

## **Diplomatic Conference to Conclude and Adopt a Design Law Treaty (DLT)**

**Riyadh, November 11 to 22, 2024**

**NOTES ON THE BASIC PROPOSAL FOR THE REGULATIONS UNDER THE DESIGN LAW TREATY (DLT)**

*Document prepared by the Secretariat*

The present document contains Explanatory Notes on the Basic Proposal for the Regulations under the Design Law Treaty (DLT), contained in document DLT/DC/4 (the “Basic Proposal for the Regulations”). The Explanatory Notes are not part of the Basic Proposal for the Regulations and will not be adopted by the Diplomatic Conference. Where a conflict exists between the Explanatory Notes and the Basic Proposal for the Regulations, the latter shall prevail.

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## NOTES ON RULE 2: DETAILS CONCERNING THE APPLICATION

R2.01 *Paragraph (1). Item (i).* No Contracting Party will be obliged to require an indication of the class of the Locarno Classification.

R2.02 *Item (ii)* refers to claims, in the sense of patent law. A claim under this item could be required by a Contracting Party in which industrial designs are protected under patent law. No Contracting Party will be obliged to require a claim.

R2.03 *Item (iv).* A Contracting Party will be free to determine the form and contents of the description. The description includes a brief description, as provided by some national legislations.

R2.04 *Item (vi)* may be required in an application both where the applicant is the creator of the industrial design and where the applicant is not the creator of the industrial design.

R2.05 *Item (vii).* Where the applicant is not the creator of the industrial design, a Contracting Party may require evidence of the transfer of the industrial design from the creator to the applicant. It is for each Contracting Party to decide whether or not to require such evidence. Where a Contracting Party does require such evidence, the applicant would, in principle, have the option between two forms of evidence, i.e., a statement of assignment or other evidence of the transfer admitted by the Office, for example the complete deed of assignment. Item (vii) makes it clear that, if the applicant wants to provide another form of evidence apart from a statement of assignment, such evidence must be admitted by the Office. Thus, if an Office does not admit other form of evidence but a statement of assignment, the applicant will have to provide a statement of assignment.

R2.06 *Item (x)* enables an Office to obtain information that could affect the registrability of the industrial design, or to ascertain whether filing took place within the applicable grace period. The term “novelty”, used in a previous version of the document, was replaced by “eligibility for registration”, so as to not unnecessarily narrow down the scope of this provision.

R2.07 At the Third Special Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), the Delegation of the United States of America proposed to move Alternatives A and B, shown in brackets, from Article 3 of the Basic Proposal to Rule 2. Since those alternatives relate to the subject matter of item (x) in Rule 2, they have been placed under that item.

R2.08 *Item (xiii).* No Contracting Party will be obliged to provide for separate terms of protection. However, where a Contracting Party does enable the applicant to choose among different initial terms of protection, an indication of the term for which the application is filed will be needed.

R2.09 *Item (xiv).* The term “evidence” is meant to include a copy of receipt, but may be interpreted wider so as to cover all form of payment.

R2.10 *Paragraph (3).* At the Third Special Session of the SCT, the Delegation of the United States of America proposed to add a paragraph whereby Contracting Parties shall permit applications for partial design.

## NOTES ON RULE 3: DETAILS CONCERNING REPRESENTATION OF THE INDUSTRIAL DESIGN

R3.01 *Paragraph (1)*. Under this provision, applicants would have the choice as to the form of representation of the industrial design for which protection is sought. Applicants would thus have the possibility of representing the industrial design by means, for example, of photographs, graphic reproductions, such as drawings, or a combination thereof.

R3.02 The words “any other visual representation” are intended to cover other forms of representation, such as videos or computer-animated representations, or forms which are not currently known, but which may develop in the future. It is also intended to cover specimens, if they are admitted by the Office. It is understood that, whatever the form which the representation of the industrial design may take, it should always be visual.

R3.03 It is generally agreed that the industrial design should be represented in such a way as to completely disclose its appearance. While several views of the design may be needed to fully disclose certain designs, it cannot be excluded that even a three-dimensional design could be fully disclosed by means of a single view, such as, for example, a perspective view.

R3.04 *Paragraph (2)(i)*. An applicant may indicate matter in the representation of the industrial design for which no protection is claimed, for example environmental matter. Such matter, while not part of the industrial design itself, can help to better understand the nature of the design. The applicant can indicate the matter for which protection is not claimed by means of dotted or broken lines in the representation of the industrial design, or by means of a description.

R3.05 *Paragraph (2)(i)* deals with the ways to indicate, in the representation of the industrial design, the matter for which no protection is sought. However, this provision does not prejudice that the matter shown in solid lines, for which protection is sought, actually meets the definition of industrial design under the applicable law of the Contracting Party concerned. If the matter shown in solid lines does not correspond to the definition of industrial design under the applicable law, the Office of the Contracting Party concerned can refuse registration on that ground.

R3.06 *Paragraph (3)* of this provision leaves it to the applicant to determine, on a case-by-case basis, the number and types of views which are needed to fully disclose the industrial design. Thus, applicants would no longer need to vary the number of views to satisfy the requirements of the different jurisdictions in which they file.

R3.07 At the same time, this provision enables Offices to call for further views where they consider that such views are necessary to fully show the product or products that incorporate the industrial design. The provision was re-drafted following the twenty-sixth session of the SCT in order to make it clear that additional views can be required in order to show all aspects of the product incorporating the industrial design. However, the industrial design itself must be disclosed by the views as originally filed.

R3.08 The wording of subparagraph (b) was modified following the twenty-sixth session of the SCT so as to clarify that the Office will determine whether or not an additional view results in the presentation of new matter.

R3.09 This provision does not establish any maximum number of views which may be filed by the applicant, or published by an Office. Opting for a given number would present an inconvenience, as it is not unlikely that such number could rapidly become obsolete. An Office that is not presently in a position to publish more than a given number of views without additional cost could soon be able to increase that number, taking into account the pace at

which new reproduction methods develop. Moreover, it is not unlikely that new reproduction techniques will make it easier for applicants to fully represent complex designs by means of fewer views.

R3.10 In the absence of a provision regarding a maximum number of views, each Contracting Party remains free to introduce a limitation in its law in this respect, and to determine the maximum number. It is understood that such maximum number should not be too low, so that all types of designs, including very complex ones, can be fully disclosed under existing reproduction techniques.

R3.11 *Paragraph (4)*. Arguably, applications that are filed electronically do not require more than one copy of the reproduction, or reproductions, as the case may be. With regard to applications filed on paper, the returns to the WIPO Questionnaires on Industrial Design Law and Practice show that the vast majority of SCT members that replied to the Questionnaires (72 per cent) require between one and three copies (see document [SCT/19/6](#)). Moreover, discussions in the SCT have revealed that, while receiving more than one copy could sometimes facilitate the processes for offices, there was rarely any practical need for offices to receive nowadays more than three copies. In previous sessions of the SCT (see, in particular, the twenty-first session), delegations that declared that more than three copies were required under their current legislation pointed out that the number of reproductions could be brought down to three or less in future amendments. As for applicants, limiting the number of copies of each reproduction in an application filed on paper would result in an advantage in terms of simplification at the time of preparing the application.

#### **NOTES ON RULE 4: DETAILS CONCERNING REPRESENTATIVES, ADDRESS FOR SERVICE OR ADDRESS FOR CORRESPONDENCE**

R4.01 *Paragraph (1)(a)*. This provision follows the approach of Article 4(3)(a) of the Singapore Treaty on the Law of Trademarks (Singapore Treaty) instead of the approach of Rule 7(2) of the Regulations under the Patent Law Treaty (PLT). Under this provision, a Contracting Party may require that the appointment of a representative be made in a separate power of attorney. No reference is made to an appointment made in the application. The power of attorney should indicate the name of the applicant, holder, or other interested person, as well as the name and address of the representative. The elements required in the power of attorney are modeled, however, on Rule 7(2)(a)(i) of the PLT, rather than on Article 4(3)(a) of the Singapore Treaty. The elements required in the Singapore Treaty are limited to an indication of the name of the applicant, the holder or any other interested person.

R4.02 *Paragraph (1)(b) and (c)* is based on Article 4(3)(b) and (c) of the Singapore Treaty. It contains permissive provisions regarding the mode of appointing a representative and the contents of a power of attorney. Given its permissive nature, paragraph (1)(c) would not be applicable to any Contracting Party that does not contemplate in its law the possibility of withdrawal of the application or surrender of the registration.

R4.03 *Paragraph (2)* distinguishes between two time limits, one or two months, depending on whether or not the address of the person appointing the representative is in the territory of the Contracting Party concerned. The reason for this distinction is that a minimum time limit of one month is considered to be too short when the address is not in the territory of the Contracting Party in which the representative is appointed, particularly for the purpose of obtaining a power of attorney. This distinction is also made in Rule 4(3) of the Regulations under the Singapore Treaty.

R4.04 A statement that time limits expressed in “months” can be calculated by Contracting Parties in accordance with their national law was added as a footnote in this Rule to address the concerns by one delegation at the twenty-sixth session of the SCT, as to the way to calculate time limits expressed in months. This is the first time in the draft Rules that reference is made to a period expressed in months. However, at the Third Special Session of the SCT, the Delegation of Brazil proposed to add a new item (xxiv) in Article 1, stating that time limits expressed in “months” can be calculated by Contracting Parties in accordance with their national law. Should that new item in Article 1 be adopted, the footnote to this Rule would become redundant.

#### **NOTES ON RULE 5: DETAILS CONCERNING FILING DATE**

R5.01 This Rule provides for a one-month time limit to comply with any missing filing date requirement. A one-month time limit has been opted for, taking into account the ability for any applicant, in an era of electronic communication, to respond quickly to a notification, along with the relevance of the irregularities concerned, which have an effect on the filing date. Any Contracting Party may provide for a time limit of more than one month to comply with a missing filing-date requirement, although it will be in the interest of the applicant to comply with the requirement as soon as possible.

#### **NOTES ON RULE 6: DETAILS CONCERNING PUBLICATION**

R6.01 This Rule provides for a minimum period of six months from the filing date or the priority date, during which an Office has to maintain an industrial design unpublished, if so wished by the applicant. A short period of six months has been opted for, in an attempt to strike a balance between the interest of applicants for secrecy and the interest of other parties. Other parties will most likely want to have the industrial design published as soon as possible, in order to have an idea of what is protected.

R6.02 The Rule stipulates that the starting point of the six-month period is the filing date or, where priority is claimed, the priority date. It is true that, in many cases, where priority is claimed, the minimum period to maintain, upon request, the industrial design unpublished in the countries of second filing might be reduced or no longer available. However, as indicated by some delegations at the twenty fifth session of the SCT, this approach would be consistent with the aim of the provision, namely to ensure that the applicant will be able to maintain the industrial design unpublished during a short period of time from the “beginning” of the registration procedures. Furthermore, this solution would better accommodate the different national approaches to postponement of publication.

R6.03 At the Third Special Session of the SCT, the Delegation of Japan proposed to delete the terms “or, where priority is claimed, from the priority date” from Rule 6, so that the starting point of the six-month period would always be the filing date.

#### **NOTES ON RULE 7: DETAILS CONCERNING COMMUNICATIONS**

R7.01 *Paragraphs (2) to (10)* are modeled on Rule 6 of the Regulations under the Singapore Treaty.

R7.02 *Paragraph (5)* provides that a Contracting Party may require certification of any signature of a communication on paper, where the communication concerns the withdrawal of an application, or the surrender of a registration and the law of the Contracting Party provides for such certification. It is understood that, given its permissive nature, this provision will not be

applicable where the law of a Contracting Party does not provide for such certification, or does not provide for withdrawal of an application or surrender of a registration.

R7.03 Specifying in a Rule the case in which certification of signature may be required is justified by the fact that the Regulations constitute a more flexible framework to provide for other cases of certification of signature in the future or remove any.

R7.04 *Paragraph (7)(ii)*. At the Third Special Session of the SCT, the Delegation of India proposed to replace the time limit of at least one month under this paragraph by a time limit of at least 15 days.

R7.05 *Paragraph (11)* is modeled on Rule 10(1) of the PLT.

R7.06 *Item (i) of paragraph (11)*. It will be for each Contracting Party to determine the specific manner in which names and addresses are to be indicated. For instance, in the case of natural persons, a Contracting Party may specify that the name to be indicated is the family or principal name and the given or secondary name(s) of the natural person. In the case of legal entities, a Contracting Party may specify that the name to be indicated is the full official designation of the legal entity.

#### **NOTES ON RULE 8: IDENTIFICATION OF AN APPLICATION WITHOUT ITS APPLICATION NUMBER**

R8.01 This Rule is modeled on Rule 7 of the Regulations of the Singapore Treaty.

#### **NOTES ON RULE 9: DETAILS CONCERNING RENEWAL**

R9.01 This Rule concerns the period within which any renewal fee must be paid and any request for renewal that may be required must be submitted. It establishes, in particular, a period of grace of at least six months after the date on which the renewal is due, to pay the fee and to submit the request for renewal, which may be subject to the payment of a surcharge. A grace period for the payment of fees for the maintenance of rights is already provided for in Article 5*bis* of the Paris Convention. The interest of this provision is that it also provides for a grace period for submitting any request for renewal that may be required.

#### **NOTES ON RULE 10: DETAILS CONCERNING RELIEF IN RESPECT OF TIME LIMITS**

R10.01 This Rule is modeled on Rule 12 of the Regulations under the PLT.

#### **NOTES ON RULE 11: DETAILS CONCERNING REINSTATEMENT OF RIGHTS AFTER A FINDING BY THE OFFICE OF DUE CARE OR UNINTENTIONALITY UNDER ARTICLE 13**

R11.01 This Rule is vastly modeled on Rule 13 of the Regulations under the PLT.

R11.02 *Paragraph (2)*. In item (i), the minimum time limit of one month was replaced by two months, following the twenty-eighth session of the SCT. A minimum time limit of two months is also provided in Rule 13(2)(i) of the PLT.

R11.03 *Paragraph (3)(iv)*. Under item (iv), a Contracting Party may exclude the application of relief measures in respect of the filing of a declaration which may have the effect of establishing a new filing date for a pending application. This may apply where the law of a

Contracting Party provides for a system by which the date of an amendment of a pending application becomes the filing date of a new application based on that amendment. In such a case, the filing date should be fixed as early as possible to preserve the rights of third parties. The same exception is contained in Rule 9(4)(vii) of the Singapore Treaty.

#### **NOTES ON RULE 12: DETAILS CONCERNING CORRECTION OR ADDITION OF PRIORITY CLAIM AND RESTORATION OF PRIORITY RIGHT UNDER ARTICLE 14**

R12.01 This Rule contains details concerning Article 14, modeled on Rule 14 of the PLT.

R12.02 *[Paragraph (3)].* At the Third Special Session of the SCT, the Delegation of Japan proposed to introduce an exception to the obligation to provide for the correction or addition of a priority claim under Article 14(1). The exception would apply where the request for the correction or addition of a priority claim is received after the substantive examination of the application has been completed.

#### **NOTES ON RULE 13: DETAILS CONCERNING THE REQUIREMENTS CONCERNING THE REQUEST FOR RECORDING OF A LICENSE OR A SECURITY INTEREST OR FOR AMENDMENT OR CANCELLATION OF THE RECORDING OF A LICENSE OR A SECURITY INTEREST**

R13.01 *Rule 13(1)(a)(xi).* Definitions of “exclusive license”, “sole license” and “non-exclusive license” are provided in Rule 1. There is no requirement for a Contracting Party to recognize all three types of license. Where the law of a Contracting Party does not provide for all three types of license, the requirement under this item will be limited to an indication of the types of licenses which are provided for under that law. Similarly, if the law of a Contracting Party does not require any such indication, information under item (xi) will not have to be furnished.

R13.02 *Paragraph (2).* This paragraph is modeled on Rule 17(2) of the PLT, rather than on Rule 10(2) of the Singapore Treaty. The main difference between the two approaches is that, in the PLT, provision is expressly made for the case where the license is not a freely concluded agreement. Moreover, where the license is a freely concluded agreement, a copy of the agreement, and not only an extract of the agreement, may accompany the request for recording of the license.

R13.03 *Paragraph (2)(a).* Where the license is a freely concluded agreement, this provision permits a Contracting Party to require that the request for the recording of the license be accompanied by a copy of the agreement or an extract of the agreement, at the option of the requesting party. In other words, while a Contracting Party may require documentation supporting the license, it should accept as such documentation either a copy of the agreement or an extract of the agreement. It is for the requesting party to decide which of the two it wishes to submit.

R13.04 At the Third Special Session of the SCT, the Delegation of Brazil proposed to delete the words “at the option of the requesting party” in paragraph (a) of Rule 13(2) and in subparagraph (i) of Rule 13(2)(a).

R13.05 *Item (ii).* The words “portions of that agreement” in item (ii) of subparagraph (a) include, in particular, information regarding the territory and duration of the licensing agreement, and whether there is a right to sub-license.



R13.06 *Paragraphs (2), (3) and (4).* Pursuant to Article 10(2)(b), a Contracting Party may require that the documents referred to in paragraphs (2), (3) and (4) be accompanied by a translation into a language admitted by the Office.

**NOTES ON RULE 14: DETAILS CONCERNING THE REQUEST FOR RECORDING OF A CHANGE IN OWNERSHIP**

R14.01 This Rule is modeled on Article 11(1)(b) and (f) of the Singapore Treaty.

**NOTE ON RULE 17: MODEL INTERNATIONAL FORMS**

R17.01 This Rule appears in brackets, insofar as the establishment of Model International Forms by the Assembly (Article 24(2)(ii)) and the provision for the publication of such Forms (Article 23(1)(b)) are still within brackets.

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