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

Fifteenth Session

Geneva, November 28 to December 2, 2005

DRAFT REPORT

prepared by the Secretariat

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 fifteenth session, in Geneva, from November 28 to December 2, 2005.
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, Armenia, Australia, Austria, Bangladesh, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malaysia, Mexico, Morocco, Myanmar, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, United States of America and Uruguay (79). The European Community was also represented in its capacity as member of the SCT.
3. The Permanent Observer Mission of Palestine took part in the meeting in an observer capacity.
4. The following intergovernmental organizations took part in the meeting in an observer capacity: Benelux Trademark Office (BBM), World Health Organization (WHO) and the World Trade Organization (WTO) (3).
5. 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), China Trademark Association (CTA), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), Exchange and Cooperation Centre for Latin America (ECCLA), German Association for Industrial Property and Copyright (GRUR), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA) and the International Wine Law Association (AIDV) (11).
6. The list of participants is contained in Annex II of this Report.
7. 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

8. Mr. Ernesto Rubio, Assistant Director General, opened the session and welcomed the participants on behalf of the Director General of WIPO.
9. Mr. Marcus Höpperger (WIPO) acted as Secretary to the Standing Committee.

Agenda Item 2: Adoption of the Agenda

10. The SCT adopted the Draft Agenda (document SCT/15/1 Prov.) without modifications.

Agenda Item 3: Adoption of the Report of the Fourteenth Session

11. The Secretariat informed the Standing Committee that, following the preliminary publication of document SCT/14/8 Prov. on the Electronic Forum of the SCT, comments were received from the following delegations and observers: Japan (concerning paragraph 315), Switzerland (concerning paragraphs 32, 43 and 327), AIM (concerning paragraph 350) and CEIPI (concerning paragraphs 22, 67, 152, 173, 278 and 295). The above-mentioned paragraphs had consequently been amended in document SCT/14/8 Prov.2.

12. The Delegation of Italy requested a modification to paragraph 36.

13. The SCT adopted the Revised Draft Report of the fourteenth session (document SCT/14/8 Prov.2) as modified.

Agenda Item 4: Questionnaire on Trademark Law and Practice

14. The discussion was based on document SCT/14/5 Rev. (Summary of the Replies to the Questionnaire on Trademark Law and Practice (SCT/11/6)).

15. The Secretariat recalled that the Questionnaire on Trademark Law and Practice had been on the Agenda of the last three sessions of the SCT. A large number of delegations had sent replies to the questionnaire and, in order to facilitate the reading of all the replies, a summary document had been prepared and delegations were given the opportunity to review the accuracy of the information contained in that document. At its fourteenth session in April 2005, the Committee decided that delegations should be given another opportunity to review the compilation and to submit requests for correction. Also, those delegations that had not yet sent replies to the questionnaire were invited to do so. A number of requests for correction were received, as well as two new sets of replies, one from China in relation to the Hong Kong Special Administrative Region (Hong Kong SAR) and one from Israel. Those replies and corrections were included in the current document. The Secretariat explained that the regular updating of the document over the last two years had engaged a considerable amount of resources, as replies had to be worked into the document, translated and reproduced. The Secretariat recalled that the purpose of the document was to collect data that would provide the Committee with additional elements of information at the time of considering possible future work in the field of trademarks, rather than constitute a complete guide to the individual national or regional laws of members. Against this background, the Committee might wish to consider whether the Secretariat should continue to issue updated versions of that document and submit them regularly to the SCT, or whether the Committee would prefer to conclude its work on the document.

16. The Delegation of Brazil said that it considered the questionnaire as a source of information and not as a document which could guide the future work of the Committee. From this perspective, it preferred not to close the questionnaire, but to keep it as an evolutionary document that could be updated in the future to reflect changes in the legislation of Member States.

17. The Delegations of Argentina, Egypt, Iran (Islamic Republic of), Israel, Italy, Kyrgyzstan and The former Yugoslav Republic of Macedonia supported the view that the document should continue to be updated, in line with what was expressed by the Delegation of Brazil.

18. The Chair noted that he understood the intervention by the Delegation of Brazil as suggesting that it was not necessary to provide an updated document at every session of the SCT but only at appropriate intervals when new information was received from Member States.

19. The Delegation of Germany expressed its preference for a closing of the document since that would relieve the offices from the burden of having to update the questionnaire. Also, if one delegation provided updated information, the other delegations would be obliged to report new developments to the International Bureau. The Delegation would however support the idea to update the document at any time in the future, if so required.

20. The Representative of the European Community, speaking on behalf of its member States and the two acceding States, wondered whether the questionnaire would be useful if only some delegations were to notify updates to their legislation. The Representative believed that Members of the SCT should update the information each time changes occur in their legislation. However, it seemed that there was no obligation *a priori* to do so, and this put into question the usefulness of the information provided. The Delegation said that a useful *modus operandi* was needed and mentioned, as an example, the obligation that members of WTO had to notify their intellectual property legislation.

21. The Delegation of Argentina said that it understood the questionnaire to be of a voluntary nature. The Delegation did not consider that the responses to the questionnaire should be regarded in the same manner as the notifications to the WTO. In the view of the Delegation, the questionnaire was circulated and replied to on a voluntary basis, and the compilation of the responses was only informative in nature. The Delegation considered that several possibilities could be envisaged with regard to the questionnaire. Delegations could be invited to update their data at some time in the future and another possibility would be to keep the issue on the agenda of the SCT and invite delegations to provide updates of any changes to their legislation – even orally – at each session of the SCT.

22. The Secretariat noted that it was important to distinguish the Questionnaire on Trademark Law and Practice from the WIPO Collection of Laws for Electronic Access (CLEA). The latter had a long standing and was based on provisions of both the Paris and the Bern Conventions. Pursuant to Article 15(2) of the Paris Convention, Members had regularly notified their laws and regulations to WIPO. Such laws were compiled in the CLEA. When the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS

Agreement) entered into force and required Member States to notify their laws and regulations, a way was sought to avoid the duplication of efforts. Indeed, the 1995 Agreement between the two organizations provided that the WIPO collection of laws could also be referred to in any notification procedure applicable under the TRIPS Agreement. The Secretariat further noted that the questionnaire on trademark law and practice had a different purpose: it was an information-gathering process to support the work of the Committee and it had a different approach, as it covered not only laws but also office practice.

23. The Delegation of New Zealand recalled that the original objective of the questionnaire was to help the Committee in looking at issues around trademark law harmonization as well as procedure harmonization. Against this background, the Delegation preferred to close the document off at this point or within a short period of time, and to use it as a basis to assess whether this Committee wished to progress on substantive trademark law harmonization or the harmonization of procedures under the next agenda item.

24. The Delegation of Brazil stressed that it understood the document to be voluntary and informative in nature. Brazil had provided answers to the questions, but legislation in all the fields covered by the questionnaire tended to evolve irregularly over time. If the document were not further updated, it would lose its relevance. The Delegation disagreed with the position expressed by the Delegation of New Zealand that the questionnaire could become the basis for decisions regarding the future work of the SCT. The questions had been answered only as a means of providing information on how particular aspects of trademark law and related issues were dealt with in Brazil. In the view of the Delegation, the answers had not been provided having in mind decisions on future work or harmonization, neither on substantive nor on procedural matters.

25. The Delegation of Ukraine said that the questionnaire should not be closed, because it was a very valuable exercise and it provided very useful information. The Delegation supported the views expressed by the Delegation of the European Community that the questionnaire should be updated regularly, so that other countries may refer to it. The Delegation said that the Committee should consider having a similar questionnaire for industrial designs and possibly also for geographical indications.

26. The Delegation of The former Yugoslav Republic of Macedonia declared that, while at the outset, the purpose of the questionnaire was to identify a basis for the future work of the SCT, it was later found that this document was very useful for all countries, even more so if the questionnaire could be updated and made available on the WIPO Website, so that interested members could see the changes that were introduced in the laws and practices of different countries.

27. The Chair concluded that, given the support expressed by delegations, this document would be updated periodically on the basis of submissions by Members.

Agenda Item 5: Proposals for the Future Work of the SCT

28. The discussion was based on documents SCT/15/2 and 3.

29. The Secretariat recalled that at its last session, the SCT had decided to invite members and observers to submit in writing proposals for the future work of the Standing Committee. Fourteen proposals from members and two contributions from observers of the SCT had been received. Document SCT/15/2 reproduced those proposals and contributions, but as way of introduction, it also contained a quantitative and thematic summary of them.

30. The Chair proposed to start the discussion of document SCT/15/2 by asking members that had provided contributions to explain their proposals first and asked other delegations, which had not expressed themselves in writing to make their positions known.

31. The Delegation of Argentina expressed concerns on the fact that document SCT/15/2 included proposals from non-governmental organizations. The Delegation recalled that, according to Article 24(2) the WIPO Rules of Procedure, observers did not have the right to present proposals, amendments or motions, a right that was reserved to Member States. Consequently, the Delegation suggested that a corrigendum of document SCT/15/2 be produced, including only the proposals submitted by Member States. In addition, the Delegation asked that, at the current session, only proposals presented by Member States should be discussed by the Standing Committee.

32. The Chair drew the attention of the Standing Committee to the fact that, in preparing document SCT/15/2, the Secretariat had based itself on a decision adopted by the SCT at its fourteenth session. That decision was reflected in paragraph 9 of the Summary by the Chair (document SCT/14/7) and in paragraph 353 of the Report of that session (document SCT/14/8/Prov. 2), which provided that members and observers of the SCT were invited to submit to the Secretariat, by July 1, 2005, in writing concise proposals for future work of the Standing Committee, including the issues to be dealt with and priorities for addressing them. The Secretariat would translate those proposals and make them available as SCT working documents. Hence, the Secretariat had strictly complied with the instructions of the SCT in that respect.

33. The Delegation of Brazil supported the views expressed by the Delegation of Argentina and recalled that in other WIPO Standing Committees, intergovernmental and non-governmental organizations that had the status of observers could only intervene after the Member States and could not make proposals. While the Delegation noted that the Secretariat had indeed complied with a decision of the Standing Committee, it was important to also comply with the General Rules of Procedure, whereby only Member States could table proposals.

34. The Chair confirmed that, in fact, the general Rules of Procedure had been followed consistently during the debates of the SCT, both regarding oral interventions and formal proposals, which could only be presented by Member States. However, in looking at the agenda of the current session, he noted that there was no item that had been proposed only by an observer organization. Thus, with regard to the substantive debate on future work, there did not seem to be a problem, as all the points listed as agenda items had been suggested by Member States.

35. The Delegation of Argentina recalled that the procedural issue it had raised needed to be resolved before any substantive discussion could be initiated. In particular, the Delegation had requested that the SCT deal only with relevant portions of the document. However, it did not seem clear that this determination had been made. Therefore, the Delegation requested

that the Chair make a declaration to the effect that Annexes XV and XVI of the document as well as all the paragraphs containing references to proposals from non-governmental organizations were to be excluded from consideration by the SCT. The Delegation further suggested that document SCT/15/2 be republished including only the proposals made by Member States.

36. The Chair noted that the purpose of the preparatory documents SCT/15/2 and 3, was similar to that of any study prepared by the Secretariat, which was to guide the discussion without prejudging its content. In addition, the SCT would not discuss proposals that were not presented by Member States. However, Member States were free to choose from any subitems contained in the documents. As to the suggestion made by the Delegation of Argentina to republish the document, this would require a decision by the Standing Committee.

37. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Group of Countries of Asia and the Pacific, declared that diverse issues had been submitted by Members of the Standing Committee for discussion of its future work. Although all of the submissions were relevant, it was important to define the direction of the work of the SCT by taking into consideration the balance of interests of Member States, their level of development, the need for policy considerations at the national level, as well as the economic capacity of those members. The Group of Countries of Asia and the Pacific expressed concerns as to the harmonization of trademark law and the new types of marks, in particular. The Group felt that, at this stage sufficient studies should be conducted to evaluate the implications of harmonization on developing and least developed countries. The Group considered that the items, which had been on the Agenda of the SCT, should remain for future discussion.

38. The Delegation of Morocco said that it wished to rectify its submission on the future work of the SCT, as reflected in document SCT/15/2. The Delegation indicated that the proposal should read "...we propose to give priority to work on well-known marks, industrial designs and three-dimensional marks."

39. The Chair suggested continuing the discussion of the items proposed for the future work of the SCT, in the order that they appeared in document SCT/15/2 and opened the floor for comments.

(a) Trademarks

Harmonization of Substantive Trademark Law

40. The Chair noted that the issue of the harmonization of substantive trademark law had been suggested by the Delegations of Mexico and of the Russian Federation. The Chair also noted that this item was broad and would probably need to be further defined, should the Standing Committee decide to initiate any studies or future work on it.

41. The Delegation of South Africa considered that the harmonization of trademark law was a truly important aspect. However, countries were at different levels of development and therefore the Delegation would prefer that a development-impact assessment be conducted in this regard, so that members could be assured that there was truly a development benefit to be derived from the harmonization of substantive trademark law.

42. The Delegation of Japan supported the idea to initiate work on the harmonization of substantive trademark law. The Delegation noted that, with economic globalization, businesses from all over the world were required to survive fierce international competition and it was important for companies to carry out their economic activities more quickly. Under those circumstances, the trademark system should be designed to satisfy the needs of companies and businesses. Specifically, it should be designed in a way that the users could more easily prepare and file applications and more accurately assess the registrability of the trademarks they applied for. In order to do so, harmonization of the trademark system was essential on substantive as well as on procedural and formality aspects. The issue of harmonization of trademark procedures and formalities was already taken up in the framework of the Madrid Agreement and Protocol and in the Trademark Law Treaty. Therefore, the Delegation considered that the SCT should engage in the substantive harmonization of trademark law. The Delegation considered that, before starting the discussion on this issue, from a point of view of efficiency, Members of the SCT should first analyze the summary of the replies to the Questionnaire on Trademark Law and Practice, in order to clarify the similarities and differences in the trademark systems of Member States. Through this process, the Committee could identify items in which priority should be set or in which harmonization could be easily achieved. The Delegation believed that the questionnaire could provide valuable information to be considered in the future and declared its particular interest in the harmonization of possible grounds for refusal and in the area of the post-grant opposition systems.

43. The Chair noted that the Delegation of Japan had not submitted proposals for the future work of the SCT, prior to the current session. However, the proposals it had just submitted to the Standing Committee should also be discussed by Members.

44. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Group of Countries of Asia and the Pacific, declared that even though the group had expressed concerns about the harmonization of substantive trademark law, it could support the idea of conducting studies on the implications of specific areas of harmonization for developing countries.

45. The Delegation of Kenya said that probably the concept of substantive law needed to be construed in relation to the principle of territoriality, which was basic in trademark law. The term substantive would need to be clarified if used in relation to harmonization, because the breath of both concepts together could be too far reaching. Explaining these concepts would help all delegations to understand what was at stake in this exercise, regardless of their level of development.

46. The Delegation of New Zealand held the view that the broad topic of harmonization of substantive trademark law should be given a lower priority in the future work program of the SCT. The Standing Committee had already devoted a substantial portion of its time over the last few years to trademark issues and in particular the revision the Trademark Law Treaty. Once that work was completed, the SCT could more usefully progress work in other areas of interest.

47. The Delegation of Slovenia expressed the view that the harmonization of substantive trademark law was an extremely interesting topic. However, it was also a very broad and difficult subject to tackle. The Delegation noted that, as a first step, parameters needed to be established, so as to define what substantive law really meant. For example, grounds for refusal could vary considerably from one country to another. While the topic of substantive harmonization was very interesting for national offices and also for the users of the system, it was more important to ensure that users could prepare trademark applications that were likely to succeed at registration. It was also important for them to understand why an application had failed to be registered in different countries.

48. The Delegation of Germany supported the proposal to consider work on the harmonization of trademark law issues, the aim of which could be the conclusion of a substantive trademark law treaty. However, as the Delegation of Slovenia had mentioned, this task could be complicated and should not be the first priority in the discussions of the SCT. Other issues could have a higher priority, such as the harmonization of design registration formalities, where there was already a common understanding.

49. The Delegation of the Republic of Korea said that all of the issues addressed in the proposals presented by Member States were mature enough to be dealt with by the Standing Committee. However, priority should be given to proposals aiming at cost reductions for applicants and streamlining of national trademark and industrial design registration processes. The Delegation further noted that any procedural improvements under Article 6*ter* of the Paris Convention could be considered a priority issue for discussion, while the harmonization of substantive trademark law or a design law treaty could be considered as a second priority. Discussions on well-known marks and new types of marks could come as a third priority.

50. The Delegation of Argentina noted that the compilation of proposals on the future work of the SCT contained replies of fourteen countries only. Therefore, the Delegation considered that the discussion at the current session was a first opportunity to exchange views on these proposals and to assess the level of acceptance that they had received. The Delegation supported the views expressed by the Delegations of Iran (Islamic Republic of), Kenya and South Africa, as to the relevance of issues of intellectual property law for developing countries, particularly when the matter at stake was the adoption of higher standards of protection. The Delegation held the view that, before the SCT could engage in further developments in other areas, it had to be proven that recently concluded agreements, such as the treaty to be adopted in Singapore, had received sufficient support. In the opinion of the Delegation, the previous speakers had suggested that caution be exercised with regard to these matters and showed that there was no conviction as to any specific action to be taken. The Delegation noted that the Government of Argentina had a preference to keep the areas of trademarks, Article 6*ter* of the Paris Convention and industrial designs within the scope of its domestic legislation so as to preserve the margins that it had at its disposal and in accordance with its international commitments.

51. The Delegation of Brazil said that it concurred with the views expressed by the Delegations of Argentina, Iran (Islamic Republic of), Kenya and South Africa with regard to the harmonization of trademark law and generally with regard to other issues before the Standing Committee. The Delegation recalled that the Government of Brazil had promoted mainstreaming development concerns in all activities of WIPO, including activities in the area of trademarks. Concerns had been expressed with regard to upward harmonization in many fields of intellectual property, as well as the economic and technology transfer effects of this

type of harmonization in developing countries. Therefore, it was necessary to clarify the scope of the harmonization exercise and to assess through evidence, the actual impact on developing countries. Trademark law was a significant area in Brazil, since most of the requests submitted to the Intellectual Property Institute concerned trademarks. The Delegation noted that a preliminary reading of document SCT/15/2 had allowed it to identify a number of areas that were novel and on which there was no convergence of practices, nor enough information at the national level. In particular, new types of marks and Internet domain names, areas on which there was currently no national legislation. The Delegation added that caution and prudence should be exercised in dealing with these issues, and that the harmonization of trademark law was not a priority.

52. The Chair noted that the harmonization of trademark law need not be upward harmonization. It may also bring together existing information on different systems and harmonize them at a reasonable level. However, it seemed that it was necessary to further clarify the notion of substantive harmonization in this particular context.

53. The Delegation of Egypt said that the harmonization of trademark law could have an impact on national offices. In many countries, applicants were requested to submit too many documents. The Delegation further noted that in Egypt, certification and collective marks had not yet received sufficient attention.

54. The Delegation of Kyrgyzstan indicated that many interesting issues had been raised in the proposals reflected in document SCT/15/2. The Delegation considered, however, that the future work of the SCT should focus on well-known marks and international non-proprietary names for pharmaceutical substances (INNs). Internet domain names and geographical indications were also important areas. With regard to the substantive harmonization of trademark law, the Delegation believed that the Standing Committee should exercise caution and take into account the different level of development of its members. Nevertheless, the Delegation noted that Kyrgyzstan had become a party to a number of international treaties dealing with trademarks and was ready to further cooperate in the harmonization of trademark law.

55. The Delegation of Iran (Islamic Republic of) referred to the concerns expressed by previous speakers and recalled that at the eleventh session of the SCT, it was decided that the Standing Committee should focus its work on the TLT in order to reach a conclusion. However, this did not mean that it would completely put aside all other issues on its agenda. In the view of the Delegation, those other issues remained open, which meant that procedurally, the work of the SCT should continue on those issues, which were provisionally postponed. The decision taken at the fourteenth session, to ask delegations to submit proposals for the work of the SCT had not been inspired by the notion of reaching the substantive harmonization of trademark law. The Delegation further noted that Iran (Islamic Republic of), had recently acceded to several treaties relating to marks but required capacity building and training to implement them, and to also be able to assess the sophisticated implications of these treaties in the national economy. The Delegation reiterated that, at the current stage, it could not agree to advance work on substantive harmonization.

56. The Delegation of the Republic of Moldova considered that the proposals contained in document SCT/15/2, as well as those presented in the course of meeting were very interesting. The Delegation supported in particular the proposals made by the Delegations of Switzerland and of the United States of America and said that a combination of both would provide a comprehensive list of issues for consideration by the Standing Committee.

57. The Delegation of Cuba said that thus far, the establishment of legal standards at WIPO had focussed on the promotion of international agreements designed to ensure the protection of intellectual property rights. In that context, the implementation of an ambitious program for the creation of new standards, without having an appropriate debate, could have a negative impact on Member States. The Delegation felt that, an analysis should be carried out on the development effects of any proposals related to the further harmonization of intellectual property law. Such an analysis should concentrate on the economic, social and cultural effects of the harmonization, as well as on the technical aspects or added value of any proposal to increase rights. Consequently, the Delegation could not, at this stage, support the harmonization of substantive trademark law, or the conclusion of a design law treaty.

58. The Delegation of Indonesia proposed as issues for consideration in the future work of the Standing Committee, geographical indications, well-known marks and industrial designs, taking into account that Indonesia was currently developing legislation on these three areas.

59. The Delegation of Colombia noted that the issue of harmonization, proposed in abstract terms, was very vast and it was difficult to determine the specific contents of the proposal. In the opinion of the Delegation, it was important for the SCT to deal with specific issues that could yield a concrete benefit. The Delegation considered that it was preferable to allocate resources to the study of specific issues that affect national offices in their day-to-day business.

60. The Chair concluded that, some delegations had indicated their interest in initiating work on harmonizing certain aspects of trademark law, such as on possible grounds for refusal. However, there was at this point, no agreement in the SCT to move forward on this topic.

New Types of Marks

61. The Delegation of Switzerland thanked the Secretariat for the documents prepared for the current session of the SCT. The Delegation recalled that the discussion at the previous session of the Standing Committee had been extremely fruitful and resulted in an agreement on the Basic Proposal for a Revised Trademark Law Treaty, to be approved by the Diplomatic Conference in Singapore, in March 2006. These were very encouraging results and the Delegation of Switzerland considered that it was important to continue working in the same manner. Within the general framework of trademark law, the Delegation wished to focus on some specific points. Firstly, on the new types of marks (movement marks, olfactory marks, etc.), the discussion of which had been proposed by that Delegation at the seventh session of the SCT. Such discussion, particularly in relation to the revised TLT, had allowed Members to better understand the nature of these marks and the special set of national requirements that should be applied to the registration of new types of marks. The Delegation said that Members could include this issue in the future work of the SCT, and could discuss two specific questions in this regard, namely, the harmonization of criteria and the modalities for

the registration of the new types of marks. The Delegation added that the discussion pertaining to this issue was timely for a number of reasons. One was that many offices had become familiar with the new types of marks and also, in this context, the Standing Committee could base its analysis on the synthesis of responses to the questionnaire – the outcome of a sizeable work carried out by the Secretariat. The Delegation further noted that the discussion at the Standing Committee would enable it to look into new technical and technological developments at the international level, setting the trend towards the development of new types of marks. The Delegation of Switzerland wished that priority be given to the treatment of these new types of marks and to the relationship between trademarks and designs.

62. The Representative of the European Community, speaking on behalf of its member States and the two acceding States said that the issue of the new types of marks was interesting and experience had shown that a number of elements could be further clarified. The Representative supported the views expressed by the Delegation of Switzerland and added that this was an issue that the European Community, its member States and the States in the process of accession could discuss, in further detail, in the framework of the SCT.

63. The Delegation of The former Yugoslav Republic of Macedonia supported the proposal made by the Delegation of Switzerland.

64. The Delegation of Singapore supported the proposal made by the Delegation of Switzerland and the views expressed by the Representative of the European Community. Taking into account the proliferation of new types of marks (scent, movement, sound, three-dimensional, shape marks), it was important for the Standing Committee to carefully study this area and particularly with a view to streamlining and setting guidelines or criteria for the protection of such marks.

65. The Delegation of Iran (Islamic Republic of) recalled that during the discussion on the new types of marks in the context of the revised TLT, it had raised concerns about the problems which developing countries could face, firstly with regard to the availability of the technologies involved in the protection of such marks and secondly, with the fact that the new types of marks were simply not protected in those countries. The Delegation further noted that according to the statistics published by the Secretariat at the last General Assembly, the numbers of these applications were extremely low in developing countries. Therefore, those countries could not be expected to introduce the protection of new types of marks. In addition, the procedural aspects for the protection of these marks under the TLT were optional and the Delegation believed that through substantive work in this area, they could become compulsory for developing countries.

66. The Chair said that the issue of new types of marks could be seen from different angles, and particularly from the angle of international trade, where traders needed to be clear about the limitations that the use of such trademarks could encounter in countries where they wished to do business. The Chair further noted that the point in making this proposal was not to simply look where protection may be raised, but also to look at the limitations on protectability. Therefore, the Committee could decide to have more clarity and transparency as to this new phenomenon.

67. The Delegation of Japan expressed the view that even though the issue was interesting, there did not seem to be a real urgency for the Standing Committee to deal with the new types of marks, as there was no real pressing need from the users of the system.

68. The Delegation of the United States of America supported the views expressed by the Delegation of Switzerland and by the Representative of the European Community regarding the new types of marks. The Delegation noted that in some jurisdictions, there seemed to be problems with the processing of applications concerning these types of marks, namely issues of distinctiveness, functionality, and representation of the drawing. The Delegation further noted that the experience its office had gained over many years processing these types of marks could be useful to the work of the Standing Committee. Such experience could be helpful to eliminate some of the issues and to address those issues in examination.

69. The Representative of the European Community, speaking on behalf of its member States and the two States in the process of accession, said that even though the number of applications for new types of marks was low, it was necessary to process them and to know exactly what requirements should apply to those registrations. The Representative also noted that it was important to ensure that the majority of States treated these applications in the same manner, for example with regard to graphic representation. In the processing of so-called non-traditional marks, there should be a set of minimum requirements to facilitate the work of the Offices.

70. The Delegation of Cuba held the view that the new creations that had been accepted by certain countries as marks should be further studied. The Delegation had doubts as to whether movement or holograms could in fact be protected as marks. Movement implied diversity and the different traits appreciated in a hologram lacked uniformity. Therefore, it was highly questionable whether these signs could be used as marks and whether a monopoly over those signs could be granted to anyone. The Delegation concluded that these new types of marks could not be harmonized while it was not clear if they indeed constituted marks or if their legal protection implied procedures or technologies that were not available in all the countries of the world.

71. The Delegation of Chile considered that the issue of the new types of marks was interesting, however, it was not a priority for the Standing Committee. The Delegation held the view that the proposal presented by the Delegation of Switzerland dealt not only with the new types of marks but also with issues of harmonization. The proposal mentioned movement and olfactory marks, which were less common in developing countries than color and sound marks. The Delegation also noted that the new types of marks could involve several categories of intellectual property rights and in particular, there could be a relationship with copyright, which could raise an issue of over protection that would affect the public domain once marks are involved. The Delegation further noted that perhaps this proposal was not mature enough or could be limited leaving out harmonization. It was important, however, to hear the experiences of other countries with the protection of color, shape and sound.

72. The Delegation of the Russian Federation said that the provisions in its national legislation were rather broad and did not contain a direct prohibition to register any type of mark. However, not too many non-traditional marks had actually been registered since that legislation was in force. The Delegation mentioned that there had been some discussion in the Russian Federation with regard to movement marks and olfactory marks, particularly in relation to the need for a single identification system. Also, whether in the case of olfactory

marks, a chemical formula should be included in the application to describe the scent, or whether there should be a system for the deposit of samples, or a system of special codes to be used. The Delegation added that it would be interesting to look at these and other issues relating to the new types of marks, in order to be able to deal with such applications. It was also important that the SCT look for a joint approach towards those issues. Furthermore, it would be essential to determine the criteria for registrability of new types of marks, in order to avoid the proliferation of such marks. In fact, this could become a whole new area of law and a complex one, which merited to be studied in an integral manner.

73. The Delegation of Italy said that distinguishing new and old types of marks was rather artificial. It was only necessary to analyze whether the sign applied for registration complied with the definition of trademark: any sign that can distinguish the goods and services of one undertaking from the goods and services of another undertaking, and that can be represented graphically. Therefore, in Italy, movement and olfactory trademarks, could be registered if they could be represented graphically. This had not been possible so far. The Delegation considered that the problem did not lie in trademark law but could be solved through technical means.

74. The Chair said that the views expressed by Delegations showed that there was at least a common feeling of uneasiness and uncertainty as to whether the sole criteria of graphic representation could solve all the issues around the new types of marks. Also, additional information was needed to decide whether there was room for harmonization in this area. Therefore, the Chair suggested that the Standing Committee request the International Bureau to prepare an issues paper listing the different aspects involved and integrating the experience that Members may already have in the registration and protection of new types of marks.

75. The Chair concluded that the SCT agreed to ask the International Bureau to prepare an issues paper on this matter.

Well-known Marks

76. The Chair noted that the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks was adopted by the Paris Union Assembly and the WIPO General Assembly at the thirty-fourth series of meetings of the Assemblies of the Member States of WIPO, in September 1999. Yet, there seemed to be some problems or new phenomena surrounding this issue, which led quite a number of Member States to propose that this item be included in the discussions of the SCT. This proposal had been made by the Delegations of Mexico, Morocco, The former Yugoslav Republic of Macedonia, the Russian Federation, Slovakia, and the United States of America. The Chair also noted it had also been suggested to discuss in particular, the special registers, unofficial compilations or official registers of well-known marks, which had been set up in some countries and were causing some concerns in the user community.

77. The Delegation of Israel said that many countries of the world had introduced the notion of well-known marks in their legislation, in the light of the requirement specifically contained in the TRIPS Agreement. However, it seemed that this concept was still not entirely clear. Therefore, the Delegation suggested that the SCT commission the Secretariat to prepare a report on the issue of well-known marks.

78. The Representative of the European Community, speaking on behalf of its member States and the two acceding States requested a clarification as to what exactly was at issue under this item. There seemed to be a concern about the proliferation of well-known mark registries but there was no clear indication about the purpose of a discussion on well-known marks.

79. The Delegation of Egypt said that precise criteria were needed to identify famous trademarks. A trademark could be well-known or famous in one country but not in another. The Delegation wondered whether there were criteria that could be applied in every country, so as to enable the authority to determine whether a given trademark was famous at the international level.

80. The Secretariat explained that the SCT and the former *Ad hoc* Committee of Experts on the Protection of Well-Known Marks had been faced with the question pointed out by the Delegation of Egypt and realized that there was no single answer to the problem. However, it was possible to come up with a certain number of criteria or guidelines to be considered by offices, law-enforcement agencies or tribunals, to determine whether a given mark, in a given situation could be considered well-known. This was, in particular, the content of Article 2 of the Joint Recommendation on Well-Known Marks, which contained a catalog of criteria to be applied on a case-by case basis and taking into consideration all the factors involved. The determination of the relevant sector of the public was also very important in that respect.

81. The Chair said that there seemed to be some uncertainty in cases where the authorities of a given country had to determine whether a trade or service mark not registered in that country was a well-known mark. This could explain why occasionally lists of well-known marks had been established in different countries. However, the question arose when a given trademark did not appear on the list, since in that case, the existence of the list would remove the neutrality of the case-by-case assessment. The Chair noted that, with the speed of information distributed over the Internet, a trademark could quickly become well-known without necessarily being included on any list.

82. The Delegation of Colombia was of the opinion that, as a first step, the issue should be limited to conducting a comparative study on the various legislations dealing with well-known marks. The Delegation held that there were as many different regimes in the world as there were offices in charge of trademark matters. The criteria used for determining the well-known character of a mark were quite diverse, for example, the scope of protection of the mark in relation to time. The Delegation noted that in the Andean Community and especially in Colombia, the temporal scope of protection of a well-known mark was limited to a given period – three or four years – after which the mark could cease to be well-known. A comparative study on this matter could provide offices with elements to better understand the issues involved in the determination of well-known marks.

83. The Chair noted that the starting point was the regime established in the Paris Convention, as further elaborated by the Joint Recommendation on Well-Known Marks. While States party to the Paris Convention were under a treaty obligation to apply the provisions of that convention, they had the choice to apply the criteria set forth in the Joint Recommendation, since the latter was a non binding instrument.

84. The Delegation of Chile requested further clarifications from the delegations that had proposed this issue for discussion. In particular, the Delegation wondered whether the proposal put forward by the Delegation of The former Yugoslav Republic of Macedonia consisted on either the establishment of an international registry for well-known marks or the establishment of national registers for such marks. In the view of the Delegation, well-known marks had enough protection under the Paris Convention, the TRIPS Agreement and the Joint Recommendation.

85. The Delegation of Ecuador agreed with the position expressed by the Delegation of Colombia, regarding the temporal limitation of the well-known character of a trademark. The Delegation noted that the establishment of well-known marks registers would remove the possibility to make a determination on a temporary basis. The Delegation also supported the views expressed by the Delegation of Chile in requesting the proponents of this issue to further clarify the particular aspects of the issue that they wished to discuss.

86. The Delegation of Egypt wondered whether the well-known character of a trademark could be established on the basis of the sales figures of a given product. The Delegation said that further clarification was needed as to what criteria should be used to make that determination.

87. The Delegation of The former Yugoslav Republic of Macedonia said its legislation provided for the protection of well-known marks within the meaning of the Paris Convention and the TRIPS Agreement. However, the Delegation noted, that it had proposed a discussion on the establishment of well-known mark registers because it knew that such registers already existed in some countries. By raising this issue at the SCT, the Delegation wished to find out whether the existence of the registers facilitated the work of the office in those countries or in any way contributed to resolving problems related to the registration of marks.

88. The Delegation of the United States of America declared that it was interested in discussing well-known mark registers in particular, but it also considered that a broader discussion of the issue would be useful to the work of the Standing Committee. The Delegation noted that its users had found that in certain countries, committees of experts evaluated marks and later recorded their work in a well-known marks register. The Delegation did not favor the establishment of such registers, but considered that starting a discussion on the arguments for and against well-known mark registers could also highlight issues of implementation of international obligations in this area, which would be useful to all SCT members.

89. The Delegation of Japan declared that it was very much interested in the idea to conduct a study on well-known marks in the SCT as a high priority matter. The Delegation said that, under fierce international competition amongst businesses, more and more corporations had shown their interest in the protection of highly valuable brand names. Against this background, Japan had recently revised its trademark law to prevent the registration of a mark, where that mark was identical or similar to a mark recognized as well-known in other countries. The Delegation added that, trademarks featured as well-known overseas had to enjoy an aggregate level of protection in any country, even though they were not registered in those countries. While a study on well-known marks would not be an easy task for the SCT, it was worthwhile to undertake such a study.

90. The Delegation of Kyrgyzstan said that in the year 2000, its Government had adopted provisions regarding well-known marks. Those provisions were in line with international treaties and with the WIPO Joint Recommendation. The Delegation held the view that well-known marks should be dealt with on an individual basis and having due care of the principle of the territoriality of registrations. As to the establishment of special registers, the Delegation believed that appropriate studies should be undertaken in the framework of the Standing Committee.

91. The Delegation of Indonesia requested clarification on one of the criteria set forth in the WIPO Joint Recommendation on Well-Known Marks, namely the degree of knowledge or recognition of the mark in society. The Delegation considered that it was difficult, in practice, to determine how broad the recognition should be. Therefore, the Delegation proposed that the Standing Committee continue to study well-known marks.

92. The Delegation of Turkey declared that its Trademark Office was very interested in the issue of well-known marks. The Delegation highlighted that some of the criteria used by the office to determine the well-known character of a mark, namely: the duration of any registrations of the mark; the duration of any use of the mark and the size of the relevant market share; the extent of any publicity or advertising of the trademark, including press or television advertising; the geographical area of distribution of the mark, and the type and size of the population of consumers of the goods or services covered by the mark. The Office also considered whether the mark applied for was similar or confusingly similar with a well-known mark. Applications for marks considered similar to well-known marks were refused for all classes of goods and services.

93. The Chair drew the attention of the Standing Committee to the fact that there was perhaps a difference between listings of well-known marks prepared as internal records and real registers of such marks. In the latter case, legal effects could derive from the fact that a trademark was included in a register and the question remained as to whether a trademark that was not included could still be covered by the provisions of the Paris Convention and the TRIPS Agreement. An additional question was whether the national law of the country concerned gave a different status to the marks included in the register and how that fact was reconciled with its international obligations.

94. The Delegation of Cuba supported the views expressed by the Delegations of Chile, Colombia and Ecuador, and added that the Joint Recommendation on the Protection of Well-Known Marks was a sufficiently clear guideline for the determination of well-known marks at the national level. The Delegation held the view that notoriety was a multifaceted question, which had to be looked at domestically. It was linked to the social, cultural and economic reality of each country and the extent to which it was involved multilateral trade. A national or international register of well-known marks would be inconsistent with current legal standards and could not be implemented in practical terms, because the analysis of the well-known character of a mark was territorially limited. Furthermore, having such a register could lead to the vulgarization or the generalization of well-known marks, which in turn could make the enforcement of trademarks ineffective in many countries. The presence of registries for well-known marks would also imply a limited appreciation of marks, if that was done at the time of establishing the registry and not at the time when the notoriety of those marks should be assessed. Therefore, establishing such registries would not be useful for national offices.

95. The Delegation of Sweden noted that the question of well-known marks was really essential. The Delegation would be glad to take part in any discussion on this matter. However, the Delegation expressed concern about the establishment of registers of well-known marks, because of the territoriality of trademark registrations, which had already been mentioned by other Delegations, as well as the temporary aspect of notoriety. In addition, there were different levels of reputation and some well-known marks were entitled to a broader scope of protection than others. A register would not take into account these differences, as it would contain all marks that passed the test at a given point. Therefore, in the view of the Delegation, an assessment of the well-known character of a mark on a case-by case basis seemed natural.

96. The Representative of AIM recalled the suggestion made by that organization at previous sessions of the Standing Committee requesting the International Bureau to conduct a survey amongst Member States to determine the level of application of the Joint Recommendation on Well-Known Marks, including, as the case may be, questions on the well-known mark registers established in some countries. The Representative clarified that such a suggestion did not seek to enhance the protection of those marks. In fact, AIM supported the catalog of flexible criteria contained in the Joint Recommendation, since it provided good guidance for a case-by-case assessment of the well-known character of a mark at any point in time. Although this system was not mandatory it had proved to be useful. In the opinion of the Representative, the establishment of well-known marks registers could detract from the flexibility provided for by the Joint Recommendation. There could be a mechanical reliance on the register, whereby once a mark was in, it could automatically enjoy the extended protection granted to well-known marks. Conversely, a mark that was not in the register could be considered *a priori* not to be well-known, or a mark could stay in the register even after it had ceased to be well-known, hence enjoying the benefit of the well-known status. The Representative further noted that the Joint Recommendation did not call for the establishment of special registers and that the Paris Convention provided that well-known marks should be protected even without registration.

97. The Chair noted that the protection of well-known marks was not contested in those States, which had accepted that international obligation, either because they were parties to the Paris Convention or because they were Members of the WTO. The Chair noted that Article 6*bis* of the Paris Convention and the 1999 Joint Recommendation on Well-known Marks did not encourage the establishment of listings or registers for such marks. Although those collections were said to enhance certainty as to the determination of the well-known character of a mark, there seemed to be an issue as to the legal effect of the compilations, since the only legally binding protection flowed from Article 6*bis* of the Paris Convention, as supplemented by the TRIPS Agreement. The Chair added that, in fact, the listings or registers did not seem to add any legal certainty about the status of the marks that were in or outside of them. While some delegations had highlighted a number of problems in the area of well-known marks, there was no consensus in the Standing Committee to engage in a discussion of specific issues or to commission the International Bureau to carry out any studies on the matter.

98. The Chair concluded that, at this point, there was no agreement in the SCT to take any action on this topic.

Collective and Certification Marks

99. The Delegation of The former Yugoslav Republic of Macedonia withdrew the proposal that it had submitted in writing (paragraph 24 and Annex XI of document SCT/15/2), namely that the Standing Committee devote attention to collective and certification marks.

100. The Delegation of New Zealand stated that, for a number of reasons, it proposed that the Standing Committee work around the simplification and harmonization of registration requirements. Firstly, this work was likely to result in benefits for trademark offices and businesses in terms of reduced administrative and compliance costs. Secondly, collective and certification marks were useful tools in the protection of traditional knowledge, which constituted an important part of the intellectual property work program of New Zealand. Thirdly, the Delegation pointed out that collective and certification marks provided a means of protecting geographical indications.

101. The Delegation of Iran (Islamic Republic of) expressed support for the proposal made by the Delegation of New Zealand. In view of national experiences, the Delegation considered it appropriate to have further cooperative discussions on this subject.

102. The Delegation of the United States of America expressed support for the proposal made by the Delegation of New Zealand. The Delegation explained that collective and certification marks were an important feature of its national system. It held the view that guidelines on how to handle collective and certification marks would be useful. The Delegation indicated that the matter constituted a priority issue for the United States of America.

103. The Delegation of Egypt stated that collective and certification marks were of particular importance with regard to services. The Delegation welcomed discussions on the subject.

104. The Delegation of Mexico believed that it was important to keep the issue of collective and certification marks on the agenda. It stressed that, in Mexico, these marks served as a means to protect handicrafts.

105. The Delegation of Cuba considered it useful to have a discussion on collective and certification marks. It proposed to study the characteristics of these marks, their position within trademark law and national experiences.

106. The Delegation of Australia expressed support for the proposal made by the Delegation of New Zealand. It proposed to discuss and develop guidelines on how collective and certification marks could be used.

107. The Delegation of Algeria was in favor of keeping the item on the agenda because of the link with traditional knowledge and geographical indications.

108. The Representative of the European Community, speaking on behalf of its member States and the two acceding States, pointed out that she could not support a debate on collective and certification marks because of the link with geographical indications.
109. The Delegation of Switzerland supported the intervention of the Representative of the European Community. It pointed out that the issue of collective and certification marks did not constitute a priority.
110. The Delegation of Norway proposed to confine the discussion to formal requirements relating to collective and certification marks, and to leave the link with geographical indications aside.
111. The Delegation of New Zealand clarified that its proposal to deal with collective and certification marks aimed only at the simplification and harmonization of registration requirements. It recalled that collective and certification marks did not fall within the scope of the proposed Revised Trademark Law Treaty, as presently drafted.
112. The Representative of the European Community, speaking on behalf of its member States and the two acceding States, expressed the view that it was impossible to separate the issue of collective and certification marks from the debate on geographical indications. Referring to deliberations at the WTO, the Representative stressed that it could not accept further discussions on the issue at the Standing Committee.
113. The Delegation of the United States of America said that the discussion of collective and certification marks should not be limited to formal requirements. It held the view that the link with geographical indications was only one particular aspect of the issue, and that a discussion on the subject should not be precluded because of this aspect.
114. The Delegation of Germany explained that it advised the private sector to combine *sui generis* protection for geographical indications with the registration of certification marks. The Delegation therefore saw a factual but not necessarily a legal connection between the issue of geographical indications and collective and certification marks.
115. The Delegation of the Russian Federation said that, even though protection for collective and certification marks had been established a long time ago under its national law, these marks were not used very often. The Delegation deemed it useful to receive information on the experiences of other countries in order to render its protection system more attractive.
116. The Chair concluded that, at this point, there was no agreement in the SCT to undertake work on this topic.

Trademarks on the Internet

117. The Delegation of the Russian Federation explained that its proposal to discuss and take stock of the protection of trademarks on the Internet had to be seen in the broader context of the harmonization of substantive trademark law. The Delegation pointed out that the Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet, was not mandatory and proposed to follow up on

resulting national practices. It said that it would be desirable to develop a further joint recommendation or an international treaty in this area, on the basis of a study of national policies and practices.

118. The Delegation of Sweden indicated its interest in the issue of trademarks on the Internet. It expressed the view that it would be difficult to achieve further progress in this area reaching beyond the Joint Recommendation.

119. The Delegation of Cuba pointed out that any debate had to take into account the differences between countries in terms of access to information technologies and knowledge, as well as legal problems that arose in this regard. It felt that a more general analysis would be unacceptable and, in particular, any attempt to impose one form of development. In view of the undeniable power that lay in certain countries, a study of marks in that context would require a prior exchange of information in order to facilitate knowledge availability. The Delegation said that a general debate on this subject, which constituted a key problem for many countries would be neither balanced nor effective. In particular, countries with lesser economic strength should not suffer. The Delegation pointed out that a debate on this topic was not useful until equal conditions were achieved in participating countries which would ensure equal access to knowledge on the subject.

120. The Delegation of Colombia emphasized that the issue of trademarks on the Internet was multi-faceted. It pointed out that the Internet had brought about substantial changes. Whereas it had become easier to present an application, the control of the use of a mark was rendered more difficult. Conflicts between right holders in different territories were not unlikely to arise in the digital environment. The Delegation was of the opinion that the issue, while being of interest to all countries, was proposed too generally. In view of existing uncertainties, an initial study would be needed, on the basis of which the direction of future activities of the Standing Committee could be determined.

121. The Chair concluded that the SCT felt that it was important to address this subject so as to enable delegations to assess whether there was a need for further action in that area.

Marks and International Nonproprietary Names for Pharmaceutical Substances

122. The Delegation of Mexico proposed that the SCT deal with the relationship between marks and international nonproprietary names for pharmaceutical substances (INNs). The Delegation suggested that a study be conducted concerning the use of nonproprietary names, in particular the effects of obtaining exclusive rights on them. The Delegation expressed concerns about the practices in some countries in respect of this matter.

123. The Secretariat referred to the work previously undertaken in the framework of the SCT in respect of INNs. In order to prevent conflicts between INNs and trademarks, World Health Assembly Resolution WHA46.19 was issued in 1993, requesting the Member States to develop policy guidelines on the use and protection of INNs, and to discourage the use of names derived from INNs. The World Health Organization (WHO) approached WIPO in order to explore possible ways of cooperation between the two organizations to ensure that INNs were not misused or appropriated through registration as trademarks. The SCT agreed at its first session, in 1998, that the International Bureau conduct a survey among its Member

States concerning trademark office practices as regards the examination of applications for registration of trademarks in respect of conflicts with proposed or recommended INNs. As a result of that survey, it was concluded that the majority of the offices, which replied to the survey, examined applications for the registration of trademarks against conflicting INNs. The lists of proposed and recommended INNs identifying new pharmaceutical substances were updated periodically by the WHO, and in order to improve access to the relevant information, a free-of-charge online database on proposed and recommended INNs had been made available at the WHO website.

124. The Chair noted that the question of registration of INNs as domain names was discussed in the first special session of the SCT, in 2001. In that session the majority of delegations considered that, in view of insufficient evidence on the abusive registration of INNs as domain names and of the harm resulting from the registration of INNs as domain names, no immediate action was necessary.

125. The Delegation of Cuba, supported by the Delegation of Egypt, emphasized that an access to the updated lists of INNs should be guaranteed.

126. The Chair concluded that there was consensus to ask the International Bureau to consult with the Secretariat of the World Health Organization on appropriate ways to make information on INNs available to Member States and to report back to the SCT.

Opposition Proceedings

127. The Delegation of the United States of America suggested that the SCT deal with the issue of opposition proceedings. The Delegation held the view that national offices should provide an opportunity for interested parties to oppose an application or to cancel a registration. Opposition proceedings allowed prior right holders, whether unregistered or registered, to oppose or cancel the registration before any damage occurred. The Delegation welcomed a discussion on the importance of opposition proceedings within national offices and stated its belief that an opposition system provided significant advantages for users as well as cost savings for national offices. The availability of opposition proceedings within a national office would shift some of the costs of examination to right holders, and would also lessen the pressure on examiners to determine whether a mark was well-known. As a consequence, opposition proceedings would decrease the need for registers of well-known marks. The Delegation further noted that opposition proceedings would assist members in implementing their enforcement obligations under the TRIPS Agreement. Finally, an administrative tribunal inside the national office was in a good position to hear appeals upon refusals. In the view of the Delegation, work towards a Joint Recommendation Concerning Trademark Opposition Proceedings might be useful for the SCT.

128. The Delegation of Japan supported the view expressed by the Delegation of the United States of America, stressing that it was worthwhile discussing opposition proceedings in the framework of the SCT. The Delegation emphasized the importance for third parties to have a mechanism for opposition after a right was granted by a national office. The Delegation expressed its interest in the harmonization of opposition proceedings.

129. The Delegation of Canada shared the views expressed by the Delegations of Japan and the United States of America. The Delegation explained that opposition proceedings formed an important part of the trademark process in Canada, enabling owners of well-known marks to enforce their rights.

130. The Delegation of New Zealand expressed support for the suggestions made by the Delegations of Japan and the United States of America, and expressed its interest in the exchange of information concerning opposition proceedings.

131. The Delegation of Cuba stated that harmonization of opposition proceedings in different countries was not possible at the moment.

132. The Delegation of Chile considered it premature to discuss the harmonization of opposition proceedings. However, the Delegation was interested in discussing the issue in more general terms.

133. The Delegation of Egypt observed that national legislation in Egypt provided for opposition. The Delegation expressed interest in learning about the opposition systems of other countries with a view to the possible harmonization of such proceedings.

134. The Representative of INTA underlined the importance of this issue and expressed its interest in a study concerning opposition proceedings, and possible work towards harmonization in this area. The Representative informed the Committee that INTA had established a sub-committee to deal with opposition proceedings.

135. The Representative of AIPLA supported the views expressed by the Delegations of Canada, Japan and the United States of America. The Representative commented that a system of opposition before the right was granted was important in those jurisdictions where a registration carried legal presumptions that had to be overcome by the right holders.

136. After this exchange of views, the Chair concluded that there was agreement in the SCT to ask the International Bureau to prepare an information document on this topic.

Trademarks and Copyright

137. The Delegation of Chile referred to the proposal made by the Delegation of Mexico (document SCT/15/2) addressing the question of the extent to which copyright protection might overlap with industrial design protection. The Delegation expressed interest in addressing this question, but also with respect of copyright and trademark protection. The Delegation pointed out that, in contrast to trademarks, the protection of copyright was limited in time. Once copyright protection had expired, the work belonged in the public domain. There was a problem regarding the concept of originality, for example, in the case of figurative marks, sound and movement marks, where the threshold of protection was rather low, allowing protection by both copyright and trademark law. There was also an issue with regard to exceptions and limitations to protection, namely the public domain exception and the exhaustion of rights. In the view of the Delegation, exceptions and limitations to

protection were more clearly defined in copyright law than in trademark law. Therefore, it was not appropriate to opt for trademark protection of a sign once copyright protection had lapsed. Against this background, the Delegation requested that this issue be included in the future work of the SCT.

138. The Delegation of Tajikistan supported the intervention by the Delegation of Chile. The Delegation illustrated the situation with an example of a trademark application in Tajikistan, which reproduced the title of a famous book.

139. The Delegation of Brazil supported the idea to further explore the relationship between copyright and trademark protection.

140. The Delegation of Kenya highlighted the importance of this issue and noted that trademark and copyright protection were different in nature. In the opinion of the Delegation, where the two types of protection overlapped, it was not easy to define their scope, for example, to define the distinctive character of a trademark or the requirement of originality from the point of view of copyright protection.

141. The Delegation of Bangladesh supported the suggestion made by the Delegation of Chile, recalling in particular, that trademark protection was not limited in time in contrast to other forms of protection.

142. The Chair concluded that there was agreement in the SCT to ask the International Bureau to prepare an issues paper on this matter.

(b) Article 6ter of the Paris Convention

143. The Representative of the European Community supported the proposal made by the Delegation of the United Kingdom (document SCT/15/2) to consider current procedures set out in Article 6ter(3) of the Paris Convention. The Representative held the view that the procedures for communication of requests should be upgraded and modernized. The Representative raised a question as to the entitlement to request a communication under Article 6ter(3) and the scope of protection under Article 6ter(1). As an example, the Representative referred to European Community institutions, which had their own emblems and wondered whether those emblems would be covered by Article 6ter(1)(b). The Representative also wondered who was entitled to request a communication on their behalf, under Article 6ter(3)(b).

144. The Delegation of New Zealand suggested that the SCT explore the regime under Article 6ter of the Paris Convention. In the view of the Delegation, it would be beneficial to discuss the different types of signs that might be protected under Article 6ter(1), since this might lead to a greater awareness amongst Member States of the usefulness of the regime. The Delegation wished to further explore the obligation to grant protection or to issue an objection under Article 6ter(4). The Delegation stressed that the information provided for in communications under Article 6ter(3) should be clarified. The clarification might lead to a standardization of communications or the establishment of forms containing elements of information that Member States needed in order to make a fair assessment on whether to grant protection, and on the scope of that protection.

145. The Delegation of Spain supported the suggestions made by the Delegations of Mexico, New Zealand, the United Kingdom and the United States of America. The Delegation was in favor of undertaking an exhaustive study of Article 6*ter*. The study should focus on three main subjects: firstly, the concepts and terms of Article 6*ter* should be defined. In Spain, national authorities had encountered problems in defining whether some signs were covered by Article 6*ter*. Secondly, to further elaborate on the modernization of Article 6*ter*, and in this context, to consider the protection of national anthems. Thirdly, the administrative procedures regarding the communication of emblems should be simplified and redundant symbols or symbols not falling under Article 6*ter* should be eliminated. Finally, the Delegation shared the views expressed by the Delegation of New Zealand to undertake a comprehensive review of the regime. In particular, the qualification of national symbols as trademarks and to clarify the grounds for opposition.

146. The Delegation of Japan supported the views expressed by the Delegations of New Zealand, the United Kingdom and the United States of America. The Delegation agreed with the view that the procedure under Article 6*ter* should be simplified. However, the Delegation expressed concern about a possible increase in the number of communications, which would lead to difficulties in selecting signs, and could bring as a consequence an additional burden on the national offices. The Delegation was in support of discussing the scope of protection, such as the definition of the signs mentioned in Article 6*ter*(1).

147. The Delegation of India emphasized the importance of the protection of signs under Article 6*ter*. The Delegation suggested that the protection of insignia of the armed forces should be explored.

148. The Delegation of Australia shared the views expressed by the Delegations of New Zealand and the United Kingdom. The Delegation pointed out that the scope of protection of Article 6*ter* should be clarified. The Delegation raised a question as to whether the protection of a sign in colors should be limited to those colors. Moreover, the Delegation wondered whether the use of common symbols, such as the Maltese Cross, contained in signs, was prohibited as part of another sign, or whether the prohibition could be restricted to the same shape of background or to the color combination only. The Delegation suggested that the SCT engage in discussing the question of eligible subject matter for protection under Article 6*ter*. In particular, signs of government departments, defense force emblems, medals and awards, illegible signs, such as names of international intergovernmental organizations in different languages, new types of signs, such as color marks, shape marks, movement marks, sound marks and perhaps, national anthems. The Delegation proposed that the signs which did not appear to qualify for protection under Article 6*ter* be eliminated by WIPO before it sent a communication. Finally, the Delegation drew particular attention on the need to provide a means for allowing the parties involved to engage in dialogue.

149. The Delegation of the United States of America stated that, in the short term, the SCT should engage in a discussion to create forms that might be used when requesting the communication of signs under Article 6*ter*(3). In particular, the communication should contain more information on the requesting party, such as the field of activities, in order to enable the examiners to make accurate determinations on the use of signs and accurate decisions when refusing trademarks.

150. The Delegation of Brazil noted that there was a degree of controversy about some of the views expressed by Delegations. The Delegation referred to paragraphs 14 and 15 of the written submission by the Delegation of New Zealand (document SCT/15/2), concerning co-existence of rights, which was addressed in the recent WTO Panel ruling on geographical indications. The Delegation found it evident that private commercial rights should not prevail over the rights of sovereign states. The Delegation could not agree on a discussion regarding this issue and reserved its position on the matter.

151. The Delegation of Iran (Islamic Republic of) noted that, during the discussion, two issues had been raised namely the preventive nature of Article 6*ter* of the Paris Convention and the communications made under that provision. Some of the views expressed by Delegations raised a number of questions: firstly with regard to paragraph 16 – concerning the definition of terms – and paragraph 19 – concerning the extent of recognition – of the written submission of the Delegation of New Zealand. Secondly, with regard to the last sentence concerning the modernization and improvement of the Article 6*ter* regime, in the written submission of the Delegation of the United Kingdom (document SCT/15/2). The Delegation further stated that in paragraph 32, concerning the extension of the application of Article 6*ter* to service marks (document SCT/15/3) there was perhaps a misinterpretation, since only the Contracting Parties to the TLT had to apply the provisions of the Paris Convention concerning trademarks to service marks. The Delegation referred to the Guidelines for the Interpretation of Article 6*ter*(1)(b) and (3)(b), adopted by the Assembly of the Paris Union in 1992, and expressed doubts as to whether the SCT was in a position to issue additional guidelines. In the view of the Delegation, a clear distinction should be made between the functions of the Assembly of the Paris Union and the SCT, according to Article 18 of the Paris Convention. The Delegation stressed that the member States of the Paris Union had national legislations concerning the definition of emblems. Therefore, the harmonization of national legislations through a broad interpretation, could jeopardize the merits of Article 6*ter*.

152. In reply to the intervention of the Delegation of Iran (Islamic Republic of) regarding the mandate of the SCT, the Chair referred to previous work of the Standing Committee relating to the three Joint Recommendations, which were prepared by the SCT and adopted by the Assembly of the Paris Union and by the WIPO General Assembly, namely, the Joint Recommendations Concerning Provisions on the Protection of Well-known Marks, on Trademark Licenses and on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet.

153. The Representative of the European Community stressed that the procedure and the scope of protection under Article 6*ter* had different dimensions. The practical impact of new types of signs could have a ‘domino’ effect on the interpretation of Article 6*ter*, which should be explored. The Delegation supported the view that work should be undertaken on the procedural aspects of communications under Article 6*ter*.

154. The Delegation of Cuba shared the views and concerns expressed by the Delegation of Brazil. The Delegation stressed that the interests of States should prevail and that the reasons why state signs had not received enough protection should be further explored.

155. The Delegation of Kyrgyzstan expressed interest in keeping Article 6*ter* of the Paris Convention on the agenda for the future work of the SCT. The Delegation said that the definition of signs of international intergovernmental organizations should be discussed in the Standing Committee. The Delegation noted that the procedure for communication of signs under Article 6*ter*(3) to States parties to the Paris Union and to Members of the WTO should be further reviewed and simplified.

156. The Chair concluded that the SCT agreed to undertake work on issues concerning Article 6*ter* and to further explore the specific items to be covered in that context.

157. The Delegation of Brazil reserved its position with regard to the specific items to be dealt with in that context.

(c) *Industrial Designs*

Industrial Designs and Three-Dimensional Marks

158. The Delegation of Switzerland highlighted its interest on the issue of the relationship between industrial designs and three-dimensional marks. It recalled that it had proposed the issue on several occasions since the eighth session of the SCT. The matter constituted a very precise problem that should be analyzed. The Delegation pointed out that document SCT/9/6 entitled “Industrial Designs and Their Relation with Works of Applied Art and Three-Dimensional Marks” was a good basis for entering into deliberations. It stressed that it would be particularly interested in using the information contained in the Questionnaire on Trademark Law and Practice in this context. The Delegation stressed that the considerations of the SCT should aim at discussing and defining the criteria for the registration of three-dimensional marks and exchanging experiences in this regard.

159. The Representative of the European Community, speaking on behalf of its member States and the two acceding States, supported the view that the issue was important. She proposed that the Standing Committee clarify the relationship between the two sets of laws and analyze difficulties experienced by industries and offices.

160. The Delegation of Denmark pointed out that it wished to renew the proposal that it had made at the thirteenth session of the SCT, to continue the work on document SCT/9/6 (as recorded in document SCT/13/8, paragraph 323). The Delegation explained that the issue was of particular importance for industry in Denmark.

161. The Delegation of Croatia informed the Standing Committee that it recognized the topic of industrial designs and three-dimensional marks as a priority for further discussion. The Delegation proposed to deal with the issue at a future meeting of the SCT.

162. The Delegation of Sweden expressed support for the interventions made by the Delegations of Denmark and Switzerland and by the Representative of the European Community.

163. The Delegation of Singapore, supported by the Delegation of Indonesia, said that it would welcome an international consensus on guidelines concerning the relationship between industrial designs and three-dimensional marks. It proposed that the Standing Committee develop criteria for determining the point at which a shape crossed the line and became a three-dimensional mark. The Delegation felt that this issue would be helpful for industries and offices alike and said that there was a connection with the topic of new types of marks.

164. The Delegation of Slovenia stated that this was an important issue which should remain on the agenda of the SCT. The Delegation proposed that the Standing Committee define criteria clarifying the relationship between industrial designs and three-dimensional marks.

165. The Delegation of France pointed out that the issue of industrial designs and three-dimensional marks was a priority for France.

166. The Delegation of Egypt said that three-dimensional marks could not be registered under the national law of Egypt. The Delegation held the view that it was important to discuss the topic.

167. The Delegation of Iran (Islamic Republic of) informed the Standing Committee that three-dimensional marks were not accepted for registration under the national law of that country.

168. The Delegation of Mexico expressed its interest in the topic and emphasized that the aspect of applied art was of particular importance.

169. The Delegation of Colombia supported a clarification on the relationship between industrial designs and three-dimensional marks. It stressed the close connection with the issue of trademarks and copyright.

170. The Representative of INTA informed the Standing Committee that INTA had recognized the relationship between industrial designs and three-dimensional marks as an emerging issue. He offered to share information with the SCT.

171. The Chair concluded that there was agreement in the SCT to continue work on this item, including the relationship between industrial designs and works of applied art, on the basis of document SCT/9/6.

172. The Delegation of Iran (Islamic Republic of) reserved its position with regard to the protection of three-dimensional marks.

Design Law Treaty

173. The Delegation of Norway said that a design law treaty would be the next logical step in the work of the SCT. As the Patent Law Treaty and the Trademark Law Treaty could serve as models, the Delegation felt that it was feasible to reach agreement on procedural maximum requirements and further aspects, such as time limits, relief measures, and refusal and appeal procedures, without having to use large resources. Offices and users would benefit from a more efficient system.

174. The Representative of the European Community, speaking on behalf of its member States and the two acceding States, said that the issue was very important for industry. She pointed out that the work of the SCT on this issue had to be prepared carefully. In particular, it would have to be clarified which difficulties industry experienced. The Representative suggested that a questionnaire be sent to industry in order to collect information, on the basis of which the SCT could undertake efficient work.

175. The Delegation of Spain expressed support for the harmonization of design registration formalities and procedures, as proposed in writing by the Delegations of Latvia and Norway, and by the Representative of the European Community at the current session.

176. The Delegation of Germany stated that it shared the views expressed in the written submissions by the Delegations of Latvia and Norway. It indicated that it was a priority for Germany to overcome differences in national procedures. A common understanding in this area would be beneficial to right holders.

177. The Delegation of Chile endorsed the view expressed by the Representative of the European Community. It proposed to take a prudent and focused approach. A questionnaire should first be sent out to industry in order to enable an informed decision on whether or not to undertake work on a design law treaty.

178. The Delegation of Japan held the view that the issue offered a good opportunity to discuss industrial designs which, to a certain extent, enjoyed protection in developed and developing countries alike. It pointed out that procedural differences depended particularly on whether a substantive examination was carried out in a country. Japan had a system of substantive examination. The Delegation felt that differences resulting from a comparison of several systems would have to be considered before commencing work on a new treaty.

179. The Delegation of Canada expressed support for the intervention by the Delegation of Japan. It pointed out that Canada had a substantive examination system. The Delegation proposed that the SCT exchange information on national systems to identify differences and similarities, and to explore industry interests.

180. The Delegation of the United States of America explained that protection for industrial designs was available in the United States of America through copyright, patents and trademarks. The Delegation informed the SCT that the United States of America was in the process of joining the 1999 Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, and that implementation of the Act would be through the design patent system. The Delegation indicated that it was not opposed to discussing office concerns about processing designs. With regard to a new treaty, it suggested to take a cautious approach and carry out focused research. It would welcome an industry contribution on this matter.

181. The Delegation of the Russian Federation expressed support for the proposal to devote attention to design registration formalities and procedures. It emphasized that, in view of the widely varying national approaches, questions of substantive industrial design law were equally important. In particular, the Delegation raised the question of the scope of exclusive rights, the protection of parts of a complex product and potential conflicts between different right holders. It proposed to study not only procedural aspects but also substantive matters in the field of industrial designs.

182. The Delegation of New Zealand supported work on the harmonization and simplification of design registration procedures. It felt that this was likely to result in benefits for offices and right holders. The Delegation said that the issue should be approached in the manner that had been proposed by the Delegation of Japan. It was not in favor of sending a questionnaire to right holders. Instead, the members of the SCT should hold consultations with industry in each country to present the results at future meetings.

183. The Chair concluded that, at this point there was no agreement in the SCT to initiate work on the harmonization of formalities concerning the procedures for design registration, but that the SCT was willing to consider that matter further on the basis of an information document to be prepared by the International Bureau.

(d) Geographical Indications

184. The Delegation of Kenya noted that although it had not sent a proposal on this matter to the International Bureau, it wished to support the notion that the Standing Committee pay attention to the protection of geographical indications. The Delegation further noted that Kenya was known to be amongst the African countries with the largest natural heritage and identity. In the opinion of the Delegation, due protection for this kind of asset was actually provided under this object of intellectual property.

185. The Delegation of Mexico said that it wished to express its interest in keeping geographical indications as an item for the future work of the Standing Committee. The Delegation supported the proposals made by other delegations on this subject and particularly, the protection of geographical indications in the Domain Name System.

186. The Delegation of Egypt explained that geographical indications represented an issue of interest in Egypt. The Delegation supported the proposals and opinions that had been expressed on this subject. However, the Delegation considered that the discussion should also deal with the products covered by geographical indications, since Egypt had a number of products that were important and had received international recognition.

187. The Delegation of Iran (Islamic Republic of) declared that geographical indications had been one of the main issues for discussion at the Standing Committee in the recent past. At the ninth session of the SCT, Member States had a very rich discussion on different aspects of this issue. However, following a decision to accelerate work on the TLT, the Standing Committee decided to postpone the discussion on this matter. The Delegation noted that the diversity of views on this issue or the fact that work is also carried out in other international fora, should not be an impediment for the discussion of geographical indications at the Standing Committee. The Delegation further noted that it was particularly relevant to address conflicts between trademarks and geographical indications, as well as conflicts between internet domain names and geographical indications.

188. The Delegation of India considered the protection of geographical indications to be an important item for the work of the SCT. The Delegation noted that in this form of intellectual property there were two different levels of protection, which might need to be looked at more carefully. There were also large variations in the legal systems of protection amongst countries. According to the Delegation, it was important to protect geographical indications in the domain name system.

189. The Delegation of the United States of America said that geographical indications norm-setting work was an extremely important priority for the work of the SCT. The Delegation believed that the SCT was a body of intellectual property experts who were used to dealing with the administration of systems for the protection for intellectual property rights. Therefore, the SCT was in the best position to determine what were the appropriate and workable means or systems for protecting geographical indications. The Delegation declared that, in an effort to continue to foster the mutual trust that existed in the SCT, the United States of America had endeavored to find a way forward on this issue. In that regard, the Delegation proposed that the SCT approach the elements of application formalities. In the opinion of the Delegation, registration systems at the national level, whether through geographical indications registration or through the trademarks system, should be open and transparent. Registration should be granted upon the examination of an application for minimum requirements, and the registration system should ensure that signs applied for later will be refused when conflicts with prior rights are found. The Delegation further noted that, since intellectual property rights were private rights, direct application by private owners without governmental intervention was desirable and necessary. The Delegation concluded that it would welcome work in the SCT towards establishing a list of minimum requirements for applications of geographical indications. This could be the first step to achieve international consensus on what these types of signs or identifiers are and what could be a workable system of protection.

190. The Delegation of Switzerland thanked all delegations which had taken the floor to express their interest on geographical indications. The Delegation said that it did not believe it was timely to launch the initiatives proposed for the future work of the SCT in the area of geographical indications, because they had undeniable links with the work currently underway at the WTO. The Delegation noted that the Standing Committee had already looked at many different aspects in the area of geographical indications over the last few years, and that detailed working documents had been drafted. The Delegation believed that it was not right to duplicate work that had already been started elsewhere. The Delegation further noted that the only issue in relation to geographical indications, which was worth dealing with was the incorporation of geographical indications in the WIPO Uniform Dispute Resolution Policy (UDRP), currently applied only to conflicts between marks and domain names. An agreement in this respect had been reached at the thirteenth session of the SCT, when it was decided to keep this issue on the mid-term agenda of the Standing Committee.

191. The Delegation of Australia said that it was open to the idea of including the protection of geographical indications in the future work program of the SCT, as suggested by the Delegations of Egypt, Iran (Islamic Republic of), Kenya and Mexico. The Delegation expressed support for the proposals made by the Delegation of the United States of America, and shared the view of that Delegation that the SCT was the appropriate forum for the discussion of issues touching on the harmonization of intellectual property rights.

192. The Delegation of Japan noted that the protection of geographical indications was important and Japan had provided for adequate protection to that form of intellectual property. The Delegation noted that it had also taken part in the discussion at the WTO TRIPS Council. In the view of the Delegation, if further protection for geographical indications was to be considered at the SCT, discussions should be technical, because WIPO was the specialized organization dealing with technical aspects of intellectual property.

193. The Representative of the European Community, speaking on behalf of its member States and the two acceding States, said that the only priority item under this heading was the inclusion of conflicts between geographical indications and domain names in the UDRP, as it was already pointed out by the Delegation of Switzerland. The Delegation considered that the problems encountered by the right holders of geographical indications around the world were similar to those faced by trademark holders, in relation to the use of those distinctive signs as domain names. The WIPO Report on the Second Domain Name Process had provided sufficient evidence as to the real problems faced by right holders of geographical indications and the Delegation felt that the latter should not be discriminated on their access to the arbitration system. The Delegation noted that, any other work on geographical indications wouldnterfere with the negotiations underway at the WTO. The Delegation also noted that the elements mentioned in the proposal by the Delegation of the United States of America were part of the proposals already tabled at the WTO, where the discussions dealt with these technical issues, not only from the perspective of geographical indications, but also from the perspective of other protective options, such as collective and certification marks.

194. The Chair recalled that the integration of geographical indications in the UDRP did not depend on a decision of WIPO, as this organization did not set up the policy. WIPO could only transmit to the Internet Corporation for Assigned Names and Numbers (ICANN) a recommendation of the Standing Committee requesting the inclusion of geographical indications in the UDRP.

195. The Delegation of Kyrgyzstan considered the issue of geographical indications to be a priority and supported the inclusion of this item in the agenda for the future work of the SCT. The Delegation also considered that the UDRP should be extended to cover geographical indications. The Delegation declared that in Kyrgyzstan, many issues remained unclear in this field and it would be desirable to discuss the whole issue of geographical indications in this forum, as that country needed to fully and effectively implement its system of protection.

196. The Delegation of New Zealand expressed support to continue discussions around geographical indications in the Standing Committee. The Delegation believed that the SCT and not the WTO was the expert group where matters relating to geographical indications, harmonization and simplification of procedures, should be discussed.

197. The Delegation of Chile expressed the opinion that the SCT was fully competent to deal with the issue of geographical indications. However, the Delegation did not support proposals which could enhance the protection currently granted under Articles 22 and 23 of the TRIPS Agreement, nor any other issues of harmonization on this matter. According to the Delegation, the area of geographical indications was relatively new and was continuously evolving. Countries needed to gain experience with the system before they could foresee any changes to it. The Delegation held that the Standing Committee should work to promote the use of geographical indications by small and medium-sized enterprises. The Delegation believed that geographical indications, collective and certification marks should be seen as instruments of development. The SCT should also be working on development issues and not limit itself to norm-setting and harmonization activities.

198. The Delegation of the Russian Federation said that in previous occasions, the Standing Committee had considered the issue of geographical indications and some delegations had expressed the view that there was no need to discuss this issue in the SCT. The Delegation referred to the views expressed by the Delegation of Switzerland at the current session and the

reference made to the possibility of overlap with the work of the WTO Special Group of Experts. The Delegation considered that perhaps then, the SCT could suggest that the Secretariat inform members in some way, as to the result of the work carried out at the WTO. The Delegation said that it understood that, under the agreement between the WTO and WIPO, it was possible to request information on the work of the TRIPS Council in the area of geographical indications. If members of the SCT could determine exactly the contents of the work undertaken at the WTO, they could decide whether or not to continue the discussion of this issue in the Standing Committee.

199. The Delegation of New Zealand said that under the current environment, New Zealand opposed the introduction of protection for geographical indications in the domain name system. While the Delegation recognized that there existed uniform rules governing the subject matter, it believed that the level of harmonization achieved by those rules was insufficient to constitute an adequate basis for the protection in the domain name system. In particular, the Delegation highlighted three specific areas where sufficient uniformity was lacking. Firstly, the harmonized rules at issue (in particular the TRIPS Agreement) incorporated several qualifications and exceptions to the protection of geographical indications, striking a delicate balance of interests, which would be difficult, if not impossible to faithfully reflect in the UDRP. Secondly, the legal and administrative mechanisms giving effect at the national level to the internationally harmonized norms varied widely, ranging from *sui generis* registration systems, certification or collective marks, the law on passing-off, unfair competition law and consumer protection legislation. Thirdly, and perhaps most importantly, there existed no uniform view at the international level of what was deemed to be a protectable geographical indication and consequently, terms which were protectable in some jurisdictions, were freely available in others. The Delegation held the view that extending the UDRP to geographical indications in a state of incomplete harmonization of the law was doomed to fail. Panels would be placed in the awkward position of having to take decisions with insufficient guidance, which would inevitably lead to the undesired creation of new law and for the same reason, this would jeopardize the UDRP's long-term viability as an effective dispute resolution system.

200. The Delegation of Australia supported the views expressed by the Delegation of New Zealand and added that including geographical indications in the UDRP would amount to norm-setting in the domain name space before the law in this area had developed in the real world. The Delegation also expressed support for the proposal made by the Delegation of the United States of America to discuss some technical aspects of geographical indications and said that all members of the Standing Committee could contribute to this work.

201. The Delegation of Canada supported the views expressed by the Delegations of New Zealand and Australia that a discussion on the protection of geographical indications in the domain name system was premature. The Delegation wished to associate itself with the views expressed by previous speakers that the SCT was the proper forum for discussion of geographical indications.

202. The Delegation of the United States of America referred to the positions expressed by previous speakers against a discussion on geographical indications in the SCT and clarified that the proposal made by that delegation would not duplicate the work carried out at the WTO. The Delegation noted that the proposals being discussed at the WTO focused on an international multilateral system of registration and the related procedures. That proposal referred to national systems, but only in dictating how the systems should function in relation

to the multilateral system. In the view of the Delegation, the element missing in that debate was guidance to members as to what system for the protection of geographical indications would work best for those members at the national level. The Delegation agreed with those delegations which had indicated that it was premature to advance work in relation to geographical indications in the UDRP. To extend the UDRP to issues related to geographical indications was asking for panelists to make international law determinations in an area where there was no international consensus. The UDRP had proved useful for trademarks because there existed a fairly sophisticated level of understanding internationally of trademark rights and trademark systems. But unlike trademark rights, geographical indications were not defined nor protected similarly around the world. The Delegation further noted that, given the different systems of protection for geographical indications and the evolving world thought on what constituted a geographical indication, the simple determination applied to obvious trademark cybersquatting cases would fall short of the fact-based determination reserved for courts. Without a clear understanding internationally of geographical indications at the national level, UDRP arbitrators would in fact be given the responsibility of creating new and internationally binding law. To allow an arbitration panel to decide over disputes involving geographic terms that were considered proprietary in one country but not in another opened the doors to creating an international body of law that imposed decisions without the consensus of the involved governments. Proceedings would take longer to resolve because of the complexity of the subject matter and the presumed unfamiliarity of the panelists with this type of intellectual property, and certainly, extending the UDRP to these identifiers at that stage would adversely affect the legitimacy of the UDRP for trademarks. The Delegation concluded that, if the SCT was precluded from launching norm-setting work on geographical indications in order to reach an international consensus on the matter, it could not entertain work on the issue of geographical indications in the UDRP.

203. The Representative of the European Community, speaking on behalf of its member States and the two acceding States expressed its opposition to any debate on what would be the best system of protection for geographical indications. In the view of the Representative, every member had the right to decide what it considered adequate to protect and how. As to the extension of the UDRP, the Representative noted that working on a recommendation from the SCT to ICANN, independently of its final outcome, would at least demonstrate to right holders of geographical indications that their concerns were taken into consideration.

204. The Delegation of Egypt supported the views expressed by the Delegation of the United States of America. The Delegation said that this was a topic of interest for many countries.

205. The Delegation of Japan said that it shared the concerns of other delegations to the effect that it was premature to discuss the relationship between geographical indications and internet domain names in the SCT. The Delegation noted that the protection of geographical indications in the real world was still being considered and no significant progress had been achieved. The Delegation wondered how agreement could be reached in the virtual world if fundamental issues could not be settled in the real world.

206. The Representative of the ICC said that, from a private sector perspective, it was important to maintain the discussions on geographical indications open at the SCT. However, it was not prudent to extend the UDRP to cover these identifiers until a number of aspects of law and practice were clarified.

207. The Chair concluded that all intervening delegations had expressed interest on various aspects of this subject. However, there was no agreement in the SCT on any concrete action to be undertaken.

Internet Domain Names

208. The Delegation of Mexico clarified that its proposal aimed in particular at the issue of Internet domain names and geographical indications. It expressed the view that, in the light of the debate on the previous agenda item, there was not much room for further discussion at this stage.

209. The Delegation of the Republic of Korea pointed out that the subject of Internet domain names was closely connected with the issue of trademarks on the Internet, which had already been discussed. While the first issue mainly concerned the use of trademarks on the Internet, the second issue brought into focus the transfer and cancellation of domain names in cases of misuse or misappropriation. As both issues were related to the Internet, they should not be separated. The Delegation informed the Standing Committee that there were court decisions in the Republic of Korea which showed that it was difficult to determine whether use of a certain sign on the Internet constituted use of a trademark. With regard to the issue of Internet domain names and the work of the WIPO Mediation and Arbitration Center, the Delegation explained that the Republic of Korea had amended relevant national laws to protect the legitimate rights of Internet domain name holders. The Delegation suggested that the SCT identify relevant issues in the field of trademarks on the Internet and Internet domain names, and discuss them together.

Consideration of priorities for the future work of the SCT

210. The Chair said that, as part of Agenda Item 5, the Standing Committee had to decide on the priorities for its future work. The Chair recalled the list of items which had been discussed by the SCT and asked members to indicate the order of priority for addressing them in future sessions. The Chair suggested that, when deciding on priorities, Members should consider firstly the degree of controversy of the items proposed and secondly, whether the International Bureau had already prepared written material on the subject, which could be used to advance the work of the SCT.

211. The Delegation of Canada said that before deciding on priorities, a clarification was needed as to how many studies or papers the International Bureau would be able to produce, considering that a lot of resources would be devoted to the upcoming Diplomatic Conference.

212. The Chair replied that such a determination could not be made in the abstract, before knowing which subjects the Standing Committee had chosen to discuss, as well as their level of difficulty and whether there was already any material available.

213. The Delegation of the United Kingdom, speaking on behalf of the European Community, its member States and the two acceding States said that he understood that the SCT was expected to prioritize those items in which there was a prospect of consensus. The

discussion on geographical indications was wide-ranging and there were many suggestions, but there was no agreement as to the way forward. Therefore, he did not agree to the inclusion of geographical indications in the list of items mentioned by the Chair or to consider it a priority for the SCT.

214. The Chair noted that he referred to the list of items discussed, without prejudice to the determination of priorities. The Chair also recalled that on geographical indications, the Standing Committee had decided that there was no agreement to take any concrete action.

215. The Delegation of Brazil supported the comment made by the Delegation of the United Kingdom and said that the same would apply for the rest of issues discussed by the Standing Committee. The Delegation expressed the view that, even though Members of the SCT had manifested interest with respect to all the items listed by the Chair, there seemed to be different views as to what aspects of those issues the Standing Committee should actually address. In the opinion of the Delegation, the SCT had only had an initial exploration or brainstorming of issues that could be the object of its future work. In these circumstances, it was not appropriate to attempt to establish priorities. The Delegation added that the issues papers requested for the next session would help Members to further reflect on these issues and only then the SCT could prioritize. The Delegation said that, under the Rules of Procedure of the Organization, any Member State was afforded the right to request the inclusion of additional items in the agenda of any meeting and hence, the Delegation wished to reserve its right to include additional items in the future.

216. The Delegation of Algeria said that it wished to react to the argument whereby the issue of geographical indications should not be dealt with in the SCT because it was being considered at the WTO. The Delegation noted that there were Member States of WIPO that were not Members of the WTO, and excluding geographical indications from the agenda of the SCT would mean that those particular Members were not allowed to express their views on an issue which was of interest to them. In the view of the Delegation, this would amount to excluding those Members from the Organization. Therefore, the issue should remain in the agenda of the Standing Committee.

217. The Delegation of Germany held the view that, at the current session, the Standing Committee had advanced more than just a first stage of reflection of the issues proposed. The Delegation believed that priority should be given to items on which there was already a significant degree of common understanding, as well as items that would yield a significant gain for right holders. The Delegation proposed the following items and the following order of priority: firstly, the harmonization of design formalities and procedures, including the relationship between designs and trademarks. Secondly, Article 6*ter* of the Paris Convention and thirdly, new types of marks. Under the latter item, two subitems should be considered, namely the harmonization of criteria for registration and aspects of the registration procedure itself. The Delegation also believed that until the next session of the Standing Committee, there would be sufficient time to produce the issues papers requested on these topics.

218. The Delegation of Switzerland supported the views expressed by the Delegation of Germany to the effect that the Standing Committee had already reached some results at the current meeting. The Delegation also supported the notion that it was important to look into issues around which there was already consensus or where consensus could be envisaged. The Delegation believed that the results were extremely important and that two groups of issues emerged: firstly, the relationship between three-dimensional marks and design, and on

this issue, the Delegation wondered whether the International Bureau still needed to prepare an additional document or whether discussions could start on the basis of document SCT/9/6. The Delegation noted that it would be necessary to agree on a definition of three-dimensional marks, as this would make it easier to establish the nature of the connection with design. Thereafter, the International Bureau could prepare a summary document as a basis for decision and follow-up of this topic. The second group of issues for discussion included: new types of marks, Article 6*ter* of the Paris Convention, opposition proceedings and a design law treaty. The Delegation further noted that background documentation would be needed on these four items to provide a basis for discussion, after which, a summary document could be prepared prior to a decision of the Standing Committee.

219. The Delegation of New Zealand supported the views of the previous speakers and said that at the next meeting of the SCT, it would be keen to having an information exchange around new types of marks and their registrability, and issues such as how to represent those marks on a register. The Delegation noted that Article 6*ter* of the Paris Convention was a priority for New Zealand and proposed that two issues be considered under this item: firstly, to set up an application form containing all the necessary information that countries would require in order to be able to assess the scope of protection being sought and whether granting protection would be in accordance with Article 6*ter*. Secondly, a discussion on the types of symbols, emblems, marks or signs that should be eligible for protection. Another aspect was design and three dimensional marks. The Delegation also believed that the SCT could continue the discussion on the basis of document SCT/9/6.

220. The Delegation of Austria expressed support for a discussion on Article 6*ter* of the Paris Convention. In the opinion of the Delegation, this issue was the most important and had the highest priority, especially considering the needs of the users of the system and also considering that there was already a background paper prepared by the International Bureau (document SCT/15/3). The Delegation suggested that the topics on new types of marks and the relationship between three dimensional marks and industrial designs be included in the agenda of the next meeting of the SCT. The Delegation noted that a discussion on this last subject, might serve as a basis for the later harmonization of design law.

221. The Delegation of Chile supported the views expressed by the Delegation of Brazil, to the effect that the discussions were very preliminary in nature. The Delegation noted that a number of issues had been presented and discussed, and more time was needed to look at those issues in further detail. The Delegation felt that it was too early to withdraw any item from the agenda of the Standing Committee. That applied in particular to geographical indications, which had been supported by the Delegation of Algeria. The Delegation concluded that the agenda should stay open until the next session; only then, the SCT could begin to decide on what issues it should focus.

222. The Delegation of Argentina held the view that there was no agreement in the SCT to establish priorities for its future work. The Standing Committee had only had a first exchange of ideas and there was not enough conviction or clarity on any issue that would allow the SCT to take any concrete action or indicate any order of priorities. The Delegation believed that caution was needed when adopting new standards for the protection of intellectual property. As an example, the Delegation noted that the WTO TRIPS Council had decided to extend the transitional period accorded for least developed countries to comply with their obligations

under that agreement. This showed the difficulties countries were facing to implement new intellectual property standards. Against this background and given the lack of consensus at the meeting, the Delegation considered that the agenda for the next session of the SCT should contain the same topics as the agenda for the current session and in the same order.

223. The Delegation of Sweden considered it natural for the Standing Committee to establish priorities for its future work at the current session. The Delegation believed that the SCT should concentrate on issues of importance for users and on topics where results could be foreseen. Firstly, the Delegation mentioned that during the discussions, there was broad support to engage in further work in the field of trademarks and specially, on new types of trademarks. Trademarks on the Internet should also be dealt with. A second group of priorities would be industrial designs and three-dimensional marks, along the lines of document SCT/9/6. Under this item, it would be adequate to consider the connection between trademarks and copyright. Thirdly, issues dealing with Article 6*ter* of the Paris Convention, and fourthly, a design law treaty, with the proviso that an issues paper was needed to highlight the problems faced by users in this field and the different systems applied in Member States.

224. The Delegation of Cuba said that there seemed to be two issues around which there was no controversy, namely copyright and trademarks, and three dimensional marks and industrial design. The Delegation felt that these two issues were quite technical and would alone produce enough work for the Standing Committee.

225. The Delegation of Ecuador said that its priorities for the future work of the SCT were as follows: firstly, the definition of criteria or guidelines concerning the requirements, formalities and registration procedures for industrial designs and three-dimensional marks. The Delegation suggested that, as a first step, a questionnaire should be sent to Member States, in order to inquire the national requirements for industrial design registration. As a second priority, the Delegation mentioned: trademarks on the Internet, trademarks and copyright, Article 6*ter* of the Paris Convention and geographical indications.

226. The Delegation of Denmark held the view that there was consensus in the SCT on which issues to discuss. However, it appeared from the debate that members needed guidance on the sub issues under those items. The Delegation suggested that at the next meeting, the Standing Committee discuss only those items of the priority list on which papers had been requested from the International Bureau. The Delegation noted that the first priority for Denmark was a discussion on the possibilities of adopting a design law treaty. On this issue, the International Bureau could prepare a paper and also send a questionnaire to Member States concerning the design registration formalities applied in those members. The Delegation further noted that Member States could also ask their own industry about their needs and the problems they faced in connection with industrial design registration. The second priority for the Delegation would be to discuss the new types of marks.

227. The Delegation of Iran (Islamic Republic of) noted that during the discussion on future work, there was consensus around certain items. However, there was no consensus on the harmonization of trademark law. The Delegation believed that, on the basis of the studies to be prepared by the International Bureau, it would be easier to set priorities at the next session of the SCT. Nevertheless, it was clear that the Standing Committee should stand by the decisions taken at the current session, as they would also be recorded in the report of the meeting. The Delegation said that it opposed the removal of any issues from the agenda of the SCT and particularly geographical indications.

228. The Delegation of the United States of America said that, based on the criteria mentioned by the Chair, and mainly the degree of controversy of the subject matter, it would propose forming two groups of issues. The first group being those issues where the SCT and the International Bureau should focus resources in the near term, namely: Article 6ter of the Paris Convention, and most notably a proposed notification form; opposition proceedings, on which the International Bureau could perhaps prepare a background paper, and new types of marks, for which an issues paper had already been suggested. The Delegation proposed that the second group of issues include items which could be held in abeyance while the SCT worked on the shorter term issues, namely: designs, three-dimensional marks, trademarks and copyrights, certification marks, geographical indications and trademarks on the Internet. On some of those issues, concerns were expressed about a lack of information. In particular, the Delegation of the United States of America did not have enough information on what problems were being experienced in respect of designs and three-dimensional marks and on trademarks and copyrights, that would necessitate work in the short term.

229. The Delegation of Colombia declared that the issue of geographical indications was important for Colombia. However, the Delegation conceded that given the discussion on that issue, it was probably not possible to start work on it in the near future. The Delegation suggested as priorities for the future work of the SCT: industrial designs and three-dimensional marks, trademarks on the Internet and new types of marks.

230. The Delegation of France suggested that the SCT concentrate its future work on items that had gathered consensus, namely: the relationship between three-dimensional marks and industrial designs, new types of marks and Article 6ter of the Paris Convention.

231. The Delegation of the Russian Federation said that it wished to stress its interest in dealing with collective and certification marks, new types of marks, and well-known marks. The Delegation noted that it was important to establish the criteria to determine well-known marks. Another set of issues of interest was the relationship between trademarks and industrial designs and the possibility of harmonizing procedures and formalities for industrial design registration. Finally, the Delegation noted that geographical indications was a very important issue for the Russian Federation, even where some delegations had expressed that the topic should not be dealt with at WIPO because it was under consideration at the WTO. In the view of the Delegation, if the SCT could get information on the results of the discussions at the TRIPS Council, it could continue to work on that basis.

232. The Delegation of Australia declared that the first priority for Australia was a discussion on Article 6ter of the Paris Convention and the broad range of issues relating to its provisions, taking into account the increase of notifications made under that article in recent years. The Delegation also wished to give first priority to discussing the relationship between industrial designs and three-dimensional marks and supported the views expressed by the Delegation of Austria that such a discussion might form the basis for a later harmonization of design law. Given the interest expressed by Members, a discussion on new types of marks should also have its place on the agenda of the next meeting of the SCT. Finally, the Delegation considered that there would be a significant benefit in discussing the harmonization of opposition proceedings and well-known marks.

233. The Delegation of Italy said that its priorities for the future work of the Standing Committee were: industrial designs and three-dimensional marks, Article 6ter of the Paris Convention, new types of marks and trademarks on the Internet.

234. The Delegation of Latvia held the view that two issues stood on the same level regarding possibilities to reach a good and productive result: Article 6*ter* of the Paris Convention, which seemed to be causing some problems for international organizations and for industrial property offices in their every day work. Secondly, the harmonization of industrial design registration formalities, which was very important for the users of the system, and particularly, for the industry and handicraft sectors in every country. The Delegation expressed support for the suggestion made by the Delegation of Germany, to include in this work on design, problems dealing with the relationship between design and trademarks. Perhaps the specific issue could touch on problems of substantive law.

235. The Delegation of Ireland associated itself with the notion that the Standing Committee had gone beyond a preliminary discussion on the proposed agenda items. The Delegation supported the views expressed by the Delegations of Germany and Sweden, and using the criteria defined by the Chair, suggested to give priority to new types of marks and the boundaries between three-dimensional marks and designs. As a third item, the Delegation suggested that the SCT discuss Article 6*ter* of the Paris Convention because of the broad questions regarding the protection given under that provision and the necessity, as mentioned by the Delegations of New Zealand and the United Kingdom to update the provisions of this article and to define the specific object of protection.

236. The Delegation of Norway, supported by the Delegation of the Netherlands, declared that its priorities for the future work of the Standing Committee would be firstly, industrial designs, with a subitem concerning the borderline between industrial designs and three-dimensional marks and another subitem on the possibility of a design law treaty. As a second priority, the Delegation would be in favor of dealing with Article 6*ter* of the Paris Convention and new types of trademarks.

237. The Delegation of Canada held the view that the first priority item for the next meeting of the SCT was Article 6*ter* of the Paris Convention. The Delegation felt that some progress could be made in simplifying and clarifying the notification process. The second item involved issues that were priorities for user groups, namely opposition proceedings and the link of this issue with well-known marks. The third item would be new types of marks.

238. The Delegation of Lithuania expressed support for including the following topics: Article 6*ter* of the Paris Convention, new types of marks, and the relationship between industrial designs and three-dimensional marks.

239. The Delegation of Croatia said that its priorities were as follows: the relationship between industrial designs and three-dimensional marks, Article 6*ter* of the Paris Convention and new types of marks.

240. The Delegation of Spain said that it wished to propose as priority items for the future work of the SCT: Article 6*ter* of the Paris Convention and harmonization of design registration formalities and procedures.

241. The Delegation of The former Yugoslav Republic of Macedonia indicated as priorities for the future work of the SCT: the relationship between three-dimensional marks and industrial designs, Article 6*ter* of the Paris Convention, and trademarks on the Internet.

242. The Delegation of Slovenia considered as priority items: the relationship between three-dimensional marks and industrial designs, the relationship between industrial designs and trademarks in general, new types of marks and opposition proceedings.

243. The Delegation of Indonesia declared that its priorities for the future work of the SCT were industrial designs and geographical indications.

244. The Delegation of Nigeria considered geographical indications and industrial designs as priority areas. The Delegation declared that it was keen on seeing progress made in deliberations on those two areas. In particular, the Delegation recalled that the proposals contained in pages 5 and 6 of document SCT/15/2 underscored the importance of geographical indications.

245. The Delegation of Chile said that following the criteria enunciated by the Chair, it wished to announce the following order of priorities: new types of marks, the relationship between marks and copyright, the relationship between industrial designs and three-dimensional marks and Article 6ter of the Paris Convention.

246. The Delegation of Moldova, supported by the Delegation of the Ukraine, proposed that at its next session, the Standing Committee address the following issues: new types of marks, industrial designs and Article 6ter of the Paris Convention. As a second set of issues that could be addressed in 2007, the Delegation proposed: opposition proceedings and a design law treaty. The Delegation noted that there did not seem to be consensus on geographical indications and on trademarks on the Internet.

247. The Representative of the ICC mentioned that, based on the different priorities indicated by Member States, the Secretariat could prepare a document to be distributed amongst all members, with the objective of establishing a final list of priorities for the future work of the SCT. With regard to geographical indications, the Representative held that a possible way forward might be to have a joint meeting of WIPO and the WTO.

248. The Chair concluded that the discussion on item 5 of the Agenda had revealed interest of the SCT to undertake work in a number of areas as set out in his conclusions on individual points under that item. However, the SCT was not in agreement as to a particular sequence in which those points should be addressed. There was agreement in the SCT that the draft Agenda for the next session should be based on the Agenda for the current session, it being understood that the International Bureau would prepare the working documents which the SCT had expressly requested.

Agenda Item 6: Adoption of the Summary by the Chair

249. The Delegation of Iran (Islamic Republic of) suggested that the phrase “given the support expressed by Delegations” be deleted on the first line of paragraph 5.

250. The Representative of CEIPI suggested that, in order to harmonize all the language versions of the Summary by the Chair, the words “*d’États*” be replaced by “*des*” in the French version.

251. The Delegations of Argentina and Brazil suggested to change the wording of paragraph 7 as follows:

“The Chair concluded that, while some delegations had indicated their interest in initiating work on harmonizing certain aspects of trademark law, such as on possible grounds for refusal, other delegations had expressed reservations. Therefore, there was, at this point, no agreement in the SCT to move forward on this topic.”

252. The Delegation of Cuba said that it wished to record its reservations concerning the conclusions of the Chair on: New Types of Marks, Trademarks on the Internet and Article 6*ter* of the Paris Convention.

253. The Standing Committee adopted the draft of the Summary by the Chair contained in document SCT/15/4 Prov. with the modifications suggested by the members of the SCT.

254. The Chair announced as tentative dates for SCT/16, November 13 to 17, 2006.

Agenda Item 7: Closing of the session

255. The Chair closed the fifteenth session of the Standing Committee.

[Annex I follows]

ANNEX I

WIPO



SCT/15/4

ORIGINAL: English

DATE: December 2, 2005

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

E

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

Fifteenth Session

Geneva, November 28 to December 2, 2005

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: Adoption of the Agenda

2. The SCT adopted the Draft Agenda (document SCT/15/1 Prov.) without modifications.

Agenda Item 3: Adoption of the Draft Report of the Fourteenth Session

3. The SCT adopted the Draft Report (document SCT/14/8 Prov.2) with one modification, as requested by the Delegation of Italy.

Agenda Item 4: Questionnaire on Trademark Law and Practice

4. Discussion was based on document SCT/14/5 Rev.
5. The Chair concluded that this document would be updated periodically on the basis of submissions by Members.

Agenda Item 5: Proposals for the Future Work of the SCT

6. Discussion was based on proposals by Members of the SCT as reflected in document SCT/15/2 (Compilation of Proposals for Future Work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications) and made in the meeting, and on document SCT/15/3 (Article 6^{ter} of the Paris Convention: Legal and Administrative Aspects).

(a) Trademarks

Harmonization of Substantive Trademark Law

7. The Chair concluded that, while some delegations had indicated their interest in initiating work on harmonizing certain aspects of trademark law, such as on possible grounds for refusal, other delegations had expressed reservations. Therefore, there was, at this point, no agreement in the SCT to move forward on this topic.

New Types of Marks

8. The Chair concluded that the SCT agreed to ask the International Bureau to prepare an issues paper on this matter.

9. During the adoption of the Summary by the Chair, the Delegation of Cuba reserved its position concerning this matter.

Well-Known Marks

10. The Chair concluded that, at this point, there was no agreement in the SCT to take any action on this topic.

Collective and Certification Marks

11. The Chair concluded that, at this point, there was no agreement in the SCT to undertake work on this topic.

Trademarks on the Internet

12. The Chair concluded that the SCT felt that it was important to address this subject so as to enable delegations to assess whether there was a need for further action in that area.

13. During the adoption of the Summary by the Chair, the Delegation of Cuba reserved its position concerning this matter.

Marks and International Nonproprietary Names for Pharmaceutical Substances

14. The Chair concluded that there was consensus to ask the International Bureau to consult with the Secretariat of the World Health Organization on appropriate ways to make information on INNs available to Member States and to report back to the SCT.

Opposition Proceedings

15. The Delegations of Japan and the United States of America proposed that the Committee consider the issue of opposition proceedings.

16. After an exchange of views, the Chair concluded that there was agreement in the SCT to ask the International Bureau to prepare an information document.

17. During the adoption of the Summary by the Chair, the Delegation of Cuba reserved its position concerning this matter.

Trademarks and Copyright

18. The Delegation of Chile proposed that the Committee consider the relationship between trademarks and some aspects of copyright law.

19. The Chair concluded that there was agreement in the SCT to ask the International Bureau to prepare an issues paper on this matter.

(b) Article 6*ter* of the Paris Convention

20. The Chair concluded that the SCT agreed to undertake work on issues concerning Article 6*ter* and to further explore the specific items to be covered in that context.

21. The Delegations of Brazil and Cuba reserved their position with regard to the specific items to be dealt with in that context.

(c) Industrial Designs

Industrial Designs and Three-Dimensional Marks

22. The Chair concluded that there was agreement in the SCT to continue work on this item, including the relationship between industrial designs and works of applied art, on the basis of document SCT/9/6.

23. The Delegation of Iran (Islamic Republic of) reserved its position with regard to the protection of three-dimensional marks.

Design Law Treaty

24. The Chair concluded that, at this point, there was no agreement in the SCT to initiate work on the harmonization of formalities concerning the procedures for design registration, but that the SCT was willing to consider that matter further on the basis of an information document to be prepared by the International Bureau.

(d) Geographical Indications

25. The Chair concluded that all intervening delegations had expressed interest on various aspects of this subject. However, there was no agreement in the SCT on any concrete action to be undertaken.

26. The Chair concluded that the discussion on item 5 of the Agenda had revealed interest of the SCT to undertake work in a number of areas as set out in his conclusions on individual points under that item. However, the SCT was not in agreement as to a particular sequence in which those points should be addressed. There was agreement in the SCT that the draft Agenda for the next session should be based on the Agenda for the current session, it being understood that the International Bureau would prepare the working documents which the SCT had expressly requested.

27. The Chair announced as tentative dates for SCT/16, November 13 to 17, 2006.

[Annex II follows]

ANNEX II

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des États)
(in the alphabetical order of the names in French of the States)

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[End of Annex II and of document]