

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

**Thirty-Ninth Session
Geneva, April 23 to 26, 2018**

REPORT

adopted by the Standing Committee¹

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee”, “the Committee” or “the SCT”) held its thirty-ninth session, in Geneva, from April 23 to 26, 2018.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Belarus, Benin, Bhutan, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Democratic People’s Republic of Korea, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Latvia, Lithuania, Malawi, Malaysia, Malta, Mauritania, Mexico, Monaco, Morocco, Netherlands, Nicaragua, Nigeria, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, Somalia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, Uruguay, United Arab Emirates, United Kingdom, United States of America, Uzbekistan, Venezuela (Bolivarian

¹ This Report was adopted at the fortieth session of the SCT.

Republic of), Viet Nam, Yemen, Zambia, Zimbabwe (106). The European Union was represented in its capacity as a special member of the SCT. Micronesia (Federated States of) and Palestine were represented in their capacity as Observer.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Regional Industrial Property Organization (ARIPO), African Union (AU), Benelux Organisation for Intellectual Property (BOIP), Eurasian Patent Organization (EAPO), International Vine and Wine Office (IWO), South Centre (SC), West African Economic and Monetary Union (WAEMU), World Health Organization (WHO), World Trade Organization (WTO) (10).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: *Association française des praticiens du droit des marques et modèles* (APRAM), China Trademark Association (CTA), European Brands Association (AIM), European Law Students' Association (ELSA International), Health and Environment Program (HEP), International Association for the Protection of Intellectual Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Intellectual Property Attorneys (FICPI), International Trademark Association (INTA), International Wine Law Association (AIDV), Internet Society (ISOC), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), MARQUES - Association of European Trade Mark Owners, Organization for an International Geographical Indications Network (oriGIn) (15).

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

6. The Secretariat noted the interventions made and recorded them.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Ms. Wang Binying, Deputy Director General of the World Intellectual Property Organization (WIPO), opened the thirty-ninth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants on behalf of the Director General.

8. Mr. David Muls (WIPO) acted as Secretary to the SCT.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

9. Mr. Adil El Maliki (Morocco) was re-elected Chair. Mr. Alfredo Carlos Rendón Algara (Mexico) and Mr. Simion Levitchi (Republic of Moldova) were re-elected Vice-Chairs.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The SCT adopted the draft Agenda (document SCT/39/1 Prov. 5).

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-EIGHTH SESSION

11. The SCT adopted the draft Report of the thirty-eighth session (document SCT/38/6 Prov.).

General Statements

12. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, stated that the Group looked forward to the successful convening of the Information Session on Country Names. The Group believed that the Information Session would further enhance common understanding of country names. The Group recalled that one of the focuses of the Committee was to find a common landing zone among Member States on the text of a possible Design Law Treaty (DLT). Like any other international treaty, the implementation of the DLT should be accompanied with enhanced capacity of Member States, in particular developing countries and least developed countries (LDCs), to carry out the obligations arising out of the new treaty. The Delegation indicated that, while most members of the Asia and Pacific Group favored the provision of technical assistance in the proposed DLT through an article in the main body of the instrument, so that technical assistance was suitably reflected therein, other members were flexible on the placement of such provision. The Group hoped to see a decision on this matter through consensus and to the satisfaction of all members. The Delegation also stated that most of the members of the Asia and Pacific Group supported the principle of disclosure of source and believed that countries should have the flexibility to include among the design eligibility criteria components that were deemed important to complete the formality for protection, while other members of the Group had different national positions. Pointing out that the Group was optimistic that a mutually agreed outcome would be reached on the DLT, the Delegation said that the Group was ready to engage constructively towards a complete resolution of the outstanding issues. The Group believed that developing countries should have ample policy space to shape their industrial design protection systems in accordance with national interest, as envisaged in the TRIPS Agreement. Thanking the Secretariat for preparing document SCT/39/2 on the issue of new technological designs, the Delegation expressed its appreciation to Member States and accredited non-governmental organizations (NGOs) that had put forward the proposals reflected in document SCT/39/3. On the issue of country names, the Group hoped to see progress towards consensus and acceptable work, highlighting the fact that there was a need for international action to prevent the undue registration and use of country names as trademarks. In that regard, the Group supported the proposal by the Delegation of Jamaica for the development and future adoption of a joint recommendation by the SCT. The Group recalled that there had been ample examples which demonstrated the fact that country names seemed not to be offered sufficient protection in practice. The Group also supported the proposal by the Delegation of Peru for the recognition and protection of nation brands and the proposal by the Delegations of Georgia, Iceland, Indonesia, Italy, Jamaica, Liechtenstein, Malaysia, Mexico, Monaco, Peru, Senegal, Switzerland and the United Arab Emirates concerning the protection of country names and geographical names of national significance. Indicating that the update prepared by the Secretariat on Trademark-Related Aspects of the Domain Name System (DNS) provided extremely useful information about various services and procedures that were available to trademark owners to prevent bad faith registration or use of their trademarks in the DNS, the Delegation requested the Secretariat to continue to provide details about the specific tools and mechanism deployed to facilitate the affordable access and use of such services for users of developing countries and LDCs. With regard to international nonproprietary names for pharmaceutical substances (INNs), the Delegation thanked the Secretariat for preparing document SCT/39/4 and believed that a full discussion would lead to a positive conclusion. Concerning geographical indications, the Delegation said that the Group was ready to engage constructively on the basis of document SCT/39/6 Rev., with a view to agreeing on the questionnaire referred to in the SCT Workplan for geographical indications. Finally, the Group thanked the Secretariat for the preparation of the Survey of the Existing State of Play of Geographical Indications, Country Names, and Other Geographical Terms in the DNS, contained in document SCT/39/7.

13. The Delegation of Ecuador, speaking on behalf of the Group of Latin American and the Caribbean Countries (GRULAC), reaffirmed its interest in continuing to work constructively during the week. Concerning industrial designs, the Group urged Member States to address pending issues, and ensured its political will and flexibility with the aim to reaching a mutually beneficial agreement. The Group stressed the importance of the protection of country names as a valuable tool and opportunity for the countries to benefit and generate value through the use of the intellectual property system, including the development of a country brand. Regretting that there was no uniformity at the international level on the protection of country names, the Group reiterated its commitment to continue the discussion on the topic in line with the proposal put forward by the Delegation of Jamaica in document SCT/32/2. Likewise, GRULAC welcomed the proposals contained in document SCT/39/8 and SCT/39/9 and expressed its willingness to examine them. The Group thanked the Secretariat for the organization of the Information Session on Country Names and said that it was ready to engage in the debate. Finally, GRULAC recognized the efforts made to implement the work program established on geographical indications and expressed its willingness to participate constructively in the discussion under that item.

14. The Delegation of Morocco, speaking on behalf of the African Group, stated that the Group was very much attached to the negotiating process in the Committee and continued to stress the importance of the items under debate. The Group expressed its support for continuing work on the protection of country names against undue registration or use as trademarks. Noting the importance of the Information Session on Country Names, the Group hoped that the discussions would continue to make progress on that subject, which had been on the table for a long time. In addition, the African Group expressed its regret that the decision to convene a diplomatic conference on the DLT during the 2017 General Assembly had been deferred to the General Assembly of 2018. Pointing out that additional efforts by all Member States would contribute to push the process forward and enable the Committee to make substantive progress on the pending issues, the Group stated that it remained optimistic regarding the possibility of reaching a mutually agreed solution and the reaching of a consensus at the next General Assembly. Thanking the Secretariat for document SCT/39/2, summarizing the main points of the Information Session on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, the Group acknowledged the usefulness of the exercise, which raised the need for adequate protection for that type of designs, and considered it wise to use the same methodology for the Information Session on Country Names.

15. The Delegation of Switzerland, speaking on behalf of Group B, thanked the Secretariat for the preparation of the summary of the main points emerging from the successful Information Session on GUI, Icon and Typeface/Type Font Designs and the compilation of proposals by Member States and accredited NGOs contained in document SCT/39/3. Welcoming the Information Session on Country Names and thanking the Secretariat for its organization, the Group also noted the proposals regarding country names, contained in document SCT/39/8, and nation brands, contained in document SCT/39/9, which would help inform the discussions on those matters. Group B also thanked the Secretariat for the compilation of questions on geographical indications, contained in document SCT/39/6 Rev., looking forward to a constructive discussion of said document. The Delegation further indicated that the Group wanted to ask the Secretariat to rationalize the number of questions to ensure operational coherence. Finally, Group B expressed its strong support to the SCT as an important forum to discuss issues, facilitate coordination and provide guidance on the progressive development of international intellectual property law on trademarks, industrial designs and geographical indications.

16. The Delegation of Lithuania, speaking on behalf of the Group of Central European and Baltic States (CEBS), said that, while it was committed to the fruitful work of the thirty-ninth session, discussions on the DLT had been referred to the General Assembly and should thus not be held at the Committee. As regards industrial designs, the CEBS Group said that it

looked forward to a discussion on GUI, Icon and Typeface/Type Font Designs, pointing out that the Information Session held at the last Committee meeting had been extremely useful. Expressing its appreciation for the excellent summary of the main points, prepared by the Secretariat and presented in document SCT/39/2, the Group thanked the Member States and accredited NGOs for their proposals on further work compiled in document SCT/39/3 and stated that it would actively engage in the discussion on potential future activities of the Committee on this topic. The Group also appreciated the initiative of the Delegation of France to present the European Union “Convergence Program 6: Graphical Representation of Designs” at this session. Concerning trademarks, the CEBS Group thanked the Secretariat for the organization of the Information Session on examination practices regarding trademarks consisting of, or containing, country names, as well as those Member States which had made new or updated proposals contained in documents SCT/39/8 Rev.2 and SCT/39/9. Indicating that it would actively engage in working together with other Member States in the area of geographical indications, on the basis of the recently established workplan, the CEBS Group thanked the Secretariat for the compilation of questions provided in document SCT/39/6 Rev. The Group pointed out that the high number of questions and the quality of many of them demonstrated the keen interest of Member States and intergovernmental organizations in this exercise. The Group looked forward to refining and streamlining the questionnaire during the present session in order to make it manageable. Finally, the CEBS Group reiterated its firm position that the SCT work program should not aim to interpret or revise the provisions of the Lisbon Agreement or the Geneva Act.

17. The Delegation of Tunisia, endorsing the statement made by the Delegation of Morocco on behalf of the African Group, reiterated its interest on the questions on the agenda. Recalling that the DLT was still in suspense, although the members had almost reached an agreement on the subject, the Delegation expressed the hope that the constructive spirit which had prevailed during the last session of the General Assembly would continue to provide the goodwill to move forward on those questions and help reaching the expected result. The Delegation also stressed the importance of the DLT as an instrument to simplify and harmonize the procedures for industrial designs. Highlighting the fact that trademarks were at the very center of the intellectual property system, the Delegation said that it attached great importance to them as they were a key element in any successful marketing strategy. Regarding the use of country names in the trademark system, the Delegation underscored the commitment of Tunisia to achieve a consensual solution.

18. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for its excellent preparatory work and recalled with appreciation the particularly constructive spirit shown by all delegations in the previous SCT session. The Delegation believed that achieving consensus on a future work program on geographical indications was a significant milestone in the work of the Committee. The Delegation said that the European Union and its member states had contributed to the questionnaire and looked forward to the discussion of documents SCT/39/6, SCT/39/6 Rev. Corr. and SCT/39/7. With regard to trademarks, the Delegation noted that the Committee had been discussing the protection of country names against registration and use as trademarks. Thanking other delegations, the Chair and the Secretariat for helping to define the focus of the upcoming Information Session on office practices, the Delegation thought that the said Information Session could further facilitate progress on the question. The Delegation looked forward to participating in the Information Session and further exploring various rationales, underscoring the range of practices currently in place. The Delegation also said that it was open to discuss the new proposal which had been tabled in document SCT/39/8, and took note of the proposal made by the Delegation of Peru in document SCT/39/9. As regards industrial designs, the Delegation referred to the discussions held in relation to the DLT during the 2017 General Assembly and reiterated its position that discussions on the DLT should not be held in the Committee. In relation to GUI, Icon and Typeface/Type Font Designs, the Delegation reiterated the view that the Information Session held at the thirty-ninth session had

been extremely useful, and thanked the Secretariat for the summary of the main points emerging from that Information Session, contained in document SCT/39/2. Thanking Member States and accredited NGOs for submitting proposals regarding desirable further work, compiled in document SCT/39/3, the Delegation said that it had studied those proposals with great interest, in particular where focused on requirements for a connection between graphical user interfaces and physical products and those on methods allowed for representation of animated graphical user interfaces. The Delegation stated that it looked forward to actively participating in discussing how the Committee could best proceed on that topic. The Delegation further commended the Delegation of France for presenting the European Union “Convergence Program 6: Graphical Representation of Designs”. With respect to geographical indications, the Delegation recalled that the SCT would continue to move forward according to the recently established work program. The Delegation thanked the Secretariat for preparing a compiled list of questions contained in document SCT/39/6 Rev. Referring to the text of the questions, the Delegation encouraged the Chair to consider a creative merging of the proposed list in order to reach a manageable length. Recalling that it would have preferred a targeted questionnaire aimed at collecting useful information on specific topics of concrete interest to users and industry and allowing meaningful discussions for the benefit of stakeholders, the Delegation reiterated that the SCT work program should not aim to interpret or revise the provisions of the Lisbon Agreement or the Geneva Act of the Lisbon Agreement.

19. The Delegation of Iran (Islamic Republic of) wished to align itself with the statement delivered by the Delegation of Indonesia on behalf of the Asia and Pacific Group. Referring to agenda item 5, industrial designs, and concerning the DLT, the Delegation said that an eventual decision depended first and foremost on the recognition of the priorities of all members and also on the constructive and positive approach by all. Accordingly, bearing in mind the decision taken by the General Assembly last year, the Delegation urged all Member States to work based on mutual respect, with the objective to overcome the remaining differences and submit the draft instrument to a diplomatic conference. As the General Assembly decision did not prohibit the Committee to continue negotiating the draft treaty, the Delegation was of the view that the SCT should use the time to make the utmost effort. With regard to GUI, Icon and Typeface/Type Font Designs, the Delegation commended the Secretariat for the preparation of documents SCT/39/2 and 3. The Delegation also looked forward to the presentation of the Delegation of France on the European Union “Convergence Program 6: Graphical Representation of Designs”. Turning to agenda item 6 on trademarks, recalling that the lack of protection of country names at the international level was a loophole in the international intellectual property system, the Delegation reiterated the importance of the protection of country names. Therefore, the Delegation believed that it was necessary to continue discussions on that subject as a matter of priority and develop a framework to prevent the undue registration or use of country names as trademarks. In this regard, the Delegation welcomed the joint proposal presented by a group of countries concerning the protection of country names and geographical names of national significance, considering that it was a positive contribution to the discussion of the Committee on that issue. The Delegation also looked forward to the Information Session on Country Names, which would bring together a number of eminent experts to discuss the issue and would enrich the debates on the subject by the Committee. The Delegation took note of the proposal made by the Delegation of Peru concerning the recognition and protection of nation brands. On agenda item 7, geographical indications, the Delegation reiterated its main concern that the work of the SCT should not in any way interpret or review the provisions of the Lisbon Agreement and the Geneva Act of the Lisbon Agreement. The Delegation said that the SCT should avoid duplication of work already covered by the Committee or covered by existing treaties administered by WIPO.

20. The Delegation of China, expressing the view that the SCT was an important platform where multilateral rules on trademarks, industrial designs and geographical indications were formulated, said that the Committee had been playing an important role and making remarkable achievements. The Delegation looked forward to making more progress in the Committee. The

Delegation reported that in 2019 China will restructure its national intellectual property office, streamlining the management of patents, trademarks and geographical indications, with a view to enhance intellectual property protection in the country. On the DLT, the Delegation called upon all sides to understand each other's concerns with cooperative and flexible spirit in order to make substantive progress with regard to technical assistance and disclosure. The Delegation hoped that proposals from developing countries could be taken into account in order to reach consensus on the issues that remained to be agreed upon and create favorable conditions for a diplomatic conference. The Delegation proposed that reservations be considered to make the treaty more flexible and acceptable to countries. On industrial designs, the Delegation considered that the Information Session on GUI, Icon and Typeface/ Type Font Designs had provided countries with useful information. Indicating that China had submitted its proposals on the topic based on comments from the creative sector, which had been included in document SCT/39/3, the Delegation pointed out that detailed studies on industrial designs would contribute to define the trends in the relevant sector. The Delegation believed that countries could draw upon positive experiences and improve the system, so as to respond to the actual needs of the creative sector. In addition, the Delegation supported the extension of the Digital Access Service (DAS) for Priority Documents to cover industrial designs, as this would reduce applicants' burdens in preparing priority documents. As regards trademarks, the Delegation welcomed the Information Session on Country Names as it considered that discussions and studies on the subject were both necessary and beneficial. The Delegation recalled that strengthening the protection of country names was in the interest of all countries. Finally, the Delegation supported the discussions on geographical indications and looked forward to them. The Delegation indicated that China supported more research and studies, respecting the countries' situations, to clarify the different systems and their rules. Such studies could serve as an important reference for further work.

21. The Delegation of Indonesia, speaking in its national capacity, said that it attached great significance to intellectual property as an important catalyst to socioeconomic and technological development. The Delegation considered that, in current globalized economies, adding value was critical and included the design, reputation and branding of a product. The Delegation indicated that the work of the Committee was important in maintaining the equilibrium between innovation, competition and overall economic development. Regarding the DLT, the Delegation indicated that it was aware of the decision taken at the WIPO 2017 General Assembly that Member States would continue to consider the convening of a diplomatic conference for the DLT in the 2018 General Assembly. However, the Delegation believed that an agreement on pending issues needed to be explored as soon as feasible. The Delegation said that a gap would remain if the SCT members were not willing to allow some time and efforts to try to bridge the gap towards a mutually acceptable solution. The Delegation was ready to engage constructively towards the resolution of outstanding issues, especially the bridging of position gaps pertaining to Article 3 and Article 22 of the draft treaty. The Delegation believed that allowing some time for discussion on those outstanding issues was not the same as debating the question of convening the diplomatic conference, which had to be decided by the General Assembly. The Delegation believed that it was possible to find a solution on the matter at the earliest feasible opportunity. The Delegation also expressed its strong interest to see progress on geographical indications according to the agreed workplan. The Delegation believed that geographical indications were one of the ways of protecting the respective culinary practices as well as the agrarian and local expertise, contributing to job creation and improving the social strength of communities. The Delegation hoped that the Committee would find an agreement to have a clear understanding on national and regional systems providing protection to geographical indications. Finally, the Delegation looked forward to the Information Session, believing that it would further enhance understanding on country names, and welcomed the proposals reflected in documents SCT/39/8 and 9.

22. The Delegation of India aligned itself with the statement delivered by the Delegation of Indonesia on behalf of the Asia and Pacific Group. The Delegation considered imperative to find a common ground on the pending issues, namely on the provision of technical assistance and mandatory disclosure requirements before the next General Assembly. On the protection of GUI, Icon and Typeface/Type Font Designs, the Delegation expressed the view that it was a policy issue of individual member countries. Finally, on international nonproprietary names for pharmaceutical substances (INNs), the Delegation believed that it was critical to ensure that trademarks that were similar to INNs or common stems were not registered.

23. The Delegation of Oman aligned itself with the statement delivered by the Delegation of Indonesia on behalf of the Asia and Pacific Group. The Delegation attached great importance to the topics on the agenda, particularly the DLT. Thanking the Committee for its work on geographical indications and the protection of country names against undue registration as trademarks, the Delegation called upon all delegations to take an active part in the discussions so as to achieve real progress.

24. The Delegation of Jamaica thanked the Chair for proposing the Information Session on Country Names and looked forward to engaging in that event. The Delegation said that, since 2009, Jamaica had been advocating within the Committee for more consistent, adequate and efficient protection of the names of States, similar to equally important symbols of statehood such as flags and armorial bearings, which were already protected under the Paris Convention. The Delegation stated that, although protection for country names was in theory available through existing trademark laws, such protection was often limited to particular circumstances, leaving ample opportunity for persons and entities to abuse and unfairly free ride on the reputation of a country name. The Delegation pointed out that the protection that theoretically existed for country names under the current trademark law, interpretation and practice was incomprehensive, inadequate and insufficient in practice. The Delegation stressed the fact that the lack of international protection of country names was now exacerbated by the threat of the registration of new top level domain names, which comprised country names, country adjectives or country codes. The Delegation indicated that it remained open and committed to working with all Member States and the Secretariat to find solutions for the effective protection of country names, which enjoyed the consensus of the entire membership.

25. The Delegation of the Republic of Korea said that, thanks to the continuous efforts of the Member States, the DLT had reached significant achievements so far. The Delegation hoped that an agreement on the DLT would be reached during the next General Assembly in order to have a diplomatic conference as soon as possible. Regarding new technological designs such as GUI, Icon and Typeface/Type Font Designs, the Delegation noted that the systems and examination practices were different from country to country, which justified further discussions on the subject. As to WIPO DAS, the Delegation stated that the Korean Design Protection Act had been amended to introduce the Service, which had taken effect as of September 22, 2017, although the examination system was currently being fine-tuned. The Delegation believed that the utilization of DAS within the industrial design context would benefit applicants from all over the world and therefore fully supported the introduction of DAS into the industrial design system. With respect to trademarks, the Delegation said that the Republic of Korea supported the protection of country names, which were already protected under Korea's trademark act and unfair competition prevention, as well as under trade protection law. This was in line with the recommendation of Jamaica to reject trademarks composed of a country name or false indications. However, the Delegation stressed the fact that excessive restrictions should be avoided and harmonization with prior trademark rights should also be considered. The Delegation hoped that the Information Session on Country Names would serve as a good opportunity to deepen the understanding of the protection system of each Member State. Referring to the protection of geographical indications, the Republic of Korea expressed its support for the proposal of the Delegation of the United States of America to discuss geographical indication issues within the framework of the SCT. Given that the protection

systems for geographical indications were different from country to country, understanding those differences would be a prerequisite before introducing an international geographical registration system. The Delegation also stated that, as the protection of geographical indications had a legal and economic impact on WIPO Member States, it would be necessary for WIPO members to discuss and express their opinions on that issue. In this sense, the Delegation thanked the WIPO Secretariat for preparing document SCT/39/6.

26. The Delegation of Senegal associated itself with the statement made by the Delegation of Morocco on behalf of the African Group. Reiterating the importance attached to the various items on the SCT agenda, the Delegation welcomed the Information Session on Country Names, which was a subject of extreme importance to the Delegation because of the gaps in the international industrial property regime. The Delegation stated that it had decided to co-sponsor a proposal, which was contained in document SCT/39/8, and reiterated its support for the proposal of the Delegation of Jamaica. Referring to the DLT, the Delegation strongly hoped that there would be a diplomatic conference as soon as possible in an inclusive and objective spirit. Finally, the Delegation welcomed the workplan on geographical indications agreed at the last SCT session.

27. The Delegation of Barbados expressed its commitment to work on all the three areas of the SCT and aligned itself with the statement made by the Delegation of Ecuador on behalf of the GRULAC. Expressing also its support for the statement made by the Delegation of Jamaica, the Delegation indicated its commitment to work on the protection of country names against registration and misuse as trademarks and maintained its support for the revised proposal contained in document SCT/32/2. Pointing out that, as a small developing state, the name Barbados was of critical importance to the country's economic, financial and social development, the Delegation said that the unauthorized use of the name Barbados by others as part of their registered trademarks for business services not originating from Barbados could potentially damage the country's reputation as a brand, particularly when referring to Barbados rum, tourism, business and financial sectors.

AGENDA ITEM 5: INDUSTRIAL DESIGNS

Industrial Design Law and Practice - Draft Articles and Draft Regulations

28. The Chair recalled that "the [2017] WIPO General Assembly decided that, at its next session in 2018, it will continue considering the convening of a diplomatic conference on the DLT, to take place at the end of the first half of 2019."

29. The Chair concluded that, while the DLT would remain on its agenda, the SCT should abide by the decision of the General Assembly. The Chair observed that the remaining gaps in positions regarding the convening of the diplomatic conference had been further narrowed at the [2017] WIPO General Assembly, and urged all Member States to make a concerted effort and display the necessary flexibility with a view to overcoming these final hurdles.

Presentation by the Delegation of France of the European Union "Convergence Program 6: Graphical Representation of Designs"

30. At the Chair's invitation, the Delegation of France presented the European Union "Convergence Program 6: Graphical Representation of Designs" (CP6).

31. The Chair thanked the Delegation of France for the very interesting presentation.

Graphical User Interface (GUI), Icon and Typeface/Type Font Designs

32. Discussions were based on documents SCT/39/2 and 3.
33. The Secretariat introduced both documents.
34. The Delegation of Italy, expressing its gratitude to the Delegation of France for the presentation on CP6, underlined the fact that the work carried out within the Convergence Program had led to the development of common practices and harmonization of the approaches concerning the depiction of designs, with a view to alleviating the problems associated with their subsequent interpretation by the courts. In the Delegation's viewpoint, that program constituted an effective and flexible approach, which could also serve as a helpful instrument and as best practices for other countries.
35. The Delegation of Spain, congratulating the Delegation of France on the excellent presentation and recalling that Spain had participated in CP6, highlighted the efforts made by all participating countries in compiling best practices and reaching agreement. The Delegation said that the work related to CP6 had required long and, at times, tense discussions to agree on common practices that would benefit users and bring security. Reporting that the implementation of the CP6 outcome in the guidelines for the examination of designs in Spain had been very well received by users, the Delegation was of the view that reaching agreement on a common understanding, based on experience and efforts, with a view to elaborating best practices or recommendations for the graphical representation of GUIs, would not be impossible.
36. The Delegation of Hungary, thanking the Delegation of France for the presentation on the CP6 results, informed the Committee that Hungary had slightly amended its formality regulations so as to join and implement the program.
37. The Delegation of Sweden thanked the Secretariat for the preparation of the session and the Delegation of France for the presentation on CP6, and reminded the Committee of the active part taken by Sweden in that program. Reporting that, due to legal constraints, the CP6 outcome had not yet been implemented in its country, the Delegation announced that Sweden was currently working towards overcoming those constraints, with a view to implementing CP6 to the benefit not only of examiners but, above all, of users.
38. The Delegation of Iran (Islamic Republic of) commended the Delegation of France for the presentation on CP6, which constituted an excellent example of sharing information on the matter, and thanked the Secretariat for the preparation of documents SCT/39/2 and 3. Considering that the current international framework provided adequate flexibility for ensuring the protection of new technological designs, the Delegation stated that further discussions on the issue should be restricted to sharing experience between delegations and should preserve Member States policy space to adopt their national legal requirements, based on their needs and priorities.
39. The Delegation of India, congratulating the Delegation of France on the presentation on CP6, expressed its intention of continuing to constructively participate in the discussions on GUIs. In its opinion, the protection of GUI, Icon and Typeface/Type Font Designs constituted a policy issue for each member country. Observing that in many countries, including India, a substantive examination was carried out, the Delegation considered that, for those countries, the question would consist in adopting uniform examination and search criteria. The Delegation also stressed the need to delineate different intellectual property laws, such as copyright and industrial design laws, in case of multiple layers of protection under various laws.

The Delegation concluded by stating that, given the specific nature of GUI, Icon and Typeface/Type Font Designs, it was not clear whether the subject should be protected by industrial design regulation.

40. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recalled that the Information Session on GUI, Icon and Typeface/Type Font Designs, held at the previous SCT session, had been a fruitful exercise, enabling the Committee to gain good insights on practices in different jurisdictions and to hear interesting experiences from relevant stakeholders. In its view, that session had provided valuable input for the Committee's subsequent discussions on the issue. Thanking the Secretariat for the excellent summary of the main points emerging from the Information Session, as reflected in document SCT/39/2, and the Member States and accredited NGOs for their proposals on desirable further work on the topic, as compiled in document SCT/39/3, the Delegation firstly pointed out that the proposals, which had been studied with great interest, were not convergent as to their scope: some proposals covered forms of GUI, Icon and Typeface/Type Font Designs which were already well established, while others mainly dealt with new age designs on the horizon, such as designs projecting outward from laser keyboards or graphics projected onto a road from an automobile for pedestrians. The Delegation therefore held the view that the Committee should have a common understanding on what exactly should be covered by its work. Secondly, while noting that issues concerning new age designs were also interesting and relevant, the Delegation pointed out that there were already problems to solve in the field of currently known forms of GUIs and icons. Hence, in seeking the way for the Committee to move forward with its work, the Delegation stressed the need for a phased approach, with a first general discussion on existing and well perceptible differences that could - and should - be immediately addressed. Considering that it would be more fortunate to limit the discussions to GUI, Icon and Typeface/Type Font Designs so as to find common understanding in the context of those existing designs, the Delegation nonetheless expressed its interest in hearing more about new age designs from users associations, to guide the SCT future work in the appropriate direction, after having reached a common understanding on currently more prevailing issues. Turning to the proposals compiled in document SCT/39/3, the Delegation expressed support for proposal (9), concerning the requirements for a connection between GUIs and physical products for the protection of GUIs by design rights and proposal (10), concerning the methods allowed for the representation of animated GUIs. In its opinion, since both proposals directly addressed currently existing divergences, further work on those issues could pave the way for a more harmonized approach. The Delegation also noted that further work on proposals (1) and (3), which also related to the connection between GUIs and the physical products to which they were applied, was considered desirable by a number of SCT participants. Recognizing the economic importance of new technological designs and users' increasing demand for ensuring their adequate protection, the Delegation expressed support for further work on the topic, which should firstly focus on finding consensus about the subject-matter of protection under the current global intellectual property regime and the way of protecting it. The Delegation concluded by expressing its openness to explore, at a later stage, interesting issues about new age designs and to examine how the intellectual property framework could remain effective to ensure the protection of future technological developments.

41. The Delegation of Lithuania, speaking on behalf of the CEBS Group, thanked the Delegation of France for the presentation on CP6 and commended the Chair and the Secretariat for the organization, at the previous session of the SCT, of the Information Session, which had been very useful in building the SCT understanding on different national practices and the experience from relevant stakeholders. The Delegation added that, in its opinion, document SCT/39/2 contained an excellent summary of the main points emerging from that session. While expressing its appreciation for the proposals of Member States and accredited NGOs, compiled in document SCT/39/3, the Delegation highlighted the different scope of those proposals: some proposals related to currently known forms of GUI, Icon and Typeface/Type Font Designs, while others dealt with new age designs. Considering that issues concerning

new age designs were a matter for the future, the Delegation believed that the SCT's immediate priority should focus on solving existing problems with well-established forms of GUIs and icons. For that reason, the Delegation lent its support to a phased approach, giving priority to the existing differences in the field of GUI, Icon and Typeface/Type Font Designs. The Delegation also expressed its willingness to explore issues relating to new age designs at a later stage, after a common understanding on current issues would have been reached. Referring to document SCT/39/3, the Delegation stated that further work on proposals (1), (2), (9) and (10) would be helpful to narrow existing differences and to enable a more consistent treatment of the designs in question.

42. The Delegation of the United States of America, expressing its gratitude to the Delegation of France for the excellent presentation on CP6, recalled that applicants' dream consisted in being able to file one application with a set of images that could be used to pursue protection in other jurisdictions. Thanking SCT members and NGOs for their proposals, which appeared as a natural flow from the Information Session, the Delegation said that it looked forward to addressing them. The Delegation said that there were three areas arising from those proposals, which had gained its support. The first concerned the tie between the design and the product, the requirements for identification of that tie and its impact on the scope. For the Delegation, examining whether the design could be protected for different products, or whether the scope was tied to one product only, were possible questions to address. The second area emanated from the suggestion for a users' questionnaire allowing them to identify problems in pursuing protection for GUIs and icons. The Delegation held the view that users should also be invited to report successful practices, regimes or occurrences in pursuing such protection. The third area resulted from a thought-provoking proposal concerning artificial intelligence and its impact on two aspects of the protection of new technological designs, namely whether a design created by artificial intelligence should be protected under the current regimes, and the use of artificial intelligence in the examination process. Echoing the suggestion made by the JTA to not rigidly stick to the GUI and icon designs context, and recalling that, at the beginning of the discussions on the topic, the term "new technological designs" had been used, the Delegation recommended not limiting the SCT work to GUIs and icons only. Given the development of designs in the context of holographic imagery or projections, the Delegation suggested including related subject-matter in such work.

43. The Delegation of China, after having thanked the Secretariat for document SCT/39/2, the Delegation of France for the excellent presentation on CP6 and all the SCT members for their valuable lessons and constructive proposals, considered that those materials would help understanding the relevant areas and the development trends. In the Delegation's viewpoint, discussing the topic would help the Committee to deal with emerging issues in relation to the protection of GUIs, to respond to actual needs, to enhance the protection mechanism in each country, to improve the protection of designs and to promote the design industry. Drawing the attention of the Committee to its proposal, reflected in document SCT/39/3, the Delegation stated that it looked forward to positive results and further discussions, in particular, on the connection between a GUI and a physical product, the examination of GUIs, and infringement standards. Finally, the Delegation declared its intention to closely follow, and participate in, the discussions.

44. The Delegation of Japan, expressing its gratitude to the Secretariat for its hard work in preparing the session and documents SCT/39/2 and 3, the Member States and NGOs for their proposals and the Delegation of France for the presentation on CP6, pointed out that the use of new technological designs, in particular GUIs and icons, had rapidly expanded, as evidenced by the comparative study and the Information Session. The Delegation noted, however, that the protection of those designs under the design system was, to some extent, limited or inconsistent in different jurisdictions. Considering the benefits for the users of the design system, the Delegation lent its support to advancing the SCT work in order to explore an appropriate and harmonized way to protect those new designs.

45. The Delegation of the Russian Federation thanked the Secretariat for documents SCT/39/2 and 3 and the Delegation of France for the presentation on CP6. The Delegation expressed its interest in working on all issues outlined in document SCT/39/3, in particular, on GUIs and the issue of artificial intelligence, and in continuing to study users' demand for GUIs.

46. The Representative of ICC, while thanking the Secretariat for the preparation of the session and the Delegation of France for the presentation on CP6, expressed its appreciation for the opportunity to share a business perspective on the possible future SCT work on design protection for GUIs. Recalling that ICC was the world's largest business organization, representing businesses of all sizes in more than 100 countries, including many businesses which developed new forms of designs, such as GUIs, the Representative highlighted the important role played by GUIs in the digital world, in facilitating user interaction with electronic devices in many different fields, such as transportation, health and communications. Observing that the increasing importance and value of GUIs as strategic assets and the relevance of design rights for protecting the visual appearance of GUIs was reflected by the notable growth in GUI design applications in recent years, the Representative commended the SCT for having taken leadership in considering how current design protection requirements apply to new digital designs, and declared that it was pleased to contribute to the discussions. Based on feedback from businesses around the world, the Representative drew the attention of the Committee on three topics on which further work by the SCT would be helpful to make design protection for GUIs more effective and efficient. Firstly, the Representative proposed to analyze the requirements for a connection between GUIs with physical products, pointing out that, given that the same GUI could usually be used in different products, many businesses would find it useful to obtain protection for GUIs as such, without the need for a connection with a specific product, which could unduly limit the scope of protection of a GUI design right. Secondly, the Representative suggested further work by the SCT on the methods allowed for the representation of animated GUIs, pointing out that businesses would find it helpful to have the possibility of filing videos or moving images in more jurisdictions and to allow the easy display and search of animations in databases. The Representative added that, in jurisdictions where traditional graphical representations were still required, increasing the number of views allowed for GUIs would be of help. Thirdly, the Representative suggested carrying out a review of the requirements to indicate the function of a GUI in design applications, which currently existed in certain jurisdictions, reporting that businesses did not find that requirement helpful in most situations. In cases where the function had to be indicated, for instance for search purposes, the Representative was of the view that it should be clarified that such indication would not limit the scope of protection. The Representative informed the Committee that those points, as well as others, were elaborated in a new ICC report on *Design Protection for Graphical User Interfaces*, available online, which also included information on prosecution and enforcement aspects of GUI designs, gathered from different jurisdictions. The ICC report suggested issues that policy makers could consider in reviewing design systems to make protection for GUIs more effective and was also intended to be a practical tool for businesses, identifying issues to address when developing GUI design strategies. The Representative concluded by encouraging the SCT to work on design protection for GUIs, as such work would not only help improving procedures and requirements for design protection in that increasingly important field of design, but would also stimulate thinking on the protection of future generations of digital designs.

47. The Delegation of Australia thanked the Secretariat for the preparation of the excellent documents and the Delegation of France for the very informative and useful presentation on CP6, which was a positive sign for ongoing considerations. Expressing its interest in the connection between the design and the physical product, the Delegation said that it found particular value in progressing proposals (1), (3), (9) and (10), outlined in document SCT/39/3.

48. The Delegation of the Republic of Korea, thanking the Delegation of France for the excellent presentation and the Secretariat for documents SCT/39/2 and 3, aligned itself with the statement made by the Delegation of Spain, which had underlined the fact that CP6 was a good example illustrating the efforts made in creating a harmonized system. Congratulating member countries of CP6 for their hard work and outstanding achievement, the Delegation stressed the need to continue the discussions on the protection of new technological designs within the SCT. In the Delegation's viewpoint, such discussions would contribute to prepare each country's design system with respect to the expansion of new technological designs and to achieve international harmonization of design protection.

49. The Delegation of the Republic of Moldova, lending its support to a discussion of those points having a practical impact at present, specifically proposals (1), (2), (9) and (10) contained in document SCT/39/3, considered that discussions on other points would also be of interest in the future, depending on the time that the Committee would dedicate to those discussions. Thanking the Delegation of France for the presentation on the interesting experience of the European Union the Delegation announced that CP6 would be discussed within the Office of the Republic of Moldova.

50. The Chair, noting that delegations were in favor of continuing work on the topic, observed, however, that some delegations had expressed their interest in future topics, while others had focused on current issues. The Chair pointed out that priorities for future discussions had been established by delegations, which had referred to proposals (1), (3), (9) and (10) outlined in document SCT/39/3, mainly dealing with the link between the design and the product and the representation of animated designs. In addition, the Chair proposed to check whether users could contribute to the SCT work by sharing their positive and negative experiences in protecting GUIs.

51. The Delegation of Spain, lending its support to the Chair's proposal, stressed the need to encompass all issues, including the artificial intelligence matter.

52. The Delegation of the European Union, speaking on behalf of the European Union and its member states, indicated that it was in favor of a more limited scope for further progress and expressed support for the Chair's proposal. Referring to proposals (1), (3), (9) and (10), contained in document SCT/39/3, the Delegation seconded the Chair's suggestion aiming at seeking input from users on their experience.

53. The Delegation of the United States of America, considering that the Chair's proposal accurately summarized the discussions, suggested being flexible and open to other points than GUIs and icons.

54. The SCT noted with satisfaction the presentation by the Delegation of France of the "European Union Convergence Program 6: Graphical Representation of Designs".

55. After an exchange of views, the SCT decided as follows:

- Further work is desirable on certain existing issues identified in documents SCT/39/2 and SCT/39/3, in particular on proposals 1, 3, 9 and 10 in document SCT/39/3, while issues related to novel technological designs could be undertaken in a subsequent phase.

- The Secretariat will invite Members, Intergovernmental Intellectual Property Organizations with observer status² and accredited Non-Governmental Organizations (NGOs) to submit further inputs, including detailed questions which they would like to see answered, concerning (1) the requirement for a link between GUIs, Icons, Typeface/Type Font Designs and the article or product and (2) the methods allowed by offices for the representation of animated designs.
- The above-mentioned invitation will be issued by the Secretariat no later than June 15, 2018, and the inputs and questions by Members, Intergovernmental Intellectual Property Organizations with observer status and accredited NGOs in response thereto are to be received by the Secretariat no later than August 20, 2018.
- The Secretariat will prepare a draft questionnaire on the basis of the received inputs and questions, for consideration of the SCT at its next session.
- At its next session, the SCT will have a further exchange of views on related matters, such as other novel technological designs.

Update on the Digital Access Service (DAS) for Priority Documents

56. At the invitation of the Chair, the Secretariat provided an update on the progress in the implementation of the DAS with respect to the Hague System. The Secretariat observed that, while 18 offices were currently using the DAS for patent priority documents, the Offices of China, India and Spain were depositing offices for design priority documents. With respect to the Hague System, the Secretariat announced that, on February 28, 2018, the International Bureau had implemented the DAS for the filing of Hague applications. Since then, applicants could indicate the four character DAS code in their international applications, at the time of filing. Such indication would allow designated offices to retrieve the priority documents, during their national procedures. While observing that the DAS was nowadays not widely utilized for designs, the Secretariat expressed the hope that the implementation of the DAS in relation to the Hague System would serve as an example and catalyst for other offices to start using that service for designs, as both depositing and accessing offices. Noting that the Korean Intellectual Property Office (KIPO) would be the first office to use the DAS for international design applications, the Secretariat also expressed the hope that other intellectual property offices would join KIPO in the near future. The Secretariat added that the International Bureau had also become a depositing office for Hague applications. Finally, reminding the Committee that, in the context of the Hague System, the International Bureau did not retrieve or make available priority documents, the Secretariat pointed out that the role of the International Bureau was limited to the communication of the DAS code provided by the applicant at the time of filing and, eventually, to the deposit of Hague applications as first filings.

57. The Delegation of the United States of America said that the application of the DAS in the Hague context, following the groundwork done by the Hague Working Group to provide the legal framework for the four digit DAS code, was an important step. In its opinion, as the matter constituted one of the top requests of applicants, the Hague System update would be to their benefit. The Delegation noted, however, that few offices were currently using the system. Recalling that the United States Patent and Trademark Office (USPTO) was currently an accessing office, but not yet a depositing office, the Delegation informed the Committee that the USPTO had already started working on an information technology update to ensure that the images provided to DAS were pristine. Expressing the hope that the USPTO would become a

² *i.e.*, organizations which, under their constituting treaty, have responsibility for the protection of industrial property rights.

depositing office in 2018, the Delegation concluded by reiterating its commitment in moving forward on the topic and its interest in hearing from other delegations also taking steps towards the implementation of the DAS in relation to industrial designs.

58. The Delegation of Japan, thanking the Secretariat for the update, announced that the Japan Patent Office (JPO) had taken the necessary steps, with respect to both the legal and computer systems, to implement the DAS in the area of industrial designs. The Delegation informed the Committee that partial amendment of the Design Act, aiming at allowing procedures through the DAS, had been submitted in February 2018. Although more time was needed to put the DAS into operation, the Delegation expressed strong support for the expansion of the service in the industrial design field.

59. The Delegation of the Republic of Korea, expressing strong support for the introduction of the DAS in the design field, was of the view that the service would be essential in enhancing users' convenience. Reporting that legal amendments for the adoption of the DAS had been made in its country in 2017, the Delegation announced that its information technology system was currently being developed in order to open the service in June to August 2018, with a view to operating the service, as depositing and accessing office, in September 2018. Considering that the implementation of DAS in the most frequently designated countries would maximize the service's full potential, the Delegation said that it looked forward to meeting more members implementing the DAS and to starting the exchange of priority documents electronically in the near future.

60. The Delegation of Spain, thanking the Secretariat for the update, recalled that the DAS needed a certain number of involved countries to be operational. Noting with satisfaction that countries with a large number of designs were about to use the DAS, the Delegation reminded the Committee of the large utilization of the service - which saved time, money and bureaucracy - in the patent field.

61. The Delegation of China thanked the Secretariat for the update and the Delegations of Japan, the Republic of Korea and the United States of America for having shared their work regarding the DAS. Since it would help reducing the burden for users and increasing offices' efficiencies, the Delegation expressed support for the extension of the DAS to industrial designs and looked forward to its application.

62. The Representative of INTA expressed its gratitude to the Delegations of Japan, the Republic of Korea and the United States of America for having given good news as to the DAS. Echoing the statement made by the Delegation of Spain, the Representative underlined the fact that the DAS for industrial designs would be a great facility for users and therefore encouraged all countries to join the system.

63. The SCT noted the progress in the implementation of the DAS for industrial designs by Members, as well as by the Secretariat.

64. While continuing to encourage a wider use of the DAS by Members for both industrial designs and trademarks, the Chair concluded that the SCT would take further stock of the progress made in this regard.

AGENDA ITEM 6: TRADEMARKS

65. The Chair, highlighting the usefulness of the Information Session on Country Names, thanked the Secretariat for the organization of the session, as well as all speakers and SCT members for their participation in the excellent debate. The Chair proposed that discussions on country names take place following discussions on INNs and DNS.

International Nonproprietary Names for Pharmaceutical Substances (INNs)

66. The SCT considered document SCT/39/4.
67. The Secretariat introduced document SCT/39/4.
68. The Representative of INTA requested confirmation that, whatever the solution chosen by offices, WIPO would integrate the INNs in the Global Brand Database, as it would be extremely interesting for users to have direct access to the INNs also through the Global Brand Database.
69. The Secretariat answered positively to the question raised by the Representative of INTA, although the solution was subject to an agreement with the Secretariat of the WHO on the implementation details.
70. The Delegation of Indonesia, speaking in its national capacity, welcomed the two methods proposed by the Secretariat, as well as the content of paragraph 13, stating that the “WIPO Secretariat intends to continue issuing the circulars (...) to all offices currently receiving them, as long as they have not availed themselves of any of the two other options”. The Delegation said that for most WIPO Member States it was critical to ensure that trademarks similar to INNs were not registered.
71. The Delegation of Iran (Islamic Republic of) highlighted the importance for trademark offices to have access to the list of recommended INNs so that they could ensure that trademarks similar to INNs were not registered. The SCT had approved several proposals, in the past, to improve access by national and regional industrial property offices of Member States to the list of INNs. The Delegation took note of the information contained in document SCT/39/4 and welcomed the intention of the WIPO Secretariat to continue issuing the circulars to all offices currently receiving them, as long as they would not have availed themselves of any of the two other options highlighted in the documents.
72. The Delegation of the Republic of Moldova expressed its support for the integration of INN data into the Global Brand Database, especially for users.
73. The Delegation of Chile, stressing the importance for trademark offices to have access to the list of recommended and adopted INNs, welcomed the work that had been done by the Secretariat over the last few years to ensure access by national and regional industrial property offices to the list of INNs, as well as the recent action together with WHO to modernize and improve the access to those lists. Considering that the two alternatives offered to offices to accede to the data were interesting, the Delegation wished to know, however, more details about them. Firstly, the Delegation sought information on the work and costs required for the implementation of the options by offices. The Delegation also wondered what type of advice would be offered by WHO and/or WIPO, whether there would be phonetic search engines, or only verbal, and what the estimated terms for the connection would be. Concerning the integration of INN data into the Global Brand Database, the Delegation requested information about the timetable foreseen. The Delegation informed the Committee that, in July 2017, the National Institute for Intellectual Property of Chile (INAPI) had signed a cooperation agreement with WIPO, and had become the first South American country to join the WIPO Global Brand Database. Indicating that Chilean trademark data were sent monthly, the Delegation wished to take the opportunity to congratulate WIPO for the continuous improvements made to improve its search engines. With respect to INNs, the Delegation expressed the view that, whatever the option taken, the system should meet the following conditions: firstly, consideration should be given to having phonetic search engines; secondly, there should be a possibility for offices to easily integrate the INNs in their national trademark databases, which would permit examiners

to use them so as to carry out a search on prior trademarks. That would facilitate the work of trademark examiners, avoiding multiple sources of information and enabling phonetic, conceptual and verbal search engines for INNs.

74. As regards the direct connection with the INN Data Hub, the Secretariat recommended delegations to contact the person identified in the document in order to have detailed information on the specific technical requirements and the resulting costs. Concerning the integration of INN data into the Global Brand Database, the Secretariat took note of the suggestions in terms of the type of searches, indicating that those elements would be looked at in more detail during the implementation phase. The Secretariat finally said that the next stage would be to establish an implementation plan with timelines.

75. The Chair requested the Secretariat to provide a progress report on the integration of INN Data into the Global Brand Database at its next session.

Update on Trademark-Related Aspects of the Domain Name System (DNS)

76. Discussions were based on document SCT/39/5.

77. The Delegation of the Republic of Korea thanked the Secretariat for the update contained in the document and expressed support for continued monitoring and updates by the Secretariat regarding trademarks and the DNS. Noting that the Internet Corporation for Assigned Names and Numbers (ICANN) is expected to open a second round of delegation of New generic Top-Level Domains (New gTLDs) in the coming years, the Delegation indicated that the SCT's continued attention could be important for addressing misuse of country names. The Delegation also expressed gratitude for the existing WIPO-created Uniform Domain Name Dispute Resolution Policy (UDRP) as a global mechanism to address clear instances of abusive domain name registration.

78. The Delegation of India thanked the Secretariat for the update contained in the document. The Delegation noted that a domain name registration may be in conflict with a trademark, and that in the Indian system, the use of a domain name which was substantially similar to a registered trademark could be an infringement of the trademark. The Delegation noted that the document did not state the extent to which the UDRP had been used by trademark owners from developing countries.

79. The Secretariat noted that statistical information was available on the WIPO Arbitration and Mediation Center's web pages.

80. The Delegation of Switzerland thanked the Secretariat for the update contained in the document, and expressed its continuing support for maintaining the item on the agenda.

81. The Delegation of Chile thanked the Secretariat for the update contained in the document. Noting the challenges raised by the global nature of the Internet, the Delegation expressed its appreciation for the work of the Secretariat in the development of the existing UDRP. Further to the statement from the Delegation of the Republic of Korea, the Delegation of Chile also noted the anticipated second round of delegation of New gTLDs; the Delegation indicated that the SCT should closely monitor such developments. The Delegation highlighted the need for ICANN to bear in mind Member States' concerns.

82. The Delegation of the United States of America thanked the Secretariat for the update contained in the document. The Delegation indicated that its intellectual property advisors attended and actively monitored issues raised at ICANN's Governmental Advisory Committee

(GAC) meetings. The Delegation expressed concern about ICANN's scheduled review of the UDRP, noting that the UDRP had been a global best practice for trademark protection, and that it should continue to be so. The Delegation noted that certain actors around ICANN had expressed concerns that trademark owners prevailed under the UDRP too often and that the UDRP should therefore be "reviewed"; however, the Delegation was concerned about such review and expressed its support for the UDRP remaining intact.

83. The Representative of ICANN expressed its appreciation for the SCT having ICANN as an observer and thanked the Secretariat for the update contained in the document, noting its importance in the context of the current work of ICANN as well as the anticipated second round of the release of New gTLDs. The Representative of ICANN noted that ICANN's community was engaged in a thorough policy review of the gTLD program, involving many work tracks, including on country names, which ICANN considered to be very important. The Representative of ICANN noted recommendations derived from such work will be put forward to the ICANN Board, at which point a process to introduce further New gTLDs could be commenced; however, it was unclear as to exactly when this would occur. The Representative of ICANN noted that the governments engaged in the Governmental Advisory Committee, most of which were also present at the SCT, were able to weigh in on ICANN community discussion on policy matters such as geographical names and the ongoing review of Rights Protection Mechanisms. The Representative of ICANN further mentioned that there would be a high-level ministerial meeting in Barcelona in October 2018 at which Ministers and other senior officials will be invited to exchange views on the strategic direction that ICANN could be taking.

84. The Chair thanked the Secretariat for its continued monitoring of DNS developments.

85. The SCT considered document SCT/39/5 and the Secretariat was requested to keep Member States informed of future trademark-related developments in the DNS.

Protection of Country Names Against Registration and Use as Trademarks

86. Discussions were based on documents SCT/37/3 Rev., SCT/38/2, SCT/32/2, SCT/39/8 Rev.2 and SCT/39/9.

87. The Chair invited the delegations concerned to introduce their proposal.

88. The Delegation of Switzerland thanked the Secretariat for organizing the constructive and useful Information Session on Country Names. Before introducing document SCT/39/8 Rev.2, the Delegation wished to recall that the question of country names had been on the agenda of the Committee for approximately ten years. The first document, dated 2009, was a Draft Questionnaire Concerning the Protection of Official Names of States Against Registration or Use as Trademarks (document SCT/22/4). Since then, although the Committee had debated on the proposal of the Delegation of Jamaica contained in document SCT/32/2, supported by the Delegation of Switzerland, on document SCT/34/2 and on document SCT/37/3 Rev., the Committee had not yet reached a satisfactory outcome. Some delegations had expressed reservations as to the possible results of the work which might be too binding compared to their national legislation. The question of the examination of the deceptive or misleading character of a trademark as to the origin of goods and services had also been considered to be problematic. The Delegation said that the new Proposal Concerning the Protection of Country Names and Geographical Names of National Significance (document SCT/39/8 Rev.2) took into account those reservations and did not deal with the examination of the deceptive or misleading nature of a trademark. The new proposal aimed at protecting country names and geographical names of national significance against monopolization by a third party, as well as to send a clear signal to ICANN, in order to ensure that country names were not delegated to private companies but reserved to the States that represented them. The proposal also sought to protect country

names against their registration as trademarks if the sign consisted exclusively of a country name or if such registration resulted in the monopolization of that country name. The Delegation added that the purpose of the proposal was therefore to prevent that a trademark containing e.g. only the word "INDONESIA" be registered. The Delegation, underlining that the new proposal only covered such case, excluding combined trademarks, observed that, according to paragraph I on page 5 in the Annex to document SCT/39/8 Rev.2, the conditions for the registration of country names and geographical names of national significance as distinctive signs, such as trademarks, should be determined in each country according to its national legislation. As heard during the Information Session, a word trademark composed exclusively of a country name was generally not registered, since it was not distinctive. However, it was possible that a trademark, containing exclusively a country name, or whose registration would result in the monopolization of that country name, be registered on the grounds that the country name in question was considered unknown to the public or to the examiners according to certain national practices. The aim of the proposal was precisely to resolve such a situation, on the basis of national legislation, by establishing the necessary transparency on the names and codes concerned by means of a list established according to criteria and known references, and made available to all by the WIPO Secretariat. The Delegation reiterated the principle that the name of a country, as a fundamental element of its international legal personality, must be protected against monopolization by a third person. As stated earlier, after almost ten years of work on the protection of country names, the Delegation believed that it was time to reach an agreement, at least on such question of principle.

89. The Delegation of Jamaica, thanking the Secretariat for facilitating a very useful Information Session on Country Names, said that it had found the exchange of experiences useful and important in identifying best practices. The Delegation recalled that, since 2009, it had advocated within the Committee for more consistent, adequate and effective protection for the names of States, as they were of equal importance as the flags and armorial bearings, already protected under the Paris Convention. The Delegation said that in its view and in the view of several other members of the SCT, although protection was available in theory for country names, such protection was often limited, leaving ample opportunity for persons and entities to nevertheless abuse or unfairly free-ride on the goodwill and reputation of a country name. Therefore, the protection theoretically existing for country names was not comprehensive and was insufficient in practice. The case of Iceland clearly demonstrated the threat existing to the sovereignty and the persistent problem of lack of international protection for country names, which was inadequate and ineffective. The problem of lack of protection of country names internationally was now exacerbated by the threat of the registration of new top level domain names which comprised country names, country adjectives or country codes. The Delegation, highlighting the progress made in the analysis of the issue under consideration, said that most Member States who had submitted comments agreed with the wording of possible Area of Convergence No. 1. The Delegation considered that the concerns of some Member States for certainty could be addressed by the use of an official list of the names of States, as well as relevant lists of associated codes, abbreviations and variations of country names. The Delegation also said that, similar to the database of official symbols and armorial bearings of States maintained by WIPO pursuant to the Paris Convention, a centralized database of names of States established by WIPO would be useful for reference by intellectual property offices in the course of examination of trademark applications. The Delegation suggested that Member States officially communicate to WIPO their country name and its various formulations for which protection was sought. The Delegation was also of the view that applicants should be required to submit a translation and transliteration where the trademark was not in the language(s) used by the intellectual property office. That was already an existing practice of many intellectual property offices. In relation to possible Area of Convergence No. 2, the Delegation was of the view that trademarks consisting solely of a country name should be refused *per se* as being descriptive, unless the registration of the mark was applied for by the State itself or an entity authorized by the State as part of a nation branding scheme. The Delegation did not subscribe, however, to the opinion that a trademark containing a country name was considered descriptive

only when the country was recognized as a place of production of the goods and services, and believed that any use of a country name in a trademark might be considered descriptive of the goods and services. If the mark was not descriptive, it would then be considered deceptive, unless the registration was applied for by the country concerned or an entity authorized by the country. In relation to possible Area of Convergence No. 5, the Delegation agreed that the grounds for refusal in possible Areas of Convergence Nos. 2, 3 and 4 should constitute grounds for invalidation of registered trademarks and also grounds of opposition. Judging from the high number of respondent States which agreed with possible Area of Convergence No. 5, the Delegation observed that there seemed to be a general consensus in that regard. In relation to possible Area of Convergence No. 6, the Delegation agreed that there was also a general consensus that appropriate legal means should be made available for interested parties to prevent the use of country names when such use was likely to deceive the public. Since the thirty-second session of the SCT in 2014, Jamaica had placed on the table a draft Joint Recommendation of the Paris Union and the WIPO General Assembly for the protection of country names, so as to facilitate within the SCT more focused discussion on possible solutions to the problem. The Delegation added that, by reflecting on the provisions of the draft Joint Recommendation, the Committee could ensure that the accepted areas of convergence were incorporated into the draft and that a suitable language could be sought that could address those areas where there was no convergence and where there was need for flexibility and discretion at the national level, based on the existence of particular circumstances. Article 2 of the draft Joint Recommendation contained in Jamaica's revised proposal in document SCT/32/2 proposed that Member States agree to "prevent use of indications consisting of, or containing country names in relation to goods or services which do not originate in the country indicated by the country name." However, recognizing that there were exceptional circumstances, under most national trademark laws, in which a trademark with a country name in relation to goods or services not originating in the named country could nonetheless be registered, Jamaica's draft Joint Recommendation proposed language that would provide some agreed parameters for those exceptional circumstances. Articles 6 and 7 of the draft Joint Recommendation sought to outline those exceptional circumstances. The Delegation reiterated that the aim of the proposed draft Joint Recommendation, contained in document SCT/32/2, was not to prescribe rules that intellectual property offices must follow, nor to create additional obligations, but to establish a coherent and consistent framework to guide intellectual property offices and other competent authorities and international traders, in their use of trademarks, domain names and business identifiers which consisted of, or contained, country names. The Delegation also said that although it was a co-sponsor of the joint proposal by the Delegations of Georgia, Iceland, Indonesia, Italy, Liechtenstein, Malaysia, Mexico, Monaco, Peru, Senegal, Switzerland and United Arab Emirates (document SCT/39/8 Rev.2), that proposal did not replace the proposal from the Delegation of Jamaica, as the Jamaican proposal was a detailed and specific reference to the protection of country names, while the joint proposal referenced the principle. The Delegation, reiterating that it continued to put forward its proposal for a joint recommendation, as a possible part of, or option for, a solution, expressed its support to initiatives which would propose a solution to the problem of lack of protection for country names. Since a collective and effective protection of country names against registration and use as trademarks was sought, the Delegation encouraged Member States to again review the draft Joint Recommendation with a view to agreeing possible language that captured the areas of convergence while leaving policy space for divergent approaches. The Delegation hoped that, through constructive engagement, the SCT could find an effective means for the protection of country names, which reflected the consensus of WIPO Member States.

90. The Delegation of Iceland, aligning itself with the statement delivered by the Delegation of Switzerland, expressed the view that a single private party should not be able to monopolize a country name. The Delegation considered that it was a question of public interest that a country's public and economic operators could not enjoy access to their own name, one of the reasons why 13 countries had co-sponsored the proposal. As already noted by other delegations, the SCT had for quite some time now discussed issues concerning the protection

of country names. The Delegation observed that the discussions during the Information Session had further demonstrated that the issue was relevant, important and complicated when going into details. Certainly, there were different systems, different practices and interests and some very important exceptions to consider; however, the Delegation underlined the fact that the proposal aimed only at laying down principles. The Delegation was very pleased with the constructive discussions on the issue of country names in the SCT.

91. The Delegation of Mexico, co-sponsor of the Proposal Concerning the Protection of Country Names and Geographical Names of National Significance (document SCT/39/8 Rev.2.), underlined the importance of the issue under consideration and believed that the Committee was in a position to make a concrete contribution regarding the assignment of country names and geographical names as gTLD. The Delegation was of the view that the proposal sought to establish a general frame of reference in support of the protection of country names and geographical names. The Delegation proposed a series of measures to support said objective, leaving space for countries to issue the regulations they considered necessary to regulate the registration of country names and geographical names as top-level domain names in the DNS and their registration as distinctive signs, such as trademarks. The Delegation hoped that the Committee would take the opportunity to support the proposal and the general terms in which it had been presented.

92. The Delegation of Indonesia, speaking in its national capacity, said that one of the main reasons why Indonesia was interested in co-sponsoring the joint proposal contained in document SCT/39/8 Rev.2. was because it strongly believed that the name of a sovereign nation or geographical names of national significance should not be monopolized by private interests or private owners. Country names and geographical names of national significance should be protected against their registration as top-level domain names in the DNS and as distinctive signs, such as trademarks, if the sign consisted exclusively of such names or if it would amount to a monopolization of the name concerned. Echoing the statement made by the Delegations of Switzerland and Iceland, and underlining the fact that the proposal concerned principles, the Delegation said that it did not see how a sovereign country could be against such principles.

93. The Delegation of Senegal welcomed the holding of the Information Session and reiterated its support for the protection of country names and geographical names, which should not be appropriated or monopolized by private parties. Quoting Article 3 of the Bangui Agreement, the Delegation pointed out the importance for its Delegation to have an effective protection for country names and geographical names. The Delegation, co-sponsor of the proposal, stated that the proposal provided an appropriate framework in view of its general and flexible scope, covering trademarks and the DNS and setting out relevant principles.

94. The Delegation of Monaco, thanking the Secretariat for the organization of the Information Session, underlined the importance of continuing the work of the Committee on the protection of country names. The Delegation, co-sponsor of the proposal contained in document SCT/39/8 Rev.2, fully endorsed the presentation made by the Delegation of Switzerland. As explained in the document, the proposal was fully complementary to the revised proposal by the Delegation of Jamaica (SCT/32/2) and to the joint proposal on the extension of the UDRP principles to geographical names and country names (SCT/31/8 Rev.8). The Delegation believed that the proposal, which aimed at laying down simple principles on the basis of internationally agreed lists that already existed, would constitute a good reply to the problems faced by many States, including Monaco, when trying to protect their country names and other names of national geographical significance. Recalling the concrete and clear case presented by the Delegation of Iceland, the Delegation was of the view that the adoption of those principles would clarify and facilitate the work of national offices, and would be of benefit to the public and to the States, who could better protect their names and their reputations. In

conclusion, the Delegation reiterated its support to the proposal by the Delegation of Jamaica and to the joint proposal on the extension of the UDRP principles to geographical names and country names, and also welcomed with interest the proposal made by the Delegation of Peru concerning the recognition and the protection of nation brands (document SCT/39/9), which it was willing to study in more depth at the next session of the Committee.

95. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked other delegations, the Chair and the Secretariat for helping to define the focus of the Information Session on Country Names on office practices. The Information Session in the form of a moderated roundtable was an interesting opportunity to learn about the various practices in place and the rationales underscoring those practices, information which would certainly be useful for the discussions at the SCT. The Delegation, noting the new proposal contained in document SCT/39/8 Rev.2, acknowledged and commended the spirit of seeking consensus that was reflected in it. At the same time, the European Union and its member states wished to make some initial comments in order to seek clarification as to how the proposal would be implemented and applied in practice. In particular, it would be interested to explore whether the proposal would necessitate any change in legislation either at the international or at the national or regional level, and whether it would be in conflict with some broadly accepted principles regarding descriptiveness. The Delegation noted with much interest that the proposal was also related to the joint proposal on the protection of geographical indications and country names in the DNS, as contained in document SCT/31/8 Rev.8. Against this background, the European Union and its member states welcomed further explanation of the new proposal's aim as regards ongoing processes in ICANN, and the potential benefits it would imply in that context. Furthermore, pointing out that the scope of the proposal extended not only to country names but also to geographical names of national significance, the Delegation said that it would be interested to hear more from proponents on that particular feature. As the European Union and its member states had stated in previous meetings, it was clear from the work already carried out by the Committee that there were legal means available to secure protection in national legislations, and the creation of a new "norm setting" instrument might not be the most appropriate way to address the issue. The SCT and its members should take into consideration other actions such as awareness raising, which should focus in particular on the availability of grounds for refusal or invalidation of trademarks containing country names and on the possibility of addressing the relevant issues in trademark examination manuals. The Delegation looked forward to further explanations or clarifications on those issues and remained open to participate in discussions concerning the new proposal. Finally, noting that another new proposal had been recently tabled by the Delegation of Peru in document SCT/39/9, the Delegation said that European Union and its member states would provide comments on it at the next SCT session.

96. The Delegation of Peru thanked the Delegation of Switzerland for its intervention and endorsed the views expressed by other countries as to the important principle contained in document SCT/39/8 Rev.2. In addition, the Delegation presented its proposal, contained in document SCT/39/9, indicating that it was a draft that could become an international agreement for the protection of nation brands. The Delegation said that in recent decades, in the context of increased globalization and fundamental change of international politics and the world economy, a number of governments had designed and implemented nation brand strategies associated with signs, logos and emblems. Those strategies sought to set the country brand in the mind and the perception of the public, associating it with a reputation and positive image of the country. A nation brand was therefore composed of a sign adopted by a State in the area of political strategies designed to promote the entity and image of the country and its strategic sectors (tourism, exports, and investments). Underlining the fact that a nation brand was not limited to a number of products or services, but identified and represented a country as a whole, the Delegation pointed out that a nation brand had a profound impact both internationally and nationally. Internationally, a nation brand presented the country to a foreign public by highlighting certain elements of attraction and raising awareness about products and services,

all of which could have a positive economic, commercial, touristic and cultural impact. In the national field, a nation brand allowed the implementation of policies to defend and promote the country's own values, as well as their recognition by the international community. Underlining the lack of an international regime for the recognition and protection of nation brands, the Delegation recalled the procedure for the notification and communication of State emblems and official signs, established by Article 6*ter* of the Paris Convention. The Delegation said that some States, among which Peru, used such procedure to protect their State emblems or official signs, whereas others treated their nation brands as a commercial brand, which they registered as such. The Delegation expressed the view that treating a nation brand as a trademark would lead to devaluing it. Therefore, the Delegation submitted a proposal for the adoption of a treaty that would establish a regime for nation brands, in which a special procedure would be established, allowing their protection in a simple, effective, rational and economic way, in order to avoid the registration and unauthorized use of identical or similar signs by third parties. Stating that the proposed procedure would complement Article 6*ter* of the Paris Convention, the Delegation requested the Chair to include the proposal on the agenda of the SCT's next session and to give the Committee enough time to discuss the document at length.

97. The Secretariat summarized the Information Session, indicating that much attention had been devoted to the various approaches for the determination of whether a trademark application concerned a country name. The general principles of distinctiveness and descriptiveness were used in all the offices, but in different ways. Moreover, additional measures could be taken by offices, such as disclaimers and limitations. A very important issue concerned the measures that offices took to ensure that third parties might still make use of the term. The Secretariat further highlighted the usefulness of having had the input of representatives of the private sector at the Information Session.

98. The Delegation of India expressed its support for the revised proposal by the Delegation of Jamaica, in particular its Article 2. The Delegation said that, although there was no specific provision in its Trademarks Act which prohibited the registration of trademarks containing the name of a country, the Indian Office refused to register such trademarks on the basis of geographical names. The Delegation added that an amendment to the 1999 Trademarks Act of India had been proposed, in order to accommodate the prohibition of registration based on Article 6*ter* of the Paris Convention. The Delegation looked forward to having more discussion on the subject.

99. The Delegation of Lithuania, speaking on behalf of the CEBS Group, thanked the Secretariat for organizing an interesting Information Session, which had increased the understanding of the question. Expressing its appreciation for the new proposals contained in documents SCT/39/8 Rev.2 and SCT/39/9, the Group was of the view that many questions were still open and needed further discussion, in particular as regards the substantive, procedural and administrative features of the proposals. As regards document SCT/39/8 Rev.2, the Group noted with interest that the proposal was related to the joint proposal on the protection of geographical indications and country names in the DNS, as contained in document SCT/31/8 Rev.8, which was co-sponsored by some CEBS members. However, the Delegation observed that the new document required further clarification, in particular about the nature of the suggested instrument and its relationship with the existing legal framework. As regards document SCT/39/9 on the recognition and protection of nation brands, the Group requested more information from the proponent on the draft nation brand regime, in particular as regards the expected roles and status of the new elements of protection in relation to existing international, national or regional legal systems. In conclusion, the Group looked forward to hearing additional clarification from the proponents.

100. The Delegation of Latvia said that, during the past years, it had observed the rise of country nation branding and the use of the intellectual property system by governments to protect their nation brands. The Delegation added that every country and its businesses should

have the possibility to use the country name in their branding strategies, as it was part of their identity. In this regard, the Delegation echoed the concerns expressed by the Delegation of Iceland regarding the use of their country name. For the Delegation of Latvia, the situation where a private company had monopolized a country name and did not allow the country's government and its companies to register any trademark containing the country name was a country's worst nightmare and illustrated the need for further reflection on the protection of country names.

101. The Delegation of Lithuania, speaking in its national capacity, expressed the view that the SCT was a forum for discussing all issues related to the registration of country names as trademarks or domain names. Thanking the Secretariat for organizing the Information Session, the Delegation said that it had learned about the different practices and perspectives taken by various jurisdictions. Although in its opinion the existing legislations ensured the protection of country names against their abusive registration as trademarks, the "Iceland versus Iceland" case raised concerns that monopolization of a country name might happen. Expressing its sympathy to Iceland on the problem, and after listening to the arguments of the co-sponsors, the Delegation believed that the principle of non-monopolization of a country name deserved thorough discussions in the Committee. The Delegation looked forward to further consideration of the question, including on the basis of document SCT/39/8 Rev.2.

102. The Delegation of Iran (Islamic Republic of), congratulating the Secretariat for the successful organization of the Information Session, which had featured interesting and informative discussions, encouraged the Secretariat to submit, at the next session of the SCT, a document summarizing those discussions. On the issue of the protection of country names, the Delegation underlined the fact that the studies undertaken by the Secretariat, which compiled national laws and practices, evidenced the necessity for a stronger protection of country names against their registration and use as trademarks. Referring to the three different but complementary proposals on the question, the Delegation was of the view that the number of proposals was an indication that there was an emerging consensus among Member States on the necessity to protect country names. The Delegation believed that the Committee had to undertake a holistic approach and adopt a comprehensive work plan that would contain the main elements of the three proposals. The Delegation also believed that the recent proposal concerning country names and geographical names of national significance provided an important principle, which deserved due consideration by the Committee. The Delegation urged all Member States to consider the proposal positively in order to operationalize and improve the protection of country names. Concerning the proposal made by the Delegation of Peru, the Delegation said that it needed more time to consider and analyze it, and asked the Chair to keep it on the agenda of the next session of the SCT.

103. The Delegation of Morocco, expressing its gratitude to the Secretariat for organizing the Information Session, underlined the quality of the panelists and the range of questions examined, which had given an overview of the different practices. The Delegation said that the Information Session had raised a number of issues, for example, the consumer perception, the tools available to examiners and the burden of proof. The Delegation considered that the exercise had contributed to an improved understanding of the different national systems for protecting country names, and had shown the evident need to continue working on the topic, while building on what had already been achieved.

104. The Delegation of Chile, associating itself with the delegations who had congratulated the Secretariat for organizing the Information Session, highlighted the similarities and differences as to how offices analyzed and coped with the question under consideration. With respect to the proposal contained in document SCT/39/8 Rev.2, the Delegation expressed its support to the principle underlying the proposal, but requested the proponents to shed some light on the criterion used to determine the 18-month time limit for sending applications. The Delegation further asked clarification about what would happen where a member would like to notify a

geographical name of national significance after the expiry of the time limit and where countries would designate new names of national significance in the future. The Delegation also shared the concern concerning the situation in ICANN, which should be reflected in the proposal in a simpler and more direct way, such as in the form of a recommendation that would highlight the importance of the Governmental Advisory Committee (GAC) in ICANN's decision-making process. The Delegation reiterated its willingness to work constructively on any proposal which would send a clear signal to ICANN about the importance of protecting country names and other geographical names of national significance, which would be agreed among WIPO members. Thanking the Delegation of Peru for submitting the proposal contained in document SCT/39/9, the Delegation expressed its agreement with the assertion made in the document that a nation brand was an intangible asset of great value to countries, which helped to associate a country with certain qualities in the mind of consumers. The Delegation therefore agreed that a nation brand could be built up from a combination of elements, as it was an identifier that described and identified the own and distinctive characteristics of a country on the basis of its cultural and geographical capital. Regarding Article 6^{ter} of the Paris Convention, the Delegation said that many countries had notified their nation brand, while others had also registered it as a certification mark, and even as a collective marks, not only in their territory, but also in other relevant countries. Observing that the development of a nation brand as an identifier and promotor of a territory was a recent phenomenon, the Delegation considered that, before adopting any common rules among countries to record special levels of protection, it was necessary to continue the discussions and exchange experiences, so as to reach a better understanding of the issue. The Delegation stated that special attention should be paid to existing tools under trademark law, including Article 6^{ter} of the Paris Convention, certification marks and the relevant provisions of the TRIPS Agreement. While underlining the good initiative of the proposed text, the Delegation nonetheless noted that the text also looked at nation brands under the traditional trademark regime. The Delegation expressed the view that the concept of nation brands went much further than the strict trademark law and could therefore not be covered by the traditional trademark system.

105. The Delegation of Malaysia, recalling that the question of country names had been on the SCT agenda for a long time, pointed out that the presence of many proposals reflected the interest of Member States on the issue. In addition, the Information Session had validated that the issue was far from being theoretical. Therefore, the joint proposal contained in document SCT/39/8 Rev.2 did not contradict, but rather complemented the earlier proposals, namely the revised Jamaican proposal, and the proposals made in the past by a group of European countries. In the Delegation's view, the new joint proposal was fundamentally based on the principle of ensuring that country names and geographical names of national significance were protected, both in trademarks and DNS. Lending its support to the points raised by the Delegation of Chile, the Delegation pointed out that the composition of the co-sponsors reflected a cross-regional interest on the matter, which further emphasized the importance for sovereign countries in protecting their country names and geographical names of national significance. The Delegation, underlining the fact that the joint proposal would not be binding or entail legislative changes, said that the co-sponsors had taken a consensus-based approach, counting on the support of all delegations. Concerning the proposal made by the Delegation of Peru on the recognition and protection of nation brands, the Delegation indicated that it was under discussion within its intellectual property office.

106. The Delegation of Ecuador, speaking on behalf of GRULAC, thanked the Secretariat for organizing the Information Session and recognized the high level of the presentations, which had provided useful input to the discussions on the protection of country names. The Delegation also thanked the delegations who had made the joint proposal contained in document SCT/39/8 Rev.2, as well as the Delegation of Peru for the presentation of its proposal contained in document SCT/39/9. The Group reiterated its position that country names were an opportunity and a valuable tool for countries to benefit and generate value for their names through the use of the intellectual property system. The Group expressed concerns as to the

lack of consistency in the protection of country names at the international level. GRULAC reiterated its commitment to continue the discussions on the basis of the proposal made by the Delegation of Jamaica and expressed its willingness to examine any new proposals under the item.

107. The Delegation of the Russian Federation, thanking the Secretariat for organizing the Information Session, highlighted the interesting and informative discussions, in which many approaches to the protection of country names had been examined. The Delegation expressed its interest in document SCT/39/8 Rev.2 and invited the Committee to continue working on the proposal, as it supported the idea of protecting country names and geographical names of national significance. However, the Delegation raised questions about the scope of the protection of country names and geographical names of national significance, as proposed in the document and, as well as on the role to be played by national legislation in trademark registrations. As regards the proposal made by the Delegation of Peru, contained in document SCT/39/9, the Delegation said that it would examine it and make comments at the next session.

108. The Delegation of Italy, underlining the importance of country names and geographical indications in the trademark system and in the DNS, said that it was important that the registration of country names and geographical indications was within the framework of national legislation, as suggested in some proposals.

109. The Delegation of Nigeria expressed its confidence in the continuation of the Committee's work. The Delegation welcomed the Information Session on Country Names, as the protection of country names and geographical names was of significance to its country. Finally, the Delegation aligned itself with the joint proposal contained in document SCT/39/8 Rev.2.

110. The Delegation of Ethiopia thanked the Secretariat for the informative and useful Information Session on Country Names. Stating that consumer protection was very important, the Delegation reported that Ethiopia protected geographical indications as collective marks and had a special provision for the protection of country names, as well as another one concerning the invalidation of registered trademarks.

111. The Delegation of Switzerland, in reply to the questions raised by several delegations, said that the new proposal was aimed at being a reference instrument that would be available to national trademark offices in the event it was adopted by the Committee. The Delegation recalled that according to the proposal, the conditions for the registration of country names and geographical names of national significance importance would always be determined in each State in accordance with national legislation. On the question of the descriptive character of a trademark, the Delegation pointed out that the protection of country names and geographical names of national significance, as proposed in document SCT/39/8 Rev.2, concerned first and foremost the need for free availability. In its view, country names and geographical names of national significance should remain freely available to all, and everyone should be able to make free use of them to indicate the origin of their products. Therefore, those terms should not be monopolized by one individual, the basis of the proposal being liberal. The Delegation was of the opinion that said principle applied independently of the descriptive nature of the sign. It was possible for a mark to be formed exclusively of a country name considered as unknown to the public or examiners, according to certain national practices, in which case the sign would not be descriptive because the country name was unknown. However, the protection of country names should not depend solely on the knowledge of the public, which would lead to an unequal treatment of country names in the trademark system. The need for free availability in commerce should also be taken into account. Secondly, as regards the question of the difference between the new proposal and the joint proposal contained in document SCT/31/8 Rev.8, the Delegation explained that both proposals had in common that they addressed the protection of geographical terms in the DNS. However, the joint proposal contained in

document SCT/31/8 Rev.8 addressed the need to extend the WIPO UDRP to geographical indications and country names, a procedure that applied today only to trademarks, while the proposal in document SCT/39/8 Rev.2 aimed at protecting country names and geographical names of national significance prior to their attribution as a domain name at the first level (as a gTLD). Contrary to the first joint proposal, the new proposal did not address issues related to dispute resolution, nor second level domain names. Finally, the Delegation explained that the reasoning underlying the protection of geographical names of national significance was the same as for country names. In the Delegation's view, those terms should remain freely available to the public and not be monopolized by a single private person. The Delegation drew attention to the fact that the protection system introduced by the new proposal in document SCT/39/8 Rev.2 was based on existing lists, namely the United Nations terminology bulletin for the names of capitals, the ISO list 3166-2 for the names of regions, as well as the list of World Heritage sites for the region names being part of the world heritage. Stressing the importance of protecting also those names, the Delegation explained that the proposal provided for the possibility for Member States to notify a list of geographical names of national significance to the WIPO Secretariat within 18 months, taking into account that the aforementioned lists were not exhaustive. Finally, the Delegation acknowledged that some specific elements of the proposal in document SCT/39/8 Rev.2 should be further discussed with all interested delegations.

112. The Chair noted the SCT's satisfaction with the Information Session on Country Names.

113. The Chair requested the Secretariat to prepare a document summarizing the various examination practices regarding trademarks consisting of, or containing, country names, as presented by the panelists at the above Information Session.

114. The Chair noted that regarding document SCT/39/8 Rev.2, a number of delegations expressed their initial views, that document SCT/39/9 was presented, and that further discussions continued on document SCT/32/2.

115. The Chair concluded that the SCT will hold further in-depth discussions under this agenda item at its next session.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

116. Discussions were based on documents SCT/39/6 Rev., SCT/39/6 Rev. Corr. and SCT/39/7.

117. The Delegation of Lithuania, speaking on behalf of the CEBS Group, expressed appreciation for the fruitful work at the past session of the Committee, which had resulted in the adoption of a workplan on geographical indications, and commended the Secretariat for the compilation of questions contained in document SCT/39/6 Rev. The high number and quality of the questions demonstrated the importance of the issue and the keen interest of Member States and intergovernmental organizations. However, the questions would need to be compiled into a shortened and streamlined questionnaire, eliminating overlaps and questions falling outside of the scope of the exercise, so as to enable the gathering of relevant information for meaningful discussions for the benefit of users and industry. The CEBS Group reiterated that the SCT work program should not aim to interpret or revise the provisions of the Lisbon Agreement or the Geneva Act. The Group thanked the Secretariat for preparing the survey on the existing state of play of geographical indications, country names and other geographical terms in the DNS, contained in document SCT/39/7, and expressed appreciation for the objective overview of the situation, which also touched upon the work of ICANN and its Supporting Organizations and Advisory Committees. The CEBS Group noted that ICANN's Applicant Guidebook did not address geographical indications, contrary to country names and other geographical terms. As

discussions within ICANN were taking place on possible changes to the Applicant Guidebook, the Group said that the way of tackling said significant omission should be considered and that it would particularly appreciate further elaboration on the role of ICANN and its Supporting Organizations and Advisory Committees, all of which played an important part in developing policies for generic top-level domains, country-code top-level domains and IP addresses.

118. The Delegation of Iran (Islamic Republic of) thanked the Secretariat for the preparation of the survey on the existing state of play of geographical indications, country names and other geographical terms in the DNS and said that it contained very useful information, which Member States could benefit from in the future. The Delegation commended the Member States and observers which had submitted questions on geographical indications, and thanked the Secretariat for compiling them in document SCT/39/6, which would constitute the basis of a questionnaire to be distributed to Member States, in line with the Summary by the Chair of the previous session. The Delegation held the view that the questionnaire should streamline the discussion on geographical indications without duplicating the work already undertaken by the Committee. Stating that the questionnaire should not challenge or restrict the current international system for the protection of geographical indications, the Delegation stood ready to hold constructive discussions.

119. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for organizing the interesting and fruitful meeting during the previous session, which had been an example of constructive spirit allowing concrete results. The Delegation expressed appreciation to the Secretariat for compiling the list of questions contained in document SCT/39/6 Rev. and said that the number and quality of such questions manifested the high level of interest of SCT members and intergovernmental intellectual property organizations. The Delegation approved the distribution of the contributions without any comment or editing, and held the view that that was an important step towards progress of critical discussions on geographical indications in the SCT. The European Union and its member states, considering that in its current form the questionnaire was not manageable, called for the reduction of the proposed list in order to reach a convenient length. The Delegation indicated that it would prefer a targeted questionnaire aimed at collecting useful information on specific topics of concrete interest to users and industry, which would allow meaningful discussions for the benefit of stakeholders. Restating that the work program, in compliance with the SCT mandate, should not aim to interpret or revise the provisions of the Lisbon Agreement or the Geneva Act, the Delegation pointed out that the list of questions showed that some issues could be removed, as they seemed to fall outside of the scope of the exercise, were wide and unclear, covered similar topics, or appeared to duplicate the work already completed by previous sessions of the SCT. In addition, the Delegation wondered whether an inventory of reasonably well-known existing systems (available in documents SCT/8/4 and SCT/9/4, dating from 2002) really added value to the current work. The interest shown for the exercise and the substantial nature of the proposed questions were promising, and the Delegation encouraged members and the Secretariat to elaborate a manageable questionnaire on the basis of that raw material, which would further the understanding of the state of geographical indications in the global arena. The Delegation said that the European Union and its member states would welcome a revised version of the questionnaire during the present session and that SCT members should have the opportunity to endorse the new version before its distribution to the Member States. With regard to the survey prepared by the Secretariat on the existing state of play of geographical indications, country names and other geographical terms in the DNS as contained in document SCT/39/7, the Delegation expressed appreciation for the effort in providing an objective overview of the situation in a complex and continuously evolving area. It believed that, while the document summarized a lot of information in a concise form, it would nevertheless benefit from additional refinement and clarifications. The Delegation recalled that the DNS was an area where different stakeholders, including from the technical Internet community, played an important role. The role of ICANN and of its Supporting Organizations and Advisory Committees, all of which

participated in developing policies for generic top-level domains, country-code top-level domains and intellectual property addresses, could be better reflected in the document. The Delegation held the view that the fact that, unlike country names and other geographic terms, geographical indications are not as such addressed in ICANN's Applicant Guidebook, which contains the set of rules governing the delegation of new gTLDs, deserved more attention. As discussions in ICANN were intensifying on possible changes in the Applicant Guidebook, the SCT should consider ways to address such shortcoming.

120. The Delegation of the Republic of Korea thanked the Secretariat for document SCT/39/6 and expressed appreciation to the Member States that contributed to the list of questions. The length of the list revealed the complexity of the geographical indication protection systems in each Member State, and led the Delegation to predict concrete and detailed answers from each office. However, some questions needed further clarification or simplification, and the Delegation requested footnotes explaining some of them. In order to enable clear answers, non-ambiguous questions were a prerequisite, and therefore the list of questions should be clear and concise.

121. The Delegation of Switzerland thanked the Secretariat for the survey describing the existing rules with regard to geographical indications, country names and other geographical terms in the DNS, and considered that document SCT/39/7 was detailed and precise. The Delegation held the view that it permitted identifying the lacunae and insufficiencies of the existing system, in respect of which it pointed out two main concerns. Firstly, the report showed that the 2012 Applicant Guidebook was incomplete concerning gTLDs registration requirements. While it provided for the protection of names of capitals, cities and regional subdivisions, as well as for the United Nations Educational, Scientific and Cultural Organization (UNESCO) list of regions, geographical indications and other geographical names, such as Amazonia, were not covered by the Guidebook. The Delegation considered that the proposal contained in document SCT/39/8 was designed to solve that issue. Secondly, concerning disputes relating to second-level attributions, the UDRP principles only applied to trademarks and not to geographical indications, country names or other geographical terms. In addition, the document indicated that in the few cases where a geographical name registered as a mark had been involved in a dispute where UDRP principles applied, the principle of co-existence was recognized for third parties and the beneficiary of the geographical name could not reclaim the related domain name. The Delegation stated that the proposal contained in document SCT/31/8 Rev.8 sought precisely to remedy that problem. Although the survey referred to current rules, it also mentioned the future new gTLD allocation rounds and the ongoing discussions within ICANN working groups concerning the delegation rules for geographical terms and country names. The Delegation regretted that the survey did not contain explanations on the current debate regarding new allocations, in particular concerning the protection of geographical names in that context. In light of document SCT/39/8, which considered the protection of country names at the top-level in the DNS, a signal from WIPO on such protection would be of particular importance, since ICANN was not bound by any views or recommendations made by countries within the GAC. An illustration of such freedom to establish its own rules on geographical names was provided by the survey under item 59, which indicated that in December 2016, ICANN authorized two-letter country codes. The Delegation recalled that the current system provided for preemptive rights to countries on their own names, and hoped that this would also apply to country names, a topic which was currently blocked. Considering that ICANN's model was based on profit and obliged countries to purchase their own name, the Delegation stated that it was opposed to such a system and called for protection at the international level. The Delegation acknowledged the compilation work and analysis of the national rules of 85 countries and the European Union, concerning ccTLDs. Noting that half of those legislations provided for the protection of geographical terms in the DNS, the Delegation invited countries concerned by the value of their own name to commit to protect country names. In conclusion, the Delegation pointed out that the information contained in the survey only touched upon one aspect of the protection of geographical terms in the electronic

world, namely their registration as domain names, and that the use of geographical terms on the Internet should also be considered. The questionnaire contained in document SCT/39/6 dealt with that issue, and the Delegation thanked the members that had proposed questions and the Secretariat for its compilation work, which raised a number of interesting topics on the protection of geographical indications. The Delegation said that it was conscious that geographical indications were a category of intellectual property which had a weak level of harmonization at the international level, due to divergent views concerning the concept of a geographical indication. That was reflected by the number and complexity of the questions. In comparison with the 214 proposed questions, the Questionnaire IPC13 and IPC13 Add.1 of the TRIPS Council, for examination, under Article 24(2), of the application of provisions of the geographical indications Section in the TRIPS Agreement, contained 57 questions, to which Switzerland had submitted replies. The Delegation considered that some of the questions included in the second part of the questionnaire, in particular those concerning defense mechanisms for ccTLDs, were partly responded to in document SCT/39/7. However, other questions concerning the views and degree of satisfaction of countries, the means of defense against illicit use on the Internet and the judicial means to fight misuse in the DNS, were not dealt with in document SCT/39/7. Therefore, further investigation regarding those aspects would be required in order to complete document SCT/39/7. The Delegation said that similar questions could be merged, while others should be formulated more clearly, in order to provide for a practicable and clear framework which would allow for an efficient exchange of information. The Delegation said that it remained committed to a constructive and dynamic approach to achieve that objective.

122. The Delegation of Chile noted with satisfaction the inclusion of the questions proposed by its country in the compilation document on geographical indications, and said that the large number of questions reflected the value and importance of geographical indications for WIPO Member States. The Delegation held the view that the questions would contribute to a better understanding of national geographical indication systems and how they connected with other issues, such as their protection on the Internet and in the DNS, as well as their link with geographical terms and country names. Considering that the exercise would be useful for the industrial property offices and would enable the Committee to move forward within the mandate of the General Assembly on geographical indications, the Delegation was confident that progress would be made on the workplan and that at the fortieth session the SCT would have a compilation document of all the replies to the questionnaire. Thanking the Secretariat for the survey contained in document SCT/39/7, the Delegation expressed the view that that was the right way to learn about the realities and/or difficulties resulting from the protection of geographical terms in the DNS. Given its inclusive nature, WIPO was the right forum to discuss that issue and raise awareness on different intellectual property areas. Considering that the survey should be the point of departure for subsequent work to identify common problems and best practices, the Delegation reiterated its willingness to cooperate and provide constructive proposals during the session.

123. The Delegation of the United States of America noted with satisfaction the number of responses to the questionnaire on geographical indications, which showed the interest of the delegations for a discussion about national examination practices. The Delegation supported the declarations made by the Delegation of the European Union and other delegations concerning the redundancy of some questions and the need to work on a more manageable questionnaire. Restating the view that the SCT should avoid negotiating the contents of the questionnaire, the Delegation suggested asking the Secretariat to abbreviate the compilation of questions by deleting purely redundant questions. The Delegation also suggested a staged approach, namely, that half of the questionnaire be issued and answered before the next meeting, in order to discuss examination practices during SCT/40, and that the second half of

the questionnaire be issued subsequently. The Delegation proposed, when dividing the questionnaire, to keep sections A and C of Part I together and to merge Section B of Part I with Part II.

124. The Delegation of Italy, considering that geographical indications were an important topic for all Member States, expressed its support for the questionnaire and was confident that the Secretariat would summarize the questions to the best satisfaction of the Committee. The Delegation supported the agenda item on geographical indications, country names and geographical indications in the DNS, which was of particular importance to Italy.

125. The Delegation of the Russian Federation said that all the questions deserved attention and required answers. Pointing out the importance of geographical indications for its country, the Delegation supported the proposal made by the Delegation of the United States of America to clean up the questionnaire.

126. The Delegations of Australia, Chile and the Republic of Korea supported the proposal made by the Delegation of the United States of America.

127. The Delegation of Iran (Islamic Republic of) considered that the approach proposed by the Delegation of the United States of America to split the questionnaire in two parts for discussion during the two following sessions of the Committee did not comply with the workplan agreed with, which provided that the questionnaire would be circulated after the present session and discussed during SCT/40. The Delegation thus believed that any proposal diverging from the workplan would need to be discussed and agreed again. In addition, it noted that no criteria had been established on how to divide the list of questions and decide which questions should be given priority and be included in the first questionnaire.

128. The Delegation of Hungary said that, although it supported the approach suggested by the Delegation of the United States of America, eliminating obvious overlaps in the questions was probably not enough. While some questions needed to be merged, others were not redundant *per se*. The Delegation considered that the questionnaire had to be restructured in order to provide for a manageable set of questions, in which case the staged approach would not be necessary.

129. The Delegation of the European Union, speaking on behalf of the European Union and its member states, welcomed the proposal made by the Delegation of the United States of America concerning the removal of redundancies and said that it would share its position later, concerning the manner in which the questions should be grouped in two parts.

130. The Delegation of Indonesia, stating that it was prepared to consider the proposal put forward by the Delegation of the United States of America, called for a simplified questionnaire, at least with no redundancies. The Delegation said that an informal meeting would only be necessary if the revised questionnaire was submitted to the Committee beforehand.

131. The Delegation of the Republic of Moldova said that the Committee should first consider a shorter list of questions provided by the Secretariat and then decide whether the questionnaire should be divided in two parts.

132. The Delegation of Georgia expressed its readiness to discuss the revision of the questionnaire, and aligned itself with the position of the Delegation of Hungary.

133. The Chair thanked the delegations for their proposals and asked the Secretariat to work on a reduced number of questions, to be distributed on the next day for informal discussions, before coming back to the plenary session.

[Suspension]

134. Resuming the session, the Chair informed the Committee of the outcome of the informal consultations and commended the excellent work carried out by the Secretariat, which had enabled a reduction from 214 to 109 questions.

135. The SCT considered with satisfaction the results of the Secretariat's work on documents SCT/39/6 Rev. and SCT/39/6 Rev. Corr., which permitted it to finalize the Questionnaires.

136. Consistent with its Workplan on this agenda item, the SCT decided to proceed as follows:

- The Secretariat will issue to Members and Intergovernmental Intellectual Property Organizations with observer status, by June 11, 2018, a first Questionnaire on the national and regional systems that can provide a certain protection to geographical indications and a second Questionnaire on the use/misuse of geographical indications, country names and geographical terms on the Internet and in the DNS. Both Questionnaires, in the agreed format, will be available to Members and the aforementioned Organizations in paper format and online.
- Members and the aforementioned Organizations will provide responses to both Questionnaires to the Secretariat by September 10, 2018. For reasons of efficiency, use of the online version of the Questionnaires for providing responses is encouraged.
- The Secretariat will issue, by October 15, 2018, a document compiling the responses to both Questionnaires, for consideration by the SCT at its next session.

OTHER MATTERS

137. Following a proposal made by the Delegation of Moldova, with the view to having sufficient time for discussion for all the agenda items, the Chair announced that the SCT had decided that the next session would comprise five days, from November 12 to 16, 2018.

AGENDA ITEM 8: ADOPTION OF THE SUMMARY BY THE CHAIR

138. The SCT approved the Summary by the Chair as presented in document SCT/39/10.

AGENDA ITEM 9: CLOSING OF THE SESSION

139. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, thanked the Chair for his leadership and for guiding the meeting towards a successful conclusion. Congratulating the Secretariat and the members of the Committee for the fruitful Information Session on Country Names, the Delegation expressed appreciation to all the speakers in that session. Stating that the Group remained committed to the work of the Committee, the Delegation also expressed the Group's optimism that a mutually agreed outcome would be reached regarding the convening of a diplomatic conference for the adoption of a DLT at the next feasible opportunity. Welcoming the next step on the protection of country names, the Delegation expressed the hope that in-depth discussion at the next session would result in positive outcomes and that the Committee would move forward on that issue. Furthermore, the Delegation commended all Member States for arriving at a mutually acceptable outcome in

the implementation of the workplan on geographical indications, in particular as regards agreement on the questionnaire and keeping up to the timetable. Welcoming the additional working day for the next session of the SCT, the Delegation was optimistic that balanced, fruitful and in-depth discussions would bring positive outcomes. Considering that the SCT had made much progress, the Delegation expressed the hope that work could be sustained in future meetings, as well as in other WIPO Committees. Finally, speaking in its national capacity, the Delegation invited SCT members to celebrate the World Intellectual Property Day by attending the opening of an exhibition dedicated to women innovators from MICTA (Australia, Indonesia, Mexico, Republic of Korea and Turkey) and the movie screening organized by the Permanent Missions of Austria and the United States of America.

140. The Delegation of Lithuania, speaking on behalf of the CEBS Group, thanked the Chair for his professional guidance of the Committee, which had made it possible to overcome formidable challenges and achieve tangible results. Expressing its appreciation for the Secretariat's work in converting a vast number of questions into manageable questionnaires on issues related to geographical indications, the Delegation said that that had enabled the Committee to move forward with the timely implementation of the agreed workplan on geographical indications. The Delegation also welcomed the request to the Secretariat to prepare a summary of the Information Session on Country Names, pointing out that that session had given a good deal of insight to think over in preparation for the next session of the SCT, during which the Delegation looked forward to having meaningful deliberations on the issues at stake. Furthermore, the Delegation indicated that the CEBS Group appreciated the Committee's work on GUIs, as well as the presentation by the Delegation of France on European Union Convergence Program 6, which had enriched the discussion. Bearing in mind that the agenda of the next Committee was going to be rich and ambitious, the CEBS Group was in favor of holding a five-day session.

141. The Delegation of Morocco, speaking on behalf of the African Group, thanked the Chair and the Vice-Chairs for the professional attitude and the efficacy with which they had conducted the SCT's work. The Delegation also thanked the Secretariat for the preparation of the session, as well as all the delegations for their contributions and constructive interaction. Expressing its gratitude for the successful organization of the Information Session on Country Names, the African Group said that the preparation, by the Secretariat, of a document summarizing the different examination practices of trademarks consisting of, or containing, country names, would contribute to the enrichment and understanding of the topic. Concerning the DLT, the African Group reiterated its optimism as to the possibility of reaching a mutually agreed solution, which would take into account its concerns and those of other regional groups. The Group invited SCT members to make additional efforts to enable the Committee to make progress on the outstanding issues and to contribute to the negotiation process.

142. The Delegation of Switzerland, speaking on behalf of Group B, thanked the Chair for his able and wise guidance through the session, the interpreters and the Conference service for their professionalism and availability, and the Secretariat for its work during the week, in particular for the preparation of the Questionnaires on geographical indications. Bearing in mind the workload for the next session of the SCT, the Delegation believed that a five-day session would give sufficient time for in-depth discussion on proposals and documents related to the protection of country names, geographical indications and other topics. The Delegation concluded by expressing Group B's full support and constructive spirit to continue the fruitful discussions in the framework of the Committee.

143. The Delegation of the European Union, speaking on behalf of the European Union and its member states, congratulated the Chair for making SCT/39 such a success. The Delegation believed that achieving consensus on the questionnaire on geographical indications at that session, as scheduled in the adopted work program, was a significant achievement. Highlighting the Secretariat's role, the Delegation commended the excellent work which had allowed the proceedings to run so smoothly and the good progress on understanding the issues surrounding country names. Expressing its appreciation for the organization of the highly informative round table, the Delegation also thanked the proponents of recently-tabled proposals for providing further clarification. The Delegation indicated that it was pleased with the progress made on the topic of GIs, pointing out that the Committee had managed to find the right focus for further work on that issue. Finally, the Delegation saluted all delegations for maintaining a constructive spirit, and expressed the hope that the SCT would continue holding fruitful discussions on all key topics at SCT/40.

144. The Delegation of Ecuador, speaking on behalf of GRULAC, acknowledged the commitment and good attitude in which the Chair had conducted the Committee's work. The Delegation also expressed its appreciation to the Member States for their efforts, which had led to positive outcomes. Commending the Secretariat's role in preparing the Information Session on Country Names and thanking all speakers, the Delegation said that it was confident that a summary document of the Session would be a good basis to continue the discussion. As to geographical indications, the Delegation congratulated the Committee for the progress made and urged Member States to make the necessary efforts, so that the agreed questionnaires achieve their objective and give the Committee more information, enabling fruitful discussions. Expressing its flexibility as regards the extension of the next SCT session, the Delegation concluded that the Committee should manage the time efficiently by delving into the topics under discussion and reaching results.

145. The Delegation of China thanked the Chair for his leadership, which had enabled a successful meeting. Considering that constructive discussions had been conducted with regard to geographical indications and industrial designs, the Delegation commended the Secretariat for the preparation of the new documents and for its efforts in assuring the smooth running of the Committee's work. The Delegation concluded by wishing everybody a Happy World Intellectual Property Day.

146. The Delegation of Iran (Islamic Republic of), expressing its appreciation for the Secretariat's efforts in the course of the week, said that the Committee had made some progress on specific topics. With regard to the additional day for the next session of the SCT, the Delegation expressed the hope that that decision would lead, not only to a more fruitful, in-depth and constructive discussion, but also to results that would benefit all Member States on all agenda items.

147. The Representative of the HEP, welcoming the way in which the Chair had managed the discussion within the Committee, indicated that the Information Session on Country Names had been very enriching and had shed light on different practices with regard to the protection of country names.

148. The Secretariat said that it wished to echo the statements made by the Group coordinators in respect of the assessment of the outcome of the Committee's session, considering the progress made as a meaningful way to celebrate the World Intellectual Property Day. Noting that more than a third of the delegates in the session were women, the Secretariat highlighted the theme of the 2018 World Intellectual Property Day, *i.e.* "Powering change: Women in innovation and creativity".

149. The Chair thanked all delegations, the Secretariat, as well as the conference staff and the interpreters.

150. The Chair closed the session on April 26, 2018.

[Annex I follows]



SCT/39/10
ORIGINAL: ENGLISH
DATE: APRIL 26, 2018

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

**Thirty-Ninth Session
Geneva, April 23 to 26, 2018**

SUMMARY BY THE CHAIR

adopted by the Committee

AGENDA ITEM 1: OPENING OF THE SESSION

1. Ms. Wang Binying, Deputy Director General of the World Intellectual Property Organization (WIPO), opened the thirty-ninth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants on behalf of the Director General.
2. Mr. David Muls (WIPO) acted as Secretary to the SCT.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

3. Mr. Adil El Maliki (Morocco) was re-elected Chair. Mr. Alfredo Carlos Rendón Algara (Mexico) and Mr. Simion Levitchi (Republic of Moldova) were re-elected Vice-Chairs.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

4. The SCT adopted the draft Agenda (document SCT/39/1 Prov. 5).

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-EIGHTH SESSION

5. The SCT adopted the draft Report of the thirty-eighth session (document SCT/38/6 Prov.).

AGENDA ITEM 5: INDUSTRIAL DESIGNS

Design Law Treaty (DLT)

6. The Chair recalled that “the [2017] WIPO General Assembly decided that, at its next session in 2018, it will continue considering the convening of a diplomatic conference on the Design Law Treaty (DLT), to take place at the end of the first half of 2019.”

7. The Chair concluded that, while the DLT would remain on its agenda, the SCT should abide by the decision of the General Assembly. The Chair observed that the remaining gaps in positions regarding the convening of the diplomatic conference had been further narrowed at the [2017] WIPO General Assembly, and urged all Member States to make a concerted effort and display the necessary flexibility with a view to overcoming these final hurdles.

Graphical User Interface (GUI), Icon and Typeface/Type Font Designs

8. The SCT considered documents SCT/39/2 and SCT/39/3. The SCT noted with satisfaction the presentation by the Delegation of France of the “European Union Convergence Program 6: Graphical Representation of Designs.”

9. After an exchange of views, the SCT decided as follows:

- Further work is desirable on certain existing issues identified in documents SCT/39/2 and SCT/39/3, in particular on proposals 1, 3, 9 and 10 in document SCT/39/3, while issues related to novel technological designs could be undertaken in a subsequent phase.

- The Secretariat will invite Members, Intergovernmental Intellectual Property Organizations with observer status¹ and accredited Non-Governmental Organizations (NGOs) to submit further inputs, including detailed questions which they would like to see answered, concerning (1) the requirement for a link between GUIs, Icons, Typeface/Type Font Designs and the article or product and (2) the methods allowed by offices for the representation of animated designs.

- The above-mentioned invitation will be issued by the Secretariat no later than June 15, 2018, and the inputs and questions by Members, Intergovernmental Intellectual Property Organizations with observer status and accredited NGOs in response thereto are to be received by the Secretariat no later than August 20, 2018.

¹ *i.e.*, organizations which, under their constituting treaty, have responsibility for the protection of industrial property rights.

- The Secretariat will prepare a draft questionnaire on the basis of the received inputs and questions, for consideration of the SCT at its next session.
- At its next session, the SCT will also have a further exchange of views on related matters, such as other novel technological designs.

Update on the Digital Access Service (DAS) for Priority Documents

10. The SCT noted the progress in the implementation of the DAS for industrial designs by Members, as well as by the Secretariat.

11. While continuing to encourage a wider use of the DAS by Members for both industrial designs and trademarks, the Chair concluded that the SCT would take further stock of the progress made in this regard.

AGENDA ITEM 6: TRADEMARKS

Protection of Country Names Against Registration and Use as Trademarks

12. The Chair noted the SCT's satisfaction with the Information Session on Country Names.

13. The Chair requested the Secretariat to prepare a document summarizing the various examination practices regarding trademarks consisting of, or containing, country names, as presented by the panelists at the above Information Session.

14. Regarding document SCT/39/8 Rev.2, a number of delegations expressed their initial views. Document SCT/39/9 was presented. Further discussions continued on document SCT/32/2.

15. The Chair concluded that the SCT will hold further in-depth discussions under this agenda item at its next session.

International Non-Proprietary Names for Pharmaceutical Substances (INNs)

16. The SCT noted document SCT/39/4.

17. The Chair requested the Secretariat to provide a progress report on the integration of INN Data into the Global Brand Database at its next session.

Update on Trademark-Related Aspects of the Domain Name System (DNS)

18. The SCT considered document SCT/39/5 and requested the Secretariat to keep Member States informed of future developments in the DNS.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

19. The SCT considered documents SCT/39/6 Rev., SCT/39/6 Rev. Corr. and SCT/39/7.

20. The SCT considered with satisfaction the results of the Secretariat's work on documents SCT/39/6 Rev. and SCT/39/6 Rev. Corr., which permitted it to finalize the Questionnaires.

21. Consistent with its Workplan on this agenda item, the SCT decided to proceed as follows:

- The Secretariat will issue to Members and Intergovernmental Intellectual Property Organizations with observer status, by June 11, 2018, a first Questionnaire on the national and regional systems that can provide a certain protection to geographical indications and a second Questionnaire on the use/misuse of geographical indications, country names and geographical terms on the Internet and in the DNS. Both Questionnaires, in the agreed format, will be available to Members and the aforementioned Organizations in paper format and online.
- Members and the aforementioned Organizations will provide responses to both Questionnaires to the Secretariat by September 10, 2018. For reasons of efficiency, use of the online version of the Questionnaires for providing responses is encouraged.
- The Secretariat will issue, by October 15, 2018, a document compiling the responses to both Questionnaires, for consideration by the SCT at its next session.

OTHER MATTERS

22. With a view to having sufficient time for a fulsome discussion of all the industrial design, trademark and geographical indication topics on its agenda, the SCT decided that its next session will comprise five days (from November 12 to 16, 2018).

AGENDA ITEM 8: SUMMARY BY THE CHAIR

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

AGENDA ITEM 9: CLOSING OF THE SESSION

24. The Chair closed the session on April 26, 2018.

[Annex II follows]



SCT/39/INF/1
ORIGINAL : FRANCAIS/ANGLAIS
DATE : 26 AVRIL 2018 / APRIL 26, 2018

Comité permanent du droit des marques, des dessins et modèles industriels et des indications géographiques

**Trente-neuvième session
Genève, 23 – 26 avril 2018**

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

**Thirty-Ninth Session
Geneva, April 23 to 26, 2018**

**LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS**

*établie par le Secrétariat
prepared by the Secretariat*

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

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

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

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