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**STANDING COMMITTEE ON THE LAW OF TRADE MARKS,
INDUSTRIAL DESIGN AND GEOGRAPHICAL INDICATIONS**

Tenth Session
Geneva, April 28 to May 2, 2003

DRAFT REPORT

Document prepared by the Secretariat

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee” or “the SCT”) held its tenth session, in Geneva, from April 28 to May 2, 2003.
2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Barbados, Brazil, Belarus, Belgium, Bulgaria, Cambodia, Cameroon, Canada, Chile, China, Congo, Costa Rica, Croatia, Czech Republic, Democratic People’s Republic of Korea, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Germany, Ghana, Greece, Hungary, India, Ireland, Islamic Republic of Iran, Italy, Japan, Kenya, Latvia, Lithuania, Malta, Mexico, Morocco, Mongolia, Mozambique, Nepal, Nigeria, Norway, New Zealand, Oman, Netherlands, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia and Montenegro, Singapore, Slovakia, Slovenia, Spain, South Africa, Sudan, Sweden, Switzerland, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela, Zambia, Zimbabwe (79). The European Communities were also represented in their capacity of member of the SCT.
3. The following intergovernmental organizations took part in the meeting in an observer capacity: Benelux Trademark Office (BBM), International Vine and Wine Office (OIV), World Trade Organization (WTO) (3).
4. Representatives of the following international non-governmental organizations took part in the meeting in an observer capacity: Association of European Trade Mark Owners (MARQUES), Center for International Industrial Property Studies (CEIPI), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), International Association for the Protection of Industrial Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), International Federation of Wines and Spirits (FIVS), International League of Competition Law (LIDC), International Trademark Association (INTA), International Wine Law Association (AIDV), Japan Trademark Association (JTA), Japan Patent Attorneys Association (JPAA) (12).
5. The list of participants is contained in Annex II of this Report.
6. Discussions were based on the following documents prepared by the International Bureau of WIPO: “Draft Agenda” (document SCT/10/1Prov.), “Draft Revised Trademark Law Treaty” (document SCT/10/2), “Further Development of International Trademark Law and Convergence of Trademark Practices”

(document SCT/ 10/3Prov.), “Geographical Indications” (document SCT/10/4), “The Protection of Country Names in the Domain Name System” (document SCT/10/5), “Internet Domain Names and Geographical Indications” (document SCT/10/6), “The Protection of Country Names in the Domain Name System” (document SCT/10/7Corr.).

7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all the observations made.

Agenda Item 1: Opening of the Session

8. Mr. Shozo Uemura, Deputy Director General, opened the session and welcomed all the participants on behalf of the Director General of WIPO. Mr. Uemura made a short introduction of the issues discussed in previous meetings of the SCT and the issues submitted for discussion at the present meeting.

9. Mr. Denis Croze (WIPO) acted as Secretary to the Standing Committee.

Agenda Item 2: Election of a Chair and two Vice -Chairs

10. The Delegation of Portugal, speaking on behalf of Group B proposed, as Chair of the SCT for the year 2003, Mr. Li -Feng Schrock (Senior Ministerial Counsellor, Federal Ministry of Justice, Germany) and as Vice -Chairs Mrs. Graciela Roadd’ Imperio (Director de Asesor ía Técnica, Dirección Nacional de la Propiedad Industrial, Uruguay) and Mrs. Valentina Orlova (Director, Legal Department, Russian Agency for Patents and Trademarks –ROSPATENT– Russian Federation).

11. The Delegations of Romania and of Switzerland endorsed the proposal.

12. The Standing Committee unanimously elected the Chair and Vice -Chairs as proposed.

13. Mr. Li -Feng Schock chaired items 3, 5, 6, 7 (partly) of the agenda. In the absence of the Chair, Mrs. Graciela Roadd’ Imperio chaired discussions on agenda items 4, 7 (partly), 8, 9 and 10.

Agenda Item 3: Adoption of the Agenda

14. The Draft Agenda (document SCT/10/1Prov.) was adopted with a modification relating to the order of discussion of Agenda Item 4 (Adoption of the Draft Report of the Ninth Session).

15. The Delegation of Switzerland requested that under Agenda Item 8 (Other Matters), the SCT continue the discussion of document SCT/9/6 (Industrial Designs and Their Relation with Works of Applied Art and Three -Dimensional Marks), started at the ninth session of the Committee. The Delegation of the United Kingdom suggested that under Agenda Item 9 (Future Work), the SCT consider current procedures as set out in Article 6 *ter* of the Paris Convention for the Protection of Industrial Property, including application, guidelines for interpretation, possibility of adding specific guidelines on withdrawal or deletion procedure, and a provision of an online database. The SCT agreed to these proposals.

Agenda Item 4: Adoption of the Draft Report of the Ninth Session

16. The Secretariat informed the Standing Committee that, following the procedure adopted by the SCT, comments were made by several delegations on the Electronic Forum of the SCT: Japan (in respect of paragraphs 205 and 214), Mexico (paragraphs 142, 285 and 305), the Republic of Moldova (paragraphs 47 and 64), Switzerland (paragraphs 37, 68, 91, 98, 284 and 324), the European Communities, (paragraphs 88 and 102), and the Representative of CEIPI (paragraphs 162, 203 and 211). The above mentioned paragraphs were consequently amended in document SCT/9/9Prov.3.

17. The Delegation of France requested a modification to paragraph 115.

18. The SCT adopted the Draft Report of the ninth session (document SCT/9 /9Prov.3) as modified.

Agenda Item 5: Internet Domain Names

19. The Secretariat recalled that, as a result of the Second WIPO Internet Domain Name Process, the Member States of WIPO recommended to extend protection to two types of identifiers, namely the names and acronyms of Intergovernmental Organizations (IGOs) and country names, by extending the scope of the Uniform Domain Name Dispute Resolution Policy (UDRP).

20. The Secretariat also recalled that it had transmitted these recommendations to the Internet Corporation for Assigned Names and Numbers (ICANN). At its meeting from March 23 to 25, 2003, the Governmental Advisory Committee of ICANN endorsed these recommendations. These recommendations are currently being considered by ICANN in accordance with its internal decision -making procedures.

Internet Domain Names and Geographical Indications

21. The Secretariat presented document SCT/10/6 which summarizes the discussions throughout the Second WIPO Internet Domain Name Process on the protection of geographical indications in the domain names system.
22. The Representative of ECTA referred to paragraph 231 of document SCT/10/6 and explained that, given the complexity of the disputes regarding geographical indications, and the divergences in their legal protection, it would be premature to extend UDRP protection to geographical indications.
23. The Delegation of the European Communities stated that it could see no reason why geographical indications should be afforded less protection in the domain name system than trade or service marks. Although, the Final Report of the Second WIPO Internet Domain Process summarizes the evidence of the misuse of geographical indications in the domain names system, it concludes that in view of the divergences in the international legal protection of geographical indications it would be premature to extend UDRP protection to such identifiers. The Delegation stated that, when the legal measures of protection of geographical indications existing in the European Union are extended to the new European Union Member States, wider harmonization will be achieved which could be used as a reference for the international protection of geographical indications. As a result, the Delegation of the European Communities confirmed its support for the extension of UDRP protection to geographical indications.
24. The Representative of the OIV expressed concern about the number of Internet domain names consisting of geographical indications. The Representative stated that such domain name registrations constitute commercial piracy.
25. The Delegations of France and Switzerland expressed support for the positions put forward by the Delegation of the European Communities and the Representative of the OIV and requested the extension of the UDRP to geographical indications.
26. The Delegation of Uruguay considered that, given the lack of a harmonized system of protection for geographical indications, it would be premature to extend the UDRP to such identifiers. The Delegation of the United States of America agreed with the position advanced by the Delegation of Uruguay.
27. In response, the Delegation of the European Communities stated that the establishment of a fully harmonized system of protection for geographical indications was unlikely in the near future, and that it was therefore necessary to find a common denominator in order to provide protection for geographical indications in the domain names system. The Delegation pointed out that, like trademarks, geographical indications are subject to the principle of territoriality, and should therefore benefit from the same protection currently available for trademarks. On the question of who should be deemed to have standing to file complaints under a proposed revised UDRP protecting geographical indications, the Delegation stated that this issue could be

determined by reference to the applicable national law. In any event, the Delegation declared its support for the establishment of an international registry of geographical indications as stated in paragraph 245 of document SCT/10/6.

28. The Chair concluded that there was a split in the position of Member States on the issue of Internet domain names and geographical indications.

Internet Domain Names and Country Names

29. Discussions on the protection of country names in the domain names system were based on documents SCT/10/5 and SCT/10/7 Corr.

30. The Secretariat presented the issues to be decided by the SCT in connection with the protection of country names in the domain names system, as reflected in document SCT/10/5, namely:

(a) whether protection should be extended to names by which countries are familiarly or commonly known as notified by the Member States to the Secretariat in the cumulative list annexed to document SCT/10/7 Corr.;

(b) whether protection of country names should be extended retroactively and, if so, whether there is a need to take specific account of acquired rights;

(c) whether to recommend, in view of the immunities enjoyed by sovereign States, a special appeal mechanism by way of *denovo* arbitration.

31. The Delegation of Greece reserved its position regarding the notifications made by the former Yugoslav Republic of Macedonia included in the Annex to documents SCT/10/5 and SCT/10/7 Corr.

32. The Delegation of Barbados supported extending protection under the UDRP to names by which countries are familiarly or commonly known, including those notified by Member States to the Secretariat after December 31, 2002. The Delegations of China and Mexico supported this approach.

33. The Delegations of the Netherlands and the Czech Republic supported the protection of names by which countries are familiarly or commonly known. The Delegation of Switzerland also supported such an extension of protection, suggested to determine a new deadline for notifications by Member States to the Secretariat, and considered that an objection mechanism was not required. The Delegation of Zimbabwe agreed with the position expressed by the Delegation of Switzerland but stated that a mechanism allowing countries to object to individual notifications should be established.

34. The Delegation of the United Kingdom urged caution and considered that protection should only be extended to the long and short names of countries as provided by the United Nations Terminology Bulletin. The Delegation stated that extending protection to names by which countries are familiarly or commonly known might be difficult to manage. The Delegation of Australia supported the position expressed by the Delegation of the United Kingdom. It also stated that the risk of disputes would be increased if protection was extended to such names.
35. The Delegations of Japan and South Africa opposed the extension of protection to the names by which countries are familiarly or commonly known. The Delegation of the United States of America also opposed such a next extension and referred to specific examples of conflicts between trademarks and domain names based on such names.
36. The Delegation of Ukraine expressed concern about the problem of countries changing names.
37. The Chairs solicited views on whether the protection of country names should be extended retroactively as stated in paragraph 15 of document SCT/10/5.
38. The Delegation of China declared itself in favor of the retroactive protection of country names.
39. The Delegations of Japan, Australia and the United States of America declared themselves against retroactive protection of country names.
40. As Member States could not agree on the issue of retroactive protection of country names, the Chair proposed moving to the issue of whether to recommend, in view of the immunities enjoyed by sovereign States, a special appeal mechanism by way of *denovo* arbitration as stated in paragraph 18 of document SCT/10/5.
41. At the request of the Delegation of the United States of America, the International Bureau explained that the SCT had recommended to respect the privileges and immunities enjoyed by IGOs in the implementation of protection for the names and acronyms of IGOs. As a result, instead of submitting to the jurisdiction of national courts, IGOs would submit to a special appeal procedure by way of *denovo* arbitration. A similar issue arises regarding the immunity of sovereign States.
42. The Delegations of Mexico and Zimbabwe declared their support to the establishment of a special appeal mechanism for sovereign States by way of *denovo* arbitration.
43. The Delegation of China stated that it was against a special appeal mechanism for sovereign States by way of *denovo* arbitration. It suggested that, in order to preserve the sovereign immunity of States, the UDRP should include a ground to consider registration of country names as domain names as a violation of the public order.

44. At the request of the Delegation of South Africa, the Secretariat explained that the registration agreement would require the domain registrant to submit to the *denovo* arbitration and that it might be liable for the costs of the arbitration, as it would be liable for the costs of any proceedings conducted before a national court of justice.

45. The Delegation of Australia expressed its opposition to the establishment of a special appeal mechanism for sovereign States by way of *denovo* arbitrations since a State is only required to waive its immunity with regard to specific UDRP proceedings. The Delegation reported that Australia, like other countries, had already done so in the context of individual UDRP proceedings. However, if there was consensus for the establishment of such a mechanism, the Delegation of Australia would follow.

46. The Delegations of Japan, Morocco, the United Kingdom, the United States of America and Uruguay stated that they reserved their position with regard to paragraph 18 of document SCT/10/5. They said that further discussions on the issue of sovereign immunity of States should take place at the SCT before making any recommendation to ICANN. The Delegation of the United Kingdom, supported by the Delegation of Australia, suggested that a short description of how a *denovo* arbitration mechanism might work should be prepared by the Secretariat for the next session.

47. The Chair drew the following conclusions:

(i) the SCT decided to revert to the issues considered in paragraphs 13 and 18 of document SCT/10/5 (The Protection of Country Names in the Domain Name System) at the next meeting of the SCT;

(ii) in respect of the question of sovereign immunity, it was agreed that a short description of how a *denovo* arbitration mechanism might work should be prepared by the International Bureau; and

(iii) with respect to the issues contained in paragraph 15 of document SCT/10/5, it was agreed that no further actions should be taken.

Agenda Item 6 : Geographical Indications

48. The Secretariat introduced document SCT/10/4 and recalled that at its ninth session, the Committee had requested WIPO to prepare a study setting out the issues generally considered with regard to the protection of geographical indications, taking into account the elements contained in the definition of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), in particular, the elements supporting a claim for quality, reputation or other characteristics, and what is considered in evaluating a claim that these elements are “essentially attributable” to the geographical origin. The list of factors would be illustrative and not exhaustive and the purpose of the study itself would be to provide members with a general overview of issues considered by different systems of protection.

49. The Secretariat added that, in document SCT/10/4, the issue of geographical indications was dealt with in two parts. A first part containing a number of questions which have not yet been resolved at the international level and which may have to be answered before any substantive discussions could be engaged on this issue, and a second part highlighting the elements of the definition as they are taken into account in different systems of protection. On the whole, the purpose of the document was to serve as the basis of an exchange of information among members of the Committee.

50. In reply to a query by the Delegation of the United States of America, the Secretariat clarified that use of the word “systematically” in paragraph 14 of the document, in relation to reputation or notoriety reproduced a conclusion contained in the World Trade Organization (WTO) survey on the subject according to which countries applying the TRIPS model refer to reputation in their national legislation as an element linked to geographical origin, whereas countries applying the Lisbon model did not generally do so.

51. The Representative of the FIVS noted that countries which had experience with geographical indications had incorporated into their legislation the language of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In Italy, the National Committee for Appellations of Origin on Wine considered the fact of a product name being well known or having reputation as one of the key elements to grant an appellation of origin to a given wine. If the product was not known to a specific sector of consumers, one of the elements would be considered to be lacking and members of the National Committee would vote against granting the appellation of origin to the product.

52. The Delegation of the European Communities, also speaking on behalf of its member States, noted that the document was comprehensive and dealt with all of the items of the definition of geographical indications. It added that the element of reputation appeared in Article 2(2) of the Lisbon Agreement which took account of the notoriety of the geographical name. The determination was however done on a case-by-case basis. The Delegation stressed that, behind the geographical name for which protection was sought, the fact that the product was well-known, that it sold well and that people appreciated it over a certain period of time, constituted an important element. In addition, reputation was also an important element to consider if the product was replaced or substituted or the name was usurped.

53. As a general remark, the Representative of the OIV said that the definition of Article 22(1) of the TRIPS Agreement applied to any product including wines and spirits. He added that the additional protection for wines and spirits under Article 23 was not conditioned by a special definition – granting a specific and autonomous protection – but by the very nature of the product. Therefore, if a product was rejected out of the scope of the additional protection, it would still benefit from the general protection contemplated under Article 22(1) of TRIPS. The TRIPS Agreement did not define either wines or spirits, and this observation was important because it raised the question of whether products such as plant wines or palm wines could benefit from the

additional protection of Article 23 of TRIPS when they had a geographical indication. In the opinion of the Representative, it would perhaps be necessary to limit the additional protection only to products of the vine, whether fermented or distilled. With regard to document SCT/10/4, the Representative regretted that no clarification was made on the meaning of the word "indication," which was contained in the TRIPS definition. The Agreement did not spell out that a geographical indication was a geographical name, while the Lisbon Agreement did use the term "geographical name." Thus, it could be understood that a word which was not a geographical name *strictu sensu* but had the very strong power of a geographical evocation could be considered a geographical indication. This exceptional situation was regulated in certain regions, where a particular indication — such as Vinho Verde, Muscadet or Manzanilla, Cava — would be assimilated to the geographical name of a geographical area. The representative recalled that since 1992, the OIV had assimilated well-known traditional expressions to appellations of origin and to geographical indications.

54. In reply to a request for clarification by the Chair regarding traditional expressions which could be assimilated to geographical indications, the Representative of the OIV added that Vinho Verde and Muscadet were not geographical names but had acquired a reputation over time. In the case of Muscadet, this denomination was recognized as a geographical indication and was thus protected under French regulations.

55. In reply to remarks made by one delegation as to the relevance in the framework of these discussions of bilateral negotiations resulting in the mutual recognition of geographical indications, including traditional expressions, the Chair noted that the work of the Committee was concerned with multilateral agreements and that it would be preferable not to take up the case of bilateral negotiations, as they had a more limited content and scope, usually reflecting the reciprocal concessions of the parties involved.

56. The Delegation of Australia was of the opinion that discussions on geographical indications at the SCT should be restricted to areas clearly defined in the TRIPS Agreement and to elements or expressions meeting that definition. The Delegation felt that it would be difficult to manage a discussion covering elements that might or might not be included in the definition, both in terms of understanding the issues and identifying the way forward. The Delegation also pleaded members of the Committee to keep outside of the discussion designations such as traditional expressions or appellations of origin, although it conceded that the latter were, for some countries, the primary form of geographical indications.

57. Referring to interventions made earlier in the session, the Delegation of the United States of America asked members of the Committee for their views on whether it were agreed that a geographical indication need not be a geographic term, then for example could a grape variety (i.e. Muscadet) ever transform into a geographical indication? The Delegation also asked, in relation to paragraph 25 of document SCT/10/4, whether the economic value of reputation could be used to distinguish a geographical indication from a trademark.

58. The Chair asked the representative of the OIV whether he wished to address the first query put forward by the Delegation of the United States of America. The Representative explained that Muscadet was the name of the synonym for a variety called "melon" which became later a geographical indication. He further explained that there were geographical indications which combined the name of a variety with a geographical name, the two elements together constituting the geographical indication. The representative of the OIV said that since Muscadet was a French appellation of origin, the authorities of that country were better placed to answer the question.

59. The Delegation of France confirmed that there were instances where the names of grape varieties became part of a geographical indication. He nevertheless stressed that the names of the varieties remained free and available for use.

60. Referring to the second query put forward by the Delegation of the United States of America, the Representative of ECTA explained that building on the element of reputation without the requirement of a geographical name would lead to something very close to a trademark, even more so if the reputation was considered only in the country of origin. The Representative cautioned against applying a very broad definition while at the same time allowing to build geographical indications solely on the basis of reputation.

Agenda Item 7: Trademarks

Draft Revised Trademark Law Treaty

61. The Secretariat introduced document SCT/10/2, containing a revised version of draft Articles 8, 13 *bis* and 13 *ter* and related rules of the draft revised Trademark Law Treaty ("TLT"), which was presented separately from the rest of the text, pursuant to a decision of the SCT at its ninth session. The document also contained explanatory notes related to these articles. The Secretariat noted that the convocation of a Diplomatic Conference for the adoption of the TLT reform had been included in the draft program and budget for the next biennium 2004 -2005, which was currently under discussion. The Chair proposed to begin discussions with Article 8 of the TLT on Communications and related Rule 5 *bis* of the Draft Revised Treaty.

Article 8 (Communications)

62. The Secretariat explained that, as agreed by the SCT at its ninth session, alternative wording had been prepared for some sections of this article reflecting the positions which had gathered the most support of participating delegations.

Paragraph(1)[Formand MeansofTransmittalofCommunications]

63. The Secretariat noted that three alternatives were represented for this paragraph : the first one (Alternative A) along the lines of the corresponding provision in the Patent Law Treaty (PLT); the third one (Alternative C), reproducing one of the alternatives discussed at the last meeting; and the second one (Alternative B) drafted as an intermediate way between the other two alternatives and developed in Rule 5 bis(1), which further clarified the requirements referred to in Alternative C, i.e., the establishment of a filing date and the compliance with that time limit.

64. The Delegations of Australia, Cameroon, the European Communities, Italy, Russia, South Africa, Sudan, Sweden, Ukraine, the United States of America and Zimbabwe favored Alternative C which reads : “Any Contracting Party may choose the means of transmittal of communications.” The delegations stressed the simplicity of the provision and the fact that it made clear that each office is free to determine the most appropriate means of communications, either paper, electronic communications or both.

65. The Delegations of Austria, France, Korea and Thailand supported Alternative B for the reason that Alternative A was too complicated to understand and Alternative C was too simplistic and did not allow for harmonization. Alternative B was the clearest alternative which enabled foreign applicants to make, first a direct filing on paper for the purpose of getting a filing date, and later regularize the application electronically with a local agent.

66. The Delegation of France further noted that it supported Alternative B because it better reflected the text of Article 5(1) of the TLT which provided that an applicant could file on paper or as otherwise permitted by the office for the purpose of the filing date. In the opinion of the Delegation, Alternative C did not contain that possibility. The Delegation added that discussion on Article 8 should be linked to Article 5 of the TLT as presented in document SCT/9/2.

67. In reply to the comment made by the Delegation of France, the Secretariat explained that the text of Article 5 contained in document SCT/9/2 and presented at the last session mirrored the corresponding provision of the PLT as this was the mandate that the International Bureau had received from the SCT and also because the possibility to continue to allow filing on paper for the purposes of the filing date had to be read in tandem with Alternative A. However, if the Committee decided to choose Alternative C, then the text of Article 5 would have to be revised accordingly, and the SCT would have to decide whether or not to allow the filing on paper for the purpose of establishing a filing date, as contemplated in Alternative B.

68. The Delegation of Indonesia favored Alternative A because it was identical to the PLT provision. However after hearing the discussions, it declared that it could also, in a spirit of compromise, join the consensus on Alternative C.

69. The Chair concluded the discussion on Article 8(1) “Form and Means of Communications” by stating a majority of delegations seemed to favor Alternative C, and opened the discussion on Rule 5 *bis*.

*Rule 5bis [Communications Under Article 8]
Paragraph (1) [Communications]*

70. The Secretariat introduced the provision and explained that three different alternatives were represented under paragraph (1) of Rule 5 *bis*. Each alternative of Article 8 did not necessarily relate to an alternative in Rule 5 *bis*. With regard to Alternative C of Article 8, which seemed to be favored by the Committee and did not refer to any requirements in the regulations, the SCT had to decide whether there was a need for requirements and in such case, what requirements. Alternative C of Rule 5 *bis* did not contain a new principle but had been included in the text at the request of the Committee at its last session, to further clarify that no Contracting Party is obliged to accept against its wish the filing of communications in electronic form or by electronic means of transmittal, or to exclude the filing of communications on paper. This provision was previously found in the notes and had been added to the rules at the request of the SCT at its last session.

71. The Delegation of Australia, supported by the Delegations of the United Kingdom, Sweden and Italy, expressed the view that Rule 5 *bis* should be seen in light of the purpose that Article 8 was supposed to achieve. If such purpose was to allow offices to move at their own pace with the electronic filing, as provided for in Alternative C of Article 8, then there was no need to establish additional provisions in the rules.

72. The Chair concluded that in view of the opinion expressed by SCT members, Alternatives A, B and C of paragraph (1) of Rule 5 *bis* would be eliminated.

Rule 5bis(2) [Communications Filed in Electronic Form or by Electronic Means of Transmittal]

73. The Secretariat said that this provision had been included at the request of certain delegations at the ninth session and that it reflected the practice of several offices which require that the original of a communication transmitted in electronic form or by electronic means of transmittal, be filed on paper with the office within a certain time limit.

74. In reaction to comments made by the Delegation of Australia to delete Rule 5 *bis*, the Representative of AIPPI recalled that the purposes of the TLT was to facilitate the task of offices but also to assist trademark applicants and holders. The Representative agreed with the Delegation of Australia that paragraph (1) of Rule 5 *bis* may be deleted,

but stressed that paragraph (2) was important to applicants as it obliged an office to respect the time limit of one month from the date of transmission for requesting the paper copy of an earlier electronic submission.

75. The Delegation of the United States of America agreed with the Representative of the AIPPI that there was a serious problem if an office set a time period which proved insufficient for the applicant to comply with. Unless there was a real issue with supplying paper copies when an electronic filing was made, the Delegation suggested that it would be more appropriate to deal with that problem in another article, such as for example Article 13 *bis* which referred to time limits, or in a general provision which would introduce general language relating to reasonable time limits.

76. Following an intervention by the Representative of the AIPPI, recalling that in some countries a paper copy of the electronic transmission was required by the office, the Delegation of Australia expressed the view that it was perhaps necessary to keep some safeguards for applicants. However in his view, this problem related to the more general issue of time limits and, as had been suggested by the Delegation of the United States of America, should be inserted in the /a corresponding article, with a specific explanation in the notes.

77. In view of the comments made by delegations, the Chair concluded that the principle contained in paragraph (2) of Rule 5 *bis* should be maintained in another provision of either the treaty or the rules.

Paragraph (2) [Language of Communications]

78. The Secretariat introduced the provision relating to the language of communications and recalled that at its ninth session, the SCT had decided to group in one single provision of Article 8 of the draft revised TLT all the provisions concerning languages which appeared in different articles of the current TLT: namely Articles 3(3) concerning application, 10(1)(c) change of address, 11(2) change of ownership, (12)(c) correction of mistakes, 13(3) renewal of registration and 4(4) power of attorney. Paragraph 2(a) contained an alternative language between brackets reflecting the current wording of the TLT and the language of the PLT. The SCT would have to decide on this alternative wording. Sub-paragraph (b), drafted on the basis of Article 11 (2) of the Joint Recommendation on Trademark Licenses, was suggested by one delegation at the last meeting, in order to allow declarations or agreements written in a language which is not accepted by the office to be translated into the language of the office.

79. The Delegation of Japan requested that Article 8(2)(a) be amended to allow a Contracting Party to require that certain communications, or parts of a communication, be presented in two languages. During the national phase of an international application which designates Japan under the Madrid Protocol it might be useful, in order to avoid

any misunderstandings about the scope of protection of the mark, if the list of goods and services could be written in English and the rest of the application in Japanese. For this reason, the Delegation of Japan suggested to add at the end of Article 8(2)(a) the following words: “unless otherwise stipulated in the Regulations.”

80. The Delegations of Australia and of the United States of America asked for a clarification as to the meaning of the language requirement in the second sentence of Article 8(2)(a) and the need for the Japanese proposal. The Delegation of the United States of America said that it had more to do with an amendment to the provision of the Madrid Protocol than with the TLT.

81. In response to the request of the Delegation of Japan, the Representative of the AIPPI, recalled that the TLT dealt only with national and not with international applications.

82. The International Bureau recalled that the second sentence of Article 8(2)(a) was in the current text of the TLT and had been included to accommodate multilingual countries which allowed an application to be filed in one language and, for example, the list of goods and services in another language.

83. The Delegation of Japan clarified its earlier statement by saying that it referred only to communications submitted during the domestic phase of an examination or registration.

84. The Delegations of Australia, the United States of America, the Dominican Republic and the Representative of the AIPPI favored the use of the wording between brackets “a language” in Article 8(2)(a). However, the Delegations of Australia and of the United States of America expressed their reservations with regard to the second sentence of Article 8(2)(a).

85. The Delegation of the European Communities explained that it supported the second sentence of Article 8(2)(a) because an application for a Community Trademark could be made in 11 languages but the procedure could take place only in two languages chosen by the applicant.

86. The Chair felt to open the discussion on Article 8(2)(b).

87. The Delegation of the Dominican Republic, supported by the Delegation of the United States of America, stated that the wording “a language” should be chosen in Article 8(2)(b). Furthermore, the Delegation of the Dominican Republic felt that the certification requirement, which is optional in the proposed provision, should be kept for countries that do require a certified translation. This proposal was supported by the Delegation of Venezuela.

88. The Delegation of the European Communities said that it preferred “the language, or one of the languages” in Article 8(2)(b).

89. The Delegation of Australia, supported by the Delegation of the United States of America and by the Representatives of the AIPPI, the FICPI and INTA, favored the deletion of the certification requirement.
90. The International Bureau pointed out that paragraph (b) applied only to the change of ownership (Article 11) in the current TLT and that specificity had disappeared because there was now a common language provision for all communications.
91. The Delegation of the United States of America explained that communications were understood to be everything the office received. The Delegation, supported by the Delegation of the United Kingdom, emphasized that communications accompanied by translations should be admitted by the office.
92. The Delegation of Switzerland, supported by the Delegation of France, suggested to delete the general provision in Article 8 and maintain the corresponding provision in Article 11(2)(b).
93. The Delegation of Australia, supported by the Delegation of New Zealand, proposed the following wording for paragraph (2) of Article 8:“(a) [...] where such a communication is not in the required language, an office must accept the communication, if it is accompanied by a translation into that language”;“(b) Subject to subparagraph (c), where an office does not require a communication to be in a language admitted by the Office, it may require the communication to be accompanied by a translation” and“(c) In relation to the request for change in ownership, an office may require that a communication be accompanied by a certified translation”. In addition, paragraph (d) should refer to the special requirements concerning multilingual offices. The delegation also reminded that originally the proposed provision referred to licenses.
94. The Representative of the AIPPI expressed reservations concerning the expression “a certified translation”.
95. The Delegation of Venezuela pointed out that the issue of security should be remembered. Depending on the circumstances, a certification could be required.
96. The Delegation of the United States of America reminded that only one or two cases concerning falsified signatures had taken place in its country during the last century.
97. The Delegation of Germany noted that its office accepted applications in a foreign language for the establishment of a filing date. However, a translation certified by a patent attorney or an official translator was required afterwards. Also, priority documents in a foreign language may be accepted by its office, if the content of the document was understood by the office, otherwise a certified translation was required.

98. Referring to the intervention made by the Delegation of Germany, the Representative of the AIPPI stated that a certification by a representative or an official translator was not problematic to the patent attorneys as long as a certification of a notary public was not required.

99. In order to facilitate the discussion of this paragraph, the International Bureau prepared for the next day a new revised text (Informal Document I), containing the three following alternatives for consideration by SCT members :

[Alternative A]

(2) *[Language of Communications]* Any Contracting Party may require that any communication be in a language admitted by the Office. Where the Office admits more than one language, the applicant, holder or other interested person may be required to comply with any other language requirement applicable with respect to the Office, provided that the communication may not be required to be in more than one language.

[End of Alternative A]

[Alternative B]

(2) *[Language of Communications]* (a) Any Contracting Party may require that any communication be in a language admitted by the Office.

(b) Where a communication is transmitted in a language not admitted by the Office, the Office must accept the communication if it is accompanied by a translation into a language admitted by the Office.

(c) Subject to Article 11(2)(b), where an Office does not require a communication to be in a language admitted by the Office, it may require that the communication be accompanied by a translation into a language admitted by the Office.

(d) Where the Office admits more than one language, the applicant, holder or other interested person may be required to comply with any other language requirement applicable with respect to the Office, provided that the communication may not be required to be in more than one language.

[End of Alternative B]

[Alternative C]

(2) *[Language of Communications]* (a) Any Contracting Party may require that any communication be in a language admitted by the Office. Where the Office admits more than one language, the applicant, holder or other interested person may be required to comply with any other language requirement applicable with respect to the Office, provided that the communication may not be required to be in more than one language.

(b) Where a communication is transmitted in a language not admitted by the Office, any Contracting Party may require that it be accompanied by a translation into a language admitted by the Office.

(c) Where an office does not require a communication to be in a language admitted by the Office, it may require that the communication be accompanied by a translation into a language admitted by the Office, certified by an official translator or a representative.

[End of Alternative C]

100. The Delegation of the European Communities expressed its preference for Alternative A of Informal Document 1, as the wording was clear and could include the other two alternatives.

101. The Delegation of New Zealand expressed its preference for Alternative B with a reservation regarding paragraph (c) since time is generally required to transmit the translation together with the communication.

102. The Delegation of Austria expressed concern about the wording of Alternative B paragraph (b) since a communication as defined in the text included the request and other documents. In its country the request had to be in a language accepted by the office (i.e. German) but other documents could be accepted in foreign languages if a translation was provided. eB a

103. Following a question by the Delegation of Germany as to whether paragraph (b) of Alternative B covered a situation where an office could accept an application in a language other than the language admitted by the office to meet the filing date requirement, the Secretariat explained that this specific situation may require further reflection by the Committee. It would be an advantage for applicants if it were possible to grant a filing date upon receipt of a document in a language not admitted by the office, but subject to receiving a translation of the said application, within a certain time limit. Article 5 would have to be amended accordingly.

104. The Delegation of the United States of America supported the concept explained by the International Bureau as in its country, if an applicant or holder files the translation of a document which has the elements of an application there is no problem to grant a filing date. The translation would in such a case be considered as the original. The Delegation asked for a clarification of the wording “the Office must accept” in paragraph (b) of Alternative B as it seemed obvious that the office would accept a communication if it was accompanied by a translation.

105. In reaction to these comments, the Delegation of Germany said that if a communication comes to the office together with a translation, then the communication would be considered as filed in a language admitted by the office. Thus the Delegation wondered about the purpose of the provision. If there was no period of time to submit a translation later, there was no benefit for the user.

106. The Delegation of the European Communities was of the view that the provision contained in Alternative B paragraph (b) was artificial because if the applicant could file an application together with a translation into a language accepted by the office, then the applicant had complied with the language requirement.

107. The Delegation of Australia, supported by the Delegation of the United States of America, said that its understanding of the discussion of the previous day was that a provision was still needed because it was not universally accepted that a communication accompanied by a translation was accepted by the office, particularly when offices provided for special application forms.

108. The Representative of the AIPPI said that Alternative C paragraph (c) was acceptable from the point of view of users as it dealt with the presentation of a translation without the need for official certification but only a confirmation by the translator or by the agent that the translation corresponds to the original. In his opinion, paragraph (c) could also be included in Alternative B.

109. The Delegation of New Zealand expressed concern about the wording of Alternative C paragraph (c), as it did not cover the situation where an office may accept a document in another language while giving the applicant time to provide a translation.

110. The Secretariat prepared a second draft proposal (Informal Document 2) for Article 8(2) as follows :

(2) [Language of Communications] (a) Any Contracting Party may require that any communication be in a language admitted by the Office. Where the Office admits more than one language, the applicant, holder or other interested person may be required to comply with any other language requirement applicable with respect to the Office, provided that the communication may not be required to be in more than one language.

(b) No Contracting Party may require the attestation, notarization, authentication, legalization or any other certification of any translation of a communication other than as provided under this Treaty.

111. The Delegation of Germany restated that its law enabled applications in foreign languages to be accepted for the purpose of a filing date. However, a certified translation of this application was later required by an attorney or official translator. For this reason, this Delegation had a reservation on this new proposal that would require its law to be changed.

112. In response to the concern raised by the Delegation of Germany, the Chair considered the new drafting of Article 8(2)(a) as allowing applications to be in foreign languages.

113. The Delegation of Germany explained it was Article 8(2)(b) that created a problem because it banned certification of any translation.

114. The Representative of the AIPPI recalled that the absence of this requirement for certification was the cornerstone of the TLT. For this reason, it would be interesting to know how many countries required a certification of translation. If a number of countries had the same requirement, the Representative thought that this article should be redrafted. Finally, the Representative stressed that German law did not require a certification but a statement from the representative or the translator indicating that the document corresponds to the original. Requirement for such a statement was acceptable as long as an attestation, notarization, authentication and legalization were excluded.

115. The Delegation of Sweden noted that it was reasonable to allow some form of certification for communications carrying factore evidence. Perhaps the way forward was, as suggested by the AIPPI, to allow for only a certification by a translator.

116. The Delegation of Germany confirmed that its law did not ask for a certification but for a confirmation by the attorney that the translation corresponds to the original document.

117. The Delegation of Australia supported the new draft Article 8(2) as contained in Informal Document 2 but raised some concerns as to the second sentence of paragraph (a). Furthermore, in order to determine whether the certification requirement was an issue, the Delegation asked the Secretariat to address it in the questionnaire contained in document SCT/10/3Prov. Finally, the Delegation of Australia stated that the type of communications referred to in Article 8(2)(b) needed to be clearly defined.

118. The Delegation of the United States of America, supported by the Delegation of Australia and the Representatives of CEIPI and INTA, indicated that the problem arose from Alternative C of Article 8(2)(c) in Informal Document 1 which stated that a translation need to be certified by an official translator or a representative. This

Delegations suggested that this provision be rewritten as follows: “Where an Office does not require a communication to be in a language admitted by the Office, it may require that the communication be accompanied by the translation of an official translator or a representative in a language admitted by the Office.”

119. The Representative of CEIPI, supported by the Delegation of Germany and the Representative of the AIPPI, suggested to use the word “verified” instead of “certified.” Regarding the second sentence of Article 8(2)(a) of Informal Document 2, the Representative of CEIPI observed that it covered only applications made under the European Community trademark. For this reason, this provision should be restricted to the office of an intergovernmental organization, which in his view was the only case where this situation would arise.

120. The Secretariat suggested another wording for Article 8(2)(b): “Except for the purpose of granting a filing date, no Contracting Party may require the attestation, notarization, authentication, legalization or any other certification of any translation of a communication other than as provided under this Treaty.”

121. The Delegation of the United States of America suggested to further clarify an “application” filing date in the proposal from the Secretariat.

122. The Delegation of South Africa noted that the Secretariat offered an answer to this problem with Article 5(1)(b) where a reference to a filing date other than language requirement in Article 8(2) was made.

123. The Chair concluded that the Secretariat would draft a new provision on Article 8(2) for the next meeting of the SCT. The Chair proposed to keep subparagraphs (a) and (b) of Article 8(2) as stated in Informal Document 2 but revised by the International Bureau to take into account the concern of the Delegation of Japan. He also suggested to add a subparagraph (c) worded as follows: “Where an Office does not require a communication to be in a language admitted by the Office, it may require that the communication be accompanied by a translation of an official translator or a representative, into a language admitted by the Office.”

124. The Delegation of the United States of America observed that, according to its understanding of the intervention by the Delegation of Germany, the law of that country provided that the translation of the document not in a language admitted by the office needed to be provided at a later stage and not together with the application.

Paragraph (3) [Presentation of a Communication]

125. The Secretariat explained that the two alternatives presented reflected the views expressed by delegations at the last meeting. Alternative A was a new provision and focused more on the content of the information which should be provided in an International Model Form. Alternative B was very close to the current language of the

TLT and contained two sub-paragraphs: (i) when a Contracting Party allows the transmittal of communications to the office on paper and (ii) when the Contracting Party allows the transmittal of communications on electronic form or by electronic means of transmittal. It was important to look at the proposals in the light of the explanations provided in note 8.12 which referred to the Agreed Statements N° 5 and 6, approved by the TLT Diplomatic Conference in 1994, and which stressed the importance of the contents of a communication more than its format. These Statements also stressed that the Contracting Parties may not provide for mandatory requirements additional or contrary to those contained in the Treaty or the Regulations.

126. Several delegations felt that the proposed Alternative A was clearer than Alternative B.

127. The Delegation of the United States of America said that Article 8(3) should refer to the relevant provisions of the Treaty instead of referring to the Model International Forms.

128. The Delegation of Australia, supported by the Representative of the AIPPI, cautioned against deleting the references to the Model International Forms without considering the consequences. Without a reference to the Model International Forms, it was difficult to reach the same result as to the maximum allowable content.

129. The Chair concluded that the majority of delegations preferred the proposed Alternative A of Article 8(3).

Paragraph (4) [Signature of Communications]

130. The Secretariat said that the introductory part of this paragraph was inspired from the PLT and could be a useful addition to the treaty. Paragraph (b) was already contained in the current TLT, paragraph (c) was new and inspired from the PLT and could provide IP offices with some flexibility. It was important that the office could require evidence if it doubted of the authenticity of a signature, particularly in the case of an electronic signature. The Chair suggested to discuss this paragraph together with the related paragraphs (4), (5) and (6) of Rule 6.

131. Following an intervention by the Delegation of Germany relating to draft legislation in that country providing for a “qualified” electronic signature and not simply a graphic representation of the signature as contemplated in Rule 6(4), the Delegation of Australia noted that its country had a very liberal approach to electronic signatures and did not require a signature on an application. This was also the case where the application was transmitted from a fax machine to a computer terminal, as in the example put forward by the Delegation of Germany. For a number of other communications with the office, signatures were indeed required, for example declarations, disputes between the parties or requests for cancellation or withdrawal of registration. However, Australia also accepted a number of other graphic

representations attached to e-mails and Internet Web -deployed electronic form. In the legislation of that country there were penalties for misrepresentation, which were considered sufficient to avoid problems in this field.

132. The Delegation of the United States of America said that its country had several methods of affixing signatures to either electronic applications or other documents filed with the office. One of them was to attach a *jpeg* picture of the signature to the application filed. The office in that country also allowed the applicant or the agent to sign by filling their name between two backslashes, and this operated as a signature for an application or other document. The United States Patent and Trademark Office (USPTO) had taken a practical approach to signature and was not concerned with the validity of the signature. Such an issue would probably arise if someone objected to the claim that was being made. In such a case, cancellation, opposition or other procedures applied. The office in that country was considering eliminating the requirement altogether if electronic filing was to be encouraged. 1

133. In reply to a suggestion by the Delegation of Japan to add a provision in paragraph (4)(b) allowing an office to confirm any electronic signature not in the form of a graphic design by an authentication process, the Chair indicated that such a provision already existed in Rule 6(6).

Paragraph (5) [Indications in Communications]

134. The Secretariat noted that this provision concerned all the indications which should or may be contained in a communication and it was further developed in Rule 6*bis*(1).

135. The Delegation of Japan supported by the Representative of JIPA, requested that the reference number of an appeal be added in item (ii) of sub-paragraph (a), as such a number was required to be indicated in communications relating to appeals in that country.

136. In this connection, the Representative of the AIPPI expressed the view that this requirement may be limited to one country and questioned how appeals would fit in the context of the TLT. He added that the purpose of revising the TLT was to further simplify it and adjust it to technological developments so as to improve the situation of applicants, not to provide for additional requirements applied by particular offices.

137. The Delegation of the United Kingdom, supported by the Delegation of the United States of America, expressed concern about the possibility of having an ever-increasing list of items in the Regulations and suggested to redraft the provision by replacing the number requirement in point (ii) with a reference to the nature of the communication.

138. In reply to a question of the Delegation of the United States of America as to why paragraph (5) referred to communications prescribed in the Regulations, instead of indicating those in the Treaty, the Secretariat pointed out that this wording was taken from the PLT. Article 8(5) prevented a Contracting Party to require other indications than those detailed in Rule 6 *bis*. However, it was up to the Committee to decide whether the indications referred to in this article related to all communications mentioned in the TLT, in addition to those in the Regulations, or only related to those in the Regulations.

139. The Delegation of the United States of America further noted that referencing the regulations could open the door for amending the Treaty by adding elements which were not allowed under the original language of the Treaty. The request of Japan illustrated the fact that the TLT was not specifically concerned with appeals.

140. The Representative of the AIPPI was of the view that paragraph (5) should be read in tandem with the new wording which would be proposed for Article 3 (Application) in order to avoid repeating the same principle in more than one place.

141. The Delegation of the European Communities, supported by the Delegation of France, found that the wording of paragraph (5) led to confusion and could be improved. The provision stated that no Contracting Party may require that a communication contain indications other than those prescribed in the Regulations but in Rule 6 *bis*(1) a set of details could be required. This gave the impression that no other details may be required. However, in cases such as a transformation, requirements other than these may be required. The Delegation of France added that in relation to rule 6 *bis*(1)(b), another item should be included for a Contracting Party to be able to require the “quality of representative or agent” as in France authorized agents were registered in a special list.

142. The Delegation of the United States of America, supported by the Representative of the AIPPI, was of the opinion that following the discussion on paragraph (5) there was probably a need to define the word “communication” to limit its scope to any communication dealt with under the TLT.

143. In response to these comments, the Secretariat recalled that at the last session of the SCT, a definition of the word “communication” was proposed in paragraph (iii *bis*) of Article 1 (“Abbreviated Expressions”) of the draft revised TLT (document SCT/9/2). This definition had been drafted on the basis of the definition contained in the PLT and would need to be discussed when the Committee reviewed the entire text of the draft treaty.

144. In relation to this definition, the Representative of the AIPPI noted that the wording “whether relating to a procedure under this Treaty or not” was too broad and should be circumscribed to procedures dealt with under the TLT.

145. The Delegation of Australia was of the view that it was better to reserve the discussion on Article 1 for later, particularly the issue of whether the definition under paragraph (iii *bis*) in its current drafting was meant to extend the scope of the TLT to cover new ground. On the one hand, it was necessary, as expressed by the Delegation of the United Kingdom, to avoid increasing the complexity imposed on users, but on the other hand, it was possible to envisage that the SCT could, in the future, discuss other procedures before the office.

146. In reaction to the position expressed by the Delegation of Australia, the Delegation of the United States of America noted that expanding the scope of the TLT would probably be a time-consuming task. The Delegation recalled that the exercise of revision was rather based on a short list of items, in view of the time frame prior to the Diplomatic Conference. Although the Delegation would have liked to work on a Joint Recommendation dealing with commonalities on appeal procedures, this was not likely to happen in the near future.

147. The Representative of the AIPPI said that any work on appeal procedures at the SCT would probably need to be preceded by a questionnaire to enquire on procedures applied around the world, as they were very different from country to country. The questionnaire to be circulated by the International Bureau would deal with opposition procedures but not with appeals and in the view of the Representative, future substantive harmonizations should perhaps deal with this issue.

148. The Delegation of Australia proposed the following wording for Article 8(5): “Except where expressly provided in other articles, no Contracting Party may require that a communication contain indications other than those prescribed in the Regulations.”

149. The Chair drew a preliminary conclusion from the discussions on this paragraph and proposed the following wording for Article 8(5): “Except where expressly provided elsewhere in the Treaty, no Contracting Party may require that a communication contain indications other than those prescribed in the Regulations.” The Chair also added that the issue of the definition of communications should be dealt with when the SCT would discuss Article 1.

150. The Delegations of the European Communities and Australia supported this proposal but were of the opinion that there was an ambiguity in the wording of this article. For the Delegation of the European Communities, a communication containing indications could refer to formalities for the identification of the holder or applicant, as suggested by Rule 6 *bis*, or to something else. It was the belief of the Delegation that the goal of this provision was to correctly identify an applicant. For this reason, it proposed that Article 8(5) start with the following wording: “For a communication to be considered as a communication from the applicant, ...”

151. The Delegation of the Dominican Republic concurred with the position expressed by the Delegation of the European Communities but saw no problem with a reference to the Regulations in the article.

152. The Delegation of Ukraine felt that Article 8(5) referred to requirements in a form and requirements relating to the content. The form requirements must meet the stipulations, which already exist in the Regulations. As for the content requirements, the Regulations were important but so was the Treaty. For this reason, this Delegation proposed Article 8(5) to start with the following wording: "As prescribed in the Treaty and in the relevant or appropriate Regulations..."

153. The Representative of the AIPPI supported by the Delegation of Germany, stated that it preferred the proposal made by the International Bureau.

154. The Representative of CEIPI supported the proposal made by the International Bureau but proposed the word "elsewhere" to be replaced by "in this treaty."

155. In conclusion, the Chair suggested the following wording for Article 8(5) "No Contracting Party may require that a communication contain, regarding its formalities, indications other than those prescribed in the Treaty or in the Regulations."

156. The suggestion was welcomed by several delegations and the representative of an observer organization. However, the formulation was left to be finalized by the International Bureau.

Paragraph (6) [Address for Correspondence, Address for Legal Service and Other Address]

157. The Secretariat noted that this provision had already been included in the previous draft contained in document SCT/9/2, and submitted at the last session of the SCT.

158. The Delegation of Australia suggested deleting item (iii) of paragraph (6). The Delegation explained that Article 8(2) addressed, first of all, the possibility for the holder to be contacted and, secondly, the transmission of the legal documents to the correct address. However, an e-mail address should be considered as an address in the context of the new technological delivery of communications.

159. The Delegation of the United States of America explained that its office sometimes required an e-mail address in addition to a mailing address.

160. The Delegation of the United Kingdom asked whether an address should indicate a physical location and/or electronic address.

161. The Representative of the AIPPI suggested adding details concerning an e-mail address to Rule 2(2)(c).

162. In reply to an intervention by the Representative of the AIPPI, the Secretariat observed that Rule 2(2)(c) defined the details which might be indicated while Article 8(6) referred to the types of addresses.
163. The Delegation of Australia noted that Article 3 also contained a number of indications referring to an address. A distinction should be made between the content and the type of communication.
164. The Representative of the AIPPI noted that the Patent Law Treaty (PLT) did not have a corresponding provision to Rule 2 of the TLT, therefore e-mail addresses were not covered by the Patent Law Treaty.
165. After some discussion, the Committee agreed to delete item (iii) of Article 8(6) and to re-examine Rule 6 *bis*(2),(3) and (4).

Paragraph(7)[Notification]

166. The Secretariat noted that this provision had already been included in the previous draft contained in document SCT/9/2 and submitted at the last session of the SCT.
167. The Delegation of the European Communities asked whether the reference to paragraph(1) should be deleted.
168. The Delegation of the United States of America concurred with the position of the Delegation of the European Communities explaining that its office had around 10,000 official e-mail addresses. The offices should have the right to select the means by which they accept a communication.
169. The Delegation of Australia reserved its position concerning paragraph(1).
170. The Delegation of France expressed reservation concerning paragraph(2).
171. In reply to a question as to why the reference to paragraph(2) was deleted, the International Bureau explained that some delegations pointed out at the ninth session that the offices should be allowed to disregard a communication in a foreign language if it was not possible to understand its content.
172. In conclusion, the SCT agreed to refer only to paragraphs(3) to (6) in Article 8(7).
173. The Delegation of Australia suggested that, upon deletion of paragraph(2) in Rule 6 *ter*, it would be appropriate to introduce in paragraph(7) the principle of that provision according to which an applicant cannot be notified if he cannot be contacted.

Paragraph(8)[Non -CompliancewithRequirements]

174. The Delegation of the United States of America asked how the sanctions in paragraph(8) could be applied, if the applicant or the holder could not be contacted.

175. The Delegations of Australia, the European Communities, France and New Zealand stressed that the wording in paragraph(8) should be aligned with paragraph(7).

176. The Representative of CEIPI, supported by the Representative of the AIPPI, pointed out that if paragraphs(7) and(8) were realigned totally, paragraphs(1) and(2) would not be complied with. In this situation, the sanctions in paragraph(8) were not applicable.

177. The Delegation of South Africa wondered how an office would be able to apply sanctions if the requirements under paragraph(2) concerning languages were not met.

178. On the basis of the consensus arising from the discussion on paragraph(8) and related Rule 6ter(2), the Chair proposed to eliminate these provisions. Thus, in case of non-compliance with the requirements, it would be up to each national office to decide whether or not to apply sanctions.

179. Several delegations and representatives of observer organizations supported this proposal. The Representative of CEIPI said that, while he agreed with the proposal, it would be necessary to reflect the consequences of this change in the explanatory notes so that future generations and other persons not participating in the SCT would understand the differences between the text of the TLT and the PLT.

Article 13bis (Relief in Respect of Time Limits fixed by the Office) and Article 13ter (Reinstatement of Rights After a Finding of Due Care or Unintentionality by the Office) Alternatives A and B

180. The International Bureau introduced Alternatives A and B and explained that Alternative A consisted of two separate articles. Article 13bis obliged Contracting Parties to provide for relief in respect of time limits fixed by an office. Paragraph (1)(a) of Article 13 bis provided for an extension of a time limit and paragraph (1)(b) for continued processing. Article 13ter applied to all time limits and was subject to a finding by an office that the failure to comply with the time limits occurred in spite of due care required by the circumstances having been taken or, at the option of a Contracting Party, that the delay was unintentional. Alternative B combined the two provisions under one single Article 13bis.

181. The Chair called for general comments on these Alternatives, and on Alternatives A and B of related Rules 9 and 10.

182. The Delegation of the United States of America raised a question as to whether the SCT should discuss the proposed Articles 13 *bis* and 13 *ter*. The Delegation explained that in its country the six-month period for responding to the office was stipulated by a statute and an additional period of two months was granted when the applicant or holder had failed to respond. After that period, it took at least one month for the examiner to examine the application or the registration. These time limits were long enough and thus no additional relief was needed. Reinstatement of rights would make the period of uncertainty much longer and cause serious problems for third parties carrying out searches concerning the trademark registries.

183. The Delegation of Sweden expressed the view that the procedures should be quick, cheap and offer legal certainty. The interests of third parties should also be taken into account and equal cases should be treated equally. The Delegation did not have special problems with provisions concerning a basic extension of time limits or with provisions concerning continued processing or concerning reinstatement of rights based on objective criteria. However, this situation was different when it came to provisions concerning reinstatement of rights after a finding of due care. Requests for such reinstatement would normally be filed several months or even a year after the failure to comply with the time limit in question, thus creating a troublesome uncertainty for third parties. Moreover, the expression “due care” could be interpreted differently in different jurisdictions. This had for example been the case with the criterion of due care in Article 53 of the European Patent Convention concerning *restitutio in integrum*. In some countries an applicant or holder had to show that he had done all he could do to avoid failure, while in other countries almost any justification was accepted. The provision concerning reinstatement of rights after a finding of due care should therefore be deleted in the draft TLT because it could cause uncertainty. In respect of patents, it was reasonable to have provisions concerning reinstatement of rights after a finding of due care, since an applicant or holder could not file a new application due to the criterion of novelty. This applies especially to reinstatement of rights after a failure to pay annual fees. The Delegation stressed that reinstatement of rights or continued processing should be requested within two months from the expiration of a time limit and added that the provision concerning reinstatement of rights should not apply in relation to payment of renewal fees, priority claims or appeals. The remaining relevant time limits were merely time limits fixed by the office in a registration case, for which mandatory provisions on continued processing were sufficient.

184. The Delegation of Australia asked whether there was a need for Articles 13 *bis* and 13 *ter* and suggested deleting these provisions.

185. The Delegation of Uruguay emphasized the importance of Articles 13 *bis* and 13 *ter* and expressed the opinion that these provisions should be maintained in the TLT. The two articles provided guarantees for the users and made procedures easier.

186. The Delegation of Ireland agreed with the principle expressed in Article 13 *bis* but said that the content of Article 13 *ter* was not clear.

187. The Delegation of Switzerland, supported by the Delegations of France, the United Kingdom and the European Communities, expressed support for Alternative A as it was easier to understand and it contained two different articles and two different rules. The Delegation proposed to delete the length of the time limits contained in related Rules 9 and 10, and to introduce directly into Articles 13 *bis* and 13 *ter* a reference to reasonable time limits without fixing any minimum time limit. In Article 13 *ter*(1), it suggested to replace “shall” by “may” which would allow member countries to choose whether to provide for reinstatement or not, and to maintain the list of exceptions under Rule 10(3). The Delegation further proposed that new provision be added obliging Contracting Parties to offer at least one of the three possibilities provided for in Alternative A.

188. The Delegation of the United States of America recalled earlier interventions expressing that time limits in patents and trademarks were different, that they produced different rights and engendered different responsibilities, which required different provisions. Against this background, the Delegation joined the opinion expressed by the Delegation of Australia that Articles 13 *bis* and 13 *ter* were not needed and could be deleted from the text. If one of these provisions should be kept, it would be Article 13 *bis* but the Delegation required members of the SCT if there was a real need for these provisions in the trademark area. Perhaps if some Member States had very short time limits these provisions were adequate, but normally time limits in the trademark area were long enough.

189. From the point of view of users, the representative of the AIPPI said that losing one trademark filing date in one country would have grave consequences if an application had been filed in many other countries relying on that first date, as it would entail losing the filing date in all countries. In his opinion, if only one of the provisions were to be retained, it should be Article 13 *ter* because in a situation of loss of rights it was more important to have them reinstated, even under very stringent conditions, and limited to circumstances beyond the control of the applicant or his representative.

190. The Delegation of Denmark expressed support for keeping the provision on relief from time limits, even though this would have as a consequence a longer processing of registrations. With regard to reinstatement of rights, the Delegation declared that according to inquiries conducted amongst interested circles in its country, this provision would also be welcomed by users, although it may create a problem of legal uncertainty for third parties. In addition, if the consensus of the meeting was to retain the provisions on reinstatement, important aspects such as the time limits and the criteria to be applied should be mentioned in the treaty itself and not in the regulations.

191. The Delegation of the United Kingdom noted that in its country, it would not be possible to grant the extension of time limit provided for under Article 13 *bis*(1)(a), in the case of a mark concerning the name of the head of State. The Delegation believed that in such cases there should be an exception to provide the relief, in the form of a *force majeure* or overriding public policy exception, to be inserted in Rule 9(5).

192. Several delegations requested information from other members of the SCT as to their experience with the provisions under analysis, as well as the rules and the criteria used to determine in which cases a particular form of relief would apply. The number and the nature of cases that they had received would also justify to include these provisions in the TLT.

193. Following some discussion on the issue, the Delegation of Australia, supported by the Delegations of the United States of America and South Africa, expressed the view that the information supplied was not persuasive enough to justify the inclusion of these provisions in the text of the TLT. However, if the majority of delegations believed that it was necessary to provide for this type of relief in the TLT, as was done in the PLT, there should be some limitations.

194. The Delegation of the European Communities expressed the view that Contracting Parties should be given the possibility, if they so choose, to provide for the three options, namely relief, continued processing and reinstatement of rights, or two of them or even none. The Delegation added that the fact that there were many or few cases to be addressed by these provisions was less important than being able to solve a particular situation through appropriate rules.

195. The Delegation of Sweden expressed the opinion that any discussion on reinstatement of rights needed to include a more in-depth discussion on the different time limits. The SCT needed to see whether it was appropriate to have, for instance, reinstatement in relation to priority claims, renewal fees, actions before a court of appeal or appeal itself. Only after this discussion the SCT would be able to determine whether a provision on reinstatement was actually necessary or whether for some of these time limits there could be a way out with continued processing. In addition, one should also take account of the need to provide legal certainty to third parties.

196. In response to the comment made by the Delegation of Australia, the Delegation of Sweden observed that there was no need for reinstatement of rights if the time limits in Rule 10(3) were excluded. Therefore, continued processing could take care of all other time limits. Furthermore, the Delegation of Australia felt that the questionnaire addressed some of these issues, and thus it was more appropriate to wait for a discussion on this subject.

197. The Representative of FICPI explained that the time limit for a response to a notification in different countries varied from one month to a year. If the time limit was one month and could not be extended, there was a need to provide for the extension of a time limit or continued processing. However, when the time limit was one year, there was no such need, because the applicant had ample time to respond to a notification. For the purposes of harmonization, the Representative felt that the time limits should be between five and six months.

198. The Representative of the AIPPI was of the view that governments should have a choice between continued processing and reinstatement of rights. However, the Representative pointed out that the law of many countries called for fees to be paid within a certain time limit in order to get a filing date. If the fees were not paid within a time limit of two months, the filing date was lost. In such a case, continued processing was of no use since the time limit was statutory. For this reason, the Representative was more in favor of Article 13 *ter* than of Article 13 *bis*.

199. The Delegation of the United States of America noted that perhaps the problem of other delegations had with Article 13 *ter* and 13 *bis* was due to the short time limits set out by their offices.

200. In connection with a statement made by the Representative of the AIPPI, the Delegation of Sweden agreed that extension of time limits was not an alternative to reinstatement of rights. However, continued processing was indeed an alternative to extension of time limits.

201. The Delegation of Germany supported the proposals made by the Delegations of Sweden and Switzerland, and by the Representative of the AIPPI. Furthermore, this Delegation regarded continued processing as the most modern legal instrument which should be applied to all time limits.

202. The Chair drew a preliminary conclusion that most delegations and representatives seemed to support the proposal made by the Delegation of Switzerland, i.e., to have one provision dealing with all time limits and allowing Member States to choose between continued processing and reinstatement of rights.

203. The Representative of the AIPPI felt that for countries which did not want continued processing and reinstatement of rights, because of their long time limits, the proposal of the Delegations of Germany, Sweden and Switzerland might be a solution. For countries that have time limits that are less than six months, they should have a possibility to choose between continued processing and reinstatement of rights.

204. The Chair asked the members of the Committee whether an Alternative C, drafted along the lines of the proposal made by the Delegation of Switzerland, should be put forward to alleviate the problems that some countries have with Alternatives A and B.

205. The Delegation of Australia favored an Alternative C drafted along the lines of the proposal made by the Delegation of Switzerland. However, the Delegation requested that time limits be set out according to the means of communication available today.

206. The Representative of the AIPPI expressed support for a maximum time limit of 6 months beyond which there should be no need for continued processing or reinstatement of rights, and for the exception contained in related Rule 9.

Further Development of International Trademark Law and Convergence of Trademark Practices

207. The Chair recalled that document SCT/10/3Prov. (Further Development of International Trademark Law and Convergence of Trademark Practices) containing the questionnaire prepared by the Secretariat had been posted on the Electronic Forum for SCT members to provide comments on the nature of the document. At present, only five members had sent comments. The SCT therefore had to decide whether the period for comments should be extended or whether the questionnaire should be sent for reply.

208. The majority of delegations seemed to be in favor of the latter option. Following some discussion as to what would be the adequate time frame for Member States to reply to the questionnaire, the SCT decided that the International Bureau should finalize the questionnaire contained in document SCT/10/3Prov. within the coming weeks, and circulate it for reply before the end of 2003. Replies to the questionnaire would be discussed at a meeting of the SCT in 2004.

Agenda Item 8: Other Matters

209. The Chair recalled that at the beginning of the current session, the Delegation of the United Kingdom had requested the SCT to consider current procedures as set out in Article 6 *ter* of the Paris Convention for the Protection of Industrial Property, including application, guidelines for interpretation, possibility of addition of a specific guideline on withdrawal or deletion procedure, and provision of an online database.

210. The Secretariat explained the procedures and guidelines currently applied by the International Bureau of WIPO in this connection and also as a result of the 1995 Agreement with the World Trade Organization (WTO) concerning the notification to be sent to WTO members, non-members of the Paris Convention. The Secretariat informed the SCT that, over the years, a number of questions regarding the interpretation of Article 6 *ter* had arisen, which would probably justify revision and updating of the guidelines adopted by the Paris Union Assembly in 1992.

211. As no questions were raised on this issue, the Chair concluded that the SCT had noted the explanations provided by the Secretariat.

212. Upon request by the Delegation of Switzerland and as agreed at the beginning of the session, the International Bureau made a brief summary of document SCT/9/6 (Industrial Designs and Their Relation with Works of Applied Art and Three-Dimensional Marks), which had been presented at the ninth session of the SCT and invited SCT to provide comments on the document.

213. The Delegation of Australia suggested that the relationship between industrial designs and three-dimensional marks should be discussed in connection with the harmonization of substantive trademark law.

214. The Delegation of Switzerland pointed out that absolute grounds for refusal should be included in the future work of the SCT. Also the technical requirements and the scope of protection for industrial designs and trademarks should be dealt with.

215. The Delegation of the United States of America, supported by the Delegation of Switzerland, suggested that the International Bureau include the issue concerning the relationship between industrial designs and three-dimensional marks in document SCT/10/3Prov. under section II "Types of marks."

Agenda Item 9: Future Work

216. The Delegation of Uruguay suggested that in order to facilitate the work of the SCT in relation to the revised TLT, the International Bureau elaborate a new document for the next session of the Committee including not only the provisions studied at the present meeting, but the entire text of the Treaty and the Regulations, with their explanatory notes.

217. The Delegation of Australia supported the proposal of Uruguay and added that at least three additional provisions which had been mentioned at the current session, namely definitions, licensing and the establishment of an assembly, would merit development in the new draft to be presented by the International Bureau at the next session.

218. The Delegation of the United States of America supported the proposals by the previous speakers and requested that at the eleventh session of the SCT devote four full working days to the revision of the TLT.

219. The representative of CEIPI, supported by the Delegation of the United States of America, suggested that, in view of the mandate received by the International Bureau to provide for one single document containing the text of the draft TLT in its entirety, and in view of the difficulty in handling a voluminous text, the International Bureau produce three separated documents: one containing the Treaty, a second one containing the Regulations and a third one containing the explanatory notes. The Delegation of Switzerland further suggested that the current text of the TLT and the Regulations be presented in parallel with the proposed amendments so as to have an immediate comparison between the two.

220. The Delegation of Australia noted that although it agreed that priority should be given to work on the TLT, time should be allowed for discussion of other outstanding issues such as geographic indications, on the basis of the document prepared by the International Bureau for this session, as well as issues concerning the Second Domain Name Process, which were referred to the SCT by the General Assembly.

221. With regard to the suggestion made by the Delegation of the United Kingdom at the beginning of the tenth session that the SCT discuss the application of Article 6 *ter* of the Paris Convention, and in view of the explanations given by the Secretariat, the Delegation of Australia was of the view that this item should be added to a list of subjects for future consideration by the SCT even though it would not be included in the agenda of the eleventh session.

222. After some discussion, it was decided that the last day of the eleventh session be devoted to discussion of domain names and country names, domain names and geographical indications, and geographical indications in general.

Agenda Item 10: Summary by the Chair

223. The Chair proceeded to the adoption of the Summary by the Chair contained in document SCT/10/8Prov. Agenda Items 1 to 6 of the Summary were adopted without modifications.

224. Following a suggestion of the Delegation of Australia, the Secretariat proposed that paragraph 8 of Agenda Item 7 read as follows: "The SCT decided that the International Bureau should revise Articles 8, 13 *bis*, 13 *ter* and related rules according to the comments made by SCT members at the tenth session and would submit for the next meeting a new document containing the full text of the TLT, including provisions on trademark licenses and the establishment of an Assembly." This paragraph was adopted as modified.

225. The Delegations of Australia, Morocco and Switzerland expressed the opinion that paragraph 9 of Agenda Item 7 should contain an indication of the timetable according to which the International Bureau expected to receive replies and prepare a synthesis for discussion. In view of these comments, the Secretariat proposed that paragraph 9 read as follows: "The SCT decided that the International Bureau shall finalize the questionnaire contained in document SCT/10/3Prov. and circulate it for reply before the end of 2003. Replies to the questionnaire will be discussed at a meeting of the SCT in 2004." This paragraph was adopted as modified.

226. Agenda Item 8 was adopted without modifications in the English and French versions and with a minor modification in Spanish, following a request of the Delegation of Mexico to replace the words "arte *saplicadas*" for "arte *aplicado*."

227. Agenda Item 9 was adopted with a minor modification suggested by the Delegation of the United States of America. The Summary of the Chair is attached as Annex I.

AgendaItem11:ClosingoftheSession

228. TheChairclosedthetenthsessionoftheStandingCommittee.

[Annex Ifollows]



SCT/10/8

ORIGINAL:English

DATE:May2,2003

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

Tenth Session
Geneva, April 28 to May 2, 2003

SUMMARY BY THE CHAIR

Agenda Item 1: Opening of the Session

229. Mr. Shozo Uemura, Deputy Director General of the World Intellectual Property Organization (WIPO), opened the session and welcomed the delegates on behalf of the Director General of WIPO.

Agenda Item 2: Election of a Chair and two Vice-Chairs

230. Mr. Li-Feng Schrock (Germany), was elected as Chair of the Standing Committee on the Law of Trade Marks, Industrial Designs and Geographical Indications (SCT). Mrs. Graciela RodD'Imperio (Uruguay) and Mrs. Valentina Orlova (Russian Federation) were elected as Vice-Chairs.

AgendaItem3:AdoptionoftheDraftAgenda

231. TheSCTadopte dtheDraftAgenda(document SCT/10/1Prov)with modificationsto theorderofAgendaitem4,AdoptionoftheDraftReportofthe NinthSession.

AgendaItem4:AdoptionoftheDraftReportoftheNinthSession

232. TheSCTadoptedtheDraftRep ort(document SCT/9/9Prov.3)withminor modifications.

AgendaItem 5:InternetDomainNames

233. TheSCTdecidedtoverttotheissuesconsideredinparagraphs13and 18ofdocumentSCT/10/5(TheProtectionofCountryNamesintheDomain NameSystem)atthenextmeetingoftheSCT.Inrespectofthequestionof sovereignimmunity,itwasagreedthatashortdescriptionofhowa *denovo* arbitrationmechanismmightworkshouldbepreparedbytheInternational Bureau.Withrespecttotheissue scontainedinparagraph 15of documentSCT/10/5,itwasagreedthatnofurtheractionsshouldbetaken.

234. WithregardtotheissueofDomainNamesandGeographicalIndications, theSCTtooknoteofthecontentofdocumentSCT/10/6.

AgendaItem6:GeographicalIndications

235. TheSCTtooknoteofthecontentofdocumentSCT/10/4.

AgendaItem7:Trademarks

DraftRevisedTrademarkLawTreaty

236. TheSCTdecidedthattheInternationalBureaushouldreviseArticles 8, 13*bis*,13 *ter* andrelatedrulesaccordingtothecommentsmadebySCTmembers atthetenthsessionandwouldsubmitforthenextmeetinganewdocument containingthefulltextoftheTLT,includingprovisionsontrademarklicenses andtheestablishmentofanA ssembly.

Further development of international trademark law and convergence of trademark practices

237. The SCT decided that the International Bureau shall finalize the questionnaire contained in document SCT/10/3Prov. and circulate it for reply before the end of 2003. Replies to the questionnaire will be discussed at a meeting of the SCT in 2004.

Agenda Item 8: Other Matters

238. The SCT took note of the explanation given by the Secretariat regarding the protection provided under Article 6ter of the Paris Convention.

239. The SCT took note of the explanations provided by the Secretariat regarding SCT/9/6 Industrial Designs and their relation with Works of Applied Art and Three-Dimensional Marks.

Agenda Item 9: Future Work

240. The SCT decided that priority should be given to the revision of the TLT. The SCT further agreed that its eleventh session would last five full working days and that the agenda of that session would devote four full days to work on the TLT, leaving the last day flexible for consideration of other issues including Geographical Indications, Geographical Indications and Domain Names, and Country Names and Domain Names. The date of the next session will be announced by the Secretariat in due course.

[Annex II follows]

ANNEXII

LISTEDES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

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

AFRIQUE DU SUD/SOUTH AFRICA

Erich HELBERG, Legal Officer, Legal Division, Companies and Intellectual Property
Registration Office (CIPRO), Pretoria
<ehelberg@cipro.gov.za>

ALBANIE/ALBANIA

Spartak BOZO, Director General, Council of Ministers, General Directorate of Patent
and Trademark, Tirana
<albpat@adanet.com.al>

Sonila ELIZI (Mrs.), Head, International and Legal Department, Albanian Patent Office,
Tirana

ALLEMAGNE/GERMANY

Li-Feng SCHROCK, Senior Ministerial Counsellor, Federal Ministry of Justice, Berlin
<schrock-li@bmj.bund.de>

Carolin HÜBENETT (Miss), German Patent and Trade Mark Office, Munich
<carolin.huebenett@dpma.de>

ARGENTINE/ARGENTINA

Marta GABRIELONI (Sra.), Consejera, Misión Permanente, Ginebra

ARMÉNIE/ARMENIA

LilitHOVUMYAN(Miss),Examiner,IntellectualPropertyAgencyoftheRepublicof
Armenia, Yerevan
<trademark@cornet.am>

AUSTRALIE/AUSTRALIA

MichaelARBLASTER,DeputyRegistrarofTrademarks,IPAustralia,WodenACT
<michael.arblaster@ipaaustralia.gov.au>

AUTRICHE/AUSTRIA

PetraASPERGER(Miss),Lawyer, AustrianPatentOffice,Vienna
<petra.asperger@patent.bmvit.gv.at>

AZERBAÏDJAN/AZERBAIJAN

IlgamA.GUSEYNOV,Chief,LawandInternationalAffairsDepartment,StateAgency
onStandardization,MetrologyandPatents,Baku
<piramida2@mail.com>
<ilgam_g@mail.ru>

BARBADE/BARBADOS

NicoleCLARKE(Miss),Counsellor,PermanentMission,Geneva
<nclarke@foreign.gov.bb>

BÉLARUS/BELARUS

IrinaEGOROVA(Mrs.),FirstSecretary,PermanentMission,Geneva

BELGIQUE/BELGIUM

MoniquePETIT(Mme),conseillèreadjointe ,Officedelapropriétéindustrielle,
Bruxelles
<monique.petit@mineco.fgov.be>

BRÉSIL/BRAZIL

LeonardoCLEAVERDEATHAYDE,SecondSecretary,PermanentMission,Geneva
<leonardo.athayde@ties.itu.int>

BULGARIE/BULGARIA

ShtiryanaVALCHANOVA -KRASTEVA(Mi ss),Juriste,StateExaminer,PatentOffice
oftheRepublicofBulgaria,Sofia
<cvaltchanova@bpo.bg>

IvanGOSPODINOV,attaché,Missionpermanente,Genève

CAMBODGE/CAMBODIA

MOMThana(Miss),AssistanttotheSecretariatoftheCommitteeSupervisingthe
ThreeAreasofIPRandChiefofTrademarkOffice,IntellectualPropertyDivision,
MinistryofCommerce,PhnomPenh
<ipd@moc.gov.kh>

CAMEROUN/CAMEROON

JacquelineNicoleMONONDJANA(Mme),sous -directeurdelapropriétéindustrielle,
Ministèredudéveloppementindustrielletcommercial,Yaoundé
<modjaque@yahoo.fr>

Jean-BernardATEBAMVOMO,SecondSecretary,PermanentMission,Geneva

CANADA

CameronMACKAY,FirstSecretary,PermanentMission,Geneva
<cameron.mackay@dfait-maeci.gc.ca>

DominiqueHENRIE(Mr s.),CounseltotheCanadianIntellectualPropertyOffice,
DepartmentofJustice,Hull,Quebec
<henrie.dominique@ic.gc.ca>

CHILI/CHILE

EleazarRamonBRAVOMANRIQUEZ,JefedelDepartamentodePropiedadIndustrial,
MinisteriodeEconomia,Santiago
<ebravo@proind.gov.cl>

MaximilianoSANTACRUZ,LegalAdviser,TradePolicy,WTODepartment,Ministry
ofForeignAffairs
<msantac@direcon.cl>

CHINE/CHINA

HANLi(Mrs.),FirstSecretary,PermanentMission,Geneva

CONGO

DelphineBIKOUTA(Mme),premierconseiller,Missionpermanente,Genève

COSTARICA

AlejandroSOLANO,MinisterCounsellor,PermanentMission,Geneva
<alejandro.solano@ties.itu.int>

CROATIE/CROATIA

JasnaKLJAJIĆ(Miss),SeniorAdministrativeOfficer,StateIntellectualPropertyOffice
oftheRepublicofCroatia(SIPO),Zagreb
<jasna_kljajic@yahoo.com>

AntonetaCVETIĆ(Miss),StateIntellectualPropertyOfficeoftheRepublicofCroatia
(SIPO),Zagreb
<antoneta.cvetic@dziv.hr>

SašaZATEZALO,StateIntellectualPropertyOfficeoftheRepublicofCroatia(SIPO),
Zagreb
<sasa.zatezalo@dziv.hr>

JosipPERVAN,FirstSecretary,PermanentMission,Geneva
<josip.pervan@ties.itu.int>

DANEMARK/DENMARK

MikaelFRANCKERAVN,SpecialLegalAdvisor,DanishPatentandTrademark
Office,Taastrup
<mfr@dkpto.dk>

EllenBREDDAM(Mrs.),HeadofDivision,DanishPatentandTrademarkOffice,
Taastrup
<ebr@dkpto.dk>

ELSALVADOR

RafaelAntonioCASTILLOMEDINA,Asistent edelaDireccióndePropiedad
Intelectual,CentroNacionaldeRegistros,SanSalvador
<rcastillo@webmail.cnr.gob>

RamiroRACINOSTREJO,MinistroConsejero,MisiónPermanente,Ginebra

ÉQUATEUR/ECUADOR

RafaelPAREDES,Ministro,RepresentantePermanente Alternativo,MisiónPermanente,
Ginebra

ESPAGNE/SPAIN

IgnacioGILOSÉS,TécnicoSuperior,DepartamentodeCoordinaciónJurídica
yRelacionesInternacionales,OficinaEspañoladePatentesyMarcas,Madrid
<ignacio.gil@oepm.es>

AnaPAREDESPRIETO(Sra.),Consejera,MisiónPermanente,Ginebra
<ana.paredes@ties.itu.int>

ESTONIE/ESTONIA

IngridMATSINA(Miss),DeputyHead,TrademarkDepartment,EstonianPatentOffice,
Tallinn
<ingrid.matsina@epa.ee>

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Eleanor MELTZER (Ms.), Attorney Advisor, Patent and Trademark Office, Department of Commerce, Arlington, Virginia
<eleanor.meltzer@uspto.gov>

Lynne G. BERESFORD (Ms.), Deputy Commissioner for Trademark Examination Policy, Office of Legislative and International Affairs, Patent and Trademark Office, Department of Commerce, Washington, D.C.
<lynne.beresford@uspto.gov>

EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE/THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Simco SIMJANOVSKI, Head of Trade Mark Department, Industrial Property Protection Office, Ministry of Economy, Skopje
<simcos@ippo.gov.mk>

Biljana LEKIĆ (Mrs.), Deputy Head of Trade Mark Department, Industrial Property Protection Office, Ministry of Economy, Skopje
<biljana@ippo.gov.mk>

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Valentina ORLOVA (Mrs.), Director, Legal Department, Russian Agency for Patents and Trademarks (ROSPATENT), Moscow
<vorlova@rupto.ru>

Anastassia MOLTCHANOVA (Miss), Senior Expert, International Cooperation Department, Russian Agency for Patents and Trademarks (ROSPATENT), Moscow
<anamol@rambler.ru>

Liubov KIRIY (Mrs.), Head of Division, Federal Institute of Industrial Property, Moscow
<lkiriy@rupto.ru>

FIDJI/FIJI

Eveli VALASERAU, Legal Officer, Ministry of Justice, Suva

FINLANDE/FINLAND

HilkkaNIEMIVUO(Mrs.),DeputyHead,TrademarksDivision,NationalBoardof
PatentsandRegistrationofFinland,Helsinki
<hilkka.niemivuo@prh.fi>

FRANCE

MarianneCANTET(Mme),chargéedemission,Institutnationaldelapropriété
industrielle(INPI),Paris
<cantet.marianne@inpi.fr>

BertrandGEOFFRAY,Institutnationaldelapropriétéindustrielle(INPI),Paris
<bgeoffray@inpi.fr>

FabriceWENGER,juriste,Servicejuridiqueetinternational,Institutnationaldes
appellationsd'origine(INAO),Paris
<f.wenger@inao.gouv.fr>

GHANA

BernardTAKYI,MinisterCounsellor,PermanentMission,Geneva

GRÈCE/GREECE

AndreasCAMBITSIS,Minister -Counselor,PermanentMission,Geneva

DaphniZOGRAFOS(Mlle),Missionpermanente,Genève

KonstantineGEORMAS,PermanentMi ssion,Geneva

HONGRIE/HUNGARY

PéterCSIKY,Head,LegalSection,LegalandInternationalDepartment,Hungarian
PatentOffice,Budapest
<csiky@hpo.hu>

GyulaSOROSI,Head,NationalTrademarkSection,HungarianPatentOffice,Budapest
<soros@hpo.hu>

VeronikaCSERBA(Mrs.),FirstSecretary,PermanentMission,Geneva

INDE/INDIA

PreetiSARAN(Mrs.),Counsellor,PermanentMission,Geneva

IRAN(RÉPUBLIQUEISLAMIQUED’)/IRAN(ISLAMICREPUBLICOF)

HamidAZIZMORADPOUR,Expert,Trademark,IndustrialPropertyOffice,Tehran
<hamid_2471@yahoo.com>

AliHEYRANINOARI,Counsellor,PermanentMission,Geneva
<a-nobari@hotmail.com>

IRLANDE/IRELAND

AnneCOLEMAN -DUNNE(Mrs.),AssistantPrincipalOfficer,IntellectualProperty
Unit,DepartmentofEnterprise,TradeandEmployment,Dublin
<anne_colemandunne@entemp.ie>

Micheál ÓRAGHALLAIGH,PermanentMission,Geneva

ITALIE/ITALY

PapanoSANTE,Director,TrademarkOffice,ItalianPatentandTrademarkOffice,
Rome

JAPON/JAPAN

NobuhiroTAKAHASHI,DeputyDirector,JapanPatentOffice,International
CooperationOffice,InternationalAffairsDivision,GeneralAdministrationDepartment,
Tokyo

HitoshiWATANABE,Director,InternationalCooperationOffice,JapanPatentOffice,
Tokyo

HiroshiMORIYAMA,DeputyDirector,InternationalAffairsDivision,JapanPatent
Office,Tokyo
<moriyama-hiroshi@jpo.go.jp>

MasakazuKOBAYASHI,TrademarkExaminer,TrademarkDivision,JapanPatent
Office,Tokyo
<kobayashi-masakazu@jpo.go.jp>

RyokichiSUZUKI,OfficerDirector,FormalityExaminationStandardsOffice,
FormalityExaminationDivision,Trademarks,DesignandAdministrativeAffairs
Department,Tokyo

KeisukeHAYASHI,FormalityExaminationStandardsOffice,Tokyo
<hayashi-keisuke@jpo.go.jp>

TakashiYAMASHITA,FirstSecretary,PermanentMission,Geneva

KENYA

GeoffreyMuchaiRAMBA,TrademarksExaminer,KenyaIndustrialPropertyInstitute,
Nairobi
<kipi@swiftkenya.com>
<jefframba@yahoo.co.uk>

LETTONIE/LATVIA

ZigrīdsAUMEISTERS,Director,PatentOfficeoftheRepublicofLatvia,Riga
<valde@lrpv.lv>

DaceLIBERTE(Ms.),Head,TrademarksandIndustrialDesignsDepartment,Patent
OfficeoftheRepublicofLatvia,Riga
<valde@lrpv.lv>

LITUANIE/LITHUANIA

DignaZINKEVI ČIENE(Miss),Head,TrademarksandIndustrialDesignDivision,State
PatentBureauoftheRepublicofLithuania,Vilnius
<d.zinkeviciene@vpb.lt>

MALTE/MALTA

TonyBONNICI,SecondSecretary,PermanentMission,Geneva
<tony.bonnici@ties.itu.int>

MAROC/MOROCCO

AminaADNANI(Mme),cadre,Officemarocaindelapropriétéindustrielleet
commerciale,Casablanca
<amina.adnani@hotmail.com>

KhalidSEBTI,premiersecrétaire,Missionpermanente,Genève

MEXIQUE/MEXICO

JoséAlbertoMONJARASOSORIO,CoordinadorDepartamentaldeConservaciónde
Derechos,InstitutoMexicanodelaPropiedadIndustrial(IMPI),México,D.F.
<a.monjaras@impi.gob.mx>

KarlaTatianaORNELASLOERA(Srta.),TerceraSecretaria,MisiónPermanente,
Ginebra
<kornelas@sre.gob.mx>

MONGOLIE/MONGOLIA

NamjilCHINBAT,DirectorGeneral,IntellectualPropertyOfficeofMongolia(IPON),
Ulaanbaatar
<ipom@magicnet.mn>

MOZAMBIQUE

JoanaValenteCHISSANO(Mrs.),IndustrialPropertyOfficer,MinistryofIndustryand
Commerce,Maputo
<jchissano@mic.mz>

NÉPAL/NEPAL

BaikunthaBahadurADHIKARY,Director,DepartmentofIndustries,Ministryof
Industry,CommerceandSupplies,Kathmandu

NIGÉRIA/NIGERIA

AliyuMohammedABUBAKAR,Counsellor,PermanentMission,Geneva

NORVÈGE/NORWAY

DebbieRØNNING(Miss),SeniorLegalAdvisor,DesignandTrademarkDepartment,
NorwegianPatent Office,Oslo
<dro@patentstyret.no>

OlufGryttingWIE,LegalAdvisor,DesignandTrademarkDepartment,Norwegian
PatentOffice,Oslo
<ogw@patentstyret.no>

NOUVELLE-ZÉLANDE/NEWZEALAND

GeorgeWARDLE,PolicyAnalyst,MinistryofEconomicDevelopment,Wellington
<george.wardle@med.govt.nz>

OMAN

FatimaAL -GHAZALI(Miss),Counsellor,PermanentMission,Geneva
<ghazali@hotmail.com>

PAYS-BAS/NETHERLANDS

AdrianaPieternellaRianneVANROODEN(Miss),LegalAdviser,Netherlands
IndustrialPropertyOffice,MinistryofEconomicAffairs,Rijswijk
<RiaRoo@bie.minez.nl>

BrigitteA.J.SPIEGELER(Mrs.),LegalAdvisoronIndustrialProperty,Ministryof
EconomicAffairs,TheHague
<b.a.j.spiegeler@minez.nl>

POLOGNE/POLAND

MartaCZYZ(Mrs.),Head,TrademarksExaminationDivision,PatentOfficeofthe
RepublicofPoland,Warsaw
<mczyk@uprp.pl>

AndrzejSZCZEPEK,Expert,PatentOfficeoftheRepublicofPoland,Warsaw
<szczepk@uprp.pl>

PORTUGAL

RogéliaMariaPINTOINGLÊS(Mrs.),HeadofDepartment,NationalInstituteof
IndustrialProperty(INPI),Lisbon
<romingles@inpi.pt>

JoséSérgioDECALHEIROS DAGAMA,conseillerjuridique,Missionpermanente,
Genève
<mission.portugal@ties.itu.int>

QATAR

AhmedYOUSIFALJUFAIRY,HeadofTrademarksOffice,MinistryofEconomyand
Commerce,Doha

RÉPUBLIQUEDECORÉE/REPUBLICOFKOREA

LEEKyung -Lim,DeputyDirector,KoreanIntellectualPropertyOffice(KIPO),Daejeon

MOONChangJin,DeputyDirector,KoreanIntellectualPropertyOffice(KIPO),
Daejeon

NAMYoung -Taeg,DeputyDirector,KoreanIntellectualPropertyOffice(KIPO),
Daejeon

AHNJae -Hyun,FirstSecretary,PermanentMission,Geneva

RÉPUBLIQUEDEMOLDOVA/REPUBLICOFMOLDOVA

IonDANILIU,FirstDeputyDirectorGeneral,StateAgencyonIndustrialProperty
Protection(AGEPI),Kishinev
<office@agepi.md>
<danil@agepi.md>

RÉPUBLIQUEDOMINICAINE/DOMINICANREPUBLIC

JocelynCASTILLO(Srta.),SuplentedelDirectorGeneral,OficinaNacionaldela
PropiedadIndustrial(ONAPI),SantoDomingo
<onapi@seic.gov.do>

IsabelPADILLAROMÁN(Srta.),Consejera,MisiónPermanente,Ginebra
<isabel.padilla@ties.itu.int>

RÉPUBLIQUEPOPULAIREDEMOCRATIQUEDECORÉE/DEMOCRATIC
PEOPLE'SREPUBLICOFKOREA

JANGIiHun,Counsellor,PermanentMission,Geneva

RÉPUBLIQUETCHÈQUE/CZECHREPUBL IC

Hana ČIŽKOVA(Mrs.),InternationalandEuropeanIntegrationDepartment,Industrial
PropertyOffice,Prague
<hcizkova@upv.cz>

ROUMANIE/ROMANIA

ConstantaCorneliaMORARU(Mme),chefduServicejuridiqueetdelacoopération
internationale,Officed'Étatpourlesinventionsetlesmarques,Bucarest
<moraru.cornelia@osim.ro>

ROYAUME-UNI/UNITEDKINGDOM

JeffWATSON,SeniorPolicyAdvisor,ThePatentOffice,Newport
<jwatson@patent.gov.uk>

DavidCharlesMORGAN,Manager,TradeMarkExamination,The PatentOf fice,
Newport
<davimorgan@patent.gov.uk>

SERBIE-ET-MONTÉNÉGRO/SERBIAANDMONTENEGRO

BrankaTOTIĆ(Mrs.),DirectorAssistant,FederalIntellectualPropertyOffice,Belgrade

SINGAPOUR/SINGAPORE

LOWDennis,SeniorAssistantDirector,IntellectualPropertyOfficeofSingapore
(IPOS),Singapore

SLOVAQUIE/SLOVAKIA

ZdenkaHAJNALOVÁ(Mrs.),Director,TrademarkDepartment,IndustrialProperty
OfficeoftheSlovakRepublic,BanskáBystrica
<zhajnalova@indprop.gov.sk>

JúliaVETRAKOVA(Miss),LegalOfficer,LegalandLegislationDepartment,
IndustrialPropertyOfficeoftheSlovakRepublic,Ba nskáBystrica
<jvetrakova@indprop.gov.sk>

SLOVÉNIE/SLOVENIA

VeselaVENIŠNIK(Mrs.),Director,TrademarksandDesignsDivision,Slovenian
IntellectualPropertyOffice,Ljubljana
<v.venisnik@uisipo.si>

SOUDAN/SUDAN

FawziaHUSSEINSALIH(Mrs.),Legal Adviser,MinisterofJustice,Khartoum

WaniJADA,SecondSecretary,PermanentMission,Geneva

SUÈDE/SWEDEN

MagnusAHLGREN,SeniorLegalCounsel,DeputyHeadofTrademarkDepartment,
SwedishPatentandRegistrationOffice,Stockholm
<magnus.ahlgren@prv.se>

PerCARLSON,Judge,CourtofPatentAppeals,MinistryofJustice,Stockholm
<per.carlson@pbr.se>

SUISSE/SWITZERLAND

MichèleBURNIER(Mme),conseillèrejuridique,Divisiondesmarques,Institutfédéral
delapropriétéintellectuelle,Berne
<michele.burnier@ipi.ch>

StefanFRAEFEL,conseillerjuridique,Divisiondesmarques,Institutfédéralde
propriétéintellectuelle,Berne
<stefan.fraefel@ipi.ch>

AlexandraGRAZIOLI(Mme),conseillèrejuridique,Divisiondroitetaffaires
internationales,Inst itutfédéraldelapropriétéintellectuelle,Berne
<alexandra.grazioli@ipi.ch>

TADJIKISTAN/TAJIKISTAN

GuennadiKOUPI,FirstDeputyDirector,NationalCenterforPatentsandInformation,
Dushanbe
<adm@tjo.tajik.net>

THAÏLANDE/THAILAND

PornchaiDANVIV ATHANA,MinisterCounsellor,PermanentMissiontotheWorld
TradeOrganization(WTO),Geneva
<pornchai@thaiwto.com>

SuparkPRONGTHURA,FirstSecretary,PermanentMission,Geneva
<suparkp@yahoo.com>

TURQUIE/TURKEY

YasarOZBEK,conseillerjuridique,Missionpermanente,Genève
<yozbek@yahoo.fr>

AsuCO ŞKUN,TrademarkExpert,TurkishPatentInstitute,Ankara
<asu.yildiz@turkpatent.gov.tr>

UKRAINE

YuriiSHEMSHUCHENKO,Director,InstituteofStateandLawbyV.M.Koretskiy,
Kyiv
<tsybenko@sdip.kiev.ua>

LyudmylaTSYBENKO(Miss),Head,LegalDivision,StateDepartmentofIntellectual
Property,Kyiv
<tsybenko@sdip.kiev.ua>

URUGUAY

GracielaROADD'IMPERIO(Sra.),DirectordeAsesoríaTécnica,DirecciónNacional
de la Propiedad Industrial, Montevideo

AlejandraDEBELLIS(Miss),SecondSecretary,PermanentMission,Geneva
<mission.uruguay@ties.iu.int>

VENEZUELA

AuraOtiliaOCANDOJUÁREZ(Srta.),DirectordelRegistrode la Propiedad Industrial,
Caracas
<aocando@sapi.gov.ve>

VirginiaPÉREZPÉREZ(Srta.),PrimerSecretario,MisiónPermanente,Ginebra
<virginia-perez-perez@yahoo.com>

ZAMBIE/ZAMBIA

EdwardCHISANGA,FirstSecretary,PermanentMission,Geneva

ZIMBABWE

JamesonMupariwaMUKARATIRWA,LawOfficer,MinistryofJustice,Legaland
ParliamentaryAffairs,Harare
<jmupariwa@yahoo.com>

COMMUNAUTÉSEUROPEÉENNES(CE) */EUROPEANCOMMUNITIES(EC) *

SusanaPÉREZFERRERAS(Mrs.),Administrator,IndustrialProperty,European
Commission,Brussels
<susana.perez-ferreras@cec.eu.int>

DetlefSCHENNEN,Head,IndustrialPropertyMattersService,Office for
HarmonizationintheInternalMarket(TradeMarksandDesigns),Alicante
<detlef.schennen@oami.eu.int>

PatrickRAVILLARD,Counsellor,PermanentDelegationoftheEuropeanCommission
inGeneva
<patrick.ravillard@cec.eu.int>

* SurunedécisionduComité permanent,lesCommunautéseuropéennesontobtenulestatutde
membresansdroitdevote.

* BasedonadecisionoftheStandingCommittee,theEuropeanCommunitieswereaccorded
memberstatuswithoutarighttovote.

II. ORGANISATIONSINTER GOUVERNEMENTALES/
INTERGOVERNMENTALORGANIZATIONS

ORGANISATIONMONDIALEDUCOMMERCE(OMC)/WORLDTRADE
ORGANIZATION(WTO)

LauroLOCKS,LegalAffairsOfficer,IntellectualPropertyDivision,Geneva

BUREAUBENELUXDESMARQUES(BBM)/BENELUXTRADEMARKOFFI CE
(BBM)

EdmondSIMON,directeuradjoint,LaHaye
<dsimon@bmb-bbm.org>

PaulLAURENT,chefdelaDivisiond'opposition,LaHaye
<plaurant@bmb-bbm.org>

OFFICEINTERNATIONALDELA VIGNEETDUVIN(OIV)/INTERNATIONAL
VINEANDWINEOFFICE(OIV)

YannJUBAN ,Head,Law,RegulationandInternationalOrganizationsUnit,Paris
<yjuban@oiv.int>

CharlesGOEMAERE,juriste

SébastienRICOLFE,avocat,Officeinternationaldelavigneetduvin(OIV)

FrançoisROUSSET,stagiaireàl'Officeinternationaldelavignee tduvin(OIV)

III. ORGANISATIONSINTERNATIONALESNONGOUVERNEMENTALES/
INTERNATIONALNON -GOVERNMENTALORGANIZATIONS

Associationcommunautairedu droitdesmarques(ECTA)/EuropeanCommunities
TradeMarkAssociation(ECTA)

BurkhartGOEBEL,LawCommitt ee,Hamburg
<burkhart.goebel@lovells.com>

Associationdesindustriesdemarque(AIM)/EuropeanBrandsAssociation(AIM)
JeanBANGERTER,Chairman,AIMTrademarkCommittee,Lausanne

Associationdespropriétaireseuropéensdemarquesdecommerce
(MARQUES)/AssociationofEuropeanTradeMarksOwners(MARQUES)
ToveGRAULUND(Mrs.),ChairmanofCouncil
<info@marques.org>

RudolfHAUG,TrademarkSpecialist,Basel
<rudolf.haugg@sygenta.com>

Associationinternationaledesjuristespourledroitdelavigneetduvin
(AIDV)/InternationalWineLawAssociation(AIDV)
DouglasREICHERT,Attorney-at-Law,Geneva
<dreichert@swissonline.ch>

Associationinternationalepourlaprotectiondelapropriétéindustrielle
(AIPPI)/InternationalAssociationfortheProtectionofIndustrialProperty(AIPPI)
GerdF.KUNZE,AIPPIPresident,Zurich
<kunze@bluewin.ch>

Associationinternationalepourlesmarques(INTA)/InternationalTrademarkAssociation
(INTA)
ToeSUAUNG,Chair,INTARegulatoryAnalysis,NewYork
<toe_su_aung@bat.com>

BruceJ.MACPHERSON,Director,ExternalAffairs,NewYork
<bmacpherson@inta.org>

Associationjaponaisedesconseilsenbrevets(JPAA)/JapanPatentAttorneys
Association(JPAA)
ReikoTOYOSAKI(Miss),Member,TrademarkCommittee,Tokyo
<toyosaki@soei-patent.co.jp>

Associationjaponaisepourlesmarques(JTA)/JapanTrademarkAssociation(JTA)
KozoTAKEUCHI,Vice-Chair,InternationalActivitiesCommittee,Tokyo
<takeuchi-k@fukamipat.gr.jp>

Centred'étudesinternationalesdelapropriétéindustrielle(CEIPI)/Centerfor
InternationalIndustrialPropertyStudies(CEIPI)
FrançoisCURCHOD,professeurassociéàl'UniversitéRobertSchumandeStrasbourg,
Genolier
<francois.curchod@vtxnet.ch>

Fédérationinternationaledesconseilsenpropriétéindustrielle(FICPI)/In ternational
FederationofIndustrialPropertyAttorneys(FICPI)

Jean-MarieBOURGOGNON,MemberofGroupI,Paris
<courrier@cabinet-loyer.fr>

Fédérationinternationaledesvinsetspiritueux(FIVS)/InternationalFederationof
WinesandSpirits(FIVS)

FredericoCASTELLUCCI,SpecialRepresentativetothePresident,Washington
<federvini@federvini.it>

Ligueinternationale dudroit dela concurrence(LIDC)/InternationalLeagueof
CompetitionLaw(LIDC)

FrançoisBESSE,représentant,Lausanne

IV. BUREAU/OFFICERS

Président/Chair: Li-FengSCHROCK(Allemagne/Germany)

Vice-présidentes/Vice-Chairs: GracielaROADD'IMPERIO(Mme/Mrs.)
(Uruguay)
ValentinaORLOVA(Mme/Mrs.)(Fédérationde
Russie/RussianFederation)

Secrétaire/Secretary: DenisCROZE(OMPI/WIPO)

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

Shozo UEMURA, vice -directeur général/Deputy Director General

Francis GURRY, sous -directeur général/Assistant Director General

Ernesto RUBIO, directeur principal, Département des marques, des dessins et modèles industriels et des indications géographiques/Senior Director, Trademarks, Industrial Designs and Geographical Indications Department

Octavio ESPINOSA, directeur -conseiller, Secteur des marques, des dessins et modèles industriels et des indications géographiques/Director -Advisor, Sector of Trademarks, Industrial Designs and Geographical Indications

Joëlle ROGÉ (Mme/Mrs.), directrice -conseillère, Secteur des marques, des dessins et modèles industriels et des indications géographiques/Director -Advisor, Sector of Trademarks, Industrial Designs and Geographical Indications

Denis CROZE, chef, Section du développement du droit international (marques, dessins et modèles industriels et indications géographiques)/Head, International Law Development Section (Trademarks, Industrial Designs and Geographical Indications)

Ignacio DECASTRO, juriste principal, Section du développement du droit, Centre d'arbitrage et de médiation de l'OMPI/Senior Legal Officer, Legal Development Section, WIPO Arbitration and Mediation Center

Martha PARRAFRIEDLI (Mme/Mrs.), juriste principale, Section du développement du droit international (marques, dessins et modèles industriels et indications géographiques)/Senior Legal Officer, International Law Development Section (Trademarks, Industrial Designs and Geographical Indications)

Päivi LÄHDESMÄKI (Mlle/Miss), juriste principale, Section du développement du droit international (marques, dessins et modèles industriels et indications géographiques)/Senior Legal Officer, International Law Development Section (Trademarks, Industrial Designs and Geographical Indications)

Abdoulaye ESSY, consultant, Section du développement du droit international (marques, dessins et modèles industriels et indications géographiques)/Consultant, International Law Development Section (Trademarks, Industrial Designs and Geographical Indications)

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