

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

### **Eighth Session**

**Geneva, October 30 to November 1, 2019**

### **REPORT**

*adopted by the Working Group*

1. 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”) met in Geneva, from October 30 to November 1, 2019.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Armenia, Azerbaijan, Canada, Denmark, Estonia, European Union, Finland, France, Germany, Hungary, Israel, Italy, Japan, Lithuania, Morocco, Norway, Oman, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Singapore, Spain, Switzerland, Syrian Arab Republic, Turkmenistan, United Kingdom, United States of America, Viet Nam (32).
3. The following States were represented as observers: Belarus, China, Czech Republic, Jordan, Kazakhstan, Lao People’s Democratic Republic, Mauritania, Mexico, Nicaragua, Pakistan, Peru, Portugal, Seychelles, South Africa, Thailand, Trinidad and Tobago, Uganda (17).
4. Representatives of the following international intergovernmental organization took part in the session in an observer capacity: Eurasian Patent Organization (EAPO) (1).
5. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: Centre for International Intellectual Property Studies (CEIPI), European Communities Trade Mark Association (ECTA), International Trademark Association (INTA), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA) (5).

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

#### **AGENDA ITEM 1: OPENING OF THE SESSION**

7. Ms. Wang Binying, Deputy Director General, Brands and Designs Sector, World Intellectual Property Organization (WIPO), opened the eighth session of the Working Group and welcomed the participants.

#### **AGENDA ITEM 2: ELECTION OF THE CHAIR AND TWO VICE-CHAIRS**

8. Mr. David R. Gerk (United States of America) was unanimously elected as Chair of the Working Group, Mr. Si-young Park (Republic of Korea) and Ms. Irene Schatzmann (Switzerland) were unanimously elected as Vice-Chairs.
9. Mr. Hiroshi Okutomi (WIPO) acted as Secretary to the Working Group.

#### **AGENDA ITEM 3: ADOPTION OF THE AGENDA**

10. The Working Group adopted the draft agenda (document H/LD/WG/8/1 Prov.2) without modification.

#### **AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE SEVENTH SESSION OF THE WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE HAGUE SYSTEM FOR THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS**

11. Discussions were based on document H/LD/WG/7/11 Prov.
12. The Working Group adopted the draft report (document H/LD/WG/7/11 Prov.) without modification.

#### **GENERAL STATEMENTS**

13. The Delegation of Spain stated that it might be interesting to study possible flexibilities of the Hague System so as to increase access to the system.

#### **AGENDA ITEM 5: PROPOSAL FOR AMENDMENTS TO THE COMMON REGULATIONS**

##### **PROPOSAL FOR A NEW RULE TO PROVIDE FOR THE ADDITION OF A PRIORITY CLAIM AFTER FILING**

14. Discussions were based on document H/LD/WG/8/2.
15. The Secretariat explained that the document contained a proposal to introduce a new rule to allow the addition of a priority claim after the filing of an international application. The inclusion of such a new rule in the Regulations had already been envisaged during the Diplomatic Conference for the Adoption of a New Act of the Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter referred to as the "Diplomatic Conference") in 1999, and therefore the 1999 Act provided for a clear legal basis in this regard in Article 6(1)(b). This proposal was also in line with the Paris Convention for the Protection of Industrial Property. The Secretariat further explained that the addition of a priority claim had

been possible in the PCT System since 1998 and that the draft Design Law Treaty (DLT) also provided for such a possibility at the national or regional level. The Secretariat added that it had been 20 years since the adoption of the 1999 Act, and that the Hague System had since been expanding with new members. A high number of international applications, 45 per cent of those received in 2018, contained a priority claim. Therefore, the Secretariat believed that this proposal would benefit and safeguard applicants in case they omitted to claim priority at the time of filing.

16. The Delegation of Switzerland raised some concerns as the proposed rule did not seem compatible with its national law under which a priority claim could not be added after filing. In standard cases, national design registrations were published within one month after filing. The Delegation wondered whether this provision would require a similar amendment to the national application procedure. If so, it would extend the application procedure which was not in the interest of Swiss applicants or Swiss users.

17. The Delegation of the Republic of Korea expressed its support for the proposal. The Delegation added that the Korean law did not permit any correction or addition to priority claims after the date of application. However, it considered the date on which an international design application was published as the date when the application was filed with the Korean Intellectual Property Office (KIPO). Therefore, it supported the current proposal. The Delegation added that there had been cases in the past where the Office received different information on priority claims contained in the confidential copies and the published registration. The Office relied on the confidential copies for examination and all application information and search data were based on the information contained in the confidential copy. However, the International Bureau had not always made the necessary corrections regarding the discrepancy. A change in relation to a priority claim was critical bibliographic information for an application. The Delegation therefore requested that where a priority claim was added after filing, the International Bureau would take measures to ensure that the necessary corrections were made on time.

18. The Delegation of France stated that it understood the rationale and importance of the proposal and its benefit for applicants. The Delegation pointed out that, like Switzerland, its national law did not allow for the possibility of adding a priority claim after filing. The Delegation added that the proposed two-month time limit for the addition of priority claims might delay publication and take away the advantage of early publication. The Delegation was interested in the view of other Delegations whose Offices accept the late addition of a priority claim.

19. The Delegation of Japan expressed its support for the proposed amendment. The Delegation also supported the two-month time limit for the addition of a priority claim in cases of indirect filing, as outlined in paragraph 44 of the document. However, it suggested that the International Bureau promptly informed the applicant of the date of receipt, otherwise, the applicant might lose the opportunity to proceed with the addition of a priority claim. Secondly, in relation to paragraph 75 of the document, the Delegation added that the late addition of a priority claim might have an impact on the Contracted Parties that carry out substantive examination and receive confidential copies under Section 901 of the Administrative Instructions for the Application of the Hague Agreement (hereinafter referred to as the "Administrative Instructions"), and requested that the addition of priority claims should be promptly processed and notified to the designated Contracting Parties concerned. Thirdly, in relation to paragraph 72 of the document, the Delegation expressed its support for the charging of a fee for this new service. However, the Delegation requested clarification as to the calculation of the proposed amount. Finally, the Delegation added that, in relation to the effective date of the proposed amendment, it might affect its IT system and requested the timely sharing of

information on the changes, such as specifications of the XML format. The Delegation therefore stated that it seemed desirable that this amendment be implemented after resolving the current backlog of processing international applications and changes under Rule 21.

20. The Delegation of the United States of America expressed its support for the proposed amendment. The proposed rule would benefit applicants who might have inadvertently omitted a priority claim when filing and wished to add the priority claim afterwards. Such a provision to enable applicants to avoid inadvertent loss of rights was also provided in other systems, such as the PCT, and was an important feature in making these international filing systems applicant friendly.

21. The Delegation, however, believed that the proposal could be improved by also providing for the correction of priority claims. Such a provision could work in conjunction with Rule 22, addressing both instances where an applicant could have a need to make changes in relation to priority claims. The Delegation believed that relying on Rule 22 for the correction of priority claims might create some legal uncertainties. Rule 22 concerned corrections of an error concerning an international registration and provided that the International Bureau should modify the International Register. The correction of an application prior to international registration was not specifically provided for under Rule 22, thus creating legal uncertainty as to the validity of such a correction. Correcting the application under Rule 22 prior to registration effectively resulted in the designated Contracting Party not receiving notices of the correction, thus impeding the designated Contracting Parties' ability under Rule 22 to refuse the effects of the correction. The Delegation suggested that the Working Group considered the need for a further update of the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement (hereinafter referred to as the "Common Regulations") at the next session of the Working Group to better support that practice and ensure that the needs of the International Bureau and applicants were being appropriately accounted for. The Delegation added that Rule 22 gave designated Contracting Parties the right to refuse the effect of the correction. This potential refusal of a correction of a priority claim created a second source of legal uncertainty for applicants. Finally, the Delegation did not find the distinction between a correction and the addition of a priority claim to be clear in a variety of circumstances. For example, in an instance where the applicant mistakenly claimed priority to application A filed on day 1 and later realized the priority claim should instead be to application B filed on day 2, it was not clear whether the claim to application B was being added or the claim to application A was being corrected. The answer to this question could potentially depend on how the applicant's request was drafted, for example, a request to add application B and remove application A might be viewed as an addition whereas a request to correct application A to application B might be viewed as a correction, even though the final result was the same. However, this distinction in terminology was not without consequences. The correction might be handled differently and might trigger different abilities of designated Contracting Parties to refuse the change of the priority claim. As noted in the Working Group paper, other international systems did not have separate provisions dealing with the addition and correction of priority claims, notably PCT Rule 26*bis*.1, Article 13 of the PLT and Article 13*bis* of the draft DLT. The Delegation questioned whether it might be advisable to apply the same in the Hague System.

22. In response to the concern raised by the Delegation of Switzerland, the Delegation of the United States of America pointed out that the United States of America allowed the addition of priority claims until the second part designation fee was paid. Its national law provided for quite a substantial time limit for the addition of priority claims. The Delegation also echoed the concerns raised by the Delegation of Japan in relation to the XML structure which might require some IT changes on the part of the designated Offices to implement this rule.

23. The Delegation of the Russian Federation expressed its support for the proposed amendment. The proposal was in line with its legislation as its national law provided for the possibility to add a priority claim within a time limit of two months from the filing date. The Delegation believed that this proposal could help to ensure and protect the rights of the applicant filing an international application. Although this amendment might require some changes, in particular IT changes mentioned by other Delegations, the Delegation supported this proposal.
24. The Delegation of OAPI expressed its support for the proposal stating that it was in line with its legislation which provided for the possibility to add a priority claim up to three months after filing, subject to the payment of a fee.
25. The Delegation of the United Kingdom stated that its national law did not have specific provisions for the late addition of priority claims, but that the Office was able to consider any request on a case by case basis as a correction of a clerical error. The Delegation requested confirmation that the proposal required an addition of a priority claim to be requested within two months from the filing of the international application or prior to publication of the international registration, hence the request had to be made before the international registration was transmitted to designated Offices. In that case, the Delegation of the United Kingdom could support the proposal.
26. The Delegation of Hungary expressed its support for the proposal stating that its national law also allowed for the addition of a priority claim within a two-month time limit.
27. The Delegation of Spain observed that the possibility to add or correct a priority claim had been introduced in the PCT System many years ago. Although its national patent law did not allow for this at that time, it did not cause any problems when applicants entered the national phase as the application came with a corrected priority claim. This was not an impediment to the application being valid. Subsequently, the national patent law included the possibility of adding and correcting a priority claim. Currently, its national design law did not offer this possibility of adding or correcting a priority claim, but the Delegation did not see any problem with this proposal.
28. In response to the questions raised by the Delegations of France and Switzerland as to the possible difference between the international procedure on one hand and the national procedure on the other hand, as well as the question raised by the United Kingdom, the Secretariat confirmed that any addition of a priority claim under the proposed new rule would take place before the publication of the international registration. Therefore, designated Offices would receive an international registration that would contain the priority claim, without differentiating whether or not the priority claim had been added during the application stage. The effect of the international registration would be the same as a regularly filed national or regional application with the Offices.
29. In reply to the intervention made by the Delegation of Japan concerning an indirect filing, the Secretariat confirmed that the acknowledgment of receipt was sent to the applicant upon receipt of the application by the International Bureau. In relation to the question about confidential copies and the update of the data concerning the international registration, the Secretariat pointed out that this was the purpose of the proposed consequential amendment to Section 902 of the Administrative Instructions. The Secretariat confirmed that there was already a mechanism to update any change or correction made subsequently to the initial international registration for which a confidential copy had been sent. In relation to the question about the calculation of the proposed amount of 100 Swiss francs, the Secretariat pointed out that the proposed amount was lower than the amount of 144 Swiss francs payable for the recording of a change. This was due to the fact that the proposed new service would not be subject to an independent transaction, in particular when a priority claim was added before registration. The

Secretariat added that it did not have any estimate for the expected number of requests that it would receive but it expected the number to be less than one per cent of international applications according to the experiences in other systems. On the other hand, the proposed new provision was expected to work as a mere safeguard for applicants, hence the amount should be high enough to encourage applicants to claim priority at the time of filing so as to avoid extra workload for the International Bureau and possible inconveniences for examining Offices.

30. In relation to the question of corrections of priority claims, as raised by the Delegations of the Republic of Korea and the United States of America, the Secretariat clarified that an error could be corrected under Rule 22 if the error was attributable to the International Bureau. Moreover, as an exception, certain bibliographic elements, such as a date, name of person, address, or typos could be corrected by the International Bureau, even if the error was made by the applicant or holder, because otherwise the correct information would not be reflected in the International Register. This type of error in a priority claim could be corrected under Rule 22. In terms of priority claims, the Secretariat further explained that, due to the absence of the provision that the Working Group was considering at the moment, the International Bureau could simply not accept an addition of a priority claim after filing. With that exception, Rule 22 has been implemented in favor of users. For instance, where an applicant provided a wrong priority claim and requested correction at a later stage, as outlined in the example by the Delegation of the United States of America, the International Bureau could accept the replacement of the wrong priority claim with the correct priority claim under Rule 22 given that the information was erroneous. There was no time limit for the application of Rule 22, which was user friendly, but at the same time the Office of a designated Contracting Party could refuse the effect of a correction, for instance if the case was already closed after examination. Current Rule 22 and the practice of the International Bureau appeared to consider both sides and strike the right balance.

31. The Delegation of the United States of America reiterated its support for the proposal as this would make the system user friendly. The Delegation repeated its concerns regarding the reliance on Rule 22 as a vehicle to correct priority claims prior to registration, and enquired whether any designated Offices would refuse the correction, as they had a right to do so under Rule 22.

32. The Delegation of France stated that it did not intend to amend its national legislation to provide for the possibility of adding a priority claim after filing. The Delegation understood, however, the interests of users to have this option, and that the two systems could coexist side by side in the sense that this provision could be included in the Hague System and would not necessarily have to be included in the national legislation. The Delegation wondered whether there would be any imbalance given that applications would be treated differently, for example, this possibility would not exist for a national application whereas an applicant who chose to file an international application would have that possibility and end up with more rights than a person that had chosen to use the national system.

33. The Delegation of Spain understood the concerns raised by the Delegation of the United States of America. The PCT, the PLT, and the draft DLT contained provisions regarding the correction of priority claims. The Delegation wondered whether such a provision could be transferred to the Hague System in order to avoid discrepancies, possibilities of refusal or legal uncertainties. This Delegation would support the inclusion of these flexibilities into the Hague System.

34. The Delegation of Romania stated that their national legislation was the same as in France and Switzerland, and echoed the question raised by the Delegation of Switzerland.

35. In response to the interventions made by the Delegations of France, Romania and Switzerland, the Secretariat clarified that an international registration had the same effect as a domestically filed application. The fact that an international registration had been subject to the addition of a priority claim before it was communicated to designated Offices should be tantamount to the situation where an Office received an application that contained a priority claim. Admitting that it was a policy matter, the Secretariat explained that it would be compatible to have a national system that did not provide domestic applicants with the possibility of adding a priority claim to their already filed national application while applicants under the Hague System would be offered such a possibility. Moreover, this was not a matter of comparing the situation of a national applicant with that of an international applicant. Apart from very few exceptions, the international system could be used by the nationals of a member State with a view to obtaining protection within their home jurisdiction. The possibility in the international procedure to add a priority claim would benefit not only foreign applicants but also domestic applicants using the Hague System with a view to securing rights in their home jurisdiction.

36. In response to the concerns raised by the Delegation of the United States of America, the Secretariat stated that if it continued to handle corrections of priority claims under Rule 22, designated Offices could refuse the effect of that correction, as foreseen by that rule. This was a potential inconvenience or risk indicated by the Delegation of the United States of America, compared to allowing the corrections of priority claims to be handled under proposed new Rule 21 *bis*. The Secretariat wondered whether the correction of priority claims should be handled differently to other elements of the application which were factually wrong and needed to be corrected under Rule 22. One reason for an Office not to be willing to consider a corrected priority claim might be that, by the time the correction was communicated to the Office, that Office might have closed the examination of the international registration, or the examination of other potentially competing applications, and might not be willing to reopen these cases.

37. Finally, the Secretariat took note of the comment of the Delegation of the United States of America that there was no clear authority for the International Bureau to rely on Rule 22 to correct applications. The International Bureau provided that service to users to the extent that any such correction to a pending application did not lead to a specific notification or publication, but was simply reflected in the original publication of the international registration. If the Working Group so wished, this matter could be discussed at the next session. The Secretariat raised the question whether it would be appropriate to consider that important matter within the framework of the current proposal, and whether it would be appropriate that a consideration of the proposal at hand was dependent on that issue.

38. The Delegation of Azerbaijan stated that under its national law the applicant had the right to request the addition of a priority claim within two months from filing, which was in line with the proposed amendment.

39. The Delegation of Poland shared its view that in most European Union countries, priority claims had to be included at the time of filing. Regarding the possible inconsistency between the national and international systems, the Delegation stated that International Bureau carried out the formalities examination, and its national Office did not check the date, the number, the reproductions, etc. Hence, the Delegation expressed its support for the proposed amendment.

40. The Delegation of the United States of America expressed its support for the proposed amendment and noted that Working Group document H/LD/WG/8/6 proposed to extend the standard publication period to 12 months. In light of that, the Delegation wondered whether the

proposed two-month period could be extended to a longer period, such as four months, consistent with other intellectual property regimes such as the PCT System.

41. The Delegation of Poland noted that, while considering document H/LD/WG/8/6, the Secretariat presented a revised proposal for providing applicants and holders with the possibility to request immediate publication at any time during the 12-month standard publication period as proposed in the said document. In that context, the Delegation raised concerns regarding the interplay between the proposal for the late addition of a priority claim contained in document H/LD/WG/8/2 and the said revised proposal. The Delegation pointed out that there might be a situation where the applicant requested immediate publication after filing and soon thereafter requested to add a priority claim within the allowed two-month period but after the registration had already been published. The Delegation stated that the late addition of a priority claim should not be allowed after publication.

42. The Secretariat acknowledged that the wording in proposed Rule 22*bis*(1)(a) excluded the addition of a priority claim only where the application contained a request for immediate publication, but not where a request for immediate publication was made after filing. It suggested to propose alternative wording to new Rule 22*bis*(1)(a) that would address this issue.

43. The Delegation of Switzerland echoed the concerns raised by Poland and supported the proposal to amend the wording of proposed new Rule 22*bis* to address the concerns.

44. The Delegation of the United States of America raised its concern in terms of categorically prohibiting the request for immediate publication after filing in cases where a priority claim had been added after filing, and referred to the PCT provisions for reference which contained a time limit for the addition of a priority claim that balanced earlier publication of an application and the late addition of priority claims.

45. The Chair noted that the time limit for the addition of priority claims could be tied to “technical preparations of publication”, as in Rule 26*bis* in the PCT Regulations.

46. Taking into consideration the concerns expressed by the Delegations, the Secretariat made a revised proposal to the text of new Rule 22*bis*(1)(a) which stated that a request for the addition of a priority claim could only be made “before completion of technical preparations for publication”.

47. The Delegation of the United States of America supported the revised proposal.

48. The Delegation of Poland expressed its support for the revised proposal and requested clarification as to the difference between publication and completion of technical preparation for publication.

49. The Secretariat explained that the International Bureau needed some flexibility in order to cancel the publication of a registration that had been put in the publication cycle. Where an international registration had already been prepared for publication, the International Bureau might not be able to pull it out of the publication process. The provision requiring the request for the addition of a priority claim to be made before technical preparation for publication was finalized was a safeguard to ensure that the International Bureau was able to cancel the publication of a registration.

50. The Delegation of France raised the question why proposed new Rule 22*bis* was placed after Rule 22 which dealt with corrections.

51. The Secretariat explained that Rule 22 was considered as a provision closest to the new rule and it appeared more sensible to insert the new rule after Rule 22 rather than before it.



52. The Chair concluded that the Working Group considered favorably a proposal to add a new Rule 22*bis*, as revised during the session, to the Common Regulations, as set out in the Annex to the Summary by the Chair, and to amend Rule 15(2) of the Common Regulations and the Schedule of Fees, as contained in Annex I to document H/LD/WG/8/2, for adoption, to the Assembly of the Hague Union.
53. The Chair also concluded that the Working Group considered it desirable to amend Section 902 of the Administrative Instructions, as set out in Annex II to document H/LD/WG/8/2.
54. The date of entry into force of new Rule 22*bis*, and amended Rule 15(2), the Schedule of Fees and Section 902 of the Administrative Instructions would be determined by the International Bureau.

#### PROPOSAL FOR AMENDMENTS TO RULE 17 OF THE COMMON REGULATIONS

55. Discussions were based on document H/LD/WG/8/6.
56. The Secretariat introduced the document which contained a proposal to extend the current six-month standard publication period to 12 months. The Secretariat referred to the position paper received from JIPA in this regard.
57. The Secretariat explained that the maximum period of deferment was 12 months under the 1960 Act and 30 months under the 1999 Act. However, one third of the Contracting Parties to the 1999 Act did not allow for that maximum period of deferment or even prohibited deferment itself through a declaration under Article 11(1). The six-month standard publication period, which was adopted at the Diplomatic Conference in 1999, aimed to grant the same effect or benefit in all Contracting Parties as a de facto deferment which the applicant would have enjoyed if that person had filed an application in the same country. The 1999 Act was a flexible treaty that could accommodate different national and regional systems, including the prohibition of deferment of publication. With this flexibility and growing membership, however, it was getting difficult to ensure the intended purpose of standard publication. This was, in particular, the case where publication of domestic applications in a given Contracting Party took place only after the completion of a long examination process, and even after the payment of a patent or registration fee.
58. The Delegation of Spain requested clarification as to paragraph 39 of the document which stated that earlier publication could no longer be requested under the proposed new provision.
59. In response to the question raised by the Delegation of Spain, the Secretariat explained that paragraphs 38 and 39 of the document described the current practice in accordance with the precise wording of Article 11(4)(a) of the 1999 Act and Article 6(4)(b) of the 1960 Act. The provisions stated that the holder could request early publication at any time during the deferment period. Before the recent migration of the IT platform, there used to be a technical restriction for carrying out early publication during the six-month standard publication period. The new IT platform had potentially removed that restriction. If the Working Group preferred, the International Bureau could accept requests for early publication even while the standard publication period applied.
60. The Delegation of Japan expressed its support for the proposed amendment stating that a design could currently only be kept confidential for six months if a designated Contracting Party did not provide for deferment of publication or provided for deferment for a period less than six months. The proposal should make the Hague System more attractive to potential users who wished to keep their designs confidential until product launch. The Delegation strongly

supported the proposed amendment stating that the extension of the standard publication period could contribute to the improvement of the system and was expected to encourage the broader use of the system.

61. The Delegation of the United States of America stated that the proposal to keep designs secret longer than under the current provisions might provide competitive advantages to applicants. The Delegation noted that the document generally indicated that users had concerns with the current six-month period for standard publication, but did not identify any particular user groups voicing this concern. One user group was identified at the beginning, but the Delegation expressed interest to hear from the user groups attending this session of the Working Group whether they supported this proposal and whether they could share any other insights into this issue. The Delegation agreed with the statement in paragraph 21 of the document according to which applicants generally wished to control the timing of publication of designs as much as possible. Hence, the Delegation suggested to improve the proposal and allow a request for immediate publication to be also made during the standard publication period. This would be beneficial for applicants. Otherwise, applicants might not know at the time of filing whether to opt for the standard 12-month publication or to request immediate publication. The choice might effectively force more applicants to request immediate publication than under the current six-month standard publication period. The Delegation added that immediate publication raised further concerns, such as the need to secure local representation much earlier in order to file certain submissions timely, for example priority documents required by certain designated Contracting Parties. Providing the option to request immediate publication after filing would provide applicants with maximum flexibility to control the timing of publication of their international registrations.

62. The Delegation of Finland voiced some concerns in relation to this proposal as their national law only provided for a six-month deferment period, and wondered whether there might be a need to change the national law. In this regard, the Delegation stated that the proposed date of entry into force seemed quite soon.

63. The Delegation of the Republic of Korea expressed its support for the proposed amendment, with entry into force on January 1, 2021. Furthermore, the Delegation raised that, currently, the request for deferment of publication could only be made at the time of filing, after which the publication period could be shortened but not lengthened. Multiple Korean users had suggested that a request for an extension of deferment of publication be allowed for a certain period of time, even after filing, if an applicant had chosen standard publication. The Delegation suggested the following amendments: first, additions or corrections could be made to deferment of publication; second, the change from immediate publication to standard publication should be permitted; third, the change from standard publication to deferment publication should be permitted; and fourth, the deferment period could be extended. The Delegation requested the Secretariat to review the suggestions and come up with a positive conclusion.

64. The Delegation of France expressed its support for the proposed extension of the standard publication period because this was a particularly important period for applicants to finalize their products in order to put them on the market. Applicants wanted to be able to benefit from the confidentiality of their products. However, the Delegation did not want the publication to be systematically extended or deferred, but suggested this to be an option which was open to applicants at the time of filing.

65. The Delegation of the Russian Federation expressed its understanding for the proposal and the aim to increase the attractiveness and user-friendliness of the Hague System. However, its national law did not provide for deferment of publication. According to the statistics from 2018, only 10 per cent of the publications were deferred. The Delegation therefore wondered what the basis for the proposed extension from six to 12 months was. Moreover, its

Office did not currently receive confidential copies, and therefore there was a risk of a conflicting design being published and noticed later, which might lead to a number of complaints or disputes. Even if the Office were to receive confidential copies, the Delegation raised the concern over the use of confidential copies for disputes. The Delegation stated that the issue needed to be studied in-depth by its competent authorities, particularly the issue of confidential copies. Therefore, the Delegation was not currently able to fully support the proposal. The Delegation requested the International Bureau to discuss the issue with the users of the system, such as by way of a survey, in order to understand whether users supported the proposal, as well as the percentage of such users.

66. The Delegation of the United Kingdom raised some concerns and requested clarification whether the Secretariat had considered any negative impact on applicants of international applications designating European Union countries, as extending the publication period would also extend the time when designated Offices received the registrations. As substantive examination was carried out by national Offices, applicants would be disadvantaged in circumstances where an objection was made and the application was transmitted too late to file a national application within the 12-month grace period. The Delegation believed that the publication period should be less than the 12-month grace period currently allowed in the European Union. The Delegation wondered what analysis was carried out in order to show that the current six-month publication period was detrimental to users and that this change was necessary.

67. The Delegation of Poland expressed its support for the proposal. The Delegation stated that Poland did not allow for deferment of publication. The Delegation explained that it analyzed their publications and concluded to have informal possibilities to postpone publication in Poland.

68. The Delegation of Norway appreciated that the proposal considered the benefits for users. In this context, the Delegation highlighted that the needs of third parties should equally be taken into account. It was in the interest of third parties to obtain knowledge of the rights that existed in order to avoid infringement and to promote further innovation. Therefore, the Delegation believed that it was desirable to have a fast and efficient system for granting rights. Norway had a deferment period of six months in its national law, in alignment with a short examination period. The Delegation also wondered whether this proposal required a change to its national law. This would require public consultation and approval from its parliament. For this reason, the Delegation raised concerns about the proposed time of entry into force.

69. The Delegation of Romania expressed its support for the proposal explaining that Romania provided for a period of deferment of publication up to 30 months.

70. The Representative of JIPA explained that it was the first time that its Organization participated in the Working Group. JIPA consisted of about 1,000 members. It represented industries and users of the IP systems and provided opinions to related institutions around the world for the improvement of the IP systems. The Representative highly supported the proposal to amend the standard publication period from six months to 12 months. As outlined in scenario one in the position paper, especially in the automobile industry, there was a certain risk of filing a design application immediately if the design was to be published shortly. The issue concerned the novelty of new products, as well as the sales of current models. Some Contracting Parties did not allow for deferment of publication. Therefore, the amendment of the standard publication period from six to 12 months would be quite helpful for applicants to keep designs unpublished for 12 months even in those countries. The Representative believed that if the standard publication period was extended to 12 months, the majority of countries would use the Hague System. The Representative also requested to revise the proposal so as to include the possibility to request immediate publication after the filing of an international application, for example due to a change of a product announcement schedule, in order to enhance the applicant's discretion.

71. The Representative of INTA supported the statement made by JIPA adding that deferment of publication of an industrial design was of considerable importance, at least in certain branches of the industry and would be helpful to most applicants seeking industrial design protection. The Representative supported the suggestions made by the Delegations of the Republic of Korea, Spain and the United States of America, and supported by JIPA, including the possibility to request publication at any stage after the filing of an application, which became possible under the current IT system, according to the explanations given by the Secretariat. The Representative looked forward to introducing this new institutional feature into the Hague System.

72. The Representative of JPAA expressed its support for the proposal stating that the proposed amendment would bring more potential users to the Hague System.

73. The Secretariat explained that it was not proposed to impose a fixed period of 12 months for publication or to remove any of the options currently available in the system. It was merely proposed to extend the standard publication period from six months to 12 months. The applicant would still have the opportunity to request immediate publication if the applicant wanted to have the registration published as soon as possible. The Secretariat noted that current users supported the proposal and a great number of potential users were not using the system today because they could not reach protection in different jurisdictions while at the same time preserving the confidentiality of their designs, which was why they preferred to use the domestic route.

74. The Secretariat further explained that the notion of standard publication was entered into the system at the time of the negotiation of the Geneva Act with a view to putting the Hague applicant in the same situation as if that applicant had chosen the domestic route in those jurisdictions where they had longer examination processes and therefore delayed publication, but that jurisdiction did not allow for deferment of publication in respect of a Hague application. Users of the Hague System found the six-month publication period too short for that concept to reach its purpose, which was why it was proposed to extend that period to 12 months. As explained by the Delegation of Poland, its national law did not allow for deferment of publication and Poland had made a declaration that it did not allow deferment when being designated in a Hague application. Nonetheless, the Delegation confirmed that there were informal ways at the domestic level for applicants to postpone publication. This appeared to be the case in many jurisdictions. Even if the national legislation did not allow for deferment of publication, the applicant could delay publication and control publication through certain informal means. Those options were not available under the Hague System. The proposal aimed to balance this discrepancy by extending the standard publication period from six to 12 months.

75. In relation to the suggestions made by the Delegation of the Republic of Korea to go even further and to revisit certain other aspects of the deferment procedure, the Secretariat believed that it was premature at this stage to engage in a discussion. For example, it would be a serious technical constraint to allow an applicant who did not ask for deferment of publication at the time of filing to later move to deferred publication. On the other hand, the current IT system would allow an applicant who had relied on standard publication to request immediate or early publication, as currently existed under the deferred publication scheme. The Secretariat proposed to prepare a further amendment that would introduce the possibility for applicants to submit a request for early publication during the standard publication period.

76. The Delegation of Azerbaijan noted that the proposal was very important for users as it provided the opportunity to extend the period of confidentiality for their industrial designs. However, this might also hinder the examination of other designs which would result in a possible oversight. Hence, the proposed extension of the standard publication period might lead to an increase of such an oversight.

77. In reply to the intervention made by the Delegation of Azerbaijan, the Secretariat explained that there was a possibility for Offices to request confidential copies of registrations recorded by the International Bureau, in order to avoid such a potential risk. The Secretariat confirmed that the International Bureau would endeavor to communicate a confidential copy of a registration prior to publication to the Offices concerned.

78. The Delegation of the Russian Federation requested clarification in relation to the procedure after having received a confidential copy. According to its national legislation, if there was a refusal, the authorities had to explain the refusal grounds and, where applicable, refer to earlier rights. The Delegation wondered whether the competent authorities could use the confidential copy for that or whether this would amount to a violation of rules. The Delegation also wondered whether any other Delegations could explain how they carried out the review of the different applications and how confidential copies were used. The Delegation understood that certain industries were in favor of extending the standard publication period so as to keep their industrial designs confidential for longer. In other industries, for example the fashion industry, the life cycle of a product was rather short and they were brought to market and consumed quickly. The Delegation also echoed the views expressed by the Delegation of Azerbaijan. There could be disputes and as a consequence one designer could be forced to stop the production of their product. The Delegation therefore requested to consider the goodwill of different groups and industries that could be negatively affected by the proposed change.

79. The Delegation of Denmark noted the interventions made by the Delegations of Finland and Norway and wondered whether this proposal should be postponed to the next session of the Working Group.

80. Taking into consideration requests expressed by the Delegations and Representatives, the Secretariat made a revised proposal by adding a new subparagraph (iii) to Rule 17(1). The revised proposal enabled applicants to request earlier publication during the standard publication period if that period was extended from six to 12 months in order to give applicants more flexibility. In addition, Rule 17(1)(ii) had been consequently adjusted. The Secretariat pointed out that the text "subject to subparagraph (iii)" was deliberately presented in square brackets at the beginning of Rule 17(1)(ii) and requested the views of the Delegations whether this text should be included therein to add clarity. The Secretariat also clarified that the International Bureau could accept a request for immediate publication after filing under the existing subparagraph (i) as it currently stood.

81. The Representative of CEIPI suggested to number proposed new subparagraph (iii) as (iibis), and to keep current subparagraph (iii) as such.

82. The Delegation of the United Kingdom still had some reservations in relation to the extension of the standard publication period and its interface with the grace period. However, with the added possibility to request immediate publication, registrations could be published before the end of the 12-month period and be transmitted to Offices for substantive examination before the end of the grace period. Hence, the Delegation supported the amended proposal.

83. The Delegation of the United States of America believed that the new text proposed in square brackets in Rule 17(1)(ii) "subject to subparagraph (iii)" was necessary for clarification.

84. The Delegation of the Russian Federation reiterated its concerns with this proposal as the Office should not provide confidential copies to third parties before publication. In addition, the Delegation found the wording of amended Rule 17 complex.

85. The Chair noted that the concerns raised by the Delegation of the Russian Federation related to secret prior art and how the Office should handle this if the publication period was extended to 12 months. The Chair invited delegations from Examining Offices to share their practices in this regard and the Delegation of the Russian Federation to explain its practices in relation to domestic applications.

86. The Delegation of the Russian Federation explained that a change in their national legislation entered into force in 2019. An application for the registration of a design was not published unless the applicant requested publication. A published registration enjoyed certain protection until the patent had been granted. Otherwise, registrations were only published once the patent had been granted. If an earlier application for a similar design which had not been published was found during the examination procedure, the applicant would be informed about it, and could then decide to withdraw the application or continue to eventually get a patent. In the latter case, there would be a risk that the earlier applicant entered into a dispute procedure. This was why the Delegation was concerned about the extension of the standard publication period. If this period was extended to 12 months, the Office would only be able to inform the applicant that there was a third party with an unpublished earlier international registration who might enter into a dispute procedure. The Office would not be able to refuse protection simply because it had information about a possible conflicting international registration that could be published later.

87. The Chair noted that the system in the United States of America was very similar to the system as described by the Delegation of the Russian Delegation. Publication only occurred after a patent had been granted. The examination process might take a year or a few months, but it was not infrequent that it could take two years or even more. Hence, there was always a risk that so called submarine or below rights patents appeared. However, when analyzing the proposal, the Delegation of the United States of America did not believe that the new publication period would introduce any new issues. The Chair admitted that the extended publication period could theoretically increase the chance of those issues that already existed but, those issues actually did not occur frequently. The Chair added that most of the rejections from the United States Patent and Trademark Office (USPTO) were not related to prior art. The Chair believed that, from his experience in the Office, the proposed change was not likely to create any noticeable differences.

88. The Chair requested clarification from the Delegations which raised concerns about the possible timing of the entry into force of the proposed rule change and potential incompatibilities that might require some changes to their national laws.

89. The Delegation of Denmark noted that it did not raise any concerns in this regard.

90. The Delegation of the Russian Federation requested the Secretariat to conduct a user survey to find out whether the proposed extension was actually needed or desired by users. This would enable the Working Group to take into account the views of different user groups and to understand the total share of users who were in favor of this proposal. This survey would also help to understand how useful this proposal was for potential users of the Hague System.

91. The Secretariat expressed its understanding of the concerns reiterated by the Delegation of the Russian Federation. The International Bureau had received a document from JIPA supporting the proposal. The Secretariat proposed to formally reach out to all user groups and request them to consult with its members. It would report back on the findings of such an exercise to the Working Group.

92. The Delegation of the Russian Federation confirmed that that would be in line with its request so the Delegation could take a clear position at the next session of the Working Group on this issue. So far only one user group, which represented Japanese users only, supported the proposal and the Delegation believed that this was not sufficient to make a decision.

93. The Representative of INTA stated that it supported the proposal believing that it would satisfy its users.

94. The Delegation of the Russian Federation expressed its understanding that the Secretariat would carry out a survey to gather more statistical data and more objective information to assist the Working Group in making a decision at its next session and to subsequently be able to take this issue to the Assembly of the Hague Union.

95. The Secretariat added that it would also invite the Offices in this survey, especially those that supported this proposal, to also reach out to their local and national user groups to seek their views and get back to the International Bureau with their findings.

96. The Chair concluded that some Delegations were in favor of the proposal, as revised, and one Delegation was not comfortable with the proposal.

97. The Working Group requested the International Bureau to consult with user groups and report back on the findings at the next session of the Working Group.

#### PROPOSAL FOR AMENDMENTS TO RULE 21 OF THE COMMON REGULATIONS

98. Discussions were based on document H/LD/WG/8/7.

99. The Secretariat explained that the document concerned the requirements for the recording of a change in ownership. According to Rule 21(1)(b)(ii), a recording of a change in ownership can be requested and signed by the new owner. In that case, however, the request must be accompanied by an attestation from the competent authority of the holder's Contracting Party that the new owner appears to be the successor in title of the holder. The Secretariat added that this provision could work where, for example, the change in ownership resulted from a merger or division of a legal entity or in the case of bankruptcy or inheritance. In such a case, the signature of the holder was no longer available and the competent authority could be, for instance, the registry of commerce in the country. However, in most cases, a change in ownership occurred through a contract between two parties. The current wording of the provision appeared too restrictive for the International Bureau to be able to accept, for instance, a copy of an assignment document, even if it was certified by a notary public. The Secretariat explained that, in this regard, the PCT System contained a simple rule for the recording of a change, which was flexible enough to allow the International Bureau to accept a copy of an assignment document in a similar case. Therefore, the document proposed to relax the wording of Rule 21(1)(b)(ii) so as to allow the International Bureau to accept a copy of an assignment document where the request was submitted or made by the new owner. This proposal was also in line with the draft DLT.

100. The Secretariat requested to make a small correction to the document, relating to the inadvertent deletion of the letter "a" in the English version contained in the Annex to the document. The proposed text should read "signed by the new owner and accompanied by 'a' document providing evidence that the new owner appears to be the successor in title of the holder".

101. The Delegation of Denmark stated that Denmark was one of the relatively few countries that had made a declaration under Article 16(2) of the 1999 Act and that Denmark was presently not able to withdraw that declaration. The Delegation wondered whether the proposed change would have any effect on that declaration made by Denmark and a few other countries.

102. In reply to the intervention made by the Delegation of Denmark, the Chair clarified that the United States of America made the same declaration and that it was his understanding that there was no conflict between the Article 16(2) declaration and the proposed amendment. The Chair hoped that applicants were aware of their obligations under Article 16(2) and that they should submit the required documentation with respect to the change in ownership to the Offices of the relevant designated Contracting Parties. The proposed amendment would not eliminate that burden and the International Bureau should make that clear to holders, in the forms and on the available e-interface.

103. The Secretariat added that, as a similar issue, the International Bureau, to date, had not received an objection from any Contracting Party in this respect to recognize the effect of a change in ownership pursuant to Rule 21 *bis*.

104. The Delegation of Japan expressed its support for the proposed amendment stating that the proposal aimed at deleting the excessive burden on the holder, as well as the International Bureau, and provided an opportunity for the previous holder to make an objection. With respect to proposed new subparagraph (6)(c), however, the Delegation wondered whether, from the aspect of stability of rights, it appeared desirable to set a time limit for the objection by the previous holder, similar to Rule 21 *bis*(3).

105. In reply to the intervention made by the Delegation of Japan, the Secretariat clarified that the proposed provision was modeled on the provision that existed in the PCT System. The PCT System did not foresee a time limit for raising objections and it worked efficiently.

106. The Delegation of Spain raised the concern that, according to the proposal, the previous holder could cancel the recorded change in ownership without providing any proof although the new owner had provided proof that the latter had the right to be recorded as the holder. The Delegation questioned whether there was some safeguard for the new holder.

107. In reply to the intervention made by the Delegation of Spain, the Secretariat clarified that, in principle, the International Bureau would take any objection raised by the previous holder at face value. If there was any doubt as to the merits of such an objection, the International Bureau would endeavor to contact the parties concerned to see whether or not a mutually agreeable resolution could be found. If not, the practice would be to take the objection raised by the previous holder. In the context of the PCT, it was the understanding of the Secretariat that there were very few instances where this occurred and the Secretariat expected this to be the same in the Hague System.

108. The Delegation of the United States of America expressed its support for the proposed amendment of Rule 21(1)(b)(ii) stating that the proposed requirements were in line with other IP systems, notably the PCT and the draft DLT. The Delegation wondered whether a translation would be required regarding the submitted documentary evidence, how this was handled in the PCT System, and whether the process envisioned in the Hague System would be the same as in the PCT.

109. In reply to the intervention made by the Delegation of the United States of America, the Secretariat explained that if an assignment document was submitted in the original language, the International Bureau would do an examination of the document as submitted. In case there



was any doubt, the International Bureau would contact the person that submitted the document and, if a translation was required or if there was any doubt related to the document, the International Bureau would request clarification from the current holder or new holder.

110. The Representative of JPAA expressed its support for the proposed amendment as it could be a great help to users and their representatives. Under the current PCT and Madrid Systems, users were also not required to submit a certified document in relation to a change in ownership and there were no reported fraud cases. Thus, the Representative believed that the proposed amendment would also work well in the Hague System.

111. The Delegation of Spain supported the proposed amendment. The Delegation added that the Hague System should follow the practice in the PCT System. However, it could be useful to have some follow-up to the application of the proposed rule to see if there were any problems with the previous holders.

112. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 21, with a minor editorial correction to the English version thereof, as set out in the Annex to the Summary by the Chair, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2021.

#### **AGENDA ITEM 6: SITUATION OF THE 1960 ACT**

113. Discussions were based on document H/LD/WG/8/3.

114. The Secretariat explained that the 1960 Act had 34 member States of which only 10 member States had not acceded the 1999 Act. Of those 10 member States, only Morocco and Suriname were not member States of OAPI or the EU but both countries were expected to join the 1999 Act in the near future. The registration activity under the 1960 Act had diminished significantly. In 2018, only 3.6 per cent of all designations were made under the 1960 Act and only one international registration did not contain any designations under the 1999 Act. The Secretariat noted that the continued coexistence of these two treaties did not only create complexity in the Hague System and its procedure but also increased management and operational costs.

115. The Delegation of Italy stated that the national law for the ratification of the 1999 Act was with its Parliament and the Delegation hoped that the ratification could be completed soon.

116. The Delegation of Morocco stated that Morocco had completed the national accession procedure to the 1999 Act and hoped that Morocco could accede to the 1999 Act in 2020.

117. The Representative of CEIPI stated that it was pleased to hear the good news from the Delegations of Italy and Morocco and, according to the Secretariat, also from Suriname and that those accessions to the 1999 Act would simplify the Hague System. The Representative suggested to possibly take measures as timely as possible to prevent new States from acceding to the 1960 Act so as to avoid a situation again where two systems would have to be managed in parallel. The Representative suggested to consider the possibility of proposing to the Hague Assembly to freeze the application of Articles 23 and 24 of the 1960 Act.

118. In reply to the intervention made by the Representative of CEIPI, the Chair indicated that the Secretariat could look into this possibility in the future.

119. The Chair concluded that the Working Group took note of the contents of the document.

## **AGENDA ITEM 7: FINANCIAL SUSTAINABILITY OF THE HAGUE SYSTEM; POSSIBLE REVISION OF THE SCHEDULE OF FEES**

120. Discussions were based on document H/LD/WG/8/4.

121. The Secretariat introduced the document which contained a summary of the financial situation of the Hague System and a proposal for a possible revision of the Schedule of Fees. The Secretariat stated that the document aimed to respond to the recommendations noted by the WIPO Assemblies in 2017 and the interventions made at the Working Group and the Hague Union Assembly in 2018. The proposed fee increase followed the discussion of the Working Group at its fifth session in 2015, having noted a huge difference between the amounts of the basic fee for the first design and each additional design.

122. The Delegation of France expressed the wish to find a long-standing financial solution for the Hague System. Any discussion on a revision of the Schedule of Fees would need to be addressed with a high level of care in order to ensure that the system remained attractive to everyone. The Delegation stated that other types of fees could also be revised. In addition, the document stated that the accessions of member States with an examination procedure had increased the costs of the system. The Delegation noted that the discussion of the revision of the Schedule of Fees should perhaps be linked to an additional fee for those designations.

123. The Delegation of the United States of America referred to Article 23(4)(b) of the 1999 Act which expressly states that the amounts of fees referred to in Article 23(3)(i) should be fixed so that revenues of the Hague Union from fees and other sources should be at least sufficient to cover all the expenses of the International Bureau concerning the Union. Since this was currently not the case, either the fees would need to be raised or the expenses would need to be reduced. Reducing expenses did not seem tenable given the continuing expansion and growth in the membership of the system. The Delegation stated that the shortfall in the Hague Union's budget did not only hamper the International Bureau's ability to fund improvements in modernizing the Hague System, such as its IT systems, but the shortfall also burdened applicants of other systems, namely the PCT System, because the Hague Union was also required under Article 23(1)(c) to contribute to the common expenses of the Union in its proportional interest. The 2018 WIPO Annual Financial Report and Financial Statements identified that the Hague Union was currently short in its proportionate contribution and, as such, other Unions where the fees were paid by applicants using those systems were burdened with higher fees to cover this shortfall. The Delegation also remarked that 11 months after the IT transition, the Office still had not received XML data for the recordings concerning Article 16 and Rule 22. In addition, the Office encountered lengthy delays in receiving data concerning the second part of the fee, leading to delays in the issuance of US patents. Given the current budget situation of the Hague Union, the Delegation, while supporting the proposal to raise the basic fee for additional designs, believed it necessary to consider a few additional minor fee increases at this point. Accordingly, the Delegation proposed further minor fee increases to three additional fees in the Schedule of Fees, namely the basic fee for one design from 397 Swiss francs to 420 Swiss francs, the basic renewal fee for one design from 200 Swiss francs to 240 Swiss francs, and for each additional design from 17 Swiss francs to 50 Swiss francs. The Delegation believed that those modest fee increases would not be unexpected or burdensome to applicants given the current financial status and the fact that the fees had not been changed for 20 years.

124. The Delegation of Japan expressed its support for the proposed amendment. In addition, the Delegation considered it necessary to reflect on other measures to eliminate the deficit of the Hague Union. The Delegation requested the International Bureau to provide a roadmap or other measures to that end.

125. The Delegation of the United Kingdom believed that the Hague System should be financially sustainable while remaining accessible to users and fees should not be a barrier to access, particularly to small and medium-sized enterprises (SMEs). The Delegation raised some concerns in relation to the proposal to increase the fee and requested more explanations regarding the fee elasticity in the current model. The Delegation also requested the International Bureau to provide an analysis of the proposal made by the United States of America regarding further fee changes for consideration at the next session of the Working Group.

126. The Delegation of the Czech Republic stated that the impact of the fee increase on the filing behavior should be analyzed because an increase of the fee would not bring new income to the system if applicants changed their filing behavior afterwards. In addition, the Delegation suggested preparing an analysis of the unit costs for processing applications with only one design and applications with more than one design. This could be compared with the progress of unit costs after the accessions of member States which have a single design system.

127. The Delegation of China suggested to carry out consultations amongst enterprises and users before making a decision, as the fee increase might have large implications. The Delegation believed that improving the efficiency and user-friendliness of the system would ensure a better financial situation.

128. The Delegation of the Russian Federation requested clarification as to the numbers provided in the document, in particular how the increase of the fee for additional designs would increase the income. There appeared to be a discrepancy between the declining number of additional designs contained in applications and the necessary income to cover the deficit. The Delegation supported raising the fees and making the system financially stable while keeping the needs of users in mind. It noted that this issue was discussed during the last session of the WIPO Program and Budget Committee.

129. The Delegation of Switzerland expressed its support for the proposed fee increase given that the fees have not been changed for 20 years, while at the same time the membership had grown and made the system more attractive to users. The Delegation believed the proposed fee increase to be reasonable, indicating that the fee for each additional design under their national law was much higher, amounting to around 50 per cent.

130. The Representative of JIPA stated that Japanese companies were using the Hague System because it was cost effective and expressed its concern that the number of filings could decrease if the fees were increased.

131. The Secretariat explained that the fee elasticity study conducted by the Chief Economist had been limited due to too little information being available in respect of the Hague System, in particular the low number of filings. In addition, the Hague System had changed so much in recent years, making it extremely difficult to conduct a robust fee elasticity analysis. In relation to the question in respect of unit costs for single design applications compared to multiple design applications, the Secretariat referred to the WIPO Performance Report (WPR) discussed during the 2019 session of the WIPO Program and Budget Committee. In its Annex, it referred to unit cost for renewed designs and over the last three years the unit cost in respect of these designs had increased by some 50 per cent. Also, in general, the costs were going up per design. However, the Secretariat stressed that the Working Group should look at the matter from a design system point of view. The current fee structure contained an anomaly insofar as the fee for additional designs represented only four or five per cent of the basic fee for the first design. This had a historical background when applications were still filed on paper and the main workload related to the physical processing of the paper file. In that context, it made little difference whether an application contained one design or several designs. The work had evolved in the last 20 years, and so had the fees in most jurisdictions. In many jurisdictions, for

example, as pointed out by the Delegation of Switzerland, the fee for additional designs was much closer, if not equal, to the fee for the first design. The Secretariat pointed out that the proposal aimed at closing that gap.

132. In response to the intervention made by the Delegation of the Russian Federation, the Secretariat explained that the decrease of the number of additional designs in international applications was due to the recent accessions of Contracting Parties with a single design system in their national systems. Applicants designating those jurisdictions tended to file single design applications. In addition, applicants from those jurisdictions appeared to be accustomed to their respective systems and also tended to file single design applications. This proposal did not intend to penalize the applicants who included multiple designs in their applications but to compensate the current workload and expenses associated with the processing of the additional designs contained in an international application. The Secretariat stressed that this proposed fee increase would not cover all costs but would be a first step to improve the financial situation of the system.

133. The Delegation of Spain expressed its support for the proposed fee change despite the considerable increase of more than double and added that the next fee increase should be more gradual.

134. The Representative of the Czech Republic shared that applicants from the Czech Republic included, on average, around seven industrial designs per one international application.

135. The Delegation of the United Kingdom expressed its support for the proposed fee increase and welcomed more regular discussions in the future on the fee structure to ensure the ongoing financial sustainability of the system. The Delegation requested clarification whether the International Bureau intended to review the proposed fee increase.

136. The Chair clarified that it would be up to the Working Group to give directions to the International Bureau in that respect.

137. The Representative of CEIPI requested clarification as to why the Working Group did not increase all the fees for additional designs.

138. The Secretariat clarified that the Working Group could recommend in this session to also increase the basic renewal fee for additional designs included in the same international registration.

139. The Delegations of France, Spain, the United Kingdom, France and the United States of America stated that a study would be useful for reviewing and increasing the basic renewal fee.

140. The Delegation of the Russian Federation requested a comprehensive study to be prepared for the next session on the current situation and the impact of the different options proposed by other Delegations. The Delegation emphasized that a fee increase could negatively impact patent activities in its country.

141. The Delegation of the United States of America stated that its Office had had several increases in the fee amounts over the last 20 years, like many other Offices, but that they did not impact the number of filings. Hence, the proposed increase would not disrupt current filing trends but would be a significant step forward for addressing the deficit. The Delegation added that the fee increase needed to be considered in context. According to the *Hague Yearly Review 2019*, the average fee paid for a Hague application was around 1,800 Swiss francs. Therefore, the proposed fee increase represented only a four per cent increase for those

applicants that included more than one design in their applications and zero per cent for other applicants. If the costs paid for representation were factored in, the percentage would decrease even further.

142. The Representative of INTA suggested that the study should also contain a review of the complex fee structure. For example, the publication fee was important in the past when publication was done on paper and quite costly at the time. With the technology in place these days, the unit cost of an additional design for the publication of an international registration could not be identified. In addition, the Representative noted that for a balanced budget, one would not only need to look at the income but also the expenses, in which case more information than was provided in the present document would be necessary.

143. The Delegation of Spain suggested to consider an automatic review with specific parameters in the future so that users would be able to predict fee increases.

144. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Schedule of Fees in the Common Regulations, as contained in Annex IV to document H/LD/WG/8/4, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2021.

145. The Working Group requested the International Bureau to prepare, for discussion at its next session, a study on the possible increase of the amount of the basic fee for each additional design for the renewal of an international registration, and a broader review of the Schedule of Fees of the Hague System, for discussion at a future session.

## **AGENDA ITEM 8: POSSIBLE OPTIONS FOR THE INTRODUCTION OF NEW LANGUAGES INTO THE HAGUE SYSTEM**

146. Discussions were based on document H/LD/WG/8/5.

147. The Secretariat explained that, at its last session, the Working Group requested the International Bureau to prepare a detailed analysis describing several models and their implications for a possible expansion of the language regime of the Hague System. This document elaborated on the implications of introducing new languages into the Hague System and proposed different criteria for the introduction of new languages and different implementation options with their advantages and disadvantages. Estimated costs for the inclusion of Chinese and Russian were outlined in the Annex to the document.

148. The Delegation of Turkmenistan, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC) stated that it supported the inclusion of Russian as a working language into the Hague System, as this was demanded by the users and national Offices of its members. Russian was a working language of the Eurasian Patent Organization (EAPO). During the Diplomatic Conference on the Adoption of the Protocol on the Protection of Industrial Designs to the Eurasian Patent Convention, held in Nur-Sultan, Kazakhstan, on September 9, 2019, a protocol was concluded which allowed applicants to use a single application to protect their designs in the eight member States of EAPO by the creation of a single Eurasian patent for industrial designs. In light of the plans of EAPO to join the Hague System, including Russian into the Hague System was a necessary step. It would also accelerate the accession of two members of CACEEC to the Hague System, as well as increase the attractiveness and the number of international applications coming from CACEEC members. It would also increase the effectiveness and reduce the time needed to examine applications by national Offices, as, for example, Russian was a working language in a number of its members and around 92 per cent of the examiners had a good knowledge of Russian. The Delegation expressed the readiness of its members to provide all possible support, namely

for the adaptation of IT equipment to the Cyrillic alphabet and to provide Russian-speaking examiners. The Delegation believed that it was important to continue to look at the expansion of the language regime of the Hague System and that a balanced and effective translation regime was necessary.

149. The Delegation of Kazakhstan expressed its support for the proposal, stating that Kazakhstan was currently, with the help of the International Bureau, preparing to accede to the Hague System.

150. The Delegation of the Republic of Korea stated that the expansion of the language regime of the Hague System could lead to an increase of its membership and its utilization but would also add financial and administrative burdens. Therefore, the introduction of filing languages could be a reasonable way forward as a first step. The Delegation added that the Working Group needed to consider which languages should be introduced into the system. This question should be based on the contribution to the Hague System so that the inclusion of filing languages would be operationally and economically viable and benefit the largest possible number of current and potential users. Given the current financial difficulties of the Hague System, the addition of a new language should demonstrate that its inclusion would help the Hague System considerably in financial terms. Therefore, top priority should be given to the language of a country where the Hague System was used most actively. In this regard, the Delegation referred to document MM/A/42/1 of the Madrid Union, which defines the qualifications of an additional language as follows: any other language having met a dual eligibility threshold, namely being the language of the basic application or registration of at least a thousand international applications and representing a share of at least three per cent with the total number of international applications filed in a given year. The Delegation added that the Republic of Korea had met those criteria for the last four years. Korean applicants were one of the most active users of the Hague System despite the limited utilization of the system due to the language barrier. Currently, only a handful of Korean companies accounted for more than 90 per cent of the total of international applications filed by Koreans. According to paragraph 13 of document H/LD/WG/8/5, the number of designs contained in applications filed by Koreans abroad was 8,663 in 2017. However, designs contained in Hague applications accounted for only 17 per cent, or 1,531 designs. The Delegation stated that the inclusion of Korean as an official filing language in the Hague System would increase the number of applications from the Republic of Korea. The Delegation therefore proposed to discuss the inclusion of Korean into the Hague System.

151. The Delegation of the Russian Federation expressed its support for the inclusion of Russian in the Hague System. The number of Russian speakers in the world was around 300 million. Russian was the second language amongst Internet users and studied by more than 18 million throughout the world, with numbers increasing. The inclusion of Russian would increase the number of Russian-speaking users of the system. The Delegation offered its assistance to the International Bureau in carrying out translations and adapting the IT system to non-Latin fonts. The Delegation stated that the addition of Chinese and Russian would stimulate more interest from different countries and different regions and would increase the total number of applications. The translation regime should be sustainable and additional expenditures should be avoided, for example, by using automatic translation. The Delegation requested more information regarding the use of the current official languages and the costs spent on translations.

152. The Delegations of Armenia, Azerbaijan, Belarus, Serbia and Turkmenistan expressed their support for the inclusion of Russian as an official language into the Hague System. The Delegations of Azerbaijan and Turkmenistan stated that this would increase the number of international applications from Russian speaking applicants, as they would be able to use the system easily. The Delegation of Azerbaijan added that it would also help examiners to carry

out examinations easily if applications were filed and published in Russian. The Delegation of Armenia stated that Russian was one of the six official languages of the United Nations and used in all official events of WIPO. The inclusion of Russian into the Hague System would reduce the translation time of examinations of international registrations. The Delegation of Belarus noted that Belarus was currently preparing for accession to the 1999 Act. While national applications could be filed in one of the two official languages of Belarus, all recently received national applications were in Russian. Adding Russian to the Hague System would make the system more attractive to applicants in Belarus and the expenditures incurred by the introduction of Russian would be compensated by new applications from Belarus.

153. The Delegation of the United States of America stated that the introduction of new languages should not make filings under the Hague System cost prohibitive for applicants, delay publication of international registrations or introduce other inefficiencies undermining the key purpose of the system, namely facilitating industrial design protection in member jurisdictions across the world. The Delegation noted that the introduction of new languages would add administrative burden to the International Bureau as it would have to handle relevant material in an increasing number of languages. The Delegation added that a request for the addition of a language was likely to result in a push by other Contracting Parties for the introduction of their respective languages. Accordingly, the aggregate translation costs to cover multiple new languages could quickly multiply. Therefore, the discussion needed to consider the anticipated aggregate costs of multiple languages, not just the cost of a single language. In relation to the concept of a relay language, the Delegation raised the concern of the accuracy of translations, particularly with respect to the description of the characteristic features of a design. Inaccurate translations could present problems for applicants and Offices, and add to costs. Therefore, a comprehensive review should be carried out. The Delegation requested further clarification as to the assessment of the cost figures provided in the Annex to the document, the additional costs for the development and maintenance of the IT system, and the costs of new languages on a per application basis. It was also important to understand the effects such costs would have on applicants' behavior as to the use of the Hague System.

154. The Delegation of China stated that China was currently preparing for accession to the 1999 Act and that Chinese users were interested in using Chinese in the system. The Hague System was user-friendly and had always been adaptive to users' needs to promote a sound development of the system. The Delegation added that new applications were the main source of revenue and the development of the system depended on the number of applications. Only by improving the system and attracting more users, could more revenues be expected and prosperous and sustainable development be guaranteed. The introduction of new languages, especially Chinese and Russian, which were used by large populations with striving innovation activities, was extremely important to maintain the attractiveness of the system and to realize long term, prosperous investment. New languages would add to the linguistic diversity of the system, increase flexibility, attract more users, increase the number of applications and stimulate the system's development. The Delegation believed that it was possible to introduce several languages at the same time. In relation to the question of costs, the options suggested by the International Bureau of introducing filing languages or publication languages, as well as the use of indirect translation, would help to address this issue. The estimated cost increase remained limited compared to the potential increase of applications, and would significantly decrease in the future with advancing technology. The introduction of new languages through options with relatively low cost impact would maintain the balance between the sustainable development of the system and its attractiveness to more countries, regions and users.

155. The Delegation of Japan, supported by the Representative of JIPA, noted that while improving the system in order to enhance its user friendliness was important, careful considerations needed to be given to which language should be included to make the system user-friendly for the majority of its users, as well as to easing the workload of the International

Bureau and Offices, eliminating complicated procedures and addressing additional financial and human costs caused by additional translations and modifications to the system. The Delegation was strongly concerned about the financial and human costs which the introduction of a new language would cause to the system and noted that the costs should be realistically calculated based on the expected balances and the prospective increase in fees. The addition of a new language should be beneficial to all users of the Hague System.

156. The Delegations of Canada and Hungary raised concerns in relation to the inclusion of additional languages. The Delegation of Canada stated that it was a bilingual country and therefore supported the addition of new languages, particularly if this made the system more interesting for users. The Delegation however suggested to look at the broader scale at WIPO since the topic of multilingualism had also been discussed in other committees. The Delegation of Hungary added that the system already had an imbalanced financial situation and the addition of another financial burden would be immature. The Delegations of Canada and Hungary noted that a comprehensive in-depth analysis was necessary before taking further steps.

157. The Delegations of Finland and Switzerland noted that the addition of new languages would have a number of important implications for the IT system. For example, all external and internal IT tools in the Hague System were currently available in all three official languages and would need to be adapted. This could cause major difficulties, particularly with the introduction of a non-Latin font. The Delegations were concerned about the costs associated with the addition of new languages which would probably have to result in an increase of the fees. This would have a negative impact on the Hague System and for the users of the system. In addition, the Delegations were concerned about the impact on the quality of translations if automated translation tools were used, as was already experienced with the goods and services lists in the Madrid System.

158. The Delegations of France, Spain and the United Kingdom supported the need for a more detailed study on the potential impact on costs, fees and human resources in order to make an informed decision taking into account all the financial constraints. Given the previous discussion concerning the financial sustainability of the system, any new expenditures needed to be considered with great prudence in order not to threaten the longevity of the system. The Delegation of Spain added that the study could review whether a possible increase in applications and therefore incoming fees might offset the costs of introducing new languages into the system.

159. The Representative of JPAA stated that the introduction of a new language into the Hague System would have an impact on the translation and development of the IT system. Given the current financial situation, priority should be given to improving the current financial situation and maintaining the sustainability of the Hague System.

160. The Delegation of the Syrian Arab Republic expressed its support for the inclusion of Chinese and Russian as official languages into the Hague System.

161. The Secretariat noted that the expansion of the geographic reach of the Hague System warranted consideration of changes to the language regime so that users in new member States could use the system more effectively. The Secretariat also noted the intervention made by Turkmenistan in relation to the establishment of a regional design system administered by EAPO which would be operating in Russian and EAPO's plans to accede to the 1999 Act. It would be desirable that access to the new regional system through the Hague System be facilitated.



162. The Secretariat added that the language policy of WIPO needed to be taken into account in the discussion. Also, the Hague System could need to be aligned with the language regimes of other systems, particularly the PCT which included more than the six official United Nations languages, such as Korean and many others. At the same time, the financial situation of the Hague System should be taken into account. The Secretariat took note of the request made by several delegations that a further study would be desirable. Such a study could contain further cost implications beyond the translation costs, experiences at WIPO with different translation mechanisms – in particular the reliance on a relay language and present different criteria for the inclusion of a new language into the Hague System.

163. The Delegation of the Russian Federation requested clarification regarding the scope of the study, as it believed that such a study should be limited to the same subject matter and geographical scope as in document H/LD/WG/8/5, namely Chinese and Russian, which were two official languages of the United Nations. The discussion concerning the addition of new languages should be based on the six official United Nations languages and the language policy adopted by the General Assembly of WIPO in 2010, and not on qualitative or quantitative criteria since the Russian Federation had only become a member of the Hague System in 2018, and China was not yet a member of the Hague System.

164. The Delegation of the Republic of Korea reminded the Working Group that it proposed to include Korean as a filing language into the Hague System. The Delegation stated that Korean applicants had made a huge contribution to the system since its accession in 2014, and would be a potential contributor to the financial sustainability of the system. The Delegation added that there was still a lot of potential for increased use of the system by Korean applicants if Korean was added as a filing language since Korean users were very active in filing design applications abroad. The introduction of Korean as a filing language would also be a good starting point to the introduction of new languages as the financial burden would be very low, whereas the contribution would be very high.

165. The Delegation of the Russian Federation stated that the study should be limited to the inclusion of Chinese and Russian, whose proposal was submitted to the Working Group last year. No other proposal to include other languages had been submitted to the Working Group, as the Delegation understood that any proposal had to be submitted no later than one month before the meeting.

166. The Chair clarified that the verbal proposal made by the Delegation of the Republic of Korea during the session to include Korean as a filing language was sufficient and that no written paper was necessary as a matter of procedure and for further consideration by the Working Group.

167. The Representative of INTA pointed out that according to paragraph 18 of document H/LD/WG/8/5, the Hague System relied entirely on the Madrid translation resources and that as long as this situation continued, a potential development of the Hague language regime should be limited to the translation resources available under the Madrid System. Since the Madrid Working Group concluded at its last session in July this year that the International Bureau should undertake a comprehensive study of the cost implications and technical feasibilities of the gradual introduction of the other United Nations languages into the Madrid System, the Representative wondered whether there would be some coordination between those two studies.

168. The Chair confirmed the point raised by the Representative of INTA and added that the Hague System did not currently have the translation infrastructure to implement the introduction of a new language which was not a language in the Madrid System.

169. The Chair proposed to request the Secretariat to prepare a study that would consider the introduction of the proposed three languages, and possibly other languages, into the Hague System.

170. The Delegations of Spain, Switzerland and the United Kingdom expressed their support for the study as proposed by the Chair.

171. The Delegation of the Russian Federation requested to limit the study to the introduction of Chinese and Russian only.

172. The Delegation of the Republic of Korea noted that the PCT System was not limited to only the United Nations languages and that there was no reason to limit the introduction of new languages under the Hague System to those languages.

173. The Chair clarified that there was no restriction that the new languages had to be United Nations languages, as could be seen in other systems at WIPO.

174. The Chair proposed to request the Secretariat to prepare two items for discussion at the next session, firstly, a comprehensive study of the cost implications and technical feasibility of the introduction of the Chinese and Russian languages into the Hague System, and secondly, a paper on the criteria for the selection of additional languages.

175. The Delegations of France and the Republic of Korea requested clarification regarding the second item of the study as to whether it would specifically analyze the inclusion of the Korean language.

176. The Secretariat explained that the second item of the study could identify criteria for the expansion of the language regime, such as design filings abroad and under the Hague System. The inclusion of a new language would need to be relevant to users and potential users around the world and should make the system more attractive so that it could reach its potential in those markets where a language barrier might exist. The Secretariat added that the number of Korean filings would clearly speak for itself in that regard.

177. The Working Group requested the International Bureau to prepare, for discussion at its next session, an advanced study of the cost implications and technical feasibility of the introduction of the Chinese and Russian languages into the Hague System.

178. The Working Group also requested the International Bureau to prepare, for discussion at the next session, a paper on the criteria for the selection of additional languages for introduction into the Hague System.

## **AGENDA ITEM 9: OTHER MATTERS**

179. The Hague Information Systems Division provided an update on electronic data exchange with Offices and the ongoing transition from DDT to Standard ST.96. It informed the member States that the converter from DDT to ST.96 had been made available to Offices and appeared to work well. Offices were encouraged to contact the International Bureau if any further assistance was needed, specifically with regard to validations and testing. Regarding the converter from ST.96 to DDT, the Hague Information Systems Division explained that minor technical adjustments were being made based on feedback from some Offices, for example, some inconsistencies with entries encoded twice and double spaces. This converter was expected to be completed within the next two months, upon which it would be made available to Offices to convert from ST.96 back to DDT, if needed.

180. The Delegation of the United States of America stated that the Office had not been receiving XML data for the recordings concerning Article 16 and Rule 22 since the IT transition last year and asked when this would be made available.

181. The Hague Information Systems Division explained that it only recently became aware of this issue. It further stated that the problem was currently being treated with high priority within the Hague Information System Division and that the Office concerned would be directly informed of any updates.

182. The Delegation of Spain stated that the Office was currently working on electronic data exchange with WIPO and was hoping that there would be a clear technical solution in one or two months. The Delegation thanked the International Bureau for the assistance received.

183. The Working Group took note of the update.

#### **AGENDA ITEM 10: SUMMARY BY THE CHAIR**

184. The Working Group approved the Summary by the Chair, as contained in Annex I to the present document.

#### **AGENDA ITEM 11: CLOSING OF THE SESSION**

185. The Chair closed the eighth session on November 1, 2019.

[Annexes follow]



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H/LD/WG/8/8  
ORIGINAL: ENGLISH  
DATE: NOVEMBER 1, 2019

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

**Eighth Session**  
**Geneva, October 30 to November 1, 2019**

### SUMMARY BY THE CHAIR

*adopted by the Working Group*

1. 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”) met in Geneva from October 30 to November 1, 2019.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Armenia, Azerbaijan, Canada, Denmark, Estonia, European Union, Finland, France, Germany, Hungary, Israel, Italy, Japan, Lithuania, Morocco, Norway, Oman, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Singapore, Spain, Switzerland, Syrian Arab Republic, Tajikistan, United Kingdom, United States of America, Viet Nam (32).
3. The following States were represented as observers: Belarus, China, Czech Republic, Jordan, Kazakhstan, Lao People’s Democratic Republic, Mauritania, Mexico, Nicaragua, Pakistan, Peru, Portugal, Seychelles, South Africa, Thailand, Trinidad and Tobago, Uganda (17).
4. Representatives of the following international intergovernmental organizations took part in the session in an observer capacity: Eurasian Patent Organization (EAPO) (1).
5. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: Centre for International Intellectual Property Studies (CEIPI), European Communities Trade Mark Association (ECTA), International Trademark Association (INTA), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA) (5).

### **AGENDA ITEM 1: OPENING OF THE SESSION**

6. Ms. Binying Wang, Deputy Director General of the Brands and Designs Sector, World Intellectual Property Organization (WIPO), opened the eighth session of the Working Group and welcomed the participants.

### **AGENDA ITEM 2: ELECTION OF THE CHAIR AND TWO VICE-CHAIRS**

7. Mr. David R. Gerk (United States of America) was unanimously elected as Chair of the Working Group, Mr. Siyoung Park (Republic of Korea) and Ms. Irene Schatzmann (Switzerland) were unanimously elected as Vice-Chairs.

8. Mr. Hiroshi Okutomi (WIPO) acted as Secretary to the Working Group.

### **AGENDA ITEM 3: ADOPTION OF THE AGENDA**

9. The Working Group adopted the draft agenda (document H/LD/WG/8/1 Prov.2) without modification.

### **AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE SEVENTH SESSION OF THE WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE HAGUE SYSTEM FOR THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS**

10. Discussions were based on document H/LD/WG/7/11 Prov.

11. The Working Group adopted the draft report (document H/LD/WG/7/11 Prov.) without modification.

### **AGENDA ITEM 5: PROPOSAL FOR AMENDMENTS TO THE COMMON REGULATIONS**

#### **PROPOSAL FOR A NEW RULE TO PROVIDE FOR THE ADDITION OF A PRIORITY CLAIM AFTER FILING (DOCUMENT H/LD/WG/8/2)**

12. Discussions were based on document H/LD/WG/8/2.

13. Taking into consideration different views expressed by the delegations and representatives, the Secretariat made a proposal to amend proposed new Rule 22*bis*.

14. The Chair concluded that the Working Group considered favorably a proposal to add a new Rule 22*bis*, as revised during the session, to the Common Regulations, as set out in the Annex to the Summary by the Chair, and to amend Rule 15(2) of the Common Regulations and the Schedule of Fees, as contained in Annex I to document H/LD/WG/8/2, for adoption, to the Assembly of the Hague Union.

15. The Chair also concluded that the Working Group considered it desirable to amend Section 902 of the Administrative Instructions, as set out in the Annex II to document H/LD/WG/8/2.

16. The date of entry into force of new Rule 22*bis*, and amended Rule 15(2), Schedule of Fees and Section 902 of the Administrative Instructions would be determined by the International Bureau.

PROPOSAL FOR AMENDMENTS TO RULE 17 OF THE COMMON REGULATIONS  
(DOCUMENT H/LD/WG/8/6)

17. Discussions were based on document H/LD/WG/8/6.
18. In relation to document H/LD/WG/8/6, taking into consideration different views expressed by the delegations and representatives, the Secretariat made a revised proposal to add a new subparagraph to Rule 17(1).
19. The Chair concluded that some delegations were in favor of the proposal as revised, and one delegation was not comfortable with the proposal.
20. The Working Group requested the International Bureau to consult with user groups and report back on the findings at the next session of the Working Group.

PROPOSAL FOR AMENDMENTS TO RULE 21 OF THE COMMON REGULATIONS  
(DOCUMENT H/LD/WG/8/7)

21. Discussions were based on document H/LD/WG/8/7.
22. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 21, with a minor editorial correction to the English version thereof, as set out in the Annex to the Summary by the Chair, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2021.

**AGENDA ITEM 6: SITUATION OF THE 1960 ACT**

23. Discussions were based on document H/LD/WG/8/3.
24. The Chair concluded that the Working Group took note of the contents of the document.

**AGENDA ITEM 7: FINANCIAL SUSTAINABILITY OF THE HAGUE SYSTEM; POSSIBLE REVISION OF THE SCHEDULE OF FEES**

25. Discussions were based on document H/LD/WG/8/4.
26. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Schedule of Fees in the Common Regulations, as contained in Annex IV to document H/LD/WG/8/4, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2021.
27. The Working Group requested the International Bureau to prepare, for discussion at its next session, a study on the possible increase of the amount of the basic fee for each additional design for the renewal of an international registration, and a broader review of the Schedule of Fees of the Hague System for discussion at a future session.

**AGENDA ITEM 8: POSSIBLE OPTIONS FOR THE INTRODUCTION OF NEW LANGUAGES INTO THE HAGUE SYSTEM**

28. Discussions were based on document H/LD/WG/8/5.

29. The Working Group requested the International Bureau to prepare, for discussion at its next session, an advanced study of the cost implications and technical feasibility of the introduction of the Chinese and Russian languages into the Hague System.

30. The Working Group also requested the International Bureau to prepare, for discussion at the next session, a paper on criteria for the selection of additional languages for introduction into the Hague System.

**AGENDA ITEM 9: OTHER MATTERS**

31. The International Bureau provided an update on electronic data exchange with Offices and the transition to Standard ST.96.

32. The Working Group took note of the update.

**AGENDA ITEM 10: SUMMARY BY THE CHAIR**

33. The Working Group approved the Summary by the Chair, as amended to take into account the interventions of a number of delegations.

**AGENDA ITEM 11: CLOSING OF THE SESSION**

34. The Chair closed the eighth session on November 1, 2019.

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

(as in force on January 1, 2021)

[...]

*Rule 21*

*Recording of a Change*

(1) [*Presentation of the Request*] (a) A request for the recording shall be presented to the International Bureau on the relevant official form where the request relates to any of the following:

- (i) a change in the ownership of the international registration in respect of all or some of the industrial designs that are the subject of the international registration;
- (ii) a change in the name or address of the holder;
- (iii) a renunciation of the international registration in respect of any or all of the designated Contracting Parties;
- (iv) a limitation, in respect of any or all of the designated Contracting Parties, to one or some of the industrial designs that are the subject of the international registration.

(b) The request shall be presented by the holder and signed by the holder; however, a request for the recording of a change in ownership may be presented by the new owner, provided that it is

- (i) signed by the holder, or
- (ii) signed by the new owner and accompanied by ~~an attestation from the competent authority of the holder's Contracting Party~~ [document providing evidence](#) that the new owner appears to be the successor in title of the holder.

[...]

(6) [*Recording and Notification of a Change*] (a) The International Bureau shall, provided that the request is in order, promptly record the change in the International Register and shall inform the holder. In the case of a recording of a change in ownership, the International Bureau will inform both the new holder and the previous holder.

(b) The change shall be recorded as of the date of receipt by the International Bureau of the request complying with the applicable requirements. Where however the request indicates that the change should be recorded after another change, or after renewal of the international registration, the International Bureau shall proceed accordingly.

(c) Where a change in ownership is recorded following a request presented by the new owner pursuant to subparagraph (1)(b)(ii) and the previous holder objects to the change in writing to the International Bureau, the change shall be considered as if it had not been recorded. The International Bureau shall inform both parties accordingly.

[...]



Rule 22bis

Addition of Priority Claim

(1) [Request and Time Limit] (a) Prior to completion of technical preparations for publication, the applicant or holder may add a priority claim to the contents of an international application or international registration by submitting a request to the International Bureau within two months from the filing date.

(b) Any request made under subparagraph (a) shall specify the international application or international registration concerned and provide the priority claim in accordance with Rule 7(5)(c). It shall be accompanied by the payment of a fee.

(c) Notwithstanding subparagraph (a), where the international application is filed through an Office, the two-month period referred to in the said subparagraph shall be counted from the date on which the International Bureau receives the international application.

(2) [Addition and Notification] If the request made under subparagraph (1)(a) is in order, the International Bureau shall promptly add the priority claim to the contents of the international application or international registration and notify that fact to the applicant or holder.

(3) [Irregular Request] (a) If the request made under subparagraph (1)(a) is not submitted within the prescribed time limit, the request shall be considered not to have been made. The International Bureau shall notify the applicant or holder accordingly and refund any fee paid pursuant to subparagraph (1)(b).

(b) If the request referred to in subparagraph (1)(a) does not comply with the applicable requirements, the International Bureau shall notify that fact to the applicant or holder. The irregularity may be remedied within one month from the date of the notification of the irregularity by the International Bureau. If the irregularity is not remedied within the said one month, the request shall be considered abandoned and the International Bureau shall notify the applicant or holder accordingly and refund any fee paid pursuant to subparagraph (1)(b).

(4) [Calculation of Period] Where the addition of a priority claim causes a change in the priority date, any period which is computed from the previously applicable priority date and which has not already expired shall be computed from the priority date as so changed.

[Annex II follows]

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

**Huitième session**  
**Genève, 30 octobre – 1<sup>er</sup> novembre 2019**

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

**Eighth Session**  
**Geneva, October 30 to November 1, 2019**

**LISTE DES PARTICIPANTS/  
LIST OF PARTICIPANTS**

*établie par le Secrétariat/  
prepared by the Secretariat*

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