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INTERNATIONAL UNION
FOR
THE PROTECTION OF INDUSTRIAL PROPERTY

CONFERENCE OF THE HAGUE

FOR THE REVISION OF THE ARRANGEMENT OF THE HAGUE
FOR THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS OR MODELS
OF 6th NOVEMBER, 1925, AS REVISED AT LONDON ON 2nd JUNE, 1934

PRELIMINARY DOCUMENTS

PROPOSALS, COUNTER-PROPOSALS AND OBSERVATIONS
COMMUNICATED BY DIFFERENT UNIONIST STATES
AND INTERNATIONAL ORGANISATIONS

COLLATED AND COORDINATED
BY THE INTERNATIONAL BUREAU



INTERNATIONAL BUREAU
FOR THE PROTECTION OF INDUSTRIAL PROPERTY
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PRELIMINARY OBSERVATIONS

In April 1960, the International Bureau addressed to the Governments and International Organizations concerned a First Volume containing the Draft proposals for the revision of the Arrangement of The Hague for the International Deposit of Industrial Designs or Models and its Regulations, proposals which will be submitted to the Diplomatic Conference at The Hague, convened by the Netherlands Government from 14th to 26th November, 1960.

The Governments and International Organizations were invited to communicate both to the Netherlands Government and to the International Bureau such observations as they thought fit to make on the proposals.

The replies received by the International Bureau up to the 15th September, 1960 were transmitted on the 16th September directly in the original language to the Directors of the Industrial Property Offices concerned with the Conference.

The present volume contains the same replies in analytical form including those of the Belgian Government. The observations relating to the different articles of the Arrangement and its Regulations have been classified under each separate article.

The replies which were not in English have been translated and such texts are indicated by the word "*translation*."

It should be noted that two countries, Czechoslovakia and Ireland, have notified the International Bureau that they have no observations to offer on the proposals.

26th September, 1960.

PART ONE

DRAFT FOR THE REVISION OF THE ARRANGEMENT OF THE HAGUE

FOR THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS
OR MODELS OF 6th NOVEMBER, 1925,
REVISED AT LONDON ON 2nd JUNE, 1934

AND PROTOCOL

I. GENERAL OBSERVATIONS

Denmark (*Translation*) : At present it is not yet certain whether Denmark will be in a position to approve the revised Arrangement of The Hague. The Nordic countries are currently cooperating in revising their legislation on models and it is important therefore that Denmark be present at the next Conference of revision in order to be able to accept, as far as possible and within the limits of Scandinavian cooperation, the main provisions to be inserted in the revised Arrangement, even if the question of Denmark's adhesion remains undecided.

If the new Nordic legislations on the protection of industrial designs or models are similar in form to the provisions of the Arrangement of The Hague, it would then be possible—should the occasion arise—to accept the Arrangement without making important amendments to the laws.

However it must be expected that the countries adhering to the Arrangement of The Hague will be flooded with a considerable number of registrations irrespective of whether the applicants have any real interest in claiming protection in all the countries of the Union. Such conditions represent a serious drawback, particularly for the smaller countries. An optional territorial limitation, similar to that provided by Article 3 *bis* of the Arrangement of Madrid for the International Registration of Trade Marks, is therefore recommended.

It is felt that with regard to the fees payable for an international deposit, these should be fixed at a sufficiently high rate in order to enable each country of the Union to cover the costs for implementing and carrying out the said Arrangement.

Lastly, it would be of considerable use if an international classification of designs and models be established, similar to that in respect of trade marks.

France (Translation) : In the main, these observations refer to the Draft Arrangement alone. No detailed examination has been made of the Draft Regulations prepared by the Working Group convened after the Conference of the Preparatory Committee ; such an examination would moreover have been premature. However certain provisions, possessing a fundamental character, of the latter Draft have been referred to in the present note, in connection with the corresponding articles in the Draft Arrangement.

The remarks that follow concern only the substance of the provisions examined. No remarks have been made as to their form, with the single exception of cases where a change in the wording seemed necessary in order to ensure the clarity of the text or to remove an apparent contradiction.

Finally, a certain number of new provisions have been suggested for insertion. These provisions appear in the commentary on the articles whose examination led to their proposal.

Before proceeding to these various remarks and proposals, the French Government considers it necessary to draw the attention of the Diplomatic Conference to certain financial aspects of the new arrangement.

It agrees entirely with the "final observations" expressed by the Preparatory Conference on this matter and reproduced after the text of its preliminary Draft, viz. "The fees must be as low as possible and so calculated that, without producing any profit, the design registration service of the International Bureau should be self-supporting."

However it feels that the Diplomatic Conference should consider in this connection the problem of the loans granted by the Union of Madrid to the Hague Union and the repayment of these loans.

The French Government reserves its right to propose, at the Conference of revision, certain alterations to the drafting of the final provisions (Articles 15 *et seq.*) in particular with regard to the statements concerning the territorial application of the Arrangement (Articles 18 and 19).

Germany (Fed. Rep.) (Translation) : The Federal Government considers that the revised text, drafted at The Hague between 28 September and 8 October, 1959, of the Arrangement of the Hague for Industrial Designs or Models is likely to induce more States to accede to the Arrangement and to reduce the risk of its denunciation by Contracting States. The Federal Government is pleased to see that a revised text of the Regulations implementing the Arrangement has also been drafted, since the matters dealt with therein, especially the provisions relating to the publication of designs or models and the expenses entailed thereby, are of vital importance for the application of the Arrangement itself (see also observations under Article 17).

Luxemburg (Translation) : Luxemburg is not yet a member of the Arrangement of The Hague. Nevertheless it is interested in the forthcoming revision since it expects there may be important changes made in the present provisions which might induce it to become a member. To show its interest, it has taken part in 1959, in the preparatory work of the Committee of Experts convened at The Hague by the Netherland's Government.

On the national level, Luxemburg has no special law with regard to the protection of designs or models. Doubtless that is one of the main reasons why it has not become a member of the Arrangement of The Hague. However, it

has decided to introduce a system of protection as soon as possible. The Benelux countries are currently drafting common legislation on the subject.

With regard to the Arrangement of The Hague, Luxemburg has already declared at the Lisbon Conference, that it desires above all, a system which ensures protection of the market, that is to say, current information on existing rights and on former rights with regard to designs or models. Consequently, it has insisted that :

1. the publication of registered models should take place as quickly as possible and be complete in detail ;

2. that the existing system which provides for a secret deposit for a term of five years, be abolished and replaced by a provision allowing for a delay in the publication not to exceed 6 months. A feeling of insecurity for rival firms might arise if publication were delayed too long.

The solutions proposed for the Conference of revision with regard to the two above mentioned points are entirely satisfactory.

Spain (Translation) : The Spanish Administration wishes to insist on the necessity of introducing the principle of optional territorial limitation in the Arrangement of The Hague for all the countries which desire it ; this is in accordance with the principle established at the Nice Conference for the Revision of the Madrid Arrangement concerning the International Registration of Trade Marks.

The reasons for urging such a measure are the same as for the Arrangement of Madrid. As our country is a receiving country in respect of foreign registrations, the acceptance of a system of international registration would imply, for Spain, the acceptance of a considerable number of applications bearing no relation to the number of Spanish registrations benefiting from the said system and furthermore, those registrations may not be exploited in Spain as exploitation will always be at the will of the owner, there being no principle of compulsory exploitation.

Furthermore, the principle of automatic registration in the Arrangement of The Hague for the International Deposit of Industrial Designs and Models would considerably increase the burden of work of the Spanish Industrial Property Office, particularly in view of the fact that Spanish industrial designs and models are only registered after a period in which third parties may lodge an opposition.

Notwithstanding, the Spanish Administration agrees with the proposal to revise the Arrangement of The Hague, subject of course to such amendments of detail which it may think fit to suggest during the discussions at the Diplomatic Conference.

Lastly, it should be noted that the Draft Regulations do not refer to any procedure by which an applicant may send his applications through the intermediary of a national office though the ruling for such cases should in fact be governed by the Regulations, in pursuance of paragraph *d* of Article 12 of the Draft Arrangement for the International Deposit of Industrial Designs and Models.

Sweden : The domestic legislation on designs is at present subject to an enquiry by a Government Committee with a view to effect a thorough revision and modernising. The Design Protection Act now in force affording protection

only for designs within the metal industries, one of the main purposes of the enquiry is to examine the question whether design protection should cover all industries or whether certain branches should be excluded. Another task of the Committee is to study the novelty requirement and advise as to the scope of the administrative novelty search.

Before the enquiry is concluded it is obvious that there are a number of important aspects of the future law on designs that are highly uncertain. In the circumstances it is difficult to express an opinion as to whether Sweden will accede to a revised Hague Arrangement. However, a certain positive interest in the Arrangement is understood to be felt in certain industrial circles. And provided reasonable guarantees in two important aspects can be given in the revised text, it is entirely possible that the adherence of Sweden may be given when the new law on designs comes into force. The two main conditions that must be fulfilled are the following :

1. The Arrangement must be such as to give sufficient safeguards against the contingency of an adherent country being overrun by a mass of claims to protection for designs that will not be used in that country. This is essential to the domestic industry which must be guaranteed a reasonable area of freedom within which it can exercise a legitimate creation of new designs. For this reason some kind of facultative territorial limitation seems imperative, and it is suggested that provisions similar to those of Article 3bis of the Madrid Arrangement on Trade Marks be embodied in the revised Hague Arrangement.

2. The various fees to be collected by the International Bureau should be set at a level sufficiently high to cover not only the costs of that Bureau for the handling of the applications and the publication of the different designs, but also the costs of the national patent offices for the work and service rendered by them consequent upon the international registration. These last named costs entail the cost of the novelty search in the countries where such a search is undertaken, and the costs necessary for classifying the registered designs and making them readily available to the public. It is emphasized that in Sweden it is a well settled principle that the costs of the protection of industrial property are borne by the persons seeking such protection : in the calculation of fees it is seen to that each branch of the industrial property protection carries its own costs. On the other hand the fees are not supposed to be set at such a level as to procure a profit for the Crown. Thus when insisting on adequate fees for the international protection of designs it should be quite clear that such a wish is not motivated by any desire to exploit financially the creators of industrial designs.

Moreover, it should be borne in mind that the designs worthy of international protection are those that are worked commercially in international trade. Even if the registration fees are high, they can only account for a very modest percentage of the accumulated costs of putting the product on the market. In cases where the mere costs of design protection cannot be borne by the estimated profits, the presumption must be that the product is not really worth putting on the market.

Quite apart from the above, however, it might seem worth while considering whether it might not be desirable to put up the fees, irrespective of the actual costs, in order to achieve a certain limitation of the number of designs for which protection is sought. Such a measure would be in harmony with the principle underlying the idea of a facultative territorial limitation.

Switzerland (*Translation*): While reserving the right to submit other remarks or proposals at the Conference, we confine ourselves for the moment to making the following observations:

Provisions concerning the covering of a deficit in the registration service.

The agreement at present in force contains no provision indicating how a deficit in the registration service is to be covered. At first, it was thought that the cost of running this service would be covered by the fees paid. But since the end of the second World War the receipts have been insufficient to cover the added cost occasioned mainly by the increases in salaries which have had to be granted as a result of the rise in the cost of living. The report the Swiss Government recently submitted to the States of the Union in Paris shows that this deficit amounts to approximately 300,000 francs. Up till now these deficits have always been covered by drawing from the surplus of the revenue obtained by the international marks service. But it is only to be expected that members of the Madrid Arrangement on Marks will demand the repayment of the amounts that have been taken from them and to which they are entitled, for the States belonging to the Madrid Arrangement on Marks differ to a certain extent from those that are members of the Arrangement of The Hague.

The first question that arises then is how to obtain the money to cover this deficit, if the members of the Union of Madrid demand the repayment of the sums that have been drawn from the marks service.

Provisions must also be made to cover the deficits which may possibly occur in the future in the designs and models service. The fees must be fixed on the basis of an estimate of the expenses and the volume of business. For a given volume of work the registration service requires a certain number of assistants. If, for some reason, the volume of business and with it the amount of receipts decrease considerably, this staff cannot immediately be dismissed to be taken on again as soon as business recovers. In such a case it is not the increase in fees, decided on by the administrative conference, that will give the necessary help. What is needed then is that member countries themselves should be prepared to cover the deficit resulting from this state of affairs. But for this to take place it is necessary for a conventional obligation to be imposed on them, otherwise the majority of governments will not be prepared to accept this extra financial burden.

For the moment we content ourselves with stressing the need to complete the drafts according to the above observations; we reserve the right to put forward concrete proposals at a later date.

United Kingdom: A Committee has been appointed by the President of the Board of Trade to hear evidence and to make recommendations as to the law on the protection of industrial designs in the United Kingdom. This Committee will not have completed its work for some months. Her Majesty's Government is not, therefore, in a position to offer positive comments on the substantive issues raised in the Draft Agreement and Regulations. It has, however, the following observations to offer on the more formal parts of the proposals:

1. *Preamble.*

We suggest that this be as follows:

The Contracting States (.), recognising the importance of a cheap and effective method for the international protection of rights in industrial designs;

considering it desirable to make certain modifications and additions to the Arrangement for the International Deposit of Industrial Designs or Models signed at The Hague on November 6th, 1925, as revised at London on June 2nd, 1934 ;

Have agreed as follows :

2. *Definition Article.*

It would be convenient as a matter of drafting to insert between Article 1 and 2 an Article defining certain expressions which are used in the Agreement such as " the International Bureau," " the International Designs Register " and " the Regulations. "

3. *Final Clauses.*

Finally we suggest a Testimonium in the following terms :

" In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed the present Agreement.

Done at the day of 1960 in the English and French languages, both texts being equally authoritative, in a single copy which shall be deposited in the archives of the Government of "

USA : Examination of the text of the Draft Arrangement and Regulations indicates that in general they appear to form a satisfactory basis for consideration by the Conference.

However it should be understood that if a Contracting State has more than one special statute providing for design protection, an applicant for international registration may elect to claim protection under any one of them if, and to the same extent as, an applicant before the national offices may so elect.

IAPIP (Translation) : The International Association for the Protection of Industrial Property (IAPIP) has examined the Draft prepared by the Committee of Experts, to revise the Arrangement of The Hague.

At the Congress of London (4th June, 1960), the IAPIP unanimously adopted the following observations, which it has the honour to submit to the Government of the Netherlands and to the International Bureau for the Protection of Industrial Property.

Territorial Limitation.

The Draft.

The draft of the Experts does not provide for the possibility of a territorial limitation of the scope of a deposit.

Remarks.

The IAPIP raised the question whether the possibility of operating a territorial limitation of the effects of the deposit should be introduced into the Arrangement under a provision similar to that introduced into the Arrangement of Madrid by the Conference of Nice.

Of course, the motives in favour of the territorial limitation in the field of trade-marks are not entirely valid in the field of models.

Nevertheless, the IAPIP voted, with a bare majority, in favour of the introduction of a territorial limitation.

Renunciation of the Deposit.

The Draft.

The Draft of the Experts did not adopt the provisions of Article 13 of the present Arrangement : this Article 13 allows a depositor to renounce his deposit at any time, either wholly or in part.

Remarks.

The IAPIP considers that the provisions of the former Article 13 should be repeated in the new text.

Definition of Designs or Models.

The Draft.

The Draft does not contain any definition of the designs or models to which protection shall be granted.

Remarks.

1. The IAPIP unanimously considers it both impossible and undesirable to establish a definition of designs or models.

2. The IAPIP considered whether it would not be suitable to add the qualifying word " industrial " to the expression " designs and models " used in the Draft.

This addition could be justified :

- by the desire to avoid a confusion of the designs or models, which are the subject of the international registration, and the " utility models " which are not referred to in the Arrangement ;
- by the fact that both in the general Convention (Article 1, paragraph 2) and in the present Arrangement of The Hague of 1925 the designs and models are qualified " industrial. "

The IAPIP thinks it preferable not to add the qualifying word " industrial, " in order to avoid any possible confusion with utility models.

But the IAPIP considers it desirable to specify that utility models are excluded from the provisions of the Arrangement, by means of a provision inserted in the text or, possibly, by a statement by way of an " Exposé des motifs. "

The International Literary and Artistic Association (*Translation*) : It appears to the International Literary and Artistic Association that the Draft submitted gives rise to a certain number of questions which relate more particularly to the field of Industrial Property since the Arrangement of The Hague comes within the framework of the Union Convention of Paris.

However the provisions which will be adopted may have certain repercussions on applied arts where the owners of such rights consider it useful to ensure their protection by means of such an Arrangement, independently of already existing national or international legislative measures which govern the protection of such arts as applied under the copyrights rules.

It is evident that the pre-eminent nature of the Arrangement of The Hague will come up against various different national conceptions with regard to the object of the Arrangement.

The International Literary and Artistic Association considers therefore that, within the above mentioned limitations, these different conceptions should find expression on the industrial property level, with the reserve that the materialisation of certain conceptions may, incidently, effect applied arts.

In order to illustrate this situation, the Executive Committee wishes to submit certain observations on those points which have been raised by certain National Groups (Belgium, France, Switzerland) ¹.

The International Chamber of Commerce ²: Having studied the Draft Revision of The Hague Arrangement concerning the international registration of designs drawn up by the Committee of Experts which met at The Hague from 28th September to 8th October, 1959, its Draft Protocol and the Draft Regulation concerning the application thereof;

Notes with satisfaction the efforts made by the Experts in order to bring about a practical compromise between the different national systems, including the solution proposed in connection with the question of applied arts referred to in Article 14 of the Draft Arrangement; in respect to the fees for international registration, the International Chamber of Commerce expresses the wish that they be fixed at a reasonable level so that interested industries should be able to take advantage to the greatest possible extent of this international protection;

Consequently, the International Chamber of Commerce approves the Draft texts referred to above and expresses the hope that their adoption by the Diplomatic Conference convened for the 14th November, 1960 at The Hague will allow adherence by a great number of States not yet members of the Separate Union created by the said Arrangement.

The International League for the Prevention of Unfair Competition (*Translation*): The International League for the Prevention of Unfair Competition, after having examined the texts established by the International Conference of Experts which met in The Hague from 28th September to 8th October, 1959 in view of the revision of the Arrangement of The Hague for the International Deposit of Designs and Models, is in agreement with the provisions suggested, subject to certain reservations ³.

II. PROPOSALS, COUNTER-PROPOSALS AND OBSERVATIONS

Title

Germany (Fed. Rep.) (*Translation*): According to its title, the (French version) Draft Arrangement relates to "designs or models." This is a departure from the definition used in the title of the text of the Arrangement

¹ These observations will be found under the appropriate articles (Editor's note).

² Resolution adopted by the Commission on the International Protection of Industrial Property at its meeting on 9th and 10th June, 1960, in Paris.

³ These observations will be found under the appropriate articles (Editor's note).

of The Hague currently in force, which speaks of " industrial designs or models. " In the Union Convention of Paris for the Protection of Industrial Property, the term " industrial designs or models " is similarly used in Articles 1, 4 and 5 and in the new Article 5 *quinques* introduced at Lisbon. It seems desirable that one and the same term should be used in both agreements, in order to avoid creating the erroneous impression, through the omission of the adjective " industrial, " that some extension of protection is contemplated. The Federal Government therefore proposes that the term hitherto employed—" industrial designs of models "—be retained¹.

United Kingdom : We suggest that the more usual word " Agreement " should be used instead of " Arrangement " to describe the new instrument.

IAPIP (Translation) :

The Draft.

As indicated in the title of the Arrangement, its object is " the international deposit of designs or models. "

Remarks.

The IAPIP approves the wording of the title, because it considers the Arrangement to be an instrument of formalities.

Article 1

Belgium (Translation) : Paragraph 2 of Article 1 entirely satisfies the Belgian Administration. It is a fact that serious legal problems arise in connection with the participation of Non-Unionist States in the new Arrangement. It may be asked whether Article 15 of the General Convention which provides that the countries reserve to themselves " the right to make separately, as between themselves, special agreements " can be interpreted to mean anything else but " as between countries of the Union. " Furthermore, it may be asked whether the Conference of The Hague is competent to interpret Article 15 of the Convention, without having the agreement of all the Unionist countries.

If however, the admission of non-member States to the Convention becomes possible from a legal point of view, it would then be necessary to insert in the text of the new Arrangement the provisions of the Union Convention of Paris which apply to designs and models.

Germany (Fed. Rep.) (Translation) : For the reasons given in the case of the title of the Draft Arrangement, it would be desirable to use the expression " industrial designs or models " in paragraph 1 of Article 1. The adjective " industrial " could then be dropped from the subsequent articles of the Arrangement, as the object of the protection would have been adequately defined by the title and by paragraph 1 of Article 1¹.

¹ The observations under this head relate to the *French text only*, as the English title includes the word " industrial " (Translator's note).

² There is a further discrepancy between the English and French texts of Article 1, paragraph 1: the former speaks simply of " designs "; the latter has " dessins ou modèles " (Translator's note).

United Kingdom : We suggest that the language of Article 1, paragraph 1, should follow that of the Industrial Property Convention. Article 1 should then read as follows :

“ 1. The Contracting States hereby constitute themselves into a union for the International Deposit of Designs.

2. Any state member of may become a party to the present Agreement. ”

IAPIP (Translation) :

The Draft.

Article 1 of the Draft provides for the constitution of a Separate Union, open only to those countries which are members of the Paris Union.

Remarks.

The IAPIP approves the provision stipulating that only members of the General Union may accede to the Separate Union :

- for fundamental reasons, because the Arrangement refers to general rules expressed in the Union Convention ;
- for reasons of expediency.

Article 2

IAPIP : The Draft of the Experts implies the institution of a deposit and of a registration of the designs or models effected at the International Bureau for the Protection of Industrial Property (Articles 1 and 2).

The Depositors.

The Draft.

A deposit may be effected by (Article 2) :

- persons within the jurisdiction of a contracting country ;
- persons without the jurisdiction of a contracting country, but having either their residence or a real and effective commercial establishment in such country.

Remarks.

The IAPIP does not offer any remarks on this item.

Article 3

Austria (Translation) :

Article 3, paragraphs 1 and 2.

In the opinion of Austria, it would be preferable if—as in the case of international trade marks (Article 1, paragraph 2, of the Madrid Arrangement on Trade Marks)-designs and models had to be registered in the country of origin first and could only then be transmitted to the International Bureau for inter-

national registration through the intermediary of the national office. This Arrangement has been found to be entirely satisfactory in the case of international trade marks. Action by the national office helps both the depositor and the International Bureau. The depositor may correspond with the national office in the language of the country and, where appropriate, he may have recourse to the services of his usual agent in the country. The work of the International Bureau would be facilitated by the uniformity of the applications for registration, the national office being in a position to deal with errors and omissions before forwarding applications.

The requirement of prior registration with the national office would also ensure that every member State itself provides for the registration of designs. It might be arranged that designs cease to depend on protection in the country of origin, as soon as they are internationally registered. If this basic principle is not generally approved at the Revision Conference, the retention of the powers conferred in Article 3, paragraph 2, and Article 5, paragraph 2, is regarded as absolutely indispensable.

Article 3, paragraph 3.

The application for registration is to be accompanied by graphic representations of the design or model. In addition, the article incorporating the design may itself be deposited. A description of the design or model may also be added.

The basic provision contained in Article 5, paragraph 1, will in any case result in a multiplicity of definitions of the scope of protection for designs or models in accordance with the domestic law of the Contracting States. The Draft further accentuates this differentiation based on the national laws by providing that in the various Contracting States one of the other criteria referred to above may be used to determine the scope of protection. In some countries the photograph or the article deposited will be the decisive factor in determining the scope of protection, in others the publication of the design or model. The binding character of the description itself, too, must be judged in accordance with Article 5, paragraph 1. It would be desirable, if the same criteria, such as, for example, the published photographs, were adopted to determine the scope of protection.

Denmark (Translation) : If the provision on "multiple deposits" is maintained, the number of models included in one deposit should be limited. According to the Regulations, a deposit should not include more than twenty objects. It is proposed that the number of objects should not exceed ten and that all the designs or models be of the same nature or that they represent parts of the same object.

France (Translation) : a) Paragraphs 1 and 3 require no observation.

b) Paragraph 2, on the other hand, "mentions a criterion, that of the "jurisdiction" under which persons or corporate bodies may come, which appears to be lacking in precision. Such a "jurisdiction" could possibly be claimed by several States with regard to the same corporate body or even person.

It would therefore seem to be preferable to keep the stricter criterion of the domicile or registered office, depending on whether it is a question of an indi-

vidual person or a corporate body; Article 3, paragraph 2, could then be expressed somewhat as follows :

“ Any Contracting State may require that applications for international registration filed by persons or corporate bodies domiciled or having their registered office on its territory be made through the intermediary of its national office. ”

The version thus proposed undoubtedly restricts the scope of the powers offered to States by Article 3, paragraph 2, since it does not apply to persons who, without being domiciled or having their registered office on the territory of a State, nevertheless do have a real and effective industrial or commercial establishment there. The notion of a real and effective industrial or commercial establishment has been omitted intentionally however, so as not to expose applicants possessing such establishments in several countries to contradictory obligations.

If however the Diplomatic Conference wished to see the powers afforded to the States under Article 3, paragraph 2 extended, the version proposed above could be modified and completed as follows :

“ Any Contracting State may require that applications for international registration filed by persons or corporate bodies domiciled or having their registered office or possessing a real and effective industrial or commercial establishment on its territory be made through its national office. ”

“ If for one and the same applicant, several Contracting States may lay equal claim to the powers offered by the previous paragraph, no obligation shall be imposed on the applicant. ”

c) The last sentence of paragraph 5 offers the applicant the possibility of enclosing supporting documents to further any claim for priority he may wish to make. Such an optional provision does not appear to have any great practical value. In fact it would seem rather as though the authors of the Draft intended to express an obligation in this respect and the provision under examination should, if this is the case, make clear, preferably in the form of a reference to the Regulations—and within the limits laid down in Article 4, letter D, 3, of the Convention of Paris—the type of documents required and the time limits for their submission to the International Bureau.

Luxemburg (Translation) : As regards Article 3 of the Draft, Luxemburg is in favour of the solution providing for the direct transmission of applications for registration to the International Bureau.

Sweden : Article 3, paragraph 4. In principle Sweden is opposed to the idea of multiple deposits. The main purpose of the multiplicity appears to be that of justifying a reduction of fees. Such a reduction, however, seems quite unwarranted in view of the fact that the costs of examining the designs and making them available to the public will not be appreciably diminished because several designs are included in one application. Indeed it is quite conceivable that in certain cases costs may actually increase as a consequence of their grouping in a joint deposit.

In case, however, a system of multiple deposits should be generally accepted, it is certainly most desirable that the permissible number should be kept as low as possible. The number of twenty mentioned in Rule 2 of the Draft Regu-

lations seems too high, ten being the highest number that could be accepted. The reduction of fees provided in Rule 6, paragraph 2 *b* in the case of multiple deposits appears to be unnecessarily liberal.

United Kingdom : Article 3, paragraph 1, should commence : “ Applications for international registration of a design may be filed with the International Bureau ”.

IAPIP (Translation) :

Application for Registration.

The Draft.

The application for registration is submitted to the International Bureau (Article 3).

1. It may be presented :
 - either directly,
 - or through the medium of a national Administration (the countries may require their nationals to present their application through the medium of a national Administration).
2. The application shall contain :
 - a) compulsorily, a photographic or a graphic reproduction of the design or model ;
 - b) optionally, and in addition :
 - a specimen or a mock-up of the object ;
 - a description of the characteristics of the deposited design or model.
3. The deposit may be a multiple one.
4. Where necessary, the application shall include a priority claim.

Remarks.

As far as the multiple deposit is concerned, the IAPIP makes a three-fold observation :

1. The institution of the multiple deposit must be approved because of the reduction of the expenses thus made possible.

2. The Draft of the Regulations imposes a two-fold condition for the multiple deposit to be regularly effected :

- a) that the different models which are deposited together must be intended to be incorporated in objects of the same kind.

This condition must be approved ;

- b) that the number of the models which form the subject of a multiple deposit does not exceed 20.

The IAPIP considers, in its majority, that this maximum number of 20 is too small.

3. A difficulty must be pointed out :

It is to be feared that certain countries, the national legislation of which does not allow the multiple deposit, do not recognize on their territory the validity of international multiple deposits effected by nationals of other adhering countries.

The IAPIP expresses the wish that the countries find a solution to this difficulty.

Article 4

Austria (*Translation*) :

Article 4, paragraph 2.

Reference is made to the " date of international registration. " This date is apparently a determining factor in fixing the beginning of protection and calculating the term of protection.

It must be recalled that under the Draft the direct deposit of a design with the International Bureau is permissible. The international registration of a design may therefore constitute a first registration—within the meaning of the Union Convention of Paris—from which a priority right may be derived in accordance with Article 4, paragraphs 1 and 2. The present Draft for the revision of The Hague Arrangement on Designs leaves the question open on which date a claim to priority may be based, if the application contains an error or omission *which can be remedied* (e. g. failure to pay the full fee). It is from this date, too, that the six-month period of deferred publication (under the provisions of the Union) is to run. The Draft permits the interpretation that the day of arrival at the International Bureau is decisive, provided that the application contains the most important criteria of registration (identification of the design, name of depositor, application for protection). The text of the Draft may, however, also be interpreted to provide that a claim to priority may be based only on an application for registration fulfilling all formal requirements in accordance with Article 4, paragraph 2.

This point should be clarified. It must be made clear which day is to be regarded as the *day of deposit* and hence as decisive for the claim to priority.

These arguments are valid also where the international deposit is a second application for which the priority of a previous national deposit is claimed. In this case, too, the present text of the Draft might give rise to doubts regarding the observance of the six-month time limit set by the Union, if formal errors and omissions in the registration are remedied only after this time limit has expired. This question should be settled in accordance with Article 4, paragraph 3, of the Union Convention, as revised at Lisbon.

Article 4, paragraph 3.

Article 3, paragraph 4 of the Madrid Arrangement on Trade Marks provides for the notification of the registration of international trade marks to the competent authorities by the International Bureau. This is done by the transmission of trade mark extracts, which correspond to a copy of the International Register. The Draft does not provide for any similar arrangement. Since, however, the period of preliminary examination provided for in Article 5, paragraph 3, begins to run as soon as the National Administrations have received

the information, Article 4, paragraph 3, of the Draft should stipulate that the transmission of the Gazette to the Contracting States shall be regarded as the official notification of the International Office concerning registration of a design.

Article 4, paragraph 4.

Under this paragraph, publication of the design may be deferred for a period of six months. This provision is at variance with Article 5, paragraph 4. If under the law of a member country, a design has to be offered to the public before it can be registered, this design or model must be made available to the public within the six-month period. The period during which the design can be kept secret is thus shortened in practice.

Belgium (Translation) : With regard to paragraph 2 of Article 4, it seems advisable to recognise that, when an application for an international registration is presented through the intermediary of the National Administration of a contracting State, that international registration should bear the date on which it was received by the National Administration, provided that the application is transmitted to the International Bureau within a period of two months from that date. This system, which puts all applicants on an equal footing, has been incorporated in Article 3, paragraph 4, of the Madrid Arrangement as revised at Nice in 1957.

France (Translation) : With regard to this article, the French Government wishes to make a reservation as to its substance as well as certain remarks regarding the form. Finally, it considers that the provisions it contains should be completed on one point.

a) The reservation as to its substance concerns the publication of international registrations, referred to in paragraphs 3 and 4. These provisions introduce two innovations into the present text of the Arrangement : a systematic publication of all designs and models registered and a considerable reduction in the time during which international registrations are withheld from public inspection. In this form they cannot meet with the agreement of the French Government. Without it being necessary to go over the reasons, often mentioned before, for this attitude, it should be stressed that from the point of view of a very large category of creators of designs and models, the appropriation of a new trend in style is just as harmful as the actual copying of a creation, so that those concerned will prefer to forego protection rather than facilitate the more or less direct imitation of their work by having it systematically and rapidly published. The question ought therefore to be re-examined. At any rate the period of 6 months laid down in paragraph 4 appears quite insufficient.

b) With regard to form, the provisions of article 4 do not seem to express as clearly as they might the economic side of the system of registration and publicity advocated by the authors of the Draft.

Under the terms of Article 7 of the Draft Regulations the applications are not in fact "registered," but "become part of" the International Register : the word "registration" would therefore appear to be incorrect. Then again—and this objection is more serious—the notion of "registration" is ambiguous : from paragraph 2 of Article 4 it would seem that "registration" occurs as soon as the documents have been filed, so that the "registration" of the application in the Register or rather the act of "becoming part" of the Register,

constitutes a later and quite distinct operation, which is certainly confusing, the notion of registration thus assuming a double sense, in substance and form. Finally, paragraph 5 lays down that "the applications and the registers" shall be open to inspection by the public, whereas, to judge by Article 7 of the Draft Regulations, they tend to become one and the same thing, at least partially.

To achieve a more precise and more coherent version, paragraph 1 could be drafted as follows :

"The International Bureau keeps an International Register of models or designs, under the conditions laid down in the Regulations. The public is free to inspect this Register as well as the documents and objects accompanying the applications for registration."

Paragraphs 2 and 3 need not be altered (except, naturally, for the above remarks concerning substance).

Paragraph 4 could be completed by the following provision :

"During the period of deferred publication, the application shall not appear in the Register provided for in paragraph 1 of the present article and the public shall not be allowed to inspect either this application or the documents and objects accompanying it."

Paragraph 5 would then be done away with.

c) It would be advisable to include in the new Arrangement provisions similar to those of Article 14 of the text at present in force concerning the communication of registered designs and models to competent national authorities.

These provisions, which could be inserted in the article under examination or form the subject of a separate article, could be expressed as follows :

"When a tribunal or any other competent authority of a member State orders the communication to it of a design or model, the International Bureau, when regularly required, shall send the design or model requested to the authority requiring it. The item thus communicated shall be returned in the shortest time possible. These operations may be made subject to a tax, which shall be fixed by the Regulations."

Germany (Fed. Rep.) (*Translation*) : Paragraph 2 of Article 4 fixes the date of the international *registration* of designs or models. Later provisions of the Draft Arrangement (Articles 5, 7 and 10) also speak of international *registration*. The Federal Government proposes that the term "international registration" be everywhere replaced by the term "international deposit," used in the text of the Arrangement of The Hague at present in force. *Deposit* with the International Bureau of designs or models in the prescribed form should suffice to produce the effects provided for in the Arrangement. Subsequent registration in the International Register is a pure formality that confers no rights.

Paragraph 4 of Article 4 of the Draft Arrangement authorizes the International Bureau to defer publication of designs or models for a period not exceeding six months. Some German industrial circles consider this period to be too short. It is therefore suggested that the period for which publication may be deferred be extended to twelve months.

According to paragraph 5 of Article 4, applications for registration, the documents and objects accompanying them and the registers themselves shall not be accessible to the public during any period of deferred publication. It should also be stipulated that, where there is no final publication owing to the applicant's withdrawing his application, the public shall not be entitled to inspect these documents even after expiry of the period of deferment.

Luxemburg : See observations on page 8.

Sweden : In order that members of the public, when inspecting the Register, may find the designs they are looking for it would appear desirable to establish a classification to be used by the Bureau and such member countries as intend to make facilities for a corresponding public inspection of their domestic registers of designs. Such a classification need have no legal significance, i. e. it need not prejudice the question of whether a design in one class would constitute an infringement or an anticipation in relation to a design falling into another class. Like the usual classifications of goods for trade mark registration purposes it should be merely an administrative aid.

United Kingdom : Article 4, paragraph 1, should read : " The International Bureau shall keep the International Designs Register and shall register therein the depositor's application for registration. " The Register should be referred to as " the International Designs Register " throughout.

IAPIP (Translation) :

Registration.

The Draft.

Article 4 of the Draft provides that :

Paragraph 1 : the International Bureau shall enter the application presented in the International Register.

Paragraph 2 : the date of the international registration is the day on which the last of the following formalities has been complied with : receipt of the application—receipt of the fee—receipt of the photographic or of the graphic reproduction of the design or model.

Remarks.

1. The IAPIP is of the opinion that the Draft of the Experts concerns two operations and that these two operations are confused.

a) The two operations referred to in the Draft are as follows :

- first, the receipt of the application for registration ;
- second, the entering of that application in the Register.

b) These two operations must be distinguished, because a certain period of time may elapse between the carrying out of the one and the other.

However, this distinction is not clearly established and the result is a most regrettable confusion. In fact :

- Article 4, paragraph 2, provides that the date of the international registration is the day of the receipt of the application ;

— but Article 5, paragraph 1, states that the protection shall come into effect from the entering of “the registration in the International Register”; and Articles 7 and 10, for the calculation of the duration of protection, seem also to consider the registration itself.

2. In order to overcome this confusion, the IAPIP makes the two following suggestions :

a) In fact, the only date to be considered is the day of the receipt of the application, i. e. *the date of the deposit*.

It is, indeed, the deposit (or the receipt of the application) which starts the term of priority and confers the right of protection.

Thus, it seems advisable not to take into account the second operation which consists in the registration proper, i. e. the entering of the application in the register.

Only the date of the deposit should be considered, i. e. the date on which the application is received.

It must be observed that the deposit is sufficient, if it meets the provisions of Article 4 A, paragraph 3, of the General Convention, as revised in Lisbon.

b) However, if the carrying out of the two operations is maintained, it will be necessary to revise the wording, in order to specify clearly :

- the distinction between the two operations ;
- the regulation according to which the first operation (receipt of the application or deposit) starts the term of priority and confers the right of protection.

Publication.

The Draft.

1. The International Bureau proceeds to the publication of the registered designs or models (Article 4, paragraph 3).

2. The depositor may apply for a delay in publication of six months (Article 4, paragraph 4).

3. The deposits are placed at the disposal of the public, excepted during the period of secrecy (Article 4, paragraph 5).

Remarks.

1. The publication of the designs or models has been thoroughly discussed in the preparatory stages :

- according to some, publication is necessary to inform third parties of creations for which protection is claimed ;
- according to others, publication is prejudicial because thus the creation is divulged and imitation encouraged.

The IAPIP, having taken this preliminary discussion into account, approves the compromise set out in the Draft, by which publicity shall be provided for, with the option of reserving a period of secrecy of six months.

2. Article 4, paragraph 4, provides that during the period of secrecy the depositor may withdraw his deposit.

The IAPIP considers that it would be of benefit to specify that in this case the entry in the Register be cancelled.

The International League for the Prevention of Unfair Competition (*Translation*) : The provision allowing for the option to defer publication appears to be necessary and the period of 6 months should constitute a minimum.

The International Literary and Artistic Association (*Translation*) : If deposits are to be published, the system to be adopted should offer sufficient guarantees against the possibility of copying and counterfeiting.

Article 5

Austria (*Translation*) :

Article 5, paragraph 2.

Reference is made to the observations relating to Article 3, paragraph 3.

Article 5, paragraph 3.

1. In deference to the principle of the certainty of the law (*Rechtssicherheit*), the right of countries to make a preliminary examination is limited to a six-month period. Within this period, the country concerned must notify the applicant of any obstacles impeding the grant of protection. The wording according to which the six-month period begins to run on the date on which the national office has *received* the issue of the Gazette containing the publication of the design or model (see Rule 9 of the Draft Regulations implementing the Draft Arrangement) appears to vitiate the principle of the safe legal basis. As in some cases a great deal of time may elapse (perhaps owing to delays in the mail service) between the despatch of the Gazette and its receipt by the national office, it would be desirable in the interests of the certainty of the law, if for this purpose an unambiguously defined maximum period starting with the date of registration or the date of publication of the Gazette, were provided.

2. Having regard to Article 5, paragraph 1, the provision of paragraph 3 should be interpreted to mean that the protection of designs begins on the day of registration. In countries providing for a preliminary examination, a degree of uncertainty prevails during the six-month period ; this may delay, but cannot prevent the preferring of claims on the basis of a design. If, for example, during this period a complaint of infringement of rights is lodged, it could not be dismissed ; proceedings could merely be suspended until the expiry of the six-month period. If protection of the design is refused on the basis of an opposing claim which has been made in time, such protection will have to be regarded retroactively as not having been granted, which should lead to the rejection of the complaint. If, however, it is found after the expiry of the six-month period that no previous decision has been made against the design, the suspended proceedings for infringement should be continued and concluded

in favour of the owner of the design, provided the other necessary conditions are fulfilled. In view of the position adopted by the United States delegation at the Conference of Experts at The Hague, this point should be clarified.

3. The reference to Article 3, paragraph 2, is apparently an error. Reference might be made to Article 4, paragraph 3, which would have to be suitably amplified.

4. The last sentence concedes to "any interested party" the right to be informed of the date on which the national office received notification of international registration. This provision is important because only on the basis of this date is it possible to know whether a decision against registration of a design can still be issued. The term "interested party" is also used in Article 8 of the Draft, where, however, it apparently refers to a much narrower group of persons. In order to avoid difficulties in interpretation, it is proposed to Draft the last sentence of Article 3 as follows :

"Anyone may request that the date.....may be made known to him."

Belgium (Translation) : General remarks on Article 5.

1. It seems advisable to insert in the Arrangement a clause providing, on the one hand, that the owner of an international design or model shall have, in each State, the same right to remedies against the decision of the National Administration referred to in paragraph 3 of Article 5, as are granted to nationals of that State, and, on the other hand, that the decision be notified within a period of time which permits the owner to avail himself of those remedies.

In this respect, the Conference might take into consideration paragraphs 3 and 6 of Article 5 of the Arrangement of Madrid (as revised at Nice) concerning the International Registration of Trade Marks (see also the observations relating to Rule 9 of the Draft Regulations).

2. The Arrangement does not provide that the International Bureau should officially notify international registrations to the Administrations of the contracting countries. This notification is nevertheless necessary because this notification will constitute the legal basis for protection in the different contracting countries. It should normally be accompanied by all the documents deposited in support of the application for international registration.

Article 5, paragraph 1.

The Belgian Administration fully believes in the merits of the proposals aimed at allowing the applicant, in general, to designate those countries in which he does not wish international registration to be effective. The principle of optional territorial limitation, as adopted by the Nice Conference in respect of the Madrid Arrangement concerning the International Registration of Trade Marks, is a solution to some of the basic objections voiced against the system of "automatism." Among the basic disadvantages of this system, is the fact that the national registers become cluttered up with thousands of designs and models which are never used in the country. The text of Article 3 *bis* of the Madrid Arrangement, as revised at Nice, could well serve as a basis for discussion at the Conference of The Hague for designs and models.

Article 5, paragraph 3.

The reference to Article 3, paragraph 2, appears to be a mistake. The correct reference should be : Article 4, paragraph 3.

Denmark (Translation) : It is felt that the period of six months fixed by Article 5, paragraph 3, for notifying a provisional or final decision is too short for those countries which make a preliminary examination. As in the case of the Arrangement of Madrid for the International Registration of Trade Marks, it is proposed that the period be fixed at one year.

France (Translation) : 1. The remark concerning the form made with reference to article 4 also applies to paragraph 1 of Article 5 : the substitution of the words " International Registration " for the words " Registration in the International Register " would make it possible to remove any possible ambiguity in the text.

2. Paragraph 2 refers to applications that " originate " in one of the Contracting States. This notion, although apparently clear, may lead to differences of interpretation, the " originating " in question being liable to interpretation either in a material or a legal sense. It would therefore undoubtedly be preferable, as in connection with Article 1, paragraph 2, to resort to the less hazy criterion of domicile or registered office, the paragraph in question being rewritten as follows :

" Any Contracting State may provide by its domestic law that international registration of applications filed by persons or corporate bodies domiciled or having their registered office on the territory of that State shall have no effect on the aforesaid territory. "

3. Paragraph 3, together with the corresponding provisions of the Draft Regulations, calls for more drastic revision.

a) Article 9 of the Draft Regulations refers expressly both in its title and in the text of its first paragraph, to the " domestic examination of novelty. " In a footnote it is made clear that " the Working Group chose (this expression) because it was of the opinion that, in the minds of the authors of the Draft Arrangement, Article 5, paragraph 3 of that Draft is intended to deal only with examinations concerning the novelty of a design. "

It may be wondered whether this restrictive interpretation really represents the intentions of the authors of the Draft Arrangement ; in any case it remains inadequate. The provision of Article 5, paragraph 3, of this Draft, which shows the same interest for any preliminary administrative examination, whatever the object, ought not in fact to be limited merely to an examination as to novelty. The contents of this provision should therefore remain unchanged in this respect.

b) In any case, the French Government considers it extremely desirable to remove from the new Arrangement the provisions concerning the charging of a special extra fee for the benefit of States carrying out preliminary examinations for novelty as well as the correlative faculty of territorial limitation. It is of the opinion that these provisions would in no way serve to extend the scope of the Arrangement and in this matter it wishes for the widest possible understanding on the part of the States concerned. It expresses the same wish

with regard to the " offering " of designs and models " to the public " (Article 5, paragraph 4) and the inclusion of a reservation concerning them, which in its opinion is not absolutely necessary.

The faculty of territorial limitation—the reservation being based on this principle—should moreover, in view of its fundamental character, be laid down by the Arrangement itself and not by the Regulations alone (Article 2, paragraph 3 b).

c) A last remark appears to be called for regarding Article 5. It would be a good idea to insert in the Arrangement, with respect to the possibility of appeal against the decision of national authorities, provisions similar to those of Article 5, paragraphs 3 *in fine*, and 6 of the Arrangement of Madrid concerning the international registration of trade marks. The first of these provisions (paragraph 3, last sentence) appears necessary so as to ensure the benefit of appeal to those concerned, it being possible in this instance to waive the application of the rule of assimilation raised by Article 2 of the Convention of Paris; the second (paragraph 6) would have the effect of guaranteeing depositors an effective protection of their rights.

Germany (Fed. Rep.) (Translation) : For the reasons adduced in respect of paragraph 2 of Article 4, it is proposed that the phrase " Registration in the International Register " be replaced by the words " International deposit (Article 4, paragraph 2) ".

Paragraph 3 b of Rule 1 of the Regulations implementing the Draft Arrangement provides that an applicant for international deposit shall be entitled to limit protection to those Contracting States which do not have a system of preliminary administrative examination for novelty. This option ought not only to be mentioned in the Regulations, but also to be expressly laid down in the Arrangement itself—in paragraph 1 of Article 5. It would also be desirable to establish in the Arrangement the principle that—with the foregoing exception—there shall be no territorial limitation of protection.

Special provision is made in paragraph 3 of Article 5 for the case where a Contracting State makes issuance of a certificate of registration or that of a design patent subject to preliminary administrative examination. This provision should be amplified, in the applicant's favour, in two respects :

In the first place, there should be an explicit guarantee that the applicant shall enjoy in the State in question the same means of recourse as if he had directly deposited the design or model there. A rule to this effect is to be found in paragraph 3 of Article 5 of the Nice text of the Arrangement of Madrid concerning the International Registration of Trade Marks. Article 2 of the Union Convention of Paris is not sufficient to protect the applicant, for, although it provides that nationals of members of the Union shall enjoy in all the other countries of the Union the same treatment as is accorded to nationals of the latter countries, provisions relating to judicial procedure are expressly excluded by paragraph 3 of the same Article.

It should be further provided that the authorities of a State which subjects the protection of a design or model to administrative examination may not finally refuse to grant protection without affording the applicant an opportunity of establishing his rights in due time. A provision to this effect is to be found in paragraph 6 of Article 5 of the Nice text of the Arrangement of Madrid concerning the International Registration of Trade Marks.

Luxemburg (Translation) : Article 5, paragraph 3 of the Draft states that the countries which make a preliminary examination have the option of refusing the protection resulting from the International Registration of the design or model in cases where the design or model does not meet with the requirements of the national law. The forms of refusal of protection and the availability of appeals recognised to the parties concerned, being of considerable importance, it is felt that they should be inserted, not in the Regulations but rather in the Arrangement itself, as is the case with the Arrangement of Madrid.

Sweden : *Article 5, paragraph 3.* The reference to Article 3, paragraph 2 appears to be erroneous. It is understood that the correct reference is intended to be to Article 4, paragraph 3. Apart from that, however, the time within which a national office exercising a novelty search should notify the Bureau of its decision to reject a certain application appears to be somewhat short. The corresponding time limit set in the Madrid Arrangement on Trade Marks (Article 5) is one year. It is suggested that a corresponding time limit should be set in The Hague Arrangement.

In this connection it should be made clear that an administrative examination as to general registrability and novelty is not intended to preclude the possibility of the validity of the protection granted being tested by the courts, for instance in a subsequent case of infringement.

United Kingdom : Article 5, paragraph 3. Reference in this paragraph to "Article 3, paragraph 2" is not understood. The reference should presumably be to Article 4, paragraph 3.

USA : In connection with Article 5, paragraph 3, of the Draft Arrangement, it should be provided that if protection is sought under a law requiring preliminary examination for novelty, the national office administering such a law may require the filing of a declaration of authorship or inventorship in the form prescribed by such law.

IAPIP (Translation) :

The Effects of the International Registration or the Protection Granted.

The Draft.

The protection granted through the international registration is referred to in Articles 5, paragraph 1, 10 and 16 :

Article 5, paragraph 1, specifies that the international registration shall produce the same effects as a deposit or the delivery of a certificate in each one of the contracting countries.

Article 10 specifies that the contracting countries shall grant to internationally registered designs or models a protection, the duration of which shall be the same as that granted to designs or models in the countries concerned.

Finally, Article 16 requires each country to adopt, before ratification of the Arrangement, the measures necessary for assuring its application.

Remarks.

1. The IAPIP recalls that there are two possible systems for determining the protection granted through the international registration :

a) The first system consists in providing that the protection arises from the international registration.

In this case, a provision of supra-national right must be inserted in the Arrangement, specifying that "registered models be protected in all the contracting countries".

b) The second system consists in providing that the protection arises from the national law.

In that case, the Arrangement is merely a technical instrument which sets up the formality of the international registration and leaves it to the national legislation to determine the protection granted.

2. The IAPIP notes that the Draft Arrangement deliberately adopts the second system.

The IAPIP approves it for the following reasons :

- most countries would not accept a system by which the protection be granted to all registered models without distinction ;
- because of their constitution most of the countries cannot apply directly an international treaty as a national law.

3. However, the IAPIP considers it desirable to retain in the Arrangement the provision of Article 5, paragraph 5, of the General Convention adopted at Lisbon, that is :

" Designs and models shall be protected in all countries of the Union. "

In fact :

a) this rule is not contrary to a system of protection that derives from national law, because it only makes it binding upon the countries to organize the protection on their territory ;

b) it would be useful to insert this rule in the Arrangement as there may be countries which adhere to it before having ratified the Lisbon text.

The Reservations of the National Legislations.

The Draft.

Articles 5 and 9 provide for the items upon which the national legislations may impose restrictions.

1. The countries may provide that the international registration shall have no effect on their territory (Article 5, paragraph 2) with respect to its own nationals.

2. Countries which practice the preliminary examination are allowed, within a term of six months, to refuse protection to internationally registered designs or models which are not in conformity with their domestic laws (Article 5, paragraph 3).

3. Countries, the domestic laws of which require the offering to the public of the design or model as a condition for protection, are allowed to refuse protection of the international registration if this offering did not occur within a term of six months.

Offering to the public takes place when the object in which the design or model is incorporated, is exhibited, sold or gratuitously offered to the public in any country whatsoever (Article 5, paragraph 4).

4. Marking cannot be required for the recognition of a right.

If the domestic laws require marking for the exercise of certain remedies, this requirement shall be fulfilled by the affixing on the objects or on their label of the symbol (D), followed by certain particulars (Article 9).

The Protocol annexed provides for the renunciation of this requirement for the countries signing it.

Remarks.

1. The reservations contained in the Draft have been the subject of two kinds of observations :

a) For some, they are unnecessary because protection flows from the national legislation.

However, attention must be drawn to the fact :

- that these reservations are claimed by certain countries and that this claim must be satisfied ;
- that these reservations limit the restrictions imposed by the domestic laws, and thus are favourable to the protection.

b) For others, the restrictions are most regrettable because they limit protection excessively

However, it must be noted that these regrets are vain because protection proceeds from domestic law which is sovereign in this respect.

2. In conclusion, the compromise set forth in the Draft is approved by the IAPIP.

The International Literary and Artistic Association (*Translation*) : The system of preliminary examination and the obligation to make a deposit available to the public within a short period is subject to important reservations.

Article 6

Belgium (*Translation*) : The Draft Arrangement does not regulate the case of first deposits made in a Unionist State, not a member of the Arrangement. Article 6 should be completed by a provision to the effect that, in such cases, the date of priority shall be that of the first deposit in a Unionist country.

Germany (Fed. Rep.) (*Translation*) : According to Article 6, only applications deposited in a Contracting State can be invoked for claiming priority in international registration. The Federal Government proposes that this provision be further considered, to ascertain whether it ought not to be expanded in such a way as to ensure that the deposit of industrial designs or models should establish priority where effected in States which, although not Parties to the Arrangement of The Hague, have acceded to the Union Convention of Paris. Naturally, even in this case only nationals of States Members of the Arrangement of The Hague would be able to claim priority. But such a provision would have the advantage of allowing a national of a Contracting State domiciled, not in his country of origin, but in a member State of the Union which has

not acceded to the Arrangement of The Hague, to claim priority in respect of applications made by him in such State of domicile for the international deposit of his designs or models.

IAPIP (Translation) :

Priority.

The Draft.

Article 6 specifies that if the international registration is effected within the six months of a first application, it shall benefit from the priority.

Remarks.

The IAPIP points out that Article 6 involves only the possibility of claiming the priority of a first application deposited in one of the contracting countries.

It would be advisable to specify that the depositors may claim the priority of a first application deposited in a unionist country, even if this country is not an adherent to the Arrangement.

Article 7

IAPIP (Translation) :

Duration of Protection.

The Draft.

1. The international registration is valid for five years.

It is renewable for periods of five years upon application made within the last year of the current period (Article 7).

2. The minimum duration of protection granted by the countries is (Article 10, paragraph 3) :

- of ten years, reckoned from the date of the international registration ;
- of five years, in case the international registration is not renewed.

This minimum duration is fixed at fifteen years for the countries, signatories of the Protocol annexed.

3. In principle, the duration of protection in the countries is that of the national legislation, provided that the minimum duration referred to above is complied with (Article 10, paragraph 1).

However, the countries may provide for a shorter period, provided they do not go below the minimum duration (Article 10, paragraph 2).

Remarks.

The IAPIP is in favour of the compromise as proposed in the Draft.

It points out, however, the two following remarks of minor importance :

1. It would be desirable to retain the provisions of Article 10 of the present Arrangement, according to which the International Bureau shall give an unofficial notice of lapse of the deposit.

2. It would be desirable to specify in Article 7 that the renewal of the deposit shall be effected directly with the International Bureau.

The International Literary and Artistic Association (*Translation*) :

a) International registration should cover a sufficiently long period of protection including a first period and a second period for renewal.

Failing a sufficiently long period, the countries should have the possibility of adopting reciprocal measures.

b) The interest in maintaining a system by which secret deposits are effective for a sufficient period, if the depositor so desires, is underlined.

Article 8

Germany (Fed. Rep.) (*Translation*) : Article 8 corresponds to Article 17 of the text of the Arrangement of The Hague at present in force, but does not include the provisions of paragraph 3 of the latter, relating to the assignment of the rights of the proprietor of an international deposit. The current rule has the advantage of making the assignment, in part or in whole, of the rights of the proprietor of an international deposit admissible in international law, whereas in the absence of such a provision the admissibility, form, content and effect of such assignment would be governed solely by the municipal law in force in the different Contracting States. The same consideration applies equally in the case of the renunciation of an international deposit, regulated by Article 13 of the current text of the Arrangement of The Hague. If the content and form of such renunciation were regulated internationally, legal relations between the States concerned would undoubtedly be facilitated. The Federal Government therefore suggests that the provisions of Articles 13 and 17 of the current text of the Arrangement of The Hague be reinstated in the revised Draft Arrangement.

IAPIP :

Change in Proprietorship.

The Draft.

Article 8 specifies that the International Bureau registers and publishes all changes that affect the proprietorship of the designs or models.

Remarks.

The IAPIP has no remarks to make on this item.

Article 9

Austria (*Translation*) : *Paragraph 1* in the main repeats the provision contained in Article 5 D of the Union Convention and relating to all industrial rights to protection under which the indication or mention of deposit on the article must not be a condition for the recognition of the right.

The exemption from this rule contained in *paragraph 2* appears to be very dangerous because it is so wide in scope. Since it is not clearly stated *for which* remedies the notice of deposit may be required, the entire exercise of the right may thus be affected. This would vitiate the provision contained in *paragraph 1* of the Union Convention, as a right which cannot be exercised is quite worthless.

In addition, such a rule, if it is regarded as compatible with the provisions of the Union Convention, could not but affect other industrial rights to protection, such as patents and trade marks. Every party to the Convention could argue that a similar practice in the case of patents and trade marks cannot be at variance with the Convention, if it is declared to be permissible and compatible with the Union Convention in an arrangement concluded under that instrument. The retention of paragraph 2 in its present form therefore appears to be at variance with the obligations arising out of the Union Convention.

In connection with *paragraph 3* mention should also be made of the fact that the provision of an indication of deposit will raise practical difficulties in the case of small articles (ornaments, etc.). Permission might have to be given for tags indicating deposit to be attached to such articles.

Denmark (Translation) : It is proposed that the provisions of Article 9, paragraphs 2 and 3 be suppressed.

France : See page 28, first three lines.

Sweden : It is doubtful whether the provisions authorizing the use of a special marking as a condition for certain remedies is in good harmony with Article 5, section D of the Paris Convention. It would be preferable if paragraphs 2 and 3 of the present article could be deleted.

United Kingdom : Article 9, paragraph 1, should read : “ No Contracting State may, as a condition of recognition of the right to protection of a design under this Agreement, require that, etc. ”

IAPIP : See observations under Article 5.

The International League for the Prevention of Unfair Competition (Translation) : The availability of remedies should not be conditional upon the affixing of an international design notice on the article or tag attached to such article.

On the other hand, such a provision could be envisaged for claiming damages.

The International Literary and Artistic Association (Translation) : The affixing of a restrictive design notice as an additional application formality is not considered necessary as the deposit should only be optional and its only aim should be to assist in proving the depositor's rights.

Article 10

France (Translation) : With regard to the substance, the French Government considers it desirable to lay down a maximum period of protection exceeding 10 years.

From the point of view of form, the wording of the first paragraph of Article 10 may appear ambiguous. It would undoubtedly be preferable to speak not of the “ continuance ” but of the “ continuance of the effect ” of the international registration.

Germany (Fed. Rep.) (Translation) : Consequentially to the observations made on paragraph 2 of Article 4, it is proposed that in Article 10 the word

“registered” be replaced by the word “deposited,” and the word “registration” by the word “deposit,” *passim*.

It is also suggested that, for the sake of clarity, the words “continuance” and “term” should be replaced by the word “validity.”¹

USA : It should be understood that if in a Contracting State full protection does not commence until a date later than the date of the international registration, the minimum terms specified in Article 10, paragraph 3, of the Arrangement shall not be curtailed.

IAPIP : See observations under Article 7.

Article 11

Luxemburg (Translation) : Articles 11 and 13 refer to amendments to be made to the Regulations. Whereas, in pursuance of Article 11, the International Committee may alter the Regulations by a majority of 4/5th, Article 13, on the other hand, providing that amendments shall be made following a written procedure, demands unanimity. Are there any special reasons for not adopting the same procedure in both cases?

As for the text of Article 11, paragraph 2 *b*, it would seem more appropriate to draft it as follows :

“*b*) to study and give advice on questions concerning the application and possible revision of this Arrangement, on the operation by the International Bureau, and concerning any.....”

United Kingdom : We suggest that this Article be redrafted as follows :

“1. There is hereby established an International Designs Committee consisting of representatives of all Contracting States.

2. The Committee shall have the following duties and powers :

a) to add to or amend the Regulations by a majority of four-fifths of its members present and voting ;

b) to study and give advice on questions concerning the application, operation and possible revision of this Agreement ;

c) to give general directions to the Bureau on the exercise of its functions under the Agreement ; and

d) to advise on any other question relating to the international protection of designs.

3. *a*) The Committee shall approve the budget of the Union.

b) If and so far as the expenses of the Union are not met by fees, the Committee shall apportion them among the Contracting States in accordance with a scale to be fixed by it.

¹ The word “*durée*” occurs four times in the French text of Article 10, twice in paragraph 1, once in paragraph 2 and once in the main clause in paragraph 3. In the first case it is rendered in English by “continuance,” in the second and fourth cases by “term,” while in the third case—in paragraph 2—an ellipsis results in its absence from the English text. It is therefore rather difficult to say exactly how the suggestion of the Federal German Government is to be applied to the English text (Translator’s note).

c) Decisions of the Committee under sub-paragraph *a* or *b* of this paragraph shall be taken by a two-thirds majority of its members present and voting.

4. The Committee shall lay down its own rules of procedures.

5. Except as otherwise provided in this Agreement or in the Rules of Procedure, the decisions of the Committee shall be by a majority of its members present and voting. Abstentions shall not count as votes.

6. The Committee shall be convened by the Director of the International Bureau with the agreement of the Swiss Government or at the request of one-third of the Contracting States."

Article 12

France (Translation) : A detailed commentary on this article would doubtless be premature : its contents depend on those of the Regulations. Nevertheless it should be pointed out that no provision of the latter text deals with the procedure referred to in letter *d*. The provision of letter *e*, on the other hand, calls for the remarks already made with regard to the extra fee for examination and territorial limitation.

United Kingdom : If the Regulations are drawn up by the diplomatic Conference and annexed to the Agreement, it might be better simply to state their general purpose and not to specify in detail the matters with which they are intended to deal.

IAPIP (Translation) :

Fees.

The Draft.

1. Article 12 *b* provides that the registration shall be subject to the payment of a fee, the amount of which is fixed by the Regulations.

2. Article 6 of the Draft Regulations provides for several fees (for example : 50 fr. s. for the registration of one model, with publication in black and white in one standard space).

Remarks.

The Vice-Director of the International Bureau observed that the future fees should not be compared to the present ones which are quite insufficient and should in any case be raised to 25 or 30 fr. s.

The IAPIP recognizes the necessity to fix the fees at a sufficiently high level.

The International Literary and Artistic Association (Translation) : It is stressed that the fees to be paid by the depositors should be strictly limited.

Article 13

Luxemburg : See observations on page 35.

Article 14

Luxemburg (Translation) : It is proposed to amend the wording of Article 14 as follows :

“ The present Arrangement shall not prevent the claiming of the application of possible wider provisions ”. It would appear preferable to replace (in the French text, edit.) the word “ prescriptions ” by “ dispositions. ”

IAPIP (Translation) :

Cumulative Protection.

The Draft.

Article 14 specifies :

- that wider provisions of the national laws may be claimed ;
- that the regime of the Arrangement does not affect the protection of artistic works and works of applied art granted by International Conventions on Copyright.

Remarks.

The IAPIP approves the provisions of Article 14, which it considers to be very wise.

Article 16

Austria (Translation) : This provision is based on Article 17 of the Paris Union Convention as revised at Lisbon and imposes the obligation on Contracting States to adapt their national law to the Arrangement even before ratification or accession. The Draft Revision does not, however, expressly commit the Contracting States to protect designs or models. It is therefore proposed to include a provision corresponding in substance to Article 5 *quinquies* of the Paris Union Convention as revised at Lisbon in The Hague Arrangement on Designs.

IAPIP : See observations under Article 5.

Article 17

Belgium (Translation) : It would appear preferable that the coming into force of the Arrangement be subject to the ratification or adhesion of eight States, two of which should not be members of the present Arrangement.

France (Translation) : Although the French Government agrees with the total number of instruments of ratification or accession required for the new Arrangement to enter into force, it considers that the number of ratifications or accessions deposited by States not party to the present Arrangement should be raised from 3 to 5.

Germany (Fed. Rep.) (Translation) :

The Draft Arrangement does not settle the question of the status of the new text in relation to that adopted at London, which is the only one in force at the moment. In paragraph 3 of Article 23 of the London text it is provided that, in the relations between the countries which have ratified it, the Arrangement shall replace the Arrangement of The Hague of 1925, but that the latter shall remain in force in relations with countries which have not ratified the London text. Corresponding provisions are to be found in Article 18 of the Union Convention of Paris and in Article 27 of the Convention of Berne concerning the Protection of Literary and Artistic Works. The absence of such a provision from the Draft Arrangement means that no link is established between the text at present in force and the future text of the Arrangement of The Hague. In other words, the Draft Arrangement, the object of which, according to the title, is to revise the Agreement of The Hague, will in practice result, not in a revision of the current text, but in the drafting of a new one. The two texts would exist collaterally, completely distinct and separate from one another. But this would be contrary to the principle applicable to the Union Convention of Paris and to the Berne Convention according to which the States Parties to this Arrangement (*sic*) form a single union and are mutually bound even if they have not acceded to the same text of the respective Convention. In the case of the Convention of Berne, the International Bureau has given its opinion that the Philippines and Turkey, which have acceded to the Brussels text of the Convention, but not to the earlier texts, are bound by the latter vis-à-vis those members of the Union which have not ratified the Brussels text (*cf. Droit de l'Auteur*, p. 98, 1950, and p. 134, 1951). The Federal Government therefore considers it desirable that a genuine revision of the Arrangement of The Hague be made, and that a formal link between the two texts be established by a special clause similar to paragraph 3 of Article 23 of the London text. It is true that the new text proposed for the Arrangement departs so far in content from the existing text that both States adhering to the Arrangement of The Hague for the first time and the present Contracting States should be given an opportunity of declaring, when ratifying or acceding to the new text, that they do not wish, or no longer wish, to be bound by the earlier texts. A corresponding provision is to be found in paragraph 4 of Article 12 of the Nice text of the Arrangement of Madrid concerning the International Registration of Trade Marks. The Federal Government therefore suggests that such a provision be included in the new text of the Arrangement of The Hague, even though, given its views on the Nice text of the Arrangement of Madrid on Trade Marks, it has no intention of itself invoking such provision.

United Kingdom : It is noted that no provision is made regarding the effect of the Agreement in respect of designs registered in the International Designs Register prior to the Agreement's entry into force, although the experts intended that it should not have a retrospective effect as regards new participants in the arrangements. We feel that the Agreement should contain a provision (either as a separate article or as part of Article 17) on the following lines :

“ A Contracting State, which was not a party to the Arrangement for the International Deposit of Industrial Designs or Models signed at The Hague on November 6, 1925, as revised at London on June 2, 1934, shall only be bound by the provisions of this Agreement in respect of designs registered after the date on which the Agreement enters into force for that State. ”

Parties to the existing Arrangement of The Hague will also presumably wish to include in the new Agreement suitable transitional provisions.

IAPIP (Translation) :

Adhesion to the Union.

Coming into force of the Arrangement.

The Draft.

1. The adhesion to the Arrangement or its denunciation are provided for by Articles 15, 18, 19 and 21 of the Draft.

2. The application of the Arrangement is provided for by Article 17 : it shall come into force upon the ratification by ten countries, three of which shall not be adherents to the Arrangement of The Hague now in force.

Remarks.

The IAPIP stresses that the object in view is the adhesion of the greatest number possible of new countries.

The International Literary and Artistic Association (Translation) : There should be a sufficient number of new adhesions and even the adhesion of certain nominal countries should be made conditional for bringing the Arrangement into force.

Article 18

United Kingdom : Article 18, fourth line, insert before "relations" the word "international."

Article 20

The International Literary and Artistic Association (Translation) : Strict provisions should be made with a view to possible revisions.

Article 22

United Kingdom : Article 22, paragraph 2, third line, should read " may at any time, by notification addressed to the Government of, declare its acceptance of the Protocol annexed to the present Agreement." The references in the last sentence should be checked.

Furthermore provision should be made for the depository power to inform other States of the date of entry into force of the Agreement, and other formal matters. This provision might well constitute a new article and might read as follows :

"The Government of shall inform all signatory and acceding States
a) of the date of entry into force of the Agreement ;

b) of the deposit of instruments of ratification or accession and of the effective dates thereof ;

c) of notifications regarding territorial application in accordance with Article 18 ;

d) of notifications of denunciation in accordance with Article 19 ; and

e) of any declaration made in accordance with paragraph 1 or paragraph 2 of Article 22. ”

Protocol

Austria (Translation) : The wording of paragraph 2 a suggests that to obtain a fifteen-year period of protection all that is required is renewal of the design in the fifth year of protection. It cannot be construed to provide for a further renewal in the tenth year of the period of protection.

On the other hand, it must be concluded from Article 7 and Article 10 that registration has to be kept in being, if the design is to enjoy continued protection. As registration can be renewed only for a period of five years at a time, two renewals would seem to be required under the Protocol for a fifteen-year period of protection.

This point should be cleared up by an appropriate amendment of the Protocol.

Belgium (Translation) : The Belgian Administration declares itself in favour of signing the Protocol as drafted by the Committee of Experts.

Luxemburg (Translation) : Whereas, according to Article 7, paragraph 2, the renewal of International registrations should be applied for in respect of each period of five years, *the Protocol* to be signed by those countries prepared to grant a minimum period of protection of 15 years, only provides for one single renewal at the end of the first period of five years. Would it not be advisable to establish the same procedure for both cases?

IAPIP (Translation) :

Protocol.

The Draft.

1. A Draft of the Protocol, thereto annexed, contains a number of complementary provisions.

2. Article 22 of the Draft provides :

- that the countries which had adhered to the Arrangement of The Hague of 1925, be considered as adhering to the Protocol, unless otherwise stated by them ;
- that the new members may ratify the Protocol.

Remarks.

The IAPIP approves the Draft on this item.

PART TWO

DRAFT FOR THE REVISION OF THE REGULATIONS IMPLEMENTING THE DRAFT ARRANGEMENT CONCERNING THE INTERNATIONAL DEPOSIT ON INDUSTRIAL DESIGNS OR MODELS

I. PROPOSALS, COUNTER-PROPOSALS AND OBSERVATIONS

Rule 1

(Applications for registration)

(See Draft Arrangement, Article 3, paragraphs 3 and 5 ; Article 4, paragraph 4, and Article 12a)

Belgium (Translation) : Rule 1, paragraph 3 b.

This provision (which, incidently, could be, in the opinion of the Belgian Administration, extended to all countries, whether they make a preliminary examination for novelty or not) is a provision of substantive law which should be incorporated in the text of the Arrangement itself. It could be inserted between paragraphs 2 and 3 of the proposed Article 5.

Spain (Translation) : Paragraph 1 of Rule 1 of the Draft Regulations stipulates that the application for registration shall be written in English or French. From a technical point of view, this rule is likely to give rise to insuperable difficulties—though the French language was accepted by Spain in the case of the Madrid Arrangement concerning the International Registration of Trade Marks—both for those who manufacture the products to which the designs or models apply and for the Spanish owners of industrial designs or models in view of the system of industrial property protection in force in Spain.

This system provides for a period of time in which third parties may lodge an opposition ; however if the applications are written in English or French, the above mentioned Spanish owners of deposits will be obliged to know either English or French in order to be in a position to lodge an opposition in respect of foreign applications claiming protection under Spanish law.

If these oppositions are not lodged, the Spanish Industrial Property Office would have to accept the applications with consequential prejudice to the industrial circles concerned or to the owners of Spanish deposits who, not having lodged an opposition, would have to appeal to the courts for cancellation of such registrations.

Furthermore, in view of the fact that there is no system which provides for a preliminary administrative examination of industrial designs and models, the Spanish Administration would be unable to act for Spanish depositors by undertaking this examination on its own account as it does in the case of international registration of trade marks. Spanish legislation provides that trade marks can only be granted after a preliminary examination; consequently the absence of any opposition on behalf of Spanish trade mark owners is compensated for by this examination.

For these reasons—which only add to the necessity of establishing the principle of optional territorial limitation because the same difficulties may well arise in other countries—the Spanish Administration proposes that applicants should include in their applications for registration, in cases where they wish to claim protection in Spain, a Spanish translation of the description with a view to its publication either in the *International Design Gazette* of the Union or in the Spanish Bulletin, subject to appropriate fees.

Sweden : In the general observations above it is proposed that the principle of facultative territorial limitation should be embodied in the Arrangement itself and drafted on the lines of Article 3 *bis* of the revised Madrid Arrangement on Trade Marks. The drafting in the present rule should be correspondingly amended.

USA : The principle according to which an applicant for international registration may declare that he does not wish to claim protection conditional upon a preliminary examination for novelty (see Rule 1, paragraph 3 *b*, of the Regulations)—with the consequence that if he makes such a declaration he is exempt from the corresponding national fee (Rule 9)—should be stated in the Arrangement itself rather than the Regulations implementing the Arrangement.

Rule 2

(Multiple deposits)

(See Draft Arrangement, Article 3, paragraph 4, and Article 12 *c*)

Austria (*Translation*) : 1. The provision that the number of multiple deposits must not exceed twenty is unacceptable to Austrian industrialists. It is proposed that the number be increased.

2. It is suggested that only designs or models intended for incorporation into articles of *one and the same kind* may be deposited jointly. There is a danger that national offices may interpret the term “of one and the same kind” differently in relation to the articles in question. It would therefore be desirable if it were expressly laid down (perhaps in the Arrangement itself) that the decision of the International Bureau regarding the admissibility of multiple

deposits is binding for the Contracting Parties. In any case a provision should be included to the effect that a post factum decision to declare the joint deposit of designs or models as inadmissible because they are not of one and the same kind may in no case result in such designs being rejected. (At most the depositor may be requested to pay the difference in fees between single and multiple deposit.)

Germany (Fed. Rep.) (*Translation*): Whereas, under the Regulations for carrying out the current Arrangement of The Hague, up to 200 designs or models may be included in a single application, Rule 2 of the new Draft Regulations imposes a maximum of twenty. This makes the procedure appreciably more burdensome for applicants, who are used to depositing large numbers of designs or models simultaneously. German industrial circles have therefore suggested that Rule 2 be amended to allow for the inclusion in a single application a maximum of 50 designs or models. Such a rule would also lighten to some extent the administrative burden on the International Bureau, for it is easier to deal with one application covering 50 designs or models than with three, two of which cover 20 designs or models each, and the third 10. Moreover, such a procedure would mean a saving of 94 Swiss francs for depositors.

Switzerland (*Translation*): (*Limitation of the number of items contained in a deposit to 20 designs or models.*)

This limitation is much too severe for industries that wish to deposit creations dependent on fashion. These industries (textiles, embroidery, footwear, etc.) are obliged to deposit large numbers of designs or models at the same time, very often several hundred at a time, knowing that only a small number of these will meet with success, but without being able to say beforehand which ones. The limitation to 20 items per deposit would therefore require a large number of deposits, each of which, under the new rates, would amount to a high price, especially if the fee for an examination as to novelty were added to this figure. Under these circumstances, the protection of designs and models would become prohibitively expensive. An increase in the number of items permitted in a deposit, to at least 50 for example, would appear indicated. Perhaps it would be possible to envisage applying such an increase at least to certain branches of industry only, i. e. those specially concerned and in particular those indicated above.

The International League for the Prevention of Unfair Competition (*Translation*): It is suggested that the maximum number of designs or models which may be included in the same multiple deposit could be raised to 30.

Sweden: Reference is made to the observations relating to Article 3, paragraph 4, of the Draft Arrangement. The permitted maximum number of multiple deposits should on no account exceed ten.

Rule 3

(Attachments to the application)

(See Draft Arrangement, Article 3, paragraph 3, and Article 12 c)

Belgium (Translation) : *Rule 3, paragraph 2.* It is necessary to prohibit the deposit of copies or models made of perishable material.

USA : The Regulations should provide that the photographs or other graphic representations accompanying the application must be filed in three (instead of two) copies ; and that the International Bureau will lend one of the copies to national offices which so request.

Rule 6

(Fees)

(See Draft Arrangement, Article 12 b)

Austria (Translation) : Austria agrees to the principle that the fees should be high enough to cover the administrative expenses of the International Bureau and the cost of publication. Since, however, Austrian industrialists consider the fees proposed in the Draft to be unacceptably high, it is proposed that the amounts should again be very carefully examined.

Austria does not agree to the proposal that those Contracting States which do not investigate the novelty of designs should not receive any share of the fees to cover their national administrative expenses. Even if the Drafts themselves do not contain any legal obligation to undertake national administrative work, such work is, in Austria's opinion, in principle inevitable.

A basic reason which has so far prevented Austria from acceding to the Arrangement of The Hague is the fact that designs and models are at present exhibited only at the International Bureau. In case Austria should accede to the Arrangement, the publication of designs or models in the Design Gazette will in no case be regarded as an adequate indication showing which proprietary rights are protected in Austria. The proposed publication contains the designs in chronological order. The changes occurring in these rights are published in the same order. It would seem to be indispensable that publications should be arranged under different heads, such as the name of the owner, the type of article incorporating the design, etc. and that changes should be summarized under the designs concerned, so that a clear picture of the valid proprietary rights may be obtained. The Contracting States should receive a share of the registration fees to cover the administrative expenses thus incurred.

Belgium (Translation) : The question might be raised whether it is not advisable to insert the provisions relating to fees in the Arrangement itself, as is the case of the Madrid Arrangement, as revised at Nice. Though it is appreciated that the Regulations can more easily be amended and adapted to changing conditions, in certain countries, however, amendments to the provisions relating to fees are, in any case, subject to parliamentary ratification as is the case with the Arrangement itself.

Germany (Fed. Rep.) (Translation) : The fees for international registration proposed in Rule 6 of the Draft Regulations for implementing the Arrangement seem very high compared with current fees. The Federal Government is well aware that the latter do not cover the administrative expenses of the International Bureau and that they ought accordingly to be raised in any event ; but it would be pleased if the new fees proposed in the Draft Regulations could be kept lower.

Luxemburg (Translation) : Rule 6 enumerates the different fees to be paid to the International Bureau and fixes their amount. The interested parties in Luxemburg, while ready to accept the amounts anticipated, have, nevertheless, expressed the desire that every possibility should be examined, with a view to lessening the fees in respect of international registrations.

As regards Rule 6, paragraph 2 *b*, which deals with the fees to be paid for multiple deposits, the question might be raised whether it is clear from the proposed text, what fees must actually be paid.

On the other hand, Rule 6, paragraph 6 *d*, provides that a fee of 50 francs shall be paid for renewals. Considering that, in the case of a renewal, publication ought to be limited, so to speak, to the date of renewal and to the number of the model, the amount of 50 francs is considered as being somewhat excessive.

Sweden : The Reduction of fees in cases of multiple deposits appears to be unnecessarily liberal. See observations relating to Article 3 paragraph 4 of The Draft Arrangement.

Paragraph 4 of the present Rule is understood to mean that a "standard space" may include the reproductions of four different designs. This is a provision that will make for practical difficulties, and it is proposed that the provision be amended so as to allow no more than one design in each "standard space".

Switzerland (Translation) : (Size of the standard space) :

We are of the opinion that the size of the standard space could be reduced without adversely affecting the intelligibility of the figures, for example, from 6×9 cm. to 4.5×6 cm. The number of standard spaces per page would thus be doubled, and the publication fees could therefore be considerably reduced, which is an essential aim.

The International League for the Prevention of Unfair Competition (Translation) : The fees should be limited to a strict minimum in order that the benefits of the Arrangement be available to as large a public as possible.

Rule 8

(Gazette)

(See Draft Arrangement, Article 4, paragraph 3, and Article 12 *f*)

Austria (Translation) : It is proposed that Contracting Parties should, on request, be entitled to receive copies of the Design Gazette printed on one side only. As no provision has been made to produce anything corresponding to

the international trade mark extract (Madrid Arrangement on Trade Marks) an issue of the Design Gazette printed on one side only is indispensable as a basis for the establishment of national card indexes.

Rule 9

(Domestic examination of novelty)

(See Draft Arrangement, Article 5, paragraph 3, and Article 12 e)

Austria (Translation) : Rule 9, paragraph 1.

1. It is not entirely clear whether the national preliminary examination fee to be collected by the International Bureau represents a requirement for registration within the meaning of Article 4, paragraph 2 of the Arrangement. This point should be cleared up, possibly in Article 4, paragraph 2.

2. Rule 1, paragraph 3 provides that the depositor may decide to forego protection in countries which have a system of preliminary administrative examination. This provision, however, serves a purpose only if in that case the relevant national fee does not have to be paid. The Draft, however, makes no express provision for that. The insertion of such a provision is therefore proposed.

Rule 9, paragraph 2.

Rule 6, paragraph 3 of the regulations implementing the Madrid Arrangement on Trade Marks provides that provisional decisions rejecting an international trade mark must contain an extract of the main statutory provisions of the country concerned. The decision must also indicate within what period and from what authority a remedy may be sought.

It is proposed that Rule 9 of the present Draft should contain a similar provision. Inasmuch as the announcement of rejection is in any case made on a printed form, the owner of a design will find it helpful to have, on the back of the form, brief instructions informing him of the remedies available against the preliminary decision. This arrangement entails no additional cost and has been found very useful in the case of international trade marks. Presumably the law of most countries already provides that an official decision must contain the necessary instructions regarding the remedies available.

Belgium (Translation) : Rule 9, paragraph 1.

The reference to Article 5, paragraph 3, should be suppressed. In fact, the extra fee can only be collected if the preliminary examination relates to novelty.

The following Draft is suggested : " For the purposes of the preliminary examination, so far as it relates to novelty, the International Bureau "

Rule 9, paragraph 2.

The second and third sentences of paragraph 2 of Rule 9 are provisions of substantive law and should, therefore, be inserted in the text of the Arrangement itself.

Denmark (Translation) : It is proposed that Rule 9, paragraph 1, according to which the fee for examining an international deposit of a model should not exceed three quarters of the national examination fee, be suppressed.

Germany (Fed. Rep.) (Translation) : The text of paragraph 1 of Rule 9 may give the erroneous impression that the preliminary examination provided for in paragraph 3 of Article 5 of the Draft Agreement relates only to the novelty of the design or model. It should therefore be made clear, both in the title and in the text of Rule 9, that this provision relates equally to all preliminary examinations by the authorities of the Contracting State, but that the fee prescribed in paragraph 1 shall be charged only where such preliminary examination concerns the novelty of the design or model.

Spain (Translation) : Paragraph 1 of Rule 9 provides that the International Bureau shall collect for each preliminary examining office the fee for an administrative examination, as fixed by that office.

In this respect, the Spanish Administration proposes that the collecting of such fees be extended to those countries which have a system permitting an opposition to be lodged prior to the registration of industrial designs or models. In view of the fact that, according to this system, the percentage of oppositions is relatively high and though such oppositions do not in fact constitute a true preliminary examination, they nevertheless imply such an examination in cases where oppositions have been lodged, the motives for which are so numerous that they nearly all represent, in practice, cases involving cancellation of novelty.

In any event, the above mentioned fee should be established in cases of opposition and it should be required to be paid by the depositor prior to the decision being given on the merits of the opposition.

Sweden : Reference is made to the General Observations. Under the present provision the fee to be collected for a national novelty search may not exceed three quarters of the corresponding fee provided by the domestic law. If the international fee is lower than the domestic fee, this has the consequence either that the international registrations are not carrying their own costs, or that the domestic registration fees will have to be raised above the level set by the principle of cost coverage. For that reason the maximation of the fee to three quarters of the national fee is unacceptable.

Switzerland (Translation) : *(Additional fees for countries practising a preliminary examination for novelty in respect of designs and models).*

We should like to say that we are convinced that in all probability the cost of the examination for novelty will be quite out of proportion with the results achieved. First of all, no administration possesses an even remotely complete collection of the designs and models on the market at a given moment ; furthermore, in this field, any decision certifying or denying the novelty of a design or model will for the most part rest on subjective appreciations : therefore there is nothing to guarantee that a judge would arrive at the same result as the examiner attached to the administrative department dealing with deposits. Second, in order to achieve a result which by the nature of things cannot avoid

being highly unreliable, it would be necessary to build up a very bulky stock of documents, as well as a comparatively large staff of examiners and an appeal organization. But if the depositor is made to help cover the expenses of such a system by charging him up to 50 francs per object, he will find the fees prohibitive.

USA : The following changes are suggested in Rule 9, paragraph 2, of the Regulations :

a) In the first sentence, the word " design " should be replaced by the word " application. "

b) In the third sentence, the words " response or " should precede the word " appeal " in both cases where this word appears.

c) It should be provided that correspondence after the first notification could be held directly between the applicant and the national office but that the final decision would also be communicated to the International Bureau.

Rule 10

(Archives)

(See Draft Arrangement, Article 12 g)

Luxemburg (Translation) : According to Rule 10, the International Bureau may dispose of copies and sketches of models and designs after a certain period of time. Would it not be possible to arrange for the models and designs to be returned to the applicants provided the latter were to cover the costs involved?