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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

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

**Eighteenth Session**  
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DRAFT QUESTIONNAIRE ON INDUSTRIAL DESIGN LAW AND PRACTICE  
(PART II)

*prepared by the Secretariat*

## INTRODUCTION

1. At the seventeenth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), held in Geneva from May 7 to 11, 2007, the SCT requested the Secretariat to develop, in addition to the Questionnaire on Industrial Design Law and Practice (Part I), a second questionnaire on the basis of additional questions by SCT Members (see document SCT/17/8 prov., paragraph 432). Accordingly, the Secretariat has prepared the present document which contains, in its Annex, a draft Part II of the Questionnaire on Industrial Design Law and Practice.

2. This draft questionnaire takes into account the comments and suggestions made by the SCT at its seventeenth session, as well as the written comments which the Secretariat received until the end of June 2007.

*3. The SCT is invited to comment on the draft Questionnaire presented in the Annex, with a view to finalizing it and to circulating it as soon as possible thereafter.*

[Annex follows]

## ANNEX

DRAFT QUESTIONNAIRE ON  
INDUSTRIAL DESIGN LAW AND PRACTICE (PART II)

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I. SYSTEM OF INDUSTRIAL DESIGN PROTECTION

Q1: According to the applicable law, protection for industrial designs is provided under:

- |   |     |    |       |
|---|-----|----|-------|
| – design patent legislation                         | yes | no | n/a   |
| – registered industrial design legislation          | yes | no | n/a   |
| – unregistered industrial design legislation        | yes | no | n/a   |
| – Copyright legislation                             | yes | no | n/a   |
| – protection against unfair competition legislation | yes | no | n/a   |
| – other   |     |    | _____ |

II. SUBJECT MATTER OF INDUSTRIAL DESIGN

Q2: The following subject matter may be protected as an industrial design:

- |   |     |    |       |
|---|-----|----|-------|
| – a typeface  | yes | no | n/a   |
| – colors  | yes | no | n/a   |
| – a graphic symbol, such as a drawing, picture or logo                                      | yes | no | n/a   |
| – ornamentation, such as figurative elements and patterns                                   | yes | no | n/a   |
| – product packaging   | yes | no | n/a   |
| – product shape   | yes | no | n/a   |
| – get-up and trade dress  | yes | no | n/a   |
| – a specific texture or material  | yes | no | n/a   |
| – a graphical user interface  | yes | no | n/a   |
| – an architectural structure  | yes | no | n/a   |
| – the appearance of a product of variable form, such as a fountain or an inflatable balloon | yes | no | n/a   |
| – labels  | yes | no | n/a   |
| – holograms   | yes | no | n/a   |
| – other   |     |    | _____ |

Q3: A part of a product may constitute an industrial design      yes  no  n/a

III. INDUSTRIAL DESIGN APPLICATION

(a) Division of a Multiple Design Application

Q4: Where the industrial designs in a multiple design application do not meet the necessary requirement to be included in a single application, the applicant may divide the application      yes  no  n/a

Q5: If yes, division should take place within a given time limit  yes  no  n/a   
If yes, please specify the time limit: \_\_\_\_\_ months from  
\_\_\_\_\_

(b) Allowed Disclosure Before Application

Q6: A disclosure of the industrial design within a given period of time before the date of filing, or the priority date of the application (grace period), is allowed, without affecting the requirement of novelty of the industrial design.  yes  no  n/a

If yes, please specify the period of time: \_\_\_\_\_

Q7: A “grace period” is available for disclosure made by:  
– the designer  yes  no  n/a   
– a person authorized by the designer  yes  no  n/a   
– any person  yes  no  n/a   
– other \_\_\_\_\_

(c) Changes to Industrial Design After Application

Q8: Amendments to the industrial design after the application has been filed are allowed.  yes  no  n/a

If yes, please specify the circumstances under which the amendments are allowed:

– under all circumstances  yes  no  n/a   
– only where the changes relate to non-essential features of the industrial design  yes  no  n/a   
– other \_\_\_\_\_

Q9: Where the amendments to the industrial design after the application has been filed exceed the scope of the original application, the application is considered to be filed on the date of the amendments.  yes  no  n/a

If yes, the Office informs the applicant of that fact.  yes  no  n/a







Q23: In order to determine whether a protected industrial design is infringed by another industrial design, regard is given to the opinion of:

- the designer yes  no  n/a
- an informed user yes  no  n/a
- any user yes  no  n/a
- other \_\_\_\_\_

## VI. APPEALS

Q24: Is there a procedure for filing an appeal against a decision to grant or refuse the registration of an industrial design? yes  no  n/a

Q25: If yes, before what authority:

- the Registry/Industrial Property Office yes  no  n/a
- an Administrative Body yes  no  n/a
- a Court or Tribunal yes  no  n/a
- other \_\_\_\_\_

Q26: If yes, within what period:

- \_\_\_\_\_ days from the date of issuing of the decision.
- \_\_\_\_\_ days from the date of receipt of the decision by the applicant.
- \_\_\_\_\_ months from the date of issuing of the decision.
- \_\_\_\_\_ months from the date of receipt of the decision by the applicant.
- other \_\_\_\_\_

## VII. DISPUTE SETTLEMENT

Q27: Disputes between parties may be referred to a dispute-settlement procedure: yes  no  n/a

Q28: If yes, the following disputes may be referred to a dispute-settlement procedure:

- those concerning a final decision of refusal of an industrial design application yes  no  n/a
- those concerning an alleged infringement yes  no  n/a
- other \_\_\_\_\_

## VIII. INVALIDATION PROCEEDINGS

### (a) Possible Grounds

Q 29: A registration of an industrial design may be invalidated on the grounds that the design:

- is not new yes  no  n/a
- is not original yes  no  n/a
- is dictated by technical or functional considerations yes  no  n/a
- is contrary to morality or public order yes  no  n/a
- other \_\_\_\_\_

### (b) Competent Authority

Q30: A registration of an industrial design may be declared invalid by the following authority:

- the Registrar yes  no  n/a
- an Administrative Body yes  no  n/a
- a Court or Tribunal yes  no  n/a
- other \_\_\_\_\_

## IX. RELATION WITH TRADEMARKS

### (a) Subject Matter Enjoying Co-existing Protection

Q31: According to the applicable law, the following subject matter may enjoy co-existing protection as a trademark and an industrial design:

- a typeface yes  no  n/a
- colors yes  no  n/a
- a graphic symbol, such as a drawing, picture or logo yes  no  n/a
- ornamentation, such as figurative elements and patterns yes  no  n/a
- product packaging yes  no  n/a
- product shape yes  no  n/a
- get-up and trade dress yes  no  n/a
- a specific texture or material yes  no  n/a
- other \_\_\_\_\_

Q32: A protected industrial design may acquire distinctiveness in the sense of trademark law during the period of industrial design protection

yes  no  n/a

(b) Subject Matter Dictated Essentially by Technical or Functional Considerations

Q33: According to the applicable law, subject matter that is dictated essentially by technical or functional considerations is excluded from:

- protection as a trademark yes  no  n/a   
If yes, such exclusion is limited to three-dimensional  
subject matter yes  no  n/a

Q34: According to the applicable law, subject matter that is dictated essentially by technical or functional considerations is excluded from:

- protection as an industrial design yes  no  n/a   
If yes, such exclusion is limited to three-dimensional  
subject matter yes  no  n/a

(c) Enforcement of Cumulative Rights

Q35: In case of subject matter enjoying cumulative protection, trademark and industrial design rights can be invoked in parallel before the courts:

- without having to satisfy any specific requirements yes  no  n/a
- only if the interested party shows a distinct legitimate interest with regard to  
each of the two protection regimes yes  no  n/a
- other \_\_\_\_\_

X. RELATION WITH COPYRIGHT

Q36: Subject matter which is protected under industrial design law:

- may be protected at the same time under copyright law  
(cumulative protection) yes  no  n/a
- cannot be protected under copyright law yes  no  n/a
- may be protected under copyright law under certain  
conditions only yes  no  n/a
- other \_\_\_\_\_

Q37: Where the subject matter which is protected under industrial design law may be protected under copyright law under certain conditions only, those conditions are the following:

- that the subject-matter can be identified *separately* from, and exist  
*independently* of, the functional  
aspect of the product yes  no  n/a
- that the subject-matter presents a *high* or *marked*  
artistic character yes  no  n/a
- other \_\_\_\_\_

