

## **Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications**

**Twenty-Fourth Session**  
**Geneva, November 1 to 4, 2010**

### **REPORT** \*

*adopted by the Standing Committee*

#### **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 twenty-fourth session, in Geneva, from November 1 to 4, 2010.
2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Cambodia, Canada, Chile, China, Colombia, Cyprus, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, Hungary, India, Iran (Islamic Republic of), Iraq, Ireland, Italy, Japan, Lithuania, Madagascar, Malaysia, Mexico, Montenegro, Morocco, Mozambique, Myanmar, Nepal, Netherlands, Norway, Oman, Panama, People’s Democratic Republic of Korea, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan, Viet Nam, (73). The European Union was represented in its capacity as a special member of the SCT.

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\* This report was adopted at the twenty-fifth session of the SCT.

3. The following intergovernmental organization took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), Benelux Organization for Intellectual Property (BOIP), Organization of Eastern Caribbean States (OECS) (3).
4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), Association of European Trademark Owners (MARQUES), Association romande de propriété intellectuelle (AROPI), Brazilian Intellectual Property Association (ABPI), Centre for International Intellectual Property Studies (CEIPI), China Trademark Association (CTA), Computer and Communications Industry Association (CCIA), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), European Law Students' Association (ELSA International), Inter-American Association of Industrial Property (ASIFI), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), Organization for an International Geographical Indications Network (OriGIn), Third World Network (TWN), Union of European Practitioners in Industrial Property (UNION) (19).
5. The list of participants is contained in Annex II of this document.
6. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all observations made.

#### Agenda Item 1: Opening of the Session

7. The Chair opened the twenty-fourth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), welcomed the participants and invited Mr. Francis Gurry, Director General of WIPO, to deliver an opening address.
8. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

#### Agenda Item 2: Adoption of the Agenda

9. The SCT adopted the Draft Agenda (document SCT/24/1 Prov.) without modifications.

#### Agenda Item 3: Adoption of the Revised Draft Report of the Twenty-Third Session

10. Discussion was based on document SCT/23/7 Prov.2.
11. The SCT adopted the Revised Draft Report of the twenty-third session based on document SCT/23/7 Prov.2.

#### Agenda Item 4: Industrial Designs

##### *INDUSTRIAL DESIGN LAW AND PRACTICE-DRAFT PROVISIONS*

12. Discussion was based on document SCT/24/3.
13. The Representative of the European Union, speaking also on behalf of the 27 Member States of the European Union, recalled that at previous sessions of the SCT and in the framework of the General Assemblies, the European Union and its Member States had recognized and stressed the continued importance of industrial designs and the added

value of harmonizing and simplifying the procedures for obtaining and maintaining a registration. The European Union and its Member States considered that the time was ripe to bring the issue of designs to the forefront of public attention and, in the light of both the substantial work progress made over the last five years and the fact that the SCT had repeatedly shown in the past that it could make major achievements based on its constructive spirit and dynamism, proposed to bring this matter to a Diplomatic Conference in the 2012-2013 biennium.

14. The Representative stated that the European Union and its Member States wished to reemphasize this commitment and to express their general support for document SCT/24/3, which was regarded as constituting a further promising and consequential step in the right direction. The European Union and its Member States, acknowledging that the proposed draft provisions took due account of the existing areas of convergence and common trends previously identified by the SCT, recognized that such draft provisions were in line with the relevant provisions of the Singapore Treaty on the Law of Trademarks and of the Patent Law Treaty and that they responded adequately to the ultimate goal of simplification of industrial designs procedures, for the benefit of both users and offices.
15. The Delegation of Brazil said that it welcomed document SCT/24/3 and was prepared to engage in the exercise expressed in paragraph 6 of such document, namely to comment upon the draft provisions and discuss future work.
16. The Delegation of Norway, supporting the statement made by the Representative of the European Union, declared that it was satisfied with the progress made from the last session.
17. The Delegation of Japan, conveying its appreciation for the fact that document SCT/24/3 contained draft provisions, said that it was of the opinion that significant progress would be made towards the harmonization of design protection. The Delegation considered, however, that delegations whose native languages were not English, French or Spanish had not had sufficient time to consider the draft provisions and, as a consequence, the discussion should start without placing a time limit.
18. The Delegation of Switzerland, expressing its satisfaction for the document and its support for the follow-up work in this area, underscored the importance of moving forward and obtaining concrete results.
19. The Delegation of Chile, stating that it was prepared to cooperate, said that it would be appropriate to begin by examining the draft provisions and to consider afterwards how to pursue the work.
20. The Representative of FICPI urged delegates to aim for a set of provisions that would simplify design law, rather than just codify the current positions.

#### *APPLICATION*

21. The Delegation of Japan expressed the view that this provision should include an indication of the type of application to which it applied, as well as a brief description of the reproduction or the characteristic features of the industrial design and an indication of the types of views.
22. The Delegation of Slovenia questioned the necessity of including a claim among the elements of the application.
23. In response to the question of the Delegation of Slovenia, the Delegation of the United States of America explained the requirement of a claim under its national law. Furthermore, noting that paragraph (1)(a)(viii) already provided for a description, the Delegation expressed doubts as to the need to include a separate item for "a brief description".

24. The Delegation of Sweden, supported by the Delegations of the Czech Republic and the Russian Federation, suggested that an indication of the classification of the product be included in this provision.
25. The Delegation of the Russian Federation suggested that, in line with the structure followed in the Singapore Treaty, the general provisions be supplemented by a second layer of provisions, called "regulations" or "instructions", which would provide for details to the general provisions.
26. The Delegation of China noted that this provision contained no indication as to the requirement of a representative for foreign applicants.
27. In reply to a question of the Delegation of Brazil concerning classification, the Secretariat explained that a number of jurisdictions required the indication of the class of the product, either under a national classification system or under the international classification under the Locarno Agreement.
28. The Delegation of Brazil said that it would be always useful to have the name of the creator identified when the application was not filed by the creator, even if the applicable law did not require it.
29. The Delegation of the Republic of Korea considered that this provision should include an indication of the type of application.
30. The Republic of Moldova, considering that the document was a good basis to harmonize industrial design law, said that it would be useful to include classification as an element of the application.
31. The Delegation of Peru, supported by the Delegations of Chile, Germany and Portugal, suggested that the signature of the applicant or the representative be included as an element of the application.
32. The Delegation of the United States of America suggested including an indication of prior registrations or any information as to the question of novelty of which the applicant could be aware, as such elements were required under national legislation.
33. The Representative of FICPI suggested that elements relating to the definition of the design, such as claims, descriptions and statements of novelty, be gathered together under the provision concerning the representation of the design.
34. The Delegation of Brazil expressed the view that this provision should include a large list of elements, and leave it to national offices to decide whether to require some only of those elements.
35. The Delegation of France, supported by the Delegations of Brazil, Peru and Portugal, suggested adding the words "in the national legislation" after the words "subject to such conditions as may be prescribed", in paragraph (3) of this provision.
36. The Representative of CEIPI, observing that the structure of the provisions followed the Singapore Treaty structure, where there is a definition of the word "communication" which includes the "application", suggested that "definitions" be inserted in the beginning of the provisions. Regarding the suggestion of adding the words "under national legislation" in paragraph (3), the Representative suggested instead "under the applicable law" or including a definition of "national legislation" which would encompass "regional legislation". Moreover, the Representative said that he understood that paragraph (3) made it mandatory to accept multiple applications, subject to the conditions prescribed under the applicable law.

37. The Delegations of Guatemala and Portugal said that their respective laws allowed multiple applications, provided that the products were in the same class.
38. The Delegations of Canada and Peru said that their respective laws did not allow for multiple applications.
39. The Delegation of Brazil indicated that up to 20 variations of the design could be filed in a single application, provided that the concept of unity of design was respected.
40. The Delegation of the United States of America said that multiple applications were admitted when the designs were so related as to have a common design concept.
41. The Representative of FICPI observed that multiple applications were very desirable for applicants, and that over 75 % of jurisdictions accepted them.
42. The Representative of Brazil said that other elements to include in this provision were a power of attorney, the priority assignment document, the date and signature.

#### *REPRESENTATION OF THE INDUSTRIAL DESIGN*

43. The Delegation of Japan sought assurance that this draft provision would allow an industrial design to be represented by graphic and photographic reproductions at the same time. Moreover, the Delegation requested confirmation as to the interpretation whereby offices would be allowed to require additional views without having to specify the reasons why they did not consider the industrial design to be fully disclosed.
44. The Representative of the European Union, observing that this provision should take into account technical developments, suggested opening the door to other ways of representing industrial designs which are currently developing, such as representation through electronic means, or which may develop in the future.
45. The Delegation of Switzerland, referring to paragraph (4)(a), expressed the opinion that the appearance of an industrial design was not susceptible of being fully disclosed with one view.
46. The Delegation of the Czech Republic, observing that all possible and future forms of representation of industrial designs should be taken into account, suggested the following wording in paragraph (1): "the representation of the industrial design shall, at the option of the applicant, be in the form of a graphic, a photographic or any other form of reproduction, as prescribed". Concerning paragraph (4), the Delegation suggested adding a new sentence, which could read as follows: "Fully disclosed appearance of the industrial design means to show all particulars of two or three dimensional designs. The applicant may omit views which do not show any design matter or which are identical or exactly inverted to those already disclosed".
47. The Delegation of China, observing that dotted and stippled lines were not protected elements in China, expressed the opinion that unclaimed elements should not figure in the application. The Delegation also pointed out that shading of three dimensional designs was not allowed under national legislation.
48. The Delegation of the Republic of Korea concurred with the delegations which had expressed the view that this provision should allow all presently-known and future forms of representing the industrial design, as well as the possibility for applicants to represent a given industrial design using different forms. The Delegation indicated that, under national legislation, three-dimensional representations and models were allowed.
49. The Delegation of Denmark, acknowledging that in some jurisdictions there was a possibility to supplement the application with a model, wondered whether a model could be considered a graphic representation. The Delegation also wondered whether there would be a need for supplementary words about contours.

50. The Delegation of Spain said that national offices should be allowed not to take into account superfluous views or those exceeding a certain number.
51. The Delegation of USA indicated that it interpreted the word “graphic” in paragraph (1) in a broad manner, including computer-generated designs and other techniques of representation. Concerning paragraph (2), the Delegation considered that, in view of the aspirational nature of this document, it would be helpful for applicants to be able to file a single set of drawings. As to paragraph (4), it interpreted the words “fully discloses” as allowing the applicant to file a single drawing if such single drawing represented the design in a complete manner.
52. The Delegation of France, supported by the Representative of the European Union, suggested adding the possibility for offices to set a maximum number of views.
53. The Delegation of the Russian Federation suggested adding a provision in the regulations or instructions that would prohibit the use of background elements that were not part of the industrial design. Concerning paragraph (4), the Delegation supported maintaining the notion of full disclosure of the article by means of one view.
54. The Delegation of the Republic of Moldova said that paragraph (1) should highlight that photographic reproductions could comprise digital or paper photographs.
55. The Delegation of Slovenia said that it concurred with delegations which had requested that paragraph (1) should encompass other modern techniques of reproduction. Concerning paragraph (4), the Delegation supported maintaining the notion of full disclosure of the industrial design by means of one view.
56. The Representative of CEIPI, referring to the French version of paragraph (2)(b), pointed out that the words “*dessin*” and “*tridimensionnel*” should be deleted.
57. The Representative of FICPI, expressing the view that it should be up to applicants to choose whether to file one or more views and whether to provide a description, said that permitting offices to request additional views would undermine the ability for applicants to use one set of views which would work globally.
58. The Delegation of Australia, supported by the Delegations of Brazil and Canada, said that there should be enough flexibility in the system, and that offices should have the possibility of requesting additional views if necessary.
59. The Delegation of Japan, observing that the office allowed applicants to submit a reference drawing to facilitate the understanding of the article in cases in which the office did not understand how the design was used or in which part the design was mounted, suggested that applicants should have an opportunity to add views.

#### *REQUIREMENT TO FILE THE APPLICATION IN THE NAME OF THE CREATOR*

60. The Delegation of the United States of America said that national legislation required that the designer signed a declaration affirming that he/she was the original designer, which would not necessarily be a part of the application form. The Delegation, noting that it was not clear from the draft article how offices would deal with procedural papers filed later, considered that a two-layer structure of the document, as suggested by the Delegation of the Russian Federation, would help address this issue.
61. The Delegation of Sweden expressed concern over the fact that the rights of creators would not be sufficiently taken into consideration where there was a requirement to file the application in the name of the creator. Therefore, applicants should present evidence that they had obtained the right to the design. To that end, it would be sufficient to have the creator sign the pre-printed statement of the assignment in the application form.

62. The Delegation of Peru, endorsing the suggestion made by the Delegation of Sweden, considered that there was a need to request further information that validated the transfer of rights.
63. The Representative of INTA suggested replacing the word "in the signing of the form" by the words "by signing the form".
64. The Delegation of India said that, according to national legislation, the person who acquired the rights had to sign the application and submit any document which proved that there was a proper assignment.

#### *DIVISION OF APPLICATION*

65. The Delegation of Denmark said that the sum of the original and subsequent fees which would result from the division should not exceed the sum that would have been paid if separate applications had been filed at the outset.
66. The Delegation of Spain requested that the term "*solicitud divisional*" be added to the term "*solicitud fraccionaria*".
67. The Delegation of India declared that national legislation did not provide for division of applications.
68. The Delegation of Saudi Arabia, observing that division of applications was provided for under national legislation, considered that it was important to maintain this provision.

#### *FILING DATE*

69. The Delegation of Brazil, observing that the name of the creator and the priority claim were also filing date requirements in Brazil, said that applications had to be filed in the national language in order to obtain a filing date. As to the time limit to correct an application where a filing date requirement was missing, the Delegation indicated that it was five days, for both national and foreign applications. As to paragraph (4), the filing date in case of correction was the date of the first deposit.
70. The Delegation of Japan suggested that an indication of the product or products which incorporate the industrial design should be listed in subparagraph (1)(a) and, as regards subparagraph (1)(b), that a sufficiently clear representation of the industrial design should be mandatory.
71. The Delegation of the United States of America expressed the view that this provision was very useful, considering the aspirational goal of this document to be helpful for applicants. The Delegation observed that this article drew out the very minimum that would be necessary to establish who filed an application on what industrial design. Furthermore, the Delegation considered that it was very constructive that paragraph (1)(b) gave the possibility to an office to accord a filing date where the application was received in a language other than a language admitted by the office.
72. The Delegation of Peru suggested that the payment of fees be a filing-date requirement.
73. The Delegation of Switzerland requested the addition of a new item (c) concerning the filing sent by post.
74. The Delegation of China said that a description was a filing-date requirement in China and the foreign applicants and non-residents had to act through a representative in order to obtain a filing date. The Delegation further explained that if the application did not comply with the legal provisions, the office would reject it and there would not be any possibility to resubmit it.

75. The Delegation of Canada, while expressing its support for simplification, noted that in Canada the applicant's name, address and title, as well as a description and the filing in French or English were filing date requirements.
76. The Delegation of Spain indicated that national legislation did not provide for any time limit of less than two months.
77. The Delegation of the Czech Republic expressed the view that the filing date should be the date on which the office received all, rather than some, requirements. The Delegation further reminded that, under the Hague Agreement, the designation of a Contracting Party was a requirement for granting a filing date.
78. The Delegation of Uruguay indicated that the time limit to comply with any of the applicable requirements in Uruguay was 30 days.
79. In reply to a request for clarification by the Delegation of France, the Secretariat confirmed that paragraph (1)(a) provided for the maximum conditions to obtain a filing date, while paragraph (1)(b) allowed offices to grant a filing date where some only of those elements were provided.
80. The Delegation of Chile suggested adding "the identification of the applicant in the manner required by the office" in paragraph (1)(a)(ii) and supported the proposal by the Delegation of Peru to add the payment of fees to the list of filing-date requirements.
81. The Delegation of Sweden suggested deleting the word "all" before "the required indications" in paragraph (4), for the sake of consistency with paragraph (1)(a).
82. The Representative of MARQUES, expressing its support for the wording of this provision, pointed out the importance for users of keeping filing-date requirements to a minimum, and stated that users would be against treating the payment of fees as a filing date requirement.

#### *GRACE PERIOD FOR FILING IN CASE OF DISCLOSURE*

83. The Delegation of Denmark said that, in paragraph (2), the notion of "misuse" should replace the notion of "without the authorization of the creator".
84. The Delegation of the United States of America, considering that this provision was very important for small and medium size companies as well as for individual designers, concurred with the Delegation of Denmark in the need to replace the notion of "without the authorization of the creator" by a broader notion, including also any disclosure made accidentally.
85. The Delegation of Japan observed that, should the starting date for the grace period be the priority date, the total grace period would be 18 months, which would put a burden on offices and third parties for the purpose of searches. The Delegation further sought clarification as to the consistency of this provision with article 11 of the Paris Convention. Finally, the Delegation suggested that this provision allow offices to require a written statement from applicants, giving information on the disclosure of the industrial design.
86. The Delegation of Moldova, supporting this provision, said that 12 months was an optimum period.
87. The Delegation of Australia said that, while Australia did not currently have a grace period, it would be prepared to examine this issue, in the interest of improving international consistency.
88. The Delegation of China, indicating that the grace period in China was six months, noted however that not all forms of disclosure could benefit from such grace period.



89. In reply to a question from the Delegation of Brazil as to the notion of authorization, the Secretariat said that “non authorized disclosure” was intended to mean any disclosure which had not been allowed by the creator, for instance a disclosure in breach of a contract.
90. The Delegation of India said that the maximum grace period in India was six months.
91. The Delegation of the Czech Republic asked whether “unauthorized disclosure” included an unintentional disclosure by a third party or only a bad faith disclosure.

#### *DEFERMENT OF PUBLICATION*

92. The Delegation of Brazil requested that the words “or 180 days” be added after “shall not be less than 6 months”.
93. The Delegation of Japan, noting that Japan provided for a substantive examination system, suggested that the starting date of the deferment period be clarified, and that a maximum period of deferment be defined.
94. The Delegation of India said that national legislation did not provide for deferment of publication.
95. The Delegation of Morocco, pointing out that national legislation did not provide for novelty examination, said that Morocco was currently amending its legislation to introduce deferment of publication.
96. The Delegation of Tunisia declared that national legislation provided for a 12-month deferment period.
97. The Delegation of China indicated that there was currently no provision on deferment of publication.
98. The Delegation of Slovenia said that it welcomed this provision and pointed out that the period of deferment was counted in Slovenia as of the filing date.
99. The Delegation of Denmark suggested that the starting date of the deferment period be clarified.
100. The Delegation of Australia, observing that Australia could comply with this provision if the deferment period started from the priority date, suggested that this provision was drafted in a flexible way, allowing offices to count the deferment period from the priority date.
101. The Delegation of Poland said that publication of the industrial design took place after registration.
102. The Delegation of Canada, noting that publication did not take place in Canada until registration, said that there was a practice whereby registration could be delayed for a period of six months, possibly followed by six additional months, upon request and payment of a fee.
103. The Delegation of the Czech Republic, observing that national legislation provided for deferment of publication from the filing date or the priority date, if any, said that it would favor a minimum deferment period of 12 months. The Delegation further expressed the view that this provision should also be applicable to countries that carry out a substantive examination, as in certain cases examination could be completed quickly, and suggested considering two possible regimes, one to defer publication and another one to delay registration.
104. The Delegation of Malaysia proposed that this provision should not be mandatory.

105. The Delegation of Sudan said that, while no deferment of publication was provided for in Sudanese law, the office would accept a request for deferment.
106. The Delegation of Germany suggested replacing the terms “without prior examination as to novelty or originality” by “without prior examination as to novelty and/or originality”.
107. The Representative of MARQUES, recalling that users wanted the ability to have secrecy if necessary, but also certainty, expressed support for the written submission made by FICPI, proposing to have deferment of publication available under all systems.

#### *COMMUNICATIONS*

108. The Delegation of the United States of America, observing that this provision would be very helpful for applicants, suggested that a definition be given to the term “communications”, and that powers of attorney be included in such definition.
109. The Delegation of Japan suggested that “individual specified cases” be listed in this provision and limited to the case of surrender.
110. The Delegation of Poland requested clarification as to the expression “except in specific cases”.
111. The Delegation of Brazil, pointing out that the national civil code required notarization, authentication and legalization as a general rule for all foreign documents, requested clarification as to the notion of “specific cases”. Concerning paragraph (3)(b)(ii), the Delegation indicated that a handwritten signature was required on paper documents.
112. The Delegation of Mexico expressed its concerns regarding a possible inconsistency in paragraph (2)(b).

#### *INITIAL TERM OF PROTECTION AND RENEWAL*

113. The Delegation of Brazil said that, according to national legislation, a request for renewal had to include also the name of the legal representative, if any, the power of attorney, the date and the signature. Referring to paragraph (3)(a)(iv), the Delegation observed that it would not be possible to request renewal of more than one design in one application. Finally, the Delegation requested that the words “ or 180 days” be added after “six months” in subparagraph (4)(b).
114. The Delegation of Uruguay, indicating that the initial term of protection was ten years, said that renewal could be requested for a single period of five years, 180 days prior to the expiry of the term of protection or 180 days after such expiry, upon payment of a surcharge.
115. The Delegation of Spain expressed its concern regarding the term “patent” in paragraph (3)(a)(iii).
116. The Delegation of Japan, supported by the Delegation of the Republic of Korea, suggested that applicants should have the option to pay annually or, where they wished to reduce the burden of the payment procedure, for two or more years.
117. The Delegation of Peru said that, under Andean legislation, the term of protection was 10 years without renewal.
118. The Delegation of Guatemala said that renewal could be requested 60 days before the expiry of the term of protection, as well as six months after such expiry, upon the payment of an extra fee.

119. The Delegation of Chile said that national legislation did not provide for renewal, but that Chile could be open to consider it. The Delegation expressed the view that use of the design should be taken into account as a requirement for renewal, and that the number of renewals should be limited.
120. The Delegation of the United States of America, observing that the single term of protection of 14 years would be changed to a single term of 15 years, suggested that the words "at least" be inserted before "five years", in order to allow for single terms of 10 or more years, or for five-year renewable terms.
121. The Delegation of Brazil, indicating that protection for an industrial design was granted for a term of ten years, renewable for three consecutive terms of five years, expressed support for the proposal made by the Delegation of the United States of America.
122. The Delegation of Sweden, supported by the Delegation of Denmark, said that it would prefer a provision which gave the possibility to grant protection for an initial term of five years or more.
123. The Delegation of Japan suggested that the initial term of protection be one year, as there was a need for shorter terms of protection.
124. The Delegation of Saudi Arabia said that national legislation provided for a non-renewable term of protection of 10 years.
125. The Delegation of Morocco said that industrial designs were registered for an initial five-year term from the date of filing and could be renewed twice.
126. The Delegation of China said that the term of protection for industrial designs was 10 years. It was not compulsory for applicants to pay annuities on a year-by-year basis, which meant that an applicant might either make a payment every year or make a payment covering several years. If the annuities were to be paid once every five years when the period of protection actually needed was shorter than five years, the applicant would end up paying more. The mode of payment in China was therefore more flexible and economical for applicants.
127. The Delegations of Bangladesh, Ghana and Malaysia said that industrial designs were registered for an initial five-year term from the date of filing, and could be renewed for two consecutive terms of five years.
128. The Delegation of Algeria said that national legislation provided for a non-renewable term of protection of 10 years.
129. The Delegations of Chile and Peru expressed support for the proposal made by the Delegation of the United States of America.
130. The Representative of MARQUES stated that users wanted a harmonized period of protection, which did not need to be too long.

*RELIEF IN RESPECT OF TIME LIMITS AND REINSTATEMENTS OF RIGHTS AFTER A FINDING BY THE OFFICE OF DUE CARE OR UNINTENTIONALITY*

131. The Delegation of Brazil, observing that these two provisions did not have much convergence with Brazilian current law, stated that extension of time could be granted only in very restricted cases.
132. The Delegation of Moldova, noting that national legislation provided for extension of time limits and continued processing, as well as for reinstatement of rights up to 12 months after the loss of rights, expressed support for the text as it stood.

133. The Delegations of Uruguay and Guatemala concurred with the comments made by the Delegation of Brazil.
134. The Delegation of Chile, while concurring with the Delegation of Brazil that there was not much convergence between this provision and national legislation, said that it would however be interested in discussing this provision, which should contain limits.
135. The Delegation of Denmark, while indicating that it was in favor of the extension of time limits, expressed the view that further consideration on the provision in its entirety was required.
136. The Delegation of Malaysia said that national law provided for a six-month grace period from the date of expiry of a time limit.
137. The Delegation of Uruguay suggested using the word "industrial design" instead of "patent".
138. The Delegation of Japan, expressing the view that the administration of the design right should be the responsibility of the holder and that any relief measure would affect third parties, suggested that the provision contained in Rule 9(4)(ii) of the Singapore Treaty be added.

*REQUEST FOR RECORDING OF A LICENSE OR A SECURITY INTEREST AND REQUEST FOR A CHANGE IN OWNERSHIP*

139. The Delegation of Japan said that the provision should take into account the case where the holder or the licensee was a legal entity and should not be limited to three types of licenses. Moreover, where there were co-holders of the design, and there was a license involving one or some holders only, the office should be allowed to require the consent of the remaining holders of the design, as provided for in Rule 10(2)(b) of the Singapore Treaty.
140. With respect to a request for a change in ownership, the Delegation of Japan requested that the indication of the registration number and the indication that the new owner was a legal entity be added to the list in paragraph (1)(b).
141. The Delegation of Brazil, noting that these provisions did not reflect Brazilian law, said that they should present minimum standards, rather than maximum standards. With respect to change of ownership, the Delegation supported the comment made by the Delegation of Japan and suggested including also the document of transfer of ownership, the power of attorney, the date, and the signature. The Delegation observed that a change of ownership was permitted even in the case where the industrial design was not yet registered and, with respect to paragraph (5), informed that a transfer of ownership resulting from a foreign court decision would have to be registered with the Supreme Court of Brazil.
142. The Delegation of China observed, with respect to paragraph (5), that the original and copies of the patent, as well as a translation thereof, were requested in China. The Delegation also mentioned that foreign owners would have to proceed through a representative.
143. The Delegation of the Russian Federation expressed the view that it would be important to supplement the list of requirements regarding the recording of license with details, to be included in the part of the document containing instructions.
144. The Delegation of the United States of America said that, in the United States, requirements to record a change in ownership or a license were very minimal and that documents received were not reviewed, although a translation into English was requested.

145. The Delegation of Chile, declaring that it was in favor of facilitating transfers, pointed out that documents would have to be translated into Spanish.
146. The Delegation of Morocco suggested that these provisions apply, not only to registered designs, but also to design applications.
147. The Delegation of Switzerland, supported by the Delegation of Brazil, suggested that any reference to "patent" be deleted, and that a provision clarifying the various terms be included.
148. The Delegation of Spain proposed to clarify whether or not non registered designs were included in these provisions.
149. The Delegation of El Salvador, expressing the view that this document would be considered as a doctrinal or illustrative document by examiners, requested clarification as to the nature of the document.
150. The Delegation of Switzerland, considering that this document was very useful, suggested that the SCT examine a revised document at its next session and, on the basis of that revised document, decide towards which instrument to move.
151. The Delegation of India said that the document should be flexible, and that nations should be left to maintain their interests.
152. The Delegation of Brazil, concurring with the Delegation of El Salvador on the importance of clarifying how to pursue the work, said that it agreed with the Delegation of Switzerland that this was a preliminary document and that the SCT might wish in the future to go further, as well as and with the Delegation of India in that the document had to remain flexible. In this regard, the Delegation of Brazil said that the document should provide minimum standards, rather than maximum standards.
153. The Delegation of the United States of America, supporting the statements made by the Delegations of Brazil and Switzerland, said that countries should strive to meet the needs of their users, carefully consider whether changes for the benefit of such users could be made, continue talking to users and making small changes to this document, and then decide on the nature of the document.
154. The Delegation of Germany, expressing its support for the comments made by the Delegation of the United States of America, said that, while details would need to continue to be discussed at the next session, it was optimistic that technical differences would be overcome.
155. The Delegation of France, supporting the statements made by the Delegations of Germany and of the United States of America, declared that it considered it important to continue the discussion on industrial designs at the next session.
156. The Representative of the European Union declared that it wished to associate its position to the position of the Delegations of France and Germany.
157. The Delegation of Saudi Arabia, expressing its support for the intervention of the Delegation of India, encouraged the SCT to consider the issue of flexibility and simplification.
158. The Delegation of Slovenia expressed support for the comments made by those delegations which wished to pursue the work, particularly the comments made by the Delegations of France, Germany and the United States of America.
159. The Delegation of El Salvador declared that El Salvador would be in a position at the next session to say whether or not it favored going to a diplomatic conference.

160. The Delegation of Uruguay, observing that it needed to evaluate the results of this session, declared that it would express its position at the next session.
161. The Chair concluded that all delegations supported the advancement of the work of the SCT on industrial design law and practice and that the twenty-fourth session made significant progress in that regard. He noted that the Secretariat was requested to prepare a revised text for consideration at the next session of the SCT, which would take into consideration all comments made at the current session and which should present provisions on two levels, namely one general level setting out provisions of a broader and general nature, and a second subordinate level of provisions addressing in detail specific aspects of the general provisions. Moreover, the revised text should address certain horizontal issues that were not dealt with in the present text, such as definitions, representation before the office, communications in general and electronic communications. As to the continuation of the work, he noted that a number of delegations called for the convening of a diplomatic conference for the adoption of a treaty on industrial design registration formalities in the next biennium 2012-2013, while other delegations were of the view that further discussions were needed on the revised text before considering the convening of a diplomatic conference. The Chair concluded that, on the basis of the revised text, the next session of the SCT should be in a position to decide its future work concerning that aspect.

*DIGITAL ACCESS SERVICE FOR PRIORITY DOCUMENTS (DAS)*

162. Discussions were based on an oral briefing presented by the Secretariat.
163. The Delegation of the United States of America thanked the Secretariat for its presentation and said that this initiative would go a long way towards improving efficiency and cutting costs when filing for trademark and industrial design protection internationally, both for rights holders and offices. The Delegation expressed its support for the proposal to permit trademark and industrial design owners to post a color copy of the registration or renewal notice in the WIPO database. By permitting this, trademark owners filing Paris Convention-based applications in multiple countries could be spared the expense and inconvenience of filing copies of the registration and/or renewal notice in each country. Of course, many times a translation of the document would still be required, plus a digital image of the registration or certified copy of the registration might not meet the requirements of the national laws of all countries, but if even some national offices could use such a system, it seemed worthwhile. In addition, it would be useful if the system permitted the national office to download the digital image of the registration.
164. The Delegation of India suggested uniformity of format in which priority documents would be framed.
165. The Delegation of Australia, pointing out that the experience regarding patent priority documents was positive, commended the initiative.
166. The Delegation of Canada expressed support for the initiative.
167. The Delegation of the Republic of Moldova said that it was interested in the system.
168. The Representatives of CEIPI and INTA expressed their support for the project.

169. The Chair concluded that a number of delegations had taken note with satisfaction of the progress made so far towards the extension of the DAS to trademark and industrial design priority documents, and took note of the future plans concerning the work. In this context, a possible extension of the system for digital registration certificates was likewise encouraged.

Agenda Item 5: Trademarks

*TRADEMARKS AND THE INTERNET*

170. Discussion was based on document SCT/24/4.
171. The Representative of the European Union, on behalf of the European Union and its twenty-seven Member States welcomed the decision of the SCT to carry out work in relation to trademarks and the Internet. The Representative recalled that the dramatic expansion of the Internet had brought great opportunities for businesses and brand promotion, but intellectual property abuses and threats to trademark integrity in that medium had increased and become difficult to avoid. In order to guarantee adequate protection to trademarks in the digital environment, it was imperative for governments and intellectual property administrations to stay abreast of developments. The European Union and its Member States considered that the summary of new challenges concerning the use of trademarks on the Internet presented in Annex I of document SCT/24/4 was most instructive and valuable. Any appropriate action addressing specific issues in this field would be considered. The Representative noted that it has been following the International Corporation for Assigned Names and Numbers (ICANN) activities, and further noted its continued support of the Secretariat's work at ICANN to ensure respect for intellectual property, in particular the need for adequate protection of trademarks in the proposed introduction of New generic Top-Level Domains (gTLDs).
172. The Delegation of Spain declared that the use of trademarks on the Internet had given rise to a great deal of legal controversy. The fact that trademarks were only protected in the country or region where they were registered and used while the Internet had a global scope, gave rise to conflict between very similar or identical marks in different countries. The Delegation said that it would be very interesting and beneficial for all delegations to address the issues presented in the document submitted by the Secretariat.
173. The Delegation of India stated that any efforts to clarify the issues under review were commendable. However, a lot of work still was needed to resolve the increasing amount of conflicts arising in every jurisdiction. India was among the countries which had no statutory law on the protection industrial property rights in signs on the Internet and any disputes at the national level were adjudicated at national courts, in accordance with common law and the application of general principles such as the law of tort. The Delegation held the view that a number of new developments had taken place since the adoption of the 2001 Joint Recommendation, which was framed at that specific point in time. New challenges needed to be considered before trying to draw any consensus on this matter.
174. The Delegation of El Salvador declared that the national industrial property Office was not competent to register domain names. However, the Delegation found that document SCT/24/4 was extremely illustrative. The Delegation noted that national authorities lacked experience in relation to the handling of domain name registers and asked whether at the next session of the SCT, a representative of the ICANN could be invited to make a presentation. The Delegation noted that it would be beneficial for SCT members to meet with members of ICANN.

175. The Delegation of China thanked the Secretariat for its work in the area of Internet domain names, and encouraged WIPO and ICANN to collaborate to better protect the interests of all parties. The Delegation additionally noted that WIPO was an ideal forum to explore national positions concerning challenges arising from domain names and the use of trademarks on the Internet.
176. The Delegation of Switzerland thanked the Secretariat for the documents provided and noted its support for the Secretariat's activities in the area of Internet domain names and in relation to the ICANN proposal to expand the number of gTLDs, which it was noted, must respect not only intellectual property such as trademarks, but also geographical indications and country names.
177. The Representative of INTA commended the Secretariat's activities in the area of Internet domain names and noted that since ICANN's inception, INTA has consistently expressed concerns about the impact of any gTLD expansion on right holders and consumers. Despite strong industry concerns about ever-increasing trademark abuse, ICANN had already expanded the number of the original eight gTLDs by seven in 2001 and by an additional six in 2005. The Representative noted that trademark owners incur significant costs to enforce their rights on the Internet under the current 21 gTLDs and some 250 country-code Top Level Domains (ccTLDs) and that ICANN had not demonstrated any economic or public policy justification for its planned limitless expansion of the number of new gTLDs. The Representative noted that the status of the recommendations of an ICANN-convened "Implementation Recommendation Team", which had been tasked with proposing solutions to address the expected increase in trademark abuse, remained uncertain. The Representative noted that because the expected harms associated with ICANN's unlimited gTLD expansion plans are not seen to be offset by any potential benefits, the INTA Board of Directors had adopted in July 2009 a resolution against the new gTLD expansion planned by ICANN until overarching issues such as economic demand and trademark protection are resolved.
178. The Delegation of India noted seemingly increased domain name abuse in India, particularly regarding confusing similarity and identification of legitimate businesses. The Delegation noted its appreciation of the WIPO Arbitration and Mediation Center's services, without which resolving Internet-based cross-jurisdictional trademark disputes would be exceedingly difficult. The Delegation noted its support for the Secretariat's activities at ICANN and in the area of the Internet and domain names generally.
179. The Delegation of China took note of the Secretariat's work producing two Reports on the issue of Internet domain names, and related further activities at ICANN. The Delegation expressed concern about ICANN's plans for an expansion of the number of New gTLDs, and expressed support for the recommendations in paragraph 17 of Annex III to document SCT24/4 which calls for any New gTLDs to be introduced by ICANN in a controlled manner.
180. The Representative of the European Brands Association (AIM) stressed the usefulness of document SCT/24/4. The Representative noted AIM's participation in ICANN's "Commercial & Business Users Constituency". The Representative referred to paragraph 31 of Annex III to document SCT/24/4 which describes efforts at ICANN to assess the current state of the Uniform Domain Name Dispute Resolution Policy (UDRP). The Representative noted its satisfaction with the effectiveness of the UDRP, notwithstanding the fact that trademark owners cannot recover their enforcement costs. The Representative noted its concerns where any ICANN processes would have the potential to affect the UDRP in a negative manner. The Representative noted support for the work of the Secretariat in connection with the UDRP. The Representative further noted that in its view, ICANN remains too focused on creating commercial opportunities for its registration business interests, and is focused too little on its obligation to act in the public interest and to promote consumer trust. The Representative, though expressing uncertainty as to whether the SCT can undertake such activity, recommended an effort to rewrite the ICANN mission statement to prioritize the public interest over ICANN constituency commercial interests.



181. The Delegation of Germany noted its agreement with the statements made to the SCT by the Representatives of AIM and INTA. The Delegation expressed concern about trademark rights being compromised in four areas. The Delegation also noted concern about any ICANN Clearinghouse discrimination against so-called “substantive review” jurisdictions, which it was noted may affect most European trademark offices. The Delegation noted that policies addressing the responsibility of registries and registrars are too lax and do not have the effect of encouraging responsible operations. The Delegation noted the problematic nature of the anticipated need for defensive domain name registrations by trademark owners in any potential New gTLDs, e.g., under a hypothetical “.BANK” or “.PHARMA” New gTLD, notwithstanding possible benefits of effectively regulated and secure New gTLDs. The Delegation noted the anticipated burdens on trademark owners under the current ICANN draft of a “Uniform Rapid Suspension” (URS) procedure, which it was noted does not address trademark concerns raised within ICANN processes. The Delegation noted the proposals in its submission to the SCT for suggested revisions to ICANN rights protection mechanisms. The Delegation expressed support for interventions of AIM and INTA within ICANN, and questioned how trademark and national concerns could be expressed and addressed more effectively in ICANN processes.
182. The Delegation of China inquired, with respect to an ICANN Clearinghouse, as to any potential ICANN view on multiple rights holders applying for recordation of their data with such Clearinghouse.
183. The Secretariat noted that the Clearinghouse, as found in ICANN’s “Draft Applicant Guidebook” which may be further revised by ICANN, is being announced as a database or repository of trademark rights, without apparent mention at this time on any form of priority between multiple rights owners, e.g., for registry-sponsored “sunrise” domain name registration schemes.
184. The Secretariat also noted with respect to the intervention by the Delegation of Switzerland raising the need for protection of geographical indications, that ICANN’s current draft “Draft Applicant Guidebook” discusses a degree of potential protection for certain identifiers such as country and territory names and capital city names.
185. The Delegation of India inquired as to whether and to what extent local court judgments, e.g., restraining orders addressing bad faith domain name registrations, may be respected by ICANN.
186. The Delegation of Hungary inquired as to the scope of anticipated protection for geographical indications, and whether there would be a process for providing to ICANN a list of such identifiers seeking protection.
187. The Representative of ECTA noted that she shared the concerns expressed by the Representatives of AIM and INTA with respect to ICANN’s planned expansion of the number of New gTLDs, and further noted that since 2009, ECTA has made some nine submissions to ICANN concerning the issue of trademark protection in any new gTLDs. The Representative confirmed her agreement with the position of AIM calling for ICANN to restore public trust in the Domain Name System (DNS).
188. The Chair asked delegations to provide comments on Annex I “Recent Developments Regarding Trademarks and the Internet” and Annex II “Joint Recommendation Concerning Provisions on the Protection of Marks and other Industrial Property Rights in Signs on the Internet” of document SCT/24/4.
189. The Delegation of Australia declared that document SCT/24/4 was a useful starting point for fruitful discussions over a number of meetings. On the question of whether it was adequate to review the 2001 Joint Recommendation, the Delegation believed that it was necessary to consult with national stakeholders before having any conclusive views. The Delegation felt that such an exercise should be seriously considered.

190. The Delegation of Slovenia also noted that the national industrial property office was not directly competent to solve disputes arising from the infringement of trademarks on the Internet. Trademark holders approaching the office were usually seeking clarifications or additional information in cases of conflict between a trademark and a domain name. The most interesting issue in this context was whether a domain name could be considered as part of intellectual property rights and could therefore constitute a valuable basis for opposition against the registration of a trademark. The question of the legal status of domain names was not settled by the jurisprudence in Slovenia. The Delegation declared that in general terms, the Joint Recommendation was satisfactory, although the text was some times difficult to understand and perhaps more discussion was needed to further clarify certain matters. The Delegation did not, however, have any specific proposals on how to amend the Joint Recommendation.
191. The Delegation of India said that it wished to comment the contents of Annexes I and II of document SCT/24/4. The analysis of the various cases presented in Annex I seemed to indicate that a number of disputes concerning trademarks and the Internet had been decided in different countries; however, the document did not indicate how the courts had determined the injury suffered or the level of damages to be paid. The Delegation noted that the definition of “competent authority” in Annex II implied authorities at different levels. In India, the courts had been very critical of the territorial application of laws. The Delegation noted that in India, there were five trademark offices and four patent offices. Applications submitted and accepted by one trademark office might not be acceptable in another because of differences in language, pronunciation and even the specific writing of signs. The Delegation held the view that a large part of Trademark Law could not be written, so even if there were principles and guidelines, much needed to be decided on a case-by-case basis. The Delegation also opined that the cases contained in Annex I revealed that the deciding authority had laid down its own tests and it would be interesting to comment on each of them.
192. The Representative of ECTA said that the organization welcomed the clear and well presented documents prepared by the Secretariat on Trademarks and the Internet. ECTA wished to underline that trademark owners created significant wealth and value all over the world. Consumers relied upon trademarks when selecting goods and services. In the view of the representative, Annex I illustrated the complexities and uncertainties for trademark owners when facing similar challenges in different jurisdictions. The Representative considered that it would be beneficial for trademark owners and consumers to have greater consistency in place. With regard to the text presented in Annex II, ECTA applauded the drafting of the Joint Recommendation as it was worded in a way that did not make it dependent on any particular technical means and its directional approach was wide in nature. The Joint Recommendation was welcome at the time when it was drafted; however, the Internet and its use had significantly changed since that time and it was clearly appropriate to update the document. The Representative noted that issues concerning the “use of trademarks in online advertising mechanisms” and the “use of trademarks in virtual worlds” were worth giving further consideration and if appropriate, including into a revised joint recommendation. While the development and use of Internet auction sites was growing since 2001, the problem of the use of trademarks on non-genuine goods was a core issue for trademark law. The liability of auction site providers and recommendations for harmonization were controversial issues, where further work was necessary. Finally, the Representative referred to the definition of the word “Internet” contained in Article 1 of the document and the explanatory note to that article in paragraph 1.05, at page 16, where it was foreseen that the definition of “Internet” might become outdated. The Representative of ECTA requested the SCT to adopt a more generally accepted description of the word “Internet”.
193. The Chair noted that even though certain delegations had indicated that they were pleased with the Joint Recommendation, it was clear that certain developments had taken place in relation to the Internet since 2001. The Chair recommended that the SCT look at the various provisions, see how they apply to current practice and determine where additional clarifications would be needed. He suggested that the SCT could ask the Secretariat to identify the shortcomings of the various provisions vis-à-vis member State practice. This work could be undertaken in preparation for the twenty-fifth session.

194. The Delegation of Germany stated that document SCT/24/4 was a good starting point for discussion. Any decision on whether or not the Joint Recommendation should be amended was largely dependent on how SCT members commented on the issues raised by the Secretariat in Annex I, like the liability of search engine providers, the liability of auctions sites, the liability of users in social virtual worlds. The Delegation was open to the idea of discussing all of these issues openly and reaching a determination on whether additional guidelines should be defined or whether the Joint Recommendation is already comprehensive and no additional drafting is needed.
195. The Chair noted that a number of delegations and representatives of observer organizations expressed the need for effective protection of intellectual property rights in the Domain Name System (DNS), in particular in the context of the expansion of the Domain Name System planned by the Internet Corporation for Assigned Names and Numbers (ICANN). A concern was expressed by several delegations regarding initiatives at ICANN to review and possibly amend the WIPO-initiated Uniform Domain Dispute Resolution Policy (UDRP). The Chair concluded that the SCT supported and endorsed the contribution that the WIPO Secretariat was making in the area of Internet Domain Names as outlined in Annex III of document SCT/24/4, and that the Secretariat was requested to report on all relevant developments at the next session of the SCT.
196. Regarding the Joint Recommendation Concerning Provisions on the Protection of Marks and Other Industrial Property Rights in Signs on the Internet, the Chair concluded that the Secretariat was requested to examine in preparation of the next session of the SCT the Joint Recommendation with a view to determining, in particular, whether the types of trademark uses on the Internet, as described in Annex I of document SCT/24/4 were adequately addressed. Furthermore, SCT members and observers delegations were requested to carry out a similar analysis and to submit their contributions for consideration at the next session of the SCT. Moreover, the SCT might wish to consider at its next session any other possible action or work related to that matter.

*INTERNATIONAL NONPROPRIETARY NAMES FOR PHARMACEUTICAL  
SUBSTANCES (INNS)*

197. Discussion was based on document SCT/24/5.
198. The Delegation of Mexico declared that the national Office had a very positive experience with the SCT Electronic Forum, which was a source of very valuable information on all the issues that were handled by the SCT. The Delegation encouraged all delegations to subscribe to the Forum and supported the suggestion contained in paragraph (8) of document SCT/24/5.
199. The Delegations of Brazil, Chile, China, El Salvador, Guatemala, Spain and the Representative of the European Union supported the proposal made by the Delegation of Mexico.
200. In reply to an inquiry from the Inter-American Association of Industrial Property (ASIPI), the Secretariat confirmed that non-governmental organizations which had observer status with the Standing Committee could also subscribe to the SCT Electronic Forum.
201. The Chair concluded that a large number of delegations supported the change in notification procedures as described in document SCT/24/5 and that the proposal contained in paragraph 8 of that document was approved.

*PROTECTION OF NAMES OF STATES*

202. Discussion was based on document SCT/24/6 Prov.
203. The Delegation of Brazil requested that the replies provided by the national Office to questions 1(b) and 2(b) be changed to "yes". The Delegation understood that when the name of a country was used as an adjective it could indicate nationality and therefore be descriptive.
204. The Delegation of Italy considered that it was difficult to assess the replies to the questionnaire as presented in document SCT/24/6 Prov. and suggested that the Secretariat prepare an evaluation of those replies after the session, in order to allow delegations to discuss on the basis of a more elaborate overview.
205. The Delegation of Japan suggested amendments to the comments made to several questions and said that a detailed text will be handed to the Secretariat.
206. The Delegation of Turkey indicated that its replies to questions 1(a) and 2(a) described situations where the mark consisted exclusively of the name of a State or where that name was a dominant element of the trademark. However, where the name of the State constituted only a part of the trademark, the sign could be registered without a disclaimer provided that the trademark as a whole was distinctive, not descriptive or deceptive, and it did not fall under another ground for refusal according to national trademark legislation.
207. The Delegation of Ukraine requested that the response to question 1(b) be changed to "yes".
208. The Delegation of Uruguay clarified that the comment made to question 1(g) should read "provided that the commercial use is not authorized".
209. The Delegation of Ghana inquired whether it was still possible for delegations to send replies to the questionnaire.
210. The Secretariat confirmed that this possibility existed but requested that replies be sent as soon as possible to allow the preparation of a final version of the document in time for the next session of the SCT.
211. The Delegation of India announced that replies to the questionnaire would be provided to the Secretariat. The Delegation stated that there were no specific provisions in India which prohibited the registration of names of States but it was stated in a separate Act that names of States, as well as insignia or emblems used by States or international organizations were not registrable as trademarks. In some cases, names of very small countries had been accepted for registration as trademarks but after receiving objections from the countries concerned, the registrations had been withdrawn. The Delegation noted that in general names of States were not registered as trademarks.
212. The Delegation of Hungary requested that its reply to question 1(a) be changed to "no".
213. The Representative of INTA noted that it appeared from the summary that in countries where names of States were reported as generally excluded from registration as trademarks this did not constitute in itself an absolute bar to registration. Registration could however be refused when the names of States were considered descriptive or deceptively misdescriptive of the geographical origin of the goods or services concerned or not inherently adapted to distinguishing the goods or services applied for.
214. The Delegation of Switzerland mentioned that the French version of questions 1(e) and 2(e) should be amended to read "excluded from registration as trademark for goods if they can be considered incorrect". The Delegation considered that the analysis of the

replies should take into account the distinction between trademarks consisting exclusively of the name of a State and marks containing that element. Referring to the statement made by the Representative of INTA, the Delegation expressed interest in learning the reasons that governed the exclusion of country names in different legislations.

215. The Delegation of the Russian Federation considered that it would be necessary to clarify the replies to the questionnaire in light of how different offices understood the questions and according to that understanding, perhaps some of the questions would need to be further clarified.
216. The Delegation of India declared that national legislation, which dated back to 1950, prevented the improper use and registration as trademarks of the names, emblems, official seals of governments or of departments of governments, as well as insignia or coats of arms used by them. The Delegation further declared that the Trademark Act provided for a list of items whose registration was prohibited. Requests for inclusion in that list could be submitted to the government.
217. The Delegation of Brazil supported the suggestion made by the Delegation of the Russian Federation and said that the definition of names of States in the questionnaire was too broad.
218. The Delegation of Switzerland requested further specifications concerning question 1(a) and requested clarification concerning question 1(e) about the incorrect character of the source of origin, which, according to the replies, might have been understood differently. The Delegation requested explanations on whether countries refuse registration for grounds that are not linked to misleading character but rather to the incorrect source of origin of the products.
219. The Delegation of France clarified its understanding that questions 3 and 4 were addressed only to countries which generally exclude names of States from registration as trademarks. On that basis, the Delegation did not provide answers to those questions or the sub-questions. The Delegation reserved the right to provide replies in the case that the questions were not correctly interpreted.
220. The Delegation of Morocco explained that the national Office answered questions 3 and 4 although national law did not generally exclude names of States from registration.
221. The Delegation of India noted that the definition of trademarks did not make any difference between goods and services as far as the registration procedure is concerned. The Delegation further noted that although names of States were considered as falling under grounds for refusal independently from other grounds during examination, they were not defined as grounds for opposition.
222. The Delegation of Trinidad and Tobago requested a clarification concerning the interpretation of the term "third party" in questions 3(b) and (d), and 4(b). The Delegation wondered whether the term referred to a party to the opposition proceedings or to another independent party.
223. The Chair clarified that the term should be understood as a third party in the filing procedure, which became a party in the opposition proceedings.
224. The Delegation of India explained, in relation to questions 5 and 11, that geographical names which are likely to cause deception as to the origin of the goods were not registrable as trademarks. In addition, an objection could be raised when a trademark consisted of a geographical name and such an objection would be published. Regarding questions 7 and 8, the Delegation said that the names of States were excluded from use as trademarks unless such use was authorized by the central government.
225. The Delegation of the Republic of Moldova requested the deletion of the words "utility models" from its comment under question 9.

226. The Delegation of India explained, in respect of question 12, that labels should be designed in such a manner that it was possible to identify whether the indication concerned the source of the goods or constituted the trademark. In those cases, the Office would examine the distinctiveness of the sign and where the name of the State was only used to indicate the source of the goods it would not be considered to be part of the mark.
227. The Delegation of Australia noted that the Committee had spent a lot of time elaborating the wording of the questionnaire and how it was to be understood. The Delegation expressed the view that there were no systemic problems which needed to be addressed and proposed that the Secretariat finalize the summary of the replies to the questionnaire and produce a reference document dealing in particular with the law and practice in relation to country names.
228. The Delegation of Germany supported the statement of the Delegation of Australia and considered that a revised document should be produced. The Delegation suggested that any specific concerns or suggestions should be expressed, so that the SCT may determine the next steps to be taken.
229. The Delegations of Denmark, France, Japan, Norway and the United States of America supported the proposal made by the Delegation of Australia.
230. The Delegation of Switzerland said that while it supported the initiative to request the Secretariat to prepare a reference document on the law and practice regarding country names, it disagreed with the view expressed by the Delegation of Australia that there are no systemic problems regarding this issue. The Delegation believed that the question of country names should remain on the agenda of the SCT and that at the next session, sufficient time should be allowed for the discussion of this issue.
231. The Delegation of the United States of America suggested that further work be done on the electronic forum instead of during meetings of the Committee.
232. The Chair noted that all requests for amendments and corrections would be taken into account by the Secretariat in preparing the final version of document SCT/24/6 Prov., which would be presented to the next session of the SCT. Furthermore, the SCT requested the Secretariat to prepare a draft reference document for consideration at its next session, based on the Committee's work in that area so far and offering a comprehensive overview of the law and practice of member States with regard to the protection of country names against registration and use as trademarks.
233. Following the conclusion of the sub-item on the Protection of Names of States of Agenda item 5, the Delegation of Jamaica made the following statement:
- “Jamaica's position on this issue is already very well known. However, I wish to re-emphasize our unswerving commitment to achieving the implementation of effective protection against the unauthorized registration and use of names of States as trademarks through an appropriate amendment to Article 6*ter* of the Paris Convention.
- “In this regard, we wholeheartedly welcome the process of discussion which has been initiated with the compilation of the returns to the questionnaire concerning the protection of names of States against registration and use as trademarks, and we also fully support the consensus concerning its further updating, as well as the mandate given to the Secretariat to provide this Committee with a draft reference document in order to assist us in our future discussions of the relevant issues and concerns.
- “My delegation has found the current summary of the returns extremely useful in highlighting a number of issues, particularly the following six key points. There is a broad divergence in members' approaches to the protection of names of States from registration and use as trademarks.

“There is evidence of a failure to provide any protection at all to names of States. There are notable inconsistencies between the existence of legislated protection against the registration of names of States, on the one hand, versus an overwhelming failure to offer similar levels of protection against the use of names of States as trademarks, on the other hand.

“There is overwhelming evidence of, as well as significant concerns regarding, the stark contrast between the level of protection being afforded in the case of goods vis-à-vis services, against the registration and use of names of states in their trademarks.

“In several cases where protection is being applied, as in the case of the use of names of States as trademarks, such protection is not enshrined in any form of legislation which would impose an obligation to enforce this level of protection. There is an incontrovertible and preeminent need for a homogenous or, at the very least, a common approach towards effectively protecting against the unauthorized registration and use of names of States as trademarks.

“Such protection, we believe, can only be achieved through a multilaterally negotiated and agreed treaty, or in this case an amendment to an existing multilateral treaty, providing a consensus-based framework within which effective legislation to ensure the protection of names of States are enshrined and enforced.

“It is in this regard that Jamaica looks forward to continuing these discussions with a view to providing further clarity on this issue, as well as in hearing, more formally, the views of others on the way forward on this issue in the near future.”

#### Agenda Item 6: Geographical Indications

234. The Chair asked the SCT whether it wished to request the Secretariat to prepare a working document on this topic.
235. The Representative of the European Union suggested that the SCT focus on industrial designs and trademarks and the Internet.
236. The Delegation of the Russian Federation informed the SCT that a new law had been adopted in the Russian Federation, whereby non-geographical names identifying a region could now be protected as geographical indications. As the new law had brought about changes in practice, the Delegation said that it would be interested to hear the experiences and practices of other countries. The Delegation considered, however, that, while a discussion on geographical indications would be of interest, priority should be given to the topics of industrial designs and trademarks and the Internet. As a result, it suggested keeping the topic of geographical indications on the agenda, in order that the possibility of coming back to it in the future be maintained.
237. The Delegation of Chile declared that the item on geographical indications should be kept on the agenda and that the SCT should be informed of the developments taking place within the Working Group on the Development of the Lisbon System.
238. The Delegations of Tunisia and the United States of America declared that they favored maintaining an item on geographical indications on the agenda.
239. The Delegation of Sudan, indicating that national legislation had been amended to include geographical indications, said that it would be important to discuss this topic.

240. The Chair noted the interest of a number of delegations in this Agenda item, whereas other delegations indicated that the priorities of the SCT at this stage should be given to work on industrial designs and trademarks and the Internet.
241. The Chair concluded that this item would be kept on the Agenda and that the SCT would reexamine that question at its next session.

Agenda Item 7: Summary by the Chair

242. The SCT approved the Summary by the Chair as contained in Annex I of the present document.

Agenda Item 8: Closing of the session

243. The Chair closed the session on November 4, 2010.

[Annexes follow]





**SCT/24/7**  
**ORIGINAL: ENGLISH**  
**DATE: NOVEMBER 4, 2010**

## **Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications**

**Twenty-Fourth Session**  
**Geneva, November 1 to 4, 2010**

### **SUMMARY BY THE CHAIR**

*adopted by the Committee*

#### Agenda Item 1: Opening of the Session

1. The Chair opened the twenty-fourth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), welcomed the participants and invited Mr. Francis Gurry, Director General of WIPO, to deliver an opening address.
2. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

#### Agenda Item 2: Adoption of the Agenda

3. The SCT adopted the Draft Agenda (document SCT/24/1 Prov.) without modifications.

Agenda Item 3: Adoption of the Revised Draft Report of the Twenty-Third Session

4. Discussion was based on document SCT/23/7 Prov.2.
5. The SCT adopted the Revised Draft Report of the twenty-third session based on document SCT/23/7 Prov.2.

Agenda Item 4: Industrial Designs

*Industrial Design Law and Practice-Draft Provisions*

6. Discussion was based on document SCT/24/3.
7. The SCT considered document SCT/24/3 in detail.
8. The Chair concluded that all delegations supported the advancement of the work of the SCT on industrial design law and practice and that the twenty-fourth session made significant progress in that regard. He noted that the Secretariat was requested to prepare a revised text for consideration at the next session of the SCT, which would take into consideration all comments made at the current session and which should present provisions on two levels, namely one general level setting out provisions of a broader and general nature, and a second subordinate level of provisions addressing in detail specific aspects of the general provisions. Moreover, the revised text should address certain horizontal issues that were not dealt with in the present text, such as definitions, representation before the Office, communications in general and electronic communications. As to the continuation of the work, he noted that a number of delegations called for the convening of a diplomatic conference for the adoption of a treaty on industrial design registration formalities in the next biennium 2012-2013, while other delegations were of the view that further discussions were needed on the revised text before considering the convening of a diplomatic conference. The Chair concluded that, on the basis of the revised text, the next session of the SCT should be in a position to decide its future work concerning that aspect.

*Digital Access Service for Priority Documents (DAS)*

9. Discussions were based on an oral briefing presented by the Secretariat.
10. The Chair concluded that a number of delegations had taken note with satisfaction of the progress made so far towards the extension of the DAS to trademark and industrial design priority documents, and took note of the future plans concerning the work. In this context, a possible extension of the system for digital registration certificates was likewise encouraged.

Agenda Item 5: Trademarks

*Trademarks and the Internet*

11. Discussion was based on document SCT/24/4.
12. The Chair noted that a number of delegations and representatives of observer organizations expressed the need for effective protection of intellectual property rights in the Domain Name System (DNS), in particular in the context of the expansion of the Domain Name System planned by the Internet Corporation for Assigned Names and Numbers (ICANN). A concern was expressed by several delegations regarding initiatives at ICANN to review and possibly amend the WIPO-initiated Uniform Domain Name Dispute Resolution Policy (UDRP). The Chair concluded that the SCT supported and

endorsed the contribution that the WIPO Secretariat was making in the area of Internet Domain Names as outlined in Annex III of document SCT/24/4, and that the Secretariat was requested to report on all relevant developments at the next session of the SCT.

13. Regarding the Joint Recommendation Concerning Provisions on the Protection of Marks and Other Industrial Property Rights in Signs on the Internet, the Chair concluded that the Secretariat was requested to examine in preparation of the next session of the SCT the Joint Recommendation with a view to determining, in particular, whether the types of trademark uses on the Internet, as described in Annex I of document SCT/24/4 were adequately addressed. Furthermore, SCT members and observers delegations were requested to carry out a similar analysis and to submit their contributions for consideration at the next session of the SCT. Moreover, the SCT might wish to consider at its next session any other possible action or work related to that matter.

#### *International Nonproprietary Names for Pharmaceutical Substances (INNs)*

14. Discussion was based on document SCT/24/5.
15. The Chair concluded that a large number of Delegations supported the change in notification procedures as described in document SCT/24/5 and that the proposal contained in paragraph 8 of that document was approved.

#### *Protection of Names of States*

16. Discussion was based on document SCT/24/6 Prov.
17. The Chair noted that all requests for amendments and corrections would be taken into account by the Secretariat in preparing the final version of document SCT/24/6 Prov., which would be presented to the next session of the SCT. Furthermore, the SCT requested the Secretariat to prepare a draft reference document for consideration at its next session, based on the Committee's work in that area so far and offering a comprehensive overview of the law and practice of Member States with regard to the protection of country names against registration and use as trademarks.

#### Agenda Item 6: Geographical Indications

18. The Chair noted the interest of a number of delegations in this Agenda item, whereas other delegations indicated that the priorities of the SCT at this stage should be given to work on industrial designs and trademarks and the Internet.
19. The Chair concluded that this item would be kept on the Agenda and that the SCT would reexamine that question at its next session.

#### *Twenty-Fifth Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT/25)*

20. The Chair announced the week from March 28 to April 1, 2011, as tentative dates for SCT/25.

Agenda Item 7: Summary by the Chair

21. The SCT approved the Summary by the Chair as contained in the present document.

Agenda Item 8: Closing of the session

22. The Chair closed the session on November 4, 2010.

[Annex II follows]

## 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)

#### AFRIQUE DU SUD/SOUTH AFRICA

Fleurette COETZEE (Ms.), Senior Manager, Trade Marks Division, Companies and Intellectual Property Registration Office (CIPRO), Department of Trade and Industry (DTI), Pretoria  
<fcoetzee@cipro.gov.za>

#### ALGÉRIE/ALGERIA

Mohamed SAHBI, directeur des marques et modèles, Institut national algérien de la propriété industrielle (INAPI), Alger  
<sahbimed@gmail.com>

#### ALLEMAGNE/GERMANY

Thorsten HAEBERLEIN, State Attorney, Federal Ministry of Justice, Berlin  
<haeberlein-th@bmj.bund.de>

Carolin HÜBENETT (Ms.), Head, International Registrations Team, Department 3, Trade Marks, Utility Models and Designs, German Patent and Trade Mark Office, Munich  
<carolin.hubenett@dpma.de>

Marcus KÜHNE, Head, Industrial Designs, Designs Register, German Patent and Trade Mark Office, Munich  
<marcus.kuehne@dpma.de>

ARABIE SAOUDITE/SAUDI ARABIA

Mohammed Saad ALYAHYA, Head, Patent Department, General Directorate of Industrial Property, Riyadh  
<myahya@kacst.edu.sa>

Tariq Ahmed ALALAZIEQ, Industrial Design Researcher, General Directorate of Industrial Property, Riyadh  
<talazaq@kacst.edu.sa>

Mohammed A. AL-MALKI, Trademarks Management, Corporate Services Center, Ministry of Commerce and Industry, Riyadh  
<al\_malki-m@hotmail.com>

Mohammed Abdullah AL-DUKHAIL, Legal Department, Ministry of Commerce and Industry, Riyadh  
<saudiadviser@hotmail.com>

ARGENTINE/ARGENTINA

Inés Gabriela FASTAME (Srta.), Primer Secretario, Misión Permanente, Ginebra  
<ines.fastame@ties.itu.int>

AUSTRALIE/AUSTRALIA

Robyn FOSTER (Ms.), Registrar of Trade Marks and Designs, IP Australia, Woden ACT  
<robyn.foster@ipaustralia.gov.au>

Edwina LEWIS (Ms.), Assistant Director, International Policy Section, IP Australia, Woden ACT  
<Edwina.lewis@ ipaustralia.gov.au>

AUTRICHE/AUSTRIA

Walter LEDERMÜLLER, Trademark Examiner, Legal Department for International Trademark Affairs, Austrian Patent Office, Vienna  
<walter.ledermueller@patentamt.at>

BANGLADESH

Shelina AFROZA (Mrs.), Joint Secretary, Ministry of Industries, Dhaka  
<shelina.afroza@gmail.com>

Muhammed Enayet MOWLA, Minister, Permanent Mission, Geneva  
<emowla2002@yahoo.com>

Faiyaz Murshid KAZI, Counsellor, Permanent Mission, Geneva

BELGIQUE/BELGIUM

Leen DE CORT (Mme), attachée au Service des affaires juridiques et internationales, Direction générale de la régulation et de l'organisation du marché, Office de la propriété intellectuelle, Bruxelles

<leen.decort@economie.fgov.be>

Jean DE LANNOY, deuxième secrétaire, mission permanente, Genève

BRÉSIL/BRAZIL

Deyse GOMES MACEDO (Mrs.), Trademark General Coordinator, Trademark Office, National Institute of Industrial Property (INPI), Ministry of Development, Industry and Foreign Commerce, Rio de Janeiro

<deyse@inpi.gov.br>

Maria Lucia LEITE MASCOTTE (Mrs.), Trademark General Coordinator, Trademark Office, National Institute of Industrial Property (INPI), Ministry of Development, Industry and Foreign Commerce, Rio de Janeiro

<malu@inpi.gov.br>

Maria Alice CASTRO RODRIGUES (Mrs.), Public Prosecutor, National Institute of Industrial Property (INPI), Ministry of Development, Industry and Foreign Commerce, Rio de Janeiro

<alice@inpi.gov.br>

Letícia FRAZAÕ A. M. LEME (Mrs.), Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

<ifraza@delbrasgva.org>

CAMBODGE/CAMBODIA

SIM Sokheng, Deputy Director, Department of Intellectual Property Rights, Ministry of Commerce, Phnom Penh

<simsokheng@yahoo.com> <sim.sokheng@moc.gov.kh>

KE Sovann, Permanent Representative, Permanent Mission, Geneva

CANADA

Francine BOUTHILLIER (Mrs.), Manager, Business Operations, Copyright and Industrial Design Branch, Canadian Intellectual Property Office (CIPO), Department of Industry Canada, Gatineau

<francine.bouthillier@ic.gc.ca>

CHILI/CHILE

Marcela Carolina BELMAR GAMBOA (Srta.), Subdirectora de Marcas, Indicaciones Geográficas y Denominaciones de Origen, Instituto Nacional de Propiedad Industrial (INAPI), Santiago

<cbelmar@inapi.ch>

CHINE/CHINA

YAN Ruoyan (Ms.), Examiner, Research Division, Design Examination Department, Patent Office, State Intellectual Property Office (SIPO), Beijing  
<yanrouoyan@sipo.gov.cn>

YUAN Qi, Director of Legal Affairs Division, Trademark Office, State Administration for Industry and Commerce (SAIC), Beijing  
<tmoyuanqi@saic.gov.cn>

CHYPRE/CYPRUS

Christina TSENTA (Ms.), Attaché, Permanent Mission, Geneva

COLOMBIE/COLOMBIA

Clara Inés VARGAS SILVA, Embajadora Adjunta, Representante Permanente, Misión Permanente, Ginebra  
<clara.vargas@cancilleria.gov.co>

Juan David PLAZA OSSES, Intern, Misión Permanente, Ginebra

DANEMARK/DENMARK

Torben ENGHOLM KRISTENSEN, Principal Legal Adviser, Danish Patent and Trademark Office, Ministry of Economic and Business Affairs, Taastrup  
<tkr@dkpto.dk>

Anja Maria BECH HORNECKER (Ms.), Special Legal Adviser, Policy and Legal Affairs, Danish Patent and Trademark Office, Ministry of Economic and Business Affairs, Taastrup  
<abh@dkpto.dk>

EL SALVADOR

Martha Evelyn MENJIVAR CORTEZ (Srta.), Consejera, Misión Permanente, Ginebra  
<emenjivar@minec.gob.sv>

ESPAGNE/SPAIN

Aurora HERNÁNDEZ AGUSTÍ (Sra.), Jefa del Área de Examen de Modelos, Diseños y Semiconductores, Departamento de Patentes e Información Tecnológica, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Turismo y Comercio, Madrid  
<aurora.hernandez@oepm.es>

Paloma HERREROS RAMOS (Sra.), Jefa de Servicio de Examen de Marcas Nacionales, Departamento de Signos Distintivos, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Turismo y Comercio, Madrid  
<paloma.herrerros@oepm.es>



ESTONIE/ESTONIA

Karol RUMMI (Mrs.), Deputy Head, Trademark Department, Estonian Patent Office, Tallinn  
<karol.rummi@epa.ee>

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Nancy OLMELKO (Mrs.), Attorney-Advisor, Office of Policy and External Affairs, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria  
<nancy.omelko@uspto.gov>

Cynthia LYNCH (Mrs.), Administrator for Trademark Policy and Projects, Office of the Commissioner for Trademarks, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria  
<cynthia.lynych@uspto.gov>

Karin L. FERRITER (Ms.), Intellectual Property Attaché, Permanent Mission, Geneva  
<Karin\_Ferriter@ustr.epo.gov>

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Liubov L. KIRIY (Mrs.), Deputy Director General, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow  
<lkiriy@rupto.ru>

Ekaterina M. IVLEVA (Mrs.), Specialist, International Cooperation Department, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow  
<ivela@rupto.ru>

Olga ALEKSEEVA (Ms.), Deputy Director, Federal Institute of Industrial Property (FIPS), Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow  
<OAlekseeva@rupto.ru>

Olga KOMAROVA (Mrs.), Director of Department, Federal Institute of Industrial Property (FIPS) Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow  
<OKomarova@rupto.ru>

FINLANDE/FINLAND

Olli TEERIKANGAS, Senior Legal Officer, Trademarks and Designs Division, National Board of Patents and Registration, Helsinki  
<olli.teerikangas@prh.fi>

Anne KEMPPI (Ms.), Lawyer, Trademarks and Designs Division, National Board of Patents and Registration, Helsinki  
<anne.kemppi@prh.fi>

FRANCE

Isabelle CHAUVET (Mme), chargée de mission au Service du droit international et communautaire, Institut national de la propriété industrielle (INPI), Paris  
<ichauvet@inpi.fr>

Marianne CANTET (Mme), chargée de mission au Service des affaires juridiques et contentieuses, Institut national de la propriété industrielle (INPI), Paris  
<macantet@inpi.fr>

GHANA

Helen Akpene Awo ZIWU (Mrs.), Principal State Attorney, Registrar General's Department, Accra  
<awoziwu@yahoo.com>

GRÈCE/GREECE

Konstantina LIOSI (Ms.), Direction of Commercial Property, General Secretariat of Commerce, Ministry of Economy, Competitiveness and Shipping, Athens  
<kliosi2gge.gr>

GUATEMALA

Flor de María GARCÍA DÍAZ (Srta.), Secretaria General, Registro de la Propiedad Intelectual, Guatemala  
<florde742000@yahoo.es>

Ana Lorena BOLAÑOS MORALES (Mrs.), Consejera Legal, Misión Permanente, Ginebra  
<lorena.mision@wtoguatemala.ch>

HAÏTI/HAITI

Pierre Joseph MARTIN, ministre conseiller, Mission permanente, Genève

HONGRIE/HUNGARY

Imre GONDA, Deputy Head of Department, Trade Mark, Model and Design Department, Hungarian Patent Office, Budapest  
<imre.gonda@hpo.hu>

INDE/INDIA

Prem Lata MITTRA (Mrs.), Assistant Registrar of Trademarks, Office of the Controller-General of Patents, Designs and Trademarks, Department of Industrial Policy Promotions, Ministry of Commerce and Industry Intellectual Property Office, New-Delhi  
<mittra.prem@gmail.com>

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Seyedeh Farang FASIHI LANGROUDI (Ms.), Legal Expert, Legal Department, Ministry of Foreign Affairs, Tehran  
<farangf@yahoo.com>

IRAQ

Yassin DAHAM, Third Secretary, Permanent Mission, Geneva

IRLANDE/IRELAND

William Thomas JOHNSON, Intellectual Property Unit, Department of Enterprise, Trade and Innovation, Ireland, Dublin  
<liam.johnson@entemp.ie>

ITALIE/ITALY

Bruno MASSIMILIANO, Officer, Italian Patent and Trademark Office, General Directorate for the Fight Against Counterfeiting, Italian Patent and Trademark Office (IPTO), Department for Enterprise and Internationalization, Ministry of Economic Development, Rome  
<massimiliano.bruno@sviluppoeconomico.gov.it>

JAPON/JAPAN

Masahiro HASHIMOTO, Director General, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Tokyo  
<hashimoto-masahiro@meti.go.jp>

Kazuyuki TAKANO, Deputy Director, International Affairs Division, General Affairs Department, Japan Patent Office (JPO), Tokyo  
<takano-kazuyuki@jpo.go.jp>

Yoichi NARITA, Deputy Director, Design Division, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Tokyo  
<narita-yoichi@jpo.go.jp>

Hiroki ASO, Official, Trademark Division, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Tokyo  
<aso.hiroki@jpo.go.jp>

Satoshi FUKUDA, First Secretary, Permanent Mission, Geneva  
<satoshi.fukida@mofa.go.jp>

LITUANIE/LITHUANIA

Digna ZINKEVIČIENĖ (Ms.), Head, Trademarks and Designs Division, State Patent Bureau of the Republic of Lithuania, Vilnius  
<d.zinkeviciene@vpb.gov.lt>

MADAGASCAR

Henri Juvin RAVELOARISON, chef du Service des marques et des noms commerciaux, Office malgache de la propriété industrielle (OMAPI), Antananarivo  
<henrijuvn@gmail.com> <omapi@moov.mg>

MALAISIE/MALAYSIA

Nurzalina BADRUDDIN (Ms.), Head, Appeals and Search Examination Section, Trade Marks Division, Intellectual Property Corporation of Malaysia (MyIPO), Kuala Lumpur  
<nurzalina@myipo.gov.my>

Abdul Rahman RAFIZA (Miss), Counsellor, Permanent Mission, Geneva

MAROC/MOROCCO

Adil EL MALIKI, directeur général de l'Office marocain de la propriété industrielle et commerciale (OMPIC), Casablanca  
<adil.elmaliki@ompic.org.ma>

Karima FARAH (Mme), chef du Département des signes distinctifs, Office marocain de la propriété industrielle et commerciale (OMPIC), Casablanca  
<farah@ompic.org.ma>

MEXIQUE/MEXICO

Joseph KAHWAGI RAGE, Director Divisional de Marcas, Instituto Mexicano de la Propiedad Industrial (IMPI), México  
<jkahwagi@impi.gob.mx>

José Alberto MONJARÁS OSORIO, Subdirector Divisional de Servicios Legales, Registrales e Indicaciones Geográficas, Instituto Mexicano de la Propiedad Industrial (IMPI), México  
<amonjaras@impi.gob.mx>

MONTÉNÉGRO/MONTENEGRO

Dusanka PEROVIĆ (Ms.), Deputy Director, Intellectual Property Office of Montenegro, Podgorica  
<dusankaperovic@gmail.com>

Milica SAVIĆ (Mrs.), Senior Advisor, Montenegrin Intellectual Property Office, Podgorica  
<milikas.ziscg@gmail.com>

MOZAMBIQUE

Carlota MOISES GUIMARÃES, Head, Trademarks Registration Section, Institute of Industrial Property, Maputo  
<carlota.guimaraes@ipi.gov.mz>

MYANMAR

Min Shan HTUN, Deputy Director, Intellectual Property Section, Ministry of Science and Technology, Nay Pyi Taw  
<most22@myanmar.com.mm> <minshanhtun@gmail.com>

NÉPAL/NEPAL

Begendra Raj SHARMA PAUDYAL, Director General, Department of Industry, Ministry of Industry, Kathmandu  
<brspaudyal@yahoo.com>

NORVÈGE/NORWAY

Solvår Winnie FINNANGER (Ms.), Senior Legal Adviser, Design and Trademark Department, Norwegian Industrial Property Office (NIPO), Oslo  
<swf@patentstyret.no>

Karine LUTNÆS AIGNER (Mrs.), Legal Adviser, Legal and International Affairs, Norwegian Industrial Property Office (NIPO), Oslo  
<kai@patentstyret.no>

Marianne NERGAARD MAGNUS (Ms.), Adviser, Legislation Department, Ministry of Justice and the Police, Oslo  
<marianne.magnus@jd.dep.no>

OMAN

Ahmed AL-SAIDI, Head, Industrial Property Department, Ministry of Commerce and Industry, Muscat  
<saidy3916@yahoo.com>

OUZBÉKISTAN/UZBEKISTAN

Bakhrom I. RAKHIMBERDIEV, Expert, Trademark Division, State Patent Office, Tashkent  
<info@patent.uz> <bakhrom@patent.uz>

PANAMA

Kathia F. FLETCHER (Sra.), Jefa del Departamento de Marcas, Dirección General del Registro de la Propiedad Industrial (DIGERPI), Ministerio de Comercio e Industrias, Panama City  
<kfletcher@mici.gob.pa>

PAYS-BAS/NETHERLANDS

Angela A. M. VAN DER MEER (Mrs.), Senior Policy Advisor, Directorate-General for Enterprise and Innovation Department, Netherlands Patent Office, Ministry of Economic Affairs, The Hague  
<a.a.m.vandermeer@minez.nl>

PÉROU/PERU

Patricia GAMBOA VILELA (Srta.), Directora de Signos Distintivos, Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Lima  
<pgamboa@indecopi.gob.pe>

Giancarlo LEÓN COLLAZOS, Segundo Secretario, Misión Permanente, Ginebra

PHILIPPINES

Josephine REYNANTE (Mrs.), First Secretary, Permanent Mission, Geneva

POLOGNE/POLAND

Marta Donata CZYŻ (Mrs.), Director, Trademark Department, Patent Office of the Republic of Poland, Warsaw  
<mczyk@uprp.pl>

Andrzej SZCZEPEK, Expert, Trademark Department, Patent Office of the Republic of Poland, Warsaw  
<aszczepk@uprp.pl>

PORTUGAL

Maria Joana MARQUES CLETO (Ms.), Executive Officer, International Relations Department, National Institute of Industrial Property (INPI), Ministry of Justice, Lisbon  
<jmcleto@inpi.pt>

Luís Miguel SERRADAS TAVARES, Legal Counsellor, Permanent Mission, Geneva  
<legal@missionportugal.ch>

RÉPUBLIQUE ARABE SYRIENNE/SYRIAN ARAB REPUBLIC

Hiam DIAB (Miss), Head, International Registration of Marks Section, Directorate of Commercial and Industrial Property Protection (DCIP), Ministry of Economy and Trade, Damascus  
<ipr@syrecon.org>

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

HAN-JIN Cho, Deputy Director, Trademark and Design Examination Support Division, Korean Intellectual Property Office (KIPO), Daejeon

TAE-HOON Kang, Presiding Judge, Supreme Court of Korea, Daejeon  
<thoon@scourt.go.kr>

RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

Ysset ROMAIN, Ministro Consejo, Misión Permanente, Ginebra

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Simion LEVITCHI, Director, Trademark and Industrial Design Department, State Agency on Intellectual Property (AGEPI), Chisinau  
<simion.levitchi@agepi.md>

RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/PEOPLE'S DEMOCRATIC  
REPUBLIC OF KOREA

KIM Tong Hwan, Consellor, Permanent Mission, Geneva

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Ludmila ČELIŠOVÁ (Ms.), Head, Industrial Designs Department, Industrial Property Office, Prague  
<lcelisova@upv.cz>

Radka STUPKOVÁ (Miss), Head, Law Department, Industrial Property Office, Prague  
<rstupkova@upv.cz>

ROUMANIE/ROMANIA

Constanta Cornelia MORARU (Mrs.), Head, Legal International Affairs Cooperation Division, State Office for Inventions and Trademarks (OSIM), Bucharest  
<cornelia.moraru@osim.ro>

Alice Mihaela POSTĂVARU (Miss), Head, Designs Division, State Office for Inventions and Trademarks (OSIM), Bucharest  
<pstavaru.alice@osim.ro>

Maria GOIA (Mrs.), Examiner, Trademarks Division, State Office for Inventions and Trademarks (OSIM), Bucharest  
<mariagoia2004@yahoo.com>

ROYAUME-UNI/UNITED KINGDOM

Mike FOLEY, Trade Marks Policy Advisor, Trade Marks Directorate, Intellectual Property Office,  
Newport  
<mike.foley@ipo.gov.uk>

John OGIER, Registrar, Intellectual Property Office, Guernsey

SERBIE/SERBIA

Mirela BOŠKOVIĆ (Mrs.), Assistant Director, Sector for Distinctive Signs, Intellectual Property  
Office, Belgrade  
<mboskovic@zis.gov.rs>

Vesna FILIPOVIĆ-NICOLIĆ (Mrs.), Minister Counsellor, Permanent Mission, Geneva

SINGAPOUR/SINGAPORE

TAN Mei Lin (Ms.), Senior Deputy Director, Legal Counsel, Registry of Trade Marks, Intellectual  
Property Office of Singapore (IPOS), Singapore  
<tan\_mei\_lin@ipo.gov.sg>

SLOVÉNIE/SLOVENIA

Vesela VENIŠNIK (Mrs.), Head, Trademark and Design Department, Slovenian Intellectual  
Property Office, Ministry of Economy, Ljubljana  
<v.venisnik@uil-sipo.si>

Aleš ORAŽEM, Undersecretary, Slovenian Intellectual Property Office, Ministry of Economy,  
Ljubljana  
<ales.orazem@uil-sipo.si>

SOUDAN/SUDAN

Huda SALIH ABUBAKER (Mrs.), Registrar General of Intellectual Property, Ministry of Justice,  
Khartoum  
<hodi2002@yahoo.com>

Osman Mohamed Elbashir MOHAMMED, Counsellor, Permanent Mission, Geneva  
<hajjaz100@hotmail.com>



SUÈDE/SWEDEN

Liv BERNITZ (Mrs.), Legal Adviser, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm  
<liv.bernitz@justice.ministry.se>

Anne GUSTAVSSON (Mrs.), Senior legal Adviser, Swedish Patent and Registration Office, Stockholm  
<anne.gustavsson@prv.se>

SUISSE/SWITZERLAND

Alexandra GRAZIOLI (Mme), conseillère juridique principale, Institut fédéral de la propriété intellectuelle (IPI), Berne

Sandrine GERBER (Mme), conseillère juridique, Institut fédéral de la propriété intellectuelle (IPI), Berne  
<sandrine.gerbuer@ipi.ch>

Marie KRAUS (Mme), conseillère juridique à la Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne  
<marie.kraus@ipi.ch>

TRINITÉ-ET-TOBAGO/TRINIDAD AND TOBAGO

Tene REECE (Ms.), Deputy Controller, Intellectual Property Office, Ministry of Legal Affairs, Port of Spain  
<tene.reece@ipo.gov.tt>

TUNISIE/TUNISIA

Lamia EL KATEB (Mlle), chef du Service juridique, Division des signes distinctifs, Institut national de la normalisation et de la propriété industrielle (INNORPI), Tunis  
<lamia\_kateb@yahoo.fr> <innorpi.dpi.marque@planet.tn>

TURQUIE/TURQUEY

H. Tolga KARADENIZLI, Trademark Examiner, Turkish Patent Institute, Ankara  
<tolga.karadenizli@tpe.gov.tr>

Şengül KULTUFAN, Trademark Examiner, Turkish Patent Institute, Ankara  
<sengul.kultufan@tpe.gov.tr>

## UKRAINE

Iurii SVIDRO, Head, Legislation Development Division, State Department of Intellectual Property (SDIP), Kyiv  
<y.svidro@sdip.gov.ua>

Iuliia GROMOVA (Mrs.), Senior Specialist, Rights on Signs Division, Ukrainian Industrial Property Institute, Ministry of Education and Science, Kyiv  
<j.gromova@ukrpatent.org>

Olena LIEVICHEVA (Mrs.), Head, Rights on Signs Division, Ukrainian Industrial Property Institute, Ministry of Education and Science, Kyiv  
<levicheva@ukrpatent.org>

## URUGUAY

Blanca Iris MUÑOZ GONZÁLEZ (Sra.), Encargada de la División de Marcas, Dirección Nacional de la Propiedad Industrial (DNPI), Ministerio de Industria, Energía y Minería, Montevideo  
<bmunoz@dnpi.miem.gub.uy>

## VIET NAM

TRAN Huu Nam, Deputy Director General, National Office of Intellectual Property, Hanoi  
<tranhuunam@noip.gov.vn>

## UNION EUROPÉENNE\*/EUROPEAN UNION\*

Tomás Lorenzo EICHENBERG, Principal Administrator, Directorate-General Internal Market, European Commission, Brussels  
<tomas.eichenberg@ec.europa.eu>

Vincent O'REILLY, Director, Department for Intellectual Property Policy, Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Alicante  
<vincent.oreilly@oami.europa.eu>

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

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

II. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/  
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE (OAPI)/  
AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

Marie Bernadette NGO MBAGA (Mlle), juriste au Service des signes distinctifs, Yaoundé  
<ngommabe@yahoo.fr>

ORGANISATION BENELUX DE LA PROPRIÉTÉ INTELLECTUELLE (OBPI)/ BENELUX  
ORGANISATION FOR INTELLECTUAL PROPERTY (BOIP)

Camille JANSSEN, juriste au Département des affaires juridiques, La Haye  
<cjanssen@boip.int>

ORGANISATION DES ÉTATS DES ANTILLES ORIENTALES (OEAO)/ORGANIZATION OF  
EASTERN CARIBBEAN STATES (OECS)

Theona STAPLETON, Attaché, Geneva  
<rmjames@oeecs.org>

III. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/  
INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association américaine du droit de la propriété intellectuelle (AIPLA)/American Intellectual  
Property Law Association (AIPLA)

Jonathan W. RICHARDS, Secretary and Member of the Board of Directors, Arlington  
<jrichards@wnlaw.com>

Association brésilienne de la propriété intellectuelle (ABPI)/Brazilian Intellectual Property  
Association (ABPI)

Alvaro LOUREIRO OLIVEIRA, Chairman, Rio de Janeiro  
<abpi@abpi.org.br>

Association communautaire du droit des marques (ECTA)/European Communities Trade Mark  
Association (ECTA)

António ANDRADE, Chair of the Design Committee, Lisbon  
Anne-Laure COVIN (Mrs.), Co-ordinator, Brussels  
<anne-laure.covin@ecta.org>

Association de l'industrie de l'informatique et de la communication (CCIA)/Computer and  
Communications Industry Association (CCIA)

Nick ASHTON-HART, Representative, Nyon

Association des industries de marque (AIM)/European Brands Association (AIM)

Jean BANGERTER, Representative, Brussels  
<bangerter.jean@citycable.ch>

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

David STONE, Member, United Kingdom

Association européenne des étudiants en droit (ELSA international)/European Law Students' Association (ELSA International)

Oleksandr BULAYENKO, Academic Coordinator for ELSA Representatives at WIPO, Stockholm  
<delegations@elsa.org>

Hana KADLEČKOVÁ (Miss), Representative, Prague

<kadleckova@elsa.cz>

Martin PULTZNER, Vice President Marketing, Prague

<pultzner@elsa.cz>

Association interaméricaine de la propriété industrielle (ASIFI)/Inter-American Association of Industrial Property (ASIFI)

Juan E. VANRELL, Secretary, Montevideo

Paula BAUDINO (Mrs.), Representative, Montevideo

<secretario@asifi.org>

Association japonaise des conseils en brevets (JPAA)/Japan Patent Attorneys Association (JPAA)

Yasuyo YOSHIMIZU (Ms.), Vice Chairman, Trademark Committee, Tokyo

Miwa HAYASHI (Ms.), Vice Chairman, Design Committee, Tokyo

Yukei MIZUNO, Member, International Activities Center, Tokyo

Association japonaise pour les marques (JTA)/Japan Trademark Association (JTA)

Reiko TOYOSAKI (Ms.), Co-chair, International Activities Committee, Tokyo

Association romande de propriété intellectuelle (AROPI)

Eric ROJAS, Representative, Lausanne

<rojas@tradamarca.com>

Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)

François CURCHOD, chargé de mission, Genolier

<francois.curchod@vtxnet.ch>

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)

Nuno CRUZ, Partner, Lisbon

<info@jpcruz.pt>

China Trademark Association (CTA)

LIU Ye, Deputy Secretary-General, Beijing  
Wu Chun Ging, Deputy Secretary-General, Beijing  
YU Xiuyang, Representative, Beijing  
HUANG Yajun, Representative, Beijing  
CAO Jing, Representative, Beijing  
SHEN Yuhui, Representative, Beijing

Fédération internationale des conseils en propriété industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI)

Robert WATSON, Reporter, Design Study Group, London  
<robert.watson@mewburn.com>  
Lars THYRESSON, Representative, Stockholm  
<lars.t@hanssonthyresson.se>

International Trademark Association (INTA)

Bruno MACHADO, Geneva Representative, Rolle  
<bruno.machado@bluewin.ch>

Organisation pour un réseau international des indications géographiques/ (oriGIn)Organization for an International Geographical Indications Network (oriGIn)

Raphael VASQUEZ, Special Advisor, Versoix  
<staff@origin-gi.com>

Union des praticiens européens en propriété industrielle (UNION)/Union of European Practitioners in Industrial Property (UNION)

Laurent C. G. OVERATH, Vice-President, Trademarks Commission, Brussels  
<laurento@bede.be>

Third World Network (TWN)

Heba WANIS (Ms.), Research Assistant, Geneva  
<h.wanis@gmail.com>

IV. BUREAU/OFFICERS

Président/Chair:	Adil EL MALIKI (Maroc/Morocco)
Vice-présidents/Vice-chairs	Imre GONDA (Hongrie/Hungary)
	Joseph KAHWAGI RAGE (Mexique/Mexico)
Secrétaire/Secretary:	Marcus HÖPPERGER (OMPI/WIPO)

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

Francis GURRY, directeur général/Director General

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

Ernesto RUBIO, directeur-conseiller principal/Senior Advisor-Counsellor

Marcus HÖPPERGER, directeur par intérim de la Division du droit des marques et des dessins et modèles/Acting Director, Trademark and Design Law Division

Martha PARRA FRIEDLI (Mme/Mrs.), chef de la Section du droit des marques, Division du droit des marques et des dessins et modèles /Head, Trademark Law Section, Trademark and Design Law Division

Marie-Paule RIZO (Mme/Mrs.), chef de la Section du droit des dessins et modèles et des indications géographiques, Division du droit des marques et des dessins et modèles /Head, Design and Geographical Indication Law Section, Trademark and Design Law Division

Nathalie FRIGANT (Mme/Mrs.), juriste adjointe à la Section du droit des dessins et modèles et des indications géographiques, Division du droit des marques et des dessins et modèles/Assistant Legal Officer, Design and Geographical Indication Law Section, Trademark and Design Law Division

Violeta JALBA (Mme/Mrs.), juriste adjointe à la Section du droit des dessins et modèles et des indications géographiques, Division du droit des marques et des dessins et modèles/Assistant Legal Officer, Design and Geographical Indication Law Section, Trademark and Design Law Division

Noëlle MOUTOUT (Mlle/Ms.), juriste adjointe à la Section du droit des marques, Division du droit des marques et des dessins et modèles/Assistant Legal Officer, Trademark Law Section, Trademark and Design Law Division

Kateryna GURINENKO (Mlle/Ms.), consultante à la Section du droit des marques, Division du droit des marques et des dessins et modèles/Consultant, Trademark Law Section, Trademark and Design Law Division

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