

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications

Twenty-Sixth Session
Geneva, October 24 to 28, 2011, and February 1 to 3, 2012

REPORT
*adopted by the Standing Committee**

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 twenty-sixth session, in Geneva, from October 24 to 27 a.m., 2011, and from February 1 to 3, 2012.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Bangladesh, Barbados, Belarus, Belgium, Benin, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, El Salvador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, Lao People's Democratic Republic, Lithuania, Madagascar, Malaysia, Mauritania, Mexico, Morocco, Myanmar, Nepal, Netherlands, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Singapore,

* This report was adopted at the twenty-seventh session of the SCT.

South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, The Former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Zimbabwe (90). The European Union was represented in its capacity as a special member of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Union (AU), Benelux Organization for Intellectual Property (BOIP), International Vine and Wine Office (IWO), Organization of Eastern Caribbean States (OECS), World Trade Organization (WTO) (5).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Bar Association (ABA), American Intellectual Property Law Association (AIPLA), Asia-Pacific-Broadcasting Union (ABU), *Asociación Mexicana para la Protección de la Propiedad Industrial* (AMPPI), Association of European Trademark Owners (MARQUES), Centre for International Intellectual Property Studies (CEIPI), China Trademark Association (CTA), Computer and Communications Industry Association (CCIA), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), Inter-American Association of Industrial Property (ASIFI), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association for the Protection of Industrial Property (AIPPI), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), International Video Federation (IVF), Internet Society (ISOC), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), Knowledge Ecology International (KEI), Organization for an International Geographical Indications Network (oriGIn), Union of European Practitioners in Industrial Property (UNION) (24).

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

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. The Session was opened by Mr. Imre Gonda (Vice-Chair) who, in the absence of Mr. Seong-Joon Park (elected Chair of the twenty-fifth and twenty-sixth sessions of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), acted as Chair of the twenty-sixth session of the SCT.

8. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

9. The SCT adopted the draft Agenda (document SCT/26/1 Prov.) on the understanding that the sequence of the working documents under Agenda item 4 would be inverted so as to allow a debate on document SCT/26/4 during the morning of the first day of the meeting, to be continued, if necessary, after the consideration of documents SCT/26/2 and 3.

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE TWENTY-FIFTH SESSION

10. The SCT adopted the draft report of the twenty-fifth session (document SCT/25/7 Prov.) with amendments requested by the Delegations of Sudan and Switzerland and by the Representative of CEIPI.

AGENDA ITEM 4: INDUSTRIAL DESIGNS

11. The Delegation of South Africa, on behalf of the African Group, observed that it was the first time that the African Group was making a statement in this Committee. The work of this Committee had often been perceived as technical and few developing countries participated in the discussions. Notwithstanding the past, the Delegation was pleased to provide its views on the recent developments in this Committee, especially pertaining to norm-setting in the area of Industrial Design Law and Practice and on the Information Meeting on the Role and Responsibility of the Internet Intermediaries in the field of trademarks. The Group noticed progress made in the discussion towards a possible instrument on industrial design law and practice, and took note of the decision of the twenty-fifth session of the Committee on industrial design that as a possible way forward, “a diplomatic conference for the adoption of a design law treaty could be convened once sufficient progress has been made and the time was ripe for recommending the holding of such a diplomatic conference”. The African Group expressed its commitment to the work of the Committee on discussing a possible international instrument on industrial design law and practice. However, the Group noted that the process that led to the recommendation of a possible diplomatic conference remained unclear. The Group expressed its understanding that norm-setting in WIPO must follow certain processes and principles outlined in Cluster B of the Development Agenda Recommendations. The Delegation highlighted three principles outlined in Recommendation 15 of the Development Agenda, namely that norm-setting activities should be inclusive and member-driven, take into account different levels of development, and take into consideration a balance between costs and benefits. The African Group realized that the current activity was not guided by these principles. The three principles related as norm-setting activities had to be based on informed decisions taken by all Member States. Under these circumstances, questions should thus not arise on the validity of the process, which was currently the case. Moreover, there was not much empirical analytical information on the costs and benefits of the envisaged instrument to developing countries and least developed countries, as instructed by the Development Agenda. The Delegation deduced that the impact of the envisaged harmonization of industrial design laws and practices on developing countries was not known. The Delegation noted that there were a number of instruments administered by WIPO with few signatories. The reason might be attributed to the lack of ownership and information regarding the impact of the instruments in Member States. The African Group wished the outcome of this exercise to be inclusive and owned by the membership of this Committee. In light of this, the African Group believed that more information was needed for developing countries to comprehend the impact of the envisaged instrument. The Delegation expressed the need for a study on the impact of the harmonization of industrial design laws and practices to countries, especially developing countries and least developed countries. The study should address the following: (a) cost and benefit analysis of the harmonization of industrial design laws and practices; (b) impact on the users, national legislation laws, IP Offices, right holders, public interest, and the public domain; and (c) how the harmonization of industrial design laws and practices related to the Hague system. Although the envisaged instrument was supposed to be procedural in nature, the Delegation believed that it was important that a thorough analysis was done, as there was normally a thin line between procedural and substantive instruments. The African Group stood ready to contribute positively in the discussions of an instrument for industrial design law and practice and was looking forward to receiving more information on this issue. The African Group noted also that the discussion on the liability of Internet Intermediaries regarding the infringement of trademarks on the Internet required in depth analysis. The African Group thus welcomed the decision of the last session of the Committee to convene an information meeting

specifically on this issue. The African Group would provide its detailed proposal on the information meeting when the relevant agenda item is discussed.

12. The Delegation of Algeria, on behalf of the Development Agenda Group (DAG), stated that the Group took note of the progress made with regard to the SCT Agenda, including on the discussion regarding possible provisions/regulations on Industrial Design Law and Practice. The DAG recalled that during the last sessions, SCT member States have engaged in a discussion on identifying possible areas of convergence in industrial design law and practice and how the streamlined procedures might contribute to facilitate international protection of industrial designs. The Group has underlined the need to continue the open and participatory dialogue in the SCT until the document reached the sufficient maturity, before considering convening a diplomatic conference. The Delegation agreed that the existing diversity among national systems in this area and the fact that countries would be required to make substantial changes to their national laws to harmonize procedures, had to be extensively considered and analyzed beforehand. In his report, the Chair of the twenty-fifth session of the Committee had faithfully explained that convening a diplomatic conference could only be considered if, and only if, sufficient progress had been made and that time was ripe. By accepting to engage in the discussions while there was no consensus on this subject and there were only a number of the developed countries requesting the convening of a diplomatic conference, the DAG had shown great flexibility and proved its willingness to constructively participate in this discussion. The DAG welcomed documents SCT/26/2 and SCT/26/3 and expressed its engagement to examine those documents, namely to comment upon the draft provisions and discuss future work. The Delegation stated that its participation in the discussions on the draft provisions did not imply accepting in advance any of the provisions or prejudging the outcome of the discussions. The Delegation said this approach denoted that, before any consideration for a possible diplomatic conference, Members States were aware that such a challenge required the commitment of all to be truly engaged in the process and willing to ensure the necessary development flexibilities, as well as special treatment for developing countries. Hence, it was necessary to have an open and inclusive process that reflected the interest of all countries taking into account their different level of development. The Delegation observed that, to date, no developing country had expressed interest in moving the discussions towards negotiating a new international instrument in this area and no one had shown its enthusiasm to be even engaged in this process. Developing countries mainly were questioning the utility to reduce diversity among WIPO Member systems of protection for industrial designs. The Delegation noted that, at the same time, evidence suggested that existing international agreements on industrial design protection were not benefiting developing country holders of design rights. No less than 88 per cent of the total of all international registrations made under the Hague system belonged to only three countries from the developed world, while 50 per cent of the members of the actual system of registration, mainly the least developed countries (LDCs) and developing countries, did not have a single registration. The Delegation wished to highlight that the DAG did not shirk its responsibility to contribute constructively as it had done before. The Delegation pointed out that in order to give more chance to this process to be successful, discussions in this Session had to take into account different levels of development and a balance between costs and benefits, follow the guidelines mandated by the Development Agenda, in particular recommendations 15, 17, 21 and 22. The DAG took note of document SCT/26/7 on the modalities for convening an information meeting on the liability of Internet intermediaries for alleged trademark infringement. The Delegation believed it was an emerging issue that was little understood, and welcomed the organization of this information session that gave the opportunity to gain greater understanding from the perspective of all stakeholders involved (trademark owners, Internet intermediaries, users of Internet services) of the broad issues involved. The Delegation encouraged listening to different opinions and views on the interface between trademarks and the Internet, and then to proceed in a participatory and inclusive manner on the way forward. The Delegation considered that greater understanding was also sought on the development implications of the issues and proposed that the information meeting should include speakers from developing countries and representing all different stakeholders, aim at exchanging information, and work on a diversity of

items reflecting the concern of the different stakeholders, so as to give to the participants the opportunity to listen to the different views.

13. The Delegation of Panama, on behalf of the Latin American and Caribbean Group (GRULAC), reiterated its readiness to work with determination on the proposed topics. The Delegation emphasized that its region remained permanently active on issues related to this Committee and that intellectual property authorities played an important role in the development of these policies. In this regard, the Delegation highlighted relevant activities, such as the Worldwide Symposium on Geographical Indications, jointly organized by WIPO, the National Institute for the Defense of Competition and Intellectual Property Protection and the Ministry of Foreign Affairs of Peru, in Lima, on June 22 to 24, 2011, and the Industrial Design Symposium, jointly organized by WIPO and the National Institute of Industrial Property of Chile, that would take place on November 16 and 17, 2011, in Santiago de Chile. Finally, the GRULAC stated that it followed the discussions that were taking place in the Committee and reiterated its commitment and willingness to continue participating actively in the work.

14. The Delegation of Sri Lanka stated that it was aware that the task before the Committee was very demanding, as the subjects in the Agenda were quite comprehensive. The Delegation believed that the delicate task of new norm-setting in the broad area of trademarks, industrial designs and geographical indications would require extensive considerations. The Delegation noted that it was logical for developing States to aspire to benefit from new norm-setting and, therefore, such new norm-setting in the broad areas under discussion were extremely challenging. The Delegation expressed the view that new norm-setting should be practical, relevant and effective to all Member States. Moreover, such new norms should meet developmental aspirations of developing Member States. The Delegation further pointed out that the new norms could lead to new issues concerning capacity building and resource allocation in already stretched out intellectual property regimes in developing countries. Additionally, the implementation of new norms could require, among other things, amendments to law and regulations, and such process took time and required acceptance by policy makers. The Delegation stated that it looked forward to a constructive engagement in the deliberations, with a view to reaching consensus on contentious issues.

15. The Delegation of the Philippines expressed confidence in a forward-looking development of the work pertaining to Industrial Design Law and Practice, and conveyed its keen interest in participating in text-based negotiations on the possible outcome of the discussions on the Draft Articles and Regulations. The Delegation explained that its position was based on a realization that the reduction in costs for obtaining design patents was important for local companies, most of which were small and medium enterprises. The Delegation stated that it was aware that, for these entities, obtaining invention patents could be beyond their reach at this time, as the threshold for the requirement of inventive step, in order to be met, required considerable investment. With their limited resources, small and medium enterprises generally could not compete in the market place, and could not easily attain global competitive advantage. Nevertheless, the Delegation believed that local enterprises were endowed with much creativity, as ascertained from indicators showing that some local products, such as jewelry, garments, furniture and home accessories, had conquered the overseas markets. The Delegation recognized that the situation could be different for design patents, which were simpler and required only the element of originality as a precondition for protection. While there were few invention patents by local creators, design patents offered some prospects, as innovation and creativity in the aesthetic aspect of products could be more easily captured and appropriated to add value to local products. The Delegation further considered that with the proposed Draft Articles and Regulations, the mechanism for obtaining competitive advantage for small and medium enterprises became less burdensome. But apart from the obvious cost benefits in registration, design patents also allowed the right holder to assert infringement without being burdened with the task of substantiating the fact of copying and access by the infringer, which were compulsory elements that a right holder had to prove to successfully prosecute a claim of

copyright infringement. The Delegation highlighted that where a Member State's national law allowed for the protection of a design simultaneously through the patent and copyright systems, there was good ground to support the view that the conclusion of these discussions would redound to the benefit of right holders. The Delegation of the Philippines acknowledged that a very expansive scope of protection would not likely promote innovation, and might even impact on competition. In this regard, the Delegation expressed the need to be guided by a balance of the interests of different stakeholders, such as those of the design owner, the public, and the national patent offices. The Delegation recognized, though, that insofar as design patents were concerned, the debate on the need to temper intangible property rights to serve public policy purposes was not as unsettling and as contentious as in the case of invention patents. A heightened inquiry into the provisions of the Draft Articles and Regulations, therefore, would form part of the framework of its participation in these discussions. The Delegation felt positive that when discussions on the Draft Articles and Regulations would be concluded, Member States would still be able to retain, for their own interpretation, implementation and benefit, the substantive requirements such as the subject matter and scope of protection, as well as possible exceptions to protection. The Draft Articles and Regulations sought to simplify the process through which registration of designs could be obtained in many countries, and the Delegation declared itself receptive to this objective if only protection of designs could be one of the mechanisms to spur innovation in small and medium enterprises.

16. The Delegation of Bangladesh stated that any norm setting involved rights and responsibilities and expressed the wish to request a study on the possible impact of a future agreement on Industrial Design Law on LDCs.

17. The Delegation of Iraq requested a clarification as to the validity of a registration title on the territory of a federation.

18. The Delegation of Zimbabwe said that it concurred with the statement made by the delegations of South Africa, on behalf of the African Group, and of Algeria, on behalf of the DAG, and emphasized the need to adhere to the principles of norm setting, as set out in the Development Agenda Recommendations. The Delegation declared that it would like to achieve a treaty that was inclusive and benefitted all membership.

19. The Delegation of Tunisia announced the ratification of the Geneva Act of the Hague Agreement by Tunisia, and indicated that the preparatory work to accede to the Madrid Protocol had been concluded.

Information on the Work of the SCT on Industrial Design Law and Practice in Relation to the WIPO Development Agenda Recommendations

20. Discussion was based on document SCT/26/4.

21. The Delegation of South Africa, on behalf of the African Group, expressed the view that the information document fell short of its mandate. Paragraph 5 of the document set the tone that the document provided "certain features of the SCT work on industrial design law and practice that appear to correspond to one or several of the Development Agenda Recommendations in Cluster B". The Delegation considered that the document did not explain how the SCT mainstreamed the Development Agenda Recommendations, in particular Recommendation 15. The Delegation said that the document provided a historical background to the discussion on the issues, and considered that some information was useful as it illustrated that there were different views on the outcome of the discussions since the beginning of this process. The African Group noted that paragraph 65 of document SCT/22/9 stated that the Delegation of Argentina expressed the view that the discussion should not result in a binding document for offices. The Delegation believed that this view was as relevant today as it was at

that session. In document SCT/23/5, it was made clear that formalities and procedures relating to the protection of industrial designs were often complex and frequently differed from jurisdiction to jurisdiction. Such complexity and divergence created difficulties for owners of industrial designs, particularly for those who wish to file in different jurisdictions. The Delegation pointed out that diversity existed in the Member States on the protection of Industrial Designs. Some countries used patent law, some *sui generis* system, and some used designs law to protect designs. The Delegation said that there was no evidence that suggested that these issues had been resolved in the Committee. The Delegation reminded that document SCT/23/5 stated that convergence in a number of areas of industrial design procedures would be beneficial for industrial design owners in many ways, as well as for Industrial Property Offices. This was also reflected under section four of the information document on policy consideration. The Delegation observed that developing countries were not making use nor benefiting from the Hague system. The Hague system at that time had 58 Member States, out of which 29 were developing countries. Membership also included the African Intellectual Property Organization (ARIPO) and the European Community. However, by 2010, close to 88 per cent of the total of all international registrations made under the Hague system belonged to only three countries, namely France, Germany and Switzerland. The 29 developing countries, ARIPO and least developed countries did not have a single registration. In view thereof, the Delegation said that it was unclear how developing countries and least developed countries were to benefit from the current instrument on harmonizing design laws and practices. The Delegation wondered if the potential benefits outlined in document SCT/23/5 for industrial design owners and Industrial Property Offices were based on empirical evidence and if there was an analysis of benefits for developing countries and least developed countries. The above called for an analytical study on the costs and benefits of harmonizing industrial design laws and practices in WIPO Member States, particularly, in developing countries and least developed countries, as there was a clear gap of information in this regard. The Delegation stated that there was also a need to determine the interface between innovation and industrial design as the document put more emphasis on technology development as a factor for supporting the harmonization of laws. The Delegation noted that the study should be carried out by the Office of the Chief Economist and submitted to the next session of the Committee.

22. The Delegation of Algeria, on behalf of the DAG, took note of the document, observing that it had been requested by the Delegation of Brazil, on behalf of the DAG, with the purpose of presenting information on how the Development Agenda Recommendations, in particular Cluster B, have been mainstreamed with regard to the work of the SCT on Industrial Design Law and Practice. Developing countries explicitly requested the Secretariat to provide such information to understand how the discussions on industrial designs in the SCT had evolved to a stage where the SCT started a norm-setting exercise by discussing draft provisions on industrial design law and practice. The Delegation considered that the document has been limited mainly to a historical background of the work of the SCT on industrial design law and practice; to the listing of participant member States and NGOs in the SCT meetings and to flexibilities in existing IP agreements and the relationship with the draft provisions on industrial designs. Although the document contained useful information, nothing in it explained how the current discussions could be considered to have respected the pertinent Development Agenda Recommendations on norm-setting. The Delegation, observing that the document stated that differences in levels of development had been taken into account in the draft provisions without giving any argument or substantive evidence of this conclusion, highlighted the fact that there was no study on the impact of industrial design harmonization on development as well as on users. So far, the experience of the Hague system showed that only developed countries had been the overwhelming beneficiaries of a harmonized industrial designs registration process, while developing countries and LDCs had not been able to benefit due to several reasons, including the high registration fees required under the system. The Delegation also said that the paper suggested that design had a positive impact on innovation in high and low income economies, without any analysis for such an assertion. This emphasized the need to conduct a detailed and comprehensive analysis of the impact of the proposed industrial designs provisions

and regulations on innovation and creativity in developing countries. The DAG wished to seize this opportunity to ask the Chief Economist of WIPO to undertake a study on the impact of industrial designs on innovation, particularly with respect to developing and least developed countries. This should include an analysis, not only of the impact for national design right holders of seeking protection abroad, but of the impact of foreign design rights being granted in the national territory, including the impact on competition and consumers, such as the impact on prices for final products protected by design rights.

23. The Delegation of Egypt, endorsing the statements of the DAG and the African Group, expressed the view that, although this document contained useful information, there was room for additional significant improvements in order to make it more beneficial to developing countries and LDCs, especially when it came to understanding the full scope of the draft provisions and regulations and their impact on innovation, creativity and competition. The Delegation observed that the document had focused only on Cluster B of the Development Agenda Recommendations, which was relevant, but that the analysis could have included Recommendation 19, concerning how to facilitate access to knowledge and technology for developing and LDCs to foster creativity and innovation. Moreover, the Delegation considered that the document should have addressed issues such as the safeguarding of national implementation of intellectual property rules, the links between intellectual property and competition, intellectual property-related transfer of technology and the possibility of additional special provisions for developing countries and LDCs. The Delegation expressed the view that the paper had not addressed thoroughly the “impact on developing countries”, as it was expected that the proposed provisions and regulations would entail substantial or not substantial costs on developing countries, including administrative, legislative and infrastructure costs. It was well known that WIPO Member States applied different regimes for the protection of industrial design and, therefore, the cost of harmonizing these divergent regimes, which was the intended objective of the draft provisions and regulations, needed to be fully assessed. The Delegation further considered that the analysis contained in the information document could have benefited from more evidence and in depth information to substantiate the general statements made throughout the document. The Delegation asked whether the statements regarding the points of view of owners, offices and users derived from developed or developing countries and what was the basis for asserting that the draft provisions took into account different levels of technological development. The Delegation further asked how the conclusion that industrial designs were an important innovation factor in lower-income economies had been reached. The Delegation noted that the information document did not address whether developing countries and LDCs would be accorded flexibilities as part of using these draft provisions and regulations. According to WIPO statistics, the Hague system was not used by developing countries, perhaps due to high fees. The Delegation asked if the draft proposals envisioned special and differential treatment for applications filed by natural or legal persons, especially SMEs from developing and LDCs members. The Delegation believed that the WIPO Secretariat could play an important role in assessing the impact of the draft provisions and regulations by covering the aforementioned points, with a view to understanding how developing countries and LDCs could benefit from them and how right holders could actively participate without being burdened. The Delegation said that it believed that the SCT would strive to work hard during the coming days to reach consensus regarding the best strategy to use industrial design as a tool for innovation, creativity and economic development for all WIPO Members. The Committee should work on solid grounds to continue a more comprehensive preparatory work guided by facts and supported by evidence, to refrain from premature decisions, to avoid one-size-fits-all IP models, and to promote IP models that balanced the various interests of right holders, users and administrators in a manner that was supportive of, and harmonious with economic development, innovation and creativity for all.

24. The Delegation of Brazil said that it had paid careful attention to the information presented in document SCT/26/4, especially Items II (Participation in the Work on Industrial Design Law and Practice), IV (Policy Considerations), and VI (Other Considerations – Different Levels of

Development). The Delegation was pleased to see that different points of view had been taken into consideration in the report, balancing the interests of industrial design owners, industrial property offices and the public in general, as shown in Paragraph 51. The Delegation observed that the Summary of the Chair of the twenty-fifth session stated that “a possible path” would be to convene a diplomatic conference to adopt a design law treaty, “once sufficient progress has been made and the time was ripe”. The Delegation considered that document SCT/26/4 was a step in the process that should enable all members, in particular developing countries, to make a careful evaluation on whether their national interests and needs were reflected on this “possible path”. In this regard, the Delegation expressed the view that the document could have provided more details on how such a treaty could benefit developing countries. The Delegation further noted that Development Agenda 15, under Cluster B, specifically indicated that norm-setting activities shall take into consideration a balance between costs and benefits. The proposed international instrument aimed at harmonizing maximum criteria for industrial design applications. On the cost side, given the significant differences in national laws and practices, many Member States would have to endeavor legislative reforms in order to be in compliance with the proposed instrument. The Delegation considered that industrial design law diversification was not, per se, a hindrance to innovation, but that it reflected the different institutional environments of each country. The benefit, in terms of development, of adhering to the proposed treaty would need to be made clear. On the benefit side, the majority of industrial design applications and registrations originated in a very small number of countries. According to the “World Intellectual Property Indicators, 2010”, the most recent data, as of 2008, indicated that the top six offices accounted for 85 per cent of all industrial design applications that year. Under the Hague system, a number of developing countries and LDCs did not have a single registration in 2008. These countries were not, in all practical terms, extracting benefits from participating in the system. The Delegation stressed that in order to fully comply with the Development Agenda Recommendations, specially Cluster B, the discussion of norm-setting in industrial design law had to be inclusive and member-driven, transparent, and with enough information at the disposal of Member States. Only with a prudent analysis of the costs and benefits involved could all Member States fully participate in the text-based work. The Delegation considered that document SCT/26/4 did not offer evidence that adhering to the proposed new treaty would automatically benefit developing countries. The Delegation, supporting the proposals made by the DAG and the African Group, encouraged therefore specific studies on the issue.

25. The Delegation of Argentina concurred with the statement delivered by the Delegation of Panama on behalf of the Latin American and Caribbean Group. The Delegation, indicating that its country was analyzing the implications of the proposals, supported the proposal of a study based on empirical evidence, as proposed by the DAG and the African Group. The Delegation further stated that it would continue participating actively in the debates and that it wished the SCT success in its work.

26. The Delegation of Pakistan said that it considered that the document contained very useful information, but that it had been limited to a historical background with regard to the work of SCT on industrial design law and practice. The Delegation, noting that the original mandate was how the development agenda recommendations had been mainstreamed in the work of the SCT on industrial design law and practice, considered that there were further areas which could be elaborated upon, such as Recommendation 15, regarding the balance between costs and benefits, Recommendation 19, regarding how to facilitate access to knowledge for developing countries and LDCs, and recommendation 22, concerning the safeguarding of national implementation of intellectual property. The Delegation supported the proposal expressed by the African Group and the DAG.

27. The Delegation of Uruguay aligned itself with the statements made by the delegations of Brazil and Argentina and considered that, by putting into practice the recommendations of the Development Agenda, the SCT would be able to achieve better results.

28. The Delegation of China declared that it supported the efforts of harmonization of the laws and practices in the area of industrial designs and that it considered that progress had been achieved in that regard. The Delegation realized the important growth of design in China, which promoted the economy, but it considered that it was a process which could vary from country to country. The Delegation, stating that WIPO, together with all parties, including China, needed to carry out more work, so that harmonization could achieve more results, said that it hoped that flexibilities would be accommodated to take into account the different interests of developing countries and LDCs.

29. The Delegation of Australia, recognizing the comments by the DAG and the African Group and the commitments for working for a successful outcome of the work of the SCT, said that it understood the concerns of the DAG and agreed with many of the comments made by delegations. The Delegation indicated that it did not yet have a position on whether or not to support a study along the lines proposed, but that a number of issues would need to be resolved, such as the scope of the request and the resources that would be required. The Delegation considered that a number of issues that had been canvassed did not help in the discussions. With regard to the extent to which design supported innovation, the Delegation expressed the view that there surely existed studies to support that assertion. Regarding the comments on the Hague system, the Delegation, noting that Australia was not part of it, pointed out that such system was a registration system, not a norm-harmonization system, and that the utility of making comparisons with the Hague system were not obvious. The Delegation expressed the view that making sure that there were effective design systems had a bigger effect on local economy, in particular on small and medium enterprises, and that only at the second level was it important to have access to design protection throughout the world. The Delegation further considered that many of the benefits that would derive from this treaty, though difficult to quantify, appeared to be self-evident. The treaty was about setting standards, which would minimize the burdens on owners and users of the system, and about encouraging each other to reduce burdens on users and owners, so that they would have ease of access to the intellectual property industrial design registration system. The Delegation considered that making sure that small and medium size enterprises in all economies had an easier access to protection must be good for economy and must be good for those businesses. In conclusion, the Delegation declared that it was not opposed to a proposal to do some further work on economic benefits, but expressed some caution about how easy it would be to do detailed analysis and reminded about the need to have a clear scope of that research. The Delegation also declared that it would not like any further research to delay the work of the SCT.

30. The Representative of the European Union, speaking on behalf of its member States, noted the request made by the African Group and supported by other delegations for an additional study to analyze the costs and benefits of "the harmonization of industrial design laws and practices on countries, especially developing countries and LDCs". The Representative said that the European Union and its member States wished to make several observations in this regard. Firstly, the scope of a possible additional study had to be precisely defined. The Representative indicated that the articles and rules in documents SCT/26/2 and SCT/26/3 dealt with harmonization of formalities for industrial designs and that, therefore, if a study had to be conducted, it should focus on the implications of such harmonization, in particular for developing countries and LDCs. Such implications should consider the impact on national offices as well as the impact for applicants and rights holders, in particular SMEs, locally and regionally. The Representative further mentioned that another important aspect which had to be taken into account was the feasibility of such a study, and said that the Secretariat should brief the Committee on what was realistic to achieve. Finally, observing that the timetable on future work of the Committee should be carefully examined, the Representative said that the European Union and its member States would like such an additional document to be ready for discussion at the next session of the SCT and that, if necessary, the dates of SCT/27 should be adjusted to meet this goal. The Representative indicated that it was important that delegations were in a

position to make an informed decision on the Committee's work on industrial designs before the 2012 General Assembly, with a view to convening a diplomatic conference for the adoption of a treaty on industrial design registration formalities and procedures as soon as possible.

31. The Delegation of Sudan expressed its full support for the statements made by the Delegation of South Africa on behalf of the African Group and the Delegation of Algeria on behalf of the DAG. The Delegation proposed that the study take into account the economic situation in developing countries and LDCs. The Delegation further expressed its hope that the Committee would be able to reach consensus on pending issues.

Resumed Session

32. The Delegation of Egypt, on behalf of the African Group and the DAG, stated that in the context of the SCT work on Industrial Design Draft Articles and Regulations (documents SCT/26/2 and SCT/26/3) and in fulfilling the commitment of WIPO Member States to the Development Agenda Recommendations relating to Norm-Setting, in particular Recommendations 15, 16, 19, 22 and 23, the SCT should request the Secretariat, with the assistance of the Chief Economist, to undertake an analytical study outlining three topics. Firstly, the study should lay out the potential benefits, constraints and costs for developing countries with regard to applicants, particularly individuals and small and medium sized enterprises (SMEs), as well as to national offices' administrative and legal capacities, to national jurisdictions, as concerns the introduction of legal changes to domestic designs systems, and as to the needs for capacity building, investment in infrastructure and technical assistance. Secondly, the study should outline the impact of norm-setting in relation to industrial design formalities on access to the designs system for SMEs. Furthermore, it should outline the impact of norm-setting on fostering creativity, innovation and economic development in developing countries, on technology transfer and access to knowledge, as well as on the potential flexibilities (exceptions and limitations) for Member States and the possibility of additional special provisions for developing countries and LDCs. Finally, the Delegation said that the study should detail statistical information about the designs system with particular reference to access by SMEs from developing countries. The Delegation pointed out that this statistical analysis should include three levels of detailed information, in order to provide factual information on the current trends relating to protection of industrial designs in foreign countries. Level one should show the general trends observed in protection of industrial designs beyond borders (i.e. international protection); level two, provide statistical analysis on the demand for protection of industrial designs abroad by developed, developing and least developed countries (i.e. demand for protection abroad as a percentage of total demand for protection); level three, offer a statistical analysis on the origin, destination and class of protection of industrial designs abroad by developed, developing and least developed countries. The Delegation also mentioned that the study should reflect recent periods of data.

33. The Representative of the European Union, speaking on behalf of its 27 member States, said that in the context of the SCT work on design formalities (documents SCT/26/2 and SCT/26/3) and taking into account the Development Agenda Recommendations, the SCT should request the Secretariat, with the involvement of the Chief Economist, to prepare a study for the next SCT meeting, based on the prior work of the SCT on design law as laid down in documents SCT/26/2 and SCT/26/3. The Representative observed that, having regard to the different levels of development, the study should analyze, especially for developing countries and LDCs, the potential benefits to applicants, particularly small and medium sized enterprises (SMEs), as well as the potential benefits to national offices (through simpler procedures) of reducing and simplifying formality requirements in the design system. The Representative also mentioned that the study should analyze the potential costs to national offices/jurisdictions of introducing changes to domestic design registration systems. The Representative observed that, in preparing this paper, the SCT would request the Secretariat to bear in mind the desire of

developing countries and of LDCs that a possible design law treaty contribute to creativity, innovation, investment and economic development in their countries, and stated that the study should in particular: (a) consider the accessibility of design registration systems for SMEs; (b) elaborate on the extent to which possible flexibilities in a design law treaty might impact on the capacity of developing countries and LDCs enterprises to realize the benefits of the proposals; (c) consider the extent to which the proposals align to the provisions of the Hague Agreement. The European Union and its member States additionally asked the Secretariat to provide more detailed statistical information about the designs system with particular reference to access by SMEs and in developing countries. The Representative pointed out that this study should aim at being completed before the next session of the SCT so that delegations were able to make an informed decision on the SCT work on industrial designs before the 2012 General Assembly. The Representative also indicated that the terms and basis of this study should be made clear to the WIPO Secretariat and the Chief Economist of WIPO, so as to make sure that the study would deliver answers that would fully satisfy the information needs of SCT members, especially developing countries and LDCs.

34. The Delegation of Algeria endorsed the proposal made by the Delegation of Egypt on behalf of the African Group and the Development Agenda Group. The Delegation explained that the proposal reflected the objectives of the study and the aim towards an efficient working process, in order to move forward with the discussions. The Delegation indicated that the aim of the study was to assess the impact of the draft treaty on intellectual property laws and economic systems. Once the overall view of the impact on members' economic systems was assessed, members would be in a position to engage in a norm-setting process. With regard to the terms of reference, the study would respond to the question of what would be the advantages and disadvantages of this instrument for economies, and what would be the cost for members, including financial, human and technical costs. The Delegation reminded that developing countries were concerned that the norm-setting process would not disadvantage SMEs and would help to implement DAG recommendations more effectively, in particular, Recommendations 15, 16, 19, 22 and 23. The study also had to respond to the question as to what would be the added value of harmonizing rules and the effect on promoting innovation and creativity and on technology transfer. Moreover, the study should touch on flexibilities, in order to ensure that developing countries would truly benefit from the system. With regard to the EU proposal, the Delegation expressed the view that both proposals were complementary, but indicated that amendments to the language would be proposed later.

35. The Delegation of Iran (Islamic Republic of), on behalf of the Asian Group, declared that it attached great importance to the study on Industrial Design Law and Practice in Relation to the WIPO Development Agenda Recommendations. It stated that the terms of reference for the study should be drafted in such a way as to ensure a comprehensive study on all aspects of design law, which should also analyze the possible challenges and benefits of formalities harmonization. The Delegation, observing that the proposals made by the African Group, the DAG and the European Union had common elements, said that a consensus solution would not be too difficult to reach. The Delegation also highlighted that the Asian Group was ready to engage constructively in informal consultations, with a view to reaching a compromise text for the terms of reference.

36. The Chief Economist of WIPO observed that the possible effects of the draft treaty on the harmonization of design formalities could be divided into first order effects and second order effects. The first order effects were the immediate effects that a design formalities treaty would have on applicants and offices. Those effects were easier to study. The second order effects, namely the effects on the broader economy in terms of creativity, investment and competition were more difficult to assess. The second important dimension to bear in mind was the available data. The Chief Economist explained that WIPO collected data on industrial design activity as part of its annual survey on IP statistics, sent to national IP Offices every year. While WIPO sent its statistic survey to every national IP Office, the responses were uneven and varied

inversely with the level of economic development of the respondent. When looking at the type of descriptive data compiled, the SCT should be aware that fewer responses came from offices in least developed countries. Another remark in regard of SMEs was that, even if SMEs appeared to be of a strong interest, it could be quite difficult to pick them up within the scope of available data at WIPO. Potentially, one data source that could be used was the record data on design applications, but even there WIPO did not have any information on the characteristic of the applicant. Finally, the Chief Economist pointed out that the SCT would have to agree on the type of study it wished to request. There were different types of study possible, depending on the methodology and the type of evidence the membership would expect the Secretariat to come up with. In order to do something meaningful, the Secretariat would have to engage in a survey which could be combined with interviews of stakeholders. A more rigorous, scientific approach would require working with random samples of applicants in a good number of countries and would need significantly more time and resources.

37. The Representative of the European Union, speaking on behalf of its 27 member States, reiterated the view of the European Union and its member States that it was important that delegations were able to make an informed decision before the 2012 General Assembly, with a view to convening a diplomatic conference for the adoption of a treaty on industrial design registration formalities as soon as possible.

38. The Representative of ATRIP said that, in its quality of professor of law, he had developed various approaches of economic analysis of industrial designs, and proposed to share ideas on this subject. The Representative pointed out that statistics showed that design patents were more filed by local applicants.

39. The Chair proposed that the terms of reference be discussed in an informal meeting with representatives of the different groups and interested delegations. Once the terms of reference were agreed upon, the plenary session would resume. The SCT would then be informed of the agreement reached in the informal sessions and decide on the subsequent work concerning this matter.

40. The plenary session was adjourned.

41. Upon resuming the plenary session, the Chair noted that a number of delegations considered that, while document SCT/25/4 contained useful information, a study by the Secretariat with the involvement of the Chief Economist, on the impact of the draft Articles and draft Rules on Industrial Design Law and Practice (documents SCT/26/2 and 3) on developing countries was required. Other delegations declared that they would not oppose such study, provided that its scope was precisely defined and that it did not delay the work of the SCT. After informal discussions, the SCT agreed to request the Secretariat to prepare an analytical study, in accordance with the terms of reference contained in document SCT/26/8 (reproduced in Annex I of this document).

42. The Delegation of Iran (Islamic Republic of), on behalf of the Asian Group, observed that the presence of the Chief Economist had been extremely helpful to shed light on the different aspects of the study and its feasibility. He pointed out that the text of the terms of reference was balanced and gave an overview of all issues of interest to all stakeholders, namely applicants, national or regional offices and different jurisdictions, with particular attention to developing countries and LDCs. The Delegation said that, given the importance of this document for Member States in taking an informed decision, the study should be published two months prior to the next SCT meeting. The Delegation indicated that it looked forward to seeing a comprehensive, analytical and fact-based study.

43. The Delegation of Algeria, on behalf of the DAG, highlighting the efforts made to undertake this work, thanked all the colleagues that had contributed constructively to the discussion of this text. The Delegation explained that the presence of the Chief Economist and the Secretariat in these consultations had contributed to giving clarity and an understanding of the different issues. The Delegation expected the study to be of great quality because it was aimed at helping developing countries to understand the implications of this norm-setting exercise.

44. The Delegation of Egypt, on behalf of the African Group, thanked the Chair, the Secretariat and the Chief Economist for availing their time and experience to assist in the elaboration process of the terms of reference for the study. The Delegation, observing that the study was important to have a better understanding of the different elements of this exercise, expressed the view that the terms of reference were sufficiently comprehensive to obtain a study that would shed light on the implications of introducing and implementing any legal changes required by the draft articles and rules. The Delegation expressed its satisfaction over the fact that the document focused on developing countries and LDCs' needs for capacity building, investment in infrastructure and technical assistance. Pointing out the commitment to mainstream the Development Agenda Recommendations in this norm-setting exercise, the Delegation said that statistical data would be very important to give a picture of this important activity. Moreover, the publication of the study two months prior to the next SCT meeting would allow delegations to examine the study and benefit from it, and to be prepared for the next round of discussions, in order to have a more positive and better engagement.

45. The Delegation of Chile thanked the Secretariat, the Chief Economist and the Regional Coordinators for preparing the document on the terms of reference for the study. The Delegation declared that once the study had been brought to the attention of the delegations, the Committee should be able to proceed with a substantive analysis of a possible treaty on design formalities, as the Delegation of Chile considered this to be an area of importance for its country. The Delegation reiterated the wish to continue moving forward in a positive spirit.

46. The Representative of AIPLA, observing that the approach for the study chosen by SCT members was economical, considered that a legal approach could also be useful and could enhance the value of the study.

47. The Representative of ATRIP congratulated SCT members and the Secretariat for the work carried out for the understanding of the project and welcomed their deep involvement into the project. The Representative observed that understanding the impact of design protection was very important and that it was appropriate to delete the reference to the Hague system, since it was a separate topic with its own procedures.

Industrial Design Law and Practice - Draft Articles and Draft Regulations

48. Discussion was based on documents SCT/26/2 and 3.

49. The Representative of the European Union, speaking on behalf of the 27 member States of the European Union, said that the European Union and its member States recognized and had stressed the great importance and added value of harmonizing and simplifying design registration formalities and procedures. Underlining that the European Union and its member States appreciated the substantial and valuable work of the Committee in addressing these issues, the Representative added that it would be a further accomplishment of this Committee to build on the promising work of the last six years and add another achievement to its record. For these reasons, the European Union and its member States reiterated their support in bringing this matter to a diplomatic conference in the very near future. Whilst not committing delegations to the provisions of a treaty until they were ready and able, such a step would send a positive

message of intent to the users of all of the design registration systems. The Representative also stated that the European Union and its member States wished to express their support for working documents SCT/26/2 and SCT/26/3, which they considered to represent a further promising step in the right direction. The European Union and its member States recognized that these draft provisions not only adequately responded to the ultimate goal of approximating and simplifying industrial design formalities and procedures, but were also appropriate to establish a dynamic and flexible framework for the subsequent development of design law, enabling both developing and developed countries to keep up with future technological, socio-economic and cultural changes. The Representative indicated that the European Union and its member States looked forward to advancing discussions on the draft articles and draft regulations in the constructive spirit that had characterized the preceding sessions of the Committee, and were hopeful that the Committee would reach consensus on the idea of convening a diplomatic conference for the adoption of a treaty on industrial design registration formalities and procedures in the very near future.

50. The Delegation of Chile, expressing the view that documents SCT/26/2, SCT/26/3 and SCT/26/4 had faithfully reflected the comments made by the delegations in the previous sessions, said that these documents constituted a good basis to continue discussing on the technical aspects of this very important topic. The Delegation, pointing out that industrial designs were a very important issue in developing countries, said that it was hopeful that the Committee would advance work on these texts at this session.

51. The Delegation of Brazil expressed its satisfaction over the new and revised explanatory notes, which helped delegates to understand how the text had been developed until now. The Delegation suggested that track-changes be introduced in the documents, in order to help delegations to clearly identify their inputs to the texts. The Delegation of Brazil also underlined that its participation in the text-based discussions did not mean automatic acceptance of any of the provisions and did not contemplate the result of these works as necessarily leading to a legally binding instrument or to the establishment of maximum standards for Member States. The Delegation's engagement in the discussions was to be understood as a constructive stance on the exercise, in order to help identifying areas of convergence with Brazilian law and practice, and to point out areas where, in the Brazilian perspective, further work was necessary.

52. The Delegation of Japan said that it was pleased to note that the document regarding the draft articles had improved session after session, although some issues still had to be discussed in detail. The Delegation confirmed that it would actively participate in the discussions, striking a balance between its existing national system and harmonization needs.

Article 1: Abbreviated Expressions

Rule 1: Abbreviated Expressions

53. The Representative of CEIPI, noting that a number of general observations on form would be communicated directly to the Secretariat, suggested replacing, in item (iv), the following definition: ““application” means an application for the registration of an industrial design or an application for the grant of a patent for an industrial design;” by ““application” means an application for registration”, since item (iii) already defined the term “registration”. The Representative wondered whether the definition of “divisional application” in item (v) was really needed, and expressed the view that, in item (xii), concerning the definition of “applicant”, the words “as the person who is applying for the design” should be replaced by more appropriate wording, as an applicant did not apply for a design.

54. The Representative of INTA said that it would be preferable to use the terms “the law of...”, instead of “legal enactments”, in item (vi) (“applicable law”), both for a Member State and a member Organization, since “legal enactments” was narrower than the “applicable law”. In

the French version, he suggested replacing the words “*la législation applicable*” by “*le droit applicable*”.

55. The Representative of JPAA reported that Japan was considering the possibility of joining the Hague Agreement, which would entail a revision of the domestic law. The Representative, observing that a fundamental barrier existed between jurisdictions that examined novelty and those which did not, said that the most crucial issue was how a design law treaty should be designed to encourage users to obtain design protection.

56. The Delegation of Brazil, indicating the time limits in Brazil were calculated in days, suggested adding a paragraph indicating that “one month should be understood as 30 consecutive days”.

57. The Delegation of Sweden observed that it would have a problem, should the proposal made by the Delegation of Brazil to include a definition of a month as 30 days be accepted.

58. The Secretariat explained that the word “month” was used in this Article in accordance with the term that had been used in previous similar instruments. Pointing out that the main issue was how to calculate a time limit, the Secretariat wondered whether there should be a note indicating that the way to calculate a time limit would be left to the parties.

59. The Delegation of Algeria, on behalf of the DAG, underscoring the commitment of its country to work together with the other countries to examine the various provisions, supported the statements made by the Delegation of Brazil regarding the usefulness of having reflected in the text, and not only in the report, the various proposals put forward by the various delegations.

60. The Delegation of Australia said that it supported having track changes in the documents for a while, until a text had been agreed. The Delegation further noted that there were two options concerning the calculation of time limits, one which would maintain flexibility and allow each jurisdiction to calculate according to its applicable law, and a second one which would consist in having a definition, which would need to be consistent with other definitions, such as the one provided by the Hague Agreement.

61. The Delegation of Germany expressed its support for the addition of a definition of the term “one month” in this Article, and declared that it did not support the addition of track changes in the revised text.

62. The delegations of Algeria and South Africa expressed their support for the proposal of the Delegation of Brazil regarding track changes.

63. The Chair noted that there were proposals for amending items (v) and (xii) and for the addition of a statement that time limits expressed in months could be calculated by Parties in accordance with their national law.

Article 2: Applications and Industrial Designs to Which these Articles Apply

64. The Delegation of Japan, seeking clarification on Notes 2.02 and 03, requested an additional note which would clearly specify that if a Party applied some, or all, of these provisions to specific types of applications, such as “converted”, “amended” or “continuation” applications, a Party would be in a position to require specific indications or elements. The Delegation alternatively suggested adding a provision in Rule 2, providing that a Party would be in a position to require specific indications or elements, as it was the case in Rule 2(2) for “Requirements in case of Divisional Applications”.

65. The Delegation of the Russian Federation said that it was not essential to give details concerning special types of applications as the applicable law would provide for those.

66. The Delegation of Algeria requested clarification as to whether the information contained in Notes 2.02 and 03 had been incorporated in this Article.

67. The Delegation of Egypt, wondering whether Article 2(1) applied also to parties which were not engaged in these discussions, expressed the view that the definition of “divisional application” in Article 1(v) should be entirely defined in Article 1, and not by reference to Article 8.

68. The Chair noted that Note 2.03 should be deleted.

Article 3: Application

Rule 2: Details Concerning the Application

Rule 3: Details Concerning Representation of the Industrial Design

69. The Delegation of Brazil, observing that there could be different interpretations on what exactly came under the Rules and under the Articles, expressed the view that items (iii) (“a claim”), (iv) (“a statement of novelty”), (vi) (“indication concerning the identity of the creator of the industrial design”), (viii) (“where the applicant is not the creator of the industrial design...”), (ix) (“the name of a State...”) in Rule 2(1) should be moved to Article 3. The Delegation further suggested including the words of Note 3.09 (“acceptance of “multiple applications” by a Party is subject to compliance, by the applicant, with the conditions prescribed in the Party’s applicable law”) in the text of Article 3(2).

70. The Delegation of Japan said that, when an applicant was a legal entity, the legal nature of that legal entity should be required, as it was the case with the Singapore Treaty. This information should also be reflected in Articles 14, 15 and 18 of document SCT/26/2. In addition, the Delegation expressed the view that item (i) of Rule 2 (“an indication of the product or products which incorporate the industrial design...”) should be included in Article 3. The Delegation further proposed to add a note which would clearly express that specimens and models could be submitted. Finally, indicating that Japan admitted not only views which represented the appearance of the industrial design itself, but also views which helped to understand how to use the product, called “reference views”, the Delegation requested the addition of a note expressing that such “reference views” would be admitted.

71. The Representative of CEIPI suggested to align the language in Article 3(1)(vi) in French, which used the term “*déclaration*”, to the English version, which used the term “evidence”. The Representative also proposed to replace, in Rule 2 (1)(ix) third line, the word “*ou*” by “*e*” in the French version. Finally, the Representative suggested reviewing item (ix) in Rule 2(1), concerning the “name of a State of which the applicant is a national...”, to follow the exact wording of Article 3(1)(a)(iii) of the Singapore Treaty.

72. The Representative of FICPI reminded that the particular interest of the participation of its organization in this type of *fora* was to bring forward the views of SMEs which the organization represented. The Representative suggested that the wording in item (ii) of Rule 2(1) follow the wording proposed in item (i). Referring to Rule 3(3), the Representative pointed out that he fully agreed with the fact that the obligation to fully disclose the industrial design for which protection was sought belonged to the applicant. The Representative noted, however, that there was a problem with subparagraph (b), in particular with the second sentence (“However, additional views disclosing new matter do not have to be admitted”), which put the applicant in very great difficulty in the case where the office decided that there was not sufficient disclosure of the design. The Representative therefore wondered whether subparagraph (b) was necessary, and

if it was the case, proposed to reword subparagraph (b) as follows: “Notwithstanding subparagraph (a), additional, specific views may be required by the Office where such views are necessary to fully show the product or products which incorporate the industrial design or in relation to which the industrial design is to be used. However, additional views disclosing new matter affecting the industrial design, which are not derivable from the original view or views, do not have to be admitted”. In that case, it would be clear that the concern was to have more views of the product, not of the industrial design.

73. The Delegation of Colombia, expressing its support to the proposal of the Representative of CEIPI concerning the French and English versions of Article 3(1)(vi), proposed to replace the words “*elementos justificativos*” by “*pruebas*” in the Spanish version of that article.

74. The Delegation of Canada, observing that it could be useful to have at least one view that presented the product as a whole, said that it wished that this be indicated at least in a note. Moreover, the Delegation wondered how Rule 3(1)(c), which required that the industrial design be represented alone, was to be understood, taking into account Rule 3(2)(a), which allowed the use of dotted lines to indicate matter for which protection was not claimed.

75. The Delegation of Australia expressed its support with the comments made by the Representative of FICPI regarding the use of the same language in items (i) and (ii) of Rule 2(1).

76. The Representative of FICPI, in reply to a request for clarification from the Delegation of Australia with regards to Rule 3(3), said that its intention was not to say that an office could not require additional views, but that additional views could be required in order to show all aspects of the product. However, the design should be seen from the views as originally filed.

77. The Representative of ABA concurred with the Delegation of Canada in that the language used in Rule 3(1)(c) was confusing with respect to Rule 3(2)(a). The Representative further suggested deleting Rule 3(3)(b).

78. The Delegation of Australia stated that the Committee would be wise to adopt the position of having the smallest amount of elements possible in the articles.

79. The Delegation of Brazil expressed the view that, since this article provided for maximum standards, the idea was to keep a maximum which would be compatible with the requirements of as many countries as possible.

80. The Delegation of France, expressing its support for the statement made by the Delegation of Australia, said that it was important to maintain the strict minimum of elements in the draft articles and to be consistent with the PLT, the TLT and the Singapore Treaty.

81. The Delegation of the United States of America, observing that it favored a minimum list of conditions in the articles in order to obtain a dynamic treaty, expressed its support for the statements by the delegations of Australia and France.

82. The Delegation of Brazil suggested drafting paragraph (2) of Article 2 in a language similar to the following part of note 3.09: “acceptance of “multiple applications” by a Party is subject to compliance, by the applicant, with the conditions prescribed in the Party’s applicable law”.

83. The Delegation of Australia expressed concern regarding the inclusion of paragraph (4) [*Evidence*] in Article 3.

84. The Secretariat explained that this provision was aimed at counterbalancing the rigidity of a provision setting out maximum requirements and was modeled on the Singapore Treaty and the PLT.

85. The Delegation of Bangladesh, referring to paragraph (2), said that the requirement to submit a power of attorney should be prescribed as well.

86. The Delegation of the Russian Federation, referring to Rule 3(3) (Views) proposed to amend the text to provide that the industrial design be represented by a view or several views of the product that fully disclosed the essence of the industrial design.

87. The Delegation of South Africa supported the wording of Rule 3(3)(b), indicating that unrepresented applicants were not always capable of deciding if a design was fully disclosed by one view.

88. The Delegation of Australia said that the language proposed by the Delegation of the Russian Federation would be problematic for jurisdictions which did not require any representation of the product to which the design was applied. Regarding Rule 3(3)(b), the Delegation expressed concerns similar to those expressed by the Delegation of South Africa, but considered that its concern could be addressed by the language in Rule 3(3)(a), which allowed the applicant to submit one view and created the obligation of full disclosure. This draft allowed the possibility for the Office to request additional views when the single view submitted did not fully disclose the industrial design.

89. The Delegation of the Russian Federation expressed the view that the words “the appearance of the industrial design” were not appropriate, as it was the industrial design that was disclosed, and not its appearance.

90. The Chair proposed to delete the word “appearance” in Rule 3(3)(a).

91. The Representative of ATRIP, pointing out that the notion of product was a difficult one, called for an uniform understanding of the concepts of “product” and “protected design”.

92. The Delegation of the Russian Federation agreed to the proposal of the Chair to delete the word “appearance” from Rule 3(3)(a).

93. The Delegation of Australia supported the proposal of the Chair to delete the word “appearance” from Rule 3(3)(a).

94. The Representative of FICPI said that the deletion of the word “appearance” would, at first sight, be a satisfactory solution. The Representative, referring to Note 3.09 on the maximum number of views, considered that it would be useful to indicate that the maximum number of views should not be too low, for example, not less than 10 views.

95. The Delegation of Germany, observing that the maximum number of views in Germany was 10, expressed support for the proposal made by the Representative of FICPI. The Delegation also supported the deletion of the word “appearance” from the Rule 3(3)(a).

96. The Delegation of Canada expressed support for the proposal by the Representative of FICPI regarding Rule 3(3)(b).

97. The Delegation of Australia expressed support for the proposal expressed by the Representative of FICPI regarding Rule 3(3)(b).

98. The Chair noted a proposal to align the wording of the French and Spanish versions of paragraph (1)(v) of Article 3 with the English text.

99. The Chair noted proposals to transfer items (i), (iii), (iv), (vi), (viii) and (ix) from Rule 2(1) to Article 3, to add an indication of the nature of the legal entity where the applicant is a legal entity in Rule 2(1), and to align the wording of item (ii) with item (i) in Rule 2(1).

100. The Chair noted that there were no comments on the draft of Rule 2(2).

101. The Chair noted that there was a proposal to redraft paragraphs 2(a) and 3(a) and (b) of Rule 3.

Article 4: Representatives; Address for Service or Address for Correspondence

Rule 4: Details Concerning Representatives, Address for Service or Address for Correspondence

102. The Delegation of Switzerland noted an error in the French version of Rule 4(3), which referred to two months instead of one month.

103. The Delegation of China noted that, according to national legislation, foreign applicants and non-residents had to act through a representative in order to obtain a filing date. The Delegation considered that it should be up to each party to make this a filing-date requirement.

104. The Delegation of Japan suggested extending the time limit in Rule 4(3) to two months, where the address of the applicant was outside the territory of the party, aligning it to the respective Rule in the Singapore Treaty.

105. The Delegation of Bangladesh noted that, as in China, national legislation provided that foreign and non-resident applicants had to file through a representative in order to obtain a filing date.

106. The Delegation of Colombia, observing that national legislation provided for a time limit of 30 days, considered that extending it to two months was too long.

107. The Representative of CEIPI proposed to replace, in Article 4(2)(b), the words “in its territory” by “in the territory of the Party”.

108. The Representative of FICPI recalled that the provision was introduced on the basis of the PLT, which allowed mandatory representation for all applicants, including applicants in the country where the protection was sought, and provided for a number of exceptions. In the Singapore Treaty, mandatory representation was restricted to applicants and owners who had no residence or commercial establishment in the territory of a Contracting Party and there was no exception to the requirement of mandatory representation in those cases. The Representative considered that the present provision proposed an amalgam of the Singapore Treaty provisions, together with an exception from the PLT. However, while designs were akin to patents because of the novelty requirement, there was a significant difference between the two because designs tend to pass registration more quickly and with less scrutiny than patents. Therefore, the problem was that, if an application obtained a filing date in a particular jurisdiction without any local representative having looked at it, it could have problems that could not be subsequently corrected because the filing date would have been accorded.

109. The Delegation of Morocco said that, according to national legislation, a filing date could not be granted to a non-represented applicant who had neither an address for service nor an address for correspondence in Morocco.

110. The Representative of MARQUES expressed support for maintaining Article 4(2)(b).

111. The Delegation of the Republic of Moldova pointed out that, although this was a complex issue, the provision worked for the benefit of users. The Delegation expressed the view that it would be appropriate to delete the words “holder” and “interested person” from this provision as the Article was specifically dealing with applicants and filing date.

112. The Representative of JPAA, observing that Article 4(2)(b) could in some cases benefit the applicant, but harm it in other cases, declared that it did not support the inclusion of this provision.

113. The Delegation of Spain supported the deletion of Article 4(2)(b).

114. The Delegation of the United States of America stated that it supported the addition of that provision, mainly because many design applications were filed by independent inventors and small businesses. The Delegation considered important that Offices should not require, for purposes of a filing date, that a representative be appointed for filing the application, or the mere payment of a fee, or a receipt. Article 7(2) of the PLT provided for an exception to mandatory representation, and the Delegation believed that a similar provision should apply in case of designs. Moreover, requiring the appointment of a representative could interfere with applications being filed under The Hague Agreement and this would be undesirable. The Delegation considered that adding a provision similar to Article 7(2) of the PLT would reduce the barriers for seeking protection in the national country, as well as internationally.

115. The Delegation of Algeria said that although, it could in principle support the deletion of Article 4(2)(b), it believed that it would be preferable, at this stage, to reflect all points of view.

116. The Delegation of Switzerland supported retaining Article 4(2)(b).

117. The Delegation of Guatemala supported deleting Article 4(2)(b).

118. The Delegation of Germany supported retaining Article 4(2)(b) for the reasons put forward by the Delegation of the United States of America.

119. The Delegation of Netherlands supported the statement made by the Delegation of the United States of America to retain Article 4(2)(b).

120. The Delegation of Switzerland stated that, while it did not support the proposal of changing the time limit from one month to two months in Rule 4(1)(d), it could support the proposal of the Delegation of Japan to make a distinction between a time limit for a holder whose address was in the territory of the party and a holder whose address was outside that territory.

121. The Delegation of Bangladesh stated that the time limit provided in Rule 4(1)(d) should be in a line with the time limit in Rule 5, which provided for a period of not less than one month to cure the application.

122. The Delegation of Australia, noting that the time limit referred to the minimum amount of time that an office had to give, expressed the view that the period should be kept short. It therefore supported the time limit of one month.

123. In reply to a request for clarification from the Delegation of Switzerland, concerning the term “interested person” in Article 4(2), the Delegation of Australia said that “interested person” was understood as a person who, according to the national law, had a right to have standing before the office. The Delegation preferred to keep the term “interested person” in Article 4(2).

124. The Delegation of Japan explained that its proposal was to extend the time limit to two months only for holders whose address was outside the country, along the lines of Article 4(3) of the Singapore Treaty.

125. The Representative of FICPI said that obtaining a power of attorney was not just a matter of electronic communication. A power of attorney was a paper document which had to be signed and brought from the place where the applicant was situated to the place where the application had to be lodged. In the real world, a one-month period would be extremely short to handle this situation. Therefore, the Representative believed that the solution allowing for two months, provided for in the Singapore Treaty, was much more manageable.

126. The Representative of JPAA supported the statement made by the Representative of FICPI, and said that, in practice, Offices usually required a hard copy of the power of attorney.

127. The Delegation of Angola considered that parties had flexibility to provide for a longer period.

128. The Delegation of South Africa expressed its support for the proposal made by the Representative of FICPI, concerning the extension of the time limit.

129. The Delegation of Uruguay suggested replacing the term “interested person” in Article 4 by the term “legitimate person.”

130. The Chair noted that there was a proposal concerning paragraph 2(b) of Article 4, in respect of which two different options would be presented as alternatives in the next draft. He also noted that two different options concerning the time limit in paragraph 1(d) of Rule 4 would be presented as alternatives in the next draft.

Article 5: Filing Date

Rule 5: Details Concerning Filing Date

131. The Delegation of Canada said that, for Offices that carried out a novelty examination, it could be useful to have other elements for the purpose of according a filing date, such as a description or a claim. Referring to the filing-date elements in the Geneva Act of the Hague Agreement, the Delegation considered that it would be counterproductive to have two WIPO treaties with different requirements relating to the filing date.

132. The Delegation of the United States of America, indicating that the Geneva Act of the Hague Agreement allowed for a claim to be a filing-date requirement for those countries that required a claim, proposed to make a parallelism with the Geneva Act in order to insert similar language to allow a party to keep this requirement if it had it at the time of ratification. The Delegation reminded that in the United States of America there were only two requirements for obtaining a filing date, namely the representation of the design and the claim. The Delegation noted that the same concept was used with reference to the fees in Article 5(2).

133. The Delegation of Brazil suggested including an additional requirement to Article 5(1), namely an indication of the identity of the creator of the design. In paragraph (4), concerning “Notification and time limits”, the Delegation proposed to replace the words “within the time limit prescribed in the Regulation” by “within reasonable time limit”. The Delegation further noted

that if this suggestion was to be accepted, then there was no need for Rule 5. With respect to paragraph (5), concerning the “Filing Date in Case of Subsequent Compliance with Requirements”, the Delegation proposed to replace the words “the date on which all the indications and elements required by the Party under paragraphs (1) and (2) are received by the Office” by “the date on which the application was first received by the Office”.

134. The Delegation of China said that, in addition to the requirement for foreign and non-resident applicants to file through a representative, the identity of the applicant was a filing-date requirement in China. The delegations further explained that, if the application did not comply with such requirements, the office would reject it and there would not be any possibility to resubmit it.

135. The Delegation of Japan proposed that “the indication of the product” be included as a filing-date requirement. The Delegation said that 95 per cent of jurisdictions required the “indication of the product” and that in some countries it was important to understand the design and determine the scope of protection.

136. The Delegation of South Africa supported the proposal of Brazil regarding Article 5(5), concerning the filing date in case of subsequent compliance with the requirements.

137. The Delegation of Australia, observing that this provision was crucial, proposed to add the words “no later than” to Article 5(5), to read “the filing date shall be no later than the date...”, which would clearly allow each jurisdiction to decide on the filing date.

138. The Delegation of South Africa said that the proposal by the Delegation of Australia would create uncertainty.

139. The Delegation of Germany supported the proposal made by the Delegation of Australia.

140. The Delegation of the Czech Republic expressed its support for the text as it stood.

141. The Delegation of Brazil said that the wording proposed by the Delegation of Australia would be acceptable.

142. The Delegation of Algeria expressed the view that Article 5(3) was too constraining and said that, while it did not request its suppression, it wished its opinion to be reflected in the report.

143. The Delegation of India said that in its country the filing date was the date where a complete application was received along with the fees.

144. The Delegation of Chile highlighted the importance of Article 5(2).

145. The Delegation of South Africa said that it could accept the wording proposed by the Delegation of Australia concerning Article 5(5).

146. The Delegation of Mexico said that it supported the amendment proposed by the Delegation of Australia concerning Article 5(5).

147. The Chair noted proposals to add to paragraph (1) of Article 5 a claim, a description, an indication of the product and an indication of the identity of the creator to the list of filing date requirements.

148. The Chair noted that there were no comments on the draft of paragraphs (2) and (3) of Article 5.

149. The Chair noted that there was a proposal by one delegation to replace the words “prescribed in the Regulations” by “within a reasonable time limit” in Article 5(4), and to omit Rule 5.

150. The Chair noted a proposal to amend the wording of Article 5(5) to the effect that the filing date should be no later than the date on which all required elements were received by the Office.

Article 6: Grace Period for Filing in Case of Disclosure

151. The Delegation of Japan, indicating that the grace period in Japan was six months, said that it started from the filing date, even if the applicant claimed a priority date. The Delegation further observed that it would like that a Note be added, stipulating that the disclosure of an industrial design made in a bulletin, published by a domestic or a foreign Office, did not give rise to a grace period as the disclosure was not made by the creator or his/her successor in title, by a person informed of the industrial design, and authorized to disclose it, by the creator or his/her successor in title. However, the Delegation observed that where the application disclosed in a bulletin was a misappropriated application as a result of an abuse, the publication of the bulletin should give rise to a grace period. In addition, the Delegation wondered whether, in the case where an applicant applied for a grace period, a Party could require a document that would prove that the design was disclosed, as it was the case in Japan. Finally, the Delegation observed that public disclosures should not be limited, except for publications of bulletins, since the forms of disclosure were numerous and that would not be in the interest of users.

152. The Delegation of Brazil, observing that it supported the option for a six-months period, suggested a change of language in order to make subparagraphs (a), (b) and (c) optional, as in Brazil the law did not provide for subparagraph (c).

153. The Delegation of China, stating that it supported the option of “at least six months”, observed that the grace period in China applied only where an industrial design was shown from the first time in an international exhibition, in academic or technical meetings and where disclosed without the consent of the applicant. The Delegation expressed the view that Article 6 should be modified to accommodate the different situations in Member States and to include flexibilities.

154. The Delegation of the Russian Federation stated that time period of “at least six months” suited the Delegation, and wondered what would be the justification of extending this period to 12 months.

155. The Representative of the European Union said that the language used in Article 6(b), requiring that a person should be not only informed about the industrial design but also authorized to disclose it, could limit the benefit of the grace period. The Representative proposed that the requirement concerning authorization to disclose the industrial design be removed or be made conditional, so as to provide more flexibility for the benefit of creators and their successors in title.

156. The Delegation of Chile said that it welcomed the proposed option of “at least six months”, but suggested that a maximum time limit be provided, in order to ensure greater legal certainty for users.

157. The Delegation of the Republic of Korea said that the grace period in its country was currently six months, but that an amendment was under consideration to extend it to 12 months, further to the request of users.

158. The Delegation of Malaysia said that the grace period was currently six months, although there was currently a proposal under consideration to extend it to 12 months.

159. The Delegation of France said that the grace period in France was 12 months, which was endorsed by users after consultations.

160. The Delegation of the Philippines, indicating that national law allowed for a six-month grace period, suggested adding two new items, namely a disclosure made by the patent office and a disclosure made by a third party who obtained information directly or indirectly.

161. The Delegation of Sri Lanka said that the grace period in Sri Lanka was six months.

162. The Delegation of Kenya said that it supported the proposed option of 12 months.

163. The Delegation of Switzerland underlined the fact that the wording of “at least six months” proposed in this Article should not be problematic for those countries that, like its own, provided for a 12-month period.

164. The Delegation of Bangladesh said that its law provided for a six-month priority period only.

165. The Delegation of Australia, observing that Australia did not currently have a grace period, said that, if the best practice was to have a grace period, Australia would be prepared to consider amending its law to come into line with other jurisdictions. The Delegation encouraged other delegations to focus on the needs of users, rather than simply reflecting on the current state of their legislation.

166. The Delegation of Poland, indicating that the grace period in Poland was 12 months, expressed its support for the comment made by the Delegation of France.

167. The Delegation of the United States of America, in response to the Delegation of the Russian Federation about the reasons to provide for a 12-month grace period, explained that applicants often based their decision to pursue protection on a number of different considerations and that 12 months was a proper time period to strike a fair balance between encouraging applicants to pursue their right to protection and enabling those applicants or design owners to evaluate what would be the value of their industrial design rights. Moreover, the 12-month grace period gave the applicant an opportunity to fully engage representation. The Delegation further observed that an applicant or an industrial design owner might not immediately be aware of the disclosure, and that a 12-month period would help individual inventors who had no counsel. The Delegation, in response to the proposal made by the Delegations of Brazil to make subparagraphs (a), (b) and (c) optional, underlined the fact that the situations referred to in subparagraph (a), (b) and (c) were intended to be instances in which a grace period should be allowed. The Delegation pointed out that, in particular, item (c) seemed to be an instance of unfair competition, suggesting that it should be an instance where a grace period should be provided for, to protect the right of the applicant.

168. The Representative of JPAA, expressing support for a grace period of 12 months starting from the filing date or from the priority date, explained that very often the decision for a company to file an industrial design was linked to the result of a market survey, which generally took time to conduct. The Representative, observing that a 12-month period did not collide with the interest of third parties, added that from the point of view of the Office, a longer grace period did

not delay the examination of the industrial design, since when the industrial design was examined, prior art within the grace period was disregarded. In addition, the Representative indicated that a six-month grace period would not be beneficial as it could finish before the expiry of the priority period. The Representative added that this Article should provide information regarding the procedure on how to apply for a grace period. In particular, it should provide that no statement had to be made to apply for a grace period, or at least that the office could only require the intention of the creator to apply for a grace period, but not any proof. Finally, the Representative suggested that a Note define the notion of “disclosure” as including publication of the design by an Office.

169. The Representative of CEIPI, regarding the proposal made by the Delegation of Brazil on subparagraphs (a), (b) and (c), pointed out that the three conditions were not cumulative and suggested to add the word “or” at the end of subparagraph (b). The Representative, supporting the statements by the Delegation of Australia and the Representative of JPAA, highlighted the need to find uniform solutions regarding the duration of the grace period, the starting point of the period and the circumstances giving rise to a grace period. The Representative concluded that it was better not to standardize anything rather than to give the impression of a legal certainty which did not exist.

170. The Representative of ATRIP observed that, not only the duration of the period, but also the circumstances giving rise to the grace period, were important issues, and that some time should be given to this topic.

171. The Representative of MARQUES underlined that the interest for users of having grace period was to prevent accidental disclosure and to give the designer an opportunity to commercialize the design, as global design filing programs meant expenses. Consequently, the Representative considered that a 12-month grace period was appropriate. Regarding the possibility of having different grace periods, the Representative said that, although this was possible, it was not an optimum solution, as in the case of international novelty, it created a difficulty when a country provided for a shorter grace period.

172. The Delegation of the Republic of Moldova observed that a longer grace period was to the benefit of users, while it had no consequences for offices. The Delegation observed that, in principle, this Article would only be used in case of conflict between the applicant and third parties.

173. The Representative of the European Union said that, in OHIM, the grace period was 12 months, there was no procedure for applying to the grace period and there was no substantive examination as regards the novelty requirement, so that the grace period had no impact on the work of the office.

174. The Representative of FICPI, expressing the hope that the Committee would reach an agreement, said that he supported the statement made by the Representative of CEIPI regarding the need to have agreement on a grace period that would apply internationally. The Representative, recalling the difficulty mentioned by the Representative of the European Union with the wording of subparagraph (b), suggested that the worded of this subparagraph be reconsidered.

175. The Representative of ECTA, observing that ECTA was in favor of a 12-month grace period, said that it supported the statement made by the Representative of MARQUES.

176. The Chair concluded that there was agreement on the principle of providing for a grace period in case of disclosure. He noted that a number of delegations expressed their preference for a period of six months, whereas other delegations and user representatives preferred a period of 12 months. The Chair further noted that a period of at least six

months provided for a flexible approach to this issue. Moreover, he noted that there were different views as to the circumstances that would trigger the application of a grace period, as well as on its starting point.

Article 7: Requirement to File the Application in the Name of the Creator

177. The Delegation of India, indicating that national legislation did not contemplate such requirement, said that the issue should be left to the applicable law.

178. The Delegation of Australia expressed support for the text as it stood, since the Article as drafted provided a flexible approach.

179. The Delegation of Sri Lanka, observing that there was no specific requirement on this issue in Sri Lanka, said that it supported the statement made by the Delegation of India.

180. The Chair noted that the text as it stood reflected a flexible approach, acceptable by the SCT. The Chair noted that there were no further comments on the draft of this provision.

Article 8: Division of Application

181. The Delegation of Brazil stated that Brazilian law allowed for multiple applications since a single application could be divided up to 20 variations. However, given that, in Brazil, a division could be made *ex officio* by the Office, the Delegation requested the deletion of the terms “by the applicant” in paragraph (1). Moreover, the Delegation suggested the deletion of subparagraph (b) in Article 8(3) and the addition of a paragraph (4) that could be read as follows: “This Article is without prejudice of the *ex officio* division of an application in cases where an application does not fulfill the applicable conditions”.

182. The Delegation of Canada expressed its support to the proposal by the Delegation of Brazil to amend paragraph (1), in order to allow the office to request a division. It further proposed to replace, in paragraph (2), the words “if any” by “if applicable”.

183. The Delegation of India, indicating that India did not allow for a division of applications, said that this Article should only apply where division was allowed nationally.

184. The Representative of the European Union, referring to paragraph (1), pointed out that, while this paragraph apparently allowed the division of an application on the request of the applicant, an applicant should not be allowed to divide an application where there was no deficiency. The Representative further requested a clarification as regards paragraph (3)(b), “the sum of the fees for the initial and divisional applications shall not exceed the sum of the fees that would have been due in the case of separate initial applications”, indicating that, under the Registered Community Design System, the sum of fees for a multiple application covering two industrial designs was 525 euros, while the sum of the fees for two individual applications was 700 euros.

185. The Delegation of Algeria supported the suggestion of the Delegation of Brazil to delete subparagraph (b) of Article 8(3).

186. The Delegation of Morocco indicated that it was in favor of an Article providing for the possibility of having a divisional application and even a divisional registration.

187. The Representative of MARQUES, observing that the aim of Article 8(3)(b) was to ensure that an applicant who made multiple applications in a country that did not allow multiple applications would not be faced with important costs, expressed its support for the text as it stood.

188. The Delegation of Brazil explained that its suggestion regarding subparagraph (b) was a consequence of its suggestion concerning paragraph (1), as in Brazil, where an application was divided *ex officio* by the Office, the final fees would be different from the initial fees for a single multiple application.

189. The Delegation of Australia said it reserved its position regarding a possible deletion of paragraph (3)(b).

190. The Delegation of Germany stated that it would not be against rephrasing Article 8(1). With respect to Article 8(3)(b), the Delegation observed that it would be unfair for the applicant to allow an *ex officio* division of a multiple application which would result in higher fees.

191. The Delegation of Australia stated that it supported paragraph 3(b) as proposed, subject to clarification of the issue in a note and to confirmation by its capital. Therefore, the Delegation proposed to have a note explaining this subparagraph and to add square brackets indicating that the subparagraph was still subject to discussion.

192. The Delegation of Brazil, agreeing to the proposal of the Delegation of Australia to introduce square brackets in subparagraph 3(b), wondered whether the language in this subparagraph could not also be amended to make it clear that the cost of the divisional applications would be more than having a single multiple application.

193. The Delegation of the Republic of Moldova, supporting subparagraph (b) as it stood, pointed out that a note could provide an explanation on this issue.

194. The Delegation of Algeria supported the proposal to put subparagraph (b) within brackets. The Delegation further suggested replacing, in the French version, the words "*ne doit pas*" by "*ne devrait pas*".

195. The Delegation of the Russian Federation, pointing to Article 4G of the Paris Convention, indicated that it did not support the proposal made by the Delegation of Brazil to allow an *ex officio* division by an Office, as a division would always be made by the applicant.

196. The Delegation of Brazil explained that, according to Brazilian law, the applicant had the right to divide his application at his own initiative or at the request of the office. Therefore, the Delegation reiterated its proposal to delete the words "by the applicant" in Article 8(1).

197. The Delegation of Australia observed that, even where the office required a division, there was still some discretion by the applicant since he would have to pay an additional fee for the division. As a result, the applicant would still be involved in determining the final outcome of the application.

198. The Delegation of the Russian Federation, reiterating its support for the text as it stood, suggested adding an indication of the reasons for the division, for example that the division was on the initiative of the applicant or at the request of the office.

199. The Delegation of the Republic of Moldova reiterated its support for the text as it stood.

200. The Delegation of Germany suggested the addition of a note to illustrate the words "by distributing among the latter..." in Article 8(1).

201. The Representative of FICPI, responding to a question to users by the Delegation of Australia, observed that the normal position was set out in Note 8.02. In fact, the applicant had various options: one which was to argue against the objection made by the office because it may not be justified, another that would be to delete one or more designs from the application because there were not so valuable, or finally, to file one or more divisional applications and maybe agree to pay additional fees. The Representative concluded that the situation, from the users' point of view, was clear, since it was always the applicant who had the control of what protection was seeking.

202. The Delegation of Brazil, conceding that Note 8.02 clarified the matter, said that it would however feel more comfortable if the words "by the applicant" in paragraph (1) were deleted.

203. The Chair noted that there was agreement on the principle of providing for the division of an application, and that the wording of paragraph (1) would be clarified in accordance with the comments made.

204. The Chair noted a proposal for replacing the words "if any" by the words "if applicable" in paragraph (2).

205. The Chair noted that two delegations reserved their position with regard to paragraph (3).

Article 9: Publication of the Industrial Design

Rule 6: Details Concerning Publication

206. The Delegation of Japan, observing that maintaining an industrial design unpublished in one jurisdiction served no purpose when it was published in another jurisdiction, expressed its strong support for Article 9(1).

207. The Delegation of France wondered whether the current draft of Article 9(3) allowed an applicant who had made a request for delayed publication to ask for the publication of its industrial design at any time.

208. The Delegation of India observed that national legislation did not provide for deferment of publication and that the industrial design was published soon after its registration.

209. The Delegation of the United States of America noted that it had an examination system of industrial designs and that the deferred publication option was not envisaged specifically. The Delegation said that the applicant, however, could use various mechanisms to control the timing of the examination and of the issuing of the patent, in order to functionally defer the publication. The Delegation stated that in the interest of moving forward and agreeing to the spirit of the text, it could agree with the text, subject to a slight modification. The modification would consist in deleting the concept that there had to be a mechanism by which the applicant could request that the publication be maintained unpublished. In the United States of America, technically, there was no formal procedure according to which the applicant could request to maintain the design patent application unpublished. The Delegation considered that with the proposed modification of paragraph (1), the text could accommodate examination systems as well as registration systems. The Delegation proposed to delete, in the heading of paragraph (1), the term "request to", so that it would read "maintaining the industrial design unpublished". The rest of the paragraph would read: "A Party shall allow an applicant to maintain the industrial design unpublished for a maximum period of time fixed by its applicable law, subject ..."

210. The Delegation of Chile suggested modifying the text in a manner that the provision would be optional and not mandatory, with a view to accommodating the practices of those countries which did not yet provide for the possibility of deferment.

211. The Delegation of Sri Lanka observed that national legislation did not provide for deferment of publication and the industrial design was published soon after its registration. Moreover, any member of the public could obtain a certified copy of the industrial design. The Delegation supported the proposal made by the Delegation of Chile concerning the optional character of the provision.

212. The Delegation of Peru suggested that the verb "shall" be replaced by the verb "may", with a view to accommodating the practices of those countries which did not yet provide for the possibility of deferment.

213. The Delegation of Germany, expressing its support for the proposal made by the Delegation of the United States of America, expressed the view that the proposals to make the text more lenient would put in question the usefulness of the Article.

214. The Delegation of China, indicating that deferment was not provided for in China, said that maintaining the industrial design unpublished would affect the interests of the public. Observing that the applicant could choose the timing of the publication by choosing the time of filing the application, the Delegation expressed the view that the text should accommodate the needs of countries like China.

215. The Delegation of Australia supported the proposal made by the Delegation of the United States of America and said that Australia also did not have mechanisms which, at the moment, would be complying with that process. The Delegation also considered that if this treaty sought to accommodate all possible laws it would be of no value, and agreed with the comment made by the Delegation of Germany that replacing "shall" by "may" would be of little value. For the reason indicated by the Delegation of Japan, maintaining an industrial design unpublished in one jurisdiction served no purposes when the design was published in another jurisdiction. The Delegation considered that it was also an area where Australia could be prepared to consider this matter.

216. The Delegation of Malaysia, noting that national legislation did not provide for deferment of publication, said that, while secrecy for patents was useful, there was a need to assess if it was useful for industrial designs. The Delegation also wondered if deferment was an effective tool in enforcement procedures because the infringer could not be expected to be aware of the design. Consequently, the Delegation stated that it supported the proposal made by the Delegation of Chile.

217. The Delegation of Morocco, pointing out that national legislation did not provide for deferment, said that Morocco was currently amending its legislation to introduce deferment of publication.

218. The Delegation of the Russian Federation, observing that national legislation did not expressly provide for deferment of publication, said that its country had an examination system. At present, the pendency period for patents was more than six months from the filing date, and it was not likely that this period would be reduced because the number of applications was increasing and the number of persons dealing with those applications was limited. The Delegation said that its country was not particularly interested to change the legislation, as a change would lead to an increase in the number of requests from applicants, would make it necessary to submit further documents and to open an examination of those documents, and in the end, would increase the costs and complicate the procedure. The Delegation expressed its agreement with the proposal made by the Delegation of the United States of America, but

proposed to add, at the end of paragraph (1), text whereby, if the applicable law did not provide for deferment of publication, the publication of the industrial design should not be earlier than as provided.

219. The Delegation of Colombia supported the statement made by the Delegation of Peru.

220. The Delegation of Kenya pointed out that national legislation did not provide for deferment and expressed its support for the interventions made by the delegations of Chile, Sri Lanka and Malaysia.

221. The Delegation of Japan wondered whether Article 9 permitted a disclosure in some special cases, for example, in Japan, when a court or interested party requested an office to disclose an undisclosed industrial design, even when the applicant requested that it remained undisclosed, the industrial design would be disclosed. The Delegation asked if, in such case, the industrial design would be published even if the application was pending or had been refused. The Delegation further asked if an applicant could withdraw a request made in accordance with Article 9(3).

222. The Representative of JPAA, noting that Article 9 was one of the most important ones for designers and enterprises, expressed its strong support for the mandatory character of Article 9.

223. The Representative of ABA, referring to the proposal made by the Delegation of the United States of America with regard to the deletion of the term "request" in Article 9(1), said that a similar modification should be made in paragraph (3). The Representative proposed to modify the text of Note 6.01 on Rule 6, at the last sentence, to read "in order to have an idea of what is potentially protected" or, alternatively, "the subject matter which has been allowed".

224. The Representative of ATRIP referred to the history of the discussions on the Geneva Act of the Hague Agreement and called to benefit from it.

225. The Representative of CEIPI did not share the concerns expressed by the Delegation of France with regard to Article 9(3) because the expression "the period applicable under paragraph (1)" did not refer to the minimum period of six months which was provided for in Rule 6, but to the period established by the applicable legislation, which could not be less than six months. The Representative considered that the applicant could legitimately ask for publication at any time.

226. The Representative of JPAA, supporting the view that Article 9 should be mandatory, said that the period of six months from the filing date fixed in Rule 6 was very short from a practical point of view, particularly in the case of claiming priority. The Representative called for harmonization in this field.

227. The Chair noted that the views of the Committee were divided between making this provision mandatory or optional. He also noted a drafting proposal for the omission of the term "request by the applicant". Furthermore, he noted unanimous support for this provision by all user representatives. He concluded that the next draft of the provision should reflect those positions.

Article 10: Communications

Rule 7: Details Concerning Communications

228. The Delegation of Sweden, referring to Rule 7(10)(b), concerning the date of receipt of a communication where there was no evidence of the receipt, said that it encountered problems with the practical application of this Rule. The Delegation, observing that manipulations of the

time of sending could not be excluded, considered that this Rule put the risk of the failure to receive a communication on the receiver. Moreover, a third party could be affected. The Delegation pointed out that no corresponding rule existed in the PLT or the Singapore Treaty. On the contrary, Rule 6(8) of the Singapore Treaty, concerning electronic filing, stated that the date on which the Office received the communication shall constitute the date of receipt. The Delegation considered that this was an opposite solution to the proposed Rule, which it proposed to delete or amend.

229. The Delegation of Japan supported the intervention made by the Delegation of Sweden.

230. The Delegation of Brazil, pointing out that the national civil code required notarization, authentication and legalization as a general rule for all foreign documents, requested the amendment of Article 10(4)(b), in order to allow parties to require such authentication or legalization or other certification of any signature, where the law of the party so provided. The Delegation proposed to also amend Rule 7(5) accordingly.

231. The Delegation of Spain, referring to Article 10(2)(b), expressed concerns with regard to the possibility for a representative to translate a communication. According to national legislation, any natural person could act as representative, not necessarily an intellectual property agent. However, any translation had to be done by an authorized intellectual property agent.

232. The Delegation of India, pointing out that a handwritten signature was required for communications on paper in India, said that the option set forth in the second part of Rule 7(4)(ii) would not be allowed in India.

233. The Delegation of Denmark supported the views and concerns regarding Rule 7(10)(b), put forward by the Delegation of Sweden.

234. The Delegation of Belgium supported the intervention made by the Delegation of Sweden.

235. The Delegation of Norway also shared the concerns expressed by the Delegation of Sweden regarding Rule 7(10)(b).

236. The Delegation of Japan observed that in Article 10 and Rule 7 there were no provisions requiring Parties to indicate the names, addresses and other indications of the applicants, owners, representatives or other interested persons, whereas the PLT and the Singapore Treaty had such provisions. The Delegation proposed to add new provisions based on Article 8(5) and Rule 10(1) of the PLT, in order to permit a Party to require a name and address of the applicant, owner or other interested person and representative, and the number or other indication under which he/she was so registered.

237. The Representative of CEIPI, referring to Rule 7(5), concerning the attestation or other certification of a signature in a communication in paper, suggested that the provision refer also to the withdrawal of an application and that the last words of the Rule, "where the law of the Party so provides" be deleted, as the optional nature of this provision was clear.

238. The Chair noted a comment by one delegation concerning Article 10 (2)(b) regarding the presentation of translations, as well as a reservation by one delegation regarding Article 10(4). The Chair further observed that there were no comments on the draft of paragraphs (5) to (7).

239. Regarding Rule 7, the Chair noted proposals to amend paragraph (5) and to add details corresponding to Rule 10(1) of the Patent Law Treaty (PLT). He also noted the reservation by one delegation concerning paragraph (5) and an agreement to delete paragraph (10)(b).

Rule 8: Identification of an Application Without its Application Number

240. The Chair noted that there were no comments on the draft of this provision.

Article 11: Renewal

Rule 9: Details Concerning Renewal

241. The Delegation of Japan proposed to add a provision which would permit holders to pay renewal fees for more than one registration through a single request.

242. The Delegation of the Russian Federation, referring to Rule 9, said that it understood that the time limit for presenting a request for renewal was six months before and six months after the expiry of the duration of the legal protection of the industrial design. The Rule did not establish if it would be possible to file the request for renewal after the expiry of this time limit. According to national legislation, it was possible to file such request after the expiry of the time limits, but a special request had to be presented and extra fees had to be paid. The Delegation asked for clarifications as to whether this provision allowed for a further prolongation of the time limit against payment of additional fees.

243. The Chair noted a proposal to introduce the possibility of requesting the renewal of several registrations belonging to the same holder in one request.

Article 12: Relief in Respect of Time Limits

Article 13: Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality

Rule 10: Details Concerning Relief in Respect of Time Limits

Rule 11: Details Concerning Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality Under Article 13

244. The Delegation of Spain, referring to the time limit provided for in Rule 10, said that two months was too long considering the progress in communication and proposed to limit it to one month.

245. The Delegation of Netherlands, referring to Article 13, said that this provision was modeled on Article 13 of the PLT and indicated that it would be useful to reflect in the notes that the jurisprudence and practices on this provision in the field of patents do not necessarily apply in interpreting this provision for industrial designs.

246. The Delegation of Switzerland, observing that Article 13 followed the PLT approach, expressed the view that industrial designs were closer to trademarks and that there was no similar provision in the Singapore Treaty. The Delegation said that there were two options, either to delete Article 13 or to render it optional.

247. The Delegation of Peru, referring to the proposal made by the Delegation of Switzerland on Article 13, said that both options could be acceptable.

248. The Delegation of Belgium supported the intervention made by the Delegation of Netherlands regarding Article 13.

249. The Representative of FICPI, referring to the proposal made by the Delegation of Spain to modify Rule 10 in order to contemplate a one-month time limit, urged delegations to consider the realities of day-to-day practice and expressed support for maintaining the two-month time limit.

250. The Delegation of France proposed to modify the time limit provided for in Rule 11(2)(i), from one month to two months.

251. The Delegation of the Republic of Moldova, referring to Article 13, said that according to national legislation it was possible to reinstate a right if a request to that effect was submitted within two months after the loss of the right, and that this was important for users.

252. The Delegation of the Russian Federation said that national legislation provided for two possibilities of relief, namely the prolongation of the deadline, for which a request had to be made, and reinstatement, when it was impossible for the applicant to file on time. The period for reinstatement was 12 months. The Delegation wondered why those options were placed in a single article, and sought clarification as to Rule 11(2)(i).

253. The Delegation of Chile, referring to Article 13, said that it would be prepared to accept it if it were optional. The Delegation considered that the reinstatement of rights could give rise to serious problems in terms of legal certainty, with consequences, not only for applicants, but also for interested third parties. The Delegation further supported the intervention made by the Delegation of Spain regarding the modification of the time limit in Rule 10.

254. The Delegation of Brazil, referring to Article 12(2) on continued processing, suggested replacing the words “shall provide” by “may provide”.

255. Regarding *Relief in Respect of Time Limits*, the Chair noted a proposal by one delegation to make paragraph (2) of Article 12 optional, as well as a proposal of one delegation to replace, in paragraph (2) of Rule 10, the time limit of two months by one month.

256. Regarding *Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality*, the Chair concluded that the next draft of Article 13 should present an optional and a mandatory alternative. The Chair further noted a proposal by one delegation to replace, in paragraph (2) of Rule 11, the time limit of one month by two months.

Article 14: Request for Recording of a License or a Security Interest

Article 15: Request for Amendment or Cancellation of the Recording of a License or a Security Interest

Rule 12: Details Concerning the Requirements Concerning the Request for Recording of a License or a Security Interest or for Amendment or Cancellation of the Recording of a License or a Security Interest

257. The Delegation of China, referring to Article 14, indicated that, according to national legislation, a number of supporting documents were required for the recording of a license, for example a power of attorney, a copy of the license and reports of the financial situation. The Delegation requested clarification as to whether paragraph 4 of Article 14 prohibited also photocopies and financial accounts.

258. The Delegation of Japan said that, where the holder or the licensee was a legal entity, the legal nature should be required. The Delegation pointed out that the same indication was necessary in Article 18.

259. The Delegation of the Russian Federation proposed to add to Article 14(1) a requirement concerning the use of the design.

260. The Delegation of Brazil said that it had three suggestions regarding Article 14, in order to allow flexibilities for countries that had special conditions. Firstly, with a view to having minimum standards, rather than maximum standards, the Delegation suggested to add the words “contains at least” at the end of Article 14(1), which would read as follows: “Where the law of a Party provides for the recording of a license, that Party may require that the request for recording contains at least...”. The Delegation further proposed to suppress paragraph (4) of Article 14, concerning the prohibition of other requirements. Finally, the Delegation proposed to add a new paragraph to Article 14, which could read: “The provisions in Articles 14 and 15 are without prejudice of any measures required for the control of potentially anti-competitive practices in contractual licenses”.

261. The Delegation of Bangladesh, indicating that in Bangladesh a request for the recording of a license could concern various registrations, subject to additional fees, requested clarification regarding the possibility of charging more when various registrations were concerned by a license.

262. The Delegation of Australia said that Article 14(2) allowed for a calculation of the fee that would address the concern expressed by the Delegation of Bangladesh.

263. The Representative of CEIPI suggested the deletion of the terms “co-applicant or” in Rule 12(2)(b), for consistency purposes, and that Rule 12 made it clear that it also applied to the recording of licenses in respect of applications.

264. The Delegation of Australia, pointing out that it was important to set maximum requirements if there was going to be a treaty, declared that it did not support the proposal to make this provision discretionary, made by the delegation of Brazil.

265. The Chair noted the reservations of two delegations as well as a number of additional comments.

Article 16: Effects of the Non-recording of a License

Article 17: Indication of the License

266. The Delegation of Australia, observing that administrative oversight should not result in the loss of a property right, expressed its strong support for Articles 16 and 17.

267. The Delegation of Brazil, observing that Article 16(2), concerning certain rights of the licensee, was not compatible with Brazilian law, requested the deletion of this paragraph or at least that it be made optional.

268. The Delegation of the United States of America, stating that it would not favor making Articles 16 and 17 optional, expressed its support for the statements made by the Delegation of Australia.

269. The Delegation of the United Kingdom, supporting the statements made by the delegations of Australia and the United States of America, wondered whether the use of the word “may” in Article 16(2) did not make this provision optional?

270. The Delegation of Australia said that the words “may not” did not make this provision optional.

271. The Delegation of Brazil said that, to its understanding, the current drafting of Article 16(2) did not make it optional.

272. The Delegation of Chile underlined the importance of having a common understanding of these provisions in the different official languages.

273. The Chair noted the reservation of one delegation.

Article 18: Request for Recording of a Change in Ownership

Rule 13: Details Concerning the Request for Recording of a Change in Ownership

274. The Delegation of Switzerland pointed out that, in Switzerland, a mere document signed by the previous owner, as referred to in Rule 13(2)(iii) and (iv), was not sufficient to record the change in ownership.

275. The Chair noted a comment by one delegation concerning Rule 13(2).

Article 19: Changes in Names or Addresses

Rule 14: Details Concerning the Request for Recording of a Change in Name or Address

276. The Delegation of China suggested deleting the last sentence of Article 19(4) “In particular, the furnishing of any certificate concerning the change may not be required”, as it was in conflict with national legislation.

277. The Delegation of Finland suggested that a note modeled in Notes 10.3 of the Singapore Treaty and 18.04 of document SCT/26/2, accompany Article 19(1)c), to clarify that the amount of the fees could differ depending on the number of registrations or applications involved.

278. The Chair noted the comment of one delegation concerning the last sentence of Article 19(4). He also noted the request of one delegation to introduce a note accompanying Article 19 along the lines of Note 18.04 in document SCT/26/2.

Article 20: Correction of a Mistake

Rule 15: Details Concerning the Request for Correction of a Mistake

279. The Representative of CEIPI asked whether any delegation wished to discuss the issues concerning the correction or addition of a priority claim and the restoration of a priority right, as mentioned in Note 13.03 of Article 13.

280. The Chair noted that there were no comments on the draft of these provisions.

Article 21: Regulations

281. The Chair noted that there were no comments on the draft of these provisions.

282. The Delegation of Argentina declared that it reserved its right to submit proposals in the future, resulting from the internal consultations that were currently taking place in Argentina on a number of draft provisions.

283. The Delegation of South Africa, on behalf of the African Group, thanked the Representative of the European Union and the Delegation of Australia for reacting in a constructive manner on the proposal made by its Delegation. The Delegation observed that the current information document on the study did not cover what its Delegation wished. The Delegation, encouraging and inviting the Coordinators to discuss and negotiate further on the modalities, said that the document which had been drafted by the Delegation of Australia might be used as a good basis for these informal consultations.

284. The Delegation of Egypt thanked the other delegations for the positive developments on this issue. The Delegation also expressed its thanks to the Representative of the European Union for highlighting the importance of precisising the scope of the study. With regards to the feasibility of that study, the Delegation requested clarification as to whether this issue referred to the ability of the Secretariat to make the study, or to whether the study should be appointed to the Chief Economist of WIPO or to external experts.

285. The Delegation of Algeria, speaking on behalf of the DAG, thanked the delegations which expressed their positive comments on the proposal of a study. The Delegation further said that, although the document proposed by the Delegation of Australia could be considered as good basis for discussions, some elements which had already been proposed by the Delegation of South Africa on behalf of the African Group and by its Delegation on behalf of the DAG, could be added.

286. The Delegation of the United States of America said that, to make this study useful, it would need to focus on the specific provisions that were being proposed in the Draft Articles and the Draft Regulations. The Delegation expressed the view that focusing on the costs and the benefits of these specific Articles and Regulations necessitated a drafting group made of technical experts. Therefore, the Delegation recommended expanding the drafting group to volunteers from various delegations who were technical experts, rather than limiting it to the regional coordinators.

287. The Chair stated that the Secretariat would note all interventions in the report of the twenty-sixth session. Moreover, the Secretariat was requested to prepare revised working documents for consideration of the SCT at its twenty-seventh session, which should reflect all comments made at the present session and highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes, as appropriate.

AGENDA ITEM 5: TRADEMARKS

Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks

288. Discussion was based on document SCT/26/5 and a non-paper prepared by the Chair.

289. The Delegation of Brazil welcomed the contributions submitted by some delegations on the Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks, which the Delegation considered would enrich the dialogue on the possible modalities of this meeting. With regard to the categories of stakeholders that would be invited to participate in the meeting, the Delegation supported the proposal made by the Delegation of the United States of America as to the inclusion of representatives of relevant national authorities

from different Member States. In addition to the stakeholders proposed by the Delegation of the United States of America, the Delegation of Brazil suggested inviting other representatives of the civil society (academia, consumers, and Internet users, etc.). It also considered that different geographical regions should be represented in the meeting from developed and developing countries. The Delegation stated that a broader discussion would be needed on the subject, which should not be restricted to intellectual property rights. Attention should be given to freedom of expression on the Internet and to the due process of law. The Delegation suggested that a consultation process take place among member countries in order to draft the program of meeting, allowing for the exposition of a variety of opinions and provide enough time for discussion. The Delegation thought that a full day meeting could be organized, although it was not opposed to a two days meeting if necessary.

290. The Representative of the European Union took note of document SCT/26/5 and clarified the fact that it was not opposed to the holding of the meeting should not be taken as an indication of its support. Any follow-up discussion on Internet intermediaries' liability was not acceptable for the European Union and its member States. The European Union reiterated its readiness to consider other specific trademark-related issues concerning the use of trademarks on the Internet.

291. The Delegation of South Africa, speaking on behalf of the African Group, took note of the divergent views expressed by the members of the Committee on document SCT/26/5. It observed that there was not sufficient information on that issue to allow the SCT to consider developing norms on the liability of Internet intermediaries. However, the Group welcomed the decision to convene an information session aimed at exploring the dynamics of that issue. It thanked the Delegations of Denmark, the Russian Federation and the United States of America for their submissions on the information meeting. Since Internet was an international resource which involved various stakeholders, the Delegation proposed that the information session adhered to the principles of the World Summit of the Information Society which advocated a multi-stakeholder approach on Internet issues. The Delegation emphasized the importance of a balanced representation of the participants from both developing and developed countries in the meeting. To that end, the African Group proposed the following participants: governments, Internet intermediaries (Internet service providers, Internet auction sites, search engines, e-mail services and social networks), trademark right holders, legal experts, users or consumers, academia and civil society, as well as relevant international organizations. The meeting should be informal. The Delegation understood that its purpose was to produce information and not to isolate, examine nor make recommendations. The Delegation proposed the setting up of panels with at least five panelists. It suggested a two-day meeting during the SCT/27 to allow sufficient time for panelists to address various issues and for an active discussion between panelists and the participants. In addition to the proposal made by the Delegation of the United States of America, the African Group wished that the information meeting consider the role of safe harbors in national legislations, the cases of reported trademark infringement on the Internet and/or inappropriate or unjust trademark infringement allegations, and the impact on secondary intermediary liability on privacy of the users, on openness of the Internet and on the accessibility of information. The African Group proposed that the Chair conducted informal consultations as appropriate on the information meeting so as to arrive at a consensus decision on the process leading to the information session.

292. The Delegation of Japan expressed its appreciation for the proposals made by the delegations of Denmark, the Russian Federation and the United States of America. Concerning secondary responsibility of Internet intermediaries in terms of trademark infringement, the Delegation considered it useful to share information on legal systems, trial cases and related information in each country. It therefore indicated its acceptance of any kind of information meeting, whether held within the SCT working time, as suggested by the Delegation of the Russian Federation, or on the margins as proposed by the Delegation of the United States of America. The Delegation expected a large number of countries to eventually participate in the

information meeting in spite of the optional meeting for delegates proposed by the United States of America, and supported that proposal as long as the meeting was held during the SCT session. Believing that the contents of the meeting would be valuable in the contribution to a future discussion, the Delegation suggested that the information meeting be officially recorded. As regards the agenda items of the meeting, the Delegation considered that it was important to discuss the role of Internet intermediaries in terms of protection of trademarks, trademark-protection related service management and responsibilities of intermediaries in preventing trademark infringement.

293. The Delegation of France expected a balanced representation of the interventions during the meeting, which should include right holders, Internet intermediaries and trademark professionals. In addition, the Delegation wished to obtain information on current legal practices in Member States in that area.

294. The Delegation of Algeria, speaking on behalf of the Development Agenda Group, took note of document SCT/26/7 and pointed that this constituted an emerging issue which was little-understood. The Delegation welcomed the organization of an information session, which it believed would give the opportunity to reach a greater understanding from the perspective of all stakeholders involved (trademark owners, Internet intermediaries, users of Internet services) concerning all the issues concerned. It encouraged listening to the different opinions and views on the relationship between trademarks and the Internet, before proceeding forward in a participatory and inclusive manner. Considering that a greater understanding on the development implications of those issues was necessary, the Delegation proposed that the information meeting include speakers from developing countries and representing all different stakeholders. It also suggested that it be informal, aiming at exchanging information and focused on diverse items reflecting the concerns of the different stakeholders so as to give to the participants the opportunity to listen to the different views.

295. The Delegation of Germany supported the statement made by the Delegation of France and, highlighting the importance of the balance of interests, expressed the view that a strong focus should be put on the persons to be invited, as stated by the Delegation of Algeria. The Delegation suggested that the Secretariat prepare a paper on the composition of the information meeting, and expressed the view that such meeting should be organized during the twenty-eighth session of the SCT. It considered, as underlined by the Representative of the European Union, that the subject was a difficult issue with many strong and different interests.

296. The Representative of ISOC explained that the Internet Society was a relatively new participant in WIPO meetings as a permanent observer and that its role was to provide technical guidance and advice to policy-makers involved in key Internet issues. The ISOC had co-organized with WIPO three workshops in 2011 and participated in the second session of UNECA on Development, Information Science and Technology, as well as in the thirty-third APEC Intellectual Property Rights Experts Group. The Representative noted that the SCT agreed to discuss the modalities of an information meeting on the Liability of Internet Intermediaries for Alleged Trademark Infringement. Before considering issues associated with liability and/or the role of Internet intermediaries in advancing the policy objective of protecting trademarks, it was important that the SCT member States be fully informed about the operation, use and development of the Internet, especially the Internet eco-system and the Internet model as well as the services provided by different types of Internet intermediaries and other Internet actors. The ISOC indicated its willingness to participate and contribute information regarding those issues in the meeting. The Representative drew the attention of the Committee to the work that had already been undertaken on Internet intermediaries by the Organisation for Economic Co-operation and Development (OECD), which started working on this issue in 2008 and had published two detailed reports on that topic. The Representative indicated that ISOC participated in the work of OECD and looked forward to continuing working with WIPO and its

stakeholders to ensure the development of policies and agreements concerning Internet-related intellectual property issues.

297. The Representative of ECTA supported the setting up of an information meeting on the Liability of Internet Intermediaries. It believed that it was very important for delegations to hear different stakeholders and get a detailed view of this complex matter. It noted that the Court of Justice of the EU adopted decisions on the subject. On July 2, 2011 the decision on l'Oréal vs. ebay provided particulars on the liability for trademark infringements committed over the Internet. On September 22, 2011, the decision Interflora vs. M&S refined the jurisprudence on the use of keywords in the context of Google services for searches. The Representative underlined that although ECTA did not have specific comments on the modalities of the meeting, it found the proposal made by the Delegation of the Russian Federation interesting and supported the proposals made by the Delegation of the United States of America as for the three categories of stakeholders making presentations and the contents of the presentations. It wished that the trademark holders' representatives could be present in order to reflect their views and avoid limiting the presentations to the views of a single company. As pointed out by the submission of the Delegation of Denmark, ECTA believed that it would be useful to study how the Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet, has been implemented into national laws and how national courts have applied the principles laid down therein. The Representative indicated that the Internet Committee of ECTA would be interested in working on such study focusing on certain countries, in view of sending a document on that subject to the Secretariat before the next session of the SCT.

298. The Representative of INTA recalled that INTA was a non-profit association dedicated to the support and advancement of trademarks and related intellectual property as essential elements of fair and orderly commerce, for the benefit of traders and consumers. The membership of the Association included 6,000 companies, legal firms and academic institutions from more than 190 jurisdictions, which made INTA a truly global network of brand owners and specialized professionals. In the global environment, the sale of counterfeit goods remained a significant issue facing consumers, industry and governments. The advent and subsequent rapid development of the Internet had raised the problem to heightened levels, as counterfeiters find simplified means and additional channels in cyberspace to promote and sell counterfeit products. The Representative considered that while the link between the increased sales of counterfeits on the Internet and the harms caused to businesses and the public was clear, the solution to the issue was complex and challenging. After in-depth study and debate over several years within the Anti-Counterfeiting and Enforcement Committee of INTA, task forces were formed to examine and develop recommendations on practical ways to address the sale of counterfeits over the Internet. Those task forces, comprised of online marketplaces, search websites, payment service providers and trademark owners, had explored ways for trademark owners and online service providers to work cooperatively to address the sale of counterfeits over the Internet. As a result, voluntary best practices for trademark owners and Internet-related companies aimed at facilitating the protection of trademarks on the Internet were developed. The Representative stated that one important outcome of the best practices was that contact information for online service providers has been provided for use when notifying them of sales of counterfeits on the Internet. Yahoo!, eBay, Google, American Express, MasterCard, Visa, Discover and PayPal were among those who participated in the elaboration of those best practices and contributed contact information. Considering that addressing the sale of counterfeits online would continue to be challenging and complex, the representative said that the Internet was unquestionably changing the way commerce and business is being conducted around the world. Continued technological advances and innovations meant that the Internet would evolve and allow sellers and buyers to interact in new ways in the virtual world. Furthermore, differences in business models and operations of Internet Service Providers, search engines and other online players as well as trademark owners made it challenging to develop one solution to tackle the entire problem. The

Representative indicated that INTA saw the proposed information meeting as a valuable opportunity to promote a better understanding of the issues at stake and to look for effective ways to address them, and was ready to contribute its experience to that information meeting.

299. The Representative of CCIA explained that the Computer and Communications Industry Association members represented a broad cross-section of the information and communications technology (ICT) industries and that they had a substantial stake in the effective operation of the entire intellectual property system, including trademarks, where they are owners of some of the world's most famous and well-known brands. Citing Professor Hargreaves in his review of the United Kingdom intellectual property system, the Representative indicated that CCIA believed in evidence-based policy-making and not policy-based evidence making. He underlined that CCIA was unable to discern any insufficiency in the international legal framework with respect to the protection of trademarks online and that the fact that abuses occur did not automatically mean that the international legal framework needed amendment. With respect of the meeting, the Representative suggested that commercial stakeholders shared their experiences in explaining how trademark protection worked in the online environment. In order to understand how trademarks are used online, the experience of consumers in interacting with trademarks online, extending beyond commercial transactions, was essential. The Representative further considered that a balance of perspectives from developed and developing countries was very important. Social networks, search engines, and online marketplaces could be global but also regional and even national or linguistic centric services in some cases. The Representative noted that search engines, social media and online marketplaces were used daily by hundreds of millions of people, generated hundreds of billions of dollars in annual revenues, directly employed hundreds of thousands of people and supported economic activity for millions more. He pointed out that any change could impact the daily life of a sizable portion of the world's population, as well as measurable levels of international trade in the kind of knowledge economy jobs that all countries worldwide seek to create and attract. He finally wondered whether this agenda item merited to be retained in the agenda of the SCT only for the organization of informational sessions.

300. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asian Group, noted that responsibility of Internet intermediaries and the use of trademarks on the Internet were emerging, new and complex issues that merited in-depth discussion in the SCT. The Delegation expressed its support for the procedural aspects of the proposal namely, the duration of the meeting, having a balanced representation of geographical regions, and the inclusive format of the meeting with the participation of all relevant stakeholders. As to the scope of the meeting, the Delegation agreed that it should mainly focus on the use of trademarks on the Internet. The Delegation emphasized that as regards the substantive aspect of the meeting and in order to avoid a possible duplication of work among panelists, a more qualified planning of the meeting was necessary to identify important topics and clusters. The Delegation indicated that the Asian Group would be interested in having the following topics discussed during the meeting: (1) Legal complexities surrounding the issue such as existing divergences in national legislations and the overall impact on the privacy of users; (2) possible interface between responsibility of Internet intermediaries with the development of countries including its possible impact on access to knowledge and information; and (3) information on any related development in other fora. Finally, the Delegation expressed its commitment to engage constructively in the forthcoming discussions and expected a well organized information meeting.

301. The Delegation of Egypt, speaking on behalf of the African Group, noted that the proposed information meeting should be informal, should not entail submitting proposals and making recommendations or decisions of any kind, and not form part of the formal session of the SCT. The Delegation emphasized the importance of having a balanced list of speakers representing different regions specially from developing countries of Africa, business areas and interests from Government authorities, Internet intermediaries, and civil society, so as to ensure

a balanced discussion on and presentation of different points of view. The Delegation stressed that the meeting program should allocate ample time for deliberation on the indispensable role of Internet intermediaries and online service providers in ensuring access to information and knowledge to Internet users especially from developing countries. The Delegation pointed out that in preparing for the information meeting, the Secretariat should be guided by and observing the relevant Development Agenda recommendations. In order to ensure transparency, the Delegation suggested that the International Bureau organize a briefing session in due time for Member States on the draft agenda, program and list of speakers.

302. The Delegation of the United States of America, speaking on behalf of Group B, expressed its support for the non-paper by the Chair for establishing modalities to guide the Secretariat in convening the information meeting, and agreed that a one-day meeting around the next session of the SCT, but not formally part of the SCT, could prove to be a very useful exercise. The Delegation emphasized that having a balanced panel was crucial.

303. The Delegation of Algeria, speaking as the Coordinator of the DAG, recalled the statement made during the last session of the SCT in which it expressed its support for holding the information meeting. The Delegation also stressed the importance of the following elements: firstly, the list of speakers should be open-ended and representative, taking into account the different regions and interests of Member States; secondly, the objective of the meeting should simply be to exchange information and should not lead to any formal or official recommendations; and thirdly, the matters to be tackled should take into account the various interests of the Member States.

304. The Delegation of the United States of America, referring to the non-paper by the Chair, stressed that, as regards the topics to be discussed at the meeting, it would be useful to restrict them to trademarks in order to get the most out of the said meeting. The Delegation also noted that other topics which were suggested diverted from the original topic of trademarks and the Internet, and would result in venturing into territories that were not contemplated when the proposal was made.

305. The Delegation of Brazil, aligning itself with the statement by the DAG Coordinator, expressed its appreciation for the reference in the Chair's non-paper to the non-formal aspect of the meeting and to a balanced representation as regards geographical regions and interests. The Delegation also expressed its support for the inclusion of different stakeholders in the meeting.

306. The Delegation of India pointed out that liability of Internet intermediaries was an emerging issue. The Delegation noted with appreciation that the proposed program included representations from different stakeholders. The Delegation expressed its support for the statements made by the Delegations of Iran (Islamic Republic of) and Algeria on behalf of the Asian Group and the DAG. The Delegation also relayed its expectation to have the issue of "safe harbors" and the role it played in national legislation to limit the liability of Internet intermediaries, discussed during the meeting.

307. The Delegation of Iran (Islamic Republic of), while agreeing that the scope of the discussions should be limited to trademarks, stressed that it would also be useful to be kept abreast with developments in other *fora* regarding similar initiatives.

308. The Delegation of South Africa, associating itself with the statement made by the Representative of the African Group and the DAG Coordinator, emphasized that the scope of the information meeting should be limited to trademarks. The Delegation pointed out that for practical reasons, the meeting could be in the same period as the next session of the SCT.

309. The Chair concluded that the SCT agreed to the modalities of the information meeting contained in the non-paper prepared by the Chair and reproduced in document SCT/26/8 (reproduced in Annex I of this document).

Update on Trademark-Related Aspects of the Expansion of the Domain Name System

310. Discussion was based on document SCT/26/6.

311. Upon invitation by the Chair, the Secretariat provided an update on trademark-related aspects of the expansion of the Domain Name System (DNS).

312. The Chair expressed appreciation for the Secretariat's update and recalled document SCT/26/6 which was provided by the Secretariat on the basis of a request by the SCT during its twenty-fifth session.

313. The Delegation of the United States of America thanked the Secretariat for its overview of trademark-related developments at the Internet Corporation of Assigned Names and Numbers (ICANN) in relation to new generic top-level domains (gTLDs). The Delegation expressed the view that appropriate mechanisms for the protection of intellectual property must be in place for the introduction of new gTLDs in order to avoid trademark abuse, consumer confusion, and a general undermining of the public trust in the DNS. The Delegation expressed concern regarding the adequacy of Rights Protection Mechanisms (RPMs) currently foreseen by ICANN in the context of its new gTLD program. The Delegation noted its support for periodic evaluation of the efficacy of such RPMs following their introduction and operation in new gTLDs. The Delegation furthermore expressed specific concern about the timing of any review of the Uniform Domain Name Dispute Resolution Policy (UDRP) as to either substantive or procedural elements; the Delegation noted that RPMs for new gTLDs were developed on the assumption of the continuing availability of the UDRP as it presently exists, and that a review, if any, of the UDRP should not take place until the new gTLD program has been established and the efficacy in practice of the new RPMs available under that program has been evaluated.

314. The Delegation of Switzerland thanked the Secretariat for its report, and concurred with the concerns expressed by the Delegation of the United States of America regarding developments at ICANN with respect to intellectual property protection; the Delegation noted the importance for mechanisms established to protect intellectual property to continue to fulfill such purpose. The Delegation expressed the view that while such mechanisms generally could be usefully reviewed, it does not support any present revision of the UDRP, in particular prior to the implementation and operation of RPMs for new gTLDs. The Delegation expressed its appreciation for the Secretariat's continued efforts in relation to ICANN.

315. The Delegation of Germany shared the concerns expressed by the Delegation of the United States of America and the Delegation of Switzerland regarding trademark rights protection in the framework of the introduction of new gTLDs. The Delegation noted that in its view, there are flaws with the RPMs envisaged for ICANN's new gTLD program. The Delegation recommended that the proven UDRP be retained, and asked the Secretariat to provide its understanding of the motivations underlying, and envisaged scope of, UDRP review efforts at this time. The Delegation stated that it would view any such UDRP review efforts with caution. The Delegation requested that the Secretariat update the SCT concerning further developments.

316. The Delegation of China informed the SCT that it had introduced measures concerning Internet-based commercial activities to encourage service providers to facilitate compliance with trademark law, and added that in its view authorities should play an administrative and regulatory role in protecting consumers on the Internet. The Delegation noted that it continued to monitor this area. The Delegation recalled the unique nature of domain names, which are not

limited by geographical constraints; it was noted that this factor, combined with advances in technology which had lowered the barriers to intellectual property rights infringement, made it increasingly important to protect rights holders and consumers online. The Delegation expressed the view that domain name-related activities subject to ICANN policies should be held to stricter scrutiny; the Delegation supported analysis of such issues in an effort to find solutions to the persistence of online trademark abuse.

317. The Delegation of Monaco asked the Secretariat to inform the SCT of its current understanding of the envisaged relationship between national trademark offices and the operation of ICANN's Trademark Clearinghouse.

318. The Secretariat recalled that ICANN intends its Trademark Clearinghouse to be a centralized repository of DNS-relevant trademark registration data; thus, trademark owners could submit their trademark registration data to one location rather than submitting it to high numbers of individual domain name registries as a basis for invoking individual RPMs, such as Sunrise registration services, trademark Claims services, and the Uniform Rapid Suspension mechanism. The Secretariat noted that ICANN has recently issued a Request For Information (RFI) seeking direction from prospective Clearinghouse operators concerning a range of operational modalities. The Secretariat recalled that within ICANN, *inter alia*, discussions had focused on Clearinghouse functionality, as well as on how Clearinghouse determinations would relate to national and regional trademark office determinations; such issues presently remain unresolved. This relates in particular to the ICANN requirement that trademarks be validated for current use, notwithstanding that many national office registrations are not predicated on a showing of use. The Secretariat noted that this topic in particular has been contentious. While ICANN's Governmental Advisory Committee (GAC) has expressed strong views to ICANN's Board that national trademark office determinations must be respected as such, ICANN has nonetheless required that all registrations be subject to Clearinghouse authentication on the basis of current use, as a condition for a rights owner's invocation of certain new RPMs.

319. The Secretariat recalled that the current ICANN UDRP revision proposal appeared to originate in the report of an ICANN working group tasked with examining certain registration-related abuses within the DNS. One of the working group recommendations was to investigate the definition of cybersquatting as contained in the UDRP. This recommendation resulted in subsequent calls, primarily from registration and so-called noncommercial interests, to review the UDRP mechanism itself.

320. The Chair noted that the SCT emphasized the need for the envisaged trademark rights protection mechanisms in ICANN's New gTLD Program to be effective, and expressed concern about ICANN processes which risk destabilizing the WIPO-initiated UDRP as an existing, globally relied-upon mechanism. He also noted that the SCT requested the Secretariat to keep Member States informed on developments in the new Domain Name System.

Draft Reference Paper on the Protection of Names of States Against Registration and Use as Trademarks

321. Discussion was based on document SCT/25/4.

322. The Delegation of Jamaica, speaking also on behalf of the Delegation of Barbados, stated that during the 1980s, proposals had been made to review the Paris Convention for the Protection of Industrial Property (hereinafter Paris Convention) in order to broaden the scope of Article 6*ter* so as to include the protection of country names. The last proposal, regarding a full review of Article 6*ter* for the purpose of possible amendments, had been made at a diplomatic

conference held in February 1980. At that conference, under the heading of “alternative B”, a proposal had been submitted which recommended that the term “as well as the official names of the countries of the Union” should be included under the category of areas that were to be refused for validation as registered trademarks. This would have effectively led to the expansion of Article 6*ter* (1)(a) to include the protection of country names. Unfortunately, attempts to review Article 6*ter* of the Paris Convention at the Diplomatic Conference had been unsuccessful due to the rejection of the proposal for the protection of country names by a number of States. The rejection of such an inclusion in Article 6*ter*, however, had taken place against the backdrop of a very different political and socio-economic reality. The widening and deepening of linkages amongst and between countries, as a result of globalization and trade liberalization had facilitated a dramatic increase in the trade in goods including those which carried unauthorized country names. Following a proposal made by the Delegation of Jamaica at the twenty-first session of the SCT in June 2009 (document SCT/21/6), the SCT had decided to prepare a draft questionnaire concerning the protection of official names of States against registration or use as trademarks for consideration by the SCT. Following the twenty-third session of the SCT, the revised and final version of the questionnaire (SCT/24/2) had been circulated to SCT members. Returns to the questionnaire had been compiled by the Secretariat and presented for consideration at the twenty-fourth session of the SCT (SCT/24/6). At that session, the SCT had requested the Secretariat to prepare a draft reference document for consideration at its next session, based on the Committee’s work in that area and offering a comprehensive overview of the law and practice of Member States with regard to the protection of country names against registration and use as trademarks. Based on the discussion on the reference document, the Chair had concluded that document SCT/25/4 would be kept open for further comments to be provided by SCT members through the SCT Electronic Forum. The Secretariat had been requested to revise document SCT/25/4 based on the comments received and to present it to the current session of the SCT for consideration. The present proposal was, therefore, aimed at contributing to this process.

323. The Delegation of Jamaica noted that the Paris Convention did not prescribe specific rules for the protection of country names, allowing parties to adopt varied approaches to the matter. At the national and regional levels, a cursory analysis showed that IP legislations frequently foresaw a number of situations wherein trademarks containing country names might be refused or the use of such trademarks might be prohibited. A non-exhaustive list of these included, *inter alia*: (a) non distinctive trademarks; (b) descriptive trademarks; (c) misleading trademarks; (d) incorrect trademarks, etc. Based on the previous work undertaken by the SCT since its twenty-first session, and due to the fact that the questionnaire and the reference document, as commented on during the twenty-fourth and twenty-fifth sessions of the SCT, provided only a somewhat limited explanation of the current legislative measures and practices, concerning the registration of trademarks containing country names, the Delegation was of the view that further work was needed to strengthen the SCT’s understanding of the *status quo*. The results obtained from the questionnaire suggested that the importance of the need to protect country names was recognised by many countries, and was addressed in domestic law and in trademark practice. This supported the position that there could be convergence among members on an agreed approach to the protection of country names in the trademark and intellectual property system having regard to differences that currently existed in the protection afforded to country names across Member States. The absence of a common approach to the treatment of country names by IP Offices had, therefore, contributed to some apparent inconsistency in the registration and use of trademarks containing country names for goods and services. There were concerns on the fact that registrations might be considered or granted where the use of a country name was neither authorised nor had a direct relationship with the relevant country. It was feared that this could potentially cause commercial loss, affect the image and reputation of the country and harm the interests of consumers. The future work of the SCT concerning the protection of country names, should be approached in a more holistic manner and take into account the socio-economic and legal implications, including in particular, the impact on a country’s sustainable development. It was evident that where country names

were not protected, there was a danger that the reputation associated with these names would become diluted or denuded, resulting in the loss of their branding value. This had implications not only for the value of trademarks but also for a country's ability to effectively protect its IP rights generally, and particularly in third countries. Countries which were heavily reliant on their name and "nation branding" as a critical trade and market development tool, and especially small developing countries whose firms lacked marketing resources and consequently relied heavily on such nation branding, suffered greatly when use of their country names went unchecked. In light of the systemic importance of establishing effective and appropriate measures for protecting country names and addressing the concerns arising from the impact of trademarks containing country names, which were used without due regard for the concerns of the countries in which those names originated, the Delegation proposed that a work programme be established within the SCT in order to advance this issue in a constructive and balanced way in three phases. The first phase should promote the exchange of more detailed information on the protection and use of country names consisting of: (1) an empirical review of the status of the use, abuse and protection of country names taking into account, where relevant, the outcome of the questionnaire on the use of country names, including nation branding initiatives; and (2) a detailed study on the current legislative provisions and practices in national or regional legislations relating to the protection and legitimate use of country names, as well as the experiences and best practices in the implementation of such provisions. The second phase would investigate what provisions and practices might better afford effective and appropriate protection of country names, taking into account the particular needs and concerns of developing countries, in particular the least developed countries. It should address conditions for their implementation and evaluate how national capacities might affect the use of the legal measures at a country's disposal. The third phase should consider the elaboration of a guide or a manual and/or a Joint Recommendation for consideration and adoption by the General Assembly as a means of promoting consistent, effective, predictable, and appropriate treatment of country names in trademark registration procedures undertaken by States who chose to be guided by its terms. The Delegation concluded that the proposed studies would be properly in line with WIPO's commitment to advancing development-focused initiatives.

324. The Delegation of Jamaica, acknowledging the concerns of many members of the SCT, recognized that the stage might not yet be ripe for an amendment to Article 6^{ter} or, for that matter, any binding international instrument. Anxious to facilitate the most constructive and realistic approach to the issue, the Delegation had consulted very broadly and in a flexible manner. These consultations had informed a change in approach to the issue of protection of country names as Jamaica sought to find consensus based on convergence within the membership of the SCT. To this end, the Delegation proposed as a first priority seeking agreement on the undertaking of a deeper and more efficient study of the *status quo* of protection and use of country names as trademarks or parts thereof. The Delegation hoped that through a focused, detailed and thorough examination, based on empirical research and analysis undertaken by the Secretariat with such further independent research as might be necessary, the SCT would be better able to determine its next steps. The Delegation expected that such a study would help the SCT establish, in a clear and comprehensive manner, the state of play concerning the protection and use of country names in trademarks at the national and international levels and ideally clarify the steps that could and should be taken to address such use. The Delegation was grateful for the work done by the Secretariat and explained that this issue was very important to Jamaica and other likeminded small and vulnerable economies - it was simply a matter of trade and development. As a small vulnerable, highly indebted middle income country, whose main firms were small, medium and micro-sized enterprises (SMMEs) by international standards, Jamaica had been greatly challenged in finding effective ways to enter global commerce where branding and marketing were the lifeblood of sales, survival and growth. Having tried valiantly to push its enterprises to go global with their limited resources, Jamaica found that many were unable to compete through their own marketing efforts. It was for this reason that Jamaica was making a great push for nation branding to leverage its weaker and more vulnerable producers through strong country-linked campaigns. Jamaica considered

the steps proposed to be of significant development value as it was mainly the smaller and less endowed producers in developing countries who would rely on the umbrella of nation branding to compete in international markets where they were often marginalized. The capacity of large enterprises, especially those in developed countries, to brand and market in their own right made the use of nation branding less critical for them. Indeed, some product brands were far stronger and more recognized than some countries and their country brand. Measures that strengthened the ability of SMMEs in small developing countries to enter and participate effectively in global commerce could have a significant impact on the prospects of these weaker firms as well as on their country's development agenda. This would flow from the recognition and market appeal provided by a well promoted "nation brand". The Delegation envisaged that the initiative before the SCT would ultimately allow countries to be better able to design and implement national marketing strategies to support their enterprises in their effort to penetrate global markets. It equally envisaged that if the SCT brought greater clarity and coherence to the treatment of country names, these strategies would be made easier and the fear that such efforts would be undermined by illegitimate use of country names and their brand impact would be allayed. This would make the national investment in branding more sustainable. Therefore, the Delegation wished to propose a work plan that could lead to recommendations that encouraged and assisted Member States to adopt regulatory approaches that would set clear standards for the kinds of uses of country names in trademarks that would be acceptable. The Delegation was aware that there might be best practices at the national level that could provide examples of how the SCT might wish to proceed. A Joint Recommendation would emerge, which could be considered for adoption by the WIPO General Assembly.

325. The Delegation of the Iran (Islamic Republic of), speaking on behalf of the Asian Group, thanked the delegations of Barbados and Jamaica for the proposed work program on the protection of country names and noted that the ultimate objective of this process would be a non-binding, non-prescriptive consensus recommendation or methodology on the protection of country names, and that therefore the Delegation of Jamaica had distanced itself from the original proposal to amend Article 6*ter* of the Paris Convention. The Delegation regarded the present objective to be more attainable and pragmatic and announced that the Asian Group was flexible and could come along with the incremental implementation of the proposed work program. Therefore, it supported the implementation of the first phase of the proposed work program, which was evidence collection. The Delegation was of the view that on the basis of the result of the analytical empirical review of the status of legitimate and illegitimate use of country names and the available protection the SCT would be able to decide on the implementation of the two remaining phases of the proposed work program.

326. The Delegation of Egypt, speaking on behalf of the African Group, congratulated the delegations of Barbados and Jamaica for their proposal and welcomed the proponents' decision to avoid the prescriptive or treaty-based approach through the proposed work program. The African Group agreed on the importance of exchanging information and best practices on this relevant issue while also allowing the policy and legal space for each Member State to pursue national measures deemed most effective and appropriate to protect country names. Given the complexity of the issue at hand and the need to explore its multifaceted aspects, the African Group recommended following an incremental approach to the proposed work program with initial work being dedicated to sharing information and best practices as well as fully analyzing and adjusting the responses to the questionnaire conducted on the protection of names of States against registration and use as trademarks (document SCT/24/2). The African Group also saw that stock-taking on progress made in Phase 1 should be conducted to be able to proceed with future work. Finally, the African Group asserted that it stood ready to continue its engagements with the proponents, with a view to advancing the discussions on the protection of country names against misuse or abuse.

327. The Delegation of South Africa associated itself with the statement made by the Delegation of Egypt on behalf of the African Group and re-iterated its unchanged position not to

support an amendment to Article 6^{ter} of the Paris Convention, as initially proposed by the Delegation of Jamaica, in order to provide protection for the names of States. The Delegation expressed its support for the current proposal of a work plan, tabled by the delegations of Barbados and Jamaica, with the envisaged outcome being a guide or a manual and/or a Joint Recommendation on the protection of country names, which, in a non-exhaustive manner, would serve as a non-binding, non-prescriptive reference to all WIPO Member States. Acknowledging that there was always a need to take cognizance of the laws and office practices of other IP offices in order to determine whether its national IP registration office could fulfill its mandate even more effectively, the Delegation was of the view that such a document could serve as a useful working tool in national offices. The Delegation, however, also stressed that the extent to and the manner in which such a document would be used within IP Offices, whether simply as a reference document or as internal office practice or as published office guidelines, should remain within the sole discretion of the offices, it being understood that the document was of a non-binding and non-prescriptive nature. It was in this context, therefore, that the Delegation, in principle, supported the work program on the protection of names of States proposed by the delegations of Barbados and Jamaica.

328. The Delegation of Germany, supported by the delegations of Denmark, France, Norway, Sweden, and the United Kingdom, recognized the intention of the delegations of Barbados and Jamaica to work on this issue, which was obviously perceived as interfering with their desire to undertake a nation branding initiative, and highlighted that every country should be able to promote itself through nation branding. However, the Delegation viewed it as problematic that no factual background was given to the allegation that some countries were prevented from nation branding because of illegitimate uses of country names and that there was not enough statistical evidence to conclude that there was a real problem. In relation to the fact that the program suggested by the delegations of Barbados and Jamaica, already in its first phase, suggested that the SCT should conduct an empirical review, the Delegation expressed the view that the burden to provide evidence should first fall on those countries alleging that there was a problem and not on the SCT. While stressing that the allegations made could be right or wrong, the Delegation felt that more factual background was needed before a discussion on the protection of State names could take place.

329. The Delegation of Trinidad and Tobago thanked the delegations of Barbados and Jamaica for tabling their proposal on the protection of country names and the draft terms of reference for the proposed work plan. The Delegation acknowledged and admired the approach taken by the co-sponsors in not pursuing the option of broadening Article 6^{ter} of the Paris Convention. This showed the degree of flexibility which both co-sponsors were willing to undertake in order to achieve international consensus on this topical area. Given the circumstances, the Delegation supported the first phase of the proposal and believed that the results of such a study, be it undertaken by the Secretariat or an independent consultant, would be helpful to all Member States and assist and guide the SCT. The Delegation believed that the study was paramount and that its outcome would determine whether and in what manner the SCT could implement Phases 2 and 3 of the proposal as it was only when this data would be submitted, that the SCT could fully appreciate the tasks ahead.

330. The Delegation of Algeria thanked the delegations of Barbados and Jamaica for their proposal on the protection of country names, which, in its view, would strengthen developing economies through the use of country names as a mechanism for the marketing of products which sprang from the same economies. The Delegation underlined that it was important to spell out that the protection of country names fell under national competences and that it was up to each country to take the measures which they deemed necessary so as to draw the best advantage from that protection. The Delegation welcomed the proposal in its first phase because it was particularly useful to have information and an analytical study on the use and possible abuse of country names. The Delegation expressed its interest in this exchange of

information which could transpire into better practice in this field and pointed out that Phases 2 and 3 would have to depend on the results of the first phase.

331. The Delegation of the United States of America recalled that it had previously voiced concerns about extending country name protection any further than what was provided in existing treaty obligations. The Delegation was also concerned that work in this area could encroach into other fields such as domain names, geographical indications, Article 6*ter*, or geographical marks in general. The Delegation stressed that it was trying to determine what information would be most useful for the *demandeurs* as they moved forward with their efforts to promote their own industries and their exports, but it also understood the position of the Delegation of Germany and considered that further enquiry was needed to address a number of questions. The Delegation wondered what the problem was and how that problem would impact on nation branding initiatives. More specifically, the Delegation considered that the critical question was perhaps what the *demandeurs* considered to be legitimate and non-legitimate uses. The Delegation stated that evidence collection would be useful to inform the work of the SCT in this regard, but was hesitant to agree to a study as the Secretariat was already working on another important study. The Delegation then proposed another questionnaire to allow delegations to put forth case-law examples, examples of how a particular refusal was applied and examples of how country name protection was applied by national courts or administrative tribunals. Whilst the Delegation was particularly interested to hear of cases from the jurisdictions of the *demandeurs*, it noted that all delegations might have examples to share. Further, the Delegation suggested that the questionnaire address nation branding more broadly and that it would be interesting to know what nation branding campaigns already existed in the jurisdictions of the various delegations and whether, in pursuing them, alternatives to geographic terms or country names were used.

332. The Delegation of Chile thanked the delegations of Barbados and Jamaica for their proposal and reported that it recognized the importance of the protection of country names at the national level and that in Chile it was not possible to register country names either as product or service marks. The Delegation noted that there was an obvious need to have greater information to be able to make headway in a substantive manner in the debate. Whilst the previous questionnaire had yielded some information, this was not sufficient. The Delegation therefore regarded the first phase of the proposal as perfectly reasonable in that it would enable the SCT to either carry out a study or an empirical review. While the Delegation considered such a study to be feasible it would welcome the view of the Secretariat to clarify such feasibility.

333. The Delegation of Kenya welcomed the draft reference document and thanked the Secretariat for the effort put into its making. The Delegation highlighted that Kenya had a keen interest in ensuring that there was adequate protection against the use of state names as trademarks or in other ways that misled consumers as to the true origin of goods and services. The Delegation expressed support for the proposals made by the delegations of Barbados and Jamaica while aligning itself with the sentiments expressed by the African Group and other like-minded delegates regarding the need for further work and discussion in this area.

334. The Delegation of India reported that although there was a legal provision in India to prevent the professional and commercial use of certain names, no specific mention was made of the names of countries in the schedule of the relevant legislation which had to be taken due cognizance of in prohibiting certain trademarks from registration. The Government of India, however, was able to amend or alter that schedule. The Delegation supported the proposal made by the delegations of Barbados and Jamaica regarding the preparation of an empirical study on the current legislative provisions and practices and was of the view that further steps could be decided by the SCT subsequently to the preparation of the study.

335. The Delegation of Colombia noted that in case of approval of the study, it should also include the convergence of Article 6*ter* with the system of protection of geographical indications, either through appellations of origin or certification marks.

336. The Delegation of Guatemala thanked the delegations of Barbados and Jamaica for their proposal and welcomed this proposal since such a study would be extremely useful for the work of the SCT.

337. The Delegation of China reported that according to national legislation, there were very strict provisions relating to Article 6*ter* of the Paris Convention and the protection of country names, which were excluded from registration, and foreign country names could not be used as trademarks. As far as the substantive examination of a trademark application was concerned, these equally followed very strict provisions but there were also exemptions; that was to say if the enterprise had an authorization from the State concerned, then the country name could be registered. The Delegation also thanked the Secretariat for the questionnaire which it regarded as very useful.

338. The Delegation of Sri Lanka reported that its national IP laws and legislation granted adequate protection to country names. However, from the proposal submitted by the delegations of Barbados and Jamaica, the Delegation concluded that the absence of a common approach to the treatment of such country names by IP Offices world-wide had contributed to some apparent inconsistency in the registration and use of trademarks containing country names for goods and services. Although it appreciated the comments made by other delegations and recognized that the question was very administrative in nature, the Delegation recommended that further action be taken by the Secretariat on this issue.

339. The Delegation of Zambia thanked the delegations of Jamaica and Barbados for introducing the proposal and the rationale that had now been presented following their reflection through their initial proposal. In view of the importance and delicate nature of the topic, the Delegation aligned itself with the statement made by the Delegation of Egypt on behalf of the African Group and stated that it would be useful to have some exchange of information before the steps to go forward could be determined. In this regard, the Delegation concluded that the first phase that had been included in the proposal of Jamaica to have more detailed information on the protection would be very useful.

340. The Delegation of Switzerland supported the proposal presented by the delegations of Barbados and Jamaica and considered it very useful to advance the work of the SCT, as the suggested study would be relevant in providing a clear idea of where the protection of country names stood at that moment. In relation to the comments made by other delegations on the fact that explanations were lacking as to why this work would be useful, the Delegation recalled that in previous meetings of the SCT, those delegations having such problems had clearly expressed them and at the current stage the SCT needed to make progress on the issue. In relation to the proposal of circulating another questionnaire, the Delegation pointed out that there had already been a questionnaire which showed that the results that could be drawn from it were rather limited. The Delegation took the view that the study proposed by the delegations of Barbados and Jamaica would be useful in order to have a more substantial exchange of views and to achieve progress. In relation to the point that had been made about focusing on other specific matters and the workload of the Secretariat, the Delegation urged the SCT to use pragmatism in finding ways to make progress in an orderly fashion.

341. The Delegation of Barbados expressed its appreciation to the Director General of WIPO for highlighting the need for the SCT to recognize the importance that the issue of the protection of country names against their registration and use as trademarks had for a number of countries. As the Delegation had outlined on previous occasions, Barbados as a small island developing State, with a small economy, faced certain challenges, such as the high cost of labor

and the lack of economies of scale which, as a general rule, rendered manufactured products uncompetitive both at home and abroad. Manufacturers in Barbados therefore had to rely on the reputation that the country had carved for itself through, amongst other things, its nation branding initiative to facilitate the sale of products with the Barbados name. Given that Barbados had scarce natural resources, it was all the more important for it to regulate the use of its name for the benefit of its nationals. Accordingly, at the national level, the legislation provided that an initial, name or abbreviation of a name of any country may not be registered as a trademark, service or collective mark unless such use was authorized by a competent authority. The Delegation was aware that while Barbados protected the country names of WIPO Member States through such a specific provision, not all countries did so. In addition, there were no guidelines at the international level specifically aimed at regulating the use or registration of country names as trademarks without permission from a competent authority in the country concerned. For these reasons, amongst others, Barbados had co-sponsored the program that proposed further work on this issue to examine, amongst other things, the potential benefits to manufacturers, particularly small and medium-sized enterprises (SMEs) in developing countries, and to the countries themselves, of specific guidelines at the international level on the registration and use of country names as trademarks. As with the discussions on industrial designs, and as with this discussion on the protection of country names, the Delegation was of the view that WIPO should seek to address the concerns of all Members States. The Delegation recalled that it had, on another occasion, addressed arguments that the current rules and procedures relating to country names were sufficient and indicated why, unfortunately, from an enforcement perspective, these rules were not sufficient. In light of the Development Agenda and the new emphasis on development objectives and concerns in the area of IP, the Delegation took the view that there could be guidelines or a Joint Recommendation at the international level on the issue of the protection of country names, taking into account the circumstances and development objectives of developing countries, particularly small island developing States and small vulnerable economies in this area of the law. It also highlighted that guidelines at the international level would encourage and support the nation branding initiatives in various countries and prevent brands developed from being so easily misused in the future. The Delegation therefore supported the proposed work program on the protection of names of States and added that a detailed study would address the concerns raised by the Delegation of Germany and supported by others. The Delegation concluded by thanking all those delegations which supported its proposal and welcomed the constructive approach taken by the Delegation of the United States of America to request that further information be gathered on this issue.

342. The Delegation of Senegal thanked the delegations of Barbados and Jamaica for their very interesting proposals and pointed out that Senegal was a member of OAPI and that its national legislation in this field was closely linked to the Bangui Agreement, which did not provide specific articles covering the protection of country names. Notwithstanding, the Delegation felt the need to make it possible to have an in-depth study by the SCT and to implement the phases as presented in the proposal submitted by the delegations of Barbados and Jamaica.

343. The Delegation of Brazil thanked the delegations of Barbados and Jamaica for their proposal and appreciated the current non-binding approach. The Delegation was of the view that a study, as suggested in the first phase of the proposal, was a positive step to better understanding all the complexities and implications involved and, therefore, supported this idea. The Delegation hoped to hear from the Secretariat as to what was actually feasible and achievable in terms of such a study.

344. The Delegation of Mauritania supported the proposal submitted by the delegations of Barbados and Jamaica and endorsed the statements made by the African and the Asian Groups for implementing the first phase of the proposal and deciding on the subsequent phases afterwards.

345. The Representative of the OECS thanked the delegations of Barbados and Jamaica for the proposal of a work program to further examine the issue, as well as all other delegations that had expressed the same issues and concerns which the OECS had. The Representative pointed out that the OECS was constituted of very small, vulnerable island States with small and medium and even micro-sized enterprises. The issue of nation branding through their country names was thus an important one for the OECS and its member States. The Representative believed that the proposed study, which would provide a clearer picture of the situation and the issue, would enable the SCT to arrive at the envisaged guidelines or any Joint Recommendation and therefore supported the proposal.

346. The Delegation of Jamaica thanked all delegations which had expressed their support and noted the concerns and the flexibility that had been shown by a number of delegations on the way forward. The Delegation believed that these concerns reflected the need for a more detailed assessment of the *status quo* and affirmed its wish for the discussion to go forward with the participation of all Member States in a transparent manner. In relation to the proposed study the Delegation of Jamaica presented draft terms of reference in which it suggested that, in furtherance of the work previously mandated by the SCT on country names, contained in documents SCT/24/6 and SCT/25/4, and in order to implement the work program on the protection of country names, the SCT, at its resumed twenty-sixth session, mandate the WIPO Secretariat to carry out the following activities in Phase 1: (1) The Secretariat should prepare an empirical review of the status of the legitimate and illegitimate use, as well as all available protection, of country names taking into account, where relevant, the returns to the questionnaire concerning the protection and use of names of States against registration and use as trademarks (SCT/24/6), and including an assessment of the impact of such use on national branding initiatives, particularly in developing countries. (i) This should include a full database search and review of Member States' trademarks registries, with specific focus on trademarks containing country names, and should also include online surveys, as well as any notifications from Member States, of existing products and services which employ country names as trademarks or as elements of trademarks. (ii) This should include an analysis of the sectors in which such legitimate and illegitimate uses occurred, and provide an assessment of the impact of any abuses on the market access opportunities of firms which are the legitimate users of the relevant country names as trademarks or as elements of trademarks, particularly for SMEs in developing countries. (iii) This should also include an analysis of the impact of both legitimate and illegitimate uses of country names as trademarks or as elements of trademarks on nation branding strategies and SMEs in developing countries. (2) The Secretariat, or an independent consultant which it might appoint, should conduct a study on the current legislative provisions and practices in national or regional legislations relating to the protection and legitimate use of country names, as well the experiences and best practices related to the implementation of such provisions. (i) In addition to any existing or impending legislations, this study should also draw on any available jurisprudence, in particular, judicial decisions, judicial reviews and any other sources of legal practices, on the subject of the use of country names, which might be available within the national and regional jurisdictions of WIPO Member States. (ii) The outcome of the study should be the compilation, into a compendium or reference document, of all available reference laws and best practices, as well as any guidelines on their implementation, in addition to the inclusion of any case studies relating to Members States' experiences in these areas. As far as a timeline for the implementation of the work program was concerned, the Delegation of Jamaica proposed that the results of Phase 1 should be placed before the SCT for consideration at its twenty-seventh session.

347. The Delegation of the United Kingdom, supported by the Delegation of Germany, said that it wished to have an opportunity to further consider the proposed terms of reference in detail. As a first reaction, the Delegation felt that the proposals were in need of discussion. Document SCT/24/6 showed that in many cases there was no blanket ban on the use of names of States and thus there were instances in which the use of a country name was perfectly legitimate. In light of this, the Delegation was concerned by the use of the term "illegitimate" in the draft terms

of reference. Additionally, the Delegation was of the view that the request to conduct the full database search was too imprecise and that it was unclear who would conduct such a search and on what terms, what parameters, and for what purpose.

348. The Delegation of Zimbabwe highlighted the need to consider the proposal in a written document before being able to react to it.

349. The Delegation of South Africa stressed that in light of the fact that a majority of Member States were in favor of the first phase, it should be possible to agree on the modalities during the current session of the SCT. The Delegation therefore encouraged the SCT to be pragmatic and not too futuristic when determining what could be feasible to achieve in the first phase in order to agree on acceptable modalities.

350. The Representative of the European Union deemed it reasonable to give the delegations time to become familiar with the proposed terms of reference. Recalling that the SCT was not taking decisions by majority but by consensus, the Representative stressed that at this stage no decision had been made as to whether to carry out a study. The Representative also referred to the proposed questionnaire and underlined its interest in fully exploring this option.

351. The Delegation of Jamaica informed the SCT that the proposed terms of reference were intended to promote the broadest possible information exchange on this issue and provide clarity as to what was involved in the request for a further detailed study and provided a brief synopsis of the proposed terms of reference.

352. The Representative of the European Union, speaking on behalf of its member States, wished to thank the delegations of Barbados and Jamaica for their proposal concerning the future work on the protection of names of States and took note of the interest of the Delegation of Jamaica in continuing work in this area and carrying out a study on the current legislative provisions and practices in national or regional legislation relating to the protection and legitimate use of names of States, as well as the experience and best practices related to the implementation of such provisions. Since there had been little time to examine the proposal and the additional terms of reference for Phase 1, the Representative did not feel to be in a position to agree to the proposal at that stage. Without prejudice to a final position to this proposal, the Representative had doubts about the feasibility of some proposed activities within the terms of reference, in particular, as to the scope, timeframe, and costs. In this regard, the Representative considered it useful to get more input from interested delegations about concrete problems encountered, including case studies, which would provide the SCT with a better understanding of the issues to be addressed.

353. The Delegation of the United States of America expressed its wish for more time to study the proposed terms of reference and noted that it was not sure that the proposed questions, although being perfectly appropriate, were conducive to getting to what was needed for further targeted and focused work. The Delegation also re-iterated its proposal to collect case studies or case-law from interested Member States and re-affirmed its interest in the larger issue of nation branding in general and in the more specific questions as to what existing nation branding schemes there were, how they were administered by governments, what problems these schemes were encountering, and how they benefitted the relevant country's government and nationals. The Delegation stressed that it was very interested in putting the debate in the appropriate context and that it took the view that this was the context of nation branding and maybe not so much that of geographic marks. The Delegation noted that a decision on the proposed terms of reference at the current session might be premature and that more evidence should be gathered in order to better frame the terms of reference. It suggested that evidence could be gathered in the short term through the SCT Electronic Forum in that Member States could send case-law or information on existing nation branding campaigns. The Delegation

concluded that by reviewing the submissions received in this way a better understanding could be gained of what the terms of reference could look like.

354. The Delegation of Jamaica asserted that it was flexible in terms of how to move forward on the issue and that it welcomed very much the forward-thinking proposal presented by the Delegation of the United States of America. The Delegation expressed its belief that the elements of what the latter Delegation had proposed were part of the current proposal and suggested to focus more specifically on these in order to have a more informed information exchange to the benefit of every member of the SCT. The Delegation specifically pointed to the fact that the first part of Phase 1 mentioned an information exchange and the possibility for Member States to submit facts and evidence, and that the second part of Phase 1 sought to look at the legal situation concerning the protection of country names. The Delegation concluded that it very much supported that approach and suggested that the current session of the SCT at least implement a mechanism to allow for information to be exchanged and that the information received be considered at the twenty-seventh session.

355. The Delegation of Barbados thanked the Delegation of the United States of America for its very constructive approach and expressed its firm interest in exploring the elements outlined. The Delegation suggested agreeing on an initial decision on the protection of country names around the collection of case studies which incorporated the elements proposed by the Delegation of the United States of America. In that case, the Delegation expressed its wish to be assisted in this exercise and requested the Secretariat to make available all information on nation branding at its disposal.

356. The Chair concluded that a number of delegations had expressed support for the proposal of the delegations of Barbados and Jamaica. Other delegations expressed the need for more information and time for reflection. The SCT invited interested members to communicate to the Secretariat cases and case studies relevant to the protection of names of States, as well as information on any nation branding scheme in which they have engaged, including problems encountered in their implementation. Such communications should reach the Secretariat by March 15, 2012. The Secretariat was requested to compile those communications in the form of a working document to be presented at the next session of the SCT. This working document should also provide information on nation branding available at WIPO.

Information on Electronic Communications in the Article 6ter Express Database

357. The Chair concluded that the SCT took note of the contents of document SCT/26/7.

AGENDA ITEM 6: GEOGRAPHICAL INDICATIONS

358. The Chair noted that no intervention was made under that Agenda item.

AGENDA ITEM 7: SUMMARY BY THE CHAIR

359. The SCT approved the Summary by the Chair as contained in the present document.

AGENDA ITEM 8: CLOSING OF THE SESSION

360. The Chair closed the session on February 3, 2012.

[Annexes follow]



SCT/26/8
ORIGINAL: ENGLISH
DATE: FEBRUARY 3, 2012

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications

Twenty-Sixth Session

Geneva, October 24 to 28, 2011, and February 1 to 3, 2012

SUMMARY BY THE CHAIR

adopted by the Committee

AGENDA ITEM 1: OPENING OF THE SESSION

1. The session was opened by Mr. Imre Gonda (Vice-Chair) who, in the absence of Mr. Seong-Joon Park (elected Chair of the twenty-fifth and twenty-sixth sessions of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)), acted as Chair of the twenty-sixth session of the SCT.
2. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

3. The SCT adopted the draft Agenda (document SCT/26/1 Prov.) on the understanding that the sequence of the working documents under Agenda item 4 would be inverted so as to allow a debate on document SCT/26/4 during the morning of the first day of the meeting, to be continued, if necessary, after the consideration of documents SCT/26/2 and 3.

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE TWENTY-FIFTH SESSION

4. The SCT adopted the draft report of the twenty-fifth session (document SCT/25/7 Prov.) with amendments requested by the delegations of Sudan and Switzerland and by the Representative of CEIPI.

AGENDA ITEM 4: INDUSTRIAL DESIGNS

Industrial Design Law and Practice - Draft Articles and Draft Regulations

5. The SCT discussed all draft Articles and draft Rules contained in documents SCT/26/2 and 3.

6. The Chair stated that the Secretariat would note all interventions in the report of the twenty-sixth session. Moreover, the Secretariat was requested to prepare revised working documents for consideration of the SCT at its twenty-seventh session, which should reflect all comments made at the present session and highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes, as appropriate.

Information on the Work of the SCT on Industrial Design Law and Practice in Relation to the WIPO Development Agenda Recommendations

7. Discussion was based on document SCT/26/4.

8. The Chair noted that a number of delegations considered that, while the document contained useful information, a study by the Secretariat with the involvement of the Chief Economist, on the impact of the draft Articles and draft Rules on Industrial Design Law and Practice (documents SCT/26/2 and 3) on developing countries was required. Other delegations declared that they would not oppose such study, provided that its scope was precisely defined and that it did not delay the work of the SCT. After informal discussions, the SCT agreed to request the Secretariat to prepare an analytical study, in accordance with the terms of reference contained in Annex II.

AGENDA ITEM 5: TRADEMARKS

Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks

9. Discussion was based on document SCT/26/5 and on a non-paper prepared by the Chair.

10. The Chair concluded that the SCT agreed to the modalities of the information meeting contained in the non-paper prepared by the Chair and reproduced in Annex I of this document.

Update on Trademark-Related Aspects of the Expansion of the Domain Name System

11. Discussion was based on document SCT/26/6.

12. The Chair noted that the SCT emphasized the need for the envisaged trademark rights protection mechanisms in ICANN's New gTLD Program to be effective, and expressed concern about ICANN processes which risk destabilizing the WIPO-initiated UDRP as an

existing, globally relied-upon mechanism. He also noted that the SCT requested the Secretariat to keep Member States informed on developments in the new Domain Name System.

Draft Reference Document on the Protection of Names of States Against Registration and Use as Trademarks

13. Discussion was based on document SCT/25/4. It was also based on a proposal for a work program on the protection of country names submitted by the delegations of Barbados and Jamaica and on a further proposal by the Delegation of Jamaica concerning specific terms of reference for the first phase of the former proposal.

14. The Chair concluded that a number of delegations had expressed support for the proposal of the delegations of Barbados and Jamaica. Other delegations expressed the need for more information and time for reflection. The SCT invited interested members to communicate to the Secretariat cases and case studies relevant to the protection of names of States, as well as information on any nation branding scheme in which they have engaged, including problems encountered in their implementation. Such communications should reach the Secretariat by March 15, 2012. The Secretariat was requested to compile those communications in the form of a working document to be presented at the next session of the SCT. This working document should also provide information on nation branding available at WIPO.

Information on Electronic Communications in the Article 6ter Express Database

15. The Chair concluded that the SCT took note of the contents of document SCT/26/7.

AGENDA ITEM 6: GEOGRAPHICAL INDICATIONS

16. The Chair noted that no intervention was made under that Agenda item.

AGENDA ITEM 7: ADOPTION OF THE SUMMARY BY THE CHAIR

17. The SCT approved the Summary by the Chair as contained in the present document.

AGENDA ITEM 8: CLOSING OF THE SESSION

18. The Chair closed the session on February 3, 2012.

NON-PAPER BY THE CHAIR OF SCT/26 ON THE INFORMATION MEETING ON THE ROLE AND RESPONSIBILITY OF INTERNET INTERMEDIARIES IN THE FIELD OF TRADEMARKS

I. INTRODUCTORY NOTES

At its 26th session, the SCT discussed document SCT/26/5 (Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks). In addition to the three suggestions presented in the document (by the delegations of the US, the Russian Federation and Denmark), several comments and suggestions were made by delegations with regard to the modalities for such a meeting. In order to conduct the discussion of the SCT in a time saving manner and to avoid addressing questions of micromanagement in the plenary session, the Chair announced to hold informal consultations on the basis of a non-paper which will reflect the basic ideas and principles from the proposals and comments made by Member States.

II. PURPOSE OF THE NON-PAPER

The aim of the non-paper is to summarize the proposals made by delegations and to provide a draft proposal for establishing modalities to guide the Secretariat in convening the information meeting.

The basic purpose of the information meeting is to provide information on the role and responsibility of Internet intermediaries in relation to the use of trademarks on the Internet. Due to its informal nature, the meeting is not intended to constitute a forum for examining the issue, preparing proposals or making recommendations, decisions of any kind. The information meeting will not form part of a formal session of the SCT.

III. TIMEFRAME

Taking into account the proposals made for the timeframe of the information meeting and also bearing in mind that Member States expressed their flexibility in this respect, the duration of one day for the meeting to be held immediately prior to SCT/27 seems to be an effective compromise and would be suitable for meeting the different expectations.

IV. SPEAKERS

A large number of comments have been made underlining the importance of the choice of speakers. Despite the different views expressed, some common principles have been addressed in the comments. A balanced representation of geographical regions, business areas and interests was a broadly accepted principle as it is an important requirement for providing the proper presentation of different points of view.

With regard to the categories of stakeholders that would be invited to participate in the meeting, Internet intermediaries, trademark owners, trademark professionals, academia, civil society and government authorities should be represented.

V. PROGRAM

The program for the information meeting should remain within the scope of work of the SCT and should mainly focus on issues of use of trademarks on the Internet. The program should also take into account the relevant WIPO Development Agenda Recommendations and could cover similar initiatives in other fora. The Secretariat is requested to organize a briefing on the program prior to the information meeting. Along the lines of the proposals and comments made by Member States, the program should cover:

- the point of view of brand owners regarding the role and responsibility of Internet intermediaries in the field of trademarks;
- the position of Internet intermediaries and online service providers concerning the role and responsibility of Internet intermediaries in the field of trademarks;
- the point of view of academia;
- the views of users;
- national and regional experiences, including experience with alternative dispute resolution and public-private-partnerships (PPP).

TERMS OF REFERENCE FOR A STUDY BY THE WIPO SECRETARIAT ON THE POTENTIAL IMPACT OF THE WORK OF THE SCT ON INDUSTRIAL DESIGN LAW AND PRACTICE

In the context of the SCT's work on Industrial Design Law and Practice (documents SCT/26/2 and 26/3) and the commitment of WIPO Member States to the Development Agenda Recommendations, in particular Cluster B relating to Norm-Setting, the Secretariat with the involvement of the Chief Economist is requested to prepare an analytical study on:

1. The potential benefits, constraints and costs for SCT members, particularly Developing Countries, Least Developed Countries (LDCs) and Countries in Transition, of the application of the draft Articles and draft Rules on Industrial Design Law and Practice (documents SCT/26/2 and 3), with regard to:

- applicants (natural and legal persons, particularly SMEs);
- national and regional Offices' administrative capacity and legal expertise;
- national and regional jurisdictions, as concerns the implementation of legislative changes to their design system;
- Developing Countries and LDCs' needs for capacity building, investment in infrastructure and technical assistance.

2. The impact, if any, of the draft Articles and draft Rules on Industrial Design Law and Practice (documents SCT/26/2 and 3) on:

- the access to design systems for SMEs;
- fostering creativity, innovation and economic development and efficiency in Developing Countries;
- technology transfer and access to knowledge.

3. Flexibilities for SCT members in the draft Articles and draft Rules on Industrial Design Law and Practice (documents SCT/26/2 and 3), deepening the analysis contained in the relevant portions of document SCT/26/4, and examining special provisions for developing countries and LDCs.

STATISTICAL INFORMATION/ANALYSIS

The study will offer statistical information, within the scope of available data, about the designs system, with particular reference to access by SMEs from developing countries, and should include three levels of detailed information, in order to provide factual information on the current trends relating to protection of industrial designs.

- Level 1: general observed trends in protection of industrial designs;
- Level 2: statistical analysis on the demand for protection of industrial designs;

- Level 3: statistical analysis on the origin, destination and class of protection of industrial designs.

The study should reflect recent periods of data display.

TIME FRAME

The study should aim to be published two months prior to the next session of the SCT, with a view to helping informed discussions on the work of the SCT on industrial designs.

[Annex II follows]

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)

AFGHANISTAN

Fraidoon AMEL, Representative, Permanent Mission, Geneva
<fraidoon_m_amel@hotmail.com>

AFRIQUE DU SUD/SOUTH AFRICA

Fleurette COETZEE (Ms.), Senior Manager (Registrar), Trade Marks Division, Companies and Intellectual Property Commission (CIPC), Department of Trade and Industry (DTI), Pretoria
<fcoetzee@cipc.co.za>

Elena ZDRAVKOVA (Ms.), Senior Manager (Registrar), Patents and Designs, Companies and Intellectual Property Commission (CIPC), Department of Trade and Industry (DTI), Pretoria
<ezdravkova@cipc.co.za>

Victoria DIDISHE (Ms.), Acting Deputy Director (Registrar), Patents and Designs, Companies and Intellectual Property Commission (CIPC), Department of Trade and Industry (DTI), Pretoria
<vdidishe@cipc.co.za>

ALBANIE/ALBANIA

Lindita MENERI (Mrs.), Head, Trademarks, Industrial Designs and Geographical Indications Sector, General Directorate of Patents and Trademarks, Ministry of Economy, Trade and Energy, Tirana
<lindita.meneri@alpto.gov.al>

ALGÉRIE/ALGERIA

Boumediene MAHI, conseiller, Mission permanente, Genève

Ahlem Sara CHARILEHI (Mlle), attaché, Mission permanente, Genève

ALLEMAGNE/GERMANY

Thorsten HAEBERLEIN, State Attorney, Federal Ministry of Justice, Berlin
<haeberlein-th@bmj.bund.de>

Heinjörg HERRMANN, Counsellor, Permanent Mission, Geneva

Marcus KÜHNE, Head of Section, Designs Unit, German Patent and Trademark Office, Jena
<marcus.kuehne@dpma.de>

ARABIE SAOUDITE/SAUDI ARABIA

Hisham ALBIDAH, Head, Formal Examination Department, General Directorate of Industrial Property, King Abdul-Aziz City for Science and Technology (KACST), Riyadh
<halbedah@kacst.edu.sa>

Mohammed Abdou ALFAIFI, Industrial Design Examiner, General Directorate of Industrial Property, King Abdul-Aziz City for Science and Technology (KACST), Riyadh
<malfaifi@kacst.edu.sa>

Tariq AL AIAZQ (Mrs.), Industrial Design Researcher, General Directorate of Industrial Property, King Abdul-Aziz City for Science and Technology (KACST), Riyadh
<talazaq@kacst.edu.sa>

Abdullah A. AL-MOUSA, Commercial Agencies Manager, Trade Mark Section, Ministry of Commerce and Industry, Riyadh
<a.mossaa@gmail.com>

Mohammad A. AL MALKI, Commercial Marks Department, Trade Mark Section, Ministry of Commerce and Industry, Riyadh
<al_malki_m@hotmail.com>

Sulaiman S.M. MUSAIBIH, Legal Advisor, Ministry of Commerce and Industry, Riyadh

Dakheelalh Mrici ALMALKI, In Charge of Trade Marks, Ministry of Commerce and Industry, Riyadh
<dmalki@mci.gov.sa>

Naseer Bakheet AL DAWASARI, Ministry of Commerce and Industry, Riyadh
<genvaa@yahoo.com>

ARGENTINE/ARGENTINA

Rodrigo BARDONESCHI, Primer Secretario, Misión Permanente, Ginebra

Alejandro Horacio LUPPINO, Segundo Secretario, Misión Permanente, Ginebra
<alejandro.luppino@ties.itu.int>

AUSTRALIE/AUSTRALIA

Robyn FOSTER (Ms.), General Manager, Trade Marks and Designs Group, IP Australia, Department of Innovation, Industry, Science and Research (DIISR), Canberra
<robyn.foster@ipaaustralia.gov.au>

Michael ARBLASTER, Deputy Registrar, Trade Marks and Designs, IP Australia, Department of Innovation, Industry, Science and Research (DIISR), Woden ACT
<michael.arblaster@ipaaustralia.gov.au>

Tanya DUTHIE (Ms.), Assistant Director, International Policy and Cooperation, IP Australia, Department of Innovation, Industry, Science and Research (DIISR), Woden ACT
<tanya.duthie@ipaaustralia.gov.au>

AUTRICHE/AUSTRIA

Walter LEDERMÜLLER, Legal Department for International Trademark Affairs, Austrian Patent Office, Vienna
<walter.ledermueller@patentamt.at>

BANGLADESH

Md Musaraf HUSAIN MOLLA, Deputy Secretary, Department of Patents, Designs and Trademarks, Ministry of Industries, Dhaka
<musarafds@gmail.com>

Md Nazrul ISLAM, Minister, Permanent Mission, Geneva
<adib1969@gmail.com>

A.F.M. Mahbubul AHSAN, Deputy Registrar, Department of Patents, Designs and Trademarks, Ministry of Industries, Dhaka
<mabo.dhaka@gmail.com>

BARBADE/BARBADOS

Heather CLARKE (Ms.), Registrar, Corporate Affairs and Intellectual Property Office (CAIPO), Ministry of International Business and International Transport, Saint Michael
<general@caipo.gov.bb> <hclarke@caipo.gov.bb>

Corlita BABB-SCHAEFER (Mrs.), Counsellor, Permanent Mission, Geneva
<cbabb-schaefer@foreign.gov.bb>

Suzette Ruth Anne CUMBERBATCH (Miss), Corporate Affairs Officer, Corporate Affairs and Intellectual Property Office (CAIPO), Ministry of International Business and International Transport, Saint Michael
<scumberbatch@caipo.gov.bb>

BÉLARUS/BELARUS

Natallia SHASHKOVA (Ms.), Chief Specialist, Trademark Examination Department, National Center of Intellectual Property (NCIP), Minsk
<nshashkova@mail.ru>

BELGIQUE/BELGIUM

Katrien VAN WOUWE (Mlle), attachée à l'Office belge de la propriété intellectuelle (ORPI), Service public fédéral économie, PME, classes moyennes et énergie, Bruxelles
<katrien.vanwouwe@economie.fgov.be>

BÉNIN/BENIN

Fadilou MOUTAIROU, conseiller, Mission permanente, Genève
<fadilmoutai@yahoo.fr>

BRÉSIL/BRAZIL

Milene DANTAS (Mrs.), IP Researcher, National Institute of Industrial Property, Ministry of Development, Industry and Foreign Trade (INPI), Rio de Janeiro
<mdantas@inpi.gov.br>

Susana María SERRÃO GUIRAMÃES (Mrs.), General Coordinator of Geographical Indications and Registers, Directorate of Contracts, Geographical Indications and Registers, National Institute of Industrial Property, Ministry of Development, Industry and Foreign Trade (INPI), Rio de Janeiro
<susana@inpi.gov.br>

Guilherme LACERDA SILVA, Permanent Mission to the World Trade Organization (WTO), Geneva

BRUNÉI DARUSSALAM/ BRUNEI DARUSSALAM

Haji Ahmad Nizam DATO PAOUKA HAJI ISMAIL, Legal Counsel, Attorney General's Chambers, Bandar Seri Begawan
<hanbdphi@hotmail.com>

BURKINA FASO

S. Mireille SOUGOURI KABORE (Mme), attaché, Mission permanente, Genève
<skmireille@yahoo.fr>

BURUNDI

Esperance UWIMANA (Mrs.), deuxième conseiller, Mission permanente, Genève

CAMEROUN/CAMEROON

Urbain Noël EBANG MVE, secrétaire général du Ministère de l'industrie, des mines et du développement technologique, Yaoundé

Joseph YERIMA, directeur du développement technologique et de la propriété industrielle, Yaoundé

CANADA

Lisa POWER (Mrs.), Director General, Trademark, Canadian Intellectual Property Office (CIPO), Industry Canada, Gatineau
<lisa.power@ic.gc.ca>

Félix DIONNE, Director, Copyright and Industrial Design Branch, Canadian Intellectual Property Office (CIPO), Gatineau
<felix.dionne@ic.gc.ca>

CHILI/CHILE

Martín Alejandro CORREA, Asesor Legal, Departamento de Propiedad Intelectual, Dirección General de Relaciones Económicas Internacionales, Ministerio de Relaciones Exteriores, Santiago de Chile
<macorrea@direcon.cl>

Andrés GUGGIANA V., Consejero, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra
<aguggiana@minrel.gov.cl>

CHINE/CHINA

LIU Zhi (Mrs.), Division Director, Research Division, Industrial Design Department, Patent Office, State Intellectual Property Office (SIPO), Beijing
<liuzhi@sipo.gov.cn>

PEI Zhihong (Ms.), Deputy Division Director, Division III, Legal Affairs Department, State Intellectual Property Office (SIPO), Beijing
<peizhihong@sipo.gov.cn>

ZHANG Wen (Ms.), Division Director, Trademark Examination Division, Trademark Office, State Administration of Industry and Commerce (SAIC), Beijing

YUAN Qi (Ms.), Director, Trademark Office, State Administration for Industry and Commerce of the People's Republic of China (SAIC), Beijing
<waiban.sbj@saic.gov.cn>

CHYPRE/CYPRUS

Yiangos-Georgios YIANGOULLIS, Expert Legal Affairs, Permanent Mission, Geneva

Christina TSENTA (Ms.), Attaché, Permanent Mission, Geneva

Myrianthy SPATHI (Ms.), Second Secretary, Permanent Mission, Geneva

COLOMBIE/COLOMBIA

Clara Inés VARGAS SILVA (Sra.), Embajadora, Representante Permanente, Misión Permanente, Ginebra
<clara.vargas@misioncolombia.ch>

José LuíS LONDOÑO FERNÁNDEZ, Superintendente Delegado, Superintendencia de Industria y Comercio, Ministerio de Industria, Comercio y Turismo, Bogotá
<jlondono@sic.gov.co>

Andrea BONNET (Srta.), Asesora, Propiedad Intelectual, Ministerio de Relaciones Exteriores, Bogotá
<andrea.bonnet@cancilleria.gov.co>

Juan Camilo SARETZKI, Primer Secretario, Misión Permanente, Ginebra

COSTA RICA

Luís Gustavo ÁLVAREZ RAMÍREZ, Director del Registro de Propiedad Industrial, Registro Nacional, Ministerio de Justicia y Paz, San José
<lalvarez@rnp.go.cr>

CROATIE/CROATIA

Ana RAČKI MARINCOVIČ (Mrs.), Assistant Director General, State Intellectual Property Office of the Republic of Croatia, Zagreb
<ana.racki-marincovic@dziv.hr>

DANEMARK/DENMARK

Mikael Francke RAVN, Chief Legal Advisor, Danish Patent and Trademark Office, Ministry of Trade and Industry, Taastrup
<mfr@dkpto.dk>

Torben ENGHOLM KRISTENSEN, Principal Legal Advisor, Trademarks and Designs, Danish Patent and Trademark Office, Taastrup
<tkr@dkpto.dk>

Anja M. BECH HORNECKER (Ms.), Special Legal Advisor, Policy and Legal Affairs, Danish Patent and Trademark Office, Ministry of Trade and Industry, Taastrup
<abh@dkpto.dk>

EL SALVADOR

Melvy Elizabeth CÓRTEZ DE ALAS (Sra.), Jefe de la Unidad de Propiedad Industrial, Centro Nacional de Registros (CNR), San Salvador
<mcortez@cnr.gob.sv>

Martha Evelyn MENJIVAR CORTEZ (Srta.), Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra
<emenjivar@minec.gob.sv>

ESPAGNE/SPAIN

Águeda FOLE SANZ (Sra.), Jefa del Servicio Relaciones Internacionales, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Turismo y Comercio, Madrid
<agueda.fole@oepms.es>

Paloma HERREROS RAMOS (Sra.), Jefa de Servicio de Examen de Marcas Nacionales, Departamento de Signos Distintivos, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Turismo y Comercio, Madrid
<paloma.herrerros@oepm.es>

Lourdes VELASCO GONZÁLEZ (Sra.), Jefa del Servicio Examen I, Departamento de Signos Distintivos, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Turismo y Comercio, Madrid

Elena GARCÍA FIÑANA (Sra.), Técnico Superior Examinador, Departamento de Patentes e Información Tecnológica, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Turismo y Comercio, Madrid

Xavier VILASECA LEMUS, Colaborador, Misión Permanente, Ginebra

ESTONIE/ESTONIA

Karol RUMMI (Mrs.), Head, Trademark Department, Estonian Patent Office, Tallinn
<karol.rummi@epa.ee>

Kaia LÄÄNEMETS (Ms.), Advisor, Legislative Policy Department, Ministry of Justice, Tallinn
<kaia.laanemets@just.ee>

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Amy P. COTTON (Mrs.), Senior Counsel, Office of Intellectual Property Policy and Enforcement, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria
<amy.cotton@uspto.gov>

Karin L. FERRITER (Ms.), Intellectual Property Attaché, Permanent Mission to the World Trade Organization (WTO), Geneva
<Karin_Ferriter@ustr.epo.gov>

J. Tood REVES, Intellectual Property Attaché, Economic and Science Affaires, Permanent Mission, Geneva
<RevesJT@state.gov>

David R. GERK, Patent Attorney, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria
<david.gerk@uspto.gov>

Janis LONG (Ms.), Staff Attorney, Office of the Commissioner for Trademarks, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria
<janis.long@uspto.gov>

Pierre HEUZÉ, Intern, Permanent Mission, Geneva
<heuzep@state.gov>

ÉTHIOPIE/ETHIOPIA

Abebe Tesfa SENDEKU, Director, Trademark and Industrial Designs, Ethiopian Intellectual Property Office (EIPO), Addis Ababa
<abbtesfa@yahoo.com>

Aehu GIRMA KASSAYE, Minister Counsellor, Permanent Mission, Geneva
<girma_kassaye@yahoo.com>

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

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

Dalila JARMOVA (Mme), Head, Marks, State Office of Industrial Property (SOIP), Skopje
<dalilaj@ippo.gov.mk>

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Liubov L. KIRIY (Mrs.), Deputy Director General, Federal Service for Intellectual Property (ROSPATENT), Moscow
<lkiriy@rupto.ru>

Olga KOMAROVA (Mrs.), Director, Department of Trade Marks and Registration, Federal Institute of Industrial Property (FIPS), Federal Service for Intellectual Property (ROSPATENT), Moscow
<okomarova@rupto.ru>

Ekaterina M. IVLEVA (Mrs.), Specialist, International Cooperation Department, Federal Service for Intellectual Property (ROSPATENT), Moscow
<ivela@rupto.ru>

Elena KOLOKOLOVA (Ms.), Representative, Chamber of Commerce and Industry of the Russian Federation, Geneva
<e.kolokolova@hotmail.com>

FINLANDE/FINLAND

Tuulimarja MYLLYMÄKI (Ms.), Legal Advisor, Trademarks and Designs Division, National Board of Patents and Registration, Helsinki
<tuulimarja.myllymaki@prh.fi>

Anne KEMPPI (Ms.), Lawyer, Trademarks and Designs Division, National Board of Patents and Registration, Helsinki
<anne.kemppi@prh.fi>

FRANCE

Olivier HOARAU, juriste au Service des oppositions aux marques, Institut national de la propriété industrielle (INPI), Paris
<ohoarau@inpi.fr>

Daphné de BECO (Mme), chargée de mission, Affaires européennes et internationales, Institut national de la propriété industrielle (INPI), Paris
<ddebeco@inpi.fr>

Katerina DOYTCHINOV (Mme), premier secrétaire, Affaires économiques et développement, Mission permanente, Genève
<katerina.doytchinov@diplomatie.gouv.fr>

GÉORGIE/GEORGIA

Ekaterine EGUTIA (Ms.), Deputy Chairman, Intellectual Property Center (SAKPATENTI), Tbilisi
<e.egutia@sakpatenti.org.ge>

Ana GOBECHIA (Mrs.), Head, International Affairs and Project Management Division, National Intellectual Property Center (SAKPATENTI), Tbilisi
<a.gobechia@sakpatent.org.ge>

Eka KIPIANI (Mrs.), Counsellor, Permanent Mission, Geneva

GRÈCE/GREECE

Despoina SAREIDAKI (Miss), Intern, Permanent Mission, Geneva
<dsaridaki@gmail.com>

GUATEMALA

Flor de María GARCÍA DÍAZ (Sra.), Secretaria General, Registro de la Propiedad Intelectual, Ministerio de Economía, Ciudad de Guatemala
<fmgarcia@rpi.gob.gt>

Alberto Pimentel MATA, Consejero, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra
<alberto.mision@wtoguatemala.ch>

INDE/INDIA

Chandni RAINA (Mrs.), Director, Office of the Controller-General of Patents, Designs and Trademarks, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, New Delhi
<chandni.raina@nic.in>

Amar PRAKASH, Deputy Registrar of Trademarks, Office of the Controller-General of Patents, Designs and Trademarks, Department of Industrial Policy Promotions, Ministry of Commerce and Industry, New Delhi
<amar.praakash@nic.in>

Sukanya CHATTOPADHYAY, Assistant Controller, Office of the Controller-General of Patents, Designs and Trademarks, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Kolkata
<sukanya.ipo@nic.in>

INDONÉSIE/INDONESIA

Stephanie KANO (Mrs.), Head, Application and Publication Division, Directorate of Trademark, Directorate General of Intellectual Property Rights, Tangerang
<stephaniekano@yahoo.com>

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Sadeghi MAHMOUD, Associate Professor, Department of Law, Tarbiat Modarres University, Industrial Property Office, Registration Organization of Deeds and Property of Islamic Republic of Iran, Tehran
<sadegh_m2000@yahoo.com>

Ali NASIMFAR, First Secretary, Permanent Mission, Geneva
<anasimi@yahoo.com>

IRAQ

Abbas Saeed Abdullah AL-ASADI, Director General, Industrial Property Department, Central Organization for Standardization and Quality Control (COSQC), Ministry of Planning and Development Cooperation, Baghdad
<info@iq-tmo.com> <dr.alasadi@yahoo.com>

Thaana ABDUL SALAM MUHAMAD (Mrs.), Head Manager, Trademarks Section, Ministry of Industry and Minerals, Baghdad
<info@iq-tmo.com>

Mohammed AL-KHAFAJI, Legal Directorate, Ministry of Industry and Minerals, Baghdad
<legal@industry.gov.iq>

Bashar S.I. AL-NUAIMEE, First Secretary, Permanent Mission, Geneva
<basharyg75@gmail.com>

IRLANDE/IRELAND

David COOMBES, Executive Officer, Patents Office, Department of Enterprise, Trade and Employment, Kilkenny
<david.coombes@patentsoffice.ie>

ISRAËL/ISRAEL

Dana SCETBUN (Mrs.), Adviser, Permanent Mission, Geneva
<reporter@geneva.mfa.gov.il>

ITALIE/ITALY

Delfina AUTIERO (Mrs.), Deputy Chief Office, International Affairs, Italian Patent and Trademark Office (IPTO), Directorate General for the Fight Against Counterfeiting, Ministry of Economic Development, Rome
<delfina.autiero@sviluppoeconomico.gov.it>

Mauro SGARAMELLA, Officer, Italian Patent and Trademark Office (IPTO), General Directorate for the Fight Against Counterfeiting, Department for Enterprise and Internationalization, Ministry of Economic Development, Rome
<mauro.sgaramella@sviluppoeconomico.gov.it>

Tiberio SCHMIDLIN, First Secretary, Permanent Mission, Geneva
<tiberio.schmidlin@esteri.it>

Barbara BIANCHI (Mrs.), Intern, Permanent Mission, Geneva
<barbara.bianchi87@gmail.com>

JAMAÏQUE/JAMAICA

Wayne McCOOK, Ambassador, Permanent Representative, Permanent Mission, Geneva
<apr@jamaicomission.ch>

Richard BROWN, First Secretary, Permanent Mission, Geneva
<fsec@jamaicomission.ch>

JAPON/JAPAN

Shinichi KITASHIRO, Director, Design Examination Planning, Design Division, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Ministry of Economy, Trade and Industry (METI), Tokyo
<kitashiro-shinichi@jpo.go.jp>

Ken-Ichiro NATSUME, Director, Multilateral Policy Office, International Affairs Division, General Affairs Department, Japan Patent Office (JPO), Ministry of Economy, Trade and Industry (METI), Tokyo
<natsume-kenichiro@jpo.go.jp>

Hideo YOSHIDA, Design Examiner, Design Registration System Planning Office, Design Division, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Ministry of Economy, Trade and Industry (METI), Tokyo
<yoshida-hideo@jpo.go.jp>

Koji TAKAHASHI, Deputy Director, International Affairs Division, General Affairs Department, Japan Patent Office (JPO), Ministry of Economy, Trade and Industry (METI), Tokyo
<takahashi-koji@jpo.go.jp>

Nobuaki TAMAMUSHI, Assistant Director, Design Division, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Ministry of Economy, Trade and Industry (METI), Tokyo
<pa0800@jpo.go.jp>

Kanako AYA (Ms.), Specialist, Trademark Planning, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Ministry of Economy, Trade and Industry (METI), Tokyo
<pa0800@jpo.go.jp>

KAZAKHSTAN

Assel SMAGULOVA (Mrs.), Senior Expert, Committee for Intellectual Property, Ministry of Justice, Astana
<assel.smagulova.s@gmail.com>

Nurzigit MYRZAKHMETOV, Expert, Department for Realization of the State Policy on Industrial Property, Committee for Intellectual Property Rights, Ministry of Justice, Astana
<assel.smagulova.s@gmail.com>

KENYA

Geoffrey Muchai RAMBA, Senior Trademarks Examiner, Kenya Industrial Property Institute (KIPI), Ministry of Trade and Industry, Nairobi
<info@kipi.go.ke> <jefframba@yahoo.co.uk> <gmramba@kipi.go.ke>

LA HONGRIE/HUNGARY

Imre GONDA, Deputy Head, Trademark, Model and Design Department, Hungarian Intellectual Property Office (HIPO), Budapest
<imre.gonda@hpo.hu>

Marta TOHATI (Ms.), Head, International Trademark Section, Hungarian Intellectual Property Office (HIPO), Budapest
<marta.tohati@hipo.gov.hu>

Zsófia BÁTHORY (Ms.), Legal Advisor, Ministry of Justice, Budapest
<zsofia.bathory@kim.gov.hu>

Viktória HEGEDŰS (Ms.), Legal Officer, Trademark, Model and Design Department, National Trademark Registration, Hungarian Intellectual Property Office (HIPO), Budapest
<victoria.hegedus@hipo.gov.hu>

LITUANIE/LITHUANIA

Digna ZINKEVIČIENĖ (Ms.), Head, Trademarks and Designs Division, State Patent Bureau of the Republic of Lithuania, Vilnius
<digna.zinkeviciene@vpb.gov.lt>

MADAGASCAR

Haja Nirina RASOANAIVO (Mme), conseillère, Mission permanente, Genève
<ambamadrh@yahoo.fr>

MALAISIE/MALAYSIA

Ismail BKRI, Counsellor, Permanent Mission, Geneva

Faridah KASMADI (Mrs.), Head, Formality Section, Trademarks Division, Intellectual Property Corporation of Malaysia (MyIPO), Kuala Lumpur
<faridah@myipo.gov.my>

MAROC/MOROCCO

Karima FARAH (Mme), chef du Département des signes distinctifs, Office marocain de la propriété industrielle et commerciale (OMPIC), Casablanca
<farah@ompic.org.ma>

Abderrahim JALLAOUI, chef du Département d'opposition et nouveaux signes distinctifs, Office marocain de la propriété industrielle et commerciale (OMPIC), Casablanca
<jallaoui@ompic.org.ma>

MAURITANIE/MAURITANIA

Fatimetou MINT ISSELMOU (Mme), deuxième conseiller, Mission permanente, Genève

MEXIQUE/MEXICO

Nelia AMERO TELLO (Sra.), Subdirectora de Examen de Signos Distintivos, Dirección de Marcas, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México
<nadero@impi.gob.mx>

Héctor CORNEJO GONZÁLEZ, Subdirector Divisional de Examen de Signos Distintivos, Instituto Mexicano de la Propiedad Industrial (IMPI), México
<hcornejo@impi.gob.mx>

Luis PÉREZ ALTAMIRANO, Coordinador Departamental de Examen de Fondo, Modelos de Utilidad y Diseños Industriales, Dirección de Patentes, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México
<lsperes@impi.gob.mx>

Liliana Selene HERNÁNDEZ (Sra.), Examinadora, Sección de Diseños, Instituto Mexicano de la Propiedad Industrial (IMPI), México
<lhernandez@impi.gob.mx>

Pedro Damon ALARCÓN ROMERO, Especialista en Propiedad Industrial, Dirección de Marcas, Instituto Mexicano de la Propiedad Industrial (IMPI), México
<palarcon@impi.gob.mx>

MYANMAR

Mya SANDAR (Ms.), Attaché, Permanent Mission, Geneva
<msandar2008@gmail.com>

Khim Thidar AYE (Ms.), First Secretary, Permanent Mission, Geneva
<thidark@gmail.com>

NÉPAL/NEPAL

Begendra Raj SHARMA PAUDYAL, Joint Secretary, Ministry of Industry, Kathmandu
<brspaudyal@yahoo.com>

NIGÉRIA/NIGERIA

Jane Chikaogwu IGWE (Mrs.), Senior Assistant Registrar, Trademarks, Patents and Designs Registry, Federal Ministry of Commerce and Industry, Abuja
<janeclintin@yahoo.com>

Mohammed Awal ALIYU, Assistant Registrar, Trademarks, Patents and Designs Registry, Federal Ministry of Commerce and Industry, Abuja
<isthnain@yahoo.ca>

NORVÈGE/NORWAY

Marianne NERGAARD MAGNUS (Ms.), Advisor, Legislation Department, Ministry of Justice and the Police, Oslo
<marianne.magnus@jd.dep.no>

Knut ANDREAS BOSTAD, Head of Section, Design and Trademark Department, Norwegian Industrial Property Office (NIPO), Oslo
<kab@patentstyret.no>

Pål LEFSAKER, Legal Advisor, Design and Trademark Department, Norwegian Industrial Property Office (NIPO), Oslo
<ple@patentstyret.no>

PAKISTAN

Ahsan NABEEL, Second Secretary, Permanent Mission, Geneva
<ahsannabeel@yahoo.com>

PANAMA

Kathia Itzel FLETCHER SEVILLANO (Sra.), Jefa del Departamento de Marcas, Dirección General del Registro de la Propiedad Industrial (DIGERPI), Ministerio de Comercio e Industrias, Panamá
<kfletcher@mici.gob.pa>

Zoraida RODRÍGUEZ MONTENEGRO (Srta.), Consejera Legal, Misión Permanente, Ginebra

Kathia OROCÚ (Sra.), Examinadora de Marcas, Departamento de Marcas, Dirección General del Registro de la Propiedad Industrial (DIGERPI), Ministerio de Comercio e Industrias, Panamá
<korocú@mici.gob.pa>

PARAGUAY

Raúl MARTÍNEZ, Primer Secretario, Misión Permanente, Ginebra
<raul.martinez@ties.itu.int>

PAYS-BAS/NETHERLANDS

Margreet GROENENBOOM (Ms.), Policy Advisor, Ministry of Economic Affairs, Agricultural and Innovation, The Hague
<m.m.groenenboom@minez.nl>

Rik VAN BREUKELEN, Assistant, Economic Affairs Permanent Mission, Geneva
<van.breukelen@minbuza.nl>

PÉROU/PERU

Giancarlo LEÓN COLLAZOS, Primer Secretario, Misión Permanente, Ginebra
<giancarlo.leon@ties.itu.int>

PHILIPPINES

Ma. Corazón DP. MARCIAL (Miss), Director III, Intellectual Property Office of Philippines (IPOPIL), Intellectual Property Center, Taguig City
<corazon.marcial@ipophil.gov.ph>

Josephine M. REYNANTE (Ms.), First Secretary, Permanent Mission, Geneva
<treaties_legal@yahoo.com>

POLOGNE/POLAND

Marta Donata CZYŻ (Mrs.), Director, Trademark Examination Department, Polish Patent Office, Warsaw
<mczyz@uprp.pl>

Grażyna LACHOWICZ (Ms.), Head, International Cooperation Division, Patent Office of the Republic of Poland, Warsaw
<glachowicz@uprp.pl>

Daria WAWRZYŃSKA (Mrs.), Expert, Trademark Examination Department, Polish Patent Office, Warsaw
<dwawrzynska@uprp.pl>

Ewa LISOWSKA (Ms.), Senior Policy Advisor, International Cooperation Division, Patent Office of the Republic of Poland, Warsaw
<elisowska@uprp.pl>

PORTUGAL

Miguel GUSMÃO, Head, Trademarks and Industrial Designs Department, National Institute of Industrial Property (INPI), Secretary of State for Justice and Judicial Modernization, Ministry of Justice
<miguel.gusmao@inpi.pt>

Luis SERRADAS TAVARES, Legal Counsellor, Permanent Mission, Geneva
<legal@missionportugal.ch>

QATAR

Mohammed Muftah F. B. AL-ABDULLA, Expert on Trade, Industrial Property Office Trademarks, Industrial Designs and Geographical Indications Competent Administration, Ministry of Business and Trade, Department of Commercial Registration and Licensing, Doha
<mmuftah@mbtgov.qa>

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

PARK Seong-Joon, Senior Director, Trademark Examination Policy Division, Korean Intellectual Property Office (KIPO), Daejeon
<sipk@kipo.go.kr> <seongjoon.park@gmail.com>

YUN Hyun-Jin (Ms.), Deputy Director, Design Examination Policy Division, Korean Intellectual Property Office (KIPO), Daejeon
<miroo980@kipo.go.kr>

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Simion LEVITCHI, Director, Trademark and Industrial Design Department, State Agency on Intellectual Property (AGEPI), Chisinau
<simion.levitchi@agepi.md>

RÉPUBLIQUE DÉMOCRATIQUE POPULAIRE LAO/LAO PEOPLE'S DEMOCRATIC
REPUBLIC

Vanmaly SOMPERTHONY (Miss), Attaché, Permanent Mission, Geneva
<vanmaly-mofa@yahoo.com>

RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

Ivette Janet VARGAS TAVÁREZ (Sra.), Directora del Departamento de Signos Distintivos, Oficina Nacional de Propiedad Industrial (ONAPI), Santo Domingo
<i.vargas@onapi.gob.do>

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

KIM Tonghwan, Advisor, Permanent Mission, Geneva
<kim.tonghwan@bluewin.ch>

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Ludmila ČELIŠOVÁ (Ms.), Head, Industrial Designs Division, Patent Department, Industrial
Property Office, Prague
<lcelisova@upv.cz>

Olga SVEDOVA (Mrs.), Head, Legal Department, Industrial Property Office, Prague
<osvedova@upv.cz>

ROUMANIE/ROMANIA

Elena Elvira MARIN (Mrs.), Head, Registrar Office, Opposition and Post Examination
Procedures Bureau, State Office for Inventions and Trademarks (OSIM), Bucharest
<elvira.marin@osim.ro>

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

Alice Mihaela POSTĂVARU (Miss), Head, Designs Division, State Office for Inventions and
Trademarks (OSIM), Bucharest
<pstavaru.alice@osim.ro>

Oana MĂRGINEANU (Mrs.), Legal Counsellor, State Office for Inventions and
Trademarks (OSIM), Bucharest
<oana.margineanu@osim.ro>

ROYAUME-UNI/UNITED KINGDOM

Mike FOLEY, Head, Technical Policy, Trade Marks and Designs Directorate, Intellectual
Property Office, Newport
<mike.foley@ipo.gov.uk>

Laura HARBIDGE (Mrs.), Head, International Institutions and Strategy Team, Intellectual
Property Office, Newport
<laura.harbidge@ipo.gov.uk>

SÉNÉGAL/SENEGAL

Bassirou SOW, chargé du Département des signes distinctifs, Agence sénégalaise de la
propriété industrielle et de l'innovation technologique (ASPIT), Ministère de mines, de l'industrie,
de l'agro-industrie et des petites et moyennes entreprises (PME), Dakar
<bassirousow2004@yahoo.fr>

Ndèye Fatou LO (Mme), premier conseiller, Mission permanente, Genève

SERBIE/SERBIA

Mirela BOŠKOVIĆ (Mrs.), Assistant Director, Sector for Distinctive Signs, Intellectual Property Office, Belgrade
<mboskovic@zis.gov.rs>

Gordana STOJANOVIĆ JOVČIĆ (Ms.), Counsellor, Industrial Designs and Indications of Geographical Origin, Sector for Distinctive Signs, Intellectual Property Office, Belgrade
<gstojanovic@zis.gov.rs>

SINGAPOUR/SINGAPORE

Anne LOO (Ms.), Director, Legal Counsel, Intellectual Property Office of Singapore (IPOS), Singapore
<anne_loo@ipos.gov.sg>

Mei Lin TAN (Ms.), Director, Legal Counsel, Intellectual Property Office of Singapore (IPOS), Singapore
<tan_mei_lin@ipos.gov.sg>

Ankur GUPTA, Senior Assistant Director, Legal Counsel, Registry of Designs, Intellectual Property Office of Singapore (IPOS), Singapore
<ankur_gupta@ipos.gov.sg>

SRI LANKA

Janaka SUGATHADASA, Additional Secretary, Ministry of Industry and Commerce, Colombo
<janakas@commerce.gov.lk>

SOUDAN/SUDAN

Osman Mohamed Elbashir MOHAMMED, Counsellor, Permanent Mission, Geneva
<hajjaz100@hotmail.com>

SUÈDE/SWEDEN

Gustav MELANDER, Legal Officer, Designs and Trademark Division, Swedish Patent and Registration Office (SPRO), Söderhamn
<gustav.melander@prv.se>

Anne GUSTAVSSON (Mrs.), Senior Legal Advisor, Designs and Trademarks Division, Swedish Patent and Registration Office (SPRO), Söderhamn
<anne.gustavsson@prv.se>

Mattias BJUHR, Legal Advisor, Division of Intellectual Property and Transport Law, Ministry of Justice, Stockholm
<mattias.bjuhr@justice.ministry.se>

Mikael HJORT, Legal Advisor and Associate Judge of Appeal, Ministry of Justice, Stockholm

SUISSE/SWITZERLAND

Alexandra GRAZIOLI (Mme), conseillère juridique principale à la Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne
<alexandra.grazioli@ipi.ch>

Marie KRAUS (Mme), conseillère juridique à la Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne
<marie.kraus@ipi.ch>

Marc HOTTINGER, stagiaire, Institut fédéral de la propriété intellectuelle (IPI), Berne
<marc.hottinger@ipi.ch>

TADJIKISTAN/TAJIKISTAN

Guennadi KOUPAI, Head, International Cooperation Department, National Center for Patents and Information (NCPI), Dushanbe
<g-koupai@mail.ru>

TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

Justin SOBION, First Secretary, Permanent Mission, Geneva
<sobionj@tperm-mission.ch>

TUNISIE/TUNISIA

Lamia KATEB (Mme), directrice adjointe chargée de la Division des signes distinctifs, Institut national de la normalisation et de la propriété industrielle (INNORPI), Tunis
<innorpi.dpi.marque@planet.tn>

TURQUIE/TURKEY

Bekir GÜYEN, Trademark Examiner, Trademark Department, Turkish Patent Institute (TPI), Ankara
<bekir.guyen@tpe.gov.tr>

Mustafa Kubilay GÜZEL, Trademark Examiner, Trademark Department, Turkish Patent Institute (TPI), Ankara
<mustafa.guzel@tpe.gov.tr>

Gonca ILICALI, Trademark Examiner, Turkish Patent Institute (TPI), Ankara
<gonca.ilicali@tpe.gov.tr>

UKRAINE

Mariia VASYLENKO (Ms.), Head, International Law Division, Ukrainian Institute of Industrial Property (UKRPATENT), Kyiv

Natalya KOZELETSKA (Ms.), Chief Expert, Industrial Property Division, State Intellectual Property Service of Ukraine (SIPS), Kyiv

URUGUAY

Blanca MUÑOZ GONZÁLEZ (Sra.), Encargada de la División de Marcas, Dirección Nacional de la Propiedad Industrial (DNPI), Ministerio de Industria, Energía y Minería, Montevideo
<bmunoz@dnpi.miem.gub.uy>

ZIMBABWE

Innocent MAWIRE, Principal Law Officer, Zimbabwe Intellectual Property Office (ZIPO), Ministry of Justice, Legal and Parliamentary Affairs, Harare
<i_mawire@yahoo.com>

Garikai KASHITIKU, First Secretary, Permanent Mission, Geneva

UNION EUROPÉENNE*/EUROPEAN UNION*

Julio LAPORTA, Head, Legal Practice Service, Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Alicante
<juliolaporta@oami.europa.eu>

Zuzana SLOVÁKOVÁ (Ms.), Legal and Policy Affairs Officer, Industrial Property Rights, Internal Market and Services Directorate-General, European Commission, Brussels
<zuzana.slovakova@ec.europa.eu>

* Sur une décision du Comité permanent, les Communautés européennes ont obtenu le statut de membre sans droit de vote.

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

II. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

OFFICE INTERNATIONAL DE LA VIGNE ET DU VIN (OIV)/INTERNATIONAL VINE AND
WINE OFFICE (IWO)

Tatiana SVINARTCHUK (Mme), chef d'unité économie et droit, Paris
<ecodroit@oiv.int>

ORGANISATION BENELUX DE LA PROPRIÉTÉ INTELLECTUELLE (OBPI)/BENELUX
ORGANIZATION FOR INTELLECTUAL PROPERTY (BOIP)

Camille JANSSEN, juriste au Département des affaires juridiques, La Haye
<cjanssen@boip.int>

ORGANISATION DES ÉTATS DES ANTILLES ORIENTALES (OEAO)/ORGANIZATION OF
EASTERN CARIBBEAN STATES (OECS)

Ricardo JAMES, chargé d'affaires, Genève
<rmjames@oecs.org>

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE
ORGANIZATION (WTO)

Ana Sofia ROSA MENDES WALSH (Ms.), Legal Researcher, Intellectual Property Division,
Geneva
<anasofia.rosamendeswalsh@wto.org>

UNION AFRICAINE (UA)/AFRICAN UNION (AU)

Georges-Remi NAMEKONG, Senior Economist, Geneva
<gnamekong@africanunion.ch>

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

Asociación Mexicana para la Protección de la Propiedad Intelectual (AMPPI)

Eduardo KLEINBERG, Presidente, Ciudad de México
<kleinberg@basham.com.mx>
Javier UHTHOFF, Vicepresidente, Ciudad de México
<j.uhthoff@uhthoff.com.mx>

Association américaine du droit de la propriété intellectuelle (AIPLA)/American Intellectual
Property Law Association (AIPLA)

Jonathan MADSEN, Representative, New York
<jmadsen@IPLawUSA.com>

Association communautaire du droit des marques (ECTA)/European Communities Trade Mark Association (ECTA)

Anne-Laure COVIN (Mrs.), Legal Co-ordinator, Brussels
António ANDRADE, Representative, Lisboa
<aja@vda.pt>
Andrew MILLS, Representative, London

Association de l'industrie de l'informatique et de la communication (CCIA)/Computer and Communications Industry Association (CCIA)

Jennifer Lynne BRANT (Ms.), Consultant, Grand-Sacconnex
Nick ASHTON-HART, Representative, Nyon
<nashton@ccianet.org>
Louise DELCROIX (Mrs.), Representative, Paris
Matthias LANGENEGGER, Representative, Nyon
<mlangenegger@ccianut.org>

Association des avocats américains (ABA)/American Bar Association (ABA)

Christopher CARANI, Representative, Chicago
<ccarani@mcandrews-ip.com>

Association des industries de marque (AIM)/European Brands Association (AIM)

Jean BANGERTER, Representative, Brussels
<bangerter.jean@citycable.ch>

Association des propriétaires européens de marques de commerce (MARQUES)/Association of European Trademark Owners (MARQUES)

David STONE, Member, London
<david.stone@simmons-simmons.com>

Association interaméricaine de la propriété industrielle (ASIPI)/Inter-American Association of Industrial Property (ASIPI)

Juan VANRELL, Secretario, Montevideo
<secretario@asipi.org>

Association internationale pour la promotion de l'enseignement et de la recherche en propriété intellectuelle (ATRIP)/International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)

William FRYER, Representative, Baltimore
<wtfryer@aol.com>

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International Association for the Protection of Intellectual Property (AIPPI)

Peter WIDMER, Attorney-at-Law, Bern
<widmer@fmp-law.ch>
Ruth ALMARAZ (Mrs.), Design Committee, Zurich
Eduardo KLEINBERG, Trademarks, Mexico City
<kleinberg@basham.com.mx>
Michael REINLE, Trademarks, Zurich
Anne Marie E. VERSCHUUR (Mrs.), Representative, Amsterdam
<annemarie.verschuur@nautadutilh.com>

Association internationale pour les marques (INTA)/International Trademark Association (INTA)

Bruno MACHADO, Geneva Representative, Rolle
<bruno.machado@bluewin.ch>

Association japonaise des conseils en brevets (JPAA)/Japan Patent Attorneys Association (JPAA)

Tomohiro NAKAMURA, Chairman, Design Committee, Tokyo
<nakamura@ipworld.jp>
Kanao YASHIRO (Ms.), Vice Chairman, Trademark Committee, Tokyo
<info@hiroe.co.jp>
Koji MURAI, Representative, Tokyo
<koji.murai@kitapat.com>

Association japonaise pour les marques (JTA)/Japan Trademark Association (JTA)

Koji MURAI, Vice-chair, International Activities Committee, Osaka
<koji.murai@kitapat.com>
Reiko TOYOSAKI (Ms.), Representative, Tokyo
<reiko.toyosaki@nifty.com>

Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)

François CURCHOD, chargé de mission, Genolier
<francois.curchod@vtxnet.ch>

Centre international pour le commerce et le développement durable (ICTSD)/International Center for Trade and Sustainable Development (ICTSD)

Daniela ALLAM (Ms.), Junior Programme Officer, Programme on Innovation, Technology and Intellectual Property, Geneva
Harsh GURSAHANI, Programme Assistant, Geneva
<hgursahani@ictsd.ch>
Alessandro MARONGIU, Programme Assistant, Programme on Innovation, Technology and Intellectual Property, Geneva

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

Elio DE TULLIO, Representative, Roma
<edt@detulliopartners.com>

China Trademark Association (CTA)

LIU Ye (Ms.), Deputy Secretary-General, Beijing
WU Jiangtao, Representative, Beijing
<wujt@founder.com>
ZHONG Hongbo Julia (Ms.), Representative, Beijing

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

Andrew PARKES, CET Special Reporter for Trademarks and Designs, Dublin
Coleen MORRISON (Ms.), Chair of the Trademarks Group, Kanatu
<cmorrison@markclerk.com>
Robert WATSON, Representative, London
<robert.watson@ficpi.org>

Fédération internationale de la video (IVF)/International Video Federation (IVF)

Benoît MÜLLER, Legal Advisor, Brussels
<benoit.muller@benoitmuller.ch>

Internet Society (ISOC)

Nicolas SEIDLER, Policy Advisor, Geneva
<seidler@isoc.org>

Knowledge Ecology International (KEI)

Thiru BALASUBRAMANIAM, Geneva Representative, Geneva
<thiru@keionline.org>

Organisation pour un réseau international des indications géographiques (oriGIIn)/Organization for an International Geographical Indications Network (oriGIIn)

Massimo VITTORI, secrétaire général, Genève
<massimo@origin-gi.com>

Union de radiodiffusion Asie-Pacifique (URAP)/Asia-Pacific-Broadcasting Union (ABU)

Fashi Langroudi SEYEDEH FARANG (Ms.), Representative, Teheran

Union des praticiens européens en propriété industrielle (UNION)/Union of European Practitioners in Industrial Property (UNION)

Laurent OVERATH, Vice-President, Trademarks Commission, Brussels
<laurento@bede.be>

IV. BUREAU/OFFICERS

Président/Chair: PARK Seong-Joon (République de Corée/Republic of Korea)

Vice-présidents/Vice-chairs: Imre GONDA (La Hongrie/Hungary)
Karima FARAH (Mme) (Maroc/Morocco)

Secrétaire/Secretary: Marcus HÖPPERGER (OMPI/WIPO)

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

Francis GURRY, directeur général/Director General

WANG Binying (Mme/Mrs.), vice-directrice générale/Deputy Director General

Marcus HÖPPERGER, directeur de la Division du droit des marques et des dessins et modèles/Director, Trademark and Design Law Division

Martha PARRA FRIEDLI (Mme/Mrs.), chef de la Section du droit des marques, Division du droit des marques et des dessins et modèles /Head, Trademark Law Section, Trademark and Design Law Division

Marie-Paule RIZO (Mme/Mrs.), chef de la Section du droit des dessins et modèles et des indications géographiques, Division du droit des marques et des dessins et modèles /Head, Design and Geographical Indication Law Section, Trademark and Design Law Division

Marina FOSCHI (Mme/Mrs.), juriste à la Section du droit des dessins et modèles et des indications géographiques, Division du droit des marques et des dessins et modèles/Legal Officer, Design and Geographical Indication Law Section, Trademark and Design Law Division

Nathalie FRIGANT (Mme/Mrs.), juriste adjointe à la Section du droit des dessins et modèles et des indications géographiques, Division du droit des marques et des dessins et modèles/Assistant Legal Officer, Design and Geographical Indication Law Section, Trademark and Design Law Division

Tobias BEDNARZ, administrateur adjoint à la Division du droit des marques et des dessins et modèles/Associate Officer, Trademark and Design Law Division

Noëlle MOUTOUT (Mlle/Ms.), juriste adjointe à la Section du droit des marques, Division du droit des marques et des dessins et modèles/Assistant Legal Officer, Trademark Law Section, Trademark and Design Law Division

Violeta JALBA (Mme/Mrs.), juriste adjointe à la Section du droit des dessins et modèles et des indications géographiques, Division du droit des marques et des dessins et modèles/Assistant Legal Officer, Design and Geographical Indication Law Section, Trademark and Design Law Division

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