

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

**Forty-First Session
Geneva, April 8 to 11, 2019**

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 forty-first session, in Geneva, from April 8 to 11, 2019.

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, Armenia, Australia, Austria, Azerbaijan, Barbados, Belarus, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Canada, Chile, China, Colombia, Congo, Côte d'Ivoire, Croatia, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Georgia, Ghana, Germany, Greece, Guatemala, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Iceland, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Latvia, Liberia, Libya, Lithuania, Madagascar, Malaysia, Malta, Mauritius, Mexico, Mongolia, Morocco, Myanmar, Nepal, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, The Republic of North Macedonia, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, Uruguay, United Arab Emirates, United Kingdom, United States of America, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Zimbabwe (106). The

¹ This Report was adopted at the forty-second session of the SCT.

European Union was represented in its capacity as a special member of the SCT. Micronesia (Federated States of) was represented in its capacity as observer.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Union (AU), Benelux Organisation for Intellectual Property (BOIP), Eurasian Economic Commission (EC), Eurasian Patent Organization (EAPO), South Centre (SC), World Trade Organization (WTO) (7).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: Centre for International Intellectual Property Studies (CEIPI), China Trademark Association (CTA), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), European Law Students' Association (ELSA International), Internet Corporation for Assigned Names and Numbers (ICANN), International Intellectual Property Commercialization Council (IIPCC), International Federation of Intellectual Property Attorneys (FICPI), International Trademark Association (INTA), International Wine Law Association (AIDV), Japan Patent Attorneys Association (JPAA), MARQUES - Association of European Trade Mark Owners, Organization for an International Geographical Indications Network (oriGIn), The French Association of Industrial and Artisanal Geographical Indications (AFIGIA) (14).

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

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

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the forty-first session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

8. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

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

9. Mr. Alfredo Carlos Rendón Algara (Mexico) was elected Chair. Mr. Simion Levitchi (Republic of Moldova) and Ms. Ingeborg Alme Råsberg (Norway) were elected Vice-Chairs.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The SCT adopted the draft Agenda (document SCT/41/1 Prov.3).

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE FORTIETH SESSION

11. The SCT adopted the draft Report of the fortieth session (document SCT/40/10 Prov.).

General Statements

12. The Delegation of Guatemala, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), thanked the Secretariat for the preparation of the forty-first session and the timely presentation of the working documents. Regarding industrial designs, the Group regretted that, during the 2018 WIPO General Assembly, it had not been possible to reach an agreement on the convening of a diplomatic conference on the Design Law Treaty (DLT). The Group reiterated that Member States needed to address this topic with pragmatism, political will and flexibility, in order to achieve an agreement which would be of benefit to all. Concerning trademarks, the Delegation, stating that the protection of country names was a fundamental issue for its Group, reiterated its commitment to continue the discussion regarding the protection of country names, in line with documents SCT/32/2 and SCT/39/8 Rev.3. GRULAC welcomed the proposal contained in document SCT/41/6 on the protection of country names and geographical names of national significance in the Domain Name System (DNS). In this regard, the Group expressed its willingness to review the document. Concerning geographical indications, the Group believed that the compilations of the responses to the questionnaires prepared by the Secretariat and contained in documents SCT/40/5 and SCT/40/6 were important inputs to guide the work of the Committee. In this regard, the Delegation said that the Group looked forward to the presentation by the Secretariat of the database containing the replies to the two questionnaires. The Group welcomed the proposal submitted by the Delegation of the United States of America, contained in document SCT/41/7, regarding a list of topics that might be of interest and could be addressed during the information sessions to be organized with respect to geographical indications.

13. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the Secretariat for the excellent preparation of the session. Recalling that one of the focuses of the SCT was to find a common landing zone among Member States on the text of a possible DLT, the Delegation pointed out that, like any other international instrument, 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 Group favored the provision of technical assistance in the proposed DLT through an article in the main body of the instrument, other members were flexible on the placement of such provision, and could accept it being part of the treaty, or as a resolution. The Group hoped to see a decision on the matter through consensus and to the satisfaction of all Member States. The Delegation also stated that most of the members of the Group supported the principle of disclosure of source and were of the view that countries should have the flexibility to include, as part of the design eligibility criteria, components that were deemed important to complete the formality for protection within their jurisdiction, while other members of the Group had different national positions. The Delegation said that it was optimistic that a mutually agreed outcome would be reached on the DLT. Thanking the Secretariat for preparing document SCT/41/2 Prov., the Delegation expressed the Group's appreciation to Member States for their inputs, and hoped that the compilation would help in the deliberations on the issue. Thanking the Secretariat also for the preparation of document SCT/41/3, the Group looked forward to discussing the draft questionnaire. On 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 or use of country names as trademarks. In this regard, the Group supported the proposal by the Delegation of Jamaica and looked forward to constructive discussions for the development and future adoption of a joint recommendation by the SCT, recalling that there had been ample examples on the use of country names as word marks, which demonstrated the fact that country names were not offered sufficient protection in practice. The Group also welcomed the revision of document SCT/39/8 Rev.2, which had been split into two proposals, namely document SCT/41/6 dedicated exclusively to the DNS, and document SCT/39/8 Rev.3

dedicated to trademarks, and looked forward to engaging constructively in the discussion on these proposals for positive decisions. On Trademark-related Aspects of the DNS, the Group believed that the update prepared by the Secretariat 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. Furthermore, the Group looked forward to the progress report on the integration of INN Data into the Global Brand Database, as agreed at the thirty-ninth session of the SCT. With regard to geographical indications, the Group took note of the proposals made by the Delegations of the United States of America, Switzerland and the European Union and its member states, respectively contained in documents SCT/41/7, SCT/41/8 and SCT/41/9, on the possible topics for discussions in the information sessions on Geographical Indications, and looked forward to the discussions. Finally, the Delegation said that the Group looked forward to holding constructive discussions and reaching a productive result in the deliberations during the forty-first session of the Committee.

14. The Delegation of El Salvador, thanking the Secretariat for the support that its country had received for the strengthening of its capacities within the framework of the biennial plan of Cooperation agreed between WIPO and El Salvador for the biennium 2018-2019, highlighted the importance of protecting industrial design, trademarks and geographical indications in the framework of its national intellectual property policy. In this regard, the Delegation said that El Salvador had given consideration to geographical Indications as a tool of protection for local products, such as coffee, Jocote varieties (*espondias purpurea*), and loroco (*fernaldia pandurata*), which represented an important expression of the identity of El Salvador. The Delegation also said that it attached great importance to nation brands, as El Salvador had a nation brand “El Salvador grande como su gente”, which aimed at positioning El Salvador as an attractive destination for investment, international business and tourism.

15. The Delegation of China thanked the Secretariat for the preparation of the session and, underlining the remarkable achievements of the SCT in formulating rules on trademarks, industrial designs and geographical indications, stated that it would continue to support the work of the Committee and would participate in all discussions of the agenda. On the DLT, the Delegation called all Member States to engage in open and inclusive discussions, demonstrating flexibility in order to achieve substantial progress at the next WIPO Assemblies. On technical assistance and disclosure, the Delegation hoped that proposals from developing countries could be taken into account in order to reach a consensus, and suggested that reservations be considered to make the treaty more flexible and acceptable to countries. Expressing its support for, and its active participation in, the well-structured questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, the Delegation believed that the questionnaire would lay a solid foundation for further work on these issues. The Delegation looked forward to actively participating in relevant discussions and listening to practical experiences and concerns shared by all Member States. In addition, the Delegation supported the extension of the Digital Access Service (DAS) for Priority Documents to cover industrial designs in order to provide a more convenient service for users. Indicating that the Information Session on Country Names held at the last session had been very useful, the Delegation said that the examination practices presented by the experts at that session had been extremely valuable. The Delegation wished that further discussion would take place during this session. Concerning geographical indications, the Delegation hoped to have further discussions based on the different national situations. The Delegation stated that such studies would help SCT members to deepen their understanding of various issues on geographical indications.

16. The Delegation of Croatia, speaking on behalf of the Group of Central European and Baltic States (CEBS), noted with satisfaction that some progress had already been achieved on key SCT issues. In this regard, the Delegation expressed the Group's appreciation for the finalization of the Questionnaire on GUI, Icon and Typeface/Type Font Designs, for the positive developments on a compromise solution on country names, as well as of the work on

geographical indications. However, the Group regretted that it had not been possible to reach an agreement on the convening of a diplomatic conference on the DLT and underlined the fact that the discussions on the DLT should be held during the General Assembly rather than at the Committee. Thanking the Secretariat for circulating the Questionnaire on GUI, Icon and Typeface/Type Font Designs, presented in document SCT/40/2 Rev., as well as for preparing a compilation of responses to the Questionnaire contained in document SCT/41/2/Prov., the Delegation said that it expected a constructive dialogue during the present session, based on the Member States' responses. The Group thanked the Delegation of Spain for the proposal contained in document SCT/40/8 to conduct a survey with the aim of clarifying the protection under Article 11 of the Paris Convention", as well as the Secretariat for drafting a questionnaire on that proposal that would be discussed during the session. On trademarks, the Group appreciated the valuable discussions held at the last SCT on various proposals, and reiterated its support for the Joint proposal contained in document SCT/39/8/Rev.2, as well as for a non-paper which would enable informal discussions during this session. The Group was of the view that the new proposals, contained in documents SCT/41/6 and SCT/39/8 Rev.3 were a valuable tool for constructive discussions, as they provided a clear separation of two policy objectives. The Group also acknowledged the work of the Secretariat with the World Health Organization (WHO) on the international non-proprietary names for pharmaceutical substances (INNs) as well as on the DNS. Concerning geographical indications, the Group thanked the Secretariat for the compilations of replies to both Questionnaires I and II, as they would be essential for debating the issue. Underlining the broadness of the topic and indicating that it attached great importance to it, the Group said that it supported the treatment of geographical indications on the Internet. The Delegation said that the Group looked forward to further discussions on the above-mentioned issues.

17. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for the excellent preparatory work and recalled with appreciation that all key topics had been moved forward in a constructive spirit. Welcoming the finalization of a questionnaire focusing on pertinent issues related to GUIs, the Delegation noted that the Committee had also made progress in seeking a compromise solution on country names, as the informal discussions had helped identify some outstanding issues about a more recent joint proposal on the topic. As to geographical indications and the continuation of the work on the topic, the Delegation referred to its proposal on the selection of topics for future discussions. Referring to the discussions held in relation to the DLT during the 2018 General Assembly, the Delegation stated that, despite its willingness to engage in discussions on the facilitator's text, it had to note with regret that, again, it had not been possible to achieve a positive decision to convene a diplomatic conference. The Delegation reiterated the view that discussions on the DLT should not be held in the Committee. In relation to GUIs, the Delegation thanked the Secretariat for preparing a compilation of responses to the questionnaire contained in document SCT/41/2 Prov. in a clear, coherent and appropriately detailed manner. While this was not the first such survey, the Delegation underlined the fact that it was the most up-to-date and contained a wealth of information, which would prove useful in further debates on GUI, Icon and Typeface/Type Font Designs in the Committee. As regards the proposal submitted by the Delegation of Spain at the previous session, the Delegation thanked the Secretariat for preparing a draft questionnaire for consideration at the present session, as contained in document SCT/41/3. The Delegation said that the draft questionnaire covered all relevant issues that could be addressed for improving the knowledge regarding national law aspects, such as whether the priority right had been explicitly mentioned in the national law, which type of exhibitions had been included in the scope of the article and the nature of the right granted. On the topic of country names, the Delegation thanked the Delegation of Switzerland and the other proponents for preparing a non-paper for the informal discussions that had taken place in the previous session of the SCT, as well as for elaborating two subsequent proposals, presented in documents SCT/41/6 and SCT/39/8 Rev.3. Welcoming the separation of the original Joint Proposal into two proposals with distinct policy objectives, the Delegation reiterated its appreciation for the spirit of consensus reflected in those proposals,

and indicated its readiness to participate in continued discussions to further explore their potential advantages, in particular in respect of the proposal in document SCT/41/6. Concerning geographical indications, the Delegation congratulated the Secretariat for having completed the compilation of the replies to the two Questionnaires. Considering that the process had been a valuable and constructive exercise in advancing the international debate on geographical indications, the Delegation considered that the exercise should be advanced by agreeing on a limited number of topics, to be addressed in information sessions in future SCT meetings. Considering that there were significant *lacunae* in the treatment of geographical indications as intellectual property rights on the Internet, as well as unjustified divergences with other forms of intellectual property rights, the Delegation expressed the view that the topics referred to in document SCT/41/9 should be discussed at the information sessions. The Delegation indicated that it looked forward to continuing the work and contributing constructively in the discussions on all three key areas of the SCT.

18. The Delegation of Uganda, speaking on behalf of the African Group, underscored the importance of the topics discussed within the SCT, which contributed to the international development of the law of trademarks, industrial designs and geographical indications. In this regard, the African Group reaffirmed its support for the ongoing discussions and work on the protection of country names and geographical names of national significance against undue registration or use as trademarks, in particular by persons who were not citizens of a given country. Thanking the delegations who had submitted the joint proposal contained in document SCT/41/6, the African Group lent its support to that proposal as a basis for future work on the matter. Regarding the DLT, the African Group reiterated its regret that during the 2018 General Assembly, the decision to convene a diplomatic conference to conclude a treaty to harmonize formalities for the registration of industrial designs had been postponed to the 2019 General Assembly. The Group was of the view that further efforts by all Member States and the integration and mutual understanding of each other's' concerns would contribute to reaching a mutually agreed solution. The Delegation, while maintaining its position, particularly with regard to the inclusion of an optional substantive provision on a disclosure requirement, as well as on technical assistance in the DLT, hoped that a consensus could be reached at the 2019 General Assembly for the convening of a diplomatic conference and remained ready to engage in discussions even before the 2019 General Assembly. Finally, concerning new technological designs and geographical indications, the Group stated that the Member States of the African Group would express their views in their national capacities.

19. The Delegation of Canada, speaking on behalf of Group B, thanked the Secretariat for the preparation of the session. Recalling that, despite the advancement of the treaty and the draft text, a consensus to convene a diplomatic conference for the adoption of the DLT had not been reached during the 2018 General Assembly, the Delegation said that the Group looked forward to devoting the time and focus of the SCT session to other issues on the Agenda, in particular on the GUI, Icon, Typeface/Type Font Designs. The Delegation, expressing the Group's gratitude to the Secretariat for the compilation of the returns to the questionnaire contained on document SCT/41/2 Prov., thanked the 31 Member States and the Benelux Organisation for Intellectual Property (BOIP) for their replies to the questionnaire. On industrial designs, the Group thanked the Secretariat for preparing document SCT/41/3, based on the proposal of the Delegation of Spain regarding the Temporary Protection Provided to Industrial Designs at Certain International Exhibitions Under Article 11 of the Paris Convention for the Protection of Industrial Property, and looked forward to further discussions on the issue. Concerning trademarks, Group B took note of the 2014 proposal made by the Delegation of Jamaica on country names, as well as of document SCT/39/8/Rev. 2, now separated into two proposals contained in documents SCT/39/8 Rev.3 and SCT/41/6. Group B also wished to thank the Secretariat for the update on INNs in document SCT/41/4 and noted the integration of INN Data into the Global Brand Database. On geographical indications, the Group appreciated the work of the Secretariat on the development of a database containing the replies to Questionnaire I on the National and Regional Systems that Can Provide a Certain Protection to Geographical

Indications and Questionnaire II on the Use/Misuse of Geographical Indications, Country Names and Geographical Terms on the Internet and in the DNS, which would provide an easier way to access and consider the replies to those questionnaires. The Group also looked forward to discussing the proposals made by the Delegations of the European Union and its member states, Switzerland and the United States of America. Finally, the Delegation stated that Group B remained strongly supportive of 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.

20. The Delegation of Iran (Islamic Republic of), thanking the Secretariat for the preparation of the meeting, aligned itself with the statement delivered by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. With regard to the DLT, regretting a lack of agreement among Member States on a disclosure requirement, the Delegation recalled that there was no other way than negotiations and dialogue to narrow down the differences. The Delegation therefore invited all Member States to engage in meaningful discussion with a view to resolving the issue and to paving the way for convening a diplomatic conference to adopt the DLT. With regard to GUI, Icon and Typeface/Type Font Designs, the Delegation, taking note of document SCT/41/2. Prov. compiling the returns to the questionnaire, expressed the view that that the current international framework provided adequate flexibility for new technological designs. The Delegation therefore believed that further discussion on this issue should be restricted to the sharing of best practices and preserve Member States' policy space to adapt their national legislation to their needs and priorities. Thanking the Secretariat for preparing the draft questionnaire contained in document SCT/41/3 on the Temporary Protection Provided to Industrial Designs at Certain International Exhibitions Under Article 11 of the Paris Convention, the Delegation said that it looked forward to the discussion on the topic. On the protection of country names, recalling that the topic had been under consideration by the Committee for a long time, the Delegation expressed the view that it was necessary to continue holistic and substantive discussions on a more consistent, adequate, and effective protection of country names, as a matter of priority. In this regard, the Delegation welcomed the initiative undertaken by the co-sponsors of document SCT/39/8 Rev.2 to split it into two separate proposals in order to facilitate the Committee's deliberations. On the issue of geographical indications, the Delegation was of the view that the work of the Committee should not create any expectation for norm-setting practice in the areas covered by the Lisbon Agreement and the Geneva Act of the Lisbon Agreement. The Delegation also commended the delegations who had provided their views on the possible topics for future information sessions on geographical indications. In conclusion, the Delegation assured the Committee of its constructive engagement in the course of the deliberations.

21. The Delegation of Tajikistan, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC), highly commended the outcome of the work of the SCT, especially on the exchange of experiences and practices in the use of the different systems for the protection of Intellectual Property. The Group expressed the hope that the discussion would continue on the protection of country names against their registration and use as trademarks.

22. The Delegation of Canada, speaking in its national capacity, took the opportunity to inform Member States of WIPO, intergovernmental organizations and non governmental organizations credited with observers status, that as of March 17, 2019, Canada had formally acceded to the Singapore Treaty on the Law of Trademarks, to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Trademarks and to the Nice Agreement Concerning the International Classification of Goods and Services for the purposes of the registration of marks. Those treaties would come into force in Canada in June 2019. The Delegation also stated that those treaties would provide Canadian trademark owners with access to more efficient means of protecting their trademarks in various jurisdictions around the world.

Additionally, aligning the Canadian' trademark regime with other jurisdictions would lower the cost of doing business in Canada, to the benefit of both Canadian and foreign businesses.

AGENDA ITEM 5: INDUSTRIAL DESIGNS

Industrial Design Law and Practice – Draft Articles and Draft Regulations

23. The Chair recalled that the WIPO General Assembly, on the occasion of its session in September 2018, had decided that, at its next session in 2019, it will continue considering the convening of a diplomatic conference on the DLT, to take place at the end of the first half of 2020.

24. The Chair concluded that the SCT took note of all statements made by delegations on that item. The SCT noted the decision of the General Assembly to continue considering this matter at its next session in 2019.

Compilation of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs

25. Discussions were based on document SCT/41/2 Prov.

26. The Chair drew the attention of the Committee to Annex I of document SCT/41/2 Prov., which compiled the returns to the questionnaire on GUI, Icon and Typeface/Type Font Designs submitted by 31 Member States and one Intergovernmental Intellectual Property Organization with observer status.

27. The Secretariat highlighted the provisional nature of the document, in view of allowing responding SCT members to check whether their answers had been accurately reflected and other SCT members to submit their replies. The Secretariat announced that amendments and additional replies would be included in the final version of the document.

28. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recalled that, at recent SCT sessions, most delegations, including the European Union and its member states, had been in favor of further work, in particular on the tie between the product and the design and its effect on the scope of protection, as well as on the representation of animated GUIs. While sharing the common understanding that currently existing divergences should be directly addressed and that further work on those issues could pave the way for a more harmonized approach, the Delegation welcomed the finalization of the questionnaire focusing on pertinent issues related to GUIs at the previous SCT session. Thanking the Secretariat for the preparation of document SCT/41/2 Prov., the Delegation held the view that the document set out responses in a clear, coherent and appropriately detailed manner. Although the document did not constitute the first survey on the topic, the Delegation considered that it was the most up-to-date and detailed one. In its opinion, the new survey explored, by means of specified and additional questions, issues such as the link of GUI and icon designs with the product indication, the use and effect of disclaimers, prior art searches and requirements for animated designs. As it believed that the wealth of information resulting from the responses would prove useful in further debates on GUI, Icon and Typeface/Type Font Designs within the Committee, the Delegation expressed its full support for the compilation, to be used as reference for further work. In addition, the Delegation expressed its readiness to provide further information on the common practice developed by the European Union Intellectual Property Office (EUIPO) and the European Union Member States within the European cooperation network. Reiterating the view that, although issues concerning novel technological designs were also interesting and relevant, there was a need to first solve existing

problems in the field of currently known forms of GUI and icon designs, the Delegation continued to lend its support to a phased approach. Nonetheless, the Delegation declared that it remained interested in hearing more about other novel technological designs from users associations.

29. The Delegation of Croatia, speaking on behalf of the CEBS Group, recalled that it had lent its full support to GUIs at earlier SCT sessions and thanked SCT members for their replies to the questionnaire and the Secretariat for the compilation of the returns. Considering that the results were relevant insofar as they clarified the link between the product and the design and the representation of animated GUIs, the Delegation expressed the hope that the work would enable greater harmonization. In the Delegation's viewpoint, information on the use and effect of disclaimers, prior art searches and other data contained in document SCT/41/2 Prov. was essential to deepen evidence-based discussions within the SCT. Finally, the Delegation reiterated its support for a phased approach, addressing first unresolved differences in the field of GUI, Icon and Typeface/Type Font Designs in order to reach a common understanding, and exploring, at a later stage, challenges linked with new age designs.

30. The Delegation of China, thanking the Secretariat for having included in the questionnaire the comments that it had made at the previous SCT session and for having prepared the compilation of returns, considered that the replies to the questionnaire would help the Committee and Member States to learn from each other, to better understand the situation and to find a way to resolve pending issues. Expressing the hope that the survey would serve as a basis for future work, the Delegation declared its willingness to engage in discussions on various aspects, such as the protection of animated GUIs and infringement criteria, while taking into consideration other parties' concerns.

31. The Delegation of the United States of America thanked the Secretariat for the preparation of document SCT/41/2 Prov., as well as the 31 Member States and the BOIP for their contributions to the questionnaire. Highlighting the interest of the responses, the Delegation stressed the timeliness of the topic in the light of the development of technologies nowadays. The Delegation felt that the responses to the questions in the questionnaire's second part, relating to methods allowed by offices to represent animated designs, spoke for themselves and provided valuable information. Turning to the questionnaire's first part, which focused on the link between GUI, Icon and Typeface/Type Font Designs and the article, the Delegation held the view that referring to an "association", rather than a "link", would be more appropriate because a link could imply the existence of a hard tie and because certain replies seemed to indicate that the issue essentially related to the association between the article or product and the design. Referring to Question 1, the Delegation considered that the responses seemed to confirm that Member States provided protection for the kind of designs under consideration. While the replies to Question 2 gave the impression that practices diverged, the Delegation observed that a closer look at those replies revealed that the practices were actually closer than they appeared. Referring to Question 4, the Delegation underscored the spread of reasons to provide for a link: in certain jurisdictions, the link was required to facilitate searches by applicants and offices while in other jurisdictions, it was required to limit the scope of design rights. In the Delegation's viewpoint, the objective of Question 9 was to determine whether offices requiring a link between the product and the design were examining novelty only with respect to the same product or, broadly, with respect to the design. Focusing on jurisdictions that did not require a link, the Delegation noted with interest that their responses seemed to suggest that the recognition of the nature of new technological designs justified the lack of such requirement. The Delegation further pointed out that, even in those jurisdictions, there was an optional or mandatory opportunity to identify the article. Therefore, the Delegation held the view that the practices – whether described as requiring a link or not - could be deemed to be much closer. For the Delegation, the question essentially lied in the determination of the extent of the required association. Finally, referring to

Question 34, the Delegation observed the emergence of a consensus concerning the applicable infringement criteria, which were the same as for other types of designs. The Delegation concluded by stating that it continued to look forward to further discussions on the agenda item.

32. The Delegation of Uganda, speaking in its national capacity, thanked the Secretariat for the preparation of document SCT/41/2 Prov. and SCT members for their replies, and expressed its concerns about the low participation. Noting that only two African countries and OAPI had responded to the first questionnaire on GUI, Icon, Typeface/Type Font Designs and that less than 16 per cent of WIPO membership had replied to the second questionnaire, the Delegation considered that the returns did not constitute a representative sample on which future work could be based. In the Delegation's viewpoint, before engaging in advanced discussions on the protection of new technological designs, the need for the protection of technological designs and a clear understanding of their impact on innovation and competition, in particular for small and medium enterprises and start-ups, had to be demonstrated. The Delegation also stressed the need to understand the reasons why GUIs were not protected by existing Intellectual Property regimes, including design laws and copyrights. Observing that, in many jurisdictions, GUIs were protected through design patents and other types of design rights and copyright, the Delegation believed that it was essential to hear other countries' experience with the implementation of GUI designs at the national level, account taken of the requirements relating to their scope of protection and their graphical representation. Finally, underlining the necessity to know about the criteria for determining the infringement of GUI designs and the calculation of damages in case of infringement, the Delegation highlighted the importance of sharing experiences on the enforcement of rights.

33. The Delegation of Norway, commending the Secretariat for the preparation of document SCT/41/2 Prov., as well as SCT members for their contributions to the questionnaire, welcomed the gathering of information regarding the protection of new technological designs, as it saw value in the collection of facts to prepare further discussions. The Delegation considered that keeping the questionnaire open would be beneficial, as it would allow delegations that had not submitted their replies to do so.

34. The Delegation of the Republic of Korea, thanking the Secretariat for the preparation of the compilation of the returns to the questionnaire, as well Member States for their contributions, held the view that the survey would help users to understand Member States' laws and systems in relation to GUIs, in particular because it highlighted similarities and differences among Member States. Observing the increasing importance of GUIs nowadays, the Delegation stressed the need for further discussions on the issue.

35. The Delegation of Japan, expressing its appreciation to the Secretariat for the preparation of the session and document SCT/41/2 Prov. and thanking SCT members for the submission of their replies, informed the Committee that, in its country, a bill, aiming at revising the Design Act and at expanding protectable subject matter to GUI designs, was under discussion. If the bill was adopted according to the cabinet draft, the revision of the Design Act would relax the current requirements for a mandatory link between a GUI and an article. Since the prospective revision could largely relate to the questions contained in the questionnaire, the Delegation expressed the wish to provide its replies, based on the revised Design Act, before the next SCT session. Observing that document SCT/41/2 Prov. could be a good basis for further discussions about design protection of GUIs, the Delegation expressed the hope that the questionnaire would remain open for further amendments or replies from SCT members, which would make the 'results more thorough and valuable as a reference document.

36. The Chair suggested keeping the questionnaire open until July 31, 2019, for further contributions by delegations and that SCT members present proposals for future work on the matter to the next session of the SCT.

37. The Delegation of Morocco, thanking the Secretariat for the preparation of document SCT/41/2 Prov., expressed its support for the proposal to keep the questionnaire open to collect additional answers.

38. The Delegation of India, congratulating the Secretariat for the preparation of document SCT/41/2/Prov., expressed the view that the topic under consideration was a policy issue pertaining to individual countries. In its opinion, the specific nature of GUI, Icon, Typeface/Type Font Designs and the question whether they should be protected by industrial designs or not was still debatable. As many countries had not submitted their replies yet, the Delegation was in favor of the extension of the deadline to keep questionnaire open. As regards the link between a GUI, Icon, Typeface/Type Font Design and an article or product, the Delegation pointed out that the Indian Designs Act 2000 required such a link as a prerequisite for registration.

39. The Chair concluded that the Secretariat was requested to:

- keep the document open until July 31, 2019, for contributions by delegations; and
- finalize the document thereafter and present it for consideration by the forty-second session of the SCT.

40. Furthermore, SCT members were invited to present proposals for future work on that matter to the forty-second session of the SCT.

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

41. The Secretariat recalled that, at the previous SCT session, the Committee had noted the important progresses made by several SCT members and the International Bureau, in relation to the Hague System, with respect to the implementation of the DAS for Priority Documents. The Secretariat also recalled that, at that session, the Chair had concluded that the SCT would continue to take stock of the progress made in the use of the DAS for industrial design applications by Member States.

42. The Delegation of Canada, expressing its support for the DAS, was of the view that the service would improve the capacity of its office to easily and quickly access priority documents in order to examine them and determine the validity of a priority claim. Announcing that its office had started participating in the DAS, as an accessing and depositing office, for industrial design applications on April 1, 2019, the Delegation observed that the DAS simplified the application process for clients, most of which benefited from a priority claim based on a filing made in a participating country. Underlining the fact that the DSA supplemented the current paper-based process and supported the office's commitment to offer a modern client service and experience, through e-enabled services, the Delegation encouraged other Member States to join the service to make the DAS an increasingly valuable and useful tool for applicants around the world. As regards patents, the Delegation further announced that Canada was planning to join the DAS after having implemented the Patent Law Treaty (PLT).

43. The Delegation of Chile, referring to its statement delivered at the previous SCT session, recalled that its office had joined the DAS on October 1, 2018. Despite the full implementation of the DAS, the Delegation reported that, to date, the service had not been used yet for industrial design applications. Since its experience with the DAS had evidenced the service's usefulness both for offices that could easily consult certificates and for applicants claiming priority, the Delegation observed that the DAS also allowed resolving problems relating

to the issuance and monitoring of paper documents. In view of the successful use of the DAS in Chile, the Delegation expressed its interest in extending the service to trademark applications. The Delegation concluded by inviting other SCT members to join the DAS.

44. The Delegation of Norway thanked delegations having shared their experience with the DAS at previous SCT sessions, as well as at the current session, as that provided valuable information on the development and merits of the service. Stating that the DAS could help simplify and streamline the system for right holders and authorities, the Delegation was pleased to announce that the Norwegian Office hoped to formalize its connection to the DAS.

45. The Delegation of the United States of America recalled that its Office had started using the DAS with respect to industrial design applications in 2018. Echoing the statement made by the Delegation of Chile, the Delegation reported that it had received positive feedback from national and foreign applicants, who considered the system as extremely helpful to comply with the submission requirement of certified copies of priority documents. The Delegation congratulated the Delegation of Canada for having joined the DAS and the Delegation of Norway for its future participation in the system. Noting that eight Member States were using the DAS for industrial design applications, the Delegation stated that it continued to look forward to the increasing participation in the service.

46. The Delegation of the Republic of Korea, expressing its satisfaction with the growing number of countries interested in the DAS, indicated that the Korean Intellectual Property Office was ready to provide support to other Member States.

47. The Delegation of China, expressing its continuous support for the extension of the DAS to industrial design applications, recalled that the Chinese Office was a participating Office in the DAS. Based on its experience, the Delegation declared that the system had made the treatment of applications and their examination more efficient and had helped reducing the burden on the Office.

48. The Delegation of Japan informed the Committee that the Japanese Office was developing an internal IT system to implement the DAS in relation to industrial design applications. Announcing that the service would become operational in 2020 in that field, the Delegation concluded by expressing its strong support for the DAS expansion to industrial designs.

49. The Secretariat invited delegations interested in implementing the DAS with respect to industrial design or trademark applications to contact the International Bureau.

50. The representative of INTA, thanking the delegations having announced their effective or prospective participation in the DAS for industrial design applications, considered that the service was of tremendous use for the system's users. Concurring with the views expressed by the Delegation of Chile, the Representative believed that the DAS could and should also be used for priority documents in relation to trademark applications.

51. The SCT noted the progress in the implementation of the DAS for industrial designs by members.

52. The Chair concluded that the SCT would revert for an update to this item at its next session.

Temporary Protection Provided to Industrial Designs at Certain International Exhibitions Under Article 11 of the Paris Convention for the Protection of Industrial Property: Draft Questionnaire

53. Discussions were based on document SCT/41/3 and SCT/41/3 Rev.

54. The Chair recalled that, at the previous SCT session, the Delegation of Spain had put forward a "Proposal for a Study on the Protection of Industrial Designs at Trade Shows in Member States", as contained in document SCT/40/8. The proposal aimed at preparing and conducting a survey among Member States to determine how the protection provided for by Article 11 of the Paris Convention for the Protection of Industrial Property was implemented and how the term "official, for officially recognized international exhibitions" was interpreted. The Chair invited the Committee to consider the draft questionnaire in relation to that proposal, as prepared by the Secretariat and presented in document SCT/41/3.

55. The Secretariat introduced document SCT/41/3, which contained a draft questionnaire on the temporary protection provided to industrial designs at certain international exhibitions under Article 11 of the Paris Convention for the Protection of Industrial Property.

56. The Delegation of Spain, thanking the Secretariat for having drafted the questionnaire and the delegations for having supported its proposal, highlighted the clarity, timeliness and usefulness of the draft questionnaire. In the Delegation's viewpoint, replies to the questionnaire would enable SCT members to learn more about the scope of protection of industrial designs exhibited at certain trade fairs. The Delegation suggested adding two questions, one on the fees to be paid to benefit from the measure giving effect to Article 11 of the Paris Convention and a second one on the deadline to claim the benefit of such a measure. The Delegation concluded by stating that it looked forward to discussing the topic under consideration.

57. The Delegation of Chile, commending the Secretariat for the preparation of document SCT/41/3 and highlighting the interest of the issue for all delegations, considered that the questionnaire would provide the Committee with information on the implementation of Article 11 of the Paris Convention. The Delegation explained that, in Chile, disclosures complying with the requirements of the law were not taken into account in the state of the art when examining the novelty and inventive step requirements. In the Delegation's viewpoint, the draft questionnaire would allow gathering information on other SCT members' experiences and enrich the Committee's discussions.

58. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for the preparation of the draft questionnaire. In the Delegation's viewpoint, the draft covered all relevant issues to be addressed for improving the knowledge on the topic, such as questions concerning the explicit mention of an exhibition priority right in national laws, the type of exhibitions included in the scope of Article 11 of the Paris Convention and the nature of the right granted. The Delegation concluded by lending its support to the draft questionnaire, which could serve as the basis for future work if the Committee decided to proceed further on the issue.

59. The Delegation of Croatia, speaking on behalf of the CEBS Group, thanked the Delegation of Spain for the proposal put forward at the previous SCT session. Expressing its support for the draft questionnaire as the basis for future work, the Delegation considered that the exercise would provide answers on various issues, such as the interpretation of the term "official or officially recognized international exhibitions".

60. The Delegation of India drew the attention of the Committee to Section 21 of the Indian Designs Act 2000, observing that an extensive list of notified exhibitions was not available in India. The Delegation expressed its support for a survey among Member States, aiming at

determining how the protection provided for under Article 11 of the Paris Convention was implemented and how the term “official or officially recognized international exhibitions” was interpreted.

61. The Delegation of the United States of America, thanking the Delegation of Spain for having raised the issue and having put forward its proposal at the previous SCT session, expressed its interest in both the topic and the forthcoming replies to the questionnaire. Thanking the Secretariat for the preparation of the draft questionnaire, the Delegation held the view that adding the questions suggested by the Delegation of Spain to the questionnaire would make it more robust.

62. The Delegation of Japan, expressing its appreciation to the Secretariat for the preparation of the draft questionnaire, proposed adding a question on the date to be taken into account to calculate the duration of the temporary protection referred to in Question 3. Pointing out that Japanese design law provided for an exception to lack of novelty without limiting the types of disclosure, the Delegation held the view that such lack of limits in the ways of disclosing industrial designs also existed in other countries’ laws. For that reason, with respect to Question 4, the Delegation suggested adding a question as to the lack of establishment of criteria to determine what was an “official or officially recognized international exhibition”. Finally, the Delegation suggested limiting Question 7 to the mandatory content of the documentary evidence.

63. The Delegation of China, thanking the Secretariat for the preparation of the draft questionnaire, announced its willingness to take part in the discussions and to share its experience with the issue. As Article 11 of the Paris Convention left Contracting Parties to the treaty free to determine the means of achieving the temporary protection, the Delegation was of the view that the survey should be based on each country’s specificity and should respect each Member’s rights in choosing their own measure.

64. The Delegation of Morocco, thanking the Secretariat for the preparation of the draft questionnaire based on the proposal made by the Delegation of Spain, suggested adding a preliminary question as to the specific provisions, contained in the law of Member States, dealing with the temporary protection. In addition, the Delegation seconded the proposal of the Delegation of Spain to include in the questionnaire a question concerning the payment of fees to claim the temporary protection.

65. The Delegation of the Republic of Korea, thanking the Delegation of Spain for its proposal and the Secretariat for the preparation of the draft questionnaire, noted the existence of differences among Member States’ design laws and systems with respect to Article 11 of the Paris Convention. Considering that a better understanding of Member States’ systems would be useful for users, the Delegation suggested adding the following questions in the draft questionnaire: (i) should the filing date be recognized retroactively?; (ii) if the filing date retroacted to the exhibition priority date, should the retroactive date be considered as the priority date under Article 4 of the Paris Convention?; (iii) where an applicant claimed both the right of priority under Article 4 of the Paris Convention and an exhibition right of priority under Article 11 of the Paris Convention, should the subsequent office automatically approve the exhibition priority right?; (iv) should the temporary protection granted to an industrial design be recorded in the register?; (v) should the Office examine whether the exhibited design was the same as the design subject to the application?

66. The Delegation of Iran (Islamic Republic of), expressing its gratitude to the Secretariat for the preparation of document SCT/41/3, considered that the historical background on the development of Article 11 of the Paris Convention was useful to better understand the issue.

Recalling that the general understanding was that the survey was limited to industrial designs, the Delegation noted that a norm-setting exercise was not an option at the present stage, as the survey only aimed at collecting information on national legislation and practices.

67. The Delegation of Azerbaijan, thanking the Secretariat for the organization of the session of the SCT, recalled that the adoption of a DLT could become the basis for improving national laws by providing a single set of procedures for the protection of industrial designs. Pointing out that the documents of the present session did not refer to copyright as a means of protecting industrial designs, the Delegation suggested including in the discussed draft documents a separate paragraph stating that legal protection should not be provided to an industrial design which was not new and original.

68. The Representative of JPAA, welcoming the proposal of the Delegation of Spain, said that clarifying the differences among Member States in the procedure and effects of the temporary protection provided for by Article 11 of the Paris Convention would be useful to applicants.

69. The Chair requested the Secretariat to prepare, before the end of the SCT session, a revised draft questionnaire reflecting the suggestions by SCT members.

70. The SCT considered document SCT/41/3 Prov., the revised draft questionnaire prepared by the Secretariat as per the Chair's request.

71. The Delegation of Spain, thanking the Secretariat for its swift work and the excellent quality of document SCT/41/3 Rev., as well as delegations for their comments, held the view that the revision had improved the draft questionnaire, which now met its needs. The Delegation expressed the hope that the replies would provide a good picture of the implementation of Article 11 of the Paris Convention.

72. The Delegation of the Republic of Korea wondered whether additional questions could be included in the draft questionnaire at a later stage.

73. The Secretariat pointed out that Question 14 allowed SCT members to provide any further remark they deemed appropriate with respect to Article 11 of the Paris Convention.

74. The Chair concluded that the Secretariat was requested to:

- circulate the questionnaire as contained in document SCT/41/3 Rev. to SCT members and Intergovernmental Intellectual Property Organizations with observer status, for returns by July 31, 2019; and
- compile all returns into a document for consideration by the forty-second session of the SCT.

AGENDA ITEM 6: TRADEMARKS

75. The Chair proposed to discuss the proposals contained in documents SCT/39/8 Rev.3 and SCT/41/6.

76. The Delegation of Switzerland said that it preferred to discuss documents SCT/32/2 and SCT/39/8 Rev.3, together, but separately from the proposal on the DNS contained in document SCT/41/6.

77. The Delegation of the United States of America said that it was in favor of discussing together documents SCT/39/8 Rev.3 and SCT/41/6, as the intention of those joint proposals was to create a sort of international instrument, recommended by the SCT, for the protection of country names.

78. The Delegations of Georgia, Iceland, Jamaica, Malaysia, the United Arab Emirates, supported the suggestion made by the Delegation of Switzerland to discuss first documents SCT/32/2 and SCT/39/8 Rev.3 and then document SCT/41/6.

79. In order to foster dialogue and continue to make progress on the discussion, the Delegation of the United States of America said that it left the Chair to decide.

Revised Proposal by the Delegation of Jamaica (document SCT/32/2).

80. Discussions were based on document SCT/32/2.

81. The Delegation of Jamaica stated that there was a need for more consistent and effective protection for names of States, similar to symbols of statehood. The Delegation considered that, although protection for country names was in theory recognized through existing national trademark laws, such protection remained inadequate, leaving ample opportunity for persons without any genuine connection to the country to free ride on the goodwill and reputation of a country name. The Delegation stressed the fact that, with the evolution of new top-level domain names, the lack of international protection had been exacerbated. While recognizing that divergences remained, the Delegation said that the examination of the possible areas of convergence during the Committee had enabled a better analysis of the extent of existing gaps in that matter. The Delegation considered that the concerns related to certainty, expressed by some Member States, could be addressed by the use of an official list of names of States, as well as relevant lists of associated codes, abbreviations and variations of country names. A centralized database of names of States, established by WIPO, similar to the database of official symbols and armorial bearings of States, would be useful for reference by intellectual property offices in the course of examination of trademark applications. The Delegation suggested that Member States officially communicated to the International Bureau of WIPO their country names and the variations thereof, 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, which was already an existing practice of many intellectual property offices. The Delegation said 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 believed that any use of a country name in a trademark could be considered descriptive of the goods and services, even if there were other elements in the trademark. The Delegation recalled that, since the thirty-second session of the SCT, Jamaica had placed on the table a draft Joint Recommendation for the protection of country names, so as to facilitate discussion within the SCT. Article 2 of the revised draft Joint Recommendation, proposed that Member States would 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”. This would not be mandatory, but based on the perception of a trademark by the trademark examination office. 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 in Articles 6 and 7 that would provide agreed parameters for those exceptional circumstances. The Delegation reiterated that the aim of the proposed draft Joint Recommendation was not to create mandatory rules, but to establish a coherent and consistent framework to guide intellectual property offices through the issue. Recalling that it was a co-sponsor of the joint proposal by the Delegations of Georgia, Iceland,

Indonesia, Italy, Liechtenstein, Malaysia, Mexico, Monaco, Peru, Senegal, Switzerland, concerning the Protection of Country Names and Geographical Names of National Significance, as contained in document SCT/39/8 Rev.3, the Delegation said that it remained flexible on the way to find a solution to the problem under consideration, either through document SCT/32/2 or document SCT/39/8 Rev.3. The Delegation therefore encouraged Member States to look at the different proposals, including the draft Joint Recommendation, with a view to moving forward in a way which would enjoy the consensus of the Member States of the Committee.

82. The Delegation of Colombia expressing its support for the proposal by the Delegation of Jamaica, said that it shared that Delegation's concern with respect to the protection of country names and the necessary adoption of criteria that would prevent their registration as commercial trademarks. However, the Delegation had a series of observations. First, noting that Article 4 established a prohibition on the registration and/or use of conflicting business identifiers, the Delegation pointed out that the notion of conflicting business identifier should be understood in its national legislation as comprising trade names and signs. The Delegation explained that this had substantial implications, as in Colombia, both trade names and signs were subject to a simple deposit system and were not constitutive of rights. The second comment concerned Article 6(1)(i), which departed from Article 135(e) of Decision No. 486/200 of the Andean Community. The latter article provided for a refusal to the registration of a trademark when the sign consisted exclusively of the name of the country. Finally, the Delegation was of the view that Article 7 went too far in imposing a burden of proof that the products really originated from the country.

83. The Delegation of Iran (Islamic Republic of) expressed its support for the work of the Committee on the protection of country names and for the proposal by the Delegation of Jamaica.

84. The Delegation of Ecuador underlined the importance of protecting country names against their registration and inappropriate use, in order to allow countries to manage the use of their names in accordance with their national needs. Pointing out that the Ecuadoran legislation referred to State names, which took into account, not only the official name of a country, but also its social, political and cultural context, the Delegation said that it wished to make some comments on the proposal of the Delegation of Jamaica. With regard to Article 1(vi), the Delegation stated that it would be pertinent to clearly define the scope of the term "country name", as well as illustrate and differentiate the different categories, since a lack of clarity in this respect could lead to abuse or to registrations being refused in an inadequate manner. The Delegation also considered that the inclusion of the international code or the abbreviation could generate complications. In addition, the Delegation wondered about the necessity of having certain terms in Article 1 "Definitions", such as "application", "domain name", "Internet", "mark", "office", "person", "registered or registration", and "right". The Delegation also considered that the difference between a trademark and a commercial identifier should be made clearer. Regarding Article 2, the Delegation underlined the importance of introducing the notion of bad faith as an additional criterion to be accounted for, as well as the possibility of an exception for appellations of origin and nation brands protected by States or with their consent. In addition, the Delegation highlighted the necessity of having clarity regarding what should be understood by the origin of the goods or services. The Delegation further suggested to delete Article 6(1)(i), as a descriptive trademark was *per se* considered as a ground for refusal, and also expressed concerns about the fate of products containing several components from different countries, but that had been produced in one country exclusively. Finally, the Delegation wondered how to prove what was established by Article 7(iv). To conclude, the Delegation reiterated its commitment to continue the discussion regarding the protection of country names, on the basis of documents SCT/32/2 and SCT/39/8/Rev.3.

85. The Delegation of China highlighted three aspects of the proposal contained in document SCT/32/2. First, on Article 1, the Delegation concurred with the Delegation of Ecuador that it was important to limit the concept of country name and its scope of protection. Secondly, on Article 3, the Delegation said that its national practice was very strict, as the registration or use of a trademark was prohibited in China if the trademark contained a name identical or similar to a country name, a national flag or emblem, or a military flag of a foreign country. However, the Delegation indicated that there were three exceptions where trademarks consisting of, or containing, country names were accepted: first, if the trademark had been authorized by the government; second, if the trademark had other meanings and would not mislead the public; and third, if there were other distinctive elements in the trademark and the country name was independent or dissociated from those elements, only used to indicate the origin of the product or service. Thirdly, on Article 7(1), the Delegation, recalling its strict practice, added that examiners, when examining a trademark containing a country name, did not consider whether the trademark was a well-known mark or enjoyed a great reputation.

86. The Delegation of Jamaica, thanking all the delegations that had expressed their support and comments, said that it would review the document in the light of those comments.

Proposal by the Delegations of Georgia, Iceland, Indonesia, 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 (document SCT/39/8 Rev.3).

87. Discussions were based on document SCT/39/8 Rev.3.

88. The Delegation of Switzerland, declaring that it was in favor of the proposal of the Delegation of Jamaica, stated that it was important that the Committee work on developing solutions to the problem of misleading marks, such as marks containing a country name, which were used in connection with products or services not originating from that country. Concerning the proposal contained in document SCT/39/8 Rev.3, and following the discussions that had taken place at the last session, the co-sponsors of the proposal presented in document SCT/39/8 had decided to divide it into two separate proposals: document SCT/39/8 Rev.3, which concentrated on trademarks, and document SCT/41/6, dedicated to the DNS. The Delegation said that the aim of the proposal contained in document SCT/39/8 Rev.3 was to recognize the principle that a country name or a geographical name of national significance should not be monopolized by a private individual, unless authorized by the State concerned. The Delegation stressed the fact that those two proposals dealt first and foremost with the issue of monopolization of names of countries or geographical names. According to the proposal presented in document SCT39/8/Rev.3, the Delegation pointed out that the conditions for registration of country names and geographical names of national significance would always be determined in each State according to its national legislation. Finally, the Delegation said that the purpose of the proposal was to serve as a reference instrument, which would be available to national offices if adopted by the Committee.

89. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recalled that a number of proposals had been discussed at the last session of the SCT on the topic of country names. As regards the joint proposal contained in document SCT/39/8 Rev.2, the Delegation thanked the Delegation of Switzerland and the other proponents for preparing a non-paper for the informal discussions at the last SCT meeting, as well as for elaborating two subsequent proposals for the present session, contained in documents SCT/39/8 Rev.3 and SCT/41/6. The Delegation noted with interest that those proposals did not imply any legislative exercise, nor envisaged any disruption of existing practices on descriptiveness and distinctiveness, and was of the opinion that the creation of a new "norm setting" instrument might not be the most appropriate way to address the issue. The

Delegation welcomed the content of the two new proposals, as well as the separation into two documents of the two distinct policy objectives that had been covered together in the previous document SCT/39/8 Rev.2. The Delegation said that, by means of that clear divide, the original Joint Proposal had been further improved in the right direction. Concerning the new proposal presented in document SCT/39/8 Rev.3, the Delegation reiterated its concerns about a general prohibition of the registration of country names and geographical names of national significance as distinctive signs, such as trademarks, if the sign consisted exclusively of such a name or if it would amount to the monopolization of such a name. The Delegation concluded by pointing out that it was more supportive of the proposal contained in document SCT/41/6. As regards the proposals contained in documents SCT/32/2 and SCT/39/8 Rev.2, the Delegation recalled its preference for the proposal contained in document SCT/39/8 Rev.2.

90. The Delegation of Colombia, welcoming the aim of the proposal contained in document SCT/39/8 Rev.3, noted that the new proposal enjoyed two additional characteristics, firstly, the protection of those expressions in accordance with the national legislation of each country, and secondly, the absence of direct contradictions with the system of protection of indications of source. The Delegation pointed out that the principles of the proposal were of great importance, as they would allow the determination of the scope of protection granted to country names and geographical names of national significance, as well as clarify which expressions were to be protected. Observing that the proposal was in line with the Colombian legal system, the Delegation endorsed the proposal.

91. The Delegation of Croatia, speaking on behalf of the CEBS Group, said that it appreciated the Committee's work and expressed the view that the two new proposals, contained in documents SCT/41/6 and SCT/39/8 Rev.3, would constitute a solid base for constructive discussions. Observing the non-binding approach of those proposals, the Delegation declared the Group's support for the twofold approach taken in the documents. Furthermore, the Group expressed its support for the protection mechanism for geographical indications and country names at the second level of the DNS, as suggested in document SCT/41/6. At the same time, the Delegation expressed its concerns over the idea of a general prohibition of the registration of country names and geographical names of national significance as distinctive signs, such as trademarks, when the signs consisted exclusively of such a name or when their registration or use would lead to the monopolization of such a name. The Delegation, looking forward to exchanging ideas on the topic, recalled that the CEBS Group was not in favor of an international binding instrument, but rather of a soft law approach.

92. The Delegation of Ecuador, while reiterating its support for the proposal contained in document SCT/39/8 Rev.3, said that it also had some concerns. Firstly, regarding Section II.1, the Delegation considered that complications could arise with respect to the inclusion of short country names, since in certain cases they might correspond to other aspects not necessarily tied to the country itself. Secondly, stating that the alpha 2 codes and alpha 3 country codes that were listed in the standard ISO 3166-1 were not completely clear, the Delegation believed that they could be covered by section II.1, since they also referred to the names of the countries. Finally, the Delegation expressed some doubts concerning the last paragraph of document SCT/39/8 Rev.3, which provided the possibility for Member States to notify to WIPO a list of such names within 18 months. In this regard, the Delegation wondered whether such list would be limited and what would be the legal effects of its notification out of time or its lack of notification.

93. The Delegation of China, stating that the scope of protection of country names was too broad, wondered whether the names of the UNESCO regions listed as World Heritage Sites should enjoy the same protection as country names.

94. The Delegation of Jamaica, lending its support to the proposal presented in document SCT/39/8 Rev.3, as it was complementary to the draft Joint Recommendation contained in document SCT/32/2, stated that it welcomed any efforts to plug the gaps in the area of the protection of country names.

95. The Delegation of Iran (Islamic Republic of), aligning itself with the objectives of the proposal contained in document SCT/39/8 Rev.3, underscored the importance of the protection of country names and geographical names of national significance against their registration as distinctive signs, such as trademarks, if the sign consisted exclusively of such names or if its use would amount to a monopolization of the name concerned. The Delegation was of the view that the criteria to define a geographical name of national significance and a country name, contained in the proposal, were very inclusive. The Delegation looked forward to concluding the discussion on this proposal in a very positive manner.

96. The Delegation of Japan explained that in its country, trademarks consisting of country or geographical names should be refused if they were deemed to indicate the place of origin or sale of goods, or the location where services were provided, or if they were likely to be misunderstood by consumers as to the quality of the goods and services. The Delegation held the view that the lists stated in items (1) to (5) of the proposal would serve as useful reference information for examination practices. However, noting that the list in item (6) had not been clarified, the Delegation said that the Committee should continue discussing such list. Furthermore, the Delegation believed that national systems and examination practices as to whether to provide or not absolute protection to country names and geographical names should be respected.

97. The Delegation of the Republic of Korea, stating that it was important to prevent the illegitimate registration and misappropriation of country names and geographical names as trademarks, indicated however that if the country name included in a trademark was not the most important element of the trademark, the trademark would be examined as a whole to determine whether it was distinctive and registrable. The Delegation also observed that the proposal contained in document SCT/39/8/Rev.3 seemed to impose a burden on applicants when requiring Member States to protect country names and geographical names without considering the risk of confusion. In this regard, the Delegation was of the opinion that the proposal should be treated very carefully.

98. The Delegation of Switzerland, thanking all the delegations that had expressed their support for the proposal contained in document SCT/39/8 Rev.3, said that it would take into account the remarks and that it looked forward to continuing the discussions on the topic at the following session.

99. The Delegation of Morocco, stressing the importance of protecting country names, especially in terms of trademarks, declared that it supported the basis of the proposal of the Delegation of Jamaica to prevent the misleading use of country names, as well as the objectives and basis of the proposal contained in document SCT/39/8 Rev.3. However, the Delegation declared that it was not in favor of a very restrictive system, in particular in terms of examination by the industrial property offices. Finally, the Delegation stated that it looked forward to the continuation of a constructive discussion, leading to a coherent solution.

Proposal by the Delegations of Georgia, Iceland, Indonesia, 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 in the DNS (document SCT/41/6).

100. Discussions were based on document SCT/41/6, as well as two informal revised versions of that document.

101. The Delegation of Switzerland recalled that document SCT/41/6 resulted from the division of document SCT/39/8. The document under consideration concerned Internet domain names, and aimed at preventing the monopolization, by a private person, of a country name or a geographical name of national significance at the first level of the DNS, without the agreement of the community concerned. The Delegation mentioned that ICANN was preparing for 2020 a new wave of expansion of the DNS, enabling the delegation of generic top-level domain names (gTLDs). To that effect, and in particular with respect to geographical names, ICANN was setting up delegation principles for the new gTLDs, based on the rules established for the first wave of delegation and codified in the Applicant Guidebook 2012. Since ICANN was considering whether to keep the 2012 rules or to adopt rules more flexible which would thus liberalize the trade of geographical names, the Delegation indicated that the proposal contained in document SCT/41/6 precisely intended to avoid any potential weakening of the protection of geographical names. By adopting that proposal, Member States would send a strong signal to ICANN that it should take into account the concerns of the States when establishing future rules of allocation of top-level domain names. The Delegation stressed the fact that the proposal did not aim at strengthening the current rules, but mainly took up the principles of the Applicant Guidebook 2012. The Delegation pointed out that, during the first wave, more than 1,200 gTLDs had been delegated based on those rules, which offered adequate protection to country and geographical names. It explained that the proposal contained in document SCT/31/8 to extend to geographical names UDRP principles, which currently applied only to trademarks, was included in document SCT/41/6 under Item III. That Item was tailored for situations concerning disputes on domain names at the second level, when a domain name was already allocated to someone. The Delegation and the co-sponsors of proposal SCT/41/6 were willing to discuss the proposal and answer any questions in informal sessions.

102. The Delegation of the European Union, speaking on behalf of the European Union and its member states, expressed support for the proposal contained in document SCT/41/6, including the underlying rationale contained on pages 1 to 4 of the document. The Delegation associated itself with the principles endorsed in the report of the SCT Second Special Session on the Second WIPO Internet Domain Process in 2002, as contained in document SCT/S2/8. The Delegation appreciated that the proposal embraced the objective to grant a rights protection mechanism at the second level of the DNS for geographical indications and country names. The Delegation indicated that it would make detailed comments highlighting some elements of the proposal that it considered more critical, in the course of further technical discussions during the meeting.

103. The Delegation of the United States of America thanked the Delegation of Switzerland for presenting the proposal. Referring to the paragraph concerning the negotiation of a list of further names to be added to the list already existing in the ICANN 2012 Guidebook, the Delegation wondered whether the proposal would go beyond that Guidebook, as the proposed amended list would then constitute a requirement for authorization or, at least, for no objection from the governments. The Delegation informed the SCT that it did not support the Applicant Guidebook 2012, in the context of the current negotiations, considering that it went too far. Nevertheless, it did not wish either to go beyond its content. Pointing out that the creation of a list of names over which governments would have a veto power would create a *de facto*

ownership right on those names for governments, the Delegation expressed concern about the fact that such right could interfere with existing uses by businesses all over the world and hinder innovation in the DNS.

104. The Delegation of Switzerland, noting that the question raised by the Delegation of the United States of America was triggered by the list mentioned in Item III(5) of the proposal, recalled that the proposal adopted most of the 2012 Guidebook content, although it was not exactly identical, as the list referred to in the proposal went beyond the 2012 Guidebook. The Delegation proposed to discuss informally in detail the differences between the Guidebook and the proposal contained in document SCT/41/6, with the help of a comparative table that had been prepared by the proponents.

105. The Delegation of Iran (Islamic Republic of) expressed the view that the protection of country names and geographical names of national significance against delegation as top-level domain names in the DNS was important. The potential of misappropriation, resulting in the monopolization of those names by private entities, would create difficulties for States. The Delegation therefore supported the adoption of the proposal and its submission to the General Assembly, considering that the course of action and recommendation proposed in document SCT/41/6 was very well drafted.

106. The Delegation of Monaco recalled that, for several years, it had been in favor of a better protection for country names, whether in the trademark system or in the DNS. For that reason, it had co-sponsored documents SCT/39/8 Rev.3 and SCT/41/6. As regards the DNS, the absence of adequate protection of country names and geographical names of national significance was of particular concern to Monaco because of the risk of monopolization of those names by private entities and the consequences for the communities concerned, as described in document SCT/41/6. The Delegation indicated that it fully supported that document, which aimed at establishing simple principles based on already existing and internationally approved lists. In addition, the proposal would constitute a first solution to the problems and difficulties faced by many States, including Monaco, in protecting their country name and other geographical names of national significance. The Delegation, holding the view that the proposed protection was even more necessary as ICANN was planning a further series of gTLD registrations in 2020, hoped that the Committee would adopt the proposal.

107. The Delegation of Indonesia, speaking in its national capacity, thanked the Delegation of Switzerland for presenting document SCT/41/6 and, as a co-sponsor, thanked the delegations that had expressed support for the proposal. Stressing the importance of protecting country names and geographical names of national significance against their delegation as top-level domain names in the DNS, the Delegation pointed out that assigning top-level domain names was unique and would result in monopolization. Considering that the proposal was balanced and enabled States or communities to raise a veto to make sure that such monopolization would not bring negative effects to communities at large, the Delegation expressed the hope that the Committee would move forward on the matter under consideration.

108. The Delegation of Jamaica fully supported the proposal for the protection of country names and geographical names of national significance in the DNS. Pointing out that it was important to protect those names against wild and free use without regulation, Delegation expressed the hope that the Committee would adopt the proposal shortly.

109. The Delegation of Georgia supported the joint proposal concerning the protection of country names and geographical names of national significance in the DNS, contained in in document SCT/41/6 and co-sponsored by its country. It considered that the approval of that nonbinding proposal by the SCT and the General Assembly would respond to the existing digital challenges with regard to the protection of country names and geographical names of national significance in the DNS.

110. The Delegation of Senegal thanked the Delegation of Switzerland for presenting the joint proposal contained in document SCT/41/6 on the protection of country names and geographical names of national significance in the DNS. Stressing the importance of the protection of country names, especially in the current context of globalization and digitalization, given the increasing risk of monopolization and privatization, the Delegation reiterated its commitment to defend the principle of the protection of country names in accordance with Annex III of the Bangui Agreement. Therefore, Senegal had decided to co-sponsor documents SCT/39/8 Rev.3 and SCT/41/6 and hoped for a positive outcome on document SCT/41/6.

111. The Delegation of Japan stated that geographical names were public property created on the basis of past contributions and activities of the residents living in the area concerned. Therefore, allowing an exclusive commercial use of the names by particular applicants in the coming years would create public policy issues. The Delegation understood the intention of the proposal to establish a preliminary protection list in order to protect country names and geographical names in the top-level domain. However, while the contents of the lists mentioned under items II(1) to (4) were already protected according to the gTLD Applicant Guidebook published by ICANN, the list mentioned under paragraph (5) was not protected by ICANN. The Delegation pointed out that the criteria for asserting the names and the question as to whether agreement by the countries would be required for the creation of the list had not been clarified. Therefore, the Delegation would support the proposal on the premise that the Committee would discuss the handling of the list mentioned in paragraph (5).

112. The Delegation of Ecuador, thanking the Delegation of Switzerland for the presentation of the proposal, expressed its support for it, considering that it enabled the protection of the sovereign right of countries to preserve their identity and reputation. Taking into account that, in the DNS, it was possible for private parties to obtain a monopoly on geographical or country names, which would deprive the States from their rights, the Delegation considered it necessary to reexamine and extend to geographical indications and country names the principles of the Uniform Dispute Resolution Policy (UDRP) for domain names, which were currently limited to trademarks. In the process of reviewing the UDRP, it would be appropriate to convey to ICANN the concerns of WIPO members. Under Item I of the proposal, the Delegation recommended including geographical names of regional importance as well as the authorization of the intergovernmental organization accordingly constituted. Regarding Item III of the proposal, the Delegation expressed doubts about the protection mechanism at the second level of the DNS, and asked whether it was understood as a broadening of the protection at that level, namely that domain names might not be registered as country names or geographical names.

113. The Delegation of Australia, thanking the Delegation of Switzerland for presenting the proposal, said that it was sympathetic to the concerns about monopolization of country names and names of national significance in the DNS. The Delegation declared its interest in learning more about the nature and extent of the issue the proposal intended to address, especially as it seemed comprehensive and likely to have consequences for ordinary business. The Delegation had practical concerns with regard to the development of a repository of country names and names of national geographical significance, as it would impose a significant administrative burden on States and applicants and there were definitional uncertainties about protected country and geographical names. In addition, it was currently unclear how the repository would deal with names existing in more than one jurisdiction. The Delegation believed that principles of coexistence should allow the use of several of those names by other registrants, provided that such use was not misleading. The creation of a repository suggested *de facto* legal rights to certain terms for which there was no legal basis. The Delegation pointed out that this might present challenges to legitimate commerce. Under the Australian law, it was difficult to justify the prohibition of legitimate use of a term simply because it consisted of a

country or geographical name. The Delegation stated that in the absence of any offline regulation of country names and names of geographical significance, regulating their use as domain names would currently be inappropriate.

114. The Delegation of Iceland, as a co-sponsor of the proposal, thanked the Delegation of Switzerland for presenting it. The Delegation recalled that a few meetings ago, it had explained the situation in Iceland, a country that had for a long time been facing problems all over the world because of the monopolization of its country name, or its registration as the adjective "Icelandic". The name had also been world-marketed by private entities, which had either prevented Icelandic businesses to register marks including the country name as a description of origin, or hindered the entering into certain markets with their products. The same applied to the monopolization on the Internet. The Delegation thus emphasized the importance of a successful conclusion of the matter under consideration, preferably during the current session.

115. The Delegation of Chile, expressing its gratitude to the Delegation of Switzerland, indicated that it understood the complexity of the topic under consideration and its relevance to all members. The Delegation declared its interest for informal meetings, as suggested by the Delegation of Switzerland, to discuss the technical details of the proposal, as such meetings would make a fruitful contribution to the debates and help for a better understanding the proposal.

116. The Delegation of Norway acknowledged the importance members of the Committee attached to the discussion on the protection of country names, indicating that restrictions on the possibility of delegating country names and certain geographical names in the DNS was well-founded. However, the Delegation said that, in its opinion, such restrictions were based on other reasons than intellectual property rights. As intellectual property, country names and geographical indications should not enjoy a different protection in the DNS and outside of it, because intellectual property law applied equally on the Internet and outside. While, in principle, the Delegation was not opposed to the SCT proposing a recommendation to ICANN, such a recommendation from WIPO to ICANN to defend the existing protection of country names and geographical names in the DNS should underline the importance of safeguarding the observance of general principles of intellectual property protection in the new gTLDs. Moreover, the Delegation was in principle not against the use of UDRP for geographical indications where an enforceable intellectual property right existed. However, the UDRP should contain criteria for determining that an enforceable right existed. The holder of an identifier should not be given a better right within the UDRP than it would otherwise enjoy.

117. The Delegation of Malaysia stressed the significant importance of the protection of country names and geographical names from potential misappropriation. Various examples had been presented to the Committee of country names and geographical names monopolized by private entities, thereby depriving the concerned communities from that particular country or region from using their own country or regional names. The situation could also mislead the consumers. Recognizing that such misuse was not unique to the trademark system but could occur also in the DNS, the Delegation had co-sponsored the joint proposal concerning the protection of country names and geographical names of national significance in the DNS, contained in document SCT/41/6. The Delegation said that the issue was even more pressing in the context of globalization, where rapid expansion of the Internet could potentially lead to greater misuse by private entities and therefore pose a potential threat to all Internet users. Noting that ICANN was opening a second round of registration for new generic top-level domain names, possibly in 2020, and that States had limited influence in the ICANN's decision making process and very little means to safeguard their interests, the Delegation held the view that the joint proposal would be a timely means of highlighting the shared concern and a way forward. Observing that many delegations in principle supported the idea of the protection of country names, the Delegation considered that further informal discussions would be useful.

118. The Delegation of the United Arab Emirates aligned itself with the statements made by the Delegations of Iceland, Indonesia, Jamaica, Malaysia, Monaco and Switzerland. It believed that the proposal contained in document SCT/41/6 was a positive contribution to reach consensus in the very important matter of the protection of country names. The Delegation underlined the fact that in the DNS, the delegation of country names might lead to the monopolization of those names, thereby depriving the concerned community from the possibility of using such names. As ICANN would open new rounds including gTLD in 2020, the Delegation stated that it was important to take into account the concerns concerning the monopolization during plenary sessions and the informal meetings.

119. The Delegation of the Republic of Korea was of the view that the protection of country names and geographical names of national significance as top-level domain names in the DNS was important. While it supported the proposal in principle, it however considered that the scope of protection sought for geographical names of national significance was too broad and could potentially create some problems. Therefore, the Delegation believed that the proposal should be clarified before any agreement.

120. The Representative of OriGIn indicated that geographical indication groups supported any proposal aimed at increasing the legal certainty in the DNS. In that respect, it believed that the proposal was going in the right direction, in particular with respect to the possibility for geographical indication groups to initiate dispute resolution mechanisms, in particular the UDRP, when a second level domain registration conflicted with a geographical indication.

[suspension]

121. The Delegation of Switzerland announced that, further to the comments and remarks made by the delegations, the co-sponsors had amended the initial proposal, to bring it closer to the rules of the 2012 Guidebook. In Item II(5), the last two sentences, concerning the open list allowing States to notify their geographical names of national significance, had been deleted. The reference to public policy as a criterion to define a geographical name of national significance had also been removed. Accordingly, only applicable national law would define whether a geographical name was of national significance. The Delegation stressed that the proposal should not be given more significance than it actually had, and that it was not intended to become a guide for domain names delegation, as only ICANN could set its own guide and rules. The Delegation said that the proposal sent a signal to ICANN indicating that States considered that the level of protection of 2012 should not be reduced, and that they should be consulted when a geographical name on their territory was delegated as a gTLD.

122. The Delegation of Croatia, speaking on behalf of the CEBS Group, informed the Committee that it had not received objections to the revised version of the proposal from its members. The Group suggested that, in Item II, the term “includes” be replaced by “limited to”. The Group believed that the SCT still had enough time to discuss the proposal.

123. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the proponents for the revised language of the proposal, which constituted a step in the right direction. The Group took note of the concerns raised during informal meetings with regard to the list, which should not be too open. The Group would be in a position to accept the proposal as such, provided that the language of Item II(5) concerning “other geographical names with national significance according to the applicable national law” either be deleted or clarified. Echoing the declaration made by the CEBS Group, the Group considered that the Committee still had some time to discuss the revised proposal, which was a very good basis for further debate.

124. The Delegation of France took note of the division of the initial proposal, which had significantly improved its clarity. It recalled that France had co-sponsored the proposal contained in document SCT/31/8 Rev., concerning the necessity to reexamine and extend to geographical indications and country names the principles governing domain name dispute resolution rules, currently limited to trademarks. Expressing support for a protection mechanism for geographical indications and country names at the second level of the DNS, the Delegation believed that the new proposal could draw ICANN's attention to issues relating to country names and geographical names in the DNS.

125. The Delegation of Uganda, speaking on behalf of the African Group, said that it had considered the revisions made during the informal meetings. Thanking the delegations that had submitted the joint proposal, it said that several members of the African Group were concerned with the misuse or monopolization of names. However, many delegations had not yet received feedback from their capitals concerning the revised proposal. The Group therefore suggested waiting one more day to discuss it.

126. The Delegation of the United States of America thanked the proponents of document SCT/41/6 for the flexibility shown in the revision. However, the Delegation considered that some questions had not been addressed and, as was stated by other delegations, consultations with ministries needed to be undertaken concerning the meaning and purpose of the proposal. Since geographic terms at the top-level were addressed in the Applicant Guidebook 2012, the Delegation considered that the proposal constituted a significant expansion of the existing state of play at ICANN, going beyond that Guidebook. The Delegation did not agree with the proponents' view that the document was consistent with the Guidebook, since country names in the Guidebook were already reserved and were likely to remain so. Therefore, the Delegation sought clarifications as to what more was requested in the proposal, before going forward. The Delegation said that Item II(5), referring to geographical names with national significance according to applicable national law, significantly expanded the contents of the Applicant Guidebook. Moreover, anything could be included in that category and thus the Delegation could not support such an uncertain open-ended list. The Delegation noted that Item III, concerning a request for rights protection mechanism at the second level for geographical indications and country names, was not included in the Applicant Guidebook and that the Committee had not held substantive discussions about it. Therefore, it could not support a recommendation to ICANN that had not been discussed previously. As some concerns had not been addressed by the revised proposal, the Delegation needed more time for consultations with ministries and suggested that a new revised version of the proposal took into account all the possible concerns raised by the delegations for the next session of the SCT.

127. The Delegation of Senegal, thanking the Delegation of Switzerland for presenting the amendments made to the initial proposal contained in document SCT/41/6, extended its appreciation to the work of all delegations in informal discussions. The Delegation supported the revised version of the proposal, as it took into account many concerns expressed by the delegations.

128. The Delegation of Canada, thanking the co-sponsors for their helpful clarifications and for the revised proposal, said that it was sympathetic to the issue of country names, recognizing that countries might have a legitimate interest in names that were closely aligned with heritage and culture. While not in the domain name context, Canada had experienced issues relating to the misuse of the name "Canada". The Delegation was however concerned that some elements of the proposal, such as the concept of geographical names of national significance, were broad in scope and had the potential to restrain innovation in the domain name space, as well as to create unintended effects, for example disputes between countries, groups, or individuals with shared experiences and heritage. The Delegation held the view that any way forward should take into consideration the impact on applicants, and ensure that administratively burdensome processes were avoided and remained predictable. Moreover, the

Delegation expressed concern about the language of the proposal, which could confer rights to countries going beyond internationally recognized legal principles. Those issues and their potential impacts on Member States, stakeholders and the domain name space should be considered in more detail.

129. The Delegation of Japan extended its gratitude to the co-sponsors for their efforts in preparing the modified proposal. However, the Delegation was of the view that the revised proposal did not ensure predictability of the definition of “geographical names with national significance according to the applicable national law” for gTLD applicants. Therefore, the Delegation could not support the proposal.

130. The Delegation of the Republic of Korea expressed appreciation to the proponents of the proposal for the revised version. However, considering that the names to be protected should be clearly identified in the recommendation, the Delegation was concerned about Items II(5) (geographical names of national significance according to the applicable national law) and III (geographical indications), as they established open-ended and non-identifiable lists of names. The Delegation informed the Committee that it was still waiting for agreement of its capital on the issue under discussion.

131. The Delegation of Italy supported the revised proposal.

132. The Delegation of Australia thanked the proponents for reexamining the proposal contained in document SCT/41/6 and for providing a revised version for consideration by the Committee. While it expressed appreciation for the willingness to take into account the concerns voiced by a number of members, the Delegation said that the revised proposal was still too broad and went beyond the Applicant Guidebook, and that critical terms remained unclear. The Delegation concluded by saying that, while it sympathized with the concerns concerning the monopolization of country names in the DNS, it was unable to support the proposal at that time.

133. The Delegation of Portugal, thanking the proponents for the revised version of the proposal, expressed support for the new draft for the reasons underlined by other delegations. Concerning the wording of Item II, the Delegation supported the suggestion made by the CEBS Group.

134. The Delegation of Iran (Islamic Republic of) thanked the proponents for the revised version, which showed flexibility to accommodate the concerns raised by some delegations. Aligning itself with the statement made on behalf of the Asia and the Pacific Group, the Delegation expressed the view that Item II(5) should end after the terms “UNESCO regions listed as World Heritage Sites”. That way, the list of geographical regions would not be open-ended, which might constitute a goods basis for some delegations. In addition, the Delegation expressed the view that the Committee should not discuss a proposal that would replicate the Applicant Guidebook. The Delegation considered that there was a willingness to go beyond the Applicant Guidebook, since otherwise there would be no interest for such a proposal. While considering that geographical names of national significance were very important and should be protected, the Delegation remained flexible concerning their exclusion from the scope of the proposal, in order to accommodate the concerns and comments made by some delegations. The Delegation expressed the view that the current revised version was a good basis to provide a landing zone among all delegations.

135. The Delegation of the United Kingdom thanked the co-sponsors for the proposal as well as for its revision. Like other delegations, it believed that more time was necessary, in particular for consultations with the Government. Recognizing that informal negotiations had alleviated some of the concerns raised, the Delegation noted that not all of them had been addressed, and expressed its readiness to work with the co-sponsors to further clarify and specify the objectives

and language of the proposal. For example, the chapeau of Item II suggested that the list was not exhaustive and could be open-ended. The Delegation thus expressed the wish to address that concern in further discussions, whether in the current session or at the next session of the SCT.

136. The Delegation of Georgia thanked all delegations that had expressed their positions. Considering that the co-sponsors had shown flexibility and reflected all the suggestions made, the Delegation said that all obstacles had been removed from the proposal.

137. The Delegation of Chile thanked the proponents for their flexibility and the changes reflecting the concerns expressed by various delegations. As the Delegation understood the importance of the topic, it had sent the revised proposal to the capital and expected a feedback during the day. Therefore, as also expressed by other members of the Committee, the Delegation requested more time to discuss the matter and make further comments.

138. The Delegation of Sweden aligned itself with a number of delegations which had pointed out the remaining issues in the proposal, in particular, the ones outlined by the Delegation of the United Kingdom. In addition, the Delegation stated that the ICANN Multistakeholder Advisory Group was the proper forum for discussing those substantive issues. Therefore, the proposal needed further reflection.

139. The Delegation of Morocco thanked the proponents of the proposal and supported the statement made by the Delegation of Uganda on behalf of the African Group. Stressing the importance of the subject, the Delegation echoed the declarations of the majority of delegations concerning the need to consult capitals to receive further instructions. In addition, pointing out that only the recommendation (and not the proposal) had been amended, the Delegation suggested that the proposal as a whole be reconsidered to enable a comprehensive study.

[suspension]

140. The Delegation of Switzerland, on behalf of the co-sponsors, thanked the delegations that supported the first revised proposal, as well as the delegations that raised questions and comments on that text. The Delegation presented a new revised version prepared by the co-sponsors. First, under Item II, the term “comprised” had been replaced by “limited to”. Noting that under Item II(5) the reference to the applicable national law was interpreted by some delegations as creating an open list, the Delegation indicated that, in a spirit of compromise and to address those concerns, that item had been amended and no longer referred to “applicable national law.” Nevertheless, since deleting Item II(5) would actually decrease the protection as compared to the 2012 Guidebook, the proponents had kept the UNESCO list also contained in the ICANN Guidebook. Furthermore, names of cities had been added, but only when the applicant declared its intention to use the gTLD with a purpose associated with the name of the city. That addition constituted a mere reproduction of the content of the ICANN 2012 Guidebook and did not go beyond the current manual. The Delegation explained that the proposal now only referred to lists already established. According to the revised proposal, geographical names which were not contained under Item II(1) to (6) could be freely delegated without any possibility of objection by the public at large. However, in order to guarantee a minimum protection for other geographical names not included in Item II, the co-sponsors proposed that ICANN inform the entity concerned of any request for a gTLD corresponding to a geographical name in the territory of a country. That would enable the collective group concerned, if they considered it necessary, to take defensive measures. Noting that certain collective groups were not able to follow up on all requests and applications for gTLDs at ICANN, the Delegation pointed out that although such information would not give any preliminary right to the collective group, a certain balance would be guaranteed.

[suspension]

141. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the proponents of document SCT/41/6 for the second revision of the proposal. The Group noted the positive effort that had been made in taking into account the positions against an open-ended list, and was of the view that the new language in Items I, II, and III was now acceptable. With regard to Item IV, the Group still had concerns, although it understood the proponents' approach as trying to find a balanced language. The Group looked forward to further discussions to resolve those doubts.

142. The Delegation of Croatia, speaking on behalf of the CEBS Group, thanked the proponents for their work and expressed gratitude for the inclusion of its suggestion in the revised version. The Group informed the Committee that the new version had been transmitted to the capitals and that some Member States had already received a positive response to accept the text. As far as Croatia was concerned, no objection had been received from the capital.

143. The Delegation of the United States of America, thanking the proponents for the significant redraft based on the comments made by the delegations, said that it still had serious concerns about the extent of the proposal and its substance. While acknowledging the considerable effort made, the Delegation stated that, due to the nature of the revision, the complexity of the proposal and the number of ministries that needed to be consulted given the scope of the proposal, the item could not be concluded during the present session. Therefore, the Delegation could not support the revision before consultation with the capital, which could not be undertaken in such a short time. The Delegation suggested to revert to the matter under discussion at the next session of the SCT and that in the meantime, further revisions be made to address the concerns raised by other delegations.

144. The Delegation of Canada thanked all delegations for the continued productive discussion on the issue under consideration, as well as the co-sponsors for their flexibility and the revised proposal. The Delegation indicated that it still had concerns concerning its scope, possible implications on innovation in the DNS, as well as its potential to create unintended effects. Therefore, the impact of the proposal on applicants and on Member States, stakeholders, and the domain name space needed to be considered in more detail before moving forward.

145. The Delegation of Australia thanked the proponents of document SCT/41/6 for their efforts and for submitting a further revision of the proposal. Expressing its appreciation for the concerns voiced and the deliberations that had led to the revisions, the Delegation indicated that, in order to fully consider the new revised proposal, it would need a significant period of time to confer with the capital and a number of government agencies. Considering that some of the terms in the proposal remained unclear, the Delegation still had concerns regarding the extent of the proposal.

146. The Delegation of the United Arab Emirates, speaking on behalf of the co-sponsors of the proposal, requested that the agenda item remain open for consultations on the questions raised during the session, to enable the proponents to either provide answers or suggest a new way forward.

147. The Delegation of Switzerland indicated that the co-sponsors were preparing a proposal.

148. The Delegation of Indonesia, speaking in its national capacity, thanked the delegations for the efforts made throughout the week. It took note of all the comments, inputs and concerns, as well as of the requests for more time to reflect and consult with different agencies in the capitals. Without holding up the progress of the meeting on questions regarding the way forward, the Delegation expressed the wish that the session could make progress in a spirit of flexibility and

constructiveness, in order to find agreement on the Summary by the Chair, which should be as factual as possible. Considering that document SCT/41/6 was still alive, the Delegation looked forward to continuing the discussion on the proposal.

149. The Delegation of Switzerland noted with regret that ICANN was not present during the discussions, in spite of its observer status in the SCT. In view of the fact that the future information session to be held during the next session of SCT included a topic on the DNS, the Delegation suggested that a representative from ICANN contribute to it. The Delegation believed that that would allow clarifying some of the technical aspects mentioned by various delegations during the session.

150. The Delegation of Indonesia called for an agreement of the Committee on the language of the Summary by the Chair, before closing the session.

151. The Delegation of the United Arab Emirates requested that the agenda item be kept open until consultations among the co-sponsors and interested members were finalized.

152. The Delegations of Georgia, Iceland and Switzerland expressed support for the statements made by the Delegations of Indonesia and the United Arab Emirates.

153. The Delegation of the United States of America, while welcoming work to find a balanced language reflecting the views expressed on the proposal during the session, recalled that there was an agreement on the continuation of the discussion at the next session. Therefore, the Delegation considered that it would not be necessary to leave the agenda item open.

154. The Delegation of Indonesia proposed that the Summary by the Chair indicate that document SCT/41/6 had been discussed and supported by several delegations, while others had raised concerns and needed more time to reflect on it. The Delegation suggested that the WIPO Secretariat draw ICANN's attention to the concerns of delegations regarding the possible delegations of new gTLDs that could negatively impact their interests through the monopolization of their country names and geographical names by private entities.

155. The Delegation of Sweden considered that the proposal made by the Delegation of Indonesia did not accurately describe the situation.

156. The Chair concluded that:

- the SCT discussed document SCT/41/6;
- the co-sponsors of document SCT/41/6 proposed revisions in response to questions and concerns raised during the discussion, but no consensus was reached;
- discussion on document SCT/41/6 will continue at the forty-second session of the SCT.

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

157. Discussions were based on document SCT/41/5.

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

159. The SCT considered document SCT/41/5 and the Secretariat was requested to keep Member States informed of future trademark-related developments in the DNS.

International Non-Proprietary Names for Pharmaceutical Substances (INNs)

160. Discussions were based on document SCT/41/4.

161. The Secretariat made a presentation demonstrating the inclusion of INN data in the WIPO Global Brands Database, as well as a demonstration on how to use the Global Brands Database.

162. The Delegation of Moldova expressed its satisfaction with the inclusion of INNs in the WIPO Global Brand Database, as it would be useful for examiners dealing with substantive examination.

163. The Delegation of Ecuador, expressing its gratitude to the Secretariat for the presentation, pointed out that an internal guideline had been issued in Ecuador regarding the availability of updated information in the Global Brand database, so that trademark examiners could access the said database in order to search and compare the signs with the INNs. In order to facilitate the work of trademark examiners, the Delegation wondered whether it would be possible to circulate among Member States a guide on how to conduct INN searches in the WIPO Global Brand database.

164. The Delegation of Chile commended the Secretariat for the excellent initiative to include INN data in the WIPO Global Brand Database. After having carried out some searches in the Global Brand Database, the Delegation was pleased to inform the Committee that it worked well. The Delegation asked whether trademark examiners had to carry out searches in all languages or whether the tool automatically considered translations when searching.

165. The Delegation of Australia, thanking the Secretariat for the hard work leading up to the meeting and for the presentation, welcomed the integration of INN data into the Global Brand Database. The Delegation said that it understood that any update by the WHO to its INN data would be reflected in the WIPO Global Brand Database and would automatically trigger a WIPO electronic notification to the offices that would have opted for this communication method. In this regard, the Delegation wondered whether its understanding was correct and, if so, how offices would be able to opt in.

166. The Secretariat indicated that any designated person in an office who had subscribed to the SCT Forum notifications would receive the e-mail alert.

167. The Delegation of Tunisia thanked the Secretariat for the excellent preparatory work. The Delegation observed that the problem encountered by Tunisia did not concern the search but rather the examination, in particular when examiners received a request for registering a trademark which added a suffix or a prefix to the INN. In this regard, the Delegation stated that it would appreciate to have a guide, which would help examiners to accept or refuse the registration of a trademark that would be very similar to an INN.

168. In response to the Delegation of Tunisia, the Secretariat indicated that the World Health Assembly resolution WHA3.11 addressed the question of infixes, prefixes and suffixes that were similar or identical to INN stems.

169. The Chair concluded that the SCT had taken note of this activity and that the Secretariat was requested to offer an update at the next session of the SCT.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

170. Discussions were based on documents SCT/40/5 and SCT/40/6.

171. The Secretariat presented a test version of a database reproducing all returns to Questionnaire I on the National and Regional Systems that Can Provide a Certain Protection to Geographical Indications, and Questionnaire II on the Use/Misuse of Geographical Indications, Country Names and Geographical Terms on the Internet and in the DNS.

172. The Chair concluded that SCT members were invited:

- to review the test version of the database, which is available at <https://www.wipo.int/memberprofilesgeo/#/> and inform the Secretariat of any required changes; and
- to submit returns to the questionnaires in case they have not yet done so for inclusion in the database.

173. Furthermore, the SCT will consider an updated version of the database at its forty-second session.

174. The SCT considered documents SCT/41/7, SCT/41/8 and SCT/41/9.

175. The Delegation of the United States of America suggested that the SCT hold a series of information sessions on geographical indication examination topics in order to structure the discussions related to the replies to the geographical indications questionnaires. The Delegation observed that exploring several topics arising from those replies would help understanding how countries with examination systems handled specific issues and complex applications, such as the ones received by the national Office. The Delegation suggested that the information sessions be structured on the model of the session on country names organized several meetings ago, and consider the matters proposed in document SCT/41/7. Conscious that several other subjects could also be discussed, the Delegation indicated that the topics suggested would be useful to start the debate. The Delegation hoped that the SCT could move forward with the organization of the information sessions.

176. The Delegation of Switzerland said that it had identified topics that regularly lead to confusion in the context of the Committee's discussions. Considering that the focus of the information sessions should be broader, the Delegation explained that its proposal contained four topics, which were not limited to examination practices in registration systems.

177. The Delegation of the European Union, speaking on behalf of the European Union and its member states, indicated that the three topics tabled for the proposed information sessions were based on the questions and replies to Questionnaire II. The Delegation was convinced that those issues entailed real uncertainties and legal lacunas with regard to geographical indications on the Internet. Therefore, the first proposed topic dealt with geographical indications as intellectual property titles in the operation of the DNS and in dispute resolution policies. The second topic addressed the issue of the types of actionable infringements of geographical indications as intellectual property titles on the Internet. Finally, the third topic referred to types of legal instruments, such as binding or soft law (for instance memoranda of understanding) or technical tools available to combat the sale of counterfeit goods bearing geographical indications as intellectual property titles via Internet.

178. The Delegation of the United States of America proposed that the half-day information session consisted of three panels, which would deal respectively with one topic selected from each of the three proposals. If the information session was found useful and productive, the

Committee could consider further topics for another information session to be organized during the forty-third session of the Committee. The Delegation believed that this would be a pragmatic way to proceed with a view to find a consensus for the first information session. In addition, the Delegation suggested that, before the forty-second session of the SCT, members submitted proposals for topics falling under the scope of Questionnaire I and Questionnaire II, to be considered at the next session for the forty-third session of the Committee.

179. The Delegation of Switzerland thanked the Delegation of the United States of America for its proposal. It however wondered whether that was the most efficient way to proceed, given that the three proposals related to very different topics. The Delegation highlighted that, at least for Switzerland, *sui generis* examination and trademark examination practices for appellations of origin or geographical indications would not be dealt with by the same experts. Moreover, different specialists would need to intervene on the issue of the protection of geographical indications in the DNS or on the Internet. Finally, the same panelists would not be able to cover judicial means and administrative procedures. The Delegation said that a more efficient way would be perhaps to proceed per area of competence, so that a maximum of experts competent on a specific matter could meet and exchange views.

180. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Delegation of the United States of America for its proposal, which seemed to be a good plan of action. The Delegation proposed that the half-day information session be divided into three topics of one hour each, selected from the three proposals, with panels composed of two or three speakers.

181. The Chair invited the three proponents to consult informally between themselves in order to find a proposal concerning the practical organization of the information session.

182. The Delegation of the United States of America suggested starting with a panel on the topic of the evaluation of genericness.

183. The Delegation of Switzerland said that it had tried to select a topic that would be related to at least one of the two other topics to be covered during the information session. Therefore, its proposal under item 4 could be reworded along the lines of the topic chosen by the Delegation of the United States of America, namely, "evaluation of the imitation of a geographical indication in trademark examination".

184. The Delegation of the European Union, speaking on behalf of the European Union and its member states, considered that the compilation of the replies to the two questionnaires on geographical indications had been a valuable and constructive exercise in advancing the international debate on geographic indications. The Delegation was of the view that the exercise should progress in line with the conclusion of the Chair at the fortieth session, that is by agreeing on a limited number of topics of interest confined to the scope of the questionnaires, to be addressed in the information sessions in future SCT meetings. The Delegation recalled that it had proposed questions on the protection of geographical indications on the Internet in document SCT/41/9, and took note of the submissions made by the Delegations of Switzerland and the United States of America in documents SCT/41/7 and SCT/41/8. Considering that the handling of geographical indications as intellectual property rights on the Internet was an area where there were significant lacunae and unjustified divergences of treatment from other intellectual property rights, the Delegation proposed for the information session the first topic of its submission, namely, "geographical indications as intellectual property titles in the operation of the DNS and in the dispute resolution policies". Concerning the organization of the session, the selection of speakers and the timing, the Delegation expected guidelines from the Chair. The Delegation concluded by saying that the European Union and its member states looked forward to engaging constructively on the topics selected for the geographical indication information sessions.

185. The Delegation of Switzerland clarified that the topic proposed covered the concept of imitation between trademarks and geographical indications, in other words, the question of trademarks which were similar or identical to a geographical indication in trademark examination.

186. The Delegation of Croatia recalled that, while the Committee had selected possible topics, it was ready to consider other subjects which would have some practical impact, such as the theme proposed by the European Union and its member states, namely, geographical indications as intellectual property titles in the operation of the DNS and in the dispute resolution policies.

187. The Delegation of France supported the statement made by the Delegation of the European Union, in particular concerning the question of geographical indications in the DNS. Considering that geographical indications as intellectual property rights could benefit from a better regulation on the Internet, the Delegation was of the view that that was a major problem, which had to be addressed.

188. The Delegation of Switzerland, referring to the subject proposed by the Delegation of the European Union, suggested a more exhaustive coverage of the issue, covering also country names. The Delegation suggested modifying the topic to read: "geographical indications as intellectual property titles and country names in the operation of the DNS and in dispute resolution policies".

189. The Chair concluded that the SCT agreed:

- to hold one half-day information session on geographical indications in conjunction with the forty-second session of the SCT;
- that the program for that information session would comprise three panels on the following topics: evaluation of genericness; geographical indications as intellectual property titles in the operation of DNS and in the dispute resolution policies; notions of identity, similarity and imitation between geographical indications and trademarks in the context of registration and commercial use;
- that, at its forty-second session, it would consider possible future information sessions on geographical indications.

AGENDA ITEM 8: ADOPTION OF THE SUMMARY BY THE CHAIR

190. The Chair referred to the draft Summary by the Chair, which had been made available to the Committee during the session.

191. The Delegation of Switzerland, speaking on behalf of the co-sponsors of the Proposal Concerning the Protection of Country Names and Geographical Names of National Significance in the DNS, as contained in document SCT/41/6, declared that, in its understanding, many delegations had supported the proposal presented in that document, while some delegations had raised questions and had stressed the need to have more time to reflect and consult. In the Delegation's understanding, WIPO would draw ICANN's attention on the concerns of most delegations regarding the possible delegation of new gTLDs that could negatively impact their interests through monopolization, by private entities, of their national/country names and other geographical names. Referring to its previous statements made during the session, the Delegation reiterated that it would welcome inputs from ICANN's Representative at the

next SCT session on the topic, and, in particular, an update on the processes aiming at revising the rules for the delegation of new gTLDs and on the rights protection mechanisms at the second level of the DNS. The Delegation concluded by stating that such update would enable further discussions among SCT members on those important issues, based on the most precise information.

192. The Delegation of Indonesia, speaking in its national capacity, aligned itself with the statement made by the Delegation of Switzerland.

193. The Delegation of Senegal, as co-sponsor of the proposal contained in document SCT/41/6, seconded the statement delivered by the Delegation of Switzerland.

194. The Delegation of Jamaica, aligning itself with the statement made by the Delegation of Switzerland, noted that discussions had revealed that the vast majority of States had expressed concerns about issues pending before ICANN with respect to the protection of country names and geographical names in the DNS. While recognizing the lack of consensus, the Delegation observed that the majority of States had expressed those concerns, while others had raised questions. In the Delegation's viewpoint, there was nonetheless an overwhelming concern that the matter be resolved in some way.

195. The Delegation of Monaco endorsed the statements made by the Delegations of Switzerland and Jamaica.

196. The Delegation of Uganda, speaking on behalf of the African Group, lent its full support to the proposal contained in document SCT/41/6. Without prejudice to the rights of Member States wishing to consult further with their capitals, the Delegation noted that, despite the lack of consensus, the majority of Member States had supported the proposal.

197. The Delegation of Georgia seconded the statement made by the Delegation of Switzerland.

198. The Delegation of Iceland, thanking the Chair for his Summary and referring to the proposal contained in document SCT/41/6, stated that it shared the understanding of the Delegation of Switzerland. Although a consensus had not been reached, the Delegation emphasized the wide support received by the proposal, while noting that some delegations had raised concerns. Echoing the suggestion made by the Delegation of Switzerland with respect to the forthcoming SCT session, the Delegation believed that information to be provided by ICANN at the next session would serve as positive input for future discussions on the topic. Finally, the Delegation concluded by thanking the Chair and the Secretariat for their work and diligence during the session.

199. The Delegation of the United Arab Emirates aligned itself with the statement made by the Delegation of Switzerland.

200. The Delegation of the United States of America, recalling that it had expressed its opinion on document SCT/41/6 at great length and details during the session, informed the Committee that its government was very active at the ICANN Governmental Advisory Committee (GAC), where it made its views known. The Delegation strongly urged other SCT members to do the same.

201. The Delegation of the United Kingdom observed that its recollection of the discussions on agenda item 6 was different from the one presented by the Delegation of Switzerland. Pointing out that ICANN was an observer to the SCT, the Delegation stated that it would also appreciate hearing ICANN's views on that agenda item.

202. The SCT approved the Summary by the Chair as presented in document SCT/41/10.

AGENDA ITEM 9: CLOSING OF THE SESSION

203. The Delegation of Croatia, speaking on behalf of the CEBS Group, thanked the Chair and Vice-Chairs for their able guidance throughout the session, the Secretariat for its work, as well as the interpreters, conference services and other stakeholders having contributed to the session. With respect to agenda item 5, the Delegation welcomed the progress achieved on the questionnaire on GUI, Icon, Typeface/Type Font Designs and on the questionnaire on the temporary protection provided to industrial designs at certain international exhibitions under Article 11 of the Paris Convention. Turning to agenda item 6, the Delegation declared that, despite the lack of consensus on the proposal concerning the protection of country names and geographical names of national significance in the DNS, as contained in document SCT/41/6, it appreciated that amendments suggested by the CEBS Group had been welcomed by some delegations. The Delegation expressed its readiness to participate constructively in future work on that important topic. Finally, with respect to agenda item 7, lending its support to the decision to organize an information session on geographical indications at the next SCT session to discuss the topics submitted by the proponents, the Delegation held the view that the information session would enable constructive discussions allowing advancement on the issue.

204. The Delegation of Guatemala, speaking on behalf of GRULAC, commended the Chair for his commitment in conducting the Committee's work and expressed its gratitude to the Secretariat for the preparation of the session. As regards trademarks, the Delegation stated that it was looking forward to discussing documents SCT/32/2, SCT/39/8 Rev.3 and SCT/41/6. Concerning geographical indications, while being pleased that the work plan was following its course, the Delegation urged Member States to make all necessary efforts to ensure that the information session, planned for the next SCT session, be useful to continue the discussions on the issue. The Delegation concluded by thanking all Member States for their active participation, as well as the conference services and interpreters for the support provided to facilitate the meeting.

205. The Delegation of the European Union, speaking on behalf of the European Union and its member states, congratulated the Chair for successfully guiding the Committee during the session. As regards industrial designs, the Delegation welcomed with satisfaction the extension of the deadline to submit additional responses to the questionnaire on GUI, Icon, Typeface/Type Font Designs in order to further expand the volume of information available. Expressing its appreciation for the finalization of the questionnaire on the temporary protection provided to industrial designs at certain international exhibitions under Article 11 under the Paris Convention, the Delegation commended the Secretariat for its efforts to take on board all comments made by delegations during the session, as reflected in document SCT/41/3 Rev. Then, highlighting the Committee's hard work in addressing the topic of country names, the Delegation noted that discussions had helped identifying some outstanding issues concerning the joint proposal contained in document SCT/41/6. Thanking the proponents for their efforts to facilitate consensus and for having prepared two revisions of the document during the session, the Delegation expressed its openness to continue discussing the issue. Finally, as regards geographical indications, the Delegation welcomed the decision to organize an information session at the next SCT session to discuss three topics, submitted by each of the proponents, from the list of topics tabled at the meeting. Looking forward to engaging constructively on each of the selected topics in order to advance the international debate on geographical indications, the Delegation encouraged the wider membership to table proposals for debate on geographical indications on subject of concerns. The Delegation expressed the

hope that the Committee would be able to agree on some particular topics for further discussions to be conducted at the forty-third session of the SCT and that it would continue to have fruitful discussions on all three key areas at its next session.

206. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the Chair and the Vice-Chairs for their able guidance and leadership, welcomed the progress made during the session and looked forward to the consideration of the DLT at the next WIPO General Assembly. The Delegation also appreciated the progress achieved with respect to GUI, Icon, Typeface/Type Font Designs and the temporary protection provided to industrial designs at certain exhibitions under Article 11 of the Paris Convention. Turning to trademarks, the Delegation looked forward to continuing discussions in relation to various proposals contained in documents SCT/32/2, SCT/39/8 Rev.3 and SCT/41/6. Welcoming the organization of an information session on geographical indications at the next session of the SCT, the Delegation announced its active participation in that information session. Finally, the Delegation wished to thank the Secretariat, conference services and interpreters, as well as all Member States for their constructiveness during the discussions held during the session.

207. The Delegation of Canada, speaking on behalf of Group B, thanked the Chair for his able and wise guidance through the SCT session, the Vice-Chairs, the Secretariat for its hard work in preparing the session, as well the interpreters, translators and conference services for their professionalism and availability. The Delegation expressed its full support and constructive spirit to continue the fruitful discussions within the Committee.

208. The Delegation of Uganda, speaking on behalf of African Group, thanked the Chair for his excellent leadership, the Vice-Chairs and the Secretariat, interpreters and conference services for their support and all Member States for their constructive engagement. The Delegation recalled that, at the opening of the session, it had looked forward to a successful conclusion of the session and concrete results. The Delegation indicated that, throughout the session, it had sought to be constructive in its engagement to ensure reaching meaningful and mutual acceptable outcomes to address the interests of all Member States in a balanced manner and in the spirit of the multilateral system. While recognizing that some progress had been achieved in some areas, with respect notably to the future work on geographical indications for the next SCT session, the Delegation nonetheless pointed out that there remained a number of outstanding issues important to, and fully endorsed by, the African Group. The Delegation considered that an agreement should be reached on those issues in the near future. The Delegation expressed its concerns about the failure of the Committee to reach consensus on the issue of the protection of country names and geographical names of national significance, which was of importance to most Member States, pointing out that the majority of Member States had raised concerns as to the potential delegation of their country names as gTLDs in the DNS. Pointing out that the Committee's work was an ongoing process, the Delegation expressed its willingness to continue engaging in a constructive manner on all outstanding issues in future SCT sessions.

209. The Chair closed the session on April 11, 2019.

[Annexes follow]



SCT/41/INF/1
ORIGINAL : FRANCAIS/ANGLAIS
DATE : 11 AVRIL 2019 / APRIL 11, 2019

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

**Quarante et unième session
Genève, 8 – 11 avril 2019**

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

**Forty-First Session
Geneva, April 8 to 11, 2019**

**LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS**

*établie par le Secrétariat
prepared by the Secretariat*

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Secrétaire/Secretary:	Marcus HÖPPERGER (M./Mr.) (OMPI/WIPO)

VI. SECRÉTARIAT DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/SECRETARIAT OF THE WORLD INTELLECTUALPROPERTY ORGANIZATION (WIPO)

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[Annex II follows]



SCT/41/10
ORIGINAL: ENGLISH
DATE: APRIL 11, 2019

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

Forty-First Session
Geneva, April 8 to 11, 2019

SUMMARY BY THE CHAIR

adopted by the Committee

AGENDA ITEM 1: OPENING OF THE SESSION

1. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the forty-first session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.
2. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

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

3. Mr. Alfredo Carlos Rendón Algara (Mexico) was elected Chair. Mr. Simion Levitchi (Republic of Moldova) and Ms. Ingeborg Alme Råsberg (Norway) were elected Vice-Chairs.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

4. The SCT adopted the draft Agenda (document SCT/41/1 Prov.3).

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE FORTIETH SESSION

5. The SCT adopted the draft Report of the fortieth session (document SCT/40/10 Prov.).

AGENDA ITEM 5: INDUSTRIAL DESIGNS

Industrial Design Law and Practice-Draft Articles and Draft Regulations

6. The Chair recalled that the WIPO General Assembly, on the occasion of its session in September 2018, had decided that, at its next session in 2019, 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 2020.

7. The Chair concluded that the SCT took note of all statements made by delegations on that item. The SCT noted the decision of the General Assembly to continue considering this matter at its next session in 2019.

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

8. The SCT considered document SCT/41/2 Prov. (Compilation of the Returns to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Typefont Designs).

9. The Chair concluded that the Secretariat was requested to:

- keep the document open until July 31, 2019, for contributions by delegations; and
- finalize the document thereafter and present it for consideration by the forty-second session of the SCT.

10. Furthermore, SCT members were invited to present proposals for future work on that matter to the forty-second session of the SCT.

Temporary Protection Provided to Industrial Designs at Certain International Exhibitions Under Article 11 of the Paris Convention for the Protection of Industrial Property: Draft Questionnaire

11. The SCT considered document SCT/41/3.

12. The Chair concluded that the Secretariat was requested to:

- circulate the questionnaire as contained in document SCT/41/3 Rev. to SCT members and Intergovernmental Intellectual Property Organizations with observer status, for returns by July 31, 2019; and
- compile all returns into a document for consideration by the forty-second session of the SCT.

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

13. The SCT noted the progress in the implementation of the DAS for industrial designs by members.

14. The Chair concluded that the SCT would revert for an update to this item at its next session.

AGENDA ITEM 6: TRADEMARKS

Revised Proposal by the Delegation of Jamaica (document SCT/32/2).

15. The SCT considered document SCT/32/2.

16. The Chair concluded that the Delegation of Jamaica would present a revised version of this document to the next session of the SCT in light of the comments made during this session.

Proposal by the Delegations of Georgia, Iceland, Indonesia, 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 (document SCT/39/8 Rev.3).

17. The SCT considered document SCT/39/8 Rev.3.

18. The Chair concluded that discussion on document SCT/39/8 Rev.3 will continue at the forty-second session of the SCT.

Proposal by the Delegations of Georgia, Iceland, Indonesia, 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 in the DNS (document SCT/41/6).

19. The SCT considered document SCT/41/6 as well as two informal revised versions of this document.

20. The Chair concluded that:

- the SCT discussed document SCT/41/6;
- the co-sponsors of document SCT/41/6 proposed revisions in response to questions and concerns raised during the discussion, but no consensus was reached;
- discussion on document SCT/41/6 will continue at the forty-second session of the SCT.

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

21. The SCT considered document SCT/41/5 and requested the Secretariat to keep Member States informed of future developments in the DNS.

International Non-Proprietary Names for Pharmaceutical Substances (INNs)

22. The SCT considered document SCT/41/4.

23. The Secretariat made a presentation of the integration of the INN data into the Global Brands Database.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

24. The SCT considered documents SCT/40/5 and SCT/40/6.

25. The Secretariat presented a test version of a database reproducing all returns to Questionnaire I on the National and Regional Systems that Can Provide a Certain Protection to Geographical Indications, and Questionnaire II on the Use/Misuse of Geographical Indications, Country Names and Geographical Terms on the Internet and in the DNS.

26. The Chair concluded that SCT members were invited:

- to review the test version of the database, which is available at <https://www.wipo.int/memberprofilesgeo/#/> and inform the Secretariat of any required changes; and
- to submit returns to the questionnaires in case they have not yet done so for inclusion in the database.

27. Furthermore, the SCT will consider an updated version of the database at its forty-second session.

28. The SCT considered documents SCT/41/7, SCT/41/8 and SCT/41/9.

29. The Chair concluded that the SCT agreed:

- to hold one half-day information session on geographical indications in conjunction with the forty-second session of the SCT;
- that the program for that information session would comprise of three panels on the following topics: evaluation of genericness; geographical indications as intellectual property titles in the operation of DNS and in the dispute resolution policies; notions of identity, similarity and imitation between geographical indications and trademarks in the context of registration and commercial use;
- that, at its forty-second session, it would consider possible future information sessions on geographical indications.

AGENDA ITEM 9: CLOSING OF THE SESSION

30. The Chair closed the session on April 11, 2019.

[End of Annex II and of document]