

Ad hoc Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs

Geneva, May 30 to June 1, 2011

ISSUES RELATING TO THE PUBLICATION AND CONTENTS OF THE INTERNATIONAL DESIGNS BULLETIN

Document prepared by the International Bureau

I. INTRODUCTION

1. A number of information technology-based innovations have been introduced in the administration of the Hague system, in recent years, such as the electronic filing interface (“e-filing”) in January 2008, the electronic interface for the payment of fees (“e-payment”) in November 2008, and the electronic interface for the online renewal of international registrations (“e-renewal”) in December 2010, all available on the website of the World Intellectual Property Organization (WIPO)¹.

¹ E-filing interface is available on the WIPO website at <http://www.wipo.int/hague/en/forms/intermediate.html>; e-payment interface is available at <https://webaccess.wipo.int/epayment/>; and, e-renewal interface is available at https://webaccess.wipo.int/erenewal_dm/erenewal.jsp?lang=EN.

2. Regarding the *International Designs Bulletin* (hereinafter referred to as “the Bulletin”) however, the last significant development occurred in 2004, when the Bulletin started to be published electronically on the WIPO website². Notably, the Bulletin is, at present, still published according to a monthly cycle. With this document, the International Bureau would like to consult the Working Group on the desirability and feasibility of tightening this cycle.
3. Chapter II of the present document describes the interplay of the Bulletin with the international procedure.
4. Chapter III develops various approaches for a tighter publication cycle and outlines their respective advantages.
5. Chapter IV then elaborates on a number of areas where the legal framework relating to the Bulletin could be updated. This leads to amendments to the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement (hereinafter referred to as “the Common Regulations”, “the 1999 Act” and “the 1960 Act”, respectively) and to the Administrative Instructions for the Application of the Hague Agreement (hereinafter referred to as “the Administrative Instructions”) being proposed in Annexes I and II of the present document for consideration by the Working Group.

II. PUBLICATION OF THE INTERNATIONAL DESIGNS BULLETIN AND INTERPLAY WITH THE INTERNATIONAL PROCEDURE

6. Article 10(3) of the 1999 Act and Article 6(3) of the 1960 Act establish the duty of the International Bureau to publish the international registrations. Article 16(4) of the 1999 Act and Articles 10(5), 12(1) and 13(2) of the 1960 Act establish the duty of the International Bureau to publish other entries recorded in the International Register. Pursuant to Rule 1(1)(ix) of the Common Regulations, these publications are effected in the Bulletin, whatever the medium used for the latter.

Background – From Paper Form to Electronic Publication

7. The Bulletin was traditionally published in paper format. However, as from March 1999³, the paper edition of the Bulletin was replaced by a hybrid publication comprising a paper part and a CD-ROM. The paper part included all the data contained in the previous paper edition of the Bulletin, with the exception of the reproductions of the designs contained in new deposits registered under the 1960 Act. These were to be found on the CD ROM alongside all the bibliographic data relating to the new deposits registered under the 1960 Act.
8. As from the beginning of 2001, all the entries made in the International Register were included in the CD-ROM, which thus became a complete publication. Nevertheless, the production of the paper part remained for the whole year, until it was abolished at the beginning of 2002.

² The Bulletin is available on the WIPO website at <http://www.wipo.int/hague/en/bulletin/>.

³ The preparation time for each issue of the Bulletin in 1999 was two months, therefore issue No. 1/1999 of the Bulletin was published in March 1999.

9. The Common Regulations entered into force on April 1, 2004⁴. In compliance with Rule 26(3) thereof, which provided that the Bulletin should “be published on the website of the Organization”, the International Bureau started to publish electronically the Bulletin on its website. Nevertheless, the production of the CD-ROM version continued.
10. At the beginning of 2011, the CD-ROM version of the Bulletin was discontinued. Currently, the Bulletin is published only electronically on WIPO’s website.

Electronic Communication of the Publication Date of Each Issue of the Bulletin to the Office of Each Contracting Party

11. In addition to providing that the Bulletin be published on the WIPO website, Rule 26(3) of the Common Regulations prescribes that the date on which each issue of the Bulletin is published on the WIPO website be electronically communicated by the International Bureau to the Office of each Contracting Party. More importantly, this rule further establishes that “Such communication is deemed to replace the sending of the Bulletin referred to in Article 10(3)(b) of the 1999 Act and Article 6(3)(b) of the 1960 Act”, and that “for the purposes of Article 8(2) of the 1960 Act, the Bulletin shall be deemed to have been received by each Office concerned on the date of the said communication”. In other words, the duty for the International Bureau to notify the offices of Contracting Parties of recordings made in the International Register is accomplished by its informing them of the availability of the new issue of the Bulletin on its website⁵.
12. To this end, in accordance with Section 204(d) of the Administrative Instructions, the Office of each Contracting Party shall indicate to the International Bureau the email address to which this communication shall be sent. The International Bureau sends an email to that address, informing the Office of the publication date of each issue of the Bulletin. In practice, that email is sent on the very day of publication and informs of the availability of the new issue of the Bulletin.
13. So as to be informed of any problems in the delivery of such emails, the International Bureau has been using, since December 2009, the Registered Email® service by RPost. This service comprises an automatic notification to the International Bureau confirming whether the email has been properly delivered to each Office, or not, with an indication of the reason for a possible failure in delivery⁶.
14. The Registered Email® service has considerably improved the monitoring of the said communications, since in the event of failure in delivery, the International Bureau will contact the Office concerned, by letter and/or facsimile, requesting a valid email address⁷.

⁴ As a consequence of the freeze of the application of the 1934 Act on January 1, 2010, the “Common Regulations Under the 1999 Act, the 1960 Act and the 1934 Act of the Hague Agreement”, became the “Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement” (for more information, see Hague Assembly documents H/A/28/1. and H/A/28/3, which are available on WIPO’s website, at http://www.wipo.int/meetings/en/details.jsp?meeting_id=18648).

⁵ The data contained in an issue of the Bulletin is also made available in a secure FTP site for uploading by Offices of Contracting Parties.

⁶ Before sending a delivery failure message to the International Bureau, RPost tries to reach the recipient several times. In 2010, Offices of 11 Contracting Parties were affected by delivery failures.

⁷ In rare cases, it has occurred that an Office has not reacted to this letter/facsimile. In these particular circumstances, the International Bureau remains unable to properly send that communication.

Publication Cycle and Timing of Publication of International Registrations

15. Although, as will be seen below, in the 1999 Act, the 1960 Act and the Common Regulations, there are several provisions relating to the timing of the publication of international registrations, none of them specify the cycle of publication of the Bulletin. Rule 26(3) of the Common Regulations only provides for the mode of publishing the Bulletin. This cycle can be broken down in two components: one is the frequency of the publication, *i.e.* the number of times the Bulletin is issued in a given year; currently, the Bulletin is a monthly publication, meaning that it is issued 12 times a year. The other component is the time lag, *i.e.* the number of days that elapse between the last recording day considered for insertion of data in a given issue of the Bulletin and the actual date of publication of that issue; that time lag – which is linked to the preparation work for the Bulletin – is currently of one month.
16. It follows from the above that, under the present cycle, the entries made in the International Register in the course of a given month are, as a general rule, published at the end of the following month. When it comes to the timing of publication of international registrations, however, Rule 17(1) of the Common Regulations provides for three different options, the first one of which only follows the aforementioned principle.
17. This first option, which is provided for under Rule 17(1)(i), is for the applicant to request the immediate publication of the international registration⁸. Under this option, and in conformity with the aforementioned principle, an international registration recorded in the International Registry during the month of April 2011, is published in the Bulletin at the end of May 2011. In other words, how immediate publication really is then depends on the date of recording of the international registration: if it is on the last working day of a month, publication will occur in just one month; however, if it is on the first working day of the month, publication will take place in fact two months after.
18. The second option, which constitutes the first exception to the aforementioned principle and is provided for under Rule 17(1)(ii), is the ability for the applicant to request deferment of publication of the international registration⁹. Under this scenario, an international registration is published after the expiry of the applicable deferment period, which is counted from the date of filing of the international application or the priority date, as the case may be¹⁰. The following examples illustrate how this works under the current cycle:
 - (a) An international registration having the filing date in November 2008, and for which deferment of publication for 30 months has been requested, is published in the Bulletin at the end of May 2011;

⁸ For the years 2004 (as from April 1, 2004) to 2010, the proportions of international registrations that were the subject of an immediate publication were 32,2% (namely 242 out of 751), 43,7% (namely 489 out of 1,120), 53,4% (namely 610 out of 1,143), 45,8% (namely 525 out of 1,147), 44,5% (namely 678 out of 1,524), 43,0% (namely 722 out of 1,681) and 41,4% (namely 918 out of 2,216).

⁹ For the years 2004 (as from April 1, 2004) to 2010, the proportions of international registrations that were the subject of a deferment of publication were 8,4% (mainly 63 out of 751), 6,3% (mainly 70 out of 1,120), 3,4% (mainly 39 out of 1,143), 3,7% (mainly 42 out of 1,147), 8,1% (mainly 123 out of 1,524), 12,0% (mainly 201 out of 1,681) and 12,3% (mainly 273 out of 2,216).

¹⁰ According to Rule 16, the maximum period is 30 months in respect of an application governed exclusively by the 1999 Act and 12 months in respect of an application governed exclusively by the 1960 Act or by both the 1999 Act and the 1960 Act.

- (b) An international registration resulting from an international application that contained both a priority claim dating back in May 2010 and a request for deferment of publication for 12 months is published in the Bulletin at the end of May 2011, regardless of the actual month during which it has been recorded in the International Register.
19. A useful feature of the deferment option is that, at any time during the period of deferment, the holder can put an end to it by requesting earlier publication¹¹. In that case, the timing of the publication is handled like in the case of “immediate” publication under Rule 17(1)(i), *i.e.* owing to the current publication cycle and depending on the date on which the request for earlier publication is made, publication will take place from one to two months after the receipt of the request.
20. The third option, which constitutes the second exception to the aforementioned principle, happens by default. As provided under Rule 17(1)(iii), absent any request for immediate or deferred publication by the applicant, the publication of an international registration takes place six months after the date of the international registration, or as soon as possible thereafter¹². Thus, under this default option is requested, an international registration with a registration date in November 2010, is published in the Bulletin at the end of May 2011.
21. Irrespective of whether the publication takes place immediately, at the end of the default period or at the end of a period of deferment, the refusal period, in respect of all the designated Contracting Parties, begins from the date of publication of the international registration in the Bulletin on the WIPO website, pursuant to Rule 18(1)(a) of the Common Regulations.

Time Constraints Relating to Refusal of Protection and Statement of Grant of Protection

22. A refusal of protection must be notified to the International Bureau within the prescribed time limit. According to Rule 18(1)(a) of the Common Regulations, this period is counted from the date of publication of the international registration as provided under Rule 26(3)¹³.

¹¹ Article 6(4)(b) of the 1960 Act and Article 11(4)(b) of the 1999 Act.

¹² The need for “default” publication is related to the fact that under Article 11(1)(b) of the 1999, a Contracting Party may declare that deferment is not provided for under its law. In that case, an application could not contain both a designation of such a Contracting Party and a request for deferment. The fact is, however, that were the applicant to file directly with the Office of the Contracting Party concerned, a certain period of time would necessarily elapse before the registration is published as the examination (whether formal or substantive) of an application and the technical preparations for publication take time. Thus, the period of six months aims at allowing the holder of the international registration to enjoy the same benefit of *de facto* deferment which he would have enjoyed if he had filed a national or regional application with the Office of that Contracting Party. See *Records of the Diplomatic Conference for the Adoption of a New Act of the Hague Agreement Concerning the International Deposit of Industrial Designs (Geneva Act)*, p. 280-281, R17.01, H/DC/6.

¹³ As a matter of principle, that period is six months. However, under Rule 18(1)(b), any Contracting Party to the 1999 Act whose Office is an Examining Office or whose law provides for opposition proceedings may declare that, for international registrations in which it is designated under the 1999 Act, that period is replaced by a period of 12 months.

23. If at the end of the applicable refusal period the Office of a designated Contracting Party has not notified a refusal, the effects of the international registration in the Contracting Party concerned are those provided for under Article 14(2) of the 1999 Act¹⁴ or Article 8(1) of the 1960 Act, as the case may be.
24. Furthermore, under Rule 18*bis*(1) of the Common Regulations, the Office of a Contracting Party designated under either the 1960 or the 1999 Act may, within the applicable refusal period, send to the International Bureau a statement of grant of protection where it has not communicated a notification of refusal and has decided to accept the effects of an international registration.

III. CONSIDERATIONS RELATING TO A POSSIBLE TIGHTER PUBLICATION CYCLE

25. There may be situations in which early publication of an international registration is advantageous. This may be the case where, under some national or regional law the right on an industrial design may be enforced only after it has been published. Some other times, the need can be driven by commercial reasons. Similarly, an international registration holder who had requested deferment of publication may suddenly need to interrupt this period of deferment and request immediate publication.
26. Regardless of whether it is requested at the time of the filing of the application or later as an interruption of an ongoing deferment, the fact is that, currently, immediate publication, as a growing number of users have recently indicated, is hardly immediate. As seen in Chapter II, above, immediate publication cannot happen any faster than one month and can take up to two full months after the recording in the International Register of the international registration concerned or, in case of an interruption to deferment, after the receipt of the request to that effect. This situation is attributable to the current publication cycle of the Bulletin, which, as indicated above, can be broken down into two components: frequency and time lag.
27. Regarding frequency, it appears that the official publications of several national or regional offices of the Contracting Parties to the Hague Agreement are issued more frequently than the Bulletin. For example, in France the official publication *Bulletin officiel de la propriété industrielle*, of the National Institute of Industrial Property (INPI), is published every second Friday. *Geschmacksmusterblatt*, is a weekly publication by the German Patent and Trade Mark Office (GPMA). *Tomo III del Boletín Oficial de la Propiedad Industrial*, is published every working day by the Spanish Patent and Trademark Office (OEPM). Finally, at the regional level, the *Community Designs Bulletin* is published every working day by the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM).
28. Regarding time lag of the Bulletin, it is to be observed that this has remained the same since 2002, when the change from paper to a CD-ROM as a support for the publication of reproductions allowed for a reduction of two months to one. The discontinuation, earlier this year of the CD-ROM version, now allows the International Bureau to reconsider its needs in terms of preparation time required.

¹⁴ Subject to any declaration under Rule 18(1)(c)(i) or (ii). At the time of preparing the present document, two Contracting Parties to the 1999 Act, namely Spain and Turkey, have made the declaration under Rule 18(1)(c)(i) and none have made the declaration under Rule 18(1)(c)(ii).

29. Bearing in mind, in particular, the need for a more responsive “immediate publication” option, the International Bureau has started considering several approaches that would allow a tighter publication cycle.

Approach 1 – Frequency Unchanged but Reduced Time Lag

30. Under this option, the Bulletin continues to be issued 12 times a year but the International Bureau affords itself less time to prepare it, for example, two weeks. Thus, assuming that this cycle is in application today, international registrations programmed for immediate publication and recorded in the International Register during the month of May 2011, are published in the Bulletin mid-June 2011. In this case, there is a gain of time for all holders but it varies greatly: those that had a registration recorded at the beginning of May still have to wait for about six weeks (instead of two months, as currently) whilst those that had a registration recorded at the end of May only have to wait for about two weeks (as opposed to a full month).
31. In respect of default or deferred publications, this approach would bring no fundamental changes compared to the present situation.

Approach 2 – Frequency Increased but Time Lag Unchanged

32. Under this option, the Bulletin is published more frequently – for example, on a weekly basis – but still with a full month lag. Thus, assuming that this frequency is in application today, international registrations programmed for immediate publication and recorded in the International Register during the first week of May 2011, are published in the issue of the Bulletin released in the first week of June, those recorded in the International Register during the second week of May 2011, are published in the issue of the Bulletin released in the second week of June, etc. In this case, there is a considerable improvement over the current cycle for holders whose registrations are recorded at the beginning of the month as they have to wait about four to five weeks instead of about two full months. On the other hand, the soonest that publication of an international registration can occur is still and always a full month after its recording, a lag that may not be satisfactory in terms of offering a real immediate publication option to users.
33. In respect of deferred publication, the move to a weekly frequency would be beneficial in the sense that it would allow the actual publication date of an international registration to correspond more closely to the end of the deferment period. At present, the lag between the two can be of up to two months minus one day, in case the filing date (or priority date) of the international registration is at the beginning of a month. The benefits in respect of default publication would be similar.

Approach 3 – Frequency Increased and Time Lag Reduced

34. Under this option, the Bulletin is published more frequently – for example, on a weekly basis – and the lag is reduced, for example to a week. Thus, assuming that this cycle is in application today, international registrations programmed for immediate publication and recorded in the International Register during the first week of May 2011, are published in the issue of the Bulletin released at the end of the second week of May; those recorded in the International Register during the last week of May 2011, are published in the issue of the Bulletin released at the end of the first week of June. In this case, there is a considerable improvement over the current cycle for all holders as immediate publication takes place from six to 13 days after the recording of an international registration.

35. In respect of default or deferred publications, the situation would be exactly the same as under Approach 2, above.

Advantages of More Frequent Publication

36. There are several advantages relating to a tighter publication cycle. First of all, a meaningful “immediate publication” option would allow applicants who chose it to enjoy the benefits sought after, as described in paragraph 25, above. Also, as the delay between the date of an international registration and its publication would be reduced, the period of refusal, which begins from the publication date of the international registration, would begin and end earlier, which would in turn increase the level of legal certainty in the system. For example, statements of grant of protection as well as notifications of refusal of protection would be issued sooner. In case no refusal is issued in respect of a designated Contracting Party and the Office in question is not one that issues statements of grant of protection, the mere fact that the refusal period ends sooner would constitute an advantage. Thus, if Approach 3 were to be implemented as described above, for a registration recorded at the beginning of a month, this would mean reducing the period of wait by almost 25% in case the six-month refusal period applies¹⁵.
37. Generally speaking, a tighter publication cycle as proposed under Approaches 2 and 3 would mean that all the entries made in the International Register would be published earlier, which would increase the transparency of the international registration system.
38. As regards the Offices of Contracting Parties, a more frequent publication of the Bulletin, as envisaged under Approaches 2 and 3, would require them to adapt their internal processes, including their IT program. However, the volume of data contained in an issue of the Bulletin would be considerably smaller than it currently is under the monthly cycle. The increased frequency of the Bulletin would also allow for more linear processing of international registrations within Offices that carry out substantive examination and definitely protect them from the peaks of load currently occurring once a month. In that respect, it may be worth recalling that international registrations have increased by 32% in 2010 over 2009, and that a comparable increase is forecasted for 2011.
39. Approach 1 would have only a one-off impact on Offices and offer no advantages. In addition, there would be a limit to how much the International Bureau could shorten the lag should the volume of data to be extracted still correspond to a monthly cycle. Therefore, the benefits for users would be somewhat limited. On the other hand, approaches 2 and 3 appear more beneficial but cannot be further developed without support from the Offices.

¹⁵ As explained in paragraph 26 above, the current publication cycle would have the effect of adding two months to the refusal period. Approach 3 would have the effect of adding a single week, with the consequence that the overall period would be reduced from eight months to just about six. At the time of writing the present document, the standard refusal period applies to 47 Offices of Contracting Parties.

IV. UPDATING OF THE LEGAL FRAMEWORK

40. Forging ahead in its consideration of the issues raised in Chapter III, the Working Group may see merit in revisiting the legal framework generally applicable to the Bulletin with a view to updating it. To this end, a number of proposals are made below.

Communication of the Date of Publication

41. As recalled in paragraph 11 of the present document, Rule 26(3) of the Common Regulations provides that the electronic communication by the International Bureau of the publication date on the WIPO website is deemed to replace the sending of the Bulletin referred to in Article 10(3)(b) of the 1999 Act and Article 6(3)(b) of the 1960 Act.
42. In the event of a weekly cycle, the Bulletin could be published on a given day of the week¹⁶ and that standard would make the need for such communication obsolete. The electronic communication of the date of the publication of the Bulletin by the International Bureau could nevertheless remain an option, so that at the express wish of the Office of a Contracting Party, the International Bureau would continue sending this communication to this Office.
43. Against this background, and taking into consideration that under the current cycle the Bulletin is systematically published on a specific day, *i.e.* the last working day of the month, one could already consider amending Rule 26(3) to the effect that it is the publication *itself* of an issue of the Bulletin on the WIPO website that shall be deemed to replace the sending of the Bulletin referred to in the above mentioned Articles. The proposed amendment to Rule 26(3) is reproduced in Annex I of the present document in “track changes” mode, *i.e.*, with the text that is proposed to be deleted, struck through, and the text that is proposed to be added, appearing underlined.
44. As a consequence of the proposed amendment to Rule 26(3), Section 204(d) of the Administrative Instructions could be amended to reflect the possibility for an Office to continue receiving a communication of the date of publication of the Bulletin. The proposed amendment to Section 204(d) is produced in Annex II of the present document in “track changes” mode, *i.e.*, with the text that is proposed to be deleted, struck through, and the text that is proposed to be added, appearing underlined.
45. In this context, it is noted that according to Rule 34(1) of the Common Regulations, the Director General of WIPO may modify the Administrative Instructions after having consulted the Offices of Contracting Parties. In the case that the Working Group were to recommend the afore-mentioned amendment to the Common Regulations, it is intended that the submission of the proposed changes to the Administrative Instructions to the Assembly of the Hague Union, together with the proposed changes to the Common Regulations, would constitute that consultation.

¹⁶ The *WIPO Gazette of International Marks*, the official publication of the Madrid System for the International Registration of Marks is published every Thursday online on the WIPO website at www.wipo.int/madridgazette/en/index/html.

Request for Recording of a Limitation or Renunciation during the Period of Deferment

46. In accordance with Article 11(5)(a) of the 1999 Act and Article 6(4)(b) of the 1960 Act, the holder of an international registration may, at any time during the period of deferment applicable, renounce the international registration in respect of all the designated Contracting Parties and in such a case, the industrial design(s) that are the subject of the international registration will not be published.
47. In addition, as prescribed in Article 11(5)(b) of the 1999 Act and in Article 6(4)(b) of the 1960 Act, the holder may, at any time during the applicable period of deferment, limit the international registration in respect of all the designated Contracting Parties, to one or some of the industrial designs that are the subject of the international registration and in such a case, the industrial design(s) affected by the limitation will not be published.
48. Pursuant to Section 601 of the Administrative Instructions, the request for the recording of a renunciation or limitation concerning the international registration must be received by the International Bureau not later than three months prior to the expiry of the period of deferment. Otherwise, the international registration is published at the expiration of the period of deferment without account being taken of the request for the recording of the limitation or renunciation. Provided that this request complied with the applicable requirements, the limitation or renunciation is, however, recorded in the International Register.
49. As explained previously in the present document, the current publication techniques allow shortening the preparation time of the Bulletin. Even if the proposal for a tighter publication cycle was not supported by the Working Group, the latest time to request the recording of a renunciation or limitation during the period of deferment could be postponed.
50. To ensure that the requests for renunciation or limitation are duly taken into account in the publication of the international registration, the preparation time should nevertheless be long enough so that in the event of possible technical problems within the preparation time, the interests of the holders are safeguarded. Therefore, it is proposed to amend Section 601 of the Administrative Instructions to provide that the request for the recording of a renunciation or limitation concerning the international registration must be received by the International Bureau not later than three weeks prior to the expiry of the period of deferment. A draft to this effect is produced in Annex II of the present document. As indicated in paragraph 45 of the present document, according to Rule 34(1) of the Common Regulations, the Director General of WIPO may modify the Administrative Instructions after having consulted the Offices of Contracting Parties. To this effect, and with a view to ensuring that all possible amendments take effect on the same date, the International Bureau intends to proceed as indicated in paragraph 45, above.

Publication of Certain Information

51. In addition to Rule 26(1) of the Common Regulations, which provides for the publication of information concerning international registrations, there are several other provisions in the Common Regulations establishing a duty for the International Bureau to publish certain information.
52. Thus, pursuant to Rule 26(2), the International Bureau is to publish in the Bulletin any declarations made by a Contracting Party as well as a list of days on which the International Bureau is not scheduled to be open to the public during the current and the following year.

53. Moreover, pursuant to Rule 28(2)(c) and (d) of the Common Regulations, the application of a new amount of the individual designation fee is dependent on its publication in the Bulletin. The new amount is applicable as from a date fixed by the Director General of WIPO, provided that it is between one and two months after the date of publication of the said amount in the Bulletin.
54. Furthermore, Rule 34(3)(a) and (b) of the Common Regulations prescribes that the Administrative Instructions and any modification thereof shall be published in the Bulletin and that no provision may be declared effective prior its publication in the Bulletin.
55. In addition to the provisions in the Common Regulations, the Administrative Instructions include a number of Sections regarding publication of information. Section 204(a)(i) of the Administrative Instructions provides for the publication in the Bulletin of the particulars of time, manner and format of communications with the International Bureau by electronic means. Section 402(b) further prescribes that the International Bureau shall publish the particulars of the data format with respect to the filing of international applications by electronic means in the Bulletin.
56. It is to be noted that as the publication of any of this information is not provided by the 1999 Act or the 1960 Act itself, it could take place elsewhere than in the Bulletin without the need to amend Rule 1(1)(ix) of the Common Regulations in that respect.
57. Each time the need arises for information to be communicated under any of the afore-mentioned provisions, the International Bureau complies with its publication duty by issuing a specific "Information Notice". Traditionally, such notices were inserted in the paper version of the Bulletin. When that format disappeared in 2002, the practice continued by making a pdf version of the notice available as part of the data contained in the CD ROM version of the Bulletin. In 2004, the page hosting the electronic version of the Bulletin was created on WIPO's website and, through the years, this evolved into a proper webpage for the Hague system. Both the Information Notices and the Bulletin are accessible from that page under clear, distinct threads. Moreover, users may subscribe to receive updates on the Hague system through an "email alert" service and any subscriber to this is immediately alerted of the issuance of a new Information Notice. Finally, the information contained in the Information Notices is generally available under specific threads such as "Fees", or through specific links listed under appropriate threads such as "Legal Texts" for the Administrative Instructions or "About members" for declarations made by Contracting Parties¹⁷.
58. As mentioned in Chapter II, the publication of the CD-ROM version of the Bulletin was discontinued earlier this year. To comply with the letter of the provisions of the Common Regulations and Administrative Instructions cited above, the International Bureau would have had to create, within the electronic Bulletin interface, a link to the Information Notices, but this would have served little purpose given that these have been more readily available under their own thread for many years. It is therefore proposed to amend the provisions concerned to better reflect the fact that the website itself has become the central source of official information about the Hague system.

¹⁷ All the published information is available on the WIPO website at www.wipo.int/hague/en and one can subscribe to the email alert service at <http://www.wipo.int/hague/en/subscribe.html>.

59. More precisely, it is proposed that Rule 26(2), Rule 28(2)(c) and (d) and Rule 34(3)(a) and (b) of the Common Regulations and Sections 204(a)(i) and 402(b) of the Administrative Instructions be amended by substituting a reference to the website to any reference to the Bulletin contained therein. The proposed amendments to the Common Regulations and the Administrative Instructions are produced in Annexes I and II of the present document.
60. It is recalled that according to Rule 34(1) of the Common Regulations, the Director General of WIPO shall establish the Administrative Instructions and may modify them after having consulted the Offices of Contracting Parties. In the case that the Working Group were to recommend the above mentioned amendment to the Common Regulations, it is intended that the submission of the proposed changes to the Administrative Instructions to the Assembly of the Hague Union, together with the proposed changes to the Common Regulations, will constitute that consultation.

61. *The Working Group is invited to indicate whether it would recommend that:*

- (a) *a proposal to amend the Common Regulations with respect to the titles of Chapter 6 and Rule 26, and with respect to Rules 26(2) and (3), 28(2)(c) and (d), and 34(3)(b), as provided in the draft contained in Annex I hereto, be submitted, for adoption, to the Assembly of the Hague Union, and*
- (b) *a proposal to amend Sections 204(a)(i) and (d), 402(b) and 601 of the Administrative Instructions, as provided in the draft contained in Annex II hereto, be submitted, for consultation, to the Assembly of the Hague Union.*

[Annexes follow]

**Common Regulations
Under the 1999 Act and the 1960 Act
of the Hague Agreement**

(as in force on XX XX XX)

[...]

CHAPTER 6

BULLETIN PUBLICATION

Rule 26

Bulletin Publication

[...]

- (2) *[Information Concerning Declarations; Other Information]* The International Bureau shall publish ~~in the Bulletin, on the website of the Organization~~ any declaration made by a Contracting Party under the 1999 Act, the 1960 Act or these Regulations, as well as a list of the days on which the International Bureau is not scheduled to open to the public during the current and the following calendar year.
- (3) *[Mode of Publishing the Bulletin]* The Bulletin shall be published on the website of the Organization. The ~~date on which each issue of the Bulletin is published on that website shall be electronically communicated by the International Bureau to the Office of each Contracting Party. Such communication, publication of each issue of the Bulletin~~ shall be deemed to replace the sending of the Bulletin referred to in Article 10(3)(b) ~~and 16(4)~~ of the 1999 Act and Article 6(3)(b) of the 1960 Act, and, for the purposes of Article 8(2) of the 1960 Act, ~~each issue of~~ the Bulletin shall be deemed to have been received by each Office concerned ~~also~~ on the date of ~~the said communication, its publication on the WIPO website.~~

[...]

Rule 28

Currency of Payments

[...]

- (2) *[Establishment of the Amount of Individual Designation Fees in Swiss Currency]*

[...]

- (c) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual designation fee has been indicated by a Contracting Party is higher or lower by at least 5% than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Office of that

Contracting Party may ask the Director General to establish a new amount of the fee in Swiss currency according to the official exchange rate of the United Nations prevailing on the day preceding the day on which the request is made. The Director General shall proceed accordingly. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount ~~in the Bulletin on the website of the Organization.~~

- (d) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual designation fee has been indicated by a Contracting Party is lower by at least 10% than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Director General shall establish a new amount of the fee in Swiss currency according to the current official exchange rate of the United Nations. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount ~~in the Bulletin on the website of the Organization.~~

[...]

Rule 34
Administrative Instructions

[...]

- (3) [*Publication and Effective Date*] (a) The Administrative Instructions and any modification thereof shall be published ~~in the Bulletin on the website of the Organization.~~
- (b) Each publication shall specify the date on which the published provisions become effective. The dates may be different for different provisions, provided that no provision may be declared effective prior to its publication ~~in the Bulletin on the website of the Organization.~~

[Annex II follows]

Administrative Instructions for the Application of the Hague Agreement

(as in force on XX XX XX)

[...]

Part Two Communications with the International Bureau

[...]

Section 204: Electronic Communications

- (a) (i) Communications with the International Bureau, including the presentation of the international application, may take place by electronic means at a time and in a manner and format to be ascertained by the International Bureau, the particulars of which shall be published ~~in the Bulletin~~ on the website of the Organization.

[...]

- (d) ~~For the purpose of the~~ Where the Office of a Contracting Party wishes to receive a communication by the International Bureau ~~to Offices of Contracting Parties~~ of the date s on which each issue of the Bulletin is published, ~~as provided for in Rule 26(3), each such Office shall~~ that Office shall notify the International Bureau of that fact and indicate ~~to the International Bureau~~ the email address to which the said communication shall be sent.

Part Four Reproduction of the Industrial Design; Disclaimer; Numbering

[...]

Section 402: Representation of the Industrial Design

[...]

- (b) The dimensions of the representation of each industrial design appearing in a photograph or other graphic representation may not exceed 16 x 16 centimeters, and one of those dimensions must be at least 3 centimeters. With respect to the filing of international applications by electronic means, the International Bureau may establish a data format, the particulars of which shall be published ~~in the Bulletin~~ on the website of the Organization, to ensure compliance with these maximum and minimum dimensions.

[...]

Part Six
Request for the Recording of a Limitation or Renunciation
when Publication Deferred

*Section 601 : Latest Time to Request the Recording
of a Limitation or Renunciation*

Where the publication of an international registration is deferred, a request for the recording of a limitation or renunciation concerning that registration, complying with the applicable requirements, must be received by the International Bureau not later than three ~~months~~ weeks prior to the expiry of the period of deferment. In default of this, the international registration is published at the expiration of the period of deferment without account being taken of the request for the recording of a limitation or renunciation. Provided that the request for limitation or renunciation complies with the applicable requirements, the limitation or renunciation is however recorded in the International Register.

[End of Annex II and of document]