

WIPO General Assembly

Forty-First (21st Extraordinary) Session Geneva, October 1 to 9, 2012

REPORTS ON OTHER WIPO COMMITTEES

Addendum

1. The present document contains an information report for the twenty-seventh session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT). It supplements Part II of the Annex to document WO/GA/41/16. Due to the dates of the twenty-seventh session of the SCT, this information could not be presented in the main document.

REPORT ON THE WORK OF THE STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS (SCT) (TWENTY-SEVENTH SESSION)

2. The twenty-seventh session of the SCT took place from September 18 to 21, 2012. The Agenda for that session featured items on industrial design law and practice (including the consideration of a study on the potential impact of the work of the SCT on industrial design law and practice), on trademark-related aspects of the expansion of the Domain Name System, on the protection of names of States against registration and use as trademarks and on International Non-proprietary Names for Pharmaceutical Substances (INNs). Moreover, an Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks was held on September 17, 2012. The Summary by the Chair for that session is published under document SCT/27/10.

Trademarks

3. In accordance with a decision taken by the SCT at its twenty-sixth session, an Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks was organized by the Secretariat on September 17, 2012, at WIPO headquarters. SCT Members and observers expressed satisfaction on the holding of that meeting. The Committee agreed not to pursue work on that topic in the SCT and to take it off the Agenda. The Secretariat presented an update on trademark-related aspects of the expansion of the Domain Name System. The SCT took note of the report and requested the Secretariat to keep Member States informed on developments in the new Domain Name System. In continuation of the work on the protection of names of States against registration and use as trademarks, the SCT requested the Secretariat to prepare a study in accordance with the terms of reference based on a proposal by the Delegations of Barbados and Jamaica, which was agreed by the Committee. The terms of reference for that study are reproduced in the Annex to document SCT/27/10.

Industrial Designs

4. The SCT considered a Study on the Potential Impact of the Work of the SCT on Industrial Design Law and Practice (the Study) (document SCT/27/4) as well as a set of draft Articles and draft Rules on Industrial Design Law and Practice. The SCT made good progress in reviewing the draft Articles and draft Rules and requested the Secretariat to prepare revised working documents for consideration of the SCT at its twenty-eighth session, which should reflect all comments made at the present session and highlight the different proposals put forward by delegations.

5. A number of delegations proposed a recommendation by the SCT to the WIPO General Assembly for the convening of a diplomatic conference for the adoption of a design law treaty. Other delegations stated that the time was not ripe for making such a recommendation and that the Study should be reviewed in order to address a certain number of points, which, in the view of those delegations, were not sufficiently covered by the Study. Yet other delegations suggested to recommend to the WIPO General Assembly a time table for the convening of a diplomatic conference while, at the same time, addressing technical assistance and capacity building in relation to the work on industrial design law and practice. In conclusion, the Chair of the SCT stated that no delegation had expressed opposition to the possibility that this work could result in an international instrument. Likewise, there was no opposition expressed to considering in this work technical assistance and capacity building. Nevertheless, the SCT was neither in agreement regarding any further work on the Study on the Potential Impact of the Work of the SCT on Industrial Design Law and Practice nor in agreement regarding a recommendation to the WIPO General Assembly to convene a diplomatic conference (document SCT/27/10, paragraphs 9 to 12).

International Nonproprietary Names for Pharmaceutical Substances (INNs)

6. Following the presentation by the SCT Secretariat of background information on the cooperation between the SCT and WHO INN Program, a Representative of the World Health Organization (WHO) presented the WHO Global Data Hub for INNS. The presentation by the Representative of the WHO was well received. SCT members warmly welcomed this cooperation, which was qualified as “exemplary for all WIPO Committees” and strongly encouraged its continuation.

CONTRIBUTION OF THE SCT TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

7. Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, the following statements made to that effect by delegations at the twenty-seventh session of the SCT are reproduced hereafter¹:

“8. Speaking on behalf of the Development Agenda Group (DAG), the Delegation of Brazil drew the SCT’s attention to Clusters A (technical assistance and capacity building) and B (norm-setting activities) of the Recommendations approved by the General Assembly in 2007, and their relation with the SCT’s work on industrial designs. It highlighted that Recommendation 15, in Cluster B, called for norm-setting activities that take into account different levels of development and that take into consideration a balance between costs and benefits and recalled that the DAG and many delegations had expressed, in their earlier interventions, the need to observe those principles. One of the objectives of the Development Agenda Recommendations was to make norm-setting activities more transparent and inclusive. The Delegation recognized that improvements had been made in this direction, mainly due to efforts made by Developing Countries. It was of the view that the discussions regarding industrial design law during the twenty-sixth session of the SCT seemed more adequate to the above-mentioned Recommendation. The study prepared by the Secretariat at the request of the SCT had aimed at analyzing the potential benefits, constraints and costs for SCT members, particularly developing countries, least developed countries (LDCs) and countries in transition, of the application of the draft articles and rules in the area of industrial design law and practice. The DAG welcomed the study and recommended further elaboration on items mentioned in the terms of reference and not sufficiently addressed in the study as well as an extension of time for offices and applicants to answer the questionnaire. The study had also had the goal of evaluating which flexibilities would be available for Member States. The Delegation underlined that flexibilities were a necessary part of a balanced intellectual property system, as proposed in the Development Agenda. It stated that some other points of the Development Agenda, however, remained to be incorporated to WIPO’s activities and that there was a clear need, as had been raised by many Member States, to discuss technical assistance and capacity building. From the existing draft texts, it seemed that developing countries were the ones that would need to promote more internal changes, both legal and technical, in order to implement the proposed new rules. The DAG took the view that this process should enable all members, in particular developing countries, to make a conscious decision on whether the proposed norm-setting activity would meet their national interests and needs. In conclusion, the Development Agenda Group was of the opinion that the item of the Agenda under consideration should become a permanent Agenda item.

“9. The Delegation of South Africa, providing its assessment of how the SCT had contributed to implementing the development agenda recommendation, underscored that it was important for this issue to be a standing item in the SCT sessions preceding the General Assemblies. South Africa had participated actively in the two sessions of the SCT under evaluation. With regard to norm-setting, the Delegation was pleased that the request of the African Group and the Development Agenda Group was taken up by the SCT to commission the study on the potential impact of the work of the SCT on industrial design law and practice in line with Cluster B of the Development Agenda, particularly

¹ At the time of the publication of this document, the draft report of the twenty-seventh session of the SCT was not yet available.

Recommendation 15. The study, as it was presented during that session, proved very insightful. The Delegation thanked and commended the Secretariat and the external consultant and pointed out that the study provided some clarity pertaining to costs and benefits of the draft design law articles. It was particularly pleased with the information on flexibilities, although it was contextualized within the current activities that had been undertaken with the design law treaty. However, there had also been limitations in gathering some of the information requested in the terms of reference, owing to the fact that the study was the first of its kind. The Delegation was therefore of the view that the study should be improved as appropriate in accordance with the comments made by Member States, especially regarding the classification of countries, provisions on technical cooperation, and linkages with the Hague Agreement. The Delegation believed that the study could further enhance the provisions of the envisaged design law treaty. The Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks as sanctioned by the SCT had been very useful and had shed some light on the complexities of this subject matter. Given that the Internet was a global resource, the Delegation would have appreciated hearing the experiences of the African continent on the issue. Nevertheless the discussions had been informative and useful indeed. The Delegation believed that the SCT had embarked on a positive process in implementing the Development Agenda Recommendation and urged the SCT to continue improving its contribution towards their implementation.

“10. Speaking on behalf of the African Group, the Delegation of Egypt appreciated that the SCT continued to be guided by the Development Agenda Recommendations and that its norm-setting activities in the area of industrial design law and practice had been guided by Clusters A and B of the Development Agenda Recommendations, in particular Recommendations 1, 2, 15 and 17. It thanked the Secretariat for preparing the impact study which emphasized the commitment of WIPO Member States to the Development Agenda Recommendations. The Delegation also noted that the study had equally covered the potential impact on developed and high-income countries, which proved that the Development Agenda Recommendations were in fact of benefit to all WIPO Member States. It hoped that the study could be further improved so as to address all terms of reference as approved by Member States and in particular the impact of the draft articles and rules on developing countries’ and LDC’s needs for capacity building, investment in infrastructure and technical assistance as well as on fostering creativity, innovation and economic development and efficiency in developing countries. It hoped to continue to see the SCT’s contribution to the Development Agenda Recommendations and said that the item under consideration should be a permanent item on the Agenda of the SCT.

“11. The Delegation of Algeria aligned itself with the statements made by the Delegations of Brazil and Egypt. It also wished to add its voice to those who had said that the contribution of the SCT to the Implementation of the respective WIPO Development Agenda Recommendations ought to be a permanent agenda item within the SCT and indeed all WIPO Committees. Any standard-setting exercise within the SCT needed to take into account the Development Agenda Recommendations, particularly Recommendation 4 on technical cooperation and capacity building. With regard to the evaluation of the contribution of the SCT to the implementation of the Development Agenda, the Delegation was particularly satisfied with the work done by the SCT in relation to the study that the Secretariat had carried out on the impact of the draft articles and rules. It believed that any standard-setting exercise within WIPO ought to be preceded by such exercise so that the impact of the establishment of legal norms on all WIPO Member States could be assessed. Of course, the SCT could do a lot more in order to be an example for other committees. In attempting to improve the study and respond genuinely to the needs of developing countries, the SCT could be recognized as being the only committee having started out by an impact study before moving on with the draft articles and rules. In the view of the Delegation, this should be the approach within

WIPO. The SCT could also strengthen its technical cooperation and capacity building activities for development.

“12. The Delegation of the United States of America, speaking on behalf of Group B, stated that it objected to the suggestion that the item under consideration should become a standing item on the Agenda of the SCT.

“13. The Delegation of Italy said that it supported the statement by the Delegation of the United States of America.

“14. The Delegation of Hungary, speaking on behalf of the Group of Central European and Baltic States, expressed its support for the statement made by the United States on behalf of Group B.

“15. The Chair noted that a number of delegations made declarations on the contribution of the SCT to the implementation of the respective WIPO Development Agenda Recommendations. He stated that all declarations would be recorded in the report for the twenty-seventh session of the SCT and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.”

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