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

Twenty-Fifth Session
Geneva, March 28 to April 1, 2011

REPORT [*]

adopted by the Standing Committee

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as "the Standing Committee" or "the SCT") held its twenty-fifth session, in Geneva, from March 28 to April 1, 2011.

2. The following member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belgium, Botswana, Brazil, Burkina Faso, Canada, Chile, China, Colombia, Comoros, Costa Rica, Cuba, Czech Republic, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Haiti, Hungary, India, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Kuwait, Latvia, Lithuania, Malaysia, Mexico, Montenegro, Morocco, Mozambique, Myanmar, Nepal, Netherlands, Nigeria, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saudi Arabia, Serbia, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The Former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Zambia, Zimbabwe, (86). The European Union was represented in its capacity as a special member of the SCT.

[*] This report was adopted at the twenty-sixth session of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African, Caribbean and Pacific Group of States (ACP GROUP), African Intellectual Property Organization (OAPI), African Union (AU), Benelux Organization for Intellectual Property (BOIP), South Centre, (5).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), Association of European Trademark Owners (MARQUES), Centre for International Intellectual Property Studies (CEIPI), China Trademark Association (CTA), Computer and Communications Industry Association (CCIA), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), European Law Students' Association (ELSA International), German Association for the Protection of Intellectual Property (GRUR), Inter-American Association of Industrial Property (ASIPI), International Center for Trade and Sustainable Development (ICTSD), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), Internet Society (ISOC), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), Organization for an International Geographical Indications Network (OriGIn), Union of European Practitioners in Industrial Property (UNION) (18).

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

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

Agenda Item 1: Opening of the Session

7. Mr. Francis Gurry, Director General of WIPO opened the twenty-fifth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

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

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

9. Mr. Park Seong-Joon (Republic of Korea) was elected Chair and Mr. Imre Gonda (Hungary) and Mrs. Karima Farah (Morocco) were elected Vice-Chairs of the Committee.

Agenda Item 3: Adoption of the Agenda

10. The Delegation of Brazil, speaking on behalf of the Development Agenda Group (DAG), proposed the addition of a new item to the draft Agenda entitled "Work of the SCT", under which the SCT could discuss its contribution to the implementation of the Development Agenda Recommendations, in accordance with the decision on Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities by the WIPO General Assembly.

11. The Delegation of France, speaking on behalf of Group B, said that it could agree to that proposal, it being understood that this point would not become a permanent item on the Agenda, that it would be without prejudice to future work and would not set a precedent.

12. The SCT adopted the Draft Revised Agenda (document SCT/25/1 Prov.2) with the addition of a new item 9 entitled "Work of the SCT".

Agenda Item 4: Accreditation of a Non-Governmental Organization

13. Discussion was based on document SCT/25/5.

14. The SCT approved the representation in sessions of the Standing Committee of the American Bar Association (ABA).

Agenda Item 5: Adoption of the Revised Draft Report of the Twenty-Fourth Session

15. Discussion was based on document SCT/24/8 Prov.2.

16. The SCT adopted the Revised Draft Report of the twenty-fourth session based on document SCT/24/8 Prov.2. with amendments as requested by the Delegations of the Czech Republic, Spain and Switzerland.

Agenda Item 6: Industrial Designs

INDUSTRIAL DESIGN LAW AND PRACTICE-DRAFT PROVISIONS

17. Discussion was based on document SCT/25/2.

18. The Delegation of Brazil, on behalf of the DAG, said that, at this session, delegations were faced with the important task of deciding how the SCT should conduct its future work on industrial designs. The Delegation recalled that at its 22nd session, the SCT started discussing possible areas of convergence in industrial design law and practice and that document SCT/22/6 indicated that the identification of areas of convergence and areas in which convergence could not be identified would be "without prejudice to possible future work of the SCT on that subject". Discussion on possible area of convergence continued at the 23rd session of the SCT on the basis of document SCT/23/5, the text of which explained, as it had been requested by the SCT at its previous session, how users and industrial design offices might benefit from harmonized procedures and how these streamlined procedures might contribute to facilitating international protection of industrial designs. Delegations then agreed to continue the work of the SCT on possible convergences. As a result, discussions among delegations were pursued at the last session of the SCT. During the debate, a few delegations proposed that a diplomatic conference be convened in order to discuss the approval of a Treaty on this matter. This proposal failed, however, to reach agreement among the broader membership of the Committee. The Delegation of Brazil pointed out that its participation in the text-based discussions at this session should in no way imply accepting in advance any of the provisions, nor prejudging the outcome of these discussions in favor of legally binding instruments, but should be understood simply as a constructive engagement with the exercise, with a view to possibly attaining concrete results in the normative agenda of WIPO, that may meet Members' interests and demands. The Delegation further indicated that the DAG was well aware that a number of delegations were of the view that the SCT work on industrial designs would sooner or later lead to a treaty, and that some wanted it sooner rather than later. Taking into account the proposal by those delegations and considering that one possible outcome of the process could be the start of negotiations for a treaty, as opposed to the current text-based discussions, the Delegation said that it expected discussions in this Session to be inclusive and essentially member-driven, as well as to take into account different levels of development and a balance between costs and benefits, as mandated by the Development Agenda Recommendation 15 on norm setting. The Delegation further indicated that the DAG wished to underline that any norm–setting process in this Committee should follow the guidelines mandated by the Development Agenda and to recall, in particular, recommendation 22 of the Development Agenda.

19. The Delegation of Japan said that discussions should take place without any time limit, considering that previous discussions had not allowed for cooperation because of insufficient time for consideration. The Delegation indicated that it believed that a commitment would be achieved and that careful discussions would contribute to find an appropriate balance between the national and international systems and harmonization.

20. The Delegation of the Republic of Moldova, indicating that insertion of two-level provisions in the document was already a success, expressed confidence that the Committee would be able to make further progress and refine the document to have it adopted at a diplomatic conference.

21. The Representative of the European Union, speaking also on behalf of the 27 member States of the European Union, said that the European Union and its member States had stressed the great importance and added value of harmonizing and simplifying design registration formalities and procedures. The European Union and its member States believed that this was a goal which had enjoyed too little attention up to now and that the work of the Committee in addressing this was a major achievement. It would be a further accomplishment of this Committee to build on the promising work of the last six years and add another achievement to its record. For these reasons, the European Union and its member States had expressed their support in bringing this matter to a diplomatic conference in the 2012-13 biennium. Whilst not committing delegations to the provisions of a treaty until they were ready and able, such a step would send a positive message of intent to the users of all design registration systems. The Representative stated that the European Union and its member States wished to express their support for working document SCT/25/2, which they considered to represent a further promising and conclusive step in the right direction. The European Union and its member States, acknowledging that the revised draft provisions contained in this document took due account of the comments and suggestions made by delegations at the twenty-fourth session of the SCT, further recognized that these draft provisions not only adequately responded to the ultimate goal of approximating and simplifying industrial design formalities and procedures, but were also appropriate to establish a dynamic and flexible framework for the subsequent development of design law, able to keep up with future technological, socio-economic and cultural changes. The Representative indicated that the European Union and its member States looked forward to concluding discussions on the basis of this new document in the same constructive spirit that characterized the twenty-fourth session of this Committee, and were hopeful that this Committee would now be able to reach consensus on the idea of convening a diplomatic conference for the adoption of a treaty on industrial design registration formalities and procedures in the next biennium 2012-2013.

22. The Delegation of Norway, declaring that it was positive as to the continuation of the work, called for the convening of a diplomatic conference for the adoption of a treaty on industrial design registration formalities in the next biennium.

23. The Delegation of the Russian Federation said that, subject to the ability to prepare the high-quality documents that were necessary for the holding of a diplomatic conference, it would support such conference.

24. The Delegations of Cuba and Nigeria, indicating that they were ready to further the discussions, expressed their support for the position of the Delegation of Brazil.

25. The Delegation of Algeria, indicating that it was ready to contribute in a constructive way to this important process, said that it supported the statement made by the Delegation of Brazil.

Article 1

26. The Delegation of the Republic of Moldova proposed to move items (iii) and (iv) to the beginning.

27. The Delegation of Spain proposed that the expression “Contracting Party” be used instead of “Party” and that a definition of “licensor” and “licensee” be added. The Delegation further considered that the definition of “communications” was ambiguous because it only referred to communications submitted to the office.

28. The Delegation of Canada, expressing concern as regards the meaning of “all data recorded” in item (ix), said that it would like to have flexibility as to the contents of its Register.

29. The Delegation of India, referring to item (vii), indicated that in India applications can include one industrial design only.

30. The Delegation of Burkina Faso proposed that item (vii) would cover also the case in which an application comprised one industrial design.

31. The Representative of CEIPI suggested deleting, in the entire document, the adjective “draft” accompanying the words articles and rules, as well as maintaining the word “Party” instead of “Contracting Party”. In addition, the Representative suggested reviewing item (vii) in line with the comment made by the delegation of Burkina Faso and adding the words “or registration” in the second line after the words “where the application”. Finally, in addition to a number of suggestions concerning the French version of the document, the Representative proposed that item (xii) read “Regulations means the Regulations referred to in Article 19”.

32. The Representative of INTA, proposing a change in the order of definitions in order to avoid the use of certain terms ahead of their definition, suggested modifying item vi) to read “references to a person shall be construed as references to both a natural person and a legal entity”.

Article 2

33. The Delegation of Japan, enquiring as to whether Article 2 would apply to converted and to amended applications, pointed out that the notes should clearly specify this point.

34. The Delegation of Brazil, supported by the Delegation of India, suggested adding the words “and where a Party provides for divisional applications” after the words “the office of a Party”.

35. The Representative of CEIPI wondered whether it was essential to refer to the Regulations in this Article, suggested deleting the words “for industrial designs” in paragraph (1) and adding a reference to ARIPO in the notes.

36. The Secretariat, in reply to a request for clarification from the Representative of AIPLA regarding the application of this article to continuation applications, indicated that this article was not intended to cover this specific type of applications.

Article 3, Rules 1 and 2

37. The Delegation of the Philippines, supporting the statement by the Delegation of Brazil on behalf of the DAG, considered that Article 3 should contain an indicative list and not exclude elements which were set by national law.

38. The Delegation of Japan proposed to add another item to Article 3(1), namely the indication of the original application in case of converted applications. The Delegation further proposed to move from the Regulations into this Article the indication of the product which incorporates the industrial design.

39. The Delegation of South Africa, supporting the statement made by the Delegation of Brazil, proposed to add another item (e) to Rule 1(1), namely an indication of the type of design where the application included more than one type of design.

40. The Delegation of Sweden, supporting the statement made on behalf of the European Union and its member States, proposed to amend Article 3(1)(xi) to read as follows: "where the applicant is not the creator of the industrial design, a statement of assignment or other evidence of the transfer of the design to the applicant". The Delegation further proposed to add an indication of the term of protection for which the application was filed, which would ensure predictability and allow Offices to know what fee to charge.

41. The Delegation of the Russian Federation, indicating that national legislation did not provide for the possibility of maintaining the industrial design unpublished, requested the insertion of the words "where the national legislation provides for such possibility" in item (xiv).

42. The Delegation of Brazil proposed to amend the chapeau of paragraph (1) to read as follows: "A Party shall provide that an application contain at least some, or all, of the following indications or elements". The Delegation further proposed to add a new item (xvi) with the following text: "where a party requires payment of a fee in respect of an application, the copy of the receipt". The Delegation also suggested the deletion of paragraph (2), in order not to limit the capacity of national legislation to regulate the requirements of an application. Finally the Delegation proposed to replace, in paragraph (3), the words "an application may include two or more industrial designs" by "a party may provide that an application which includes two or more industrial designs shall be processed as such or shall be divided in two or more applications".

43. The Delegation of Colombia, supporting the comment of the Delegation of Sweden concerning the possibility for the applicant to prove the assignment in a more general manner, further suggested the deletion of the requirement in Rule 1(2)(a).

44. The Delegation of Germany proposed to replace, in item (xiii), the term "declaration" by "evidence" and to delete the words "together with indications in support of that declaration".

45. The Delegation of India proposed to amend Article 3 (1)(xi) to allow the applicant to present a mere statement that the applicant was the proprietor of the industrial design and to insert, as a further element under this Article, the indication of the product incorporating the design.

46. The Delegation of Canada, indicating that under national legislation the article embodying the design had to be shown from all views, expressed concern that the language used in Rule 2(1)(c) would exclude the possibility of that requirement.

47. The Delegation of the United States of America, pointing out that it appreciated the effort made to keep the list of required elements to the minimum, proposed adding a note concerning Article 3 (1)(ii), acknowledging that, for privacy considerations, the address provided could be a place where the person received mail, and not necessarily a home address. The Delegation further proposed to delete the requirement of a statement of novelty, as the applicant was often not in the best position to know the full scope of the prior art, and thus would not be able to accurately predict what was different about his or her design. The Delegation further proposed to add "as prescribed in the Regulations" after "description" in paragraph (1)(viii), and suggested to further develop this item in the Regulations. Finally, the Delegation proposed to add "as prescribed in the Regulations" at the end of paragraph (1)(ix) and to include an element in the Regulations allowing for an oath or declaration to be filed in which a creator affirmed that he or she believed himself to be the creator of the design. Concerning Rule 1, the Delegation said that, while an indication of the class under the Locarno Classification was not required under national law, the title of the invention was. Considering that this requirement was similar to that in Rule 1(1)(a), the Delegation proposed to amend such Rule, as follows: "(a) an

indication of the product or products which incorporate the industrial design, or in relation to which the industrial design is to be used, such indication may be required to be in the form of a title to the application". Finally, considering that the reference to "novelty" in paragraph (1)(c) was too limiting, the Delegation suggested to change it to "registrability".

48. The Delegation of Switzerland said that it would be useful to indicate the number attached to each design, so as to avoid confusion between various designs included in multiple applications.

49. The Representative of CEIPI considered that it was unnecessary to include the expression "of the industrial design" in Article 3(1)(i) and that the requirement under Article 3(1)(iv) was already covered by Article 10(3). In addition, the Representative proposed to replace the word "or" for "and" in Article 3(1)(x) to be in line with the Singapore Treaty on the Law of Trademarks and to amend the text of Article 3(1)(xv) to be consistent with the terminology used in the chapeau. Finally, the representative said that he disagreed with the proposal to delete paragraph (2), as it considered it to be perhaps the most important part of the Article.

50. The Delegation of Saudi Arabia proposed to delete the item concerning the claim.

51. The Representative of AIPLA, pointing out that the Committee should endeavor to reduce the number of elements in Article 3, said that the use of the statement of novelty and the description should be discouraged, as designs were best described by drawings and not words. Concerning Rule 2(1)(c), the Representative disagreed with the interpretation that the design should be represented alone and that environmental subject matter could not be present in the application as, when it was marked clearly in dotted lines, such matter could help the public in understanding what the industrial design was. Finally, the Representative suggested to add the expression "at the option of the applicant" in the chapeau of Rule 2(2), between "may" and "include".

52. The Representative of FICPI, expressing the view that Rule 2(3)(b) contained two contradictory portions, said that it was for the applicant to decide on the scope of the design, and that the office should examine exactly what the applicant had submitted.

53. The Representative of JPAA suggested adding a note indicating that a Party could not require, under Article 3(1)(vii), any search result or any other information demonstrating the novelty of the design.

54. The Delegation of Nigeria suggested that Rule 2(1)(b) indicate that the representation could, at the option of the applicant, be in any color.

55. The Delegation of China, observing that neither dotted lines nor shading were allowed in China, expressed the opinion that unclaimed elements should not figure in the application. The Delegation also suggested adding a subparagraph (c) to Rule 2(2), as follows: "Notwithstanding subparagraph (a), parts defined by dotted line should meet the requirements of the office regarding the object of industrial designs protection".

56. The Representative of MARQUES, suggesting that Rule 2 was maintained as drafted and that the list of elements in Article 3 be kept to the absolute minimum, proposed moving items (vi), (vii), (viii), (ix) and (xi) to the Regulations.

Article 4, *Rule 3*

57. The Delegation of the United States of America, indicating that the Geneva Act of the Hague Agreement allowed for a claim to be a filing-date requirement for those countries that required a claim, requested that a claim be added to the list of elements in Article 4.

58. The Delegation of China, pointing out that a description and the requirement for foreign and non-residents applicants to file through a representative were filing-date requirements in China, explained that if the application did not comply with such

requirements, the office would reject it and there would not be any possibility to resubmit it. The delegation proposed to add a description to the list in Article 4(1) and to replace, in paragraph (3), "the Regulations" by "the applicable law".

59. The Delegation of Japan suggested adding the description of the product and the representation of the industrial design as elements required for obtaining a filing date.

60. The Delegation of Denmark, indicating that the representation of the industrial design was a mandatory requirement for obtaining a filing date according to national law, requested clarification as to the application of Article 4(1)(b).

61. The Delegation of Colombia, supported by the Delegations of Burkina Faso, Chile, Cuba, India, and Lithuania, suggested adding the payment of the fees to the list in Article 4(1)(a).

62. The Representative of FICPI, pointing out that a representation was essential in order to obtain a filing date, expressed concern about the wording of Article 4(1)(b), which could imply that an office could not require a representation to give a filing date.

63. The Representative of JPAA, considering that the wording of Article 4(1)(iii) was not precise, proposed to replace it by "a perspective view of design".

64. The Delegation of Spain suggested drafting the articles in the same manner as in the Singapore Treaty.

65. The Delegation of Brazil suggested re-drafting Article 4(1)(b) to begin with "A party may provide that the filing date be the date…".

66. The Delegation of the Republic of Moldova, expressing its agreement with the rationale behind this Article, as expressed in Note 4.01, concurred in that it was important to maintain filing-date requirements to a minimum.

67. The Delegation of Switzerland, underscoring its agreement with the current text of Article 4(1), said that it did not support the proposal to add the payment of fees as a requirement to obtain a filing date.

68. The Delegation of Haiti suggested that Rule 3 be drafted in a more precise manner.

Article 5

69. The Delegation of France suggested removing the term "immediately" in Article 5.

70. The Delegation of South Africa, indicating that integrated circuits were protected as industrial design under national legislation and that the grace period for them was two years, suggesting amending Article 5 to take that situation into account.

71. The Delegation of China, pointing out that the grace period in China was six months and that it applied only where an industrial design was shown for the first time in an international exhibition, where it was made public for the first time in academic or technical meetings and where disclosed without the consent of the applicant, proposed to reformulate this Article in order to accommodate the different situations in member States.

72. The Delegation of India said that the grace period in India was six months.

73. The Delegation of Brazil, noting that the grace period in Brazil was six months, said that it was important to retain this flexibility. Moreover, the Delegation proposed to add the following text: "A party shall define the cases of disclosure to which these provisions apply."

74. The Delegation of Japan, indicating that the grace period in Japan was six months, said that it started from the filing date, even if the applicant claimed a priority date.

75. The Chair said that the grace period in the Republic of Korea was six months, but that an amendment was under consideration to extend it to 12 months, further to the request of users.

76. The Representative of JPAA, expressing support for a grace period of 12 months, suggested adding a provision whereby a country could not require demonstration of why the industrial design was compliant with the grace period.

77. The Representative of FICPI supported the view that the grace period should start from the priority date.

78. The Delegation of Saudi Arabia supported the view that the grace period should be six months.

79. The Delegation of Burkina Faso said that the grace period in the Bangui Agreement was 12 months.

80. The Delegation of Morocco indicated that the grace period in Morocco was six months from the filing date.

81. The Representative of GRUR, observing that in the field of industrial designs the grace period was an element of fairness for small enterprises, said that it strongly encouraged delegations to support a 12-month grace period.

82. The Representative of JPPA suggested including language to indicate that the applicable disclosure would be one in a Member of WIPO, as well as moving sub-paragraph (c) to the Regulations.

Article 6

83. The Delegation of the United States of America suggested deleting the word “form” in the last line of Article 6(2).

84. The Delegation of India, indicating that national legislation did not contemplate such requirement, said that the issue could be left to the applicable law.

85. The Secretariat, in reply to a request for clarification from the Delegation of Colombia, explained that the name of the representative of the creator did not have to be indicated in the application.

Article 7

86. The Delegation of India, observing that national legislation did not allow for division of applications, expressed the view that this Article should only apply where the applicable law provided for division.

87. The Representative of INTA suggested re-drafting paragraph (3) in order to make sure that the total of the fees due in case of divisional applications did not exceed the fees that would have been payable if the initial applications had been each for one design.

88. The Delegation of the United States of America, recalling that in the United States of America a divisional application needed to be filed while the initial application was pending, considered that a time limit to file such a divisional application should be added.

89. The Delegation of India, in response to a request for clarification from the Delegation of the United States of America as to the reason why national legislation did not provide for division, explained that, while in India the principle was one design in one application, a subsequent application could be allowed under certain conditions when such application was a variation of the initial application.

90. The Delegation of Morocco said that an amendment of national legislation with a view to including division was currently under consideration.

91. The Delegation of Germany, supporting the statement made by the Representative of INTA, proposed to replace, in paragraph (3)(b), the words “due for an equivalent number of separate applications” by “that would have been due in the case of separate initial applications”.

92. The Delegation of Canada said that, when the design in the divisional application was completely different from the design in the initial application, the divisional application would not preserve the priority claim.

93. The Representative of CEIPI expressed the view that the present wording of Article 7 already contained a limitation in time, since the term division of “application”, and not of “registration”, was used.

94. The Representative of AIPLA suggested broadening the language of this Article in order to take into account any procedure which had the same effect of a divisional application, as could be the case with the continuation application in the United States of America.

95. The Representative of GRUR, expressing support for the text as it stood, said that the possibility of requesting a divisional application should be allowed as long as the application was pending.

Article 8, Rule 4

96. The Delegation of India observed that national legislation did not provide for deferment of publication.

97. The Delegation of France, pointing out that national legislation provided for deferment of publication, requested clarification as to the interest of having a minimum period of six months during which the design would not be published.

98. The Delegation of the United States of America, stating that national law did not provide expressly for deferment of publication, said that there were mechanisms that allowed for a *de facto* deferment, in particular because of the existence of an examination system and of a three-month time limit to pay the issuance fee. As a result, the Delegation concluded that a procedure to delay publication was not necessary in the United States of America, and suggested that an additional phrase be added to accommodate systems that did not publish an application until a patent was granted.

99. The Delegation of Japan suggested that the starting date of the deferment period be “the filing date or the registration date”.

100. The Delegation of the Russian Federation, supported by the Delegation of Ukraine, observed that national legislation did not expressly provide for deferment of publication and that publication could therefore take place within a period of less than six months from the filing date. Consequently, the Delegation suggested adding the words “where the Party provides for deferment of publication”.

101. The Delegation of Burkina Faso said that, under the Bangui Agreement, publication could be deferred for a maximum period of 12 months from the filing date.

102. The Delegation of the Republic of Moldova, observing that a request for deferment of publication did not arise frequently, declared that publication in the Republic of Moldova could be delayed for a period of six months, possibly 12 months.

103. The Representative of the European Union said that the drafting of Rule 4 seemed to dismiss the possibility for an applicant of requesting publication before the six months prescribed by this rule.

104. The Delegation of China, noting that Chinese legislation did not allow for deferment of publication, said that the rule should be flexible enough to accommodate different national practices.

105. The Delegation of Chile, supported by the Delegation of Colombia, proposed that the verb “shall” be replaced by the verb “may”, with a view to accommodating the practices of those countries which did not yet provide for the possibility of deferment.

106. The Delegation of Spain, supported by the Representative of CEIPI, expressed the view that the minimum period prescribed to maintain an industrial design unpublished should be calculated from the filing date and not from the priority date.

107. The Representative of JPAA, explaining that in Japan an industrial design could be kept secret for a maximum period of three years from the date of registration, said that six months was not in the interest of users and that an effort should be made to provide for a longer deferment period, taking also into account that six months coincided with the priority period.

108. The Representative of FICPI, recalling that the purpose of this provision was to provide for a short period of time within which the applicant could control the publication of the industrial design, expressed support for the text as it stood.

109. The Representative of AIPLA, underlining the great value of such provision, expressed the view that clarification should be given as to whether the object of deferment of publication was the application or the registration itself. In addition, the Representative suggested that some exceptions be added to this rule in order to take into account the continuation application practice in the United States of America.

110. The Representative of GRUR, underscoring the usefulness of this provision, said that it would favor a minimum deferment period that was longer than six months. The Representative further expressed the view that the starting date of the deferment period should not be the priority date as, considering that in practice an application with a priority claim was filed the last day of the priority period, applicants might not be able to request deferment of publication in subsequent applications.

111. The Representative of CEIPI noted that, in the French version, the word "ajournement" should be replaced by another expression because that word was not broad enough.

Article 9, Rule 5

112. The Delegation of Morocco suggested that the subject matter of Article 9 should be addressed after Article 3.

113. The Delegation of the United States of America, stating that Offices should not require mandatory representation for the purpose of attributing a filing date, suggested that this Article be supplemented by a paragraph which would provide for exceptions to mandatory representation as in Article 7(2) of the PLT. Such provision would reduce the barriers to seek industrial design protection and would not interfere any longer with applications filed under the Hague Agreement.

114. The Delegation of Switzerland, supported by the Delegation of Germany, suggested to replace the time limit of two months by one month in Rule 5(2)(c), to be in line with Rule 4(3) of the STLT.

115. The Delegation of Denmark, supported by the Delegation of the United States of America, proposed that Rule 5(1) follow the approach of Article 4(3)(a) of the Singapore Treaty instead of the PLT approach.

116. The Delegation of India, indicating that there was no mandatory representation under national law, said that, where an application was filed by someone else than the creator or the applicant, the appointed person had to be a legal practitioner or a duly accredited person.

117. The Delegation of Burkina Faso noted that, in the Bangui Agreement, representation was mandatory for foreign applicants.

118. In reply to a request for clarification made by the Delegation of Colombia, the Secretariat indicated that the notion of “interested person” could be clarified in a note.

119. The Delegation of Brazil said that Rule 5(2) was in line with its national requirements and provided the necessary flexibility.

Article 10, Rule 6

120. The Delegation of the United States of America, expressing its support for the concept reflected in this article that the formalities placed upon communications should be limited to only those that were necessary, said that Article 10(2)(b) should not preclude a statement that a translation was accurate and that the exceptions referred to in that article should make that point clear. Furthermore, the Delegation suggested adding “or other representation” to Rule 6(6), in order to allow more liberal practices. Concerning Rule 6(10), the Delegation wondered what would be the situation where the Party had no record of the transmission, but that the applicant could show that the document was transmitted. In those cases, in the United States of America, the applicant could still be recognized as having filed as of the date on which the document was transmitted.

121. The Delegation of Spain suggested replacing the words “except in those cases prescribed in these Provisions” by “except where there are reasonable doubts” in Article 10(2)(b).

122. The Delegation of Brazil, observing that Article 10(2)(b) did not concur with Brazilian law, said that it would be difficult to change the law as far as this issue was concerned.

123. The Delegation of Germany expressed the opinion that paragraph (2)(b), as contained in the previous version of the document, should be re-integrated.

124. The Delegation of El Salvador, supported by the Delegation of Brazil, suggested that the words “subject to the applicable national provisions” be added in paragraph (2)(b).

125. The Representative of CEIPI requested that it be clarified whether the term “provisions” in Article 10(2)(b) referred to the article only or also to the draft regulations.

126. The Delegation of India, pointing out that a handwritten signature was required for communications on paper in India, said that the option set forth in the second part of Rule 6(4)(ii) would not be allowed in India.

Article 11, Rule 7

127. The Delegation of Japan, pointing out that this provision should allow applicants to pay renewal fees every year or to make a payment covering several years, requested that this issue be clarified in a note. Moreover, the Delegation requested the addition of another note explaining the meaning of the words “number of the registration” in Articles 11, 14(3), 18, and Rule 10(viii) and (ix).

128. The Delegation of El Salvador said that national legislation did not provide for renewal.

129. The Delegation of India said that any renewal fee was due before the expiration date; however, if the applicant was not able to pay the fee before that date, he would have one year from that date to pay the renewal fee and additional fees.

130. The Delegation of Denmark expressed its support for the statement made by the Delegation of Japan regarding the possibility to make a renewal for several periods.

131. The Delegation of Colombia proposed to add language that would make clear that this provision was applicable only to Parties that provide for renewal under their law.

Article 12, Rule 8

132. The Delegation of Japan suggested the addition of a note explaining the notion of "time limit fixed by the office".

133. The Delegation of Spain expressed the view that this provision should follow the approach of the Singapore Treaty.

Article 13, Rule 9

134. The Delegation of Japan said that a similar provision to Rule 9(4)(vii) of the Singapore Treaty should be added regarding the exceptions to the applicability of the reinstatement. Moreover, the Delegation suggested adding a provision on relief measures for supplementing, adding or reinstating a priority claim as provided in Article 13 of the PLT.

135. The Delegation of Switzerland suggested replacing the period of two months by a period of one month in Rule 9(2)(i), and proposed that Note 13.02 refer to the notion of industrial design.

Article 14, Rule 10

136. The Delegation of the United States of America, supported by the Delegation of Chile, suggested that Article 14(7) include specific provisions concerning the recording of mortgages. Moreover, the Delegation expressed the view that Article 14(4)(a)(ii) was inconsistent with the PLT, as Rule 17 of the PLT permitted Parties to require a copy of an agreement. The Delegation also said that the reference to paragraph (6) in Article 14(7) should be a reference to paragraph (5) instead. Concerning Rule 10, the Delegation suggested adding a new paragraph which would read as follows: "(5) [Security Interests]. Paragraphs (1) to (4) shall apply, where applicable, to requests for the recording of a security interest in respect of an application or registration, and, in particular it is noted that a copy of a security interest (mortgage contract) may be required to be recorded".

137. The Delegation of Brazil, observing that this provision did not converge with Brazilian current law, said that it should set forth minimum standards, rather than maximum standards.

138. The Delegation of Japan stated that a similar provision to Rule 10(1)(a) of the Singapore Treaty should be added. Moreover, the Delegation proposed that this project be modeled on Article 1(xi) and Rule 1(iii) of the Singapore Treaty. Finally, the Delegation suggested the addition of a note clarifying this Rule.

139. The Delegation of China said that a copy of the license agreement should be required to ensure that the recording of a license or a security interest was done properly.

140. The Delegation of India observed that there was no recording of a security interest in India.

141. The Delegation of Chile said that it considered that all the documents received by the Office should be in the language admitted by the Office.

142. The Delegation of the Republic of Korea explained that Article 14(4) diverged from national practice and that maintaining this provision would require an important change in national legislation.

143. The Delegation of Cuba expressed support for the statements made by the Delegations of Brazil and Chile.

144. The Representative of CEIPI suggested that “and /or” be replaced by “and” in Rule 10(1)(a)(vii) in the English version.

145. The Delegation of Spain suggested introducing, in Rule 10, the possibility of sub-licensing and assigning the license, if that was agreed in the contract. Accordingly, the contract or an extract of the contract should be included as supporting document for the recording of a license in Rule 10(2).

Article 15, Rule 10

146. The Delegation of the Republic of Korea said that if a reference was made to the national law of the Parties in Article 14(4), then Article 15 could be maintained.

Article 16, Rule 10

147. The Delegation of Colombia, observing that a license had to be recorded in Colombia, said that Article16(1) was contrary to their national legislation.

148. The Delegation of Spain shared the view expressed by the Delegation of Colombia.

149. The Delegation of Chile, stating that in Chile the recording of a license was not a condition for the validity of a license, requested clarification as to whether the concept of validity found in Article 16 was referring to the act itself.

150. The Delegation of India observed that if a license was not recorded, a Court could record that license in any infringement case.

151. The Secretariat recalled that Article 16 was referring to the validity of the registration of the industrial design and not to the validity of the license itself.

152. The Chair, supported by the Delegation of Cuba, suggested that the explanation given by the Secretariat should be reflected in a note.

Article 17

153. There were no comments on this matter.

Article 18, Rule 11

154. The Delegation of Japan requested that the indication that the new owner was a legal entity be added in Article 18, and said that Article 11(1)(f)(iv) of the Singapore Treaty should be reflected in this proposed article.

155. The Delegation of the United States of America, observing that in the United States of America there was a separate fee for each intellectual property right but not for each request, asked for confirmation that the reference to a “fee” in Article 18(3) authorized separate fees for intellectual property rights.

156. The Representative of CEIPI said that provisions concerning a request for the change of name or address and for the correction of a mistake should be included.

Article 19

157. The Delegation of the Russian Federation suggested the possibility of annexing model forms to the Regulations.

158. The Representative of CEIPI suggested that two distinct documents be provided at the next session of the SCT, with a view to facilitating the reading.

Future work

159. The Representative of the European Union reiterated the support of the European Union and its twenty-seven member States for bringing this matter to a diplomatic conference in the 2012-2013 *biennium*.

160. The Representative of AIPLA suggested forming a sub-committee to discuss distinct areas of divergence.

161. The Delegation of Japan, declaring that it could envisage the prospect of a diplomatic conference, stated that more time was needed.

162. The Delegation of Brazil observed that, while areas of convergence were identified, divergences should first be examined before considering a move towards a diplomatic conference.

163. The Representative of the JPAA expressed support for the statement made by the Representative of AIPLA.

164. The Delegation of India concurred with the Delegations of Brazil and Japan in that the text should mature further and that a diplomatic conference should be convened once there was assurance that it would succeed.

165. The Delegation of Switzerland said that, although progress had been made, further work was necessary in order to increase the numbers of points on which the Committee had convergence. The Delegation indicated that, at this stage, it was important that the Committee could envisage the possibility of convening a diplomatic conference when the time would be ripe, bearing in mind that such moment could arrive quickly. Therefore, in order to make further progress, the Delegation suggested that the Committee could envisage to expand its sessions.

166. The Representative of the European Union, on behalf of the European Union and its twenty-seven member States, expressed support for further work on the draft provisions concerning industrial designs. The Representative, expressing interest on the proposal made by the Representative of AIPLA in setting up sub-committees, indicated that it would also be appropriate to submit this issue to the WIPO General Assembly.

167. The Delegation of Australia expressed support for further work and favored going to a diplomatic conference. However, the Delegation stated that it did not agree with the creation of sub-committees.

168. The delegation of Cuba said that, while it was not opposed to a diplomatic conference, future work should be directed at continuing to study the document to obtain a sufficiently mature text which could satisfy each of the parties. The Delegation said that it did not support the proposal of sub-committees.

169. The Delegation of Iran (Islamic Republic of), expressing the view that it was too premature to envisage a diplomatic conference proposed that these provisions be adopted at the WIPO General Assembly as guidelines which would be used by Offices at their convenience, and that a diplomatic conference be convened at a later stage.

170. The Delegation of China, observing that it appreciated the work made to harmonize laws, said that further work must be carried out to be able to hold a diplomatic conference.

171. The Delegation of Germany said that the work of the Committee was not only to define existing areas of convergence, but also to create convergence where there was none. In this regard, efforts should be made to overcome certain positions. The Delegation added that it believed that the moment was ripe to bring the document to the General Assembly as significant improvement had been attained.

172. The Delegation of Colombia pointed out that the work had been positive and constructive, but that the document required additional discussions so that all the interests could converge.

173. The Delegation of Sweden expressed its support for the statements made by the Delegation of Germany and the Representative of the European Union.

174. The Delegation of Chile, observing that initiatives to facilitate and simplify formalities should be encouraged, said that it agreed with the continuation of technical discussions and that it was open to the nature of the instrument which would result from them. The Delegation said that it did not support the proposal of sub-committees.

175. The Delegations of Norway and Romania expressed support for the proposals made by the Delegations of Sweden, Germany and the Representative of the European Union.

176. The Representative of AIPLA suggested that the Secretariat invite the Members of this Committee to present written submissions on particular points where divergence existed, in order to understand their positions.

177. The Representative of GRUR, recalling that the goal of simplification of industrial design procedures was for the benefit of both users of the system and offices, but also in the interest of the public at large through more transparent intellectual property systems, expressed its support for continuing and concluding this work. Moreover, the Representative also pointed out that solutions that were acceptable for trademarks should also be acceptable in the field of design protection. Finally, the Representative indicated that it had a preference for an earlier rather than a later diplomatic conference.

178. The Representative of JPAA suggested that the Secretariat encourage the industry sector to provide comments on the current work of the Committee on industrial designs and said that those should be reflected in the draft provisions.

179. The Chair concluded that all comments and requests for clarification would be recorded in the report of the twenty-fifth session. The Secretariat was requested to prepare a revised working document for consideration at the twenty-sixth session of the SCT. That document should reflect all comments made at the present session and highlight the issues that needed more discussion. Furthermore, delegations were requested to consult extensively with national user groups in order to obtain their views and to inform the work of the Committee. A substantive portion of the twenty-sixth session will be dedicated to work on industrial designs. As regards the continuation of the work on the law of industrial designs, the Chair noted that the SCT had well advanced in its work on the draft provisions on industrial design law and practice. The Chair further noted that a number of delegations had reiterated their request for recommending to the Assemblies the convening of a diplomatic conference for the adoption of a design law treaty as soon as possible. Other delegations were of the view that more time for further work was needed and recommending the holding of a diplomatic conference at the present session was premature. The Committee was in agreement that as a possible path to move ahead, a diplomatic conference for the adoption of a design law treaty could be convened once sufficient progress has been made and the time was ripe for recommending the holding of such a diplomatic conference.

Agenda Item 7: Trademarks

TRADEMARKS AND THE INTERNET

180. Discussion was based on document SCT/25/3.

181. The Delegation of Japan said that it was meaningful to discuss the new types of trademark uses on the Internet from the perspective of trademark infringement. The Delegation further observed that such a discussion should not be undertaken rapidly, and sufficient consideration should be given to the matter before taking any decision in relation thereto.

182. The Delegation of Australia declared that it was useful to provide a clear legal framework for trademark owners, thereby creating a degree of certainty whilst conducting e-commerce in a changing electronic environment. The Delegation added that it did not see a need to amend the scope of the *WIPO Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property in Signs, on the Internet* (Joint Recommendation), which was adequate and defined. The Delegation mentioned that it was willing to consider further the issues raised in paragraph (70) of document SCT/25/3, and expressed its support to the approach suggested therein.

183. The Representative of the European Union, on behalf of the European Union and its twenty-seven member States, reaffirmed the general interest of the European Union in pursuing work in the important and evolving area of trademarks and the Internet, and thanked the Secretariat for preparing document SCT/25/3. The Representative pointed out that the Electronic Commerce Directive 2000/31/EC established within the European Union a very balanced and all encompassing harmonized regime on exemptions from liability of Internet intermediaries, and added that such a regime covered a wide range of activities that went far beyond the area of trademarks. The Representative held the view that it was neither appropriate nor necessary to have an additional debate on the subject under consideration in the SCT, and declared that the European Union and its member States could not accept any proposal that the future work of the SCT included the issues mentioned in paragraphs (69) and (70) of document SCT/25/3. The Representative explained that the European Union and its member States remained ready to consider any other useful and appropriate action to address specific trademark issues related to the use of trademarks on the Internet.

184. The Delegation of Brazil said that document SCT/25/3 was very helpful in demonstrating that some situations which took place on the Internet were not addressed by the Joint Recommendation. The Delegation noted that more work, including a broader discussion on the topic under consideration, were necessary in order to assess whether such situations raised problems that needed to be addressed, and whether the approaches referred to in document SCT/25/3 could constitute an appropriate remedy to such eventual problems.

185. The Delegation of Spain expressed its support for the statement made by the Representative of the European Union.

186. The Delegation of Italy considered that the liability of Internet intermediaries had to be assessed from the standpoint of contributory infringement. The Delegation observed that Internet intermediaries were responsible in cases of misleading names or counterfeit products, and, in order to demonstrate their good faith, they had to inform the stakeholders. According to the Delegation, Internet intermediaries had to be involved in any project relating to their liability.

187. The Delegation of Australia suggested that member States should discuss with their established national consultations forums to seek user views. Further, the Delegation raised some concerns about potential conflict of interest issues with respect to the participants that would contribute to a future information session and over the amount of time the preparation of such a session would require.

188. The Delegation of the United States of America supported the proposal of holding an information session on the topic under consideration.

189. The Chair suggested having a one-day information meeting at the next session of the SCT. The Chair noted that it was necessary to establish certain modalities regarding the identity of the speakers and the allocation of topics, and considered that it was important to listen not only to member States, but also to industry, consumer, and academic representatives.

190. The Delegation of Germany shared the concern raised by Australia on issues relating to the independence, neutrality and eventual conflict of interest of possible participants to the information session, noting that such issues would have an influence on the format of such a session. The Delegation observed that the selection of possible speakers and topics had to be made with great care, and that it was premature to undertake immediately such an exercise. The Delegation expressed the view that member States could submit in written form their suggestions regarding the modalities, the speakers and the topics of a possible information session. According to the Delegation, such an approach would enable the SCT to decide at the next session the format of an information session that could take place at the twenty-seventh session of the SCT.

191. The Delegation of Denmark declared that it looked forward to seeing the proposals regarding the modalities of a future information session, and stressed the importance of assessing such a matter carefully in order to have a balanced outcome.

192. The Delegation of Mexico thanked the Secretariat for document SCT/25/3, a very good document which showed the problems relating to the use of trademarks on the Internet, and indicated that it did not wish to delay the discussion of the said document until the twenty-seventh session due to issues raised by the users.

193. The Delegation of the Russian Federation pointed out that it was interested in the procedure relating to the future discussion on the use of trademarks on the Internet, and that it wished to discuss the document prepared by the Secretariat. The Delegation expressed concern with respect to the content, objective and format of the proposed information session, recalling that the SCT had always worked on the basis of documents to prepare recommendations or drafts for new agreements at different levels.

194. The Chair explained that the suggestion to hold an information session resulted from the existence of divergent views on the question of whether or not to discuss document SCT/25/3 and from the wish expressed by several member States to have more information on the topic. The Chair observed that although most of the time of the SCT during the next session would be devoted to the discussion on design law, a certain amount of time would be allocated to the item under consideration which would remain on the agenda of the SCT.

195. The Delegation of Japan said that it believed that the information session would be very helpful and important for all Members States. The Delegation added that the concern raised by the Delegation of Australia highlighted the importance of having a careful discussion during the next session on the modalities of the eventual information session.

196. The Representative of the CCIA said that it was premature to propose an open-ended course of action to resolve issues that were not clearly defined or understood, in relation to stakeholders who were also not very clearly defined. The Representative added that any discussion of international action should always be evidence-based and suggested that a series of information sessions be organized by the Secretariat at the beginning of upcoming SCT sessions. The Representative mentioned the readiness of CCIA in contributing to such information sessions.

197. The Representative of INTA mentioned that the topic under consideration had great significance and importance for trademark owners. The Representative added that INTA was prepared to cooperate in identifying speakers and topics for a possible information

session, and to go along with suggestions that would lead to further elucidating the issues to be discussed, and to future work of the SCT in that area.

198. The Representative of the CTA mentioned that Internet transactions have been developing in China at an exponential pace, and that meanwhile the protection of intellectual property rights on the Internet, in particular trademark rights, had drawn a great deal of attention. The Representative hoped that the topic of trademarks and the Internet would have more weight in the agenda of the SCT.

199. The Delegation of Mexico said that it wished to discuss document SCT/25/3, paragraph (71)(ii), concerning deliberation on other future course of action for the topic under consideration. The Delegation requested a clarification on what users should be providing in terms of information, and referred to the current lack of procedural proposals on this question. The Delegation proposed to discuss document SCT/25/3 during the next session independently from the fact that those delegations wishing to send written submissions may do so, and added that such a course of action would be consistent with the agreed procedure of the SCT.

200. The Delegation of Hungary enquired on the scope of the information session, in particular whether it would relate only to the issue of the liability of Internet intermediaries or whether it would include other issues, such as for instance the Internet Corporation for Assigned Names and Numbers (ICANN) process.

201. Upon invitation by the Chair, the Secretariat provided an update on recent developments related to trademarks in the Domain Name System (DNS). In particular, it recalled that ICANN took a decision in 2007 to expand the number of gTLDs, and that while possibly subject to change, the current plan of the ICANN Board is to approve the launch of its new gTLD program at its meeting in June 2011, following which gTLD registry applications may be accepted as of the last quarter of 2011. The Secretariat noted that since the announcement by ICANN of its plans to expand the DNS, adequate reflection of existing IP norms, in particular trademark norms, in the DNS has been raised as a challenge, and that a number of stakeholders have been involved with the goal of ensuring such protection. The Secretariat has been actively engaging in such discussions and has made a number of submissions to ICANN including proposals for further trademark rights protection mechanisms to ensure adequate trademark and consumer protection in any expanded DNS; this work follows WIPO's tradition since its work in the late 1990s in designing the Uniform Domain Name Dispute Resolution Policy (UDRP) to address the interface between trademarks and the Internet. The Secretariat noted concerns about the mechanics of ICANN's processes which have produced results where it appears that ICANN may choose not to adopt expert trademark advice. In this connection, the issue of trademark and consumer protection in the DNS has become the subject of discussions between the ICANN Board and the GAC, which presently involves the GAC commenting on specific design elements of rights protection mechanisms. The Secretariat noted that there is general present agreement that the UDRP should be complemented by other trademark protection mechanisms, which, the Secretariat further noted must be properly drafted to add value on a sound legal basis. One such mechanism, the Trademark Clearinghouse, would be a database holding trademark information; an area of disagreement between ICANN stakeholders is the current ICANN-proposed requirement that such Clearinghouse undertake validation of use as a condition for inclusion. Many jurisdictions not requiring use prior to registration, the question arises as to the relationship between trademarks "validated" by the Clearinghouse and national trademark laws. Many stakeholders including the Secretariat and GAC have raised such relationship as a serious issue for consideration. The Secretariat mentioned the Uniform Rapid Suspension (URS), which was intended to act as a quicker and lower-cost complement to the UDRP. Beyond the question of whether the current ICANN proposal truly achieves the goal of reduced speed and cost within a responsible and enforceable mechanism, an important related question is the relationship between the URS and UDRP. The Secretariat noted that in its comments to ICANN, the WIPO Arbitration and Mediation Center, currently the leading global UDRP service provider, seeks to ensure that any URS mechanism interoperate smoothly with the WIPO-initiated UDRP. The Secretariat noted a third mechanism, the PDDRP intended to

address TLD registry operator, and possibly also registrar, conduct alleged to cause or contribute to trademark abuse. The Secretariat noted concerns including by some GAC members, that the current ICANN-adapted PDDRP dilutes the intended effect of the original WIPO Center proposal. The Secretariat concluded by noting that the WIPO-initiated UDRP may be subject to review by ICANN; it was noted that within ICANN's processes, registration business interests appear to be institutionally prevalent to certain IP and public interests. The question arises as to whether it can realistically be ensured that any ICANN-managed UDRP review process is adequately handled, and the Secretariat is closely monitoring this development.

202. The Delegation of Hungary noted that at the last session, the Secretariat mentioned that the exclusion of some geographical names from use as gTLDs is foreseen, and queried whether there has been progress in that respect. If so, the Delegation queried how such a list would be prepared, and how a national or international organization could assist this process.

203. The Secretariat noted that it was not aware of new developments on this issue, and therefore the current status was that a degree of protection is foreseen for geographic terms, for example, country names and capital city names and in certain languages, but that this remains an area of discussion, monitored by the GAC. The Secretariat noted that while there is discussion of protection of certain geographic terms, it is not clear that this is the case for geographical indications.

204. The Delegation of Japan expressed its thanks for the Secretariat's explanation of its contributions to ICANN and noted that national authorities remain interested in developments at ICANN, and requested the Secretariat to remain involved also within the ICANN GAC and to continue to take action and make proposals to ICANN for the purpose of protecting trademark rights.

205. The Delegation of Switzerland agreed with the expression of support by Japan for the Secretariat's work concerning ICANN, and encouraged the Secretariat to continue its work, and to monitor ICANN developments concerning trademarks and geographic names.

206. The Delegation of Germany agreed with the expression of support by Japan and Switzerland for the Secretariat's presentation of its work concerning ICANN, and acknowledged the order of topics mentioned: first, the Trademark Clearinghouse, next the URS, and finally the PDDRP. This order shows that even before a determination of potential liability relating to a domain name registrant or possibly a registry, there are potential problems, i.e., involving participation in the Clearinghouse. The Delegation noted the recently introduced problematic concept of Clearinghouse validation of marks for use as it would potentially have a broad impact on European and other trademark registrations where there is no such use examination prior to registration. Regarding the URS, in the view of the Delegation, as currently conceived by ICANN, it is not a truly rapid mechanism; also trademark owners would have to show that the registrant acted in bad faith which the Delegation viewed as problematic within the context of the URS. Next, the Delegation shared its view that the liability standard adopted by ICANN for the PDDRP was lax, and noted that it wished for the Secretariat to continue related work as relevant. Along with member States in the GAC, the Delegation would continue to support adequate protection of the rights of trademark owners. The Delegation queried how the SCT could contribute to the Secretariat's efforts, and noted that it would welcome further input concerning possible SCT contributions.

207. The Representative from ECTA noted that there was a need for effective protection of intellectual property rights in the DNS, and that despite strong industry concerns about the increase in rights violations, ICANN was planning on expanding the number of gTLDs. The Representative noted that significant controversy remained on the subject of new gTLDs, and that the most recent ICANN meeting saw the ICANN Board approve the launch of ".XXX" despite no active support from the ICANN's GAC. More generally, the Representative noted that ICANN will publish a final "Applicants Guidebook" for new gTLDs in May 2011, and that applications for new gTLDs are likely to start in the last

quarter of 2011. The Representative noted that ECTA and MARQUES had sent a letter on March 11, 2011, to the Chairs of the ICANN Board and GAC; this joint letter called on ICANN not to ignore the role of trademark experts. The Representative further noted that the Intellectual Property Constituency (IPC) of ICANN supported the ECTA/MARQUES call, but it seemed that ICANN ignored it. The Representative noted that finally, following this most recent ICANN meeting, ECTA and MARQUES again sent a further joint letter to the Chairs of the ICANN Board and GAC concerning the so-called GAC "scorecard" document. The Representative concluded by noting that in the view of ECTA, recording a trademark registration in ICANN's Trademark Clearinghouse should not be subject to proving use of that trademark, and that it was also concerned with details of the ICANN proposed URS mechanism.

208. The Representative from INTA joined with the Delegations of Japan, Switzerland, and Germany in commending the Secretariat's work in the area of Internet domain names including at ICANN, and reiterated INTA's serious concerns expressed at the last session of the SCT, and the firm position of INTA regarding ICANN's planned expansion of gTLDs, including on a number of fundamental issues which have been highlighted by the Secretariat and the Representative of ECTA but which have not been addressed by ICANN in a manner satisfactory to trademark owners.

209. The Secretariat clarified that concerning ICANN, it had merely the status of observer member of the GAC. As a consequence of ICANN's constituency structure, it appears in practice that a submission made by the WIPO Secretariat seemed to have no more weight than submissions made by any individual. The Secretariat also observed that many of the trademark concerns it had raised have been shared by the GAC, and that while the GAC does have a more formal advisory status within ICANN, formally the ultimate decision lies with the ICANN Board which has its own decision-making process. The Secretariat concluded by noting that ICANN's policy-making body, the Generic Names Supporting Organization (GNSO), is comprised largely of registration business interests, which interests accordingly appear to play a key role in shaping the outcomes of ICANN's processes.

210. The Chair concluded that SCT Members were invited to present proposals for the modalities of an information meeting on liability of Internet intermediaries to the Secretariat before the end of the month of May 2011. The Secretariat was requested to compile all suggestions received and to present them to the twenty sixth session of the SCT for consideration. The Chair further concluded that the Secretariat was requested to prepare a document for the twenty-sixth session of the SCT that would provide an update on developments in the context of the expansion of the DNS planned by ICANN.

SUMMARY OF THE REPLIES TO THE QUESTIONNAIRE CONCERNING THE PROTECTION OF NAMES OF STATES AGAINST REGISTRATION AND THE USE AS TRADEMARKS

211. Discussion was based on document SCT/24/6.

212. The Secretariat informed the Committee that document SCT/24/6 had been finalized with additional contributions from Canada, China (including Hong Kong SAR), Ireland and Republic of Korea and had been published on the WIPO website.

DRAFT REFERENCE DOCUMENT ON THE PROTECTION OF NAMES OF STATES AGAINST REGISTRATION AND USE AS TRADEMARKS

213. The discussion was based on document SCT/25/4.

214. The Delegation of Australia considered that document SCT/25/4 constituted a useful source of information regarding the protection of country names, and suggested that it be published on the WIPO website for reference purposes. During its twenty-fourth session, the SCT had agreed that document SCT/25/4 would be finalized and published for reference purposes, and that it would not pursue further work on this issue.

215. The Delegation of Jamaica wished to discuss the Committee's work concerning the protection of country names and stated that the questionnaire and its subsequent summary had been very helpful in confirming the Delegation's view that an amendment to Article 6*ter* of the Paris Convention should be further considered in order to fully protect country names against registration, without the permission of the country concerned. The Delegation added that the questionnaire had revealed the absence, in some jurisdictions, of legislation preventing the use or the registration of marks containing country names, and further observed that the effect of the relevant legislations that existed in most jurisdictions was to limit the scope of protection of such names as the legislations allowed, for example, the registration of country names when the names were not considered as a dominant element of the mark, or as an indication or source of origin; or when the names indicated the quality of the goods or services for which the mark was used. The Delegation observed that, although according to the returns referred to in document SCT/25/4 over half of the jurisdictions generally excluded country names from their registration process, such a figure represented only half of the jurisdictions that had responded to the questionnaire, and many exceptions permitting the registration of country names existed within certain of the said jurisdictions. The Delegation considered that such a situation did not represent a complete protection of country names against registration and use as trademarks. The Delegation asked the Committee to reexamine the topic under consideration by taking into account the objectives of the WIPO Development Agenda, and to recognize that for certain States, including Jamaica, the country name was a precious commodity that had to be protected. The Delegation, referring to capital and human resources constraints, explained that Jamaica had to rely considerably on its brand, which was heavily marketed by its people. The Delegation, considering the importance of reaching an agreement at the international level on this matter, suggested that further work and discussion, including on an eventual amendment of Article 6*ter* of the Paris Convention be continued at the next session of the SCT.

216. The Delegation of Japan supported the statement made by the Delegation of Australia, and considered that document SCT/25/4 was a useful and comprehensive source of information on the law and practice of member States relating to the protection of country names. The Delegation proposed that the work of the Committee on this matter be concluded.

217. The Delegation of Switzerland, mentioning that a number of points required further clarification, considered that document SCT/25/4 could not constitute a final reference document. The Delegation wished to have during the next session of the SCT additional detailed information on systems relating to the registration and use of country names, including examples of trademark registrations consisting of country names or containing such names as elements of the mark, where the goods covered by the mark did not originate in those countries. In addition, the Delegation wished to receive detailed information about countries which require authorization prior to the registration or use of such marks.

218. The Delegation of Germany supported the statements made by the delegations of Australia and Japan, and considered that document SCT/25/4 should be published for reference purposes, and that the discussion on this issue should be concluded.

219. The Delegation of Italy, referring to high quality Italian products, conveyed its appreciation for the fact that a big percentage of returns to the questionnaire excluded country names

from registration as trademarks, noting that such names could often be considered misleading or deceptive as to the nature or origin of the goods whose source was not certain.

220. The delegations of Denmark, France, Norway, Sweden, Turkey, the United Kingdom and the Representative of the European Union expressed support for the declaration made by the Delegation of Australia.

221. The Delegation of Spain requested to replace in paragraph (20) of the Spanish version of document SCT/25/4 the words “incorrect character of the mark” with the word “deceptive”, considering that the latter included the former.

222. The Delegation of Switzerland explained that the term “incorrect” had been used in the questionnaire to refer to cases where registration was refused because the product did not originate from the country concerned, and added that the deceptive or misleading character of a mark was dealt with in the following items of the questionnaire.

223. The Delegation of Spain acknowledged the explanation given by the Delegation of Switzerland, but noted that the term “incorrect” in this context, was not found in the Trademark terminology in Spanish.

224. The Delegation of Jamaica requested that a mention be made in document SCT/25/4 to the effect that the returns to the questionnaire did not reflect the practice of all 184 WIPO member States.

225. The Delegation of Cuba expressed the view that the protection of country names should remain on the Agenda of the SCT in order to better understand the problems faced by some countries.

226. The Delegation of the United States of America recalled the existence of international obligations concerning geographical terms, and indicated that country names were protected against misleading, confusing or deceptive uses. The Delegation, observing that country names were in the public domain, considered that additional work on this item would go beyond the scope of industrial property, and supported the proposal to publish document SCT/25/4 and close the related Agenda item.

227. The Delegation of Barbados considered that document SCT/25/4 constituted an analysis on the protection of country names in 38% of WIPO member States that responded to the questionnaire, and that it could not be understood as presenting a comprehensive picture on this topic in all WIPO member States. The Delegation observed that the document reflected the *status quo* adopted by certain member States, and declared that the SCT should not endorse the *status quo* as being a sufficient response to problems faced by some States, such as Barbados, regarding the use of country names without the authorization of a competent authority in the country concerned. The Delegation suggested that the Secretariat prepare a document which would help member States in determining how to protect more effectively country names. The Delegation recalled that during the twenty-third session of the SCT it had made a detailed statement on the protection of country names, and that it had noted, *inter alia*, at that time that the efforts of the Barbados Government to use intellectual property as a tool for economic development were being undermined as a result of the use, in countries where more favorable economic conditions existed, of the Barbados name by manufacturers for product branding purposes. The Delegation, referring to a project on intellectual property and product branding for business development in developing countries and least-developed countries presented by the Secretariat in the Committee on Development and Intellectual Property, observed that products from different regions of the world were increasingly enjoying prestige and international recognition due to the registration and use of names of other countries, including Barbados, as trademarks. The Delegation noted that such registration and use were detrimental to its manufacturers which may be unable to register a trademark, including the Barbados name, in such countries in relation to goods in the same class. The Delegation proposed that the Secretariat prepare for the next session of the SCT a document focusing on issues relating to a more effective protection of country names against registration and use as trademarks, including the

strengths and weaknesses of various existing legal rules. The Delegation further suggested that the document examine the relationship between, on the one hand, the protection of country names and, on the other hand, the WIPO national branding initiative and the protection of traditional cultural expressions. The Delegation hoped the Secretariat would address as well the modalities relating to the protection of country names as domain names.

228. The Chair pointed out that the Committee was not requested to take a decision on document SCT/25/4, rather to consider its content. The Chair noted that various delegations suggested that no further work was required in this area.

229. The Representative of ECTA declared that country names should not be used as trademarks in specific cases, including when considered deceptive, descriptive, or of a misleading character. The Representative, referring to collective marks, added that in certain circumstances country names should remain available to the public. The Representative observed that country names could occasionally be generic and be used as trademarks, and mentioned, by way of example, the words “Panama” and “Bermuda” used, respectively, for hats and shorts. The Representative further pointed out to certain translation problems, including the issue whether a translation in any language of a country name should always be refused. The Representative finally referred to cases where country names were used as adjectives, or were slightly modified.

230. The Representative of CTA specified that Chinese law rigorously prohibited the registration and use of country names as trademarks, unless such registration and use were expressly authorized by the country concerned.

231. The Chair concluded that document SCT/25/4 would be kept open for further comments to be provided by SCT members through the SCT Electronic Forum. The Secretariat was requested to revise document SCT/25/4 based on the comments received, and to present a revised version at the twenty-sixth session of the SCT for consideration.

Agenda Item 8: Geographical Indications

232. The Chair noted that no intervention was made under that Agenda item.

Agenda Item 9: Work of the SCT

DEVELOPMENT AGENDA

233. The Delegation of Brazil, speaking on behalf of the DAG, recalled that, according to the General Assembly’s decision on coordination mechanisms and monitoring, assessing and reporting modalities, the SCT shall include in its annual report to the Assemblies a description of the SCT’s contribution to the implementation of the Development Agenda Recommendations. To this end, the DAG would like to make some comments on how the SCT is contributing to the implementation of the Development Agenda, especially in regard of Cluster B of the Development Agenda. The Delegation pointed out that the SCT had used questionnaires to identify areas related to trademark, industrial designs and geographical indications that may deserve the attention of delegations, and added that in some cases and after the questionnaires have asserted the legal framework in different jurisdictions, the SCT advanced to identify areas of convergence and divergence and considered the possible next steps. The DAG expressed its belief that the sheer fact that there are convergences in one specific issue amongst member States does not necessarily mean that norm-setting activities are either needed or desirable and that any such initiative should be preceded by open and inclusive discussions among member States about the desirability and need for norm-setting in the first place; only after there is a broad agreement on the end goals of the exercise should text-based discussions be initiated. The DAG pointed out that it is precisely these concerns that Recommendations 15, 17, 21 and 22 of the Development Agenda seek to address, and noted that

Recommendation 21 determines that any new norm-setting activity shall be preceded by informal, open and balanced consultations through a member-driven process, promoting the participation of experts from member States. The DAG expressed its opinion that this process should enable all members, in particular developing countries, to make a conscious decision on whether the proposed norm-setting activity meets with their national interest and needs. The Delegation added that once members have agreed to the need of norm-setting Recommendation 15 dictates that these activities shall: i) be inclusive and member-driven; ii) take into account different levels of development; iii) take into consideration a balance between costs and benefits; iv) be a participatory process, which takes into consideration the interests and priorities of all WIPO member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations (IGOs) and non-governmental organizations (NGOs); and be in line with the principle of neutrality of the WIPO Secretariat. The Delegation stated the flexibilities in international intellectual property agreements should also be taken into account, especially those which are of interest to developing countries and LDCs, as prescribed by Recommendation 17, and be supportive of the Development Goals agreed within the United Nations system, including those contained in the Millennium Declaration, as prescribed in Recommendation 22. In this regard, the DAG commended the SCT members' decision to take the time to listen to different opinions and views on the relationship between Trademarks and the Internet, as this is in accordance with the Development Agenda Recommendations on norm-setting. The DAG indicated it felt that if the same preparatory work had been conducted in relation to Industrial Designs, members would now be better equipped to evaluate whether the proposed draft provisions correspond to their national development needs.

234. The Delegation of India, taking note of the intervention by the Delegation of Brazil, expressed its satisfaction to see this agenda item inscribed for discussion, so as to enable the SCT to comply with the General Assembly's directive to report to it on how it is mainstreaming the Recommendations of the Development Agenda in its work. The Delegation pointed out that, in its view, the Development Agenda of WIPO was not a set of Recommendations that stand in splendid isolation and meant to be discussed only in the Committee on Development and Intellectual Property (CDIP) and that the Development Agenda was adopted by all WIPO member States in recognition of the fact that developmental considerations ought to form an integral part of WIPO's work in every Committee and in all areas of its work, recognizing that all processes, decisions and outcomes that result from the work in WIPO have inherent developmental implications and these ought to be factored into our consideration. The Delegation of India expressed its view that the consideration of how the SCT is integrating this aspect in its work is especially significant in view of the substantive discussions in the SCT and the specific proposal for norm-setting in the area of Industrial Design law and practice. With regard to whether the discussions so far in this Committee, especially the draft text on Industrial Design procedures, have been aligned with the Development Agenda, the Delegation of India supported the statement made by the Delegation of Brazil on behalf of the DAG. The Delegation of India stated its view that, prior to making provisions for convening a Diplomatic Conference, which is the very last step in a treaty-making process, there should be focused discussions to see whether there is agreement among all WIPO member States about the need for new norm-setting in this area. This is especially important in the Industrial Designs area, where there is a great diversity in member States' systems of protection and where developing countries are not the key beneficiaries of existing international agreements on Industrial Design protection. The Delegation of India mentioned that out of the 58 member States of the Hague system, nearly 88% of the international registrations made under the system belong to only 3 developed countries and the European Community, while there are 29 developing countries and LDCs that do not have a single registration. In the Delegation's view, developing countries and LDCs that are party to the Hague system have not been able to benefit from the unified procedures under the system. The Delegation expressed its belief that it is unclear how they would benefit from the proposed new treaty seeking to harmonize the maximum criteria that national offices can request from applicants. The Delegation stated that while it is evident that foreign applicants, particularly those interested in filing in multiple jurisdictions would benefit from the harmonized application requirements, the issue as to whether this would result in significant benefits to national

applicants from developing countries needs to be closely examined. In the Delegation's view, given the existing diversity among national systems in the area of Industrial Designs, the fact that countries would be required to make substantial changes to their national laws to harmonize procedures makes it all the more necessary to have a clear understanding of its developmental implications before proceeding further with norm-setting. The Delegation of India suggested that, as mandated by the Development Agenda Recommendations 15 and 22, the Secretariat prepares a working document for the next SCT session outlining the costs and benefits taking into account the different levels of development. As stipulated in the Development Agenda Recommendation 22, this document should also address whether the proposed norm-setting is "supportive of the development goals agreed within the United Nations system, including those contained in the Millennium Declaration" and explore the "possibility of additional special provisions for developing countries and LDCs". In the Delegation's view, any discussion on future work in the area of Industrial Designs, including consideration of the need for norm-setting and the kind of norm-setting required, should be a better informed discussion that takes into account the above-mentioned considerations of the Development Agenda. To this end, the Delegation mentioned that Member-driven, open consultations should be convened wherever appropriate, as stated in Recommendation 21, which reads, "WIPO shall conduct informal, open and balanced consultations, as appropriate, prior to any new norm-setting activities, through a member-driven process, promoting the participation of experts from member States, particularly developing countries and LDCs". To conclude, the Delegation of India said that the Recommendations of the Development Agenda were not merely symbolic; they were adopted in the wake of a series of unsuccessful norm-setting initiatives in other WIPO Committees and with a view to better guiding future norm-setting processes and steering them towards successful outcomes. The Delegation stated that it was in this spirit that it made its suggestion, as it firmly believed that adopting the transparent, inclusive and participatory approach outlined by the Development Agenda would facilitate consensus building and smooth and efficient progress in the work of the Committee, by making sure that time and energy is well-spent in terms of progressing work in an incremental fashion while taking all Members on board towards a clear and commonly agreed goal.

235. The Delegation of Philippines, mindful of the decision of the 2010 WIPO General Assemblies on Coordination Mechanisms and Monitoring, Assessing and Reporting, namely, document WO/GA/39/7, which was clearly premised in the fact that the Development Agenda is intended to ensure that development considerations form an integral part of WIPO's work, expressed its view that this Committee, as a relevant body of WIPO, should include in its annual report to the Assemblies a description of its contribution to the implementation of the Development Agenda where it identifies the ways in which the said Recommendations have been mainstreamed in its work. The Delegation of Philippines indicated its support for the interventions made by the Delegations of Brazil and India and stated that, without intending to create any hierarchy of importance among the 45 Development Agenda Recommendations, it was its belief that it is noteworthy and timely for this Committee to asses how it has implemented Cluster B Recommendations on norm-setting, flexibilities, public policy and public domain of the Development Agenda *vis-à-vis* the discussion on Industrial Designs. The Delegation recalled that Cluster B, particularly Recommendations 15, 17, 21 and 22, provide the fundamental elements attendant to all norm-setting activities in WIPO. The Delegation of the Philippines expressed its belief that it is important to have a cost-benefit assessment on norm-setting, as indicated clearly on the Development Agenda Recommendations. In good faith, member States shared information on its laws, regulations, and practices on Industrial Designs Law by replying to the questionnaires prepared by the Secretariat, and participated in relevant discussions during previous SCT sessions. The Delegation recalled that, during the twenty-first Session of the SCT in June 2009, the Secretariat was requested to prepare a working document based on the information and comments provided by delegations regarding their respective State practice with the understanding that the preparation of the revised working document was "without prejudice to the position delegations may have with regard to any possible area of convergence on industrial design law and practice", which was reflected in paragraph (8) of the Chair's Summary of the twenty-first SCT and paragraph (139) of the twenty-first SCT Report. The Delegation of the Philippines acknowledged the efforts of

the Secretariat in preparing the questionnaires, but said there was neither a clear understanding among member States as to what the questionnaires purported apart from information-sharing purposes nor was there even an implicit understanding on the part of member States to advance discussions with the end in view of negotiating an instrument on Industrial Designs. The Delegation of the Philippines indicated its view that if the intention was to commence discussion on possible norm-setting activities in the field of Industrial Design Law, then it would be imperative to conduct preliminary, informal, open, balanced and member-driven consultations as provided under the Development Agenda, as a means to attain a cost-benefit analysis of the potential impact that such an endeavor may have on Member countries, particularly developing countries and LDCs. In the Delegation's view, this is important because of the varying levels of development among member States and it is particularly significant because a considerable number of developing countries and LDCs are not States Party to any or all of the international instruments on Industrial Design Law.

236. The Delegation of South Africa, supporting the declarations of the Delegations of Brazil India and the Philippines, reiterated that the aim of this important exercise under this agenda item was to compile the views of member States on the implementation of the Development Agenda Recommendations in the SCT. The Delegation considered that the discussion of norm-setting in Industrial Design Law should be member-driven, transparent, and with enough information at the disposal of the member States so that the delegations may first familiarize themselves with the work and then move further to help in a concrete manner.

237. The Delegation of Cuba supported the declarations by the delegations of Brazil and India and the Philippines and indicated that it considers important, from the offset of the discussions, that countries give their opinions, continue to analyze the document, and exchange experiences. The Delegation expressed its view that delegations need to have more solid information for analysis before engaging in harmonization and pointed out that there are many examples as to why developing countries need this. The Delegation of Cuba recalled that some of the present delegations were able to participate in the meetings that preceded the signing of the Singapore Treaty, while some where not able to do so, and that many countries involved understood the need to converge and not to resist the inclusion of certain elements; but some delegations, for different circumstances, were not able to accede to the Treaty and therefore the people in their country were not able to benefit from those provisions. In the view of the Delegation, part of the reason why countries were not able to sign the Treaty was because the Committee did not carry out enough thorough analysis of countries' needs and requirements before the treaty was agreed. The Delegation of Cuba stated that this problem needs to be born in mind, in order to avoid users in member States from not being able to participate again in a future treaty because their needs are not properly taken into account in the run-up discussions to the agreeing of that treaty, which is when the content of the treaty is determined. For the Delegation, having harmonization instruments is acceptable only if those instruments meet the concerns of member States; otherwise some may not be able to accede and enjoy the benefits. The Delegation concluded that the SCT needs to thoroughly analyze all aspects before taking a decisive step forward.

238. The Delegation of India, taking into account that this is the last meeting of the SCT before the General Assembly meets in September-October, stated that the Committee should report to the General Assembly the current discussion under this agenda item. The Delegation mentioned that the Secretariat had previously prepared a document saying how the proposed initiatives in this Committee and the ongoing discussion on Industrial Designs would benefit users and Industrial Design national offices. The Delegation sought to clarify that the document suggested under this agenda item would be on the same lines of the mentioned previous document, which the Secretariat could modify by outlining the developmental implications of this Industrial Design law initiative and present for the next session of the SCT. The Delegation further elaborated on its clarification by stating that the document would not detail the current process, mainly because the SCT had already engaged in this exercise, which resulted in a more refined document after delegations had presented their comments. The Delegation of India expressed its certainty that the time will come when the issue is mature enough for all delegations to sit

together and decide the next steps. To conclude, the Delegation stated that its suggestion was, as required by the Development Agenda prior to any norm-setting exercise, for the Secretariat to prepare a document outlining developmental considerations and present it at the next session of the SCT, as it would help the discussion and perhaps bring more clarity to the questions that some delegations had raised.

239. The Delegation of Germany stated that it did not find it surprising that there was not one individual, coherent view of the statements that had been presented and noted that there were many differences. The Delegation indicated that there were two main approaches: first, the approach presented by the Delegation of Brazil, which stated that Members should express their views on how developmental issues are dealt within the SCT and then such views would be communicated to the General Assembly; and second, the approach presented by the Delegation of India, which stated that there should be a cost-benefit analysis and that the competence for addressing such analysis lies with the Secretariat. The Delegation of Germany expressed that it trusted that the Secretariat would perform the mentioned task in a very good and neutral way, should such responsibility be delegated to it. The Delegation said that this second approach is very different from the first one, which states that it would be the member States, and not the Secretariat, who would indicate what is and what is not good for them and in what way they see that there is a potential deficiency in implementing developmental issues. The Delegation of Germany expressed its preference for States acting as their own advocates, presenting their own views. At the same time, the Delegation stated that the discussions on the potential Industrial Design Law Treaty had given ample opportunity for developing and developed States to say in what way the suggested clauses were good or not so good for them. The Delegation declared that it would be satisfied if, in the future, developing States would indicate if a developing issue arises from one of the clauses of the text being discussed; such discussion should take place at that moment, not on the basis of other, more general papers. If a paper was to be prepared by the Secretariat, the Delegation of Germany reiterated it believed the responsibility would not be lying on developing countries themselves, but it would be delegated.

240. The Delegation of Brazil referred to the Decision of the General Assembly in 2010 and stated that in that decision there is no detailed process on how the relevant reporting should take place. Since approved last September, delegations have discussed how this reporting should take place; and during the last session of the Advisory Committee on Enforcement (ACE) an *ad-hoc* process was agreed, which is the process the Delegation of Brazil was suggesting to duplicate in the SCT as it considered it to have been a successful endeavor. The Delegation of Brazil explained that, according this *ad-hoc* process, an item should be included in the agenda for all delegations to freely express their views on how the Committee is implementing the Recommendations of the Developing Agenda so that then the Secretariat summarized the views presented and sent its report to the General Assembly. The Delegation recapitulated that its own Delegation, along with the delegations of the Philippines, India and South Africa, had already expressed its views on this matter. The Delegation noted that a separate issue was that of having a study on the cost-benefit analysis, and in this regard it declared that it could be useful and, if all countries agreed, the Delegation of Brazil was open to that suggestion.

241. The Delegation of France declared in response to the statement made by the Delegation of Brazil that it had a slightly different point of view because when this item was introduced in the Agenda at the beginning of the session, the Delegation of France had specified it agreed to its inclusion as long as it would not have value as a precedent, whether it was in the framework of this Committee or in another Committee, such as the ACE.

242. The Delegation of Australia expressed its belief that there was some confusion on what was being suggested, but stated it agreed with the suggestion by the Delegation of Brazil as it complies with the instructions from the General Assembly. Regarding the suggestion by the Delegation of India, the Delegation of Australia suggested it might be better to do one thing at a time and therefore wait until the next session.

243. The Delegation of Egypt expressed its view that a norm-setting activity should be preceded by an analysis of the benefits that would be received by the States that would undertake such activity. The Delegation commented that it was quite normal that developing countries and least developed countries ask for a more in-depth study about the impact these new norms would have at a developmental level, and stated its belief that the Secretariat is perhaps amongst the most capable to carry out this work, which would be presented at the next session of the SCT. Further, the Delegation indicated that it considered it was not acceptable to oppose to what the Delegation of India proposed, as it is normal that developing countries wish to know what will be the effects these new norms would have on their development, particularly as this is contained in the Development Agenda.

244. The Delegation of Iran (Islamic Republic of) supported the request of the Delegation of India as it too preferred to see a separate document from the Secretariat on the developmental impact of the new treaty and annexed to the draft Industrial Design Law provisions in order to let developing countries make an informed decision on moving toward a diplomatic conference on this matter.

245. The Chair noted that a number of delegations made declarations under that Agenda item on the contribution of the SCT to the implementation of the WIPO Development Agenda. He stated that all declarations would be recorded in the report for the twenty-fifth session of the SCT and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

246. The Chair also noted that the Secretariat was requested to present an information document to the twenty-sixth session of the SCT on how the Development Agenda Recommendations, in particular Cluster B, were mainstreamed with regard to the work of the SCT on industrial design law and practice.

Agenda Item 10: Summary by the Chair

247. The SCT approved the Summary by the Chair as contained in Annex I of the present document.

Agenda Item 11: Closing of the session

248. The Chair closed the session on April 1, 2011.

[Annexes follow]

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WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

SCT/25/6
ORIGINAL: ENGLISH
DATE: APRIL 1, 2011

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

Twenty-Fifth Session
Geneva, March 28 to April 1, 2011

SUMMARY BY THE CHAIR

adopted by the Committee

Agenda Item 1: Opening of the Session

1. Mr. Francis Gurry, Director General of WIPO opened the twenty-fifth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

2. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

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

3. Mr. Park Seong-Joon (Republic of Korea) was elected Chair and Mr. Imre Gonda (Hungary) and Mrs. Karima Farah (Morocco) were elected Vice-Chairs of the Committee.

Agenda Item 3: Adoption of the Agenda

4. The Delegation of Brazil, speaking on behalf of the Development Agenda Group (DAG), proposed the addition of a new item to the draft Agenda entitled "Work of the SCT", under which the SCT could discuss its contribution to the implementation of the Development Agenda Recommendations, in accordance with the decision on Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities by the WIPO General Assembly.

5. The Delegation of France, speaking on behalf of Group B, said that it could agree to that proposal, it being understood that this point would not become a permanent item on the Agenda, that it would be without prejudice to future work and would not set a precedent.

6. The SCT adopted the Draft Revised Agenda (document SCT/25/1 Prov.2) with the addition of a new item 9 entitled "Work of the SCT".

Agenda Item 4: Accreditation of a Non-Governmental Organization

7. Discussion was based on document SCT/25/5.

8. The SCT approved the representation of the American Bar Association (ABA) in sessions of the Committee.

Agenda Item 5: Adoption of the Revised Draft Report of the Twenty-Fourth Session

9. Discussion was based on document SCT/24/8 Prov.2.

10. The SCT adopted the Revised Draft Report of the twenty-fourth session based on document SCT/24/8 Prov.2. with amendments as requested by the Delegations of the Czech Republic, Spain and Switzerland.

Agenda Item 6: Industrial Designs

Industrial Design Law and Practice-Draft Provisions

11. Discussion was based on document SCT/25/2.

12. The SCT considered document SCT/25/2 in detail.

13. The Chair concluded that all comments and requests for clarification would be recorded in the report of the twenty-fifth session. The Secretariat was requested to prepare a revised working document for consideration at the twenty-sixth session of the SCT. That document should reflect all comments made at the present session and highlight the issues that needed more discussion. Furthermore, delegations were requested to consult extensively with national user groups in order to obtain their views and to inform the work of the Committee. A substantive portion of the twenty-sixth session will be dedicated to work on industrial designs.

14. As regards the continuation of the work on the law of industrial designs, the Chair noted that the SCT had well advanced in its work on the draft provisions on industrial design law and practice. The Chair further noted that a number of delegations had reiterated their request for recommending to the Assemblies the convening of a diplomatic conference for the adoption of a design law treaty as soon as possible. Other delegations were of the view that more time for further work was needed and recommending the holding of a diplomatic conference at the present session was premature. The Committee was in agreement that as a

possible path to move ahead, a diplomatic conference for the adoption of a design law treaty could be convened once sufficient progress has been made and the time was ripe for recommending the holding of such a diplomatic conference.

Agenda Item 7: Trademarks

Trademarks and the Internet

15. Discussion was based on document SCT/25/3.

16. The Chair concluded that SCT Members are invited to present proposals for the modalities of an information meeting on liability of Internet intermediaries to the Secretariat before the end of the month of May 2011. The Secretariat was requested to compile all suggestions received and to present them to the twenty-sixth session of the SCT for consideration.

17. The SCT took note of a presentation by the Secretariat on recent trademark-related developments in the context of the expansion of the Domain Name System planned by the Internet Corporation for Assigned Names and Numbers (ICANN).

18. The Chair concluded that the Secretariat was requested to prepare a document for the twenty-sixth session of the SCT that would provide an update on developments in the context of the expansion of the Domain Name System planned by the Internet Corporation for Assigned Names and Numbers (ICANN).

Draft Reference Paper on the Protection of Names of States Against Registration and Use as Trademarks

19. Discussion was based on document SCT/25/4.

20. The Chair concluded that document SCT/25/4 would be kept open for further comments to be provided by SCT Members through the SCT Electronic Forum. The Secretariat was requested to revise document SCT/25/4 based on the comments received and to present it to the twenty-sixth session of the SCT for consideration.

Agenda Item 8: Geographical Indications

21. The Chair noted that no intervention was made under that Agenda item.

Agenda Item 9: Work of the SCT

22. The Chair noted that a number of delegations made declarations under that Agenda item on the contribution of the SCT to the implementation of the WIPO Development Agenda. He stated that all declarations would be recorded in the report for the twenty-fifth session of the SCT and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

23. The Chair also noted that the Secretariat was requested to present an information document to the twenty-sixth session of the SCT on how the Development Agenda Recommendations, in particular Cluster B, were mainstreamed with regard to the work of the SCT on industrial design law and practice.

Twenty-Sixth Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT/26)

24. The Chair announced the week from October 24 to 28, 2011, as tentative dates for SCT/26.

Agenda Item 10: Summary by the Chair

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

Agenda Item 11: Closing of the Session

26. The Chair closed the session on April 1, 2011.

[Annex II follows]

LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

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

AFRIQUE DU SUD/SOUTH AFRICA

Fleurette COETZEE (Ms.), Senior Manager, Trade Marks Division, Companies and Intellectual Property Registration Office (CIPRO), Department of Trade and Industry (DTI), Pretoria <fcoetzee@cipro.gov.za>

Elena ZDRAVKOVA (Ms.), Senior Manager Patents and Designs, Companies and Intellectual Property Registration Office (CIPRO), Department of Trade and Industry (DTI), Pretoria <ezdravkova@cipro.gov.za>

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ALGÉRIE/ALGERIA

Boumediene MAHI, conseiller, Mission permanente, Genève

Hayet MEHADJI (Mme), premier secrétaire, Mission permanente, Genève

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Thorsten HAEBERLEIN, State Attorney, Federal Ministry of Justice, Berlin <haeberlein-th@bmj.bund.de>

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ANGOLA

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

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Association communautaire du droit des marques (ECTA)/European Communities Trade Mark Association (ECTA)
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Association de l'industrie de l'informatique et de la communication (CCIA)/Computer and Communications Industry Association (CCIA)
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Association des propriétaires européens de marques de commerce (MARQUES)/Association of European Trademark Owners (MARQUES)
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Association européenne des étudiants en droit (ELSA international)/European Law Students' Association (ELSA International)
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Marzia IOSINI, Milan
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Association interaméricaine de la propriété industrielle (ASIPI)/Inter-American Association of Industrial Property (ASIPI)
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Association japonaise des conseils en brevets (JPAA)/Japan Patent Attorneys Association (JPAA)
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Internet Society (ISOC)
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Organisation pour un réseau international des indications géographiques (oriGIn)/Organization for an International Geographical Indications Network (oriGIn)
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Union des praticiens européens en proprieté industrielle (UNION)/Union of European Practitioners in Industrial Property (UNION)
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IV. BUREAU/OFFICERS

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	Karima FARAH (Mme) (Maroc/Morocco)
Secrétaire/Secretary:	Marcus HÖPPERGER (OMPI/WIPO)

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

Francis GURRY, directeur général/Director General

WANG Binying (Mme/Mrs.), vice-directrice générale/Deputy Director General

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