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MATTERS CONCERNING THE CONVENING OF A DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A DESIGN LAW TREATY

Document prepared by the Secretariat

- At its forty-first (21st extraordinary) session, held in Geneva from October 1 to 9, 2012, the World Intellectual Property Organization (WIPO) General Assembly adopted the following text (document WO/GA/41/18, paragraph 231):

“The WIPO General Assembly notes the Summary by the Chair of the 27th session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), and the progress made by the SCT on industrial design law and practice - draft Articles and Regulations.

“Recognizing the importance for all member States of a Design Law Treaty, the General Assembly urges the SCT to expedite in a committed manner work with a view to advance substantially the basic proposals for a Design Law Treaty (draft Articles and Regulations contained in revised Annexes of documents SCT/27/2 and SCT/27/3).

“In its work, consideration will be given to include appropriate provisions regarding technical assistance and capacity building for developing countries and LDCs in the implementation of the future Design Law Treaty.

“The General Assembly in 2013 will take stock of and consider the text, progress made, and decide on convening a diplomatic conference.”

2. Following the aforementioned session of the WIPO General Assembly, the SCT held three sessions, namely the twenty-eighth session (December 10 to 14, 2012), the twenty-ninth session (May 27 to 31, 2013) and the thirtieth session (November 4 to 8, 2013). The twenty-eighth session was chaired by Mr. Imre Gonda (Deputy Head, Trademark, Model and Design Department, Hungarian Intellectual Property Office), while the twenty-ninth and thirtieth sessions were chaired by Mr. Adil El Maliki (Director General, Moroccan Industrial and Commercial Property Office (OMPIC)).

3. The twenty-eighth session of the SCT was entirely dedicated to industrial design law and practice in order to advance the basic proposals for a Design Law Treaty (draft Articles and Regulations), taking into account the text adopted by the WIPO General Assembly referred to in paragraph 1, above.

4. At that session, the SCT considered a set of revised draft Articles and draft Rules on Industrial Design Law and Practice. At the outcome of the session, the Chair stated that the SCT had made good progress on the draft Articles and draft Rules, and 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” (document SCT 28/7, paragraph 6).

5. At the twenty-eighth session, two proposals on technical assistance and capacity building were presented, namely by the African Group (document SCT/28/5) and by the Delegation of the European Union (document SCT/28/6). At that session, the SCT also considered a document providing an overview of technical assistance and capacity building provisions in WIPO-administered treaties (document SCT/28/4). The Committee requested the Secretariat to revise document SCT/28/4 by including the text of the provisions on financial assistance to facilitate participation in relevant Assemblies in the treaties referred to in Section I of document SCT/28/4 and to provide detailed information concerning the current practice, in WIPO, of financing the participation of delegations in meetings of the Assemblies of treaties administered by WIPO (document SCT/28/7, paragraph 10). The revised document, containing the detailed information requested, was presented to the twenty-ninth session of the SCT as document SCT/28/4 Rev.

6. Finally, at the outcome of the twenty-eighth session, 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 [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), 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” (document SCT/28/7, paragraph 11).

7. Accordingly, the two surveys were made again available to offices and applicants from January 7 to March 7, 2013. The additional responses yielded through the extended circulation of the surveys were used to update the original study in the form of an Addendum to document SCT/27/4 (document SCT/27/4 Add.), which was submitted to the twenty-ninth session of the SCT. The additional responses corroborated the conclusions presented in the original study, and were thus useful in building further confidence in the results. Overall, the results of the Study indicate that respondents in all countries believe that the proposed changes in the draft Articles and Rules would result in improvements and positive benefits for

applicants/users. In addition, the results show that in middle and low-income countries, there is a perceived need for support in the form of technical assistance and capacity building, in order to facilitate the implementation of the proposed changes.

8. At its twenty-ninth session, the SCT reviewed in detail the revised draft Articles and Rules contained in documents SCT/29/2 and 3. Following the twenty-ninth session, the state of the draft Articles and Rules can be described as follows: documents SCT/29/2 and 3 feature a total of 31 draft Articles and 15 draft Rules; four draft Articles propose alternative options, namely Article 5 (Filing Date), Article 13 (Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality), Article 16 (Effects of the Non-Recording of a License) and Article 26 (Entry into Force; Effective Date of Ratifications and Accessions). Moreover, six delegations made a number of individual proposals for amendments or reservations in respect of the draft Articles and the draft Rules.

9. As regards technical assistance and capacity building, three proposals were considered by the SCT at its twenty-ninth session, namely one by the African Group (document SCT/28/5), one by the European Union and its member states (document SCT/29/6), superseding the proposal made at the twenty-eighth session (document SCT/28/6), and one by the Republic of Korea (document SCT/29/8). A non-paper combining elements from the three proposals was presented by the Chair and discussed by the SCT. Following that discussion, the Secretariat was requested to prepare revised working documents for consideration of the SCT at its thirtieth session, including a draft Article or Resolution in square brackets, based on the Chair's non-paper (document SCT/29/9, paragraph 9). The draft Article or Resolution has been included in the revised working document containing draft Articles (document SCT/30/2), for consideration of the SCT at its thirtieth session, to be held from November 4 to 8, 2013. Footnotes to the draft Article indicate that this draft Article is proposed by the Chair, and that some delegations would prefer the subject matter of this draft Article to be covered by a Resolution.

10. At the outcome of the twenty-ninth session of the SCT, the Chair concluded that "the SCT had made good progress on the draft Articles and draft Rules included in documents SCT/29/2 and 3 and that the work on technical assistance and capacity building had advanced. A number of delegations stated that sufficient progress had been made by the SCT to recommend to the WIPO General Assembly the convening of a diplomatic conference in 2014. Other delegations, expressing the view that there was a need for more progress on technical assistance and capacity building in order to reach a concrete outcome, were of the opinion that the General Assembly would take stock of and consider the text, progress made, and decide on convening a diplomatic conference" (document SCT/29/9, paragraph 10).

11. The thirtieth session of the SCT reviewed in detail all provisions included in documents SCT/30/2 and 3 which were presented in the form of alternative options, or for which footnotes indicated proposals or reservations of individual delegations. All member delegations and representatives of observer organizations that made general statements at the thirtieth session expressed broad support for the work of the SCT on design law and practice and the conclusion of this work in the form of a Design Law Treaty. All delegations expressed support, in principle, for making available technical assistance and capacity building measures to developing countries and least developed countries (LDCs) in the context of the implementation of the future Treaty.

12. The Chair noted (see document SCT/30/8, paragraphs 10 to 12) that the SCT had made further progress on the draft provisions that it had considered and requested the Secretariat to prepare revised working documents for consideration of the SCT, or a possible preparatory conference, as the case may be, which should reflect all comments made at the present session in the following form: provisions for which alternative options existed would be redrafted in accordance with the decision taken by the Committee; individual proposals presented in

footnotes for which there was support by other delegations would be elevated into the text and presented in square brackets with an indication of the delegations having supported the proposal; individual proposals for which there was no support would remain in footnotes; reservations to provisions would be recorded in the form of footnotes.

13. With regard to technical assistance, the Chair noted that progress was made on the provisions in draft Article 21/Resolution and requested the Secretariat to reflect the new draft Article 21/Resolution in the revised working document.

14. Concerning the convening of a diplomatic conference for the adoption of a Design Law Treaty, the Chair noted that all delegations that had taken the floor were in favor of convening such a diplomatic conference. A large number of delegations was of the view that an agreement to address technical assistance in the form of an article in the treaty had to be reached prior to convening such a diplomatic conference. Other delegations were of the view that the SCT could already recommend to the General Assembly the convening of a diplomatic conference. Among the latter, a number showed flexibility as to whether technical assistance should be addressed in a resolution or an article, whereas one delegation was of the view to defer this matter to the diplomatic conference itself.

15. *The WIPO General Assembly is invited to take stock of, and consider, the text and progress made and decide whether to convene a diplomatic conference for the adoption of a Design Law Treaty in 2014.*

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