

***Ad hoc* Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs**

Geneva, May 30 to June 1, 2011

REPORT

adopted by the Working Group

INTRODUCTION

1. The *ad hoc* Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs (hereinafter referred to as “the *ad hoc* Working Group”) met in Geneva from May 30 to June 1, 2011.
2. The following members of the Hague Union were represented at the session: Bulgaria, Denmark, Estonia, France, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, Mongolia, Morocco, Norway, Poland, Republic of Moldova, Romania, Serbia, Singapore, Spain, Switzerland, the former Yugoslav Republic of Macedonia and Tunisia (22).
3. The following States were represented as observers: Algeria, Canada, China, Haiti, Indonesia, Japan, Kazakhstan, Panama, Republic of Korea, Saudi Arabia and United States of America (11).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: Benelux Office for Intellectual Property (BOIP) and Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) (2).
5. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: *Association romande de propriété intellectuelle* (AROPI) and European Communities Trade Mark Association (ECTA) (2).

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

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General, opened the meeting of the *ad hoc* Working Group and welcomed the participants.

8. Mr. Gurry first recalled that the International Bureau received 2,382 international applications for the registration of industrial designs in 2010. This represented a record increase of 32.6 per cent over the previous year. Although the number of applications was still fairly small, similar growth was expected in 2011. He observed that the Hague System for the International Registration of Industrial Designs had new energy in it.

9. Mr. Gurry then welcomed two new Contracting Parties to the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter referred to as “the 1999 Act”), namely Finland (as from May 1, 2011) and Monaco (as from June 9, 2011). He explained that with these accessions, the number of Contracting Parties to the Hague Agreement had increased to 58, of which 41, including the European Union (EU) and the African Intellectual Property Organization (OAPI), were bound by the 1999 Act. In addition, Mr. Gurry informed the *ad hoc* Working Group that the Republic of Korea had announced its intention to accede to the 1999 Act in 2012. Furthermore, accession to the 1999 Act was under active consideration by a number of prospective Contracting Parties.

10. With regard to the reasons for convening the *ad hoc* Working Group, Mr. Gurry recalled that the Diplomatic Conference for the Adoption of the New Act of the Hague Agreement, in 1999, had discussed a number of items, which were not included in the final text of the Regulations, as adopted by the Diplomatic Conference. It was, however, understood that these items would be introduced into the Regulations at a later stage. Mr. Gurry stressed the importance of commencing work on the items set aside at the time of the Diplomatic Conference and highlighted the need for such items to be aired in a collegial context, so as to ensure the achievement of a balanced solution, which could suit all prospective Contracting Parties with similar needs.

11. Mr. Gurry further indicated that the meeting of the *ad hoc* Working Group could be the first meeting in a series of meetings, if the *ad hoc* Working Group decided to recommend to the Assembly of the Hague Union the establishment of a Working Group to look into the full implementation of the 1999 Act.

12. Mr. Gurry went on to present briefly the working documents of the meeting to the *ad hoc* Working Group. As regards document H/LD/WG/1/2, entitled “Issues Relating to the Publication and Contents of the *International Designs Bulletin*”, Mr. Gurry said that the *ad hoc* Working Group was invited to reconsider the publication mechanism for international registrations and other official information on the WIPO website, taking into account a number of technological developments in the Hague environment. The *ad hoc* Working Group was also invited to consider the proposed amendments to the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement (hereinafter referred to as “the Common Regulations”), as elaborated in that document.

13. In respect of document H/LD/WG/1/3, entitled “Issues Relating to the Effects of the Recording of a Change in Ownership in the International Register”, Mr. Gurry explained that the *ad hoc* Working Group was invited to consider proposed new Rule 21*bis* on the refusal of the effects of the recording of a change in ownership in the International Register. Although, at present, only two Contracting Parties, namely Denmark and OAPI, had made the declaration under Article 16(2) of the 1999 Act to the effect that the recording of a change in ownership in the International Register had no effect in that Contracting Party until the Office had received

the statements or documents specified in that declaration, it was expected that some prospective Contracting Parties would make the same declaration. Under the Hague system, there was currently no mechanism to allow the Offices of Contracting Parties to refuse the effects of the recording of a change in ownership in the International Register in the territory of a designated Contracting Party. The new Rule would also be necessary for some current or prospective Contracting Parties, where the change in ownership was incompatible with their national/regional laws.

14. Furthermore, the *ad hoc* Working Group was invited to consider the possible establishment of standard forms under the Hague system, along the lines of the Model International Forms in respect of a certificate of transfer, as provided for under the Patent Law Treaty (hereinafter referred to as “the PLT”) and the Singapore Treaty on the Law of Trademarks (hereinafter referred to as “the Singapore Treaty”), or a transfer document as provided for under the Singapore Treaty.

15. As regards document H/LD/WG/1/4, entitled “Situation of the 1934 Act and the 1960 Act of the Hague Agreement”, Mr. Gurry observed that the purpose of the document was to provide the *ad hoc* Working Group with a clear understanding of the global framework relating to the Hague system. He recalled that the application of the London (1934) Act of the Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter referred to as “the 1934 Act”) had been frozen since January 1, 2010, and that the next agreed step was to terminate that Act. Mr. Gurry encouraged the Contracting States to the 1934 Act, which had not yet submitted their consent to the termination of that Act, to do so, in order to tidy up that part of the Hague system architecture.

16. Furthermore, Mr. Gurry pointed out that there had been a significant decrease in the use of the Hague (1960) Act of the Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter referred to as “the 1960 Act”) in comparison with the expansion of the use of the 1999 Act. The evolution of the Hague system, and in particular of the 1999 Act, would be monitored closely in the future with a view to creating a more straightforward architecture for the Hague system.

17. Finally, Mr. Gurry emphasized the importance of designs and design protection, which was the theme of *World Intellectual Property Day* in 2011. He also reminded the *ad hoc* Working Group of the discussions in the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the SCT”) concerning a possible treaty on the formalities relating to industrial design applications and registrations before national/regional Offices. To conclude, Mr. Gurry stressed that an efficient and well performing Hague system was in everyone’s interest.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

18. Ms. Solvår Winnie Finnanger (Norway) was unanimously elected as Chair of the *ad hoc* Working Group, and Ms. Anne Loo (Singapore) and Mr. Gusztáv Szöllősi (Hungary) were elected as Vice-Chairs.

19. Ms. Päivi Lähdesmäki (WIPO) acted as Secretary to the *ad hoc* Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

20. The *ad hoc* Working Group adopted the draft agenda, as contained in document H/LD/WG/1/1 Prov., without amendment.

AGENDA ITEM 4: ISSUES RELATING TO THE PUBLICATION AND CONTENTS OF THE *INTERNATIONAL DESIGNS BULLETIN* AND RELATED PROPOSED AMENDMENTS TO THE COMMON REGULATIONS UNDER THE 1999 ACT AND THE 1960 ACT OF THE HAGUE AGREEMENT

21. Discussion was based on document H/LD/WG/1/2.

Possible Tightening of the Publication Cycle of the International Designs Bulletin

22. The Chair opened the discussions by inviting the *ad hoc* Working Group to discuss a possible tightening of the publication cycle of the *International Designs Bulletin* (hereinafter referred to as “the Bulletin”), as elaborated in the document prepared by the International Bureau. The Chair observed that the document was mainly of a technical nature. In this respect, the Chair indicated that various users of the Hague system had reported to the International Bureau that a tighter publication cycle of the Bulletin would be beneficial to them.

23. Upon invitation by the Chair, the Secretariat introduced document H/LD/WG/1/2 to the *ad hoc* Working Group. The document consisted of two sets of proposals: one dealing with the publication cycle of the Bulletin and the other dealing with the legal framework of the Hague system. In this context, the Secretariat also referred to the submission by MARQUES containing comments on the said proposals. The submission by MARQUES had been made available to the delegations.

24. The Secretariat recalled that the Bulletin was currently published electronically only on the WIPO website, 12 times a year, on the last day of every month. In general, the monthly publication cycle meant that entries made in the International Register during a given month were published in the Bulletin on the WIPO website at the end of the following month. The same principle applied to international registrations recorded during a given month, for which immediate publication was requested.

25. Furthermore, the Secretariat indicated that in the absence of a request for immediate publication or a request for deferment of publication, the publication of an international registration happened by default, i.e., six months after the date of the international registration, or as soon as possible thereafter.

26. At present, where an applicant requested immediate publication of the international registration and the registration date was at the beginning of a given month, the publication of the international registration took place after almost two months. Conversely, if the registration date was at the end of a given month, the publication took place after at least one month. The Secretariat recalled that, in recent years, the proportion of international registrations that had been the subject of immediate publication requested by the applicant, had been over 40 per cent of all international registrations. Users of the Hague system had reported to the International Bureau that such immediate publication, which was hardly “immediate”, constituted a major inconvenience of the system. In order to address that issue, the *ad hoc* Working Group was invited to consider the tightening of the publication cycle of the Bulletin, for example, proceeding to a weekly publication of entries made the previous week. In that context, the Secretariat indicated that a more frequent publication cycle of official publications already took place before the Offices of a number of Contracting Parties to the Hague Agreement.

27. The Secretariat stressed that irrespective of whether the publication took place immediately, at the end of the default period or at the end of a period of deferment, the refusal period, in respect of all the designated Contracting Parties, began from the date of publication of the international registration in the Bulletin on the WIPO website. One of the consequences of a more frequent publication cycle would be that refusal periods would begin and end earlier and

statements of grant of protection, as well as notifications of refusal of protection, would be issued sooner. This would in turn increase the level of legal certainty and transparency of the system and would be in the interest of holders of international registrations and third parties.

28. As regards the legal background of a possible tightening of the publication cycle, the Secretariat noted that the publication cycle was not specified in the 1999 Act, in the 1960 Act or in the Common Regulations, so there was no need to amend any provisions in the Common Regulations. The Secretariat emphasized that the advantages of a possible tightening of the publication cycle could not be achieved without support from the Offices of the Contracting Parties. A tighter publication cycle would require them to adapt their internal processes, including their IT program. On the other hand, it would allow them to avoid the peak workloads currently occurring once a month.

29. The Secretariat then indicated that the cycle of the Bulletin could be broken down into two components: firstly, the frequency of the publication, which meant the number of times that the Bulletin was issued each year, which was currently 12 times a year, and secondly, the time lag, which meant the number of days that elapsed between the last recording day considered for insertion of data in a given issue of the Bulletin and the date of publication of that issue of the Bulletin. At present, the time lag between the last recording day considered and the publication was one month. The Secretariat went on to introduce the three different approaches elaborated in the document, which illustrated some possible options for timing the publication of international registrations. Consequently, the *ad hoc* Working Group was invited to indicate what would be the optimal publication frequency for the users of the Hague system and the Offices.

30. In that context, the Secretariat referred to a submission by MARQUES, which stated the support of MARQUES to approach three elaborated in the document, under which the Bulletin was published on a weekly basis and the time lag was reduced to one week. Under that option, if immediate publication were requested, international registrations recorded in a given week would be published at the end of the following week.

31. The Delegations of Hungary, Spain and Switzerland expressed their support for Approach 3, as elaborated in the document.

32. The Delegation of France explained that it was in favor of the proposal to tighten the publication cycle of the Bulletin. The proposal was in line with the interests of users of the system and with technological developments. The Delegation indicated, however, that, if the *ad hoc* Working Group was moving towards weekly publication, its Office might need some time to adapt its IT tools.

33. The Representative of AROPI thanked the Secretariat for the proposal of tightening the publication cycle as elaborated in the document, which was in the interest of the users. The Representative recalled that the publication of international registrations was a key element for the opposability of rights. The Representative fully agreed with the comments contained in the submission by MARQUES and expressed its support for Approach 3 of a weekly publication of the Bulletin. Finally, the Representative thanked the Delegations for being open to users' interests.

34. The Representative of ECTA stressed that it was actively promoting the Hague system among its membership, for example, by organizing workshops in cooperation with WIPO. The Representative, underlining the significant advantages of the increased frequency of the publication, expressed its support for Approach 3. In addition, the Representative remarked that by tightening the publication cycle transparency of the system would increase and make the Hague system more attractive, especially within the European Union, also for current non-users.

35. The Chair concluded that the *ad hoc* Working Group supported Approach 3 elaborated in the document, on the understanding that the *International Designs Bulletin* would be published on a weekly basis.

Implementation Date of Weekly Publication of the International Designs Bulletin

36. The Secretariat suggested January 1, 2012, as the target date for the implementation of the weekly publication cycle of the Bulletin, as supported by the *ad hoc* Working Group.

37. Upon invitation by the Secretariat, the Delegation of France explained that its Office needed some time to renew the contracts with external providers for updating the procedures before its Office. The target date of January 1, 2012, would, in principle, allow sufficient time for its Office to adapt its IT tools. Nevertheless, the Delegation inquired whether the national Offices could confirm to the International Bureau at a later stage that the target date was technically feasible for them.

38. The Delegation of Switzerland indicated that, for some countries, the target date of January 1, 2012, for the implementation of a tighter publication cycle of the Bulletin, might be too early.

39. The Secretariat informed the *ad hoc* Working Group that the International Bureau had started to look at adapting its IT procedures to a weekly publication cycle. In addition, the Secretariat welcomed the suggestion made by the Delegation of France and indicated that it would send a circular to the Offices of all Contracting Parties, informing them of the proposed weekly publication of the Bulletin and inviting them to comment on the target date of January 1, 2012.

40. In reply to a question by the Delegation of Spain concerning the proposed implementation date, the Secretariat confirmed that the said date would be reconsidered if an Office indicated that it would not be ready to implement the weekly publication cycle as from January 1, 2012.

41. The Chair noted that the International Bureau would send a circular to the Offices of all the Contracting Parties inviting them to comment on the target date of January 1, 2012, for the implementation of weekly publication of the *International Designs Bulletin*.

Updating the Legal Framework

42. Upon invitation by the Chair, the Secretariat introduced the second part of the document relating to the legal framework applicable to the Bulletin. The Secretariat explained that the proposed amendments to the Common Regulations were contained in Annex I to the document and the proposed amendments to the Administrative Instructions for the Application of the Hague Agreement (hereinafter referred to as "the Administrative Instructions") were contained in Annex II to the document.

Proposed amendments to Rule 26(3) of the Common Regulations and Section 204(d) of the Administrative Instructions

43. The Secretariat recalled that Rule 26(3) of the Common Regulations provided that the electronic communication by the International Bureau of the publication date of the Bulletin on the WIPO website was deemed to replace the sending of the Bulletin referred to in

Article 10(3)(b) of the 1999 Act and Article 6(3)(b) of the 1960 Act. It was now proposed to amend Rule 26(3) to the effect that it was the publication of an issue of the Bulletin on the WIPO website itself that would be deemed to replace the sending of the Bulletin referred to in the said Articles.

44. In case of a weekly publication cycle, the Bulletin could be published on a given day of the week. In this context, the Secretariat noted that the official publication of the Madrid System for the International Registration of Marks entitled the *WIPO Gazette of International Marks* took place every Thursday on the WIPO website. As a consequence, the electronic communication of the publication date by the International Bureau would become superfluous. Nevertheless, this could remain optional so that at the express wish of the Office of a Contracting Party, that communication would be sent. It was therefore proposed to amend Section 204(d) of the Administrative Instructions, so as to keep the email alert optional.

45. In reply to a question by the Delegation of Denmark, the Secretariat recalled that the electronic communication took the form of an email alert automatically generated and sent to the Offices of all Contracting Parties, regardless of whether or not a given Contracting Party was designated in any international registration published in the issue of the Bulletin at hand. The email alert was simply a reminder of the fact that a new Bulletin had been published on the WIPO website.

46. The Delegation of Indonesia raised concern about the possibility of cyber crimes and the security of emails. In reply, the Secretariat explained that the email alert did not contain any confidential information and did not have any legal effect. The Secretariat emphasized that the refusal period started from the publication date of the Bulletin on the WIPO website.

47. The Delegation of Lithuania asked whether any document specified the cycle of publication of the Bulletin and, if not, in which document the new cycle would be mentioned.

48. In reply to a question by the Delegation of Lithuania, the Secretariat said that the publication cycle would be indicated in an Information Notice, issued by the International Bureau and published on the WIPO website.

49. The Delegation of Tunisia wondered whether Section 204(d) of the Administrative Instructions constituted an exception to the principle stated by Rule 26(3) of the Common Regulations. The Delegation further inquired whether there were any legal consequences as to the publication date and the refusal period, if the Office did not receive the email alert.

50. The Secretariat stated that the proposed amendments to Rule 26(3) of the Common Regulations did not change the legal framework relating to the publication of the Bulletin. The email alert was for information purposes only and the publication of the Bulletin on the WIPO website constituted the legal effects, such as the beginning of the refusal period. The Secretariat recalled that the starting point of the refusal period for all designated Contracting Parties was the publication date of the Bulletin.

51. In addition, the Secretariat indicated that, if the new publication cycle of the Bulletin were to be approved by the Hague Union Assembly, the International Bureau would publish an Information Notice on the WIPO website to inform users and third parties.

Proposed amendment to Section 601 of the Administrative Instructions

52. As background to the proposed amendment to Section 601 of the Administrative Instructions, the Secretariat explained that in accordance with Article 11(5)(a) of the 1999 Act and Article 6(4)(b) of the 1960 Act, the holder of the international registration could, at any time during the period of deferment, renounce the international registration in respect of all the

designated Contracting Parties. In this case, the industrial designs that were the subject of the international registration would not be published. In addition, pursuant to Article 11(5)(b) of the 1999 Act and Article 6(4)(b) of the 1960 Act, the holder could, at any time during the period of deferment, limit the international registration in respect of all the Contracting Parties, to one or some of the industrial designs that were the subject of the international registration. In such a case, the industrial designs affected by the limitation would not be published.

53. At present, Section 601 of the Administrative Instructions established that the request for the recording of a renunciation or limitation should be received by the International Bureau not later than three months prior to the expiry of the period of deferment. Otherwise, the international registration was published upon expiry of the period of deferment without account being taken of the request for recording of the limitation or renunciation. The Secretariat pointed out that new publication techniques allowed for the postponement of the latest time to request the recording of the limitation or renunciation, for example, from three months to three weeks prior to the expiry of the period of deferment.

54. The Representative of ECTA stated that the proposed postponement of the latest time to request the recording of the limitation or renunciation would be in the interest of the users of the Hague system. The Representative, referring to the observations in the submission by MARQUES, drew the attention of the *ad hoc* Working Group to the important safeguards for users set out in paragraph 50 of the document. In line with that paragraph the preparation time of the publication should be long enough so that in the event of possible technical problems, the interests of the holders were safeguarded.

Proposed amendments to the titles of Chapter 6 and Rule 26, and to Rules 26(2), 28(2)(c) and (d), 34(3)(b) of the Common Regulations, and proposed amendments to Sections 204(a)(i) and 402(b) of the Administrative Instructions

55. The Secretariat introduced the proposed amendments to the Common Regulations relating to the duty of the International Bureau to publish certain information and recalled that, since the discontinuation of the CD-ROM versions of the Bulletin, the International Bureau complied with its publication duty by issuing the specific "Information Notices" on the WIPO website. Furthermore, all the information was accessible under distinct threads on the WIPO website, such as "Fees", "Legal texts" or "About members". The Secretariat pointed out that the WIPO website itself had become the central source of official information about the Hague system. The information was more readily available under different threads on the website than if that information were included in the Bulletin. The Secretariat underlined that the proposed amendments merely aimed at reflecting current practice, by replacing the reference to the Bulletin in the said provisions with a reference to the WIPO website.

56. The Representative of OHIM asked whether it was necessary to amend the Common Regulations and Administrative Instructions in that respect since every issue of the Bulletin was also published on the WIPO website.

57. In reply, the Secretariat said that the said provisions currently stated that the information should be published in the Bulletin itself. The proposed amendments were of a cosmetic nature, so as to reflect a more efficient way to publish the information under different threads on the website. The Secretariat pointed out that the said provisions were drafted at the time when there was no specific webpage for the Hague system on the WIPO website.

58. The Representative of ECTA, expressing support for the proposed amendments, emphasized that from the user's point of view those amendments reflected the "state of the art".

59. The Delegation of Poland inquired about the dimensions of the representations as prescribed in Section 402 of the Administrative Instructions. In reply, the Secretariat noted that the section defined the maximum and minimum dimensions for publication purposes.

60. The Chair concluded that the *ad hoc* Working Group recommended that a proposal to amend the Common Regulations with respect to the titles of Chapter 6 and Rule 26, and with respect to Rules 26(2) and (3), 28(2)(c) and (d), and 34(3)(b), as provided in Annex I to document H/LD/WG/1/2, be submitted, for adoption, to the Assembly of the Hague Union.

61. The Chair concluded that the *ad hoc* Working Group recommended that a proposal to amend Sections 204(a)(i) and (d), 402(b) and 601 of the Administrative Instructions, as provided in Annex II to document H/LD/WG/1/2, be submitted for consultation, to the Assembly of the Hague Union.

AGENDA ITEM 5: PROPOSAL FOR A NEW RULE ON THE REFUSAL OF THE EFFECTS OF THE RECORDING OF A CHANGE IN OWNERSHIP IN THE INTERNATIONAL REGISTER

62. Discussion was based on document H/LD/WG/1/3 as well as on a first draft of possible model forms for a "Certificate of Transfer" and "Transfer Document", as prepared and circulated by the Secretariat in the course of the meeting.

Possible New Rule on the Refusal of the Effects of the Recording of a Change in Ownership

63. The Chair introduced document H/LD/WG/1/3 which consisted of two parts: one dealing with a proposed new Rule on the refusal of the effects of the recording of a change in ownership in the International Register and the other relating to a possible establishment of standard forms, where the change in ownership resulted from a contract.

64. Upon invitation by the Chair, the Secretariat presented the document in detail. As a major advantage of the Hague system, the Secretariat mentioned the "central management of international registrations", which meant that at the request of the holder of an international registration, a change in ownership or any other modification affecting an international registration, might be recorded in the International Register in respect of all the designated Contracting Parties concerned by the modification. Pursuant to Article 16(2) of the 1999 Act, any such recording had the same effect as if it had been made in the Register of the Office of each Contracting Party concerned. There was one exception, however, to that rule, namely, in the case that a Contracting Party had made a declaration under Article 16(2) of the 1999 Act to the effect that the recording of a change in ownership in the International Register had no effect in that Contracting Party until the Office of that Contracting Party had received the statements or documents specified in the said declaration. The Secretariat explained that, from the legal point of view, until such statements or documents had been received by the Office, the international registration remained in the name of the transferor with respect to the Contracting Party having made the said declaration.

65. As regards the recording of a change in ownership in the International Register, the Secretariat explained that the change in ownership was recorded in the International Register in respect of all the designated Contracting Parties affected by the change despite the fact that its effect in some Contracting Parties might be pending the compliance with the requirements as stated in the declaration under Article 16(2) by those Contracting Parties, respectively.

66. The Secretariat stressed that there was currently no mechanism in the Hague system to allow the Offices to remind the holder of the international registration that the required statements or documents had not been received or to notify the International Bureau of that fact. Since Article 16(2) did not set up any follow-up procedure, it created an open-ended situation. That could be problematic for the holder, the Office concerned and third parties who might not be aware that the change in ownership had not taken effect unless they consulted the Office concerned.

67. The Secretariat recalled that, at present, only two Contracting Parties, namely Denmark and OAPI, had made a declaration under Article 16(2) but it was expected that some prospective Contracting Parties would make the same declaration. The Secretariat therefore stressed the importance of addressing that issue.

68. To enhance the transparency of the Hague system, it was proposed to establish a mechanism to update the International Register with feedback from the Office of a designated Contracting Party. The introduction of a new Rule allowing the Office of a Contracting Party to refuse the effects of the recording of a change in ownership in the International Register in the territory of that Contracting Party would be in the interest of third parties, as it would provide them with accurate information as to the identity of the holder of the rights deriving from the designation of the said Contracting Party.

69. The Secretariat went on to explain that the proposed new Rule would also be in the interest of some current or prospective Contracting Parties, where the change in ownership was incompatible with their national laws. For example, under national laws providing for the “similar design” system or the “related design” system, two industrial designs recorded under such a concept may not be transferred separately from each other.

70. The Secretariat further pointed out that a similar provision was contained in Rule 27(4) of the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (hereinafter referred to as “the Madrid Regulations”). The Secretariat explained that the proposed new Rule envisaged a period of six months beginning from the date of publication of the change in ownership or the applicable refusal period, whichever expired later, to an Office to declare that the change in ownership had no effect.

71. The Delegation of Denmark supported the introduction of the proposed new Rule 21*bis* to the Common Regulations. The Delegation referred to Rule 27(4) of the Madrid Regulations and explained that that rule had been applied in Denmark in very rare and obvious cases. In addition, the Delegation inquired whether the proposed new Rule would apply to any Contracting Party or only to Contracting Parties that had made the declaration under Article 16(2) of the 1999 Act.

72. In reply to the inquiry by the Delegation of Denmark, the Secretariat confirmed that the proposed new Rule 21*bis* would apply to all Contracting Parties.

73. The Representative of ECTA, underlining that the current situation gave rise to legal uncertainty as to the accuracy of the information recorded in the International Register, expressed its support for the introduction of the proposed new Rule 21*bis*.

74. The Delegation of the Republic of Korea announced that its country had decided to accede to the 1999 Act and that the necessary preparations for accession were ongoing. The Delegation referred to the provisions in its national law, which provided for the “similar design” system. The Delegation explained that under the “similar design” system, any design which

was similar or related to a principal design should contain a reference to the said principal design and the similar or related design and the principal design may not be transferred separately from each other. The Delegation stressed the need to allow Contracting Parties to refuse the effects of the recording of a change in ownership, if so provided for by their domestic law, and expressed its full support for the proposed new Rule 21*bis*.

75. The Delegation of Japan, indicating that the law of Japan provided for a system similar to the one described by the Delegation of the Republic of Korea, supported the proposed new Rule 21*bis*.

76. The Delegation of France, supported by the Representative of BOIP, suggested replacing, in the French version, the words “ancien titulaire” with the word “cédant”, in paragraph 1 of the proposed new Rule 21*bis*. The Delegation further suggested adding the word “titulaire” in the last sentence of paragraph 5 of the proposed new Rule 21*bis*. In addition, the wording “en notifie” in the same paragraph might require revision.

77. The Delegation of Spain said that the terminology used should also be reflected in the Spanish version.

78. The Chair invited the delegations and representatives to comment on a possible date of entry into force of the proposed new Rule 21*bis*.

79. The Representative of ECTA stressed that the application of the proposed new Rule as soon as possible was in the interest of the users of the Hague system.

80. The Secretariat proposed January 1, 2012, as the date of entry into force of the said new Rule, if the Rule was adopted by the Assembly of the Hague Union.

81. The Chair concluded that the *ad hoc* Working Group recommended to the Hague Union Assembly the introduction into the Common Regulations of proposed new Rule 21*bis*, as reproduced in Annex I to document H/LD/WG/1/3, subject to editorial corrections to the French version thereof, with January 1, 2012, as the date for its entry into force.

Establishment of Model Forms

82. Upon invitation by the Chair, the Secretariat explained that standardization of statements or documents that may be required by Contracting Parties that had made a declaration under Article 16(2) of the 1999 Act in terms of model forms could be feasible. In that context, the Secretariat referred to Model International Forms in respect of a certificate of transfer as provided for under the PLT and the Singapore Treaty and a transfer document as provided for under the Singapore Treaty, produced in Annexes II to IV to document H/LD/WG/1/3. The Secretariat stressed that the establishment of the model forms was not only in the interest of Contracting Parties that had made the declaration under Article 16(2) of the 1999 Act but also in the interest of the applicants, from all the Contracting Parties. A first draft of possible model forms for a “Certificate of Transfer” and “Transfer Document” was distributed to the Delegations in the course of the meeting.

83. The Representative of ECTA stressed that, given the fact that formal requirements in some countries were very high, the implementation of model forms would simplify the procedures and would be beneficial to the users.

84. In reply to an inquiry by the Delegation of Japan, the Secretariat said that the time limit for the submission of the said model form to the Office of a Contracting Party was in line with the national laws and practices of the Contracting Parties.

85. The Delegation of Denmark said that it was in favor of the establishment of the model forms based on the Model International Forms under the Singapore Treaty and expressed its support for the draft model forms, as circulated by the Secretariat in the course of the meeting. The Delegation indicated, however, that those draft model forms would have to be further examined, also taking into account the discussion in the SCT concerning a possible treaty on industrial design application and registration formalities.
86. The Representative of ECTA suggested referring to “total transfer” and “partial transfer” in brackets, in the third box of the draft model form entitled “Industrial Design(s) Affected by the Transfer”. The Representative said that the draft model forms would be analyzed by ECTA Designs Committee and that it would submit its comments on the forms in due course.
87. In reply to a question raised by the Representative of ECTA as to the format of additional sheets to be attached to the forms, the Secretariat confirmed that there was no decision taken as to the said format. The Secretariat indicated that any comments from users and Offices were welcome and could be addressed directly to the Secretariat.
88. The Delegation of Spain expressed its appreciation for the efforts made by the Secretariat to make the draft model forms available, in three languages, in the course of the meeting.
89. In reply to a comment by the Delegation of Switzerland, the Secretariat stated that the first item of the third box, entitled “Industrial Design(s) Affected by the Transfer”, concerned a total change in ownership, in respect of all the designs contained in one or more international registrations, and that the second item dealt with a partial change in ownership, in respect of one international registration only. However, the second item could be divided to cover different options.
90. In reply to an inquiry by the Delegation of China, the Secretariat explained that the forms would apply only to transfers of ownership resulting from a contract. As to the possibility, for a Contracting Party, to ask for additional information despite the use of forms, the Secretariat referred to Article 8(3)(c) of the Singapore Treaty, which provided that a Contracting Party may require that evidence be filed with the Office where the Office may reasonably doubt the authenticity of any signature of a communication on paper. The Secretariat also referred to Rule 16(6) of the PLT Regulations, which stated that a Contracting Party may require further evidence to be filed with the Office only where that Office may reasonably doubt the veracity of any indication contained in the request and in any document referred to in the said Rule.
91. In reply to a comment by the Delegation of Singapore concerning the transfer of international applications, the Secretariat said that a change in ownership seldom took place before the recording of an international registration. In general, a change in ownership took place after the registration.
92. Finally, the Secretariat referred to a WIPO project related to the Digital Access Service (DAS) for the uploading and sharing of priority documents. The Secretariat mentioned that there was a proposal to expand the system to other types of documents, in particular, to documents required by Offices in respect of a change in ownership. The Secretariat invited the *ad hoc* Working Group to consider the said proposal and the documents related to the third session of the Working Group on the Digital Access Service for Priority Documents, which was to take place from July 12 to 15, 2011.
93. The Chair concluded that the *ad hoc* Working Group wanted the International Bureau to pursue the development of possible model forms and that, in that respect, the International Bureau would take into account any comments made by Offices and user groups as well as developments in the Digital Access Service environment.

AGENDA ITEM 6: SITUATION OF THE 1934 ACT AND THE 1960 ACT OF THE HAGUE AGREEMENT

94. Discussions were based on document H/LD/WG/1/4 entitled "Situation of the 1934 Act and the 1960 Act of the Hague Agreement", prepared by the International Bureau.

95. The Chair introduced document H/LD/WG/1/4 and specified that it dealt, on the one hand with the 1934 Act, the application of which had been frozen since January 1, 2010, and, on the other hand, with the situation of the 1960 Act in comparison with the geographical expansion of the 1999 Act.

96. Upon invitation by the Chair, the Secretariat presented the document. The document provided the *ad hoc* Working Group with an update of the status of the Hague system. The Secretariat recalled that the Contracting States to the 1934 Act had agreed that the next step would be the termination of that Act. Those Contracting States that had not yet given their consent to the termination of the 1934 Act or denounced it, were encouraged to do so in order to simplify the architecture of the Hague Agreement.

97. The Delegation of Tunisia confirmed the willingness of its country to terminate the 1934 Act and to accede to the 1999 Act. The Delegation indicated that the consent to the termination of the 1934 Act and the instrument of accession to the 1999 Act would shortly be communicated to the Director General of WIPO.

98. The Delegation of Spain announced that a communication by Spain regarding consent to termination of the 1934 Act had been initiated. After being approved by the Parliament, the Delegation believed that the consent to termination of the 1934 Act could be communicated to the Director General of WIPO before the end of the year.

99. The Representative of ECTA appreciated the efforts made by the Contracting States to the 1934 Act to terminate the said Act and encouraged them to accede to the 1999 Act. It also stressed that a system based on one Act only, namely the 1999 Act, would be more user-friendly.

100. The Chair pointed out that, as long as two Acts were applied in parallel, namely the 1960 Act and the 1999 Act, the system would remain complicated for users and it would maybe be time to upgrade from the 1960 Act to the 1999 Act.

101. As regards the 1960 Act, the Delegation of Germany noted that there were users which still designated Germany under that Act and said that it could not at that stage express a position as to the future of the said Act. The Delegation mentioned that it might be useful to ask for the view of users and to consult the interested circles in that respect.

102. The Secretariat recalled that there was currently no proposal to freeze or terminate the 1960 Act. The Secretariat stressed the natural erosion of the 1960 Act because of Contracting Parties acceding to the 1999 Act. The Secretariat, referring to the comment by the Delegation of Germany, confirmed that before reverting to any action such as the freezing of the 1960 Act, consultation of the users would be carried out. The Secretariat, however, noted that in the course of the meeting, user groups had been in favor of a single Act system focused on the 1999 Act only.

103. The *ad hoc* Working Group took note of the information provided in the document.

AGENDA ITEM 7: OTHER MATTERS

Recommendation to the Assembly of the Hague Union to Establish a Working Group to Address the Legal Development of the Hague System

104. The Secretariat, referring to the opening remarks of the meeting by Mr. Gurry, recalled that some features of the 1999 Act were still to be implemented in the administration of the Hague system. It was important that the work should start to look into the implementation of those features in the collegial context of a Working Group. In the Program and Budget for the 2012-2013 biennium, a provision was made for the holding of two sessions of a Working Group.

105. The Delegation of France expressed its support for the establishment of a Working Group to address the legal development of the Hague system.

106. The Representative of ECTA was in support of the establishment of a Working Group in order to move towards a single Act, since streamlining of the Hague system was favored by the users.

107. The Chair concluded that the *ad hoc* Working Group agreed to recommend to the Assembly of the Hague Union the establishment of a Working Group to address the legal development of the Hague system.

AGENDA ITEM 8: SUMMARY BY THE CHAIR

108. The *ad hoc* Working Group approved the Summary by the Chair as contained in Annex I to the present document.

AGENDA ITEM 9: CLOSING OF THE SESSION

109. The Chair closed the session on June 1, 2011.

[Annexes follow]



H/LD/WG/1/5
ORIGINAL: ENGLISH
DATE: JUNE 1, 2011

***Ad hoc* Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs**

Geneva, May 30 to June 1, 2011

SUMMARY BY THE CHAIR

approved by the ad hoc Working Group

1. The *ad hoc* Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs (hereinafter referred to as “the *ad hoc* Working Group”) met in Geneva from May 30 to June 1, 2011.
2. The following members of the Hague Union were represented at the session: Bulgaria, Denmark, Estonia, France, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, Mongolia, Morocco, Norway, Poland, Republic of Moldova, Romania, Serbia, Singapore, Spain, Switzerland, The former Yugoslav Republic of Macedonia and Tunisia (22).
3. The following States were represented as observers: Algeria, Canada, China, Haiti, Indonesia, Japan, Kazakhstan, Panama, Republic of Korea, Saudi Arabia and United States of America (11).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: Benelux Office for Intellectual Property (BOIP) and Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) (2).

5. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: *Association romande de propriété intellectuelle* (AROPI) and European Communities Trade Mark Association (ECTA) (2).

Agenda Item 1: Opening of the session

6. Mr. Francis Gurry, Director General of WIPO, opened the session of the *ad hoc* Working Group and welcomed the participants.

Agenda Item 2: Election of a Chair and two Vice-Chairs

7. Ms. Solvår Winnie Finnanger (Norway) was unanimously elected as Chair of the *ad hoc* Working Group, and Ms. Anne Loo (Singapore) and Mr. Gusztáv Szöllősi (Hungary) were elected as Vice-Chairs.
8. Ms. Päivi Lähdesmäki (WIPO) acted as Secretary to the *ad hoc* Working Group.

Agenda Item 3: Adoption of the Agenda

9. The *ad hoc* Working Group adopted the draft agenda (document H/LD/WG/1/1 Prov.) without modification.

Agenda Item 4: Issues relating to the publication and contents of the *International Designs Bulletin* and related proposed amendments to the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement

10. Discussion was based on document H/LD/WG/1/2.
11. The *ad hoc* Working Group considered document H/LD/WG/1/2 in detail.
 12. The Chair concluded that the *ad hoc* Working Group supported approach three elaborated in the document, on the understanding that the *International Designs Bulletin* will be published on a weekly basis.
 13. The Chair noted that the International Bureau will send a circular to the Offices of all the Contracting Parties inviting them to comment on the target date of January 1, 2012, for the implementation of a weekly publication of the *International Designs Bulletin*.
 14. The Chair concluded that the *ad hoc* Working Group recommended that a proposal to amend the Common Regulations with respect to the titles of Chapter 6 and Rule 26, and with respect to Rules 26(2) and (3), 28(2)(c) and (d), and 34(3)(b), as provided in Annex I to document H/LD/WG/1/2, be submitted, for adoption, to the Assembly of the Hague Union.
 15. The Chair concluded that the *ad hoc* Working Group recommended that a proposal to amend Sections 204(a)(i) and (d), 402(b) and 601 of the Administrative Instructions, as provided in Annex II to document H/LD/WG/1/2, be submitted, for consultation, to the Assembly of the Hague Union.

Agenda Item 5: Proposal for a new Rule on the refusal of the effects of the recording of a change in ownership in the International Register

16. Discussion was based on document H/LD/WG/1/3, as well as on a first draft of possible model forms for “Certificate of Transfer” and “Transfer Document”, as prepared and circulated by the Secretariat in the course of the meeting.
17. The Chair concluded that the *ad hoc* Working Group recommended to the Hague Union Assembly the introduction to the Common Regulations of proposed new Rule 21*bis*, as reproduced in Annex I to document H/LD/WG/1/3, subject to editorial corrections to the French version thereof, with January 1, 2012, as the date for its entry into force.
18. The Chair concluded that the *ad hoc* Working Group wanted the International Bureau to pursue the development of possible model forms and that, in that respect, the International Bureau would be taking into account any comments made by Offices and user groups as well as developments in the Digital Access Service environment.

Agenda Item 6: Situation of the 1934 Act and the 1960 Act of the Hague Agreement

19. Discussion was based on document H/LD/WG/1/4.
20. The *ad hoc* Working Group took note of the information provided in the document.

Agenda Item 7: Other matters

21. The Chair concluded that the *ad hoc* Working Group agreed to recommend to the Assembly of the Hague Union the establishment of a Working Group to address the legal development of the Hague system.

Agenda Item 8: Summary by the Chair

22. The *ad hoc* Working Group approved the Summary by the Chair as contained in the present document.

Agenda Item 9: Closing of the session

23. The Chair closed the session on June 1, 2011.

[Annex II follows]



H/LD/WG/1/INF/1
ORIGINAL: FRANÇAIS/ENGLISH
DATE: 31 MAI 2011 / MAY 31, 2011

Groupe de travail *ad hoc* sur le développement juridique du système de La Haye concernant l'enregistrement international des dessins et modèles industriels

Genève, 30 mai – 1^{er} juin 2011

***Ad hoc* Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs**

Geneva, May 30 to June 1, 2011

Liste des participants
List of Participants

*établie par le Secrétariat/
prepared by the Secretariat*

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[End of Annex II and of document]