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Special Union for the International Deposit of Industrial Designs (Hague Union)

Assembly

**Thirty-Eighth (17th Extraordinary) Session
Geneva, September 24 to October 2, 2018**

PROPOSED AMENDMENTS TO THE COMMON REGULATIONS UNDER THE 1999 ACT AND THE 1960 ACT OF THE HAGUE AGREEMENT

Document prepared by the International Bureau

I. INTRODUCTION

1. The seventh session of the Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs (hereinafter referred to as the “Working Group”) was convened from July 16 to 18, 2018¹.

2. In that meeting, the Working Group considered favorably the submission of a proposal to amend the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement (hereinafter referred to as the “Common Regulations”) with respect to Rule 3, for adoption, to the Assembly of the Hague Union².

¹ Refer to document H/LD/WG/7/10, “Summary by the Chair”.

² Refer to document H/LD/WG/7/2, “Proposal for Amendments to Rule 3 of the Common Regulations”.

II. PROPOSED AMENDMENTS TO RULE 3 OF THE COMMON REGULATIONS

3. Rule 3 of the Common Regulations provides for representation before the International Bureau. The Working Group discussed document H/LD/WG/7/2, containing a proposal to amend Rule 3, aiming to relax the requirement to submit a power of attorney at the time of filing.
4. Pursuant to Rule 3(2)(a) and (b), the appointment of a representative before the International Bureau may be made in the international application form, provided that the application is signed by the applicant, or in a separate communication (“power of attorney”) which may relate to one or more specified international applications of the same applicant, and must be signed by the applicant.
5. Where the international application, signed by a representative, is not accompanied by a power of attorney, the International Bureau sends an irregularity letter. The International Bureau received 5,213 international applications in 2017. In the same year, it sent 405 irregularity letters to representatives requiring them to submit a power of attorney, with 123 of those letters sent for that sole reason.
6. All of these irregularity cases were eventually resolved, showing that the formal sending of irregularity letters by the International Bureau served little purpose other than to satisfy the formal requirement of including a power of attorney in the file.
7. The requirement to submit a power of attorney duly signed by the applicant at the time of filing of the international application is often challenging for both representatives and applicants, especially when they have to meet strict deadlines to safeguard the applicant’s rights and interests.
8. Thus, in order to alleviate the burden for the users of the Hague System, the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 3 to the Assembly of the Hague Union for adoption, as described below, with the proposed date of entry into force of January 1, 2019.
9. The proposal is to amend the wording of subparagraph (2)(a) of Rule 3 to read: “The appointment of a representative may be made in the international application. The naming of the representative in the international application at the time of filing shall constitute an appointment by the applicant of such representative”.
10. The proposed amendment will enable the International Bureau, pursuant to subparagraph (3)(a), to record the representative in the International Register, if his/her name and address are provided in the application form in accordance with Section 301 of the Administrative Instructions, even if the latter is not signed by the applicant.
11. Consequently, the International Bureau will consider that that person has been authorized by the applicant to file the application and to be recorded as the representative for subsequent procedures and the resulting international registration.
12. The term “at the time of filing” is intended to clarify that the appointment of a representative not initially indicated as such in the application form at the time of filing would need to be made in a separate communication (power of attorney), pursuant to subparagraph (2)(b)³.

³ This is in line with the particular instances in which the International Bureau requires a power of attorney or a copy of a general power of attorney, as the case may be, under the PCT System and also with the Madrid System (Rule 3(2)(b)).

13. Furthermore, paragraph (4) of Rule 3 provides for the “effect of appointment of a representative”. In light of the proposed amendment to subparagraph (2)(a), the Working Group noted that the expression “Except where these Regulations expressly provide otherwise” appearing in subparagraph (4)(a) would become irrelevant, redundant and confusing, and thus recommended to delete it.

14. For ease of reference, the proposed amendments to Rule 3 are first reproduced in Annex I, in “track changes” mode, *i.e.*, with the text that is proposed to be deleted, struck through, and the text that is proposed to be added, appearing underlined. For additional clarity, the final text of the provision, as it would result following the amendments, is reproduced in Annex II.

15. The Assembly of the Hague Union is invited to adopt the amendments to the Common Regulations with respect to Rule 3, as set out in Annexes I and II of document H/A/38/1, with a date of entry into force of January 1, 2019.

[Annexes follow]

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

(as in force on [January 1, 2019])

Rule 3

Representation Before the International Bureau

[...]

[*Appointment of the Representative*] (a) The appointment of a representative may be made in the international application, ~~provided that the application is signed by the applicant.~~ The naming of the representative in the international application at the time of filing shall constitute an appointment by the applicant of such representative.

(b) The appointment of a representative may also be made in a separate communication which may relate to one or more specified international applications or international registrations of the same applicant or holder. The said communication shall be signed by the applicant or the holder.

(c) Where the International Bureau considers that the appointment of a representative is irregular, it shall notify accordingly the applicant or holder and the purported representative.

[...]

(4) [*Effect of Appointment of a Representative*] (a) ~~Except where these Regulations expressly provided otherwise, t~~he signature of a representative recorded under paragraph (3)(a) shall replace the signature of the applicant or holder.

(b) Except where these Regulations expressly require that a communication be addressed to both the applicant or holder and the representative, the International Bureau shall address to the representative recorded under paragraph (3)(a) any communication which, in the absence of a representative, would have to be sent to the applicant or holder; any communication so addressed to the said representative shall have the same effect as if it had been addressed to the applicant or holder.

(c) Any communication addressed to the International Bureau by the representative recorded under paragraph (3)(a) shall have the same effect as if it had been addressed to the said Bureau by the applicant or holder.

[...]

[Annex II follows]

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

(as in force on [January 1, 2019])

Rule 3

Representation Before the International Bureau

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[*Appointment of the Representative*] (a) The appointment of a representative may be made in the international application. The naming of the representative in the international application at the time of filing shall constitute an appointment by the applicant of such representative.

(b) The appointment of a representative may also be made in a separate communication which may relate to one or more specified international applications or international registrations of the same applicant or holder. The said communication shall be signed by the applicant or the holder.

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[...]

[End of Annex II and of document]