

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

Fifth Session
Geneva, December 14 to 16, 2015

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 December 14 to 16, 2015.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Azerbaijan, Denmark, Egypt, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Italy, Japan, Lithuania, Morocco, Norway, Oman, Poland, Republic of Korea, Republic of Moldova, Romania, Senegal, Spain, Switzerland, Turkey, Ukraine and the United States of America (27).
3. The following States were represented as observers: Algeria, Belarus, Canada, China, Colombia, Czech Republic, Indonesia, Kazakhstan, Madagascar, Mexico, Panama, Portugal, Russian Federation, Saudi Arabia, Turkmenistan, United Kingdom, Viet Nam, Yemen and Zimbabwe (19).
4. The Permanent Observer Mission of Palestine took part in the session as an observer.
5. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: American Intellectual Property Law Association (AIPLA), MARQUES – The Association of European Trademark Owners, Centre for International Intellectual Property Studies (CEIPI), European Communities Trade Mark Association (ECTA),

European Law Students' Association (ELSA International), International Association for the Protection of Intellectual Property (AIPPI) and International Federation of Intellectual Property Attorneys (FICPI) (7).

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

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the fifth session of the Working Group and welcomed the participants.

8. The Director General recalled that since the last session of the Working Group, the Geneva (1999) Act had entered into force with respect to the Republic of Korea on July 1, 2014, and with respect to Japan and the United States of America, on May 13, 2015. The Director General welcomed those delegations, participating for the first time in the Working Group in their new capacity as members of the Hague Union.

9. Those accessions bring the number of Contracting Parties to the 1999 Act to 49 and the total number of Contracting Parties to the Hague Agreement to 64. The Director General noted that the Hague System covers at present 82 jurisdictions and that Turkmenistan would deposit its instrument of accession to the 1999 Act during the course of the week, bringing the number of Contracting Parties to the 1999 Act to 50 and the total number of Contracting Parties to the Hague Agreement to 65. The expectation was that the Hague System would become a truly global system.

10. The Director General observed that those recent accessions had had a remarkable effect on the usage of the Hague System, as Japan, the Republic of Korea and the United States of America were among the world's largest jurisdictions for the filing of design applications. By the end of November 2015, the number of international applications filed in 2015 was 3,765, which corresponded to an increase of about 41 per cent over the corresponding period in 2014. Those new accessions had brought with them a need to adapt the Hague System to jurisdictions that provided for procedures for novelty examination.

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

11. Ms. Marie Kraus (Switzerland) was unanimously elected as Chair of the Working Group, and Ms. Eun Rim Choi (Republic of Korea) and Ms. Sengül Kultufan Bilgili (Turkey) were unanimously elected as Vice-Chairs.

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

13. The Chair welcomed the new members of the Hague Union and observed that the Hague System was facing a geographical expansion. She stressed the importance of a simple, easily accessible and user-friendly Hague System.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

14. The Working Group adopted the draft agenda (document H/LD/WG/5/1 Prov.) without modification.

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE FOURTH SESSION OF THE WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE HAGUE SYSTEM FOR THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

15. The Working Group adopted the draft report (document H/LD/WG/4/7 Prov.) without modification.

AGENDA ITEM 5: ISSUES RELATING TO ELECTRONIC COMMUNICATION UNDER THE HAGUE SYSTEM: PROPOSAL FOR AMENDMENTS TO RULE 5 OF THE COMMON REGULATIONS

16. Discussion was based on document H/LD/WG/5/2.

17. The Secretariat introduced the document.

18. The Delegation of Japan observed that it was participating for the first time in the Working Group as a member of the Hague Union. The Delegation underlined its wish to cooperate with other Contracting Parties and the International Bureau in order to make the Hague System more efficient and attractive. The Delegation expressed its support to the proposed amendments to Rule 5 and considered them a useful safeguard measure for users.

19. The Delegation of Spain expressed its support for the proposed amendments, indicating that aligning the safeguard measures with the Madrid System should benefit the users of both systems.

20. The Delegation of the United States of America observed that it was participating for the first time in the Working Group as a member of the Hague Union. The Delegation indicated that users in its country were very interested in using the Hague System to protect their designs and that the United States Patent and Trademark Office (USPTO) was already receiving their feedback on how to make the system more user-friendly, for example, concerning required documentation. The Delegation further explained that its Office had started its substantive examination of international registrations designating the United States of America and that by the next session of the Working Group it could share its experience with other delegations.

21. The Representative of CEIPI expressed satisfaction that the Hague System was developing as it was hoped when the Diplomatic Conference was convened in 1999. The Representative further expressed support to the proposed amendments to Rule 5, particularly, because CEIPI was in favor of consistency between the different systems for protection offered by WIPO.

22. The Delegation of China stated that China had started the internal procedure for accession to the 1999 Act, including the establishment of implementation rules. The Delegation was in support of the proposed amendments to Rule 5, as it would improve the system.

23. In reply to an inquiry by the Delegation of Egypt concerning the extension of time limits under the Hague System, the Secretariat explained that the proposed amendments only concerned a failure to meet a time limit for electronic communications addressed to the International Bureau under extraordinary circumstances, for example, where the server of the International Bureau was down. Under the Hague System, there was no general provision concerning the extension of time limits, such as was recently added to the legal framework under the Madrid System.

24. In reply to an inquiry by the Delegation of the United States of America concerning the proposed minor amendment to paragraph (4), the Secretariat replied that the expression “where applicable” was added to take into consideration factors peculiar to electronic communications, where there was no visible or materialized communication, as opposed to paper communications. Therefore, it should be read as referring particularly to an electronic communication which had not been received by the International Bureau.

25. The Delegation of the United States of America further expressed its general support to the proposed amendments. However, the Delegation expressed concerns regarding the wording of the proposal since it would also relate to the payment of the second part of the individual designation fee. The Delegation noted that unlike with other types of communication, an interested party had a choice to pay the said fee either to the International Bureau or to the USPTO. In that regard, its national law provided for time limits for the payment of the said fee, including specific requirements for excusing a delay in payment. In view of the above, the Delegation proposed a minor modification to proposed paragraph (3) of Rule 5, by adding the words “required to be” to this paragraph after the word “communication”.

26. The Secretariat concurred with the rationale for the proposal by the Delegation of the United States of America and made a further proposal to add a new paragraph (5) to Rule 5, which would read as follows “[*Exception*] This rule shall not apply to the payment of the second part of the individual designation fee through the International Bureau as referred to in Rule 12(3)(c)”. Alternatively, that exception could be added to Rule 12 as a new subparagraph (3)(e), to read: “Rule 5 shall not apply to the payment of the second part of the individual designation fee through the International Bureau as referred to in subparagraph (c)”.

27. The Representative of CEIPI observed that both the proposal made by the Delegation of the United States of America and the counterproposals made by the Secretariat appeared feasible. However, the proposal by the Delegation of the United States of America was limited to paragraph (3) only, whereas the counterproposals by the Secretariat seemed to apply to Rule 5 as a whole.

28. The Secretariat confirmed that its counterproposals were to apply to Rule 5 as a whole.

29. The Representative of FICPI indicated that it appeared logical to add a new paragraph (5) to Rule 5 as an exception, instead of inserting a new subparagraph in Rule 12(3).

30. The Delegation of the United States of America expressed its support to the proposals by the Secretariat and stated its preference to add a new paragraph (5) to Rule 5.

31. In reply to an intervention by the Delegation of the European Union, the Secretariat explained the difference between Rule 12(3)(c) of the Hague Common Regulations and Rule 34(3)(d) of the Madrid Common Regulations. Under the Hague System, the second part of the individual designation fee may be paid either to the International Bureau or to the Office concerned, whereas under the Madrid System, the second part of the individual designation fee must be paid only to the International Bureau.

32. The Delegation of Spain and the Representative of CEIPI questioned the rationale behind the divergence concerning the payment of the second part of the individual designation fee between the two systems.

33. The Secretariat explained that Rule 12(3) of the Hague Common Regulations was adopted prior to Rule 34(3) of the Madrid Common Regulations, but could not identify the reason why the Assembly of the Madrid Union took a different approach. The Secretariat noted that providing two options for payment under the Hague System was a more flexible approach and in the interests of users.

34. In reply to an inquiry by the Delegation of Indonesia, the Secretariat explained that where there was an interruption in the electronic communication services in the locality of the sender, once the problem was resolved, the communication should be resent to the International Bureau no later than five days after the services were resumed. However, the said communication and the required evidence, for example, a statement by the Internet services provider, should be resent to the International Bureau no later than six months after the expiry of the initial time limit.

35. The Chair concluded that the Working Group favorably considered the submission of a proposal to amend the Common Regulations with respect to Rule 5, as contained in the Annex to document H/LD/WG/5/2, with the addition of a new paragraph (5) to Rule 5, for adoption by the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2017.

AGENDA ITEM 6: PROPOSAL FOR A NEW RULE RELATING TO AMENDMENTS TO THE INDICATIONS CONCERNING THE IDENTITY OF THE CREATOR

36. Discussion was based on document H/LD/WG/5/3.

37. The Secretariat introduced the document.

38. In reply to an inquiry by the Delegation of the Republic of Korea, the Chair explained that the issue of possible fees could be raised under Agenda Item 9 concerning the revision of the schedule of fees.

39. The Delegation of the United States of America requested clarification on the scope of the proposed new rule, since under its national law, the identity of the creator was a critical part of the substantive examination, including the necessity of the submission of an oath or declaration by the creator.

40. The Secretariat explained that the proposed rule was exhaustive. In fact, four different situations could be identified concerning updates to the indication concerning the identity of the creator.

41. In the first situation, there was no indication of the identity of the creator in the international application. Pursuant to proposed subparagraph (v) to Rule 21(1), the holder of the international registration could request that the indication of the identity of the creator be reflected in respect of that international registration in the International Register. In respect of Contracting Parties that had made a declaration under Article 5(2)(b)(i) or Rule 8, such as the United States of America, this situation would never arise.

42. In the second situation, a creator was mentioned in the international application, but a co-creator was missing. The second situation would be handled by the International Bureau as a correction under Rule 22(1).

43. The third situation would arise where there was a spelling mistake in the name of the creator and/or address or a factual mistake in the address. Such an error would be corrected under Rule 22(1). In this context, the Secretariat emphasized that pursuant to Rule 22(2), the effects of the correction could be refused by the Office.

44. Lastly, the fourth situation would arise when the creator had moved and sought to update the address recorded in the International Register, in which case proposed subparagraph (v) to Rule 21(1) would apply. Likewise, where the creator changed his/her name subsequent to a marriage or a divorce, proposed subparagraph (v) would apply.

45. The Delegation of the United States of America expressed its discomfort with the proposal since its law did not provide for the possibility of changing the name of the creator after an issued patent, for example, subsequent to a marriage. Furthermore, information as to the rationale behind Rule 22 would be useful for considering whether the Office of a designated Contracting Party could refuse the effects of correction or not. The Delegation also inquired about the possibility of introducing a mechanism for correcting the identity of the creator prior to registration by the International Bureau.

46. Following the intervention by the Delegation of the United States of America, the Secretariat requested clarification on the relationship between prior art and the identity of the creator. In particular, the Secretariat sought to elicit how a search for prior art could be affected by a subsequent change in the name or address of the creator. In reply to a question raised by the Delegation, the Secretariat explained that the International Bureau accepted some corrections concerning the identity of the creator before the application proceeded to international registration. Such corrections were accepted from a pragmatic point of view, whereas the International Bureau always ascertained the indication of the creator *vis-à-vis* the oath or declaration; otherwise it would not have been recorded with respect to the designation of the United States of America, pursuant to Article 8(2)(b) and Rule 8.

47. The Representative of AIPPI wondered about the impact of the published information upon the substantive right. The Representative noted that in some situations, a creator might be removed from the register. Furthermore, there could be considerations with respect to foreign filing licenses in jurisdictions having that requirement.

48. In reply to the Representative of AIPPI, the Secretariat clarified that it would be possible to remove one of the two creators from the international registration if the need arose. This was tantamount to the second situation, falling within the scope of Rule 22 for corrections.

49. The Delegation of the Republic of Korea explained that under its national law, after registration it was possible to correct a typo, or change the data concerning the address or name subsequent to a marriage. However, it was not possible to add a creator after registration. The Delegation stressed that the requirement of the identity of the creator was an important matter under its law. The Delegation considered the proposed amendment to Rule 21 acceptable.

50. The Delegation of Spain explained that in Spain, if it was necessary to remove or include a creator in the record, the Office would require that all involved, not merely the creators concerned but also those who were maintained therein, as well as the holder, accept that modification. Thus, the Office required a declaration from all of those parties to accept the change.

51. The Delegation of the European Union explained that, as far as a community design was concerned, an indication of the identity of the creator was optional. It could be added after the design was registered and would be published accordingly. In that regard, the Delegation also recalled that the creator had the right to be mentioned under the Community Design Regulations. There were no further implications such as those mentioned by the Delegation of the United States of America. This appeared to be merely an issue with certain laws.

52. The Delegation of Switzerland explained that under its national law, the name of the creator could not be changed. A creator's change of name or address had no effect on the scope of protection. However, the Delegation was in favor of the proposal to amend Rule 21.

53. The Chair concurred with the position expressed by the Delegation of Switzerland, emphasizing that the proposal did not affect the scope of protection of the design or of the rights of the creator. The purpose of the proposal was to update the records.

54. The Delegation of Indonesia explained that its Office required the applicant to submit legal documents concerning changes of name.
55. The Delegation of the United States of America indicated that it had some difficulty in recognizing the effect referred to in Article 16(2) in conjunction with Rule 21.
56. In reply, the Secretariat recalled that Article 16(2) was one of the fundamental pillars of the Hague System. Under Article 16(2) any recording made in the International Register has the same effect as if it had been made in the register of the Office of each Contracting Party concerned. Contracting Parties should forego the need for supporting legal documents when they join the Hague System.
57. The Delegation of China explained that its national law required indications of the identity of the creator and that the creator must be an individual. Moreover, the Office required proof to accept a subsequent change to the identity of the creator.
58. The Delegation of Romania explained that its national law required indications of the identity of the creator. If a creator were to be removed from the record or added to it, its Office would require a statement from the creator(s) initially recorded in the register. As regards a change of name, a certificate of marriage or a court decision of divorce was required.
59. The Delegation of Egypt explained that a subsequent change in the identity of the creator must be registered at its Office and a supporting document was required.
60. The Delegation of the Czech Republic explained that its national law required indications of the identity of the creator. Subsequent changes could be requested by the creator, applicant or holder. Its Office could ask for proof, in the event of doubt.
61. The Delegation of Zimbabwe stated that it was considering acceding to the Hague System and expressed support for the proposal.
62. The Delegation of Lithuania explained that the identity of the creator was a mandatory element under its national law. The Delegation also expressed support for the proposal.
63. The Secretariat thanked the delegations for sharing their national systems. The proposal for Rule 21 was to provide for the possibility to record in the International Register a change of the name or address of the creator already recorded therein and to provide the name or address of the creator where no such information was recorded. Such a recording could be requested by the holder of the international registration.
64. The Delegations of Germany and the United States of America sought clarification of the purpose of keeping the name and address of the creator up to date.
65. The Secretariat explained that in its view, the main purpose was the publicity of the creator, and that creators were easily searchable in the database. The Secretariat reiterated that the proposal was not about changing the identity of the creator.
66. The Representative of FICPI observed that the wording of the proposed rule was not as clear as it could be, suggesting that the two options could be listed separately, rather than in one paragraph.
67. The Representative of MARQUES stated that it was important for creators to be recognized in the record and any later changes to the name of the creator should be allowed, as should the addition of a new creator to the records.

68. The Representative of CEIPI was in favor of the proposal to amend Rule 21. Concerning the schedule of fees, the Representative proposed that a resulting renumbering of the existing items could be avoided by inserting a new item 16*bis* instead of a new item 17.

69. The Chair concluded that the Secretariat would prepare a revised document, taking into account the different positions expressed by the delegations, in order to further consider this proposal at the sixth session of the Working Group, which will take place from June 20 to 22, 2016.

AGENDA ITEM 7: PROPOSAL FOR RECOMMENDATIONS RELATING TO THE DISCLOSURE OF AN INDUSTRIAL DESIGN IN AN INTERNATIONAL APPLICATION

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

71. The Secretariat introduced the document.

72. The Delegations of Canada, China, Japan, the Republic of Korea, the Republic of Moldova, Romania and the United States of America, and the Representatives of AIPPI and FICPI expressed support for the proposal.

73. The Delegations of China and Japan suggested that the contents of the recommendations should be updated timely where, for example, the examination practices of the Office of the Contracting Parties changed.

74. The Delegation of the Republic of Korea indicated that it would be necessary to provide a disclaimer taking into account possible changes.

75. The Delegation of Switzerland expressed support for the proposal and suggested that “recommendations” be changed to “guidance”.

76. The Delegation of European Union expressed support for the proposal with a view to providing useful recommendations to users as to how an industrial design should be represented. There was some potential overlap between the proposed recommendations and the Convergence Program which was running in the European Union. In that regard, the Delegation stressed the importance of guiding users without confusion.

77. The Chair noted that all the interventions by the delegations and representatives were in favor of establishing recommendations for users, aside from the wording. The Chair further asked the Working Group how the recommendations could be validated and endorsed by the Working Group, and whether they should be published on the WIPO website.

78. The Delegation of the United States of America indicated that it would be preferable to publish the recommendations on the WIPO website.

79. As regards an update of the recommendations, the Representative of CEIPI suggested that, where any change was requested by a (new) Contracting Party, the recommendations, as amended, could be published with a note indicating that that version was provisional until accepted by the Working Group.

80. The Delegation of Switzerland raised the issue of whether Examining Offices themselves might have more appropriate examples which could be linked from the general recommendations that would be posted on the WIPO website.

81. The Delegation of the Republic of Moldova proposed that the International Bureau establish and publish recommendations without representations or drawings, which would be provided and amended exclusively by each of the Examining Offices.
82. In reply to an intervention by the Representative of AIPPI, the Secretariat recalled the purpose of the proposed recommendations, which were intended to alleviate the primary concern of users as to how to prepare and provide reproductions when designating some Contracting Parties with Examining Offices, although it found it useful for each Examining Office to provide relevant information itself, to assist users in the same context.
83. Following the intervention by the Secretariat, the Representative of MARQUES indicated that users desired recommendations as the greatest common denominator, in order to provide a rough idea, and instructions which would be laid out by the International Bureau.
84. Following interventions by the Delegation of Colombia, the Secretariat clarified that it was a role of the International Bureau to conduct formal examination on behalf of the Office of a designated Contracting Party and that a submission of a specimen was outside the scope of the proposed recommendation.
85. The Delegation of Norway indicated that a means could be found to delegate the authority to update the recommendations to the International Bureau, so that they could be amended on a more regular basis.
86. Emphasizing the importance of the recommendations, the Delegation of the United States of America suggested that the document be improved and finalized within a reasonable period.
87. The Chair then invited the delegations to make comments on four specific recommendations.

RECOMMENDATION 1.1

88. The Representatives of AIPPI and FICPI suggested that the pattern on each side of the box shown in the graphic images should be carefully chosen in order to eliminate any doubt as to what was represented.
89. The Delegation of the United States of America added that it would look clearer if the pattern shown on the front surface of the box had a simpler and more obvious structure, such as circles, instead of the hurricanes or flower-shaped patterns. Moreover, when multiple designs were filed, the applicant should ensure that each of the designs was fully and independently disclosed through reproductions and/or descriptions.
90. Following an intervention by the Delegation of Switzerland, the Secretariat clarified that none of those recommendations were self-sufficient, and therefore it was not sufficient for an applicant to follow only some of them and expect that there would be no refusal relating to disclosure. The idea was that each of those recommendations focused on a separate issue.
91. The Delegation of Japan expressed support for the recommendation.

RECOMMENDATION 1.2

92. The Delegations of Turkey and of the Republic of Korea expressed support for the recommendation.

93. The Delegation of Lithuania explained that its Office requested perspective views of a product and did not publish descriptions.

94. The Delegation of Egypt explained that the Office would ask the holder for clarification on the reproduction where needed.

95. The Representative of AIPPI pointed out that it was not clear whether the interior rectangle shown in image 1.1 was hollow and whether the surface shown in image 1.2 had parts recessed.

96. The Delegation of the United States of America explained that a description of the omitted views should be provided where the omitted view as described is part of the claimed design. If such views form no part of the design, they should neither be shown in the drawings nor described in the description.

RECOMMENDATION 1.3

97. The Delegation of the United States of America suggested that all of the broken lines, dotted lines and coloring for disclaimer purposes also be mentioned in each of the two sentences in the second part of the recommendation.

RECOMMENDATION 2

98. The Representative of AIPPI pointed out that image 1.4 did not fully disclose the interior configuration of the internal box. Although in that example a description could be provided to refer to the cross-sectional view of image 1.5, there would be many other cases where merely providing a description could not work to precisely indicate the source of the cross-section.

RECOMMENDATION 3

99. The Representative of MARQUES asked whether or not rendering, instead of shading, could be accepted in order to represent relief or contours of the surface of a three-dimensional product.

100. In reply, the Delegation of the United States explained that its Office had concerns as to whether or not the design was fully disclosed and clearly understandable regardless of the format of the representation, although there still remained a preference for line drawings.

101. The Delegation of Japan expressed support for the recommendation.

102. The Delegation of China indicated that it could accept the recommendation, in general, in the sense that the Office could accept a use of shading if its purpose was clearly indicated.

103. Following interventions by the Delegations of Egypt and Colombia, the Secretariat clarified the purpose of the recommendation by recalling that the International Bureau examined the formal conditions of an international application, including reproductions. The Offices of designated Contracting Parties may refuse protection only on substantive grounds but may not request additional views on the basis of formal requirements as to reproductions in their national laws.

104. The Representative of AIPPI observed that the interior circle shown in image 2.4 did not reveal whether or not it was concave.

RECOMMENDATION 4

105. The Representative of MARQUES indicated that it was not clear whether the graphic images of 1.3 and 1.4 were in black and white or in color.

106. Following the intervention by the Representative of MARQUES, the Delegation of Hungary explained that its Office would not consider those reproductions to be in color.

107. The Delegation of Romania indicated that it could accept the recommendation. In fact, the Office could accept the mixing of reproductions in different forms and in black and white and in color.

OTHER POINTS

108. In reply to an inquiry by the Delegation of the European Union, the Delegations of Canada, Japan and the United States of America explained that, in their jurisdictions and for their examination purposes, full disclosure did not only require the design to be represented fully in the sense that all sides or interiors were shown, but also required the design to be clearly shown, such that the examiner could determine the scope of the design for which the applicant sought protection. Therefore, ambiguity or inconsistency in the reproductions affected full disclosure of the design.

109. In reply to a question by the Delegation of the European Union, the Secretariat explained that the proposed recommendations did not go beyond Part Four of the Administrative Instructions for the Application of the Hague Agreement and therefore the International Bureau would not enforce these recommendations but would carry out its formal examination in accordance with Part Four of the Administrative Instructions. It is up to the applicants to decide which recommendation to follow.

110. The Delegation of the United States of America suggested that the recommendations and the corresponding texts in the list of the last page should be consistent with each other. The Delegation also suggested providing the possibility to indicate what was not recommended in the list.

111. The Representative of FICPI requested the Chair to provide user groups with an opportunity to make comments on the final proposal.

112. The Chair concluded that all the comments made by the delegations and representatives of user groups would be taken into account and further comments could be submitted to the Secretariat in writing by December 31, 2015. The Secretariat would prepare a revised Guidance and distribute it to all the Contracting Parties whose Offices were "Examining Offices", as referred to in footnote 1 of document H/LD/WG/5/4, and also to the user groups, for comments. The final Guidance, prepared in consultation with the Examining Offices would be published on the WIPO website. The list contained in the last page thereof would be updated as further Contracting Parties with an Examining Office joined the Hague System.

AGENDA ITEM 8: CONSIDERATIONS RELATING TO THE POSSIBLE INTRODUCTION OF SIMULTANEOUS LIMITATIONS IN INTERNATIONAL APPLICATIONS AND OTHER AMENDMENTS TO THE COMMON REGULATIONS

113. Discussion was based on document H/LD/WG/5/5.

114. The Secretariat introduced the document.

115. The Delegations of Japan and the Republic of Korea highlighted possible technical problems in the implementation of the proposed simultaneous limitations system, although they were generally in support of giving flexibility to the users of the Hague System. One aspect of the technical constraints would be the timing of the implementation, taking into account a period of required modifications to their IT systems. Another more fundamental issue would relate to a description that might be contained in an international registration. The proposed simultaneous limitations system would further bring a need for descriptions to be more specifically tied to the individual designs contained in an international registration.

116. The Delegation of the United States of America echoed the observations made by the Delegations of Japan and the Republic of Korea. Possible complications raised by the present proposal would not only concern document H/LD/WG/5/6 relating to fees to be discussed later, but would also be linked to the goal at which the previous document H/LD/WG/5/4 was aiming. In that regard, the Delegation indicated that it would be more beneficial to focus on the approach proposed in document H/LD/WG/5/4, noting that its practice concerning requirements on disclosure of an industrial design appeared closely aligned to those indicated by the Delegations of Japan and the Republic of Korea in the table of the draft recommendation.

117. The Delegation of the Russian Federation and the Representatives of AIPPI, MARQUES and ECTA expressed support for the proposal, as it would improve the flexibility of the Hague System.

118. The Representative of MARQUES indicated that it was not premature to discuss the proposal at that juncture, because it would still require considerable time before its implementation.

119. The Representative of AIPPI emphasized the importance of the proposal, providing an example where filing design applications with 40 to 45 Offices would require the submission of approximately 800 drawings in total.

120. The Delegation of the European Union expressed support for the proposed amendments. However, in light of the philosophy of the Hague System, the Delegation requested further explanations as to the justification for the complications that the proposal brought into the Hague System.

121. The Secretariat agreed that the proposed mechanism was complex and the need for it had not yet been demonstrated. Recalling the positive outcome of the discussion on the previous agenda item and the fact that the Working Group was in favor of finalizing and publishing a set of recommendations relating to the disclosure of an industrial design shortly, the Secretariat suggested that it might be wiser to take some more time in order to better assess the situation. With more experience and after analyzing refusals that might be received from Examining Offices, the Working Group could suggest whether an evolution in the legal framework of the Hague System in the proposed direction was warranted.

122. In reply to inquiries by the Delegation of the United States of America, the Secretariat clarified that a limitation is not a cancellation, as it would not affect all the designs and would allow the applicant to choose *ab initio* which design should be protected, and in which designated Contracting Party. Moreover, all the designs contained in that international application could be the subject of a priority claim, if it was the first filing.

123. The Delegation of the United States of America noted that it might be clarified if the wording "any or some" appearing in proposed Rule 7(8) was replaced by "one or more". Furthermore, with reference to paragraph 39 of the document, it was important for Rule 14 to be entirely aligned with Article 8 of the 1999 Act.

124. The Chair concluded that some delegations were in favor of introducing the concept of simultaneous limitations in international applications. However, since there was not yet enough experience with refusals issued by Examining Offices, the discussion was premature at the current session. Therefore the need for the concept could be better assessed in upcoming sessions.

AGENDA ITEM 9: CONSIDERATIONS RELATING TO A POSSIBLE REVISION OF THE SCHEDULE OF FEES

125. Discussion was based on document H/LD/WG/5/6.

126. The Secretariat introduced the document.

127. The Delegations of Denmark, Japan, Spain and the European Union expressed support for the proposal to amend Rule 14 so as to introduce the possibility for the International Bureau to invite the applicant within one month to correct irregularities due to the lack of payment of the basic fee for one design.

128. The Delegation of the United States of America requested clarification as to the proposed up-front payment mechanism in terms of the secured application of Article 6(2) of the 1999 Act, dealing with the use of international applications as a basis for claiming priority. The Delegation also indicated that the lack of payment of fees should not negate the possibility of using the international application as a basis for claiming priority.

129. In reply to the intervention by the Delegation of the United States of America, the Secretariat explained that the lack of payment of fees was not one of the irregularities entailing a postponement of the filing date provided for in Rule 14(2). Moreover, those irregularities provided for in Rule 14(2) were fundamental elements that should be easily detected and, in the case of an international application filed through the E-filing Interface, they were verified automatically. Thus, it could hardly envisage a situation where the proposed amendment to Rule 14(1) would cause a difficulty that would prevent the applicant from using the international application as a basis for claiming priority.

130. The Delegation of the United States of America observed that the proposed time limit of one month to make the requested payment would be too short. In reply, the Secretariat indicated that it would be in the interest of the applicant to make the payment as soon as possible, while admitting that one month might be considered short and the time limit could therefore be extended up to three months. For, the earlier the payment was made, the faster the application could be examined and registered.

131. The Delegation of the United States of America expressed its discomfort with the proposed approach, referring to the PCT System and its national design patent system, in which up-front payment of the fee was not required in order to carry out the formality examination.

132. In reply to the intervention by the United States of America, the Secretariat noted that, in general, patent filings with technical descriptions and claims were made by specialists and were relatively costly. Therefore it would be less likely that they would not continue the application. In contrast, design filings could be made by an individual or small entity seeking protection in a cost-effective manner, and the filing party might not be familiar with the procedure. Those applicants could make more mistakes and they were more likely not to continue their applications, as a result of which the examination would have been carried out without payment.

133. The Delegation of the United States of America raised the question as to whether the proposed approach would be warranted and effective if it was to deal with a small number of cases.

134. In reply, the Secretariat explained that, in addition to frivolous applications, there were other type of applications that were complex and demanding even from a formal point of view.

135. While expressing its sympathy, the Delegation of the United States of America indicated that it was still not comfortable with the proposal, and therefore could not support it at that juncture. The Delegation suggested discussing the issue in the next session of the Working Group.

136. The Chair noted that some delegations were in support of the proposed addition of subparagraph (b) to Rule 14(1), but one delegation was not comfortable with the proposal.

137. The Chair concluded that the discussion on proposed subparagraph (b) to Rule 14(1) would continue in the sixth session of the Working Group.

138. The Secretariat then introduced Section III of the document relating to possible amendments to the Schedule of Fees.

139. In reply to an intervention by the Delegation of Japan, the Secretariat explained firstly that introducing specific fees would not cause complication for users, as the Fee Calculator would automatically compute all the fees that needed to be paid and give estimates or simulations. Secondly, the concept of equity among Contracting Parties could not be an objection to the increase of fees as it was put aside since the Geneva Act introduced the possibility for Contracting Parties to make a declaration for individual designation fees; moreover, the Common Regulations had introduced the concept of different levels of standard designation fee.

140. The Delegations of Japan, Spain, the Republic of Korea, the United States of America and Norway observed that the flat basic fee had not been changed in the last twenty years. Nevertheless, the Delegations of Japan and United States of America did not support the proposal to introduce a new designation-tied basic fee. Some delegations observed that, as the geographical expansion of the Hague Union increased the workload of the International Bureau, the number of applications and the resulting income should increase correlatively.

141. The Delegation of the United States of America noted that the current structure of the basic fee, consisting of a larger fee amount for the first design, complemented by a smaller fee amount for an additional design, could be contemplated with a proportionate increase of fee for additional designs, as an alternative approach.

142. The Representative of AIPPI indicated that from the users' perspective there was a high degree of sensitivity regarding any cost increase proposals. An increase of fees at that stage could fuel skepticism among users in new Contracting Parties and the Hague System would look less attractive.

143. The Delegations of the Republic of Korea, the United States of America, the European Union and the Czech Republic suggested discussing the proposal to raise the amount of fees in the future. Some delegations observed that there might be other approaches or opportunities for preserving the attractiveness of the Hague System that would not have such a drastic impact on applicants, but that could raise the revenue desired.

144. The Delegation of the European Union observed that the Examining Offices had a preference for an increase of the flat basic fee whereas non-Examining Offices preferred the introduction of a designation-tied fee.

145. As regards an alternative approach, the Secretariat explained that, for instance, the publication fee had been reviewed but had actually been reduced. Technological development had reduced the workload of the International Bureau in that respect. The same should apply to the approach to charge for a request for deferment of publication, since the deferment procedure was fully automated. It would not warrant charging a specific fee. The Secretariat emphasized that the contention at hand was more in line with the basic fee, which would allow the International Bureau to recoup its examination costs more generally. An increase in the number of international applications would generate an increase in income, but the new features introduced into international applications for the purposes of the designations of new Contracting Parties with an Examining Office were making the formal examination increasingly complex, requiring more time and more staff.

146. Regarding a possible revision of the Schedule of Fees, the Chair noted that several delegations supported the idea that the fees be revised so as to allow the International Bureau to cover its expenses, suggesting alternative approaches to achieve that goal, but many indicated that they could not support the idea of a possible designation-tied basic fee.

147. The Chair concluded that for the sixth session the Secretariat would prepare some scenarios for a revision of the Schedule of Fees, which would be the basis for further discussions.

AGENDA ITEM 10: OTHER MATTERS

148. The Secretariat referred to comments made by some delegations requesting the inclusion of more granular data in the international registration, for example, in descriptions for designs. In that regard, the Secretariat informed the Working Group that it intended to issue a survey in order to assess what level of granularity would be beneficial for Offices.

AGENDA ITEM 11: SUMMARY BY THE CHAIR

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

AGENDA ITEM 12: CLOSING OF THE SESSION

150. The Chair closed the session on December 16, 2015.

[Annexes follow]



H/LD/WG/5/7
ORIGINAL: ENGLISH
DATE: DECEMBER 8, 2015

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

Fifth Session
Geneva, December 14 to 16, 2015

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 December 14 to 16, 2015.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Azerbaijan, Denmark, Egypt, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Italy, Japan, Lithuania, Morocco, Norway, Oman, Poland, Republic of Korea, Republic of Moldova, Romania, Senegal, Spain, Switzerland, Turkey, Ukraine and the United States of America (27).
3. The following States were represented as observers: Algeria, Belarus, Canada, China, Colombia, Czech Republic, Indonesia, Kazakhstan, Madagascar, Mexico, Panama, Portugal, Russian Federation, Saudi Arabia, Turkmenistan, United Kingdom, Viet Nam, Yemen and Zimbabwe (19).
4. The Permanent Observer Mission of Palestine took part in the session as observer.
5. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: American Intellectual Property Law Association (AIPLA), Association of European Trademark Owners (MARQUES), Centre for International Intellectual Property Studies (CEIPI), European Communities Trade Mark Association (ECTA), European Law Students' Association (ELSA International), International Association for the Protection of Intellectual Property (AIPPI) and International Federation of Intellectual Property Attorneys (FICPI) (7).

AGENDA ITEM 1: OPENING OF THE SESSION

6. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the session of the Working Group and welcomed the participants.

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

7. Ms. Marie Kraus (Switzerland) was unanimously elected as Chair of the Working Group, and Ms. Eun Rim Choi (Republic of Korea) and Ms. Sengül Kultufan Bilgili (Turkey) were unanimously elected as Vice-Chairs.

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

AGENDA ITEM 3: ADOPTION OF THE AGENDA

9. The Working Group adopted the draft agenda (document H/LD/WG/5/1 Prov.) without modification.

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE FOURTH SESSION OF THE WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE HAGUE SYSTEM FOR THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

10. Discussions were based on document H/LD/WG/4/7 Prov.

11. The Working Group adopted the draft report (document H/LD/WG/4/7 Prov.) without modification.

AGENDA ITEM 5: PROPOSAL FOR AMENDMENTS TO RULE 5 OF THE COMMON REGULATIONS UNDER THE 1999 ACT AND THE 1960 ACT OF THE HAGUE AGREEMENT

12. Discussions were based on document H/LD/WG/5/2.

13. Following the intervention made by the Delegation of the United States of America, the Secretariat made two alternative proposals for amendments, either adding a new paragraph to Rule 5 or a new subparagraph to Rule 12(3).

14. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 5, as contained in the Annex to document H/LD/WG/5/2, with addition of a new paragraph (5) to Rule 5 as set out in the Annex 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, 2017.

AGENDA ITEM 6: PROPOSAL FOR A NEW RULE RELATING TO AMENDMENTS TO THE INDICATIONS CONCERNING THE IDENTITY OF THE CREATOR

15. Discussions were based on document H/LD/WG/5/3.

16. Following the intervention made by one delegation, which expressed its discomfort with the proposal due to the constraints of the substantive examination carried out by its Office, the Chair noted that the discussion on the proposal could continue in the next session.

17. The Chair concluded that the Secretariat would prepare a revised document, taking into account the different positions expressed by the delegations, in order to further consider this proposal at the sixth session of the Working Group, which would take place from June 20 to 22, 2016.

AGENDA ITEM 7: PROPOSAL FOR RECOMMENDATIONS RELATING TO THE DISCLOSURE OF AN INDUSTRIAL DESIGN IN AN INTERNATIONAL APPLICATION

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

19. All the delegations and representatives of user groups were in favor of establishing the proposed Guidance, and made comments on the proposed Guidance prepared by the Secretariat.

20. The Chair concluded that all the comments made by the delegations and representatives of user groups would be taken into account and further comments could be submitted to the Secretariat in writing by December 31, 2015. The Secretariat would prepare a revised Guidance and distribute it to all the Contracting Parties whose Office is an "Examining Office", as referred to in footnote 1 of document H/LD/WG/5/4, and also to the user groups, for comments. The final Guidance, prepared in consultation with the Examining Offices, would be published on the WIPO website. The list contained in the last page thereof would be updated as further Contracting Parties with an Examining Office join the Hague System.

AGENDA ITEM 8: CONSIDERATIONS RELATING TO THE POSSIBLE INTRODUCTION OF SIMULTANEOUS LIMITATIONS IN INTERNATIONAL APPLICATIONS AND OTHER AMENDMENTS TO THE COMMON REGULATIONS UNDER THE 1999 ACT AND THE 1960 ACT OF THE HAGUE AGREEMENT

21. Discussions were based on document H/LD/WG/5/5.

22. The Chair concluded that some delegations were in favor of introducing the concept of simultaneous limitations in international applications. However, the Chair noted that since there was not yet enough experience with refusals issued by Examining Offices, the discussion was premature in this session. Therefore, the need of this concept could be better assessed in the upcoming sessions.

AGENDA ITEM 9: CONSIDERATIONS RELATING TO A POSSIBLE REVISION OF THE SCHEDULE OF FEES

23. Discussions were based on document H/LD/WG/5/6.

24. Some delegations were in support of the proposed addition of subparagraph (b) to Rule 14(1) of the Common Regulations, but one delegation was not comfortable with the proposal. Regarding a possible revision of the Schedule of Fees, several delegations supported the idea that the fees be revised so as to allow the International Bureau to cover its expenses, suggesting alternative approaches to achieve this goal, but many indicated that they could not support the idea of a possible designation-tied basic fee.

25. The Chair concluded that the discussion on the proposed subparagraph (b) to Rule 14(1) would continue in the sixth session of the Working Group.

26. The Chair concluded that for the sixth session the Secretariat would prepare some scenarios for a revision of the Schedule of fees, which would be the basis for further discussions.

AGENDA ITEM 10: OTHER MATTERS

27. The Secretariat referred to comments made by some delegations requesting to include more granular data in the international registration, for example, concerning descriptions for designs. In this regard, the Secretariat informed the Working Group that it intended to issue a survey in order to assess what level of granularity would be beneficial for Offices.

AGENDA ITEM 11: SUMMARY BY THE CHAIR

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

AGENDA ITEM 12: CLOSING OF THE SESSION

29. The Chair closed the session on December 16, 2015.

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

(as in force on [January 1, 2017])

~~Irregularities in Postal and Delivery Services~~ Excuse of Delay in Meeting Time Limits

[...]

(3) [Communication Sent Electronically] Failure by an interested party to meet a time limit for a communication addressed to the International Bureau and submitted by electronic means shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau, that the time limit was not met because of failure in the electronic communication with the International Bureau, or which affects the locality of the interested party owing to extraordinary circumstances beyond the control of the interested party, and that the communication was effected not later than five days after the electronic communication service was resumed.

~~(34)~~ [Limitation on Excuse] Failure to meet a time limit shall be excused under this Rule only if the evidence referred to in paragraph (1), ~~or~~ (2) or (3) and the communication or, where applicable, a duplicate thereof are received by the International Bureau not later than six months after the expiry of the time limit.

(5) [Exception] This rule shall not apply to the payment of the second part of the individual designation fee through the International Bureau as referred to in Rule 12(3)(c).

[Annex II follows]



H/LD/WG/5/INF/1
ORIGINAL: FRANÇAIS / ANGLAIS
DATE: 16 DÉCEMBRE 2015 / DECEMBER 16, 2015

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

**Cinquième session
Genève, 14 – 16 décembre 2015**

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

**Fifth Session
Geneva, December 14 to 16, 2015**

**LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS**

*établie par le Secrétariat/
prepared by the Secretariat*

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