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

Third Session
Geneva, November 8 to 12, 1999

REPORT*

prepared by the International Bureau

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 third session, in Geneva from November 8 to 12, 1999.

2. The following States members of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burundi, Cambodia, China, Colombia, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Democratic People’s Republic of Korea, Denmark, Egypt, El Salvador, Ecuador, Estonia, Fiji, Finland, France, Gabon, Germany, Ghana, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Japan, Kyrgyzstan, Latvia, Lesotho, Lithuania, Madagascar, Mali, Malta, Mexico, Morocco, Mongolia, Namibia, New Zealand, Netherlands, Nicaragua, Nigeria, Norway, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Slovakia, Slovenia, Spain, Syria, Sweden, Switzerland, Suriname, Turkey, Uganda, Ukraine,

* Subject to adoption at the fourth session of the SCT. Following comments received on the Draft Report (document SCT/3/10 Prov.), paragraphs 35, 42 and 103 were modified.

United Kingdom, United States of America, Uruguay, Uzbekistan, Zambia, Zimbabwe (83). The European Communities were also represented in the capacity as member of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: Benelux Trademark Office (BBM), International Vine and Wine Office (OIV), African Intellectual Property Organization (OAPI).

4. Representatives of the following international non-governmental organizations took part in the meeting in an observer capacity: American Bar Association (ABA), American Intellectual Property Law Association (AIPLA), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International League of Competition Law (LIDC), International Trademark Association (INTA), International Wine Law Association (AIDV), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), Union of European Practitioners in Industrial Property (UEPIP) (13).

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

6. Discussions were based on the following documents prepared by the International Bureau of WIPO: "Agenda" (document SCT/3/1), "Use of Trademarks on the Internet: Summary of Responses to Questionnaire" (documents SCT/3/2 and SCT/3/2 Add.), "Information on the Preliminary Draft Convention on Jurisdiction and the Effects of Judgments in Civil and Commercial Matters" (documents SCT/3/3 and SCT/3/3 Corr.), "Use of Trademarks on the Internet: Issues Paper" (document SCT/3/4), "Draft Provisions on Trademark Licenses" (document SCT/3/5), "Geographical Indications" (document SCT/3/6), "International Nonproprietary Names for Pharmaceutical Substances" (document SCT/3/7), "Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks" (document SCT/3/8).

7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions without reflecting all the observations made.

GENERAL DISCUSSION

Agenda Item 1: Opening of the Session

8. The session was opened by the Chair, Ms. Lynne G. Beresford, United States of America, who welcomed the participants.

Agenda Item 2: Adoption of the Agenda

9. The Agenda (document SCT/3/1) was adopted without modification.

Agenda Item 3: Adoption of the Draft Report of the Second Session, Second Part

10. The Report of the second part of the second session (document SCT/2/12) was adopted without modification.

Agenda Item 4: Report on the Deliberations of the WIPO Assemblies
Regarding the Joint Recommendation on the Protection of Well-Known Marks

11. The Standing Committee was informed of the deliberations of the WIPO Assemblies regarding the proposed Joint Resolution on the Protection of Well-Known Marks (document SCT/3/8) and their decision to adopt a Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, including the text of the provisions, without modification, as adopted by the SCT. The Joint Recommendation and provisions, together with the explanatory notes prepared by the International Bureau, will be published by WIPO in a bound form within the next few months.

Agenda Item 5: Use of Trademarks on the Internet

Preliminary Draft Convention on Jurisdiction and the Effects of Foreign Judgements in Civil and Commercial Matters (Document SCT/3/3)

12. As an introduction to the issue of the use of trademarks on the Internet, the International Bureau presented document SCT/3/3 regarding the Preliminary Draft Convention on Jurisdiction and the Effects of Judgements in Civil and Commercial Matters (hereinafter referred to as “the draft Convention”), and gave an update on discussions at the fifth session of the Special Commission of the Hague Conference on Private International Law, which took place from October 25 to 30, 1999. The International Bureau explained that the Special Commission, holding its last session before the convening of a Diplomatic Conference in October 2000, decided that the draft Convention should be re-named “Convention on Jurisdiction and Foreign Judgements in Civil and Commercial Matters.” Two decisions with respect to the territorial scope of application of the draft Convention were taken by the Commission: The chapter dealing with jurisdiction (Chapter II) shall apply to court proceedings in Contracting States, unless all parties are habitually resident in that State, and the chapter dealing with recognition and enforcement (Chapter III) shall apply to all judgements rendered in a Contracting State. Regarding the issue of multiplicity of defendants (Article 15), the Special Commission decided that, irrespective of the connectivity of the claims, a choice of court agreement should prevail to the extent that it is exclusive.

13. With respect to the issue of exclusive jurisdiction in respect of the registration and validity of industrial property rights, Article 13.4 reads as follows:

“In proceedings which have as their object the registration, validity, [or] nullity [, or revocation or infringement,] of patents, trade marks, designs or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or, under the terms of an international convention, is deemed to have taken place, have exclusive jurisdiction. This shall not apply to copyright or any neighbouring rights, even though registration or deposit of such rights is possible.”

It is planned that a meeting between a small group of experts, including intellectual property specialists, be convened before the Diplomatic Conference to clarify the factual situation, as well as the legal implications of exclusive jurisdiction with respect to intellectual property rights.

14. The Representative of AIPPI stated that his organization had approached the Secretariat of the Hague Conference in order to convey its comments on the draft Convention. AIPPI had been invited, in return, to submit a final report in the course of next year to the Hague Conference. The representative added that AIPPI had raised strong objections with regard to Article 13.4.

15. The Delegation of United Kingdom stated that, in its opinion, the SCT should monitor and evaluate the revised draft Convention before taking any decisions on this issue.

16. The Chair concluded by stating that delegates should be allowed more time to understand the issues and read the latest draft of the Convention, which had just been issued by the Hague Conference, and which was made available by the International Bureau during the meeting.

Use of Trademarks on the Internet: Issues Paper (Document SCT/3/4)

17. The International Bureau gave an introduction to document SCT/3/2 (Summary of Responses to Questionnaire), and to document SCT/3/4 (Issues Paper), and reminded SCT members that the purpose of circulating the questionnaire to Member States had been to collect information regarding practices under national law with regard to hypothetical situations dealing with the use of trademarks on the Internet. The International Bureau pointed out that there existed a wide divergence of views regarding the legal treatment of the hypothetical situations presented in the questionnaire, resulting from the tension between the territoriality of trademark rights and the global nature of the Internet. There seemed to be a tendency towards transposing territoriality into the borderless cyberspace by:

- defining the notion of infringement in a way that presupposes some objective relationship with the country in which the conflicting right exists;
- giving some effect to “disclaimers,” at least when they are supported by factual evidence;
- limiting the effect of court decisions to the territory in which the court is located and/or where the infringed trademark is protected.

18. The International Bureau also emphasized that the issue of conflicting legitimate trademark rights constituted the most important unanswered question raised by the questionnaire, and that there was a tendency toward solving conflicts between legitimate national trademark rights on the Internet in a way which allowed all right holders to use their sign on the Internet. With regard to problems resulting from new forms of use on the Internet, however, a divergence of views seemed to be quite significant. Regarding the question of jurisdiction, dealt with in Part II of document SCT/3/4, the International Bureau inquired whether such issues should be left to the Hague Conference to deal with, or whether the International Bureau should monitor the work of the Hague Conference.

19. The Delegation of Azerbaijan stated that one of the most important tasks for his country was to identify problems of trademark use on the Internet. He stressed the fact that a trademark put on the Internet may become well known just because of its diffusion through this medium, and regretted that the legal aspects of these problems were still very unclear.

Jurisdiction and Private International Law (Document SCT/3/4, Paragraphs 3 to 5)

20. The Delegation of the United States of America said that the Standing Committee should focus primarily on practical work. However, since the work of the Standing Committee was to promote the rights of legitimate holders, the delegation also suggested that the International Bureau should, in its capacity as an observer in the Hague Conference, provide recommendations to that organization on the implications for trademark owners of the provisions of the draft Convention.

21. The representative of an observer organization supported the proposal that the International Bureau should formulate recommendations and convey them to the Hague Conference.

22. The Delegation of Australia expressed some reservations on such action because of the persistent legal uncertainty of the issue, in particular for small companies. There should be more discussion before the SCT made a decision on what its contribution should be to the Hague Conference.

23. The Delegation of Morocco stressed the importance of these issues for WIPO Member States, and suggested that, together with national delegations participating in the work of the Hague Conference, the International Bureau should monitor work on the draft Convention.

24. The representative of an observer organization stated that Article 13.4 of the draft Convention constituted a proposal which directly addressed intellectual property rights and that, given the timing of the Diplomatic Conference, the SCT had to react to it at this meeting.

25. With regard to issues of jurisdiction and private international law, the SCT agreed not to pursue these matters in depth, but instead to monitor developments within the Hague Conference on Private International Law regarding the Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters. It was agreed that the International Bureau would prepare a paper for the next session of the SCT, which would be distributed quickly, and which would outline the provisions of the draft Convention which concerned jurisdiction regarding claims involving the validity or infringement of trademark rights. On the basis of this paper, the SCT would, at its next meeting, discuss whether the International Bureau should convey a position paper to the Hague Conference regarding trademark issues contained in the draft Convention.

Adapting Territorial Trademark Law to a Global Medium (Document SCT/3/4, Paragraphs 6 to 8)

26. The International Bureau introduced possible issues for international cooperation (Section III, paragraph 6 of document SCT/3/4), including the following two basic principles on which the SCT was asked to comment: (i) that the protection of trademarks should extend to the Internet, and (ii) that such protection should neither be less nor more extensive than outside the Internet.

27. The Delegation of Argentina suggested that other delegations exchange information concerning the rulings and judgements rendered by their jurisdiction on conflicts relating to the use of trademarks on the Internet in order to give some examples to those jurisdictions who have not yet taken decisions in such cases.

28. The representative of an observer organization referred to a recent ruling, which recognized the priority of the trademark law on the registration of a domain name. The Delegations of Spain and Uruguay, while approving the two basic principles mentioned in paragraph 6 of document SCT/3/4, suggested that the following sentence should be added: “in accordance with the applicable trademark legislation.”

29. The Delegation of Andorra expressed the view that the protection contemplated in paragraph 6 (ii) should not necessarily be limited to protection “not more extensive than outside the Internet.”

Infringement of Trademark Rights through Use of Signs on the Internet (Document SCT/3/4, Paragraphs 9 to 11, Principle I)

30. The International Bureau introduced Principle I relating to Infringement and two possible approaches regarding the notion of infringement, reflected in the words between brackets in Principle I(1).

31. *Principle I(1)*. Several delegations and the representative of an observer organization considered that the wording between brackets introduced a subjective intentional element which, in many legislations, was associated with fault and which might be detrimental to the trademark owner. Since, in addition, this element could also be contrary to Article 16.1 of the TRIPS Agreement, it would be more appropriate to retain only “effect in the country” and delete the words between brackets. In response to a question by the representative of an observer organization as to whether deletion of the words in brackets could result in “per se” liability, the International Bureau indicated that a safeguard could be introduced elsewhere in the principles or provisions.

32. The Delegation of Andorra asked whether “the use produced an effect” was a different concept than “used in the course of trade”, as stated in the TRIPS Agreement. The International Bureau explained that the concept used in paragraph (1) builds on the TRIPS provision and that, in some situations, the use of a sign on the Internet may constitute an infringement even though the sign is not used in the course of trade. In response to a query by the Delegation of Morocco as to the use of the word “territory”, the International Bureau indicated that it would try to replace this with a more appropriate word.

33. *Principle I(2)*. The Delegation of France, supported by the Delegation of the United States of America, suggested that the list of factors for determining use in another country be preceded by an indication similar to that of the provisions on well-known marks (Article 2(6)(c)). This would indicate that the list is neither cumulative nor exhaustive.

34. The Delegation of Australia, supported by the representative of an observer organization, was of the opinion that item (c) relating to visits on the web site, was not likely to produce an effect and should be excluded from the list, while the Delegations of the European Communities and Andorra were in favor of retaining that item on the grounds that the number of visits to the website was the only way to measure the volume of use of the trademark.

35. The Delegation of Japan suggested that an item be added in the list regarding prohibition of certain imports into a particular country. The Delegation of the European Communities suggested adding post-sales activities such as warranty, post-sales services and repair, while the representative of an observer organization suggested adding compliance with national regulations for products in certain countries. The Delegation of Spain suggested that, in the Spanish text, at the beginning of paragraph (2), “Al” be replaced by “Para,” and on the third line “pero” by “aunque”.

36. The representative of an observer organization expressed the view that subparagraph (c) should be retained since it could constitute one factor among others for determining whether the use of a sign on the Internet had produced an effect in a particular country. In response to questions by the Delegations of the Netherlands and Andorra, the International Bureau stated that subparagraph (j) and the chapeau of paragraph (2) would be clarified in a subsequent draft.

Disclaimers (Document SCT/3/4, Paragraphs 12 to 13, Principle I(3))

37. The International Bureau introduced the principle of disclaimers which, adequately formulated, might constitute a way of limiting liability.

38. The Delegation of Australia supported the idea of enabling users of a sign on the Internet to avoid creating an effect in particular countries and any infringement claims arising from such effect by virtue of statements (“disclaimers”) on the web site on which the sign is used. The delegation stressed, however, that the difficult task, in reality, would consist in formulating such statements. The Delegation of the United States of America pointed out that, while the use of disclaimers had advantages, their use might be insufficient in cases of conflicts with well-known marks. The Delegation of France stressed that disclaimers should not exonerate the user of a sign on the Internet from liability for infringements that had actually occurred. One delegation, supported by the representative of an observer organization, expressed the view that users should also have the option to use “negative” formulations on their web sites in order to exclude relationship with particular countries.

Global Effect of Injunctions (Document SCT/3/4, Paragraphs 15 to 16, Principle II)

39. Referring to the problems faced by trademark owners when they had to enforce their rights in various jurisdictions, the representative of an observer organization pointed out that it might have to be clarified that trademark owners could sue a defendant at a court of general jurisdiction for infringement of trademark rights which are protected in a variety of countries.

40. The Delegation of Australia pointed out that it might have to be made clear that a court could, if necessary, enjoin every use on the Internet. The Delegation of Finland suggested to provide the defendant with the opportunity to propose means that would be sufficient to remove the effect from the territory in which the infringed right exists.

Enabling Coexistence of Rights on the Internet (Document SCT/3/4, Paragraphs 18-25, Principle III)

41. The representative of an observer organization stated that he agreed in general with the principle of coexistence, that it addressed important Internet-specific problems, and that it was necessary to find a solution to these problems. As currently drafted, however, Principle III(1) would appear too broad. The representative was of the opinion that it was contrary to established principles of trademark law to provide that there was no infringement in a country where a conflicting right exists simply because the user of the sign held a right in another country. It would be more consistent to say that, even though there was infringement, the user could continue to use the sign on the Internet under the conditions outlined in paragraphs (2) and (3). This was supported by the Delegations of Belgium, France and Switzerland and by the representative of an observer organization.

42. The Delegation of Japan pointed out that the relationship between Principles I and III as currently drafted was unclear and expressed the wish to have their understanding confirmed: in judging whether the use of a sign should be regarded as an infringement, use in bad faith could be enjoined even when it is accompanied by a disclaimer and use not in bad faith could be continued.

43. The Delegation of the United Kingdom suggested to reorder the principles, placing Principle III in front of Principle I so that the latter would list the requirements for coexistence.

44. The Delegation of Andorra referred to the possibility of applying technical measures to prevent access in a given territory. If such solutions were feasible, then the principle of territoriality could be transferred onto the Internet. The International Bureau responded that the basic assumption for drafting these principles was the nonexistence of such technical solutions, at least in a form that could become a standard for the purposes of trademark law.

45. The Delegation of Australia affirmed its support for the principle of coexistence, and said that the main issue was the ability of right holders in good faith to continue to use their rights on the Internet, as trademark law should not be designed to limit the potential growth in electronic commerce. The International Bureau concurred with this view, and added that the overall goal of the principle of coexistence was to avoid conflict or the need to engage in court proceedings. In this manner, disclaimers were suggested as a preventive measure and not as a means for imposing territoriality on the Internet. The representative of an observer organization said that, according to his knowledge, in most cases where holders discovered

that their trademark was being used in another country, they engaged in negotiations to avoid court proceedings. However, if a disclaimer could avoid the need for such negotiations, a standard disclaimer should be recommended as a short-term solution.

46. The Delegations of Australia and the United States of America strongly supported the explanation given by the International Bureau, and the latter delegation asked whether there were any suggestions concerning jurisdiction, to which the International Bureau responded that jurisdictional issues were broader than trademark law; they were cross-cutting in nature and, although the issue had not been abandoned, it was not perceived as a practical starting point for solving problems of trademark law.

47. Several delegations questioned the necessity of the concept of coexistence since the use of a sign on the Internet could, according to Principle I, only be considered to infringe a trademark in a particular country if such use actually had an effect in that country. “Innocent legitimate trademark users” of trademarks would not be considered as infringers if they respected the requirements outlined in Principle I. In response, the International Bureau pointed out that this would require that, before using a trademark on the Internet, a user search for conflicting registered or unregistered rights all over the world in order to find out in respect of which countries it should attempt to avoid producing an effect. In many cases involving the Internet, however, a business would not even know where its customers were located. The Delegation of Australia stressed that, in its view, the principle of coexistence went beyond adjusting the concept of infringement to the realities of the Internet in that it should achieve certain goals, namely that: (i) legitimate right owners should have the certainty that they can use their trademarks over the Internet without having to fear claims raised against them by right holders in other jurisdictions, and (ii) use of a mark on the Internet should not require a worldwide search for conflicting rights.

48. The Representative of the ABA pointed out that it seemed preferable to distinguish between geographical disclaimers and disclaimers as to association. In the United States of America, right owners had reservations against the latter type of disclaimers since they might dilute their trademarks.

49. The Delegation of Andorra suggested also to include unregistered rights, such as tradenames.

Associative Use of Signs on the Internet (Document SCT/3/4, Paragraphs 27 to 31)

50. The representative of an observer organization stated that one common feature of the “new” forms of use referred to in part V of document SCT/3/4 was the unfair taking advantage of the trademark of another by using new technological means, and that these practices might more properly be dealt with under unfair competition law. The Delegation of Denmark stated that it might be necessary to draw up an inventory of “new” ways of using a trademark on the Internet, such as use of trademarks in metatags, the sale of keywords triggering particular banner advertisements, or the sale, by search engines, of places in the list of results appearing in response to particular search terms, and then to discuss how these “new” forms of use should be treated in law.

Suggested Draft Provisions

51. On the basis of the discussions of November 8 and 9, 1999, the International Bureau made further suggestions regarding the drafting of future draft provisions concerning the use of trademarks on the Internet. It suggested that a first provision might be formulated as follows: “Protection of trademarks should extend to the Internet, and such protection should be determined under the relevant laws of each Member State.” The International Bureau said that the words “Member States” were used instead of “country” or “territory”, as in the Joint Recommendation on Well-Known Marks, and may be changed to “Contracting Party” in the future if the SCT decided to adopt these provisions in the form of a Treaty.

52. The Delegation of the United States of America supported the principle of protection of trademarks under national laws as stated in the suggestion made by the International Bureau.

53. The Delegation of Guatemala said that well-known marks and geographical indications should also be included in the Principle.

54. As a general principle regarding coexistence of trademark rights, the International Bureau suggested the following wording: “Trademark rights under the laws of the various Member States should coexist on the Internet, unless they have been acquired or used in bad faith.” The Delegation of the European Communities, supported by the Delegation of the United States of America, asked why a principle on coexistence of trademark rights should have to appear in the provisions and stressed that trademarks can coexist as long as there is no infringement. The Delegation of France, supported by the Delegations of Australia and the Netherlands, said that the proposed wording was more satisfactory than in the previous draft in that it did not allow “legitimate infringement”.

55. A number of delegations and the representative of an observer organization supported the principle, provided that its wording was made more clear.

56. The Delegation of Andorra expressed a preference for referring to “concurrent legitimate use of conflicting rights on the Internet” rather than to “coexistence of rights.” The representative of an observer organization suggested to draft the principle along the following lines: “The global use of trademarks should coexist on the Internet unless the existing national laws of Member States are contravened.” In response to a question by one delegation, the International Bureau stated that the relationship between the principle of coexistence and Article 16 of the TRIPS Agreement depended on whether coexistence was understood as mere non-infringement or whether it actually resulted in a limitation of rights.

57. The International Bureau suggested the following wording for a general principle regarding liability for use of a sign on the Internet that conflicts with a trademark right: “(a) In order for an act on the Internet to infringe a trademark right in a Member State, that act must have occurred in that Member State. For an act on the Internet to have occurred in a member State, it must have produced a commercial effect in that Member State. (b) Certain forms of use of signs on the Internet that are made possible by technological advances may not fall within the existing definitions of trademark infringement, but are still considered to be unacceptable practices and should be prohibited.” In response to a question by one delegation, the International Bureau explained that the term “commercial effect” rather than the term “use in the course of trade” (as used in Article 16.1 of the TRIPS Agreement) was chosen in order to include situations in which a non-profit company by using a sign on the

Internet produced a commercial effect in a particular country without using the sign in the course of trade. This interpretation was supported by one delegation.

58. Replying to questions put forward by one delegation, the International Bureau pointed out that the principle no longer included any subjective requirements, such as intent or foreseeability, since it was only intended to deal with the question whether an act on the Internet could be deemed to have taken place in a particular country, whereas the determination whether this act also infringed a conflicting right in that country would have to be made under the applicable law.

59. A number of delegations proposed to use a single term instead of referring in some instances to “an act on the Internet” and to “use of a trademark on the Internet” in others. One delegation suggested merging the contents of both sentences of (a) by deleting the first sentence.

60. In response to a question by the Delegation of Germany, the Chair explained that the draft provisions regarding “new” forms of use (as described in paragraphs 27 to 32 of document SCT/3/4) could serve as a reminder that the Standing Committee would have to come back to this issue in the course of its discussions. The representative of an observer organization proposed to refer to unfair competition law by using the words “unfair practices” rather than “unacceptable practices.”

61. The International Bureau suggested the following wording for a general principle regarding Remedies: “Remedies may have to be adapted for the adequate protection of trademark rights on the Internet.” One delegation stated that this principle might effectively render the principle of coexistence superfluous. In response, the Chair suggested to retain the principle of coexistence, as well as the principle regarding the adaptation of remedies currently under discussion, so that these matters could be further discussed.

62. The International Bureau suggested that a general principle regarding the acquisition or maintenance of trademark rights could be drafted as follows: “The forms of use of trademarks on the Internet that would be sufficient for acquiring or maintaining trademark rights should be defined.”

63. One delegation expressed doubts as to whether it was sufficient for the maintenance of rights that the use of a trademark on the Internet had produced a commercial effect. The representative of an observer organization stated that an internationally harmonized list of minimum requirements might be useful. The Delegation of China stated that the draft might need further clarification, and suggested that the different forms of use should be defined. Referring to document SCT/3/4, the delegation mentioned that Chinese Law only recognizes the concept of “owner”, but not of “holder”.

64. The International Bureau suggested that the provisions could include a part II dealing with coexistence of rights on the Internet which could contain the following more specific provision: “(1) [Rebuttable Presumption] As between two owners of rights in identical or similar trademarks, there will be a rebuttable presumption that both owners are entitled to continue good faith use of their trademarks on the Internet. (2) [Rebuttal of Presumption] The presumption referred to in paragraph (1) may be rebutted, *inter alia*, if one owner has acquired or used the trademark in bad faith.”

65. The Delegation of the European Communities, supported by the Delegations of France, Belgium, Germany, the Netherlands and the representatives of two observer organizations, expressed concern about such a provision, in particular with regard to the idea of a presumption in favor of the trademark holder on a website, even if this was a rebuttable presumption. In their view, it was preferable to formulate the principle in terms of an exception to infringement in a way similar to Article 17 of the TRIPS Agreement. The first question was to see how use on the Internet could damage a trademark right and the need for any additional provisions could only be decided after solving that question.

66. The Delegation of Australia said that it had no objection to bring this principle closer to the TRIPS form. It was possible, however, that one could lose sight of the intention behind the principle, which was to avoid that a trademark owner having a legitimate right would be prevented from using it on the Internet. The International Bureau stated that this intervention clarified the intent of the principle, and added that the provision under discussion intended to allow a legitimate trademark owner in one country to conduct business on the Internet without being totally excluded by right holders in other countries.

67. The representative of an observer organization sought clarification about the relationship between the principle of coexistence of trademark rights and the question whether an act on the Internet occurred in a Member State. The International Bureau explained that the relationship between the two issues was important and that it constituted one of the core issues under discussion: coexistence of rights and coexistence of use. The Delegations of the Netherlands and the European Communities suggested to invert the order and first address the question whether an act on the Internet occurred in a Member State before dealing with coexistence of trademark rights.

68. The International Bureau suggested to include, in that part, a provision regarding the definition of “bad faith” which could be phrased as follows: “In determining whether a trademark was acquired or used in bad faith for the purposes of applying Section 3, the competent authority shall take into consideration: (i) whether the person who obtained the registration of or used the mark had, at the time when the mark was used or registered, or the application for its registration was filed, knowledge of, or reason to know of, the other trademark, and (ii) whether the use of the trademark would take unfair advantage of the distinctive character or the reputation of the other trademark.”

69. In relation to subparagraph (i), the Delegation of Japan suggested redrafting this provision in order to clarify that if a user obtained a registration or used a trademark in good faith, that user did not act in bad faith when he later became aware of the other trademark. The Delegation of Australia suggested that, in its opinion, it was important to preserve the idea, under subparagraph (i), that the person who obtained a registration or used the mark had knowledge of the first mark, even though knowledge was only one of the elements used to determine bad faith.

70. The Delegation of Andorra and the representative of an observer organization were of the opinion that this provision should be redrafted to provide that the elements contained in subparagraphs (i) and (ii) were both needed in order to establish bad faith. The Delegation of Australia stated that it should be made clear in the chapeau of the provision whether or not the intention was to use both elements in determining good faith. The Delegation of France suggested changing the word “shall” to “may” in the same part of the provision, in order to render the language less mandatory and allow an authority the freedom to choose these or other standards when determining bad faith. The Delegation of Sweden stressed that, for a

determination of “bad faith”, all relevant circumstances, not only those mentioned, would have to be taken into account.

71. The International Bureau suggested to add another provision in that part addressing references to rights in the trademark. Such a provision could be worded as follows: “In the application of this Part, a Member State may require that the user of the trademark have clearly and unambiguously stated, along with the use of the trademark on the Internet, that the trademark is [protected] [registered] in a particular Member State, giving details of the registration (number, date, etc.) and the goods or services for which the trademark is registered.”

72. The representative of an observer organization expressed doubts as to the practicality of a requirement to give the details of registration in a particular Member State. In particular, she pointed out that such a requirement could be cumbersome because information would necessarily relate to registrations in many States and to several goods and services, and would change frequently.

73. One delegation stated that, in its opinion, a system for easy contact of a trademark owner would be preferable to a requirement to give a reference to rights in the trademark. The delegation said that such a system could follow the model described in the report on the WIPO Domain Name Process, where a best practice requirement existed with regard to the registrant’s name or domain names regarding minimum contact detail information.

74. Another delegation said that any requirement to show that the use of a mark corresponded to an existing trademark right in a Member State should be combined with a system of mediation which could result in resolution of conflicts outside the courts.

75. The International Bureau suggested to include the following provision in a part III dealing with the question whether an act on the Internet occurred in a Member State: “For the purposes of determining whether a particular act on the Internet infringes a right in a Member State, that act will be deemed to have occurred in that Member State if: (i) the act may be perceived by a user of the Internet in that Member State, and (ii) the act has produced a commercial effect in that Member State.”

76. The Delegation of France and the representative of an observer organization suggested to omit subparagraph (i).

77. The representative of another observer organization said that, for determining whether an act occurred in a Member State, not only use that actually produced a commercial effect should be taken into consideration, but also use that was likely to do so.

78. The Delegation of the European Communities supported the proposal to omit subparagraph (i), and said that cases of dilution should equally be covered by that provision.

79. The representative of an observer organization stated that dilution was a consequence of the commercial effect which the use of a trademark produced, and that the notes could make that clear. Since any kind of infringement should be covered by the proposed wording, that representative supported the proposal to change the wording in order to cover likelihood of producing a commercial effect.

80. The Chair suggested to omit the reference to infringement in the chapeau.

81. The International Bureau suggested, based on proposals of Member States, to redraft the list of criteria for determining whether an act has produced a commercial effect in a particular country in the light of the discussion on Principle II in the Annex to document SCT/3/4 by adding the following items:

“(k) whether the Member State has prohibited the importation of the goods or services in question;

(l) whether the web site refers to post-sales activity in the Member State, such as warranty or service;

(m) statements of compliance with government regulations in the Member State for the product or service;

(n) the degree of interactivity of the web site on which the sign is used (advertising, mail order, delivery of digital goods or services, etc.);”

82. The International Bureau also suggested to add, as proposed during the discussion on document SCT/3/4, the following paragraph: “(2) The above factors, which are guidelines to assist the competent authority to determine whether the use of a sign on the Internet has produced a commercial effect in a particular country, are not pre-conditions for reaching that determination. Rather, the determination in each case will depend upon the particular circumstances of that case. In some cases all of the factors may be relevant. In other cases some of the factors may be relevant. In still other cases none of the factors may be relevant, and the decision may be based on additional factors that are not listed in paragraph (1), above. Such additional factors may be relevant, alone, or in combination with one or more of the factors listed in subparagraph (1), above.”

83. The Delegation of the European Communities said that, under EC law, the delivery of goods in a digital form was considered to constitute a rendering of services, and suggested deletion of the word “digital” in item (n).

84. One delegation supported the inclusion of subparagraphs (l) and (m) in paragraph (1). That delegation said that a commercial effect could be produced in three situations, namely where someone was already doing business using a certain mark, where someone was entering a market and using a certain mark, and where someone was planning to do business using a certain mark. The delegation said that producing a commercial effect could be summarized by utilizing these distinctions.

85. The International Bureau suggested to include, in part III, a provision regarding “disclaimers”, and suggested the following wording: “(1) [Rebuttable Presumption] If the user of a sign on the Internet clearly and unambiguously states, along with the use of the sign, that the sign is not used in relation to a particular Member State, and that the goods or services offered are not available in that Member State, there shall be a rebuttable presumption that the use of that sign has not produced an effect in that Member State. (2) [Rebuttal of Presumption] The presumption referred to in subparagraph (a) shall be rebutted, *inter alia*, where there is a showing that the user did not abide by his statement.”

86. One delegation said that it preferred the original drafting of that provision as produced in the Annex to document SCT/3/4, using the words “could be deemed” rather than “there shall be a rebuttable presumption”.

87. One delegation, supported by a number of other delegations and the representative of an observer organization, suggested to include the content of that provision in the list of factors for determining whether an act has produced a commercial effect in a particular country, since, if it were contained in a separate provision as proposed by the International Bureau, the concept of disclaimers would gain too much weight. Such a provision could be understood as indicating that the use of disclaimers as such would be sufficient for avoiding a commercial effect (and consequently an infringement) in particular countries while it constituted merely one factor among others.

88. The International Bureau suggested to address, in a part IV, forms of use made possible by technology. It explained that this part could contain provisions dealing with use in relation to new technologies and with acts of unfair competition, without suggesting specific wording for these provisions.

89. One delegation, supported by two delegations and an observer organization, stated that the principle on certain forms of use of signs on the Internet that are made possible by technological advances, discussed above (see paragraph 57) already sufficiently addressed that subject matter. The delegation suggested that the approach to new technologies should be left to national law, and that the contents of the principle might be rendered more specific by including examples.

90. The International Bureau suggested that future provisions might contain a part V dealing with exceptions to liability for use of a sign on the Internet. This part could consist of a section addressing disclaimers as a means for avoiding liability, and a section on non-infringing (fair) use.

91. One delegation said that it did not support the idea that disclaimers could create a general exclusion from liability.

92. The representative of an observer organisation suggested to state, in connection with the “fair use” exception, that use of a non-commercial site does not produce a “commercial effect” for the purposes of determining whether such use occurred in a particular Member State.

93. The International Bureau further suggested that another part (part VI) of such provisions could address the issue of remedies in more details. This part could include provisions on injunctions, damages, disclaimers and concurrent use/gateway pages.

94. One delegation said that, although the provision under consideration appeared to offer a new solution, that possibility was already available under national law. Another delegation supported that delegation and proposed to set up a recommendation as guidelines, but not to create “hard law” in that matter.

95. The representative of one observer organization said that the provisions in this part should not only cover registered rights, since certain unregistered rights should also be protected.

96. The International Bureau suggested to include a part VII on acquisition or maintenance of trademark rights through use on the Internet. This part could contain the following provision: “Use of a trademark on the Internet shall be deemed to constitute use for the purposes of acquiring or maintaining a trademark registration if that use produced a commercial effect in that Member State.”

97. The representative of an observer organization stated that, in general, the standards which were applied in order to determine whether use was infringing or whether use was sufficient to maintain the registration of the trademark, were not the same. In particular, the requirements to maintain the registration of a mark were higher in many countries. As an example, the representative cited the case of advertising, which was always considered to be sufficient in order to infringe a trademark, but not necessarily enough use in order to maintain the registration of a trademark. He also stated that there was a danger that the trademarks would be posted on the Internet but not really used.

98. One delegation stated that the effect of part VII should be that use of trademark on the Internet could not be discarded as such. However, whether the use was sufficient in order to maintain the registration or in order to acquire a right should be decided on a case by case basis. The International Bureau pointed out that this provision was only intended to address whether use occurred in a Member State; if so, then the applicable standards would be used to determine if that use was sufficient to acquire or maintain rights.

99. One delegation supported by the representative of an observer organization suggested that, contrary to the suggested draft, the principle according to which use of trademarks on the Internet may be taken into consideration when determining whether use of the trademark was made should be drafted negatively.

100. One delegation questioned the usefulness of the reference to commercial effect in that part, since it was already used in the context of infringement.

Agenda Item 6: Trademark Licensing

Draft Article 1: Abbreviated Expressions

101. The Chair introduced Article 1, relating to abbreviated expressions, of the draft Provisions on Trademark Licenses contained in document SCT/3/5 (hereinafter referred to as “the Provisions”).

102. The representative of an observer organization suggested that the definition of an application should also be included, as in the Trademark Law Treaty (TLT). In reply, the Chair said that, depending on the decision that the SCT took concerning the form of adoption of the Provisions (Protocol to the TLT or recommendation instrument), some of the definitions of the Provisions which are already in the TLT would have to be deleted. The representative of another observer organization suggested that, pending such decision, the definitions of those terms which are mentioned in the TLT, as well as the definition of an Application, should be put between brackets in the present document.

103. The Delegations of the Russian Federation and Spain asked why various types of licenses, such as sub-licenses, total or partial licenses, are not mentioned in the definitions of licenses. The Delegation of Japan expressed the wish to have their understanding confirmed

about Draft Article 1: Draft Article 1 should not be applied to sub-licenses; and Member States are not required to introduce the concept of sole licenses in their national legislation. In reply, the Chair, as well as the representative of an observer organization, recalled to SCT members that the aim of these Provisions was to simplify and harmonize formalities concerning the recordal of licenses and not to deal with substance. The International Bureau noted that licences which concern only a part of the territory were covered by Article 2(1)(a)(viii).

Draft Article 2: Request for Recordal/Cancellation of the Recordal of a Licence

104. *Paragraphs (1) and (2).* The Delegation of Japan proposed to add, in the list of requirements, that a Contracting Party may require an indication of the legal nature of the legal entity.

105. The representative of an observer organization suggested a change in subparagraph (viii) of Article 2(1), relating to the deletion of the word “or” and its replacement by the word “and” after the words “sole license”.

106. The Delegation of Norway and the representative of an observer organization suggested to replace, in subparagraph (ix), the words “the term of the license” by the words “the time period”.

107. The Delegations of Ireland and Brazil reserved their positions regarding Article 2(1) as presently drafted since their law required the filing of a copy of the licensing contract. The Delegation of Columbia reported that this was the case also under the law of its country.

108. Several delegations suggested to draft the provision along the lines of Article 11(1)(b) of the TLT, which sets out maximum requirements for the recordal of changes in ownership. According to this provision, a Contracting Party can require that the request for recordal of a change in ownership be accompanied, at the option of the requesting party, by a certified copy of the transfer contract, a certified extract of the contract, an uncertified certificate of transfer signed by both the holder and the new owner, or an uncertified transfer document which also has to be signed by both parties. The Delegation of Japan further suggested to delete paragraph 2(ii).

109. The Delegation of the Netherlands pointed out that an Office should be able to require an abstract of the license contract or a joint declaration by the licensor and the licensee for the recordal of a license in order to ensure that the licensee was aware of the content of the recordal. The Delegation of Sweden, supported by the Delegation of Andorra, stated that the current draft required that the request be signed by the licensor, and that this could cause problems if the licensor, after concluding the license contract, refused to record the request. In such a situation, the licensee should be given the opportunity to file the license contract. The Delegation of Germany remarked that this constituted a contractual dispute and would have to be solved *inter partes*.

110. The Delegations of Australia, the United States of America and Germany stated that the draft provisions should lead to a simplification of formal requirements and that, therefore, not every requirement that existed in various countries should be included in the list. This was supported by the representative of an observer organization. The Delegation of Australia and the representative of an observer organization indicated, however, that they could accept a

provision drafted along the lines of Article 11(1)(b) of the TLT. The Delegation of Australia expressed sympathy for the view that a mechanism was needed to provide evidence of the existence of the licensing agreement when the licensee requested the recordal. In addition to Article 11(1)(b) of the TLT, however, the requesting party should be given the opportunity to simply furnish the signature of the holder. One delegation suggested to include, in paragraph (1), the requirement that the request be signed by the holder, which is presently contained in paragraph (3).

111. Another delegation proposed simply to state that the signature of the holder can be replaced by the submission of the license agreement or a certified copy thereof.

112. The representative of an observer organization underlined that paragraph 2 of draft Article 2 would have to be retained.

113. In response to a question by the representative of an observer organization, the Chair stated that draft Article 2(1)(a)(ix) would not authorize an Office to require that the term of the license be aligned with the term of the trademark.

114. The Delegation of Andorra suggested adding in this paragraph a provision similar to Article 11(1)(b) of the TLT to the effect that a copy of the contract would not be one of the elements included in the request, but a separate item presented with it. The representative of an observer organization responded that there was a difference between trademark assignment, which required recordal, and the grant of a license, which had effect even without recordal. In the second case, it was up to the parties to decide whether or not they wished to record the license.

115. The Delegation of the European Communities suggested to distinguish with regard to the person filing the request: if the trademark holder, i.e. the licensor, requested the recordal of the license, his signature would, under the current draft, be sufficient and no further proof could be required. Under Article 11 of the TLT, however, an Office could even in this situation require a document containing not only the signature of the licensor but also the signature of the licensee. The delegation questioned whether this was really necessary. However, if the licensee filed the request, an Office could, under the current draft, always require the signature of the licensor. The delegation agreed with previous comments pointing out that this might cause problems if the licensor, after having concluded the license contract, refused to record the license. The delegation suggested that this particular problem could be addressed by a provision allowing the furnishing of additional proof of the license agreement if the request was made by the licensee.

116. The Chair pointed out that there still remained a question of whether the holder shall be required to sign the request for recordal. As a result of this discussion, the provision was referred to the International Bureau for further study concerning the possibility of redrafting it along the lines of Article 11(1)(b) of the TLT, based on the discussions.

117. *Paragraph (3)*. The Delegation of Andorra requested that provision be made in this paragraph for the transmittal of communications by electronic means other than telefacsimile.

118. *Paragraph (4)*. The Delegation of Japan held the view that it was necessary to ensure that every Contracting Party could accept one single request for several registrations, even if the scope of the licenses was not exactly the same. The Chair responded that this could become an additional burden if the Offices had to make sure that all the information had been

included in the request. The Delegation of Uruguay said that its Office proceeded in this manner, which was cost-efficient from the point of view of processing requests.

119. *Paragraph (5)*. No comments were made on this paragraph.

120. *Paragraph (6)*. The representative of an observer organization asked whether amendment of the conditions of the agreement could be subject to a separate recordal and, if so, how this could be effected. The International Bureau responded that it would study the possibility of applying the provisions *mutatis mutandis*. The Delegation of the European Communities warned that this provision would not be a simplification since, under Community law, evidence would have to be furnished in cases of amendments. A provision like Article 2 might, therefore, oblige Member States to change their trademark legislation.

Draft Article 3: Effects of the Non-Recordal of a License

121. *Paragraph (1)*. The Representative of INTA reported that her association had passed a board resolution containing a statement similar to Article 3(1), and that she therefore strongly supported that provision.

122. *Paragraph (2)*. Several delegations and the representative of an observer organization expressed their reservations about the provision contained in paragraph (2). They held that the rights of third parties could depend on recordal and that the licensee could not join in infringement proceedings unless the license was recorded. The Delegation of Azerbaijan stated that recordal in that country required an act by a notary and that Civil Law regarded registration as the legal basis of ownership. The Representative of OAPI said that publication was required under its legislation if the license was to have effect on third parties.

123. Several other delegations and the representatives of two observer organizations supported the text of paragraph (2) as proposed, on the grounds that their national legislation did not provide for the recordal of licenses and that this lack of recordal did not affect third party rights.

124. As positions were divided on this issue, it was decided that the text would be kept in square brackets and referred to the International Bureau for further study. Following a suggestion by the representative of an observer organization, it was also decided to elaborate the arguments contained in Note 3.04, in order to reflect these discussions.

Draft Article 4: Use of a Mark on Behalf of the Owner

125. *Paragraph (1)*. One delegation suggested to align the wording of this provision with Article 19.2 of the TRIPS Agreement, by replacing the words “shall be deemed to constitute use by the holder himself” by the words “shall constitute use for the purpose of maintaining the registration.” This was opposed by another delegation on the grounds that use by the licensee could not only be relevant in the context of maintaining a trademark registration, but could also contribute to the mark acquiring distinctiveness or becoming well-known.

126. One delegation, while supporting the intent of the provision, expressed concern as to the language used which referred to “the holder’s consent” rather than to the license agreement. The representative of an observer organization stated that it supported the intent of the

provision, but was concerned that it could be read as prohibiting the licensor from including quality control clauses in the license agreement. The representative suggested to replace the words “with the holder’s consent” by the words “under a valid license agreement.” Several delegations and the representative of an observer organization supported the text as currently drafted, and pointed out that even an invalid license agreement should be sufficient for regarding use by third persons as use of the owner. What constituted consent would be left to the applicable law of Contracting Parties. Nothing in the text prohibited a Member State from requiring quality control in order for a license to be valid. The Chair concluded that this could be clarified in the notes.

127. *Paragraph (2)*. The Delegation of Spain reserved its position as to this provision, stating it would run counter to national provisions according to which only recorded licenses produced legal effects. The representative of an observer organization pointed out that the law of the European Community contained a similar provision according to which any use with the owner’s consent has to be considered use by the trademark owner, even if such use was not based on a valid license.

Draft Article 5: Mention of the License

128. Several delegations suggested to delete the words “in connection with the use of the licensed mark.” Some delegations pointed out that, in the Spanish version, these words would appear clearer than the words that followed. As a result, the provision was referred to the International Bureau for redrafting.

Draft Model International Form for the Request for the Recordal of License(s)

129. The International Bureau indicated two corrections: on the first page under item 1, “Request for Recordal/Cancellation,” the word “renewal” would have to be replaced by the word “recordal;” and on page 3 the indication of “Telephone number(s)” and “Telefacsimile number(s)” under item 4.6 would have to be moved under item 4.3.

130. In response to a question put forward by one delegation, the Chair confirmed that item 5, “Representative,” referred to the representative of the holder in accordance with draft Article 2(1)(a)(ii). Another delegation, supported by the representative of an observer organization, suggested to include the signature of the licensee into the form, as discussed with regard to draft Article 2(1). The delegation also proposed to replace the word “telefacsimile” by a broader term, which would include other forms of communications by electronic means. In response, the International Bureau pointed out that it would be necessary to agree on the exact forms of electronic communications. Otherwise an applicant might use a type of electronic communication which could not be received by the Office to which this communication was addressed.

131. In response to a question by one delegation, the Chair explained that the Model International Form had, in itself, no legally binding status. Contracting Parties could modify the Form, as long as they stayed within the maximum requirements contained in the draft provisions. However, if an applicant used the Model International Form in a language accepted by the Office, the Office would have to accept the request, and could not force the applicant to use its own form.

Agenda Item 7: Geographical Indications

132. Discussions were based on document SCT/3/6.

133. The Delegation of the European Communities declared that, taking into account the negotiations that are being held in the World Trade Organization regarding the implementation of a multilateral registry to be established under Article 23.4 of the TRIPS Agreement, the preparation of the study on the registration of geographical indications, as contemplated by paragraph 9(ii) of document SCT/3/6, might be regarded as a duplication of efforts in the sense of paragraph 9(iii) of that document. For that reason, the delegation thought it was appropriate to postpone work on that issue.

134. The representatives of three observer organizations expressed their support for the suggestion contained paragraph 9(i) of document SCT/3/6.

135. The Representative of the OIV declared that his organization had already carried out work concerning the relation of trademarks and geographical indications, and the relation between homonymous geographical indications. He offered the cooperation of his organization in any work that was going to be done concerning those issues.

136. One delegation re-called the importance of the work WIPO had accomplished in the field of geographical indications and, in particular, the organization of symposia dedicated to that subject matter, which it considered as ideal platforms for the exchange of views and the development of new ideas concerning that matter. Furthermore, that delegation expressed support for the proposal contained in paragraph 9(i) of document SCT/3/6.

137. The Chair concluded that the International Bureau should prepare a study as outlined in paragraph 9(i) of document SCT/3/9, and that this study would be presented to the SCT for consideration at its fifth session.

Agenda Item 8: Trademarks and Nonproprietary Names for Pharmaceutical Substances (INNs)

138. Discussions were based on document SCT/3/7.

139. The Representative of the World Health Organization (WHO) expressed, on behalf of the Director General of that Organization, thanks to the World Intellectual Property Organization (WIPO) for the invitation to the third session of the SCT. The representative expressed her appreciation of WIPO's efforts in undertaking a survey among its Member States with regard to trademark office practice concerning the examination of applications for trademark registrations as to possible conflicts with International Nonproprietary Names for Pharmaceutical Substances (INNs). She also said that WHO was pleased with the results of the survey, since a large majority of the offices that had responded stated in their replies that applications for registration of trademarks were examined for conflict with INNs. Concerning future work on that matter, she said that WHO could explore internally and with the WIPO Secretariat the best way of making the INN database available in an electronic format. Possible options would be the making available of the information to national authorities on the Internet, the development of a CD ROM, or the inclusion of the INN information in a WIPO-sponsored electronic format.

140. The representative of one observer organization said that his organization supported any initiative which helped to avoid conflicts between registered trademarks and INNs. He further recommended that WHO would also make available recommended INNs to the public for any comments.

141. Two delegations stated that information concerning INNs were of utmost importance for the daily work of their offices, and that they therefore supported any initiative that facilitated providing such information to offices.

142. One delegation said that attention should be paid to making information on INNs available not only in Latin characters, but also in non Latin characters. This was of particular importance regarding automated examination of trade mark applications.

143. The representative of an observer organization said that, given the importance and the sensibility of the issues at hand, it seemed to be justified to work on guidelines concerning that question. In particular, he pointed out that offices that did not examine trademark applications as to absolute grounds for refusal would be not in a position to refuse applications for registrations of trademarks which were in conflict with INN, even if in most cases there was the possibility to invalidate such trademark registrations.

144. In conclusion, it was agreed that the International Bureau would explore, on a technical level, together with the WHO Secretariat ways of making available information on INNs in an electronic format to those offices of Member States who were interested in receiving such information.

Agenda Item 9: Future Work

145. The SCT agreed that its fourth session would tentatively be held from March 27 to 31, 2000, in Geneva, and would last five full days.

146. The SCT further agreed that the agenda of the next meeting would consist of the following substantive items:

- consideration of the paper prepared by the International Bureau on the Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters;
- Finalization of provisions on trademark licensing;
- Consideration of suggested draft provisions on the use of trademarks on the Internet.

147. The Delegation of Spain asked whether the International Bureau had envisaged to present, at the next meeting of the SCT, an advance of the study regarding Geographical Indications and a follow-up concerning INNs. In her opinion, these topics had to be analyzed in connection with developments taking place at the Seattle Ministerial Conference. The Chair recalled that the meeting had agreed that the study on Geographical Indications would be presented at the fifth session of the SCT.

Agenda Item 10: Brief Summary by the Chair (Document SCT/3/9)

148. The SCT adopted the Summary by the Chair (document SCT/3/9), incorporating a number of suggested amendments.

Agenda Item 11: Closing of the Session

149. The Chair closed the third session of the Standing Committee.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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[†] Based on a decision of the Standing Committee, the European Communities were accorded Member status without a right to vote.

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