

Working Group on the Legal Development of the Madrid System for the International Registration of Marks

**Eleventh Session
Geneva, October 30 to November 1, 2013**

DRAFT REPORT

prepared by the Secretariat

1. The Working Group on the Legal Development of the Madrid System for the International Registration of Marks (hereinafter referred to as “the Working Group”) held its eleventh session, in Geneva, from October 30 to November 1, 2013.
2. The following Contracting Parties of the Madrid Union were represented at the session: Algeria, Australia, Austria, China, Colombia, Cuba, Czech Republic, Denmark, Estonia, European Union, Finland, France, Georgia, Germany, Hungary, Iceland, India, Israel, Italy, Japan, Kenya, Latvia, Lithuania, Madagascar, Mexico, Morocco, New-Zealand, Norway, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Slovenia, Spain, Sudan, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Viet Nam (46).
3. The following States were represented as observers: Afghanistan, Chile, Dominican Republic, Indonesia, Iraq, Malawi, Malaysia, Myanmar, Peru, Saudi Arabia, Thailand, Trinidad and Tobago, Zimbabwe (13).
4. A Representative of the following international intergovernmental organization took part in the session in an observer capacity: Benelux Office for Intellectual Property (BOIP) (1).
5. Representatives of the following international non-governmental organizations took part in the session in an observer capacity: American Intellectual Property Law Association (AIPLA), *Association des praticiens du droit des marques et des modèles* (APRAM), *Association romande de propriété intellectuelle* (AROPI), Centre for International Intellectual Property Studies (CEIPI), International Association for the Protection of Intellectual Property (AIPPI), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA) (8).

6. The list of participants is contained in Annex III to this document.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the session and welcomed the participants.

8. The Director General noted that, since the previous session of the Working Group, India, Mexico, New Zealand, Rwanda and Tunisia had acceded to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as "the Protocol"), bringing the number of Contracting Parties to the Protocol to 91, with Algeria remaining the sole country bound by the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as "the Agreement") only. He added that several Central American and some Caribbean countries were well advanced in their preparation for accession to the Protocol and recalled that members of the Association of Southeast Asian Nations (ASEAN) had decided to accede to the Protocol by 2015. He hoped that some of these would accede in the following year.

9. The Director General indicated that the Madrid system had grown for the third consecutive year in 2012, with a record number of 44,018 international applications filed, which represented a 4.1 per cent increase compared to 2011. He said that Japan, the Russian Federation, the United Kingdom and the United States of America accounted for most of this growth, with Germany being, once more, the Contracting Party where the highest number of applications was filed, followed by the United States of America and France. He also indicated that China was again the most designated Contracting Party, followed by the European Union, the Russian Federation and the United States of America. He stated that growth continued in 2013, at a rate of 6.6 per cent compared to the previous year, and announced that the International Bureau expected between 45,000 and 46,000 international applications for 2013. He further noted that, at the end of 2012, there were over 560,000 international registrations in force, with more than 5.6 million designations, for some 178,500 right holders and that a majority of these holders might be categorized as small and medium-sized enterprises (SMEs), remarking that these figures reflected the efficiency and benefits of the Madrid system.

10. The Director General confirmed that the International Bureau remained focused on rendering the highest quality of services and that it had undertaken an initiative in this area. He emphasized the usefulness of information technology tools for users of the Madrid system, highlighting the Madrid Portfolio Manager (MPM) for holders and the Madrid Office Portal (MOP) for Offices. He also mentioned that electronic communication with Offices continued to increase, with almost 46 per cent of international applications and 65 per cent of all documents transmitted electronically.

11. The Director General said that the Working Group had brought about major advances to the Madrid system, such as the repeal of the safeguard clause and the obligation to send certain statements of grant of protection. Emphasizing the importance of a renewed Madrid system, he affirmed that the Working Group was the vehicle for its evolution. He announced that, in that session, the Working Group would focus on the introduction of continued processing, the partial renewal of international registrations, the possible introduction of recording of division and merger of an international registration, a review of information on ceasing of effect, central attack and transformation, and the possible freeze of Article 14(1) and (2)(a) of the Agreement.

12. The Director General thanked delegations for their constructive engagement and said that he looked forward to positive discussions.

AGENDA ITEM 2: ELECTION OF THE CHAIR AND TWO VICE-CHAIRS

13. Mr. Mikael Francke Ravn (Denmark) was unanimously elected as Chair of the Working Group, and Ms. Ma. Corazon Marcial (Philippines) and Ms. Mathilde Manitra Soa Raharinony (Madagascar) were unanimously elected as Vice-Chairs.

14. Ms. Debbie Roenning (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

15. The Working Group adopted the draft agenda (document MM/LD/WG/11/1 Prov. 2), without modification.

16. The Chair reminded that the report of the tenth session of the Working Group had been adopted electronically on June 6, 2013, and announced that the report of the current session would follow the same procedure.

AGENDA ITEM 4: PROPOSED AMENDMENTS TO THE COMMON REGULATIONS UNDER THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS AND THE PROTOCOL RELATING TO THAT AGREEMENT

17. Discussions were based on document MM/LD/WG/11/2.

18. The Secretariat, presenting the document, said that it proposed three changes to the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (hereinafter referred to as “the Common Regulations”) to make the Madrid system more user-friendly, and indicated that the first proposed change would allow an applicant or holder to request that the International Bureau continue processing an international application or certain requests where he had failed to comply with time limits. Informing that, from time to time, the International Bureau received requests from users on available relief measures, the Secretariat noted that the legal framework of the Madrid system did not provide for any relief measure and recalled that Rule 5 of the Common Regulations was restricted to irregularities in postal and delivery services. The Secretariat also mentioned that the Regulations under the Singapore Treaty on the Law of Trademarks (the Singapore Treaty) defined relief measures such as the extension of time limits, continued processing or the reinstatement of rights.

19. The Secretariat proposed the introduction of continued processing in a new Rule 5*bis*, where an applicant or holder, who had missed certain time limits, could request the International Bureau to continue processing an application or certain requests and affirmed that the proposal would strike a fair balance among the interests of applicants and holders, third parties, competitors and designated Contracting Parties with a fast and transparent process that would not impose additional workload on Offices or the International Bureau. The Secretariat indicated that, under the proposed Rule 5*bis*, applicants and holders could request continued processing within two months from the expiry of the missed time limit and upon payment of a fee. The Secretariat further noted that this would only apply to the time limits indicated in Rules 11(2) and (3), 20*bis*(2), 24(5)(b), 26(2) and 39(1)(i) but would not apply to any procedure before the Offices of Contracting Parties or to any procedure involving these Offices, such as remedying irregularities under Rules 12 and 13 of the Common Regulations. The Secretariat proposed that the fee for requesting continued processing be set at 300 Swiss francs.

20. The Secretariat indicated that the second proposed change to the Common Regulations was an amendment to Rule 30 which would provide for the renewal of an international registration only for those goods and services effectively protected in a designated Contracting Party, following the recording of a statement sent under Rule 18~~ter~~(2)(ii) or (4). Recalling that, at the time, after the recording of those statements, the holder had to either request the recording of a limitation to those goods and services effectively protected in a designated Contracting Party – before the due date for renewal – or renew the international registration for all the goods and services originally mentioned in the designation, the Secretariat underlined the potentially favorable impact the proposal would have on the amount of the fees due upon renewal.

21. The Secretariat, introducing the third proposed change to the Common Regulations, said that under an amended paragraph (4) of Rule 31, the International Bureau would notify holders of international registrations whenever these were not renewed to avoid any uncertainty on the side of the holder on the status of the international registration.

22. The Chair invited delegations to comment on paragraphs 4 to 36 of document MM/LD/WG/11/2.

23. The Delegation of Germany, estimating that most holders would not realize that they had missed a time limit, was of the view that the proposed change would not be useful in all cases where this happened.

24. The Delegation of Japan, supporting the proposed change, considered that continued processing could also extend to the time limit for the payment of the second part of the individual fee, arguing that, since this measure would be available to the payment of the amounts of the individual fee collected by the International Bureau in respect of an international application or subsequent designation, this measure could also be available in respect of the payment of the second part of the individual fee as this was a feature of the Madrid system which was managed by the International Bureau. The Delegation agreed with the assessment made in the document and considered that the introduction of this relief measure would not increase the workload of the International Bureau and sought the opinion of other delegations and of the Secretariat on whether to provide the proposed relief measure to the payment of the second part of the individual fee would result in such increase.

25. The Delegation of Japan considered that the proposed Rule 5~~bis~~ was not clear on whether the relief measure would have a retroactive effect on the date of the recording of changes and licenses and recalled that, under the legal framework of the Madrid system, the date of the recording of a change or a license was the date on which the request was put in order. The Delegation stated that the proposed rule, while providing for continued processing, did not indicate whether the date of the recording would be the date on which the time limit expired or it continued to be the date on which the request was put in order and suggested that the proposed rule include the presumption that the applicant or holder had met all requirements on the date on which the time limit had expired. The Delegation considered that this presumption would be valuable in those cases where the holder wanted to preserve an earlier date and it would justify the amount of the proposed fee.

26. The Delegation of Italy agreed with the proposed change, which was in line with its national legislation and with the Singapore Treaty and it also agreed with the proposed fee, but considered that the applicant or holder should not be charged where the failure to meet a time limit resulted from *force majeure*.

27. The Delegation of Madagascar found the proposed measure interesting but indicated that further information was required on its implementation. Citing paragraphs 30 and 31 of the document under discussion, the Delegation wondered whether the applicant or holder could remedy its application or present the request more than once during the proposed two-month delay. The Delegation shared the concern expressed by the Delegation of Japan on the impact the proposed measure could have on the workload of the International Bureau.

28. The Delegation of the European Union, reaffirming its full commitment to the efforts of the Working Group, emphasized the importance of maintaining a balanced approach between user-friendliness and legal certainty. The Delegation believed that the proposed change might increase user-friendliness at the potential cost of legal certainty for third parties. The Delegation supported limiting in number and duration the availability of the proposed relief measure. It also considered that it was appropriate to charge a fee to guard against its systematic use and to maintain a degree of legal certainty.

29. The Delegation of Kenya supported the proposed change and considered it a useful mechanism for SMEs. Accordingly, the Delegation proposed that the amount of the fee be reduced. The Delegation also echoed the concerns expressed by the Delegations of Japan and Madagascar on a potential increase in the workload of the International Bureau.

30. The Delegation of Switzerland said that it understood the usefulness of the proposed measure and supported it but, as expressed by other delegations, it considered that further clarification on its implementation was required. The Delegation observed that the proposed measure would apply to certain procedures which could concern both the International Bureau and national Offices. The Delegation asked whether continued processing would also apply to a missed time limit, fixed by a national Office, where the holder had submitted the request for recording or subsequent designation through this Office. The Delegation also asked whether the request for continued processing would have to be presented directly before the International Bureau, even where the irregular request for recording or subsequent designation had been presented through a national Office. Finally, the Delegation asked whether the applicant or holder could still benefit from the proposed relief measure where the request for continued processing was erroneously presented to a national Office within two months.

31. The Delegation of Colombia supported the proposed change as a timely effort to modernize and simplify the Madrid system and agreed with the proposal made by the Delegation of Kenya on the amount of the proposed fee. The Delegation said that it believed that Rule 5 should consider all means of communication that could be affected by *force majeure* and requested that the International Bureau study this matter. The Delegation sought further clarification on the reasons why the proposed relief measure would not apply to the time limits specified in Rules 12 and 13 of the Common Regulations.

32. The Delegation of the United States of America said that it was important to limit the application of the proposed relief measure to exceptional circumstances, such as earthquakes, pandemics and other natural disasters. The Delegation expressed its concern about the impact the proposed measure would have on the processing of international applications and subsequent designations and on third parties in designated Contracting Parties. Noting that there was already a significant delay in the notifications of extension of protection to its national Office, the Delegation indicated that the proposed new Rule 5*bis* would add another two months to this delay and suggested that, if the proposed measure was not limited to exceptional circumstances, it would be used routinely, as it was the case with the period of grace. The Delegation added that, due to the processing time required by its national Office, there was already a high risk that an earlier designation of the United States of America would conflict with a mark registered in this country.

33. The Delegation of the United States of America was of the view that the proposed measure was not completely in line with the provisions of the Singapore Treaty. Echoing the concerns expressed earlier by the Delegation of the European Union on the interests of third parties, the Delegation recommended that the proposed measure should not extend to international applications and subsequent designations. The Delegation further noted that, when an application filed before its national Office did not meet certain necessary elements, a filing date was not granted.

34. The Delegation of Morocco supported the proposed introduction of continued processing into the Madrid system. The Delegation indicated that its national law provided for this measure, in accordance with the Trademark Law Treaty (TLT) and the Singapore Treaty. The Delegation considered that it would be wise to further specify that only one request could be presented per missed time limit, as this would prevent applicants and holders from repeatedly requesting, within the proposed two-month period, the continued processing of the same irregular application or request.

35. The Representative of INTA welcomed the proposed introduction of continued processing into the Madrid system and announced that he had already shared a number of suggestions for drafting amendments with the Secretariat. The Representative added that he saw no particular reason to exclude from the proposal the time limit specified in Rule 39(1)(ii) of the Common Regulations. He explained that the proposal addressed only the time-limit in Rule 39(1)(i), which was the time limit for presenting the request for continuation of effects of international registrations in a successor State, but excluded the time limit in Rule 39(1)(ii) which dealt with the time to pay the fees for that request. The Representative suggested that both time limits be included in the proposal.

36. The Representative of INTA supported the suggestion made by the Delegation of Japan to extend the proposed relief measure to the time limit to pay the second part of the individual fee, and he also supported the comment made by this Delegation on the date of recording of a change, cancellation or license made as a result of continued processing. The Representative recommended that the date of effect in those cases should be indicated in Rule 20*bis*, regarding licenses, and in Rule 27, regarding changes and cancellations.

37. The Representative of INTA considered that the amount of the proposed fee for a request for continued processing was high compared to the amount of the fee payable for a request for the recording of a change or a license. He argued that the fact that the International Bureau would not reimburse any amount paid for a failed request for continued processing was punitive. The Representative emphasized that this contrasted sharply with the stated intention of the proposed new Rule 5*bis* which was to provide a relief measure in situations beyond the control of the holder or applicant. Recalling the remark made by the Delegation of Kenya on the fact that the Madrid system was largely used by SMEs, he recommended that the fee for a request for continued processing should be reasonably fixed at 177 Swiss francs, with half of that amount being reimbursed when the request was not considered as such.

38. The Representative of INTA said that he agreed with the views expressed by the Delegation of Colombia on Rule 5 of the Common Regulations. Underlining the fact that Rule 5 had been drafted almost 20 years ago, he remarked that the channels of communication had evolved and Offices and users were relying less on surface mail and delivery services. In that context, the Representative said that the Working Group should consider reviewing Rule 5 to introduce, in the case of *force majeure*, disturbances that may affect electronic communication.

39. The Representative of APRAM proposed that continued processing be extended to irregularities which had to be remedied through an Office; in particular, those in Rules 11(4), 12(2), 12(7), 13(2) and 28(4) of the Common Regulations. He explained that, in most cases, those irregularities were remedied in cooperation between the applicant or the holder and the Office. The Representative indicated that the conditions that applicants or holders had to meet to request this relief measure through an Office would be determined by the laws of the Contracting Party of this Office. The Representative agreed with the views expressed by the Delegation of Kenya and the Representative of INTA on the amount of the proposed fee, emphasizing that, if continued processing was intended as a relief measure in special situations, the amount would be perceived by users, in particular SMEs, as being punitive.

40. The Representative of CEIPI supported the proposal made by the Delegation of Colombia, endorsed by the Representative of INTA, on failure of electronic communication. The Representative reported that the issue had been discussed in the Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs. He suggested that the Secretariat propose a change to the Common Regulations in line with what had been discussed for the Common Regulations Under the 1999 Act and the 1960 Act of The Hague Agreement.
41. The Delegation of Cuba supported changes that improved the Madrid system and favored developing countries. The Delegation stated that, given that members of the Madrid Union provided relief measures in their legislations, the introduction of continued processing before the International Bureau seemed to be a logical measure. The Delegation underscored the usefulness of the proposal in cases where, for example, applicants or holders encountered complications which delayed the transferring of funds when making a payment to the International Bureau. The Delegation expressed its concern with the fact that applicants and holders would not be notified when a request for continued processing was not considered as such, given the uncertainty this would generate. The Delegation indicated that it agreed with the proposals made by the Delegation of Japan to extend this relief measure to the payment of the second part of the individual fee and by the Delegation of Colombia on a review of Rule 5.
42. The Secretariat, addressing the issues raised by some delegations, recalled that, at the time, the Madrid system did not envisage any relief measure and explained that it sought not to burden Offices when it determined the procedures for which continued processing would be available and that, for this reason, it proposed that the measure apply only to procedures directly before the International Bureau. The Secretariat said that, in addition, the proposal sought not to delay the registration of marks in the International Register and, therefore, it excluded procedures under Rules 12 and 13 of the Common Regulations. The Secretariat revealed that the highest number of irregularities found in international applications was processed under these two Rules.
43. The Secretariat, referring to the comment made by the Delegation of Japan, explained that it did not propose to make continued processing available to the payment of the second part of the individual fee because it considered that it was not a procedure before the International Bureau, but a payment collected by the International Bureau on behalf of Offices. Having heard the opinion of several delegations, the Secretariat stated that continued processing could also apply when a holder missed the time limit to pay the second part of the individual fee.
44. The Secretariat, following the comment made by the Representative of INTA, said that continued processing could also be available when a holder missed the time limit indicated in Rule 39(1)(ii).
45. The Secretariat, addressing an issue raised by several delegations, explained that the International Bureau had been flexible with Offices when natural disasters or other similar events had disrupted communications. The Secretariat recalled that some delegations had suggested that continued processing be limited to *force majeure*. The Secretariat indicated that the Working Group had to decide whether it wanted to keep the provision as proposed by the Secretariat or limit the application of the proposed relief measure.
46. The Secretariat stated that a low amount of the proposed fee for the request for continued processing could be seen as a mere possibility to extend a time limit which could lead to a higher number of those requests. The Secretariat affirmed that, in contrast, a high amount would not benefit the users the Working Group was trying to help. The Secretariat noted that there appeared to be no consensus on an amount which would strike the right balance.

47. The Secretariat, referring to the comments made by the Delegation of Japan and the Representative of INTA on the date of recording of changes and licenses, said that Rules 20*bis* and 27 of the Common Regulations could be amended to indicate that, when continued processing was granted, the date of recording would be the date on which the time limit had expired. The Secretariat thanked the Representative of INTA for his written proposal on this matter.

48. The Secretariat, referring to a proposal made by the Delegation of Colombia on a possible review of Rule 5, confirmed that the International Bureau would study the matter and present a document in a future session of the Working Group.

49. The Chair concluded that, while there was consensus on the introduction of continued processing into the Madrid system, there appeared to be no consensus on neither limiting the application of this relief measure to situations arising from *force majeure* nor extending it to procedures before national Offices. He also remarked that there were a number of drafting submissions which needed to be taken into account. The Chair suggested that discussions on a modified version of proposed Rule 5*bis*, as well as on the suggested amendments to Rules 20*bis* and 27, resume when the Secretariat had provided a new text in the three working languages of the Madrid system.

50. The Chair invited delegations to comment on paragraphs 37 to 47 of document MM/LD/WG/11/2.

51. The Delegations of Australia, Colombia, Israel, Lithuania, on behalf of the European Union, New Zealand, Norway, the Philippines, the Republic of Korea, Spain and the United States of America expressed their support for the proposed amendment to Rule 30 of the Common Regulations.

52. The Delegation of India commented that its legislation did not provide for the partial renewal of a registration.

53. The Representative of INTA supported the proposed change to Rule 30, but added that he had some drafting suggestions. Noting that a statement sent under Rule 18*ter*(4) could either grant or refuse protection, the Representative suggested qualifying that statement in Rule 30(2)(a) and (b) by indicating “[...] for which no statement of total refusal under Rule 18*ter*(3) or (4) is recorded [...]”. The Representative of INTA also suggested that the first paragraph of Rule 30(1)(a)(iii) be modified to read “[...] for which no statement of total refusal under Rule 18*ter*(3) or (4) or of invalidation is recorded [...]” and that the word “may” be replaced by the word “shall” in Rule 30(2)(c) and (e). The Representative expressed the view that this subparagraph could also be improved by deleting its last sentence.

54. The Delegation of Switzerland, while supporting the proposed amendment to Rule 30, considered that the text could be improved and supported the drafting suggestions made by the Representative of INTA. The Delegation proposed that these suggestions be considered in a modified proposed amendment to Rule 30.

55. The Representative of AROPI, while supporting the proposed amendment to Rule 30, considered that users would also be interested in the partial renewal of an international registration instead of having to previously request its partial cancellation. The Representative remarked that the interests of holders evolved and this could make the renewal of the international registration no longer justified for some goods and services. The Representative considered that, in addition to the possibility to renew an international registration in respect of only certain designated Contracting Parties, a holder should also be able to renew it in respect of only certain goods and services.

56. The Delegation of Kenya supported, in principle, the proposed amendment and, referring to the comments made by the Representative of INTA, asked the Secretariat to explain the reasons for the use of the word “*may*”, instead of the word “*shall*”, in Rule 30.
57. The Delegation of Cuba, agreeing in principle with the proposed amendment to Rule 30, advised caution. The Delegation suggested that designated Offices would have to examine the scope of a renewed international registration to ascertain that it corresponded to the scope of the protection granted. The Delegation also indicated that it perceived the need for a coordination mechanism between Offices and the International Bureau to resolve any discrepancy. The Delegation revealed that, occasionally, the International Bureau did not properly determine the scope of statements sent by the Office of Cuba and that this had prompted the Office to verify their recording using ROMARIN. The Delegation acknowledged that the problem had been almost removed by using the model forms.
58. The Representative of INTA, following the question raised by the Delegation of Kenya, emphasized the fact that the word “*may*” in the English version of Rule 30 corresponded to the phrase “*ne peut pas être*” in the French version. The Representative explained that, contrary to the English version, the French version was not equivocal.
59. The Secretariat, addressing a comment made by the Delegation of India, explained that the proposed modification to Rule 30 would only apply to those Contracting Parties which, under their legislations, could grant partial protection. The Secretariat indicated that if this was not the case, holders could still request the recording of a limitation before the renewal of an international registration.
60. The Secretariat, addressing a comment made by the Delegation of Cuba, explained that statements of partial grant of protection sent under Rule 18*ter*(2)(ii) had to indicate the goods and services for which protection had been granted. The Secretariat considered that this requirement, as well as the use of the model form, had rendered these statements clearer. The Secretariat agreed with the view expressed by the Delegation of Cuba on the need to implement a coordination mechanism between the International Bureau and Offices to ensure the proper recording of these statements.
61. The Secretariat, referring to a suggestion made by the Representative of AROPI, confirmed the fact that the Common Regulations only provided for the possibility to request the recording of a partial cancellation or of a limitation, before renewal was due. The Secretariat indicated that the proposed amendment to Rule 30 sought to provide for the possibility to renew an international registration only for goods and services effectively protected in a designated Contracting Party. The Secretariat indicated that the suggestion made by the Representative of AROPI would be noted in the report of the session and that it could be considered at a future session of the Working Group.
62. The Secretariat thanked the Representative of INTA for his drafting proposal, said that it would be taken into account and suggested that a discussion on a consolidated version of the proposed changes be held later in the session.
63. The Chair concluded that there appeared to be consensus on the proposed amendment to Rule 30 but that there were some drafting proposals that needed to be presented to the Working Group. The Chair suggested that discussions on a modified version of the proposed changes to Rule 30 resume when the Secretariat had provided a new text in the three working languages of the Madrid system.
64. The Chair invited delegations to comment on paragraphs 48 and 49 of document MM/LD/WG/11/2.
65. The Delegations of Australia and Mexico supported the proposed amendment to Rule 31 of the Common Regulations.

66. The Representative of APRAM supported the proposal but suggested that the notification under Rule 31 be sent to the holder and to his recorded representative. The Representative, recalling that organizations not affiliated to the International Bureau were sending communications to holders of international registrations, remarked that holders found it hard to discern those communications from official notices sent by the International Bureau.

67. The Chair noted that, under Rule 3(5)(b) of the Common Regulations, an invitation, notification or other communication addressed to the holder had to be sent to the recorded representative, which would address the concern expressed by the Representative of APRAM.

68. The Representative of APRAM clarified that he was suggesting that notices under Rule 31 be sent to both the holder and to the recorded representative, as it was the case with the unofficial notices of expiry sent under Rule 29. The Representative considered that sending the notification to both, the holder and the representative, would make it fulfill its purpose when the information concerning the representative was no longer up to date in the International Register.

69. The Secretariat considered that notices under Rule 31 could also be sent to both the holder and the representative, following the same established practice for unofficial notices of expiry sent under Rule 29.

70. The Chair concluded that there was consensus on the proposed modification to Rule 31 of the Common Regulations.

71. The Chair announced that a document with a modified version of proposed Rule 5*bis*, as well as with suggested modifications to Rules 20*bis* and 27 of the Common Regulations had been made available and invited the Secretariat to introduce it.

72. The Secretariat thanked the Delegation of Japan as well as the Representatives of INTA and APRAM for their drafting contributions. The Secretariat indicated that:

- proposed Rule 5*bis* had been changed to:
 - insert in paragraph (1)(a) a reference to Rule 34(3)(c)(iii);
 - insert in paragraph (1)(a), after the word “*designation*”, a comma and the word “*payment*”;
 - insert in paragraph (1)(a)(ii), after the phrase “*in respect of*”, the word “*which*”;
 - modify paragraph (1)(b) to notify the applicant or holder when a request for continued processing was not granted;
 - delete from paragraph (2) the words “*under paragraph (1)*”.
- Rule 20*bis*(3) could be amended to introduce a new subparagraph (c) dealing with the date of the recording of a license where continued processing had been granted.
- Rule 27(1) could also be amended to introduce a new subparagraph (c) dealing with the date of recording of a change, cancellation, renunciation or limitation where continued processing had been granted.

73. The Secretariat asked delegations whether 200 Swiss francs would be an appropriate amount of the fee for a request for continued processing under proposed Rule 5*bis*.

74. The Chair invited the Working Group to comment on Rule 5*bis*, as it had been most recently proposed by the Secretariat.

75. The Delegation of France indicated that it had some minor linguistic remarks to the French version of the new proposal and that it would later submit them in writing to the Secretariat. The Delegation also suggested to add the phrase “*in the International Register*” to proposed Rule 5*bis*(2), after the word “*record*”. The Delegation said that the same phrase could be added to proposed Rule 20*bis*(3)(c), after the phrase “*the license shall be recorded*”, and to proposed Rule 27(1)(c), after the phrase “*the change or cancellation shall be recorded*”.

76. The Delegation of Switzerland sought further clarification on the nature of the recording in the International Register that was referred to in proposed Rule 5*bis*(2). The Delegation noted that continued processing was being proposed for time limits in Rule 11(2) and (3) of the Common Regulations, which dealt with situations in which an international application had not yet resulted in a registration.

77. The Representative of CEIPI recommended that the word “*aucune*” be replaced with the word “*un*” in the French version of proposed Rule 5*bis*(1)(a). The Representative explained that this would be more appropriate because it would state that the proposed relief measure applied where the holder failed to meet either one or more than one of the time limits indicated in the Rule and not necessarily all of them. The Representative also suggested that the word “*specified*” be replaced with the phrase “*referred to*” in the English version of the same proposed Rule. The Representative noted that Rule 34(3)(c)(iii) did not specify but referred to a time limit established by the designated Office and he also remarked that the French version did not present the same problem.

78. The Delegation of Morocco sought further clarification on the fate of the application or request for which continued processing had not been granted. The Delegation asked whether that application or request would be considered abandoned or whether the holder would be able to present another request for continued processing within the two-month delay provided for in proposed Rule 5*bis*(1)(a)(ii).

79. The Representative of APRAM asked the Secretariat why his suggestion to extend continued processing to the time limits to remedy irregularities through an Office had not been taken into account in the modified proposal presented by the Secretariat.

80. The Secretariat, addressing the issue brought up by the Delegation of Switzerland, explained that recording in the International Register the fact that continued processing had been granted could be useful information to Offices and third parties.

81. The Secretariat, replying to a question asked by the Delegation of Morocco, indicated that the proposed Rule did not limit the number of times an applicant or holder could present a request for continued processing within the specified time limit. The Secretariat added that applicants and holders could present subsequent requests for continued processing where a previous one had not been considered as such.

82. The Secretariat, referring to the intervention made by the Representative of APRAM, understood that the proposal made by the Representative referred to communications sent by Offices which had been affected by *force majeure*. The Secretariat explained that the current proposal dealt with a number of procedures before the International Bureau. The Secretariat added that it would study a possible revision of Rule 5 in line with what had been previously discussed and present a proposal in a future session of the Working Group. Underlining the fact that, at the time, there were no relief measures provided for in the Madrid system, the Secretariat suggested that adopting and implementing proposed Rule 5*bis* could serve as a learning experience to later propose the introduction of further measures.

83. The Representative of APRAM clarified that he had suggested to extend the application of the relief measure in proposed Rule 5*bis* to the time limit to remedy irregularities through an Office. The Representative argued that the reasons stated by the Secretariat in the document under discussion to provide the relief measure to the procedures specified in the proposed Rule equally applied to those procedures which had to be managed through an Office. The representative considered that applicants and holders would be interested in having this relief measure for those procedures.

84. The Chair, thanking the Representative of APRAM for his clarification, indicated that his proposal would be noted in the report of the session and suggested that it could be considered in a future session of the Working Group.

85. The Delegation of Switzerland stated that, while not being opposed to the recording in the International Register of every granted request for continued processing, as a practical matter, the Delegation questioned its usefulness. The Delegation stressed the importance of maintaining the simplicity of the International Register and wondered whether including these recordings would add an unnecessary burden.

86. The Secretariat, addressing the concern expressed by the Delegation of Switzerland, suggested that the proposed recording would add to the transparency of the International Register. The Secretariat added that, while the information would be recorded, Offices would not be cluttered with unnecessary notifications. The Secretariat anticipated that, in practice, there would be few request for continued processing.

87. The Representative of INTA indicated that it would be useful to have the information reflected in the International Register. He also suggested that, as a practical matter, only that which was the subject of a recording could be notified to applicants or holders.

88. The Chair concluded that there was consensus on the introduction of Rule 5*bis*, as it had been most recently proposed by the Secretariat, with some small editorial changes suggested during the session.

89. The Chair invited the Working Group to comment on the proposed modifications to Rule 20*bis*.

90. The Representative of CEIPI suggested that the proposed paragraph (3)(c) specify that the original time limit was that indicated in paragraph (2)(b) of Rule 20*bis*.

91. The Delegation of Switzerland reserved its opinion on the proposed change to Rule 20*bis*. The Delegation indicated that, according to the law of Switzerland, where continued processing was granted, it was presumed that the initial time limit had been observed. The Delegation indicated that it appeared that the proposed change was in line with its national law but that it would require time to engage in further consultations. The Delegation said that it would state its opinion later in the session.

92. The Chair suggested that discussions on the proposed amendments to Rules 20*bis* and 27 be postponed.

93. The Chair asked the Working Group whether it considered 200 Swiss francs to be an appropriate amount of the fee for a request for continued processing under proposed Rule 5*bis*. The Chair concluded that there was consensus on recommending this amount.

94. The Chair announced that a document with a modified version of the proposed amendment to Rule 30 had been made available and invited the Secretariat to introduce it.

95. The Secretariat thanked the Representative of INTA for his drafting contributions. The Secretariat indicated that the initial proposal to amend Rule 30 had been changed to:

- insert in paragraph (1)(a)(iii) the phrase “*statement of*” before the word “*refusal*” and the phrase “*under Rule 18ter(3) or (4)*” after this word;
- move, in the same paragraph, the phrase “*in respect of all the goods and service concerned*” to place it, between commas, after the word “*invalidation*”;
- insert in paragraph (2)(a) the phrase “*of refusal*” after the first mention of the word “*statement*”;
- move, in the same paragraph, the phrase “*in respect of all the goods and service concerned*” to place it, between commas, after the reference to Rule 18ter;
- insert, in the same paragraph, the phrase “*by the holder*” after the second mention of the word “*statement*”;
- insert in paragraph (2)(b) the phrase “*of refusal*” after the first mention of the word “*statement*”;
- insert, in the same paragraph, the phrase “*by the holder*” after the second mention of the word “*statement*”;
- replace in paragraph (2)(c) the two mentions of the word “*may*” by the word “*shall*”;
- redraft paragraphs (2)(d) and (e) which would then read as they appeared in the document which had been recently presented by the Secretariat.

96. The Representative of CEIPI noted that, in the English version of the proposed amendment to Rule 30(1)(a)(iii), the second letter “s” was missing from the word “*services*”.

97. The Delegation of Cuba sought further clarification on the proposed amendment to Rule 30(2)(b).

98. The Secretariat, referring to the question raised by the Delegation of Cuba, explained that no substantial change was proposed for Rule 30(2)(b). The Secretariat indicated that the principle remained that the holder could renew an international registration for all the designated goods and services, even after the recording of a final decision totally refusing protection to the mark. The Secretariat clarified that the Rule envisaged this possibility where further administrative or judicial proceedings could still result in either total or partial protection being granted.

99. The Delegation of Switzerland sought further clarification on the scope of a statement sent under Rule 18ter(4). The Delegation stated that it had interpreted that a statement sent under this Rule could not result in a total refusal of protection. The Delegation added that the Rule required that the statement indicate the goods and services for which protection was being granted. Considering that this statement could only result in either a total or a partial grant of protection to the mark, the Delegation concluded that the proposed amendment to Rule 30 would not be consistent with the scope of a statement sent under Rule 18ter(4).

100. The Secretariat, addressing the issue raised by the Delegation of Switzerland, remarked that a statement sent under Rule 18ter(4) could result in a total refusal of protection to the mark. The Secretariat explained that, where this statement followed a statement sent under Rule 18ter(2), the Office could withdraw some or all of the protection initially granted. The Secretariat added that Rule 18ter(4) only requested that, where the further decision referred to in this Rule granted some protection, the Office indicate the protected goods and services.

101. The Delegation of Kenya, sharing the view expressed by the Delegation of Switzerland, considered that a statement sent under Rule 18*ter*(4) could not result in a total refusal of protection to the mark.

102. The Representative of INTA said that the issue raised by the Delegation of Switzerland referred to the interpretation of the scope of a statement sent under Rule 18*ter*(4). The Representative remarked that, while the Delegations of Switzerland and Kenya considered that this statement could not result in a total refusal of protection to the mark, it appeared that the International Bureau and other delegations might have the opposite view. The Representative suggested further reflection on this issue to determine whether the reference to a statement sent under Rule 18*ter*(4) should be maintained in the proposed amendment to Rule 30.

103. The Delegation of Switzerland indicated that, following consultations with the Secretariat and other delegations, it was still of the view that a statement sent under Rule 18*ter*(4) could not result in a total refusal of protection to the mark. The Delegation suggested, so as not to preempt the interpretation of Rule 18*ter*(4), to delete from the proposed amendment to Rule 30(1)(a)(iii) and (2)(a) and (b) any reference to paragraphs (3) and (4) of Rule 18*ter*. The Delegation proposed that Rule 30 refer only to a statement of total refusal sent under Rule 18*ter*.

104. The Delegation of Italy asked whether the solution proposed by the Delegation of Switzerland would also apply to the proposed amendment to paragraph (d) of Rule 30.

105. The Delegation of Switzerland clarified that its proposed solution did not extend to paragraph (d) of Rule 30. The Delegation stated that it considered that the reference to Rule 18*ter*(4) in this paragraph was appropriate.

106. The Delegation of Cuba expressed its concern with the solution proposed by the Delegation of Switzerland and its potential impact on the calculation of the amount of the fees due for the renewal of an international registration. The Delegation added that it considered that Rule 18*ter*(3) referred to an administrative review of a decision taken by the Office while Rule 18*ter*(4) referred to a judicial review of this decision. The Delegation stated that it considered that both decisions could result in a total refusal of protection to the mark. The Delegation indicated that, for this reason, it concluded that it was necessary, for the sake of clarity, to maintain the references to paragraphs (3) and (4) of Rule 18*ter*, in particular, in the proposed amendment to Rule 30(2)(a).

107. The Secretariat, addressing the concern expressed by the Delegation of Cuba, indicated that the reference to Rule 18*ter* in the proposed amendment to Rule 30, without mentioning any paragraph, would encompass the interpretation made by the Office of Cuba on the nature and scope of statements sent under Rule 18*ter*. The Secretariat added that the proposed solution would accommodate the view that a statement of total refusal of protection to a mark might be sent under Rule 18*ter*(4) as well as the opposite view.

108. The Chair concluded that there was consensus on recommending to the Assembly the adoption of the proposed amendment to Rule 30, with the changes suggested by the Delegation of Switzerland. The Chair noted that the interpretation of the scope of the statements sent under Rule 18*ter*(4) was a pending issue and recommended that the Secretariat consider it as an item in the agenda of a future meeting of the Madrid Working Group Roundtable (hereinafter referred to as "the Roundtable").

109. The Chair announced that a document with a modified version of the proposed amendment to Rule 31 had been made available and that this version had taken into account the suggestion made earlier by the Representative of APRAM.

110. The Representative of INTA considered that Rule 31(4)(a) and (b) should mirror the language used in Rule 30(3)(a) and (c). He suggested that the words “*if any*” be added, between commas, after the word “*representative*”.

111. The Chair concluded that there was consensus on recommending to the Assembly the adoption of the proposed amendment to Rule 31, with the change suggested by the Representative of INTA.

112. The Chair proposed continuing with the discussions on the proposed amendments to Rules 20*bis* and 27.

113. The Delegation of Switzerland indicated that, according to its national legislation, continued processing implied the presumption that the applicant or holder had complied with all relevant requirements within the applicable time limit and, as a result, the original date of recording was preserved. The Delegation considered that the exceptions proposed in the amendments to Rules 20*bis* and 27 ran against the logic embedded in the Common Regulations and wished for a better solution. The Delegation, understanding the amendments as necessary to bestow some benefit on applicants or holders seeking continued processing, concluded that, as a practical compromise, it could accept the proposed amendments to Rules 20*bis* and 27.

114. The Chair established that there was consensus on recommending to the Assembly the adoption of the amendments to Rules 20*bis* and 27, with the editorial changes suggested by the Delegation of France and the Representative of CEIPI.

115. The Chair concluded that the Working Group had agreed to recommend to the Assembly the adoption of Rule 5*bis* and the amendments to Rules 20*bis*, 27, 30 and 31 of the Common Regulations, as well as the proposed amendment to the Schedule of fees, as modified by the Working Group, and as reproduced in Annexes I and II to the present document.

AGENDA ITEM 5: PROPOSAL FOR THE INTRODUCTION OF THE RECORDAL OF DIVISION OR MERGER CONCERNING AN INTERNATIONAL REGISTRATION

116. Discussions were based on document MM/LD/WG/11/3.

117. The Secretariat, introducing the document, recalled that this topic had been first discussed in the fifth session and, in detail, in the course of several ensuing sessions of the Working Group and that two specific proposals had been discussed in the previous session of the Working Group. The Secretariat explained that the first proposal aimed to introduce the division of an international registration at the level of the International Bureau whereas the second one intended to introduce division at the level of the Offices of designated Contracting Parties.

118. The Secretariat noted that, at the end of the previous session, there was no consensus on the introduction of division and that the Working Group had requested that the Secretariat prepare a further document based on all the comments and concerns expressed in the various sessions of the Working Group dedicated to discuss this matter. The Secretariat reported that, to facilitate the preparation of a further discussion document, the International Bureau invited Offices of Contracting Parties and users' organizations to submit comments on this matter and indicated that the International Bureau had received 11 contributions, eight from Offices and three from users' organizations.

119. The Secretariat remarked that the document which was about to be discussed did not provide a new proposal on how division of an international registration might be introduced, but summarized and clarified the differences between the two proposals discussed in the previous session of the Working Group, and it offered a brief review and comparative analysis of those proposals, further indicating that the document reviewed the previous discussions on the subject, identified issues that had emerged from those discussions, formulated some considerations and suggested a way to move forward.

120. The Chair, noting that the document at hand did not contain a new proposal and that the Working Group had already discussed this matter before without reaching a consensus, invited the Working Group to comment on the document in its entirety and asked that delegations indicate a way to move forward on the issue.

121. The Delegation of Switzerland recalled that, following requests made by interested parties and users of the system, it had taken several steps to make a proposal for the introduction of division into the Madrid system. The Delegation said that first it had made a general proposal which, taking into account the views expressed in the Working Group, had evolved into a pragmatic and practical detailed proposal that did not unduly burden the International Bureau or the Offices of the designated Contracting Parties. The Delegation considered that the Working Group, in its previous session, did not have the opportunity to discuss in detail this proposal due to its somewhat late submission.

122. The Delegation of Switzerland indicated that it had expected that the document, which had been prepared by the International Bureau at the request of the Working Group, would elaborate on a new proposal along the lines of what had been already decided by the Working Group. The Delegation wished that the Working Group returned to more substantive discussions on its proposal and those made by other delegations as well as other parties concerned. The Delegation declared that, based on the reaction of delegations and other parties, the proposal made by the Secretariat did not fulfill the needs of the users. The Delegation considered that, in contrast, Switzerland had presented a good proposal which, although subject to improvement, had received the support of a large number of users. The Delegation announced that, for this reason, it continued to put forth its proposal expecting to hear what additional measures could be taken to fulfill the needs of other delegations, the International Bureau and the users of the system.

123. The Delegation of Switzerland, referring to the contribution made by AROPI, which had been posted on the Madrid System Legal Forum, considered that this contribution had confirmed the needs of the users, providing examples where division would be useful and taking the discussion out of the theoretical domain. Recalling the message delivered earlier by the Director General of WIPO, the Delegation said that there was a gap in the Madrid system that it wished to fulfill, as users of the Madrid system were in an unfavorable position compared to those who chose the national route. Highlighting the fact that a great number of countries provided for division in their national legislation, the Delegation said that it was of the view that division should also be available in the Madrid system.

124. The Delegation of Lithuania, speaking on behalf of the European Union and its member States, confirmed that it regarded division of an international registration as a desirable outcome. The Delegation also indicated that it sought to maintain the philosophy of the Madrid system, making the international registration of marks as simple as possible, to encourage new members to join the Madrid system, bringing yet greater benefits for its users.

125. The Delegation of Lithuania, while supporting both proposals under consideration, expressed its concern with the practical implications of their implementation. The Delegation said that, under the proposal made by the International Bureau, it appeared that Contracting Parties would have to maintain a separate register to record divisions and mergers of international registrations. The Delegation considered that, under the proposal submitted by the Delegation of Switzerland, it appeared that an international registration would in effect be divided which could potentially diminish the simplicity of the Madrid system and remove the advantage of having a single registration with effect in multiple Contracting Parties. The Delegation concluded that both options would, as a practical effect, add complexity to the Madrid system.

126. The Delegation of Lithuania said that it did not preclude that a workable solution might be developed during the session of the Working Group, and that future technological developments could minimize the drawbacks of the introduction of division into the Madrid system. The Delegation suggested that the Working Group might decide on the introduction of a mechanism for division, as part of a comprehensive assessment of the Madrid system, following its transition to a one treaty system.

127. The Delegation of Mexico declared that, as it had been previously agreed by the Working Group, a procedure for the division of international registrations should not be imposed on the Offices of those Contracting Parties which, as it was the case with Mexico, did not provide for division in their national legislations.

128. The Delegation of the Russian Federation confirmed its support, in principle, to the introduction of a procedure for the division of international registrations, but indicated that further clarification was still needed. The Delegation considered that the request for the division of an international registration had to be presented in an official form; that it ought to be processed by the International Bureau; that the division of an international registration should be recorded in the International Register; and, that the International Bureau had to assign a new international registration number to the divided part. The Delegation also considered that requests for the division of an international registration presented to the Office of a designated Contracting Party, either during examination or following a decision made by that Office, ought to be forwarded to the International Bureau which should examine it to determine whether the list of goods and services fell within the original scope of the international registration.

129. The Delegation of Italy, concurring with the position expressed earlier by the European Union, favored the introduction of the recording of division and merger of an international registration. The Delegation said that the legislation of Italy provided for this possibility and further noted that the introduction of this feature would better harmonize the Madrid system with the TLT and the Singapore Treaty. The Delegation said that some important aspects required deeper consideration and provided, as an example of one of them, the way in which the division of an international registration would be recorded in the International Register.

130. The Delegation of Italy considered that the introduction of division should not increase the workload of neither the International Bureau nor the Offices, should not increase the complexity of the Madrid system and should not result in any obligation for the Offices of those Contracting Parties where division was not provided for in their national legislations. The Delegation expressed the need for a closer examination on the possible implementation of each proposal and, in particular, on the possibility to have two international registrations for the same mark, the date of the effect of the divided international registration and the possibility to have refusals based on different grounds for the same mark. The Delegation warned of the added complexity these issues could bring to the Madrid system.

131. The Delegation of France said that it was ready to accept the introduction of division as long as this did not burden the Madrid system. The Delegation indicated that the proposal made by the International Bureau appeared to be limited, as division could be attained only before the Offices of those few Contracting Parties which, at the moment, contemplated division in their national legislations and maintained a parallel registry. The Delegation considered that this proposal would be difficult to implement in Offices that, as it was the case with the Office of France, did not maintain a parallel registry of international registrations.

132. The Delegation of France considered that the proposal made by the Delegation of Switzerland appeared to be interesting, as it had a broader scope than the one made by the International Bureau and noted that under the proposal made by the Delegation of Switzerland, the request could be made before the Offices of those Contracting Parties that provided for division in their national laws and information on division would be centralized in the International Register. The Delegation expressed that it continued to have doubts on the implementation of this proposal by the Offices of the designated Contracting Parties, in particular, on their examination of requests for division. The Delegation also wondered what would happen in those Contracting Parties that did not provide for the merger of divided applications or registrations in their national legislations.

133. The Delegation of Romania supported the proposal made by the Delegation of Switzerland and the declaration made by the Delegation of France. The Delegation noted that the national legislation of Romania provided for division and that its Office had received some requests for division. The Delegation indicated that it considered that the introduction of division would allow holders to preserve their rights.

134. The Delegation of Madagascar indicated that its national legislation provided for division only as a result of the recording of a partial change in ownership. The Delegation declared that it was not opposed to the introduction of division into the Madrid system, but the introduction had to be done without constraining the International Bureau or the designated Offices and without burdening the international procedure. Referring to the proposal made by the Delegation of Switzerland, the Delegation was of the view that assigning a new international registration number to a divided registration would cause complications.

135. The Delegation of Spain said that it was not opposed to the proposal made by the Delegation of Switzerland, which went further than the proposal made by the International Bureau, as long as it did not increase the workload and the complexity of the Madrid system. The Delegation remained skeptical on the usefulness of the proposal and highlighted that, 11 years after the introduction of division in its national legislation, its experience had been practically nonexistent given the few requests that had been presented to its Office.

136. The Delegation of the United States of America said that it was aware of the importance for industry of the option to divide a national application and that its national law provided for this option. The Delegation understood that one of the reasons for requesting the introduction of division into the Madrid system was to bring about this practice where national laws did not provide for it. The Delegation argued that changing the Common Regulations was perceived as easier than amending the national laws. The Delegation added that another reason was the fact that division in the Madrid system would be easier to implement for those national Offices that did not want to assign a set of national numbers to Madrid registrations. The Delegation explained that its Office did not discriminate between national applications and Madrid registrations, that both would be equally processed within the same work stream by its Office, and that that latter would be assigned national application and, eventually, national registration numbers.

137. The Delegation of the United States of America described the proposal made by the Delegation of Switzerland as the institutionalization of the way in which the members of the Madrid Agreement had implemented the Madrid system and indicated that, according to this view, the International Register took the place of the national register. The Delegation added that such view made sense where only standard fees were in place. The Delegation argued that, under the possibility to declare for individual fees, holders of international registrations expected to receive the same level of services delivered to national applicants.

138. The Delegation of the United States of America declared that it was not in favor of proposals which would introduce further complexity to the Madrid system while institutionalizing a way to implement it that resulted in fewer services to the holders of international registrations. As a way to move forward, the Delegation suggested that those Contracting Parties that provide for division in their corresponding legislation discuss, in the following session, the way in which division had been implemented so as to provide a fuller understanding on how this was being done by national Offices.

139. The Delegation of Kenya said it supported the introduction of division with a view to create a simpler Madrid system, but it sought clarity on a number of issues, such as whether the renewal would still be for a single international registration, whether such renewal would be allowed for part of the divided registration and whether the holder would be able to pursue only a part of the divided registration.

140. The Delegation of Norway declared that it supported proposals that would make the Madrid system more transparent and attractive for users. The Delegation said that, while the recording of division and merger appeared interesting, it was also important to avoid changes to the system that would increase its complexity. The Delegation suggested that division and merger be introduced as an easy, manageable solution that did not imply a large increase of work for the International Bureau and the national Offices. The Delegation of Norway considered that the proposal made by the Delegation of Switzerland raised a number of issues, such as how to number the divided part of an international registration and deal with its renewal, that further elaboration was needed and that input from the floor was necessary. The Delegation said that it wished to hear the experience of those Contracting Parties that already provided for division of designations in international registrations.

141. The Delegation of Australia, suggesting that the introduction of a formal structure for the division of international designations would add complexity to the Madrid system, indicated that, while this could benefit a small number of users, the associated costs might be significant. The Delegation recommended caution and declared that it supported changes to the Madrid system that increased transparency and efficiency while providing real benefits to the users. The Delegation concluded that further analysis on the impact of the proposal was needed to reduce the probability of increasing the complexity of the Madrid system and the risk of hindering its simplicity.

142. The Delegation of Australia, declaring its support for further discussions to find a workable mechanism for recording in the International Register that division had taken place at the level of the Office of a Contracting Party, indicated that, based on submissions made by several Contracting Parties, it would appear that the division of a particular designation might provide for a consistent treatment at the national level of direct and Madrid-based filings. The Delegation also indicated that, while a number of requests for division of a designation of Australia had been made, it lacked sufficient evidence to conclude whether this was necessary and recommended further in-depth analysis of the matter.

143. The Delegation of Australia, referring to the proposal made by the Delegation of Switzerland, remarked that the reasons to request division and the way in which such request was processed should, in principle, be consistent for national applications and Madrid registrations but added that, nevertheless, practices were different in each jurisdiction. Reporting that its Office received some 600 annual requests for division, the Delegation explained that most of those requests sought an extension of the trademark prosecution period.

The Delegation suggested that a detailed cost-benefit analysis of the proposal would be necessary, including the resource implications for the International Bureau, particularly, on any significant IT investment that might be required, as well as an analysis of any subsequent impact on users in terms of expenses and delays.

144. The Delegation of China stated that the recording of divisions of international registrations was a positive proposal, which would maintain the integrity and transparency of the International Register, but it should neither lead to any increase in the burden on the International Bureau or national Offices nor increase the complexity of the Madrid system. The Delegation preferred the proposal of the International Bureau. The Delegation informed that a new Trademark Law would enter into force in China on May 1, 2014, which would introduce a division procedure during substantive examination. The Delegation explained that the details, which were still being discussed, would be included in the implementing regulations.

145. The Delegation of Colombia agreed to the introduction of division on the condition that it neither increased the burden of the International Bureau nor the complexity of the system. Recalling that, under Article 4 of the Madrid Protocol, holders of international registrations designating Colombia and national applicants had equal prerogatives, the Delegation indicated that holders of international registrations could request its division in Colombia and that the national Office would assign a new number to the divided part. The Delegation considered that division was to be dealt within each jurisdiction and that the only issue left to be defined by the Working Group was whether the request would be filed directly with the Office of a designated Contracting Party or through the International Bureau.

146. The Representative of INTA said that he was surprised when he did not find a new proposal in the document under discussion, as it had been requested by the Working Group. The Representative understood that further clarification was needed on the various issues discussed in the previous sessions, and considered that the document presented by the International Bureau was useful in identifying and summarizing those issues. The Representative hoped that the session would provide clarity and that a broad agreement could be reached on the principles and essential grounds on which a satisfactory solution should be based, so as to move forward on a question that had been with the Working Group for over five years.

147. The Representative of INTA recalled that, in 2009, INTA had suggested a number of principles with practical implications, and he wished to highlight two of those principles. He said that the first principle was that holders of international registrations should have access to the same possibilities of division available to national applicants and that, where division was not possible in the national route, there should be no obligation for Contracting Parties to give effect to the division of an international registration. He added that the second principle was that, in order to maintain the integrity and transparency of the International Register, division of the international registration had to be administered centrally and concluded that this meant that a procedure administered by the International Bureau should be set in place for the recording, notification and publication of the division and for processing amendments of the resulting divisional registrations, including their merger. The Representative of INTA declared that his organization had recognized both principles in the proposal made by the Delegation of Switzerland and, for that reason, supported this proposal.

148. The Representative of INTA, referring to paragraph 25 of the document under discussion, understood that the proposal made by the Delegation of Switzerland implied an obligation for all Contracting Parties whose legislation provided for division to give equal effect to the division of an international registration in which it was designated. For the sake of brevity the Representative deferred to Part 1 of the observations posted by AROPI on the Madrid System Legal Forum.

149. The Representative of INTA, regarding to the specific procedure to be put in place, said that his organization had made a number of suggestions that it also recognized in the detailed proposal made by the Delegation of Switzerland, which, he added, was perfectible.

The Representative quoted paragraph 41 of the document under consideration in support of using a procedure similar to the one used for the recording of partial changes in ownership, which, according to the document, worked to the satisfaction of users without unduly burdening the International Bureau.

150. The Representative of INTA indicated that several delegations had voiced their concern on a potential increase in the complexity and workload of the Madrid system, following the introduction of division. The Representative assured that trademark holders did not view additional facilities as complicating or increasing the complexity of the system. He asserted that holders and their representatives were very familiar with division at the national level and used it only when required and that the fact that division was used sparingly, as evidenced by the survey presented by the International Bureau at the ninth session of the Working Group, should reassure the Working Group that the introduction of division would not unduly burden the Madrid system.

151. The Representative of CEIPI, recalling that his organization was an educational and research institution that did not represent the users of the Madrid system, said that, nevertheless, he was sensitive to their needs and declared that the Madrid system had become essential to holders wishing to protect their marks abroad, noting that most of the concerns expressed by certain delegations were more related to practical aspects rather than to the adoption, in principle, of division.

152. The Representative of CEIPI indicated that his organization remained strongly committed to two principles. He said that the first was the principle of consistency among all the treaties administered by WIPO, unless this was prevented by compelling reasons, which, the Representative added, did not exist in this case. Recalling that division had been recognized in the TLT and it had then been taken up in the Singapore Treaty, he argued that it would be logical and consistent to also adopt it in the Madrid system. He mentioned that the second principle was that holders of international registrations should not be at a disadvantage compared to national applicants, at the risk of, otherwise, endangering the appeal of the Madrid system. The Representative asserted that the fact that a number of Contracting Parties had already recognized the institution of division and that such number was likely to increase, said that it was important that holders of international registrations could divide it in respect of those Contracting Parties.

153. The Representative of CEIPI supported the proposal made by the Delegation of Switzerland, because he considered that it addressed the needs of users while lessening a possible increase in the complexity and the workload of the system feared by a number of delegations. The adoption of the proposal made by the Delegation of Switzerland would not affect, in any way, the Contracting Parties that did not provide for division in their legislations.

154. The Representative of AIPLA fully supported the remarks made by the Representatives of INTA and CEIPI.

155. The Representative of AROPI supported the declarations made by the Representatives of INTA and CEIPI and said that, as a user of the system, he was sensitive to the concerns expressed by a number of delegations on a possible increase in its complexity. The Representative noted that AROPI had recently posted a document on the Madrid System Legal Forum which demonstrated the importance of division for users.

156. The Representative of AROPI supported the proposal made by the Delegation of Switzerland, and considered that the proposal would not render a more complex Madrid system, since it would rest on an existent mechanism, and it would not result in any additional workload for the International Bureau. The Representative argued that division had been provided for in international treaties because it reflected a business need, event though, as demonstrated in the survey conducted by the International Bureau, its use remained limited.

157. The Representative of AROPI recalled that certain delegations had expressed reservations over the proposal made by the Delegation of Switzerland and, in particular, on the communication of requests for division to the International Bureau. The Representative suggested that the Working Group might consider a simplified and harmonized way in which Offices could communicate these requests.

158. The Representative of APRAM supported the views expressed by the representatives of the other users' organizations and institutions interested in the development of intellectual property. The Representative added that division should be offered to users of the system and considered that the proposal made by the Delegation of Switzerland struck a good balance, as it satisfied all of the expressed needs. The Representative failed to see how division would increase the complexity or the workload of the Madrid system. The Madrid system was a complex system, dealing with complex issues and, as a result, some complexity was to be expected to resolve these issues. The Representative asserted that division, while an opportunity for holders of international registrations, would not result in additional workload for Offices or the International Bureau.

159. The Delegation of Switzerland, thanking all the delegations and representatives who had supported its proposal, recalled that it had searched for a solution that would not render a more complex system and it had proposed replicating the procedure used for the recording of a partial change in ownership because it was a well-known and established procedure. The Delegation explained that, as it was the case with this procedure, the division of an international registration would result in two independent registrations with two sets of fees. The Delegation considered that holders would be ready to assume these costs where division was actually needed. The Delegation indicated that holders would later have to decide whether to renew one or both registrations.

160. The Delegation of Switzerland, addressing some concerns expressed over the implementation of its proposal, affirmed that its proposal would not increase the examination workload of Offices because the request would be presented once the Office had already examined the international registration and determined that there were some issues with respect to some of its goods and services. The Delegation declared that its proposal would provide holders with a clear title of protection for those goods and services which were not contested by the Office. The Delegation added that, in contrast, the proposal made by the International Bureau would increase the burden of the Offices of the designated Contracting Parties.

161. The Delegation of Switzerland recalled that its proposal did not envisage changes to the legislation of the Contracting Parties because division would strictly operate within the framework of the Madrid system. The Delegation further clarified that its proposal would not oblige Contracting Parties to introduce division in their legislations and that the same would apply to the merger of divided international registrations. The Delegation proposed that using a mechanism which already existed in the Madrid system would produce a clear and actual division of the international registration and not a mere inscription. The Delegation declared that it remained open to continue the discussion to refine and further clarify other aspects of its proposal.

162. The Secretariat, confirming that the International Bureau would undertake all necessary efforts to implement any proposal that would benefit the Madrid system, noted that various opinions had been expressed on the subject during the discussion and, while some were strongly in favor of the introduction of division, others had advised caution and wished neither to burden nor to render a more complex Madrid system. The Secretariat remarked that discussions had been centered on this particular issue, but that had been held at an abstract level.

163. The Secretariat suggested that the International Bureau prepare a new document, along the lines indicated by the Delegation of Australia, detailing the cost and the practical implications of the introduction of division on the workload of the International Bureau and the Offices. It also suggested that Contracting Parties that provided for division might prepare similar documents explaining how their Offices operated this procedure. The Secretariat indicated that, if the Working Group agreed on this approach, it would also have to decide whether the document had to focus on a centralized approach, which the Secretariat defined as a division effected in the Madrid system, or a decentralized approach, defined as a division effected in the designated Contracting Parties. The Secretariat said that, while some of the principles advanced by the Representative of INTA would favor a centralized approach, some delegations had expressed reservations about this approach. The Secretariat suggested that a new document discuss the practical implications of both approaches and that the Working Group further debate both options.

164. The Delegation of the United Kingdom declared that the Secretariat's latest intervention had added balance to the considerations of the Working Group, further indicating that the benefits for the system and its users, not just avoiding complexity, were the drivers of the Working Group. The Delegation suggested that the proposal made by the Secretariat be considered seriously and taken forward. On the question posed by the Secretariat, the Delegation suggested that, in the interest of balance, validity and accuracy of the assessment, the document cover both approaches and that those Offices having a division process give advice on how it actually worked, what processes it involved, the resource implications and how it was managed. The Delegation suggested that it would be quite informative to establish the frequency with which division actually occurred, to determine whether it was a regular occurrence or something happening under particular circumstances, and that this information would help the Working Group determine the impact each approach would have.

165. The Delegation of Switzerland, while understanding the usefulness of having more detailed information, questioned whether a new document, as it was being proposed, would be of any interest. The Delegation recalled that the users of the Madrid system had already expressed that they favored a centralized approach which would better address their needs. Fearing that the Working Group would digress into discussions about division and how it was implemented at the national or regional level, the Delegation suggested that the Working Group move forward with a document that could allow it to make a decision on the introduction of division into the Madrid system.

166. The Delegation of Germany suggested that the new document should also discuss the impact on fees and informed that, under its legislation and following division, a holder would have to maintain two registrations and pay two sets of fees or might renew only one of them. As its legislation provided for division, the Delegation considered that division would also extend to international registrations but added that its legislation excluded the possibility to request a merger which, the Delegation understood, was an essential element for INTA. In that respect, the Delegation underlined that if division was to be effected under the legislation of the Contracting Parties, the principles stated earlier by the representative of INTA would not be met.

167. The Delegation of Germany declared that the main issue was the transparency of the International Register and, for this reason, did not favor that the International Register merely mention the fact that division had taken place, as holders and third parties would rely on the International Register to determine the scope of protection of an international registration in the designated Contracting Parties, rather than on their national registers. The Delegation said that it believed that the United States of America was the only Contracting Party that maintained a parallel register for international registrations.

168. The Delegation of Germany said that the number of requests for division in its country was very limited and that it appeared that its usefulness was also very limited but noted that, in contrast, the representatives of users' organizations held the view that there were reasons for requesting division. The Delegation estimated that there would be no relevant increase in the examination workload for national Offices, but requested that the document take into consideration the costs of implementing division, whether it be recorded in the International Register or in the registers of the Contracting Parties.

169. The Delegation of the United Kingdom noted that the Delegation of Germany had raised a point that needed to be considered in the document. The Delegation of the United Kingdom added that it was not only a question of comparing procedures and costs, but also the implications of having a central register; it further declared that users should not be obliged to interrogate national databases to find out the status of protection of an international registration. The Delegation deemed that to be a significant argument and the kind of practical issue that needed to be considered in the document.

170. The Delegation of France considered that the centralized approach was the most effective for users of the system and, for this reason, requested that this approach be preferred in the document.

171. The Representative of AROPI, thanking the Delegations of France, Germany and the United Kingdom for their interventions, considered that the centralized approach had to be preferred. The Representative recalled the fact that very few Offices maintained a parallel register for international registrations and stated that, to avoid a surcharge in these Offices, the centralized inscription appeared to be the most logical and simpler solution, as well as the clearest one in terms of availability of information. Emphasizing the importance of keeping users informed on the status of a request for division, after it had been presented to an Office, he said that, under the proposal made by the Delegation of Switzerland, the Office of a designated Contracting Party would decide whether to admit a request for division according to its legislation and, once the Office had made that decision, should notify the International Bureau for its inscription in the International Register.

172. The Representative of AROPI, referring to the issue raised by the Delegation of Germany on merger, declared that he remained open to discuss this option, indicating that, although merger would be an asset, the introduction of division remained as the highest priority for users.

173. The Delegation of Cuba declared that the contributions made by the preceding delegations had clarified a subject that had appeared highly abstract. The Delegation requested that a new document consider the costs implications and analyze whether division should be first requested to the Offices of the designated Contracting Parties or directly to the International Bureau, because this issue had not been sufficiently clarified.

174. The delegation of Austria shared the concerns expressed by the Delegations of Germany and the United Kingdom. The Delegation declared that it looked forward to a more practical and detailed document, as well as to more information on the issue.

175. The Chair recalled that a number of delegations had expressed the need for transparency and availability of information on division but had raised concerns over the more practical implications of the introduction of this mechanism. The Chair also noted that a majority of delegations had mentioned that division should not unduly increase the workload of the International Bureau or Offices nor add complexity to the system, and that a number of delegations had declared that more information was needed.

176. The Chair suggested that the International Bureau prepare a document for a future session of the Working Group. The Chair proposed that the document should provide more information on the centralized and decentralized approaches; analyze the expected workload increase for the international Bureau and Offices, on the basis of document MM/LD/WG/9/2, for which the Chair invited delegations to submit updated information; estimate the costs for the International Bureau of the implementation of the mechanism; and address the timeframe for this implementation. The Chair indicated that it was quite clear that the centralized approach should be examined in more detail.

177. The Delegation of Switzerland declared that it wished that the document discuss the practical implications of implementing its proposal.

178. The Chair recommended caution and suggested that the Working Group should not commit to one approach, but take one step back and try to envisage how to implement a centralized approach while remaining open to the available options.

179. The Delegation of Switzerland asserted that, while understanding that there could be other options, it would be useful that the document discuss in more detail the two proposals which were already on the table.

180. The Secretariat confirmed that the proposal made by Switzerland would be taken into account as one of the major starting elements in the new document. The Secretariat said that it wished to take a step back and determine the most effective way to implement a procedure that would best meet the objectives behind the request.

181. The Delegation of Switzerland thanked the Secretariat for its clarification, but insisted on its request that the new document provide more concrete elements on the two proposals under discussion. The Delegation hoped for a new document assessing its proposal and suggesting an alternative, be it centralized or decentralized.

182. The Chair suggested that the document should contain, with a high degree of precision, the operational implications of a centralized and decentralized approach and not of two centralized approaches that only differed in very little aspects. The Chair suggested that it would be best if the Working Group remained available to consider different elements.

183. The Delegation of Switzerland, asserting that it did not wish to impose a solution on the Working Group, declared that it remained confident that the new document would serve to clarify the matter under discussion.

184. The Chair concluded that the Working Group had agreed to request that the International Bureau prepare, for its next meeting, a document which would:

(a) propose a detailed operational implementation of primarily a centralized, but also a decentralized approach, to the introduction of division and merger concerning an international registration, including how such implementation would affect Contracting Parties to the Madrid system;

(b) analyze the impact on costs and workload of the International Bureau and the workload of Contracting Parties;

(c) propose a timeframe for the above-mentioned implementation;

(d) take into account all previous contributions in the discussion of this issue, including documents MM/LD/WG/10/6 and MM/LD/WG/9/2.

AGENDA ITEM 6: INFORMATION CONCERNING CEASING OF EFFECT, CENTRAL ATTACK AND TRANSFORMATION

185. Discussions were based on document MM/LD/WG/11/4.

186. The Secretariat introduced the document, following-up on a data gathering exercise first reported in the ninth session of the Working Group, and presented the data contained in it.

187. The Chair suggested that the document be discussed as a whole.

188. The Delegation of Norway, citing information provided in the document under discussion, argued that the latest data gathering exercise largely supported the findings of the first exercise, namely that central attack due to a third party action constituted only a small portion of the total number of recorded notifications of ceasing of effects. The Delegation underlined that the document suggested that the actual use of central attack was more limited than the figures reported in both exercises. The Delegation recalled that, the day before, the Director General of WIPO had reported that most users of the Madrid system were SMEs and indicated that this was also the case in Norway.

189. The Delegation of Norway considered that third parties might attack a national application or registration believing that it violated a right in Norway, but it seriously doubted that, in most of those cases, this was done with the intention of attacking an international registration. The Delegation declared that, in those situations, the cancellation of an international registration was simply an inadvertent side effect or an unintentional central attack. The Delegation did not consider this situation as being fair and struggled to see how the users of the national system could have a legitimate reason to effectively invalidate an international registration which had protection in different jurisdictions. The Delegation suggested that central attack ran contrary to basic trademark principles; in particular, to the principle of legal sovereignty under which a trademark only had protection in the jurisdiction where it was being used or had been registered.

190. The Delegation of Norway, recalling that the first to use or register a trademark in a jurisdiction was normally entitled to protection in that jurisdiction, and in that jurisdiction alone, indicated that under the Madrid system, a trademark right given in a jurisdiction might effectively be invalidated on grounds relevant only in another jurisdiction, which would not be in line with either the principle of legal sovereignty or Article 6 of the Paris Convention for the Protection of Industrial Property. The Delegation declared that, for those preceding reasons, it believed that the possibility of freezing central attack should be considered and declared that it was of the view that this would be a relevant step in simplifying and modernizing the Madrid system, making it more user-friendly. The Delegation concluded that, as proprietors of international registration would not need to worry about the status of their basic marks, the system would become safer, easier, more efficient and with increased legal certainty.

191. The Delegation of Norway particularly noted the benefit that freezing central attack might bring to applicants in Contracting Parties that did not use Latin characters and indicated that, although these applicants would still have to file a basic application in Latin characters, they would not have to be concerned with any consequences on their international registrations resulting from the invalidation or revocation of the basic mark. The Delegation suggested that freezing central attack, as a reversible decision by the Assembly, could resolve the fear of the unknown, as it would be possible to assess its consequences and revert to the previous situation if the proposed solution did not work.

192. The Delegation of Norway proposed that the Working Group request that the International Bureau prepare, for the following session of the Working Group, a study on possible ways to freeze the relevant provisions of the Agreement and the Protocol and suggested that the study elaborate on the potential implications of the freeze from the perspectives of users, Contracting Parties and the International Bureau. The Delegation proposed that, on the basis of the study, the Working Group discuss freezing in substance and consider whether to recommend it to the Assembly of the Madrid Union.

193. The Delegation of Japan, highlighting the fact that the geographical coverage of the Madrid system had been expanding, said that it agreed to further discuss the issue. The Delegation remarked that dependency had been an integral part of the Madrid system from the beginning and that users had paid close attention to the issue. The Delegation requested that a study be undertaken to clarify how the proposed freeze of dependency would affect user behavior and impact the legal systems of the Contracting Parties.

194. The Delegation of the European Union noted that, in a minority of cases, ceasing of effect appeared to occur as a result of central attack and concluded that, while central attack was a feature of the system that was particularly useful in challenging international registrations, it might dissuade potential applicants from using the system, as the cost of transformation would be high. The Delegation considered that a policy decision had to be made as to whether it was better to keep central attack, as a benefit for third parties challenging international registrations, or to eliminate it to the benefit of applicants and noted that the Secretariat had suggested, as a possible mechanism for dealing with the issue, freezing the dependency principle. However the Delegation considered that it was necessary to keep in mind the usefulness of central attack.

195. The Delegation of Australia stated that, in the interest of efficiency, it would not repeat the arguments put forward by the Delegation of Norway and added that the statistics on central attack, while interesting, were not likely to provide an accurate and relevant picture because central attack was usually raised in negotiations between owners in relation to prior rights. The Delegation suggested that the rights of applicants and those of third parties would be considered to be unbalanced if an opposition to a basic mark succeeded on the basis of factors only applicable in one jurisdiction, resulting in the total or partial cancellation of a mark in all the designated Contracting Parties, even where the underlying grounds were not relevant to them. The Delegation considered that the benefits for a very small number of users seemed to be vastly outweighed by the broader benefits that would flow to all users from an increased geographical coverage and asserted that the Working Group would benefit from a concrete proposal from the International Bureau outlining the exact way in which the freezing of dependency could be achieved and considering any other ramification of this decision.

196. The Delegation of Israel considered that freezing the dependency principle had to be examined carefully and that, while the Madrid system could become more flexible and more attractive for potential users, the proposal could damage third parties wishing to file an opposition to the international registration in all designated Contracting Parties. The Delegation asked for a new document explaining the consequences and effects of freezing of the operation of the dependency principle.

197. The Delegation of the Republic of Korea recalled that, through the Madrid system, it was possible to protect a mark in several Contracting Parties, with one filing, and cancel this protection with a single action in the Office of origin. The Delegation considered that, in principle, this attained a balance between the interests of holders and those of third parties. Citing information provided in the document under discussion, the Delegation underscored that most of the notifications of ceasing of effect were the result of *ex officio* refusals and that only a small number of them were the result of a third party action. The Delegation declared that these findings suggested that central attack was not being used as it had been originally intended.

198. The Delegation of the Republic of Korea stated that, in view of the situation, it favored the idea to freeze Article 6(3) of the Protocol for several reasons. The Delegation asserted that products had shorter life-cycles which required a shorter period to go from brand development to trademark protection which, in turn, resulted in a growing number of international registrations based on an application rather than on a registration and argued that this fact and the expansion of the Madrid Protocol had yielded an increased number of notifications of ceasing of effect due to the failure of the basic application. The Delegation cited as evidence the fact that international applications based on national or regional applications went from over 10 cent of the total number of international applications filed in the year 2000 to 85 per cent in the year 2009.

199. The Delegation of the Republic of Korea considered that a large number of notifications of ceasing of effect resulted from *ex officio* refusals, based on national grounds, after the Office of origin had examined the basic application following strict examination standards and that most *ex officio* refusals resulted from either absolute or relative grounds related to prior rights in the Contracting Party of the Office of origin. The Delegation noted that it appeared that very few notifications of ceasing of effect were the result of an actual central attack, and it seemed that, in practice, a fair balance between the interest of applicants and third parties had not been achieved in the Madrid system.

200. The Delegation of the Republic of Korea said that it had concluded that freezing Article 6(3) of the Protocol would make the Madrid system more attractive for its users and for Offices and it encouraged the International Bureau to undertake the necessary administrative actions to put forth this proposal before the Working Group so that it may be adopted by the Assembly.

201. The Delegation of Italy recalled that, in 2008, the Working Group had discussed a proposal to eliminate the requirement of the basic mark, and that the Delegation had advised strong caution when considering such fundamental change to the Madrid system. The Delegation, recalling that several delegations were not in favor of the proposal, considered that the suggestion to freeze the application of the principle of dependency offered a middle-ground solution between eliminating the requirement of the basic mark and maintaining the *status quo*.

202. The Delegation of Italy, supporting changes which made the Madrid system simpler, more user-friendly and attractive, favored the proposal and considered that it did not weaken the central role of national Offices and considered that freezing the dependency principle would increase the legal certainty of the rights obtained under an international registration, meeting the interests of holders and third parties alike. The Delegation asked that a further document analyze, in detail, the practical aspects and consequences of the suggested change. The Delegation said that, if the Working Group decided not to recommend the suggested freeze, the Delegation of Italy would be in favor of studying a possible reduction of the dependency period.

203. The Delegation of Mexico indicated that the cancellation of the international registration, following the ceasing of effect of the basic mark, and central attack were deeply analyzed and produced grave concerns when Mexico debated its accession to the Protocol. The Delegation further noted that these issues had been pondered by officials in the Office of Mexico and by potential users of the system, given the significant investment required to file an international application, and they were deemed to be a disincentive to use the Madrid system. The Delegation declared that it favored analyzing in a document the viability and consequences of the suspension of both legal concepts.

204. The Delegation of Germany wondered whether the proposal referred to the freeze of the principle of dependency or of the mechanism of central attack and how the latter could be achieved. The Delegation noted that, according to the document under discussion, its Office and the Office of the European Union reported the highest number of cases of central attack. The Delegation reported that its Office had consulted users who had expressed a strong desire to keep the mechanism of central attack, a fact that the Delegation wished to emphasize, and suggested that a parallel should be drawn between division and central attack, as both were sparsely employed mechanisms that users found valuable.

205. The Delegation of the Russian Federation declared that the suggested freeze would have an impact on current and future users of the Madrid system and noted, as positive effects, the fact that the holder would not be compelled to use a mark in characters which would not be understood in the Contracting Party of the Office of origin and the fact that filing an international application based on an application would no longer be considered as premature. The Delegation further stressed that the proposal entitled a decision that the Assembly could reverse at any moment. The Delegation asked that a document be prepared for the following session of the Working Group providing the legal basis for the suggested freeze.

206. The Delegation of the United States of America underlined that, according to the information provided in the document under discussion, it would appear that its Office sent a large number of notifications of ceasing of effect, mostly as a result of an *ex officio* refusal by the Office. The Delegation indicated that its Office had seen a growing number of international applications based on a national application, which the Delegation qualified as a risky undertaking given that a refusal by the examining attorney – within the dependency period – would result in a notification of ceasing of effect, further noting that, while its Office wished that it could send fewer notifications of ceasing of effect, it was not optimistic about a possible change in the filing behavior of applicants in the United States of America.

207. The Delegation of the United States of America argued that the proposal made by the International Bureau would actually increase the likelihood of international applications being filed at the same time as the basic application and indicated that, in those cases, its Office would only certify the correspondence between the basic and the international applications, but it would not be able to ascertain the *bona fide* intention of the applicant. The Delegation expressed its concern about the fact that any applicant in bad faith could use the Office of the United States of America as Office of origin to multiply this bad faith in what the Delegation described as an epidemic. Stating that its Office would not be able to stop the spread of bad faith under these circumstances, the Delegation said that its country would then become part of a problem that, at the same time, it was working hard to eradicate.

208. The Delegation of the United States of America stated that it did not fail to see the merits of the suggestion made by the International Bureau, but it also considered that it was not the right time for the proposal and stated that, as long as the global community did not have a better solution to deal with bad faith applicants, the Working Group should not introduce mechanisms that would enable them to operate through the Madrid system.

209. The Delegation of the United States of America requested that the International Bureau determine and evaluate the elements of the examination process that helped prevent bad faith applicants from obtaining a registration and suggested that the Working Group should identify and preserve the features of the dependency principle that added value and consider freezing the other features. The Delegation also suggested that the Working Group should consider freezing dependency for cases of a partial ceasing of effect while preserving it for cases of a total ceasing of effect, as this would still enable Offices to expel applicants in bad faith from the Madrid system.

210. The Delegation of Spain declared that freezing the principle of dependency required further analysis, given that central attack was one of the main advantages that the Madrid system offered to its users, further noting that, while sparsely used, the mechanism was attractive for holders of pirated brands who, without it, would have to enforce their rights in each jurisdiction at greater costs. The Delegation considered that the mechanism of central attack had to be preserved.

211. The Delegation of France supported the intervention made by the Delegation of the European Union, but added that it remained uncertain about the freezing mechanism proposed by the International Bureau and about its impact on legal certainty. The Delegation wondered about the legal value of a decision taken by the Assembly to freeze the application of a specific provision of a treaty, as opposed to the entire treaty. The Delegation requested that further information on the proposed mechanism be provided to evaluate whether it was consistent with international law and determine whether it would provide sufficient legal certainty to the users of the Madrid system and to third parties. The Delegation shared the concern expressed by the Delegation of Germany on the distinction between dependency and central attack and on the lack of clarity on whether the suggested freeze would apply to one legal principle or to the other one. The Delegation reported that a number of its users were against the proposal made by the International Bureau because they considered that central attack was an important feature of the Madrid system which continued to have practical value for them.

212. The Delegation of Sweden said that it was important to take into account the opinion of users on this matter and it suggested that a further inquiry be undertaken to assess their point of view. The Delegation reported that, in 2009, Sweden conducted a survey on the subject and that the opinions of SMEs varied from that expressed by global companies. The Delegation requested that the Working Group bear in mind that third parties were also users of the Madrid system, not just applicants and holders and considered that the proposal raised an important policy question and that an analysis of its possible outcome would be required.

213. The Delegation of the Republic of Korea, wishing to emphasize some of its earlier remarks, recalled that trademark rights were, in principle, territorial, which meant that trademark rights acquired in one jurisdiction were independent from those acquired in other jurisdictions. In view of this, the Delegation declared that it was unreasonable to cancel the international registration, which affected all the designated Contracting Parties, following a ceasing of effect of the basic mark in the Contracting Party of the Office of origin and, considering that ceasing of effect and central attack were among the highest barriers that kept holders from using the Madrid system, wondered whether holders could be expected to use the Madrid system at the risk of having the registration of their marks cancelled in all the designated Contracting Parties. The Delegation remarked that ceasing of effect and central attack were a source of complexity and instability in the Madrid system.

214. The Delegation of the Republic of Korea explained that, following a notification of ceasing of effect, its Office had to, oftentimes, withdraw a decision to grant protection which had been properly taken and that its Office was frequently notified of several recordings in the International Register which affected the list of goods and services, such as limitations, partial transfers, notifications of partial ceasing of effect and corrections, which were in direct conflict with what the Office had already decided. The Delegation suggested that, in these particular cases, it was extremely difficult to determine the scope of protection in a designated Contracting Party and request the transformation of the international registration and wondered whether, under these circumstances, the Madrid system could be described as easy and user-friendly. Recalling that some delegations had opposed the proposal on the basis of preventing international applications filed on bad faith, the Delegation questioned the wisdom of affecting *bona fide* registrations in order to achieve this goal.

215. The Representative of INTA, recalling arguments expressed earlier in the session, underlined that the question which was put to the Working Group required very careful consideration as a policy decision and that this decision would need to involve the users of the system, as requested by the Delegation of Sweden. The Representative reserved his opinion on the substance of the proposal until he had had sufficient time to engage in consultations. On the procedure proposed in paragraph 25 of the document under discussion, the Representative echoed the remarks made by the Delegation of France and suggested that the Working Group had to be absolutely assured that the procedure followed for the suspension of any element of the dependency principle was legally sound and that it would not endanger the legal certainty of international registrations.

216. The Representative of JPAA said that, while he considered that freezing the dependency principle would be basically beneficial for users, he still had some concerns about its negative effects, in particular, over whether it would encourage trademark squatters or applicants in bad faith to exploit the Madrid system. The Representative recommended that careful consideration should be given to the negative effects of the proposal.

217. The Delegation of Germany said that, after having heard some of the precedent arguments, it believed that the issue under consideration was a policy decision that had to be evaluated in consultation with users and that, for that reason, it was premature to ask for a paper with a more detailed proposal. The Delegation requested that the International Bureau prepare a document addressing the question posed by the Delegation of France on whether the proposal was consistent with international law.

218. The Delegation of Australia acknowledged the need to address bad faith applications in the Madrid system and suggested further exploring the dispute resolution mechanisms mentioned in document MM/LD/WG/8/4. The Delegation also declared to be open to explore other potential solutions, such as limiting central attack to ceasing of effect on the grounds of bad faith.

219. The Delegation of Morocco remarked that the document under consideration corroborated that there was a small percentage of cases of central attack in respect of the total number of applications filed under the Madrid system, and this underscored the importance of the proposal. The Delegation supported the proposal which it described as being favorable for users, Offices and the International Bureau. The Delegation indicated that holders would no longer have to be concerned with the fate of the basic mark, once an international application had been filed, would no longer have to wait five years for the international registration to become independent from the basic mark and would not have to incur in additional costs to transform their international registrations, following their cancellation due to ceasing of effect. It added that Offices would no longer have to monitor the fate of those applications or registrations which had been the basis to file an international application, and the International Bureau would no longer have to inscribe notifications of ceasing of effect and update the International Register accordingly.

220. The Chair remarked that a number of delegations were in favor of requesting that the International Bureau prepare a document further exploring the possibility to freeze the principle of dependency, but a number of other delegations had expressed grave concerns on the impact this freeze would have on the availability of central attack, where a basic application had been filed in bad faith. The Chair also recalled that some delegations had requested that the feasibility to freeze the application of a particular provision of a treaty be further studied. The Chair suggested that the Working Group request that the International Bureau prepare a document addressing all the issues raised during the discussion.

221. The Chair concluded that the Working Group had agreed to request that the International Bureau prepare a document that would analyze all aspects of freezing the principle of dependency and made reference to the various concerns that had been raised during its discussion; in particular, central attack and bad-faith international applications.

AGENDA ITEM 7: PROPOSAL TO FREEZE THE APPLICATION OF ARTICLE 14(1) AND (2)(A) OF THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

222. Discussions were based on document MM/LD/WG/11/5.

223. The Secretariat, introducing the document, recalled that there were two fully operational treaties in the Madrid system, the Agreement and the Protocol and indicated that Part I of document MM/LD/WG/11/5 delivered an overview of the development of the Agreement in relation to accessions. The Secretariat underlined that the last accession to the Agreement occurred on August 5, 2004, when it entered into force with respect to the Syrian Arab Republic, which had since denounced the Agreement with effect on June 29, 2013, further noting that, according to information at the disposal of the International Bureau, all future Contracting Parties to the Madrid system would accede to the Protocol alone and that the Madrid system was on a path to be unified under one treaty. The Secretariat underlined that, following the repeal of the safeguard clause and the review of Article 9*sexies* of the Protocol, this was now the prevailing treaty in the Madrid system.

224. The Secretariat said that Part II of the document informed of the possibility of freezing the application of Article 14(1) and (2)(a) of the Agreement and referred to two precedents. Recalling that in September 1991, the Assembly of the Trademarks Registration Treaty (TRT) Union adopted the decision to freeze the application of this treaty, as from October 2, 1991, the Secretariat referred to document TRT/A/VII/2. The Secretariat also recalled that in September 2009, the Contracting States to the London (1934) Act of the Hague Agreement Concerning the International Deposit of Industrial Designs (“the 1934 Act”) adopted the decision to freeze the application of said Act, as from January 1, 2012, and referred to document H/EXTR/09/2.

225. The Secretariat stated that Part II of the document also informed of the consequences of a decision to freeze the application of Article 14(1) and (2)(a) of the Agreement and clarified that the Agreement would remain an operational treaty, but that a country would no longer be able to deposit an instrument of accession to the Agreement with the Director General of WIPO.

226. The Secretariat recalled that the Assembly of the Madrid Union consisted of representatives from all the Contracting Parties to the system and that a decision by this Assembly was presumed to be a decision where all Contracting Parties had given their consent. The Secretariat added that it was understood that when this Assembly could freeze an entire treaty, it also had the authority to do the lesser as well; that is, freeze a single provision or a part of the treaty.

227. The Chair suggested that the discussions of the Working Group be based on the document in its entirety.

228. The Delegation of Lithuania said that the European Union and its member States supported the effort of the Working Group to be unified under one treaty and that a one-treaty system would result in a simpler system to the benefit of applicants, Offices, third parties and the International Bureau. The Delegation understood that Article 14 provided for the ratification of, or accession to, the Agreement and could therefore support the principle of freezing Article 14(1) and (2)(a). The Delegation, seeking clarification from the International Bureau on the exact procedures to follow, stated that it looked forward to freezing the Agreement itself at a future date.

229. The Delegation of France aligned itself with the statement delivered by the Delegation of Lithuania, and added that it shared the same doubts it had expressed earlier on the legal certainty of the freeze mechanism proposed by the International Bureau, further noting that the precedents cited in the document referred to the freeze of an entire treaty and not of a particular provision of a treaty. The Delegation reserved its opinion on the proposal as it wished to obtain further information on the proposed mechanism to be assured that it was consistent with international law and that it preserved legal certainty for third parties and users of the Madrid system.

230. The Delegation of Algeria said it had taken note of the proposal made by the International Bureau and understood the interest of other delegations for the establishment of an international trademark registration system based on a single treaty. The Delegation stated that, however, this should not oblige contracting countries bound by the Agreement to accede to the Protocol and emphasized that this was a sovereign decision. While recalling that Algeria was only bound by the Agreement, the Delegation announced that the Algerian authorities had begun consultations for the accession of Algeria to the Protocol.

231. The Delegation of Algeria said that, when considering the proposal, it wondered whether it would affect the rights and obligations between Contracting Parties bound by the Agreement. While recalling that the precedents cited in the document dealt with the freeze of an entire treaty, the Delegation wondered whether international law provided for the freeze of certain provisions of a treaty and reserved its opinion on the proposal until the International Bureau had addressed the concerns raised by the Delegations of France and Lithuania.

232. The Representative of INTA stated that, once all the countries parties to the Agreement had acceded to the Protocol, the Madrid system would be a unified system under this treaty. The Representative declared that it understood that the International Bureau was keen to avoid a return to a situation where it would have to operate again under two treaties. Sharing that keenness, the Representative said that, on substance, INTA basically agreed with the proposal of the International Bureau.

233. The Representative of INTA said that he believed that the proposal went one step too far. The Representative declared that he was of the view that it would suffice to prevent the accession to the Agreement by States which were not already party to the Protocol or which were not, at the same time, acceding to the Protocol. The Representative pointed out that, as long as one country remained bound by the Agreement only, there remained a legitimate interest for parties to the Protocol to become bound by the Agreement. The Representative further indicated that parties to the Protocol would also have an interest to become party to the Agreement to benefit from the application of Article 9*sexies*(1)(b) of the Protocol.

234. The Representative of INTA suggested that it would suffice to suspend the application of Article 14(2) of the Agreement with an understanding that this would allow the Director General of WIPO to accept an instrument of accession to the Agreement together with an instrument of accession to the Protocol or from countries already bound by the Protocol. The Representative said that, nevertheless, it had the same reservations expressed earlier regarding the feasibility of the freeze mechanism and wondered whether the International Bureau could explore other options to achieve the same result.

235. The Delegation of Italy, being in favor of a one-treaty system, supported the proposal, providing as another reason for it, the fact that it preserved the obligations in the relations between countries currently bound by the Agreement as well as the exceptions provided in Article 9*sexies*(1)(b) of the Protocol concerning the standard refusal period and the standard fees.

236. The Secretariat, addressing a concern raised by several delegations and the Representative of INTA regarding the possibility to freeze a provision of a treaty, considered that where the Assembly of the union of a treaty was able to freeze the entire treaty, it followed that it would also be empowered to freeze the application of a single provision. The Secretariat requested the opinion of the Legal Counsel on this matter.

237. The Legal Counsel confirmed that the solution proposed in the document was fully in line with the available precedents at WIPO, where the application of treaties had been frozen by a decision taken by the Assembly of the union of that treaty or by the Contracting Parties, as it had been the case with the 1934 Act of the Hague Agreement. The Legal Counsel insisted on the fact that there was nothing new proposed in the document, as WIPO had already these precedents on board and added that the fact that the Working Group was considering to freeze one provision and not the entire treaty seemed to simply correspond to what was needed at the time. The Legal Counsel declared that, although it was not specifically provided for in the Vienna Convention on the Law of Treaties, there was no legal impediment to decide for a freezing if the Working Group recommended this to the Assembly of the Madrid Union. According to the Legal Counsel, the fact that the decision would be more limited in scope, in the sense that it would only concern one provision of a treaty, was not problematic.

238. The Representative of INTA asked the Legal Counsel to clarify the procedure followed to freeze the 1934 Act. The Representative added that, if his recollection was correct, the Hague Union Assembly took a decision and all members were recorded as having taken part in that unanimous decision. However, the Representative said that he thought that those members who were not present had to manifest their agreement also and that the delegations who attended the meeting were required to have full powers to take the decision in question. The Representative considered that a procedure where each and every country of a treaty was required to manifest a positive decision was more consistent with the Vienna Convention on the Law of Treaties and that it was for each and every one of the members of a treaty to decide whether that accorded with their internal law.

239. The Legal Counsel, replying to the question raised by the Representative of INTA, explained that, in the case of the 1934 Act, a two-step procedure was followed. The Legal Counsel stressed that, in this particular case, the decision was not taken by an Assembly simply because that Act had no Assembly and remarked that an extraordinary meeting of the Contracting Parties to the 1934 Act was convened and at that, in this meeting, the decision was taken to freeze the application of this Act. The Legal Counsel clarified that, to freeze the application of the 1934 Act, only credentials, not full powers, were required, further clarifying that full powers would have been required only to decide the termination of the treaty. The Legal Counsel said that, if not mistaken, all the Contracting Parties to the 1934 Act were present at that extraordinary meeting where the decision to freeze its application was taken, which was not a difficult undertaking as there were only 15 parties to this Act.

240. The Delegation of Algeria said that, following the explanation delivered by the Legal Counsel, it remained difficult to determine whether international law provided for the proposed mechanism. The Delegation stated that it was ready to show some flexibility if all delegations were convinced of the usefulness of the proposal and expressed a keen interest and a need for it. The Delegation asked to hear from other delegations.

241. The Delegation of Switzerland found the proposal interesting and was in its favor. Nevertheless, following the discussion, it had found particularly interesting the intervention of the Representative of INTA and it had further reflected on the fact that, following the adoption of the proposal, holders from new Contracting Parties to the Madrid system would not be able to designate Algeria and considered that this would create a problem. The Delegation wondered whether the International Bureau could further explore this issue and study a possible freeze that would imply not accepting accession to the Agreement alone.

242. The Delegation of France supported the remarks delivered by the Delegation of Switzerland and declared that its proposal appeared to be an interesting approach.

243. The Representative of INTA expressed its concern regarding the proposed procedure as it would set a new precedent that could apply to other articles of the Agreement or the Protocol. The Representative suggested that, in the document prepared by the International Bureau, other possibilities should be explored, as there were other useful precedents.

244. The Delegation of Algeria requested that, while preparing a new document, the International Bureau should determine whether individual provisions of treaties managed by other organizations had been frozen while the treaty itself remained operational.

245. The Chair concluded that the Working Group had agreed to request that the International Bureau prepare, for the thirteenth session of the Working Group, a document that would, in the context of public international law, review the legal framework for the freezing, either totally or in part, of international treaties, and its possible consequences. The document would also consider other options that might achieve the objective of what had been proposed in document MM/LD/WG/11/5 without the need to resort to the freezing of the application of Article 14(1) and (2)(a) of the Madrid Agreement Concerning the International Registration of Marks.

AGENDA ITEM 8: OTHER MATTERS

246. The Delegation of Mexico, requesting that the International Bureau study a matter which had created serious concerns among its users, recalled that under Rule 9(4)(a)(xi) of the Common Regulations, the international application should contain the description of the mark as it appeared in the basic application or registration, if the holder so wished. The Delegation indicated that this correlated to paragraph (5)(d)(iii) of the same Rule. The Delegation argued that this posed an additional burden on holders designating Contracting Parties that required a description of the mark, where the basic mark did not have that description and that, in these particular cases, the designation was bound to be the subject of a provisional refusal, which undermined the simplicity of the system where protection was granted to the mark, and not to the description which was merely informative.

247. The Chair, thanking the Delegation of Mexico for its explanation, said that this issue merited further consideration and confirmed that the International Bureau would take it into account for a future session of the Working Group.

248. The Representative of INTA emphasized the importance of the point raised by the Delegation of Mexico and suggested that the issue be discussed at the following session of the Working Group rather than at a future session. The Representative highlighted the importance of being informed, in advance, of the timing and agenda of the following session of the Working Group in order to be able to contribute effectively to it.

249. The Secretariat informed that the following session of the Working Group would be held in 2014, but that its precise timing was yet to be known. As regards to its agenda, the Secretariat said that it would likely include the issue raised by the Delegation of Mexico and amendments to certain provisions of the Common Regulations, such as Rule 5. The Secretariat added that the agenda could also include proposals made by delegations or organizations. The Secretariat explained that the content of the agenda would depend on the timing of the next session.

250. The Delegation of Switzerland expressed its interest on holding the following session of the Working Group ahead of the next session of the Assembly of the Madrid Union. The Delegation also indicated that, if the time between the two meetings was short, the agenda of the next session of the Assembly might be reduced.

251. The Delegation of Cuba considered that the Roundtable had had a fruitful outcome and it requested that the activity be maintained. The Delegation suggested, as a matter of general interest, that the International Bureau explain its examination process.

252. Following the comment made by the Delegation of Cuba concerning the Roundtable, the Secretariat said that it also felt that the Roundtable was a useful event. The Secretariat stressed that some participants attended only the Roundtable because they had a stronger interest on the operational aspect of the Madrid system. As regards the suggestion made by the Delegation of Cuba, the Secretariat said that this would be included in the list of possible topics for the Roundtable. The Secretariat invited delegations and organizations to propose further topics for the Roundtable.

253. The Delegation of Algeria, given the small interest expressed by other delegations on the proposal to freeze Article 14(1) and (2)(a) of the Agreement, requested that the proposal be debated not in the following session of the Working Group, but in the one after that. The Delegation explained that this would provide it with more time to evaluate the proposal in light of what had been discussed during the current session.

254. The Delegation of Germany stated that its Office had received a number of applications which were irregular due to the fact that the reproduction of the mark was not very clear. The Delegation explained that, where there were several views of the mark, the reproduction of those views appeared very small because the box contained in the international application form only measured 8cm x 8cm. Thus, the Delegation suggested that the issue of increasing the size of this box should be discussed during a session of the Working Group or during the Roundtable.

255. The Delegation of Norway supported the last intervention made by the Delegation of Germany as this was also an issue that was frequently discussed within the Office of Norway.

256. The Representative of INTA supported the proposal made by the Delegation of Germany. The Representative was of the opinion that the International Bureau could expand its review of the question to the other changes that had been introduced in the application form annexed to the Singapore Treaty. The Representative emphasized the considerable work done by the special group of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) on this question and reported that the application form had been revised and that it provided for the possibility to include a digital recording of a sound mark. He asserted that this would be an important development under the Madrid system because already a few Offices either allowed or required the reproduction of the mark in digital form. The Representative stated that the international applicant should be able to furnish a digital recording in the international application to avoid objections from the Offices of designated Contracting Parties that so required.

257. The Chair remarked that the Working Group had raised a number of interesting issues to be considered in the next and future sessions of the Working Group or in the Roundtable and requested that the International Bureau undertake the pertinent preparatory work.

AGENDA ITEM 9: SUMMARY BY THE CHAIR

258. The Working Group approved the Summary by the Chair, as contained in document MM/LD/WG/11/6.

AGENDA ITEM 10: CLOSING OF THE SESSION

259. The Chair closed the session on November 1, 2013.

[Annexes follow]

**PROPOSED AMENDMENTS TO THE COMMON REGULATIONS UNDER THE MADRID
AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS AND THE
PROTOCOL RELATING TO THAT AGREEMENT**

**Chapter 1
General Provisions**

[...]

Rule 5bis
Continued Processing

(1) [Request] (a) Where an applicant or holder has failed to comply with any of the time limits specified or referred to in Rules 11(2) and (3), 20bis(2), 24(5)(b), 26(2), 34(3)(c)(iii) and 39(1), the International Bureau shall, nevertheless, continue the processing of the international application, subsequent designation, payment or request concerned, if:

(i) a request to that effect, signed by the applicant or holder, is presented to the International Bureau on the official form; and

(ii) the request is received, the fee specified in the Schedule of Fees is paid and, together with the request, all of the requirements in respect of which the time limit concerned applied are complied with, within two months from the date of expiry of that time limit.

(b) A request not complying with items (i) and (ii) of subparagraph (a) shall not be considered as such and the applicant or holder shall be notified to that effect.

(2) [Recording and Notification] The International Bureau shall record in the International Register any continued processing and notify the applicant or holder accordingly.

**Chapter 4
Facts in Contracting Parties
Affecting International Registrations**

[...]

Rule 20bis
Licenses

[...]

(3) *[Recording and Notification]*

[...]

(c) Notwithstanding subparagraph (b), where continued processing has been recorded under Rule 5bis, the license shall be recorded in the International Register as of the date of expiry of the time limit specified in paragraph (2).

[...]

Chapter 5 Subsequent Designations; Changes

[...]

Rule 27

*Recording and Notification of a Change or of a Cancellation;
Merger of International Registrations; Declaration That a Change in
Ownership or a Limitation Has No Effect*

(1) *[Recording and Notification of a Change or of a Cancellation]*

[...]

(c) Notwithstanding subparagraph (b), where continued processing has been recorded under Rule 5bis, the change or cancellation shall be recorded in the International Register as of the date of expiry of the time limit specified in Rule 26(2), except that, where a request has been made in accordance with Rule 25(2)(c), it may be recorded as of a later date.

Chapter 6 Renewals

[...]

Rule 30

Details Concerning Renewal

(1) *[Fees]* (a) The international registration shall be renewed upon payment, at the latest on the date on which the renewal of the international registration is due, of

[...]

(iii) the complementary fee or individual fee, as the case may be, for each designated Contracting Party for which no statement of refusal under Rule 18ter or invalidation, in respect of all the goods and services concerned, is recorded in the International Register ~~in respect of all the goods and service concerned~~, as specified or referred to in item 6 of the Schedule of Fees. However, such payment may be made within six months from the date on which the renewal of the international registration is due, provided that the surcharge specified in item 6.5 of the Schedule of Fees is paid at the same time.

[...]

(2) *[Further Details]* (a) Where the holder does not wish to renew the international registration in respect of a designated Contracting Party for which no statement of refusal under Rule 18ter, in respect of all the goods and services concerned, is recorded in the International Register ~~in respect of all the goods and services concerned~~, payment of the required fees shall be accompanied by a statement by the holder that the renewal of the international registration is not to be recorded in the International Register in respect of that Contracting Party.

(b) Where the holder wishes to renew the international registration in respect of a designated Contracting Party notwithstanding the fact that a statement of refusal under Rule 18ter is recorded in the International Register for that Contracting Party in respect of all the goods and services concerned, payment of the required fees, including the complementary fee or individual fee, as the case may be, for that Contracting Party, shall be accompanied by a statement by the holder that the renewal of the international registration is to be recorded in the International Register in respect of that Contracting Party.

(c) The international registration ~~may~~shall not be renewed in respect of any designated Contracting Party in respect of which an invalidation has been recorded for all goods and services under Rule 19(2) or in respect of which a renunciation has been recorded under Rule 27(1)(a). The international registration ~~may~~shall not be renewed in respect of any designated Contracting Party for those goods and services in respect of which an invalidation of the effects of the international registration in that Contracting Party has been recorded under Rule 19(2) or in respect of which a limitation has been recorded under Rule 27(1)(a).

(d) Where a statement under Rule 18ter(2)(ii) or (4) is recorded in the International Register, the international registration shall not be renewed in respect of the designated Contracting Party concerned for the goods and services that are not included in that statement, unless payment of the required fees is accompanied by a statement by the holder that the international registration is to be renewed also for those goods and services. ~~The fact that the international registration is not renewed in respect of all of the designated Contracting Parties shall not be considered to constitute a change for the purposes of Article 7(2) of the Agreement or Article 7(2) of the Protocol.~~

(e) The fact that the international registration is not renewed under subparagraph (d) in respect of all the goods and services concerned, shall not be considered to constitute a change for the purposes of Article 7(2) of the Agreement or Article 7(2) of the Protocol. The fact that the international registration is not renewed in respect of all of the designated Contracting Parties shall not be considered to constitute a change for the purposes of Article 7(2) of the Agreement or Article 7(2) of the Protocol.

[...]

Rule 31
Recording of the Renewal; Notification and Certificate

[...]

(4) *[Notification in Case of Non-Renewal]* (a) Where an international registration is not renewed, the International Bureau shall notify accordingly the holder, the representative, if any, and the Offices of all of the Contracting Parties designated in that international registration.

(b) Where an international registration is not renewed in respect of a designated Contracting Party, the International Bureau shall notify the holder, the representative, if any, and the Office of that Contracting Party accordingly.

[Annex II follows]

PROPOSED AMENDMENTS TO THE SCHEDULE OF FEES

SCHEDULE OF FEES

Swiss francs

[...]

7. *Miscellaneous recordings*

[...]

| [7.6 Request for a continued processing under Rule 5bis\(1\)](#)

[200](#)

[Annex III follows]



MM/LD/WG/11/INF/1
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Groupe de travail sur le développement juridique du système de Madrid concernant l'enregistrement international des marques

**Onzième session
Genève, 30 octobre – 1^{er} novembre 2013**

Working Group on the Legal Development of the Madrid System for the International Registration of Marks

**Eleventh Session
Geneva, October 30 to November 1, 2013**

**LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS**

*établi par le Secrétariat
prepared by the Secretariat*

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