

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

Twenty-Eighth Session
Geneva, December 10 to 14, 2012

REPORT

*adopted by the Standing Committee**

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee” or “the SCT”) held its twenty-eighth session, in Geneva, from December 10 to 14, 2012.
2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Argentina, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Brazil, Burkina Faso, Burundi, Canada, Chile, China, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Hungary, India, Iran (Islamic Republic of), Ireland, Italy, Japan, Jordan, Kuwait, Libya, Lithuania, Madagascar, Mexico, Morocco, Myanmar, Nepal, Nicaragua, Nigeria, Norway, Panama, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Sudan, Sweden, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Viet Nam (69). The European Union was represented in its capacity as a special member of the SCT.

* This Report was adopted at the twenty-ninth session of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Regional Industrial Property Organization (ARIPO), African Union (AU), Benelux Organization for Intellectual Property (BOIP), South Centre (5).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), *Association française des praticiens du droit des marques et modèles (APRAM)*, Association of European Trademark Owners (MARQUES), Centre for International Intellectual Property Studies (CEIPI), International Center for Trade and Sustainable Development (ICTSD), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA), Third World Network Berhad (TWN) (9).

5. The list of participants is contained in Annex II of this document.

6. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all observations made.

AGENDA ITEM 1: OPENING OF THE SESSION

7. The Chair opened the twenty-eighth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), welcomed the participants and invited Mr. Francis Gurry, Director General of WIPO, to deliver an opening address.

8. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

9. The SCT adopted the draft Agenda (document SCT/28/1 Prov.) with the addition of one sub-item in item 4, entitled "Study on the Potential Impact of the Work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) on Industrial Design Law and Practice" (document SCT/27/4).

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE TWENTY-SEVENTH SESSION

10. The SCT adopted the draft report of the twenty-seventh session (document SCT/27/11 Prov.), with amendments as requested by the Delegations of China and Peru and the Representative of INTA.

AGENDA ITEM 4: INDUSTRIAL DESIGNS

General Statements

11. The Delegation of Belgium, on behalf of Group B, recognized the added value of reaching convergence on the industrial design law and practice of Member States in relation to design registration formalities and procedures with a view to simplifying them. Group B looked forward to engaging constructively towards the conclusion of a final treaty that would benefit all users, including those in developing countries and least developed countries (LDCs). With this in mind, Group B reiterated its readiness to consider appropriate measures regarding technical assistance and capacity building in line with the mandate of the General Assembly. In

conclusion, Group B added its voice to that of the General Assembly in urging the Standing Committee to expedite its work on the articles and regulations for a Design Law Treaty (DLT), and indicated that it was hopeful to reach consensus for convening a diplomatic conference for the adoption of a treaty ahead of the next WIPO General Assembly.

12. The Delegation of Hungary, on behalf of the Regional Group of Central European and Baltic States (CEBS), considered that the rapid progress of the work of the SCT on the harmonization of design law formalities was a clear priority and believed that enhancing convergence of national legislation in that area could bring benefits to users around the world, and would effectively contribute to the development of creative industries which enjoyed growing attention and economic importance in developing countries and in countries with economies in transition. The Group welcomed the decision reached at the 2012 General Assembly urging the SCT to expedite in a committed manner its work, with a view to substantially advancing the basic proposal for a DLT. The Group indicated its commitment, in line with the decision of the General Assembly, to meaningfully addressing the issue of technical assistance and capacity building for developing countries and LDCs in the implementation of the future DLT. The CEBS Group believed that the level of maturity of the draft articles and rules was considerable and looked forward to making significant progress at the current session on all outstanding issues and agreed to convene a diplomatic conference at the 2013 General Assembly.

13. The Delegation of Brazil, on behalf of the DAG, announced that Argentina became a member of the DAG in the week preceding the current SCT session, thus reinforcing the commitment of the DAG with the mainstreaming of the development dimension in all areas of the work of WIPO. The DAG believed that the main objective of that session was to further discuss the draft articles and regulations of a proposed DLT, according to the decision of the last General Assembly. The Delegation recalled that Member States had started discussing the issue without a clear negotiating mandate and what was meant to be a debate turned into a new norm-setting activity. It considered that a significant number of Member States had reasonable grounds to question the benefits and costs of the proposed treaty, and a specific study was requested to the Secretariat. Document SCT/27/4 was discussed in the twenty-seventh session of the SCT and a number of issues and questions were raised by delegations. However, the DAG considered that no attention was given to those concerns. In the last session of the SCT, the Chair concluded that “the SCT was not in agreement on a recommendation to the WIPO General Assembly concerning the convening of a Diplomatic Conference”. The DAG was surprised that, during the last General Assembly, attempts were made to overcome the conclusions of the Standing Committee as regards the next steps to be taken. Although the DAG was not opposed to the negotiating exercise, concerns were raised in relation to the process undertaken during the General Assembly. The Delegation believed that developing countries, which were the most concerned with the evaluation of the benefits and costs of the proposed treaty, needed to be extremely flexible in agreeing to continue the discussion without the proper fulfillment of the terms of reference of the study, which did not address all questions and doubts expressed by developing countries, regardless of how important they were to the decision-making process involved in negotiating the treaty. The Delegation stated that currently, it was not clear to many Member States whether the advantages of implementing harmonized procedures for design registration would compensate for the price to be paid, including the amendment of domestic regulations and developing the infrastructure and technology necessary to process industrial design applications in a harmonized way. Consideration should also be given to the economic impacts of the proposed treaty, especially in domestic design industries of developing countries. The DAG was of the view that the study should not have been set aside and that substantive work needed to be done in order to provide the answers Member States needed at that point of the negotiation. For this reason, the DAG had requested that document SCT/27/4 be discussed during the current session, so that further refinement be made and delivered at the next session of the SCT. The Delegation clarified that such request was without prejudice to the ongoing negotiations. It pointed out that the negotiation exercise had been based mostly on the law and

practice of a few developed countries, having as a goal the harmonization of procedures for design registration across a wide range of jurisdictions. In order for it to be inclusive and transparent, the working documents needed to reflect the realities and priorities of all countries, including developing countries. During the 2012 General Assembly, it was agreed that consideration would be given to including in the Treaty appropriate provisions regarding technical assistance and capacity building for developing countries and LDCs. The DAG noted that document SCT/28/4, prepared by the Secretariat, contained examples of provisions on technical assistance and capacity building included in WIPO-administered treaties. The DAG highlighted that those provisions were mere examples from other treaties and that Member States had to develop and agree upon specific provisions for the subject matter at hand, and sufficient time of this session should be dedicated to this discussion. The Development Agenda recommendations should guide the work in this field, as well as all work carried out by the Organization. The Delegation recalled the importance of observing Cluster B of the Recommendations, especially Recommendations number 15 and 21, and reiterated the commitment of its members to work productively and engage constructively with all groups and delegations.

14. The Representative of the European Union, on behalf of its 27 member states said that it looked forward to an efficient and productive session. The focus of the discussions on the Draft Design Law Treaty (Draft DLT) should allow the Standing Committee to make significant progress along the road map adopted by the General Assembly, with a view to bringing this matter to a diplomatic conference in 2013. The European Union and its member states were ready to discuss in an open and constructive manner on how to include appropriate provisions regarding technical assistance and capacity building for developing countries and LDCs in the implementation of the future DLT.

15. The Delegation of Peru, on behalf of the Group of Countries of Latin America and the Caribbean (GRULAC), took note of the decision of the General Assembly in October 2012 concerning the work of the Standing Committee, notably with reference to industrial designs. In particular, the GRULAC noted that in 2013, the General Assembly would consider the progress made and decide whether or not to convene a diplomatic conference. The Delegation expressed the hope that balanced work would be undertaken on all issues at WIPO, including those of interest to developing countries. The Group regarded document SCT/28/4 as a good basis for discussion and several of its members had expressed interest in arriving at a balanced text on industrial designs for the benefit of all. The Group believed that the inclusion of appropriate technical assistance and capacity building provisions would enable the Standing Committee to make progress to be made on the text. Nevertheless, the Group requested the Secretariat to ensure that document SCT/28/4 be expanded to include further details as to financial assistance provisions in order to facilitate participation by developing countries in line with the established practice of the United Nations General Assembly.

16. The Delegation of Iran (Islamic Republic of) associated itself with the statement made by the Delegation of Brazil on behalf of the DAG. The Delegation emphasized that negotiations should be guided by Cluster B of the Development Agenda. In order to comply with this part of the Development Agenda, it would be important that developing countries and LDCs receive appropriate technical assistance to promote their capacity before entering in a binding norm-setting process. Considering the different levels of development among countries, the Delegation suggested that the Secretariat first engage in technical assistance activities and investments in infrastructure, in particular on information technology (IT), to prepare the ground for developing countries and LDCs to implement the treaty and allow those countries to use the system properly before committing themselves to abide by a costly harmonized procedure which did not suit their level of development. The Delegation was therefore of the view that it would be imperative, when discussing a proposed DLT with the view of holding a diplomatic conference, to take into account the particular needs and requirements of developing countries and clarify several important issues, such as the relationship between the proposed DLT and The Hague

System for the International Registration of Designs (Hague system). The Delegation considered that, exploring that relationship and its possible impact on Member States which are not party to the Hague system should be added to any future study.

17. The Delegation of the Republic of Korea commended the valuable work that the Committee had accomplished so far. The Delegation stressed that it was crucial to recognize the importance and added value of simplifying design registration formalities and procedures. According to the study conducted by the Secretariat, the DLT would make it easier, cheaper and quicker to register designs. The Delegation noted, however, prominent differences between the views expressed by delegations from high-income countries, which believed that the changes would improve the time and cost of registration, while delegations from middle and low-income countries believed that there were costs to be borne. The Delegation stressed that the aim of the proposed treaty was not to force countries to change their systems or introduce another one but to identify areas that could be simplified, and over time the creation of a minimum standard to which people could adhere would bring them together and better align the design law. It pointed out that the creation of a design did not require sophisticated and complex infrastructure but rather creative and innovative ideas. Therefore, design was the most appropriate area of intellectual property (IP) to bridge the IP gap. The Delegation acknowledged that national differences in the level of infrastructure and experiences in system management might lead to varying degrees of satisfaction when implementing the DLT. However, providing assistance to Member States for developing and improving the capacity of their IP institutions would help developing countries and LDCs to fully benefit from the DLT. The Delegation was convinced that solutions could be found to respond to those needs as it has been the case with other treaties and said that it would continue working with all Member States to find the most appropriate and effective means of addressing these issues. The Delegation stressed the importance and value of industrial design law and practice and was hopeful that the Committee could promptly reach a consensus on the convening of the diplomatic conference in the near future.

18. The Representative of TWN said that caution should be exercised when deciding to move towards a diplomatic conference. The Representative believed that there was very little understanding of the full range of impacts of the proposed DLT, and in particular, the consequences for LDCs. The Representative asked what the economic implications of the proposed DLT would be; what would its impact be on innovation; would the treaty actually encourage or discourage innovation in developing countries and LDCs? What would its impact be on competition and on consumers? Would the proposed DLT create systems which limit the ability of market participants to compete and thus diminish consumer choice? The Representative believed that these important questions needed to be examined in depth before convening a diplomatic conference. She expressed the view that the impact study carried out by the Secretariat did not fully address those concerns, and believed that it was very important to re-examine those questions and conduct more in-depth studies on them. The Representative recalled two very important recommendations of the WIPO Development Agenda, namely Recommendation No. 15, which stated that norm-setting activities should take into account different levels of development as well as the costs and benefits for countries, as well as Recommendation No. 22, which stated that the WIPO Secretariat, without prejudice to the outcome of Member States considerations, should address in its working documents for norm-setting, as appropriate and as directed by Member States, issues such as: safeguarding national implementation of IP rules, links between intellectual property and competition, intellectual property-related transfer of technology, potential flexibilities, exceptions and limitations for Member States and the possibility of additional special provisions for developing countries and LDCs. The Representative believed that the issue of special provisions for developing countries and LDCs should be particularly addressed, not just in the context of technical assistance but throughout the different aspects of the Treaty. She also stressed the need for countries to maintain flexibility in the implementation of procedures for the registration of industrial designs.

Industrial Design Law and Practice - Draft Articles and Draft Regulations

19. Discussion was based on documents SCT/28/2 and 3.

20. The Representative of the European Union, speaking on behalf of its 27 member states, recognized and stressed the great importance and added value of harmonizing and simplifying design registration formalities and procedures. Underlining the fact that the European Union and its member states appreciated the substantial and valuable work of the Committee in addressing these issues, the Representative added that it would be a further accomplishment of this Committee to build on the promising work of the last six years and add another achievement to its record. For these reasons, the European Union and its member states reiterated their support for bringing this matter to a Diplomatic Conference in 2013. Whilst not committing delegations to the provisions of a treaty until they were ready and able, such a step would send a positive message of intent to the users of all design registration systems. The Representative also stated that the European Union and its member states wished to express their support for working documents SCT28/2 and 28/3, which they considered to represent a further promising step in the right direction. The European Union and its member states recognized that these draft provisions not only responded to the ultimate goal of approximating and simplifying industrial design formalities and procedures, but were also appropriate to establish a dynamic and flexible framework for the subsequent development of design law, enabling members to keep up with future technological, socio-economic and cultural changes. The European Union and its member states looked forward to advancing discussions on the draft articles and draft regulations in the constructive spirit that had characterized the preceding sessions of this Committee, and were hopeful that this Committee would be able to reach consensus on convening a diplomatic conference for the adoption of a treaty on industrial design registration formalities and procedures in 2013.

21. The Delegation of India requested that the text of the draft articles and rules, as well as comments made by different delegations, be projected on a screen.

22. The Chair, observing that the practice followed by this Committee was to prepare the documents in a written form and to circulate them to the delegations, said that no projection was foreseen for this meeting. The Chair also observed that live drafting would not be an easy exercise due to the large number of members attending this Committee.

23. The Delegation of South Africa supported the proposal made by the Delegation of India.

24. The Secretariat explained that live drafting was not a practice of this Committee and had not been requested before by this Committee. The Secretariat, indicating that screening required previous technical preparations, pointed out that live drafting might lead to some complications since interventions were made in many languages.

25. The Representative of the European Union, speaking on behalf of its 27 member states, expressed the view that it was not necessary to show the different interventions from delegates on the screen, since the text was sufficiently mature already to engage in discussion without this tool. However, if certain delegations would like to see the text of documents SCT/28/2 and 3 up on the screen, the Representative considered that this could be implemented, provided that this did not slow down the discussions.

26. The Delegation of Hungary, supporting the statement made by the Representative of the European Union and observing that during the information meeting organized by the Secretariat no delegation had raised this issue, stated that discussions on documents SCT/28/2 and 3 should not be delayed by the request of live drafting.

27. The Delegation of Belgium supported the statement made by the Delegation of Hungary.

Article 1: Abbreviated Expressions

Rule 1: Abbreviated Expressions

28. The Representative of CEIPI proposed that the definition of “Diplomatic Conference” in item (xix) be left pending until Article 24 had been discussed. The Representative also pointed out that Rule 1 of the French version had to be renumbered.

29. The Delegation of India, referring to item (v), proposed to add the word “one,” before “two or more industrial designs”, and the words “where allowed by the applicable law” at the end of items (v) and (vi).

30. The Chair, observing that there were no comments on the statements made by the Delegation of India, suggested that these proposals be reflected in a footnote.

31. The Delegation of India reiterated the wish to have its proposals included in the Draft Articles rather than in the footnotes.

32. The Delegation of Iran (Islamic Republic of), expressed its support for the statements made by the Delegation of India.

33. The Delegation of Hungary stated that it would not be in favor of an amendment of Article 1 as proposed by the Delegation of India, since this Article was quite stable. The Delegation, observing that the proposal made by the Delegation of India needed to receive support in order for it to be inserted in the main text, asked the Delegation of India to explain the purpose of its request.

34. The Delegation of the United Republic of Tanzania suggested that the definitions given in Article 1 be in alphabetical order to assure that all the abbreviated expressions were covered.

35. The Delegation of India, responding to the Delegation of Hungary, said that it requested these amendments because there was no definition of the term “industrial design” in the Draft Articles and Regulations.

36. The Secretariat explained that the initial application included two or more designs in item (v) because this application was the one that potentially would be divided into divisional applications, whereas an application would be covered by the definition given in item (iv).

37. The Delegations of Spain and Sweden supported the intervention made by the Delegation of Hungary for keeping the text as it stood.

38. The Delegation of Senegal expressed its support for the proposal by the Delegation of India.

39. The Delegation of Hungary said that it would be more logical to expand the definition of “application” in item (iv) by adding the words “one, two or more industrial designs”.

40. The Delegation of Iran (Islamic Republic of) reiterated its support for the proposal by the Delegation of India, as well as for the necessity of having the text on the screen for the afternoon session.

41. The Delegation of Spain said that the proposal to expand item (iv), made by the Delegation of Hungary, would be a consensus solution.

42. The Delegation of Morocco said that it did not support modifying the text, except for expanding item (iv), as proposed by the Delegation of Hungary.

43. The Delegation of Canada stated that, since “initial application” was only relevant in the context of “divisional applications”, it was inappropriate to add the word “one” in item (v). However, the Delegation said that, for the sake of consensus, it could support adding, at the end of item (iv), the words “which includes one or more industrial designs”.

44. The Delegation of Trinidad and Tobago, expressing the view that the definition of “industrial design” could be included in Article 1 or 2, proposed three possible approaches, namely an exhaustive list of industrial design definitions, an illustrative list of what could be included or, thirdly, an exclusion list stating what would not to be covered by the instrument.

45. The Delegation of India explained that it proposed the addition of the word “one” in item (v) because it considered that some States allowed multiple designs of single applications and some did not.

46. The Chair proposed to postpone the discussion on definitions after the discussion on Articles 3 and 8.

47. The Representative of the European Union, on behalf of its 27 member states, observed that the definitions had to be consistent throughout the treaty.

48. The Delegation of the United Kingdom observed that the definitions should not be considered in isolation, since the text in the definitions became relevant when it was used in the context of the articles, in particular, Articles 3 and 8. The Delegation requested the delegations that wished to have “one” inserted in item (v), to show to the Committee the relevance of their proposal in the context of the use of initial applications.

49. The Delegation of India agreed to pursue the discussion on definitions when discussing Articles 3 and 8, and suggested putting items (iv) and (v) within square brackets for the time being.

50. Referring to the intervention by the Delegation of Trinidad and Tobago, the Delegation of Hungary observed that adding a definition of “industrial design” in the Draft Articles or Regulations was a substantive issue. The Delegation recalled that there was a clear understanding from the members before starting this exercise that substantive issues would not be taken in the context of this draft treaty.

51. The Delegation of Spain, supported by the Delegations of Denmark and Japan, concurred with the Delegation of Hungary.

52. The Chair proposed to postpone the discussion on the definition in item (v) until the discussion on Articles 3 and 8 took place. With respect to the proposal by the Delegation of Trinidad and Tobago, the Chair said that it would be reflected in the report.

Article 2: Applications and Industrial Designs to Which These Articles Apply

53. The Delegation of Argentina declared that it was in a position to withdraw the proposal included into footnote 1, although it reserved the right to return to this issue if the balance found in Articles 3(3) and 8 was subsequently altered.

54. The Delegation of India proposed to add the words “where allowed by the applicable law” after the words “Contracting Party” in Article 2(1). The Delegation further suggested to use the wording of Article 25 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in Article 2(2).

55. The Delegation of the United Kingdom said that it was not in favor of the proposed wording, as the question of independence and novelty or originality was a substantive consideration and not a procedural one, and was therefore outside of the scope of the formalities discussion in this Committee.

56. The Representative of the European Union, on behalf of its 27 member states, and the Delegation of Hungary concurred with the Delegation of the United Kingdom.

57. The Chair said that the scope of the proposed new legal instrument covered formality questions, and not substantial legal issues. As regards the new wording proposed by the Delegation of India on Article 2(1), the Chair observed that before this proposal there was a consensus on this Article, and wondered whether the Delegation of India would be able to reconsider its position and join this consensus.

58. The Delegation of India said that it was not in a position to join the consensus on Article 2(1), but that it could join the consensus on Article 2(2).

59. The Chair concluded that the footnote to Article 2(1) reflecting the proposal made by the Delegation of Argentina at the twenty-seventh session of the SCT would be deleted, while the proposal put forward by the Delegation of India on Article 2(1) would be highlighted in a footnote.

Article 3(1) and (2): Application

60. The Delegation of Brazil declared that it withdrew its proposal to transfer subparagraph (iii) of Rule 2, “a claim”, to Article 3(1), although it reserved the right to come back to this Article and to restate this proposal if the discussions regarding Article 2(1) changed substantially.

61. The Delegation of Japan reiterated its view that an indication of the product should be stipulated by Article 3(1), not by Rule 2(1)(i). The Delegation explained that the indication of the product was essential to understand the industrial design, and that, in some jurisdictions, the indication of the product was considered in determining similarity with other designs, or in determining the scope of the registered designs. It further observed that, according to the “Analysis of the Returns to WIPO Questionnaires”, issued at the nineteenth session of the SCT, 94 per cent of jurisdictions which replied to the questionnaires required the indication of the product. The Delegation observed that in the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (Hague Agreement), an indication of the product was provided in Article 5(1)(iv) and not in a rule.

62. The Delegation of Canada endorsed the proposal put forward by the Delegation of Japan. As this draft treaty did not have a definition of industrial design, countries were free to define industrial design as they felt appropriate under their national law. The Delegation explained that in the Canadian context, an indication of the product was relevant both in terms of determining whether the design was protectable, and also as regards the scope of protection. The Delegation also pointed out that, for the interest of consistency with the Hague Agreement, an indication of the product should be transferred into Article 3. The Delegation highlighted the fact that the elements contained in Article 3 were a maximum list and did not impose on any Contracting Party to require these elements in an application.

63. The Delegations of Morocco, Peru and the Republic of Korea supported the statements made by the Delegations of Japan and Canada.
64. The Representative of MARQUES, observing that the list of elements in Article 3 should be kept as short as possible in the interest of users, in particular of small and medium enterprises, expressed the view that having this element in the rule was more flexible.
65. The Delegation of the Republic of Korea proposed to insert two new items in Rule 2(1), namely “an indication of partial design”, used to request protection for a part of a product, and “a request for an earlier publication”, to permit the applicant to request earlier publication at the application stage.
66. The Delegation of China proposed to transfer the description from Rule 2(1) to Article 3(1) and that the following sentence be added to the notes of Article 3: “a description should include a brief description under the applicable law of a Contracting Party. A Contracting Party will be free to decide the content and the form of the description”. The Delegation explained that in China, a brief description was a mandatory requirement for accepting an application. A brief description should include the name and the use of the product or products which incorporate the industrial design, as well as the distinctive features of the products. The Delegation said that it could however show some flexibility as regards the transfer of a description from Rule 2 to Article 3.
67. The Representative of the European Union, on behalf of its 27 member states, said that it would prefer to maintain item (v), “a description”, in the Regulations rather than in Article 3.
68. The Delegation of China stated that it was ready to consider the withdrawal of its proposal, taking into consideration the need to advance the work of the Committee.
69. The Chair concluded that the proposal by the Delegation of Brazil to transfer subparagraph (iii) of Rule 2(1), “a claim”, to Article 3(1), highlighted in a footnote, was withdrawn. Noting that several delegations had supported the proposal by the Delegation of Japan, the Chair concluded that “an indication of the product” would be transferred from Rule 2(1) to Article 3. The proposal by the Delegation of the Republic of Korea would be highlighted in a footnote.

Article 3(3)

70. The Delegation of the Republic of Moldova said that it supported the text as it stood.
71. The Secretariat, in reply to a question by the Delegation of India, said that Article 3(3) referred to the conditions under which multiple applications were accepted. The Secretariat recalled that this provision should be discussed together with Article 8, “Division of Application”.
72. The Delegation of India recalled that, in India, one design was allowed in one application, unless it referred to an article pertaining to the same class. In this regard, the proposal to add “one or more” would be justified.
73. The Delegation of the United Kingdom, underscoring the importance of this provision, expressed the view that the treaty should aim to be as inclusive as possible. The Delegation said that its preference would be to bring a possible non-acceptance of multiple applications and the connected Article 8 within the provisions that would be set in Article 27, “Reservations”.

74. The Delegation of Hungary, expressing its support for the statement made by the Delegation of the United Kingdom, said that providing for multiple applications was important for both developing and developed countries.

75. The Delegation of Canada, observing that there was a need to have a mechanism whereby the applicant could maintain its filing date if multiple designs were not accepted by the Office, said that it was worth considering deleting Article 3(3) and rewording Article 8. The Delegation further pointed out that the Paris Convention, in Article 4G1, which related to patents, provided that “the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any”. The Delegation considered that the words “at the request of the Office” in Article 8 did not clearly indicate that the applicant would have the right to file divisional applications.

76. The Delegation of India expressed its support for the Delegation of Canada regarding the wording of Article 8. The Delegation also explained that in India, when an applicant filed a design with a particular classification, he/she was then entitled to file a second application and the protection would be counted from the filing date of the first application.

77. The Delegation of Argentina, pointing out that it had withdrawn its proposal on Article 2 on the understanding that Articles 3(3) and 8 should be taken as a package, declared that it would prefer to keep the language of Article 3(3) as it stood, although it was open to discuss alternative solutions.

78. The Delegation of India, seeking clarification regarding the use of the term “admit” in line 6 of Note 3.09, asked whether there were other countries that limited an application to one design.

79. The Secretariat said that the term “admit” referred to the situation where the application was admitted and would result in a registration of the multiple designs; if the multiple designs were not admitted in one application, the application would be rejected.

80. The Delegation of Canada said that its national legislation specifically provided that an application should be related to one design only, although a mechanism of divisional applications was provided in order to protect applicants. The Delegation, feeling that the intention of Article 3(3) was to leave flexibility to countries not to accept multiple designs at all, reiterated its request to modify or delete Article 3(3).

81. The Representative of CEIPI, observing that the positions of the various delegations were not that far apart, said that a different language could be found in Article 8, along the lines of what had been suggested by the Delegation of Canada, so that there would be no need for resorting to reservations. In the Representative’s view, if the word “division” created a problem to some delegations, it could be replaced by other language leading to the same result, namely the preservation of the filing date.

82. The Chair suggested that the Delegations of Canada and India worked on a bilateral basis to produce a proposal on Articles 3(3) and 8.

83. The Delegation of the United Kingdom expressed concern regarding any significant loosening of these important provisions. Observing that Articles 3(3) and 8 provided a structure allowing multiple applications, the Delegation requested that this aspect be maintained in these Articles.

Rule 2: Details Concerning the Application

84. The Delegation of Canada, referring to item (viii) of Rule 2, proposed to add the words “at the option of the applicant” after “is not the creator of the industrial design”, in order to broaden the options given to the applicant as stated in Note 2.06. The intention of this proposal was not to let the applicant decide whether or not to provide evidence, but to make it clear that the applicant would have the option between the two forms of evidence set forth in the provision. It would be left to the Contracting Party to decide whether the evidence in a particular case was sufficient.

85. The Representative of CEIPI suggested that the words “at the option of the applicant” follow the words “a statement of assignment or”.

86. The Delegation of India, observing that in its country a statement from the applicant stating that the applicant claimed to be the owner of the design was sufficient, proposed to add the following words at the end of Rule 2(1)(vii): “or a declaration by the applicant that the applicant claims to be the owner of the design”.

87. The Delegation of Canada, recalling that Rule 2(1) was not an exhaustive list and that items (vii) and (viii) worked together, said that it was in favor of combining items (vii) and (viii).

88. The Delegation of the United States of America expressed its support for the proposal by the Delegation of Canada to add the words “at the option of the applicant” in item (viii).

89. The Delegation of Canada said that it aligned itself with the wording proposed by the Representative of CEIPI.

90. The Delegation of Argentina, expressing its preference for keeping items (vii) and (viii) separated, suggested to add, in item (vii), “when the applicant is the creator of the industrial design”, and in item (viii), “when the applicant is not the creator of the industrial design”.

91. The Delegation of Spain, indicating that it preferred to keep items (vii) and (viii) separated, expressed its support for the text proposed by the Delegation of Argentina. The Delegation further said that it would be in favor of leaving it up to each Contracting Party to decide what evidence had to be submitted.

92. Expressing its support for the language proposed by the Delegation of Argentina in item (vii), the Delegation of Canada reiterated its proposal to add the words “at the option of the applicant” in item (viii).

93. The Chair said that a new draft of items (vii) and (viii), based on the proposals by the Delegations of Argentina and Canada, would be presented to the Committee.

94. A new draft of items (vii) and (viii) was presented to the Committee by the Chair in a non-paper. The new draft read as follows:

Rule 2
Details Concerning the Application

(1) [Further Requirements Under Article 3] In addition to the requirements provided for in Article 3, a Contracting Party may require that an application contain some, or all, of the following indications or elements:

[...]

(vii) where the applicant is the creator of the industrial design, a statement that the applicant believes himself/herself to be the creator of the industrial design;

(viii) where the applicant is not the creator of the industrial design, a statement of assignment or, at the option of the applicant, other evidence of the transfer of the design to the applicant admitted by the Office;

95. The Delegation of the United States of America requested the deletion of the sentence “where the applicant is the creator of the industrial design” in the proposed new draft of item (vii), since this language could create difficulties, in particular if a country required a declaration even from an inventor. The Delegation supported the new proposed draft of item (viii).

96. The Delegation of Canada expressed its support for the proposed new draft of item (viii).

97. The Representative of CEIPI suggested adding an explanation in the Note to clarify that item (vii) applied both where the applicant was the creator and where the applicant was not the creator.

98. The Delegation of China explained that under national legislation a brief description, consisting of the name, the purpose and the elements of the industrial design, was required. Since Note 2.04 stated that a Contracting Party would be free to determine the form and contents of the description, the Delegation wondered whether the description mentioned in item (v) of Rule (2)1 included also a brief description, as provided by its national legislation.

99. The Secretariat confirmed that “a description” in Rule 2(1)(v) comprised a brief description.

100. In reply to a request for clarification by the Delegation of India, concerning the term “indications” in item (vi), the Secretariat explained that the terms “indications concerning the identity of the creator” had been chosen to provide flexibility, as there could be different ways of giving the identity of the creator. Contracting Parties were free to decide how this information should be furnished.

101. The Delegation of India expressed the view that the term “indications” in item (vi) was redundant, but said that it could accept it if the Committee did not have a problem with it.

102. The Secretariat, in reply to a request for clarification by the Delegation of India regarding item (xi), “an indication of any prior application or registration, or other information, of which the applicant is aware, that could have an effect on the eligibility for registration of the industrial design,” recalled that Rule 2 was a maximum list and that Contracting Parties were not required to apply all the items provided in Rule 2. The Secretariat said that item (xi) was not intended to address questions of term of protection or eligibility of protection, since the Committee did not address elements of substantive design law.

103. The Chair concluded that item (vii) would remain as it stood, and that item (viii) would be amended in accordance with the draft presented in the Chair’s non-paper. In addition, Note 2.04 would be expanded to make it clear that “a description” in Rule 2(2)(v) included “a brief description under national legislation”, and Note 2.05 would be expanded as per the suggestion put forward by the Representative of CEIPI.

Rule 3: Details Concerning Representation of the Industrial Design

104. The Delegation of Canada expressed its concerns about the limitation of the exceptions that were provided in Rule 3(2), in particular when the industrial design constituted only a part of the appearance of a product. Referring to the Administrative Instructions for the Application of the Hague Agreement, the Delegation underlined that Section 403 provided for indicating matter which was shown in a reproduction, but for which protection was not sought, by means of dotted or broken lines or a description. The Delegation, observing that it seemed standard practice that one way to indicate matter that did not constitute a part of the design was through the use of a description, concluded that the current text of Rule 3(2) was more limited, since it only referred to broken lines. In addition, the Delegation proposed to replace the word “reproduction” by “representation” in Rule 3(2). The Delegation proposed text that would read as follows: “[Particulars Concerning Representation] Notwithstanding paragraph (1)(c), the representation of the industrial design may include: (i) matter that does not form part of the claim design, if it is identified as such in the description, or it is shown by means of dotted or broken lines”.

105. The Representative of the European Union, on behalf of its 27 member states, said that it supported the use of the term “representation” instead of “reproduction” in Rule 3(2).

106. The Delegation of Norway requested clarification as to whether the obligation, in Rule 3(1)(c), to represent the industrial design alone, to the exclusion of any other matter, should be interpreted strictly. The Delegation also asked whether the means indicated in Rule 3(2) were exhaustive.

107. The Delegation of the United States of America expressed its support for the proposal by the Delegation of Canada to replace the word “reproduction” by “representation”.

108. The Delegation of Japan said that it was in favor of the proposal made by the Delegation of Canada, although it suggested to add, in item (i) of Rule 3(2), the word “and” before “or”. Rule 3(2) would read as follows: “(i) matter that does not form part of the claimed design if it is identified as such in the description and/or it is shown by means of dotted or broken lines”.

109. The Delegation of India, referring to Rule 3(4), said that it did not satisfy the requirements of national legislation, as national law required four copies, and suggested to amend it.

110. The Delegation of China reiterated the proposal made at the twenty-seventh session to add a subparagraph (c) in Rule 3(3), which would read as follows: “Notwithstanding subparagraph (a), the part in solid lines that indicate the matter of industrial design protection should satisfy the requirements of the Office”.

111. The Delegation of the United Kingdom disagreed with the proposal made by the Delegation of India to replace “three copies” by “four copies” in Rule 3(4).

112. The Secretariat, in reply to a question raised by the Delegation of India concerning Rule 3(4), said that the number of “three copies” was selected on the basis of the information collected by means of the questionnaires on industrial design law and practice, which was presented to the Committee at the nineteenth session. In addition, the number of “three copies” had been validated through the work of this Committee.

113. The Delegation of Australia observed that its domestic legislation currently required that five copies of representations be provided by the applicant. However, consideration would be given to amending the national law to align it with international best practice, for the benefit of users.

114. The Delegation of the Republic of Moldova said that, according to national legislation, one copy was requested if the design was in black and white and five copies if it was in color. However, since technical possibilities were constantly evolving, it was not discarded that national legislation would be amended.

115. The Delegation of Morocco pointed out that under national legislation three copies were required, although a draft amendment had reduced the number to two copies with the introduction of electronic applications.

116. The Chair concluded that Rule 3(2) would be changed as proposed by the Delegation of Canada, including the slight change suggested by the Delegation of Japan. Noting that there had been no support for the proposals by the Delegations of China and India, the Chair concluded that they would be highlighted in footnotes.

Article 4: Representatives; Address for Service or Address for Correspondence
Rule 4: Details Concerning Representatives, Address for Service or Address for Correspondence

117. The Delegation of the United States of America said that it preferred Option 1, for the sake of simplifying the procedure and easing formality burdens on applicants. The Delegation further proposed to add, at end of subparagraph (b), the words “or for the mere payment of a fee”, which was language used in Article 7(2) of the Patent Law Treaty (PLT).

118. The Delegations of Brazil and the Russian Federation declared that they preferred Option 1.

119. The Delegation of Canada expressed its preference for Option 1, and supported the proposal made by the Delegation of the United States of America.

120. The Representative of the European Union, on behalf of its 27 member states, declared that it preferred Option 1.

121. The Delegation of Hungary, endorsing the arguments put forward by the previous delegations as regards the importance of Option 1 for users and Small and Medium Enterprises (SMEs), declared that it supported Option 1.

122. The Delegations of India and Nigeria declared that they preferred Option 2.

123. The Delegation of China, considering that it should be up to each Party to decide whether or not to require representation, said that it preferred Option 2, in the interest of applicants.

124. The Delegations of Lithuania and Spain expressed their support for Option 1.

125. The Delegation of the Republic of Moldova declared that it preferred Option 1, since it was convenient for applicants to file an application before selecting a representative. The Delegation also mentioned that many jurisdictions offered electronic filing systems, which enabled applicants to file themselves.

126. The Delegation of the Republic of Korea, expressing the view that according a filing date without requiring a representative could reduce burdens for applicants, especially independent creators and SMEs, said that it supported Option 1.

127. The Delegation of Nepal declared its preference for Option 2.

128. The Representative of the European Union, on behalf of its 27 member states, observed that from the perspective of users, a friendly system would increase the number of applications filed abroad. The Representative also raised the question as to whether Option 2 was compatible with Article 3 (2).
129. The Delegation of Iran (Islamic Republic of) declared that it preferred Option 2.
130. The Delegations of Norway, Sweden and Switzerland declared that they supported Option 1.
131. The Delegation of Chile, referring to the words “for the purposes of any procedure before the Office” in Option 2, requested clarification as to whether adversarial procedures before the Office, such as opposition, would be covered.
132. The Delegations of Belgium, Czech Republic and France added their voice to those delegations that were in favor of Option 1.
133. The Delegation of Belarus concurred with the Delegations of Republic of Moldova and the Russian Federation in supporting Option 1.
134. The Representatives of APRAM and MARQUES declared that they preferred Option 1.
135. The Representative of OAPI declared that it supported Option 2 for the same reasons put forward by the Delegations of China and India.
136. In response to a request for clarification by the Delegation of Trinidad and Tobago, the Secretariat explained that an address for service was an additional option in cases where there was no representation and no establishment or domicile. In response to the request for clarification by the Delegation of Chile, the Secretariat said that the terms “any procedure before the Office” would also cover adversarial procedures for which the Office could require representation.
137. The Representative of the European Union, on behalf of its member states, reiterated its question on the compatibility of Option 2 of Article 4 and Article 3(2). Article 3(2) provided that no indication or element, other than those referred in paragraph (1) and in Article 10, may be required in respect of the application. This would imply, under Option 2, that the appointment of a representative could not be made in the application, since it was not provided for by Article 3(2).
138. The Secretariat, observing that item (iii) of Article 3(1) referred to a representative, said that the ambit of Article 3 was to regulate the elements in the application itself and that the conditions concerning the appointment of a representative were different from the application.
139. The Delegations of Germany and Norway expressed their support for the proposal made by the Delegation of the United States of America.
140. The Delegation of India requested the addition of the words “where such provisions are allowed under the applicable law” in Rule 4(1)(c).
141. The Delegation of Hungary questioned the relevance of the proposal by the Delegation of India, since this provision was not mandatory.
142. The Secretariat explained that this was a permissive provision, so that it would not be applicable to any Contracting Party that did not contemplate in its law the possibility of withdrawal of the application or surrender of the registration.

143. The Delegation of India requested that the explanation offered by the Secretariat be reflected in a note.

144. The Chair noted that there were a number of delegations that were in favor of Option 1, while others expressed their support for Option 2. As regards the proposal by the Delegation of the United States of America to add “or for the mere payment of a fee” at the end Article 4(2)(b) of Option 1, the Chair concluded that it would be added, as it had received support from two delegations and no delegation had expressed disagreement. In addition, the Chair concluded that a note on Rule 4(1)(c) would be added to reflect the explanation by the Secretariat.

Article 5: Filing Date

Rule 5: Details Concerning Filing Date

145. The Delegation of the United States of America confirmed that it maintained its proposal, highlighted in footnote 8, to add “a claim” to the list of filing-date requirements in paragraph (1).

146. The Delegation of Japan confirmed that it maintained its proposal to add “an indication of the product or products which incorporate the industrial design, or in relation to which the industrial design is to be used” to the list of filing-date requirements in paragraph (1). The Delegation pointed out that, in some jurisdictions, this indication constituted an essential factor for determining the scope of protection or judging similarity with other designs.

147. The Delegation of Brazil declared that it withdrew its proposal to add “indications concerning the identity of the creator of the industrial design” to the list of filing-date requirements in paragraph (1), as highlighted in footnote 8.

148. Referring to footnote 8 and its proposal to add “a description” to the list of filing-date requirements in paragraph (1), the Delegation of Canada said that, after having reconsidered the question, it was in a position to withdraw that proposal. The Delegation expressed its support for the proposal made by the Delegation of Japan. Recalling that the Committee had agreed to transfer “an indication of the product or products which incorporate the industrial design, or in relation to which the industrial design is to be used” to Article 3, the Delegation believed that such indication should also be included in the text of Article 5. Finally, noting that the reference to Article 10(2), appearing in Article 5(1)(a), was intended to be a reference to Article 10(2)(a) only, the Delegation suggested replacing, in Article 5(1)(a), the terms “in the language required under Article 10(2)” by the words “in a language admitted by an office”.

149. The Delegation of India expressed its support for the proposal by the Delegation of Japan, and proposed to add, in Article 5(1), a subparagraph (v) providing for “any further indication or element as prescribed under the applicable law”.

150. The Delegation of China recalled that it had made three proposals during the twenty-seventh session of the SCT. The first two were highlighted in the footnotes and the third was to a certain extent reflected in the explanatory notes. The Delegation expressed the hope that its proposals would be reflected in the text of Article 5 itself. Referring to Article 5(4), the Delegation indicated that it amended its previous proposal so that it read “the Office shall decide according to the applicable law whether it will invite the applicant to comply with such

requirements". Finally, referring to Article 5(1)(a), the Delegation said that, in its view, each Contracting Party should be allowed to impose its own requirements concerning the form and content of an application.

151. The Delegation of Morocco expressed its support for the proposal made by the Delegation of Japan.

152. With respect to the proposal by the Delegation of China concerning Article 5(4), as highlighted in footnote 9, the Delegation of Denmark stated that Danish users were not in favor of that proposal, as it was important for applicants to get a chance to comply with the requirements. Therefore, the Delegation preferred to maintain the text of Article 5(4) as it stood. Concerning the proposal made by the Delegation of India, the Delegation of Denmark expressed its preference for the current text of Article 5(1).

153. On behalf of the European Union and its member states, the Representative of the European Union stressed that the filing date was a key point of the future DLT. In its opinion, any proposal providing for the inclusion of any additional element according to domestic law would not make sense. The Representative believed that the conditions to get a filing date, as set out in the current text of Article 5(1)(a)(i) to (iv), were sufficient. Furthermore, referring to the proposal made by the Delegation of Japan, the Representative of the European Union stated that the proposed indication could be given by the applicant after the filing of the application. In this respect, the Representative referred to the patent field, where it was possible to get a filing date and to improve the patent application at a later stage. Finally, the Representative stated that the aim was to be user-friendly, so as to request the minimum necessary requirements to grant a filing date.

154. The Delegation of the United Kingdom stated that, in its opinion, Article 5 constituted one of the fundamental achievements that could be brought by the potential Treaty. In its view, the filing date requirements should be no more than those necessary to establish the scope of protection sought. The Delegation considered that Article 5(1) adequately set out the information necessary to determine the scope of protection, and that a proposal to extend Article 5 to any other indication was disconnected with the intent of this Article.

155. The Delegation of the Republic of Moldova, underlining the fact that Article 5 kept the requirements to a minimum, pointed out that other elements could be obtained at a later stage through a process of communication between the Office and the applicant.

156. The Delegation of Switzerland concurred with the Delegation of the United Kingdom in that Article 5 was a key article, which should therefore remain clear and simple. The Delegation was not in favor of any extension of the list contained therein and expressed its preference for the current text of Article 5.

157. Referring to the proposal initiated by the Delegation of Canada, the Delegation of Argentina believed that, if accepted by the Committee, the suggested wording, namely "in a language admitted by the Office" should be repeated also in Article 5(1)(b).

158. The Delegation of the United States of America expressed its support for the proposal of the Delegation of Canada, as complemented by the Delegation of Argentina.

159. The Representative of MARQUES, endorsing the statements that Article 5 was a key article, noted that the Committee had recognized the need for this Article to be simple and minimalistic. The Representative expressed its support for the proposal made by the Delegation of Canada concerning Article 5(1)(a), as complemented by the Delegation of Argentina, but stated its opposition to any further amendment of Article 5.

160. The Delegation of Hungary aligned itself with the statements made in favor of the current text of Article 5, which provided for a minimal set of requirements. The Delegation did not support the proposal initiated by the Delegation of India to open up the list of requirements. Finally, the Delegation of Hungary expressed its support for the proposal by the Delegation of Canada concerning Article 5(1)(a), as complemented by the Delegation of Argentina.

161. The Delegation of Belgium associated itself with the Representative of the European Union and the Delegation of Hungary, in support of the current version of Article 5.

162. The Delegation of the United Kingdom did not support the inclusion of a subparagraph (v) to Article 5(1), but expressed its support for the proposal made by the Delegation of Canada concerning Article 5(1)(a), as complemented by the Delegation of Argentina.

163. The Delegation of France endorsed the statements opposing any extension of the list of filing-date requirements, and expressed its support for the proposal made by the Delegation of Canada concerning Article 5(1)(a).

164. The Delegation of Lithuania aligned itself with the statements made by other delegations which preferred keeping the text of Article 5 as it stood, and expressed its flexibility as to the proposal by the Delegation of Canada concerning Article 5(1)(a).

165. The Delegation of Denmark, supported by the Delegation of Sweden, declared its wish to keep the current text of Article 5, and expressed its flexibility as to the proposal by the Delegation of Canada concerning Article 5(1)(a).

166. The Delegation of India sought clarification as to the concept of “implicit indication” under Article 5(1)(a)(i).

167. The Delegation of the United States of America, expressing the view that the term “implicit” in Article 5 was the most accurate one, expressed its support for the text as it stood.

168. The Delegation of Trinidad and Tobago sought clarification as to the link between the granting of a filing date and the payment of the fees. The Delegation noted that most offices allowed the payment of fees and provision of supporting documents after the filing.

169. The Secretariat recalled the previous discussion on this issue and indicated that, according to Article 5, the future Contracting Parties were encouraged to grant a filing date even if the fee was not yet paid. Fees were therefore not a mandatory filing date requirement, but merely an optional one.

170. The Chair concluded that, as a consequence of the withdrawal by the Delegations of Brazil and Canada of their respective previous proposals, the latter would be deleted from the footnotes. The proposals made by the Delegations of China and the United States of America, reflected in the footnotes, would be maintained in the footnotes. The Chair observed that the proposal made by the Delegation of Japan, reflected in footnote 8, received support from a certain number of delegations and would therefore be highlighted in brackets in the text of Article 5, as an option. Furthermore, the Chair said that the proposal made by the Delegation of India would be highlighted in the footnotes. The Chair also concluded that the Committee agreed with the proposals made by the Delegation of Argentina and Canada concerning the text of Article 5(1)(a) and (b), and that those provisions would therefore be amended accordingly. Finally, the Chair noted that a certain number of delegations and users’ representatives expressed their support for keeping the

text of Article 5 as simple as possible, while other delegations wished to include further elements in the list of filing-date requirements. Therefore, the Committee did not reach agreement on the content of Article 5, so that further discussions on this provision were needed.

Article 6: Grace Period for Filing in Case of Disclosure

171. The Delegation of Canada, considering that it made no sense to separate the situations covered by subparagraphs (ii) and (iii), suggested keeping subparagraph (i), adding at the end of it the word “or”, deleting subparagraph (iii), and combining the substance of subparagraphs (ii) and (iii) in one subparagraph (ii), which would read as follows: “by a person who obtained information about the industrial design directly or indirectly from the creator or his/her successor in title”.

172. Expressing its preference for a grace period of six months, the Delegation of China said that too long a grace period would increase the instability of rights, conflicts and costs. Considering that each Party should decide how to deal with this period, the Delegation suggested adding, after “a disclosure of the industrial design”, the words “in accordance with the domestic legislation of the Party”.

173. The Delegation of Trinidad and Tobago expressed its preference for a grace period of 12 months.

174. The Delegation of the United States of America supported the proposal made by the Delegation of Canada.

175. The Delegation of Brazil, expressing its preference for a grace period of six months, referred to the footnote under Article 6 concerning the calculation of the time limits expressed in months. The Delegation recalled its concern regarding the possibility to interpret the word “month” as 30 days, according to the legislation applicable in Brazil. In this context, the Delegation sought clarification as to the nature of the footnote in question, and wondered whether its content would be part of the final legal text as a footnote or as an agreed statement.

176. The Secretariat, indicating that document SCT/28/3 contained a similar footnote, confirmed that the content of the footnote would apply to all time limits expressed in months mentioned in the text of the treaty and that most suitable way to reflect this understanding would be found as the text of the treaty evolved.

177. The Delegation of Sweden indicated that it was not in favor of the deletion of subparagraph (iii).

178. The Delegation of India considered that this Article concerned a substantive issue and that it was not relevant in an instrument related to procedural matters. However, if there was a consensus to keep this Article in the text, the Delegation expressed its support for the proposal made by the Delegation of China.

179. The Delegation of Spain, recalling that this Article had already been discussed extensively during previous sessions of the SCT and was as such acceptable for almost all delegations, expressed its preference for Article 6 as it stood, even though it was not in conformity with its national law.

180. The Delegation of Hungary, concurring with the statement by the Delegation of Spain, said that the compromise reflected within brackets in Article 6 was an important achievement resulting from previous discussions of the SCT. In its view, giving the choice between two different periods – six months or 12 months – was more user-friendly than allowing each Party to determine the grace period according to its national law.

181. The Delegation of Belarus supported the idea that the law of the Contracting Parties should apply, but indicated that it could also accept a grace period of at least six months.

182. The Delegation of Trinidad and Tobago said that it was comfortable with the proposal initiated by the Delegation of China.

183. The Republic of Korea expressed its support for the proposal made by the Delegation of Canada, which provided for a more comprehensive range of disclosure.

184. The Delegation of Spain said that it would prefer to keep item (iii) in Article 6, as it was clearer than incorporating the notion of abuse in item (ii).

185. The Delegation of the Republic of Moldova said that it could accept the proposal of the Delegation of Canada.

186. The Delegation of the United States of America expressed its support for the proposal made by the Delegation of Canada, which, in its opinion, fully encompassed the previous Article 6 from a substantive perspective. In the understanding of the Delegation, subparagraph (ii) would encompass the notion of abuse, as set forth in the current subparagraph (iii).

187. The Delegation of the Russian Federation requested clarification as to whether the proposal by the Delegation of Canada would cover the case where the disclosure was obtained through lies.

188. Sharing the concern expressed by the Delegation of Spain, the Delegation of Chile considered that the language used in subparagraph (ii), as proposed by the Delegation of Canada, was not clear, and indicated that it preferred maintaining Article 6 as it stood.

189. The Delegation of South Africa supported the proposal made by the Delegation of China. In addition, the Delegation announced that it could waive its reservation and agree to a six-month grace period for designs in general, provided that an exception for integrated circuit topography, for which the grace period would be two years, was included. In its understanding, this exception would be applicable only to South Africa, as it was the sole country protecting integrated circuit topography under design law.

190. The Delegation of Canada, confirming that subparagraph (ii), as drafted in its proposal, covered abusive behaviors, suggested adding in subparagraph (ii), after the words “directly or indirectly”, the words “including as a result of an abuse”.

191. The Delegation of the Russian Federation declared that it supported the amended proposal made by the Delegation of Canada.

192. The Delegation of Spain informed the Committee that, while it still preferred the text of Article 6 as it stood, it was ready to accept the wording proposed by the Delegation of Canada, so as to make some progress in the drafting of the articles. However, the Delegation reserved its right to further analyze Article 6.

193. The Delegations of Denmark and Sweden supported the new proposal of the Delegation of Canada.

194. The Delegation of Chile said that, while it believed that the current text of Article 6 was clearer, it could also agree with the proposal of the Delegation of Canada, with a view to reaching consensus, but reserved its right to further analyze the Article.

195. The Representative of the European Union aligned itself with the opinions expressed by the Delegations of Denmark, Spain and Sweden.

196. The Chair concluded that there was a growing support for the proposal made by the Delegation of Canada, as amended in the course of the discussions. The Chair indicated that the proposals made by the Delegations of China and India would be highlighted in the footnotes and that the Delegation of South Africa maintained its reservation.

Article 7: Requirement to File the Application in the Name of the Creator

197. The Delegation of Trinidad and Tobago, seeking clarification on this provision, explained that, in Trinidad and Tobago, if the applicant was not the creator, the application had to be accompanied by a declaration stating that the application was filed with the consent of the creator.

198. Referring to Note 7.02, the Secretariat confirmed that the provision did not generalize the requirement that the application be filed in the name of the creator and that it was of a permissive nature.

199. The Chair concluded that no comments had been made on this provision.

Article 8: Division of Application

200. The Chair informed the Committee that two drafting proposals had been presented, one from the Delegation of India relating to Article 8(1) and another from the Delegation of Canada amending Article 8(1)(i) to (iii). The Chair recalled that discussions concerning Article 8 should also cover the concerns raised by the Delegation of India as regards Article 1(v) defining the terms “initial application” and Article 3(3).

201. The Delegation of Norway, expressing its support for the proposal by the Delegation of Canada, suggested amending also the heading of Article 8 to read as follows: “Amendment or Division of Initial Application”.

202. The Representative of the European Union, observing that the general objective of this provision was to guarantee the keeping of the filing date, even if the applicant had made an error in filing a multiple application in a country where this was not allowed, considered that the proposal initiated by the Delegation of India did not achieve this objective

203. The Delegations of Spain and Sweden, expressing their support for the proposal made by the Delegation of Canada, said that they agreed with the change of wording of the heading of Article 8, as suggested by the Delegation of Norway.

204. The Delegation of Canada said that it also agreed with the amendment of the heading proposed by the Delegation of Norway.

205. The Delegation of India sought clarification as to the relationship between the definition of “application” given by Article 1(iv) and the term “application” appearing in the proposal of the Delegation of Canada. In its understanding, the term “application” as defined by Article 1(iv) would only cover one industrial design, while the word “application” in the proposal of the Delegation of Canada would contain two or more designs.

206. The Delegation of Canada replied that it understood that the term “application” would cover one or more industrial designs. The Delegation added that it had no intention to limit the term “application” to simply one industrial design.

207. The Secretariat recalled that the discussions related to three provisions, namely Article 1, Article 3(3) and Article 8. The Secretariat stated that Article 1 defined “application” and “initial application”, the latter being related to Article 8. The Secretariat stressed that all initial applications were applications, but not every application was an initial application. In its understanding, the term “initial application” was used where, according to Article 8, there was a division into several divisional applications. For the Secretariat, it would not be necessary to use the term “initial” in case of non-division of the application. Finally, the Secretariat recalled that the word “application” was a recurrent term mentioned throughout the text of the treaty, so that a constructive way to alleviate the concern of the Delegation of India could be to combine the term “application” and the term “initial application”. In this respect, the Secretariat wondered whether the term “initial application” in Article 8 was necessary, bearing in mind that all initial applications were applications.

208. The Delegation of Spain, expressing the view that that the text of Article 8 was consistent, indicated that the term “application” should not be used in Article 8 since that could mean that a single design could be divided. Stressing the importance of clearly distinguishing between an initial application and a divisional application, the Delegation of Spain recommended replacing the adjective “initial” by another adjective.

209. The Delegation of the United States of America, expressing its support for the proposal made by the Delegation of Canada, explained that, under the United States practice, two designs could be filed in a single application and be granted in a design patent, if they were patentably indistinct. Such application would be considered as the initial application. The Delegation indicated that, if the patentably indistinct requirement was not fulfilled, the Office would require the applicant, at its option, to amend the application (for example, by deleting one design) or to divide that application into two different applications.

210. The Delegation of Norway, expressing the view that the text of Article 8 was coherent, pointed out that the term “initial application” only made sense in situations where a division would happen. The Delegation understood that the term “application” meant application for one or more industrial designs and suggested extending the explanatory notes accordingly.

211. The Representative of CEIPI concurred with the Delegation of Norway in that the term “application” should be understood as including one or more industrial designs. Referring to the explanations given by the Secretariat, the Representative suggested removing the expression “initial application”, which created misunderstandings, and amending the proposal made by the Delegation of Canada by changing the title into “Amendment or Division of Application That Includes Two or More Industrial Designs” and by changing the wording as follows: “If in accordance with Article 3(3) a Contracting Party prescribes conditions under which an application may include two or more industrial designs and an application is filed which includes two or more industrial designs but does not comply with those conditions, the Office may require the applicant, at the option of the applicant, to either (i) amend the application to comply with those conditions; or (ii) divide the application into two or more divisional applications which

comply with those conditions by distributing among the latter the industrial designs for which protection was claimed in the application". In addition, as a consequence of this suggestion, the Representative of CEIPI indicated that the word "initial" should also be deleted from Article 8(2) and (3).

212. The Delegation of Iran (Islamic Republic of) stated that a possible solution could consist in removing the concept of "initial application".

213. The Delegation of Morocco, expressing its support for the proposal made by the Delegation of Canada, said that it was in favor of maintaining the concept of "initial application". The Delegation noted that the Singapore Treaty on the Law of Trademark (STLT) referred to the concept of "initial application" and informed the Committee that the last version of the draft law of Morocco also contained such a reference.

214. The Delegation of the Russian Federation recalled that the term "initial application" was found in the Paris Convention, which indicated that division could only take place in case of an initial application, as well as in other agreements, so that, in its view, deleting this term was not the appropriate approach. The Delegation wondered whether it would be possible to divide an application which had already been divided.

215. The Delegation of the Republic of Moldova said that, in its opinion, there was no limit to the possibility of dividing.

216. The Secretariat recalled that Article 4.G(1) of the Paris Convention used the term "initial application" in the context of division. Under this provision related to patents, if the examination revealed that an application for a patent contained more than one invention, the applicant could divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any. The Secretariat indicated that the term "initial application" was used in the context of division to highlight that, in the process of a division, there were divisional applications, and to differentiate the divisional applications from the initial application. To alleviate the concern raised by the Delegation of India, the Secretariat was of the view that two options were available, namely avoiding any reference to the term "initial application" or rethinking the definition of that term in relation to the concept of division.

217. The Delegation of Canada, observing that the current discussions focused on the drafting of Article 8 rather than on its substance, proposed to agree on the substance and to request the Secretariat to draft the provision accordingly.

218. The Delegation of Norway, observing that the term "initial application" was used in Article 7 of the STLT concerning divisional application and in the Paris Convention in the context of a divisional application, suggested not defining the term "initial application" in the list of abbreviated expressions, but using it only in the Article governing divisional applications.

219. Replying to a request for clarification by the Delegation of India concerning the purpose of the filing date, the Chair observed that this point was not defined by the DLT and should thus be ruled by the national law of the Contracting Parties.

220. The Chair concluded that the Committee agreed on three basic principles related to Article 8: (i) an application could contain one or more industrial designs; (ii) if an application containing more than one design was filed and the national legislation did not permit such an application, the applicant should have the possibility to amend or divide its application; (iii) in such case, the filing date would be preserved. The Chair further

concluded that the Secretariat was requested to prepare, for the next session of the SCT, a draft Article 8, taking into account the comments and suggestions made by delegations and the three agreed principles.

Article 9: Publication of the Industrial Design

Rule 6: Details Concerning Publication

221. The Delegation of Japan, explaining that the publication of industrial designs could have strong implications for users, expressed its preference for a mandatory provision.

222. The Delegations of Canada, India and Switzerland, as well as the Representative of the European Union, expressed their preference for a mandatory provision.

223. The Delegation of the Republic of Korea, indicating that this facility was available in its country, said that allowing for deferment of publication of the industrial designs for a certain period of time could protect the interests of the applicants.

224. While recognizing the benefits of maintaining industrial designs unpublished for a certain period of time, the Delegation of Chile expressed its preference for an optional provision, which offered more flexibility.

225. The Delegations of Belarus, China and the Russian Federation expressed their preference for an optional provision.

226. The Delegation of Morocco reported that the law currently applicable in its country did not provide for this facility and expressed its preference for an optional provision. However, the Delegation informed the Committee that the draft law would provide for the possibility to defer publication for a maximum period of eight months.

227. The Delegation of India reported that, in its law, an industrial design considered as prejudicial to the security interest would not be published until the competent authority allowed its publication. Therefore, the Delegation suggested adding a paragraph (4) to Article 9, stating that: "Notwithstanding anything contained in this Article, an office may (a) not disclose any information relating to the registration of an industrial design which it considers prejudicial to the interest or security of the Contracting Party and (b) take any action regarding the cancellation of the registration of the industrial design by the Contracting Party, as described in the applicable law".

228. The Delegation of the United Kingdom informed the Committee that its national law contained a similar provision prohibiting registration – and not only publication – and preventing the applicant from registering anywhere else. The Delegation, underlining the specificity of this provision and recognizing that this point would be very difficult to harmonize, was not in favor of adding a new paragraph to Article 9.

229. The Chair noted that a certain number of delegations were in favor of a mandatory provision, while others preferred an optional provision. Therefore, the Chair concluded that the Committee was not in a position to reach an agreement on this question, so that both options would be maintained in the text. The Chair added that all comments made by delegations would be mentioned in the report and that the explanatory notes relating to Article 9 would be completed by the explanations given by the Secretariat concerning the absence of obligation for a Contracting Party to publish where this was warranted by national security interests.

Article 10: Communications

Rule 7: Details Concerning Communications

230. The Delegation of Brazil announced that it withdrew its previous proposals, as highlighted in footnotes 13 and 14 to Article 10 and in footnote 2 to Rule 7.

231. The Delegation of India, referring to the words “if the communication concerns the withdrawal of an application or the surrender of a registration” in Rule 7(6), suggested adding “where the law of the Party so provides”, since its national law did not provide for any withdrawal or surrender. In addition, referring to Rule 7(8)(ii), the Delegation proposed to replace the time limit of at least one month by 15 days.

232. The Secretariat pointed out that Rule 7(6) was of a permissive nature, and wondered whether the addition of the words “where the law of the Party so provides” was necessary.

233. The Delegation of the United States of America expressed its preference for the text of Rule 7(8)(ii) as it stood, as shortening the time limit to 15 days would put stress on applicants.

234. The Delegation of Denmark expressed its preference for the time limit of at least one month, as contained in Rule 7(8)(ii).

235. The Representative of CEIPI observed that Rule 7(8)(ii) imposed a minimum time limit to Contracting Parties and considered that, for international communications on paper, it was advisable to keep the time limit of one month.

236. Recalling the logic beyond Rule 7(8)(ii), the Chair confirmed that, if a Contracting Party decided to provide for a confirmation copy where a fax had been received, the time limit for sending the confirmation copy could not be shorter than one month.

237. The Delegation of India agreed to have a note explaining Rule 7(6).

238. The Chair noted that the Delegation of Brazil withdrew its proposals, as highlighted in footnotes 13 and 14 to Article 10 and in footnote 2 to Rule 7. The Chair concluded that the explanatory notes concerning Rule 7(6) would be extended to explain the permissive nature of the provision, according to the explanations given by the Secretariat. The Chair also concluded that the proposal of the Delegation of India related to Rule 7(8)(ii) would be highlighted in a footnote.

Article 11: Renewal

Rule 9: Details Concerning Renewal

239. The Delegation of India explained that, in its country, the initial term of protection of a registered industrial design lasted for 10 years and could be further extended for a period of five years. The Delegation said that, if the holder missed the time limit to extend the protection, the rights could be restored within one year from the date of lapsing.

240. The Secretariat wondered whether the proposal made by the Delegation of India could be covered by Article 13 and Rule 11(2)(ii), dealing with the reinstatement of rights in case of non-payment of a renewal fee. The Secretariat recalled that Article 11 and Rule 10 applied automatically, without any need to provide evidence of due care or unintentionality, while Article 13 and Rule 11 were subject to the provision of such evidence and could be considered as a second safety net for applicants or holders.

241. Taking into account the explanations given by the Secretariat, the Delegation of India requested the transfer of footnote 15 to Article 13.

242. The Chair concluded that the Delegation of India requested the transfer of footnote 15 to Article 13, concerning reinstatement of rights.

Article 12: Relief in Respect of Time Limits

Rule 10: Details Concerning Relief in Respect of Time Limits

243. The Delegation of India proposed to turn the mandatory nature of Article 12(2) into an optional one.

244. The Delegation of Denmark, supported by the Delegation of Hungary, expressed its preference for the text as it stood, observing that no comments had been made during the last session of the SCT and underlining the importance of this provision for users.

245. The Chair concluded that the proposal made by the Delegation of India would be highlighted in a footnote.

Article 13: Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality

Rule 11: Details Concerning Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality Under Article 13

246. The Delegation of Brazil announced that it withdrew its proposals highlighted in footnotes 16 and 17 to Article 13, as well as in footnote 3 to Rule 11.

247. The Delegation of China indicated its preference for the second option of Article 13, and pointed out a mistake as to the translation in Chinese of Option 2.

248. Referring to footnote 4 to Rule 11, the Delegation of France recalled that it had proposed to replace the time limit of one month by a time limit of two months, so as to be consistent with the PLT.

249. The Delegation of Canada supported the proposal by the Delegation of France.

250. The Chair concluded that the SCT agreed to request the Secretariat to replace the time limit of one month in Rule 11(2)(i) by a time limit of two months.

251. The Delegation of the United States of America, referring to Note 13.05, recalled that, at a previous session of the SCT, one delegation had suggested to include a provision on correction or addition of a priority claim and restoration of priority right. Observing that the discussions on that issue had not been continued, the Delegation of the United States of America, supported by the Delegations of Canada and Japan, proposed that the Secretariat prepare a draft provision, or material for discussion, for the next session of the SCT.

252. Considering that the suggestion made by the Delegation of the United States of America had not been addressed at previous meetings of the SCT, the Delegation of Sweden believed that it was late to introduce new provisions on which the Committee would be supposed to agree on at a later stage. The Delegation therefore indicated that it preferred not to explore this issue.

253. The Delegation of the United States of America proposed to prepare a draft which would be submitted later during this session or during the next one.

Proposal for an Article 13bis and a Rule 11bis by the Delegations of Canada and the United States of America

254. The Delegations of Canada and the United States of America presented for discussion a draft text for an Article 13bis, "Correction or Addition of Priority Claim and Restoration of Priority Right", and a Rule 11bis, "Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right under Article 13bis", modeled on the PLT. The draft text read as follows:

***"Article 13bis
Correction or Addition of Priority Claim; Restoration of Priority Right***

(1) *[Correction or Addition of Priority Claim] A Contracting Party shall provide for the correction or addition of a priority claim with respect to an application ("the subsequent application"), if:*

(i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;

(ii) the request is filed within the time limit prescribed in the Regulations; and

(iii) the filing date of the subsequent application is not later than the date of the expiration of the priority period calculated from the filing date of the earliest application whose priority is claimed.

(2) *[Delayed Filing of the Subsequent Application] Taking into consideration the Paris Convention, a Contracting Party shall provide that, where an application ("the subsequent application") which claims or could have claimed the priority of an earlier application has a filing date which is later than the date on which the priority period expired, but within the time limit prescribed in the Regulations, the Office shall restore the right of priority, if:*

(i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;

(ii) the request is filed within the time limit prescribed in the Regulations;

(iii) the request states the reasons for the failure to comply with the priority period; and

(iv) the Office finds that the failure to file the subsequent application within the priority period occurred in spite of due care required by the circumstances having been taken or, at the option of the Contracting Party, was unintentional.

(3) *[Fees] A Contracting Party may require that a fee be paid in respect of a request under paragraphs (1) to (2).*

(4) *[Evidence] A Contracting Party may require that a declaration or other evidence in support of the reasons referred to in paragraph (2)(iii) be filed with the Office within a time limit fixed by the Office.*

(5) *[Opportunity to Make Observations in Case of Intended Refusal]* A request under paragraphs (1) to (2) may not be refused, totally or in part, without the requesting party being given the opportunity to make observations on the intended refusal within a reasonable time limit.

Rule 11bis
Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 13bis

(1) *[Requirements Under Article 13bis(1)(i)]* A Contracting Party may require that a request referred to in Article 13bis(1)(i) be signed by the applicant.

(2) *[Time Limit Under Article 13bis(1)(ii)]* The time limits referred to in Article 13bis(1)(ii) shall not be less than six months from the priority date or, where the correction or addition would cause a change in the priority date, six months from the priority date as so changed, whichever six-month period expires first, provided that the request may be submitted until the expiration of two months from the filing date.

(3) *[Time Limit Under Article 13bis(2)]* The time limits referred to in Article 13bis(2), introductory part, and Article 13bis(2)(ii) shall expire not less than one month from the date on which the priority period expired.

(4) *[Requirements Under Article 13bis(2)(i)]* A Contracting Party may require that a request referred to in Article 13bis(2)(i):

(i) be signed by the applicant; and

(ii) be accompanied, where the application did not claim the priority of the earlier application, by the priority claim."

255. The Delegation of Canada said that paragraph (1) of the proposed Article 13bis would permit the applicant to correct or add a claim on or after the filing date to an application which could have claimed the priority of an earlier application but did not do so. It would apply both where the application filed contained no priority claim and where the application already claimed priority of one or more earlier applications. In terms of the time period during which the correction or addition could be made, this would be found in the proposed Rule 11bis(2), which was based on the wording of Rule 26bis(1) under the PCT. The Delegation further considered that in the context of industrial designs, a six-month period from the priority date or two months from the filing date could be acceptable. With respect to paragraph (2), it would provide for the restoration of the priority right where a subsequent application was filed after the expiration of the priority period but within the time limit prescribed. It would only apply where the failure to file the application within the priority period occurred in spite of due care required by the circumstances having been taken or, at the option of the Contracting Party, was unintentional. The time limit would be found in the proposed Rule 11bis(3)(a), and would be not less than one month from the date on which the priority period expired. The Delegation noted that under the PLT, the equivalent provision provided for a minimum period of two months, but that in the context of industrial designs a shorter period might be more appropriate. The Delegation concluded that its primary objective was to request that the proposal be included in square brackets in the draft articles and rules in order to be available for consideration by the Committee at the next meeting.

256. The Delegation of the United States of America, supporting the introduction of the new article and new rule, said that the purpose of the provisions was consistent with the aims and goals of the DLT.

257. The Representative of the European Union, expressing the view that this was an important and sensitive matter, which deserved consideration, proposed to highlight the proposal in a footnote.

258. The Delegation of the United States of America said that, in light of the complicated nature of the provisions, it did expect that more time was needed and looked forward to discussing the merits at the next session. However, in light of the fact that there was expressed support for this specific proposal and also because a new Article and a new Rule were proposed, the Delegation considered it difficult to fully appreciate its effect in the footnotes. The Delegation reiterated the wish to put the proposal in brackets in the text of the documents for a better understanding.

259. In reply to a question by the Delegation of Chile, the Delegation of the United States of America clarified that the proposed new Article and Rule were not an alternative to Option 1 of Article 13, but a stand-alone Article and Rule.

260. The Representative of the European Union reiterated its request to highlight the proposal in a footnote to give time to all delegations to consider it.

261. The Delegation of Japan welcomed the discussion of this important issue and supported the proposal made by the Delegations of Canada and the United States of America.

262. The Chair concluded that the texts of Article 13*bis* and Rule 11*bis*, as proposed by the Delegations of Canada and the United States of America, would be included within brackets, for discussion by the Committee at its next session.

Article 14: Request for Recording of a License or a Security Interest

Rule 12: Details Concerning the Requirements Concerning the Request for Recording of a License or a Security Interest or for Amendment or Cancellation of the Recording of a License or a Security Interest

263. The Delegation of Brazil informed the SCT that it withdrew its proposal contained in footnote 18 and that it wished to simplify its proposal highlighted in footnote 20, by deleting footnote 20 and adding a new sentence at the end of Article 14(4)(b), which would read as follows: “in particular, any requirements by tax authorities and monetary authorities of a Party are exempt from any obligation under these articles”. In addition, the Delegation informed the SCT that it withdrew its proposals contained in footnotes 5 and 6 to Rule 12, but maintained the proposals highlighted in footnotes 7 and 8 to Rule 12.

264. Referring to footnote 19 to Article 14, the Delegation of Chile pointed out that it was not so much concerned about the possibility of a single request relating to several registrations, as about the possibility of charging a fee for each registration in the request. The Delegation announced that it would be ready to remove its proposal, provided that it would be absolutely clear that the fees to be paid for a single request including several registrations could cover each registration concerned.

265. The Secretariat referred to Note 18.03, which stated that each Contracting Party was free to determine the amount of the fee, depending, *inter alia*, on the number of applications or registrations concerned by the change in ownership, and wondered whether a similar note to Article 14 could alleviate the concern expressed by the Delegation of Chile.

266. The Delegation of Chile, expressing the view that the drafting of Article 14(3) and Article 18(4) should be consistent, pointed out that, under Article 14(2), the Office could require the payment of “a” fee, and wondered whether “a” fee referred to “one” registration or to more than one.

267. The Chair, indicating that there was no intention to limit the Office’s freedom as to the fees to be charged, wondered whether an explanatory note could be the way forward.

268. The Delegation of India associated itself with the concern expressed by the Delegation of Chile, and said that it would be useful to clarify this point. The Delegation indicated that transposing Note 18.03 to Article 14 would not address the issue, since that note explained that a Contracting Party could require the payment of “a” fee in respect of “a” request. In the view of the Delegation, this would imply that the Office could charge only one fee.

269. The Delegation of Spain expressed the view that the problem could stem from the translation into Spanish of the word “a”. In English, this article was indefinite, and could refer to several fees, while in Spanish, the article “*una*” was definite and referred to a single fee.

270. The Delegation of the Russian Federation, observing that Note 18.03 stated that each Contracting Party was free to determine the amount of the fee, depending on the number of applications or registrations, suggested adding a similar sentence in the explanatory note related to Article 14.

271. The Delegation of Chile stressed that it would prefer a clarification in the text of Article 14 itself, rather than in the explanatory notes. In its opinion, this would be the easiest way to inform users and the public in general.

272. The Delegations of Mexico and Spain expressed their preference for the inclusion of a sentence similar to the one contained in Article 18 in the explanatory notes.

273. The Delegation of India stated that the clarification should be better reflected in the text of Article 14 to enable users and the general public to be aware of the amount of fees that they would have to pay.

274. The Delegation of Chile observed that it resulted from the discussions that nobody objected the principle that an office would be able to charge a fee for each registration. It should therefore not be difficult to clarify the text of the treaty itself. The Delegation proposed to present a draft new Article 14(2) or (3) in the afternoon, for consideration by the Committee.

275. The Delegation of Hungary said that it was ready to consider the draft prepared by the Delegation of Chile.

276. The Delegation of Chile observed that Article 14(3) had similarities with Article 18(4) and Article 19(1)(d) as to the payment of fees and proposed to analyze them together so that the provisions were aligned. The Delegation proposed amending Article 14(3) in the following manner: *“[Single Request] A single request shall be sufficient even where the license relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request, the holder and the licensee are the same for all registrations, and the request indicates the scope of the license with respect to all registrations and, if applicable under paragraph (2), fees are paid for all registrations concerned.”*

277. The Delegation of Canada said that, in its view, there was no difference between the word "fees" and "a fee". The Delegation said that the concept of a "fee" had to be interpreted very broadly and the words "a fee" could incorporate "fees". Noting that it did not have any problem with the particular proposal by the Delegation of Chile, the Delegation of Canada pointed out that if changes to the particular articles that have been mentioned were to be made, it would be advisable to review the entire text to make sure it was consistent.

278. In this respect, the Secretariat observed that if the new drafting of the Article were to be accepted, the Secretariat would review the entire text.

279. The Delegation of Norway supported the statement by the Delegation of Canada and pointed out that the same drafting was present in the text of the STLT, which apparently did not create any confusion among its Contracting Parties.

280. The Delegation of the Russian Federation said that this provision was not acceptable for the Russian Federation because it did not correspond to its current approach. The Delegation explained that according to national legislation the payment of a fee for the registration of a license did not depend on the number of registrations. The Delegation believed that the proposal made by the Delegation of Chile would to some extent limit the possibility of Contracting Parties to establish fees for the registration of licenses, and therefore did not support the wording.

281. The Representative of CEIPI said that the proposal by the Delegation of Chile could be understood as limiting the freedom of Contracting Parties which required a fee under paragraph (2), so that they would be obliged to require fees for all registrations, which would be contrary to the practice of the Russian Federation and probably other potential Contracting Parties. The Representative suggested the following wording to amend the text, which was more flexible: *"A single request shall be sufficient even where the license relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request, the holder and the licensee are the same for all registrations, and the request indicates the scope of the license with respect to all registrations, and provided that a Contracting Party may require that fees be paid for all registrations"*.

282. The Delegation of Chile said that its proposal did not intend to limit the freedom of Contracting Parties to establish fees, and proposed that the Secretariat prepare a new drafting in order to accommodate all concerns expressed during the discussion, for the consideration by the SCT at its next session.

283. The Delegation of Belarus reiterated a proposal to insert in the notes corresponding to Article 14 an explanatory note in respect of fees, similar to Note 18.03.

284. The Delegation of the United States of America, while recognizing the concerns expressed by the Delegation of Chile, stated that it supported the statements made by the Delegations of Canada and Norway concerning similar wording in other WIPO-administered treaties, and believed that the proposal by the Delegation of Canada might be easier to accomplish.

285. The Delegation of the United Kingdom pointed out that it had no difficulty with the text as it appeared in the original version of the Article. The Delegation said that the expression "a fee" could be what a Contracting Party prescribed it to be, both a single fee transaction and a multiple fee transaction. Concerning the options of an explanatory note or a redrafting of the text, the Delegation preferred the articles to be explicit.

286. The Secretariat noted that no provision in the text was intended to circumscribe the mode of calculating and charging fees. It was understood that Contracting Parties had complete freedom to collect fees as they prescribed.

287. The Chair noted that the Delegation of Brazil withdrew its proposal contained in footnote 18 to Article 14 and amended its proposal highlighted in footnote 20 to Article 14. The Chair concluded that the text of Articles 14(3), 18(4) and 19(1)(d) would remain unchanged and that explanatory notes would be added. The Chair also concluded that the proposal made by the Delegation of Chile would be reflected in a footnote.

Article 15: Request for Amendment or Cancellation of the Recording of a License or a Security Interest

288. The Delegation of Brazil withdrew its proposal contained in footnote 21 to Article 15.

289. The Chair concluded that footnote 21 would be deleted and the text of Article 15 would remain unchanged.

Article 16: Effects of the Non-Recording of a License

290. The Delegation of India suggested turning Article 16(1) into an optional provision.

291. The Secretariat, noting that Article 16(1) concerned the validity of the registration of the design and not the validity of the license, pointed out that the provision would avoid the invalidity of the design itself as a consequence of the non-recording of a licence.

292. The Delegation of Brazil said that it wished to introduce changes to its proposal contained in footnote 22, so that it would read as follows: “[Certain Rights of the Licensee] A Contracting Party may provide that the recording of a license shall not be a condition for any right that the licensee may have under the law of that Contracting Party to join infringement proceedings initiated by the holder or to obtain, by way of such proceedings, damages resulting from an infringement of the industrial design which is the subject of the license”.

293. The Chair concluded that the text of Article 16 would remain unchanged and that the proposal made by the Delegation of India would be highlighted in a footnote. The Chair also concluded that the proposal expressed by the Delegation of Brazil would be highlighted in an amended footnote 22.

Article 17: Indication of the License

294. The Chair noted that there were no comments and concluded that the text of Article 17 would remain unchanged.

Article 18: Request for Recording of a Change in Ownership

Rule 13: Details Concerning the Request for Recording of a Change in Ownership

295. The Delegation of Chile pointed out that Article 18(4) should be in line with the solution that would be agreed for Article 14(3).

296. The Delegation of Canada, referring to Rule 13(2), proposed to add the words "resulting from a contract" after the word "ownership" in the heading and in the provision itself, so that Rule 13(2) would read as follows: "[Requirements Concerning Supporting Documents for Recording of a Change in Ownership Resulting from a Contract] A Contracting Party may require that the request for the recording of a change in ownership resulting from a contract be accompanied, at the option of the requesting party, by one of the following:..."

297. The Delegation of China reiterated its proposal expressed at the twenty-seventh session of the SCT concerning Article 18(7) and highlighted in footnote 23 to document SCT/28/2. The Delegation wished that the proposal would be reflected in the text of Article 18.

298. The Chair concluded that the texts of Article 18 and Rule 13 would remain unchanged and that the proposals made by the Delegation of China concerning Article 18(7) and by the Delegation of Canada, concerning Rule 13(2), would be highlighted in the footnotes.

Article 19: Changes in Names or Addresses

Rule 14: Details Concerning the Request for Recording of a Change in Name or Address

299. The Delegation of India, referring to the previous intervention of the Delegation of Chile concerning Article 14(3) and Article 18(4), raised an identical concern on Article 19(1)(c) and expressed its wish to uniform the drafting of those articles.

300. The Delegation of Mexico proposed to extend the scope of Articles 14, 18 and 19 to both applications and registrations.

301. The Secretariat pointed out that Articles 14(6), 18(5) and 19(2) provided that of the corresponding provisions applied *mutatis mutandis* to applications.

302. The Delegation of China, supported by the Delegation of the Republic of Korea, proposed to delete the last sentence of paragraph (4), as well as paragraph (5) of Article 19, or to specify that a Contracting Party was free to decide whether it was necessary to provide evidence and what would be the form of the evidence to be provided.

303. The Representative of CEIPI suggested replacing in footnotes 23 and 25 the word "Party" by "Contracting Party" in order to be consistent with the text of the Articles. Referring to the proposal by the Delegation of China, concerning Article 19(4) and (5), the Representative noted that the PLT and the STLT contained similar provisions.

304. The Delegation of the United States of America, noting that Article 19(5) created a good balance and allowed some flexibility, declared that it did not support the concerns expressed by the Delegations of China and the Republic of Korea.

305. The Delegation of the Republic of Korea said that there were other situations when evidence could be required, for example, in case of people bearing identical names, which could create confusion as to the ownership of rights.

306. The Delegation of Canada mentioned that identical provisions were included in the PLT and the STLT. The rationale under those treaties was related to the goal of simplifying matters for users. There was always the need to balance off the rights and interests of users with the rights of other parties and the broader public interest. In the context of the related provisions on a change in ownership, an abuse could be envisaged because requests for change in ownership were often made by the assignee or new holder and under those circumstances it

seemed reasonable that a Contracting Party could require some evidence to be sure that there was no abuse. Article 19(5), however, concerned only a change in name or address and, therefore, the Delegation did not see any justification for taking a different approach in the DLT from that in the PLT and in the STLT.

307. The Delegation of China, in reply to a question by the Delegation of India, clarified that the reason why its Delegation proposed to specify that a Contracting Party should be free to decide whether it was necessary to provide evidence and what would be the form of the evidence was to guarantee the veracity and effectiveness of this clause, as well as to guarantee the interest of the right holder concerned.

308. The Secretariat, noting that the proposals by the Delegation of China contained in footnotes 23 and 25 provided for two alternatives, wondered whether specifying in a note that a Contracting Party was free to decide whether it was necessary to provide evidence and what would be the form of evidence would address that Delegation's concerns.

309. The Representative of the European Union, concurring with the opinion expressed by the Delegations of Canada and the United States of America, said that it would prefer the text as it stood, but could agree with the insertion of an explanatory note concerning Article 19(5).

310. The Delegation of Norway wondered whether the proposal was meant to let a Contracting Party decide on situations where it could invoke reasonable doubts.

311. The Delegation of the Republic of Korea, declaring that it was committed to supporting the process of simplification, proposed to explore, together with the Delegation of China, the possibility of presenting to the Committee a commonly agreed text, for consideration at the next session.

312. The Delegation of China stated that it was willing to consider whether to withdraw its proposal for Article 19(5) or to specify its contents in a note.

313. The Chair concluded that the proposal made by the Delegation of China concerning Article 19(5) would remain in a footnote. The Chair also noted that the Delegation of China and the Republic of Korea expressed their wish to refine the proposal concerning Article 19(4) made by the Delegation of China at the twenty-seventh session of the SCT, highlighted in a footnote, and to present a text to the Committee at the next meeting of the SCT, for further discussion and consideration.

Article 20: Correction of a Mistake

Rule 15: Details Concerning the Request for Correction of a Mistake

314. The Chair noted that there were no comments, and concluded that the texts of Article 20 and Rule 15 would remain unchanged.

Article 21: Regulations

315. The Representative of CEIPI observed that the French version of items (ii) and (iii) in Article 21(1) should be aligned with the French version of the STLT.

316. The Chair noted that, except for the linguistic concern expressed by the Representative of CEIPI, there were no comments, and concluded that the text of Article 21 would remain unchanged.

Article 22: Assembly

317. The Chair noted that there were no comments, and concluded that the text of Article 22 would remain unchanged.

Article 23: International Bureau

318. The Chair noted that there were no comments, and concluded that the text of Article 23 would remain unchanged.

Article 24: Revision or Amendment

319. The Representative of CEIPI, referring to WIPO administered treaties, noted that some of them contained two different terms relating to changes made within the text of the treaty. The term "revision" was used to designate substantive changes of provisions, whereas the term "amendment" referred generally to a change of administrative provisions, for example, provisions on the Assembly, International Bureau, etc. For a revision to take place, it was necessary to convene a diplomatic conference, whereas a decision by the Assembly was sufficient for an amendment. In the absence of any provision in the draft Articles setting forth amendment procedures, the Representative proposed to delete the words "or amendment" or to insert provisions clarifying amendment procedures, in order to be consistent with other WIPO-administrated treaties.

320. The Chair said that the SCT took note of the comment by the Representative of CEIPI, and concluded that the text of Article 24 would be aligned with the terminology used in other WIPO treaties, following consultation with the Office of the Legal Counsel of WIPO.

Article 25: Becoming Party to the Treaty

321. The Chair noted that there were no comments, and concluded that the text of Article 25 would remain unchanged.

Article 26: Entry into Force; Effective Date of Ratifications and Accessions

322. The Delegation of Chile requested clarification as to the reason behind a number of 10 instruments of ratification or accession were sufficient for the entry into force of the Treaty. The Delegation noted that Article 26 of the Beijing Treaty on Audiovisual Performances stipulated that the Treaty would enter into force three months after 30 eligible parties had deposited their instruments of ratification or accession. The Delegation recognized that it was important for the DLT to entry into force as soon as possible, but it was also important to have a reasonable high number of parties that would ratify the instrument.

323. The Secretariat noted that Article 26 was modelled on the corresponding provision of the STLT.

324. The Delegation of India supported the comment by the Delegation of Chile, and expressed the wish that the SCT look into the matter.

325. The Chair noted the comments, and concluded that they would be reflected in the report of the twenty-eighth session of the SCT.

Article 27: Reservations

Article 28: Denunciation of the Treaty

326. The Delegation of Colombia, observing that provisions in the DLT were of a maximalist nature, said that Decision 486, applicable to Colombia and all other countries in the Andean Community, did not provide for multiple design applications or for division. The Delegation said that it would be important for the Committee to bear that in mind, in connection with Article 27, concerning “Reservations.”

327. The Chair noted the comment, and concluded that it would be reflected in the report of the twenty-eighth session of the SCT.

Article 29: Languages of the Treaty; Signature

Article 30: Depositary

328. The Chair noted that there were no comments and concluded that the text of Articles 29 and 30 would remain unchanged.

Industrial Design Law and Practice-Overview of Technical Assistance and Capacity Building Provisions in WIPO-Administered Treaties

329. The African Group submitted a proposal for draft articles on technical assistance and capacity building to be integrated in the Industrial Design Law and Practice Treaty.

330. The Delegation of Egypt, on behalf of the African Group, proposed provisions on technical assistance and capacity building for developing countries and LDCs in the implementation of the future DLT. The Delegation submitted four articles to be included in the Draft DLT. The first article aimed at encouraging applicants from developing countries and LDCs to benefit from the treaty with respect to filing design applications. The Delegation proposed that applicants from developing countries benefit from a fee reduction of at least 50 per cent and applicants from LDCs benefit from a fee waiver. The second article dealt with technical, financial assistance and capacity building, and was inspired by the outcome of the study that WIPO has conducted in this regard. It included six paragraphs. The aim of the first paragraph was to facilitate the implementation of the treaty in developing countries and LDCs and was targeted to those Member States who would join the treaty. WIPO would be requested to provide targeted additional, appropriate and adequate technical assistance, comprising technological, legal and other forms of support to strengthen the national capacity in those countries to implement the treaty and enable those countries and their domestic users to take full advantage of the provisions of the treaty. As described in the second paragraph, such technical assistance should be development-oriented, demand-driven, needs-based and transparent, taking into account the priorities and the special needs of developing countries, particularly LDCs. The third paragraph provided that WIPO and developed Contracting Parties to the Treaty should, at the request of interested developing Contracting Parties, provide full financial support for all activities and measures that would have to be taken in those countries to implement the treaty and the regulations under the treaty, for at least the first five years from the entry into force of the Treaty. The fourth paragraph addressed the issue of LDCs in particular, providing that WIPO and its Developed Member States should provide full financial support to all LDCs Contracting Parties for all activities and measures that had to be taken to implement the Treaty and the Regulations under the Treaty for as long as a country would remain a least developed

country. The fifth paragraph dealt with the assistance in all the appropriate equipment and technology, including information and communications technology, as well as the required infrastructure and other facilities, and appropriate training to the staff from the offices of developing countries and LDCs for operating such equipment or technology. The Delegation said that this also premised on the finding of the study which concluded that IT was considered crucial to implement the treaty. The last paragraph dealt with the evaluation of the assistance. The Delegation of Egypt said that the objective of the third article was to facilitate the participation of developing countries and LDCs in the Assembly and in any inter-sessional meeting, working group, or revision or diplomatic conference in relation to the Treaty and the Regulations under the Treaty. The last article, relating to the exchange of information on industrial designs, responded to some concerns of African countries, which had reported misappropriation of traditional designs.

331. The Representative of the European Union, on behalf of the European Union and its member states, presented a proposal for a Resolution by the Diplomatic Conference Supplementary to the Treaty on Industrial Design Law and Practice.

332. The Representative of the European Union, speaking on behalf of its 27 member states, said that the European Union and its member states fully respected and acknowledged the needs of developing countries and LDCs with respect to technical assistance in implementing a future design law formalities treaty, so that users of the global design system might benefit no matter where they were located. The Representative said that the European Union and its member states had a long tradition of providing comprehensive technical assistance to, and cooperating with, developing countries and LDCs in relation to IP rights. The Representative further said that, in addressing technical assistance, the Committee should build upon best practices and lessons learned from the implementation of technical assistance measures in other areas of WIPO's work. The Representative said that the Committee should take into account Cluster A of the Development Agenda which recommended that WIPO's technical assistance be demand driven. In this regard, design delivery mechanisms and evaluation processes of technical assistance programs should be country specific. Last but not least, the technical assistance should be focused and relevant to the implementation of the Treaty. The Representative noted that much of what would be needed to implement a future treaty was already present in existing design registration systems. The Representative said that it saw some merit in the precedent of the Resolution Supplementary to the STLT, as described in document SCT/28/4. The subject matter of the draft Design Law Formalities Treaty was very close in nature to the STLT, so that it would make sense to draw inspiration from this precedent. Regarding the content of such Resolution, the European Union and its member states suggested that: (i) the beneficiaries should be those developing countries who had signed or ratified this treaty, while the providers should be WIPO and the contracting parties to the treaty; (ii) in line with the decision taken at the 2012 General Assembly, the technical assistance should aim at an effective implementation of the treaty and enabling developing countries and LDCs to fully benefit from it; (iii) the technical assistance should be at the request of the beneficiary countries and take into account their level of technological and economic development; (iv) the technical assistance should be funded through agreements of WIPO with international financing organizations, and intergovernmental organizations, particularly the Specialized Agencies of the United Nations concerned with technical assistance, in addition to the Governments of the States receiving the technical assistance; (v) the Assembly of the Treaty could review at regular intervals such technical assistance.

333. The Delegation of Peru, speaking on behalf of GRULAC, welcomed the proposals by the African Group and by the European Union on strengthening technical and financial assistance and capacity building. The Delegation considered that the discussions of those proposals in the framework of the Committee could shape the type of technical and financial assistance, as well

as of capacity building, that developing countries would require in order to better implement the instrument on industrial designs. The Delegation expressed its preference for the binding nature of the provisions on technical assistance and capacity building.

334. The Delegation of Belgium, speaking on behalf of Group B, welcomed document SCT/28/4 and wished to provide general remarks on technical assistance. The Delegation said that the measures entailing technical assistance should always be in line with best practices and lessons learned. This included lessons learned from the implementation of other treaties and lessons learned within the wider framework of WIPO technical assistance. The measures entailing technical assistance should also be driven by the principles of efficiency and effectiveness in order to use the available resources in the best manner possible. The Delegation further said that Group B believed that the issue of fee reductions was not relevant to a formalities treaty, as this type of treaty regulated procedural requirements, but did not administer a scheme which required fees. Further, the Delegation pointed out that the measures entailing technical assistance and capacity building should be specifically and directly linked to the implementation of the treaty. This was in line with the specificity of Cluster A of the Development Agenda recommendations. Any suggestions for a wider or even full form of support should therefore be discarded. Recommendation for unconditional support which was not directly linked to the actual implementation of the treaty, but to a specific time limit or to the mere status of the receiving countries should be excluded. Since the DLT did not define traditional designs and was not about enforcement and substantive examination, Group B suggested that this issue should be tabled in another WIPO Committee, for instance, in the IGC or the Hague Working Group. The Delegation felt confident that agreement on the DLT, including on technical and financial support aspects, could be reached. In this regard, Group B was ready to constructively engage in further discussions, while also noting that the measures entailing financial support under the DLT should not be duplicative with other financial support measures, either under other WIPO treaties or with financial support provided by WIPO members or regional offices.

335. The Delegation of Nepal welcomed and fully supported the proposal put forward by the Delegation of Egypt on behalf of the African Group, since that proposal accommodated most of the issues of concern for Developing and Least Developed Countries. Noting that the TRIPS Agreement had provided for a grace period for full implementation, the Delegation proposed the inclusion of a special provision on grace period in the DLT. The Delegation pointed out that countries like Nepal would require at least five years to effectively implement the treaty.

336. The Delegation of Brazil, speaking on behalf of the DAG, considered that technical assistance was a key aspect in the proposed treaty on industrial design law, which was consistent with the Development Agenda Recommendations, specifically with Cluster A. Considering that the African proposal offered a good basis for the discussion on technical assistance, the Delegation declared that the best way to address that issue was by including binding provisions regarding technical assistance in the treaty, as this was consistent with the mandate of the General Assembly of October 2012.

337. The Delegation of Hungary recalled that the General Assembly at its forty-first session reached a common decision and devoted special attention to technical assistance and capacity building in the Draft DLT. The General Assembly gave clear and precise guidance regarding technical assistance and capacity building. The content of technical assistance and capacity building should be strictly focused on the main goal of the DLT, provide adequate and effective solutions to the needs of relevant countries, and be demand-driven and country-specific, as it was the practice at WIPO. The Delegation noted that technical assistance should be easily accessible and applicable, without unnecessary and complicated barriers for both WIPO and countries requesting the technical assistance. The Delegation, thanking the African Group and the European Union for their proposals, which showed a clear commitment to the process, expressed some concerns as to the issue of the fee reduction. The Delegation said that, in its

view, this was not an issue of technical assistance or capacity building, and believed that it was outside the scope of this exercise. The Delegation also said that this issue would establish a discriminatory practice, which could raise questions on its conformity to the TRIPS Agreement. The Delegation, supporting some of the concerns raised by the Representative of the European Union and the Group B coordinator, declared that it was very interested in finding a common solution to this issue, but advised that it was important to stay within the practice of WIPO. In this regard, the Delegation believed that the proposal by the European Union was a more adequate and balanced solution on technical assistance.

338. The Delegation of Japan said that it wished to echo the sentiments expressed by the Delegation of Belgium on behalf of Group B. The Delegation understood the importance of technical assistance as such in a general sense and, based on that understanding, Japan had cooperated with, and given assistance to, many developing countries and LDCs. In the discussion on technical assistance in the specific context of the DLT, the Delegation highlighted the need to focus on technical assistance that was directly linked to the implementation of the DLT, while discussion about improving the capacity and infrastructure in a wider sense had to be conducted in other appropriate *fora*. In this regard, the Delegation said that a clear border line should be drawn between formality issues, which were part of the DLT, and substantive issues, which went beyond the scope of the exercise. The Delegation further considered that, by achieving convergence of formalities, the burden of all users of the design system, including users from developing countries and LDCs, would equally benefit from the outcome of this exercise, without further consideration of special treatment for specific category of users. The Delegation believed that the proposal by the European Union was built upon the lessons learned from past achievements, such as the STLT. The Delegation declared that it was ready to discuss the necessary technical assistance issue with a constructive spirit.

339. The Delegation of the Republic of Korea stated that it fully understood the needs and concerns for technical assistance and capacity building for developing countries and LDCs. The Delegation wished to emphasize that the scope of financial and technical assistance for developing countries should be based upon the needs of the recipient countries in order to maximize the effectiveness of the assistance. The Delegation pointed out that the assistance had to be related to the implementation of the DLT. The Delegation further said that the ways in which the financial and technical assistance were to be provided should be decided by referring to previous treaties, such as the STLT and the PLT. The Delegation hoped that all concerns related to technical assistance would find a solution in the form of a Resolution, as it was the case for the STLT and the PLT.

340. The Delegation of Belarus, on behalf of the Regional Group of Caucasian, Central Asian and Eastern European Countries, thanked the European Union and African Group for their proposals. The Delegation, indicating that, in its view, the issue of technical assistance should be addressed in a Resolution, expressed its preference for the proposal by the European Union. The Delegation wished to echo the reasons expressed by the Representative of the European Union and Group B Coordinator and the need to strike a link between technical assistance and the implementation of the Draft DLT. The Delegation hoped that the Committee would find a solution to the benefit of all Member States.

341. The Delegation of Ecuador, expressing its support for the statement by GRULAC, said that it was important that this issue be addressed in a binding fashion within the treaty itself.

342. The Delegation of Canada expressed the view that the design treaty should benefit all users, and supported appropriate mechanisms and provisions with respect to technical assistance and capacity building in line with the mandate of the General Assembly. The Delegation, noting that Canada already provided support in several areas by sharing best practices and expertise in the administration of IP rights, supported the Group B statement.

343. The Delegation of the United Republic of Tanzania aligned itself with the statement by the Delegation of Egypt on behalf of the African Group, particularly with regard to the special and differential treatment proposal for Developing Countries and LDCs. The Delegations said that the treaty should provide for a fee reduction to enable members to take full advantage of it.

344. The Delegation of South Africa, reiterating the decision of the General Assembly, concerning the inclusion of appropriate provisions on technical assistance and capacity building, aligned itself with the statements by the Delegation of Egypt, on behalf of the African Group, and the Delegation of Brazil, on behalf of the DAG.

345. The Delegation of Morocco supported the statement by the Delegation of Egypt, on behalf of the African Group, with regard to facilitating the participation in meetings and the exchange of information on registered industrial designs.

346. The Representative of the European Union, while thanking the African Group for its suggested provisions on technical assistance, said that the European Union and its member states were concerned that some of the provisions went beyond the scope of the future treaty on formalities. The Representative further believed that some of the proposed provisions went beyond the existing practice and precedents, by setting up a compulsory system of Technical Assistance not fully in line with Cluster A of the Development Agenda. In particular, the Representative noted that no linkage was made with the effective implementation of the treaty. The Representative reiterated its strong preference to work on the basis of a draft resolution, in line with the existing precedents for that kind of treaty. The Representative believed that technical assistance should be sought by those Member States that had already joined the treaty, so as to allow them to properly implement it and benefit from it. The Assembly, as provided for in Article 22, could review at regular intervals the technical assistance, and agreements could be passed to provide and finance that technical assistance.

347. The Delegation of Iran (Islamic Republic of) associated itself with the statement by the Delegation of Brazil, on behalf of the DAG. The Delegation expressed the view that the mandate of the General Assembly on technical assistance regarding the DLT should be interpreted in the context of Cluster B of the Development Agenda. The Delegation considered that it was necessary to give the required incentives to developing countries to join the future treaty and decrease costs related to harmonization of procedures.

348. The Delegation of Argentina, associating itself with the statements by the Delegation of Brazil, on behalf of the DAG, and the Delegation of Peru, on behalf of GRULAC, expressed its preference for the inclusion of binding provisions within the treaty, and believed that this was the correct interpretation of the General Assembly mandate.

349. The Delegation of Tunisia endorsed the proposal by the Delegation of Egypt, on behalf of the African Group, and hoped that those provisions could be included within the body of the future DLT.

350. The Delegation of Algeria supported the statements by the Delegation of Brazil, on behalf of the DAG, and the Delegation of Egypt, on behalf of the African Group. The Delegation was pleased to see that all Member States wished to follow up the decision of the General Assembly whereby technical assistance was to be taken into account in the future treaty on the harmonization of industrial design law and practice. The Delegation was also pleased to hear that many delegations shared the point of view of developing countries to the effect that technical assistance was an essential tool for the implementation of the Draft DLT. As regards the need to draw inspiration from WIPO practice on technical assistance and notably from the provisions of the Singapore Treaty, the Delegation drew the attention of the SCT to the fact that there were only 29 Member States of the Singapore Treaty. On the other hand, the PCT, which had 147 Member States, had included in the body of the text provisions on technical assistance.

The Delegation believed that the PCT was an excellent example to follow. Noting that some delegations had made reference to Cluster A of the Development Agenda, the Delegation believed that Cluster B should also be taken into account. The Delegation further believed that the General Assembly has called for provisions on technical assistance, which logically meant that there should be obligatory provisions within the treaty in relation to technical assistance. Therefore, the Delegation urged the Committee to prioritize the examination of the African Group proposal.

351. The Delegation of Ethiopia, Ghana, Nigeria and Senegal underlined the importance of technical and financial assistance, as well as of capacity building, to improve the receptivity of African countries to the future DLT. The delegations considered that, in order to be more effective, the technical assistance and capacity building provisions should be included in the body of the treaty itself and be given a binding nature.

352. The Delegation of India, associating itself with the statement made by the Delegation of Brazil, on behalf of the DAG, expressed its support for the proposal by the African Group, particularly as regards the binding nature of the provisions on technical assistance and capacity building.

353. The Delegation of Spain, endorsing the statements by the Representative of the European Union and the Delegation of Belgium on behalf of Group B, requested that information on WIPO-financed participants to different meetings be included in a revised version of document SCT/28/4.

354. The Delegation of the United States of America expressed its support for the statement made by Group B and indicated that the principles set forth in the proposal by the European Union formed a good basis for discussion. The Delegation also shared the concerns raised by the European Union with respect to the African Group proposal, and wished to echo the statements made with respect to the merit of looking to the STLT and to the PLT for guidance.

355. The Delegation of Lithuania said that it wished to echo the sentiments expressed by the Delegation of Belgium on behalf of Group B. The Delegation believed that the African Group proposal put strongly binding financial obligations, not only on WIPO, but on other Contracting Parties as well. Therefore, the Delegation needed more time for consideration and consultation with national authorities.

356. The Delegation of Brazil reiterated the need to develop specific, binding provisions, for the DLT.

357. The Delegation of Argentina requested that the text of the provisions on financial assistance in the treaties referred to in Section I of document SCT/28/4 be inserted in the document itself.

358. The SCT requested the Secretariat to publish the African Group proposal and the European Union proposal as SCT working documents for further consideration by the Committee at its twenty-ninth session.

359. The Chair concluded that the Secretariat was requested to revise document SCT/28/4, to include the text of the provisions on financial assistance in the treaties referred to in Section I of document SCT/28/4. The document should be complemented with detailed information concerning the current practice, in WIPO, of financing the participation of delegations in meetings of the Assemblies of treaties administered by WIPO.

Study on the Potential Impact of the Work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) on Industrial Design Law and Practice

360. At the end of informal consultations, the Delegation of Brazil, on behalf of the DAG, informed that it had been agreed to extend the deadline for new submissions for two months, with the aim to increase the sample of data. Offices or applicants that had not answered the questionnaire due to lack of time or any other reason would be able to do so. The extension would also permit to amend or complement the answers sent earlier. As a result, a new updated version of the study would be presented at the next session and this would be an agenda item for the next meeting. The structure of the study would be kept the same. The Delegation also informed that Member States had agreed to request the Secretariat to prepare a new separate document on the relationship between the Hague system and the proposed treaty on design formalities.

361. The Representative of the European Union, on behalf of the European Union and its member states, said that it had listened with attention to the suggestions made by some delegations to reopen the study with the aim of allowing more countries to respond to the questionnaire. The Representative acknowledged the concerns of the delegations that wished to respond but had not had the time to do so. Therefore, the Representative could agree to the extension of the deadline for two months for answering the questionnaire, as well as to the Secretariat reflecting these additional answers in the current study, by producing a revised version for the next session, with the understanding that the questionnaire, the terms of reference and the structure of the study would not be modified. The Representative also agreed to a new separate document on the relationship between the Hague system and the future treaty, to be prepared by the Secretariat before the next session, for the information of delegations. It was also the understanding that this would be without prejudice to the work on the draft Articles and Rules. The Representative also noted that the practice of reopening a study should remain an exception in the work of WIPO.

362. The Delegation of Belgium, on behalf of Group B, highlighted the exceptional nature of reopening the Study and stressed that this should be without prejudice to the work on the draft Articles and Rules.

363. Following informal consultations among delegations, the Chair concluded that, without prejudice to the work on the Draft DLT, the Secretariat was requested to extend for an additional period of two months the surveys that were conducted in preparing the Study (document SCT/27/4), in order to increase the available data sample by way of new responses, as well as by way of the possibility of amending or completing earlier responses. The Study should be updated for consideration of the SCT at its twenty-ninth session, taking into account additional replies received. The general structure of the Study should be maintained. Some delegations were of the view that such a request was on an exceptional basis.

364. The Chair further concluded that the Secretariat was requested to prepare a separate document describing the relationship between the Hague system and the Draft DLT.

AGENDA ITEM 5: GEOGRAPHICAL INDICATIONS

365. The Chair noted that no intervention was made under that Agenda item.

AGENDA ITEM 6: SUMMARY BY THE CHAIR

366. The SCT approved the Summary by the Chair as contained in the present document.

367. The Delegation of Spain said that it wanted to offer some general thoughts about the organization of WIPO committees. Pointing out that the SCT could have started the afternoon session on time and could have avoided waiting until Friday afternoon to begin the hard negotiation phase, the Delegation stated that such a waste of time had implications notably as to interpretation and electricity costs. It also observed that last minute changes in one of the official United Nations languages of the Summary by the Chair made it difficult for delegates to read, understand and adopt it. In particular, the Delegation indicated that it had not had the opportunity to read the changes in the Spanish version of the Summary by the Chair and that it relied only in the interpretation. In its view, summaries by the Chair should not contain far-reaching content, meriting lengthy negotiations. Finally, underlining that these remarks did not constitute a criticism of the SCT, but referred to the practice across all WIPO committees, the Delegation of Spain called for the improvement of the situation and for measures to resolve the issues mentioned.

AGENDA ITEM 7: CLOSING OF THE SESSION

368. The Chair closed the session on December 14, 2012.

[Annexes follow]



SCT/28/7
ORIGINAL: ENGLISH
DATE: DECEMBER 14, 2012

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

Twenty-Eighth Session
Geneva, December 10 to 14, 2012

SUMMARY BY THE CHAIR

adopted by the Committee

AGENDA ITEM 1: OPENING OF THE SESSION

1. The Chair opened the twenty-eighth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), welcomed the participants and invited Mr. Francis Gurry, Director General of WIPO, to deliver an opening address.
2. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

3. The SCT adopted the draft Agenda (document SCT/28/1 Prov.) with the addition of one sub-item in item 4, entitled "Study on the Potential Impact of the Work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) on Industrial Design Law and Practice" (document SCT/27/4).

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE TWENTY-SEVENTH SESSION

4. The SCT adopted the draft report of the twenty-seventh session (document SCT/27/11 Prov.), with amendments as requested by the Delegations of China and Peru and the Representative of INTA.

AGENDA ITEM 4: INDUSTRIAL DESIGNS

Industrial Design Law and Practice - Draft Articles and Draft Regulations

5. Discussion was based on documents SCT/28/2 and 3.
6. The Chair stated that the SCT had made good progress on the draft Articles and draft Rules. All statements made by delegations would be recorded in the report of the twenty-eighth session. The Secretariat was requested to prepare revised working documents for consideration of the SCT at its twenty-ninth session, which should reflect all comments made at the present session and highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes.

Technical Assistance and Capacity Building Provisions in Line with the General Assembly Decision

7. The African Group submitted a proposal for draft articles on technical assistance and capacity building to be integrated in the Industrial Design Law and Practice Treaty.
8. The Representative of the European Union, on behalf of the European Union and its member states, presented a proposal for a Resolution by the Diplomatic Conference Supplementary to the Treaty on Industrial Design Law and Practice.
9. The SCT requested the Secretariat to publish them as SCT working documents for further consideration by the Committee at its twenty-ninth session.
10. The Chair concluded that the Secretariat was requested to revise document SCT/28/4, to include the text of the provisions on financial assistance in the treaties referred to in Section I of document SCT/28/4. The document should be complemented with detailed information concerning the current practice, in WIPO, of financing the participation of delegations in meetings of the Assemblies of treaties administered by WIPO.

Study on the Potential Impact of the Work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) on Industrial Design Law and Practice

11. Following informal consultations among delegations, the Chair concluded that, without prejudice to the work on the Draft Design Law Treaty, the Secretariat was requested to extend for an additional period of two months the surveys that were conducted in preparing the Study (document SCT/27/4), in order to increase the available data sample by way of new responses, as well as by way of the possibility of amending or completing earlier responses. The Study should be updated for consideration of the SCT

at its twenty-ninth session, taking into account additional replies received. The general structure of the Study should be maintained. Some delegations were of the view that such a request was on an exceptional basis.

12. The Chair further concluded that the Secretariat was requested to prepare a separate document describing the relationship between the Hague System for the International Registration of Industrial Designs and the Draft Design Law Treaty.

AGENDA ITEM 5: GEOGRAPHICAL INDICATIONS

13. The Chair noted that no intervention was made under that Agenda item.

AGENDA ITEM 6: SUMMARY BY THE CHAIR

Twenty-Ninth Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT/29)

14. The Chair announced the week from May 27 to 31, 2013, as tentative dates for SCT/29.

15. The SCT approved the Summary by the Chair as contained in the present document.

AGENDA ITEM 7: CLOSING OF THE SESSION

16. The Chair closed the session on December 14, 2012.

[Annex II follows]



SCT/28/INF/1
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Comité permanent du droit des marques, des dessins et modèles industriels et des indications géographiques

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

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LISTE DES PARTICIPANTS
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établie par le Secrétariat
prepared by the Secretariat

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