

Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs

**Fourth Session
Geneva, June 16 to 18, 2014**

REPORT

adopted by the Working Group

INTRODUCTION

1. The Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs (hereinafter referred to as “the Working Group”) met in Geneva from June 16 to 18, 2014.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Benin, Denmark, Estonia, European Union, France, Germany, Greece, Hungary, Latvia, Lithuania, Norway, Oman, Republic of Korea, Republic of Moldova, Romania, Spain, Suriname, Syrian Arab Republic, Switzerland, Tajikistan, Tunisia and Ukraine (23).
3. The following States were represented as observers: Cameroon, Canada, China, Czech Republic, Japan, Madagascar, Mexico, Russian Federation, United States of America, Viet Nam and Yemen (11).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: African Regional Intellectual Property Organization (ARIPO) and Benelux Office for Intellectual Property (BOIP) (2).
5. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: Association of European Trademark Owners (MARQUES), Japan Patent Attorneys Association (JPAA) and Knowledge Ecology International, Inc. (KEI) (3).

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

AGENDA ITEM 1: OPENING OF THE SESSION

7. The Chair, Mr. Mikael Francke Ravn (Denmark), opened the fourth session of the Working Group, welcomed the participants and invited Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), to deliver an opening address.

8. The Director General first recalled that in 2013, international design registrations grew by 7 per cent. The 2,734 international registrations contained 12,806 designs. At the end of 2013, there were around 27,000 active international registrations containing around 112,000 designs. Thus far, the number of international registrations in 2014 is at around the same level in the same period last year.

9. Since the last session of the Hague Working Group, the 1999 Act came into force with respect to Brunei Darussalam on December 24, 2013. The Director General further welcomed the Republic of Korea's recent deposit of its instrument of accession to the 1999 Act. The 1999 Act will come into force with respect to the Republic of Korea on July 1, 2014. The accession of the Republic of Korea brings the number of Contracting Parties to that Act to 47 and the total number of Contracting Parties to the Hague Agreement to 62.

10. The Director General noted that the membership of the 1999 Act was expected to grow tremendously, in the next one or two years, judging from the work that the International Bureau was doing with prospective Contracting Parties, as well as statements having been made in the Assemblies of the Member States of WIPO. The Hague System is expected to cover trade areas accounting for 95 per cent of design filings worldwide (e.g. 1.2 million designs filed in 2012) compared to 25 per cent today.

11. The Director General recalled that that geographical expansion would also lead to a transformation of the operations under the Hague System. The 1999 Act was adopted with the objective of making the system compatible with local systems that provide for novelty examination and as many of the prospective Contracting Parties had such a system, a great number of declarations would be made for the first time. The Director General stressed that, in this fourth session of the Working Group, proposals elaborated in the working documents aimed at embracing such a transition, still with the underlying objective of guaranteeing users and Offices alike access to efficient and user-friendly procedures.

12. Ms. Päivi Lähdesmäki (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

13. The Working Group adopted the draft agenda (document H/LD/WG/4/1 Prov.) without modification.

GENERAL STATEMENTS

14. Referring to its accession to the 1999 Act, the Delegation of the Republic of Korea expressed its gratitude to the International Bureau for the positive cooperation during preparations for accession. The Delegation also expressed its appreciation for the working documents prepared by the International Bureau, which take into account national systems including the Republic of Korea.

15. The Delegation of the United States of America reported that preparatory work for the accession to the 1999 Act was underway in the United States of America. The implementing legislation was already passed in 2012, and the review of the rules was underway.

16. The Delegation of China reported that most of the preparatory work concerning its accession to the 1999 Act had been completed. The Delegation underscored the potentially high volume of international applications originating from China in the future, calling for the inclusion of Chinese as a working language under the Hague System.

17. The Delegation of Canada stated that its country had signaled its interest and intent to join the Hague System; the 1999 Act was tabled in Parliament on January 27, 2014, for discussion and debate, whilst a commitment to join the Hague System had been outlined in its 2014 budget. The Delegation indicated that its Office was an Office that carried out substantive examination on novelty, and was keen to look to other Examining Offices for guidance. It also indicated that an accession date was not yet available.

18. The Delegation of Romania explained that its national law was being reviewed. At present, description was a mandatory element in an application for registration of an industrial design.

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE THIRD SESSION OF THE WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE HAGUE SYSTEM FOR THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

19. Discussion was based on document H/LD/WG/3/8 Prov.

20. The Working Group adopted the draft report (document H/LD/WG/3/8 Prov.) with a modification concerning the list of participants

AGENDA ITEM 4: TYPES OF DOCUMENTS AND OTHER MATERIAL UNDER RULE 7(5)(F) AND (G) OF THE COMMON REGULATIONS AND THEIR SUBMISSION THROUGH THE INTERMEDIARY OF THE INTERNATIONAL BUREAU

21. Discussion was based on document H/LD/WG/4/2.

22. The Secretariat introduced the document.

23. In reply to an inquiry by the Delegation of Mexico, the Chair clarified that proposed Section 408 of the Administrative Instructions for the Application of the Hague Agreement (hereinafter referred to as the "Administrative Instructions") would deal with permitted matters in the international application and with permitted documents accompanying an international application, limited at the time of filing an international application.

SECTION 408(A)

24. In reply to an inquiry by the Delegation of the United States of America, the Secretariat clarified that proposed Section 408(a) would not make it mandatory for any Contracting Party to participate in the DAS system.

25. In reply to an intervention by the Delegation of the Russian Federation, the Secretariat observed that there would be difficulties if the submission of a priority document itself through the International Bureau were to be included in proposed Section 408 (a). In that case, a copy of the priority document would be made electronically available to the Offices and a number of Offices would not be ready to accept electronic distribution of the priority document.

26. In reply to an inquiry by the Delegation of China, the Secretariat observed that the length of time for the submission of a priority document was outside the scope of the Hague legal framework. A procedure for the late submission of priority documents through the International Bureau would be difficult to introduce since those documents should be linked to the correct international applications/registrations which would cause additional work load to the International Bureau. In addition, if only one Office required the priority document, its submission directly to that Office would be a quicker option.

27. Being members of the DAS system, the Delegations of the United States of America and Spain expressed their support for the expansion of the DAS system in respect of industrial designs.

28. The Delegation of the Republic of Korea indicated that it had no objection to the use of the DAS system, but doing so would require an amendment to its national law, which the Republic of Korea was willing to do.

SECTION 408(B)

29. No comments were made by the Working Group.

SECTION 408(C)

30. The Delegation of the Republic of Korea expressed its support for the proposed paragraph. Referring to an intervention of the Representative of JPAA, the Delegation commented that the additional requirements, such as "type and date of disclosure", referred to in subparagraph (i) might be an extra burden on the applicant, as the same information could be obtained from the documentation referred to in its subparagraph (ii), therefore suggesting the deletion of such elements from subparagraph (i).

31. The Delegation of Japan expressed its support for the proposed paragraph. The Delegation proposed deleting the indication "type and date of disclosure", which were not required, as part of the declaration, under its national law.

32. In reply to an inquiry by the Delegation of China, the Secretariat clarified that proposed Section 408(c) only applied in respect of designation of Contracting Parties, the national laws of which provided for a declaration concerning exception to lack of novelty. Furthermore, allowable times at which the declaration could be made might be different, depending on the national legislation. The Secretariat stressed that although many national laws provided for grace periods only a few national laws contained a provision of such a declaration.

SECTION 408(D)

33. The Delegation of the United States of America explained that the purpose of a duty of candor and the requirement to provide information to the Office was to assist its examination process, preventing applicants from hiding any information they knew of, which would

consequently prevent them from acquiring a valid right. The Delegation also expressed its strong support for the development of the Hague Portfolio Manager (HPM) and Hague Office Portal (HOP) in the future.

34. The Delegation of the United States of America further explained that providing such information concerning prior designs to the Office should be in the form of an Information Disclosure Statement. The Delegation expressed its concern that the documents were submitted in a language which its examiner could not understand. The Delegation stated that a situation should be avoided where the examiner treated a reference as if it was never submitted.

35. The Secretariat recalled that Rule 6 of the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement (hereinafter referred to as the "Common Regulations") provided for the main principles that the applicant is given a choice among the working languages for his international application, while the Office of each designated Contracting Party may use any of the working languages for receiving and submitting communications, irrespective of the language of the international application. Those two principles functioned through translation by the International Bureau. However, documentation that might accompany the international application was outside the scope of Rule 6. Noting that the issue could be revisited at a later stage, the Secretariat believed that the International Bureau should at least accept a submission of documentation in a working language that might be different from the language of the international application, in support of the designation of a certain Contracting Party, as it would be in the interest of the applicant to be able to submit documentation in the language that the Office could understand.

36. The Chair recalled that Rule 6 of the Common Regulations did not exclude the submission of documentation accompanying the international application in a working language other than that of the international application.

ACCESS TO SUPPORTING DOCUMENTATION

37. The Delegations of the European Union and Germany expressed their interest and need to have access to distributed supporting documents, for example, during invalidity proceedings, although they had no interest to see those documents at the examination stage.

38. The Delegation of Switzerland observed that it would be easier if the parties requiring such access could simply be given a password to access information on WIPO's database.

39. The Representatives of JPAA and MARQUES observed that a warning should appear in the E-filing interface and paper application form to raise the awareness of applicants on possible implications of making the declaration under Section 408(c) for other jurisdictions.

40. In reply to the Representatives of JPAA and MARQUES, the Secretariat indicated that a warning text had been prepared but it was hesitant to implement the text. The Secretariat believed however that it would be useful to provide such a warning, if the supporting documentation were to be made available to all Offices.

41. The Secretariat clarified that supporting documentation should only be made publicly available to the Offices after publication of the international registration. The Secretariat also indicated that separate meetings could be held with the Offices concerned on whether they preferred that all the supporting documentation be made available or only the relevant information. It further asked the Delegation of the United States of America to clarify on what would be the consequences if the information regarding prior arts were not provided in the "Information Disclosure Statement" submitted to the Office, but could be found elsewhere in a supporting document submitted for the purpose of a designation of any other Contracting Party.

42. The Delegation of the United States of America indicated that, in order to satisfy the duty of disclosure, the applicant should do so before its Office. The Delegation further expressed the benefits of increased transparency in the long term if making all the information publicly available.

43. The Chair noted that nothing precluded the Office of any Contracting Party from having access to supporting documents either on an *ad hoc* basis or under a systematic basis pursuant to an agreement that may be concluded under Section 204(a)(ii) of the Administrative Instructions.

SCHEDULE OF FEES

44. The Delegation of Germany observed that the proposed wording was vague but since it echoed a corresponding item in the Schedule of Fees under the Madrid System, it was acceptable.

45. The Chair concluded that the Working Group considered it desirable to add a new Section 408 to the Administrative Instructions, as contained in Annex I to document H/LD/WG/4/2, with a modification to paragraph (c), with a date of entry into force of July 1, 2014.

46. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to the Schedule of Fees, as set out in Annex II to document H/LD/WG/4/2, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2015.

AGENDA ITEM 5: POSSIBLE INTRODUCTION OF A MECHANISM INTO THE HAGUE SYSTEM TO MAKE PUBLICLY AVAILABLE IN A CENTRALIZED MANNER AMENDMENTS TO AN INDUSTRIAL DESIGN FOLLOWING A PROCEDURE BEFORE AN OFFICE

47. Discussion was based on document H/LD/WG/4/3.

48. The Secretariat introduced the document.

49. The Delegation of the United States of America expressed its support for the proposals on the feedback mechanism as it provided clarity as to the amended scope of rights.

50. In reply to an intervention by the Delegation of China on the scenario where there were multiple amendments following each other, the Chair clarified that the Office would only have to notify the amendment finally accepted by the Office.

51. The Representative of JPAA expressed its support for the feedback mechanism and inquired whether an Office was obliged to notify an amendment made by the holder voluntarily in the absence of a refusal.

52. In addition to the instance raised by the Representative of JPAA, the Delegation of the United States of America observed that there might also be instances where the holder of the international registration and applicant might not be the same, noting that a person having no connection to any Contracting Party may not be recorded as the new holder under the Hague System while such assignment should actually be possible under the national law of the United States of America.

53. In reply to an intervention by the Delegation of the Republic of Korea, the Chair clarified that it would be up to the International Bureau to present the information concerning amendments in a sensible manner when it was submitted in XML format.

54. In reply to an intervention by the Delegation of the Russian Federation, the Secretariat clarified that details concerning amendments could be provided in the language of the Office which was different from the working languages. The information would be made publicly available through the *International Designs Bulletin* in the form of a scanned copy of the notification or statement as submitted by the Office to the International Bureau.

SUBPARAGRAPH (B)(IV) IN RULES 18(4), 18BIS(1) AND 18BIS(2)

55. In reply to an inquiry by the Delegation of China, the Secretariat explained that the reason for proposed subparagraph (b)(iv) concerning the date of effect as a grant of protection, apart from “date of the statement”, was that it was possible, depending on the applicable law, that protection would not begin from the date of the statement.

56. Upon a further inquiry from the Delegation of China, the Secretariat confirmed that the effect as a grant of protection could start from the date of republication of the international registration in China. The Secretariat proposed an indication of a date of national republication in the statement of grant of protection.

SUBPARAGRAPH (C) IN RULES 18(4), 18BIS(1) AND 18BIS(2)

57. The Delegation of the Russian Federation proposed the addition of “in one of the working languages of the Hague System or in the language of the Office” to clarify that the statement did not have to be in a working language of the Office.

58. In reply to the intervention by the Delegation of the Russian Federation, the Delegation of the United States of America stated that rather than adding further specificity that might increase complications in the wording of the provision, it might be better to leave it to the Office to convey their communication in the manner they choose, including the language to be used.

59. The Chair observed that there should be no need to have any direct reference in subparagraph (c) to the languages. Alternatively, that would be reflected in the document to be submitted to the Assembly of the Hague Union; it appeared clear that neither the Offices or the International Bureau was obliged to translate the statement into one of the working languages of the Hague System.

60. In reply to an inquiry by the Delegation of the European Union whether the wording “all amendments” in proposed subparagraph (c) included notification of invalidation under Rule 20 of the Common Regulations, the Secretariat explained that invalidations were very rare and that they were not included in the present exercise.

61. In conjunction with the intervention by the Delegation of the European Union, the Delegation of Germany explained that, under its national law, the proprietor of a design registration had the possibility to partially surrender his design right where there was a partial ground of invalidity. Following a discussion with a third party, the right holder could, without any proceedings before the Office, declare a partial surrender, and provide the Office with an amended representation of the design, regardless of the ground of invalidity.

62. In reply to the intervention by the Delegation of Germany, the Secretariat recalled that, under the current system, it was not possible to record such a partial surrender in the International Register. The Secretariat further indicated that the Common Regulations may be amended in that respect, pursuant to Article 16(1)(vii) of the 1999 Act, should such a need arise.

SUBPARAGRAPHS (C) AND (D) OF RULE 18BIS(1)

63. Following an intervention by the Delegation of the United States of America, the Secretariat proposed to delete the wording “initiated by the holder of the international registration” in proposed subparagraphs (c) and (d), thus giving place to other occasions that were not initiated by the holder. Nevertheless, the Secretariat expressed its concern on whether the deletion would give an impression to Offices that, instead of issuing a refusal, they would rather proceed to an amendment without involving the holder of the International registration.

64. The Delegation of the European Union suggested the addition of “but not initiated by the Office” after the existing language in the proposed subparagraphs, indicating that such addition would be broad enough to cover the possible situations described by the Secretariat.

65. The Delegation of the United States of America mentioned that the proposal by the Delegation of the European Union would still leave out instances. The Delegation, supported by the Delegations of Denmark and the Russian Federation, suggested that an explanatory note could be added with the proposed provisions, after the deletion of the wording “initiated by the holder of the international registration”, as a means to clarify the issue.

66. The Chair stated that the circumstances under which the statements under proposed Rule 18*bis*(1) could be issued would be recalled in the document to be submitted to the Assembly of the Hague Union.

SUBPARAGRAPH (B)(III) IN RULE 18BIS(1) AND 18BIS(2)

67. The Delegation of Ukraine suggested that the wording in Rule 18*bis*(1)(b)(iii) should be read in the same way as Rule 18*bis*(2)(b)(iii), theoretically, using the same wording “those to which it relates or does not relate” in both provisions, irrespective of whether the statement of grant of protection were to be made in the first instance or after a refusal.

68. The Secretariat clarified that there was a difference between the scenarios covered by the two provisions. As a statement of grant of protection under Rule 18*bis*(1) were to be issued in a positive stage, it would be superfluous to include the same wording as in subparagraph (2)(b)(iii), to indicate the industrial designs to which protection was not given.

69. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 18(4) and Rule 18*bis*(1) and (2), as contained in the Annex to document H/LD/WG/4/3, with modifications to sub-paragraphs (c) and (d) of Rule 18*bis*(1), for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2015.

AGENDA ITEM 6: REVISED PROPOSAL FOR A STANDARD DOCUMENT FOR THE PURPOSE OF ARTICLE 16(2) OF THE 1999 ACT OF THE HAGUE AGREEMENT AND ITS POSSIBLE SUBMISSION THROUGH THE INTERMEDIARY OF THE INTERNATIONAL BUREAU

70. Discussion was based on document H/LD/WG/4/4.
71. The Secretariat introduced the document
72. The Delegation of Denmark announced that it intended to withdraw the declaration it had made under Article 16(2) in the near future.
73. The Representative of OAPI stated that it required a document, but wished to reassure the Secretariat that its legislation does not specify any particular authentication of the document. Therefore, the Office could accept the standard document submitted through the International Bureau and made available electronically.
74. The Delegation of the Republic of Korea expressed its support for the use of the standard document, indicating that the Office would make good use of it.
75. The Delegation of the Russian Federation expressed its interest in using the standard document, and indicated that amendments to the national law were being considered to accommodate the use of the document.
76. The Delegation of the United States of America stated that it expected to make a declaration under Article 16(2), but would not be able to rely on the standard document as a matter of validity, which was an issue for its country's courts and was outside the scope of its Office. The Delegation further observed that the possibility of attaching documents to the standard document might broaden its possible use by the Office.
77. The Delegation of China expressed its gratitude to the Secretariat for taking into account its suggestions made on the standard document at the last session.
78. The Delegation of the Republic of Moldova expressed its support for the standard document, as it would benefit the users of the system.
79. The Representative of JPAA stated that, under the Madrid System, a submission of form MM5 to the International Bureau was sufficient for a change in ownership to be recorded in the International Register, and to have legal effect in the territory of each of the designated Contracting Parties concerned. The representative acknowledged the differences between industrial designs and trademarks, but nonetheless suggested that the Hague System could take reference in that procedure when considering any further improvements.
80. In reply to the intervention by the Representative of JPAA, the Secretariat clarified that the Hague System shared the same underlying principle with the Madrid System, as enshrined in Article 16(2) of the Geneva Act. However, the existence of a possible declaration thereunder resulted from negotiations at the Diplomatic Conference, whereas the architects of the Geneva Act envisaged that such a potential disadvantage to the holders would be mitigated when a standard document was established to satisfy the requirements of all Offices concerned.

ITEM 1

81. In reply to an inquiry by the Delegation of France, the Secretariat explained that the “date of execution” was an expression required under the law of the United States of America, and that, in its understanding, “Effective date of the transfer” and “Date of execution” were equivalent in their meaning. Subject to a confirmation by the Delegation of the United States of America, the Secretariat proposed to delete the term “Date of execution”.

82. In reply to an intervention by the Delegation of Spain, the Secretariat corrected the Spanish text to match the French and English texts.

ITEM 2

83. The Delegation of the European Union suggested that “Number” be changed into “Number(s)” in “Number of the industrial design(s)” under INID code (53) for clarity.

ITEMS 3 AND 4

84. The Delegation of the Republic of Moldova observed that under the current wording, items 3 and 4 appeared to give the impression that only a name was required for a natural person, whereas in the case of a legal entity, further information such as an address and telephone number had to be provided.

85. In reply to the intervention by the Delegation of the Republic of Moldova, the Secretariat agreed to correct items 3 and 4 to clarify the wording.

ITEM 5

86. The Delegation of Spain suggested that the plural form should be used in item 5(a)(ii) in the Spanish text to read “la(s) persona(s) firma(n)”, to be consistent with item 5(a)(i).

87. The Chair further confirmed that the standard document would be revised taking into consideration the proposals put forward during the session.

SUBMISSION OF THE STANDARD DOCUMENT THROUGH THE INTERNATIONAL BUREAU AND ITS ELECTRONIC DISTRIBUTION TO OFFICES

88. The Delegation of the United States of America raised its concern on whether and how a submission of the document by the holder to the Office concerned could be reflected in the International Register.

89. In reply to the intervention by the Delegation of the United States of America, the Secretariat explained that since the submission of the standard document was an additional service provided by the International Bureau, it was not recorded in the International Register. The Secretariat, however, observed that any refusal of the effects of the recording of a change in ownership could be notified through a declaration under Rule 21*bis*(1), and thus recorded in the International Register and published in the Bulletin.

90. The Chair noted that the Working Group favorably considered the submission of the standard document through the International Bureau and its electronic distribution to the Offices.

RECOMMENDATION

91. In reply to an intervention by the Delegation of the United States of America, the Secretariat clarified that the recommendation, as proposed in Annex III of document H/DC/LD/4/4, to be adopted by the Assembly of the Hague Union was of a non-binding nature. The Secretariat referred to the existing recommendation adopted by the Hague Assembly for Contracting Parties that make, or that have made, a declaration under Article 7(2) of the Geneva Act or under Rule 36(1) of the Common Regulations, concerning international applications filed by applicants whose sole entitlement is a connection with a least developed country.

92. The Chair concluded that the Working Group favorably considered the submission of the proposal for a recommendation for making the standard document an acceptable document in the Contracting Parties having made a declaration under Article 16(2) of the 1999 Act, to the Assembly of the Hague Union, for adoption. The Chair further explained that the purpose of the recommendation was to merely encourage the Contracting Parties to accept the standard document as having the same effect as a statement or document which may be submitted for the same purpose under the law of the Contracting Party concerned.

AGENDA ITEM 7: OTHER MATTERS

93. Discussion was based on document H/LD/WG/4/5.

94. The Secretariat introduced the document

95. The Delegation of the European Union announced that the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) was engaged in a convergence project called "CP6", where, among others, "representation of a design" and "disclaimers" were discussed. The Delegation emphasized the importance of those discussions also for the current discussion within the Working Group.

SECTION 401

96. The Delegation of the United States of America observed that its Office was not legally or technically in a position to handle, for instance, moving image files. Following the intervention, the Secretariat acknowledged that it might be premature to introduce the proposed new provision concerning other visual representations into the Administrative Instructions. Moreover, it would be useful to keep it in the agenda, as it was observed by the Working Group in its previous session.

SECTION 402

97. In reply to an inquiry by the Representative of JPAA, the Chair explained that submitting an enlarged view would remain possible under proposed Section 402(b).

SECTION 403

98. The Delegations of Japan, the Republic of Korea and the Republic of Moldova expressed their support for the proposed provision.

99. The Delegation of the United States of America expressed its concern on the use of color as a means of disclaimer, as it was not accepted by its Office. Thus, the addition of coloring in the provision might increase the number of refusals of international registrations to be issued by the Office.

100. The Delegation of Canada echoed the intervention by the Delegation of the United States of America, recalling that the best practice for disclaimer was still being pursued in discussions for a Design Law Treaty (DLT). The Delegation inquired what the disclaiming mechanism using color could entail.

101. In reply to the interventions by the Delegations of Canada and the United States of America, the Secretariat, using the examples presented, asserted that the current practice of using color for disclaimer was not a source of confusion as long as it was clearly indicated in the description; if the examiner of the International Bureau did not understand what the color in question meant, he would inquire upon the matter with the applicant and ask for a revised clarification.

102. The Delegations of the European Union and Ukraine indicated that the word “may” appearing in the text of the provision would create ambiguity, as any additional environmental matter could not be presented in the reproduction unless they were disclaimed in accordance with the provision. The Delegations therefore proposed to change the wording.

103. In reply to the interventions by the Delegations of the European Union and Ukraine, the Secretariat clarified that it was not the purpose of the proposed provision to set out a closed list of disclaimer types, as many Offices might accept other means of disclaimer, such as blurring and shading. From the International Bureau’s perspective, a type of disclaimer not mentioned in Section 403 might be accepted if it was accompanied by a description indicating such a disclaimer clearly enough to its examiner. The Secretariat proposed to split the provision into two paragraphs, the first paragraph remaining exactly the same as in the original proposal, while the second paragraph would deal with any additional environmental matter that must be claimed out in accordance with the provision.

104. The Delegation of Japan expressed its support for the Secretariat’s proposal, indicating that a disclaimer by coloring was frequently employed where the reproductions were in the form of photographs or computer graphics before its Office, as it would be costly and difficult to convert photographs or computer graphics into line drawings for the purposes of disclaimers. The Delegation also explained that a disclaimer by coloring should be accompanied by a description to that effect.

105. In reply to an inquiry by the Representative of JPAA, the Secretariat confirmed that a disclaimer of protection for part of the product by coloring would continue to be allowed, within the ambit of proposed paragraph (a). The Secretariat further proposed a modification to the title of Section 403, which would replace “Claimed Design” by “the Industrial Design or the Product in Relation to Which the Industrial Design Is Used” in order to be consistent with Section 402(a).

106. The Representative of MARQUES welcomed the Secretariat’s proposal.

107. The Delegations of the European Union and Ukraine expressed their concern that the proposed paragraph (b) still appeared to give an impression of a closed list. Accordingly, the Delegations suggested a deletion of the direct reference to subparagraph (i) and (ii) of paragraph (a) from paragraph (b).

108. The Delegation of the United States of America recalled that, as a blanket practice, the Office did not accept color as a means of disclaimer. Therefore, the Delegation expressed its concern over the need to push for the inclusion of the words “or coloring”, where it was already a current practice that the list in the provision was non-exhaustive, implying the inclusion of the use of color.

109. The Delegation of Canada confirmed that the use of color to disclaim part of the design was not in line with the current practice of the Office, which did not even accept reproductions themselves in color so far. The Delegation nevertheless indicated that it would bring the issue of coloring for a disclaimer back to the Office for further discussion, reaffirming its intention to be as flexible as possible when looking at its practices and regulations. The Delegation further inquired on the issue of a lack of a disclaimer in a description, where color was used as a means to disclaim part of the design.

110. In reply to the inquiry made by the Delegation of Canada, the Secretariat clarified that, in the absence of a written explanation on the use of the color, it would be left to the Office of the designated Contracting Party to make its assessment; where there was an issue of ambiguity as to the element of the color to the extent that it would, for instance, prevent a clear disclosure of the design or from determining the scope of the right claimed, the Office would be in a position to issue a refusal and seek clarification. The Secretariat further indicated that it believed that, if the Offices of certain Contracting Parties could not rely on the use of color for a disclaimer from such substantive points of view, it would be the role of the International Bureau to convey that information to applicants intending to designate such Contracting Parties. Accordingly, the Secretariat invited comments from the Delegation of the United States of America.

111. The Delegation of the United States of America recalled that a submission of reproductions in black and white was considered to be the clearest way in conveying the scope of right, and the Office did not accept color for a disclaimer, as it believed that it was not the best way for disclaimers. The Delegation therefore reaffirmed its concern on the possible outcome of consistent refusals where the United States of America would be designated.

112. The Delegation of Japan explained that, if no explanation was given in the description concerning the use of color in a reproduction, it would be considered as part of the design; where the use of color was not clear, the application would be rejected.

113. The Delegation of the Republic of Korea explained that the reasons for the Office to start accepting a disclaimer by coloring was based on the need of the design industries, as it was more efficient to disclaim part of the design that was represented in photographs or computer graphics.

114. In reply to the interventions made by the Delegations of Japan and the Republic of Korea, the Delegation of the United States of America further clarified that the only occasion in the United States of America where color could be accepted was when it was claimed as part of the design. The Delegation further asserted that it did not necessarily agree with the Delegations of Japan and the Republic of Korea that the use of color for a disclaimer would be more cost effective for the applicant.

115. Recalling the purpose of the current discussion being a mere consultation pursuant to Rule 34(1) of the Common Regulations, the Chair noted that the Delegations of current members of the Hague Union, as well as the Representatives of user organizations, considered favorably the amendments to Part Four of the Administrative Instructions. The Chair further noted that a few prospective members of the Hague Union expressed their concern about the addition of the indication “by [...] or coloring” in amended Section 403. The Chair indicated that this topic could be revisited in the future.

SECTION 405

116. The Delegation of the Republic of Korea expressed its support to proposed Section 405(c). However, it preferred that view descriptions be provided relying upon standard terms only in order to prevent confusing terms from being used.

117. In reply to the intervention by the Delegation of the Republic of Korea, the Delegation of the United States of America expressed its concern with a fixed set of standard terms as the applicant would lose flexibility.

118. The Secretariat clarified that it was in the process of formulating an electronic interface with a scroll down list where the applicant was invited to choose among a list of pre-defined terms, but also with a blank field where a more specific description could be provided manually.

119. The Chair concluded that the Working Group considered it desirable to amend Sections 402, 403 and 405 of the Administrative Instructions, as contained in the Annex to document H/LD/WG/4/5, with modifications to Section 403, with a date of entry into force of July 1, 2014.

120. No other matters were raised by the Working Group under this item.

AGENDA ITEM 8: SUMMARY BY THE CHAIR

121. The Working Group approved the Summary by the Chair as contained in Annex I to the present document.

AGENDA ITEM 9: CLOSING OF THE SESSION

122. The Chair closed the session on June 18, 2014.

[Annexes follow]



H/LD/WG/4/6
ORIGINAL: ENGLISH
DATE: JUNE 18, 2014

Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs

Fourth Session
Geneva, June 16 to 18, 2014

SUMMARY BY THE CHAIR

approved by the Working Group

1. The Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs (hereinafter referred to as “the Working Group”) met in Geneva from June 16 to 18, 2014.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Benin, Denmark, Estonia, European Union, France, Germany, Greece, Hungary, Latvia, Lithuania, Norway, Oman, Republic of Moldova, Romania, Spain, Suriname, Syrian Arab Republic, Switzerland, Tajikistan, Tunisia and Ukraine (22).
3. The following States were represented as observers: Cameroon, Canada, China, Czech Republic, Japan, Madagascar, Mexico, Republic of Korea, Russian Federation, United States of America, Viet Nam and Yemen (12).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: African Regional Intellectual Property Organization (ARIPO) and Benelux Office for Intellectual Property (BOIP) (2).
5. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: Association of European Trademark Owners (MARQUES), Japan Patent Attorneys Association (JPAA) and Knowledge Ecology International, Inc. (KEI) (3).

AGENDA ITEM 1: OPENING OF THE SESSION

6. The Chair, Mr. Mikael Francke Ravn (Denmark), opened the session of the Working Group and welcomed the participants. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO) made an opening address.
7. Ms. Päivi Lähdesmäki (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

8. The Working Group adopted the draft agenda (document H/LD/WG/4/1 Prov.) without modification.

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE THIRD SESSION OF THE WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE HAGUE SYSTEM FOR THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

9. Discussions were based on document H/LD/WG/3/8 Prov.
10. The Working Group adopted the draft report (document H/LD/WG/3/8 Prov.) with a modification concerning the list of participants.

AGENDA ITEM 4: TYPES OF DOCUMENTS AND OTHER MATERIAL UNDER RULE 7(5)(F) AND (G) OF THE COMMON REGULATIONS AND THEIR SUBMISSION THROUGH THE INTERMEDIARY OF THE INTERNATIONAL BUREAU

11. Discussions were based on document H/LD/WG/4/2.
12. With respect to paragraph 25 of the document, the Chair noted that Rule 6 of the Common Regulations did not exclude the submission of documentation accompanying the international application in a working language other than that of the international application. The Chair further noted that nothing in paragraph 31 precluded the Office of any Contracting Party from having access to supporting documents either on an *ad hoc* basis or under a systematic basis pursuant to an agreement concluded under Section 204(a)(ii) of the Administrative Instructions.
13. The Chair concluded that the Working Group considered it desirable to add a new Section 408 to the Administrative Instructions, as contained in Annex I to document H/LD/WG/4/2, with a modification to paragraph (c), as set out in Annex I to the Summary by the Chair, with a date of entry into force of July 1, 2014.
14. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to the Schedule of Fees, as set out in Annex II to document H/LD/WG/4/2, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2015.

AGENDA ITEM 5: POSSIBLE INTRODUCTION OF A MECHANISM INTO THE HAGUE SYSTEM TO MAKE PUBLICLY AVAILABLE IN A CENTRALIZED MANNER AMENDMENTS TO AN INDUSTRIAL DESIGN FOLLOWING A PROCEDURE BEFORE AN OFFICE

15. Discussions were based on document H/LD/WG/4/3.

16. The Chair noted that the amendments indicated or contained in the notification or statement as referred to in proposed Rules 18(4)(c), 18*bis*(1)(c) and (2)(c), may be in the language of the Office which issued the said notification or statement and that this would be reflected in the document to be submitted to the Hague Union Assembly.

17. The Chair further noted that the circumstances under which the statements under proposed Rule 18*bis*(1) could be issued will be recalled in the document to be submitted to the Hague Union Assembly.

18. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 18(4) and Rule 18*bis*(1) and (2), as contained in the Annex to document H/LD/WG/4/2, with modifications to sub-paragraphs (c) and (d) of Rule 18*bis*(1), as set out in Annex II to the Summary by the Chair, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2015.

AGENDA ITEM 6: REVISED PROPOSAL FOR A STANDARD DOCUMENT FOR THE PURPOSE OF ARTICLE 16(2) OF THE 1999 ACT OF THE HAGUE AGREEMENT AND ITS POSSIBLE SUBMISSION THROUGH THE INTERMEDIARY OF THE INTERNATIONAL BUREAU

19. Discussions were based on document H/LD/WG/4/4.

20. The Chair noted that at present three Contracting Parties have made a declaration under Article 16(2) of the 1999 Act, namely, the African Intellectual Property Organization (OAPI), Denmark and the Republic of Korea. However, the Delegation of Denmark informed the Working Group that the withdrawal of the said declaration by Denmark was underway. In the future, it is expected that a number of prospective Contracting Parties will make that declaration.

21. The Chair further noted that the standard document will be revised taking into consideration the proposals put forward during the session.

22. The Chair also noted that the Working Group favorably considered the submission of the standard document through the International Bureau and its electronic distribution to the Offices.

23. The Chair concluded that the Working Group favorably considered the submission of a proposal for a recommendation for making the standard document an acceptable document in the Contracting Parties having made a declaration under Article 16(2) of the 1999 Act, to the Assembly of the Hague Union, for adoption. The Chair further explained that the purpose of the recommendation was to merely encourage the Contracting Parties to accept the standard document as having the same effect as a statement or document which may be submitted for the same purpose under the law of the Contracting Party concerned.

AGENDA ITEM 7: OTHER MATTERS

24. Discussions were based on document H/LD/WG/4/5.

25. The Chair noted that the Delegations of current members of the Hague Union and Representatives of user organizations considered favorably the amendments to Part Four of the Administrative Instructions. The Chair further noted that a few prospective members of the Hague Union expressed their concern about the addition of the indication "by [...] or coloring" in amended Section 403. The Chair indicated that this topic would be revisited in the future.

26. The Chair concluded that the Working Group considered it desirable to amend Sections 402, 403 and 405 of the Administrative Instructions, as contained in the Annex to document H/LD/WG/4/5, with modifications to Section 403, as set out in Annex I to the Summary by the Chair, with a date of entry into force of July 1, 2014.
27. No other matters were raised by the Working Group under this item.

AGENDA ITEM 8: SUMMARY BY THE CHAIR

28. The Working Group approved the Summary by the Chair, as contained in the present document.

AGENDA ITEM 9: CLOSING OF THE SESSION

29. The Chair closed the session on June 18, 2014.

**Administrative Instructions for the Application
of the Hague Agreement**

(as in force on [July 1, 2014])

[...]

**Part Four
Requirements Concerning Reproductions and Other Elements
of the International Application**

[...]

Section 402: Representation of the Industrial Design

(a) The photographs and other graphic representations shall represent the industrial design alone, or the product in relation to which the industrial design is to be used, to the exclusion of any other object, accessory, person or animal.

(b) The dimensions of the representation of each industrial design appearing in a photograph or other graphic representation may not exceed 16 x 16 centimeters, and in respect of at least one representation of each design, one of those dimensions must be at least 3 centimeters. With respect to the filing of international applications by electronic means, the International Bureau may establish a data format, the particulars of which shall be published on the web site of the Organization, to ensure compliance with these maximum and minimum dimensions.

(c) The following shall not be accepted.

- (i) technical drawings, particularly with axes and dimensions;
- (ii) explanatory text or legends in the representation.

Section 403: Disclaimers and Matter That Does Not Form Part of the Industrial Design or the Product in Relation to Which the Industrial Design is to be Used

(a) Matter which is shown in a reproduction but for which protection is not sought may be indicated

- (i) in the description referred to in Rule 7(5)(a) and/or

(ii) by means of dotted or broken lines or coloring.

(b) Notwithstanding Section 402(a), matter that does not form part of the industrial design or the product in relation to which the industrial design is to be used may be shown in a reproduction if it is indicated in accordance with paragraph (a).

[...]

Section 405: Numbering of Reproductions and Legends

(a) The numbering stipulated for multiple international applications shall appear in the margin of each photograph or other graphic representation. When the same industrial design is represented from different angles, the numbering shall consist of two separate figures separated by a dot (e.g., 1.1, 1.2, 1.3, etc. for the first design, 2.1, 2.2, 2.3, etc. for the second design, and so on).

(b) The reproductions shall be submitted in ascending numerical order.

(c) Legends to indicate a specific view of the product (e.g., “front view”, “top view”, etc.) may be indicated in association with the numbering of the reproduction.

[...]

Section 408: Permitted Matters in the International Application and Permitted Documents Accompanying an International Application

(a) Where the applicant has made a declaration under Rule 7(5)(c) claiming priority of an earlier filing in the international application, that claim may be accompanied by a code allowing to retrieve that filing in a Digital Access Service for Priority Documents (DAS) digital library;

(b) Where the applicant wishes to benefit from a reduction of an individual designation fee as indicated in a declaration made under Article 7(2) of the 1999 Act by a designated Contracting Party, the international application may contain an indication or claim of the economic status entitling the applicant to the reduced fee as indicated in the declaration, as well as the certificate thereof, where applicable.

(c) (i) Where the applicant wishes to make a declaration concerning exception to lack of novelty in the international application, as may be prescribed under the law of a designated Contracting Party, the declaration shall be worded as follows, with the indication of those industrial designs to which the declaration relates:

“Declaration Concerning Exception to Lack of Novelty

“The applicant claims to benefit from exceptional treatments provided for in the applicable laws of the designated Contracting Parties concerned for disclosure of [all] the [following] industrial designs included in the present application.”

(ii) Where the applicant wishes to submit documentation on the type and date of disclosure, the international application may be accompanied by such documentation.

(d) Where the applicant wishes to submit a statement as referred to in Rule 7(5)(g), the statement shall be in the format established by the International Bureau in agreement with the designated Contracting Party concerned.

[...]

**Common Regulations
Under the 1999 Act and the 1960 Act
of the Hague Agreement**

(as in force on [January 1, 2015])

*Rule 18
Notification of Refusal*

[...]

(4) [*Notification of Withdrawal of Refusal*] (a) The notification of any withdrawal of refusal shall relate to one international registration, shall be dated and shall be signed by the Office making the notification.

(b) The notification shall contain or indicate

- (i) the Office making the notification,
- (ii) the number of the international registration,
- (iii) where the withdrawal does not relate to all the industrial designs to

which the refusal applied, those to which it relates or does not relate, ~~and~~
(iv) the date on which the international registration produced the effect as a grant of protection under the applicable law, and

~~(iv)~~ the date on which the refusal was withdrawn.

(c) Where the international registration was amended in a procedure before the Office, the notification shall also contain or indicate all amendments.

[...]

*Rule 18bis
Statement of Grant of Protection*

(1) [*Statement of Grant of Protection Where No Notification of ~~Provisional~~ Refusal Has Been Communicated*] (a) An Office which has not communicated a notification of refusal may, within the period applicable under Rule 18(1)(a) or (b), send to the International Bureau a statement to the effect that protection is granted to the industrial designs, or some of the industrial designs, as the case may be, that are the subject of the international registration in the Contracting Party concerned, it being understood that, where Rule 12(3) applies, the grant of protection will be subject to the payment of the second part of the individual designation fee.

(b) The statement shall indicate

- (i) the Office making the statement,
- (ii) the number of the international registration, ~~and~~
(iii) where the statement does not relate to all the industrial designs that are the subject of the international registration, those to which it relates,

(iv) the date on which the international registration produced or shall produce the effect as a grant of protection under the applicable law, and

(v) the date of the statement.

(c) Where the international registration was amended in a procedure before the Office, the statement shall also contain or indicate all amendments.

(d) Notwithstanding subparagraph (a), where Rule 18(1)(c)(i) or (ii) applies, as the case may be, or where protection is granted to the industrial designs following amendments in a procedure before the Office, the said Office must send to the International Bureau the statement referred to in subparagraph (a).

(e) The applicable period referred to in subparagraph (a) shall be the period allowed pursuant to Rule 18(1)(c)(i) or (ii), as the case may be, to produce the effect as a grant of protection under the applicable law, with respect to a designation of Contracting Party having made a declaration under either of the aforementioned Rules.

(2) [Statement of Grant of Protection Following a Refusal] (a) An Office which has communicated a notification of refusal and which has decided to either partially or totally withdraw such refusal, may, instead of notifying a withdrawal of refusal in accordance with Rule 18(4)(a), send to the International Bureau a statement to the effect that protection is granted to the industrial designs, or some of the industrial designs, as the case may be, that are the subject of the international registration in the Contracting Party concerned, it being understood that, where Rule 12(3) applies, the grant of protection will be subject to the payment of the second part of the individual designation fee.

(b) The statement shall indicate

- (i) the Office making the notification,
- (ii) the number of the international registration,
- (iii) where the statement does not relate to all the industrial designs that are the subject of the international registration, those to which it relates or does not relate, ~~and~~
- (iv) the date on which the international registration produced the effect as a grant of protection under the applicable law, and
- (v) the date of the statement.

(c) Where the international registration was amended in a procedure before the Office, the statement shall also contain or indicate all amendments.

[...]

[...]

SCHEDULE OF FEES

(as in force on [January 1, 2015])

[...]

VII. *Services Provided by the International Bureau*

24. The International Bureau is authorized to collect a fee, whose amount it shall itself fix, for services not covered by this Schedule of Fees.

[Annex II follows]



H/LD/WG/4/INF/1
ORIGINAL: FRANÇAIS / ANGLAIS
DATE: 16 JUIN 2014 / JUNE 16, 2014

**Groupe de travail sur le développement juridique du système
de La Haye concernant l'enregistrement international des dessins
et modèles industriels**

**Quatrième session
Genève, 16 – 18 juin 2014**

**Working Group on the Legal Development of the Hague System for
the International Registration of Industrial Designs**

**Fourth Session
Geneva, June 16 to 18, 2014**

**LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS**

*établie par le Secrétariat/
prepared by the Secretariat*

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des parties contractantes)
(in the alphabetical order of the names in French of the Contracting Parties)

ALLEMAGNE/GERMANY

Marcus KÜHNE, Senior Government Official, Designs Section, German Patent and Trade Mark Office (DPMA), Berlin

BÉNIN/BENIN

Charlemagne DEDEWANOU, attaché, Mission permanente, Genève

DANEMARK/DENMARK

Mikael Francke RAVN, Chief Legal Advisor, Danish Patent and Trademark Office, Ministry of Business and Growth, Taastrup
mfr@dkpto.dk

Torben Engholm KRISTENSEN, Principal Legal Advisor, Danish Patent and Trademark Office, Ministry of Business and Growth, Taastrup
tkr@dkpto.dk

Cecilie BOCKHOFF (Ms.), Legal Advisor, Trademark and Design, Danish Patent and Trademark Office, Ministry of Business and Growth, Taastrup
ceb@dkpto.dk

ESPAGNE/SPAIN

Raquel SAMPEDRO CALLE (Sra.), Jefa, Área de la Subdirección General de Propiedad Intelectual, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Energía y Turismo, Madrid
raquel.sampedro@oepm.es

ESTONIE/ESTONIA

Liina PUU (Ms.), Deputy Head, Trademark Department, The Estonian Patent Office, Tallinn
liina.puu@epa.ee

FRANCE

Julie ZERBIB (Ms.), chargée de mission, Direction juridique et des affaires internationales, Institut national de la propriété industrielle (INPI), Courbevoie

Olivier HOARAU, chargé de mission, Institut national de la propriété industrielle (INPI), Courbevoie

GRÈCE/GREECE

Konstantinos AMPATZIS, Director, Applications and Grants, Industrial Property Organization (OBI), Athens

HONGRIE/HUNGARY

Virág Krisztina HALGAND (Ms.), Deputy Permanent Representative, Permanent Mission to the World Trade Organization (WTO), Geneva

LETTONIE/LATVIA

Asja DIŠLERE (Ms.), Chief Expert of Designs, Department of Trademarks and Industrial Designs, Patent Office of the Republic of Latvia, Riga

LITUANIE/LITHUANIA

Digna ZINKEVIČIENĖ (Ms.), Head, Trademark and Designs Division, State Patent Bureau of the Republic of Lithuania, Vilnius

NORVÈGE/NORWAY

Marie RASMUSSEN (Ms.), Head of Section, Design and Trademark Department, Norwegian Industrial Property Office (NIPO), Oslo
mra@patentstyret.no

Sabrina FREGOSI (Ms.), Senior Executive Officer, Design and Trademark Department, Norwegian Industrial Property Office (NIPO), Oslo

OMAN

Amir AL-HADDABI, IP Administrator, Innovation Support, The Research Council, Muscat

Fatima AL-GHAZALI (Ms.), Minister (Commercial Affairs), Permanent Mission, Geneva

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

Marie Bernadette NGO MBAGA (Mme), juriste, Service des signes distinctifs, Yaoundé

RÉPUBLIQUE ARABE SYRIENNE/SYRIAN ARAB REPUBLIC

Jamal Eddin CHUEIB, Deputy Minister, Ministry of Internal Trade and Consumer Protection, Damascus

RÉPUBLIQUE DE CORÉE*/REPUBLIC OF KOREA*

CHOI Eun Rim (Ms.), Deputy Director, Design Examination Policy Division, Korean Intellectual Property Office (KIPO), Daejeon

SOHN Eunmi (Ms.), Deputy Director, Korean Intellectual Property Office (KIPO), Daejeon
eunmi.sohn@gmail.com

KIM Shi-Hyeong, Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Alexandru ȘAITAN, Head, Industrial Designs Division, State Agency on Intellectual Property (AGEPI), Kishinev

ROUMANIE/ROMANIA

Constanta MORARU (Ms.), Head, Legal Affairs, International Cooperation and European Affairs Division, State Office for Inventions and Trademarks (OSIM), Bucharest

Alice Mihaela POSTĂVARU (Ms.), Head, Industrial Designs Division, State Office for Inventions and Trademarks (OSIM), Bucharest
postavaru.alice@osim.ro

SUISSE/SWITZERLAND

Beat SCHIESSER, chef, Service des dessins et modèles, Division des brevets, Institut fédéral de la propriété intellectuelle (IPI), Berne

Marie KRAUS (Mme), conseillère juridique, Division du droit et des affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

SURINAME

Kenneth Steven JAKAOEMO, Master of Laws (LMM), Bureau of Intellectual Property, Ministry of Justice and Police, Paramaribo

TADJIKISTAN/TAJIKISTAN

Lubat SHARIPOVA (Ms.), Head, Inventions and Industrial Designs Division, National Center for Patents and Information (NCPI), Ministry of Economic Development and Trade, Dushanbe

* Le 31 mars 2014, le Gouvernement de la République de Corée a déposé auprès du Directeur général de l'Organisation Mondiale de la Propriété Intellectuelle (OMPI) son instrument d'adhésion à l'Acte de Genève (1999) de l'Arrangement de La Haye concernant l'enregistrement international des dessins et modèles industriels. L'Acte de 1999 entrera en vigueur, à l'égard de la République de Corée le 1^{er} juillet 2014.

On March 31, 2014, the Government of the Republic of Korea deposited with the Director General of the World Intellectual Property Organization (WIPO) its instrument of accession to the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs. The 1999 Act will enter into force, with respect to the Republic of Korea on July 1, 2014.

TUNISIE/TUNISIA

Mokhtar HAMDY, directeur de la propriété industrielle, Institut national de la normalisation et de la propriété industrielle (INNORPI), Tunis

UKRAINE

Yuliya TKACHENKO (Ms.), Head, Division of Examination of Applications for Industrial Designs, State Enterprise Ukrainian Institute of Industrial Property (SE UIPV), Kyiv
tkachenko_yuliya@uipv.org

Larysa TUMKO (Ms.), Head, Sector of Rights for Inventions and Utility Models, State Enterprise Ukrainian Institute of Industrial Property (SE UIPV), Kyiv
l.tumko@uipv.org

UNION EUROPÉENNE (UE)/EUROPEAN UNION (EU)

Paul BULLOCK, Expert, Litigation Service, International Cooperation and Legal Affairs Department, Office for the Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Alicante

Benjamin VAN BAVEL, Quality Officer for Designs Service, Operations Department, Office for the Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Alicante

II. OBSERVATEURS/OBSERVERS

CAMEROUN/CAMEROON

Luc Landry MENDZANA AMBOMO, ingénieur d'études, Direction du développement technologique et de la propriété industrielle, Ministère des mines, de l'industrie et du développement technologique, Yaoundé
mendzanaluc_landry@yahoo.fr

CANADA

Brittany STIEF (Ms.), Analyst, Technical Policy Department, Industry Canada, Gatineau
brittany.stief@ic.gc.ca

CHINE/CHINA

YANG Hongju (Ms.), Director, Department of Law and Treaty, State Intellectual Property Office (SIPO), Beijing

BIAN Yuhan (Ms.), Project Officer, Department of Examination Affairs Administration, State Intellectual Property Office (SIPO), Beijing

YANG Ping (Ms.), Project Administrator, Department of International Cooperation, State Intellectual Property Office (SIPO), Beijing
yangping@sipo.gov.cn

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

David GERK, Patent Attorney, Office of Policy and International Affairs (OPIA), United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria
david.gerk@uspto.gov

Jennifer MCDOWELL (Ms.), Associate General Counsel, Office of General Counsel, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria
jennifer.mcdowell@uspto.gov

Charles PEARSON, Director, International Patent Legal Administration, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria
charles.pearson@uspto.gov

Boris MILEF, Senior PCT Legal Examiner, International Patent Legal Administration, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria
boris.milef@uspto.gov

Karin FERRITER (Ms.), Adviser, Permanent Mission, Geneva

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Andrey ZHURAVLEV, Deputy Director, Federal Institute of Industrial Property (FIPS), Federal Service for Intellectual Property (ROSPATENT), Moscow

Gennady NEGULYAEV, Senior Researcher, Federal Institute of Industrial Property (FIPS), Federal Service for Intellectual Property (ROSPATENT), Moscow

JAPON/JAPAN

Shigekazu YAMADA, Director, Design Registration System Planning Office, Design Division, Patent and Design Examination Department (Physics, Optics, Social Infrastructure and Design), Japan Patent Office (JPO), Tokyo

Masashi NEMOTO, Director for Policy Planning and Research, Office for International Trademark Applications under the Madrid Protocol, Trademark and Customer Relations Department, Japan Patent Office (JPO), Tokyo

Tatsuya SUTO, Deputy Director, Design Registration System Planning Office, Design Division, Patent and Design Examination Department (Physics, Optics, Social Infrastructure and Design), Japan Patent Office (JPO), Tokyo

Machi SAKATA (Ms.), Deputy Director, Legislative Affairs Office, General Coordination Division, Policy Planning and Coordination Department, Japan Patent Office (JPO), Tokyo

MADAGASCAR

Oby RAFANOTSIMIVA (Mme), chef, Service juridique, Office malgache de la propriété industrielle (OMAPI), Antananarivo

Haja Nirina RASONAIVO (Mme), conseiller, Mission permanente, Genève

MEXIQUE/MEXICO

Gustavo ÁLVAREZ SOTO, Dirección Divisonal de Patentes, Instituto Mexicano de la Propiedad Intelectual (IMPI), Ciudad de México

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Evžen MARTÍNEK, Lawyer, International Department, Industrial Property Office, Prague
emartinek@upv.cz

VIET NAM

BUI Hue Anh (Ms.), Director, Registration Division, National Office of Intellectual Property (NOIP), Hanoi

YÉMEN/YEMEN

Abdu Abdullah Hassn AL-HUDHAIFI, Director General, General Department for Intellectual Property Protection, Sana'a

Hussein AL-ASHWAL, Third Secretary, Permanent Mission, Geneva

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

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

Patrice CLÉMENT, chef, Secteur des dessins et modèles, La Haye

ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ
INTELLECTUELLE (ARIPO)/AFRICAN REGIONAL INTELLECTUAL PROPERTY
ORGANIZATION (ARIPO)

Christopher KIIGE, Director, Industrial Property, Harare

Palesa KAIBE (Ms.), Senior Finance Officer, Finance Department, Harare
pkaibe@aripo.org

IV. ORGANISATIONS NON GOUVERNEMENTALES/NON-GOVERNMENTAL ORGANIZATIONS

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

Robert Mirko STUTZ, First Vice-Chair, Designs Team, Bern
bks@torneys.ch

Japan Patent Attorneys Association (JPAA)

Tomoya KUROKAWA, Tokyo
gyoumukokusai@jpaa.or.jp
Tomohiro NAKAMURA, Design Committee, Tokyo
gyoumukokusai@jpaa.or.jp

Knowledge Ecology International, Inc. (KEI)

Thirukumaran BALASUBRAMANIAM, Representative, Geneva

V. BUREAU/OFFICERS

Président/Chair:

Mikael Francke RAVN (Danemark/Denmark)

Secrétaire/Secretary:

Päivi LÄHDESMÄKI (Mme/Ms.) (OMPI/WIPO)

VI. SECRETARIAT 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/Ms.), vice-directrice générale/Deputy Director General

Grégoire BISSON, directeur, Service d'enregistrement de La Haye, Secteur des marques et des dessins et modèles/Director, The Hague Registry, Brands and Designs Sector

Neil WILSON, directeur, Division de l'appui aux services d'enregistrement, Secteur des marques et des dessins et modèles/Director, Registries Support Division, Brands and Designs Sector

Päivi LÄHDESMÄKI (Mme/Ms.), chef, Section juridique, Service d'enregistrement international de La Haye, Secteur des marques et des dessins et modèles/Head, Legal Section, The Hague Registry, Brands and Designs Sector

Hiroshi OKUTOMI, juriste, Section juridique, Service d'enregistrement de La Haye, Secteur des marques et des dessins et modèles/Legal Officer, Legal Section, The Hague Registry, Brands and Designs Sector

Hideo YOSHIDA, administrateur adjoint, Section juridique, Service d'enregistrement de La Haye, Secteur des marques et des dessins et modèles/Associate Officer, Legal Section, The Hague Registry, Brands and Designs Sector

Li MAOR (Mme/Ms.), administratrice juridique adjointe, Section juridique, Service d'enregistrement de La Haye, Secteur des marques et des dessins et modèles/Associate Legal Officer, Legal Section, The Hague Registry, Brands and Designs Sector

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