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WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE MADRID SYSTEM FOR THE INTERNATIONAL REGISTRATION OF MARKS

Seventh Session
Geneva, July 7 to 10, 2009

REPORT

adopted by the Working Group

I. INTRODUCTION

1. The Working Group on the Legal Development of the Madrid System for the International Registration of Marks (hereinafter referred to as “the Working Group”) held its seventh session, in Geneva, from July 7 to 10, 2009.
2. The following Contracting Parties of the Madrid Union were represented at the session: Australia, Austria, Belgium, China, Cuba, Czech Republic, Denmark, European Community, Finland, France, Germany, Greece, Hungary, Italy, Japan, Kazakhstan, Kenya, Latvia, Lithuania, Montenegro, Netherlands, Norway, Poland, Portugal, Republic of Korea, Russian Federation, Sao Tome and Principe, Serbia, Singapore, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States of America, Viet Nam (36).
3. The following States were represented by observers: Brazil, Indonesia (2).

4. Representatives of the following international intergovernmental organization (IGO) took part in the session in an observer capacity: Benelux Organisation for Intellectual Property (BOIP) (1).
5. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: *Association romande de propriété intellectuelle* (AROPI), Centre for International Intellectual Property Studies (CEIPI), European Communities Trade Mark Association (ECTA), German Association for the Protection of Industrial Property and Copyright Law (GRUR), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA), MARQUES (Association of European Trademark Owners), Union of European Practitioners in Industrial Property (UNION) (10).
6. The list of participants is contained in the Annex to this report.

Agenda Item 1: Opening of the Session

7. Mr. Ernesto Rubio, Assistant Director General, opened the session and, on behalf of Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), welcomed the participants. Mr. Rubio recalled some recent developments in the Madrid system that had taken place during the period since the last session of the Working Group.
8. Concerning membership, Mr. Rubio noted the ratification of the Madrid Protocol Concerning the International Registration of Marks (hereinafter referred to as “the Protocol”), on June 3, 2009, by Egypt. He stated that, as a result of this ratification, which would become effective on September 3, 2009, of the 84 members of the Madrid Union, only five Contracting Parties would remain bound solely by the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as “the Agreement”).
9. On the matter of registration activity, Mr. Rubio indicated that the year 2008 had been intensive and had ended with an increase of 5.3% in the volume of trademark applications received by the International Bureau, as compared to 2007. In 2008, the International Bureau had received about 42,000 international applications. Some 41,000 international registrations as well as some 19,500 renewals had been recorded by the International Bureau in the same year. Mr. Rubio noted that during the first six months of 2009, the International Bureau had started to feel the impact of the global economic crisis on the Madrid system. In this regard, there had been a drop of some 15% in the number of new applications received by the International Bureau, as compared to the same period last year. However, Mr. Rubio indicated that renewals of existing registrations had still continued to grow at a rate of some 7% over 2008.
10. Mr. Rubio then reported recent developments related to the services offered to users of the Madrid system. In January 2009, the ROMARIN database had been upgraded to include digitalized copies of notifications of statements of grant of protection, provisional refusals and related communications. Indicating that the copies of such communications were made available on the Madrid website within three days of having been received by the International Bureau, Mr. Rubio underlined that this upgrade of the ROMARIN database was particularly appreciated by the holders of international registrations and their representatives.

Mr. Rubio also recalled that, from the beginning of 2009, the *WIPO Gazette of International Marks* was published in a fully electronic and searchable version available on-line once a week (“e-Gazette”). Furthermore, as part of the general policy to improve communication with the users of WIPO global services, WIPO had launched a specific customer service for users of the Madrid system. Mr. Rubio said that WIPO was confident that these developments would make the international system even more attractive and would contribute to increasing the satisfaction of users with the level of the Madrid system services.

11. Referring to the legal development of the Madrid system, Mr. Rubio recalled that, during its last session, the Working Group had examined the proposal by Norway to review some of the fundamental features of the system established by both the Agreement and the Protocol, including the possibility of suppressing the basic mark requirement. As agreed by the Working Group, the International Bureau had prepared a questionnaire in order to gather information on the range and level of services and tasks that Offices of Contracting Parties currently provided and carried out as Office of origin. While recalling that this questionnaire was circulated among the Offices in June 2009, Mr. Rubio indicated that the International Bureau had already received over 40 replies. The replies to the questionnaire would serve as the basis of a document to be prepared by the International Bureau for the next session of the Working Group. The aim of the document would be to assess what tasks would be required to be performed with respect to the filing of an international application, and by whom, in the absence of the requirement of a basic mark. So that their replies could be taken into account in the drafting of the document, Mr. Rubio encouraged those Offices which had not yet responded to send their replies to the International Bureau by the end of July 2009.

12. Mr. Rubio then stated that the current session of the Working Group was to focus on the question of the introduction of additional filing languages in the Madrid system. As requested by the Madrid Union Assembly at its meeting in September 2008, the International Bureau had conducted a study on the implications, consequences and advantages of including other languages in the language regime of the Madrid system in which the working languages would, however, remain English, French and Spanish, but in which applicants would be permitted to file international applications in other languages.

13. Mr. Rubio indicated that the conclusion of this study was presented in document MM/LD/WG/7/2., which was then before the Working Group. The languages to be considered as additional filing languages included Arabic, Chinese, Portuguese and Russian, as suggested by the Madrid Union Assembly, and additional filing languages among those frequently used by applicants when filing their basic marks. Mr. Rubio pointed out that the study proposed some criteria for determining the acceptance of additional filing languages and concluded that the best way of formalizing the acceptance of filings in those additional languages would be through specific agreements to be concluded between the International Bureau and the Offices of interested Contracting Parties.

14. Mr. Rubio observed that the idea of introducing filing languages through specific agreements was linked with the International Bureau’s constant efforts to foster reliance on information technology tools in the management of the Madrid system. Mr. Rubio recalled that one well-known aspect of these efforts was the standard electronic communication agreements concluded between the International Bureau and a number of interested Offices. These agreements alleviated the workload of all parties concerned and increased reliability in

the system. Mr. Rubio further indicated that the International Bureau had begun to create a database of acceptable terms for the indication of goods and services. This database, along with a prototype of the so-called “Madrid Filing Assistant”, which was a user interface in the form of an electronic search and classification tool, would be presented by the International Bureau to the participants during the discussions relating to item 5 of the Agenda.

15. Mr. Rubio further pointed out that the contribution by Switzerland (document MM/LD/WG/7/3), which raised the issue of the division of the international registration, would be discussed under item “Other Matters” of the Agenda and that delegations and representatives would be welcome to raise any further issue under that item. Mr. Rubio finally informed the participants that an informal liaison meeting between the International Bureau and Offices, providing an opportunity to address some operational issues at a practical level, was proposed to be held after the conclusion of the discussions of the Working Group, and before the adoption of the Summary by the Chair.

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

16. Mr. António Campinos (Portugal) was unanimously elected as Chair of the Working Group, and Mr. Chan Ken Yu Louis (Singapore) and Mr. David Lambert (Switzerland) were elected as Vice-Chairs.

17. On his behalf and on the behalf of the elected Vice-Chairs, the Chair thanked the delegations and the International Bureau for his re-election as Chair of the Working Group. The Chair also thanked all the participants for their positive and constructive contributions during the last years, which had facilitated his work as Chairman and had allowed the approval by the Madrid Union Assembly of numerous proposals made by the Working Group.

18. Mr. Grégoire Bisson (WIPO) acted as Secretary to the Working Group.

Agenda Item 3: Adoption of the Agenda

19. The Working Group adopted the draft agenda (document MM/LD/WG/7/1 Prov.) without modification.

Agenda Item 4: Adoption of the Draft Report of the Sixth Session of the Working Group on the Legal Development of the Madrid System for the International Registration of Marks

20. The Working Group adopted the revised draft report of the sixth session of the Working Group on the Legal Development of the Madrid System for the International Registration of Marks, as contained in document MM/LD/WG/6/7 Prov.2, without comment.

Agenda Item 5: Additional Filing Languages

21. Discussions were based on document MM/LD/WG/7/2., entitled “Study on the Possible Introduction of ‘Filing Languages’ in the Madrid System”, prepared by the International Bureau.

22. The Chair opened the discussions by recalling that, during its last session, the Madrid Union Assembly had mandated the International Bureau to conduct a study on the possibility of introducing additional filing languages in the Madrid system. The task of the Working Group was therefore to concentrate on the results of that study and to decide on a way forward. While underlining that the question of the possible introduction of additional filing languages in the Madrid system was an issue of major importance associated with the development of the international system for the protection of trademarks, the Chair indicated that the main objectives to be attained were the promotion of the accession of new Contracting Parties to the Madrid system, contributing to a larger geographical coverage, the facilitating of the use of the system by applicants from Contracting Parties whose domestic language was not one of the working languages of the Madrid system, and the reinforcement of the use of new information technologies, all contributing to improving the overall efficiency and effectiveness of the Madrid system.

23. At the invitation of the Chair, the Secretariat introduced document MM/LD/WG/7/2. (hereinafter referred to as “the document”).

24. The Secretariat noted that it had been demonstrated by the document that, had the basic proposal, concerning the possible introduction of Arabic, Chinese, Portuguese and Russian, already been introduced in 2008, this extension in the filing language regime would not have been sufficient to cover the working languages of four of the top 10 Contracting Parties of origin in the system in 2008, namely those of Austria, Germany, Italy and Japan. The Secretariat observed that, among those 10 Contracting Parties, there were multi-language Offices – namely, the Office for Harmonization in the Internal Market (Trademarks and Designs) (OHIM), the Benelux Organisation for Intellectual Property (BOIP) and the Swiss Office and although those Offices were already operating in one or more of the working languages of the Madrid system, they also utilized a number of domestic languages which were not covered by the Madrid system. These considerations led to the conclusion that the relevance of other languages – namely Dutch, German, Italian and Japanese – should be taken into account, in addition to the additional four working languages of WIPO covered by the basic proposal, that is to say, Arabic, Chinese, Portuguese and Russian.

25. Referring to Chapter 2 of the document, the Secretariat mentioned that there was a significant stability in the identity of the top 10 filing countries of origin in the system. The document proposed to establish certain criteria for a language to be considered as a possible additional filing language in the system, i.e., a dual threshold of 3% of the share of filings from an Office, compared to the total number of Madrid filings, and an absolute figure of a minimum of 1,000 international applications filed through that Office in a given year. If this dual threshold had been applied in the year 2008, this would have allowed for the possibility of taking into account Dutch, German, Italian and Japanese as additional filing languages. The system, as devised, should however be flexible enough to tolerate that a language could be kept as a filing language, even if the number of filings from the Office concerned subsequently dropped below the threshold.

26. Referring to Chapter 3 of the document, the Secretariat recalled the legal framework for the working languages in the Madrid system, resting on Rule 6 of the Common Regulations. The Secretariat recalled a fundamental principle of the Madrid system according to which the date on which an application was filed at the national Office became the international registration date, provided that the international application was received from the national Office within two months, by the International Bureau. Chapter 3 of the document raised the question of the potential impact, on that principle, of a filing of an international application in

a language different from a working language of the system. In this regard, the Secretariat noted that the document underlined the existence of a *de facto* situation according to which an Office could currently allow applicants to file applications in the local language and then assist them with the translation into a working language, before sending the international application to the International Bureau.

27. Making reference to paragraph 19 of the document, the Secretariat stated that the document contained a text omission and that the full text of that paragraph should read as follows:

“Furthermore, it should be noted that even where an international application is received by the International Bureau in a language other than English, French or Spanish, this would not necessarily have an impact on the international registration date. In the extraordinary situation where it is the international application as a whole that is presented in a non-working language, then, clearly, the latter is not considered as such^{*}, but where this deficiency affects only the list of goods and services, the attitude of the International Bureau is more pragmatic. More precisely, the International Bureau would consider that such an application is missing the required indication of goods and services for which registration of the mark is sought, which is one of the “irregularities affecting the international registration date” under Rule 15 of the Common Regulations. However, that Rule further provides that where such irregularities are remedied by the Office of origin before the expiry of the two-month period set under Article 3(4), the registration date is, in the end, not affected but remains that on which the international application was filed with the Office of origin. In other words, provided the Office of origin resubmits the application in English, French or Spanish, within that time-limit, the international application proceeds to examination by the International Bureau (with that language of filing becoming the “language of the international application”), but the filing date remains that on which the Office of origin received the defective application.”

28. Thus, in the context of the possible introduction of additional filing languages, the Secretariat considered that a practice remaining in the ante-chamber of the international procedure could be envisaged, which could take place without any changes to the Rules. The Secretariat indicated that, nevertheless, in that context, for examination, notification and publication purposes, the practice should provide for a clear identification of English, French or Spanish as a language of the international application, as expected under Rule 6 of the Common Regulations.

29. In addition, the Secretariat noted that at the end of paragraph 35 of the paper, the following footnote should be inserted:

“Taken in isolation, this increase would amount to some 748,800 Swiss francs, representing 1.4% of the total budget of the Madrid Union for 2008 (see page 173 of Revised Program and Budget for the 2008/09 Biennium, document WO/PBC/13/4). This figure is based on an average count for 2008 of 143 words per international application, and a fee per word ranging from 0.24 Swiss francs (for European languages) to 0.32 Swiss francs for the Chinese and Japanese languages.”

* See Rule 11(7) of the Common Regulations.

30. Referring to Chapter 4 of the document, the Secretariat spoke of the development of the WIPO database of acceptable indications of goods and services for the filing of international applications under the Madrid system. The database, currently under construction, should be available in languages other than the working languages of the Madrid system and could be used, in conjunction with the Madrid Filing Assistant, as a translation tool by applicants so as to establish the list of goods and services from their domestic languages into a working language of the Madrid system. The Secretariat stressed, however, that making the database available in these other languages could be done by the International Bureau only in cooperation with Offices and would be coupled with the proposal for the possible introduction of additional filing languages.

31. Presenting Chapter 5 of the document, which contained a proposal to formalize the acceptance of filings in a non-working language, the Secretariat stated that Offices would have to be ready to communicate electronically with the International Bureau, at least for the transmission of international applications, and also would be required to cooperate with the International Bureau for the translation of the WIPO database of acceptable terms. An Office would be expected to make available an electronic interface and the Secretariat highlighted the interest of the International Bureau in developing such standard interfaces containing a number of checks and safeguards to be implemented by Offices. Ideally, such an interface would be connected to the database now under construction.

32. The Secretariat suggested that the procedure would take the following steps: an international application would be filed, in the domestic language, by the applicant, who would be invited to specify also one working Madrid language, among those accepted by the Office of origin, which would become the language of the international application; after the certification procedure, the Office of origin would process the specification of goods and services through the automatic translation tool of the database; any portion of the international application remaining not translated would be sent to the International Bureau to have the translation process completed by the International Bureau; the International Bureau would proceed to the translation of these extra terms within five working days and submit the translated list back to the Office of origin, which would invite the applicant to confirm his agreement to the list so translated; once the applicant had agreed, the Office of origin would transmit the international application, in the working language selected by the applicant, to the International Bureau.

33. The Secretariat noted that all this procedure should take place within the two-month time limit provided for by Article 3(4) of the Agreement and the Protocol. The Secretariat highlighted the fact that a number of benefits would result from this procedure since, in principle, the International Bureau should not have cause to make any objection under Rule 13 of the Common Regulations (Irregularities with respect to the indication of goods and services), taking into account the fact that the terms contained in the list would have been taken from the database and therefore would already have been validated.

34. The Secretariat finally presented Chapter 6 of the document, concerning the issue of costs. An attempt in evaluating the number of expected filings in a language other than the three working languages had been made. In this respect, the Secretariat thanked the multi-language Offices, namely the Offices of BOIP, OHIM and the Swiss Office, which had indicated precisely the distribution of languages in filings within their respective Offices. The Secretariat came to the conclusion that the overall increase in the translation workload of the International Bureau would be of 24.5% and, more precisely, of 3.9% for the basic package concerning Arabic, Chinese, Portuguese and Russian and of 20.6% for the other languages.

35. The Secretariat stressed that the proposal hinged on the development of the WIPO database of acceptable terms. There should be a one-off cost in getting the database translated into the various additional languages, and that cost would be shared with the Offices concerned. The Secretariat underlined that, once the database became available, a much fewer number of terms would require to be translated, because there would be an automated translation process. Therefore, the costs, instead of going up, would ultimately go down, in addition to the fact that the use of the database would bring advantages for the International Bureau, Offices and users. It would also bring stability and certainty to the system.

36. The International Bureau gave a demonstration of a prototype of the Madrid Filing Assistant in association with the new WIPO database of acceptable indications of goods and services. The database and the Madrid Filing Assistant would be available in the context of agreements with interested Offices, with a view to establishing the process of introducing new filing languages. It was stated that the aim of the International Bureau was to make the database available on-line on the WIPO website for use by any applicant in the preparation of an international application, as soon as the database contained a sufficient number of indications of goods and services. It was hoped that the database would be available in the three working languages, on-line, in the second half of 2009.

37. The Delegation of the European Community welcomed the initiative of WIPO to put at the disposal of users its database of acceptable indications, as this would be helpful to users and national Offices, and would benefit the Madrid system itself. The Delegation stated that the WIPO initiative was going in the same direction as the one taken by OHIM, with different means. OHIM operated in a multilingual environment and had 22 languages to deal with, so that issues of translation were important for speed, accuracy and cost. The Delegation mentioned that OHIM had an initiative named EUROCLASS, which was an on-line tool showing the compilation of terms for lists of goods and services accepted by the various offices participating in the EUROCLASS project.

38. The Delegation of the European Community, referring to the EUROCLASS database operated by OHIM, noted that the first phase of that database gave users an immediate overview of all terms accepted by participating Offices. The database currently contained data from the Offices of the Czech Republic, Finland, Germany, Poland, Portugal, Slovakia, Spain, Sweden, and the United Kingdom. The Delegation said that the next phase was to turn EUROCLASS into a tool that would help to approximate classification practices among different Offices and confirmed that this further phase had already started with the Office of the United Kingdom. In case of differences, OHIM and the Office of the United Kingdom would seek to reach an agreement and, in default of agreement, WIPO would be requested to take a decision. The Delegation noted that, up to the present time, about 90,000 terms had been agreed between OHIM and the United Kingdom Office for translation into the other languages of the European Community.

39. The Delegation of the European Community underlined the readiness of OHIM to cooperate with WIPO in the establishment of a common database which could be accepted by as many Offices as possible and said that OHIM hoped to be able to learn from the experience of WIPO and other Offices.

40. The Delegation of Serbia stated that it supported further work on development and modernization of the Madrid system. The inclusion of other filing languages in the language regime of the Madrid system would represent a significant improvement in the efficiency of the system. Stating that this initiative should be considered in the context of broader

information technology development, the Delegation indicated its support for WIPO's efforts in the field of technology development, and, in particular, its endeavors to create a database of acceptable terms for the benefit of all users of the Madrid system. However, the Delegation indicated that the introduction of additional filing languages in the system should not rest upon an unwieldy procedure but should be flexible enough to accommodate further filing languages as the need arose.

41. The Delegation of the Russian Federation expressed its surprise that document MM/LD/WG/7/2. did not take into account the recommendations listed in document MM/A/40/2., submitted to the Madrid Union Assembly, which dealt with the introduction of four new official languages, namely Arabic, Chinese, Portuguese and Russian. Believing that by virtue of the decision taken by the Madrid Union Assembly, mentioned in Paragraph 33 of document MM/A/40/5, the subject of the study was to have been the introduction of these four new filing languages, the Delegation considered that the document prepared by the International Bureau was not a study that meets the objective of the Madrid Union Assembly. The Delegation however underscored that the study in question contained an appropriate analysis of these four additional languages and that it was necessary to first start with the introduction of these languages and then proceed to a study, step by step.

42. Recalling that ease of use for users was an important element in the discussions on the future of the Madrid system, the Delegation of Belgium favorably welcomed the proposal outlined in the document prepared by the International Bureau. Indicating that the proposal took into account the current balance of language use of the Madrid system, the Delegation indicated that it wished to have more details as to its implementation.

43. The Delegation of Italy expressed its view that the proposal to formalize the acceptance of filing in a non-working language of the Madrid system was very interesting, as had been the demonstration of the WIPO database of acceptable terms and the Madrid Filing Assistant. While noting that it did not have a clear idea of the possible fees increase that such a proposal might imply, the Delegation stated that it appeared that the proposal would appear to suggest a significant impact on the procedures under the Madrid system and an economic impact for applicants. Pointing out that the proposal would seem to require the establishment of a system of exchanges backwards and forwards between Offices and the International Bureau, as well as between applicants and their representatives, the Delegation referred to the risk of mistakes arising and the possibility that the two-month time limit set under Article 3(4) of the Agreement and the Protocol might not always be respected. Finally, the Delegation of Italy expressed its reservations regarding the proposal, suggesting that it was not generally in the spirit of simplification and would impose an extra workload for offices.

44. The Delegation of the United States of America thanked the International Bureau for the demonstration of the WIPO database for acceptable terms and the Madrid Filing Assistant and said that it appreciated the creative and forward-thinking proposal to introduce additional filing languages in the Madrid system. However, the Delegation stated that adding the other United Nations languages as filing languages of the system might not make the most sense at this time, based on filing figures provided by the International Bureau. The Delegation indicated that it had noted with interest that Dutch, German and Italian applications were more prevalent than Arabic, Portuguese and Russian language applications at the national level.

45. While underlining that the proposal of the International Bureau relied on IT solutions to gain efficiencies in the system, the Delegation of the United States of America mentioned that the proposal also provided for flexibility in filing languages and kept costs down by not increasing the working languages of the Madrid system. Expressing concerns about the increase of the translation costs necessitated by providing such filing language flexibility, the Delegation saw the WIPO database as a long-term project. Cost savings would occur if the filing language flexibility was used by national Offices at the time of the filing of a national application.

46. The Delegation of the United States of America indicated its support for the proposal that national Offices would use the identification “pick lists”, as provided for in the Madrid Filing Assistant, in association with the WIPO database, as this would result in greater efficiency for Offices and applicants. However, the Delegation noted that the only way that the WIPO database could decrease the cost of translation for WIPO would be in its being used consistently by applicants when filing their national applications and this would mean that any cost savings would be a long way down the road.

47. The Delegation of the United States of America asked for an estimated costing for the 24.5% translation workload increase. The Delegation asked whether WIPO foresaw any negative impact on the functioning of the system if resources were moved from one area of operations to translation. The Delegation also asked how the WIPO database would be populated, what would the interface of pick lists look like, and whether it would be possible for WIPO to know from the database which national Offices would accept given identifications of goods and services.

48. Finally, the Delegation of the United States of America noted that, presumably, the database would be more useful in the event of suppression of the basic mark requirement, since applicants would be filing directly through WIPO and could use the pick lists from the WIPO database at that time. However, with a basic mark requirement, applicants who wished to file in a language other than the three working languages would have to base their international application on a basic application or registration that used a WIPO-approved identification of goods and services. The database could, however, be used by national applicants if it were somehow made available to national Offices via national Offices’ websites and wondered whether WIPO foresaw national Offices incorporating the WIPO database on their own websites.

49. The Delegation of Norway, while noting that it would need time to have further consultations, expressed the view that the proposal for the introduction of additional filing languages was ambitious. Even though the proposal did not affect Norway directly, the Delegation said that it welcomed any initiative to improve the Madrid Protocol and to make the Madrid system more user-friendly. Additionally, the Delegation noted its support for the introduction of the electronic search and classification tool (the Madrid Filing Assistant) as demonstrated earlier by the International Bureau.

50. However, the Delegation of Norway expressed some concerns with regard to the additional costs that the proposal might entail, and how those costs would be covered. It also suggested that the additional translation work would increase examination time and possibly result in a backlog in the work of the International Bureau. The Delegation asked the

Secretariat to confirm whether the introduction of Spanish as a working language had increased the examination time. It also asked for an assurance that the costs would not be offset by increasing the filing fees, and that the additional translation work would not cause any increase in the examination time, or cause any backlog that would affect all applicants.

51. The Delegation of Japan also expressed its concern with regard to the need for an international application to be translated into a working language within the two-month period earlier referred to, in order to preserve the filing date, and stated that careful consideration would need to be given to the issue of costs and the workload for those Offices using a non-working language. In particular, the Delegation pointed out that there was a risk that the Office of origin may not be in a position to obtain the consent of the applicant with respect to the translated version of the international application, within the two-months time limit, despite all due care. The Delegation suggested, therefore, that the International Bureau might consider that the Madrid system would allow those international applications to retain their filing dates.

52. The Delegation also asked whether, with regard to electronic communications between Offices and the International Bureau, the latter expected the Office of origin to provide, in XML, all data in both the domestic language and the working language, within two months. The Delegation queried whether the International Bureau would be able to hire translators who understood non-working languages and asked whether the Office of origin or the International Bureau might charge an additional fee for a non-working language application.

53. In response to the comments made by the Delegations of the European Community, Norway and Serbia, the Secretariat underlined the willingness of the International Bureau to cooperate with respect to the development of databases. The Secretariat then responded to a number of queries raised by other delegations.

54. Concerning the statement by the Delegation of the Russian Federation on the mandate given by the Madrid Union Assembly, the Secretariat confirmed that document MM/A/40/2, submitted to the Madrid Union called on that Union to authorize the Working Group to carry out the study on the possible introduction of Arabic, Chinese, Portuguese and Russian as filing languages in the Madrid system. The Secretariat, however, recalled that during the Assembly's deliberations, some delegations had invited the Working Group also to consider the introduction of other languages, taking into account, in particular, the pertinence of such languages in the Madrid system and the number of international applications received. Finally, the Madrid Union Assembly had concluded that the Secretariat should carry out a study on the introduction of new languages but not limited to the four languages initially planned.

55. Referring to the question asked by the Delegation of Belgium on the implementation of the proposal, the Secretariat indicated that it was necessary for the Working Group first to make a favorable recommendation to the Madrid Union Assembly, that that Union agreed with it and authorized the Working Group to conclude bilateral agreements on the introduction of new languages with the Offices concerned. Once those steps had been taken, the deadlines would depend on implementing the database in the languages concerned, which necessarily required the support of Offices.

56. The Secretariat confirmed that the introduction of new filing languages would be implemented individually, as interested offices, which would have already equipped themselves with electronic communication means with the International Bureau, showed willingness to implement such agreements and would be ready to contribute to establishing the database in their language.

57. With regard to the concerns expressed on the issue of possible cost increases, the Secretariat provided a calculation based on filing figures for the year 2008. If the eight filing languages had been introduced in 2008, without yet having available the Madrid Filing Assistant, the additional volume of words to be translated in English, French and Spanish would have represented a 24.5% increase in the volume of translation, and in terms of costs, this would have amounted to about 750,000 Swiss francs for translation purposes. However, the Secretariat stressed that the costs would ultimately be lower than that figure because these figures did not take into account the eventual existence of the database, the Madrid Filing Assistant, and the facility of automatic translation. For the purposes of making this estimate, the Secretariat had taken into account different fees, depending on the language from which translation would have been required to be performed. The Secretariat concluded that these figures represented less than 1.4 % of the total budget of the Madrid Union for the year 2008. The Secretariat believed that the savings resulting from the use of the database would largely compensate for any extra translation costs from those additional languages into any of the Madrid working languages.

58. As to the question of the financial impact on applicants, the Secretariat indicated that it did not envisage any fee increase and that the implementation costs would be compensated by the savings resulting from the use of the WIPO database. Referring to the question of the possibility for the Office of origin to charge a fee, the Secretariat observed that it would be part of the handling fees, which was a matter over which Offices had sovereignty. A reduction of the handling fee might even be envisaged, with a view to encouraging applicants to use the electronic filing interface or, at least, the database, but this would be in the hands of the Offices.

59. Regarding the question of possible delays and the possible increase of the backlog, as raised by the Delegation of Norway, the Secretariat indicated that it would not be appropriate to make comparisons with the introduction of Spanish in the system, since Spanish had been introduced as a full working language. Moreover, the Secretariat noted that when Spanish had been introduced in 2004, the International Bureau had faced a backlog, owing in particular to a sudden and very large increase in the volume of applications arising, to a large extent, from the accession to the Madrid Protocol of the United States of America and the European Community.

60. Making reference to the question raised by the Delegation of the United States of America concerning the population of the database, the Secretariat recalled that the creation of the database had started with the alphabetical list of the Nice Classification and with the most frequent terms selected from the pool of international applications. The Secretariat confirmed that the International Bureau was ready to consider adding additional terms that national Offices might wish to propose from their own pick lists. This would increase the level of correlation between the two databases, which would be needed in a system based on a basic mark requirement.

61. As to the possibility of information in the database with regard to the acceptance by particular Offices of given indications, the Secretariat said that this was indeed part of the objective, but that it would be part of Phase 2 of the implementation of the database.

62. Concerning the question raised by the Delegation of Japan regarding the hiring of translators, the Secretariat stated that, when the International Bureau would enter into an agreement with an interested Office, it would then take the necessary measures, which would include the hiring of translators able to handle non-working languages. However, the International Bureau would not need to translate an application from one of these extra filing languages into all of the three working languages of the system because there would always be a limitation due to the choice made by the Office of origin of the working languages for Madrid purposes.

63. Referring to the concerns expressed by the Delegations of Italy and Japan regarding the possibility of delays, the Secretariat stated that the proposal was to be understood in the context of electronic communications, so that the back and forth exchanges could be almost instantaneous. While admitting that there could be a risk that, within the two-month period, the Office may not have been in a position to obtain the consent of the applicant as to the translation of some terms, the Secretariat however observed that this risk also existed currently where the Office of origin, when comparing the basic list and the translation proposed, concluded that the two lists did not correspond, in which case there was still a need to revert to the applicant.

64. The Delegation of Germany pointed out that the statistics concerning Germany were not a surprise, since Germany was an exporting nation protecting trademarks on a global scale. Those statistics indicated that the private sector and the Office in Germany were able to work with the system as it stood. As had the Delegation of Norway, the Delegation of Germany noted that it had not had the opportunity to consult and liaise with its Office, its financial department and the private sector, and for this reason the Delegation said that it was difficult for it to take a final stand at this time. The Delegation stressed that the issue was not the possible introduction of new working languages, but new filing languages and, in this context, how to make best use of the available information technology. For this reason, the Delegation said, the issue should be looked at pragmatically, and in particular, consideration should be given as to what would be the added value for applicants and Offices, and to recall the possible negative impacts, which had been voiced by other delegations.

65. Supporting the comments made by the Delegations of Italy, Japan and Norway, the Delegation of Germany underlined that the proposal was interesting, but it felt that it would considerably increase the workload of Offices and introduce new steps into the filing procedure. The Delegation also noted that its Office already used a national database for indications of acceptable terms of goods and services, but that this had not decreased the classification workload of the Office, as national applicants could not be obliged to use the indications in the database. Noting that compliance with the two-month time limit was the responsibility of the Office of origin, the Delegation of Germany queried what would happen if WIPO were unable able to complete the translation in five days.

66. The Delegation of Germany further indicated that, in the event of translation issues, its Office currently had a specialized translator. If the Office was unable to reach the applicant, the application was sent to WIPO as it stood. However, the procedure being proposed required the signature of the applicant. Observing that it had sometimes had problems in obtaining responses from WIPO, the Delegation expressed the view that, although it might be

an electronic process, the proposal contained numerous back and forth steps. The Delegation therefore concluded that, in practice, the proposal would not be feasible for its Office because there were too many extra steps, extra workload for the Office, and costs for translation and for personnel.

67. The Delegation of Denmark stated that it did not yet have a mandate on the proposal. Furthermore, it had not been possible to organize consultations with users at short notice, which it felt was essential in order to be able to take a position on formulating a way forward on the proposal. Noting that one of the stated main purposes of introducing additional filing languages was the encouragement of additional countries to become members of the Madrid system and to increase the number of filings, the Delegation wondered how it was known that this purpose would be attained by adding further filing languages to the system.

68. The Delegation of Australia stated that the proposal was very interesting and could potentially be very beneficial. However, if there were to be a change of filing languages, it would seek the same service level and quality standards as heretofore. Therefore, the costs involved in implementing the changes would need to be considered carefully. In line with the intervention made by the Delegation of Denmark, the Delegation of Australia said that it wished to have further information on the expected benefits of the additional filing languages.

69. With respect to the WIPO database of accepted indications of goods and services, the Delegation of Australia indicated that a similar database of accepted terms, based on the Nice Classification, had been implemented in Australia and that the pick list was attached to the electronic application form automatically populated with the applicant's selected terms. Fees were automatically calculated on the basis of the classes included and the type of application. The electronic form provided an either/or option for use of the pick list. If free text was required, the pick list could not be used. A discount in the fees was granted if the pick list was used, because in that case there was no need to check the classification or the wording. The Delegation of Australia underlined that the experience of its Office with this tool had been very positive and that uptake had been around 60% of non-Madrid electronic filings.

70. The Delegation of Austria stated that the proposal appeared to be complex and would provide national Offices with extra work within the two-month time limit. It said that, as had already been mentioned by other delegations, the proposal might not simplify the system and would probably result in increased costs.

71. While noting that the proposal seemed useful, the Delegation of the Netherlands stated that it had not been in a position to consult its stakeholders and therefore had reservations about the proposal. However, the Delegation said that it could not imagine how Dutch could be added as a filing language without any fees increase.

72. The Representative of JPAA expressed its concern about whether the applicant could authorize the translation provided by WIPO within two months. If the applicant was not satisfied with the translation prepared by WIPO or the Japanese Office, the Representative of JPAA asked whether the applicant might contest such translation. The Representative of JPAA suggested that, in any event, the two-month time limit was too short and wondered whether WIPO would always send the translation within five days. Considering past experience, such as delays in transmission of provisional refusals, the Representative said that there remained some doubt that WIPO could always observe the time limit.

73. The Delegation of the United Kingdom raised concern about using the terms for the indication of goods and services accepted by the International Bureau. Under the current procedure, a national application or registration was required prior to the filing of an international application. However, it appeared that some terms accepted by the International Bureau were not accepted in the Office of the United Kingdom and in some other Offices. Therefore, the Delegation said that, with the proposed pick list system, whereby an applicant could use the International Bureau's acceptable terms and file the international application and the domestic application at the same time, the Office of the United Kingdom could have objections against the domestic application, on the basis that it contained classification terms that the Office of the United Kingdom did not accept. In this case, the Office of the United Kingdom would have to raise a notification of ceasing of effect on some of the goods and services of that application. Meanwhile, the Delegation of the United Kingdom concluded that applicants would have the impression that their applications would be accepted because the list of goods and services had been greenlighted by the International Bureau's system. The Delegation of the United Kingdom therefore thought that it was important that terms used by the International Bureau in its database would be clarified and agreed with each of the national Offices concerned.

74. While reiterating its support for any initiative to modernize the Madrid system and to facilitate access to it, the Delegation of France said that, given the late publication of the document, it had not been in a position to consult Madrid system users and that it felt obliged, therefore, to express its reservations about the proposal.

75. The Representative of MARQUES noted that it was presumed that the budgeted figures for the extra translation costs were based on an assumption that every single applicant, whose national language was one of the additional filing languages, would opt to file in that language. While mentioning that the enterprise with which the Representative was associated would continue to file in a working language of the Madrid system, the Representative doubted whether all, or even the majority, of trademark owners would opt to file in one of the new optional filing language. For this reason, the Representative of MARQUES asked interested national Offices to ascertain what proportion of users might actually use an alternative filing language, since it could ultimately be very low and therefore maybe not such a huge burden on national Offices. The Representative suggested that an optional filing language might be used by SMEs not filing through the medium of an outside attorney, and national Offices should bear in mind that the proportion of such filings might be small.

76. Recalling that INTA would always be ready to support any initiative that could effectively contribute to facilitating access to the Madrid system by applicants from all countries, the Representative of INTA said that such objective should, however, not be at the expense of the attractiveness of the system, in terms of its costs and efficiency. Considering that the proposal was interesting and included a number of potential benefits in promoting the use of electronic communications and the standardization of indications of goods and services, the Representative noted that some doubts as to the effectiveness of the proposal, and some concerns as to the validity of some assumptions, had been expressed by certain delegations and representatives of users. In particular, the Representative of INTA recalled that some delegations and some of the representatives of users wondered whether it was feasible that the International Bureau would, within five days from receiving a list of goods and services in a non-working language of the system, be able to have it translated, to send it back to the Office of origin, and the Office of origin, in turn, be able to obtain the consent of the applicant within the time limits.

77. The Representative of GRUR noted that, in the abstract, users believed that anything that facilitated the operations of the Madrid system or made it easier, faster and more efficient and more secure, was welcome. The establishment of a database with pick list terms to be chosen, provided that this database was up to date and accurate and reflected the requirements of users, would be an extremely useful tool, aside from the benefit that the Madrid Union would have from the translation effect of it. The Representative of GRUR confirmed, therefore, that whatever might be achieved in this field would be greatly welcomed by users.

78. The Representative of GRUR noted that the possible introduction of additional filing languages was linked to the establishment of the WIPO database and that the system would not work unless there was a reasonably complete database. Otherwise, the additional work necessary in communicating back and forth between the International Bureau, the Office and an applicant would rarely be able to be finished in the two months. For this reason, the Representative stressed that it should first be seen whether there was a workable database and then there could be an analysis of the benefit of making use of such a database in the context of the possible introduction of additional filing languages.

79. The Representative of ATRIP and CEIPI said that neither ATRIP nor CEIPI had been consulted, given the late dissemination of the document and that he was therefore expressing a personal opinion. After recalling that ATRIP and CEIPI were academic organizations which did not represent users, the Representative indicated that the deliberations showed that most delegations, with official languages which were not languages of the United Nations System, that would benefit from the planned system according to the International Bureau's proposal, did not seem interested at the moment. The Representative noted that the actual entry into force of the system would therefore depend on an agreement with the Office concerned and that there was therefore no obligation to apply the system. To the best of his knowledge, there were not many Italian-speaking, Japanese-speaking or Dutch-speaking countries that were not already members of the Madrid system. The Representative of ATRIP and CEIPI stated that the principle of a dual threshold was in contradiction with one of the objectives of the proposal, which was to attract new countries, and suggested that the dual threshold be abandoned.

80. The Delegation of Cuba thanked the Secretariat of the International Bureau for the documents, which although they had been made available at a late stage, were clear and well-founded in relation to their subject matter, namely, the introduction of new filing languages in the Madrid system.

81. The Delegation of Cuba, perhaps due to a lack of time available to study the documents, expressed its reservations about the proposal. In any case, the on-line Assistant presented was highly useful, versatile for the purposes for which it was designed and, in truth, an important solution not only in that respect but also as regards the work of any IP Office, which in the same way as his colleague, Mr. Campinos, he would like to have at his disposal. The Delegation agreed with other delegations on the approach of the interconnection between the analysis of the contribution of Norway with the new filing languages for without a solution to the former it was unclear how the latter could be solved and the proposal presented did not shed any light on the matter. The Delegation added that although it was highly receptive to the on-line Assistant it was equally concerned about access to it, as not all countries had the same equipment or sufficient bandwidth to use it fully. Lastly, the Delegation underscored that although it was not one of the countries which required that type of forward-looking services, he shared the concern of others about the availability of translation resources.

82. The Delegation of China stated that it agreed, in principle, with the introduction of Chinese as a filing language in the Madrid system, as this would attract a greater number of users to the system.

83. The Delegation of Kenya indicated that it had not been able to conduct the necessary consultations and, for that reason, it expressed reservations about the proposal. However, the Delegation raised concerns about the cost implications for Offices of origin, and said that this issue should be clarified. Noting that it sometimes faced problem with one of the working language, namely French, the Delegation of Kenya observed that the introduction of additional filing languages would be problematic, in terms of capacity and workload.

84. While pointing out that it was not for him to express the point of view of the Benelux Governments, the Representative of BOIP highlighted, from the Office's technical point of view, that the proposal was excellent. The optional aspects were an important point as was the individual nature and the fact that the proposal for collaboration was dependent on relatively advanced technology requiring on-line communication. Given those three elements and the fact that the proposal was in the interests of users and would help make the Madrid system more attractive, the Representative of BOIP added that that was an interesting path, worth pursuing, provided that the Governments of Benelux agreed.

85. The Delegation of Lithuania stated that if the WIPO database could be used to pick a term and to have that term simultaneously translated, that would be very useful. The Delegation noted that the Office of Lithuania itself had an electronic tool for this purpose, enabling applicants to select Lithuanian terms and have them translated into English. Under the proposal, this facility could be expanded, to include, for example, translation from Russian into English and French.

86. The Delegation of Spain thanked the International Bureau for the documents prepared. The Delegation stated that due to the delay in distributing the Spanish version, it had not had time to study the documents and consequently its Office reserved judgment.

87. Recalling that the proposal would be implemented on a voluntary basis, the Chair indicated that those who were prepared could enter into an agreement with the International Bureau, and the others who were not prepared could first prepare themselves and then implement the proposal. Following a question raised by the Delegation of Germany, the Chair confirmed that Portugal had already entered into an electronic communication agreement with the International Bureau.

88. Following a question raised by the Representative of INTA as to when the International Bureau was to submit the study to the Madrid Union Assembly, Mr. Rubio, recalling the content of the Assembly's decision, specified that the above Assembly had not said that the study was to have been submitted in 2009. The International Bureau nevertheless intended to present the study in the current year, firstly to the Working Group so that it could contribute. Mr. Rubio pointed out that the interesting statements made during the discussions would enable new elements to be included in the study and would improve it.

89. Following a statement by the Representative of FICPI also on the subject of when the study was to be submitted to the Madrid Union Assembly, the Secretariat recalled that the Working Group had been guided by the conclusion at which the Madrid Union Assembly had arrived in September 2008 and which was contained in the Assembly report, in paragraph 33 of document MM/A/40/5.

90. Noting that the new system being proposed was on a voluntary basis, the Delegation of Italy underlined its interest in the possibility of additional filing languages in the Madrid system and also its interest in participating in the system. However, as had already been noted by a number of other delegations, the Delegation of Italy expressed its concerns for the additional effort that may be required from Offices in terms of expense, personnel and so on.

91. At the invitation of the Chair, the Secretariat was invited to clarify the concerns and questions raised by some delegations and representatives during the discussions.

92. Referring to the origin of the proposal, the Secretariat firstly recalled that its scope was not primarily to expand the geographical coverage of the Madrid system. Existing members of the Madrid system also required that, if possible, their nationals be given easier access to the system, by being allowed to file international applications in their own language. For that reason, the Secretariat observed that individual applicants and SMEs would be primarily concerned, in terms of the potential benefits of the proposal. Recalling the intervention made by the Representative of MARQUES concerning the likely preference of multinational and large corporations to continue to file international applications in one of the three working languages of the Madrid system, the Secretariat agreed that these multinational and large corporations would probably not switch massively to an option of filing in their domestic language.

93. The Secretariat then explained that the Contracting Parties interested in the proposal, and the languages concerned, were two different issues, to be considered separately.

94. The interested Contracting Parties were those that would be qualified because they had, as a domestic language, one of the languages selected. The other Contracting Parties, in particular those for whom the working language of the Office was the same as one of the working languages of the Madrid system, would not therefore be concerned by the proposal. The Secretariat added that the proposal did not change anything for Offices which had, for Madrid purposes, selected to work only in English, or only in French, or only in Spanish or, for example, in both English and French. Concerning the intervention made by the Delegation of Kenya as to the difficulties it envisaged if the proposal were to go ahead, in particular the current difficulties of that Office when required to deal with filings in French, the Secretariat recalled that, since the introduction of the full trilingual regime on September 1, 2008, any Office may choose to operate only in English for Madrid purposes.

95. Concerning the selected languages, the Secretariat said that admissibility criteria were needed since, at this stage, not all the languages of those countries in the Madrid Union could be envisaged as a filing language. The objective criterion initially concerned the four additional WIPO languages, because they were languages of the United Nations system and/or WIPO working languages. Following the discussions that took place in the framework of the Madrid Union Assembly in September 2008, the additional four languages, which were currently the most relevant to the Madrid system, were added. The Secretariat recalled that the Working Group was welcome to formulate different criteria for the selection of languages, taking into account that any recommendation to the Assembly in that respect would have to allow, at least, for the four additional WIPO languages, which were Arabic, Chinese, Portuguese and Russian.

96. Regardless of the criteria that would be agreed by the Working Group, the Secretariat suggested that the recommendation of the Working Group would provide that the introduction of filing languages would not be open-ended, but would rest on bilateral agreements between the International Bureau and any Office interested. This was essential so that two conditions could be established, namely electronic communications between the International Bureau and that Office, and cooperation in making the database available in the given language. These conditions were necessary so that the introduction of filing languages would succeed, from both a technical and cost point of view.

97. As to the concerns about costs which had been expressed by a number of delegations, the Secretariat recalled that data had been furnished to the Working Group which demonstrated that the amounts concerned were very reasonable. As the introduction of any filing language would be tied to reliance on the database, the translation costs would have to go down, instead of up.

98. Referring to the procedure proposed in the document, the Secretariat agreed that the system should be kept simple and efficient. The Secretariat added that safeguarding legal certainty was a crucial element too. While admitting that the proposal could be improved, taking into account the experience gained under its implementation, the Secretariat stressed that the proposal had been based on thorough research and reflected the best solution, in order to allow for the introduction of filing languages in a financially and practically feasible manner, without compromising legal certainty.

99. As to the translation exchanges between the International Bureau and Offices of origin, and between Offices of origin and applicants, the Secretariat considered that it was essential that the applicant consented to the translation provided by the International Bureau. Under the current system, and under what would continue to be the standard system even if additional languages were introduced, when the applicant filed in a working language, the applicant was responsible for the terms chosen for the establishment of the list of goods and services in the language of the international application. Then the International Bureau would translate that list into the other two working languages, and that translation was the responsibility of the International Bureau. If there was an issue as to the specific protection of the mark due to a disparity between the list in that original working language submitted by the applicant and the other two languages as translated by the International Bureau, the former list prevailed. In such a case, the applicant or third parties could ask the translation to be amended by means of a correction in the International Register. The Secretariat noted, however, that the applicant could not change the list in the original language of the application. That list was indeed the immutable unchanging record of what protection under the trademark had been sought for.

100. Under the proposal, the applicant would be filing in a non-working language. The International Bureau could therefore not have this immutable unchanging list in the language of filing, as this was, by definition, a non-working language of the Madrid system. The list needed to be in a working language allowed by the Office or, if there were several working languages allowed by this Office, the working language selected by the applicant. The Secretariat recalled that only the terms not contained in the WIPO database would require to be translated by the International Bureau. Since the International Bureau would establish the list in the language of the international application, it was essential that the applicant be shown this translation. Referring to a question raised by the Representative of JPAA, the Secretariat explained that the proposed procedure provided for the possibility, for the applicant, to comment upon and change the translation returned by the International Bureau.

That version of the list would constitute the reference from which the International Bureau would then proceed to the translation into the other two working languages. Because the primary list could not change, the International Bureau would therefore need the applicant to consent to the translation of that list.

101. However, the Secretariat stressed that, for all terms already contained in the WIPO database, the translation would be automatic, so that the Office of origin would, in many cases be able to obtain immediately the consent of the applicant.

102. As to the concerns about the deadlines and the capacity of the International Bureau to proceed to the translation within five days, the Secretariat pointed out that the International Bureau had in-house capacity to translate from the 10 PCT publication languages into English and French. If there were other needs, the International Bureau would provide for them before entering into an agreement with an interested Office. The Secretariat underlined that if the procedure provided for a five-day turnaround, the International Bureau would comply with this time period.

103. Referring to doubts and concerns expressed about the turnaround time within Offices, the Secretariat recalled that the proposal rested on electronic communications and said that figures had shown that electronic communications brought down the turnaround time within Offices. Making reference to footnote 8 in the document, the Secretariat recalled that, within those Offices that currently communicated electronically with the International Bureau, the average turnaround time was lower than for other Offices. The Secretariat gave the example of the USPTO, where the average turnaround time was 1.7 days, OHIM with 16.8 days, the Office of Switzerland with 23 days, and the Office of the Republic of Korea with 21.7 days. The Secretariat observed that it would be sensible for an Office that entered into a filing language agreement with the International Bureau to set up an electronic filing interface for applicants wishing to file in their domestic language. The Secretariat emphasized that WIPO was dedicated to helping Offices in the setting up of such e-filing interfaces.

104. The Secretariat concluded that in a case in which an application was filed electronically, there would be a number of checks that would be run automatically by the interface. The Secretariat estimated that 20 days in the context of the filing language agreement seemed a reasonable figure. If an additional five days were added to take account of translation by WIPO of terms not contained in the WIPO database, this would leave four weeks to contact the applicant and obtain his approval.

105. Concerning the potential increase in the workload of Offices, the Secretariat recalled that electronic communications would be a precondition, and that two tasks would be novel. Firstly, in the case of terms unknown in the WIPO database, the Office would have to run the list by the International Bureau for translation. Secondly, the Office would then be required to obtain the consent of the applicant with respect to the translation provided by the International Bureau. The Secretariat believed that these two tasks would replace other tasks currently performed by the Office, such as the certification as to the list of goods and services, that might currently be done on the basis of two different languages, or the possible present need for the Office to refine, in a working language, an unclear list of goods and services submitted by the applicant.

106. The Delegation of Sweden underlined its support for the development of the Madrid system with the aim of making the system more efficient and attractive for users. However, as with other delegations, the Delegation stated that it did not have a mandate to either support or oppose the proposal at this time. The Delegation said that it had noted the interest that had been expressed with regard to the database, along with the some concerns regarding the practical implications and cost effects of the proposal. Given that several delegations had indicated that they were not in a position to take a final stand concerning new filing languages at this time, the Delegation of Sweden wondered whether it might be appropriate to continue the discussions at a later stage, after having read a revised document drafted by the Secretariat, including the cost aspects of the proposal. This approach would also allow for consultations with users and other stakeholders. It would also enable WIPO to further develop the database and to establish the necessary cooperation between WIPO and national or regional Offices on acceptable terms for the classification of goods and services.

107. The Delegations of Austria and Denmark of both indicated their support for the proposal by the Delegation of Sweden.

108. The Delegation of Cuba thanked the Secretariat for the clarifications it had made in the sense that they cleared up any doubts that it had, firstly, that there would be no variations as regards the rule whereby the subject of basic applications and registration would not interfere and unrelated to the fact that the analysis of the contribution of Norway, which was pending and which many had objected to, had been deferred as well as the fact that there would be no impact on countries in which their languages were official and in those which were new; the Electronic Assistant would be a tool which would help them in their efforts to accept that applicants did so in the language of their respective countries.

109. The Delegation of Cuba emphasized that it would therefore be a good idea for the International Bureau to demonstrate to delegates interested in accepting new filing languages how the proposal would work as regards the costs, provided that the Assistant, designed by WIPO specialists who had won praise for its versatility and impact on the work of Offices, was fully able to operate.

110. Noting that there were still some concerns, the Delegation of Germany indicated that, at this stage, it did not undertake any commitment with respect to the proposal outlined in the document. Supporting also the intervention made by the Delegation of Sweden, the Delegation suggested that the Working Group recommend that the Assembly take note of the content of the document.

111. The Chair concluded that Member States believed that the project was not sufficiently prepared to be presented as it stood to the Madrid Union Assembly for approval. The Chair noted that some delegations had mentioned a lack of time, others had expressed doubts which had, to date, not been cleared up and others still were pleased with document MM/LD/WG/7/2 and the proposals put forward by the International Bureau. The Secretariat stressed that no participant had expressed opposition to the document.

112. Given the mandate of the Working Group of the Madrid Union Assembly and referring to the statements by the Delegations of Germany and of Sweden, the Chair suggested recommending to the Madrid Union Assembly to take note of document MM/LD/WG/7/2. and to allow the creation of a pilot project among eligible Contracting Parties, pursuant to the criteria defined in the document, with the aim of verifying the feasibility of the proposals presented in the document and their impact on costs, and to verify whether these new

procedures would create a backlog or by contrast reduce it. Furthermore, the pilot project would enable the Working Group to verify the capacity of National Offices and the International Bureau to respect the procedural deadlines established in the document and would give rise to the creation of a database of acceptable terms. The Chair concluded that the result of the pilot project would allow the Working Group to gauge in concrete terms the impact of the proposal and to convince the Working Group or not to recommend to the Madrid Union Assembly, on the basis of the document as presented or on the basis of a revised document, the introduction of additional filing languages within the framework of the Protocol.

113. The Delegation of the Russian Federation supported the proposal made by the Chair and expressed its wish to participate in the above-mentioned pilot project. Recalling that its Office was already party to an electronic communication agreement with the International Bureau, the Delegation stated that it was ready to cooperate with the International Bureau on translating WIPO's database. The Delegation underscored that it was extremely important for it to progress in the direction suggested by the Chair.

114. Considering that the pilot project would be a positive and appropriate approach, the Delegation of Belgium, supported by the Delegation of the Netherlands, also agreed with the conclusions of the Chair. However, without wishing to hasten a decision on the part of both Belgium and BOIP and without wishing to give its opinion, the Delegation believed that at first sight, BOIP might be interested in participating in the pilot project and that it would have the necessary means at its disposal to do so, given its technical development.

115. The Delegation of China noted that, in principle, Chinese would be introduced in the Madrid system as a filing language.

116. The Delegation of Australia, echoed by the Delegations of Austria, the Czech Republic, France, Germany, Greece, Italy, Norway and Singapore, also supported the proposal of a pilot project, recognizing that there might be potential benefits to all member States and users, in such an approach. During the course of such a pilot project, there would be an opportunity to evaluate the impact of the proposal and to provide the best information possible for future decisions, or improvements to the proposal.

117. The Delegation of the United States of America expressed its willingness to participate in any such pilot program.

118. The Delegation of Switzerland also supported the Chair's proposal, deeming it well thought-out, constructive, likely to reassure the more skeptical countries and enabling the most enthusiastic countries to make progress.

119. As was the case for some other delegations, the Delegation of the European Community indicated that it had not been able to coordinate the position within the European Community. Speaking on behalf of the European Commission, the Delegation thanked the International Bureau for the study which it had prepared, but stressed that there were still open issues, and noted that concerns had been expressed by a number of delegations. The Delegation said that it supported the proposal of the Chair, and said that it would serve to allow for consideration of all the implications and impacts of the proposal.

120. At this time, the Chair noted that the Working Group had taken note of the study on the possible introduction of additional filing languages in the Madrid system, prepared by the International Bureau.

121. The Chair further noted that the Working Group was open to the possibility of introducing additional filing languages in the Madrid system, on the basis of bilateral agreements between the International Bureau and interested Offices meeting certain language eligibility criteria. Those bilateral agreements would provide for electronic communication and cooperation on the building of a database of acceptable terms for the indication of goods and services in the language concerned.

122. While some delegations indicated the readiness of their Offices to engage in such a type of agreement, the Chair recalled that others had expressed concern about the feasibility of applying the procedure outlined in the study, particularly with regard to the operational implications for their Offices and for the International Bureau.

123. The Chair then concluded that the Working Group had agreed that a pilot project be established, involving the participation of interested Offices meeting the criteria proposed in paragraph 43 of document MM/LD/WG/7/2., with a view to verifying the feasibility of the proposal to introduce new filing languages. The project would examine, *inter alia*, the implications of the proposed procedure, in particular, in terms of costs and compliance with time limits.

124. The Working Group recommended that the Assembly mandate the International Bureau to undertake such a pilot project and report its results to the Working Group and to the Assembly in due course.

Item 6 – Other matters

Contribution by Switzerland – Division of International Registrations

125. Discussions were based on document MM/LD/WG/7/3, containing a contribution by Switzerland.

126. On the Chair's invitation, the Delegation of Switzerland presented its contribution on the division of international registrations. The Delegation pointed out that it had noticed, during the previous session of the Working Group, that some delegations and representatives, acting in an observer capacity, had shown interest in the proposal distributed by AROPI. The contribution was based on the fact that when a holder received a notice of provisional refusal, the goods and services refused were entered in the International Registry. Within the framework of the national procedure, it was possible that some goods and services, provisionally refused, were later accepted. In that case, third parties were not informed of such acceptance. The Delegation of Switzerland therefore indicated that one of the benefits of dividing the international designation at that stage of the procedure would be to enable the continuation of the procedure for the refused goods and services and to have acceptance for those goods and services which had been accepted during the national procedure. In the case of a partial provisional refusal, the Delegation of Switzerland suggested implementing a confirmation system, on behalf of the designated Office, for the goods and services not refused.

127. The Chair invited the delegations to comment on the contribution by Switzerland.

128. The Representative of AROPI warmly thanked Switzerland for its contribution. While admitting that the contribution was technical in nature, the Representative of AROPI underscored that it was very interesting. Complementing the statement by the Delegation of Switzerland, the Representative of AROPI pointed out that in the case of a partial provisional refusal, division was of great interest to users. According to the Representative of AROPI, if division were introduced in the international system, there was already a set of rules in the Common Regulations, in particular Rule 27 (3) on the merger of international registrations, which could equally apply to a divided mark.

129. After thanking Switzerland for its contribution, the Representative of ATRIP and CEIPI indicated that ATRIP and CEIPI supported the principle of introducing division in the Madrid system. As well as the benefits that that would have for applicants and holders of international registrations, it was appropriate to harmonize the Madrid system with international standards on marks. The Trademark Law Treaty (TLT) and the Singapore Treaty on the Law of Trademarks made the recognition of division compulsory. Recalling, however, that neither WIPO nor the Madrid Union was bound by those two treaties, the Representative of ATRIP and CEIPI stated that it was peculiar that an international registration system administered by WIPO, as the custodian of those two treaties, did not recognize division. Given the technical character of the issue of division, the Representative of ATRIP and CEIPI proposed entrusting to the International Bureau the mandate to make a concrete proposal after studying all the aspects of the problem.

130. Thanking Switzerland for its contribution, the Delegation of Norway noted that it was interesting and could make the system more user-friendly. Underlining that this mechanism would be appreciated by users, the Delegation proposed that this issue be included on the agenda for discussion at a later session of the Working Group and requested the International Bureau to prepare a document identifying and clarifying the implications of the possible introduction in the Madrid system of a mechanism which would allow for division of an international registration, and its possible merger, subsequently.

131. The Delegation of Germany, expressing the view that, although the contribution was interesting, stated that account should be taken of the differences between some national systems, which provided for division, and the international system, which did not. Besides, as had already been noted by the Delegation of Switzerland, the Delegation of Germany recalled that according to the principle of tacit acceptance, a partial refusal always meant that there was, in fact, a partial protection of the mark for the goods and services not refused. Therefore, in principle, in such case, division was not needed. The Delegation then asked for some concrete examples of where division would be needed.

132. After thanking the Delegation of Switzerland for its contribution, the Delegation of the Russian Federation explained that the Civil Code of the Russian Federation provided for the division of an application and a registration. An application could be divided by the applicant only until the decision on the registration of a mark had been made by the Office. The division of the registration was, for its part, authorized during the dispute procedure, assuming a third party disputed the validity of a registration. The Delegation stressed that it was interested in examining the contribution of the Delegation of Switzerland and ready to discuss a draft amendment to the Common Regulations with a view to introducing provisions which would enable the division of an application and/or of the international registration.

133. The Delegation of Japan expressed its appreciation to the Delegation of Switzerland for its excellent contribution concerning the possible division of international registrations. Although there may be some technical and complicated issues to be considered, the Delegation noted that it was agreeable to the commencement of a study on the matter, in the context of the improvement of the Madrid system. The Delegation said that it would be useful to conduct a study of each country's domestic law and practice concerning the division of applications and registrations and noted that Japanese trademark law laid down some requirements and timing restrictions, with respect to the division of applications and registrations, and required a fee for division.

134. Replying to questions raised by the Delegation of Germany on the practical interest of introducing division in the Madrid system, the Representative of AROPI specified that the notion of division was of practical concern to users. When wishing to assert its mark and the related rights, the holder of an international registration could encounter obstacles in the interpretation which might be based on the principle of tacit acceptance by an independent administration. The Representative of AROPI invited participants to reflect on some of the examples cited in the documents attached to the proposal of the Delegation of Switzerland (document MM/LD/WG/7/3). When a holder of a mark asserted its rights either to a certification body in the context of authorizations to market pharmaceuticals or to customs authorities in the context of a seizure or of surveillance measures for the confiscation of works infringing copyright, an international registration partially refused and therefore partially accepted, could be misinterpreted by these administrations, which might refuse the holder's request on the grounds that the right was not assured. According to the Representative of AROPI, the principle of tacit acceptance under which goods or services not specifically refused were accepted was well understood by professionals in the field of the law of marks and by Offices but was not necessarily the case for the independent administrations with which an applicant was faced in day-to-day business life.

135. Echoing the statement by the Delegation of the Russian Federation, the Representative of AROPI indicated that many countries currently provided for division in their legislation. The Representative stated that if a holder chose to have a national Russian registration, he could divide it and that that was also the case for a national Swiss registration. Yet, if the holder had designated the Russian Federation via the Madrid system, he could not have access to that division. The Representative of AROPI concluded therefore that that showed there was a processing difference between a holder of an international registration and holder of a national registration and that the difference was hard to understand for users. Lastly, the Representative of AROPI added that, in its proposal, AROPI had taken into account the fact that some States did not provide for the possibility of dividing an application for international registration and that they could expressly consider that such an application, when it was not provided for under national law, would not be applicable to them.

136. While thanking the Delegation of Switzerland for its contribution, the Delegation of France indicated that there was a division procedure in France for national marks, under certain specific conditions provided for by the Intellectual Property Code. The French procedure did not provide for division at the application stage or when the decision to register a mark was subject to judicial appeal. Conversely, there was no post-registration possibility of division. The Delegation underscored that use of this procedure, implemented in 2004, was for the time being relatively symbolic in France since to date there had been only five cases of division. Following the example of the Delegation of Germany, the Delegation of

France wished to obtain details on the concrete cases which might be applicable at the international level. The Delegation stated, however, that it is in favor of examining the proposal further and that it would ensure that planned solutions were sufficiently flexible to eliminate the need to modify national frameworks and not to cause excessive workloads for National Offices.

137. The Representative of GRUR said that he shared the opinion of the Representative of ATRIP and CEIPI, and noted that it would seem logical that division, which was part of a number of national and international systems, should also be available in the international treaties governed and administrated by WIPO. The Representative said, further, that Article 7 of the Singapore Treaty on the Law of Trademarks at least recognized the principle of division of applications and registrations. He quoted, as an example, the European Community trademark system which had, like the German trademark system, a very liberal approach of permitting, in principle, the division of applications and registrations, at any time. The Representative of GRUR emphasized that it would therefore seem entirely appropriate that the Madrid system would have a similar liberal, rather than restrictive, approach. Therefore, the Representative of GRUR supported the basic idea behind the contribution of the Delegation of Switzerland, as well as the proposal of a study, to be conducted by the International Bureau, which could lead to concrete solutions to this particular issue, hopefully without having to go through a revision of the Madrid Protocol.

138. The Delegation of Cuba thanked the Delegation of Switzerland for its contribution outlined in document MM/LD/WG/7/3 and its presentation thereof.

139. The Secretariat first underlined that all delegations and all the representatives who had spoken agreed that that was a highly complex issue. Referring to the statement by the Representative of AROPI on the difference in processing, the Secretariat recalled that the statement by the Delegation of Germany which had, quite rightly, underscored that, given the principle of tacit acceptance, the Madrid system was quite different to national or regional systems.

140. The Secretariat indicated that, among the jurisdictions mentioned in the Annex to the contribution by Switzerland, a Contracting Party had indeed introduced division in its national system due to its accession to the Protocol. As regards that Contracting Party, those who used the international route to file were at an advantage over those who used the national route to file as, at the international level, they benefitted from the application of the principle of tacit acceptance whereas, at the national level, as long as there was an objection to some of the goods or services, no notification of protection was issued.

141. Given the marginal use of the division procedure, as shown by Switzerland in its contribution, the Secretariat wondered about the possible existence of another means of meeting the above-mentioned needs immediately. In the case of a holder of an international mark faced with an independent national authority which did not understand the principle of tacit acceptance, the Secretariat suggested that the holder should ask the Office, which had notified a partial refusal, to send an official communication to that authority certifying that what was not refused was protected. In that respect, the Secretariat underscored the wish of the International Bureau to help, if required, with that alternative solution.

142. In the context of a study on the issue of division, the Secretariat specified that it would be useful to verify whether the notion of division could be introduced under the umbrella of Article 9bis of the Protocol and to find out if division applied to the “corrupted” part of a designation or, conversely, to the “healthy” part. The Secretariat wondered if it might not be preferable to remove the “corrupted” part so as to keep an international registration healthy for all the Contracting Parties. Lastly, the Secretariat wondered if the possibility of a merger should be made available.

143. Referring to another track which might be explored if a study on the division of an international registration were actually carried out, the Secretariat recalled that, during the first session of the Working Group, the Delegation of the United Kingdom had submitted an informal proposal to introduce declarations of grants of partial protection. However, at the time, the Working Group was not ready to consider that question. The Secretariat had, however, observed that the circumstances since then had changed, as the Madrid Union Assembly had adopted in 2008 a recommendation of the Working Group to introduce a rule making declarations of grants of protection compulsory. In that context, the Secretariat had wondered whether the possibility might not be considered of providing for declarations of grants of partial protection, non compulsory, available to the holder on request.

144. The Chair noted that the Working Group had concluded that further discussions relating to the division of an international application/registration were needed and that this had been requested by a number of delegations. The Chair said that the Working Group had expressed its interest in the preparation by the International Bureau of a study which would examine the need for, and the impact and consequences of the possible introduction of division into the procedures of the Madrid system, which would also assess national practices on the matter.

145. The Working Group agreed that such a study should be conducted by the International Bureau in order to ascertain the impact and consequences of the possible introduction of a procedure which would permit the division of international registrations. The Working Group indicated that such a study should also examine the practices of Contracting Parties of the Madrid system in this regard. In due course, the International Bureau would present to the Working Group the results of the study.

Tribute to the work accomplished by Mr. Ernesto Rubio

146. The Delegation of Germany, on behalf of the Working Group, expressed particular appreciation and thanks to Mr. Ernesto Rubio for the work which he accomplished in the International Bureau.

147. Thanking the Chair and the Working Group, Mr. Rubio said that it had been a privilege to work in WIPO over the years. He recalled some very important and fundamental changes that had occurred in the legal structure of the Madrid system, such as the repeal of the safeguard clause and the introduction of mandatory statements of grant of protection. Mr. Rubio then thanked Mr. Grégoire Bisson, the Secretary of this Working Group, Mr. Marcus Höpperger, the Secretary of the SCT, Mr. Alan Datri, Mr. Matthijs Geuze and other colleagues who had worked closely in order to have the International Bureau respond to the expectations of the Member States. Finally, he thanked the Delegates for the spirit of consensus that they had always shown during the course of the discussions of the Working Group over the years.

Agenda Item 7: Summary by the Chair

148. The Working Group approved the Summary by the Chair, as contained in document MM/LD/WG/7/4.

Agenda Item 8: Closing of the Session

149. The session was closed on July 10, 2009.

[Annex follows]

ANNEX

I. MEMBRES/MEMBERS

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

ALLEMAGNE/GERMANY

Li-Feng SCHROCK, Senior Ministerial Counsellor, Federal Ministry of Justice, Berlin

Carolin HÜBENETT (Ms.), Counsellor, German Patent and Trade Mark Office, Munich

AUSTRALIE/AUSTRALIA

Edwina LEWIS (Ms.), Assistant Director, International Policy Section, IP Australia, Woden ACT

AUTRICHE/AUSTRIA

Tanja WALCHER (Mrs.), Legal Department, Austrian Patent Office, Vienna

BELGIQUE/BELGIUM

Leen DE CORT (Mlle), attachée au Service des affaires juridiques et internationales, Office de la propriété intellectuelle, Direction générale de la régulation et de l'organisation du marché, Service public fédéral, économie, P.M.E., classes moyennes et énergie, Bruxelles

CHINE/CHINA

WU Qun, Director, Division of International Registrations, Trademark Office, State Administration for Industry and Commerce (SAIC), Beijing

COMMUNAUTÉ EUROPÉENNE (CE)/EUROPEAN COMMUNITY (EC)

Tomas Lorenzo EICHENBERG, Principal Administrator, Directorate General for Internal Market, European Commission, Brussels

Vincent O'REILLY, Director, Department for Industrial Property Policy, Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Alicante

CUBA

Clara Amparo MIRANDA VILA (Sra.), Jefa del Departamento de Marcas y Otros Signos Distintivos, Oficina Cubana de la Propiedad Industrial (OCPI), La Habana

DANEMARK/DENMARK

Anja M. BECH HORNECKER (Ms.), Special Legal Advisor, International Affairs, Danish Patent and Trademark Office, Ministry of Economic and Business Affairs, Taastrup

Christina M. F. JENSEN (Ms.), Legal Advisor, Trademarks/Designs, Danish Patent and Trademark Office, Ministry of Economic and Business Affairs, Taastrup

ESPAGNE/SPAIN

María del Carmen FERNÁNDEZ RODRÍGUEZ (Sra.), Jefa del Servicio de Examen de Marcas VI, Departamento de Signos Distintivos, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Turismo y Comercio, Madrid

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Brad HUTHER, Senior Director, Global Intellectual Property Center, United States Chamber of Commerce, Washington

Patricia KABULEETA (Ms.), Global Intellectual Property Center, United States Chamber of Commerce, Washington

Deborah LASHLEY-JOHNSON (Mrs.), Intellectual Property Attaché for Economic and Science Affairs, Permanent Mission, Geneva

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Tatiana ZMEEVSKAYA (Mrs.), Head of Division, Federal Institute of Industrial Property (FIPS), Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Larisa POLYAKOVA (Ms.), Senior Patent Examiner, Federal Institute of Industrial Property (FIPS), Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

FINLANDE/FINLAND

Marjo AALTO-SETÄLÄ (Ms.), Coordinator of International Affairs, National Board of Patents and Registration, Helsinki

FRANCE

Daphné DE BECO (Mme), chargée de mission au Service des affaires européennes et internationales, Institut national de la propriété industrielle (INPI), Paris

Mathilde MECHIN (Mme), chargée de mission au Service des affaires juridiques et contentieuses, Institut national de la propriété industrielle (INPI), Paris

GRÈCE/GREECE

Stavroula KOUVARI-KOMATANOU (Mrs.), Director, Directorate of Commercial and Industrial Property, Ministry of Development, Athens

Evangelia GKRIMPA (Mrs.), Economist/Marketer, Directorate of Commercial and Industrial Property, Ministry of Development, Athens

HONGRIE/HUNGARY

Krisztina KOVÁCS (Ms.), Head, Industrial Property Law Section, Hungarian Patent Office, Budapest

ITALIE/ITALY

Renata CERENZA (Mrs.), First Examiner, International and Community Trademarks, Italian Patent and Trademark Office, Ministry of Economic Development, Rome

JAPON/JAPAN

Hirofumi AOKI, Director, Trademark Examination Planning, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Tokyo

Mayako OE, Administrative Coordinator for PCT and Madrid Protocol Affairs, Coordinating Office for PCT and Madrid Protocol Systems, International Application Division, Trademark, Design and Administrative Affairs Department, Japan Patent Office (JPO), Tokyo

KAZAKHSTAN

Nurzhan KUMAROV, A.I. Chief Officer, Committee for Intellectual Property Rights, Ministry of Justice, Astana

KENYA

Elvine Beryl APIYO (Mrs.), Legal Officer, Kenya Industrial Property Institute (KIPI), Nairobi

LETTONIE/LATVIA

Līga RINKA (Mrs.), Deputy Director, International Trademark Matters, Department of Trademarks and Industrial Designs, Patent Office of the Republic of Latvia, Riga

LITUANIE/LITHUANIA

Jūratė KAMINSKIENĖ (Ms.), Head, Examination Subdivision, Trademarks and Designs Division, State Patent Bureau of the Republic of Lithuania, Vilnius

MONTÉNÉGRO/MONTENEGRO

Duškanka PEROVIĆ (Mrs.), Deputy Director, Intellectual Property Office, Ministry of Economic Development, Podgorica

NORVÈGE/NORWAY

Solvår Winnie FINNANGER (Ms.), Senior Legal Advisor, Section 3 Trademarks, Design and Trademarks Department, Norwegian Industrial Property Office, Oslo

Debbie RØNNING (Ms.), Senior Legal Advisor, Legal and International Affairs, Norwegian Industrial Property Office, Oslo

PAYS-BAS/NETHERLANDS

Angela VAN DER MEER (Mrs.), Senior Policy Advisor, Directorate-General for Enterprise and Innovation, Innovation Department, Ministry of Economic Affairs, The Hague

POLOGNE/POLAND

Maciej KRAWCZYK, chef de division au Département d'examen des marques, Office des brevets de la République de Pologne, Varsovie

PORTUGAL

António Serge CAMPINOS, President, National Institute of Industrial Property (INPI), Ministry of Justice, Lisbon

Luis SERRADAS FAVARES, Legal Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

YOO Jin-Ou, Deputy Director, International Application Division, Korean Intellectual Property Office (KIPO), Daejeon

RYU Gil-Fan, International Trademark Examiner, International Trademark Examination Team, Korean Intellectual Property Office (KIPO), Daejeon

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Zlatuše BRAUNŠTEINOVÁ (Ms.), Trademarks Department, Industrial Property Office, Prague

ROYAUME-UNI/UNITED KINGDOM

Mark JEFFERISS, Trade Marks and Designs Operations Manager, Intellectual Property Office, Newport

SAO TOMÉ-ET-PRINCIPE/SAO TOME AND PRINCIPE

Domingos DA SILVA DA TRINDADE, directeur de l'industrie, Service national de la propriété industrielle (SENAPI), Sao Tomé

SERBIE/SERBIA

Mirela BOŠKOVIĆ (Ms.), Assistant Director, Intellectual Property Office, Belgrade

Marija PETROVIĆ (Mrs.), Senior Counsellor, International Trademarks Division, Intellectual Property Office, Belgrade

SINGAPOUR/SINGAPORE

CHAN Ken Yu Louis, Director and Legal Counsel, Registry of Trade Marks, Intellectual Property Office of Singapore (IPOS), Singapore

SUÈDE/SWEDEN

Anneli SKOGLUND (Mrs.), Deputy Director, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

Göran SÖDERSTRÖM, Deputy Director, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

Anne GUSTAVSSON (Ms.), Senior Legal Advisor, Designs and Trademarks Department, Swedish Patent and Registration Office, Söderhamn

SUISSE/SWITZERLAND

Sandrine GERBER (Mme), conseillère juridique au Service juridique des marques, Institut fédéral de la propriété intellectuelle (IPI), Berne

David LAMBERT, conseiller juridique au Service juridique des marques, Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Julie POUPINET (Mme), responsable de section suppléante, Institut fédéral de la propriété intellectuelle (IPI), Berne

UKRAINE

Olena LYEVICHEVA (Mrs.), Head, Rights on Designation Division, Ukrainian Industrial Property Institute, State Department of Intellectual Property (SDIP), Ministry of Education and Science, Kyiv

Svitlana SUKHINOVA (Mrs.), Head, Department of International Trademark Registrations, Ukrainian Industrial Property Institute, State Department of Intellectual Property (SDIP), Ministry of Education and Science, Kyiv

VIET NAM

NGUYEN Thi Minh Hien (Mrs.), Director, Trademark Division 2, National Office of Intellectual Property (NOIP), Hanoi

II. ÉTATS OBSERVATEURS/OBSERVER STATES

BRÉSIL/BRAZIL

Schmuell Lopes CANTANHEDE, Trademark Examiner/Project Coordinator, National Institute of Industrial Property (INPI), Rio de Janeiro

Marcus Vinicius DUDKIEWICZ, Deputy Coordinator, National Institute of Industrial Property (INPI), Rio de Janeiro

INDONÉSIE/INDONESIA

Almira DEVAYANTI (Miss), Directorate General of Legal Affairs and International Treaties, Directorate of Legal and International Treaties on Economic, Social and Cultural Affairs, Department of Foreign Affairs, Jakarta

Yasmi ADRIANSYAH, First Secretary, Permanent Mission, Geneva

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/ INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION BENELUX DE LA PROPRIÉTÉ INTELLECTUELLE (OBPI)/BENELUX ORGANISATION FOR INTELLECTUAL PROPERTY (BOIP)

Hugues DERÈME, directeur général adjoint, La Haye

Camille JANSSEN, juriste, La Haye

IV. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/
INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association allemande pour la propriété industrielle et le droit d'auteur (GRUR)/German Association for the Protection of Industrial Property and Copyright Law (GRUR)

Alexander VON MÜHLEND AHL (Attorney-at-Law, Munich)

Association communautaire du droit des marques (ECTA)/European Communities Trade Mark Association (ECTA)

Jan WREDE (Law Committee member, Antwerp)

Anne-Laure COVIN (Mrs.) (Legal Co-ordinator, Brussels)

Association internationale pour la promotion de l'enseignement et de la recherche en propriété intellectuelle (ATRIP)/International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)

François CURCHOD (représentant, Genolier)

Association japonaise des conseils en brevet (JPAA)/Japan Patent Attorneys Association (JPAA)

Reiko TOYOSAKI (Ms.) (Member, International Activities Center, Tokyo)

Chikako MORI (Ms.) (Member, Trademark Committee, Tokyo)

Association romande de propriété intellectuelle (AROPI)

Éric NOËL (observateur, Genève)

Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)

François CURCHOD (chargé de mission, Genolier)

Fédération internationale des conseils en propriété industrielle (FICPI)/International Federation of Industrial Property Attorneys (FICPI)

Jean-Marie BOURGOGNON (Representative, Paris)

International Trademark Association (INTA)

Bruno MACHADO (Geneva Representative, Rolle)

MARQUES (Association des propriétaires européens de marques de commerce)/MARQUES (Association of European Trademark Owners)

Jane COLLINS (Mrs.) (Immediate Past President, Basel)

Union des praticiens européens en propriété industrielle (UNION)/Union of European Practitioners in Industrial Property (UNION)

Laurent OVERATH (vice-président, Commission des marques, Bruxelles)

V. BUREAU/OFFICERS

Président/Chair:	António Serge CAMPINOS (Portugal)
Vice-présidents/Vice-Chairs:	CHAN Ken Yu Louis (Singapour/Singapore)
	David LAMBERT (Suisse/Switzerland)
Secrétaire/Secretary:	Grégoire BISSON (OMPI/WIPO)

VI. **SECRETARIAT DE L'ORGANISATION MONDIALE DE LA
PROPRIÉTÉ INTELLECTUELLE (OMPI)/
SECRETARIAT OF THE WORLD INTELLECTUAL
PROPERTY ORGANIZATION (WIPO)**

Ernesto RUBIO, sous-directeur général/Assistant Director General

Juan Antonio TOLEDO BARRAZA, directeur du Département des enregistrements internationaux/Director, International Registrations Department

Neil WILSON, directeur de la Division de l'appui fonctionnel/Director, Functional Support Division

Grégoire BISSON, chef du Service juridique des systèmes d'enregistrement international/Head, International Registration Systems Legal Service

Alan DATRI, conseiller principal au Bureau du sous-directeur général/Senior Counsellor, Office of the Assistant Director General

Päivi LÄHDESMÄKI (Mlle/Miss), juriste principale au Service juridique des systèmes d'enregistrement international/Senior Legal Officer, International Registration Systems Legal Service

William O'REILLY, juriste principal au Service juridique des systèmes d'enregistrement international/Senior Legal Officer, International Registration Systems Legal Service

Isabelle VICEDO (Mme/Mrs.), administratrice principale de programme à la Division des opérations relatives aux enregistrements internationaux, Département des enregistrements internationaux/Senior Program Officer, International Registrations Operations Division, International Registrations Department

Marina FOSCHI (Mlle/Miss), juriste au Service juridique des systèmes d'enregistrement international/Legal Officer, International Registration Systems Legal Service

Hiroshi OKUTOMI, juriste au Groupe de l'appui juridique et de la liaison inter-offices, Service juridique des systèmes d'enregistrement international/Legal Officer, Legal and Inter-Office Support Unit, International Registration Systems Legal Service

Silvia VINCENTI (Mme/Mrs.), juriste au Groupe de l'appui juridique et de la liaison inter-offices, Service juridique des systèmes d'enregistrement international/Legal Officer, Legal and Inter-Office Support Unit, International Registration Systems Legal Service

Marie-Laure DOUAY (Mlle/Miss), assistante juridique au Service juridique des systèmes d'enregistrement international/Legal Assistant, International Registration Systems Legal Service

Valeriya PLAKHOTNA (Mlle/Miss), consultante au Service juridique des systèmes d'enregistrement international/Consultant, International Registration Systems Legal Service