

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

Twenty-Sixth Session

Geneva, October 24 to 28, 2011

INFORMATION DOCUMENT ON THE WORK OF THE SCT ON INDUSTRIAL DESIGN LAW AND PRACTICE IN RELATION TO THE WIPO DEVELOPMENT AGENDA RECOMMENDATIONS

Document prepared by the Secretariat

INTRODUCTION

1. At the twenty-fifth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee” or the “SCT”), held in Geneva from March 28 to April 1, 2011, the Chair noted that “the Secretariat was requested to present an information document to the twenty-sixth session of the SCT on how the Development Agenda Recommendations, in particular Cluster B, were mainstreamed with regard to the work of the SCT on industrial design law and practice” (paragraph 6 of document SCT/25/6).
2. It is recalled that the Development Agenda 45 Recommendations were adopted by the General Assembly of the World Intellectual Property Organization (WIPO) in October 2007. The 45 Recommendations are structured in six clusters. Cluster B relates to norm-setting, flexibilities, public policy and public domain.
3. Following the request of the SCT, the Secretariat has prepared the present information document, which is divided into six parts: Part I summarizes the work of the SCT on industrial design law and practice; Part II contains information on the participation of Member States and other stakeholders in the work of the SCT on industrial design law and practice; Part III describes the nature of the work on industrial design law and practice; Part IV offers some policy consideration concerning work on industrial design law and practice; Part V examines

the relationship between the draft provisions resulting from the work on industrial design law and practice and existing flexibilities in international intellectual property agreements; and Part VI informs about other considerations taken into account by the work on industrial design law and practice.

4. The document has two Annexes. Annex I contains the text of the nine recommendations included in Cluster B of the Development Agenda Recommendations. Annex II contains a Table of Participants, with details on the participation of Member States, international intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) in the sessions of the SCT.

5. It should be noted that the present document does not attempt to match specific aspects of the work of the SCT on industrial design law and practice with individual Development Agenda Recommendations. Rather, it intends to provide an overview of certain features of the SCT work on industrial design law and practice that appear to correspond to one or several of Cluster B of the Development Agenda Recommendations.

I. SUMMARY OF THE WORK ON INDUSTRIAL DESIGN LAW AND PRACTICE

Fifteenth session of the SCT (November 28 to December 2, 2005)

6. Work on industrial design law and practice began upon an initiative of Member States at the fifteenth session of the SCT. A number of delegations expressed an interest in commencing work on the harmonization and simplification of design registration procedures. Some other delegations were of the view that any such initiative required preparatory work. Consequently, the Secretariat was requested to prepare a preliminary information document on formalities concerning the procedures for design registration (document SCT/16/6) (see paragraphs 173 to 183 of document SCT/15/5).

Sixteenth session (November 13 to 17, 2006), seventeenth session (May 7 to 11, 2007), eighteenth session (November 12 to 16, 2007), and nineteenth session (July 21 to 25, 2008) of the SCT

7. At the sixteenth session of the SCT, the Committee agreed to an exchange of information with a view towards promoting a better understanding of the industrial design systems in different Members. In order to do this, the Standing Committee requested the Secretariat to prepare a draft questionnaire relating to the formalities of industrial design registration (document SCT/17/6, "Draft Questionnaire on Industrial Design Law and Practice"). The draft questionnaire was revised (document SCT/18/7, entitled "Questionnaire on Industrial Design Law and Practice (Part I)"), on the basis of the comments made by delegations, and supplemented by a second questionnaire, at the request of the SCT (document SCT/18/8 Rev., entitled "Questionnaire on Industrial Design Law and Practice (Part II)"). Both questionnaires, as agreed by the SCT, were distributed to all Member States and intergovernmental organizations.

8. Sixty-five Member States and three intergovernmental organizations, namely the European Union, the African Intellectual Property Organization (OAPI) and the Benelux Organization for Intellectual Property (BOIP), replied to Part I of the Questionnaire. Forty-two Member States and the European Union replied to Part II. The replies to Parts I and II of the questionnaires were reproduced in document WIPO/STrad/Inf/2., supplemented by document SCT/19/9, entitled "Industrial Design Law and Practice - Analysis of the Returns to WIPO Questionnaires".

Twentieth session (December 1 to 5, 2008) and twenty-first session (June 22 to 26, 2009) of the SCT

9. At the outcome of the twentieth session, the SCT requested the Secretariat to prepare a document identifying possible areas for convergence on industrial design law and practice in SCT members (see paragraph 6 of document SCT/20/4). Accordingly, the Secretariat prepared document SCT/21/4, which identified nine possible areas of convergence on industrial design law and practice. That document was discussed by the SCT at its twenty-first session.

Twenty-second session (November 23 to 26, 2009) and twenty-third session (June 30 to July 2, 2010) of the SCT

10. At the conclusion of the twenty-second session, the SCT requested the Secretariat to prepare a revised document, highlighting the potential benefits that users and industrial design administrations could derive from convergence among Member States in industrial design law and practice (see paragraphs 63 to 65 of document SCT/22/9).

11. Accordingly, the Secretariat prepared document SCT/23/5, which provides a synthesis of the results of the discussions to that date. This document is divided into four chapters: one on potential benefits deriving from convergence among Member States, a second on possible areas of convergence, a third on common trends, and a fourth on the issue of specimens, in which no common trend was found.

12. At the twenty-third session of the SCT, the Delegation of the United Kingdom presented a non-paper on future work on harmonization of design laws. In addition, the Delegation of Spain, on behalf of the European Union and its member States, supported intensifying discussions in the Committee with the aim of recommending to the General Assembly the convening of a diplomatic conference in the biennium 2012-2013, which would consider an international instrument harmonizing and simplifying design registration formalities and procedures. This statement was supported by a number of delegations, whereas other delegations indicated that before supporting such a decision, further work was required.

13. The Chair of the twenty-third session concluded “that all delegations attached great importance to the work of the SCT on possible convergences in the industrial design law and practice of Member States and that the SCT supported the advancement of that work. To that effect, the Secretariat was requested to prepare a revised working document, for consideration and future work of the SCT at its 24th session, taking into account the conclusions presented in document SCT/23/5, as well as the comments made by delegations at the twenty-third session of the SCT” (see paragraph 60 of document SCT/23/7).

Twenty-fourth session (November 1 to 4, 2010) and twenty-fifth session (March 28 to April 1, 2011) of the SCT

14. After discussing document SCT/24/3, entitled “Industrial Design Law and Practice – Draft Provisions”, the SCT requested the Secretariat to prepare a revised document, which should present provisions on two levels, namely one general level setting out provisions of a broader and general nature, and a second subordinate level of provisions addressing in detail specific aspects of the general provisions (see paragraph 8 of document SCT/24/7).

15. Accordingly, the Secretariat prepared document SCT/25/2, which was discussed by the SCT at its twenty-fifth session. At the outcome of that session, the Secretariat was requested to prepare a revised working document for consideration at the twenty-sixth session of the SCT, reflecting all comments made at the twenty-fifth session and highlighting the issues that needed

more discussion. “As regards the continuation of the work, the Chair noted that the SCT had well advanced in its work on the draft provisions on industrial design law and practice. The Chair further noted that a number of delegations had reiterated their request for recommending to the Assemblies the convening of a diplomatic conference for the adoption of a design law treaty as soon as possible. Other delegations were of the view that more time for further work was needed and recommending the holding of a diplomatic conference at the present session was premature. The Committee was in agreement that as a possible path to move ahead, a diplomatic conference for the adoption of a design law treaty could be convened once sufficient progress had been made and the time was ripe for recommending the holding of such a diplomatic conference” (see paragraphs 11 to 14 of document SCT/25/6).

16. The Chair also noted that “the Secretariat was also requested to present an information document to the twenty-sixth session of the SCT on how the Development Agenda Recommendations, in particular Cluster B, were mainstreamed with regard to the work of the SCT on industrial design law and practice” (see paragraph 23 of document SCT/25/6). The present document has been prepared in response to that request.

II. PARTICIPATION IN THE WORK ON INDUSTRIAL DESIGN LAW AND PRACTICE

17. An average of 78 WIPO Member States, three IGOs, and 14 NGOs participated in the fifteenth to twenty-fifth sessions of the SCT. Out of the total number of members an average of seven least-developed countries, 35 developing countries, and eight countries in transition participated.

18. Two NGOs, namely the Federation of Intellectual Property Attorneys (FICPI) and the Association of European Trademark Owners (MARQUES), have made submissions in writing.

19. Annex II contains a table of participants, showing in detail the participation in the SCT, from the fifteenth to the twenty-fifth session.

III. NATURE OF THE WORK ON INDUSTRIAL DESIGN LAW AND PRACTICE

20. The draft provisions presented in documents SCT/26/2 and 3 deal with matters of a procedural nature. They fall within four general categories:

- (i) procedures for registration or grant of protection of industrial designs, including matters relating to the contents of applications, the representation of industrial designs, filing date requirements, grace period for filing an application, division of an application and publication of the industrial design;
- (ii) procedures for renewal of industrial designs, in those jurisdictions in which renewal is provided for;
- (iii) procedures for managing industrial designs after registration or grant of protection, including the formalities for recording licenses, changes in ownership and changes in name or address; and
- (iv) horizontal procedures, including the appointment of a representative, communications with Offices, relief measures in cases of missed time limits, and correction of mistakes.

21. The draft provisions do not touch upon matters of substantive industrial design law. They do not deal with, in particular, the subject matter of protection, the scope of protection, possible exceptions to the protection, or the duration of protection.

IV. SOME POLICY CONSIDERATIONS CONCERNING THE WORK ON INDUSTRIAL DESIGN LAW AND PRACTICE

(a) General

22. Recent literature on innovation and competitiveness highlights the fact that innovation is not exclusively defined through technological research and development, but comprises many other components, among which design is important¹. Moreover, it is suggested that design is an increasingly important innovation factor, in higher-income, as well as in lower-income, economies.

23. Intellectual property systems, in particular industrial design systems, should be devised to accompany the innovation potential of industrial designs. In this regard, they should evolve to respond to the needs of different profiles of design owners, big and small, and to take into account new market realities, as well as developments in technology and communications.

24. Formalities and procedures are structural elements of an industrial design protection system. They can be obstacles or, on the contrary, contribute in a pivotal manner, to an efficient system that is responsive to the needs of businesses that use design.

25. For a long time, policy makers have not given significant attention to industrial design formalities and procedures. As a result, design formalities and procedures tend to be less in line with the needs of users, and not in tandem with technological developments. Thus, existing formalities and procedures often hinder, rather than contribute to, design innovation.

26. The SCT work on industrial design law and practice provides members with an opportunity to exchange information on existing industrial design formalities and procedures, to get acquainted with the needs and interests of users and other members, and to advance towards simplification, streamlining and harmonization of those formalities and procedures. This work can result in national and regional industrial design systems that are more efficient, flexible and balanced, and which contribute to an adequate framework for fostering innovation.

(b) Point of view of Industrial Design Owners

27. The formalities and procedures relating to the protection of industrial designs are often complex and take little or no account of recent technological developments. Moreover, such formalities and procedures frequently differ from one country to another, which adds to the difficulty of those who wish to file in different jurisdictions. Ultimately, the wide variety of procedures, as well as their complexity, may deter design owners from filing in their own country, even more so from filing abroad.

28. A major hurdle for applicants concerns the need to prepare different sets of design reproductions in order to comply with divergent filing requirements concerning, for example, the number and form of the reproductions, or the views of the industrial design.

29. In certain jurisdictions, the procedures may be further complicated by the need to comply with formality requirements, such as the presentation of a transfer deed, or the certification or legalization of the signature on a communication.

30. In other cases, the divergence in practice and legislation may result in the impossibility for a design owner to obtain protection abroad, for instance where the owner has disclosed the design in its own territory, relying on the availability of a grace period for filing the application after the disclosure of the design.

31. The diversity of formalities and procedures has negative implications for owners of industrial designs, not only in terms of complexity and delays, but also in terms of costs. For instance, adapting the set of required reproductions to each jurisdiction in which protection is sought results in more time needed and in higher costs, not only to prepare such reproductions before filing, but also to correct the irregularities which are inevitably raised by the different offices.

32. The diversity of formalities and procedures may even result in a loss of rights, for instance when an irregularity resulting from non-compliance with a formal requirement fails to be corrected in time.

33. Simplification and convergence in a number of areas of industrial design procedures would be beneficial for industrial design owners in many ways. For example, as far as formal requirements are concerned, convergence would enable applicants to file a single set of reproductions in several jurisdictions. That would not only simplify the filing process and have an impact on costs, but would contribute to enhanced legal certainty and security, as the unintentional loss of substantive rights as a result of failure to comply with formal requirements could be avoided.

34. Finally, streamlined and convergent design registration procedures would encourage design owners to file domestically and abroad, as such owners would be able to act within a simplified and familiar framework in several countries.

(c) Point of view of Industrial Property Offices

35. Convergence in the procedures and formalities would also be advantageous for industrial property offices. In terms of the rationalization of work, for instance, the need to raise irregularities would be reduced, as applications complying with formal requirements in one territory would more likely be accepted in other territories.

36. Simplified procedures concerning signatures or the manner in which certain requirements may be satisfied, for example, would contribute to a reduction of the amount of documentation received by offices, as well as to streamlining the examination process.

37. Convergence in the representation of industrial designs could lead to more homogeneous data collections, making it easier to search and retrieve industrial designs which may anticipate a design for which protection is sought. This would be in the interest of the public at large.

V. THE WORK ON INDUSTRIAL DESIGN LAW AND PRACTICE AND ITS CONNECTION WITH EXISTING FLEXIBILITIES IN INTERNATIONAL INTELLECTUAL PROPERTY AGREEMENTS

38. The following paragraphs examine the draft provisions under consideration in documents SCT/26/2 and 3 (hereinafter “the draft provisions”) in the light of existing flexibilities in international intellectual property agreements, in particular in the Paris Convention for the Protection of Industrial Property (hereinafter “the Paris Convention”) and Agreement on Trade-Related Aspects of Intellectual Property Rights (“the TRIPS Agreement”) ²:

(a) Definition of industrial design

39. There is no definition of industrial design in the Paris Convention. Much the same can be said with respect to the TRIPS Agreement. While this Agreement contains an obligation for WTO members to “provide for the protection of independently created industrial designs that are new or original”, it does not define, as such, the term industrial design. It follows that the determination of the subject-matter of protection through industrial design remains flexible.

40. The draft provisions do not encroach on this flexibility, as they do not contain any definition of industrial design. Parties are left free to decide what constitutes an industrial design under their applicable law.

(b) Articles or products embodying an industrial design

41. Under the Paris Convention and the TRIPS Agreement, there is no obligation concerning the type of product which may incorporate, or in relation to which may be used, an industrial design. Thus, taking into account individual needs and specific policies, these provisions allow the exclusion of certain articles from design protection. Moreover, it is also possible to expressly provide for the protection of designs embodied in particular products, for example handicrafts.

42. The draft provisions maintain this flexibility, as they do not contain any obligation or prohibition concerning the products in which an industrial design can be embodied.

(c) System of protection for industrial designs

43. Under the Paris Convention and the TRIPS Agreement, there is an obligation to protect industrial designs. However, there is flexibility as regards the specific system through which that obligation can be met. Thus, industrial designs can be protected through a *sui generis* system, through copyright, or through other systems of protection.

44. The draft provisions relate to industrial design formalities in *sui generis* systems that require registration or any other procedure resulting in grant of protection, but do not propose any obligation to protect industrial designs through such *sui generis* systems. The draft provisions do not preclude the protection of industrial designs through other systems, e.g. copyright, trademarks or unregistered designs. As regards the specific *sui generis* system to which they apply, the draft provisions accommodate the requirements of so-called registration systems and of systems that provide protection to designs through patent legislation. Thus, the draft provisions maintain the flexibility concerning the system of protection of industrial designs that exists in international intellectual property treaties.

(d) Substantive requirements for protection

45. The TRIPS Agreement lays down minimum requirements for the protection of industrial designs. In order to be protected, it may be required that industrial designs are, at the minimum, independently created, new or original. The TRIPS Agreement does not define the concepts of “independently created”, “novelty” and “originality”.

46. The draft provisions do not lay down substantive requirements for the protection of industrial designs. Where the draft provisions refer to substantive requirements in the framework of certain procedures, the language used is broad enough to accommodate the requirements that may be applicable under the different laws. For instance, the terms “novelty and/or originality” are used in Article 6, so as to take into consideration the flexibility regarding the criteria for protection in the TRIPS Agreement.

(e) Protection for textile designs

47. Under Article 25.2 of the TRIPS Agreement, “each member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection”. Textile designs have at least two particularities, they are short-lived, as they depend on seasonal cycles, and they are usually part of “collections”, so that there are several designs to be protected at the same time.

48. The TRIPS Agreement contains a flexibility concerning the way in which the aforementioned obligation can be met by members. The last sentence of Article 25.2 of the TRIPS Agreement indicates that “members shall be free to meet this obligation through industrial design law or through copyright law.”

49. Where a member decides to meet the obligation through industrial design law, the draft provisions will contribute to facilitate protection for textile designs. Of particular interest for the protection of textile designs are Article 3(3), which provides for so-called “multiple applications”, and Article 9, which provides for the possibility of maintaining an industrial design unpublished during a period of time.

VI. OTHER CONSIDERATIONS TAKEN INTO ACCOUNT BY THE WORK ON INDUSTRIAL DESIGN LAW AND PRACTICE

50. In the work towards simplification and streamlining of industrial design procedures, the needs of users and offices are not the only considerations that are taken into account. A balanced and flexible system of industrial design will also have to take into consideration the interests of the public at large, as well as the different levels of development of member States. This chapter highlights the manner in which concrete draft provisions take account of those considerations.

(a) Balance between different interests

51. In the work which has been undertaken on industrial design law and practice, three different interests have been identified, namely those of designers and applicants, those of administrations and those of third parties and the public at large. The following examples illustrate how the draft provisions on design law and practice have endeavored to strike a balance between the different interests at stake.

Balance between the interests of applicants and Offices

52. In Article 3(3) of the draft provisions, the filing of so-called “multiple applications” is provided for. This is in the interest of applicants. However, multiple applications may have the effect of rendering searches more difficult and costly. In order to strike a balance between the interests of applicants and Offices, acceptance of multiple applications by an Office is subject to the conditions prescribed in the applicable law. For example, a Party may prescribe that multiple applications will be accepted only where all the designs in the application apply to, or are constituted by, products which belong to the same class of the Locarno Classification, or only where all the designs in the application conform to the requirement of unity of design, or only where all the design in the application are part of a set (see Note 3.09 in document SCT/26/2).

Balance between the interests of applicants and the public at large

53. Another example can be found in Article 9 and in Rule 6. Under Article 9(1), a Party shall, upon request by the applicant, maintain the industrial design unpublished for a minimum period prescribed in the Regulations. From the point of view of applicants, there may be an interest in maintaining the industrial design unpublished for some time, as it enables the applicant to control the first commercial release of the product. However, from the point of view of the public at large, there is an interest that the industrial design be published. In order to strike a balance between the interest of applicants for secrecy and the interest of other parties for publication, the minimum period for maintaining an industrial design unpublished, proposed in Rule 6, is a short period of six months from the filing date or, where priority is claimed, from the priority date (see Notes 9.01 to 9.06 in document SCT/26/2 and Notes 6.01 and 6.02 in document SCT/26/3).

b) Different levels of development

54. The draft provisions take into account, in particular, different levels of technological development.

Form of communications

55. Under Article 10(1), concerning “Communications”, a Party may choose to accept communications on paper, in electronic form, or in any other form. The ability to request communications on paper responds to the understanding that this is still the most widespread form of communication in many countries.

Form of visual representation of the industrial design

56. Rule 3(1)(a)(iii) provides that the representation of the industrial design shall, at the option of the applicant, be in the form of photographs, graphic reproduction or any other visual representation admitted by the Office. The third option is intended to cover forms of representation which are not currently known, but may develop in the future. In order not to oblige offices to accept any form of representation that may develop in the future, the words “admitted by the Office” have been inserted. Thus, Offices will be able to decide when they are in a position to accept new forms of representation, depending on, for example, their level of technological development.

c) Flexibilities inherent in the draft provisions

57. In order to take into account the different interests and legal traditions of Parties, the draft provisions contain several flexibilities. Some of the features referred to as “flexibilities” are already described earlier in this document, albeit in a different context. The following are examples of flexibilities in the draft provisions:

Choice of the industrial design system operating in a Party

58. The draft provisions accommodate the requirements of both registration and patent systems of protection for industrial designs (see Article 1(iii)). It follows from Article 1(iii) that the draft provisions apply to registration systems and to patent or patent-similar systems of protection of industrial designs.

Definition of industrial design

59. It follows from Article 2(2) that the draft provisions apply to those industrial designs that can be registered as industrial designs under the applicable law of each Party. It is for each Party to determine what matter can be protected as industrial design and what industrial designs are subject to registration or any other procedure towards grant of protection.

Conditions for accepting multiple applications

60. Article 3(3) provides for so-called “multiple applications”, that is, applications for protection including more than one industrial design. However, under that same article, acceptance of multiple applications by an Office is subject to such conditions as may be prescribed under the applicable law. Therefore, while the possibility to file multiple design applications is envisaged, each Party will have leeway to determine the conditions under which such multiple applications will be treated and, eventually, accepted.

System for maintaining an industrial design unpublished

61. Article 9(1) provides that, on request by the applicant, an industrial design shall be maintained unpublished for a period of time. The article does not provide for a specific system for maintaining an industrial design unpublished, but rather leaves the option to each Party. Thus, a Party may comply with this article by implementing a system of deferment of publication, a secret design system, a system based on request for delayed registration, or any other system that would result in maintaining the industrial design unpublished for a period of time.

Maximum period for maintaining an industrial design unpublished

62. Article 9(1) does not provide for any specific period of time during which a Party is obliged to maintain an industrial design unpublished. Rather, it provides for a minimum period of time, prescribed in the Regulations, and leaves it to each Party to determine the maximum period. Thus, a Party will be able to opt for a short or a long maximum period, based on the interests of its national industry or other policy considerations.

Structure of the duration of the protection

63. The draft provisions do not contain any obligation to divide the term of protection of industrial designs into separate and renewable terms. A Party is therefore free to provide for a *single* term of protection of at least ten years, or for *separate* terms of protection, which may be renewed by the applicant to sum up at least ten years³. Article 11 applies only where a Party provides for separate and renewable terms of protection.

VII. SUMMARY

64. This document provides a summary of the work of the SCT on industrial design law and practice over the past 10 sessions of the Committee. It offers detailed information about the participation of member States, intergovernmental organizations and non-governmental organizations in the work of the SCT on industrial design law and practice, and describes the nature of this work. The document further highlights a number of policy considerations

concerning the work on industrial design law and practice. Finally, it examines the relationship between that work and existing flexibilities in international intellectual property agreements, and describes a number of other considerations taken into account by the draft provisions resulting from that work.

65. In summary, the document offers information on the work of the SCT on industrial design law and practice with respect to the WIPO Development Agenda Recommendations, in particular Cluster B. It illustrates the inclusive, participatory and member-driven nature of that work, as well as how it takes into account the flexibilities in international intellectual property agreements and how it provides additional flexibilities in order to take account of the different interests and levels of development of member States.

66. The SCT is invited to take note of the contents of this document and its Annexes.

[Annexes follow]

THE 45 ADOPTED RECOMMENDATIONS UNDER THE WIPO DEVELOPMENT AGENDA

Cluster B: Norm-setting, flexibilities, public policy and public domain

- * 15. Norm-setting activities shall:
 - be inclusive and member-driven;
 - take into account different levels of development;
 - take into consideration a balance between costs and benefits;
 - be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations (IGOs) and NGOs; and
 - be in line with the principle of neutrality of the WIPO Secretariat.

- * 16. Consider the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain.

- * 17. In its activities, including norm-setting, WIPO should take into account the flexibilities in international intellectual property agreements, especially those which are of interest to developing countries and LDCs.

- * 18. To urge the IGC to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments.

- * 19. To initiate discussions on how, within WIPO's mandate, to further facilitate access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.

- * 20. To promote norm-setting activities related to IP that support a robust public domain in WIPO's Member States, including the possibility of preparing guidelines which could assist interested Member States in identifying subject matters that have fallen into the public domain within their respective jurisdictions.

- * 21. WIPO shall conduct informal, open and balanced consultations, as appropriate, prior to any new norm-setting activities, through a member-driven process, promoting the participation of experts from Member States, particularly developing countries and LDCs.

- * 22. WIPO's norm-setting activities should be supportive of the development goals agreed within the United Nations system, including those contained in the Millennium Declaration. The WIPO Secretariat, without prejudice to the outcome of Member States considerations, should address in its working documents for norm-setting activities, as appropriate and as directed by Member States, issues such as: (a) safeguarding national implementation of intellectual property rules (b) links between intellectual property and competition (c) intellectual property-related transfer of technology (d) potential flexibilities, exceptions and limitations for Member States and (e) the possibility of additional special provisions for developing countries and LDCs.

- * 23. To consider how to better promote pro-competitive intellectual property licensing practices, particularly with a view to fostering creativity, innovation and the transfer and dissemination of technology to interested countries, in particular developing countries and LDCs.

Table of participants⁴

SCT Meetings	WIPO Member States, total of participants	Least-developed Countries	Developing Countries	Countries in transition	International Intergovernmental Organizations	Non-Governmental Organizations
SCT/15 November 2005	79	5	32	10	3	11
SCT/16 November 2006	88	12	37	9	4	19
SCT/17 May 2007	77	5	36	7	3	16
SCT/18 November 2007	74	1	36	8	3	11
SCT/19 July 2008	81	7	36	10	3	12
SCT/20 December 2008	71	4	33	9	3	9
SCT/21 June 2009	83	9	41	6	2	12
SCT/22 November 2009	69	4	33	8	1	13
SCT/23 June 2010	78	10	34	8	2	14
SCT/24 November 2010	73	8	33	6	3	19
SCT/25 March 2011	85	12	39	8	5	18

[End of Annexes and of document]

¹ Some recent literature on this issues includes:

- "The Global Innovation Index 2011: Accelerating Growth and Development", INSEAD, 2011.
- Carvalho, Avila *et al.*, "Propiedade do Desenho Industrial Na Dinâmica da Inovação nas MPMEs. Brasileiras: Situação Atual e Perspectivas" in *Ciência e Cultura*, Vol 59 N° 4, 2007.
- "Value of Design Factfinder", British Design Council, 2007.

² Reference is made to the commentary on chapter 4 of TRIPS Agreement, including on the flexibilities available under this chapter, by Mrs. Thu-Lang Tran Wasescha in "Concise International and European IP Law", Kluwer Law, 2008.

³ Under Article 25(3) of the TRIPS Agreement, the duration of protection available to industrial designs shall amount to at least ten years.

⁴ This table uses the composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings, classified by the United Nations Statistics Division, revised on April 26, 2011, <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.