

## **WIPO General Assembly**

### **Forty-Seventh (22<sup>nd</sup> Ordinary) Session Geneva, October 5 to 14, 2015**

#### **MATTERS CONCERNING THE CONVENING OF A DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A DESIGN LAW TREATY (DLT)**

*Document prepared by the Secretariat*

1. At its forty-first (21<sup>st</sup> extraordinary) session, held in Geneva from October 1 to 9, 2012, the World Intellectual Property Organization (WIPO) General Assembly adopted the following text (document WO/GA/41/18, paragraph 231):

“The WIPO General Assembly notes the Summary by the Chair of the twenty-seventh session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), and the progress made by the SCT on industrial design law and practice - draft Articles and Regulations.

“Recognizing the importance for all member States of a Design Law Treaty, the General Assembly urges the SCT to expedite in a committed manner work with a view to advance substantially the basic proposals for a Design Law Treaty (draft Articles and Regulations contained in revised Annexes of documents SCT/27/2 and SCT/27/3).

“In its work, consideration will be given to include appropriate provisions regarding technical assistance and capacity building for developing countries and LDCs in the implementation of the future Design Law Treaty.

“The General Assembly in 2013 will take stock of and consider the text, progress made, and decide on convening a diplomatic conference.”

2. The twenty-eighth session of the SCT (December 10 to 14, 2012) was entirely dedicated to industrial design law and practice in order to advance the basic proposals for a Design Law Treaty (draft Articles and Regulations), taking into account the text adopted by the WIPO General Assembly referred to in paragraph 1, above.

3. At that session, the SCT considered a set of revised draft Articles and draft Rules on Industrial Design Law and Practice, as well as a document providing an overview of technical assistance and capacity building provisions in WIPO-administered treaties (document SCT/28/4). At the outcome of the session, the Committee requested the Secretariat to revise document SCT/28/4 by including the text of the provisions on financial assistance to facilitate participation in relevant Assemblies in the treaties referred to in Section I of document SCT/28/4 and to provide detailed information concerning the current practice, in WIPO, of financing the participation of delegations in meetings of the Assemblies of treaties administered by WIPO (document SCT/28/7, paragraph 10). The revised document, containing the detailed information requested, was presented to the twenty-ninth session of the SCT as document SCT/28/4 Rev.
4. In addition, at the twenty-eighth session, two proposals on technical assistance and capacity building were presented, namely by the African Group (document SCT/28/5) and by the Delegation of the European Union (document SCT/28/6).
5. Finally, at the outcome of the twenty-eighth session, the Chair concluded “that, without prejudice to the work on the draft Design Law Treaty, the Secretariat was requested to extend for an additional period of two months the surveys that were conducted in preparing the Study [on the Potential Impact of the Work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) on Industrial Design Law and Practice] (document SCT/27/4), in order to increase the available data sample by way of new responses, as well as by way of the possibility of amending or completing earlier responses. The Study should be updated for consideration of the SCT at its twenty-ninth session, taking into account additional replies received. The general structure of the Study should be maintained” (document SCT/28/7, paragraph 11).
6. Accordingly, the two surveys were made again available to offices and applicants from January 7 to March 7, 2013. The additional responses yielded through the extended circulation of the surveys were used to update the original study in the form of an Addendum to document SCT/27/4 (document SCT/27/4 Add.), which was submitted to the twenty-ninth session of the SCT. The additional responses corroborated the conclusions presented in the original study, and were thus useful in building further confidence in the results. Overall, the results of the Study indicate that respondents in all countries believe that the proposed changes in the draft Articles and Rules would result in improvements and positive benefits for applicants/users. In addition, the results show that in middle and low-income countries, there is a perceived need for support in the form of technical assistance and capacity building, in order to facilitate the implementation of the proposed changes.
7. At its twenty-ninth session (May 27 to 31, 2013), the SCT reviewed in detail the revised draft Articles and Rules contained in documents SCT/29/2 and 3. As regards technical assistance and capacity building, three proposals were considered by the SCT at that session, namely one by the African Group (document SCT/28/5), one by the European Union and its member states (document SCT/29/6), superseding the proposal made at the twenty-eighth session (document SCT/28/6), and one by the Republic of Korea (document SCT/29/8). A non-paper combining elements from the three proposals was presented by the Chair and discussed by the SCT. Following that discussion, the Secretariat was requested to prepare revised working documents for consideration of the SCT at its thirtieth session, including a draft Article or Resolution in square brackets, based on the Chair’s non-paper (document SCT/29/9, paragraph 9). The draft Article or Resolution was included in the revised working document containing draft Articles (document SCT/30/2) which was considered by the SCT at its thirtieth session, held from November 4 to 8, 2013. Footnotes to the draft Article indicated that the draft Article was proposed by the Chair, and that some delegations would prefer the subject matter of the draft Article to be covered by a Resolution.

8. At the outcome of the twenty-ninth session of the SCT, the Chair concluded that “the SCT had made good progress on the draft Articles and draft Rules included in documents SCT/29/2 and 3 and that the work on technical assistance and capacity building had advanced. A number of delegations stated that sufficient progress had been made by the SCT to recommend to the WIPO General Assembly the convening of a diplomatic conference in 2014. Other delegations, expressing the view that there was a need for more progress on technical assistance and capacity building in order to reach a concrete outcome, were of the opinion that the General Assembly would take stock of and consider the text, progress made, and decide on convening a diplomatic conference” (document SCT/29/9, paragraph 10).

9. The thirtieth session of the SCT (November 4 to 8, 2013) reviewed in detail all provisions included in documents SCT/30/2 and 3 which were presented in the form of alternative options, or for which footnotes indicated proposals or reservations of individual delegations. All member delegations and representatives of observer organizations that made general statements at the thirtieth session expressed broad support for the work of the SCT on design law and practice and the conclusion of this work in the form of a Design Law Treaty. All delegations expressed support, in principle, for making available technical assistance and capacity building measures to developing countries and least developed countries (LDCs) in the context of the implementation of the future Treaty.

10. The Chair noted (see document SCT/30/8, paragraphs 10 to 12) that the SCT had made further progress on the draft provisions that it had considered and requested the Secretariat to prepare revised working documents for consideration of the SCT, or a possible preparatory conference, as the case may be, which should reflect all comments made at the present session in the following form: provisions for which alternative options existed would be redrafted in accordance with the decision taken by the Committee; individual proposals presented in footnotes for which there was support by other delegations would be elevated into the text and presented in square brackets with an indication of the delegations having supported the proposal; individual proposals for which there was no support would remain in footnotes; reservations to provisions would be recorded in the form of footnotes.

11. With regard to technical assistance, the Chair noted that progress was made on the provisions in draft Article 21/Resolution and requested the Secretariat to reflect the new draft Article 21/Resolution in the revised working document.

12. Concerning the convening of a diplomatic conference for the adoption of a Design Law Treaty, the Chair noted that all delegations that had taken the floor were in favor of convening such a diplomatic conference. A large number of delegations was of the view that an agreement to address technical assistance in the form of an article in the treaty had to be reached prior to convening such a diplomatic conference. Other delegations were of the view that the SCT could already recommend to the General Assembly the convening of a diplomatic conference. Among the latter, a number showed flexibility as to whether technical assistance should be addressed in a resolution or an article, whereas one delegation was of the view to defer this matter to the diplomatic conference itself.

13. Subsequently to the holding of the thirtieth session of the SCT, the forty-fourth (23<sup>rd</sup> extraordinary) session of the WIPO General Assembly, held in Geneva from December 10 to 12, 2013, gave consideration to the convening of a diplomatic conference for the adoption of a Design Law Treaty.

14. At that session, the WIPO General Assembly decided that it:

“(a) requests the SCT to finalize its work on the text of the basic proposal for a Design Law Treaty building upon the outcome of the thirtieth session of the SCT;

“(b) will at the Extraordinary Session of the General Assembly in May 2014 take stock of, and consider, the text, progress made, and decide on whether to convene a diplomatic conference in 2014 in Moscow. If the Extraordinary Session of the General Assembly in May so decides, a preparatory committee will be held immediately after that session of the General Assembly (document WO/GA/44/6, paragraph 89).”

15. At its thirty-first session, held in Geneva from March 17 to 21, 2014, the SCT continued work on the draft Articles and Rules on Industrial Design Law and Practice as presented in documents SCT/31/2 and 3.

16. The Committee reviewed in detail all provisions which were presented within brackets, or for which footnotes indicated individual proposals or reservations of individual delegations.

17. With regard to technical assistance and capacity building, all delegations stated that progress was made on this matter. A number of delegations expressed the view that technical assistance provisions had to be in the form of an article. On this particular issue, other delegations said they were flexible. Some other delegations said that, although they preferred a resolution, they would consider an article, but not as a precondition for convening a diplomatic conference.

18. Concerning the convening of a diplomatic conference for the adoption of a Design Law Treaty, while a number of delegations were of the view that an agreement to address technical assistance in the form of an article in the treaty had to be reached prior to convening such a diplomatic conference, other delegations were of the view that the draft Treaty was mature enough in order to convene a diplomatic conference.

19. The Chair of SCT/31 concluded (see document SCT/31/9, paragraphs 7 to 10) that the SCT had made further progress towards cleaning up the draft Design Law Treaty. The text consists of 32 draft Articles and 17 draft Rules, of which six draft Articles and one draft Rule show portions of bracketed text. In addition, a certain number of provisions show proposals or reservations expressed by individual delegations in the form of footnotes to the text. Changes to the text of the draft Articles and Rules as agreed are shown in documents SCT/31/2 Rev. and SCT/31/3 Rev.

20. Subsequently to the holding of the thirty-first session of the SCT, the forty-fifth (24<sup>th</sup> extraordinary) session of the WIPO General Assembly, held in Geneva on May 8 and 9, 2014, gave consideration to the convening of a diplomatic conference for the adoption of a Design Law Treaty.

21. At that session (see document WO/GA/45/4, paragraph 19), the WIPO General Assembly decided that it:

“(a) notes the progress made at the thirty-first session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) in relation to draft Articles and Regulations of a proposed Design Law Treaty;

“(b) encourages delegations to hold informal consultations prior to the 54<sup>th</sup> series of meetings of the WIPO Assemblies to take place in September 2014 with a view to resolving pending issues;

“(c) will at its session in September 2014 decide on whether to convene a diplomatic conference for the adoption of a Design Law Treaty as soon as practicable at a venue to be decided.”

22. At its forty-sixth (25<sup>th</sup> extraordinary) session, the WIPO General Assembly considered whether to convene a diplomatic conference for the adoption of a Design Law Treaty as soon as practicable at a venue to be decided, but was unable to take a decision on this item (see document WO/GA/46/12, paragraphs 61 to 72).

23. Subsequent to the forty-sixth (25<sup>th</sup> extraordinary) session of the WIPO General Assembly, the SCT held two sessions, which dealt with, *inter alia*, the draft Design Law Treaty.

24. At the thirty-second session of the SCT (November 24 to 26, 2014), the Delegation of Kenya, on behalf of the African Group, presented a proposal for a new item (ix) on disclosure requirement to be included in Article 3(1)(a) of the draft Design Law Treaty as contained in document SCT/31/2 Rev.

25. The Delegation of Japan, on behalf of Group B, presented a proposal for a decision by the SCT to recommend to the WIPO General Assembly to convene a diplomatic conference for the Adoption of a Design Law Treaty in 2015, based on documents SCT/31/2 Rev. and 3 Rev.

26. The Chair of the thirty-second session of the SCT concluded that the proposal of the African Group would be included into the revised version of the document between square brackets and that the different views on that proposal would be reflected in footnotes. Some delegations expressed concern with the timing and substance and indicated that they now have to reconsider their position on the process following these new developments. Some delegations stated that the convening of a diplomatic conference still depended on the inclusion into the draft Treaty of an Article on Technical Assistance and Capacity Building (see document SCT/32/5, paragraphs 6 to 9).

27. At the conclusion of the thirty-third session of the SCT (March 16 to 20, 2015), the Chair of the SCT noted that delegations held useful discussions on the proposal presented by the African Group at the thirty-second session of the SCT. He concluded that, overall, the situation remained unchanged and that the Design Law Treaty would be considered at the next sessions of the General Assembly and the SCT (see document SCT/33/5, paragraph 6).

*28. The WIPO General Assembly is invited to decide on whether to convene a diplomatic conference for the adoption of a Design Law Treaty as soon as practicable at a venue to be decided.*

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