

WIPO



H/A/26/2
ORIGINAL: English
DATE: July 31, 2008

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

SPECIAL UNION FOR THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS
(HAGUE UNION)

ASSEMBLY

Twenty-Sixth (10th Extraordinary) Session
Geneva, September 22 to 30, 2008

STUDY ON THE IMPLICATIONS OF THE POSSIBLE INCLUSION OF SPANISH IN
THE LANGUAGE REGIME OF THE HAGUE SYSTEM

prepared by the International Bureau

I. INTRODUCTION

1. At the twenty-fourth session of the Assembly of the Hague Union (September 24 to October 3, 2007), the Delegation of Spain recalled that during the informal consultative meeting of Hague Union Members, held on May 4, 2007, it had proposed that the possibility of introducing Spanish as a working language of the Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter referred to as the “Hague Agreement”) be studied. Advocating that the system would become more attractive to prospective members as a result of this introduction, and making a parallel, in particular, with the Madrid system, the Delegation requested that the International Bureau study the possibility of introducing Spanish as a working language of the Hague system. The statement made by the Delegation of Spain was supported by the observer Delegations of Cuba and El Salvador.

2. Towards the end of that session, the Assembly took note of the request of the Delegation Spain, and of the support expressed by other Delegations, for a study to be carried out by the International Bureau about the possible inclusion of Spanish as a working language of the Hague system.

3. The present document contains the results of this study, commencing by reviewing briefly the current language regime under the Hague system.

II. CURRENT LANGUAGE REGIME OF THE HAGUE SYSTEM

4. The current language regime of the Hague system comprises two variants: on the one hand, a single language (French) regime, applicable to all international applications governed exclusively by the 1934 London Act of the Hague Agreement, as well as to any communication concerning such an application or the international registration resulting therefrom; and, on the other hand, a bilingual (English/French) regime, applicable in all other cases.

5. The international applications governed exclusively by the 1934 Act, as well as any communication concerning such an international application or the international registration resulting therefrom, shall be in French, as stipulated in Article 2 of the 1934 Act of the Hague Agreement and recalled in Rule 30(2)(a) of the Common Regulations under the 1999 Act, the 1960 Act and the 1934 Act (hereinafter referred to as “the Common Regulations”). This requirement cannot be modified without an amendment of Article 2 of the 1934 Act. Such a modification would necessitate a diplomatic conference and cannot be effected by virtue of a decision of the Assembly of the Hague Union.

6. All other international applications and international registrations under the Hague system are governed by the language regime established by Rule 6 of the Common Regulations. Under this Rule, English and French are the languages that can be used under the procedures, as follows:

“Rule 6 Languages

(1) [*International Application*] The international application shall be in English or French.

(2) [*Recording and Publication*] The recording in the International Register and the publication in the Bulletin of the international registration and of any data to be both recorded and published under these Regulations in respect of that international registration shall be in English and French. The recording and publication of the international registration shall indicate the language in which the international application was received by the International Bureau.

(3) [*Communications*] Any communication concerning an international application or the international registration resulting therefrom shall be

(i) in English or French where such communication is addressed to the International Bureau by the applicant or holder or by an Office;

(ii) in the language of the international application where the communication is addressed by the International Bureau to an Office, unless that Office has notified the International Bureau that all such communications are to be in English or that all such communications are to be in French;

(iii) in the language of the international application where the communication is addressed by the International Bureau to the applicant or holder unless the applicant or holder expresses the wish to receive all such communications in English although the international application was in French, or *vice versa*.

(4) [*Translation*] The translations needed for the recordings and publications under paragraph (2) shall be made by the International Bureau. The applicant may annex to the international application a proposed translation of any text matter contained in the international application. If the proposed translation is not considered by the International Bureau to be correct, it shall be corrected by the International Bureau after having invited the applicant to make, within one month from the invitation, observations on the proposed corrections.”

7. As the language regime applicable to international applications other than those governed exclusively by the 1934 London Act is set out in the Common Regulations (and not in the Acts of the Hague Agreement themselves), modification of it would not require an amendment of any of the treaties but only amendments by the Assembly of the Hague Union of the provisions of the Common Regulations.

Translation Workload for the International Bureau

8. The Common Regulations expressly provide that the translations needed for recordings in the International Register, publication in the *Industrial Designs Bulletin* and notifications to Offices and/or holders, are made by the International Bureau. The translations needed, in accordance with Rule 6(4), as mentioned above, concern all the textual data contained in the international application and referred to in Rule 15(2) and 17(2) of the Common Regulations, i.e., in particular, the product or products which constitute the industrial design or in relation to which the industrial design is to be used (with an indication as to which of these two types of relationship exists between the design and the product(s) in question). International applications may contain additional textual data, as specified in Rule 7(4) and (5) of the Common Regulations, among which, notably, a brief description of the reproduction or of the characteristic features of the industrial design that is the subject of the international application.

Statistics Concerning Translation of International Registrations

9. In 2007, the International Bureau recorded a total of 1,147 international registrations. Under Rule 6(2), all of these had to be recorded and published in both English and French. Virtually all of them could be filed either in English or French, as they were governed by either the 1999 Geneva Act and/or the 1960 Hague Act, or were mixed registrations under the 1934 London Act in combination with the 1999 Geneva Act and/or the 1960 Hague Act. Only a marginal number – just five – were governed exclusively by the 1934 London Act and therefore could only be filed in French.

Statistics Concerning Translation of Communications Other Than International Registrations

10. In 2007, in respect of all international registrations in force – 25,982 at the end of 2007 –, the International Bureau recorded 4,205 renewals and 3,507 other transactions¹. The translation of these data was computer assisted (see below) and required in practice little direct intervention by the translators of the International Bureau.

Translation Process

11. In the administration of the Hague system, the International Bureau is assisted by a system of computer programs (called DMAPS and MATCHES) which makes available a translation – into English or French – of most of the standard texts used as part of the international procedure (such as the text of notices of irregularities or texts used for the purposes of recordings, notifications and publication).

12. Thus, in practice, the intervention of the translators employed by the International Bureau is mainly (though not exclusively) required for: (a) the translation of the description of the product or products which constitute the industrial design or in relation to which the industrial design is to be used (with an indication as to which of these two types of relationship exists between the design and the product(s) in question) – which is required for all international registrations; and (b) the translation of the description of the reproduction or the characteristic features of the industrial design that is the subject of the international application – which occurs in respect of some 20 per cent of the international registrations. In 2007, for example, only 203 of the 1,147 international registrations recorded that year, contained a description of the reproduction or the characteristic features of the industrial design. However, if the number of Contracting Parties with an examining office requiring such type of description would increase in the years to come, the corresponding translation workload would, of course, increase accordingly.

13. The translation work required in connection with both types of description indicated in the previous paragraph amounts in only a few cases to more than one page of text. Any description exceeding 100 words is subject to the payment of an additional fee. In 2007, only four of the 1,147 international registrations recorded that year, contained a description of the product or products constituting the industrial design or in relation to which the industrial design was to be used (and related indications) exceeding 100 words. That same year, only 24 international registrations contained a description of the reproduction or the characteristic features of the industrial design subject of the international application exceeding 100 words.

14. Most of the other matters to be recorded, notified and published are independent of language (such as the number of the international registration concerned or the name and address of the holder) or are matters the translation of which is computer assisted. Where these computer-assisted translations remain of course under the control of the translators – which includes their regular adaptation and updating –, the workload relating thereto may be considered marginal for the purposes of the present document.

¹ These transactions concerned 315 changes in ownership; 956 changes in name or address; 2,111 entries concerning representatives (appointments, changes in name or address, renunciations and cancellations), 34 refusals, 49 withdrawals of refusals and 42 other changes (such as limitations or renunciations of international registrations, corrections, etc.).

15. In 2007, the translation workload under the Hague system amounted to about 17.5 translator days. On the basis of an estimated number of some 4,000 industrial design registrations in the years to come (see below), plus a proportionate number of other communications in respect of international registrations in force, the translation work involved would increase to some 57.8 translator days.

III. ADVANTAGES OF ADDING SPANISH TO THE WORKING LANGUAGES OF THE HAGUE SYSTEM

16. The main advantage of adding Spanish as a working language of the Hague system must be appraised in terms of potential new accessions. In fact, Spanish is an official language of 20 countries in the world (representing over 400 million people), of which only one (Spain) is currently a Contracting Party of the Hague system. However, it should be noted that recently two intergovernmental organizations have acceded to the 1999 Geneva Act of the Hague Agreement which comprise Member States that are hispanophone, namely the European Community – with Spain as hispanophone Member State – and the African Intellectual Property Organization (OAPI) – with Equatorial Guinea as hispanophone Member State.

17. It is felt that the inclusion of Spanish would operate as a clear and strong incentive for Spanish-speaking countries (especially those from the Latin-American region) to join the Hague system and/or would facilitate their accession process. Moreover, the inclusion of Spanish or the participation of new Spanish-speaking countries within the Hague system would also likely encourage the accession to the Hague system of new Contracting States (not necessarily hispanophone).

18. As regards users of the system, a possible extension of the geographical coverage of the Hague system would benefit both:

- industrial design owners established in the territories of the potential new Contracting Parties (who would be entitled to use the Hague system following the accession of their country of origin and, therefore, be in a position to obtain protection for their industrial designs with much fewer formalities and less cost); and

- current users of the system (who would then be in a position to designate those new Contracting Parties and obtain protection on a broader geographical scale).

19. Furthermore, it is clear that adding Spanish as a working language of the Hague system would be of immediate interest for those offices for which Spanish is an official language and which are already party to the Hague system, as well as for industrial design owners established in the territories of the Contracting Parties in question.

IV. IMPLICATIONS OF THE INCLUSION OF SPANISH AS A WORKING LANGUAGE OF THE HAGUE SYSTEM

Legal Implications

20. In order to proceed with a change of the current language regime of the Hague system, the Assembly of the Hague Union would need to amend Rule 6 of the Common Regulations. No draft amended provision has been prepared at this stage since it would first appear necessary that the Assembly pronounce itself on the matters set out in the present document. Following discussions within the Assembly of the Hague Union and the emergence of principles, concrete proposals for amendments of Rule 6 could then be submitted to the Assembly of the Hague Union at a future session.

Administrative Implications

21. If Spanish would become a new working language, translation into Spanish would be required of the eleven forms that exist for international applications and other requests for recording in the International Register, as well as of the e-filing interface and associated fee calculator and the Guide to the International Registration of Industrial Designs under the Hague Agreement. All these documents currently only exist in English and French. Making them available in Spanish is estimated to require some 15 translator days and some five additional working days for the administrative preparation of the texts concerned (three days) and the necessary legal checking by a legal officer (two days).

22. Moreover, it should be taken into account that each subsequent modification of the texts concerned would require an extra translation compared to the current situation. The same would apply in respect of the official information notices and explanatory brochures published by the International Bureau concerning the Hague system. Equally, as Spanish would become a working language for administrative purposes too, communications with Contracting Parties – such as through circular letters – and with the Assembly would also have to be prepared in Spanish. Although it is difficult to estimate the exact amount of working days required for the translation and administrative preparation concerned, as this would very much depend on the modifications concerned, the related operating costs could roughly be estimated at an annual average of some five translator days and five additional working days for the administrative preparation of the texts concerned (three days) and the necessary legal checking by a legal officer (two days).

Implications for Computer Programs

Standard Letters and Texts Contained in Computer Programs

23. In the administration of the Hague system, as previously noted, the International Bureau is assisted by a system of computer programs which makes available standard texts (in English and French) in an electronic form. These texts are used for the composition of various types of communications and notifications sent by the International Bureau to Offices and holders, in accordance with the provisions of the Hague system. They consist of:

- some 20 standard letters (which represent around 2,500 words); and

– some 250 standard texts (representing around 8,000 words), which are used in relation to irregularities contained in the international applications or other communications presented by Offices or holders.

24. The necessary adaptation of the system of computer programs used for the administration of the Hague system would require the translation into Spanish of those standard letters and texts. This exercise would require some 10 working days for one translator. The time necessary for the subsequent incorporation of the Spanish texts into the computer system would be marginal. Testing of the functioning of the system of computer programs with the new Spanish texts would require some 15 working days for one hispanophone industrial design examiner.

“Hague Express” IPDL Service

25. The *Hague Express* IPDL Service is a search tool available on WIPO’s Internet website containing, in particular, data concerning all international registrations recorded since January 1999. The adjustments needed in order to enable this service to present data from the International Register that was recorded in Spanish would require 10 working days for a computer specialist.

Implications for the Examination by the International Bureau of International Applications (and Other Communications) Filed in Spanish

26. As a result of the inclusion of Spanish in the language regime of the Hague system, the International Industrial Design Registry would be required to examine international applications and other communications filed in Spanish and to deal with related correspondence.

27. Based on the statistics under the Hague system, between 1993 and 2003 – when the European Community Design Regulation entered into force –, on average, about four per cent of the international registrations recorded were based on applications filed by an applicant from Spain. In real terms, in this period, the number of these international registrations varied from 121, in 1994, to 195, in 2000. Since 2003, the figures have been much lower, but the expectation is that they will increase again now that the European Community has acceded to the Geneva Act of the Hague Agreement².

28. On the assumption that the share of applicants from Spain under the Hague system will regain its level from before 2003 – i.e., some four per cent –, and that the total number of international applications will also regain its level from before 2003 – i.e., when, on average, some 4,000 international registrations were recorded –, the number of international applications that would be received in Spanish in the years to come would amount to some 160.

29. The examination by the International Bureau of those international applications and other communications relating to international registrations in force could at present be undertaken by existing staff within the International Industrial Design Registry.

² The accession came into force on January 1, 2008.

Implications Resulting from the Additional Translations of International Registrations and Other Communications Relating Thereto

30. The main consequence of the inclusion of Spanish in the language regime of the Hague system would concern the additional translations that would be required (from and into Spanish) of international registrations, and other communications relating thereto, recorded by the International Bureau.

31. On the same assumptions as mentioned in the previous sub-section, the number of translations of international applications received would double. Consequently, instead of some 4,000 translations (either from English into French or from French into English), some 8,000 translations would be required (either from English into French and Spanish, or from French into Spanish and English, or from Spanish into English and French). The breakdown of the additional translations to be made would be as follows: some 160 would need to be effected from Spanish into English, some 160 from Spanish into French and some 3,680 from either English or French into Spanish.

32. Based on the experience of the International Bureau in recent years, one translator is expected to translate, on average, 1,300 words per day. In fact, on this basis, in 2007, 17.5 translator days of work were required for the translations effected in respect of international registrations, plus a proportionate number of other communications (for translations from English into French or French into English). In case Spanish had been available as a third language on the same basis as French and English, an additional 17.5 translator days would have been required.

33. On the same basis, and on an estimated number of some 4,000 international registrations in the years to come, plus a proportionate number of other communications, under the current language regime, 57.8 translator days would be required for the translations to be effected in respect of international registrations, plus a proportionate number of other communications (for translations from English into French or French into English). In case Spanish would be available as a third language on the same basis as French and English, an additional 57.8 translator days would be required.

34. It should be noted, however, that, if it were decided to include Spanish as a working language of the Hague system, the work involved would not require the setting up of a completely new translation unit in the International Registrations Department of the International Bureau, which already currently deals with translation work from and into Spanish under the Madrid system for the international registration of marks and the Lisbon system for the international registration of appellations of origin, which both already have a trilingual regime comprising English, French and Spanish.

35. Full integration of Spanish would, in principle, also entail that any international registrations effectuated prior to the date of entry into force of an amended Rule 6 introducing a trilingual regime should be translated into Spanish. Had Spanish been introduced in July 2008, this would have required the translation into Spanish of the 23,684 international registrations in force at that time (i.e., the total number of international registrations in force minus the 764 exclusively governed by the 1934 London Act). This would have required an additional workload equivalent to about 20 times the translation work required for the international registrations recorded in 2007 plus a proportionate number of other communications, i.e., some 350 translator days.

36. Although the cost involved in extending the possible introduction of Spanish into the Hague system also to all international registrations effectuated prior to the date of entry into force of an amended Rule 6 introducing a trilingual regime would concern only one-off set up costs, it would amount to a considerable cost compared to the other costs specified in the present document. The cost in question would, moreover, appear to be disproportionate to the main objective of such inclusion, as explained in Section III, above.

Implications Concerning the *Industrial Designs Bulletin*

37. The *Industrial Designs Bulletin*, published by the International Bureau, contains all relevant data on international registrations, renewals, changes and other entries affecting international registrations. The bibliographic data is identified by INID codes³, which are the codes of Standard ST.80 (“Recommendation Concerning Bibliographic Data Relating to Industrial Designs”) and the codes of Standard ST.3 (“Recommended Standard on Two-Letter Codes for the Representation of States, Other Entities and Intergovernmental Organizations”).

38. At present, the *Industrial Designs Bulletin* is available on-line on the WIPO website and on CD-ROM. The on-line edition and the CD-ROM edition are both published on the last working day of each month. The CD-ROM edition is cumulative over a calendar year (in the sense that the second disc of each year contains all the data published in the first disc, the third disc contains all the data published in the first two discs, and so on for a period of one calendar year).

39. As a result of the inclusion of Spanish in the language regime of the Hague system, it would become necessary for the International Bureau to make arrangements for the publication in the *Industrial Designs Bulletin* of the data concerned, in three languages. This would initially entail some translation work with respect to the current bilingual introductory part of the Bulletin and the various current bilingual headings throughout the publication. This translation work, however, can be considered to be relatively insignificant for the purposes of the present document.

40. The adjustments needed in order to enable this service to present data in Spanish would require some 10 working days for a computer specialist.

Financial Implications of the Inclusion of Spanish as a Working Language of the Hague System

41. The additional workload that would result from the inclusion of Spanish as a working language of the Hague system would have financial implications in terms of both one-off set up costs and annual operating costs, as explained in the preceding Section. These financial implications can be summarized as follows:

³ INID stands for “Internationally agreed Numbers for the Identification of (bibliographic) Data”.

One-off Set Up Costs

*Translation*⁴

	(Swiss francs)
– 15 days – administrative texts (forms, Guide, etc.)	4,680
– 10 days – standard letters and texts	3,120

<u>Total:</u> 25 days	7,800

*Adaptation by Computer Specialists*⁵

	(Swiss francs)
– 10 days – <i>Hague Express</i>	10,500
– 10 days – <i>Industrial Designs Bulletin</i>	10,500

<u>Total:</u> 20 days	21,000

*Industrial Design Examination*⁶

	(Swiss francs)
– 15 days – testing of the system with Spanish texts	5,436

(Swiss francs)

*Administrative Preparation and Legal Checking*⁷

– 3 days – adaptation of administrative texts (forms, the Guide, etc.)	1,087
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⁴ Based on the translation of 1,300 words per day at a cost of 0,24 Swiss francs per translated word.

⁵ The cost for the hiring of a consultant with five to 10 years of experience for such a purpose would amount to some 1,050 Swiss francs per day.

⁶ The cost involved has been calculated on the basis of the remuneration that applies in respect of overtime work during the week by an industrial design examiner remunerated at G6-level, i.e., 45.30 Swiss francs per hour.

⁷ The cost involved has been calculated on the basis of the remuneration that applies in respect of overtime work during the week by administrative clerks remunerated at G6-level, i.e., 45.30 Swiss francs per hour. The cost involved in respect of the work to be done by legally qualified staff would be absorbed through re-prioritization within the existing budget.

Annual Operating Costs

*Translation*⁸

(Swiss francs)

–	57.8 days – international registrations and other recordings	18,034
–	5 days – updating administrative texts (forms, Guide, etc.)	1,560
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	<u>Total:</u> 62.8 days	19,594

*Administrative Preparation and Legal Checking*⁹

(Swiss francs)

–	3 days – updating administrative texts (forms, the Guide, etc.)	1,087
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Summary Financial Implications

42. In summary, should the Assembly of the Hague Union decide to include Spanish in the language regime of the Hague system, this would imply:

- *one-off* set up costs of 35,323 Swiss francs, and
- *annual* operating costs of 20,681 Swiss francs¹⁰.

43. Funds to finance the above-mentioned one-off costs could be found through re-prioritization of activities of the International Bureau within the Program and Budget. Financing of the estimated annual operation costs, which represent less than 0.5% of the total budget for the Hague Union for the 2008-2009 biennium, could be achieved by an increase of the productivity in the International Industrial Designs Registry. In any event, taking into account the expected growth in international registrations in the years to come and in view of the overall financial situation of the Hague Union, the Secretariat would not anticipate the need to modify the current Schedule of Fees of the Hague system.

⁸ See footnote 4, above.

⁹ See footnote 7, above.

¹⁰ In this regard, it should be noted that should the level of activities of the International Industrial Designs Registry be higher or lower than in 2007 (used as a basis for calculation), these operating costs would vary accordingly.

44. The Assembly is invited to comment on this study, and decide on any action that it feels might be required.

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