

## **Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications**

### **Twenty-Seventh Session**

**Geneva, September 18 to 21, 2012**

### **REPORT**

*adopted by the Standing Committee\**

### **INTRODUCTION**

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee” or “the SCT”) held its twenty-seventh session, in Geneva, from September 18 to 21, 2012.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Argentina, Australia, Austria, Barbados, Belarus, Belgium, Benin, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People’s Republic of Korea, Denmark, Djibouti, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Gambia, Georgia, Germany, Ghana, Guatemala, Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Jamaica, Japan, Kazakhstan, Latvia, Lebanon, Libya, Lithuania, Madagascar, Malaysia, Mexico, Morocco, Nepal, Netherlands, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, United Republic of Tanzania,

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\* This Report was adopted at the twenty-eighth session of the SCT. Comments were received on the draft report (document SCT/27/11 Prov.) from the Delegations of China and Peru and from the Representative of INTA, concerning paragraphs 53, 64, 65, 93, 121 and 217. Those paragraphs have consequently been amended in this document.

United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen (93). The European Union was represented in its capacity as a special member of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: World Health Organization (WHO), African Regional Industrial Property Organization (ARIPO), South Centre, African Union (AU) (4).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), Asian Patent Attorneys Association (APAA), *Association des praticiens du droit des marques et modèles (APRAM)*, China Trademark Association (CTA), Computer and Communications Industry Association (CCIA), European Brands Association (AIM), Inter-American Association of Industrial Property (ASIPI), International Association for the Protection of Industrial Property (AIPPI), International Center for Trade and Sustainable Development (ICTSD), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), International Video Federation (IVF), Internet Cooperation for Assigned Names and Numbers (ICANN), Internet Society (ISOC), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), Knowledge Ecology International (KEI), Organization for an International Geographical Indications Network (oriGIn) (18).

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

6. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all observations made.

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

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO) opened the twenty-seventh session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

8. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

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

9. Mr. Imre Gonda (Hungary) was elected Chair and Mr. Andrés Guggiana (Chile) and Ms. Ahlem Sara Charikhi (Algeria) were elected Vice-Chairs of the Committee.

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

10. The SCT adopted the draft revised Agenda (document SCT/27/11 Prov.2) with the addition of one additional item entitled "Contribution of the SCT to the Implementation of the respective WIPO Development Agenda Recommendations" and the amendment of the wording of item 11 to read "Summary by the Chair".

#### **AGENDA ITEM 4: ACCREDITATION OF A NON-GOVERNMENTAL ORGANIZATION**

Discussion was based on document SCT/27/9.

11. The SCT approved the representation of the Internet Corporation for Assigned Names and Numbers (ICANN) in sessions of the Committee.

#### **AGENDA ITEM 5: ADOPTION OF THE REVISED DRAFT REPORT OF THE TWENTY-SIXTH SESSION**

12. The SCT adopted the revised draft report of the resumed session of the twenty-sixth session (document SCT/26/9 Prov.2), subject to adding the Delegation of Pakistan to the list of Members in paragraph 2.

#### **AGENDA ITEM 6: INDUSTRIAL DESIGNS**

##### *General Declarations*

13. The Delegation of Brazil, on behalf of the Development Agenda Group (DAG), reiterated its willingness to work constructively with all groups and delegations in order to achieve a productive dialogue. The DAG welcomed the arranging of the Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks (Information Meeting), which provided an opportunity to obtain greater understanding, from the perspective of all stakeholders, of the many issues involved in the use and protection of trademarks in the online environment. However, the Group noted that there could have been a more balanced representation of geographical regions. While many business areas and interests had been represented, the speakers came mainly from developed countries, with only one speaker from the Latin American and Caribbean Group (GRULAC). Regarding the Draft Articles and Draft Regulations on Industrial Design Law and Practice, the Delegation pointed out that Members of the DAG would engage constructively in examining those documents and in commenting on the draft provisions and future work. Participating in the discussions on the draft provisions did not imply, however, acceptance beforehand of any of the provisions or of the text of the draft treaty in its entirety, and did not prejudice in any way the outcome of the discussions. The DAG also expressed the view that this harmonization exercise had been based mostly on the law and practice of a few developed countries and that it was necessary, in order for it to be inclusive and transparent, that the realities of other countries, including developing countries, also be reflected in the documents. The Delegation, recalling that the aim of the Draft Articles and Draft Regulations under discussion was to establish maximum standards for registration of industrial designs, declared that, at this stage, it was not clear to many Member States if the advantages of implementing such harmonization compensated for the costs involved. There should be a balance between costs and benefits. The Delegation observed that there were two categories of costs involved. First, the cost of adapting domestic regulations to abide by the rules being discussed should be considered, since many Member States were in the process of addressing the implications in terms of regulatory space. Secondly, there would be direct costs associated with infrastructure and technology necessary to process industrial design applications in the harmonized way. For developed countries, few changes would be necessary, since the model was based on existing frameworks. However, for developing countries, a good deal of effort would be necessary in order to comply with the proposed new rules. The Group, observing that the Recommendations of the Development Agenda must guide the work in this field, as well as all work carried out by this Organization, recalled the importance of observing Cluster B of the Recommendations, especially Recommendations 15 and 21. Regarding the Study on the Potential Impact of the Work of the

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) on Industrial Design Law and Practice (the Study), the DAG welcomed the Study as it offered interesting views and useful elements for aiding Member States' consideration on the issue. The Delegation recalled that this Study was requested by the DAG and the African Group during the last session of the Committee as a tool to further analyze the consequences of the harmonization exercise for developing countries. The Group observed that benefits seemed to be more concentrated on easing the registration process and allowing for international registration, which benefited mostly IP holders, and further stated that for Intellectual Property Offices in developing countries the cost of adoption of harmonized rules for processing industrial design applications appeared to be higher than for offices in developed countries. Regarding the protection of country names, the DAG acknowledged the proposal made by the Delegations of Barbados and Jamaica (document SCT/27/6) on the protection of country names, as well as regarding the proposal by the Delegation of Jamaica contained in document SCT/27/7. The Group indicated its willingness to engage constructively in the discussion of this issue, which was of interest to developing countries.

14. The Delegation of Peru, on behalf GRULAC, assured its availability to work in a constructive manner on the topics of this meeting. The Delegation considered that the Study would enable Member States to continue their work in a more informed manner. Although most applications for registration of industrial designs came from developed countries and these countries were also the destination of most applications filed abroad, it was of interest for GRULAC countries to know how they could benefit from a new instrument on industrial design. Therefore, the discussions on this topic would be followed closely by these countries. The Delegation further thanked the Secretariat for organizing the Information Meeting since it enabled a better understanding of the topics and gave more information to judge future discussions of the SCT.

15. The Delegation of Hungary, on behalf of the Group of Central European and Baltic States, welcomed the Information Meeting, which constituted a useful tool that could facilitate discussions about the possible continuation of work in this area and contributed to better understand the complex issue of using IP rights in the electronic environment. Considering that the basic goal of this Committee's work was to extend the scope of convergence in the area of design formalities and practice, since formalities of design procedures were probably the last non-harmonized IP field, the Delegation highlighted the importance of encouraging creativity, returning value to creators, promoting fair competition and honest practices, which were goals that could only be achieved through easy access to design protection systems, and not only on the national level. The Group observed that the Study contributed to furthering awareness of the role and prospective benefits of convergence, and expressed the view that the Committee should continue working towards commonly acceptable convergence of industrial design formalities. On country names, the Delegation said that the Group was open to continue discussions with the view to building a consensus and achieving an acceptable work program for all. Finally, the Delegation reiterated its commitment to discussing in a cooperative spirit and support.

16. The Delegation of Egypt, on behalf of the African Group, emphasized the importance of observing Development Agenda Recommendations, especially those of Cluster A. The Delegation highlighted several principles outlined in those Recommendations, namely that WIPO technical assistance should take into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States, and should also accord high priority to finance activities in Africa through budgetary and extra-budgetary resources, to promote the legal, commercial, cultural, and economic exploitation of intellectual property in these countries. The Delegation, observing that great importance should be accorded to the fact that the work on industrial designs was guided by Cluster B, highlighted the fact that norm-setting activities should be inclusive and member driven, take into account different levels of development, take into consideration a balance

between costs and benefits, be in line with the principle of neutrality of the WIPO Secretariat, as well as take into account the flexibilities in intellectual property agreements, especially those which are of interest to developing countries and LDCs. In this regard, the Delegation observed that, following the results of the Study, there was a need in middle and low income countries for support in IT, administration, legal expertise and training. The DAG noted that the proposed draft provisions and regulations were more beneficial for developed countries that had capacity for registration. The Delegation, mentioning that it was important that WIPO be committed to promoting capacity building and technical assistance in African countries and LDCs in order to effectively promote innovation and creativity in the area of industrial designs, stated that WIPO should assist in bearing the cost of the implementation of these draft provisions and regulations, as well as in ensuring flexibilities for developing countries.

17. The Delegation of Iran (Islamic Republic of), on behalf of the Asian Group, reiterated its engagement in the process leading to the development of the texts of Draft Articles and Regulations, with a view to working constructively with other groups on a possible outcome of the session. The Group expressed caution about the nature of the work and believed that it should not be inferred from the format of the texts that all Members looked at such texts from the same angle and expected the same outcome. The Group believed that the Committee should take a deliberate step on a possible outcome after careful consideration of the possible impacts of the work of the SCT on industrial designs. The Delegation thanked the Secretariat for having provided a study that tried to address the questions raised by Member States about the impacts, and observed that in general the study was very helpful for the analysis of the impacts and benefits of the Committee's work on industrial designs. The Group recalled that the Committee should not forget that the background of the whole picture was to look at the registration trend of industrial designs in developing countries and at how any change might bring about positive effects to such trend. On the issue of the protection of names of States, the Delegation declared that it attached importance to the work of the SCT and wished that the committee could expedite its work. Finally, the Delegation thanked the Secretariat for the Information Meeting, which was very helpful to better understand the delicate aspects of the protection of trademarks in the virtual world.

18. The Delegation of India, stating that harmonization of the procedural aspects of industrial design registration was an important norm-setting exercise, recalled that Recommendation 15 of the Development Agenda called on WIPO to take into account the different levels of development of Member States and the need to balance costs and benefits. The Delegation considered that document SCT/27/4 did not fully address the Terms of Reference (TOR) of the Study. The Delegation pointed out that the Study made an assessment of the Trademark Law Treaty (TLT), the Singapore Treaty on the Law of Trademarks (STLT) and the Patent Law Treaty (PLT), which had a membership of, respectively, 53, 32 and 27 members out of the 185 Member States of WIPO. India was not a member of any of those Treaties and the Indian IP Office could therefore not provide comments on these treaties. The Delegation further noted that WIPO received only 143 responses of applicants/users in the world, a miniscule number which was not statistically significant for making any kind of conclusions on the impact of a treaty. In addition the Delegation considered that the Study did not comply with the TOR approved by the Member States at the twenty-sixth session of the SCT, as there had been no assessment about the impact of the design system for SMEs, the fostering of creativity, innovation and economic development and efficiency in developing countries and the impact on technology transfer and access to knowledge. Therefore, the Delegation expressed the view that the mandate of the twenty-sixth session of the SCT had not been fulfilled and that the Study needed to be improved upon. As a way forward, the Delegation proposed that WIPO could be requested to suggest approaches to improve the Study. The improved Study could then be a basis for further discussion at the twenty-eighth session of the SCT, after which Member States would be in a position to decide on the way forward. The Delegation expressed the view that it would be interesting to organize regional meetings once the study had been improved. Finally,

the Delegation stated that India was ready to contribute constructively to the discussions in the present session of SCT.

*Study on the Potential Impact of the Work of the SCT on Industrial Design Law and Practice*

19. Discussion was based on document SCT/27/ 4.

20. The Delegation of Egypt, on behalf of the African Group, thanked the Secretariat for preparing a study with this level of quality. Underlining the fact that the TOR requested that developing countries, LDCs and economies in transition be the subject matter of the study, the Delegation wondered why the classification of countries as requested in the TOR had not been followed. In addition, the Delegation requested a clarification regarding the selection of an external consultant. Moreover, noting that the Study relied on responses from 53 offices out of 185 WIPO Member States, with six countries from the African continent out of 54 Member States and no response from LDCs, the Delegation considered that the sample size for data collection was problematic. The Delegation further highlighted the complexity of the survey for national offices and pointed out that Geneva missions had not been informed about the survey. The Delegation also wondered why a comparison with other treaties, with the exclusion of the Hague Agreement Concerning the International Registration of Industrial Designs, had been made, while this analysis was not required in the TOR. Regarding the developing countries' and LDCs' need for capacity building, investment in infrastructure and technical assistance, the Delegation observed that the Study did not adequately address the TOR, as it should have explained what specific needs and investments were required for developing countries to implement the proposed changes, estimated the cost, and indicated the role of WIPO. In the view of the Delegation, the Study did not address section 2 (b) of the TOR concerning the fostering of creativity, innovation and economic development and efficiency in developing countries. Moreover, the Delegation requested clarification as to the reason why the analysis on "special clauses for developing countries" in Section B of the study ("Flexibilities") had been limited to the Resolution by the Diplomatic Conference Supplementary to the Singapore Treaty on the Law of Trademarks. The Delegation, wondering why other special provisions for developing countries under other WIPO instruments had not been examined, questioned the fact that the option of reducing registration fees by developed countries' offices for applications received from developing countries' had not been addressed. Regarding the statistical part of the Study, the Group noted that 40 per cent of applications in developing countries came from non-residents. The statistical data revealed a huge divide between developed and developing countries in terms of industrial design registrations abroad. This huge imbalance was also reflected in the statistics showing the beneficiaries of the Hague system, which revealed that 88 per cent of all international registrations belonged to three countries (France, Germany, Switzerland) and the European Community, whilst 29 developing countries, LDCs and OAPI did not have a single registration. Under these circumstances, the African Group observed that the proposed industrial design instrument would be more beneficial to developed countries than to developing countries, which first needed to develop capacity and promote innovation in the area of industrial designs. In this light, the Delegation suggested that WIPO should do more work to build capacity and promote innovation in developing countries. On the cost side, the Delegation recalled that, as revealed by the Study, middle and low income countries would need to bear the cost of implementing the proposed changes, especially in the area of IT equipment, infrastructure and support, administration, legal expertise, training of human resources and capacity building. The African Group thus requested the assistance of WIPO in bearing the cost of implementation. The Delegation concluded that the cost of this proposed instrument far outweighed its expected benefits. Finally, the African Group stated that it looked for a constructive engagement with WIPO and other developed countries to reach effective solutions to rectify this imbalance.

21. The Delegation of the Republic of Korea expressed its deep appreciation to the Secretariat for having completed such a robust, analytic study in a relatively short period of time. The Delegation considered that the Study was meaningful, as it was a product of the collective efforts made by the Secretariat, national offices and applicants/users. The Delegation stated that the results demonstrated that respondents in all countries believed that the changes would result in improvements. It further noted that offices in middle and low-income countries and SMEs were generally positive towards the impact on innovation, use of intellectual property and simplification of procedures, and that they believed that the cost would be mostly neutral, with perhaps small savings. The Delegation said that it hoped that such a positive assessment would help take the negotiations forward in a timely and appropriate way. From the perspective of the Republic of Korea, the underlying message was that it was time for Member States to move the negotiations forward in a speedy and substantive manner, as the value and utility of the SCT work on industrial designs had been clearly identified. The Delegation wished that Member States would build on the momentum created at the Beijing Diplomatic Conference to conclude the negotiations in this area at the earliest possible date. On a final note, the Delegation highlighted the perceived need for increased IT expertise and infrastructure, especially in middle and low-income countries, as one of the key findings of the Study. Similarly, a need had also been identified for increased administration capability and legal expertise. The Delegation considered that this was an area where the Secretariat would play an active role later, by providing technical assistance.

22. The Delegation of Brazil, on behalf of the DAG, observed that the Study offered interesting views and useful elements for aiding Member States to better evaluate the complex issues involved. The Delegation expressed the view that the results showed that benefits seemed to be more concentrated on easing registration procedures and allowing for international registration, which benefited mostly IP right holders. For IP offices in developing countries, the cost of adopting harmonized rules for processing industrial design applications would be higher than for developed countries' offices. The Delegation said that the needs of IP offices in developing countries should be taken into consideration in the work of this Committee. The Delegation indicated that the DAG was of the view that the TOR had not been observed in their entirety. Firstly, the Study addressed only superficially developing countries and LDCs' needs for capacity building, investment in infrastructure and technical assistance. Secondly, the Study did not elaborate on "fostering creativity, innovation and economic development and efficiency in developing countries". The DAG considered that it was necessary to elaborate and have more clarity on these two issues. The Delegation, seeking clarification from the Secretariat regarding the classification of countries adopted, requested clarification as to why and how an external consultant had been selected, and the reasons why Member States had not been informed in due time.

23. The Delegation of India reiterated the view that the number of responses was statistically not significant for making any kind of conclusions on the impact of a treaty and that, for this reason, the Study was slightly biased or incomplete. In addition, the Delegation endorsed the views expressed by the DAG and the African Group regarding, in particular, the fact that the Study should have addressed the implementation of the Hague Agreement and followed the TOR concerning the category of countries. Finally, stating that the implementation of the proposed draft articles and regulations would not make much difference in India, the Delegation requested clarification as to the selection of an external consultant.

24. The Delegation of China declared that the Study was very useful to understand the impact of the work of the SCT on industrial designs. However, given the limited number of responses from offices and users, the conclusions of the Study should be interpreted carefully. In this light, the Delegation expressed the need to prolong the Study.

25. The Delegation of Argentina thanked the Secretariat for preparing the study, which gave an informative panorama regarding the possible impact of the work on design law and practice and would help to avoid making assumptions. The Delegation considered that, although any study could be improved, the present Study provided an acceptable informative overview on the impact of the provisions under discussions and of the main statistics. The Delegation, noting that in most offices in middle and low-income countries there was a need for capacity building, investment in infrastructure and technical assistance, highlighted the importance to have multilateral support. The Delegation, underlining the intense activity in industrial designs in Argentina, observed that the Study showed that the majority of applicants who filed abroad came from developed countries. Likewise, the majority of filings made abroad were made in developed countries. Notwithstanding that, there was intense activity in industrial designs in Argentina, with one of the highest rates of domestic filings in the region. The Delegation considered that the picture was even more promising if one looked at the number of registrations per million of inhabitants. The Delegation also indicated that this Study should set a precedent to committees that had norm-setting mandates. The Delegation stated that it hoped that this work would be useful for this Committee in order to undertake an informed decision regarding industrial design harmonization.

26. The Representative of the European Union, speaking on behalf of its 27 Member States, stressed the great importance and added value of harmonizing and simplifying design registration formalities and procedures. Underlining the fact that the European Union and its Member States appreciated the substantial and valuable work of the Committee in addressing these issues, the Representative added that it would be a further accomplishment of this Committee to build on the promising work of the last six years and add another achievement to its record. For these reasons, the European Union and its Member States reiterated their support in bringing this matter to a Diplomatic Conference in the near future. Whilst not committing delegations to the provisions of a treaty until they were ready and able, such a step would send a positive message of intent to the users of design registration systems. The Representative also stated that the European Union and its Member States wished to express their support for working documents SCT/27/2 and SCT/27/3, which they considered to represent a further promising step in the right direction. The European Union and its Member States recognized that these draft provisions not only adequately responded to the ultimate goal of approximating and simplifying industrial design formalities and procedures, but were also appropriate to establish a dynamic and flexible framework for the subsequent development of design law, enabling Members to keep up with future technological, socio-economic and cultural changes. The Representative of the European Union, on behalf of its Member States expressed its support for document SCT/27/4. It considered that this Study clearly addressed the questions set out in the TOR and demonstrated the positive benefits that respondents from all countries believed the changes proposed in the draft Articles and Regulations would bring. It was worth noting that applicants in all countries considered that almost all the proposed changes would bring benefits in terms of "ease of registering", "time to register", and "cost of registering". In addition, the Representative said that IP Offices in all countries, but particularly those in middle and low-income countries, expected a design law formalities treaty to bring improvements in terms of "level of innovation" and the "use of IP". Furthermore, the Study suggested that a design law formalities treaty would be in everybody's interest and was an area where work could be carried out and a quick agreement reached. The Study also showed that there were considerable flexibilities for Parties when implementing the treaty. The European Union and its Member States looked forward to advancing discussions on the draft articles and draft regulations in the constructive spirit that characterized the preceding sessions of this Committee, and were hopeful that this Committee would be able to reach consensus on the idea of convening a diplomatic conference for the adoption of a treaty on industrial design registration formalities and procedures in the near future.

27. The Delegation of Algeria, indicating that it would have preferred to have the whole Study in French earlier, underlined the need for respecting official channels when the Secretariat established a study. The Delegation expressed the view that the questionnaires should have been simpler, with a view to collecting more responses. The Delegation indicated that the responses provided by the Algerian Office were of a technical and preliminary nature, reflected the good-faith engagement of Algeria in the discussions on a draft treaty, and should not be interpreted in any other way. Concerning substance, the Delegation said that it followed from the results of the Study that the draft international treaty would have an important impact in terms of human and financial resources, infrastructure and regulations. That was the price that developing countries would have to pay to adapt their legislations to the proposed changes, although those changes would not have a clearly positive impact on the development of industrial designs and on innovation in general. The Delegation observed that the draft treaty would be favorable for users, most of which were from developed countries. In conclusion, the Delegation expressed the need to further the examination of the provisions under discussion, and to adapt such provisions to the needs of all Member States. Finally, the Delegation reiterated the commitment of Algeria to working hand in hand with all Member States, so that the discussions at the SCT reached a favorable outcome.

28. The Delegation of South Africa associated itself with the statement made by the African Group and the DAG. The Delegation, highlighting the complexity of the questionnaire and the impact of such complexity on the responses, stated that it was not comfortable with the country classification used in the questionnaire. The Delegation further requested clarification as to the exclusion of the Hague Agreement in the analysis of the impact of the implementation of similar treaties. Finally, the Delegation considered that the questionnaire should be kept open, with a view to improving it through the gathering of information from more offices and users and to providing sufficient time for such responses.

29. The Delegation of Norway, pointing out that the Study showed that all Member States would benefit from a design law treaty, expressed its support to the convening of a diplomatic conference.

30. The Delegation of Hungary, on behalf of the Group of Central European and Baltic States, expressed the view that the Study was fully in accordance with the TOR and that it contributed to better understand the impact of the work of the SCT on industrial designs. In light of this, the Group expressed its support for achieving a commonly acceptable draft instrument and recommending the General Assembly to convene a diplomatic conference.

31. The Delegation of El Salvador, indicating that the Study offered the information required to make a decision, said that it agreed with the conclusion regarding the need for assistance in terms of technical and legal capacity building and IT infrastructure. The Delegation said that, if offices could rely on such technical assistance, the proposed changes would have a positive impact on the number of applications and, therefore, on national economies. The Delegation expressed the view that the Study should remain open to gather more information, in particular as regards transfer of technology and access to knowledge.

32. The Delegation of Japan thanked the Secretariat for preparing this useful Study. The Delegation pointed out that the results of the Study showed that offices in middle and low-income countries considered that the proposed changes would be positive for innovation and that users in middle and low-income countries were positive on their impact on profitability. The Delegation believed that the Study could contribute to intensify discussions on the draft provisions towards a future diplomatic conference.

33. The Delegation of Switzerland, pointing out that the Study clearly highlighted the positive impact of the draft treaty on the design system, declared that the Study had achieved its objectives. With regards to technical assistance, the Delegation was convinced that solutions would be found to respond to those needs, as it had been the case in the framework of other treaties. The Delegation expressed its support for continuing the examination of the draft provisions, with a view to advancing towards positive results.

34. The Delegation of Turkey stated that the Study was beneficial to analyze the impact of simplification in design law. Although it was a middle-income country, Turkey had a remarkably high-growing rate of industrial design applications. The country had a strong institutional infrastructure and had the capacity to adapt easily to the possible changes. The Delegation believed that income levels had an impact on IT infrastructure and legal capacity building. However, they had no impact on other areas, such as future changes on administration, procedures and mistake analysis. Thus, the Delegation believed that the categorization of countries in the report could be revised in order to reflect actual economic development.

35. The Delegation of Chile, observing that the Study gave a general panorama of the potential impact that the work of this committee could have on industrial designs, highlighted the fact that this was the first time that such a study was undertaken and that having a document of this scope prior to a discussion on possible articles for a treaty was in line with the Recommendations of the Development Agenda. The Delegation expressed the view that any study could be subject to improvement. However, the Delegation said that it did not believe that improving the Study and leaving it open for additional replies would result in a substantial difference in terms of the responses obtained and of the general analysis. The Delegation, indicating that it was important for its country to make progress on design law and practice, considered that it should not be difficult to make such progress, as the exercise at the SCT related to formalities. The Delegation invited other delegations to analyze the draft provisions in detail, as those provisions could provide an answer to many of the concerns expressed by developing countries.

#### *Industrial Design Law and Practice-Draft Articles and Draft Regulations*

36. Discussion was based on documents SCT/27/2 and 3.

#### *Article 1: Abbreviated Expressions* *Rule 1: Abbreviated Expressions*

37. The Delegation of Switzerland, referring to item (v), proposed to replace the item “initial application” by “parent application” and to delete the words “at the request of the office”, in order to allow division by the applicant.

38. The Delegation of Algeria proposed to add to the end of item (ii) the sentence “or the granting of a patent for an industrial design” or to delete the same sentence from item (iii). Further, the Delegation proposed to add at the end of item (xviii) the words “of this document”.

39. The Delegation of Denmark, noting that the PLT and the STLT used the words “initial application”, said that it would prefer the current text.

40. The Delegation of Algeria, referring to item (xii), considered that the word “Registers” would better fit than “records of the Office”.

41. The Delegation of Peru asked for a correction in the Spanish version of the words “records of the Office”.

42. The Delegation of the United States of America, pointing out that there were no registers as such in its country, said that it would seem inappropriate to exclude some countries from that terminology, and suggested keeping the current language.

43. The Delegation of Switzerland withdrew the request on parental application, and expressed its preference for the term “records of the Office”.

44. The Delegation of Croatia supported maintaining the words “records of the Office” mainly because it was broader.

45. The Delegation of Brazil said that its participation in the discussion did not prejudice the outcome.

46. The Chair, in reply to a question by the Delegation of Brazil regarding the footnote to Article 6 indicating that time limits could be calculated by Parties according to their national laws, confirmed that this footnote would remain in any final version of the text.

47. The Delegation of Saudi Arabia expressed its concerns regarding the translation into Arabic of the word “applicant” in Article 1(xiii).

48. The Delegation of Algeria disagreed with the statement by the Delegation of Saudi Arabia and asked keeping the text in Arabic as it stood.

49. The Chair noted that, concerning Article 1(xii), there were two proposals, namely to maintain “records of the Office” or to use the term “Register”. Both proposals would remain open for discussion at the next session. He also noted that the terminology used in item (v) would be maintained. Finally, he noted a linguistic concern in the Spanish and Arabic versions of the text, which would be solved in the next draft.

#### *Article 2: Applications and Industrial Designs to Which These Articles Apply*

50. The Delegation of Argentina, referring to divisional applications and to the fact that there were some members that did not accept such applications, proposed to add the words “in those Parties which accept them” at the end of Article 2(1).

51. The Chair noted that the proposal by the Delegation of Argentina would be reflected in a footnote.

#### *Article 3: Application*

##### *Rule 2: Details Concerning the Application*

52. The Delegation of Brazil withdrew its earlier proposal to transfer a number of items from Rule 2(1) to Article 3, with the exception of item (iii) (“a claim”).

53. The Delegation of China proposed to transfer the description from Rule 2(1) to Article 3(1) and to include a new note to Article 3, to the effect that the form and content of the description should be prescribed by national legislation. The Delegation suggested the following text: “a description should include the ‘brief indication’ as provided for in national laws of Contracting Parties, and the requirements on the contents and forms of such descriptions should be the matter for Contracting Parties to decide.”

54. The Delegation of the Russian Federation, supporting the proposals made by the delegations of Brazil and China, expressed the view that splitting the application requirements between the Articles and the Regulations could confuse applicants as to what was mandatory and optional.
55. The Delegation of Japan reiterated that the indication of the product should be stipulated by Article 3(1), not by Rule 2(1)(i), since it was as important as the representation of the design. The Delegation explained that, in some jurisdictions, the indication of the product was considered in determining similarity with other designs, or in determining the scope of the registered designs, and it was also an element that facilitated searches.
56. The Delegation of Algeria requested clarification as regards the requirement concerning the identity of the creator in Rule 2(1).
57. The Delegation of Denmark said that experience had shown that it was preferable to keep in the Articles only the minimum requirements that would stand the test of time, in order to provide more flexibility in the future and not to have to call for a diplomatic conference each time a change was needed. The Delegation therefore proposed to maintain the text of Article 3 and Rule 2 as they were.
58. The Delegations of Georgia, Norway, Spain, South Africa and the United States of America supported the statement made by the Delegation of Denmark.
59. The Delegation of Germany proposed to add a note to Article 3, to the effect that Article 3(2) did not preclude Parties from requiring the use of an official form.
60. Responding to a proposal by the Delegation of Ghana concerning the addition of the words “for registration” in the title of Article 3, the Secretariat explained that the definition of “application” in Article 1(iv) clarified that this word referred to an “application for registration.”
61. In reply to a question by the Delegation of India concerning unity of design, the Secretariat explained that the words “Subject to such conditions prescribed under the applicable law” were intended to accommodate all conditions, including unity of design or unity of invention.
62. The Chair noted that the footnote to Article 3 reflecting the proposal by the Delegation of Brazil at the twenty-sixth session of the SCT would be deleted, with the exception of the proposal concerning a claim, which would be maintained. The Chair further noted that the footnote concerning the proposal by the Delegation of Japan would be maintained and that a footnote would be added, containing the proposal by the Delegation of China to transfer “a description” from Rule 2 to Article 3. In addition, two notes would be added, following the suggestion by the Delegation of China regarding the form and contents of the description, and the suggestion by the Delegation of Germany, concerning the possibility to require an official form.

*Rule 3: Details Concerning Representation of the Industrial Design*

63. The Delegation of Japan proposed to add a note to Rule 3(1)(iii) to clarify that specimens and models could be submitted.
64. The Delegation of Peru, referring to Rule 3(2), proposed to delete the words “to indicate matter that does not form part of the claimed design” in item (i) and to “show the contours or volume of a three-dimensional design” in item (ii). In the view of the Delegation, these words served to indicate the purpose of the dotted lines and shading and could have an impact on the scope of the protection. They went thus beyond the ambit of mere form.

65. The Delegation of China supported the proposal made by the Delegation of Peru and proposed that a paragraph (c) be inserted under draft Rule 3(2) as follows: “notwithstanding paragraph (a), the parts marked with solid lines should satisfy the requirements of the Office to indicate the subject matter for which industrial design protection is requested”.

66. The Delegation of Sweden, noting that Rule 3(2) was a “may” provision, expressed the view that this provision related more to form, as it was relevant to the representation of the industrial design. The Delegation said that wished to maintain the text as it stood.

67. The Delegation of the United States of America, indicating that the words in question provided the context within which dotted lines and shading could be used by applicants, supported the statement made by the Delegation of Sweden. The Delegation further suggested, as a possible solution to the problem posed by the Delegation of Peru, to add the words “for example” before the words in question.

68. The Chair noted that the text would remain as it stood, but that the proposal by the Delegation of Peru would be reflected in a footnote.

*Article 4: Representatives; Address for Service or Address for Correspondence*

*Rule 4: Details Concerning Representatives, Address for Service or Address for Correspondence*

69. The Delegation of Brazil declared that it supported option 1 in Article 4.

70. The Delegation of the Republic of Korea, pointing out that the primary purpose of harmonization and simplification was to provide a customer-friendly environment, emphasized the need of reducing barriers for seeking protection for industrial designs, particularly in the interest of individual inventors and small and medium-sized enterprises, who were often burdened by the need to appoint a representative for the purpose of acquiring a filing date. The Delegation declared that it preferred Option 1.

71. The Delegation of India, referring to Option 2, said that it did not satisfy the requirements of national legislation, as national law required that a representative be a patent agent or legal practitioner and should have an address for service in the territory. Therefore, the provision needed to be amended accordingly.

72. The Delegation of Switzerland declared that it preferred Option 1.

73. The Delegation of Spain said that it would be in a position to support Option 1, although it did not have a problem with Option 2.

74. The Delegation of Norway, endorsing the arguments put forward by the Delegation of the Republic of Korea as regards the importance of Option 1 for small businesses and designers and the need to keep the system user-friendly, declared that it supported Option 1.

75. The Delegation of Georgia, on behalf of the Regional Group of Caucasian, Central Asian and Eastern European Countries, declared that it supported Option 2, as it was in line with national legislations of Members of the Group.

76. The Delegation of Argentina, indicating that no representation was required where an applicant had no domicile in the territory, expressed its preference for Option 1.

77. The Delegation of Algeria said that, although national practice was in accordance with Option 2, it was prepared to examine Option 1 also. Concerning Rule 4(1), the Delegation

proposed to require the surnames or other names of the applicant and representative, in addition to the name.

78. The Secretariat said that the revised version of the draft Regulations could address the concern by the Delegation of Algeria regarding names through a horizontal provision.

79. The Delegation of China, considering that it should be up to each Party to decide whether or not to require representation, said that it preferred Option 2.

80. The Delegation of Peru declared its preference for Option 1.

81. The Delegation of the Republic of Moldova was of the view that Option 1 was more suitable, based on the fact that many jurisdictions offered electronic filing systems, thanks to which applicants were able to file themselves.

82. The Delegation of Ghana said that it preferred Option 2.

83. The Delegation of Gambia, indicating that Option 1 would be preferable in terms of harmonization, declared that it nevertheless preferred Option 2.

84. The Delegation of the United States of America said that it preferred Option 1, for the benefit and protection of small and medium businesses and individual inventors.

85. The Delegation of Denmark, pointing out that obtaining a filing date without requiring a representative was very important, expressed its support for Option 1.

86. The delegations of Finland, Sweden and Turkey declared that they supported Option 1.

87. The Delegation of Argentina, supported by the Delegations of Peru and Switzerland, stated that it supported the second option of Rule 4(2).

88. The Delegation of India referring to Article 4(6) said that it was not possible to communicate and to give notice to the applicant where neither the address for communication nor the address for service was mentioned. Therefore, Article 4(6) of the draft treaty needed to be amended accordingly.

89. The Chair noted that both options concerning Article 4(2) would be maintained in the revised draft. He also noted that, given the preference for the second option concerning the time limit in Rule 4(2), the first option in Rule 4(2) would be deleted.

#### *Article 5: Filing Date*

##### *Rule 5: Details Concerning Filing Date*

90. The Delegation of China proposed to add two new items to the list in Article 5(1), namely “a brief description” and “where the appointment of a representative is mandatory, such appointment”. The Delegation further proposed to amend Article 5(4) by replacing the last portion of the sentence by the following: “the Office shall decide according to the applicable law whether it will invite the applicant to comply with such requirements within the time limit prescribed in the Regulations”. In addition, the Delegation proposed to add a note stating that Parties are free to decide the form and contents of the express or implicit indication referred to in Article 5(1)(i). Finally, the Delegation requested a correction of the Chinese version of Article 5(4), where the reference to paragraph (2) was missing.

91. The Delegation of India, observing that national legislation provided that the filing date should be accorded only when the prescribed fee, form and representation were filed, indicated that it was not possible to accept a retrospective filing date.

92. The Delegation of Japan, supported by the Delegations of India, the Republic of Korea, Spain and Switzerland, reiterated the proposal made at the previous session to include "an indication of the product" in the list of filing date requirements.

93. The Delegation of Peru, expressing its concern on Article 5(5) with regard to Article (5)(1), sought clarification as to whether the inclusion of the words "no later than" in Article 5(5) allowed for an earlier filing date when the application did not comply with the requirements established by Article 5(1), including where the application was not accompanied by the representation of the industrial design.

94. The Representative of the European Union, speaking on behalf its 27 Member States, supported by the Delegations of Denmark, France, Latvia and Norway, stated that the correct indication of the product had no impact on the scope of the protection of the design. Therefore, linking the indication of the product to the filing date was an unnecessary burden for applicants. The Representative thus preferred to maintain the text as it stood.

95. The Delegation of Argentina declared that it preferred to maintain the text as it stood.

96. The Delegation of Brazil reiterated its request to include a new item (v) in paragraph (1)(a), which was reflected in footnote 7, and expressed the wish that it form part of the Article. Regarding the second proposal reflected in footnote 8, the Delegation withdrew it.

97. The Delegation of Peru, referring to the proposal to require the indication of the product for according a filing date, observed that a solution could be to require it only in those cases where the product was not obvious in the representation, which was a situation limited to rare cases. The Delegation further reiterated its concern on Article 5(1)(a)(iii), as the requirement of a sufficiently clear representation of the industrial design was critical, and it would not be justified that a filing date be given when it was missing. The Delegation considered that it would be unacceptable that an applicant could file an application without a representation, submit a proper representation later, and obtain a retroactive filing date.

98. The Chair noted that the proposals by the Delegation of China concerning Article 5(1) and (4) would be reflected in a footnote. Furthermore, a note to Article 5(1)(i), suggested by the Delegation of China, would be included in the revised draft. The Chair also noted that the proposal by the Delegation of Japan to move to Article 5(1) "an indication of the product or products that incorporate the industrial design, or in relation to which the industrial design is to be used", supported by a number of delegations and opposed by other delegations, would remain in a footnote. Moreover, the Chair noted that the footnote to Article 5(4) reflecting the proposal by the Delegation of Brazil at the twenty-sixth session of the SCT would be deleted, while the other footnotes would be maintained. Finally, the proposal by the Delegation of Peru concerning Article 5(1)(a)(iii) would be covered by a footnote.

#### *Article 6: Grace Period for Filing in Case of Disclosure*

99. The Representative of the European Union said that, as regards the duration of the grace period, the option of "at least six months" was vague and would result in legal uncertainty. The Representative proposed either to maintain the option of "12 months" or the following wording: "between six and twelve months". As regards item (ii), the Representative was of the view that requiring that the person be, not only informed about the industrial design, but also authorized to

disclose it might limit the benefits of the grace period. The Representative proposed to remove the words “and authorized to disclose it”.

100. The Delegations of Peru and Switzerland declared that they preferred the period of 12 months and agreed with the proposal to delete, in item (ii), the words “and authorized to disclose it”.

101. The Delegation of Argentina said that, although national legislation did not provide at present for a grace period, consideration was being given to amending the legislation to introduce a six-month grace period, which was perceived in the Study as being less costly. The Delegation, concurring with the view expressed by the Representative of the European Union that the words “at least” would create legal uncertainty, proposed to delete them and to opt for a period of six months.

102. The Delegation of China, stating that it supported the option of “at least six months”, observed that the requirements for a grace period in China were very different. The Delegation expressed the view that Article 6 should be modified to accommodate the different situations in Member States and that each Party should be free to decide on the requirements as regards the disclosure.

103. The Delegation of Brazil reiterated its wish to have flexibility to interpret the time limit of six months as 180 days and its understanding that this would be reflected in a footnote. The Delegation, supporting the option of six months, stated that it could agree with the language “between six and 12 months”. Finally, the Delegation declared that it withdrew its proposal to make subparagraphs (i), (ii) and (iii) optional and that it could go along the proposal to delete “and authorized to disclose it”.

104. The Delegation of India, observing that there was not time limit in India for disclosure in good faith, said that it opted for the six-month period.

105. The Delegation of Guatemala said that it supported the proposed option of 12 months.

106. The Delegation of the Russian Federation, indicating that it favored “at least six months” because this was the period mentioned in national law at present, said that it could agree with the proposal of “between six and 12 months” and the deletion of the words “and authorized to disclose it”.

107. The Delegations of Algeria, Saudi Arabia and Turkey declared that they agreed with the language “between six to 12 months”.

108. The Delegation of Nepal stated that it agreed with the proposal of “between six and 12 months” and with the deletion of the words “and authorized to disclose it”.

109. The Delegation of Germany supported the proposal made by the Representative of the European Union to delete the words “and authorized to disclose it”. The Delegation further proposed the wording “six months or 12 months”, in order to make it clearer for users that the time limit was either six or 12 months.

110. The Delegation of Georgia said that, although it preferred 12 months, it would also feel comfortable with the proposal by the Delegation of Germany. The Delegation further declared that it agreed with the deletion of the words “and authorized to disclose it”.

111. The Delegation of the Republic of Korea, referring to Article 6(ii), proposed to delete the words “and authorized to disclose” and to insert “directly or indirectly”, so that Article 6(ii) would

read “by a person informed of the industrial designs, directly or indirectly by the creator or his/his successor in title”.

112. The Representative of APRAM said that, although it preferred a 12-month period, it could accept the proposal of “six months or 12 months”.

113. The Representative of JPAA supported a 12-month grace period, as a period of “at least six months” was not practical and a period of “six months” was too short. A longer grace period was crucial in the field of industrial designs, as consumer products relied on market surveys to decide whether a company would seek design protection. A 12-month grace period would therefore avoid protecting designs which lacked commercial value. Moreover, the Representative considered that applicants should enjoy an entire 12-month grace period and a six-month priority period. In addition, the Representative suggested adding an article on the procedure for applying for a grace period, spelling out the minimum requirements for eligibility for obtaining a grace period. In this regard, it was reasonable to place a burden of proof on the applicant to show that the design that was filed met the grace period requirement only in the framework of a refusal or invalidation of the industrial design.

114. The Delegation of Norway proposed to agree on “six or 12 months”.

115. The Delegation of Argentina declared that it could accept the proposal of “six or 12 months”.

116. The Delegation of South Africa, indicating that integrated circuits were protected as industrial design under national legislation and that the grace period for them was two years, suggested maintaining the option “at least six months”.

117. The Chair noted that the text would contain in square brackets the words “six or 12 months”, that the words “and authorized to disclose it” in item (ii) would be deleted, and that the reservation by the Delegation of South Africa would be reflected in a footnote.

*Article 7: Requirement to File the Application in the Name of the Creator*

118. No comments were made.

*Article 8: Division of Application*

119. In response to a request by the Delegation of South Africa, the Secretariat drew the attention of the Committee to explanatory note 8.04 and pointed out that the revised drafting of Article 8 was attempting to take into consideration the discussions that had been held during the previous session of the SCT and the explicit request made by some delegations to introduce the notion of division at the request of an office. The Secretariat explained that Article 8 did not cover situations where an applicant divided the application on his/her initiative, although this possibility would not be preempted by that provision.

120. The Delegation of Switzerland said that it needed to further consider this issue, in the light of the explanation given by the Secretariat.

121. The Delegation of Peru wondered whether the wording “at the request of the Office” was appropriate, and suggested indicating that, as a consequence of an objection or an observation by the office with regard to the non-fulfillment of the requirement of unity of designs, the office could inform the applicant that he/she could request the division of the application, so as to resolve the problem.

122. Without prejudice to continuing to reflect on this issue, the Delegation of Argentina said that it agreed with the understanding expressed by the Secretariat. The Delegation noted that it was important to keep the wording “at the request of the Office” or a similar wording, so as to maintain the notion that it was the office itself which made the request.

123. The Delegation of Chile expressed its support for the comment made by the Delegation of Argentina and underscored that it was important that the text of Article 8 contained the wording “at the request of an Office” or a similar wording.

124. Regarding the two options contained in Article 8(3), the Russian Federation said that it did not support option (b) since its application in its country would imply a change in all the documents relating to fees. The Delegation observed that the current practices in place in the Russian Federation did not give rise to any problem.

125. The Delegation of Switzerland stated that it would be in favor of keeping option (a) in Article 8(3), so that each Member State could choose whether it would like to require fees, or not.

126. The Delegation of the United States of America expressed its preference for option (b), recalling that the purpose of that option was to prevent an applicant from unfairly being burdened with fees in case of need to divide an application due to requirements of an office. The Delegation said that this constituted an appropriate approach, and would be especially helpful to SMEs and those who might not have filed the correct number of applications to cover the designs submitted in one application.

127. The Chair concluded that the text of Article 8(1) and (2) reflected the common understanding of the Committee and that it would remain unchanged. The Chair also concluded that, since there was no agreement, both options would be maintained in the text of Article 8(3) in square brackets.

*Article 9: Publication of the Industrial Design*  
*Rule 6: Details Concerning Publication*

128. The Delegation of Japan expressed its strong support for the first option, which made Article 9(1) a mandatory provision. The Delegation stated that the designs should be kept unpublished for a certain period of time, in the interest of users. The Delegation observed that maintaining the designs unpublished in one jurisdiction served no purpose when the design was published in another jurisdiction. The Delegation pointed out that a country with no deferment of publication or secret designs system could nonetheless comply with Article 9(1), even if the provision became mandatory. Referring to explanatory note 9.05, the Delegation said that the provision accommodated systems where the applicant could postpone the publication of the industrial design by delaying the payment of the registration fees, without filing any request, as such. The Delegation added that the publication of industrial designs had strong implications for users and business strategies. In this respect, the Delegation of Japan drew the attention of the Committee to the results of the Study, in particular to figure C.7.2.2, which showed that all entities, including SMEs in low and middle income countries, were in agreement that secrecy during a period of 6 months after the filing of an application would have a positive economic effect on commercialization.

129. The Delegation of China stated that since some countries authorized non-publication for a certain period whereas other countries, such as China, did not, it preferred the second option, which allowed more flexibility.

130. The Delegation of Chile underlined the importance and benefit of deferment of publication, particularly for SMEs. However, the Delegation observed that, in the context of a possible international instrument, each State should have the possibility to determine the manner of implementing the provision. For this reason, the Delegation expressed its preference for the second option, so as to facilitate the implementation of a possible international instrument.

131. The Delegation of Norway stated that it believed that, in general, the mandatory options were the better ones. The Delegation observed that the purpose of a formalities treaty was the harmonization of procedural rules so as to ease the filing by applicants in different jurisdictions. The Delegation of Norway stressed the importance of binding Member States, so that procedural rules were essentially harmonized. Therefore, the Delegation expressed its support for the first option. In addition, agreeing with the comment made by the Delegation of Japan, the Delegation of Norway stated that making the provision optional would be problematic if one country allowed deferment of publication and another did not. The Delegation said that this would make deferred publication in the first country redundant, as the design would be published in another country.

132. The Delegation of Peru stated that it aligned itself with the positions taken by the Delegations of Japan and Norway.

133. On behalf of the regional group of Central Asian, Caucasian and Eastern European countries, the Delegation of Georgia expressed its preference for the second option. The Delegation said that the provision should be optional since the legislations of some countries of that group did not provide for the deferment of publication.

134. Expressing its support for the comment made by the Delegation of China, the Delegation of the Republic of Korea said that it preferred the second option. The Delegation said that Article 9(1) would properly accommodate the different systems of the Members regarding the maintenance of industrial designs unpublished only of this was an optional provision.

135. Referring to the comments made by the Delegations of Japan, Norway and Peru, the Delegation of Switzerland confirmed that it preferred the first option. The Delegation added that the provision was crucial in the context of a harmonization process, to facilitate applications for industrial designs. The Delegation of Switzerland noted that having different positions would cause difficulties.

136. The Delegation of Algeria, indicating that its national law allowed the applicant to request deferment of publication for a period of one year, expressed its preference for the second option.

137. Referring to the comments made by the Delegations of Japan and Norway, the Delegation of the European Union stated that it preferred the first option.

138. Since both options were supported by delegations, the Chair concluded that they would both be kept in Article 9, so as to provide more time for each delegation to consider the situation.

#### *Article 10: Communications*

##### *Rule 7: Details Concerning Communications*

139. The Secretariat suggested considering the proposal of the Delegation of Algeria, as to the manner in which names of parties would be indicated, in relation to these provisions.

140. Concerning the proposal of the Delegation of Algeria, the Chair noted that, if the text of an international legal instrument provided flexibility, it was up to national legislations to go into the detail and to specify what was understood by the term “name”.

141. The Delegation of Brazil said that it wished to keep its position as mentioned in footnote 11. The Delegation explained that this reflected a common practice in Brazil, which applied not only to IP laws, but also to other aspects, and that it could not admit an exception to this practice. The Delegation of Brazil sought language that would make the text amenable to different jurisdictions, by allowing the Parties to decide whether or not to require attestation, notarization, authentication, legalization or other certification. Therefore, the Delegation of Brazil proposed replacing, in Article 10(5)(b), the words “no Party may require” by “a Party may require”, to delete the words “except in those cases prescribed in the Regulations”, as well as the deletion of Article 10(5)(c), which would then become redundant. Accordingly, the Delegation proposed replacing, in Rule 7(6), the words “a Party may require” by the words “Parties are free to require” and to add, after the word “paper”, “where the law of the Party so provides”.

142. Referring to Rule 7(8)(ii), the Delegation of India pointed out that, under its national law, the time limit was 30 days and that it had reservation as to the words “at least”, which permitted a time period greater than one month. Stating that the time period could not be indefinite, the Delegation of India suggested limiting it to a maximum of one month.

143. In this respect, the Secretariat explained that the provision was a legacy of the use of telefacsimile, so as to cover situations where an applicant filed a communication by fax and the office required the original by mail. The Secretariat specified that the time for the original to arrive should be equivalent to at least one month and that any time limit beyond one month would be at the discretion of the office.

144. As to the proposed change of wording of Article 10(2)(c), which would make this provision permissive, the Delegation of the United States of America underlined that the language of the provision was identical to the language of the TLT and that its purpose was to prevent excessive costs for the applicant in the process of attestation and notarization. Therefore, the Delegation indicated that it preferred the current language.

145. The Chair concluded that footnote 11 under Article 10 would be kept as such in the footnotes and that the texts of Article 10 and Rule 7 would remain unchanged.

#### *Article 11: Renewal*

##### *Rule 9: Details Concerning Renewal*

146. The Delegation of Japan stated that, under Article 11(1)(iii), the holder could pay renewal fees for more than two registrations by making a single request. The Delegation noted that Article 14(3), Article 18(4) and Article 20(3) contained a similar provision allowing a single request for multiple registrations. The Delegation of Japan suggested adding an explanatory note or a footnote specifying that the holder could pay renewal fees for two or more registrations, in case of single request.

147. The Delegation of Peru sought clarification as to the possibility of including various registrations in one request for renewal.

148. The Delegation of India said that, under its national law, renewal fees had to be paid on or before the expiry of the initial term of 10 years as from the date of registration and a request for renewal had to be made before the expiry of the 10 year term. The Delegation said also that its national law contained an additional provision for the restoration of a design within one year

from the date of cessation. The Delegation of India suggested including a similar provision in the text.

149. The Secretariat explained that Article 11 allowed one single request for renewal pertaining to more than one registration and that the provision accommodated such possibility in an optional manner. The Secretariat recalled that the provision resulted from the discussions that had been held during the last session of the SCT. The Secretariat noted that Article 11 covered situations where offices would restrict a renewal request to only one registration or one patent as well as situations where offices would allow a renewal request for more than one registration. Therefore, the Secretariat suggested adding an explanatory note specifying that the provision left the option to the offices to allow a request for renewal pertaining to more than one registration.

150. The Chair concluded that a new explanatory note under Article 11 would be included, and that the proposal made by the Delegation of India would be highlighted in a footnote relating to Article 11.

*Article 12: Relief in Respect of Time Limits*

*Rule 10: Details Concerning Relief in Respect of Time Limits*

151. The Delegation of Brazil informed the SCT that it withdrew its request referred to in footnote 12.

152. The Delegation of the Republic of Korea indicated that the provision was acceptable to the Republic of Korea because it would strengthen the protection of applicants and right holders. The Delegation observed that, without such relief measures, missing a time limit would cause irreparable loss of rights.

153. The Delegation of India stated that Article 12 was not acceptable to its delegation because it was not consistent with its national law.

154. The Delegation of Spain said that it withdrew its proposal referred to in footnote 2 under Rule 10.

155. The Chair concluded that footnote 12 under Article 12 and footnote 2 under Rule 10 would be deleted. The Chair also concluded that the reservation as to Article 12 expressed by the Delegation of India would be noted in the report.

*Article 13: Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality*

*Rule 11: Details Concerning Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality Under Article 13*

156. The Delegation of the Netherlands requested the insertion of an explanatory note, specifying that jurisprudence and practice developed in the field of patents were not necessarily applicable in the interpretation of that provision.

157. The Delegation of the Republic of Korea observed that it would be unreasonable that a system did not provide for reinstatement of rights, as this could lead to a loss of rights, even if the cause was not imputable to applicants or holders. Therefore, the Delegation said that it preferred the first option

158. The Delegations of Denmark, Spain and Japan expressed their preference for the first option. The Delegation of Japan added that relief measures, such as those provided for by Article 13, were beneficial to users.

159. The Delegation of the Republic of Moldova stated that, since the scope was to harmonize legislations and since the loss of rights for a holder of a design was an important issue, it preferred the first option.

160. The Delegation of Brazil stated that it was still considering the issue and had not yet taken a position. In addition, the Delegation mentioned that the time limit referred to in Rule 13(1)(ii) was not in line with its national law and suggested replacing, in both options contained in Article 13, the words “within the time limit prescribed in the Regulations” by the words “within a reasonable time limit” and, accordingly, to delete Rule 11(2).

161. The Delegation of Chile said that it preferred the second option.

162. The Delegation of India indicated that it did not support Article 13 and the corresponding Rule 11, except in cases of restoration proceedings as provided for by its national law, as well as postal delay with documentary evidence. The Delegation said that the provision implied mandatory amendments of its national law, which would not be acceptable.

163. In response to a request for clarification from the Delegation of Peru, the Secretariat noted that a Contracting Party applying Article 12(1) would still have to implement Article 13, if mandatory, since the latter constituted a second safety net in situations not contemplated by Article 12, where the failure to comply with the time limit led to a loss of rights.

164. The Delegation of China indicated its preference for the second option because it provided more flexibility. The Delegation stated that reinstatement of rights was provided for by the Patent Law of China under different conditions and sought clarification as to the compliance of its Law with Article 13. Referring to Article 13(2), the Delegation said that the Patent Law of China provided also for a grace period without further details. Finally, the Delegation pointed out a mistake as to the translation of the second option in the Chinese version of Article 13.

165. The Secretariat explained that the second option was not mandatory and was aimed at providing guidelines for countries wishing to comply with it, so that discrepancies with national laws would have no consequence. However, the Secretariat noted that, if Article 13 became mandatory, national laws would have to conform to it.

166. The Delegation of China suggested highlighting the explanation of the Secretariat in the explanatory notes.

167. The Delegation of Peru made an editorial comment Note 13.02, which referred to the word “exclusions” instead of the word “exceptions”, as used in Rule 11.

168. The Chair concluded that both options would be maintained in the text of Article 13 and that two new notes, requested by the Delegations of China and the Netherlands, would be inserted in the explanatory notes. The Chair also concluded that the reservation made by the Delegation of Brazil would be highlighted in a footnote and that the word “exclusions” in Note 13.02 would be replaced by “exceptions”.

*Article 14: Request for Recording of a License or a Security Interest*

*Rule 12: 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*

169. Referring to footnotes 13 and 14, the Delegation of Brazil underlined that these footnotes reflected situations where flexibility for national authorities was required, so as to allow them to continue to perform their duties regarding issues falling beyond the realm of IP law. The Delegation said that the current drafting was unacceptable for Brazil. As to Article 14(4), the

Delegation recalled that it had suggested its deletion during the last session of the SCT and stated that, after having reconsidered and discussed the text internally, it could propose another wording so as to make the requirement amenable to the position of Brazil. The Delegation of Brazil suggested deleting in Article 14(4)(a) the words “in particular, the following may not be required”. The Delegation also proposed deleting Article 14(4)(a)(i) and moving Article 14(4)(a)(ii) to Rule 12(1)(a). Finally, the Delegation of Brazil suggested changing the wording of Article 14(4)(b) as follows: “subparagraph (a) is without prejudice to any requirements of authorities other than the Office of a Party. In particular, any requirements by tax authorities and monetary authorities of a Party are exempt from any obligation under these articles”. With respect to the request reflected in footnote 14, the Delegation proposed the inclusion of a new provision in Article 14. Such new provision, entitled “Measures Required to the Control of Potentially Anti-Competitive Practices”, could read as follows: “The provisions in Articles 14 and 15 are without prejudice to any measure required to the control of potentially anti-competitive practices in contractual licenses”. Accordingly, the Delegation of Brazil proposed to insert, in the list of items under Rule 12(1), a new item (xiv) drafted as follows: “an indication of the financial terms of the license contract” and to remove, in Rule 12(2) and in Rule 12(2)(i), the words “at the option of the requesting party”. Finally, the Delegation suggested including, in Rule 12(1)(b)(i), a reference to the proposed new item (xiv).

170. The Delegation of Chile observed that Article 14(3) might create challenges from an administrative point of view and raised some doubts as to the payment of fees. The Delegation said that, in Chile, fees were laid down by law. According to the understanding of the Delegation, the general rule was that each license corresponded to a registration. The Delegation of Chile underlined that Article 14(3) would therefore be an exception to this rule, since it allowed for the recording of a license relating to more than one registration, provided that it complied with the prescribed requirements. The Delegation said that the provision should be optional and proposed amending Article 14(3) by indicating that “a single request may be sufficient where the license relates to more than one registration”.

171. The Delegation of China suggested including in Rule 12(1)(a) a new item referring to the power of attorney.

172. In this respect, the Secretariat drew the attention of the Committee to Rule 7 related to the details concerning communications, and, in particular to Rule 7(1)(b)(ii) regarding “a reference to the power of attorney on the basis of which the representative acts”, and recalled that Rule 7 was a horizontal provision applying to all communications.

173. The Delegation of China, noting the explanation given by the Secretariat, said that it withdrew its proposal.

174. Referring to the words “evidence” contained in Article 14(5), the Delegation of the Republic of Korea said that this provision was acceptable for the Republic of Korea and that it was reasonable to require additional document from the office only if there were reasonable doubts about the veracity of any indication contained in the request, or in any supporting document.

175. Referring to the proposal made by the Delegation of Brazil, the Delegation of the United States of America pointed out that the current language aligned with the TLT and the PLT and added that the burden, costs and delay resulting from the proposal by the Delegation of Brazil would fall on applicants. The Delegation said that this would not appear to be justified. Similarly, as regards the single request for the recording of a license pertaining to more than one registration, the Delegation underlined the efficiency aspect of the provision. For this reason, the Delegation said that it supported the current text.

176. The Chair concluded that the texts of Article 14 and Rule 12 would remain unchanged, but that the proposal made by the Delegation of Brazil, already reflected in footnotes 13 and 14, would be updated and highlighted in the footnotes and the proposal made by the Delegation of Chile would also be highlighted in a footnotes.

*Article 15: Request for Amendment or Cancellation of the Recording of a License or a Security Interest*

177. The Delegation of Brazil noted that Article 15(3) referred to Article 14(2) to (5) and suggested adding a reference to paragraph (8), so as to link Article 15(3) with the provision that had been proposed by the Delegation under Article 14.

178. The Chair concluded that the text of Article 15 would remain unchanged and the proposal made by the Delegation of Brazil would be highlighted in a footnote.

*Article 16: Effects of the Non-Recording of a License*

179. Referring to footnote 15, the Delegation of Brazil proposed replacing, in Article 16(2), the words “a Party may not require” by the words “a Party may provide that the recording of a license shall not be a condition for any right that the licensee may have under the law of that Party”.

180. The Delegation of India indicated that its national law gave discretion to the courts and said that it wished to keep that discretion. Furthermore, the Delegation said that there was no provision similar to Article 16(1) in the Indian Design Law, so that the latter would not be acceptable.

181. In order to clarify the scope of Article 16(2), the Secretariat referred to explanatory note 16.03 and noted that Article 16(2) would not oblige Parties that applied that provision to admit that an infringement action be brought by a non-registered licensee. The Secretariat informed the Committee that the provision did not contemplate situations where the proceedings would be brought by the licensee in his/her own name.

182. The Chair concluded that the text of Article 16 would remain unchanged and that the proposal made by the Delegation of Brazil would be highlighted in a footnote. The Chair also concluded that the reservation expressed by the Delegation of India would be noted in the Report.

*Article 17: Indication of the License*

183. The Chair noted that there were no comments and concluded that the text of Article 17 would remain unchanged.

*Article 18: Request for Recording of a Change in Ownership*

*Rule 13: Details Concerning the Request for Recording of a Change in Ownership*

184. The Chair concluded that the texts of Article 18 and Rule 13 would remain unchanged and that the proposal made by the Delegation of China, which applied to both Article 18 and Article 19 (see hereunder), would be highlighted in the footnotes.

*Article 19: Changes in Names or Addresses*

*Rule 14: Details Concerning the Request for Recording of a Change in Name or Address*

185. Noting that Articles 18 and 19 were similar, the Delegation of China proposed deleting paragraphs (4) and (5) of Article 19, or to specify that a State Party was free to decide whether it was necessary to provide evidence and what would be the form of the evidence to be provided.

186. The Chair concluded that the proposal made by the Delegation of China would be highlighted in a footnote.

*Article 20: Correction of a Mistake*

*Rule 15: Details Concerning the Request for Correction of a Mistake*

187. The Chair noted that there were no comments and concluded that the texts of Article 20 and Rule 15 would remain unchanged.

*Article 21: Regulations*

188. The Chair noted that there were no comments and concluded that the text of Article 21 would remain unchanged.

*Continuation of Work*

189. The Delegation of Egypt, on behalf of the African Group, requested the Secretariat to improve the Impact Study (SCT/27/4) with reference to the following points: items 1.4 and 2.2 of the TOR; the classification of countries as per the TOR; including the Hague Agreement in the analysis; conducting an analysis regarding the impact on the proposed provisions on the development of the industrial designs sector in developing countries; including additional provisions on the issue of technical assistance and flexibilities for developing countries; simplifying the questionnaire in order to assist IP offices in developing countries to respond to it, and giving more time to reply to the questionnaire. With regards to the draft Articles and Regulations, the Group requested the Secretariat to note all interventions in the report of the twenty-sixth session and to prepare revised working documents for consideration at the next session. The revised document should reflect all comments made at the present session and should highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes, as appropriated.

190. The Representative of the European Union, speaking on behalf of its 27 Member States, stated that it did not see much merit in keeping open the Study for it meant delaying further the perspective of concluding work on a treaty on industrial design registration formalities and procedures. The Representative pointed out that Member States of the European Union had observed the discussions on the draft Articles and Regulation with interest and believed that the text was very close to agreement, but without an impetus by the Committee, it would not make progress. The Representative reiterated its support to convening in the near future a diplomatic conference to adopt a treaty on industrial design formalities. The Representative hoped that this session would set a clear timetable for this Committee's future work on industrial designs.

191. The Delegation of Brazil, on behalf of the DAG, supported the statement made by the African Group that there were some points of the TOR that had not been fully addressed, especially regarding technical assistance, as well as the need to further analyze the possibilities and consequences of the implementation of the draft Article and Rules, in particular in terms of costs. The Delegation expressed its support to the proposal made by the DAG to examine provisions on technical assistance. The Delegation also indicated that, in order to better assess and analyze the issue, it was in favor of an extension to the time frame of the Study. The Delegation pointed out that the classification used in the Study was neither in line with WIPO

terminology nor with the TOR. Regarding the draft Articles and Regulations, the DAG said that many issues were still open and needed to be better addressed.

192. The Delegation of Brazil, observing that Brazil was still assessing the consequences of the proposed draft Articles and Regulations to Brazilian legal structure and practices, stated that it was premature to assert that the committee was close to an agreement. The Delegation mentioned that the draft Articles and Regulations would need more flexibility to be implemented in Brazil and should take into account the reality for developing countries.

193. The Delegation of Hungary, on behalf of the Group of Central European and Baltic States, whilst noting that there was still divergence of position on some important questions, stated that significant improvement on the draft Articles and Rules had been achieved during the course of this session. The Delegation expressed the view that these differences could be accommodated in a preparatory meeting for a diplomatic conference. Thus, the Delegation, supporting the proposal made by the European Union, encouraged a recommendation to the General Assemblies to convene a diplomatic conference, and to set a clear timetable in this regard.

194. The Delegation of Canada encouraged a collaborative approach and flexibility in terms of timing. However, the Delegation, stating that it did not see the need to seek elaboration on the Study which already constituted a thorough report, encouraged all SCT Members to note the benefits indicated by the Study on the administration of industrial design.

195. The Delegation of Norway aligned itself with the statements made by the Representative of the European Union and the Delegation of Hungary.

196. The Delegation of the Republic of Korea observed that, according to the Study respondents from all countries believed that these changes would result in improvements, by making it easier, cheaper, and quicker to register industrial designs. The Delegation said that the draft Articles and Regulations adequately responded to the ultimate goal of simplifying industrial design laws and practices, and established a practical and flexible framework for design laws in general, even though some areas still required further discussion. The Delegation hoped that the Committee could promptly reach a consensus on the convening of a diplomatic conference in the near future.

197. The Delegation of India, recalling that harmonization of the procedural aspects of industrial design registration was an important norm-setting exercise, said that the Study did not fully address the core objective of showing the potential benefits, constraints and costs for SCT members of implementing a new instrument, particularly for Developing Countries, Least Developed Countries (LDCs) and Countries in Transition. The Delegation concluded that the appropriate stage for convening a diplomatic conference had not been yet reached.

198. The Delegation of Japan said it was pleased to note that there had been fruitful discussions during this session. The Delegation considered that the Study had addressed issues in a satisfactory manner. Some issues still remained in the draft Articles and Rules, but the majority had been addressed in the documents. The Delegation therefore considered that the SCT was going towards the direction of an agreement.

199. The Delegation of the Russian Federation, observing that results had been reached regarding the draft Articles and Regulations, said that documents SCT/27/2 and 3 could be examined by a diplomatic conference. However, since certain delegations called for an extension of time to have more information on the impact of a new instrument in their countries, the Delegation suggested that the SCT recommend the General Assembly to give a mandate to go to a diplomatic conference and that, at the same time, work on the Study would continue to address the concerns expressed by some delegations.

200. The Delegation of Egypt, on behalf of the African Group, in order to ease the pressure on the Secretariat proposed that further work on the Study be limited to an analysis of the impact of the changes on developing countries and LDCs only.

201. The Delegation of Chile, given the differences expressed, suggested to keep the Study open while trying to make progress towards a decision regarding the possible holding of a diplomatic conference.

202. The Delegation of Ukraine supported the statements made by the Representative of the European Union and endorsed the proposal submitted by the Russian Federation.

203. The Delegation of South Africa, endorsing the statements made on behalf of the DAG and the African Group, said that it wished to maintain the Study open for further work. The reason for this was that good and inclusive preparatory work was necessary in order to obtain a treaty that would be widely supported by Members. Other treaties on formalities did not have wide membership, maybe due to the fact that there had not been enough and inclusive preparatory work. The Delegation declared that it was not opposed to a diplomatic conference, but ore time was needed before convening it.

204. The session was suspended to hold informal discussions.

205. When the session was reconvened, the Chair stated that the SCT had made progress on the draft Articles and draft Rules. The Secretariat was requested to prepare revised working documents for consideration of the SCT at its twenty-eighth session, which should reflect all comments made at the present session and highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes, as appropriate.

206. He further stated that no delegation had expressed opposition to the possibility that this work could result in an international instrument. Likewise, there was no opposition expressed to considering in this work technical assistance and capacity building.

207. The SCT was not in agreement as to any further work on the Study on the Potential Impact of the Work of the SCT on Industrial Design Law and Practice

208. Likewise, the SCT was not in agreement on a recommendation to the WIPO General Assembly concerning the convening of a diplomatic conference.

## **AGENDA ITEM 7: TRADEMARKS**

### *Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks*

209. The Chair recalled that the Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks had taken place immediately before the twenty-seventh session of the SCT on Monday, September 17, 2012, and noted that it had contained very interesting and comprehensive presentations as well as roundtable discussions where participants had been able to raise comments and to ask questions.

210. The Delegation of the Republic of Korea expressed the view that the Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks had been very informative and hoped that solutions in the area would be found in the near future. It wished to continue the work on this sub-item in the twenty-eighth session of the SCT.

211. The Delegation of the Russian Federation, while acknowledging that the proposal of the Delegation of the Republic of Korea as to the future work of the SCT on this sub-item was interesting, stressed that the SCT had already put a lot of effort into the work on Internet intermediaries and that there was not much needed to finalize that work. It proposed that the work of the SCT during its twenty-eighth session be focused in as much as possible on the draft Articles and Regulations in the area of design law and practice with a view to coming to an agreement on this matter before continuing the work on Internet intermediaries.

212. The Representative of the European Union agreed with the proposal of the Delegation of the Russian Federation to give priority to the work on industrial designs and recalled its view that it was neither appropriate nor necessary to have an additional debate in the SCT on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks.

213. The Chair concluded that the SCT did not wish to continue work on this topic and that it would not remain on the Agenda of the SCT.

#### *Update on Trademark-Related Aspects of the Expansion of the Domain Name System*

214. Discussion was based on document SCT/27/8.

215. Upon invitation by the Chair, the Secretariat provided an update on trademark-related aspects of the expansion of the Domain Name System (DNS).

216. The Delegation of Switzerland thanked the Secretariat for its report, and noted its concern and interest in developments regarding the expansion of the DNS. The Delegation requested that the Secretariat update the SCT concerning further developments.

217. The Representative of INTA thanked the Secretariat for its report, and noted the desirability of enhancements to the currently contemplated ICANN Rights Protection Mechanisms (RPMs) associated with the expansion of the DNS. The Representative noted that trademark holders would incur incremental costs to protect their brands and prevent consumer confusion by defensively registering domain names and monitoring for infringing domain name registrations. The Representative noted that the need for RPM enhancement concerns, in particular, the second level RPMs, notably the Trademark Clearinghouse and the Uniform Rapid Suspension (URS) system. The Representative noted that the public benefit of DNS expansion is contingent in part on the functionality of such RPMs.

218. The Representative of AIM concurred with the recommendation of the Representative of INTA regarding further improvements to RPMs. The Representative noted that not all trademark owners would be able to undertake defensive domain name registrations in the expanded DNS. The Representative expressed the view that, accordingly, efficient and effective dispute prevention and resolution systems must be in place.

219. The Delegation of the United States of America thanked the Secretariat for its update. The Delegation concurred that defensive registrations are no longer an effective and reasonable DNS enforcement strategy. The Delegation noted that RPMs must balance the needs of trademark owners with reasonable commercial considerations. The Delegation supported the need for further collaboration on the URS, and more generally for registries, registrars and IP owners to engage together on rights protection in the DNS. In this connection, the Delegation affirmed its support of ICANN's multi-stakeholder model.

220. The Representative of ICANN expressed appreciation to the Secretariat for the production of document SCT/27/8. The Representative stated that the process of DNS expansion was the result of the collective involvement of the ICANN community over a period of years. The Representative acknowledged the view expressed by the Delegation of the United States of

America in relation to balanced rights protection in both the top and second level of the DNS, and noted that discussions in this regard are still ongoing. The Representative expressed the view that internationalized domains and domain names are a vital element of DNS expansion. The Representative wished to encourage Governments to participate in ICANN Meetings, in part through ICANN's Governmental Advisory Committee.

221. The Chair concluded that the SCT had taken note of document SCT/27/8 and that the Secretariat was requested to keep Member States informed on developments in the Domain Name System.

*Protection of Names of States Against Registration and Use as Trademarks*

222. Discussion was based on documents SCT/25/4, SCT/27/5, SCT/27/6 and SCT/27/7.

223. The Delegation of Jamaica recalled that at the resumed twenty-sixth session of the SCT in February 2012, it had made a proposal together with the Delegation of Barbados, which outlined a three-phased work plan containing a number of specific objectives that those delegations believed would advance the work of the Committee on the very important matter of the Protection of Names of States Against Registration and Use as Trademarks. That proposal was contained in document SCT/27/6. In addition, the Delegation of Jamaica also submitted separate draft terms of reference, contained in document SCT/27/7, which would serve to facilitate the implementation of the jointly proposed work program. The joint proposal concerning Phase 1 of the work plan had received wide support from the members of the Committee, though a few delegations asked for more time to further consider the draft terms of reference, on which the Delegation was prepared to exercise flexibility.

224. In this context, the Delegation of Jamaica re-submitted the elements of those proposals for the consideration of the SCT and invited the Committee to take a decision regarding future work under this agenda item. In furtherance of this objective, the Delegation, as well as a number of other delegations, had responded to the Committee's request by furnishing information on cases and case studies, which were relevant to the protection of names of States, in addition to information on nation branding schemes in which they were involved. Jamaica's contributions, in this regard, had been outlined in a very detailed case study and an equally detailed report outlining a non-exhaustive set of evidence that not only enumerated its concerns, but described the steps that Jamaica had taken to protect its nation brand.

225. The case studies, for example, identified a number of products and services which bore the name Jamaica, but which had no association with the country, and also presented evidence contained in the local media outlining both the reported stance of a few producers and services providers of these infringing goods and services, as well as the contrasting stance of the Government of Jamaica. The case studies also highlighted a wide range of registered trademarks, which used the name Jamaica to highlight the widespread nature of the concern.

226. Jamaica's country report, on the other hand, provided a fulsome overview of not only the economic significance of the potential impact of trademark infringements involving the name Jamaica, but also detailed the efforts and initiatives that had been taken by the Government of Jamaica, as well as by the private sector, to establish Jamaica's Nation Brand. The report highlighted the limitations of the existing intellectual property rights systems in addressing these concerns, and mentioned specific issues related to trademark damage, passing off and unfair competition, as some of the areas in which local companies had been affected by such infringements.

227. The Delegation was therefore of the view that a detailed and critical assessment of these concerns was needed, with emphasis not only on identifying the sources of such uses and any potential abuses of country names, but also an empirical assessment of the impact of such uses

on developing countries. It also strongly encouraged the undertaking of a comprehensive review of legislation and jurisprudence, in all forms, so as to identify existing protections, highlight possible gaps as well as consistencies and potential synergies in legal approaches, and the further consolidation of this information into a document or documents, of a form to be agreed to by the Committee. The ultimate objective of this exercise was to produce a reference resource or joint recommendation that would guide the future development of domestic and international practice, legislation, and related jurisprudence, in relation to the protection of country names. The Delegation therefore invited the SCT to take a positive decision regarding the next steps of its work in this vital area, in order to ultimately bring order and structure to the treatment of names of States within the global IP system.

228. The Delegation of Barbados thanked Member States for submitting cases and case studies relevant to the protection of country names, as summarized in document SCT/27/5, and considered that there was more to be revealed on this matter in order to carry the work forward. Therefore, it proposed that the Secretariat carry out a study on the protection of country names.

229. The Delegation of Argentina, recognizing the importance of the protection of country names, which existed in several countries, expressed the view that areas of convergence could be established in the handling of country names by industrial property offices. The Delegation highlighted that Argentina had embarked on several initiatives to protect the use of its name in different bodies. Hence, considering the proposal under discussion as an extension of those initiatives, it encouraged the SCT to continue working in this area on the basis of those proposals.

230. The Delegation of the Republic of Korea supported the proposal made by the Delegations of Barbados and Jamaica and mentioned that country names were protected in the Republic of Korea through the Trademark Law and Unfair Competition Act.

231. The Representative of the European Union thanked the Delegations of Barbados and Jamaica for their proposals concerning future work on the protection of names of States. It took note of the interest of Jamaica in continuing work in this area and carrying out a study into the current legislative provisions and practices, in national or regional legislation, relating to the protection and use of names of States, as well the experience and best practices related to the implementation of such provisions. The Delegation noted that it had reviewed the report by the Delegation of Jamaica on its national branding initiatives, as summarized in document SCT/27/5, and in particular the three phase proposal for a work program set out in document SCT/27/6 and the details of phase one of that work program set out in document SCT/27/7. However, the Representative expressed reservations about the scope, cost, and feasibility of the proposed work program. In phase one, part one, which involved an empirical review of legitimate and illegitimate use of country names, the meaning of "legitimate" and "illegitimate" use, as well as the specific criteria that could be applied were unclear. In addition, that part of the proposal also involved a search in each SCT Member State's trademark registries for the names of other Member States. The Representative underlined that the cost of such an undertaking, which would involve the identification and analysis of a great number of marks, had not been defined. Finally, phase one, part two of the proposal concerned a study of the current legislative provisions and practices in national or regional legislation, including any existing or impending legislation, judicial decisions and judicial reviews. This would seem an extremely wide-ranging task, for which the resources that might be entailed in carrying it out did not seem to be determined.

232. Accordingly, the Representative said that the European Union and its Member States were unable to support the work on the protection of names of States in the form set out in the proposals under consideration. In addition, it recalled that the item had been on the Committee's agenda since 2009 and that a great amount of work had been conducted by the SCT on the subject and several documents had been prepared by the Secretariat, as

summarized in document SCT/27/5. In spite of all these efforts, the Representative said that there was no indication that names of States were not respected and protected by national offices when registering new trademarks. However, recognizing the great importance attached to the issue of names of States by the Delegations of Barbados and Jamaica, it pointed out its willingness to discuss further. Finally, the Representative reiterated that the European Union and its Member States were of the view that the Committee should focus its efforts on finalizing its work in the area of industrial designs with a view to convening a Diplomatic Conference for the adoption of a treaty on industrial design registration formalities and procedures in the near future.

233. The Delegation of Chile supported the request made by previous speakers that the Secretariat carry out a study on norms, standards and legislative systems existing in the area of country names at different national levels.

234. The Delegation of Canada recognized that the documents under discussion represented a useful reference tool which provided a comprehensive review of the laws of Members regarding the protection of country names against registration and use as trademarks. Furthermore, it indicated that the adoption and use of names of States was prohibited in Canada unless distinctiveness could be proven, and expressed the view that this prohibition was sufficient to protect country names against illegitimate use.

235. The Delegation of Peru observed that the documents presented for the consideration of the Committee outlined not only the problems faced by developing countries to protect their official name against unauthorized use, but also the difficulties they faced in protecting the image and reputation given by the country name, particularly in terms of nation branding, which was a specific form of using the name of a country. The Delegation noted that the document submitted by the Delegation of Jamaica included examples of situations where the name of the State, and therefore its reputation, were used without authorization, particularly by private entities which took advantage of that reputation without sharing the economic profits gained. The Delegation expressed the view that the Committee should continue working on this issue, by taking into account how important it was for developing countries to protect their names and receive the economic benefits derived from such use. Additionally, the Delegation considered that the recognition of nation branding was implicitly included in the issue and constituted a distinct way of protecting a country name. It concluded that the Committee should focus on that issue without prejudice to the work on the protection of names of States against unauthorized use.

236. The Delegation of Trinidad and Tobago supported phase one of the proposal made by the Delegations of Barbados and Jamaica and, which could be considered as the basic level of consistency that Member States could apply when dealing with applications involving the use of country names.

237. The Delegation of Hungary, on behalf of the Central European and Baltic States Sub-group, took note of document SCT/27/5 and welcomed the decision made by the proponents to avoid a treaty-based approach. The Sub-group associated itself with the view that, although the existing international and national legal framework granted adequate protection for country names in trademark registration and cancellation procedures, in the absence of a common interpretation of similar rules and converging practices of industrial property offices, inconsistencies might arise. The Subgroup considered that, in analyzing possible solutions, emphasis should be given to the complex nature of the issue. The distinctive character of a mark, its descriptiveness or the possibility that a mark may mislead consumers was closely connected to the characteristic of the market and the knowledge of the relevant consumers in a particular country. Therefore, unified interpretation and practice did not seem to be a possible approach. In spite of these factors, the Delegation recalled that information in a

global world was easily accessible for the consumers and indicated that it was ready to engage on the proposed study as a basis for the future work of the Committee.

238. The Delegation of Sudan stated that national legislation prohibited the use of country names as trademarks.

239. The Delegation of Switzerland supported the proposal and considered that the subject was useful for the SCT, given the importance it had for several countries.

240. The Delegation of Japan expressed its appreciation to those delegations which had provided useful information about case studies concerning the protection of country names as well as methods of nation branding, and recognized the importance of the latter. The Delegation understood that country names formed part of geographical terms and observed that they were generally not registrable as trademarks where they were descriptive or deceptive to the public in relation to the designated goods or services. However, the Delegation considered it legitimate to indicate a country name on genuine products, when this was necessary in the course of trade. In particular, the term "Japan" was included in trademarks or was used on genuine products actually made in Japan or originated in Japan. The Delegation stated that each country analyzed whether a given sign may be registered as a trademark on the basis of the facts of each individual case. Therefore, it considered that the criteria of legitimate and illegitimate use in the proposal made by Jamaica were unclear and that such ambiguity might mislead the direction of the discussion in the Committee. In this regard, the Delegation welcomed the effort made by the Delegation of Jamaica to revise the proposal and stated that such revision could be a good basis for further discussion.

241. The Delegation of Ghana expressed appreciation for the revised proposal and associated itself with all statements made by previous speakers. The Delegation believed that further work on the protection of country names was necessary. Furthermore, it indicated that the Trademarks Act of Ghana contained provisions protecting names of States as part of grounds for refusal. However, when the Office refused registrations containing country names, applicants often submitted certificates from other States where such marks had been registered. Therefore, the Delegation considered that a consensus on the matter was crucial.

242. The Representative of the European Union expressed the view that the revised proposal should not include a link to document SCT/27/6 since that document had not been approved by the Committee. In addition, the European Union and its Member States considered that the scope of the study was too broad and requested that the revised proposal be discussed at an informal consultation meeting with the proponents. The results of that discussion would be later reported to the plenary.

243. The Delegation of China considered that the revised proposal was very positive due to the uniqueness of country names and the negative consequences of their registration or use as trademarks. The Delegation supported the continuation of discussions on the issue and added that Chinese Trademark Law clearly prohibited the registration of names of States without authorization of the competent authorities and provided sanctions against users of country names as trademarks.

244. The Delegation of Barbados thanked the Member States for their useful contributions to the discussion on the use of country names. It stated that, for countries that had spent a great deal of effort on country branding, there was much to protect. Several delegations had indicated that their authorities were also concerned about the misuse of names of States and that this issue was addressed in the domestic law and trade mark practices of many countries. The Delegation underlined that there were instances where trademarks could be misleading, could dilute the efforts of countries to brand their name and could put in danger the reputation associated with these names. It considered that because of the absence of a common

approach and since only a few countries had provided information, even though many more supported the initiative, there was a need to draw on other examples in framing a response to that problem. The Delegation wondered whether Member States were ready to take action on the basis of the information before them, even though they had not submitted cases. It believed that information on how countries had tried to address this problem and the effectiveness of these efforts would help finding an optimum approach to handling the problem. The Delegation considered that when producers abroad misused country names, an international approach seemed necessary. An analysis would be helpful in concluding this matter successfully, since for some developing countries protection of country names was of significant economic importance.

245. After the informal consultation meeting, the Delegation of Jamaica presented a new revised proposal for a study on the protection of country names, which focused on the field of trademarks with consideration on non-trademark legislations and practices which protected country names, and allowed the Secretariat to rely on an external expertise as appropriate.

246. The Representative of the European Union supported the revised Terms of Reference presented by the Delegation of Jamaica.

247. The Chair concluded that the SCT had requested the Secretariat to prepare a study in accordance with the terms of reference as contained in the Annex to the Summary by the Chair (document SCT/27/10).

#### **AGENDA ITEM 8: INTERNATIONAL NONPROPRIETARY NAMES FOR PHARMACEUTICAL SUBSTANCES (INNS)**

248. Discussion was based on a presentation by Dr. Rafaella Balocco Matavelli, Manager of the International Nonproprietary Names (INNs) for Pharmaceutical Substances Program of the World Health Organization (WHO) (hereinafter WHO Representative). The presentation provided a general outline of the INN selection process, the publication of lists of proposed and recommended INN in different supports, and the recent establishment of a Global Data Hub for INNs.

249. The Delegation of Denmark asked whether the list of stems would be included in the INNs Global Data Hub, to facilitate search and examination of trademark applications consisting of, or containing INN stems.

250. The Delegation of Egypt, on behalf of the African Group, expressed the view that Intellectual Property, including Trademarks, should support Public Health and recalled that the Group had made an assessment of the benefits of establishing a mandatory disclosure requirement of INNs and easier identification of generic names of medical products, in patent applications. The Delegation suggested that a similar presentation by the WHO Representative could be made before the Standing Committee on the Law of Patents.

251. The Delegation of the Republic of Moldova thanked the WHO Representative for the information provided and noted that the INNs Database was a helpful tool in the daily work of the national Trademark Office.

252. The Delegation of India supported by the Delegation of Venezuela (Bolivarian Republic of) asked whether or not INNs applied to biological compounds.

253. The Delegation of Mexico requested information on whether applications for INNs, which had been considered and refused by the WHO INN Expert Group, were placed on a separate list that could also be made available to Trademark Offices.

254. The Delegation of the United States of America noted that usually INNs were not part of a patent application. They were normally assigned after the grant of a patent.

255. In reply to the query by the Delegate of Denmark, the Secretariat confirmed that the Presentation made by the Representative of WHO would be published on the SCT web page.

256. In reply to a question by the Delegation of Denmark, the WHO Representative explained that the list of stems was published in the 2011 Stem Book. This publication could be downloaded from the WHO web site. Although the stem list was currently not included in the Data Hub, its inclusion could be considered in the future.

257. In reply to the concerns raised by the Delegations of India and Venezuela (Bolivarian Republic of), regarding relationship between INNs and biological compounds, the WHO Representative explained that this was a very complicated question. Biological substances were by definition not homogeneous. When a name was assigned to a chemical entity, this name corresponds to an ideal substance. The INNs Programme dealt only with the ideal structure to which a name should be assigned. Some rules had been established and used to create names for biological substances, but the discussion was still ongoing. The INNs Programme had certainly dealt with nomenclatures for biological products and each biological substance was evaluated on its own merits.

258. In reply to the comment made by the Delegation of Egypt on behalf of the African Group concerning patents and INNs, the WHO Representative explained that when a request for an INN was received, it was clear that a certain development of the substance at the clinical phase had been advanced, and usually a patent application was already under discussion. The INNs Program would not receive an INN application for a substance at a very early stage of development, because an INN application should contain information on the medical aims of the substance.

259. The SCT took note on the presentation by the Representative of the World Health Organization on the WHO Global Data Hub for International Nonproprietary Names for Pharmaceutical Substances (INNs).

#### **AGENDA ITEM 9: GEOGRAPHICAL INDICATIONS**

260. The Chair noted that no intervention was made under that Agenda item.

#### **AGENDA ITEM 10: CONTRIBUTION OF THE SCT TO THE IMPLEMENTATION OF THE RESPECTIVE WIPO DEVELOPMENT AGENDA RECOMMENDATIONS**

261. Speaking on behalf of the DAG, the Delegation of Brazil drew the SCT's attention to Clusters A (technical assistance and capacity building) and B (norm-setting activities) of the Recommendations approved by the General Assembly in 2007, and their relation with the SCT's work on industrial designs. It highlighted that Recommendation 15, in Cluster B, called for norm-setting activities that take into account different levels of development and that take into consideration a balance between costs and benefits and recalled that the DAG and many delegations had expressed, in their earlier interventions, the need to observe those principles. One of the objectives of the Development Agenda Recommendations was to make norm-setting activities more transparent and inclusive. The Delegation recognized that improvements had been made in this direction, mainly due to efforts made by Developing Countries. It was of the view that the discussions regarding industrial design law during the twenty-sixth session of the SCT seemed more adequate to the above-mentioned Recommendation. The study prepared by the Secretariat at the request of the SCT had aimed at analyzing the potential benefits,

constraints and costs for SCT members, particularly developing countries, least developed countries (LDCs) and countries in transition, of the application of the draft articles and rules in the area of industrial design law and practice. The DAG welcomed the study and recommended further elaboration on items mentioned in the terms of reference and not sufficiently addressed in the study as well as an extension of time for offices and applicants to answer the questionnaire. The study had also had the goal of evaluating which flexibilities would be available for Member States. The Delegation underlined that flexibilities were a necessary part of a balanced intellectual property system, as proposed in the Development Agenda. It stated that some other points of the Development Agenda, however, remained to be incorporated to WIPO's activities and that there was a clear need, as had been raised by many Member States, to discuss technical assistance and capacity building. From the existing draft texts, it seemed that developing countries were the ones that would need to promote more internal changes, both legal and technical, in order to implement the proposed new rules. The DAG took the view that this process should enable all members, in particular developing countries, to make a conscious decision on whether the proposed norm-setting activity would meet their national interests and needs. In conclusion, the Development Agenda Group was of the opinion that the item of the Agenda under consideration should become a permanent Agenda item.

262. The Delegation of South Africa, providing its assessment of how the SCT had contributed to implementing the development agenda recommendation, underscored that it was important for this issue to be a standing item in the SCT sessions preceding the General Assemblies. South Africa had participated actively in the two sessions of the SCT under evaluation. With regard to norm-setting, the Delegation was pleased that the request of the African Group and the Development Agenda Group was taken up by the SCT to commission the study on the potential impact of the work of the SCT on industrial design law and practice in line with Cluster B of the Development Agenda, particularly Recommendation 15. The study, as it was presented during that session, proved very insightful. The Delegation thanked and commended the Secretariat and the external consultant and pointed out that the study provided some clarity pertaining to costs and benefits of the draft design law articles. It was particularly pleased with the information on flexibilities, although it was contextualized within the current activities that had been undertaken with the design law treaty. However, there had also been limitations in gathering some of the information requested in the terms of reference, owing to the fact that the study was the first of its kind. The Delegation was therefore of the view that the study should be improved as appropriate in accordance with the comments made by Member States, especially regarding the classification of countries, provisions on technical cooperation, and linkages with the Hague Agreement. The Delegation believed that the study could further enhance the provisions of the envisaged design law treaty. The Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks as sanctioned by the SCT had been very useful and had shed some light on the complexities of this subject matter. Given that the Internet was a global resource, the Delegation would have appreciated hearing the experiences of the African continent on the issue. Nevertheless the discussions had been informative and useful indeed. The Delegation believed that the SCT had embarked on a positive process in implementing the Development Agenda Recommendation and urged the SCT to continue improving its contribution towards their implementation.

263. Speaking on behalf of the African Group, the Delegation of Egypt appreciated that the SCT continued to be guided by the Development Agenda Recommendations and that its norm-setting activities in the area of industrial design law and practice had been guided by Clusters A and B of the Development Agenda Recommendations, in particular Recommendations 1, 2, 15 and 17. It thanked the Secretariat for preparing the impact study which emphasized the commitment of WIPO Member States to the Development Agenda Recommendations. The Delegation also noted that the study had equally covered the potential impact on developed and high-income countries, which proved that the Development Agenda Recommendations were in fact of benefit to all WIPO Member States. It hoped that the study could be further improved so as to address all terms of reference as approved by Member States and in particular the impact of the draft articles and rules on developing

countries' and LDC's needs for capacity building, investment in infrastructure and technical assistance as well as on fostering creativity, innovation and economic development and efficiency in developing countries. It hoped to continue to see the SCT's contribution to the Development Agenda Recommendations and said that the item under consideration should be a permanent item on the Agenda of the SCT.

264. The Delegation of Algeria aligned itself with the statements made by the Delegations of Brazil and Egypt. It also wished to add its voice to those who had said that the contribution of the SCT to the Implementation of the respective WIPO Development Agenda Recommendations ought to be a permanent agenda item within the SCT and indeed all WIPO Committees. Any standard-setting exercise within the SCT needed to take into account the Development Agenda Recommendations, particularly Recommendation 4 on technical cooperation and capacity building. With regard to the evaluation of the contribution of the SCT to the implementation of the Development Agenda, the Delegation was particularly satisfied with the work done by the SCT in relation to the study that the Secretariat had carried out on the impact of the draft articles and rules. It believed that any standard-setting exercise within WIPO ought to be preceded by such exercise so that the impact of the establishment of legal norms on all WIPO Member States could be assessed. Of course, the SCT could do a lot more in order to be an example for other committees. In attempting to improve the study and respond genuinely to the needs of developing countries, the SCT could be recognized as being the only committee having started out by an impact study before moving on with the draft articles and rules. In the view of the Delegation, this should be the approach within WIPO. The SCT could also strengthen its technical cooperation and capacity building activities for development.

265. The Delegation of the United States of America, speaking on behalf of Group B, stated that it objected to the suggestion that the item under consideration should become a standing item on the Agenda of the SCT.

266. The Delegation of Italy said that it supported the statement by the Delegation of the United States of America.

267. The Delegation of Hungary, speaking on behalf of the Group of Central European and Baltic States, expressed its support for the statement made by the United States on behalf of Group B.

268. The Chair noted that a number of delegations made declarations on the contribution of the SCT to the implementation of the respective WIPO Development Agenda Recommendations. He stated that all declarations would be recorded in the report for the twenty-seventh session of the SCT and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

#### **AGENDA ITEM 11: SUMMARY BY THE CHAIR**

269. The SCT approved the Summary by the Chair as contained in document SCT/27/10.

#### **AGENDA ITEM 12: CLOSING OF THE SESSION**

270. The Chair closed the session on September 21, 2012.

[Annexes follow]



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**SCT/27/10**  
**ORIGINAL: ENGLISH**  
**DATE: SEPTEMBER 21, 2012**

## **Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications**

**Twenty-Seventh Session**  
**Geneva, September 18 to 21, 2012**

SUMMARY BY THE CHAIR

*adopted by the Committee*

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

1. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO) opened the twenty-seventh session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.
2. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

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

3. Mr. Imre Gonda (Hungary) was elected Chair and Mr. Andrés Guggiana (Chile) and Ms. Ahlem Sara Charikhi (Algeria) were elected Vice-Chairs of the Committee.

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

4. The SCT adopted the draft revised Agenda (document SCT/27/1 Prov.2) with the addition of one additional item entitled "Contribution of the SCT to the Implementation of the respective WIPO Development Agenda Recommendations" and the amendment of the wording of item 11 to read "Summary by the Chair".

### **AGENDA ITEM 4: ACCREDITATION OF A NON-GOVERNMENTAL ORGANIZATION**

5. Discussion was based on Document SCT/27/9.

6. The SCT approved the representation of the Internet Corporation for Assigned Names and Numbers (ICANN) in sessions of the Committee.

### **AGENDA ITEM 5: ADOPTION OF THE REVISED DRAFT REPORT OF THE TWENTY-SIXTH SESSION**

7. The SCT adopted the revised draft report of the resumed session of the twenty-sixth session (document SCT/26/9 Prov.2), subject to adding the Delegation of Pakistan to the list of Members in paragraph 2.

### **AGENDA ITEM 6: INDUSTRIAL DESIGNS**

*Industrial Design Law and Practice - Draft Articles and Draft Regulations and Study on the Potential Impact of the Work of the SCT on Industrial Design Law and Practice*

8. Discussion was based on documents SCT/27/2, 3 and 4.

9. The Chair stated that the SCT had made progress on the draft Articles and draft Rules. The Secretariat was requested to prepare revised working documents for consideration of the SCT at its twenty-eighth session, which should reflect all comments made at the present session and highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes, as appropriate.

10. He further stated that no delegation had expressed opposition to the possibility that this work could result in an international instrument. Likewise, there was no opposition expressed to considering in this work technical assistance and capacity building.

11. The SCT was not in agreement as to any further work on the Study on the Potential Impact of the Work of the SCT on Industrial Design Law and Practice

12. Likewise, the SCT was not in agreement on a recommendation to the WIPO General Assembly concerning the convening of a diplomatic conference.

## **AGENDA ITEM 7: TRADEMARKS**

### *Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks*

13. The Chair concluded that the SCT did not wish to continue work on this topic and that it would not remain on the Agenda of the SCT.

### *Update on Trademark-Related Aspects of the Expansion of the Domain Name System*

14. Discussion was based on document SCT/27/8.

15. The Chair concluded that the SCT had taken note of document SCT/27/8 and that the Secretariat was requested to keep Member States informed on developments in the Domain Name System.

### *Protection of Names of States Against Registration and Use as Trademarks*

16. Discussion was based on documents SCT/25/4, SCT/27/5, SCT/27/6 and SCT/27/7.

17. The Chair concluded that the SCT had requested the Secretariat to prepare a study in accordance with the terms of reference as contained in the Annex of the present document.

## **AGENDA ITEM 8: INTERNATIONAL NONPROPRIETARY NAMES FOR PHARMACEUTICAL SUBSTANCES (INNS)**

### *Presentation by a Representative of the World Health Organization (WHO) on the WHO Global Data Hub for INNs*

18. The SCT took note of the presentation by the representative of the WHO.

## **AGENDA ITEM 9: GEOGRAPHICAL INDICATIONS**

19. The Chair noted that no intervention was made under that Agenda item.

## **AGENDA ITEM 10: CONTRIBUTION OF THE SCT TO THE IMPLEMENTATION OF THE RESPECTIVE WIPO DEVELOPMENT AGENDA RECOMMENDATIONS**

20. The Chair noted that a number of delegations made declarations on the contribution of the SCT to the implementation of the respective WIPO Development Agenda Recommendations. He stated that all declarations would be recorded in the report for the twenty-seventh session of the SCT and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

**AGENDA ITEM 11: SUMMARY BY THE CHAIR**

21. The SCT approved the Summary by the Chair as contained in document (SCT/27/10).

**AGENDA ITEM 12: CLOSING OF THE SESSION**

22. The Chair closed the session on September 21, 2012.

[Annex follows]

**BARBADOS AND JAMAICA**  
**REVISED PROPOSAL FOR A STUDY ON THE PROTECTION OF COUNTRY NAMES**  
**20 SEPTEMBER 2012**

**Purpose**

The purpose of the work outlined below is to determine possible best practice for the protection of country names from registration as trademarks, or as elements of trademarks.

**Terms of Reference**

In furtherance of the work previously mandated by the SCT on country names, contained in documents SCT/24/6 and SCT/25/4, the Standing Committee on the law of Trademarks, Industrial Designs and Geographical Indications (SCT), at its 27<sup>th</sup> session, mandates the WIPO Secretariat to carry out the following activities.

The Secretariat, drawing on outside expertise as appropriate, shall conduct a study on the current legislative provisions and practices in national or regional legislations relating to the protection of country names in the field of registration of trademarks, as well as best practices related to the implementation of such provisions.

In addition to any existing or impending legislations, this study shall also draw on available jurisprudence, in the field of trademarks, involving the subject of country names, which may be available within the national and regional jurisdictions of WIPO Member States.

The outcome of the study shall provide a focused presentation of the different trademarks law and where used in the alternative, non-trademark legislation and practices developed by Member States, including grounds for refusal and/or cancellation, which protect country names. The study should aim to provide a detailed overview of the different approaches used to protect country names and to highlight elements or features that may be considered possible best practice or elements which could enhance the protection of country names.

**Decision**

*The Standing Committee on the law of Trademarks, Industrial Designs and Geographical Indications (SCT), at its 27<sup>th</sup> session, requests the WIPO Secretariat to carry out the study on the protection of country names, and to submit the study to the 29<sup>th</sup> Session of the SCT.*



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**SCT/27/INF/1**  
**ORIGINAL: FRANCAIS/ENGLISH**  
**DATE: 21 SEPTEMBRE 2012/SEPTEMBER 21, 2012**

## **Comité permanent du droit des marques, des dessins et modèles industriels et des indications géographiques**

**Vingt-septième session**  
**Genève, 18 – 21 septembre 2012**

## **Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications**

**Twenty-Seventh Session**  
**Geneva, September 18 to 21, 2012**

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*prepared by the Secretariat*

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\* Sur une décision du Comité permanent, les Communautés européennes ont obtenu le statut de membre sans droit de vote.

\* Based on a decision of the Standing Committee, the European Communities were accorded member status without a right to vote.

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