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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS

Twelfth Session
Geneva, April 26 to 30, 2004

REPORT¹

adopted by the Standing Committee

¹ This Report was adopted at the thirteenth session of the SCT. Following comments received on the draft report (document SCT/12/7 Prov. 2), paragraphs 93, 137, 138 and 194 were modified.

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee” or “the SCT”) held its twelfth session, in Geneva, from April 26 to 30, 2004.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Albania, Algeria, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Brazil, Bulgaria, Canada, China, Congo, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Gabon, Germany, Greece, Hungary, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Kazakhstan, Kenya, Latvia, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malta, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen (76). The European Communities were also represented in their capacity of member of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African, Caribbean and Pacific Group of States (ACP), African Union (AU), Benelux Trademark Office (BBM), World Trade Organization (WTO) (4).

4. Representatives of the following international non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), Center for International Industrial Property Studies (CEIPI), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), Inter-American Association of Industrial Property (ASIPI), Intellectual Property Alumni Association (IPAA), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), International Wine Law Association (AIDV), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), Max-Planck Institute for Intellectual Property, Competition Law and Tax Law (MPI) (14).

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

6. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all observations made.

Agenda Item 1: Opening of the Session

7. Mr. Ernesto Rubio, Assistant Director General, opened the session and welcomed the participants on behalf of the Director General of WIPO.

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

Agenda Item 2: Election of a Chair and two Vice-Chairs

9. The Delegation of Canada, speaking on behalf of Group B, proposed as Chair of the SCT for the year 2004, Mr. Li-Feng Schrock (Senior Ministerial Counsellor, Federal Ministry of Justice, Berlin, Germany) and as Vice-Chairs Mr. Evgeny Zinkevitch (chef de la Division des marques, Centre national de la propriété intellectuelle, Minsk, Belarus) and Mr. Jeong In-sik (Deputy Director, International Cooperation Division, Korean Intellectual Property Office, Daejeon-City, Republic of Korea).

10. The Delegations of the Republic of Korea, speaking on behalf of the Group of countries from the Asia and Pacific region, and of Kazakhstan speaking on behalf of the Group of certain countries of Europe and Asia, supported the proposal made by the Delegation of Canada.

11. The Standing Committee unanimously elected Mr. Li-Feng Schrock as Chair and Mr. Evgeny Zinkevitch and Mr. Jeong In-sik as Vice-Chairs.

Agenda Item 3: Adoption of the Agenda

12. The Draft Agenda (document SCT/12/1 Prov.) was adopted without modifications.

Agenda Item 4: Adoption of the Draft Report of the Eleventh Session

13. The Secretariat informed the Standing Committee that, following the preliminary publication of document SCT/11/8 Prov. on the Electronic Forum of the SCT, comments were received from the following delegations and observers: Japan (in respect of paragraphs 21, 164 and 237), New Zealand (in respect of paragraphs 98, 265 and 278) and CEIPI (in respect of paragraphs 17, 23, 44, 125 and 229). The abovementioned paragraphs had consequently been amended in document SCT/11/8 Prov.2.

14. The Delegation of Japan requested a further modification to paragraph 237 and the Delegation of Switzerland requested a modification to paragraph 228.

15. The SCT adopted the Draft Report of the eleventh session (document SCT/11/8 Prov.2) as modified.

Agenda Item 5: Revision of the Trademark Law Treaty

16. Discussions were based on the following documents prepared by the Secretariat: "Draft Revised Trademark Law Treaty (TLT)" (document SCT/12/2), "Draft Revised Regulations under the Draft Revised Trademark Law Treaty (TLT)" (document SCT/12/3) and "Notes" (document SCT/12/4).

17. Following a proposal by the Chair concerning the order of discussions of the draft revised TLT, the Delegation of Switzerland suggested that one hour should be devoted to a reading of those articles which have been modified, although they have not yet been discussed, namely Articles 2 and 3 of the draft revised TLT.

Article 1
(Abbreviated Expressions)

item (iv) [Communication]

18. There was consensus on this provision, on the understanding that the first sentence of Note 1.02 would be further clarified to indicate that the term “communications” referred to communications received by the Office from an applicant or a holder.

item (viii) [Procedure Before the Office]

19. There was consensus on this provision.

Article 4
(Representation; Address for Service)

20. The Delegation of Australia stated that the expression “address for service” might be construed as referring to an address for legal service of documents before the office or before a court. Another interpretation of Article 4(2) could be that a Contracting Party was not allowed to require an address for the exchange of correspondence. The Delegation preferred the interpretation that an address for service would be construed as an address for legal service of documents. In addition, the Delegation suggested deletion of the last sentence of Note 4.02 since, in accordance with paragraph (5), a Contracting Party might not demand other requirements.

21. In reaction to the remark made by the Delegation of Australia, the Chair noted that court proceedings were not covered by the TLT. As regards Note 4.02, the Chair pointed out that paragraph (5) referred only to paragraphs (3) and (4) but not to paragraphs (1) and (2). Therefore the last sentence of Note 4.02 was consistent with the Article.

22. The Secretariat indicated that the term “address for service” was derived from Article 2(3) of the Paris Convention for the Protection of Industrial Property. The requirement concerning an address for correspondence was dealt with individually in several articles, such as in Articles 3, 10, 11, 12, 14 and 17, which made it possible for a Contracting Party to require the name and address of the applicant, holder or the representative.

23. The Delegation of the United States of America stated that the draft of this provision in document SCT/11/2 was inspired from the Patent Law Treaty (PLT), which contained exceptions to mandatory representation. Those exceptions provided that an applicant, holder or other interested person might act himself before the office for the following procedures: (i) the filing of an application; (ii) the payment of a fee; (iii) the issue of a receipt or notification by the office in respect of any procedure referred to in items (i) and (ii). The Delegation felt that a provision concerning exceptions was useful also in respect of trademarks and suggested bringing back the exceptions to paragraph (2) from the previous draft.

24. The Delegation of Australia pointed out that if an applicant who was not domiciled or did not have an establishment in the territory of a Contracting Party filed an application directly, a filing date might be accorded to the application in accordance with Article 5. The Delegation said that it could support, in principle, the inclusion of exceptions to mandatory representation.

25. The Representative of INTA stated that the expression “address for service” appeared to be clear, although alternatively “address for the purposes of this Treaty” could be used. The Representative recalled that paragraph (2) was optional and as a consequence a Contracting Party could always allow direct filing of an application or payment of a fee by the applicant.

26. The Representative of CEIPI stressed that if a Contracting Party required representation and such requirement was not fulfilled, the defect could be corrected without any effect on the filing date. He also observed that the reference to other requirements in Note 4.02 appeared to be correct.

27. The Chair concluded that the Notes would be clarified concerning the issues raised in the discussion. The Chair then concluded that there was consensus on this provision.

Rule 4

[Details Concerning Representation and Address for Service]

28. As no comments were raised by the members of the SCT, the Chair concluded that there was consensus on this provision.

Article 8

(Communications)

Paragraph (1) [Means of Transmittal of Communications]

29. There was consensus on this provision.

Paragraph (2) [Language of Communications]

30. There was consensus on this provision.

Paragraph (3) [Presentation of a Communication]

31. There was some discussion as to whether or not reference to the Model International Forms should be kept in this paragraph and whether the forms themselves should be retained as part of the Regulations.

32. The Delegation of Australia noted that the Model International Forms could serve as valuable guidance for offices setting-up operations for the first time and for the users of the system to identify a number of requirements which they may need to fulfill. However, those forms were not needed where offices had established their own forms or in the case of local professional representation.

33. The Delegation of China held the view that Article 8(3) did not require a Contracting Party to use the Model International Forms as such, but to comply with their contents, which consisted of a maximum list of requirements. Although China was currently not a member of the TLT, the forms had been used as reference for legal development.

34. The Chair explained that the wording in paragraph (3) “the contents of which correspond” made it clear that no particular format was required. This notion was further explained in Note 8.08.

35. The Representatives of the AIPPI, the ICC and INTA insisted on the necessity of forms. However, they also pointed out that in practical terms most offices, if not all, produced their own forms. Nevertheless the Model International Forms were very useful for countries which were in the process of amending their laws.

36. The Chair concluded that subject to future adjustment, the Model International Forms could be retained as part of the Regulations and the corresponding reference in paragraph (3) could also be kept as proposed.

37. Following a suggestion from the Delegation of the United States of America, it was agreed to add in Article 8(3) a reference to paragraph (1) of the same Article, to make it clear that offices had the flexibility they needed as regards the presentation of a communication.

38. There was consensus on this provision as modified.

Paragraph (4) [Signature of Communications]

39. There was consensus on this provision.

40. In reply to a query from the Representative of AIPLA as to whether the phrase “or by electronic means of transmittal” could be added in item (ii) of subparagraph (b), for the sake of consistency with other parts of the draft, the Secretariat explained that item (ii) was the second exception to the rule established in subparagraph (b) that no Contracting Party may require attestation, notarization, authentication or other certification of any signature. If the above language were to be included in the exception, it would mean that a Contracting Party could require attestation, notarization, etc. of a signature on a communication transmitted by telefacsimile, which would be incompatible with Rule 6(4)(a).

Paragraph (5) [Original of a Communication Filed in Electronic Form or by Electronic Means of Transmittal]

41. The Chair noted that there was consensus on this provision.

Paragraph (6) [Prohibition of Other Requirements]

42. The Delegation of Australia expressed the view that this provision, which related to communications in general, needed to be constrained further than to the requirements contained in paragraphs (1) to (5). The Delegation suggested to extract all prohibition clauses in different articles of the TLT and to draft a single horizontal provision dealing with prohibition of other requirements, as this was the central tenant of the Treaty.

43. The Secretariat explained that paragraph (6) had already been restricted, as compared to the draft approved at the previous session, where reference was made to the Article and the Regulations. The reason for this change was the horizontal nature of Article 8 itself, which covered all types of communications and against this background there was a need to spell out the requirements which should apply to all communications, namely: signature, means of communication, language and means of transmittal.

44. The Chair noted that there was consensus on this provision.

Paragraph (7) [Opportunity to Make Observations in Case of Intended Refusal]

45. The Delegation of Germany expressed the view that this paragraph and Rule 7(2)(b), in their current wording, did not seem to fit together. The Delegation felt that there was no real difference between the opportunity to make observations and the requirement of notification, as they both concerned the right to be heard. In addition, while Rule 7(2)(a) established a list of cases where this opportunity was available, Rule 7(2)(b) indicated one exception to that principle. It was then preferable to include in Article 8(7) a list of the cases where the right to be heard existed and avoid reference to the Regulations.

46. The Delegation of Austria noted that the current text of Rule 7(2)(a) mentioned “requirements” under Article 3, whereas Article 14 of the TLT 1994 used the term application. The use of the word application could be interpreted as meaning a communication that complied with the filing date requirements, which were fewer than all requirements under Article 3. Therefore, it was probably more appropriate to keep the wording of the TLT 1994.

47. The Delegation of Barbados, supported by the Delegation of Algeria, held the view that paragraph (7), which reproduced the contents of Article 14 in the original text of the TLT should not be part of Article 8 dealing with communications in general. Article 14 concerned the right to be heard in cases where applications or requests may be refused and as such was part of the more general principle of due process.

48. The Representative of the European Communities noted that, according to the procedures applicable under the Community trademark regime, it was not possible to notify the applicant in the case of non-payment of a fee. In such a case, the application was deemed to be non-existent and the applicant would not be heard, as there was no possible remedy.

49. The Representative of the Benelux Trademark Office observed that under the procedures applied by the Benelux Trademark Office, an opposition was only heard if the opposition fee was paid. If that fee was not received by the office, the opposition was not admitted and the opposing party was not given an opportunity to make an observation on the non-admission of the opposition.

50. The Representatives of the AIPPI, CEIPI and FICPI noted that the users of the system attached great importance to the original text of Article 14 and in particular to the principle that an application or a request may not be refused without giving the applicant an opportunity to be heard. Reference to the Regulations in the current drafting would have the effect of questioning this absolute right.

51. The Chair concluded that there was broad support to move paragraph (7) into a separate provision. The provision should apply to applications and requests, without making it subject to the Regulations. If there was a need to include other situations in which a right to be heard should be provided, the Secretariat could identify them in the redraft of this provision to be prepared for the next session of the SCT.

52. There was some discussion as to whether or not the TLT applied to procedures concerning international registrations under the Madrid Protocol, as a result of which it was decided to add some clarification in the Notes on the relationship between the two treaties.

Rule 6
[Details Concerning the Signature Under Article 8(4)]

Paragraph (1) [Indications Accompanying Signature]

53. There was consensus on this provision.

Paragraph (2) [Date of Signing]

54. There was consensus on this provision.

Paragraph (3) [Signature of Communications on Paper]

55. There was consensus on this provision.

Paragraph (4) [Signature of Communications Filed in Electronic Form or by Electronic Means of Transmittal Resulting in Graphic Representation of Signature]

subparagraph (a)

56. There was some discussion as to whether the graphic reproduction of a signature on the printout of a telefacsimile, as compared to the graphic representation of a signature on a communication received by electronic means had a better capacity for identifying the sender. Concerns were raised as to the possibility of false representation or fraud.

57. The Representative of CEIPI indicated that an autographic signature could also be falsified. He pointed to Article 8(4)(c), containing a provision on evidence that could be required in cases where the Office had doubts about the authenticity of any signature.

58. The Chair concluded this subparagraph was acceptable as proposed.

subparagraph (b)

59. The Delegation of Australia recalled that at the last session, it had suggested to change the wording of this provision from “may” into “shall”.

Paragraph (5) [Signature of Communications Filed in Electronic Form Not Resulting in Graphic Representation of Signature]

60. The Delegation of France said that it was important to differentiate communications sent by telefacsimile from communications sent by other electronic means. In France, there was great concern in the user community about fraud over the Internet. The French National Institute for Industrial Property had recently put in operation an electronic filing system for patents and it was foreseen to launch a similar system for trademarks. Upon request from users, the Institute might establish a certification system for this type of transmission. Thus, it was important to ensure that Contracting Parties had flexibility to require a certification process for electronic signatures. The Delegation also requested that the phrase “and a graphic representation of a signature accepted by that Contracting Party under paragraph (3)” be removed from the text of paragraph (5).

61. The Delegation of Switzerland supported the statement made by the Delegation of France and the suggestion to remove the reference to graphic representation of a signature in paragraph (5).

62. The Delegation of the United States of America declared that the United States Patent and Trademark Office provided for electronic filing and had not experienced any particular problems with regard to misrepresentation or fraud. If these were to be discovered by competitors in the market place, it would be up to them to bring the matter to the attention of the office through a cancellation procedure. The Delegation also referred to the economic burden for the office if it were to establish a certification system.

63. The Chair noted that in the next draft subparagraph (4)(b) and paragraph (5) should be merged. Both items would remain as “may” provisions and the Secretariat was requested to cover the following situations in a new draft: signature of communications on paper, signature of communications transmitted by telefacsimile, and signature in the remaining means of electronic transmittal, so that Contracting Parties were left with the flexibility they needed to apply technical safeguards and to identify the senders of electronic communications.

64. It was concluded that there was consensus on the contents of these two provisions, subject to redrafting.

Rule 7

[Details Concerning Communications]

Paragraph (1) [Time Limit]

65. In response to a query by the Delegation of Sweden as to whether the time limit of one month was adequate for the applicant to provide the original of a communication filed in electronic form or by electronic means of transmittal, the Secretariat explained that this was a minimum time limit. Contracting Parties could provide for longer time limits, and could also determine the starting point of the time limit.

66. The Representative of CEIPI noted that Rule 7(2)(a) made reference to Article 8(5), for which paragraph (1) established the time limit. As a consequence, if the applicant failed to submit the original within the one-month time limit, he would be notified that it was necessary to provide the original within the reasonable time limit referred to in Rule 7(2)(a).

67. The Chair noted that there was consensus on this provision.

Paragraph (2) [Notification]

68. The Delegation of Germany declared that in the current drafting it was not possible to distinguish this provision from that of former Article 14. It was necessary to separate the right to be heard and the provisions to which it would apply from the provision on notification upon failure to comply with elements of a communication.

69. The Delegations of Australia and Switzerland expressed support for the suggestion of the Delegation of Germany.

70. After a short discussion, the Chair concluded that the sense of the Standing Committee was that the heading of the paragraph “Notification” would be provisionally kept, as the text of this paragraph provided that the office should notify the applicant, holder or other person. The Secretariat would be entrusted with the task of identifying those situations in which an applicant needed to comply with missing requirements within a reasonable time limit.

71. On this understanding, the Chair noted that there was consensus as to the contents of the provision, subject to redrafting.

Paragraph (3) [Sanctions for Non-Compliance with Requirements]

72. In reply to a question raised by the Delegation of Japan concerning the indication contained in item (i) of sub paragraph (a), the Secretariat explained that the registration number referred to the language contained in paragraph (5)(a) of the former draft of Rule 7, as adopted at the last session of the SCT. The text could be redrafted in a way to avoid overlap between items (i), (ii) and (iii) by omitting item (i) as suggested by the Delegation of Japan.

73. The Delegation of Japan further requested to amend the Model International Forms in order to allow a Contracting Party to require, where the applicant, holder or his representative was registered with the office, the number or other indication with which he was so registered. This provision had been included in former Rule 7(a)(iii) and (b)(iii), as contained in document SCT/11/3.

74. The Secretariat explained that the deletion of this indication was consequential to the deletion of former Rule 7(1), which indicated details concerning former Article 8(6), which was also deleted. In addition, although this indication had been included in an earlier draft, it constituted a new element which offices may be allowed to require in a communication.

75. The Delegation of Austria, supported by the Delegation of Australia, noted that the wording of former Rule 7(5) referred to the refusal of an application and not the refusal of a communication, which was a broader term. If the provision were to be reinserted, it should refer to an application only.

76. The Chair concluded that the Secretariat should carefully look into the second matter raised by the Delegation of Japan and declared that there was consensus on this provision subject to redrafting.

Article 14
(Measures in Case of Failure to Comply with Time Limits)

Paragraph (1) [Measures]

77. The Delegation of New Zealand stated that whether or not a time limit was reasonable depended on the specific circumstances of a given case. The Delegation suggested to retain in that paragraph the words “or is about to fail” and “and that time limit is less than one month”.

78. The Delegation of Denmark explained that the time limit in the corresponding provision of the PLT was two months. The Delegation proposed that the time limit in paragraph (1) should be “not more than three months”. In the view of the Delegation that Article was a compromise between the interests of administrations and those of users. However, the Delegation said that it was prepared to look into solutions acceptable for users and suggested that items (i) and (ii) be merged.

79. The Representative of the European Communities, in reaction to the suggestion by the Delegation of New Zealand, preferred a longer time limit. In the view of the Representative, time limits were generally not less than one month and as a consequence paragraph (1) would not have any meaning if the time limit was less than one month.

80. The Delegation of the Republic of Korea said that a time limit of six months was too long and suggested three months.

81. The Delegation of Sweden stated that the TLT should always provide for a remedy in cases in which a time limit had expired and that the current draft of Article 14 left a choice to Contracting Parties in that respect. The remedy could either be in the form of continued processing or reinstatement of rights. The Delegation explained that reinstatement of rights should be a minimum requirement while the provision concerning continued processing was more generous.

82. The Delegations of Australia, the United Kingdom, Ireland, Switzerland, Portugal and Italy and the Representative of the European Communities expressed agreement with the statement of the Delegation of Sweden.

83. The Delegation of Australia explained that the term “continued processing” was not used in the legislation of Australia. Under the applicable legislation the extension of a time limit was possible after the expiration of the time limit, therefore the substance of the provision was not a problem. The Delegation observed that in different legislations the meaning of the terms “continued processing” and “reinstatement of rights” might be different. It therefore asked whether a provision concerning reinstatement of rights caused problems to any other delegations.

84. The Delegation of Ireland said that extension of a time limit was a minimum requirement but other remedies, such as continued processing or reinstatement of rights were necessary in order to maintain legal certainty. The time limit that an applicant had already missed was not an issue as such.
85. The Delegation of Portugal noted that Rule 10(1) was more restrictive than Article 14. It also observed that a time limit of three months was reasonable.
86. The Delegation of Italy explained that in Italy the applicable time limit was six months.
87. The Delegation of the Netherlands explained that time limits in the Netherlands might be extended up to six months provided that an extension had been requested prior to the expiration of the time limit. The Delegation was not of the view that a remedy was necessary after the expiration of the time limit.
88. The Delegation of Mexico explained that in Mexico the initial time limit was two months and that the time limit could be extended by two months without any request.
89. The Delegation of Germany stated that it was in favor of providing a remedy also after the expiration of a time limit. In the view of the Delegation, the legislations of most countries provided at least for reinstatement of rights. The Delegation stated that, if a maximum time limit was needed, this should be “not more than six months”.
90. The Delegation of the Russian Federation stated that the difference between the extension of a time limit and reinstatement of rights needed further consideration. A time limit of three months was in line with the legislation of its country.
91. In reply to the point raised by the Delegation of the Russian Federation, the Chair explained that reinstatement of rights was subject to a finding by the Office that the failure to comply with a time limit occurred in spite of due care required by the circumstances or, at the option of the Contracting Party, that the failure was unintentional. As regards an extension of the time limit and continued processing no such requirements existed.
92. The Delegation of Japan expressed support for a time period of less than three months.
93. The Delegation of New Zealand, in reply to a question raised by the Delegation of Australia, observed that while most countries, like New Zealand, required an application fee to be paid at the time of filing an application, some countries are more generous and allowed, for example, the fee to be paid up to 14 days after an application had been filed. Accordingly under Article 14 a Contracting Party would be obliged to provide further relief in respect of such a generous provision, like the late payment of the fee, yet there is no requirement for other Contracting Parties to provide for the late payment of an application fee. There would be a risk therefore that a Contracting Party may choose to withdraw a generous provision like the late payment of the application fee, instead of being obliged to provide further relief in respect of its generosity.
94. The Representative of FICPI pointed out that Article 14 in its current version did not make it mandatory for Contracting Parties to provide a remedy for situations in which a time limit was not met and the applicant or requesting party wanted to make a request for relief after the time limit had expired. Therefore, the structure of two separate articles as presented

in Alternative A of document SCT/10/2 was preferable. The first article should contain a provision concerning the extension of time limits and continued processing, while the other article should deal with reinstatement of rights. The Representative suggested adding the following provision to paragraph (1) : “ where a Contracting Party does not provide for an extension of a time limit under paragraph (1)(i) when a request to that effect is filed after the expiration of the time limit, the Contracting Party shall at least provide for either continued processing under paragraph (1)(ii) or reinstatement of rights under paragraph (1)(iii).” The Representative observed that if the time limit in paragraph (1) was six months and the initial time limit was less than six months, a Contracting Party had to provide for relief. Regarding reinstatement of rights, no time limits should apply.

95. The Representatives of the AIPPI, CEIPI, INTA and the ICC expressed support for the statement made by the Representative of FICPI.

96. The Representative of the AIPPI said that the term “continued processing” was used within the framework of patent procedures. However, the availability of a remedy after a time limit had expired was a common principle in the civil law of many countries. As regards reinstatement of rights, no time limits should apply. The Representative raised concern about the fact that if a Contracting Party chose only paragraph (1)(i) there was no remedy for the applicant or holder if the time limit had been missed. In addition to an extension of the time limit, continued processing or reinstatement of rights should be provided for in national legislation.

97. The Representative of INTA suggested deletion of the terms “continued processing” and “reinstatement of rights” because those terms made the Article difficult to read.

98. The Representative of CEIPI suggested maintaining the terminology and to provide explanations in the Notes. The Representative further proposed that a Contracting Party should not be bound by the terminology of the TLT and that the Diplomatic Conference might adopt an agreed statement in that respect. He further noted that Article 14 was the legal basis for Rule 10 but in its current formulation it did not contain a reference to time limits provided for in the Regulations.

99. The Chair noted that the time limit in paragraph (1) continued to be subject to discussion. Items (i) and (ii) could be merged. Item (iii) could be dealt with in a separate provision.

100. It was agreed that this provision should be redrafted in light of the discussion.

Paragraph (2) [Exceptions]

101. There was consensus on this provision.

Paragraph (3) [Fees]

102. There was consensus on this provision.

Paragraph (4) [Prohibition of Other Requirements]

103. The Chair concluded that there was consensus on this provision. However, the Notes should explain that reference to an Article also covered the corresponding Rule.

Rule 10

[Requirements Relating to Measures in Case of Failure to Comply with Time Limits]

104. The Delegation of Mexico said that as regards extension of a time limit an office should not be obliged to require a request. The time limit was extended in Mexico without the need for a request prior to the expiration of the time limit.

105. The Delegation of Australia stated that on the basis of paragraph (1) it was implicit that a request could be required. The Delegation suggested replacing the expression “the request” in paragraph (1) by the expression “a request”.

106. The Chair recalled that in accordance with Article 8(1) a Contracting Party might choose the means of transmittal of communications. A request for extension did not have to be a written request but it might be, for instance, a phone-call. It was agreed that this issue could be clarified in the Notes.

107. The Delegation of Switzerland, supported by the Delegations of Sweden and France and the Representative of the European Communities, suggested adding a time limit for the filing of a request for continued processing along the lines of the draft of Rule 10(4) in document SCT/11/3. The Delegation explained that continued processing should be requested within six months from the expiration of the unextended time limit. The Delegation asked why Rule 10(4)(i) concerning exceptions did not refer to Article 14(1)(iii). The Delegation also suggested to omit in Rule 10(4)(ii) the word “request”.

108. The Delegation of France suggested a period of six months as a reasonable time limit in subparagraph (3)(b) for the presentation of a request for reinstatement of rights.

109. The Delegation of the United States of America noted that a request for reinstatement of rights was not an exceptional case. The statutory time limit in its country was six months and if that time limit was missed reinstatement of rights could be requested within two months. The Delegation suggested that the time limit in subparagraph 10(3)(b) should be two months.

110. The Delegation of the Russian Federation suggested adding to the list of exceptions in Rule 10(4) the declaration referred to in Article 3(1)(viii) concerning protection resulting from the display of goods and/or services in an exhibition.

111. The Delegation of Japan said that reinstatement should only be available if the non-compliance with a time limit resulted in a loss of rights, and that Article 14 should be amended in that sense. The Delegation was in favor of adding the declaration referred to in Article 3(1)(viii) of the TLT and indications in support of that declaration, the evidence referred to in Article 11(3) of the Paris Convention, and the indications and evidence in support of the declaration of priority referred to in Article 3(1)(vii) of the TLT to the list of exceptions in paragraph (4). It further suggested to add to the list of exceptions a separate item concerning a request for a new application for a trademark based on an amendment which had been dismissed. It explained that, in accordance with the law of Japan, an applicant might request the amendment of the list of goods or services of a pending

application. If the office dismissed the request for amendment because the amendment would result in an extension of the scope of rights, an applicant could file within 30 days from the transmittal of the notification of dismissal a new application based on the amendment. The priority date of the new application would be the date on which the amendment was filed. As this particular provision constituted a form of relief, its non-inclusion in the list of exceptions would lead to a duplication of remedies.

112. The Delegation of Germany proposed to clarify the Notes in order to state that the exceptions in paragraph (4)(v) also covered the payment of opposition fees. Concerning the applicable time limit under Rule 10(3)(b), the Delegation said that under the legislation of Germany, a request for reinstatement had to be filed within two months from the removal of the cause of failure to comply with the time limit in question, with an overall time limit of twelve months from the date of the expiration of the time limit in question.

113. The Delegation of the Netherlands suggested deleting the square brackets in paragraph (4)(iii) concerning the payment of renewal fee.

114. The Representative of ASIPI noted that the current Rule applied only to exceptional circumstances.

115. The Representative of FICPI noted that continued processing and reinstatement of rights were different concepts. The criterion for a reasonable time limit in subparagraph (3)(b) was decided by a Contracting Party and should be calculated as of the removal of the cause of failure to comply with the time limit in question. A provision concerning exceptions with respect to an extension of the time limit or continued processing should be separated from the provision concerning exceptions with respect to reinstatement of rights.

116. It was agreed that this Rule should be redrafted in light of the discussion.

Article 17
(Request for Recordal of a License)

117. The Chair noted that a number of delegations and representatives of observer organizations expressed support for the inclusion of Articles 17 to 21 in the draft Revised TLT. Other delegations expressed their concern as to the inclusion of those provisions in the draft Revised TLT and referred to the debate which had taken place in that respect at the eleventh session of the SCT. Without prejudice to the positions of delegations on that matter in general, the Chair opened the discussion on Articles 17 to 21.

Paragraph (1) [Contents of the Request for Recordal]

118. The Delegation of Australia suggested that the requirements in item (vii) should be separated by the word “or” instead of the word “and”, since a Contracting Party might require only one of those elements.

119. The Representative of the AIPPI stated that if a licensee was not a national of any State, the name of the State in which the licensee had his domicile or establishment, could be required. Therefore, the Representative was in favor of maintaining the word “and” in this item.

120. The Representative of CEIPI observed that Article 3(1)(a)(iii) of the TLT corresponded to Article 17(1)(vii). He said that if a State was not a Member of either the Paris Union or the World Trade Organization, national treatment was not applicable. In this situation, an office should be able to require more than one element under item (vii). Consequently “and” should not be replaced by “or”.

121. The Representative of INTA asked for a clarification of the expressions in item (xi) concerning an exclusive license, a non-exclusive license and a sole license.

122. In reply to the intervention by the Representative of INTA, the Chair referred to Article 1(xiii), (xiv) and (xv) where the terms were defined.

123. The Chair then concluded that there was consensus on this provision, subject to the redrafting of sub paragraph (1)(vii), in order to clarify that the three indications in that item could be requested at the option of a Contracting Party.

Paragraph (2) [Signature]

124. The Delegation of the Russian Federation suggested that paragraph (2)(a) be reviewed and aligned with paragraph (2)(b). The Delegation explained that under the legislation of the Russian Federation, an extract of the license contract had to be submitted also in cases where the holder had signed the request.

125. The Delegation of Japan concurred with the position of the Delegation of the Russian Federation and suggested that subparagraph (a) should be amended in order to allow a Contracting Party to require the presentation of an extract of the license contract or an uncertified statement of license. The Delegation pointed out that a Contracting Party should be able to require the consent of all co-holders in addition to those parties who had signed the contract. Moreover, the Delegation suggested to align the provision under consideration with Article 11(1)(e) of the TLT so as to allow Contracting Parties to require the presentation of court decisions.

126. The Delegation of Australia noted that subparagraph (a) corresponded to Article 11(1)(d) concerning change in ownership. The Delegation supported the view that a holder was entirely free to limit or surrender his rights without restrictions.

127. The Representative of the AIPPI said that a situation in which the holder requested the restriction of his rights did not appear to cause any problems. In contrast, where the licensee requested the recordal of a license, the office could require the submission of supporting documents.

128. The Secretariat referred to Note 17.12 and stated that, unlike Article 11(1)(d), the question as to whether all co-holders had to give their consent to the recordal of the license was left to the applicable law of the Contracting Parties.

129. The Delegation of Japan pointed out that Article 17(5) prohibited a Contracting Party from requesting any other requirements except for those stipulated in paragraphs (1) to (4) of Article 17. Thus, in the opinion of the Delegation, it seemed that if the Office requested a document which showed the consent of the co-holders, it would violate this provision.

130. This provision was left open for further discussion.

Paragraph (3) [Fees]

131. There was consensus on this provision.

Paragraph (4) [Single Request Relating to Several Registrations]

132. There was consensus on this provision.

Paragraph (5) [Prohibition of Other Requirements]

133. The Delegation of Austria referred to Article 8(2) concerning language of communications. Since Article 8(2) applied also to requests for the recording of licenses, the reference to a translation in item (ii) was superfluous.

134. The Delegation of Mexico, supported by the Delegation of Australia, suggested deleting items (i), (ii) and (iii) since these items did not have any relevance in this matter.

135. The Delegation of Barbados, in reaction to the intervention by the Delegation of Mexico, noted that there were illustrative lists also in Articles 3(4), 11(3) and 13(2). The Delegation raised a question as to whether those lists should be kept.

136. The Delegation of Brazil explained that the law of its country provided for the recording of trademark licenses, and that such recordings were considered to be important and useful. Article 17(5) appeared to restrict the freedom of Contracting Parties to require certain information, and the Delegation sought to obtain clarification on the reasoning that stood behind such a restriction. In particular, the Delegation questioned the necessity of preventing Contracting Parties from requiring the furnishing of licensing contracts or the disclosure of the financial terms of licensing contracts.

137. The Delegation of Egypt stated that it reserved its position regarding the insertion of the Joint Recommendation Concerning Trademark Licenses into the TLT, as it had already expressed in the previous session of the SCT. The Joint Recommendation was not binding but the TLT would oblige Contracting Parties to implement the provisions into national legislation. Paragraph (5) was an example of a provision which could cause difficulties for its country.

138. The Delegation of the Russian Federation noted that in this paragraph there was a reference to Article 8 which applied to all communications. Since Article 8(6) contained a prohibition of other requirements, the Delegation asked whether references to Article 8 were needed in other articles.

139. In reply to the question raised by the Delegation of the Russian Federation, the Secretariat explained that Article 8(6) was applied in respect of all communications but the prohibitions in other articles referred to the elements required in those articles.

140. The Delegation of Switzerland, supported by the Delegations of Sweden and Canada and the Representative of the European Communities, expressed support for keeping the formulation of the paragraph as proposed in document SCT/12/2.

141. The Representative of the European Communities stated that the intent of Article 17 was the limitation of the formalities required in connection with the recording of licenses. The Representative emphasized that the discussion should concentrate on the text and not on whether or not the section concerning licenses should be included in the TLT.

142. The Representative of the AIPPI stated that paragraph (5) corresponded to Article 3(4) which did not cause any interpretation problems. He pointed out that the original license contract was often a lengthy and complicated commercial document. Furthermore, it was sometimes against the interests of the parties to the contract to disclose sensitive commercial information. The Representative stated that illustrative lists should be either kept or deleted in all articles concerned. However, the Representative was in favor of keeping the current formulation of the paragraph.

143. The Representative of INTA indicated that in many countries the recording of licenses was not mandatory and suggested that provisions concerning the mandatory recordal of license contracts should be removed from national legislations.

144. The Representative of the ICC observed that paragraph (6) concerning evidence could be applied in case of doubts of the veracity of any indication.

145. The Representative of CEIPI noted that the compulsory licensing of trademarks was not permitted under Article 21 of the TRIPS Agreement and wondered whether there existed concrete examples when court decisions concerning trademark licenses needed to be presented in support of a request for the recording of a license.

146. This provision was left open for further discussion.

Paragraph (6) [Evidence]

147. The Delegation of Japan suggested adding at the end of this provision a reference to any document referred to in the present Article as it was provided for in the corresponding Article 11(4) concerning change in ownership.

148. There was consensus on this provision subject to redrafting.

Paragraph (7) [Request Relating to Applications]

149. The Delegation of Australia suggested adding explanations in the Notes as to which items of paragraph (1) did not apply to the recordal of a license in respect of a pending application.

150. There was consensus on this provision.

Article 18
(Request for Amendment or Cancellation of the Recordal of a License)

151. The Delegation of Latvia stated that where a holder requested the amendment or cancellation of the recordal of a license, the rights of the licensee had to be taken into account. Therefore, in those situations, the holder should present supporting documents for the request.

152. The Delegation of Brazil reiterated its concerns expressed in respect of Article 17. The Delegation said that in Brazil the authority in charge of the registration of trademarks was different from the authority responsible for the recording of licenses. This authority was the Directorate of technology transfer.

153. The Delegation of Mexico, in response to the intervention by the Delegation of Latvia, observed that Article 17 could be applied to amendments and cancellations with the exception of paragraph (2). The Delegation clarified that a cancellation of the recordal of a license did not mean that a license contract had expired since recordal of licenses was not compulsory in Mexico.

154. The Delegation of Algeria stressed that the purpose of the recordal of licenses was to inform third parties, while the recordal of the amendment and cancellation of the contract was in the interest of the parties involved.

155. The Representative of the European Communities emphasized that Article 17 could be applied *mutatis mutandis* to the request for amendment or cancellation. The Representative cautioned against amending the provision as this might create confusion.

156. The Delegation of New Zealand explained that in New Zealand the office did not notify the licensee of the request for amendment or cancellation of the recordal of a license by the holder. The holder had the obligation to notify the licensee before requesting for amendment or cancellation.

157. The Delegation of the Russian Federation emphasized that the interests of the licensee should be taken into account and pointed out that a signature of both the holder and the licensee should be required.

158. The Representative of the AIPPI noted that a *mutatis mutandis* application of the Article implied that not all the provisions of Article 17 should be applied. In the view of the Representative, a holder should not request the amendment or cancellation of the recordal of a license without the consent of the licensee.

159. In reaction to an intervention by the Delegation of Latvia, the Representative of FICPI noted that an office could notify the licensee that a request for amendment or cancellation was received.

160. The Chair concluded that the Secretariat should research the preparatory documents for the Joint Recommendation in order to give further explanation on the interpretation of this Article in the Notes.

161. The provision was left open for further discussion.

Article 19
(Effects of the Non-Recordal of a License)

Paragraph (1) [Validity of the Registration and Protection of the Mark]

162. The Delegation of Brazil declared that paragraph (1) was not consistent with the legislation of Brazil and that it was opposed to this provision.

163. The Delegation of New Zealand expressed support for Article 19.

164. The Delegation of INTA said that the current Article encouraged countries to change their laws if they were very restrictive. After an application was filed, the requirement to use the mark should be fulfilled. The updating of the license contract should not be tied to the validity of the mark or the license contract.

165. This provision was left open for further discussion.

Paragraph (2) [Certain Rights of the Licensee]

166. The Delegation of Australia, supported by the Delegation of the United States of America, expressed concern about subparagraph (b) since it was invalidating the effects of subparagraph (a). The Delegation raised a question as to whether any countries needed subparagraph (b). If the provision was not needed, subparagraph (b) should be deleted. Article 28 concerning reservations should not be opened for insertion of subparagraph (b).

167. The Delegation of Canada was in favor of retaining Article 19 as it was currently formulated. In the view of the Delegation, the loss of rights as a consequence of the non-recordal of the license was an extreme sanction.

168. The Delegation of France and the Representative of the European Communities expressed their support for the current formulation of subparagraph (b) stating that the provision was a compromise.

169. The Delegation of France stated that the recording of a license in order to safeguard all rights of the licensee was a principle which was supported by the interested circles in France and that it should be retained.

170. The Representative of CEIPI suggested that subparagraph (b) could be added to Article 28 concerning reservations in order to inform the public that a given Contracting Party had made this reservation.

171. The Representative of the AIPPI was in favor of deleting subparagraph (b). If the provision was not deleted, it should be inserted in Article 28.

172. The Representative of AIPLA concurred with the positions expressed by the Delegations of Australia and the United States of America in respect of the current Article.

173. This provision was left open for further discussion.

Article 20
(Use of a Mark on Behalf of the Holder)

174. The Delegation of Japan pointed out that the content of Note 20.01, namely that Article 20 only dealt with situations in which the use by a person other than the holder might accrue to the benefit of the holder, should be reflected in the provision itself.

175. The Delegation of Australia emphasized that not all use was to the benefit of the holder and suggested deleting from the provision the last phrase “if such use is made with the holder’s consent” and adding the following precision: “Use of a license in benefit of the holder whether or not the license is recorded shall be deemed to constitute use by the holder himself.”

176. The Delegation of Germany stated that the formulation of the provision in the legislation of Germany was similar to the current formulation of the Article. The provision had never been a problem since the use of a mark by third persons without holder’s consent would never constitute a use by the holder of the mark.

177. The Delegation of the United States of America supported the view expressed by the Delegation of Australia.

178. The Delegations of France and Switzerland stated that the legislations of their countries did not require quality control clauses for the recordal of a license. The term “consent” was construed in the legislation of France as referring to a positive sign by the holder of the mark, and not merely tolerance.

179. The Representatives of AIPLA, AIM and FICPI expressed support for the principle that use of the mark by the licensee should accrue to the holder even if the license was not recorded. However, the Representative of AIPLA expressed disagreement with Article 20 to the extent that the accompanying Notes could be interpreted as not allowing Contracting Parties to provide that the lack of effective quality control could be raised in the context of *inter partes* opposition and cancellation proceedings before the Office. In addition, if the effect of Article 20 was to circumvent Article 19(2) of the TRIPS Agreement, the provision did not appear to be necessary in *ex parte* proceedings, as other articles in the Treaty already precluded offices from requiring evidence regarding use of a mark by or through a licensee.

180. The Representative of INTA observed that quality controls were the cornerstone in the legislations of more than 60 countries. A provision that use of the trademark with the “mere” consent of the holder should benefit the registration of the mark did not appear to be justifiable.

181. It was agreed that the Article should be redrafted.

Article 21
(Indication of the License)

182. There was consensus on this provision.

Articles 22 to 31

183. The Delegation of Canada declared that the relationship between amendments and revisions in Article 25 needed to be studied further. In particular, it asked whether a revision by a diplomatic conference could be initiated without a decision by the Assembly.

184. The Delegation of Mexico pointed out that, under Article 22(3)(a), amendments to certain provisions of the Regulations might require unanimity. However, the Regulations did not appear to specify any provisions for which such a requirement existed.

185. The Delegation of the Islamic Republic of Iran, in addressing the final and administrative clauses of the draft revised TLT in general, stated that it considered the TLT to be a technical treaty, the revision of which required patience and accuracy. The final clauses, which made up at least a quarter of the Treaty, might seem to be of a procedural nature, but it should be kept in mind that those articles might have substantial consequences for Contracting Parties. The Delegation expressed the view that the final provisions of a Treaty should be compatible with the nature of the other provisions of that Treaty. Final provisions of intellectual property treaties that differ in nature from the TLT should not be incorporated as such into the TLT merely in order to save time. Turning to specific provisions, the Delegation stated that Article 23(2)(i) and (ii) stipulated that the Assembly should deal with matters concerning the maintenance, development, application and operation of the TLT. Those were tasks that were not of an administrative or procedural nature, and could cause problems with the national law of contracting parties. Furthermore, the Delegation pointed at Article 24(4)(a) and asked whether the reference to “any revision” in this paragraph was referring to provisions of a procedural nature. Article 24(4)(b) providing the option for the International Bureau to consult with Member States of WIPO, intergovernmental organizations and international and national non-governmental organizations concerning the preparation of any revision conference appeared to go beyond modifying technical regulations. Concerning Article 23(4)(a) and (b), the Delegation indicated that there appeared to be a procedural inconsistency, as Article 23(4)(a) specified that the Assembly should endeavor to take its decision by consensus, whereas Article 23(4)(b) provided for a voting mechanism. However, the method of decision-making in a treaty should be clearly defined. Moreover, Article 23(4)(b)(ii) appeared to be unclear as it was not specified which Contracting Party had the right to vote in a situation of conflicting votes between a Contracting Party that was an intergovernmental organization and another Contracting Party that was a State member of that intergovernmental organization. In addition, Articles 22(2) and (3), 23(5) and 25(3)(b) introduced different and sophisticated methods of voting. Concerning Article 25(2), the terms “revision” and “amendment” needed definition, and it was unclear who was to take the decision whether specific provisions were revised by a diplomatic conference or amended by the Assembly. In conclusion, the Delegation stated that it did not question the necessity of an Assembly. However, it appeared that the final and administrative clauses should be further studied, taking into account new technical dimensions, and that suitable solutions should be suggested.

186. The Delegation of Mexico stated that, concerning Article 23(6), the Assembly should not meet annually but only if there was a specific reason for holding a session. Moreover, it recalled the ongoing exercise on constitutional reform and suggested that, to the extent there was identity between the members of the WIPO General Assembly and the TLT Assembly, both assemblies could be merged. The Delegation expressed its reservation concerning the possibility to amend the Treaty through a decision by the Assembly, as such amendments would appear to need parliamentary approval at the national level of contracting parties. However, it underlined the importance of keeping the structure of the Treaty flexible for certain changes and said that it was prepared to look for other provisions to be included in Article 25(3).

187. The Delegation of Australia indicated that the difference between revisions and amendments in Article 25 appeared to need clarification. It also suggested amending Article 23(2)(iii) so as to empower the Assembly to amend the Treaty in its entirety. If this was not possible, the Assembly should retain at least the power to amend some provisions of the Treaty. Moreover, the Delegation suggested moving as much content as possible from the Treaty to the Regulations in order to enable future amendments of those provisions by the Assembly.

188. The Delegation of New Zealand welcomed the proposal for the creation of an assembly and the amendment of the Treaty to that effect.

189. The Delegation of the European Communities expressed its support for the inclusion of an assembly into the Treaty. It informed the Committee that it had modified its trademark legislation and that it intended to adhere to the TLT. Concerning Article 23(4)(b)(ii), the Delegation recognized that this provision followed a similar provision in the Geneva Act of the Hague Agreement, and that it could support it in principle, subject to the last sentence of that provision, for which further internal consideration was necessary. Referring to Article 27(4), the Delegation stated that it was important to determine how the TLT 1994 would operate in relation to the draft revised TLT. On a more general line, the Delegation supported a full and complete revision of the TLT, as the holding of a diplomatic conference for changing only one article was not justifiable.

Recommendation to the General Assembly of the World Intellectual Property Organization

190. The Chair opened the discussion on paragraph 7 of document SCT/12/2.

191. The Delegation of Australia said that the SCT had made significant progress in its work, and that two more meetings of the SCT appeared to be necessary in order to prepare a text of the revised TLT that could serve as a basic proposal for a diplomatic conference. The Delegation suggested that the SCT agree on a recommendation to the WIPO General Assembly meeting in September 2004 to approve the convening of a Diplomatic Conference for the Revision of the TLT in early 2006.

192. The Delegation of Algeria stated that the revision of the Trademark Law Treaty was not merely a procedural exercise, as it envisaged the creation of administrative and final provisions. The work on this project should not be rushed, and there was still a large number of WIPO Member States that had to join the TLT. However, the holding of a Diplomatic

Conference for the Revision of the TLT was certainly a means of increasing the acceptance of the TLT, and the Delegation expressed its full support for the convening of such a diplomatic conference.

193. The Delegation of the United States of America expressed its support for the convening of a diplomatic conference in 2006 and said that it felt two more meetings of the SCT were necessary in order to prepare that conference.

194. The Delegation of Egypt said that the work of the SCT showed that certain matters under consideration required further discussion. Although the Delegation had some doubts about certain issues, it felt that two more sessions of the SCT should be sufficient in order to reach a successful conclusion for the preparation of a diplomatic conference. Recalling the responsibility that Member States had towards the work of WIPO as a whole, and in the spirit of flexibility and compromise, the Delegation expressed its support for the convening of a diplomatic conference.

195. The Delegation of Brazil agreed that the SCT had made a certain degree of progress in its work on the revision of the TLT. However, there were still some provisions on which agreement had not yet been reached. More time was needed in order to resolve differences, but the Delegation emphasized that, in the spirit of compromise and flexibility, it was prepared to join the emerging consensus in the SCT to forward a recommendation to the General Assembly of WIPO on the convening of a Diplomatic Conference for the Revision of the TLT. Having said that, the Delegation also expressed its hope that its concerns be taken seriously by other delegations and that a consensus solution could be found and would be fully reflected in the preparatory materials for the diplomatic conference.

196. The Representative of the European Communities stated full support for recommending the convening of a Diplomatic Conference for the Revision of the TLT, it being understood that two more meetings of the SCT should be held in preparation of the conference.

197. The Standing Committee agreed to request the Secretariat to convey the following recommendation to the WIPO General Assembly meeting at the fortieth session of the Assemblies of the Member States of WIPO from September 27 to October 5, 2004:

“At its 12th session, which took place in Geneva from April 26 to 30, 2004, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), with due regard given to the progress which the SCT has made on the work of a revised Trademark Law Treaty (TLT), decided to recommend to the WIPO General Assembly to approve the convening of a Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty in the first half of 2006, with the exact dates and venue for such a diplomatic conference to be decided by the preparatory meeting, and to hold two more sessions of the SCT prior to the holding of the diplomatic conference.”

Agenda Item 6: Internet Domain Names and Geographical Indications

198. The discussion regarding the protection of geographical indications in the domain name system was based on document SCT/10/6.

199. The Delegation of the European Communities stated that it attached high importance to the protection of geographical indications in the domain name system and that it would like to see some progress in this regard. The Delegation requested that the issue remain on the agenda of the SCT. This was supported by the Delegation of Switzerland.

200. The Delegation of Australia agreed that the protection of geographical indications in the domain name system was an important issue that should remain on the agenda of the SCT, but noted that the revision of the TLT seemed more urgent at this stage and should be given priority in the work of the SCT. This was supported by the Delegations of the Islamic Republic of Iran, Mexico and the United States of America.

201. The Chair concluded that the protection of geographical indications in the domain name system should remain on the agenda of the SCT, with due consideration to be given to the priorities set by the SCT for its work.

Agenda Item 7: Geographical Indications

202. No comments were made on this Agenda item.

Agenda Item 8: Other Matters

Questionnaire on Trademark Law and Practice

203. The SCT took note of document SCT/12/5 and the declaration of the Secretariat that a draft summary document containing the replies to the questionnaire would be circulated to the SCT, if possible prior to its next meeting.

Article 6ter of the Paris Convention

204. The SCT took note of a presentation by the Secretariat of the Article 6ter on-line database.

National Registers of Well-Known Marks

205. There was no discussion on the issue of registers for well-known marks.

Agenda Item 9: Future Work

206. The SCT decided that priority should be given to the revision of the TLT. The SCT further agreed that its thirteenth session would last five full working days and that the agenda of that session would devote at least four and a half days to work on the TLT, leaving the remaining time, where possible, for consideration of other matters and future work.

207. The provisional date for the thirteenth session of the SCT will be October 25 to 29, 2004.

Agenda Item 10: Adoption of the Summary by the Chair

208. The Standing Committee adopted the draft of the Summary by the Chair contained in document SCT/12/6 Prov. without modifications.

Agenda Item 11: Closing of the Session

209. The Chair closed the twelfth session of the Standing Committee.

[Annex I follows]

WIPO



SCT/12/6

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS

Twelfth Session
Geneva, April 26 to 30, 2004

SUMMARY BY THE CHAIR

Agenda Item 1: Opening of the Session

1. Mr. Ernesto Rubio, Assistant Director General of the World Intellectual Property Organization (WIPO), opened the session and welcomed the delegates on behalf of the Director General of WIPO.

Agenda Item 2: Election of a Chair and two Vice-Chairs

2. Mr. Li-Feng Schrock (Germany), was elected as Chair of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT). Mr. Evgeny Zinkevitch (Belarus) and Mr. Jeong In-sik (Republic of Korea) were elected as Vice-Chairs.

Agenda Item 3: Adoption of the Agenda

3. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) adopted the Draft Agenda (document SCT/12/1 Prov.) without modifications.

Agenda Item 4: Adoption of the Draft Report of the Eleventh Session

4. The SCT adopted the Draft Report (document SCT/11/8 Prov.2) with minor modifications.

Agenda Item 5: Revision of the Trademark Law Treaty

5. Discussion was based on the following documents: SCT/12/2 (Draft Revised Trademark Law Treaty (TLT)), SCT/12/3 (Draft Revised Regulations under the Draft Revised Trademark Law Treaty) and SCT/12/4 (Notes).

Article 1
(Abbreviated Expressions)

item (iv). There was consensus on this provision.

item (viii). There was consensus on this provision.

Article 4
(Representation; Address for Service)

There was consensus on this provision.

Rule 4
[Details Concerning Representation and Address for Service]

There was consensus on this provision.

Article 8
(Communications)

(1) [*Means of Transmittal of Communications*]

There was consensus on this provision.

(2) [*Language of Communications*]

There was consensus on this provision.

(3) [*Presentation of a Communication*]

There was consensus on this provision as modified.

(4) [*Signature of Communications*]

There was consensus on this provision.

(5) [*Original of a Communication Filed in Electronic Form or by Electronic Means of Transmittal*]

There was consensus on this provision.

(6) [*Prohibition of Other Requirements*]

There was consensus on this provision.

(7) [*Opportunity to Make Observations in Case of Intended Refusal*]

There was consensus on this provision subject to moving its contents to a separate article and to redrafting.

Rule 6
[Details Concerning the Signature under Article 8(4)]

(1) [*Indications Accompanying Signature*]

There was consensus on this provision.

(2) [*Date of Signing*]

There was consensus on this provision.

(3) [*Signature of Communications on Paper*]

There was consensus on this provision.

(4) [*Signature of Communications Filed in Electronic Form or by Electronic Means of Transmittal Resulting in Graphic Representation of Signature*]

There was consensus on this provision subject to redrafting.

(5) [*Signature of Communications Filed in Electronic Form Not Resulting in Graphic Representation of Signature*]

There was consensus on this provision subject to redrafting.

Rule 7
[Details Concerning Communications]

(1) [*Time Limit*]

There was consensus on this provision.

(2) [*Notification*]

There was consensus on this provision subject to redrafting.

(3) [*Sanctions for Non-Compliance with Requirements*]

There was consensus on this provision subject to redrafting.

Article 14
(Measures in Case of Failure to Comply with Time Limits)

(1) [*Measures*]

It was agreed that this provision should be redrafted in light of the discussion.

(2) [*Exceptions*]

There was consensus on this provision.

(3) [*Fees*]

There was consensus on this provision.

(4) [*Prohibition of Other Requirements*]

There was consensus on this provision.

Rule 10

[Requirements Relating to Measures in Case of Failure to Comply with Time Limits]

It was agreed that this Rule should be redrafted in light of the discussion.

6. The Chair noted that a number of delegations and representatives of observer organizations expressed support for the inclusion of Articles 17 to 21 in the draft Revised TLT. Other delegations expressed their concern as to the inclusion of those provisions in the draft Revised TLT and referred to the debate which had taken place in that respect at the eleventh session of the SCT. Without prejudice to the positions of delegations on that matter in general, the Chair summarized the ensuing discussion as follows:

Article 17
(Request for Recordal of a License)

(1) [*Contents of the Request for Recordal*]

There was consensus on this provision, subject to redrafting.

(2) [*Signature*]

This provision was left open for further discussion.

(3) [*Fees*]

There was consensus on this provision.

(4) [*Single Request Relating to Several Registrations*]

There was consensus on this provision.

(5) [*Prohibition of Other Requirements*]

This provision was left open for further discussion.

(6) [*Evidence*]

There was consensus on this provision subject to redrafting.

(7) [*Requests Relating to Applications*]

There was consensus on this provision.

Article 18
(Request for Amendment or Cancellation of the Recordal of a License)

This provision was left open for further discussion.

Article 19
(Effects of Non-Recordal of a License)

(1) [*Validity of the Registration and Protection of the Mark*]

This provision was left open for further discussion.

(2) [*Certain Rights of the Licensee*]

This provision was left open for further discussion.

Article 20
(Use of a Mark on Behalf of the Holder)

It was agreed that the Article should be redrafted.

Article 21
(Indication of the License)

There was consensus on this provision.

Articles 22 to 31

Following a number of interventions made by several delegations, the Chair noted that these provisions would be left open for further discussion.

7. The Standing Committee agreed to request the Secretariat to convey the following recommendation to the WIPO General Assembly meeting at the fortieth session of the Assemblies of the Member States of WIPO from September 27 to October 5, 2004:

“At its 12th session, which took place in Geneva from April 26 to 30, 2004, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), with due regard given to the progress which the SCT has made on the work of a revised Trademark Law Treaty (TLT), decided to recommend to the WIPO General Assembly to approve the convening of a diplomatic conference for the adoption of a revised Trademark Law Treaty in the first half of 2006, with the exact dates and venue for such a diplomatic conference to be decided by the preparatory meeting, and to hold two more sessions of the SCT prior to the holding of the diplomatic conference.”

Agenda Item 6: Internet Domain Names and Geographical Indications

8. It was agreed that this item should be kept on the Agenda of the SCT, with due consideration given to the priorities set by the SCT for its work.

Agenda Item 7: Geographical Indications

9. No comments were made on this Agenda item.

Agenda Item 8: Other Matters

10. The SCT took note of document SCT/12/5 and the declaration of the Secretariat that a draft summary document containing the replies to the questionnaire would be circulated to the SCT, if possible prior to its next meeting.

11. The SCT took note of a presentation by the Secretariat of the Article 6ter on-line database.

12. There was no discussion on the issue of registers for well-known marks.

Agenda Item 9: Future Work

13. The SCT decided that priority should be given to the revision of the TLT. The SCT further agreed that its thirteenth session would last five full working days and that the agenda of that session would devote at least four and a half days to work on the TLT, leaving the remaining time, where possible, for consideration of other matters and future work.

14. The provisional date for the thirteenth session of the SCT will be October 25 to 29, 2004.

ANNEX II

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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

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

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[Fin de l'annexe II et du document/
End of Annex II and of document]