

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL UNION FOR THE PROTECTION OF INDUSTRIAL PROPERTY
(PARIS UNION)

ASSEMBLY

Twenty-First Session (11th Ordinary)
Geneva, September 20 to 29, 1993

REPORT

adopted by the Assembly

INTRODUCTION

1. The Assembly was concerned with the following items of the Consolidated Agenda (document AB/XXIV/1 Rev.): 1, 2, 3, 4, 7, 14, 15, 16, 17, 19, 21, 22, 24 and 25.
2. The report on the said items, with the exception of item 7, is contained in the General Report (document AB/XXIV/18).
3. The report on item 7 is contained in the present document.
4. Mr. Julio Delicado Montero-Ríos (Spain) was elected Chairman of the Assembly.

ITEM 7 OF THE CONSOLIDATED AGENDA:

CONTINUATION OF THE DIPLOMATIC CONFERENCE
FOR THE CONCLUSION OF A TREATY SUPPLEMENTING
THE PARIS CONVENTION AS FAR AS PATENTS ARE CONCERNED

5. Discussions were based on document P/A/XXI/1.
6. The Delegation of the United States of America explained the position of the United States of America with regard to convening the second part of the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned (hereinafter referred to as the "Diplomatic Conference"). It recalled that, following the presidential election in the United States of America in 1992, there had been a change of Administration. The decision to go forward with the Diplomatic Conference on patent law harmonization and, in particular, to agree to change the law of the United States of America to a first-to-file system, was a decision which had been made under the previous Administration. Following the election, the new Administration had reviewed the decisions that had been made by the previous one and had concluded that there was insufficient support in the United States of America for changing to a first-to-file system. In fact, the American Bar Association, the leading organization of lawyers in the United States of America, had asked the Government to retain the first-to-invent system. As a result of this, the Administration had concluded that a thorough review was needed of the implications of changing from a first-to-invent to a first-to-file system. On October 7 and 8, 1993, public hearings would be held by the United States Commissioner of Patents and Trademarks in Washington, D.C., in which everyone in the United States of America who had an interest in the matter would have an opportunity to express their views. Following those hearings and a review of the views submitted in writing, the United States Patent and Trademark Office would consult within the Government, with the Secretary of Commerce and with the President, and make a determination as to what policy should be adopted. Consequently, the United States Government was unable, at this time, to participate in a Diplomatic Conference and the Delegation requested that any decision on convening the second part of the Diplomatic Conference should be postponed, pending the convocation by the Director General of an extraordinary session of the Assembly of the Paris Union, following the review by the United States Government of this issue.
7. The Delegation of Japan stated that, in Japan, there was strong recognition of the need for patent law harmonization, reflecting the increasing globalization and high technology orientation of the world economy. The Government of Japan strongly wished the Diplomatic Conference to be convened promptly. It was to be regretted that the Government of the United States of America required more time to proceed with a review of the situation. The Delegation considered that the meeting should suggest that the Director General convene an extraordinary session of the Assembly of the Paris Union as soon as he felt it appropriate to do so. In that session, the date of the second part of the Diplomatic Conference should be decided. In addition, the Director General should be able to convene such an extraordinary session with very short notice.

8. The Delegation of Finland reiterated its support for patent law harmonization and stated that the second part of the Diplomatic Conference should be set at a date that gave the optimum opportunity for achieving results. In the light of the statement by the Delegation of the United States of America, the Delegation saw no possibility of achieving results before the United States Government had decided what position it would take on, for example, the first-to-file system. The Delegation supported the proposal to convene an extraordinary session of the Assembly of the Paris Union at a later date.

9. The Delegation of Spain expressed understanding for the reasons for which the Delegation of the United States of America was not in a position to agree on a date for the second part of the Diplomatic Conference. The Delegation emphasized that the importance of the topic required pursuit of the greatest consensus possible and therefore supported the proposal put forward by the Delegation of Japan.

10. The Delegation of France referred to two problems that currently stood in the way of the conclusion of a treaty on patent law harmonization. The first was the fact that forums other than WIPO were in the process of discussions concerning intellectual property, and the Delegation would have liked to know what the conclusions of those other negotiations were. The second problem was the situation of the United States of America, where the subject of patent law harmonization had both technical and political dimensions. The Delegation requested that the United States of America do all it could to accelerate the decision-making process. It recommended that the Director General convene an extraordinary session of the Assembly of the Paris Union as soon as he felt that the conditions for obtaining the best results were fulfilled, and that the earliest possible date be set for the second part of the Diplomatic Conference.

11. The Delegation of Portugal recalled that the first part of the Diplomatic Conference had been held in 1991 and that, while it had been hoped that the second part would take place in the subsequent year (1992), it had not been scheduled until 1993, and would not take place even then. The Delegation stated that all countries were making efforts to adapt their laws to the present trends in the world, despite technical and political difficulties, and referred to recent changes in the laws of Portugal and Spain, under which patents were now available for pharmaceutical inventions. The Delegation supported the proposal of the Delegation of Japan as being the most reasonable, and encouraged the Director General to do everything possible so that the second part of the Diplomatic Conference could be scheduled as soon as possible.

12. The Delegation of the Russian Federation stated that it understood the situation in the United States of America, which needed some time to define its position. The Delegation agreed that an extraordinary session of the Assembly of the Paris Union should decide on a date for the second part of the Diplomatic Conference, and that the date of the extraordinary session should be decided by the Director General in the light of circumstances.

13. The Delegation of Brazil expressed regret at the fact that the treaty on patent law harmonization had not been concluded so far. The Delegation called for a spirit of cooperation to achieve results on the initiatives of WIPO. It observed that changes of administration occurred in every country, and that

ways of continuing the initiatives of previous administrations should be found. The Delegation supported the convening of the second part of the Diplomatic Conference as soon as possible.

14. The Delegation of Ireland expressed sympathy with the position of the Delegation of the United States of America concerning the question of the first-to-file system. It supported the proposal of the Delegation of Japan, requesting the Director General to choose the most appropriate time to convene an extraordinary session of the Assembly of the Paris Union.

15. The Delegation of Israel stated that it appreciated the difficulties faced by the Delegation of the United States of America and recognized that patent law harmonization involved a major issue of change in the United States patent system. It also supported the proposal of the Delegation of Japan.

16. The Delegation of the Netherlands stated that, taking a realistic approach, the proposal of the Delegation of Japan was the best solution.

17. The Delegation of New Zealand considered that the participation of the United States of America was a critical part of any patent law harmonization treaty. There was little alternative but to delay the decision on setting a date for the second part of the Diplomatic Conference.

18. The Delegation of Australia stated that it had come to the present meeting with the hope of setting an early date for the second part of the Diplomatic Conference, but understood the obstacles which stood in the way. It supported the suggestion to leave the date for a second part of the Diplomatic Conference undecided, but encouraged the setting of an early date as soon as the situation in the United States of America had been clarified.

19. The Delegation of Canada supported convening the second part of the Diplomatic Conference as soon as possible, but recognized the problems which existed. It also recalled, as the Delegation of France had also observed, that negotiations on intellectual property were currently taking place in other forums. The Delegation supported the proposal of the Delegation of Japan, requesting that the Director General convene an extraordinary session of the Assembly of the Paris Union when the time was ripe.

20. The Delegation of Belgium expressed a preference for holding the second part of the Diplomatic Conference at a time when there would be the best chances of success and recognized that the requirements for those chances had not yet been met. It favored the proposal of the Delegation of Japan and encouraged the Delegation of the United States of America to use its best efforts to be in a position to agree on a date for the second part of the Diplomatic Conference as soon as possible.

21. The Delegation of Poland shared the opinions of the Delegations of Portugal and Brazil and accepted the proposal of the Delegation of Japan.

22. The Delegation of Germany expressed its desire that the negotiations on patent law harmonization come to a good end, which could not happen without an answer to the important question of the nature of the patent system in the United States of America.

23. The Delegation of China stated that it was very interested in patent law harmonization and that its country had made preparations for an early convening of the second part of the Diplomatic Conference. However, considering the problems encountered by the United States of America, the Delegation recommended that the Director General should judge when was the most appropriate time to convene an extraordinary session of the Assembly of the Paris Union and that the date for the second part of the Diplomatic Conference could be decided at that session.

24. The Assembly adopted the following decision:

"The Assembly of the Paris Union decided not to fix, at its present session, a date for the continuation of the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents Are Concerned. At the same time, it asked the Director General to convene an extraordinary session of the Assembly of the Paris Union when he believes that the time is ripe for considering the fixing of the date of the continuation of the Diplomatic Conference."

25. It was understood that any extraordinary session of the Assembly could be convened with a notice of one month.

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