

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

Ninth Session
Geneva, December 14 to 16, 2020

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, on December 14 and 15, 2020.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Bosnia and Herzegovina, Canada, Denmark, European Union, Finland, France, Germany, Hungary, Israel, Italy, Japan, Kyrgyzstan, Lithuania, Mexico, Mongolia, Norway, Oman, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Slovenia, Spain, Switzerland, Tunisia, Turkey, United Kingdom, United States of America and Viet Nam (32).
3. The following States were represented as observers: Algeria, Australia, Bangladesh, Belarus, Brazil, China, Colombia, Costa Rica, El Salvador, Ethiopia, India, Iraq, Jamaica, Jordan, Kazakhstan, Kuwait, Lesotho, Madagascar, Pakistan, Panama, Philippines, Saudi Arabia, Thailand, Trinidad and Tobago, Uzbekistan, Vanuatu and Zimbabwe (27).
4. Representatives of: (i) Palestine (1); (ii) Asian Patent Attorneys Association (APAA), *Association romande de propriété intellectuelle* (AROPI), Centre for International Intellectual Property Studies (CEIPI), European Community Trademark Association (ECTA), International Association for the Protection of Intellectual Property (AIPPI), International Trademark Association (INTA), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), MARQUES - The Association of European Trademark Owners (9); participated in an observer capacity.
5. The list of participants (document H/LD/WG/9/INF/4 Prov.2) is contained in Annex II to this document.

AGENDA ITEM 1: OPENING OF THE SESSION

6. Mr. Daren Tang, Director General of the World Intellectual Property Organization (WIPO), opened the ninth session of the Working Group and welcomed the participants.

7. The Director General pointed out that the pandemic had accelerated the move to digital communications, with 96 per cent of all Hague notifications now being sent electronically. In this regard, the Director General applauded the Hague Union Assembly for deciding just a couple of months ago to make the provision of an e-mail address a mandatory requirement for applicants, new owners and representatives. This amendment ensured communication with users of the Hague System in these difficult times.

8. Turning to recent accessions to the Hague System, the Director General noted that the Hague Union had gained some new members since the Working Group met last time, notably Viet Nam, Samoa, Israel and Mexico. With those recent ascensions, the Hague Union now comprised 74 members, covering 91 national jurisdictions. Additionally, Suriname upgraded its status from being a 1960 Act member to a 1999 Act member, bringing the Hague System closer to the objective of being governed by a single Act. The Director General looked forward to many more countries and eligible intergovernmental organizations joining the 1999 Act in the near future. Focused efforts would continue to support active usage and further increase membership to reinforce the Hague System's position as the preferred system for the international protection of industrial designs.

9. The Director General turned to the agenda of the Working Group, noting that the Secretariat, following the request from the Working Group at its previous session, prepared two documents relating to the expansion of the language regime. However, in response to the most recent views of the members that the hybrid format would not be conducive for the in-depth discussion necessary for this issue, the said item was removed from this session's agenda. The International Bureau of WIPO remained prepared to take up the discussions again when members were ready.

10. The Director General recalled that the COVID-19 pandemic and the measures taken in connection with it had resulted in disruptions for users of the Hague System that were likely to continue for some time in different parts of the world. In order to address such difficulties in the future even more efficiently, the agenda included a proposal to amend the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement regarding the excuse of delay in meeting time limits with a view to providing Hague System users with adequate safeguards, in particular in relation to *force majeure* events. The Director General recalled that similar amendments to the Madrid and Lisbon Regulations had just been recommended for adoption by the respective Working Groups.

11. The Director General noted that the agenda also included proposals to make the Hague System more attractive to users. To this end, the Working Group was invited to consider a proposal to extend the standard publication period from six months to 12 months.

12. The full opening remarks of the Director General are available at the following website: https://www.wipo.int/edocs/mdocs/hague/en/h_ld_wg_9/h_ld_wg_9_opening_remarks.pdf.

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

13. Ms. Angar Oyun (Mongolia) was unanimously elected as Chair of the Working Group, Mr. Si-Young Park (Republic of Korea) and Mr. David R. Gerk (United States of America) were unanimously elected as Vice-Chairs.

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

GENERAL STATEMENTS

15. The Delegation of Belarus, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC), expressed its gratitude to the other regional groups for their flexibility to support its proposal for the revision of the agenda before the session.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

16. The Working Group adopted the draft agenda (document H/LD/WG/9/1 Prov.3) without modification.

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

17. Discussions were based on document H/LD/WG/8/9 Prov.

18. The Working Group adopted the draft report (document H/LD/WG/8/9 Prov.) without modification.

AGENDA ITEM 5: PROPOSAL FOR AMENDMENTS TO THE COMMON REGULATIONS

PROPOSAL FOR AMENDMENTS TO RULE 17

19. Discussions were based on documents H/LD/WG/9/2 and H/LD/WG/9/2 Corr.

20. The Secretariat introduced document H/LD/WG/9/2 which contained a proposal to amend Rule 17 and to extend the current six-month standard publication period to 12 months. The Secretariat added that a minor typo was corrected as outlined in document H/LD/WG/9/2 Corr. in all language versions except the Spanish version.

21. The Secretariat recalled that this proposal had already been made during the last session of the Working Group. While the proposal had largely been supported by the Working Group, the Working Group had requested the International Bureau to consult with user groups on this proposal and to report back on its findings at the next session. Accordingly, a Questionnaire was sent to non-governmental organizations (NGOs) representing users of the Hague System in June 2020. The Secretariat also sent the Questionnaire to the Offices of all Contracting Parties inviting them to reach out to their local user groups so that those user groups could also participate in that survey. The Secretariat received 17 responses to the Questionnaire.

22. The Secretariat further explained that the Questionnaire inquired whether a given organization was in favor of extending the standard publication period to 12 months, and also of the introduction of the possibility to request earlier publication at any time during the standard publication period. The vast majority of the responses strongly supported the extension of the standard publication period, if it was introduced together with the possibility to request an earlier publication. Therefore, the International Bureau prepared document H/LD/WG/9/2 with proposed amendments to Rule 17, as well as a transitional provision in Rule 37.

23. The Delegation of Norway stated that its national law had a six-month deferment period. As the proposed amendment would not allow reservations, the proposal would most likely require a change to the national law. The Delegation explained that it considered a fast granting system to be favorable. Their examination took place within six months, and there was no possibility to keep designs secret for longer than that. The proposed extension of the standard publication period might cause unnecessary delay in the entire registration process, even though

the proposal allowed requests for earlier publication. The Delegation recognized that a longer period of secrecy might be beneficial for many users. However, it could raise the risk of undermining the credibility of the design system, for third parties not knowing the design. This might affect the promotion of innovation, and the use of the design system for obtaining rights. Therefore, the Delegation was not ready to support the proposal.

24. The Delegations of Canada, Japan, the Russian Federation, Switzerland and the United States of America thanked the Secretariat for having carried out the survey and, based on the responses received from users, expressed their support for the proposed amendments. The Delegation of the United States of America added that, in their experience, prior art was not a typical reason for a refusal.

25. The Delegation of the Republic of Korea expressed its support for the proposed amendment which would increase the flexibility and usability of the Hague System. The Delegation emphasized the importance of a stable and reliable electronic transmission between the International Bureau and Contracting Parties. The provision of confidential copies by the International Bureau to Offices could ensure the quality of examination by Offices and minimize the potential uncertainty during the extended secrecy period.

26. The Delegation of the United Kingdom noted that, at the last session, it had raised concerns that publication at 12 months would reduce the options available to applicants to overcome substantive objections made by national Offices within the 12-month grace period. The current proposal which would allow early publication upon request would address those concerns; however, the Delegation believed that the International Bureau should provide additional guidance to applicants on this issue, alerting them to the potential consequences of the application being published and examined after the expiry of the grace period.

27. During the session of the Working Group, the Delegation of China submitted a statement to the International Bureau in which it expressed its support for the proposed amendments, noting that the proposal was in line with the friendly and flexible characteristics of the Hague System and that it was more favorable to applicants overall.

28. The Representatives of JIPA and JPAA expressed their support for the proposed amendments. The Representative of JPAA added that the proposal matched users' expectations to keep a design secret as long as possible, and that the amendments would facilitate the use of the Hague System to potential users.

29. The Delegation of Norway noted its concerns voiced earlier, but stated that it would not stand alone not supporting the proposal, and preventing the Working Group from reaching consensus on this proposal.

30. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rules 17 and 37, as set out in Annex II to document H/LD/WG/9/2, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2022.

PROPOSAL FOR AMENDMENTS TO RULE 5 OF THE COMMON REGULATIONS

31. Discussions were based on documents H/LD/WG/9/3 Rev. and H/LD/WG/9/6.

32. The Secretariat introduced document H/LD/WG/9/3 Rev. which contained a proposal to amend Rule 5. The Secretariat explained that current Rule 5 provided for an excuse of delay in meeting time limits for communication addressed to the International Bureau. However, the current provision appeared to be too restrictive, and should be modified to better respond to the current pandemic or similar events in the future. Therefore, following a similar provision in the Regulations under the Patent Cooperation Treaty (PCT), it was proposed to restructure Rule 5 so as to provide for a general provision for relief measures where applicants, holders,

representatives, and Offices have failed to meet time limits due to force majeure reasons, which would include irregularities in postal, delivery and electronic communication services, owing to circumstances beyond the control of the party. The proposed new provision would also apply to any action before the International Bureau for which the Common Regulations prescribed a time limit, such as the response to any irregularity letter, the payment of a fee, or the sending of a notification of refusal by an Office.

33. The Secretariat continued that the proposed amendments would be beneficial for users of the Hague System by ensuring that the Common Regulations offered them a safeguard equivalent to the one available to the PCT users. Similar proposals had been discussed at the Madrid and Lisbon Working Groups held in 2020 and the text of the proposed amendments to Rule 5 was largely based on the text which the Madrid and the Lisbon Working Groups agreed to recommend for their adoption by their respective Assemblies.

34. The Secretariat pointed out that it had received a written proposal for further amendments to Rule 5 from the Delegation of the United States of the America.

35. During the session of the Working Group, the Delegation of China submitted a statement in which it expressed its support for the proposed amendments, stating that the proposal took into account the disruptions caused by the COVID-19 pandemic and would provide the same remedies to users of the Hague System as provided for in the Regulations under the PCT, by relaxing formal requirements for the application of relief in case of failure to meet a time limit which was more user friendly.

36. The Delegation of the United States of America introduced document H/LD/WG/9/6 which contained further amendments to Rule 5. The Delegation explained that the first additional proposed amendment was the deletion of current Rule 5(5), which corresponded to the proposed Rule 5(3) in document H/LD/WG/9/3 Rev., and which referred to the second part of the individual designation fee. The proposed Rule 5(1) only covered the failure to meet a "time limit specified in the Regulations", and a time limit for the payment of the second part of the individual designation fee was not specified in the Regulations but by the Contracting Parties. Therefore, that sub-paragraph could be deleted as it was not needed. The second additional proposal was to include a new paragraph clarifying that the International Bureau could waive the requirement for evidence in which case a statement in lieu of that evidence could be submitted. The proposed Rule 5, as set out in document H/LD/WG/9/3 Rev., seemed to require that evidence be submitted in all cases. The proposed new second paragraph aimed to clarify that a waiver could be applied in large epidemic instances where there was general awareness of the incidence, such as the current COVID-19 pandemic, and a statement could be accepted instead of the provision of evidence. The Delegation added that this concept had been discussed at the last session of the PCT Working Group in October 2020. The third proposal was the addition of the word "epidemic" in paragraph (1), which was also discussed and generally supported at the last session of the PCT Working Group.

37. The Secretariat agreed with the proposed deletion of the paragraph regarding the payment of the second part of the individual designation fee, and requested the opinion of other delegations on the inclusion of the term "epidemic" in paragraph (1). In relation to the new proposed paragraph (2), the Secretariat confirmed that the International Bureau announced the waiver of the submission of evidence under this rule when it became widely known that COVID-19 was interrupting postal and delivery services in many places around the world. The International Bureau believed that it was able to waive the requirement concerning evidence without a specific provision in the rule, but noted that having a clear provision to that effect would add certainty.

38. The Delegation of Germany expressed its support for the proposed amendment stating that it would be helpful for users of the Hague System who were facing emergencies or disruptions preventing them from taking the required action within the specified time limit. The Delegation also supported the additional amendments proposed by the Delegation of the United States of America as they provided more legal certainty and clarity.

39. The Delegation of Spain expressed its support for the proposed amendment stating that it would provide greater legal certainty and safeguards for the users of the system. In relation to the proposed amendments made by the Delegation of the United States of America, the Delegation of Spain raised the concern whether the use of the term “epidemic” in the Regulations of some of the WIPO systems - the Madrid, Lisbon, PCT and Hague systems, but not in others would lead to different interpretations of the regulations. In relation to the paragraph regarding the waiver, the Delegation requested clarification whether the proposed paragraph, which was not part of the regulations of other systems, would lead to difficulties in the interpretation of the regulations of the other systems and would not negatively affect those other systems.

40. The Delegation of the United Kingdom expressed its support for the proposed amendments, including those proposed by the Delegation of the United States of America. The Delegation added that there was a need for all Working Groups to ensure that there was consistency amongst the systems, as the Delegation of Spain pointed out. The Delegation requested clarification whether Rule 5 would also apply to the refusal period, where an Office was unable to submit a notification of refusal within the applicable period due to a *force majeure* event, which was confirmed by the Secretariat.

41. In response to the intervention made by the Delegation of Spain, the Delegation of the United States of America responded that its Delegation generally advocated for consistency amongst the different WIPO systems. However, in the present case, the proposed amendment would add clarity which would warrant taking a different path. The practice described in the proposed text regarding the waiver appeared to be fully consistent with the practices in the other systems. The Delegation also noted that the wording of the regulations of the other systems could still be amended since the Assemblies of the Unions had not yet met and decided on this subject.

42. The Delegation of the Russian Federation expressed its support for the proposed amendments, including those proposed by the Delegation of the United States of America. The Delegation also emphasized the importance of a consistent approach for all systems so that all regulations contained the same precision and legal certainty in their texts.

43. The Representative of JPAA expressed its support for the proposed amendments.

44. The Secretariat stated that the proposal to introduce a paragraph explicitly providing the International Bureau with the possibility to waive the requirement for evidence would not introduce anything new compared to the current practice of the International Bureau under either of the different systems. In particular, the Madrid document (MM/LD/WG/18/2 Rev.) on this subject that was discussed at the last session of the Madrid Working Group clearly outlined in the body of the document that the International Bureau possessed the right to waive the need for the submission of evidence. Therefore, this practice had already been acknowledged in the Madrid context, and was the same in the different systems, with or without a specific paragraph providing for it. The proposal of the Delegation of the United States of America would make this practice explicit in the rule. The Secretariat noted that while the provisions in the regulations of the different systems would be different, the practice would be the same.

45. The Delegation of Spain expressed its general support for the proposal as long as there were no negative impacts on other WIPO systems.

46. The Delegation of Switzerland expressed its general support for the proposal made by the Delegation of the United States of America while echoing the concerns raised by the Delegation of Spain and supporting a consistent approach in all WIPO systems.

47. During the session of the Working Group, the Representative of MARQUES submitted a statement in which it expressed its support for the proposed amendments, including the amendments proposed by the Delegation of the United States of America in relation to the addition of the word “epidemic” in paragraph (1) and to the deletion of the paragraph concerning the second part of the individual designation fee. In relation to the addition of a new paragraph concerning the waiver, the Representative shared the concerns voiced by the Delegations of Spain and Switzerland, and suggested to take a more careful approach on making changes to the current rule, that could give rise to any difficult interpretation or that would create inconsistencies with the provisions currently set on *force majeure* in other regulations, notably in the Madrid System.

48. The Secretariat explained that the European Patent Office (EPO), France, Switzerland and the United Kingdom had submitted a document (PCT/WG/13/10) to the last session of the PCT Working Group aiming to strengthen the safeguards in case of general disruption. The document proposed several amendments to PCT Rule 82*quater*, amongst other proposed amendments, also the inclusion of the term “epidemic” as well as a paragraph providing for a waiver of the requirement to submit evidence. While the whole proposal was not recommended by the PCT Working Group for adoption, those two proposed amendments had received general support by the Working Group, and would probably be contained again in the revised proposal to be submitted to the next session of the PCT Working Group. The Secretariat also explained that the proposed new paragraph providing the International Bureau with the possibility to waive the requirement for evidence did not introduce any changes compared to the practices of the International Bureau under either of the different systems. The Secretariat emphasized that the body of the equivalent Madrid and Lisbon Working Group documents (MM/LD/WG/18/2 Rev. and LI/WG/DEV-SYS/3/3 Rev.) expressly outlined this possibility. While the Working Groups of the different systems met at different times, the Assemblies of the Unions usually take place at the same time. Therefore, one Working Group could make a step forward while the others might follow at a later time.

49. The Delegation of Switzerland noted that the proposal of the Delegation of the United States of America would not extend the scope of Rule 5. Even if the proposal brought some discrepancies in the wording of different regulations, the PCT and Madrid Working Groups would have the possibility to reconsider the wording of their regulations on this issue. Therefore, the Delegation could support the proposal made by the Delegation of the United States of America.

50. The Delegation of Spain agreed with the intervention made by Switzerland and supported the proposal made by the Delegation of the United States of America because it would benefit the users of the Hague System.

51. The Delegation of Germany reiterated its support for the proposal as it would codify an already existing practice and thus provide more clarity and legal certainty in the Hague System.

52. The Delegation of Japan expressed its support for the proposed amendments and requested clarification whether the International Bureau would publish the relevant information on the waiver.

53. In response to the question raised by Japan, the Secretariat confirmed that it would publish all relevant information in case it decided to waive the requirement of the submission of evidence.

54. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 5, as revised during the session and 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 two months following their adoption.

AGENDA ITEM 9: OTHER MATTERS

55. The International Bureau introduced document H/LD/WG/9/INF/1 which contained a study of the renewal fees and amounts in national and regional design registration systems.

56. The International Bureau explained that, at its previous session, the Working Group discussed the financial sustainability of the Hague System, and a possible revision of the Schedule of Fees. The Working Group favorably considered the proposal to increase the basic fee for each additional design in an international application. The said proposal was, however, yet to be adopted by the Hague Union Assembly. At its previous session, the Working Group also noted a significant difference between the amount of the basic renewal fee for the first design and that for each additional design. Accordingly, the Working Group requested the International Bureau to prepare a study on the possible increase of the amount of the basic renewal fee for each additional design to be discussed at the next session. Given that the agreed proposed amendments to the basic application fee was yet to be adopted by the Hague Union Assembly, the present document did not contain a proposal at this stage, but was presented for consideration of the Working Group.

57. The Delegation of Spain requested clarification on the Secretariat's intentions regarding the revision of the fees with a view to the next session of the Working Group.

58. The Secretariat noted that there were no specific plans at this stage, given the economic situation caused by the current pandemic and the unforeseeability of the evolution of the pandemic, which did not provide a sound background for a further revision of the fees. In agreement with the Working Group, the Secretariat suggested to pause on that issue until the situation had stabilized a bit before continuing that important work.

59. The Working Group took note of the content of the document.

AGENDA ITEM 10: SUMMARY BY THE CHAIR

60. The Working Group approved the Summary by the Chair, as amended to take into account the intervention of one delegation in respect of the Spanish version.

AGENDA ITEM 11: CLOSING OF THE SESSION

61. The Chair closed the ninth session on December 15, 2020.

[Annexes follow]



H/LD/WG/9/7

ORIGINAL: ENGLISH

DATE: DECEMBER 17, 2020

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

Ninth Session

Geneva, December 14 to 16, 2020

SUMMARY BY THE CHAIR

approved 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, on December 14 and 15, 2020.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Bosnia and Herzegovina, Canada, Denmark, European Union, Finland, France, Germany, Hungary, Israel, Italy, Japan, Kyrgyzstan, Lithuania, Mexico, Mongolia, Norway, Oman, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Slovenia, Spain, Switzerland, Tunisia, Turkey, United Kingdom, United States of America and Viet Nam (32).
3. The following States were represented as observers: Algeria, Australia, Bangladesh, Belarus, Brazil, China, Colombia, Costa Rica, El Salvador, Ethiopia, India, Iraq, Jamaica, Jordan, Kazakhstan, Kuwait, Lesotho, Madagascar, Pakistan, Panama, Philippines, Saudi Arabia, Thailand, Trinidad and Tobago, Uzbekistan, Vanuatu and Zimbabwe (27).
4. Representatives of: (i) Palestine (1); (ii) Asian Patent Attorneys Association (APAA), *Association romande de propriété intellectuelle* (AROPI), Centre for International Intellectual Property Studies (CEIPI), European Community Trademark Association (ECTA), International Association for the Protection of Intellectual Property (AIPPI), International Trademark Association (INTA), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), MARQUES - The Association of European Trademark Owners (9); participated in an observer capacity.

5. The list of participants is contained in document H/LD/WG/9/INF/4 Prov.2.

AGENDA ITEM 1: OPENING OF THE SESSION

6. Mr. Daren Tang, Director General of the World Intellectual Property Organization (WIPO), opened the ninth session of the Working Group and welcomed the participants.

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

7. Ms. Angar Oyun (Mongolia) was unanimously elected as Chair of the Working Group, Mr. Siyoung Park (Republic of Korea) and Mr. David R. Gerk (United States of America) 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/9/1 Prov.3) without modification.

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE EIGHTH 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/8/9 Prov.

11. The Working Group adopted the draft report (document H/LD/WG/8/9 Prov.) without modification.

AGENDA ITEM 5: PROPOSAL FOR AMENDMENTS TO THE COMMON REGULATIONS

PROPOSAL FOR AMENDMENTS TO RULE 17 (DOCUMENTS H/LD/WG/9/2 AND H/LD/WG/9/2 CORR.)

12. Discussions were based on documents H/LD/WG/9/2 and H/LD/WG/9/2 Corr.

13. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rules 17 and 37, as set out in Annex II to document H/LD/WG/9/2, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2022.

PROPOSAL FOR AMENDMENTS TO RULE 5 OF THE COMMON REGULATIONS (DOCUMENTS H/LD/WG/9/3 REV. AND H/LD/WG/9/6)

14. Discussions were based on documents H/LD/WG/9/3 Rev. and H/LD/WG/9/6.

15. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 5, as revised during the session and 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 two months following their adoption.

AGENDA ITEM 6: OTHER MATTERS

16. Discussions were based on document H/LD/WG/9/INF/1.

17. The Chair concluded that the Working Group took note of the content of the document.

AGENDA ITEM 7: SUMMARY BY THE CHAIR

18. The Working Group approved the Summary by the Chair, as amended to take into account the intervention of one delegation in respect of the Spanish version.

AGENDA ITEM 8: CLOSING OF THE SESSION

19. The Chair closed the ninth session on December 15, 2020.

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

(as in force on January 1, 2022)

[...]

**CHAPTER 1
GENERAL PROVISIONS**

[...]

Rule 5

Excuse of Delay in Meeting Time Limits

(1) *[Excuse of Delay in Meeting Time Limits due to Force Majeure Reasons]* Failure by an interested party to meet a time limit specified in the Regulations to perform an action before the International Bureau shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau, that such failure was due to war, revolution, civil disorder, strike, natural calamity, epidemic, irregularities in postal, delivery or electronic communication services owing to circumstances beyond the control of the interested party or other *force majeure* reason.

~~*[Communications Sent Through a Postal Service]*~~ Failure by an interested party to meet a time limit for a communication addressed to the International Bureau and mailed through a postal service shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau,

~~(i) that the communication was mailed at least five days prior to the expiry of the time limit, or, where the postal service was, on any of the ten days preceding the day of expiry of the time limit, interrupted on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, that the communication was mailed not later than five days after postal service was resumed,~~

~~(ii) that the mailing of the communication was registered, or details of the mailing were recorded, by the postal service at the time of mailing, and~~

~~(iii) in cases where not all classes of mail normally reach the International Bureau within two days of mailing, that the communication was mailed by a class of mail which normally reaches the International Bureau within two days of mailing or by airmail.~~

~~(2) — *[Communications Sent Through a Delivery Service]* Failure by an interested party to meet a time limit for a communication addressed to the International Bureau and sent through a delivery service shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau,~~

~~(i) that the communication was sent at least five days prior to the expiry of the time limit, or, where the delivery service was, on any of the ten days preceding the day of expiry of the time limit, interrupted on account of war, revolution, civil disorder, natural calamity, or other like~~

~~reason, that the communication was sent not later than five days after the delivery service was resumed, and~~

~~(ii) that details of the sending of the communication were recorded by the delivery service at the time of sending.~~

~~(3) [Communication Sent Electronically] Failure by an interested party to meet a time limit for a communication addressed to the International Bureau and submitted by electronic means shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau, that the time limit was not met because of failure in the electronic communication with the International Bureau, or which affects the locality of the interested party owing to extraordinary circumstances beyond the control of the interested party, and that the communication was effected not later than five days after the electronic communication service was resumed.~~

(2) [Waiver of Evidence; Statement in Lieu of Evidence] The International Bureau may waive the requirement under paragraph (1) concerning the submission of evidence. In such a case, the interested party must submit a statement that the failure to meet the time limit was due to the reason for which the International Bureau waived the requirement concerning the submission of evidence.

~~(4)~~ [Limitation on Excuse] Failure to meet a time limit shall be excused under this Rule only if the evidence referred to in paragraph (1); or the statement referred to in paragraph (2) or (3) and the communication or, where applicable, a duplicate thereof are is received by, and the corresponding action is performed before the International Bureau as soon as reasonably possible and not later than six months after the expiry of the time limit concerned.

~~(5) [Exception] This rule shall not apply to the payment of the second part of the individual designation fee through the International Bureau as referred to in Rule 12(3)(c).~~

[...]

[Annex II follows]



H/LD/WG/9/INF/4
ORIGINAL : FRANÇAIS / ENGLISH
DATE : 23 FÉVRIER 2021 / FEBRUARY 23, 2021

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

**Neuvième session
Genève, 14 – 16 décembre 2020**

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

**Ninth Session
Geneva, December 14 to 16, 2020**

LISTE DES PARTICIPANTS/
LIST OF PARTICIPANTS

*établie par le Secrétariat/
prepared by the Secretariat*

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des membres)
(in the alphabetical order of the names in French of the members)

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