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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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# AD HOC WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE MADRID SYSTEM FOR THE INTERNATIONAL REGISTRATION OF MARKS

## Third Session
## Geneva, January 29 to February 2, 2007

REPORT

*adopted by the Working Group*

I. INTRODUCTION

1. The *ad hoc* Working Group on the Legal Development of the Madrid System (hereinafter referred to as "the Working Group") met in Geneva from January 29 to February 2, 2007.

2. The following Contracting Parties of the Madrid Union were represented at the session: Antigua and Barbuda, Australia, Austria, Belgium, Bulgaria, China, Croatia, Cuba, Czech Republic, Denmark, Estonia, European Community, Finland, France, Germany, Greece, Hungary, Iran (Islamic Republic of), Ireland, Italy, Japan, Kenya, Latvia, Lithuania, Moldova, Morocco, Namibia, Netherlands, Norway, Portugal, Republic of Korea, Romania, Russian Federation, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, United States of America, Uzbekistan, Viet Nam (48).

3. The following States were represented by observers: Brazil, Cambodia, Canada, Democratic Republic of the Congo, Haiti, Iraq, Mexico, Tunisia, Uruguay (9).

4. Representatives 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: *Association romande de propriété intellectuelle* (AROPI), Centre for International Industrial Property Studies (CEIPI), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA) and MARQUES (Association of European Trademark Owners) (8).

6. The list of participants is given in the Annex to this report.

7. Mr. Ernesto Rubio, Assistant Director General, opened the session and welcomed the participants on behalf of the Director General of WIPO. He recalled that, since the last meeting of the Working Group, Azerbaijan, Botswana, Montenegro, Uzbekistan and Viet Nam had acceded to the Madrid Protocol. Uzbekistan had also denounced the Agreement and would, while continuing to be a member of the Madrid Union through the Protocol, cease to be bound by the Agreement as from January 1, 2008. As from April 15, 2007, when the accession of Azerbaijan would become effective, the number of Madrid Union member countries bound by the Agreement only would be reduced to eight.

8. He said that the year 2006 had also been particularly successful in respect of the registration activity undertaken under the Madrid system. Throughout the year, the International Bureau had received some 36,500 international applications (8.6% more than in 2005) and recorded more than 37,200 international registrations, which represented a 12.2% growth over 2005. The International Bureau had also recorded some 11,000 subsequent designations and around 15,000 renewals (i.e., over 100% more renewals than those recorded in 2005). Throughout 2006, more than half a million individual designations had been notified to Contracting Parties, including new designations and the renewal of existing designations. The International Bureau had been able to absorb the backlog in the processing of applications that had accumulated over a number of months in 2005 and 2006 and, as a result, processing times had improved significantly.

9. Continuing, he referred to steps taken by the International Bureau for the introduction of new services under the Madrid system. As from January 1, 2007, access to the online version of the ROMARIN database was available free of charge. Shortly, the International Bureau would start with the monthly publication of statistics on registrations, renewals and designations recorded in the International Register, on the Internet. Later on this year, but still within the first half of 2007, the introduction of a new service for the electronic notification of refusals and irregularity notices to interested right holders was planned.

10. Finally, he recalled the decisions taken by the Madrid Union Assembly when extending the mandate of the Working Group in September/October 2006 and, in particular, the objectives to be achieved by the review of the safeguard clause: firstly, to simplify the operation of the Madrid system, as much as possible, keeping in mind the ultimate goal that the system be governed by only one treaty; secondly, to ensure equal treatment among all Contracting Parties to the Madrid Protocol; and thirdly, to allow users of States which are today bound by both the Agreement and the Protocol to be able to benefit from the advantages offered by the Protocol while limiting undesired effects that might affect them as a result of the application of the Protocol.

11. The Working Group unanimously elected Mr. António Campinos (Portugal) as Chair of the Working Group and Mr. Vladimir Oplachko (Russian Federation) and Mr. Chan Ken Yu Louis (Singapore) as Vice-Chairs.

12. Mr. Grégoire Bisson (WIPO) acted as Secretary to the Working Group.

13. The Working Group adopted the draft agenda, as contained in document MM/LD/WG/3/1 Prov.

14. The Secretariat noted the interventions made. This report summarizes the discussions.

## II. REVIEW OF ARTICLE 9*SEXIES* OF THE MADRID PROTOCOL

15. Discussions were based on document MM/LD/WG/3/2 prepared by the International Bureau and entitled "Review of Article 9*sexies* of the Madrid Protocol".

16. The Delegation of Norway stated that it wished to propose a way forward for the discussions. Recalling the conclusions of the last session of the Working Group, it noted that the repeal of the safeguard clause had been linked to two types of measures, namely ensuring that the level of services provided by the Offices of Contracting Parties to the Protocol was commensurate with the individual fees charged and the length of the applicable refusal period, and establishing more precise criteria and maximum levels to be applied by Contracting Parties to the Protocol when fixing the amounts of the individual fees they might require.

17. It was the opinion of the Delegation of Norway that the discussion on the safeguard clause was, in effect, a concern only for the Contracting Parties member to both the Agreement and the Protocol. It therefore proposed that the issues be split, so that the question of the repeal of the safeguard clause not be tied to the introduction of measures as noted above, but instead be dealt with separately by the Contracting Parties affected by the safeguard clause.

18. The Delegation suggested that the question of those measures, which was of great importance, would then be the subject of separate discussions on the legal development of the Madrid system.

19. The Delegations of Australia, Denmark and the European Community expressed their support for the proposal of the Delegation of Norway.

20. The Delegation of Kenya, while agreeing with the Delegation of Norway from a legal point of view, nevertheless considered that the discussion on the safeguard clause would benefit from the views and opinions of Contracting Parties bound by the Madrid Protocol only. It further requested clarification as to the practical implications of adopting the proposal of the Delegation of Norway, in terms of participation in the discussion.

21. Responding to the Delegation of Kenya, the Chair specified that the proposal by Norway did not aim to exclude certain Contracting Parties from the debate but only to separate the discussion on the measures that could be put in place in the interest of users from that relating to the safeguard clause.

22. On that basis, the Delegation of Kenya endorsed the proposal of the Delegation of Norway.

23. The Delegation of Germany, agreeing on the importance of participation in the discussion by Contracting Parties bound by the Protocol only, stated that it hesitated to go along with the proposal of the Delegation of Norway since the introduction of measures of the type under discussion in the context of a possible repeal of the safeguard clause would be a reasonable compromise. Not linking the two would, in fact, mean reverting to the options originally proposed.

24. The Delegation of Australia stated that it was interested in participating in the discussion, but did not have a desire to impose any particular outcome and would wish to be guided by those Contracting Parties mostly affected by the issue of the safeguard clause.

25. In reply to a question from the Delegation of Australia, the Secretariat confirmed that, pursuant to Article 9*sexies*(2), only Contracting Parties bound by both the Agreement and the Protocol would have the right to vote on the issue of a repeal of the safeguard clause.

26. In response to a question by the Delegation of Kenya, the Chair said that the proposal by the Delegation of Norway aimed to separate the examination of measures from the discussion on the safeguard clause and therefore to come back to the five options presented at the previous Working Group meeting.

27. The Representative of MARQUES, acknowledged the validity of the proposal by the Delegation of Norway and noted that the adoption of measures relating to the level of services was very important for users.

28. Pointing out that several Contracting Parties preferred to continue the discussions relating to the measures and to the safeguard clause separately, and considering that the Assembly's mandate allowed the Working Group to make progress in that way, the Chair suggested that discussion of the safeguard clause continue, focusing on Option 5, i.e., that of a "freezing".

29. The Delegation of Germany, noting that the proposal by the Delegation of Norway had been supported by many delegations, agreed with the proposal by the Chair to revert back to the options already discussed, and in particular Option 5.

30. The Delegation of Kenya said that it favored Option 5 along with Option 2, and suggested that Contracting Parties bound by both the Agreement and Protocol might meet for a discussion in order to seek a solution.

31. The Delegation of France noted that it had always expressed a clear preference for Option 4. Realizing, however, that the repeal of the safeguard clause would allow a simplification of the system, it declared its willingness to examine Option 5, and more precisely the combination of Options 3 and 5, while specifying that certain points should be discussed.

32. The Delegation of Spain said that it maintained its position in favor of Option 2, although it would be willing to consider Option 3. The Delegation expressed the opinion that, if Option 5 were considered, Option 2 should also be examined.

33. The Delegation of Portugal also indicated its support for the proposal by the Chair and suggested that the discussion should continue on that basis.

34. The Delegations of Italy and Latvia indicated their support for Option 3, as this would lead to simplification and harmonization while at the same time restricting any undue increase in the amount of individual fees.

35. The Delegation of Belgium said that, even though it was in favor of Option 4, it could accept a compromise combining Option 3.

36. Noting that a large number of delegations were ready to discuss Option 5, even though some of them had expressed the desire to examine this Option in combination with other options, the Chair took up the proposal by the Delegation of Kenya whereby the Working Group would continue its discussions in an informal session, in which NGOs could also participate, with the aim of achieving a compromise solution which would then be submitted to the formal session of the Working Group.

37. On that basis, the discussions were adjourned.

38. Upon resumption of the meeting in formal session, the Chair introduced a document containing draft conclusions resulting from the discussions in the informal session, reading as follows:

"The Proposal

After having explored several options, the Working Group came to the conclusion that the following proposal could be the best possible compromise:

1. The safeguard clause should be amended to the effect of clearly establishing that, in the relationship between countries bound by both the Protocol and the Agreement, the provisions of the Protocol alone shall apply.

2. The amendment should also specify that, notwithstanding the above, a declaration on individual fees by a State party to both the Protocol and the Agreement shall not be applicable to the renewal of an international registration in respect of that State if the territorial extension to that State was effective from a date prior to the amendment and the Contracting Party of the holder in respect of such international registration is party to both treaties.

3. The Assembly would be entitled to repeal the provision indicated under 2, above, only after the expiry of a period of 10 years as from the date of entry into force of the amendment, and by a special three fourths majority (only States bound by both treaties having the right to vote).

The Proposal in the Light of the Agreed Objectives

This would meet the objectives approved by the Assembly as follows:

1. It would entail a simplification of the Madrid system, keeping in mind the ultimate goal that the system be governed by only one treaty (the Protocol).

2. It would ensure equal treatment to nationals of all parties to the Protocol for any new designations.

3. It would allow users to benefit from the advantages offered by the Protocol while limiting undesired effects.

Conversion principles

Principles concerning the conversion of existing designations governed by the Agreement into designations governed by the Protocol:

1. The period of refusal applicable to a recorded designation should not be affected.

2. Converted designations should enjoy the benefit of possible transformation.

Transitional principles

Regarding international applications, subsequent designations and requests for the recording of renunciations and cancellations that are pending on the date of the coming into force of the amendments, it is proposed, for certainty, to provide that their processing continue according to the regime applicable on the date on which these were filed, or are deemed to have been filed.

Request

The Working Group requests the International Bureau to prepare draft amendments to Article 9*sexies* and the Common Regulations following the principles above."

39. The Delegations of Italy, Slovenia and Spain, noting that they had previously favored other options, stated that, in a spirit of compromise and consensus, they would be ready to accept the above-mentioned proposal.

40. The conclusions stated in paragraph 38, above, were adopted by the Working Group.

41. Before adopting the Report, the Working Group also took note of a paper submitted by BUSINESSEUROPE on the review of the safeguard clause.

## III. REPLACEMENT

42. Discussions were based on document MM/LD/WG/3/3 prepared by the International Bureau and entitled "Replacement".

43. The Delegation of Japan stated that it supported the proposal set out in the document and that establishing an Internet forum would be useful for users and would facilitate discussion of the issues. However, in the interest of efficiency and for the benefit of Offices themselves, it suggested that the results of the survey of practices adopted by Offices regarding replacement should be made available.

44. The Delegation of Slovenia spoke of the difficulty of interpreting the relevant provisions and indicated that it would wish the International Bureau to conduct a further survey in order to obtain additional information.

45. The Representative of MARQUES, noting its support for the comments made by the Delegation of Japan, spoke of the necessity to establish the extent of the difficulties encountered with regard to the interpretation of the provisions concerning replacement.

46. The Delegation of the Russian Federation endorsed the proposal in the document regarding the establishment of an Internet forum.

47. The Representative of INTA expressed its satisfaction at seeing the issue of replacement on the agenda of this session of the Working Group and recalled that at the last session of the Working Group it had expressed its concerns with regard to certain practices which might jeopardize the interests of users in the context of earlier acquired rights, following the replacement of a national or regional mark. It therefore fully supported the proposal of the Delegation of Japan and the continuation of the discussions of the Working Group in this regard. The Representative, referring to the submission of the Delegation of Slovenia, stated that the Working Group might recommend to the Assembly of the Madrid Union that, pending the outcome of the survey, Contracting Parties be invited to abstain from taking measures which could have the effect of putting international registration holders at risk of losing their national or regional rights. Furthermore, available information on measures already in place could be shared with all interested parties.

48. Noting that it had already responded to the survey initiated by the International Bureau, the Delegation of Germany expressed its interest in knowing the structure of the proposed Internet forum. It asked whether the Internet forum might be combined with a new survey.

49. The Delegation of Australia suggested that progress might be made by requesting those Contracting Parties that had already been surveyed to update their responses and, in addition, that those Contracting Parties not already surveyed be done so. It expressed the view that there would be clear benefit in simplifying and harmonizing the arrangements concerning the issue of replacement and that it supported the proposal of an Internet forum.

50. The Delegation of Australia, referring to the proposed modalities for the conducting of an Internet forum, as set out in the document, suggested that it would be helpful if specific concrete questions were to be identified for users and Offices to respond to. In contrast to a mono-directional forum, the Delegation said that it would favor an enquiry in the nature of a chatroom or dialogue. It also said that Offices should encourage users to participate in the forum.

51. The Delegation of Australia went on to say that the conducting of such a forum could be seen as a limited trial which, depending upon its outcome, could be extended with a view to obtaining the views of Offices and users regarding the wider development of the Madrid system.

52. The Delegation of China, endorsing the proposal of the Delegation of Japan, stated that it had established a system for implementation of the replacement procedure, which it would be happy to share with other Contracting Parties.

53. The Delegation of Sweden queried whether it might add some structure to the debate if the International Bureau were to propose to Contracting Parties a preferred interpretation of the replacement procedure. This was endorsed by the Delegation of Australia.

54. The Delegation of Kenya expressed its support for the setting up of an Internet forum and recommended that such a forum be more open, along the lines proposed by the Delegation of Australia. It also suggested that posting on the forum details of the practices already adopted by Offices in this regard would lead to harmonization.

55. The Delegation of France expressed its support for the setting-up of an Internet forum and favored the solution of a free exchange of opinions and experiences.

56. The Delegation of Singapore recalled the fundamental divergence in practice, as set out in the document. Notwithstanding the fact that it had specific procedures in place for the implementation of the replacement procedure, it said that it still encountered problems in their application. It therefore also supported the setting up of an Internet forum with a free exchange of views and information.

57. The Delegation of the Russian Federation said that it was currently drafting its own regulations on the basis of the model provisions established by the International Bureau. It also felt that the setting up of an Internet forum would assist in resolving the difficulties encountered by Offices and that it would be important that the forum be publicized by Offices on their own Internet websites.

58. For the purpose of clarification, the Secretariat explained that the survey which had been referred to in the document was in the format of a questionnaire which was limited in scope and had been circulated to a restricted number of Offices.

59. Reverting to its earlier submissions, the Delegation of Australia reiterated that it would be desirable for the International Bureau to devise a standardized interpretation for the implementation of the replacement provisions. It said that the establishment of such a model interpretation would offer a concrete viewpoint and elicit more informed responses. It favored the placing of specific questions on the forum and also providing on the forum details of the practices that certain Offices had already implemented.

60. In response to the various submissions of delegates regarding the establishment by the International Bureau of a model interpretation, the Secretariat stressed the paramount need to consider the requirements of users.

61. The Representative of MARQUES stated its support for the submissions made by the Delegations of Australia and Sweden. Furthermore, in its view, the most important consideration was what was required by users. Referring to the similarities between the seniority procedure under the Community trademark system, it underlined the importance of users being enabled to understand the operation and the benefits of the replacement procedure. To this extent, the procedure should be more widely publicized and Offices should be encouraged to promote its use.

62. The Delegation of the United States of America requested clarification at this point as to whether two different proposals were being put forward. The Delegation said that it supported the establishment of an Internet forum based on a document recalling the essence of replacement but had some concerns regarding the resources of the International Bureau as far as the conducting of a survey was concerned.

63. In response to the Delegation of the United States of America, the Chair stated that the International Bureau could launch a survey independently of the setting up of an Internet forum, at the same time drafting a document which would set out the essential elements of the replacement procedure, to be placed on the forum website. He suggested that it would not be necessary to conduct an in-depth analysis of the responses and that the information could simply be posted on the website for the assistance of users and Offices.

64. The Delegation of Australia stated that the survey could be largely based upon the original questionnaire. Furthermore, it said that the responses might be sought in a number of different ways, such as through e-mail, or direct postings to the website.

65. The Delegation of Germany queried whether the International Bureau envisaged merely a simple survey, involving the ticking of boxes, indicating 'yes' or 'no' responses. If so, advantage could be taken of the earlier survey by using the information generated.

66. The Secretariat confirmed that the information elicited from the original questionnaire could certainly prove useful in the preparation of a new, simple survey, the responses to which could be posted on the Madrid webpage. In addition, if the International Bureau could create a multi-directional exchange forum, the two sources of information would be complementary. An introductory document could be prepared by the International Bureau. It would envisage setting up the forum during the second part of 2007.

67. In response to an enquiry by the Chair as to whether it would be necessary to conduct a feasibility study, the Secretariat stated that this may be necessary with respect to the establishment of a multi-directional forum.

68. Discussions followed with regard to the time frame of the proposed Internet forum and the Secretariat suggested that this aspect be left in the hands of the International Bureau. Agreeing with the Delegation of Germany, the Delegation of Italy said that precise timings should be avoided and that what was important was that the forum would inform and engage users and Offices.

69. The Chair concluded that

– the Working Group considered that the harmonization of the work of Offices with regard to replacement should be pursued;

– the Working Group agreed with the establishment of an Internet forum during the second part of 2007 and was requesting the International Bureau to study the feasibility of making this forum a multi-directional one;

– the International Bureau should recall the objectives of replacement in the form of a document to be posted on the forum website, with a view to ascertaining if current Office practices met these objectives;

– at the same time, and independently, the International Bureau would conduct a survey of Office practices.

## IV. OTHER MATTERS

Proposal for a New Rule 1*bis*

70. The discussions were based on document MM/LD/WG/3/4.

71. The Delegation of Australia stated that while it supported the proposal contained in the document, it had one reservation. Referring to the informal paper prepared by the Delegation and which had been circulated during the course of the Working Group, it underlined the importance of considering issues in the general context of broader change. While the proposed amendment might prove to be very useful in the light of the proposed repeal or restriction of the safeguard clause, it was also necessary to recall the ideal of the system, operating upon the basis of one treaty alone, and that in that context it wished to avoid a situation which might result in more designations being made under the Agreement than might otherwise have been the case. The Delegation also indicated that it had a number of specific comments in relation to a possible future text of the proposed amendment.

72. Recognizing the importance of the proposal and indicating that it could support the proposal, the Delegation of Slovenia expressed the opinion that it would be desirable to begin by discussing the question of revising the safeguard clause, in order to avoid a possible contradiction between the result of this revision and the adoption of a Rule 1*bis*.

73. Responding to the Delegation of Slovenia, the Secretariat said that if it were essential to ensure that no such contradiction arose, the implementation of the revision of the safeguard clause would anyway prevail over Rule 1*bis* of the Regulations, insofar as that would be done by amending Article 9*sexies* of the Protocol itself.

74. In response to an enquiry from the Delegation of the Russian Federation, the Secretariat noted the differences between the operation of paragraph 5 of Article 15 of the Agreement and of the corresponding provision of the Protocol and explained that there was no conflict between the proposed amendment and the operation of those provisions. The proposed amendment was aimed merely at providing for users a further means of ensuring the continuation of their rights by allowing these to be carried-over under the other treaty when the appropriate circumstances existed.

75. The Representative of ATRIP and CEIPI stated that it fully endorsed what had been explained by the Secretariat and that in the overall context of the system it would be absurd for a holder to lose rights when a Contracting Party moved from one treaty to another, if this could be avoided. The Representative also underlined the urgency of adoption of such a provision by the Madrid Union Assembly next autumn, in the light of the denunciation of the Agreement by Uzbekistan. It was, however, not certain that a solution to the question of the safeguard clause would be attained by then. The Representative considered that, if it were subsequently needed to adopt a further amendment of the provision in the light of the review of the safeguard clause, this could be done.

76. The Delegation of Slovenia noted that this information was complementary to what had been indicated earlier, and was relevant.

77. The Representative of MARQUES indicated its support for the comments of the Representative of ATRIP and CEIPI and suggested that any other solution to the situation brought about by the denunciation of the Agreement by Uzbekistan would involve users incurring considerable expense.

78. The Representative of INTA endorsed what had been said by the Representatives of ATRIP, CEIPI and MARQUES and said that it was extremely important to move forward in the direction proposed by the International Bureau.

79. In response to a query raised by the Delegation of Australia, the Secretariat confirmed that a more detailed and specific text for the proposed amendment would be introduced at the next session of the Working Group.

80. The Representative of INTA, reaffirming its support for the principle of the proposed amendment, requested the International Bureau, when reviewing its draft of the proposed new provision, to consider substituting, in the chapeau thereof, the words "has been requested" for the words "is requested", and rewording the second part of items (i) and (ii) as follows: "[…] the designation of the latter shall be governed by the [Protocol/Agreement] as of the date on which the [Agreement/Protocol] so ceases to be applicable, insofar as, on that date, both the Contracting Parties of the holder and the designated Contracting Party are parties to the [Protocol/Agreement]".

81. Noting that the Working Group had approved the proposal for a new Rule 1*bis*, the Chair concluded that, on the basis of the text introduced by the Secretariat at this session, a revised draft amendment would be prepared by the Secretariat for approval by the Working Group at its next session.

Ensuring that the Level of Services Provided by the Offices of Contracting Parties to the Protocol is Commensurate with the Individual Fees Charged and the Length of the Applicable Refusal Period

82. Discussions were based on paragraph 8(a) of document MM/LD/WG/3/2.

83. In response to a question from the Chair, the Delegation of Australia stated that it did not believe that it was possible to ensure that there was a link between the level of services provided and the level of individual fees. Furthermore, it stated that any decision taken with regard to this issue should now be viewed in the context of where the development of the Madrid system was seen in the longer term.

84. Referring to its informal paper that had been circulated during the course of the Session, the Delegation of Australia said that the starting point of the discussion should be that there ought to be an underlying principle that members of the system should provide a minimum level of service and move towards a more consistent approach with regard to the handling of applications and the provision of information.

85. Stressing the importance, in any trademark system, of access to information by holders and interested third parties, the Delegation proposed that there should be set an *interim* standard consisting in the mandatory notification to the International Bureau of grants of protection for publication purposes. This would not impose a significant burden on Offices and could be done in many ways.

86. The Delegation further proposed that both new Contracting Parties and those Contracting Parties making new declarations under Articles 5(2) or 8(7) of the Protocol might be required to meet the *interim* standard as soon as the declarations became effective. On the other hand, transitional provisions would be required with regard to Contracting Parties that have already made either of the declarations in question, with a longer period allowed for existing Contracting Parties which have not made declarations.

87. In response to a query from the Chair, the Delegation of Australia reiterated the subject-matter of its proposal, namely the necessity to institute a minimum level of services applicable to all Contracting Parties, and not only those that have made a declaration. Furthermore, the Delegation believed that there should be a single mechanism for users to obtain information concerning international registrations.

88. At this point, the Chair recalled that the mandate of the Assembly of the Madrid Union had been to explore possible measures ensuring that the level of services be commensurate with the level of fees charged and the length of the refusal period and noted that the proposal of the Delegation of Australia did not make that link.

89. In response, the Delegation of Australia stated that, in its view, such a link could not be ensured and that the only possibility was to remain within the confines of Article 8(7) of the Protocol, without being able to monitor the application, by Offices, of that Article. The Delegation believed that this should be reported to the Assembly of the Madrid Union.

90. The Delegation of Antigua and Barbuda, noting that, as a small nation, it struggled with regard to the level of services provided, requested guidelines as to the precise level of services that might be required in order to justify the making of a declaration for individual fees.

91. The Delegation of the United States of America said that the processing of filings through the Madrid system resulted in substantial additional work for the Office. Statistically, it had been noted that the first-action approval rate for international filings was 2%, as against 15% for domestic filings. Among the reasons given for this, was the failure by applicants to comply with certain national requirements when filing through the Madrid system.

92. The Delegation added that it felt a certain discomfort with regard to the discussion concerning fee savings and services. It feared that linking the two might be perceived by potential new Contracting Parties as the setting of pre-conditions on the making of certain declarations, which could result in the creation of a disincentive to joining the system.

93. The Delegation further expressed its appreciation for the proposal of the Delegation of Australia, which looked to the future of the system in the context of harmonization and consistency. It stated that it was important not to ignore long-term development of the system for short-term gains.

94. While it approved the aims of simplification, friendliness and equality between the Contracting Parties, the Delegation of China emphasized the need to maintain the refusal period of 18 months. It said that the period was justified by the type of examination which the Chinese Office carried out, as well as by the translation into Chinese of international registrations and the increase in the number of designations of China.

95. As regards services, the Delegation of China said it was in favor of providing free online access to information but was not willing to issue declarations of the grant of protection.

96. The Delegation of Namibia supported the proposal of the Delegation of Australia with regard to the provision of minimum services.

97. The representative of MARQUES said that there should not be a discrepancy between the services provided at the national and international levels. In particular, it expressed the view that those Contracting Parties that had made a declaration as to individual fees should issue statements of grant of protection.

98. The Delegation of Turkey, noting that it issued statements of grant of protection and provided free access to its database, said that it supported the introduction of improvements in the system, but that it was necessary for it to retain the period of 18 months for notifying provisional refusals.

99. Noting that there had been no agreement concerning the level of services provided and their relationship with the amount of the individual fees and the duration of the applicable refusal period, the Chair said that a consensus had emerged to the effect that a guarantee should be provided whereby a certain minimum number of services should be offered within the Protocol. He therefore concluded that the Working Group recommended that discussions continue on the subject.

Establishing More Precise Criteria and Maximum Levels to be Applied by Contracting Parties to the Protocol when Fixing the Amounts of Individual Fees

100. The Delegation of Sweden referred to the economic impact which the Madrid Protocol had had on its Office and invited other delegations to share their experiences. It explained that application fees were set at a low level in order not to deter filings and that any loss was intended to be covered through renewal fees. Experience showed that during the first years following accession to the Protocol, the handling of Madrid designations by the Swedish Office had been approximately 10% more costly and more cumbersome than the handling of national filings. This could be explained, in particular, by the fact that any new system required an initial investment.

101. The Delegation noted that savings in relation to national application fees began to be made after the full implementation of the new computer system. During the course of the first decade as a member of the Protocol, the Office did not recover any renewal fees, and therefore accumulated a deficit which was covered by domestic filings. However, since renewal fees had commenced to be paid, the economic situation had begun to improve and a credit balance was expected in five years time.

102. The Delegation of Japan said that it disagreed with the suggestion to fix a maximum level of individual fees. The Delegation added that it considered that individual fees were to be set at the discretion of an Office, in compliance with the provisions of Article 8(7), and depending on the circumstances which were particular to an Office. For example, it pointed out that the Japanese Office carried out a translation of the list of goods and services, which was an additional service on the basis of which the amount of its individual fee had been set.

103. The Delegation of Australia said that, as a separate agency operating on a cost-recovery basis for each of the services it provided, it had carried out a cost comparison between national and international filings. This had shown that filings through the Madrid system were more costly than national filings. Like the Delegation of Sweden, it noted that it also had a fee structure that made entry into the system cheap.

104. Noting that the examination cost was a relatively low part of the total, the Delegation said that there were a number of areas where savings had been made through the Madrid system, the most significant being through the electronic communication of data.

105. The Delegation noted that at this point the Office was more or less breaking even, and that the amounts of the individual fees had just recently been reduced.

106. The Delegation of China considered that the individual fee should be fixed by each Contracting Party and that, as far as China was concerned, it should not be less than the national fee.

107. The Delegation of Finland, pointing out that its Office was self-financed, stated that it would have a problem with the proposal to set a maximum level for individual fees.

Proposal by Norway (Suppression of the Requirement for a Basic Mark; Revision of Time Limits for the Notification of Provisional Refusals; Designation of the Contracting Party of the Applicant or Holder)

108. Discussions were based on document MM/LD/WG/2/9 entitled "Proposal by Norway". The document was introduced by the Delegation of Norway.

109. In response to a query from the Delegation of Italy, the Delegation of Norway confirmed that, irrespective of the nature of the examination carried out by an Office, the reference to nine or 12 months as a period within which a notification of refusal would be issued was intended to replace the current time limits applied by Contracting Parties.

110. The Delegation of Slovenia considered that the proposal was worthy of discussion but that the complexity of the subjects referred to required an in-depth debate. It proposed that the Working Group should request a mandate from the Madrid Union Assembly in order to continue the discussion.

111. The Representative of ATRIP and CEIPI, expressing its gratitude to the Delegation of Norway for having highlighted the issues in the document, recalled that in the 1970s the Trademark Registration Treaty had been based upon similar ideas with regard to the requirement for a basic mark, but that, for other reasons, that treaty had not succeeded. The Representative underlined the need to proceed with caution with respect to the proposal to modify the time limits for the notification of provisional refusal, noting that several delegations had expressed the importance for them of the availability of the 18-month period. If this period were reduced it may deter countries who might have been considering joining the system. In the light of that, the Representative proposed separating that issue from the discussion of the matters contained in the document and focusing instead on the issue of the requirement for a basic mark.

112. The Representative of MARQUES, noting that a reasonable period for the notification of provisional refusals should be maintained in order to encourage wider participation in the system, stated that it endorsed the views of the previous delegation. With regard to the question of the requirement of a basic mark, it said that it would favor either abolition of the requirement in its entirety, which would address the concern of many users with respect to so-called 'central attack' or at least freedom for applicants to elect the Contracting Party whose Office would constitute the Office of origin.

113. The Representative of INTA, stating that it wished to endorse the views of the previous speakers as regards the suppression of the requirement of a basic mark, noted that this would require a revision of the Protocol (and the Agreement, if still in force) which would require the holding of a diplomatic conference. With respect to the revision of the time limit for notification of provisional refusals, the Representative recalled that Article 5 of the Protocol had just been the subject of a review. On this occasion, the Madrid Union Assembly had decided not to amend the relevant provisions and had adopted an interpretative statement recognizing the possibility of future reviews. In the circumstances, therefore, the Representative suggested that it may be better to defer further discussion on the latter issue.

114. Having noted the input from other delegations, the Representative of FICPI said that it had been impressed by the willingness to introduce simplification into the system and that the proposals contained in the document were of significant interest.

115. The Delegation of Australia stated that it strongly agreed with the sentiments expressed by the Delegation of Norway when introducing the document. The Delegation noted that it had appeared from a series of consultations in Australia that, while at the outset the profession had had reservations concerning accession to the system, it was now enthusiastic about it. It also emerged that certain features, such as the dependency period, were perceived in Australia as inhibiting new accessions and use of the system.

116. With regard to time limits for the notification of provisional refusal, the Delegation of Australia pointed out that it had made the declaration for 18 months, and that this had proven occasionally necessary. It was therefore reluctant to consider a move to a shorter period.

117. The Delegation of Australia reiterated that these matters should be considered in a cohesive manner in the context of the overall development of the system. In the light of the above, it said that while the proposal was worthy of consideration, it was not yet in a position to give its full support to it.

118. In response to a request for clarification from the Delegation of Antigua and Barbuda with respect to the procedural implications if the requirement of a basic mark were to be abandoned, the Secretariat referred to the positive experience of the Hague system which did not have the requirement of a basic filing and allowed for the designation of the country of entitlement of the applicant.

119. The Delegation of the Russian Federation, thanking the Delegation of Norway for having initiated the discussion of the proposals set out in the document, said that it would hesitate to proceed with such a radical change in the principles of a system which had operated successfully over such a long period of time. With regard to revision of the time limits for notifying a provisional refusal, the Delegation stated that it might be possible in the future to consider shorter time limits.

120. The Delegation of Singapore, supported by the Delegation of the Republic of Korea, said that it would wish to retain the 18-month period, which it considered to be a selling point of the system, and that countries considering acceding to the system would be concerned by a possibility that this feature might be revised. However, it did not see any reason why the matter could not be looked at again in the future.

121. The Delegation of the United States of America noted that some of the concerns expressed with regard to time limits might be mitigated by the introduction of the issuing of statements of grant of protection and access to databases. With regard to the issue of the requirement of a basic mark, it said that its abolition would be seen by some users as the elimination of a perceived problem, in particular regarding the need for identity of goods and services at the basic and international levels and the need for identity between the marks. However, some users in the United States of America perceived the possibility of central attack as a positive aspect of the system.

122. It was the view of the Delegation that the abolition of the basic mark would be a significant shift in the paradigm of the system and that it would need to ascertain the views of its users. Consequently, the Delegation indicated that it was unable to take a position upon the issue but would wish to have the discussions continue.

123. In response to the Delegation of Slovenia as to whether the issue of a basic registration had been contemplated in the history of the Hague system, the Secretariat said that the requirement of novelty in the field of industrial designs, which was absent from the field of trademarks, would have made it impracticable to have the requirement of a basic registration.

124. Noting that most of the delegations shared the concern regarding the simplification and modernization of the Madrid system, as well as that of maintaining its attractiveness with regard to possible new members, the Chair concluded that the recommendation of the Working Group was that it should continue to examine the issues raised by Norway in greater depth, as part of the discussion on the legal development of the Madrid system. For that purpose, the Working Group was requesting the International Bureau to begin to study the consequences of each of the proposals made by Norway.

125. The proposal of the Chair was adopted by the Working Group.

Proposal by Japan (Marks in Different Scripts)

126. Discussions were based on an informal document entitled “Contribution by Japan on the discussion of the future development of the Madrid system”. The document was introduced by the Delegation of Japan.

127. In reply to a question by the Delegation of Japan as to whether other Contracting Parties had encountered similar problems to those raised in the document, the Delegation of Australia, supported by the Delegation of the Russian Federation, said that it was an issue that arose generally when protection was required in a country using a different form of script. While it was not clear what the solution to the problem might be, the Delegations said that the issue should be addressed. It was suggested by the Delegation of Australia that dispensing with the requirement of a basic mark might be a solution, but that would, in itself, have other implications.

128. The Delegation of the United States of America, noting that the issue was also a concern for users in the United States of America, said that it would be useful to explore the matter in order to find a solution.

129. In reply to a question asked by the Delegation of Croatia, the Delegation of Japan confirmed that a mark in non-Japanese script was treated as a word mark, unless the examiner considered that it was a figurative mark. Neither a translation nor transliteration of a mark may be submitted to the Office under its national law.

130. The Chair concluded that the recommendation of the Working Group was that it should continue to examine the issues raised by the Delegation of Japan in greater depth, as part of the discussion on the legal development of the Madrid system. For that purpose, it considered that it would be useful for Japan to send to the International Bureau, at least two months before the beginning of the following Working Group session, proposals designed to enhance the attractiveness of the system.

131. The proposal of the Chair was adopted by the Working Group.

Proposal by Australia (Minimum Level of Services)

132. Discussions were based on an informal document entitled "Proposal by Australia to the *Ad Hoc* Working Group on the Legal Development of the Madrid System in relation to further work on the future development of the Madrid system". The document was presented by the Delegation of Australia.

133. The Delegations of Austria, Japan and Slovenia stated that they supported the proposal contained in the document.

134. In response to a query from the Delegation of Slovenia, the Delegation of Australia confirmed that the proposal envisaged the communication of a statement of grant of protection where a mark attained protection before the expiry of the applicable refusal period.

135. Referring to footnote 15 in document MM/LD/WG/3/2, the Representative of AIM said that the proposals set out in the Australian paper were more attractive insofar as they did not consist of alternatives and instead represented a set of unified, comprehensive measures. Moreover, they offered the advantage of a centralized information source.

136. The Representative of ATRIP and CEIPI, in addition to endorsing the previous submission and adverting to paragraph 23 of document MM/LD/WG/3/2, said that it would be undesirable to introduce mutually exclusive options and that the right to request information on the legal status of a given designation should not be limited to the applicant alone.

137. The Representative of INTA stated that it greatly welcomed the proposals, which constituted in its view an indispensable complement to the compromise attained on Article 9*sexies* of the Protocol. It believed that one of their principal virtues would be the recording in the International Register of statements of grant of protection, which would benefit both holders and interested third parties.

138. The Delegation of the Russian Federation, indicating that the principle of protection by default was sometimes perceived by users as a disadvantage of the system, supported the proposal.

139. The Representative of MARQUES said that it was interested in the possibility of moving away from the principle of "no news, good news" and in the availability of information on ROMARIN.

140. The Delegation of the United States of America stated that the principle of issuing statements of grant of protection should be approved and that the modalities for implementation could be further discussed with a view to making it as simple as possible for Offices.

141. The Chair invited the Delegation of Australia to summarize its proposal.

142. Comparing its proposal with the approach set out in paragraph 23 and in footnote 15 of document MM/LD/WG/3/2, the Delegation of Australia said that it was a simple and single process, as against a set of alternatives for Offices to elect between. This responded to the need for simplification and for establishing a mechanism which would give both holders and other parties a single source for obtaining information about the status of designations and registrations.

143. The Delegation said that the proposals contained in the document consisted of two principles, namely the confirmation of an intention to establish standards in the provision of information which would apply throughout the membership of the Protocol, and secondly, as an interim measure, the requirement of all members of the Protocol that statements of grant of protection be sent to the International Bureau. The latter could be transmitted in a single communication covering multiple international registrations.

144. In reply to a question by the Secretariat, the Delegation of Australia said that its proposal was silent on the necessity for the International Bureau to send a copy of the statements of grant of protection to the holder, but only emphasized the obligation to record the information in the International Register and to publish it on ROMARIN.

145. The Representative of MARQUES requested confirmation as to whether, on the basis of the proposal, the International Bureau would cease to forward to holders statements of grant of protection.

146. The Secretariat said that, in line with what had been said earlier, this would be its understanding.

147. The Representative of INTA said that holders should not be required to chase information and that the International Bureau should therefore not be relieved of the requirement to forward statements of grant of protection to holders. However, with the development of automation and electronic communications, the issuing and sending of such statements should become less of a problem over time.

148. The Delegation of Germany, supported by the Delegation of France, said that, while it did not have an issue with the requirement to provide information upon request, it was not, at this time, in a position to accept the proposal regarding the issuing of statements of grant of protection. It noted, in particular, that in the absence of an electronic system, such a measure would impose a heavy burden upon it.

149. The Delegation of Australia indicated that while it was not expecting to have its proposal adopted during the course of this meeting, it nevertheless would wish that the Working Group would continue to consider the proposal. It realized that implementation of its proposal might not be easy for many offices, and with this in mind, it also proposed that transitional measures could be put in place.

150. The Delegation of Antigua and Barbuda, noting that it would not be in a position to adopt such proposal at this time, nevertheless expressed an interest in continuing to reflect upon it.

151. The Delegation of Cuba said that, while it was very commendable to be able to discuss new perspectives, it required more time to consider the proposal and underlined the importance of having documentation in sufficient time and in three languages.

152. The Chair concluded by proposing as follows:

– that the working Group declare its intention that standards be established in the provision of information, which would apply throughout the membership of the Protocol;

– that the Working Group agree to continue to discuss in depth at the next session, the proposal put forward by the Delegation of Australia, in the context of the legal development of the Madrid Protocol.

153. The proposal of the Chair was adopted by the Working Group.

## V. FUTURE WORK

154. The Chair concluded as follows:

The Working Group was requesting the International Bureau to organize a fourth session of the Working Group, tentatively from May 30 to June 1, 2007, to consider the following agenda items:

(a) review of Article 9*sexies* of the Madrid Protocol;

(b) amendments to the Common Regulations;

(c) legal development of the Madrid Protocol, on the basis, notably, of the proposals submitted by Australia, Japan and Norway.

The Working Group was further requesting that, in view of that session, the International Bureau prepare:

(a) a draft amendment of Article 9*sexies* of the Madrid Protocol along the lines of the compromise proposal contained in paragraph 38, above;

(b) draft amendments to the Common Regulations for:

(i) the implementation of the proposed amendment to Article 9*sexies*;

(ii) the addition of a new Rule 1*bis* as agreed in the current session.

The Working Group recalled that at its second session it had already approved draft amendments to the Common Regulations for the implementation of a full trilingual regime, for submission to the Assembly on the occasion of the review of the safeguard clause.

*155. This report was unanimously adopted by the Working Group on February 2, 2007.*

[Annex follows]

ANNEX

## I. MEMBRES/MEMBERS

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

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Li-Feng SCHROCK, Senior Ministerial Counsellor, Federal Ministry of Justice, Berlin

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### AUSTRALIE/AUSTRALIA

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## III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/ INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

OFFICE BENELUX DE LA PROPRIÉTÉ INTELLECTUELLE (OBPI)/BENELUX OFFICE FOR INTELLECTUAL PROPERTY (BOIP)

Camille JANSSEN, juriste, La Haye

## IV. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/ INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association communautaire du droit des marques (ECTA)/European Communities Trade Mark Association (ECTA)
Sandrine PETERS (Mrs.) (Legal Co-ordinator, Antwerp)
Jan WREDE (Law Committee Member, Antwerp)

Association des industries de marque (AIM)/European Brands Association (AIM)
Jean BANGERTER (Representative, Lausanne)

Association internationale pour les marques (INTA)/International Trademark Association (INTA)
Bruno MACHADO (Representative, Geneva)

Association internationale pour la promotion de l'enseignement et de la recherche en propriété intellectuelle (ATRIP)/International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)
François CURCHOD (représentant permanent auprès de l'OMPI, Genolier)

Association romande de propriété intellectuelle (AROPI)
Alliana HEYMANN (Mme) (vice-présidente de la Commission "Droits internationaux", Genève)
Éric NOËL (observateur, Genève)

Centre d'études internationales de la propriété industrielle (CEIPI)/Centre for International Industrial Property Studies (CEIPI)
François CURCHOD (représentant permanent auprès de l'OMPI, Genolier)

Fédération internationale des conseils en propriété industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI)
Kate LØHREN (Ms.) (Attorney-at-law, Oslo)

MARQUES (Association des propriétaires européens de marques de commerce)/MARQUES (Association of European Trademark Owners)
Tove GRAULUND (Mrs.) (Council Member, Leicester)
Jane COLLINS (Mrs.) (Vice-Chairman, Leicester)

## V. BUREAU/OFFICERS

| | |
|---|---|
| Président/Chair: | António CAMPINOS (Portugal) |
| Vice-présidents/Vice-Chairs: | CHAN Ken Yu Louis (Singapour/Singapore) |
| | Vladimir OPLACHKO (Fédération de Russie/Russian Federation) |
| Secrétaire/Secretary: | Grégoire BISSON (OMPI/WIPO) |

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

Ernesto RUBIO, sous-directeur général/Assistant Director General

Secteur des marques, des dessins et modèles industriels et des indications géographiques/ Sector of Trademarks, Industrial Designs and Geographical Indications:

Grégoire BISSON, directeur adjoint et chef de la Section juridique des systèmes d'enregistrement international, Division des enregistrements internationaux/Deputy Director and Head, International Registration Systems Legal Section, International Registrations Division

Alan DATRI, conseiller principal, Bureau du sous-directeur général/Senior Counsellor, Office of the Assistant Director General

Matthijs GEUZE, conseiller principal, Bureau du sous-directeur général/Senior Counsellor, Office of the Assistant Director General

Marie-Paule RIZO (Mme/Mrs.), chef du Groupe de l'appui juridique et de la liaison inter-offices, Section juridique des systèmes d'enregistrement international, Division des enregistrements internationaux/Head, Legal and Inter-Office Support Unit, International Registration Systems Legal Section, International Registrations Division

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Valeriya PLAKHOTNA (Mlle/Miss), stagiaire à la Section juridique des systèmes d'enregistrement international, Division des enregistrements internationaux/Intern, International Registration Systems Legal Section, International Registrations Division

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