

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

**Sixth Session**  
**Geneva, June 20 to 22, 2016**

### 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 20 to 22, 2016.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Democratic People’s Republic of Korea, Denmark, Estonia, Finland, France, Germany, Ghana, Hungary, Italy, Japan, Lithuania, Norway, Poland, Republic of Korea, Republic of Moldova, Romania, Senegal, Suriname, Switzerland, Turkey, Turkmenistan and the United States of America (23).
3. The following States were represented as observers: Algeria, Brazil, Cameroon, Canada, China, Czech Republic, Indonesia, Kazakhstan, Madagascar, Mexico, Philippines, Russian Federation, Saudi Arabia, Thailand, United Kingdom and Zimbabwe (16).
4. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: *Association française des praticiens du droit des marques et des modèles* (APRAM), European Communities Trade Mark Association (ECTA), International Association for the Protection of Intellectual Property (AIPPI), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA) and MARQUES – Association of European Trademark Owners (6).
5. The list of participants is contained in Annex II to this document.

## **AGENDA ITEM 1: OPENING OF THE SESSION**

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

7. The Director General recalled that since the last session of the Working Group, the Democratic People's Republic of Korea, which was already a member of the Hague Union, had deposited its instrument of accession to the Geneva (1999) Act of the Hague Agreement on June 13, 2016, bringing the number of Contracting Parties to the Act to 51. The total number of Contracting Parties to the Hague Agreement stood at 65. The Director General welcomed the accession of the Democratic People's Republic of Korea to the 1999 Act, which would come into force on September 13, 2016.

8. The Director General further recalled that the 1999 Act had entered into force with respect to Turkmenistan on March 16, 2016, and welcomed the Delegation of Turkmenistan, which was participating for the first time in the Working Group in its new capacity as a member of the Hague Union.

9. The Director General noted that, in 2015, there had been an increase of 40.6 per cent in respect of international applications filed, and of 13.8 per cent in respect of industrial designs contained in those applications, compared to 2014. In 2015, 4,111 international applications containing 16,435 industrial designs were filed.

10. The Director General also observed that during the first five months of 2016, there had been a 70.8 per cent increase in the number of applications compared to the same period in 2015. However, this increase could be reduced in the course of the year, since the 1999 Act was not active with respect to Japan and the United States of America during the first five months of 2015.

11. The growth in the number of international applications also originated from new members, predominantly Japan, the Republic of Korea and the United States of America, and from the longer-standing members, where the user-base has grown as a result of the Hague System now offering a more attractive system in that it offered a broader geographical coverage.

12. The Director General remarked that the recent accessions by Contracting Parties with Examining Offices had had a profound impact on the operations of the Hague System. That evolution must be closely monitored before any proposal for future development of the Hague System could be made.

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

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

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

15. The Chair welcomed the accession of the Democratic People's Republic of Korea to the 1999 Act and the Delegation of Turkmenistan for participating, for the first time, as a member of the Hague Union in the Working Group. The Chair further observed that the Hague System was facing geographical expansion and stressed the importance of a simple, easily accessible and user-friendly Hague System.

### **AGENDA ITEM 3: ADOPTION OF THE AGENDA**

16. The Working Group adopted the draft agenda (document H/LD/WG/6/1 Prov.) without modification.

### **GENERAL STATEMENTS**

17. The Delegation of the Democratic People's Republic of Korea referred to its accession to the 1999 Act, as well as to its ratification of the Singapore Treaty on the Law of Trademarks on June 13, 2016, and its ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled and the Beijing Treaty on Audiovisual Performances on February 19, 2016. It was the ambition of the Government of the Democratic People's Republic of Korea to develop every sector of national economy by science and technology, fully combined with intellectual property. Industrial design was an important aspect of government policy. The Delegation thanked the International Bureau of WIPO for its assistance and advice, as manifested by the organization of a national workshop on the international registration of industrial designs, in 2013.

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

18. The Working Group adopted the draft report (document H/LD/WG/5/8 Prov.) without modification.

### **AGENDA ITEM 5: REVISED PROPOSAL FOR AMENDMENTS TO RULES 21 AND 26 OF THE COMMON REGULATIONS**

19. Discussion was based on document H/LD/WG/6/2.

20. The Secretariat introduced the document.

21. The Delegation of Japan expressed its support to the proposed amendments to Rules 21 and 26 of the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement, explaining that under its national legislation the name and address of the creator must be contained in the application. The Delegation indicated that it would be useful to add information concerning the creator subsequently to the International Register, if such information was not included in an international application at the time of filing. The Delegation also expressed its support for the proposal concerning the Schedule of Fees, and agreed with the proposal concerning the entry into force of the revised Common Regulations. Regarding the proposal of recording a subsequent change in the name and/or address of the creator in the International Register, the Delegation explained that under its domestic law, such information was already required at the time of filing an application.

22. The Delegation of the United States of America expressed its concern regarding some points of the proposal to amend Rule 21. The Delegation supported the first proposal concerning the provision of the name and address of the creator, where none was provided in the international application. That proposal would not affect the national practice in the United States of America, and would provide more information. Regarding the second proposal to allow subsequent changes in the name and/or address of the creator, the Delegation invited other delegations to explain the practices of their Offices as to subsequent changes in the name

or address of the creator. The Delegation further explained that under the national law of the United States of America, the change of the name of the creator required a correction of the "Application Data Sheet" (ADS) and a corresponding fee. No proof for a subsequent change of name was requested. The change of the address of the creator could be requested by providing a corrected ADS and was not subject to the payment of a fee. The Delegation added that there was no mechanism to change the name or address of the inventor after the patent was issued, or after the payment of the issue fee, which under the Hague System was the second part of the individual designation fee.

23. The Delegation of the African Intellectual Property Organization (OAPI) explained that its Office had concerns relating to the first proposal regarding the provision of the name and address of a creator in the application, as under OAPI legislation, those requirements had to be met at the stage of filing the application. Furthermore, its legislation did not provide for the possibility of changing the name of the creator after registration. The Delegation welcomed the opportunity to receive more information on the practice of other Offices.

24. The Delegation of the Russian Federation expressed its support for the proposed amendments. Under the legislation of the Russian Federation, information on the creator was required although it was not obligatory at the time of filing. The Delegation was in favor of establishing a mechanism in the Hague System which would allow for inserting the name of the creator in the International Register.

25. The Delegation of Zimbabwe stated that it was planning to accede to the Hague System and supported the proposed amendments. The Delegation explained that the legislation of Zimbabwe required the name, address and nationality of the creator to be included in the application and also provided for the possibility of changing those indications, and of correcting clerical mistakes or errors; however, proof supporting such changes was required.

26. The Delegation of Norway expressed its support for the proposed amendments in their entirety and reported that to conform to the first proposal, Norway was considering modifying its legislation so that the indication of the creator in the application would not be mandatory.

27. The Delegation of the United States of America asked whether Article 16(2) of the 1999 Act was applicable if under the national law there was no mechanism to implement the recording referred to in paragraph (1) of Article 16, such as "limitation" and "renunciation", and what the effect of a change under the proposed rule would be, if in practice it could not be given effect in a Contracting Party.

28. In reply to the questions raised by the Delegation of the United States of America, the Secretariat recalled that, in accordance with Article 16(2) of the 1999 Act, a recording of the change in the International Register should have the same effect as if it had been made in the register at the national/regional Office. The basis for the proposals discussed was the understanding that Article 16(2) did not compel a Contracting Party to recognize the effects of a recording in the International Register, if such type of recording was not possible under the national/regional system, or if the "time-window" for making such a recording had elapsed. The Secretariat further clarified that the purpose of the proposed modification of Rule 21(1)(a)(v) was to facilitate procedures at the national/regional level. The Secretariat further indicated that a recording of "renunciation" or "limitation" of an international registration could have the effect of a "cancellation" in countries with a procedure for the cancellation of a national application or registration. Concerning a possible discrepancy in the name of the creator between the national register and the International Register, pursuant to Rule 22 of the Common Regulations, the international registration could be corrected and such correction could be refused by any designated Contracting Party.

29. The Representative of AIPPI raised concerns about the possibility that the change in the name of the creator would not be a simple formality but could instead have an important effect in countries where rights were vested initially in the creator, and where such a change could be made for bad or fraudulent reasons.
30. The Delegation of the United States of America echoed the observations of the Representative of AIPPI and observed that any changes in the name of the creator should be made with caution. The Delegation also pointed out that the reason for the proposed rule seemed to be the publicity of such a change in the name of the creator.
31. Following the intervention by the Delegation of OAPI, the Secretariat clarified that under the Hague System, the requirement of the name of the creator in the international application was optional, unless a designated Contracting Party had made a declaration under Article 5(2)(b)(i) of the 1999 Act or Rule 8(1) of the Common Regulations. Nevertheless, the proposal to amend Rule 21 would allow OAPI or the Norwegian Industrial Property Office to insert the indication of the creator in respect of an international registration designating their countries.
32. The Representative of AIPPI pointed out that the change of address was more innocuous than the change in the name of the creator. In some jurisdictions, the law required a declaration or an oath as evidence of a legally valid change of name. A declaration could also be required in cases of a change in name of co-inventors or co-designers. The Representative raised concerns of abuse in changing the name of the creator and emphasized the need to protect the substantive rights of the creator. He compared this issue with copyright where the author retains his initial rights in his work.
33. The Delegation of China expressed its interest in hearing the views of the other delegations and the Secretariat in respect of the creator's personal rights and their linkage with the Hague System and national laws.
34. The Delegation of Switzerland explained that under its national law, the name of the creator could not be changed after registration. However, the Delegation expressed support for the proposal, which would allow for a mechanism to update the data in the International Register.
35. The Chair noted that the majority of the delegations having taken the floor were in favor of proposed Rule 21(1)(a)(v). The Chair requested the delegations to comment on proposed Rule 21(2)(vi).
36. The Delegation of the United States of America expressed flexibility as concerns the first part of this provision, but emphasized its concerns regarding the change of the name or address of the creator, and called for more discussion on this issue, as the rationale, urgency and need for such a proposal were unclear.
37. In reply to the intervention by the Delegation of the United States of America, the Secretariat quoted paragraph 3 of document H/LD/WG/5/3: "Occasionally, the International Bureau receives a request from the holder of an international registration to record a change in the name or address of the creator in the International Register. Such a change may occur as often as a change in the name or address of the holder, for instance, as a result of the creator's moving to a new address or, in the case of a natural person, a change in marital status." The Secretariat added that the rationale for the proposal was publicity of the creator's rights. Finally, the Secretariat explained that the concerns and worries expressed seemed not to affect the change in the address of the creator.

38. The Delegation of the United States of America emphasized that its concerns also extended to the application of Article 16(2), when a possible discrepancy between their national register and the International Register could arise in respect of the change of address or in the name of the creator. The Delegation stressed that it was interested in understanding how the system would operate in such a situation. Finally, the Delegation underlined the lack of safeguards of the rights of the creator and proposed to work on an improved wording of the proposed amendments to Rule 21.

39. The Representative of JPAA and MARQUES expressed support for the proposed amendments to Rule 21 since it was not rare for users to request the recording of the change in the name or address of the creator.

40. Following discussions with the Delegation of the United States of America on the improved wording of the proposed amendments to Rule 21, the Secretariat introduced the revised proposal containing a proposed new paragraph 9 under Rule 21, which was considered as a safeguard and to alleviate concerns, especially in case of discrepancy between recordings in the International Register and recordings in the national register of a Contracting Party.

“(9) [*Recording of a Change in the Name of the Creator*] Any recording of a change in the name of the creator under paragraph (1)(a)(v) shall be void *ab initio* if such a recording concerns a change in the person of the creator.”

41. Following a proposal by the Delegation of the United States of America, the Secretariat advanced some minor changes to the wording of proposed Rule 26(1)(iv), as follows: “changes in ownership and mergers, changes of name or address of the holder, renunciations, limitations, provisions of the name and address of the creator and changes in the name or address of the creator recorded under Rule 21.” Concerning the entry into force of the proposals, the Secretariat informed the Working Group that as there was an ongoing process of modernization of the IT-based administration of the Hague System and no new features could be added to the International Register for the time being. Therefore, the Secretariat proposed to recommend to the Assembly of the Hague Union, that the proposal to amend Rules 21 and 26 and the Schedule of Fees come into force at a later date, to be determined by the International Bureau.

42. The Chair concluded that the Working Group favorably considered the submission of a proposal to amend the Common Regulations with respect to Rules 21 and 26 and to the Schedule of Fees, as contained in the Annex to document H/LD/WG/6/2, with minor amendments and the addition of a new paragraph (9) to Rule 21, for adoption by the Assembly of the Hague Union. The date of entry into force would be determined by the International Bureau.

## **AGENDA ITEM 6: REVISED PROPOSAL FOR AMENDMENTS TO RULE 14 OF THE COMMON REGULATIONS**

43. Discussion was based on document H/LD/WG/6/3 Rev.

44. The Secretariat introduced the document.

45. The Delegation of Norway noted that the proposal was of particular interest to Norway as an ePayment system, similar to the Hague System, would be operational in its Office in the fall. That system would encourage the applicant to pay at the time of the application, contrary to the current system under which the bill was sent to the applicant at the time of receipt of the application, giving a one-month time limit to pay, similar to the proposed amendment. While the

Delegation expressed its support of the proposed amendments, it had some concerns regarding the influence this proposal would have on the filing date. The Delegation wondered if an invitation concerning the correction of an irregularity affecting the filing date was sent without the required amount being paid.

46. The Delegation of the United States of America echoed the statement of the Delegation of Norway. The Delegation expressed its concern regarding the loss of rights of applicants. It was not satisfied with what would be required under the proposal, particularly with only one month allowed. As regards so-called frivolous filings due to applicants experimenting with the system, the Delegation mentioned that a possible solution could be found in the E-filing interface by providing a sandbox which would allow applicants to gain experience without actually filing. Furthermore, the Delegation highlighted that it was of the view that the framework of the system already provided some flexibility for the International Bureau to notify the applicant of irregularities before completing full examination, allowing a three-month period. The Delegation also believed that setting a one-month period to correct an element affecting the filing date would not be necessary, as the applicant already had significant incentive to respond in a timely manner. On the contrary, for those applicants filing long distance from the International Bureau, the one-month period could be considered short. Finally, the Delegation expressed additional concerns over the systematic adoption of a practice of piecemeal examination.

47. The Delegation of Japan expressed its support for the proposal and highlighted that the allocation of the resources of the International Bureau in conducting a formality examination could be used more appropriately to sustain the operations of the Hague System. The Delegation added that the proposed amendment would be beneficial to applicants in terms of minimizing the postponement of the filing dates, and considered that the proposed one-month period was reasonable enough for applicants to respond.

48. The Delegation of France supported the proposal, noting that it would make the system more efficient both in terms of preservation of the filing date and balancing the finances of the system itself.

49. The Secretariat recalled that the legal basis for the duty of examination of the International Bureau was in Article 8(2)(a) of the 1999 Act, which stated that if the applicant did not comply with the invitation to correct the international application within the prescribed time limit, the application would be considered abandoned. The Secretariat noted that the concerns expressed by the Delegation of Norway had also been raised earlier by the Delegation of Denmark, and explained that the international application would be considered abandoned only if the applicant had failed to submit any observation or to contact the International Bureau even by e-mail or telephone. The Secretariat also underlined differences in the wording of Rule 14(3) and that of Article 8(2)(a). The former appearing stricter than the latter, however, the Secretariat confirmed that the International Bureau's practice had always been in line with Article 8, in that everything that the applicant had done during the three-month period, such as partial payment, phone calls, observations, was taken as an intent to continue the application. Moreover, the Secretariat clarified that if this provision was adopted, the International Bureau would commit itself to reinforce its internal processes to detect the absence of the necessary elements for the establishment of the filing date. The Secretariat recalled that this provision favored the applicants and its purpose was to avoid the applicant having to wait for the completion of the examination of application by the International Bureau. As regards the suggestion of the Delegation of the United States of America to provide the E-filing interface with a sandbox to allow the applicant to gain experience in the application process, the Secretariat opined that it could easily be confused with a real filing and therefore could not be supported. As to the E-filing interface, the Secretariat underlined that the E-filing Portfolio Manager allowed the applicants to send corrections of irregularities to the International Bureau through that interface.

50. The Delegation of the United States of America restated its view that in the current system the International Bureau could send an irregularity letter without completing full examination. The Delegation stressed that the only difference was the time limit for responding, which would be one month instead of the current three months. The Delegation was interested in hearing the views of the users on the proposed one-month time limit and the potential risk with respect to the filing date.

51. The Representative of AIPPI pointed out that the reference to the “said amount” in proposed Rule 14(1)(b)(ii) was unclear as to whether it referred to the amount received or to the basic fee received for one design. The Representative also requested clarification on the meaning of “one design”, given that some countries consider one design as being one set of drawings, while other countries consider the unity of one design. Furthermore, the Representative suggested that the three-month period should be considered as a virtue of the system and expressed disquiet that a majority of *bona fide* users operating in good faith would have to suffer a reduction to a one-month period because some people were experimenting with the system. Thus, from the users’ perspective, it would be preferable to allow the three-month period, or to insert a provision allowing *bona fide* applicants to continue their applications after one month.

52. The Delegation of Japan requested clarification on the proposed one-month period, as to whether the three-month period would be considered as the total length of the time given to applicants to correct all irregularities, or the full three-month period would be given for correcting other irregularities after a response was sent to the International Bureau within one month.

53. In reply to the intervention of the Delegation of the United States of America, the Secretariat explained that the proposed one-month period was to set up a mechanism allowing the International Bureau to react immediately when an element was preventing the granting of the filing date, or in case of failure to pay the fee. The applicant would be invited immediately to provide the missing element or to pay at least the minimum amount of the fee corresponding to one design. In reply to the intervention of the Delegation of Japan, the Secretariat emphasized that if the International Bureau detected other deficiencies, it would have to invite the applicant to correct the deficiencies, providing the full new period of three months. The Secretariat revisited the observation of the Representative of AIPPI concerning the wording of “the fee for one design” and clarified that the proposed amendment referred to the basic fee for one design. The Secretariat stated that under the current system, the International Bureau had to ask the applicant for the full payment of the fees on the basis of the criteria provided in the application. On the contrary, with the implementation of the proposed rule, the International Bureau would only request from the applicant the payment of the basic fee in respect of one design. This new mechanism would allow the International Bureau to invest more time in processing the application. In reply to the disquiet expressed by the Delegation of the United States of America regarding the proposal, the Secretariat indicated that the one-month period could possibly be extended to a three-month time period. The Secretariat stressed that it was in the applicant’s interests to reply as soon as possible when the filing date requirement was missing.

54. The Chair asked whether a three-month period instead of a one-month period would make a difference in the proposal.

55. The Delegation of the United States of America reiterated its concerns regarding the proposed provision and recalled that usually the shortest period for any response was a three-month period, with a few exceptions of a two-month period which could be extended and revised for different scenarios. The Delegation finally stated that, all things considered, and in the interests of flexibility, it agreed with the three-month time period.



56. The Delegation of Japan expressed its concern about allowing a longer period than one month to respond to an invitation to correct an irregularity in question. The Delegation emphasized that such an extension of the period at the international level could lead to a delay in the designated Contracting Party, and would have a negative impact on other applications in terms of the first-to-file principle. The Delegation added that if three months were to be provided in proposed subparagraph (1)(b) of Rule 14, that would be meaningless, as subparagraph (1)(a) provided a time limit of three months for correcting all kinds of irregularities.

57. The Secretariat sought to allay the concerns expressed by the Delegation of Japan by recalling that the proposal was made in response to a small number of cases where a filing date element was missing and it would be in the applicant's best interests to promptly reply to this first invitation. Even in other possible more numerous situations where no fees had been paid, there would not be two three-month periods in each instance.

58. The Representative of AIPPI observed that while a one-month period could seem long for certain users, the three-month period was generally accepted as an appropriate period to deal with foreign law firms and with foreign agents; therefore, a three-month period would be by far preferable.

59. The Representative of MARQUES stated that from the users' perspective, in order to sort out obstacles with regard to a successful registration, the proposed one-month period could be accepted.

60. Taking into account the interventions of the delegations and user groups, the Chair proposed a two-month period as a compromise.

61. In reply to an intervention of the Delegation of the United States of America, the Secretariat clarified that this provision would be applied systematically to all applications.

62. The Delegation of the Russian Federation suggested a possible amendment to provide for a four-month period, as the total period, to correct irregularities other than irregularities in the payment of fees, which should be one month.

63. The Delegation of Hungary requested clarification as to whether changing from one month to three months was referring to Rule 14(1)(b) subparagraph (i) or (ii), as the two provisions were dealing with two different situations.

64. The Delegation of Japan emphasized that, if a longer period than one month were to be introduced, additional measures to avoid any delay in registering international applications should be provided.

65. The Delegation of the United States of America expressed its concern about applying the proposed provision systematically, as some discrepancies, such as the exchange rate between the U.S. dollar and the Swiss franc, could affect the situation. The Delegation observed that if the intent was to address frivolous cases, it could be considered that such a proposal could increase the work and complexity of the International Bureau in having to send more irregularity letters. The Delegation further reiterated its concerns regarding the one-month period and echoed the observations of the Representative of AIPPI.

66. In reply to the different interventions of the delegations and representatives, and to address the concerns expressed by the Delegation of the United States of America, the Secretariat made a new proposal to amend Rule 14(1)(b)(i), which would remove the time limit: "where the International Bureau finds that the international application contains an irregularity entailing a postponement of the filing date of the international application, as prescribed in paragraph (2), it may first invite the applicant to correct that irregularity". The Secretariat

recalled that the situation would affect a limited number of applications and clarified that it would not preclude any irregularity letter from being sent in accordance with Rule 14(1)(a), which allowed a three-month period.

67. The Delegation of Switzerland expressed its support for the new proposal, further stating that it had no objection to the one-month time limit for the payment of the basic fee, as in proposed subparagraph (ii), since this period would be counted from the moment of the submission of the notice from the International Bureau.

68. The Secretariat clarified that the said time limit would start from the date of the invitation to pay the basic fee, to make sure that the application was serious.

69. The Delegation of Japan supported the new proposal and the one-month period proposed in Rule 14(1)(b)(ii).

70. The Representative of AIPPI reiterated its concerns about the one-month period, which, from the users' perspective (attorneys who were acting on behalf of their clients with other councils in other countries), was still too narrow a time frame, and restated its proposal to provide a kind of reinstatement of the right of the applicant, in the interests of *bona fide* users.

71. The Representative of JPAA expressed its support for the statement by the Representative of AIPPI, adding that the one-month period was too short.

72. The Delegation of the Russian Federation expressed its support for the compromise proposal of a two-month period proposed by the Chair.

73. The Secretariat indicated that, following the intervention of the Representative of AIPPI, it wished to clarify that it was important to bear in mind the need not to prejudice a *bona fide* applicant. The Secretariat recalled its statement that the application should be systematic under the proposed rule and stated that it was keenly aware of the danger posed by the systematic issuance of an invitation. The Secretariat went on to clarify that what should then be systematic would be the detection of the payment of the basic fee, whether an application was frivolous or not.

74. Following the comments of the delegations and user groups, the Secretariat introduced a revised proposal of Rule 14(1). It had taken into account, in particular, the concerns expressed regarding the filing date of the international application. Thus, the new text of subparagraph (1)(b) would deal only with the amount of the fee received if it was less than the amount corresponding to the basic fee for one design, on the understanding that current paragraph (1) would already allow the International Bureau to issue an irregularity letter as soon as the absence of an element for the filing date is detected. New subparagraph (1)(b) should be applicable where the International Bureau considered that the application was not done in earnest. Moreover, the new proposal contained, as a compromise, a two-month period for the applicant to provide the payment corresponding to the basic fee for one design.

75. The Representative of INTA observed that the text of proposed subparagraph (b) could read as dealing only with a situation in which some fees, albeit insufficient, had been paid, while it was also certain to apply where no fee had been received by the International Bureau.

76. The Secretariat thanked the Representative of INTA and stated that the consistency of the proposal would be checked against other relevant provisions in the legal texts of the Hague System. The Secretariat further proposed that the Working Group recommend that the Hague Union Assembly should adopt this proposed Rule, subject to verification of the sentence proposed by the Representative of INTA.

77. The Chair noted that the members agreed on the proposed amendments and that the Secretariat would still verify the points raised by the Representative of INTA.

78. The Delegation of the United States of America stated that from the different interventions on this item, one of the balances that the Working Group was trying to strike concerned the time limits, in a bid to move the applications forward efficiently and not to cause delay with multiple examinations. The Delegation added that these issues involved rights, and a loss of rights would have serious consequences leading to abandonment. Therefore, the Delegation proposed, as a future task for the Working Group, that it would be beneficial to study a concept such as reinstatement of rights, in the context of the Hague System, as it was in the Patent Law Treaty and the draft Design Law Treaty.

79. The Representative of INTA supported the proposal of the Delegation of the United States of America, and recalled that such provision for reinstatement of rights had recently been introduced in the Madrid Common Regulations.

80. The Representative of JPAA stated that the two-month period would be sufficient and beneficial for applicants in such a situation.

81. Taking into consideration the different views expressed by the delegations and representatives of user groups, the Secretariat made a revised proposal to amend Rule 14. The Secretariat returned to the point raised by the Representative of INTA, confirming that the proposed wording was consistent with other relevant provisions in the Common Regulations.

82. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 14, as set out in Annex II to the Summary by the Chair, for adoption by the Assembly of the Hague Union. The date of entry into force would be determined by the International Bureau.

#### **AGENDA ITEM 7: PROJECT ON INCREASED GRANULARITY CONCERNING THE DATA IN THE INTERNATIONAL REGISTER**

83. Discussion was based on document H/LD/WG/6/4.

84. The Secretariat introduced the document.

85. The Delegations of Canada, Japan, Norway, the Republic of Korea and the Russian Federation and the Representatives of AIPPI and MARQUES expressed their support for the implementation of a higher granularity of the data provided in the International Register.

86. The Representative of AIPPI raised the question of a potential subsequent increase in the costs for applications. The Secretariat stated that there would be no direct impact on the costs. In this context, the Delegation of the United States of America indicated its satisfaction with the response by the Secretariat. The Delegation was, however, interested in referencing any cost that the proposed change would entail.

87. The Delegations of Japan and the Czech Republic raised the question of whether the International Bureau planned to reorganize the data of the existing international registrations into the proposed structure. The Secretariat stated that a strategy should be identified either to normalize the previous data in the new manner or simply to build a new structure from a given day.

88. The Delegation of the Republic of Korea noted that where the description in an international application exceeded 100 words, each additional word was chargeable. The Delegation underlined that the manner of charging a description, where the description were to

be tied with each single design, should be reviewed. The Delegation of the United States of America echoed this proposal. The Secretariat stated that it took good note of the remark and that such an evolution would be part of the process, once the proposed approach was supported.

89. The Delegation of the Russian Federation expressed its support for the proposal, which appeared to be highly relevant to the IT system being prepared by the Office of the Russian Federation.

90. The Delegation of the United States of America stated that, although it was interested in the topic, the Delegation could not take any position at this stage because of the potential costs and legal effects that should be taken into account. The Delegation stressed that, in particular, concepts such as a design-specific publication date and design-specific designations referred to in paragraph 8 of the document could make the Hague System vastly more complex. The Delegation invited the Working Group to consider not only the benefits but also the potential detriments that might be occasioned by the proposed information structure, referring to an instance where applicants would need to mechanically copy and paste the same description for each design. The Delegation therefore requested more technical information concerning the ramifications of the proposed information structure that should be considered. The United States of America had a principle of unity of design, and therefore all data in a singular fashion was desirable. Nevertheless, the Delegation was open to taking into account the positions of other Offices.

91. The Representative of JPAA welcomed the proposal, provided that fees would not be increased. The Representative indicated that it was important for a description to be tied to each design.

92. In reply to the interventions of the Delegation of the Russian Federation and the Representative of AIPPI, the Secretariat clarified that the proposed structure allowed the indication of multiple creators for multiple designs.

93. Following an intervention by the Representative of MARQUES, the Representative of AIPPI clarified that it would prefer the system to be flexible enough to provide a single description for several designs or a unique description for each design.

94. In view of adopting the proposed information structure change, the Delegation of Japan requested the International Bureau to present the Document Type Definition (DTD) to be used and to notify the Japan Patent Office when it would be released.

95. Following the intervention of the Delegation of Japan, the Secretariat clarified that, once a stage of implementation was reached, the International Bureau would provide the Offices with all the necessary documentation, including DTD, needed to implement the changes.

96. The Chair noted that the Working Group welcomed the proposed information structure of international registrations, as illustrated in Annex II to document H/LD/WG/6/4, and that the Working Group invited the International Bureau to present an analysis on the practical, technical and legal implications of the proposed information structure to be discussed at the seventh session of the Working Group.

## **AGENDA ITEM 8: RECENT TRENDS UNDER THE HAGUE SYSTEM**

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

98. The Secretariat introduced the document.

99. A number of Delegations and Representatives of user groups expressed their interest in the data provided and encouraged the International Bureau to continue gathering and providing such information.

100. The Delegation of China expressed its interest in becoming a member of the Hague System and suggested that Chinese become an official language of the Hague System to assist the users of the system.

101. The Delegation of Mexico expressed its interest in becoming a member of the Hague System and noted the usefulness of the document under consideration as giving a true picture of the Hague System.

102. The Representative of AIPPI expressed interest in the document under consideration and noted that users were still waiting for harmonization in the filing of applications.

103. In reply to a question raised by the Delegation of China, the Secretariat clarified the notion of “designation-families” referred to in Chapter IV of the document, which were selected for illustrative purposes.

104. The Delegation of the Czech Republic observed that the average number of designs per international registration had been decreasing, as opposed to the huge increase in the number of international registrations. Accordingly, the Delegation asked the Secretariat if the consequential increase of the income of the International Bureau could be considered as a positive trend, in terms of its workload, and in the context of the financial situation of the Hague System.

105. Following the intervention by the Delegation of the Czech Republic, the Secretariat confirmed that it was a positive trend, while drawing the attention of the Working Group to the fact that the International Bureau’s workload also depended on other parameters, particularly the nature of the designations made by the applicant.

106. The Delegation of the Russian Federation noted two distinct trends regarding international registrations. One was the tendency for some international applications to be filed after a national application whose priority was claimed. Another consequential trend was a low rate of self-designations.

107. The Secretariat indicated that these statistics were prepared precisely because the filing strategies remained unknown for the time being and that conclusions reached so far were only assumptions.

108. The Chair concluded that the Working Group took note of the information contained in document H/LD/WG/6/5.

## **AGENDA ITEM 9: OTHER MATTERS**

109. The Secretariat expressed its gratitude for comments received from certain Offices and user groups on the revised version of the *Guidance on Preparing and Providing Reproductions in Order to Forestall Possible Refusals on the Ground of Insufficient Disclosure of an Industrial Design by Examining Offices* (hereinafter referred to as the “Guidance”). The Secretariat informed the Working Group that the Guidance would be made available on the WIPO website in July 2016.

110. Following a question by the Representative of AIPPI, the Secretariat clarified that no further comments could be accepted for the existing version of the Guidance, but comments were always welcome in general, as the Guidance should be open to further development and would be updated as the years passed.

111. The Delegation of the United States of America expressed its interest in using Digital Access Service for Priority Documents (DAS) for the exchange of priority documents for industrial designs and encouraged other delegations to give it consideration.

112. The Secretariat stressed that DAS was a solution to alleviate the growing burden on users, as the Hague System expanded to examining jurisdictions.

113. The Delegation of the United States of America proposed that the International Bureau study the concept of reinstatement of rights in the context of the Hague System.

#### **AGENDA ITEM 10: SUMMARY BY THE CHAIR**

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

#### **AGENDA ITEM 11: CLOSING OF THE SESSION**

115. The Chair closed the session on June 22, 2016.

[Annexes follow]



H/LD/WG/6/6  
ORIGINAL: ENGLISH  
DATE: JUNE 22, 2016

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

**Sixth Session**  
**Geneva, June 20 to 22, 2016**

### 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 20 to 22, 2016.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Democratic People’s Republic of Korea, Denmark, Estonia, Finland, France, Germany, Ghana, Hungary, Italy, Japan, Lithuania, Norway, Poland, Republic of Korea, Republic of Moldova, Romania, Suriname, Switzerland, Turkey, Turkmenistan and the United States of America (22).
3. The following States were represented as observers: Algeria, Brazil, Cameroon, Canada, China, Czech Republic, Indonesia, Kazakhstan, Madagascar, Mexico, Philippines, Russian Federation, Saudi Arabia, Thailand, United Kingdom and Zimbabwe (16).
4. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: *Association française des praticiens du droit des marques et des modèles* (APRAM), European Communities Trade Mark Association (ECTA), International Association for the Protection of Intellectual Property (AIPPI), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA) and MARQUES – Association of European Trademark Owners (6).

### **AGENDA ITEM 1: OPENING OF THE SESSION**

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

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

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

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

### **AGENDA ITEM 3: ADOPTION OF THE AGENDA**

8. The Working Group adopted the draft agenda (document H/LD/WG/6/1 Prov.) without modification.

### **AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE FIFTH 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/5/8 Prov.

10. The Working Group adopted the draft report (document H/LD/WG/5/8 Prov.) without modification.

### **AGENDA ITEM 5: REVISED PROPOSAL FOR AMENDMENTS TO RULES 21 AND 26 OF THE COMMON REGULATIONS**

11. Discussions were based on document H/LD/WG/6/2.

12. Taking into account the concerns expressed by the Delegation of the United States of America, the Secretariat made a proposal to add a new paragraph to Rule 21.

13. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rules 21 and 26 and to the Schedule of Fees, as contained in the Annex to document H/LD/WG/6/2, with minor amendments, with the addition of a new paragraph (9) to Rule 21, as set out in Annex I to the Summary by the Chair, for adoption, to the Assembly of the Hague Union. The date of entry into force would be determined by the International Bureau.



#### **AGENDA ITEM 6: REVISED PROPOSAL FOR AMENDMENTS TO RULE 14 OF THE COMMON REGULATIONS**

14. Discussions were based on document H/LD/WG/6/3.
15. Taking into consideration different views expressed by the delegations and representatives of user groups, the Secretariat made a revised proposal to amend Rule 14.
  16. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 14, as set out in Annex II to the Summary by the Chair, for adoption, to the Assembly of the Hague Union. The date of entry into force would be determined by the International Bureau.

#### **AGENDA ITEM 7: PROJECT ON INCREASED GRANULARITY CONCERNING THE DATA IN THE INTERNATIONAL REGISTER**

17. Discussions were based on document H/LD/WG/6/4.
  18. The Chair noted that the Working Group welcomed the proposed information structure of international registrations, as illustrated in Annex II to document H/LD/WG/6/4, and that the Working Group invited the International Bureau to present an analysis on the practical, technical and legal implications of the proposed information structure to be discussed at the seventh session of the Working Group.

#### **AGENDA ITEM 8: RECENT TRENDS UNDER THE HAGUE SYSTEM**

19. Discussions were based on document H/LD/WG/6/5.
  20. The Chair concluded that the Working Group took note of the information contained in document H/LD/WG/6/5.

#### **AGENDA ITEM 9: OTHER MATTERS**

21. The Secretariat expressed its gratitude for comments received from certain Offices and user groups on the revised version of the *Guidance on Preparing and Providing Reproductions in Order to Forestall Possible Refusals on the Ground of Insufficient Disclosure of an Industrial Design by Examining Offices*. The Secretariat informed the Working Group that the Guidance would be made available on the WIPO website at the beginning of July 2016.
22. The Delegation of the United States of America expressed its interest in using Digital Access Service for Priority Documents (DAS) for the exchange of priority documents for industrial designs and encouraged other delegations to give it consideration.
23. The Delegation of the United States of America proposed that the International Bureau study the concept of reinstatement of rights in the context of the Hague System.

#### **AGENDA ITEM 10: SUMMARY BY THE CHAIR**

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

**AGENDA ITEM 11: CLOSING OF THE SESSION**

25. The Chair closed the sixth session on June 22, 2016.

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

(as in force on [...])

*Rule 21  
Recording of a Change*

(1) [*Presentation of the Request*] (a) A request for the recording shall be presented to the International Bureau on the relevant official form where the request relates to any of the following:

- (i) a change in the ownership of the international registration in respect of all or some of the industrial designs that are the subject of the international registration;
- (ii) a change in the name or address of the holder;
- (iii) a renunciation of the international registration in respect of any or all of the designated Contracting Parties;
- (iv) a limitation, in respect of any or all of the designated Contracting Parties, to one or some of the industrial designs that are the subject of the international registration;
- (v) [the provision of the name and address of the creator, or a change in the name or address of the creator, of any or all of the industrial designs that are the subject of the international registration.](#)

(b) The request shall be presented by the holder and signed by the holder; however, a request for the recording of a change in ownership may be presented by the new owner, provided that it is

- (i) signed by the holder, or
- (ii) signed by the new owner and accompanied by an attestation from the competent authority of the holder's Contracting Party that the new owner appears to be the successor in title of the holder.

(2) [*Contents of the Request*] The request for the recording of a change shall, in addition to the requested change, contain or indicate

- (i) the number of the international registration concerned,
- (ii) the name of the holder, unless the change relates to the name or address of the representative,
- (iii) in case of a change in the ownership of the international registration, the name and address, given in accordance with the Administrative Instructions, of the new owner of the international registration,
- (iv) in case of a change in the ownership of the international registration, the Contracting Party or Parties in respect of which the new owner fulfils the conditions to be the holder of an international registration,
- (v) in case of a change in the ownership of the international registration that does not relate to all the industrial designs and to all the Contracting Parties, the numbers of the industrial designs and the designated Contracting Parties to which the change in ownership relates,
- (vi) [in case of the provision of the name and address of the creator of the industrial design, the numbers of the industrial designs concerned, where the person is not a creator of all the industrial designs that are the subject of the international registration, and](#)
- (vii) the amount of the fees being paid and the method of payment, or instruction to debit the required amount of fees to an account opened with the International Bureau, and the identification of the party effecting the payment or giving the instructions.

[...]

(9) [Recording of a Change in the Name of the Creator] Any recording of a change in the name of the creator under paragraph (1)(a)(v) shall be void *ab initio* if such a recording concerns a change in the person of the creator.

*Rule 26*  
*Publication*

(1) [*Information Concerning International Registrations*] The International Bureau shall publish in the Bulletin relevant data concerning

- (i) international registrations, in accordance with Rule 17;
- (ii) refusals, with an indication as to whether there is a possibility of review or appeal, but without the grounds for refusal, and other communications recorded under Rules 18(5) and 18*bis*(3);
- (iii) invalidations recorded under Rule 20(2);
- (iv) changes in ownership and mergers, changes of name or address of the holder, renunciations, ~~and~~ limitations, provisions of the name and address of the creator and changes in the name or address of the creator recorded under Rule 21;
- (v) corrections effected under Rule 22;
- (vi) renewals recorded under Rule 25(1);
- (vii) international registrations which have not been renewed;
- (viii) cancellations recorded under Rule 12(3)(d);
- (ix) declarations that a change in ownership has no effect and withdrawals of such declarations recorded under Rule 21*bis*.

[...]

SCHEDULE OF FEES  
(as in force on [...])

*Swiss francs*

[...]

V. *Miscellaneous Recordings*

13. Change in ownership 144

14. Change of name and/or address of the holder

14.1 For one international registration 144

14.2 For each additional international registration of the same holder included in the same request 72

14*bis*.Provision of the name and address of the creator, or change in the name and/or address of the creator, of the industrial design

14bis.1 For one international registration 144

14bis.2 For each additional international registration included in the same request 72

[...]

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

(as in force on [...])

*Rule 14  
Examination by the International Bureau*

(1) [*Time Limit for Correcting Irregularities*] [\(a\)](#) If the International Bureau finds that the international application does not, at the time of its receipt by the International Bureau, fulfill the applicable requirements, it shall invite the applicant to make the required corrections within three months from the date of the invitation sent by the International Bureau.

[\(b\) Notwithstanding subparagraph \(a\), where the amount of the fees received at the time of receipt of the international application is less than the amount corresponding to the basic fee for one design, the International Bureau may first invite the applicant to make the payment of at least the amount corresponding to the basic fee for one design within two months from the date of the invitation sent by the International Bureau.](#)

[...]

(3) [*International Application Considered Abandoned; Reimbursement of Fees*] Where an irregularity, other than an irregularity referred to in Article 8(2)(b) of the 1999 Act, is not remedied within the time limits referred to in paragraphs [\(1\)\(a\) or \(b\)](#), the international application shall be considered abandoned and the International Bureau shall refund any fees paid in respect of that application after deduction of an amount corresponding to the basic fee.

[Annex II follows]



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**H/LD/WG/6/INF/1**  
**ORIGINAL: FRANÇAIS / ANGLAIS**  
**DATE: 22 JUIN 2016 / JUNE 22, 2016**

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

**Sixième session**  
**Genève, 20 – 22 juin 2016**

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

**Sixth Session**  
**Geneva, June 20 to 22, 2016**

**LISTE DES PARTICIPANTS/  
LIST OF PARTICIPANTS**

*établie par le Secrétariat/  
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Association française des praticiens du droit des marques et des modèles (APRAM)

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

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

Robert Mirko STUTZ, Co-Chair, Designs Team, Bern

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Vice-présidents/Vice-Chairs:	SOHN Eunmi (Mme/Ms.) (République de Corée/Republic of Korea) Sengül KULTUFAN BILGILI (Mme/Ms.) (Turquie/Turkey)
Secrétaire/Secretary:	Päivi LÄHDESMÄKI (Mme/Ms.) (OMPI/WIPO)

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

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

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