

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

**Fortieth Session**  
**Geneva, November 12 to 16, 2018**

### **DRAFT REPORT**

*prepared by the Secretariat*

### **INTRODUCTION**

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee”, “the Committee” or “the SCT”) held its fortieth session, in Geneva, from November 12 to 16, 2018.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Albania, Algeria, Argentina, Australia, Austria, Azerbaijan, Bahamas, Barbados, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, China, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Lybia, Malaysia, Malta, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, Niger, Nigeria, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, Uruguay, United Arab Emirates, United Kingdom, United States of America, Venezuela (Bolivarian Republic of), Yemen, Zambia, Zimbabwe (103). 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: Benelux Organisation for Intellectual Property (BOIP), Eurasian Patent Organization (EAPO), South Centre (SC), World Health Organization (WHO), World Trade Organization (WTO) (5).
4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), *Association française des praticiens du droit des marques et modèles* (APRAM), Chamber of Commerce of the United States of America (CCUSA), European Brands Association (AIM), European Law Students' Association (ELSA International), Health and Environment Program (HEP), Inter-American Association of Industrial Property (ASIPI), International Federation of Intellectual Property Attorneys (FICPI), International Trademark Association (INTA), International Wine Law Association (AIDV), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), Knowledge Ecology International, Inc. (KEI), MARQUES - Association of European Trade Mark Owners, Organization for an International Geographical Indications Network (oriGIn) (15).
5. The list of participants is contained in Annex I of this document.
6. The Secretariat noted the interventions made and recorded them.

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

7. Ms. Wang Binying, Deputy Director General of the World Intellectual Property Organization (WIPO), opened the fortieth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants on behalf of the Director General.
8. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.
9. The Secretariat announced that, due to the unavailability of the Chair of the SCT, Mr. Adil El Maliki, Mr. Alfredo Rendón, ranking Vice-Chair, would be acting as Chair for the fortieth session of the SCT.

#### **AGENDA ITEM 2: ADOPTION OF THE AGENDA**

10. The SCT adopted the draft Agenda (document SCT/40/1 Prov.3).

#### **AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-NINTH SESSION**

11. The SCT adopted the draft Report of the thirty-ninth session (document SCT/39/11 Prov.).

### *General Statements*

12. The Delegation of El Salvador, speaking on behalf of the Group of Latin American and the Caribbean Countries (GRULAC), thanked the Secretariat for the excellent preparatory work of the fortieth session. Concerning industrial designs, GRULAC regretted that, during the 2018 WIPO General Assembly, it had not been possible to reach an agreement on the convening of a diplomatic conference on the Design Law Treaty (DLT). The Group reiterated that Member States needed to address this topic in a pragmatic way, with political will and flexibility, in order to achieve an agreement which would be of benefit to all. Concerning trademarks, the Delegation said that GRULAC attached great importance to the protection of country names. In this regard, the Group thanked the Secretariat for the Summary of the Various Examination Practices Regarding Trademarks Consisting of, or Containing, Country Names, contained in document SCT/40/3, based on the information session that had taken place in the framework of the thirty-ninth session of the Committee. GRULAC reiterated the view that country names were a valuable tool and an opportunity for countries to benefit from, and to generate value through, the use of the intellectual property system, including the development of a country brand. For that reason, the Delegation said that GRULAC would actively participate in the discussions on that item. The Delegation also stated that proof of GRULAC's engagement in the topic were the proposals that had been submitted by, or with the sponsorship of, the members of the Group, such as the proposals on the protection of country names contained in document SCT/32/2 of Jamaica and the joint proposal with the participation of Jamaica, Mexico and Peru, contained in document SCT/39/8 Rev. 2, as well as the proposal of Peru on the recognition and protection of nation brands, contained in document SCT/39/9. The Delegation indicated, furthermore, that GRULAC also considered extremely valuable the Update on Trademark-Related Aspects of the Domain Name System, contained in document SCT/40/4. Regarding geographical indications, the Group believed that the compilations of the responses to the questionnaires prepared by the Secretariat and contained in documents SCT/40/5 Prov. 2 and SCT/40/6 Prov. 2 were important inputs to guide the work of the Committee.

13. The Delegation of Morocco, speaking on behalf of the African Group, thanked the Secretariat for the efforts made in the preparation of the work of the fortieth session of the SCT. Highlighting the importance of the topics discussed within the SCT and the dynamic of all debates in the current process, the African Group reiterated its support for the ongoing work and discussions on the protection of country names against undue registration or use as trademarks. Thanking the Secretariat for the preparation of document SCT/40/3, which summarized the various examination practices regarding trademarks consisting of, or containing, country names, the Delegation indicated that the Group was convinced of the usefulness of that document to enrich the understanding of the debate and help the Committee to make progress on the issue. The Delegation also said that the Group regretted that during the 2018 WIPO General Assembly, the decision to convene a diplomatic conference on the DLT had been deferred to the 2019 General Assembly. Pointing out that additional efforts by all Member States would contribute to mutual understanding and enable the Committee to make progress on the topic, the Delegation stated that the Group remained optimistic on the possibility of reaching a mutually convenient solution and a consensus at the next General Assembly, to move forward to a diplomatic conference.

14. The Delegation of Lithuania, speaking on behalf of the Group of Central European and Baltic States (CEBS), stated that, while the Group was committed to the fruitful work of the fortieth session, discussions on the DLT had been deferred to the 2019 General Assembly and should thus not be held at this session of the Committee. Regarding industrial designs, the Delegation expressed the Group's appreciation for the Draft Questionnaire on Graphical User Interface, presented in document SCT/40/2, and considered it to be a strong basis for further work on that important topic. On geographical indications, the Group thanked the Secretariat for the compilations of replies to both Questionnaire I on the National and Regional Systems that Can Provide a Certain Protection to Geographical Indications and Questionnaire II on the

Use/Misuse of Geographical Indications, Country Names and Geographical Terms on the Internet and in the DNS, contained in documents SCT/40/5 Prov. 2 and SCT/40/6 Prov. 2. Expressing the Group's readiness to discuss the results of the questionnaires and to exchange experiences and practices on the different protection systems, the Delegation said that the Group believed that further work of the Committee on geographical indications was important, as there were issues to be tackled at the international level. On trademarks, the Group recalled the fruitful discussions in previous SCT sessions on the protection of country names against registration and use as trademarks. The Group appreciated the valuable exchanges on different practices, the efforts to clarify practical issues and the new compromise proposal concerning implementation issues. Finally, thanking the Secretariat for the Summary of the Various Examination Practices Regarding Trademarks Consisting of, or Containing, Country Names, contained in document SCT/40/3, the Group said that the conclusions of the document were an objective overview of the different practices.

15. The Delegation of Canada, speaking on behalf of Group B, thanked the Secretariat for the preparation of the session. Recalling that, despite the advanced maturity of the draft text, a consensus to convene a diplomatic conference for the adoption of the DLT had not been reached during the 2018 General Assembly, the Delegation said that Group B looked forward to devoting the time and focus of the SCT session to other issues on the Agenda. The Delegation expressed the Group's gratitude to the Secretariat for the preparation of documents SCT/40/2, SCT/40/3 and SCT/40/4, as well as for the preparation and distribution of Questionnaire I on the National and Regional Systems that Can Provide a Certain Protection to Geographical Indications and Questionnaire II on the Use/Misuse of Geographical Indications, Country Names and Geographical Terms on the Internet and in the DNS. Group B also wished to thank Member States, intergovernmental intellectual property organizations and accredited NGOs that had submitted input as part of the development of the questionnaire, as well as those Member States and observers that had provided replies to the questionnaires. The Group recommended that documents SCT/40/5 Prov. 2 and SCT/40/6 Prov. 2 remain open for further submissions by Member States. Finally, the Delegation stated that Group B remained strongly supportive of the SCT as an important forum to discuss issues, facilitate coordination and provide guidance on the progressive development of international intellectual property law on trademarks, industrial designs and geographical indications.

16. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the Secretariat for the preparation of the session. Recalling that one of the focuses of the Committee was to find a common landing zone among Member States on the text of a possible DLT, the Delegation pointed out that, like any other international treaty, the implementation of the DLT should be accompanied with enhanced capacity of Member States, in particular developing countries and least developed countries (LDCs), to carry out the obligations arising out of the new treaty. The Delegation indicated that, while most members of the Asia and the Pacific Group favored the provision of technical assistance in the proposed DLT through an article in the main body of the instrument, other members were flexible on the placement of such provision. The Group hoped to see a decision on the matter through consensus and to the satisfaction of all members. The Delegation also stated that most of the members of the Group supported the principle of disclosure of source and believed that, as sovereign Member States of WIPO, countries should have the flexibility to include among the design eligibility criteria components that were deemed important to complete the formality for protection within their jurisdiction, while other members of the Group had different national positions. Pointing out that the Group was optimistic that a mutually agreed outcome would be reached on the DLT, the Delegation said that the Group was ready to engage constructively towards a complete resolution of the outstanding issues, especially the bridging of position gaps pertaining to Articles 3 and 22 of the draft treaty. Thanking the Secretariat for preparing document SCT/40/2, the Delegation also expressed the Group's appreciation to Member States for their inputs and questions, as well as to the Delegation of Spain for putting forward a proposal for a study on the protection of industrial designs at trade shows in Member States.

On country names, the Group hoped to see progress towards consensus and acceptable work, highlighting the fact that there was a need for international action to prevent the undue registration and use of country names as trademarks. In this regard, the Group supported the proposal by the Delegation of Jamaica for the development and future adoption of a joint recommendation by the SCT, recalling that there had been ample examples which demonstrated the fact that country names were not offered sufficient protection in practice. In addition, the Group supported the proposal by the Delegation of Peru for the recognition and protection of nation brands and the proposal by the Delegations of Georgia, Iceland, Indonesia, Italy, Jamaica, Liechtenstein, Malaysia, Mexico, Monaco, Peru, Senegal, Switzerland and the United Arab Emirates concerning the protection of country names and geographical names of national significance. The Group was also grateful to the Secretariat for the preparation of document SCT/40/3 and hoped that the Committee could have a meaningful deliberation towards a positive direction on the subject matter. On Trademark-Related Aspects of the Domain Name System, the Group believed that the update prepared by the Secretariat provided extremely useful information about various services and procedures that were available to trademark owners to prevent bad faith registration or use of their trademarks in the DNS. The Delegation said that the Group looked forward to the progress report on the integration of INN Data into the Global Brand Database, as agreed at the thirty-ninth Session of the SCT. Concerning geographical indications, the Group thanked the Secretariat for the preparation of Questionnaire I on the National and Regional Systems that Can Provide a Certain Protection to Geographical Indications and Questionnaire II on the Use/Misuse of Geographical Indications, Country Names and Geographical Terms on the Internet and in the DNS, as well as Member States and observers that had provided replies to those questionnaires.

17. The Delegation of China thanked the Secretariat for the preparation of the session and, commending the enormous efforts made by the SCT in formulating rules on trademarks, industrial designs and geographical indications, stated that it was ready to continue to support the work of the Committee and play a role in the formulation and improvement of those rules. The Delegation looked forward to making more progress at the session. On the DLT, the Delegation called upon all sides to engage in open and inclusive discussions, demonstrating flexibility in order to obtain substantive progress at the next General Assembly. On technical assistance and disclosure, the Delegation hoped that proposals from developing countries could be taken into account in order to reach consensus on the issues that remained to be agreed upon and create favorable conditions for a diplomatic conference. The Delegation proposed that reservations be considered to make the treaty more flexible and acceptable to countries. On other aspects relating to industrial designs, the Delegation thanked the Secretariat for preparing the Draft Questionnaire on Graphical User Interface (GUI), Icon, Typeface/Type Font Design. The Delegation believed that the questionnaire would help countries to learn about the trends in the relevant area, know about the problems faced by offices, draw from good practices, as well as push forward the improvement of the design system. The Delegation of China looked forward to sharing its experience and suggestions, proactively participating in the discussions. In addition, the Delegation supported the extension of the Digital Access Service (DAS) for Priority Documents to cover industrial designs, as this would reduce applicants' burdens in preparing priority documents and improve examination efficiency. Indicating that the Information Session on Country Names held at the last session had been very useful, the Delegation said that the examination practices presented by the experts at that session had been extremely valuable and wished that further discussion would take place on the summary of the session. On geographical indications, the Delegation supported further studies to be carried out on the basis of different national situations. Finally, the Delegation thanked the Secretariat for the efforts made in preparing the questionnaires and compiling the responses, which would help to know and summarize the countries' specific systems and constitute an important basis for further work.

18. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for the excellent preparatory work and recalled with appreciation the particularly constructive spirit shown by all delegations in the previous SCT session. The Delegation believed that the finalization of the questionnaires on geographical indications had been a significant achievement and thanked the Secretariat for its substantial assistance in the process. The Delegation recalled that another important result had been the agreement on the focus of the future work concerning GUI, Icon and Typeface/Type Font Designs, expressing the view that the Committee had taken the right choice in prioritizing issues concerning the requirement for a link between GUIs and the product and the representation of animated designs. The Delegation noted that the Committee had also made progress in furthering understanding on the topic of country names, both by means of a moderated roundtable discussing offices' practices and by starting discussions on a new compromise, proposal contained in document SCT/39/8 Rev. 2. Referring to the debate held on the DLT during the 2018 General Assembly, the Delegation stated that, despite its willingness to engage in discussions on the facilitator's text, it had to note with regret that once again no positive decision to convene a diplomatic conference could be achieved. The Delegation reiterated the view that discussions on the DLT should not be held in the Committee. In relation to GUIs, the Delegation thanked the Secretariat for preparing the draft questionnaire contained in document SCT/40/2 in a clear, coherent and sufficiently detailed manner. Indicating that the European Union had contributed to the draft questionnaire with a description of the practice applied by the European Union Intellectual Property Office (EUIPO) and the common practice on the graphical representation of designs developed with the EU Member States within the European cooperation network, the Delegation expressed support for the draft questionnaire, as the basis for further work on selected pertinent issues concerning GUIs. On trademarks, the Delegation thanked the Secretariat for the preparation of a Summary of the Various Examination Practices Regarding Trademarks Consisting of, or Containing, Country Names contained in document SCT/40/3, which had accurately captured the main points emerging from the roundtable, stating that it agreed with its conclusions. As to the joint proposal contained in document SCT/39/8 Rev.2, the Delegation recalled that it had made some initial comments during the last session of the SCT to seek clarification as to how it would be implemented and applied in practice. The Delegation reiterated its appreciation of the spirit of seeking consensus reflected in the proposal and indicated to be ready to participate in continued discussions to further explore its potential advantages. The Delegation also took note of the proposal concerning the recognition and protection of nation brands submitted by the Delegation of Peru during the last session and contained in document SCT/39/9. Finally, turning to geographical indications, the Delegation said that the European Union and its member states had submitted responses to both questionnaires. The Delegation welcomed the provisional compilations of replies to the questionnaires contained in documents SCT/40/5 Prov. 2 and SCT/40/6 Prov. 2. Despite the fact that the compilations did not comprise all contributions, the Delegation thanked the Secretariat for the work done so far and hoped that the Secretariat would be in a position to complete the task in due course before the forty-first session of the SCT. The Delegation pointed out that the compilations would already prove useful in informing debates on geographical indications in the present forum and elsewhere. In respect of Questionnaire II, the Delegation noted that, while protection systems for geographical indications in the DNS and on the Internet existed to a limited extent, they were not well developed. The Delegation was of the view that after completion of the documents, it would be opportune for the SCT to continue to work on the improvement of geographical indication protection on the Internet and in the DNS, given that many issues still needed to be addressed at the international level.

19. The Delegation of Tunisia, endorsing the statement made by the Delegation of Morocco on behalf of the African Group, reiterated its interest on the questions on the Agenda, in particular the DLT, the protection of country names against registration and use as trademarks and the protection of geographical indications. Regretting that the 2018 WIPO General Assembly had not been able to reach a decision on the DLT, the Delegation expressed the hope that progress would be made in the spirit of cooperation, flexibility, and constructive

attitude to the benefit of all, taking into account the importance of the DLT as a tool to simplify and harmonize procedures for registering industrial designs to the benefit of creators and enterprises. The Delegation thanked the Secretariat for preparing the documents summarizing the different practices on country names and for having organized the Information Session with fruitful discussions on the subject. Highlighting the fact that trademarks were at the very center of the intellectual property system, the Delegation said that it attached great importance to them, as they were a key element in any successful marketing strategy. Regarding the use of country names in the trademark system, the Delegation underscored the commitment of Tunisia to achieve a consensual solution in view of impeding such use on an international scale.

20. The Delegation of Iran (Islamic Republic of), thanking the Secretariat for the preparation of the Committee, aligned itself with the statement delivered by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. The Delegation said that it attached great importance to the work of the SCT and the discussions on the topics currently on the Agenda, recalling that the SCT was an important forum, which was playing a significant role and making remarkable achievement in the areas of trademarks, industrial designs and geographical indications. Referring to industrial designs and the DLT, the Delegation stated that an eventual decision depended first and foremost on the recognition of the priorities of all members and also on the constructive and positive approach by all. The Delegation also recalled that there was no other way than negotiations to bridge the position gaps on the specific issue, toward a mutually acceptable solution. With regard to GUI, Icon and Typeface/Type Font Designs, the Delegation expressed the view that the current framework provided adequate flexibility for new technological designs. The Delegation therefore believed that further discussion on this issue should preserve Member States' policy space to adopt their national legal requirements based on their needs and priorities. The Delegation looked forward to the discussion on the proposal submitted by the Delegation of Spain for the study on the protection of industrial designs at trade shows in Member States. Turning to trademarks and recalling that the Committee had been discussing the protection of country names against registration and use as trademarks since 2009, the Delegation highlighted the fact that the name of a country, as an element of its national identity, and geographical names of national significance must be protected against monopolization by a third party. The Delegation believed that there was a need to continue holistic and substantive discussion on more consistent, adequate, and effective protection of country names as a matter of priority. The Delegation took note of the proposal made by the Delegation of Peru on the protection of nation brands and looked forward to its discussion. On geographical indications, the Delegation took note of the compilation of the replies to the two questionnaires. Finally, the Delegation reiterated the view that the questionnaire initiative should not create any expectation in the areas already covered by the Lisbon Agreement and the Geneva Act of the Lisbon Agreement.

21. The Delegation of India said that it aligned itself with the statement delivered by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. The Delegation thanked the Secretariat for the efforts made in preparation of the documents for this session of the SCT. The Delegation of India believed that the SCT had a primary role in finding common ground to resolve the stalemate in the DLT. The Delegation was of the view that the provisions on technical assistance and mandatory disclosure requirements had to be included in the DLT to enable developing countries to shape their systems in accordance with the flexibilities provided in the TRIPS Agreement. While thanking the Secretariat for the preparation of the Draft Questionnaire on Graphical User Interface (GUI), Icon, Typeface/Type Font Designs contained in document SCT/40/2, the Delegation expressed the view that the topic concerned was a policy issue pertaining to individual countries. The Delegation recalled that there were many countries having a system of substantive examination, including India. The Delegation said that in case of protection under various intellectual property rights, the interfaces between them, for example between copyright and industrial design, needed to be delineated. The Delegation believed that, given the specific nature of GUI, icon, typeface/type font designs, it was still debatable whether the subject should be protected through industrial design regulation. The Delegation

also said that it looked forward to the integration of data on non-proprietary names for pharmaceutical substances (INNs) into the Global Brand Database, as agreed at the thirty-ninth session of this Committee. The Delegation considered critical to ensure that trademarks that were similar to INNs were not registered. Thanking the Secretariat for the update relating to trademark-related aspects of the Domain Name System, the Delegation said that the DNS raised a number of challenges for the protection of intellectual property. The Delegation stated that the registration of a domain name might be in conflict with a trademark and, as per the Indian system, the use of a domain name substantially similar to a registered trademark might constitute an infringement of the said trademark. Referring to country names, the Delegation expressed the view that their use as trademarks, not only created linkages with the original products or services, but also had implications on the sovereignty of States. The Delegation therefore hoped that the Committee would have a constructive dialogue on the issue in the present session. On geographical indications, the Delegation thanked the Secretariat for the compilation of the replies to the two questionnaires.

22. The Delegation of Brazil aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC. Concerning industrial designs, the Delegation regretted that the 2018 General Assembly had not been able to reach consensus to convene a diplomatic conference to adopt the DLT. The Delegation hoped that, in the future, Member States would show more flexibility to find common ground and eventually reach an agreement on the topic before the 2019 WIPO General Assembly. Regarding the graphical user interface (GUI), icon and typeface/type font designs, the Delegation said that it would continue to be constructively engaged, looking forward to sharing its practices on the subject, as well as to making its best efforts to submit replies to the questionnaire. Referring to trademarks, the Delegation pointed out that the Information Session held during the last session of the SCT had made clear that intellectual property offices adopted different practices in the examination of country names. The Delegation ensured that Brazil was willing to continue exchanging views on the different approaches adopted on the topic. Indicating that it attached particular interest to geographical indications, the Delegation stated that Brazil had observed an exponential growth in the registration of geographical indications over the last few years. In 2002, the first geographical indication had been granted and currently 69 geographical indications were registered. Thus, due to the growing importance of the topic in Brazil, the Delegation said that it had submitted replies to both questionnaires and would continue to engage constructively in the discussions on geographical indications.

23. The Delegation of Malaysia said that it aligned itself with the statement delivered by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. On the DLT, the Delegation noted the decision taken at the 2018 General Assembly and hoped that all Member States would continue to work constructively to overcome the remaining differences and find consensus to bring the text to a diplomatic conference. Stressing the fact that trademarks were a key component of the intellectual property system and an important marketing tool, the Delegation hoped to see progress in the Committee's work on the protection of country names. While noting that country names were generally protected under the Malaysia Trademark Act, the Delegation stressed the fact that there was a need for international action to prevent the undue registration and use of country names as trademarks. The Delegation recalled that there had been ample examples presented to the Committee highlighting the fact that country names were not sufficiently protected. For that reason, the Delegation saw merit in the numerous proposals under the agenda item concerned and supported the proposal of the Delegation of Jamaica for a joint recommendation to be adopted by the SCT. The Delegation also reiterated its support to the proposal on the protection of country names and geographical names of national significance contained in document SCT/39/8/ Rev.2., of which Malaysia was a co-sponsor. In addition, the Delegation also stated that it saw merit in the proposal put forward by the Delegation of Peru for the recognition and protection of nation brands. Finally, the Delegation recognized the importance of geographical indications in contributing to social and economic development, especially of the regions producing such goods, and added that, by



extension, geographical indications were also capable to contribute to the social and economic development of a country. The Delegation considered that the information embodied in a geographical indication was a valuable commercial asset, which merited legal protection against the unauthorized use of parties. For that reason, the Delegation looked forward to a constructive discussion based on the responses to the two questionnaires.

## **AGENDA ITEM 5: INDUSTRIAL DESIGNS**

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

24. The Chair recalled that the WIPO General Assembly, at its session in September 2018, had decided that, at its next session in 2019, it will continue considering the convening of a diplomatic conference on the Design Law Treaty (DLT), to take place at the end of the first half of 2020.

25. The Delegation of Canada, speaking on behalf of Group B, expressed its continuous support for the ongoing work of the Committee in relation to industrial designs. Referring to document SCT/40/2, the Delegation was of the view that the two topics on which the draft questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs focused – namely the link, or lack thereof, between a design and an article or product and the methods of representation of animated designs – were particularly relevant and important to users, as designs and their use in the modern economy continued to progress and evolve. Therefore, the Delegation stated that it looked forward to considering the draft questionnaire. Additionally, the Delegation underlined that it continued to be interested in Member States plans for implementation of the WIPO Digital Access Service (DAS) for depositing and retrieving electronic priority documents for industrial design registrations. Remarking that several Member States had taken important and encouraging steps forward during the past year, the Delegation said that it looked forward to hearing about their progress in relation to the DAS and designs. Finally, referring to its opening statement as regards the draft DLT, the Delegation recalled that it was disappointing that a consensus to convene a diplomatic conference had yet again not been reached during the 2018 WIPO General Assembly. Observing that, unfortunately, during that Assembly, some delegations had not been prepared to consider a facilitator's proposal for a path forward – although Group B had been ready to do so – the Delegation reiterated its readiness to engage again at the next General Assembly in 2019, when the draft DLT would be considered.

26. The Delegation of Lithuania, speaking on behalf of the CEBS Group, expressed the view that the Information Session on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs had been very useful in building the Committee's understanding of different national practices and experiences of relevant stakeholders and recalled that, during the discussions on future work held at the last SCT session, the CEBS Group and other delegations had expressed their interest in further working on the link between GUIs and the physical product to which they applied. Thanking the Secretariat for having prepared a draft questionnaire, presented in document SCT/40/2, the Delegation expressed its readiness to continue working on the basis of the said draft and to further identify the most relevant issues. Indicating that the issues in relation to new age designs were a matter of further perspectives, the Delegation pointed out that the Committee's immediate priority should focus on solving existing problems with current and well-established forms of GUI and icon designs. For that reason, the Delegation lent its support to a phased approach, giving priority to the existing differences in the field of GUI, icon and typeface/type font designs. The Delegation expressed its willingness to explore the issues relating to new age designs, including hearing the views from user associations, at a later stage, after a common understanding on current issues would have been reached. Thanking the Delegation of Spain for its proposal to study the protection of

industrial designs at trade shows, the Delegation declared its interest in receiving additional explanations about the nature of the problem at stake. Finally, as regards the draft DLT, the Delegation concluded by referring to its opening statement.

27. The Chair concluded that the SCT took note of all statements made by delegations on that item. While the DLT would remain on its agenda, the SCT duly noted the decision of the General Assembly to continue considering this matter at its next session in 2019.

*Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*

28. Discussions were based on documents SCT/40/2 and SCT/40/2 Rev.

29. The Secretariat introduced the document, which contained a draft questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, based on inputs and questions submitted by members and non-governmental organizations (NGOs).

30. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recalled that, following a successful Information Session on GUI, Icon and Typeface/Type Font Designs, the SCT had looked into proposals for future work at its last session. The Delegation reminded the Committee that most delegations, including the European Union and its member states, had been in favor of further work on the tie between the product and the design and its effect on the scope of protection, as well as on the representation of animated GUIs. While sharing the common understanding that currently existing divergences should be directly addressed and that further work on those issues could pave the way for a more harmonized approach, the Delegation noted, at the same time, that issues concerning novel technological designs could be undertaken in a subsequent phase. Expressing its satisfaction with the progress made at the last SCT session, the Delegation believed that the Committee had managed to find the right focus for further work on GUIs. Observing that, in accordance with the decision taken at the last SCT session, the Secretariat had prepared a draft questionnaire on the basis of received inputs and questions, contained in document SCT/40/2, the Delegation informed the Committee that the European Union had contributed to the said draft by providing the Secretariat with a description of the practice applied by the EUIPO and the common practice on the graphical representation of designs developed with the member states of the European Union within the European Cooperation Network. After thanking the Secretariat for the preparation of a draft questionnaire in a clear, coherent, and sufficiently detailed manner, the Delegation expressed support for the draft questionnaire, which could serve as the basis for further work on selected pertinent issues concerning GUIs. Referring to the decision taken at the last SCT session on a further exchange of views on related matters, such as novel technological designs, the Delegation reiterated the view that, although issues concerning novel technological designs were also interesting and relevant, there was a need to solve first the problems in the field of currently known forms of GUI and icon designs. Nonetheless, the Delegation expressed its interest in hearing more about novel technological designs from users associations. In the Delegation's viewpoint, that could guide the SCT future work in the appropriate direction, after having reached a common understanding on current and more prevailing issues.

31. The Delegation of Chile, thanking the Secretariat for the preparation of a draft questionnaire on GUI, Icon and Typeface/Type Font Designs, which brought together questions and inputs submitted by Member States, observed that the questionnaire aimed at covering two aspects, namely the requirement for a link between a design and an article and the methods of representation of animated designs. Noting that the comments submitted by its country on its law and on the practice of its national office (INAPI) had been taken into account in document SCT/40/2, the Delegation considered that the information provided by Chile, other

Member States and NGOs, could feed the discussions and help the Committee to make a better use of the compilation. Finally, the Delegation held the view that the questionnaire should remain open to enable the inclusion of additional responses.

32. The Delegation of the United States of America, thanking the Secretariat for the preparation of document SCT/40/2, held the view that the draft questionnaire on GUI, Icon, Typeface/Type Font Designs was a great work product, successfully addressing the two issues under consideration, namely the requirement for a link between a design and an article or product and the methods allowed by offices for the representation of animated designs. The Delegation pointed out that, in its jurisdiction, although a tie to an article of manufacture was required, the the United States Patent and Trademark Office (USPTO) carried out a novelty search covering all types of articles. Therefore, the Delegation suggested duplicating Question No. 11 to get information about the scope of searches made by examining Offices also in jurisdictions requiring a link between the article and the design. Besides, the Delegation informed the Committee that the ID 5 – a forum gathering five offices namely the National Intellectual Property Administration of the People's Republic of China (CNIPA), EUIPO, the Japan Patent Office (JPO), Korean Intellectual Property Office (KIPO) and USPTO – was also studying designs in new technologies, and, specifically, GUI and icon designs. In that respect, the Delegation announced that, during its annual meeting held in Seoul (Republic of Korea) the previous week, the ID5 had agreed to publish on its website the results of a study, carried out by the ID5 participating offices, which could complement the SCT work and the information available for both offices and users.

33. The Delegation of China, thanking the Secretariat for the preparation of the draft questionnaire on GUI, Icon, Typeface/Type Font Designs, contained in document SCT/40/2, and the Member States and NGOs for their inputs, believed that studying those inputs would help the Committee understand the developing trends and existing problems in the area. In the Delegation's viewpoint, the questionnaire would also help the Committee's members to learn from each other, to tackle emergent issues in protecting designs and to improve systems of design protection. Looking forward to thoroughly discussing the topic with SCT members and seeing positive outcomes resulting therefrom, the Delegation expressed its readiness to share its experience within the SCT. As regards the content of the questionnaire, which was very detailed, well targeted and accurately reflecting its concerns, the Delegation proposed adding three questions, so as to gather replies in relation to: (i) the requirement that a GUI be part of a physical product and the possibility to apply a GUI to a virtual product, (ii) the possibility and means of protection of a part only of a GUI, (iii) the possibility to protect scenario-based GUI or icon designs appearing, for instance, in a navigation application. Finally, the Delegation also suggested asking whether protection was provided in each jurisdiction for GUI, icon and typeface/type font designs.

34. The Delegation of Japan expressed gratitude to the Secretariat for the draft questionnaire and to the Member States and NGOs for their submissions and insightful comments. Noting the desire of Member States and user associations to promptly conduct the survey and share the results, the Delegation announced that a revision of the Design Act was currently undertaken in Japan, notably to extend the scope of protectable GUIs. Since the prospective amendments to the Design Act could largely relate to the questions contained in document SCT/40/2, the Delegation wondered whether it could reply to the questionnaire on the basis of its revised law and practices and, therefore, requested some flexibility to allow delayed or additional answers.

35. The Delegation of the Russian Federation, thanking the Secretariat for having organized the Information Session on GUI, Icon, Typeface/Type Font Designs and for having drafted the questionnaire, and expressing its gratitude to the Member States and NGOs for their inputs, believed that the questionnaire on GUI, Icon, Typeface/Type Font Designs was not only very relevant, as the popularity of the topic was growing, but also a good basis to enable sharing experiences. Expressing its readiness to participate in the discussions on the topic and to listen

to all comments, the Delegation was of the view that exchanging information would promote a better understanding of the matter and would lead to a better examination of applications. The Delegation concluded by highlighting the importance of the area under consideration, in respect of which work should continue.

36. The Delegation of Iran (Islamic Republic of) stated that, in addition to the points highlighted in its opening statement in relation to industrial designs, it had taken note of document SCT/40/2 containing a draft questionnaire based on the received inputs and questions from Member States and NGOs. Since the draft questionnaire incorporated inputs from 11 Member States only, the Delegation concurred with the views expressed by the Delegation of Chile to keep the door open for further Member States' inputs. While expressing its readiness to examine the document and to streamline the questionnaire during the session, the Delegation stressed the need to address important issues, such as considering whether, under the existing international agreements, there was any requirement for Member States to recognize rights over such designs. In its opinion, taking into account the nature of those designs, the Committee should also clarify whether the subject matter at stake should be protected by industrial design regulations or by a new sort of regulation. Considering that the Committee should have a common understanding on the subject covered by its work under that topic, the Delegation indicated that addressing those issues should be a part of the future SCT work on the topic.

37. The Representative of INTA, commending the Secretariat for the preparation of the draft questionnaire on the basis of inputs and questions submitted by delegations and observer organizations, expressed its appreciation for document SCT/40/2. In addition to its proposal to slightly modify the drafting of Questions 5, 6 and 7, the Representative suggested defining or illustrating, for instance in a footnote, the term "link" between a GUI, icon or typeface/type font design and an article in Question 1, the term "functional aspects" in Question 4, the term "permanent articles" in Question 26, and the term "active state" in Question 29. Concurring with the proposal by the Delegation of the United States of America as to Question 11, the Representative also suggested separating two possible answers, namely "installation of a protected GUI or icon design" and "use of a protected GUI or icon design" in Question 31.

38. The Delegation of Morocco, thanking the Secretariat for the draft questionnaire and the Member States for their inputs, said that Morocco recognized the significance of GUI, icon, typeface, type font designs and their emerging importance, particularly because Morocco was a contracting party to the Hague Agreement and would, as such, be designated in international applications for those designs protected in other countries, where means of registering them had been implemented. The Delegation indicated that the registration of those designs could, however, be refused in Morocco for lack of means of protection. Although the Industrial Property Law of Morocco did not expressly exclude the type of design under consideration, as it contained a broad definition of industrial design, the Delegation explained that there were nonetheless restrictions, in particular as to the link between a design and an article or product and the representation of that type of design. Finally, the Delegation underlined the usefulness of the questionnaire, which would shed light on experiences and practices of offices already granting protection to that type of design.

39. The Delegation of the Republic of Korea, thanking the Secretariat for having prepared the draft questionnaire and the Member States for having enriched its content by providing inputs, considered that the questionnaire aimed at enhancing the Committee's understanding of each jurisdiction's system concerning new technological designs. Expressing the view that typeface/type font designs should be regarded differently from GUI or icon designs, since they performed different functions, the Delegation pointed out that there was no need to examine their connection to an article and, for that reason, suggested to delete the terms "typeface/type font" in Questions 1, 4, and 10. The Delegation added that providing for specific questions for typeface/type font designs would be more relevant.

40. The Chair requested the Secretariat to prepare, before the end of the SCT session, a revised draft questionnaire reflecting comments made by SCT members.
41. The Chair reverted to the draft questionnaire, as revised and presented in document SCT/40/2 Rev., which had been made available to the Committee during the session.
42. The SCT considered document SCT/40/2 Rev., a revised draft questionnaire on Graphical User Interface, Icon and Typeface/Type Font Designs, prepared by the Secretariat as per the Chair's request.
43. The Delegation of the United States of America was of the view that the revised draft questionnaire was excellent and highlighted areas of interest to a number of SCT members.
44. The Delegation of China, thanking the Secretariat for its swift work, considered that the revised draft questionnaire had been improved and addressed its concerns. The Delegation added that the replies to the questionnaire would lead to additional questions.
45. The Delegation of Japan, drawing the Committee's attention to the current revision process of the Design Act in its country, wondered whether it could submit its reply based on its updated Act, after the proposed deadline for replying to the questionnaire.
46. The Secretariat indicated that, for the next SCT session, it would prepare a provisional document compiling the replies, so as to enable delegations to subsequently provide comments on it or additional replies. The Secretariat added that the document would be finalized after the forty-first SCT session.
47. The Chair concluded that the Secretariat was requested to:
- circulate the questionnaire as contained in document SCT/40/2 Rev. to SCT members and Intergovernmental Intellectual Property Organizations with observer status, for returns by January 31, 2019; and
  - compile all returns into a document for consideration by the forty-first session of the SCT, it being understood that, due to the limited time for the preparation of this document, the SCT agreed that this document would be made available not later than March 8, 2019.

*Update by Member States on the Digital Access Service (DAS) for Priority Documents*

48. The Secretariat provided an update on the progress in the implementation of the DAS with respect to the Hague System. Pointing out that the Hague System did not provide for the actual receipt and communication, by the International Bureau of WIPO, of priority documents issued by offices, the Secretariat recalled that applicants could nonetheless indicate, in their Hague applications, the four character DAS code provided by an office of first filing, so as to allow the subsequent retrieval of the documents by a second office of filing. Observing that six offices – namely the Offices of Chile, China, India, Spain, the Republic of Korea and the United States of America – currently used the DAS for industrial designs, that the EUIPO planned to introduce the DAS in 2019 and that the Japan Patent Office (JPA) was also planning such introduction in the future, the Secretariat said that it planned to fully implement the DAS to include the deposit and retrieval of Hague applications as priority documents in the beginning of 2019.

49. The Delegation of Canada, expressing support for the DAS, recognized the potential benefits of adopting the service both for clients and the Canadian Intellectual Property Office . In the Delegation's viewpoint, the service could improve its national office's capacity to quickly and easily access priority documents in order to examine them and determine the validity of a priority claim. Reporting that, in view of its accession to the Hague Agreement, which had occurred on November 5, 2018, the Industrial Design Regulations of Canada had been amended, the Delegation announced that such amendments would enable Canada to use the DAS. In that respect, the Canadian Office was currently developing the DAS implementation approach, including the establishment of user accounts and employees' training on the DAS office portal.

50. The Delegation of Chile, thanking the Secretariat for the update, was pleased to announce that, since October 1, 2018, its national office, the *Instituto Nacional de Propiedad Industrial* (INAPI) had become the 19<sup>th</sup> office having implemented the DAS. Pointing out that the service allowed applicants and the office to comply with the prerequisites of the Paris Convention concerning certification and was consistent with INAPI's digitalization and electronic transmission policy, the Delegation said that the DAS had entered into function on November 1, 2018, in Chile, which enabled users to access priority documents electronically, including PCT international applications filed with INAPI as receiving office. Stating that the DAS would allow the submission of 29 per cent of priority documents with respect to the international phase, the Delegation highlighted the very active role of INAPI as receiving office. Finally, the Delegation added that the service was cost-free to users.

51. The Delegation of the United States of America, thanking the Secretariat for the update, congratulated the Delegations of Chile, China, India, Spain and the Republic of Korea for having added their names to the list of States using the DAS in relation to industrial designs. While recalling that, not so long ago, none or only one country had been utilizing the DAS with respect to industrial designs, the Delegation was of the view that the growing list of countries already participating in the DAS, or about to do so, was extremely encouraging and said that it looked forward to their participation. Recalling that it had continued supporting SCT work on that area, the Delegation announced that, since October 1, 2018, the United States of America had also started using the DAS in relation to industrial designs. In the Delegation's viewpoint, the DAS was an important tool both for applicants and offices in satisfying their priority claim processing. The Delegation pointed out that the DAS was helpful in two ways: on the one hand, it helped applicants to satisfy the priority claim requirements by providing them with a more straightforward and simplified mechanism, in an electronic form; on the other hand, it enabled offices to streamline the process. As, in its jurisdiction, there was a rather narrow and focused certification process, the Delegation said that a paper copy of priority documents was required by the USPTO, except in case of a preapproved electronic priority form, such as the one used by the DAS. The Delegation further observed that the system helped the office in receiving documents, without having to deal with failed submissions. Stressing the fact that, for all parties involved, the DAS constituted a great solution, the Delegation concluded by welcoming with satisfaction SCT members having joined the system or intending to do so.

52. The Delegation of Australia thanked the Secretariat for the excellent documents that it had prepared for the session. While reporting that, in its country, the DAS had been used for some time already for priority documents in relation to patent applications, the Delegation expressed its appreciation for the extension of the DAS to other IP rights, so as to remove the existing burden on offices and applicants in accessing priority documents. The Delegation said that, in its jurisdiction, certified copies on paper were currently required to confirm a priority claim. However, as it was actively considering extending the DAS to other IP rights, the Delegation informed the Committee that technical and legislative changes, needed to allow such extension, were currently being analyzed and could delay its Office's ability to participate in the system. Recognizing the potential benefits of the involvement in the DAS, the Delegation expressed the hope to announce its Office's participation in the DAS soon.

53. The Delegation of China, thanking the Secretariat for the update, expressed its appreciation for, and congratulated SCT members on, the progress made with respect to the DAS. Declaring that it wished to continue supporting the DAS extension to industrial designs, the Delegation considered that such extension would raise the efficiency of the examination and reduce the applicants' burden in preparing priority documents.
54. The Delegation of Georgia, thanking the Secretariat for the update, highlighted the usefulness of listening to other offices' experience, in order to analyze the impact of the implementation of the system. Since the DAS reduced bureaucracy, saved time and reduced costs for applicants in preparing priority documents, the Delegation lent its support to its extension to industrial designs.
55. The Delegation of the Republic of Korea, expressing satisfaction as to the growing number of countries interested in the DAS, informed the Committee that the Republic of Korea had started exchanging documents electronically with China on July 22, 2018, and was planning to do so with the United States of America, as from December 1, 2018. The Delegation concluded by stating that it looked forward to seeing more Member States implementing the DAS and exchanging documents electronically in a near future.
56. The Delegation of the United States of America, noting that several delegations had planned to implement the DAS in the coming years, considered that maintaining the item on the SCT agenda would be prudent, as it would enable SCT members to provide updates, if any, at each SCT session.
57. The Representative of INTA held the view that a mechanism, such as a publication on the WIPO website or an announcement made by the Secretariat, aiming at informing the public of any new participation of offices in the DAS, would be useful.
58. The Chair said that the suggestions by the Delegation of the United States of America and the Representative of INTA would be combined and that the Secretariat would always be available to provide information on new offices joining the DAS.
59. The SCT noted the progress in the implementation of the DAS for industrial designs by Members, as well as by the Hague Registry.
60. The Chair concluded that the SCT would revert for an update to this item at its next session.

*Proposal by the Delegation of Spain*

61. Discussions were based on document SCT/40/8.
62. The Delegation of Spain presented its proposal, indicating that it aimed at untangling the meaning and interpretations of Article 11 of the Paris Convention for the Protection of Industrial Property (Paris Convention) on the temporary protection of industrial property at trade shows and other exhibitions. The Delegation recalled that exhibitions constituted the main source of inspiration for copying at the end of the 19<sup>th</sup> century, which had been one of the reasons to promote the adoption of the Paris Convention. In its opinion, the situation was probably not much different nowadays. The Delegation also recalled that, under Article 11 of the Paris Convention, all countries of the Paris Union had the obligation to enact and enforce legislation on the temporary protection of industrial property for products exhibited at certain exhibitions, but had the freedom to decide how to best provide such protection. In addition, Article 3(1)(viii) of the draft DLT included a reference to Article 11 of the Paris Convention, which was relevant, in

the Delegation's view, since industrial designs could especially be affected by copy when presented at trade shows and exhibitions. All that advocated for shedding light on Article 11 of the Paris Convention, in particular two elements that could be understood in various ways. The first element concerned the different means of temporary protection provided for by each country of the Paris Union for industrial property shown at trade shows or exhibitions: in certain countries, the temporary protection was ensured through a right of priority; in other countries, through a grace period, during which a disclosure would be harmless; finally, in other countries, it was ensured through a combination of the latter. The second element concerned the divergences as to the type of trade shows or international exhibitions taken into account: in some countries, only international exhibitions in accordance with the Convention Relating to International Exhibitions, signed in Paris, were considered; in other countries, a closed list of admitted exhibitions, complying with certain prerequisites, was published in bulletins or official gazettes; finally, in some countries, any type of exhibition, without any prerequisite, was considered. In view of the diverging practices, the Delegation believed that the Committee should try to address the users' need for greater harmonization as to the means of protection and the type of exhibitions taken into account. For that reason, the Delegation proposed circulating a questionnaire, aimed at gathering information on the different practices among SCT members and providing a diagnosis of the situation, which could serve as a basis for further discussions by the SCT, so as to reach a common position.

63. The Delegation of the United States of America, thanking the Delegation of Spain for its proposal, said that utilizing industrial design experts attending the SCT sessions to move forward was a good practice. The Delegation explained that its national legislation provided for a robust grace period covering any public disclosure, assuming that the applicable requirements were met. Expressing its interest in learning more about other countries' practices and the existing divergences, the Delegation seconded the proposal put forward by the Delegation of Spain and stated that it looked forward to further discussing the matter.

64. The Delegation of Italy said that the proposal by the Delegation of Spain was good, as protecting industrial designs in trade shows was an important matter. Pointing out that its national law provided for the temporary protection of trademarks exhibited at trade shows, but not of industrial designs, the Delegation expressed its interest in the proposal and seconded the survey aiming at addressing the question of the meaning of "official or officially recognized international exhibitions".

65. The Delegation of Morocco reported that, although the applicable legislation in Morocco contained provisions on the temporary protection of inventions, industrial designs and trademarks showed at exhibitions, those provisions were barely used by exhibitors. Therefore, the Delegation lent its support to the proposal by the Delegation of Spain to study the temporary protection of industrial designs exhibited at trade shows and, in particular, to conduct a survey among Member States, aiming at gathering information on the practices and type of measures provided for under Article 11 of the Paris Convention.

66. The Delegation of Iran (Islamic Republic of), while appreciating the proposal by the Delegation of Spain, sought clarification as to its scope. Pointing out that Article 11 of the Paris Convention not only dealt with industrial designs and trademarks, but also covered inventions and utility models, the Delegation wondered whether the proposal was restricted to trademarks and industrial designs only, or intended to cover also utility models and inventions, which were not included in the SCT mandate. Additionally, as regards the proposal's final objective, the Delegation wondered whether it aimed at constituting a norm-setting activity and, if so, in which form.



67. The Delegation of Hungary, while seeing great merit in the proposed fact-finding exercise, as the matter constituted a very pertinent issue in industrial design property, wondered also whether the proposal concerned other forms of industrial property and whether that was in line with the SCT mandate. For that reason, the Delegation suggested to limit the proposal's scope to avoid conflicts with other WIPO standing committees.

68. The Delegation of Switzerland, thanking the Delegation of Spain for the proposal, highlighted the importance of the temporary protection of industrial property for products exhibited at certain trade shows. The Delegation reported that its national legislation contained a provision dealing with a non-prejudicial disclosure: under certain conditions, the disclosure of a design could not be invoked against the right holder during a period of 12 months preceding the filing date or priority date. Noting that the draft DLT, as contained in document SCT/35/2, provided for a similar provision on a grace period for filing in case of disclosure, the Delegation wondered whether conducting a survey among Member States would be premature, as long as the DLT was still on hold.

69. The Delegation of Spain said that the proposed survey would be limited to industrial designs and trademarks only, taking into account the mandate of the SCT. In addition, in the Delegation's viewpoint, inventions, although also covered by Article 11 of the Paris Convention, were less affected by it, since it was much more complicated to copy an invention at a trade show. As regards the draft DLT currently on hold, the Delegation observed that, while Article 3(1)(viii) of the draft DLT was very clear, what it would actually involve for users was less obvious. Hence, the Delegation stressed the usefulness of understanding that provision. As regards the objective of the proposal, the Delegation said that the intention was to get a clear picture of the situation. Depending on the survey's outcome, the Committee could consider whether further work would be needed. If no problem was revealed by the survey, the situation would remain as it stood. The Delegation believed that, for 21<sup>st</sup> century users, understanding the manner in which Article 11 of the Paris Convention operated in all countries would be useful.

70. The Delegation of Iran (Islamic Republic of), thanking the Delegation of Spain for the clarification, noted that the proposal aimed at gathering information without involving any norm-setting activity at the present stage. As regards the scope of the proposal, the Delegation said that it might need to conduct some consultations to determine the way of addressing only a specific part of Article 11 of the Paris Convention.

71. The Representative of ASIPI, thanking the Secretariat for the great amount of information gathered and made available to the SCT, declared that, as representative of the private sector in Latin American and Caribbean countries, it was in favor of the proposal of the Delegation of Spain. Noting that more and more Latin American countries participated in international trade shows, the Delegation reported that industrial designs of ASIPI's clients were frequently copied in fairs and exhibitions, where their goods were presented. In the Representative's opinion, such well-known and recurrent problem resulted from discrepancies in the interpretation of Article 11 of the Paris Convention in each country. Therefore, the Representative believed that the proposal by the Delegation of Spain would improve the transparency of the system and provide effective recommendations on the way of dealing with the issue in each country. Considering that the proposal was very important and would greatly enrich enterprises' trade possibilities, the Representative added that the survey could be of great assistance to companies taking part in exhibitions.

72. The Delegation of Indonesia sought clarification about the scope of the survey.

73. The Delegation of Spain said that it was for the Committee to decide whether the survey should cover both trademarks and industrial designs, or only the latter.

74. The Delegation of Indonesia declared that it was in favor of a survey restricted to industrial designs.

75. The Representative of AIPLA said that applicants appreciated the proposal in relation to the possibility of avoiding the waiver of intellectual property rights due to pioneering advanced disclosure at trade shows. However, as pointed out by some delegations, the Representative highlighted the limited application of Article 11 of the Paris Convention nowadays, as many products were unveiled via the World Wide Web, but not at trade shows. The Representative further observed that many trade shows were not official trades, such as the unveiling of the iPhone by Steve Jobs at a Macworld Conference and Expo in San Francisco. Referring to the statement made by the Delegation of the United States of America, the Representative pointed out that grace periods often overrode the need for Article 11 of the Paris Convention. Referring to Article 6 of the draft DLT, as contained in document SCT/35/2, the Representative concluded that moving forward towards a six to 12-month grace period for all Member States could be a more comprehensive approach to explore ways forward.

76. The Chair concluded that the Secretariat would prepare a draft questionnaire concerning the proposal contained in document SCT/40/8 for consideration by the Committee at its next session.

## **AGENDA ITEM 6: TRADEMARKS**

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

77. The SCT considered documents SCT/32/2, SCT/39/8 Rev.2, SCT/39/9 and SCT/40/3.

78. The Secretariat introduced document SCT/40/3.

79. The Delegation of Iran (Islamic Republic of), thanking the Secretariat for the organization of the Information Session and for the summary of the various examination practices regarding trademarks consisting of, or containing, country names, contained in document SCT/40/3, expressed the view that the Information Session had been very useful in building the SCT understanding on the different national practices and the experience from relevant stakeholders, and could contribute positively to further discussions on country names in the committee sessions.

80. The Delegation of the European Union, speaking on behalf of the European Union and its member states, stated that the information session in the form of a moderated roundtable organized by the Secretariat at the last session had been an interesting opportunity to learn about the various practices in place and the rationales underscoring those practices. The Delegation thanked the Secretariat for preparing document SCT/40/3, which accurately captured the main points emerging from the roundtable, and agreed with its conclusions. Concerning the joint proposal contained in document SCT/39/8 Rev., the Delegation recalled that at the last session of the SCT it had made some initial comments in order to seek clarification as to how it would be implemented and applied in practice. In particular, the Delegation noted with interest that the proposal would not imply any legislative exercise or any disruption of existing practices on descriptiveness. Reiterating its appreciation for the spirit of consensus reflected in the proposal, the Delegation said that it was ready to discuss it to further explore its potential advantages. Furthermore, the Delegation noted that the new proposal submitted at the last session by the Delegation of Peru concerning the recognition and protection of nation brands (document SCT/39/9) aimed at protecting signs which not only consisted of country names, but could include figurative elements. Therefore, the Delegation was of the view that the underlying concept of "nation brand" would greatly extend the considerations taken into account when protecting symbols of sovereignty in the strict sense.

Furthermore, the protection for nation brands would not be limited to any specific product or service would be indefinite in time, and would not be subject to any use requirements as a condition for maintaining it. The Delegation was of the opinion that such protection would be extraordinarily strong without any balances to safeguard the interests of the holders of trademarks, trade names, banners, slogans, geographical indications and other signs, the registration of which could be refused even *ex officio*. The Delegation said that, as stated in previous meetings, it was clear from the work already carried out by the Committee that there were legal means available to secure protection for country names in national legislations, and the creation of a new “norm setting” instrument might not be the most appropriate way to address the issue. The Delegation therefore considered that, in addition to acquiring further knowledge of the issues involved, the SCT and its members should take into consideration other actions, such as awareness raising, focusing in particular on the availability of grounds for refusal or invalidation of trademarks containing country names and on the possibility of addressing the relevant issues in trademark examination manuals. In this context, the Delegation informed the Committee that the EUIPO had recently held a roundtable with the intellectual property offices of the European Union on country names in the framework of the Liaison Meeting on Trademarks. The discussions had concerned issues of distinctiveness and descriptiveness, and of how the criterion of the reputation of the country in respect of the goods or services specified in the application was taken into account. The Delegation indicated that it would keep the SCT informed about any further developments on this ongoing process.

81. The Delegation of Chile thanked the Secretariat for document SCT/40/3, summarizing the Information Session, in which it had had an opportunity to participate. Considering that the document constituted a valuable tool for making progress, the Delegation reiterated its interest in continuing the discussion on this matter.

82. The Delegation of Kazakhstan thanked the Secretariat for summary of the various examination practices regarding trademarks consisting of, or containing, country names, which, in its opinion, could be used in the future as a basis for normative work. The Delegation explained that the national legislation of Kazakhstan prohibited the registration as trademarks of misleading signs as to the place of production of the goods. The Delegation said that the IP Office of Kazakhstan was cautious not to register trademarks that included designations directly indicating the place of production of the goods or their country of origin, or designations that might induce consumers to associate the goods to a false place of production. Applicants who received such notifications of refusal very often requested that those norms be applied only to trademarks containing direct indications of the place of production of the goods, but not to trademarks containing designations that consumers might associate with one or another country.

83. The Delegation of Lithuania, speaking on behalf of the CEBS Group, thanked the Secretariat for organizing an interesting Information Session which had increased the understanding about the regimes in different jurisdictions. The Information Session had also given a good insight to think over in preparation for the current session of the SCT, during which the Delegation looked forward to having meaningful deliberations on the issues at stake. The Delegation also welcomed document SCT/40/3, in particular its conclusions, which were an objective overview of the different practices. In addition, the Delegation expressed its appreciation for the proposals contained in documents SCT/39/8 Rev.2 and SCT/39/9. As regards document SCT/39/8 Rev. 2, the Group noted with interest that the proposal was related to the joint proposal on the protection of geographical indications and country names in the DNS, as contained in document SCT/31/8 Rev.8, which was co-sponsored by some CEBS members. After some clarifications on the relationship of the suggested instrument with the existing legal framework, the Group looked forward to further discussing the proposal. As regards document SCT/39/9 on the recognition and protection of nation brands, the Group was of the view that the expected roles and status of the proposed new elements of protection were

not entirely clear. In conclusion, the Group considered that the protection of country names could be tackled, not by focusing on new normative proposals, but by using the existing national legislation to ensure that it was used to its full extent.

84. The Delegation of China thanked the Secretariat for document SCT/40/3, which helped to understand the various examination practices regarding trademarks consisting of, or containing, country names. The Delegation said that its national practice was very strict, in order to reduce a likelihood of confusion on the part of the consumer and to take into account national sovereignty. However, the Delegation indicated that there were three exceptions where trademarks consisting of, or containing, country names were accepted: first, if the trademark had been authorized by the government; second, if the trademark had other meanings and would not mislead the public; and third, if there were other distinctive elements in the trademark and the country name was independent or dissociated from those elements, thus only used to indicate the origin of the product or service. The Delegation added that, in the examination of those trademarks, the Office did not have a pre-defined list and relied on examiners.

85. The Delegation of Indonesia, speaking in its national capacity, thanked the Secretariat for document SCT/40/3, welcoming the summary, as well as the compilation of Member States' legislations and practices, which complemented the previous works made on country names by the Committee. The Delegation said that, while the summary showed that legal protection could be sought for country names, some divergence in examination practices still existed. The Delegation reiterated its commitment to continue the discussions with regard to the protection of country names including, but not limited to, the development and future adoption of a general recommendation by the Committee for the protection of country names. The Delegation believed that there was no need to require another information session or compilation of member state practices.

86. The Delegation of Ecuador underlined the importance of protecting country names against inappropriate registration and misuse as trademarks, in order to allow countries to manage the use of their own country name. The Delegation added that the Ecuadorian legislation provided for the protection of country names at the constitutional level. The texts referred to State names, which took into account, not only the official name of a country, but also its social, political and cultural context. Stating that Ecuador established safeguards for registering country names as trademarks when they did not lead to confusion as to the existence of a link between the applicant and the State in question, the Delegation reported that a trademark which contained a country name would have to be analyzed according to the impression it would create in the mind of the consumer. The Delegation, expressing its support for the proposal made by the Delegation of Peru in document SCT/39/9, indicated that the recognition and protection of nation brands had been raised at the regional level, where progress had been made for a future Andean decision.

87. The Delegation of Morocco, thanking the Secretariat for document SCT/40/3, said that its national legislation did not provide for an express exclusion from registration of signs constituted by country names, which were considered as geographical names. However, such signs were refused when they consisted only of country names. Conversely, signs containing country names, accompanied by other verbal or figurative elements, were refused when they were devoid of any distinctive character, described the geographical origin of the goods or service or were likely to mislead the public, in particular as to the geographical origin of the goods and services. The Office considered that the risk of confusion was more obvious when the country was known for the quality of the designated products. Finally, the Delegation stated that it followed with great interest the discussion on the issue under consideration.

88. The Delegation of the United States of America expressed its extreme satisfaction with the analysis contained in document SCT/40/3, illustrating the different approaches taken by countries in examining country names. It indicated that the conclusion in particular, reflected exactly what its Delegation understood it to be following the Information Session. Observing that from that conclusion it followed that some countries excluded country names from eligible subject matter, and some did not, and noting that several proposals under discussion started from the rationale of the exclusion of country names from eligible subject matter, the Delegation expressed its concerns. The Delegation explained that in the United States of America, an exclusion of eligible subject matter for flags, sovereign seals, and coats of arms existed. No one could register them as a trademark. As a consequence of this exclusion, the United States of America had now, over the past 10 years, heard complaints from domestic governments, local States, and even foreign governments, that they wanted to register their flags, sovereign seals and coats of arms. The provision being interpreted very narrowly, the use of flags, sovereign seals or coats of arms, which suggested sovereign State approval, was refused, whereas variance or simulations were not refused if they were not deceptive and were distinctive, as they did not point uniquely to the State. The Delegation added that, even when narrowly construed and applied in the USPTO examination, the absolute prohibition referred to had been problematic, as some governments wanted to use those symbols, perhaps to create licensing revenue or for nation branding. The Delegation said that some complaints had been made from its own domestic governments, pointing out that some demands had been received from those governments for special statutory protection for their seals and flags, so that they could both commercialize the signs as private trademark owners, but also use the power of the State to enforce against unauthorized users. To avoid those constant demands for special statutory protection that existed outside of the trademark system, the Delegation stated that the USPTO was considering a statutory amendment that would change the status of flags, sovereign seals and coats of arms, making them eligible subject matter, but under certain conditions. The Delegation believed that those symbols had to be kept within the trademark system because creating a separate system for the protection of State symbols or names outside of the trademark system would be problematic. The Delegation further said that it had the same concerns about carving out country names or any of the other geographical names that had been identified from trademark eligible subject matter. If they were excluded as trademarks, they would be excluded for everyone, even a government; and if they were excluded from the trademark system, another special system for governments would have to be created, as well as a special trademark register with government rules. The Delegation expressed concerns as to that approach, in particular about the expense for offices and delegations to negotiate such lists, the uncertainty for businesses to identify what was or was not protected, the scope of that protection, as well as the increase in workload in having yet another database for examiners to look at. The Delegation said that it raised the matter so as to note some of its concerns about the rationale that governments or delegations were using to advance their protection proposals. The Delegation also stated that it continued to believe that discussions should focus on the examination test for when the consumers of the country name perceived a country name and when the country name might not be distinctive or might be descriptive. Finally, the Delegation indicated that it was happy to engage further on specific proposals, but wished to identify its concern about the policy rationales being advanced.

89. The Delegation of Jamaica, expressing its appreciation for the summary contained in document SCT/40/3, said that the representation on the panel at the Information Session had been a good mix of developed and developing countries. The Delegation observed that the guiding principles for examiners referenced by the panelists varied in some instances, which highlighted the need for consistency. Therefore, the Delegation remained committed to its revised proposal, contained in document SCT/32/2, and to the joint proposal contained in document SCT/39/8, which called for a more consistent, adequate and effective protection for the names of States, similar to the one provided under the Paris Convention to equally important symbols of States, such as flags and armorial bearings. Thanking all the delegations that had expressed their support for the initiative, the Delegation said that it remained open and

committed to working with all Member States and the Secretariat to find solutions for the effective protection of country names, which would enjoy the consensus of the entire membership. Finally, the Delegation said that it looked forward to a continued focus on the discussions and to further progress on all the issues within the SCT.

90. The Delegation of the Republic of Korea, stating that it was necessary to prevent the illegitimate registration and misuse of country names as trademarks, indicated that country names were protected in its country through the Korean Trademark Act and unfair competition norms. Lending its support to the creation of a database for country names, in order to determine whether a country name was registrable or not as a trademark, the Delegation explained that, without a database, examiners conducted research on the Internet and might not produce the full results in terms of the translation and transliteration of the country name. The Delegation was of the view that a country name database would provide adequate information and be more viable. Furthermore, the Delegation considered that the extent to which a country name was known must also be considered as a factor in determining its registrability. The Delegation added that, although under Korea's Trademark Act, a mark consisting exclusively of a sign devoid of any distinctive character should only be registered if the mark had acquired distinctiveness by use before the date of the application, that was almost impossible in the case of country names, since country names were considered to be in the public domain. In addition, the use of a country name in a trademark would lead the consumer to see the trademark as an indication of the origin of the goods and would be unacceptable if the product did not come from that place. However, if the country name included in a trademark was not the most important element of the trademark, the trademark would be examined as a whole to determine whether it was distinctive and registrable. Considering that excessive restrictions should be avoided and that harmonization with prior trademark rights should also be considered, the Delegation recommended that no protection be claimed if the trademark was applied or registered before the consumer became aware of the name of the country concerned. Such a safeguard would provide legal certainty and predictability.

91. The Delegation of Iceland, expressing its gratitude to the Secretariat for the preparation of the excellent and very informative Information Session on country names during the last session, also highly appreciated the information session's summary provided in document SCT/40/3. The Delegation said that the different practices outlined echoed the situation, which the committee had been discussing for almost a decade, namely whether a country name should be considered as an element pertaining to the sovereignty of a State or as a word capable of being registered as a distinctive trademark. Stating that the information session had casted a clearer light on where exactly the countries differ in practice, the Delegation said that it wished to have a constructive discussion on this issue during the session and that it remained committed to bringing the matter forward, especially with regard to the proposal contained in document SCT/39/8 Rev. 2.

92. The Delegation of Switzerland highlighted three aspects of the proposal contained in document SCT/39/8, which would hopefully facilitate its adoption by the Committee. First, the proposal only aimed at recognizing the simple principle that a country name or a geographic name of national significance should not be monopolized by a private individual, unless authorized by the State concerned. Secondly, the proposal did not contain any obligations with regard to the implementation of that principle, and left freedom to States to determine, in accordance with national legislation, the conditions for registration of trademarks. Thirdly, the proposal only covered country names provided for in established internationally-recognized lists and thus dealt with the delicate issue of the definition of a country name. The proposal dealt first and foremost with the issue of the monopolization of names of countries, regions, capitals or other geographical names in the framework of generic top-level domain names attribution. The Delegation recalled that top-level domain names were unique and could only be attributed to one person. The monopoly was granted by ICANN, a private enterprise which determined its own rules. Since ICANN had shown receptiveness to WIPO recommendations, the Delegation

believed that the adoption of the proposal would send a strong signal to take into account the concerns of countries, at the time of establishing rules for domain names attribution. The Delegation pointed out that ICANN was currently planning a new wave of attribution of top-level domain names around 2020 and said that the Committee would thus need to act rapidly in order to give effect to the proposal. The Delegation noted that the geographical diversity of the 13 countries co-sponsoring the proposal showed that concerns about the monopolization of names of countries, regions or capitals, were widely shared throughout the world. Recalling that the issue of the protection of country names had been discussed in the SCT for a long time, the Delegation saw the proposal as a way to end that long process and believed that it was time to at least agree on the principle formulated in document SCT/39/8.

93. The Delegation of the European Union, speaking on behalf of the European Union and its member states, commended the spirit of consensus reflected in the proposal. In particular, it noted with interest that it did not imply any legislative exercise, nor envisaged any disruption of existing practices on descriptiveness. The Delegation said that it was ready to participate in continued discussions to further explore the potential advantages of the proposal, including during informal consultations.

94. The Delegation of Kazakhstan, referring to the joint proposal contained in document SCT/39/8 Rev. said that it understood that Part A of the document described cases of misappropriation of national assets by private entities and gave some examples about firms prevented from using the name of their own country to market their goods or services, while part B shared information from a reference document prepared by the Secretariat in November 2015, according to which country names were excluded from registration as word marks, but received limited indirect protection. The Delegation noted that the Kazakh legislation excluded country names and other indications of place of origin from registration as trademarks, unless those names or indications were part of a composite trademark in a non-dominating position and provided that the legal address of the applicant corresponded to that country or place of origin. That fact was mandatorily checked by the Office. The Delegation further referred to Part C of the document, which touched upon the protection of country names against registration or use by persons with no link to the State authorities of the country in question. Noting that the proposal concerned only certain lists of countries and did not require any legislative action from the Member States, the Delegation wondered how effective that protection was going to be and how it was going to work.

95. The Delegation of Indonesia said that it attached great significance to intellectual property as an important catalyst to socioeconomic development. The Delegation considered that, in current globalized economies, adding value was critical and included the reputation and branding of a product. Since one of the main sources of reputation was the geographical origin of products, the Delegation strongly believed that the name of a sovereign nation or geographical names of national significance should not be monopolized by private interests or private owners, especially when it could mislead customers, or prevent communities in a particular country or region from using their own country and regional names. The Delegation said that one of the main reasons why Indonesia co-sponsored the joint proposal contained in document SCT/39/8 Rev.2 was because the same problem might occur in the DNS. Once assigned, a top-level domain was unique. Therefore, country names and geographical names of national significance should be protected against their registration as top-level domain names in the DNS and as distinctive signs, such as trademarks, if the sign consisted exclusively of such names or if its use would amount to a monopolization of the name concerned. Echoing the statement made by the Delegation of Switzerland and underlining the fact that the proposal concerned principles, the Delegation said that it remained open for discussion, be it in plenary or informal meetings, and that it was optimistic that the Committee would be able to agree on a positive decision towards the adoption of the principles reflected in the proposal.

96. The Delegation of Iran (Islamic Republic of) stressed the need to continue substantive discussions on a more consistent, adequate, and effective protection of country names, as a matter of priority, in the interest of all Member States. The Delegation was of the view that the number of proposals submitted by countries from different regions and with different levels of development was an indication of an emerging consensus among Member States on the protection of country names. The Delegation said that it had studied those proposals with great interest, and believed that they constituted a good basis for discussion by the Committee. In that regard, it welcomed the joint proposal concerning the protection of country names and geographical names of national significance, and expressed its appreciation for the update provided by the Delegation of Switzerland. Referring to the three different but complementary proposals currently on the table, the Delegation held the view the Committee should undertake a holistic approach to discuss their main elements.

97. The Delegation of the United States of America expressed its appreciation for the proposal put forward by the 13 co-sponsors and said that it was ready to explore it. However, it did not consider it as a compromise. Recalling the difference, highlighted during the roundtable on country names, between systems excluding country names from eligible subject matter and others that did not, the Delegation was of the view that the proposal clearly took the first approach. The Delegation observed that the proposal seemed to treat the ISO list of country names as a government database or register, with legal effect at the international level. As understood by the Delegation, the proposal intended to suggest that ICANN took that list into consideration to prevent the delegation of those names as gTLDs, and that international effect would also affect the trademark systems. In addition, the list of names could be very long and have political implications. The Delegation reiterated its concern in that regard, but said that it was nonetheless open to informal consultations to understand the proposal more thoroughly and to engage constructively.

98. The Delegation of the United Arab Emirates thanked the Secretariat for the document summarizing the various practices on trademarks including country names, which showed the importance of continuing to discuss the topic. The Delegation supported the statements made by the Delegations of Indonesia and Switzerland and believed that the proposal contained in document SCT/39/8 Rev.2 constituted a positive contribution, in an attempt to find consensus with regard to the protection of country names and the prevention of any monopoly in the use of those names. The Delegation noted that, since the Committee had begun discussing that topic at its twenty-first session, it seemed clear that many opinions and trends existed, for example regarding elements of sovereignty or the reputation of countries. Therefore, the Delegation was of the view that the work on the protection of country names should be supported, taking into consideration all the previous discussions and studies.

99. The Delegation of Japan explained that in its country, filed trademarks consisting of country or geographical names should be refused if they were deemed to indicate the place of origin or sale of goods or the location where services were provided, or if they were likely to be misunderstood by consumers as to the quality of the goods and services. The Delegation however understood the proposal contained in document SCT/39/8 as requiring Member States to protect country and geographical names without considering consumer recognition or the risk of confusion. If that understanding was correct, the Delegation held the view that the proposal would impose a huge burden on applicants trying to register trademarks consisting of country or geographical names. In addition, it would restrict the use of registered trademarks by their holders, in order to avoid conflicts with protected country or geographical names. The Delegation believed that placing too many restrictions on registration and use of trademarks could hinder economic activity by companies and that, therefore, the matter should be discussed carefully and constructively.



100. The Delegation of Jamaica recalled that it had consistently advocated within the Committee for more consistent, adequate and effective protection for names of States, similar to symbols of statehood. The Delegation stated that, although protection for country names was in theory available through existing national trademark laws, such protection was inadequate, leaving ample opportunity for persons and entities to free ride on the goodwill and reputation of a country name without any genuine connection to the country named. The Delegation stressed the fact that the lack of international protection of country names was exacerbated by the evolution of new top-level domain names, which comprised country names, country adjectives or country codes, with Member States having to struggle with misappropriation of country names in the DNS. The Delegation was pleased that, after the examination of the possible areas of convergence, which had enabled a better analysis of the extent of existing gaps in that matter, discussions continued with a view to finding appropriate solutions to that global problem. The Delegation considered that the concerns of some Member States for certainty could be addressed by the use of an official list of names of States, as well as relevant lists of associated codes, abbreviations and variations of country names. The Delegation also said that, similar to the database of official symbols and armorial bearings of States maintained by the International Bureau of WIPO pursuant to the Paris Convention, a centralized database of names of States established by the International Bureau of WIPO would be useful for reference by intellectual property offices in the course of examination of trademark applications. The Delegation suggested that Member States officially communicated to the International Bureau of WIPO their country names and their variations, for which protection was sought. The Delegation was also of the view that applicants should be required to submit a translation and transliteration where the trademark was not in the language(s) used by the intellectual property office. That was already an existing practice of many intellectual property offices, including the Jamaica Intellectual Property Office. The Delegation stated that trademarks consisting solely of a country name should be refused *per se* as being descriptive, unless the registration of the mark was applied for by the State itself or an entity authorized by the State as part of a nation branding scheme. The Delegation believed that any use of a country name in a trademark might be considered descriptive of the goods and services. Since the thirty-second session of the SCT in 2014, Jamaica had placed on the table a draft Joint Recommendation of the Paris Union and the WIPO General Assembly for the protection of country names, so as to facilitate within the SCT more focused discussion on possible solutions to the problem. The Delegation stated that several possible solutions had been presented to the SCT, and that the Committee should now conceive the most workable solution to the problem. The Delegation added that, by reflecting on the provisions of the draft Joint Recommendation, the Committee could ensure that the accepted areas of convergence were incorporated into the draft and that a suitable language could be sought to address those areas where there was no convergence and where there was a need for flexibility and discretion at the national level, based on the existence of particular circumstances. Article 2 of the draft Joint Recommendation contained in Jamaica's revised proposal in document SCT/32/2 proposed that Member States agreed to "prevent use of indications consisting of, or containing country names in relation to goods or services which do not originate in the country indicated by the country name." However, recognizing that there were exceptional circumstances, under most national trademark laws, in which a trademark with a country name in relation to goods or services not originating in the named country could nonetheless be registered, Jamaica's draft Joint Recommendation proposed a language that would provide some agreed parameters for those exceptional circumstances. Therefore, Articles 6 and 7 of the draft Joint Recommendation sought to outline those exceptional circumstances in which trademarks which consisted of, or contained, a country name should be refused or accepted. The Delegation reiterated that the aim of the proposed draft Joint Recommendation was not to prescribe rules that intellectual property offices must follow, nor to create additional obligations, but to establish a coherent and consistent framework to guide those offices and other competent authorities and international traders in their use of trademarks, domain names and business identifiers which consisted of, or contained, country names. Recalling that it was a co-sponsor of the joint proposal by the Delegations of Georgia, Iceland, Indonesia, Italy, Liechtenstein, Malaysia, Mexico, Monaco, Peru, Senegal, Switzerland

and United Arab Emirates, concerning the Protection of Country Names and Geographical Names of National Significance, the Delegation said that it was committed to finding a solution to the problem under consideration and remained flexible regarding the form and approach that the solution would take. The Delegation therefore encouraged Member States to again review the draft Joint Recommendation, with a view to agreeing on a possible language that captured the areas of convergence, while leaving policy space for divergent approaches.

101. The Delegation of Iceland, recalling that it had co-sponsored the proposal concerning the protection of country names and geographical names of national significance, thanked the delegations for the overall positive and constructive comments to that proposal. The Delegation aligned itself with the comments made by other co-sponsors, emphasizing the fact that, despite differences, all practices were based on the same ground rules, such as Article 6*quinquies* of the Paris Convention, which stated that trademarks may neither be denied registration nor be invalidated, except, among other things, when they consisted exclusively of signs or indications which may serve in trade to designate the place of origin of the goods. The Delegation held the view that that was exactly the role of country names, whether or not a country was known by the relevant consumer, or whether it was known for certain products or services and not others. The Delegation pointed out that countries should be provided with the opportunity and flexibility to make their production evolve, and that exclusive rights today might be a hindrance tomorrow, as it had already been proven in the case of Iceland. Underlining the fact that the proposal aimed only at laying down principles to prevent the registration of country names as wordmarks or their delegation as top-level domain names in the DNS, in line with ground rules already set a long time ago and recommendations supported by the Committee in 2002, the Delegation stated that it remained committed to bringing the matter forward.

102. The Delegation of Australia expressed concern over the introduction of international regulations on subject matter that, in many countries, was generally available for use at national level. The Delegation was of the view that it was premature to regulate against the use of country names and geographical place names in the DNS, when such regulation was not in place in the real world yet. The Delegation considered that the protection sought in the proposal was very broad and could potentially create problems bigger than the issue it tried to address. Pointing out that a repository of country names and names of geographical significance would impose significant administrative burden on States and applicants, the Delegation wondered how such a repository would deal with names already protected in different jurisdictions or having more than one meaning. The Delegation believed that principles of co-existence could apply in such cases, while the creation of a repository suggested *de facto* legal rights for certain terms for which no legal basis currently existed, which could imply challenges for legitimate commerce. The Delegation specified that under national law, it would be difficult to justify the prohibition of legitimate use of a term, simply because it constituted a country or geographical name.

103. The Delegation of Switzerland thanked all delegations that had made comments and asked questions on the proposal. Replying to the question raised by the Delegation of Kazakhstan, the Delegation clarified that the proposal was not binding and that its practical effectiveness would depend on its implementation in the countries. The Delegation also underscored that the proposal dealt with trademarks consisting exclusively of country names or significant geographical names, in order to avoid monopolization and leave these names at the free disposal of all. The Delegation stated that although a trademark could be distinctive to the public, a limited number of geographical names needed to be left available. The Delegation highlighted that the proposal did not focus on trademarks including both a geographical name and a distinctive element and used in connection with products that did not come from the place indicated and said that such case, which would be misleading, was covered by the proposal by the Delegation of Jamaica. Indicating that it supported that proposal and the statement delivered by the Delegation of Jamaica, as it was important to continue discussions on the issue of misleading trademarks, the Delegation said that, very often, a country name used with

products that did not come from the place indicated was misleading for the consumers who expected that the products come from the country indicated. In addition, such use gave rise to significant economic losses for producers from the regions concerned. The Delegation believed that it was possible to combat that problem at the time of registration, as suggested by the proposal by the Delegation of Jamaica.

104. The Delegation of Peru said that its proposal did not intend to prohibit the use of country names, but rather to draw attention to the fact that various countries, including Peru, already used signs to promote exports and tourism, and to attract investment to their countries, using a nation brand. Those signs did not necessarily contain the name of the country but a number of other elements, such as colors or figurative elements and sometimes words. For instance, Colombia's nation brand did not include the word Colombia but the letters CO and other figurative and color elements. The Delegation stated that the proposal dealt with a new element, not aimed at identifying a commercial or individual owner, but rather used for promoting activities connected with a country. The Delegation believed that there was a need for an *ad hoc* system for the protection of nation brands because current trademark protection systems were insufficient and costly to protect nation brands. The Delegation explained that Peru had tried to protect its nation brand in countries with which it developed commercial activities. However, protecting a nation brand in 45 countries and hiring lawyers to enforce it was too expensive. In addition, nation brands often changed over time and the current trademark systems were not designed to protect the commercial interests of a country, but rather to protect individual owners and businesses. The Delegation suggested a reciprocal filing system for nation brands, free of charge, to protect them. While being aware that the protection of nation brands was a new issue, the Delegation wished to propose an initial mapping study in each interested country, to determine the current state of affairs of the manner in which countries protected nation brands and the systems used to protect them, including at the international level. On the basis of that study, a proposal could be submitted to the Committee to start discussing the issue of the protection of nation brands.

105. The Delegation of Iran (Islamic Republic of) expressed its appreciation for the proposal, recalling that Article 6<sup>ter</sup> of the Paris Convention provided a procedure for the communication and notification of State emblems and official signs. However, the Delegation was of the view that the Committee should undertake a fact-finding study before making a final decision on the best way to protect nation brands. To that end, the Delegation suggested to request the Secretariat to conduct a survey and provide more information, in particular on the existing national and international legal framework. With a better understanding of the state of play, the Committee could consider whether or not there was a need to develop a *sui generis* legally binding instrument in that regard.

106. The Delegation of Argentina, associating itself with the statement made by the Delegation of El Salvador on behalf of GRULAC, thanked the Delegation of Peru for the proposal contained in document SCT/39/9. The Delegation agreed that a nation brand constituted a *sui generis* sign and a useful tool for the development of countries, particularly valuable for attracting investment, developing tourism and encouraging exports. The Delegation said that it understood the proposal, at that stage, as a conceptual reference leading to discussion and exchanges of experiences on the best way of ensuring protection of nation brands, before the Committee could move forward to address possible approaches. The Delegation expressed its willingness to contribute constructively to future discussions on that issue.

107. The Delegation of Kazakhstan, pointing out that the recognition and protection of nation brands were currently a topical question, said that those signs were different from trademarks, which were a means of individualization of goods and services of one undertaking from other undertakings. The Delegation expressed its interest in a reference document, prepared by the Secretariat, on experiences in the protection of nation brands at the international level.

108. The Delegation of Italy, considering the proposal made by the Delegation of Peru as well as the different proposals by the Delegation of Jamaica and the joint proposal from various countries on the protection of country names and geographical names of national significance, said that nation brands were synonyms of certification marks according to its national law. Considering that convergence in national laws about nation brands would be difficult to find, the Delegation believed that the proposal would require changes in national laws to introduce a definition for nation brands.

109. The Delegation of Norway said it had studied the proposals under the agenda item, including the proposal from the Delegation of Peru contained in document SCT/39/9. The Delegation considered essential to have effective and flexible trademark systems for users, while at the same time preventing the inappropriate monopolization and misuse of country names. In its opinion, existing legislation in most member States prevented the registration of descriptive and deceptive trademarks, and granted adequate protection against monopolization and misuse. The Delegation held the view that this was sufficient to prevent the undue monopolization and misuse of country names, and thus did not see the merit of introducing requirements to provide documentation on origin or consent from the competent authorities for the use of country names, as this was a burden imposed on trademark systems and offices. Indicating that the use of country names differed from the use of flags and State emblems, which enjoyed protection against trademark registration under Article 6*ter* of the Paris Convention, the Delegation pointed out that businesses had stronger needs to use country names as part of trademarks rather than State emblems. The Delegation reiterated that it did not support any norm-setting activity regarding the protection of country names. Over many years, the SCT had collected information, organized an information session and the summary contained in document SCT/40/3 provided sufficient knowledge on the *status quo*. The Delegation said that the SCT should focus on raising-awareness initiatives, based on the information already collected, about the application of existing grounds of refusal and/or invalidity, in order to prevent misuse and misappropriation. The Delegation said that no text could replace assessment of individual cases with regard to country names, on the basis of the applicable law.

110. The Delegation of the European Union, speaking on behalf of the European Union and its member states, said that it had studied the proposal thoroughly and understood it as providing protection to signs, not only consisting of country names, but also including figurative elements. The Delegation therefore held the view that the underlying concept of nation brand would greatly extend considerations taken into account when protecting symbols of sovereignty in the strict sense. Furthermore, the protection to be provided for nation brands would not be limited to any specific product or service and it would be indefinite in time, while at the same time, nation brands would not be subject to any use requirements as a condition for maintaining their recognition and protection. In the Delegation's opinion, such protection would be extraordinarily strong without any conceivable balances to safeguard the interests of the holders of trademarks, tradenames, banners, slogans, geographical indications or other signs, the registration of which could be refused even *ex officio*. The Delegation reiterated that the creation of a norm-setting instrument might not be the most appropriate way to address this issue.

111. The Delegation of Peru recalled that its proposal differed from the proposals from the Delegations of Jamaica and Switzerland and did not intend to regulate the prohibition of the use of country names, but rather to ensure protection of the investments made by the countries to promote their economic activities. Like in the case of businesses and individuals that used the trademark system to protect their signs, the Delegation believed that intellectual property should lead to the balanced development of countries. Therefore, like businesses, countries should be entitled to protect their interests, not only country names but also all the elements used in connection with the country name and which required investment in promoting them at the international level.

112. The Delegation of Japan expressed its appreciation to the Delegation of Peru for preparing the proposal contained in document SCT/39/9. As far as the Japanese trademark system was concerned, the scope of protection proposed for nation brands could be too broad, as it might imply the cancellation of registered trademarks consisting of nation brands even if they were not misleading as to the quality of the goods or services. The Delegation considered that the proposal would thus impose a heavy burden on trademark applicants, restrict the use of registered trademarks or result in the cancellation of registered trademarks. Placing too many restrictions on the registration and use of trademarks could hinder economic activities by companies and as such, the Delegation believed that the matter should be discussed carefully and in detail, so as to allow a constructive discussion.

113. The Representative of ASIPI said that the Inter-American Association of Industrial Property had been working for five years on the issue of nation brands, and agreed with the Delegation of Peru in that a nation brand was different from a country name and that both issues needed to be distinguished. Pointing out that a nation brand had a completely different purpose from the protection of country names, the Representative explained that a nation brand was designed to give a positive image of a country in international trade and to promote exports, investment and tourism, as well as to spread the values of a country. The Representative held the view that nation brands were also very different from State symbols such as flags or armorial bearings, which were considered worth protection in the constitutions of many countries and were protected under Article 6*ter* of the Paris Convention. Nation brands were neither State emblems nor certification marks because they did not certify any particular product. The Representative said that nation brands were *sui generis* distinctive signs which had emerged over the past few years because of the globalization of international trade and which were designed to enable countries to promote their exports. ASIPI had carried out a study of the situation in Latin American and Caribbean Countries and had found disparities in the legislative treatment and protection of nation brands. The Representative believed that the proposal from Peru would enable the Committee to move forward with an analysis of the state of protection of this type of *sui generis* sign and could be a good starting point for countries to better understand the way in which systems operated and attempt to find flexible mechanisms of protection in that area.

114. The Delegation of the United States of America said that, as it understood it, the proposal allowed countries to notify to the International Bureau of WIPO their nation brands, which should be defined in each territory and could comprise different kinds of signs. The proposal assumed that the International Bureau of WIPO would then notify those signs to its members, leading to automatic protection for all goods and services, and that no opposition would be available for existing rights. The notified countries would have the obligation to enforce the protection, while the requesting government would be considered as the owner of the right, without nevertheless having any obligation to use the sign or enforce the right. The Delegation highlighted that since no goods or services would be listed in the request, the scope of protection would be very broad and, therefore, no infringement standard could be defined. The Delegation stated that, given, in addition, the potential impact of the proposal on the judicial and examination systems of the notified countries and on existing trademark holders, it was not in a position to support it. The Delegation held the view that interested countries could notify their nation brands to other countries either under Article 6*ter* of the Paris Convention or under national trademark systems or the Madrid System. The Delegation said that its national office did not have the authority to regulate signs in commerce if there was no consumer deception or confusion, and could not reserve signs in commerce for foreign governments.

115. The Delegation of the Republic of Korea, extending its deep appreciation to Peru for preparing the proposal on the protection of nation brands, expressed its support for the statement made by the Delegation of Japan, considering that the scope of protection in the proposal was broad and ambiguous, and might cause confusion and weaken users' rights and potential opportunities.

116. The Chair suspended the discussion.

[Suspension]

117. Resuming the discussion, the Chair gave the floor to the Delegation of Switzerland in order to present a new draft of the joint proposal contained in document SCT/38/8 Rev.2.

118. The Delegation of Switzerland thanked all delegations that had made constructive comments and observations in the plenary and informal meetings on document SCT/39/8 Rev.2. The Delegation, presenting the revised joint proposal, indicated that it contained some changes with respect to document SCT/39/8 Rev.2, and that the wording had been adapted to reflect the criticisms and objections that had been made, in particular at the informal meeting, to the proposal contained in document SCT/39/8 Rev.2. Thus, the items on trademarks and DNS had been separated, trademarks having been placed under (I) and DNS under (II). The Delegation indicated that (I) was dedicated solely to trademark law, and that the word "shall", which had been seen as too restrictive, had been removed. In addition, in order to relativize the principle of non-monopolization of country names in trademark law, the wording on the generally non-distinctive nature of country names had been emphasized. The Delegation, observing that (II) was dedicated solely to ICANN, added that, under (III), the lists had been maintained and were unchanged from the proposal contained in document SCT/3/8 Rev.2, as they consisted merely of references that indicated what were, objectively, a country name or a geographical name of national significance. Although some comments had been made by several delegations on those lists, the Delegation believed that they were at the heart of the process undertaken by the Committee and should continue to be discussed in the Committee. The Delegation concluded by expressing its full support to a constructive approach to discuss the topic in more detail.

119. The Delegation of El Salvador, speaking on behalf of GRULAC, thanked the co-sponsors for taking the opinions and observations that the Group had raised into consideration, when revising the proposal. The Delegation indicated that, as the Group had not yet a group position, the various delegations would take the floor in their national capacity.

120. The Delegation of the United States of America expressed its appreciation for the efforts made by the Delegation of Switzerland and the co-sponsors to take into account, in the non-paper, some of the concerns that the Delegation and others had raised. The Delegation appreciated the constructive spirit to try to find a way forward on the particular proposal under consideration, but said that, nonetheless, it still had concerns regarding the breadth of the proposal and the impact that it would have on trademark systems around the world, as well as the impact on gTLD applicants. The Delegation, observing that a reference to the WIPO Second Domain Name Process Reports had been made in the non-paper, and mentioning that the Delegation was aware of how those report recommendations had come out, recalled that its Delegation had disassociated itself from that recommendation, along with two other delegations. The Recommendation stated that "most delegations favored some form of protection for country names against registration or use (of domain names) by persons unconnected with the constitutional authorities of the country in question and where such registration would cause confusion as to source". The Delegation recognized that it was necessary to limit the analysis to where confusion as to source would occur; however, a block list did not address confusion, a reservation list did not take into account consumer perception or consumer deception, a block list only reserved the names forever and overrode any analysis of consumer perception. With

that in mind, the Delegation explained that, when looking at the non-paper divided into two parts – one part being the trademark part and the other the DNS part – and when examining the trademark part, it appeared that the registration of country names was not possible if it was exclusively the name of a country or would amount to monopolization. In addition, the Delegation wondered where would be the analysis at the national level of consumer perception if the names on the list were considered as country names. The Delegation said that maybe the consumer did not view all of the names on the list as the names of a country. The Delegation held the view that saying what those names must be overrode consumer perception at the national level. In the Delegation's opinion, it was possible that the short-form name of a country would always be perceived as a country name at the national level by the consumers of those countries, but saying that the entire list would always be perceived as country names by the consumers of every country was not possible and would create a presumption that every name on that list was a country name and, therefore, should be considered a monopolization in the trademark system that overrode the analysis that each country made in deciding whether those names were perceived as country names and were eligible subject matter or not. As regards the DNS side, the Delegation pointed out the fact that the non-paper provided that all of the names on that list would serve as the basis of a block list, whereas according to the Delegation, all the names on the list were not known. For instance, the UNESCO list was opened for new names to come at any time, and the Delegation wondered how it would serve the basis of a block list to be implemented in ICANN. The Delegation explained that when a block list was implemented in ICANN, what had been blocked should be identified. In addition, the Delegation wondered in what languages the elements in the list would be blocked. If the elements were to be blocked in every language that existed in the world, that would mean that an enormous amount of names would have to be blocked from the gTLD application process. The Delegation also underlined that the block list could be overcome if there was the consent of the government; in other words, the government had to indicate as to every single name on that list whether it could be the subject of a gTLD application or not. The Delegation, being aware of the enormous leverage of the government in that situation, underlined the disadvantage that it could represent to many prior right holders who wished to apply for a gTLD registry. The Delegation added that in order to create the list, an opposition process at all national levels should be established. Because of the significant impact on the trademark and the DNS sides, the Delegation stated that it was not in a position to support the proposal. The Delegation, reminding the Committee that, in 2002, the recommendations to ICANN recognized that there was a need to look at consumer confusion, reiterated its position that a block list, both on the trademark and on the DNS sides, absolutely eliminated consumer perception from the analysis. The Delegation concluded by stating that it was open to further discussions on the matter and that it appreciated the spirit in which the new proposal was offered.

121. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the proponents for the revised version of the text contained in document SCT/39/8/Rev.2, and aligned itself with the statement made by the Delegation of the United States of America. Commending the spirit of constructive engagement in trying to seek consensus, the Delegation welcomed the improvements made, one of which resulted in two different sections in the text, a preamble paragraph capturing the introduction and the main objectives of the proposal, and a second section seen as the operative part of the draft. In the second section, the Delegation acknowledged the separation between the areas of trademarks and the ICANN-related part. The Delegation expressed similar concerns to those highlighted by the Delegation of the United States of America with regard to the first part in (I). The Delegation also saw a problem with the block list approach and the overriding of the consumer perception. The Delegation found the second part under (II) more acceptable than the first; however, in spite of the replacement of the term "shall" by another formulation, it considered that the result would be the same. The Delegation also pointed out that the second paragraph in the preamble

seemed problematic, as it was in line with the principle set out in the first part, but not with the third paragraph. The Delegation reiterated that it remained open to discussing the proposal, although it could not support it the way it stood.

122. The Delegation of Lithuania, speaking on behalf of the CEBS Group, expressed gratitude to the co-sponsors for improving their proposal, and said that the Group valued positively the effort towards elaborating a language with regard to gTLDs and ICANN processes. However, the Delegation said that some members of the Group had similar concerns to those of the Delegation of the European Union, but would support the continuation of the discussion on that matter in the future.

123. The Delegation of Switzerland, replying to the Delegation of the United States of America with regard to consumer perception in the DNS, said that the SCT needed to keep in mind that the DNS was global. Therefore, such perception should not only be considered in one country, but in the whole world. The Delegation believed that the current attribution rules for country names as gTLDs set aside country names in all national languages, like the UNESCO list did. This was the same in the initial proposal, except for the last point, which was not currently set out in ICANN rules. The Delegation considered that the proposal did not go very much further than what was already in the rules of ICANN.

[Suspension]

124. The Delegation of Peru thanked all the delegations who had expressed support for the proposal on nation brands and those who had provided observations on the proposal. As those comments deserved to be dealt with in an appropriate manner, the Delegation announced that it would submit a revised version of its proposal at the forty-second session of the SCT, at the latest.

125. The Chair concluded that:

- the SCT had taken note of document SCT/40/3;
- discussions on documents SCT/32/2 and SCT/39/8 Rev.2 would continue at the forty-first session of the SCT; and
- the Delegation of Peru would present a revised version of document SCT/39/9 for consideration at a future session.

#### *International Non-Proprietary Names for Pharmaceutical Substances (INNs)*

126. The Secretariat informed the SCT on recent developments concerning the exchange of INN data between the World Health Organization (WHO) and WIPO, including the conclusion of a Memorandum of Understanding to that effect between both Organizations, and made a presentation demonstrating the inclusion of INN data in the WIPO Global Brands Database.

127. The Delegation of Chile, expressing gratitude for the presentation, thanked the Secretariat for the work carried out during the past years to facilitate the access of regional and national industrial property offices to the list of INNs, as well as WHO for having modernized and improved the access to those lists. The Delegation stated that the integration of the two databases was extremely important and the right path to follow.



128. The Delegation of the Russian Federation, thanking the Secretariat for the work done and for the information provided, informed the Committee that, in their work, the examiners of the Russian Patent Office always checked the information on INNs provided by WHO and communicated through the International Bureau of WIPO. The Delegation concluded by expressing the hope that the new function of the Global Brands Database would ease the examination procedures conducted by the Office.

129. The Chair concluded that the SCT had taken note of this activity and that the Secretariat was requested to offer an update at the next session of the SCT.

## **AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS**

130. Discussions were based on documents SCT/40/5 Prov.2 and SCT/40/6 Prov.2.

131. The Delegation of El Salvador, speaking on behalf of GRULAC, thanked the Secretariat for the compilation of replies to Questionnaire I on the National and Regional Systems that Can Provide a Certain Protection to Geographical Indications and Questionnaire II on the Use/Misuse of Geographical Indications, Country Names and Geographical Terms on the Internet and in the DNS. Reiterating that both documents were very meaningful inputs to guide the work of the Committee, the Delegation believed that it was important to give an opportunity to more members to participate in that exercise and allow them to send their replies to the questionnaires. Informing the Committee that some GRULAC members were still preparing their replies, the Delegation considered it wise to keep the documents open for further inputs. In conclusion, the Delegation suggested to find a more user-friendly way of presenting the information and encouraged everyone to make constructive suggestions in that respect to the Secretariat.

132. The Delegation of Australia, thanking all the Member States that had contributed with responses to the geographical indication questionnaires, recognized that a large amount of work had been done in a short period of time. Conveying its gratitude to the Secretariat for compiling the inputs so quickly for the meeting, the Delegation aligned itself with the opening statement made by Group B to leave the questionnaires open for additional replies. Pleased to see a large range of responses so far, the Delegation noted the member-driven and inclusive approach to the subject. Expressing the view that the responses had provided with a wealth of contemporaneous information about national and regional approaches to aspects of geographical indication law, policy and practice, the Delegation said that geographical indications remained an unsettled area of international intellectual property law, with a range of diverse approaches, and stressed that there could only be advantages in explaining and understanding the underpinning rationale for the different national and regional approaches. Looking forward to discussing those approaches at future meetings, the Delegation expressed its interest in hearing the views of Member States about the subjects that appeared to be of interest to all.

133. The Delegation of Lithuania, speaking on behalf of the CEBS Group, appreciated the fruitful work of the Committee at the past session, which had resulted in the production of the geographical indication questionnaires and the gathering of information for a meaningful discussion for the benefit of users and industry. The Delegation further thanked the Secretariat for the preparation of documents SCT/40/5 Prov. 2 and SCT/40/6/ Prov. 2 compiling the replies to Questionnaire I and Questionnaire II. Expressing the view that the Committee should continue its work on geographical indications, the Delegation noted that the replies to Questionnaire II had indicated that there could be more work on the protection of geographical indications on the Internet and in the DNS.

134. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for producing the provisional compilation of replies to Questionnaires I and II. Pleased to see a wealth of information on the systems and instruments used to protect geographical indications in the responses to Questionnaire I, the Delegation said that, while that was not the first survey of the kind, it was surely the most up-to-date one, which would prove useful in informing the debates on geographical indications in that forum and elsewhere. In respect of Questionnaire II, the Delegation noted that, while protection systems for geographical indications in the DNS and on the Internet did exist to a limited extent, they were not well developed. Since the documents were provisional and the workplan adopted at the thirty-eighth session had been completed, the Delegation believed that the work on geographical indications should be accomplished at the forty-first session of the SCT and that it would be useful to consider the next steps. Given that many issues still needed to be addressed at the international level, the Delegation believed that it was essential that the SCT continue its work on specific topics related to the protection of geographical indications on the Internet and in the DNS. Commending the work of the SCT and of the Secretariat with regard to the geographical indication questionnaires, the Delegation looked forward to seeing the final versions of documents SCT/40/5 and 6.

135. The Delegation of Japan, extending its appreciation to the Secretariat for the compilation of replies to the geographical indication questionnaires, expressed its continued support to the examination of those issues within the SCT, the most appropriate forum in WIPO to discuss geographical indications. Agreeing to keep the questionnaires open for additional replies, the Delegation concluded that such studies would help SCT members to deepen their understanding of various issues on geographical indications.

136. The Delegation of the Russian Federation, noting that much work had been done in the field of the protection of geographical indications, said that the legislation of the Russian Federation had not so far provided for the protection of geographical indications, but only for appellations of origin. Informing the Committee that the legislator had been working to incorporate geographical indications in the national legislation, the Delegation expressed the hope that the new provisions would be soon adopted. Appreciating the work done by the Secretariat and all the Member States that had provided replies to the Questionnaires, the Delegation said that the responses were very helpful and that the practice on geographical indications of other Intellectual Property Offices would be taken into account in building its own work on geographical indications.

137. The Delegation of China, extending its appreciation to the Secretariat for the preparation of the documents and to the Member States for submitting replies to the geographical indication questionnaires, said that the information was of great significance for the countries which carried out the registration of geographical indications and aimed at improving the system. The Delegation informed the Committee that in 2018 the Chinese Government had consolidated the Intellectual Property work relating to geographical indications under one administration, responsible for drafting and implementing the unified certification system for geographical indications and, at the same time, for improving the system and learning from the best practices of other countries. By June 30, 2018, China had protected 2,359 geographical indications, including 61 foreign geographical indications, and had registered 4,395 collective and certification marks, including 171 from foreign applicants. The Delegation further said that 24 national demonstration sites for products bearing protected geographical indications had been built, 8,091 enterprises used special signs designating geographical origin on their products and the relevant output value exceeded one trillion yuan. Stressing the fact that all those figures showed that geographical indications were a very important area and the great importance attached to them, the Delegation committed to actively participate in the SCT work.

138. The Delegation of Kazakhstan, thanking the Secretariat for the preparation of the documents, wished to inform the Committee that Kazakhstan's legislation currently provided for protection of appellations of origin only and that it had no information as to whether and when geographical indications would be afforded such protection. Based on the understanding that, globally, both appellations of origin and geographical indications were recognized and protected, national legislation did allow foreign rightholders to seek inclusion in the National Registry of both foreign appellations of origin and foreign geographical indications, subject to their protection in the country of origin.

139. The Delegation of Iran (Islamic Republic of), taking note of the compilation of replies to Questionnaire I and Questionnaire II, commended the Member States for their input and thanked the Secretariat for its work. Lending its support to the proposal to keep the questionnaires open for additional replies, the Delegation said that it would be useful to have a complete picture of the national and regional geographical indication legislations and updated versions of the documents in a more user-friendly manner. The Delegation reiterated that the geographical indication questionnaires initiative and the Committee's deliberation on that Agenda item should not create any expectation of norm setting in the areas which were already covered by existing treaties or systems administered by WIPO.

140. The Delegation of the Republic of Korea, extending its appreciation to the Secretariat for compiling a big amount of data regarding countries' laws and practices on geographical indications, expressed the view that the documents would be a good basis for future discussion on geographical indications. Considering that only 39 Member States had taken part in the survey, the Delegation joined other Member States requesting to keep the questionnaires open for additional replies, and concluded that it would be useful and meaningful if more Member States provided information on geographical indication laws and examination guidelines.

141. The Representative of oriGIn, thanking all the countries that had responded to the geographical indication questionnaires and those that had expressed an interest to participate in the future, extended its appreciation to the Secretariat for the compilation of replies and reiterated the importance of protecting geographical indications in the Domain Name System. Recalling that geographical indications could not benefit from the application of dispute resolution systems, the Representative sensed an urgent need to open to geographical indications the application of corrective mechanisms, in particular of the UDRP, considering that there were more than 1,200 gTLDs and the number of disputes was rising. Referring to recent case law, in particular to the geographical indications Rioja and Gorgonzola protected via the trademark system, the Representative said that claims based on registered trademarks were not always successful in UDRP proceedings. In those cases, the claims were not sufficient to obtain back the second level domain names, since the designations were considered descriptive. Expressing the view that geographical indications were discriminated and disadvantaged, affecting economic interests, the Representative encouraged WIPO Member States to work on that crucial topic.

142. The Delegation of Switzerland, aligning itself with other delegations that had expressed gratitude to SCT members for providing responses to the two questionnaires, thanked the Secretariat for making the compilation of replies in such a brief time. Indicating that it looked forward to additional responses from other SCT members, the Delegation wondered whether it would be possible to present the documents in a more user-friendly manner for future discussions.

143. The Delegation of Argentina, thanking the Secretariat for the compilation of responses, said that geographical indications were of great interest to Argentina. Pointing out that the questionnaires provided understanding and knowledge on the various practices and formed a good basis for future discussion, the Delegation expressed the hope that they would remain open for new replies. Highlighting the fact that Argentinian legislation provided for the protection of geographical indications and designations of origin with regard to wines, spirits and agricultural products, the Delegation expressed its interest in a discussion of the replies at future SCT sessions and indicated that Argentina would provide its replies shortly after the meeting.

144. The Delegation of Morocco, informing the Committee that the national legal framework provided for the protection of geographical indications for agricultural and artisanal products, thanked the Secretariat for the preparation of the documents and expressed the hope that they would be updated with other national and regional practices. The Delegation aligned itself with other delegations that had proposed that the Committee continue its work on geographical indications, particularly with regard to their protection on the Internet.

145. The Delegation of the United States of America, noting with satisfaction the number of responses to the questionnaires on geographical indications, the quality of the responses and the good faith in which they had been offered, extended its appreciation to all the SCT members that had submitted their replies. The Delegation pointed out that it had been waiting for that exchange of practices for 15 years and that the information was extremely helpful. Noting that there were a lot more similarities in national systems than it might have been expected, the Delegation expressed its interest to know more about those differences. In particular, the Delegation was interested to know what were the policy reasons for those differences in national geographical indication systems, in order to better understand them. The Delegation further enumerated some of the differences that it had noticed in the responses, starting with eligible subject matter. Noting from the replies that the eligible subject matter could include current place names, historical names, nicknames, logos, colors, and other kinds of signs, the Delegation expressed its interest to know more about the breadth of the subject matter that was used to identify a geographic source identifier. Referring to the origins of geographical indication protection and agricultural policy, the Delegation wondered whether those origins had some impact on subject matter that was constrained to certain place names and what was the impact then on geographical indication protection in various systems when eligible subject matter was broadened. The Delegation also noticed that the breadth of the goods and services covered by geographical indication protection differed and that there seemed to be an interest in moving from agricultural goods to handicrafts, textiles and even services. In this context, the Delegation wondered if the origin of geographical indication protection and agricultural policy had been a constraint and how to overcome that when expanding the protection to other goods and even services. The Delegation also noticed that the role of the competent authorities varied in different jurisdictions and that there were many different roles that authorities seemed to play in geographical indication protection systems. Sometimes they were involved in the creation or organization of the geographical indication; sometimes they were involved with the application; sometimes, with ongoing monitoring or enforcement, and even with seeking protection overseas. Noting that understanding the role of the competent authorities was important, the Delegation said that digging deeper into that issue would be useful because, as enforcement actions in foreign courts were pursued, it was important to know who had the legal standing to bring the enforcement actions. Understanding those various roles would bring some certainty for stakeholders when considering the options for enforcement. The Delegation wondered, in addition, how to determine whether a producer group applicant was actually representative of the producers in a region, indicating that the issue posed some difficulties in the United States of America. The Delegation believed that, when the government was involved, the issue did not pose many concerns. However, when a private association was applying for protection, the concern was to know how to evaluate that representation. The Delegation also expressed its interest in hearing more about the replies by Switzerland. In addition, sensing from the

responses that there seemed to be a variety in the amount and the nature of the proof required to establish the quality link, the Delegation said that it would be very useful, particularly for geographical indication owners, to have a discussion about what was required in various jurisdictions. The Delegation also expressed its interest in hearing more about generic and common terms, for instance what was the weight given to those generic terms in an evaluation of infringement or conflict and how was that generic term factored into the analysis. Referring to some submissions that had indicated that use was required within seven years or the geographical indication was prone for invalidation, the Delegation expressed its interest to know more about use requirements and invalidation procedure. With regard to the invalidation procedure, the Delegation was interested to know whether it was *ex officio* or at the request of third parties or beneficiaries and whether the procedure was open to other persons. Indicating that there were some interesting distinctions between the trademark system maintenance requirements and the geographical indication system maintenance requirements, the Delegation said that exploring those distinctions, as well as the maintenance of authorized users' registrations, would be interesting. The Delegation also wondered whether the monitoring of activities was supposed to be regular and independent, who was responsible for it and how much of it was required. The Delegation also expressed its interest to hear more about authorized user registries, as there were several jurisdictions that had that feature in their system. In particular, the Delegation wondered what was the burden and the benefits of having those registries, and whether that was helpful in the system. Lastly, noting that there were many different responses about the scope of infringement, enforcement, protection and examination, the Delegation expressed its interest to hear about how the different tests applied. Expressing its gratitude to countries interested in submitting further responses, the Delegation expected that more replies would come. The Delegation also said that a database to display the responses would be very useful, observing that a display of the tick boxes "yes" or "no" would not be particularly helpful without understanding the reasons. In the Delegation's view, the free form boxes were the most helpful, as country systems could not be distilled by means of tick boxes, and that was the reason why it would like to see those in the database. Calling for suggestions as to the structure of the future discussion, the Delegation reiterated that it had been waiting for that discussion for 15 years and that it was delighted to see that SCT members had begun that road.

146. The Chair noted three elements emerging from the discussion: (1) the call for additional replies, (2) the manner in which to present the replies, and (3) the future work and proposals for discussion. With regard to the first element, the Chair proposed to open up the questionnaires for additional replies until the end of January, in which case the updated documents would be made available one month ahead of the next session of the Committee.

147. The Secretariat, invited by the Chair to comment about the manner in which to present the replies to the questionnaires, said that it would explore ways of presenting the information gathered in a database, which would be accessible online and allow to retrieve information by country and by subject matter. The Secretariat invited SCT members to critically review the information that they had produced, which would be compiled into a final document. In parallel, the Secretariat would start working on compiling the information in a database, which would be made available online, via the SCT Electronic Forum or SCT web page, and remain there as a resource tool which could be updated in the future. The Secretariat indicated that at least a prototype would be ready for the next session of the SCT.

148. The Delegation of the United States of America, in response to the Chair's comment on the future work and structure of the discussion, said that a possible way to organize the work would be to consider a series of information sessions on discrete topics, which would enable delegations to find an appropriate way to structure the conversation and promote understanding.

149. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Delegation of the United States of America for the proposal and agreed that the idea of a series of information sessions on specific topics was a practical and sensible approach. As to the topics, the Delegation proposed to revert to that subject at the next session of the SCT.

150. The Delegation of Lithuania, speaking on behalf of the CEBS Group, expressed its support for a structured discussion, indicating that it looked forward to the proposals for specific topics and to a roadmap to address them.

151. The Delegation of the Republic of Korea, expressing support for the proposal made by the Delegation of the United States of America, said that it stood ready to take an active part in the next information session by sharing the experiences and practices of the Republic of Korea.

152. The Delegation of the United States of America, appreciating the support from various delegations to the idea of conducting a series of information sessions on geographical indication examination practices, wished to share some ideas on possible topics for future information sessions. Having gathered together suggestions for possible topics from various SCT members, the Delegation said that it was keen to start at the next SCT with a half-day information session with potentially two panels and two topics from those identified so far. For that purpose, the Delegation believed that the following topics could be interesting to all delegations: (1) the nature and extent of the proof necessary to establish the quality link in an application, (2) the scope of protection for conflicts between identifiers, (3) evaluating the potential for an anticompetitive effect of the applicant's exercise of control over the geographic term, (4) how do countries evaluate genericness and what are the tests and elements applied, and (5) homonymous geographical indications and establishing how they could be used. In relation to the second topic, the Delegation said that the idea behind it was sharing experiences on the various national scopes of protection used when evaluating conflicts between trademarks and geographical indications, geographical indications and geographical indications or geographical indications and trade names. Noting that the likelihood of confusion test generally applied in respect of trademarks, the Delegation wondered what were the tests and the elements of those tests that other countries applied. In relation to the third topic, the Delegation expressed its interest to hear how other countries went through the process of evaluating the potential for an anticompetitive effect of the applicant's exercise of control over the geographic term. The Delegation said that the USPTO carried out its own evaluation of the applicant's ability to control the use of the term, while the Australia Intellectual Property Office sent the applications for evaluation to the Anti-Competition Bureau. In conclusion, the Delegation expressed the hope that SCT members would agree to select a couple of those topics for discussion at the next session of the SCT and that delegations would explore more topics.

153. The Delegation of El Salvador, speaking on behalf of GRULAC and thanking the Delegation of the United States for the proposal and for the list of topics for discussion, said that it needed first to have a consultation within the regional group.

154. The Delegation of the European Union, speaking on behalf of the European Union and its member states, requested time to coordinate with the EU members on the list put forward by the Delegation of the United States of America and on the overall topics of future work.

155. The Delegation of Lithuania, speaking on behalf of the CEBS Group, said that it also wished to consult the members of the Group before continuing the discussion.

156. The Delegation of Canada, speaking on behalf of Group B, also asked for the possibility to consult the members of the Group.

157. The Delegation of Iran (Islamic Republic of), requesting that the list of topics be circulated with regional coordinators in writing, expressed the view that more time was needed for the consideration of both ideas, namely to have a series of information sessions and the list of topics.

158. The Chair suspended the meeting.

[Suspension]

159. Resuming the session, the Chair informed the Committee that informal consultations had been conducted among delegations and opened the floor for comments on the proposal made by the Delegation of the United States of America.

160. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Delegation of the United States of America for the proposal on possible topics for an information session. While agreeing that holding information sessions would be one useful means to continue the discussions on geographical indications, the Delegation expressed the view that SCT members should remain open also to other possible means in the context of the future work. As regards the concrete way of continuing the work, the Delegation proposed that such a decision be taken in respect of SCT/42 at a later stage, based on further and more extensive discussions during the next SCT meeting. Indicating that it would appreciate to have more time to thoroughly study the proposal and to also propose some topics, the Delegation said that it looked forward to the finalization of the compilations of replies, expressing the view that the updated documents would facilitate the discussions on the future SCT work.

161. The Delegation of El Salvador, speaking on behalf of GRULAC, said that it agreed to have an information-exchange session on certain topics at the forty-first session of the SCT, and that it would announce later the topics on which it was interested.

162. The Delegation of Lithuania, speaking on behalf of the CEBS Group expressed its readiness to have a structured discussion, but requested more time to decide on the list of topics. The Delegation proposed to postpone the discussion to the next session of the SCT.

163. The Delegation of Iran (Islamic Republic of) expressed its flexibility to have a series of information sessions on geographical indications. With regard to the topics, the Delegation wondered whether they should be selected from the subject matter of the questionnaires or outside of their scope. Expressing its preference to select the topics from the questionnaires, the Delegation said that it preferred to discuss them during the next session of the SCT.

164. The Delegation of the United States of America clarified that its proposal was to expand on the topics that had been asked and answered in the questionnaires.

165. The Delegation of Chile, aligning itself with the statement made by the Delegation of El Salvador, on behalf of GRULAC, recalled that many members had expressed the wish to submit additional replies to the Questionnaires. The Delegation lent its support to the proposal to have an information session at the next SCT session, in order to discuss some selected topics from the questionnaires, without ruling out the inclusion of other topics in the list.

166. The Delegation of El Salvador, speaking on behalf of GRULAC, said that, although the Group had expressed its preference to have an Information Session at the next SCT meeting, it remained flexible to discuss the issue at the next session, given the fact that other delegations needed more time to define the topics to be discussed.

167. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, welcomed the proposed work on geographical indications. Taking into account that the Group still had questions on the topics to be discussed at the Information Sessions, the Delegation said that individual statements by the members of the Group would be made with regard to the list of topics and the planning of the future information sessions.

168. The Chair requested the Secretariat to:

- invite members and Intergovernmental Intellectual Property Organizations with observer status to submit additional or revised replies to Questionnaires I and II until January 31, 2019;
- finalize documents SCT/40/5 Prov. 2 and SCT/40/6 Prov. 2., for consideration at the forty-first session of the SCT; and
- present the information contained in both documents in a database.

169. The Chair also concluded that half-day information meetings on geographical indications would be organized within the framework of future SCT sessions, the topics of which would be discussed at the forty-first session of the SCT. To that effect, members and Intergovernmental Intellectual Property Organizations were asked to propose possible topics for such information meetings ahead of the forty-first session of the SCT.

#### **AGENDA ITEM 8: ADOPTION OF THE SUMMARY BY THE CHAIR**

170. The SCT approved the Summary by the Chair as presented in document SCT/40/9.

#### **AGENDA ITEM 9: CLOSING OF THE SESSION**

171. The Delegation of the European Union, speaking on behalf of the European Union and its member states, congratulated the Chair for successfully guiding delegations through the SCT agenda. The Delegation also noted with appreciation that the Committee had moved forward on all key topics at the session. Welcoming the finalization of a Draft Questionnaire focused on pertinent issues related to Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, the Delegation said that it appreciated the efforts made by the Secretariat to take on board all comments made by delegations at the meeting, as reflected in document SCT/40/2 Rev. Considering that the SCT had made some progress in seeking a compromise solution as regards the issue of country names, the Delegation said that the informal discussions had helped to identify some outstanding issues concerning the joint proposal contained in document SCT/39/8 Rev.2. The Delegation, thanking the proponents, in particular the Delegation of Switzerland, for their efforts to facilitate the reaching of a consensus and for preparing the non-paper discussed at the session, stated that it remained open to continue discussions on the issue. On the topic of geographical indications, the Delegation noted that all delegations agreed that further work was desirable on the basis of the wealth of up-to-date information compiled by the Secretariat. The Delegation was hopeful that the provisional compilations prepared for the present session could be finalized by the next session. Furthermore, the Delegation wished to thank the Chair for offering flexibility in SCT discussions to address the continuation of work, in particular as regards the methodology and the selection of topics, and looked forward to discussing next steps at SCT/41. Finally, the Delegation thanked all delegations for maintaining the positive spirit shown at the recent SCT sessions, and hoped that the Committee would continue to have fruitful discussions on all three key areas at the next meeting.



172. The Delegation of Salvador, speaking on behalf of GRULAC, thanked the Chair for his leadership and efforts, which had allowed to achieve important results with regard to the items on the SCT agenda. The Delegation expressed its appreciation to the Secretariat for the excellent work in preparing the session and the documents that had served as a basis for the deliberations. Expressing the view that the session had laid a good foundation for future discussions, especially on the topic of the protection of country names in relation to trademarks and domain names, the Delegation hoped that the discussions would continue in a fruitful manner and would allow to achieve results at the next SCT session. Furthermore, the Delegation congratulated the Secretariat on the initiative of incorporating the international nonproprietary names for pharmaceutical substances (INNs) in the Global Brand Database, as it would facilitate the work of industrial property offices in the examination of trademarks, in balance with the protection of health and consumers. The Delegation, expressing the wish to see that project working very soon, also expressed its interest in having a timeframe of work for its implementation. With regard to geographical indications, the Delegation was very pleased and welcomed the initiative of the Secretariat to compile all the information gathered by the questionnaires in a database, considering that it would constitute a very valuable and useful information. The Delegation reiterated the commitment of GRULAC to continue participating through its answers. The Delegation hoped that, as agreed, the Committee would be able to reach an agreement on the topics to be discussed during the information sessions that would take place at the next sessions of the SCT, allowing to deepen the understanding of the topics explored in the questionnaires. The Delegation, thanking the delegations for their participation in the discussions and for the presentation of documents, which enabled the Committee to advance in the discussions and build future results, also commended the interpreters and the conference services for their professionalism and for facilitating the work of the SCT.

173. The Delegation of Lithuania, speaking on behalf of the CEBS Group, thanked the Chair for his efforts to move forwards the work of the Committee, as well as the Secretariat for the valuable inputs in preparing for the session. The Delegation also thanked the interpreters and the Conference Service for their tireless work. Expressing its satisfaction with the substantive discussions carried out during the session, the Group appreciated the Committee's work on graphic user interfaces and was pleased that the questionnaire had been adopted, as it would constitute a solid basis for further work on this topic. As regards country names, the Delegation appreciated the constructive engagements of co-sponsors of the joint proposal contained in document SCT/39/8 Rev.2 and their attempts to accommodate the concerns of delegations voiced during the session. Commending the Secretariat for the impressive work of compilation carried out, and noting with satisfaction the developments as regards the work on geographical indications, the Group said that it looked forward to further discussing the issue, which was deemed important by a number of delegations, on the basis of inputs from Member States. In conclusion, the Delegation thanked all delegations for their constructive spirit and looked forward to continuing the discussions on all three key areas of action at the next session.

174. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the Chair for his leadership in guiding the Committee towards a successful conclusion. Expressing appreciation on the progress made on all agenda items, in particular on the Draft Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs (document SC/40/2 Rev), the Group looked forward to having further fruitful discussions on country names and trademarks, including all the proposals under the subject matter, in future SCT sessions. Welcoming the decision on geographical indications, the Delegation expressed its interest in discussing the topic in the framework of information sessions. Furthermore, thanking all delegations for the positive and constructive spirit shown throughout the session, the Group expressed its appreciation for the excellent Secretariat's work for the successful convening of the meeting. The Group also thanked the conference service and the interpreters, who had contributed to a smooth and successful meeting. Finally, the Group reaffirmed its commitment to continue the work and mandate of the Committee.

175. The Delegation of Canada, speaking on behalf of Group B, thanked the Chair for his able and wise guidance through the session, the Secretariat for its hard work prior to the session and during the week, and the interpreters and the Conference service for their professionalism and availability. The Delegation concluded by expressing Group B's full support and constructive spirit to continue the fruitful discussions in the framework of the Committee.

176. The Delegation of China thanked the Chair for his leadership, the interpreters and the Conference service for their work, and the Secretariat for its enormous work in preparing and conducting the meeting. The Delegation, commending the work of the Committee in formulating rules on trademarks and geographical indications, said that it attached great importance to the role played by the SCT. The Delegation underlined the positive results in many items of the agenda, in particular the Draft Questionnaire on Graphical User Interface (GUI), Icon Typeface/Type Font Designs, which demonstrated the efficiency of the Secretariat. For those agenda items where no consensus had been reached, the Delegation indicated that, following the meeting, it would study actively those pending agenda items in order to be able to participate in the discussion in future sessions. The Delegation concluded by hoping that, in the future, Member States would continue to show flexibility to reach consensus on those pending agenda items.

177. The Delegation of Morocco, speaking on behalf of the African Group, thanked the Chair for the excellent way in which he had steered the work during the session. The Delegation welcomed the discussions that had taken place during the session, which had helped to deepen the understanding of the various topics. The Group declared its intention to participate in the discussions during the next sessions, with a view to achieving tangible outcomes on those important topics. The Group also thanked the Secretariat for preparing the session, as well as all the delegations for their contributions in enriching the discussions. On geographical indications and country names, the Delegation expressed its optimism as to the possibility of reaching a mutually agreed solution and hoped that the next sessions would be an opportunity to accelerate the discussions on the various items.

178. The Delegation of Ukraine thanked the Chair for his leadership and the Secretariat for its professionalism in preparing and conducting the work of the Committee. While welcoming the deliberations that had taken place under agenda item 6 (trademarks), the Delegation said that it wished to draw the attention of the delegations to a matter related to the functioning of the Madrid System for the International Registration of Marks. The Delegation explained that there was an issue regarding some international applications for trademarks under the Madrid System, as they contained the addresses of applicants that were located at the temporarily occupied territories of another country. In particular, in the applications submitted from the territory of the Autonomous Republic of Crimea, autonomous Republic of Ukraine, the State of the applicant was indicated as the Russian Federation. While the Delegation was grateful to the International Bureau of WIPO for the reaction to its concerns in this matter and for the introduction of a new legal warning mechanism on the electronic platform of Madrid Monitor, the Delegation believed that the solution was however far from being completed. The Delegation said that WIPO, as an institution belonging to the United Nations System, had to share the views and adhere to the principles of this universal international organization. The Delegation, time and again, considered that those registrations were contradicting the position of the United Nations regarding the territorial integrity of Ukraine, as proclaimed in the United Nations General Assembly (UNGA) Resolution 68/262, adopted on March 27, 2014. However, the Delegation wished to emphasize to the SCT that the problem remained when the addresses of applicants and owners from temporarily occupied territories of another State were indicated in international trademark registrations. The Delegation considered that it was appropriate to raise the issue of the content of international applications and its verification by the International Bureau of WIPO before the Working Group on the Legal Development of the Madrid System for the International Registration of Marks. In conclusion, the Delegation called on all delegations of Member

States, as well as on representatives of international and intergovernmental organizations, to utilize all available legal mechanisms to refuse the registrations of such international applications.

150. The Chair closed the session on November 16, 2018.

[Annexes follow]



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SCT/40/INF/1  
ORIGINAL : FRANCAIS/ANGLAIS  
DATE : 16 NOVEMBRE 2018 / NOVEMBER 16, 2018

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

**Quarantième session  
Genève, 12 – 16 novembre 2018**

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

**Fortieth Session  
Geneva, November 12 to 16, 2018**

**LISTE DES PARTICIPANTS  
LIST OF PARTICIPANTS**

*établie par le Secrétariat  
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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MARQUES - Association des propriétaires européens de marques de commerce/  
MARQUES - The Association of European Trade Mark Owners  
Alessandro SCIARRA (Mr.), Chair, Geographical Indications Team, Milano

Organisation pour un réseau international des indications géographiques (oriGIn)/Organization  
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(Mexique/Mexico)

Vice-président/Vice-chair: Simion LEVITCHI (M./Mr.) (République de  
Moldova/Republic of Moldova)

Secrétaire/Secretary: Marcus HÖPPERGER (M./Mr.) (OMPI/WIPO)

#### V. SECRÉTARIAT DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/SECRETARIAT OF THE WORLD INTELLECTUALPROPERTY ORGANIZATION (WIPO)

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WANG Binying (Mme/Ms.), vice-directrice générale/Deputy Director General

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[Annex II follows]



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SCT/40/9  
ORIGINAL: ENGLISH  
DATE: NOVEMBER 16, 2018

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

**Fortieth Session**  
**Geneva, November 12 to 16, 2018**

### **SUMMARY BY THE CHAIR**

*adopted by the Committee*

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

179. Ms. Wang Binying, Deputy Director General of the World Intellectual Property Organization (WIPO), opened the fortieth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants on behalf of the Director General.

180. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

181. The Secretariat announced that, due to the unavailability of the Chair of the SCT, Mr. Adil El Maliki, Mr. Alfredo Rendón, ranking Vice-Chair, would be acting as Chair for the fortieth session of the SCT.

### **AGENDA ITEM 2: ADOPTION OF THE AGENDA**

182. The SCT adopted the draft Agenda (document SCT/40/1 Prov.3).

### **AGENDA ITEM 3: ACCREDITATION OF A NON-GOVERNMENTAL ORGANIZATION**

183. The SCT considered document SCT/40/7.

184. The SCT approved the accreditation of the French Association of Industrial and Artisanal Geographical Indications (AFIGIA).

### **AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-NINTH SESSION**

185. The SCT adopted the draft Report of the thirty-ninth session (document SCT/39/11 Prov.).

### **AGENDA ITEM 5: INDUSTRIAL DESIGNS**

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

186. The Chair recalled that the WIPO General Assembly, on the occasion of its session in September 2018, had decided that, at its next session in 2019, it will continue considering the convening of a diplomatic conference on the Design Law Treaty (DLT), to take place at the end of the first half of 2020.

187. The Chair concluded that the SCT took note of all statements made by delegations on that item. While the DLT would remain on its agenda, the SCT duly noted the decision of the General Assembly to continue considering this matter at its next session in 2019.

#### *Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*

188. The SCT considered documents SCT/40/2 and SCT/40/2 Rev. (Graphical User Interface (GUI), Icon, Typeface/Type Font Designs: Draft Questionnaire).

189. The Chair concluded that the Secretariat was requested to:

- circulate the questionnaire as contained in document SCT/40/2 Rev. to SCT members and Intergovernmental Intellectual Property Organizations with observer status, for returns by January 31, 2019; and
- compile all returns into a document for consideration by the forty-first session of the SCT, it being understood that, due to the limited time for the preparation of this document, the SCT agreed that this document would be made available not later than March 8, 2019.

#### *Update by Member States on the Digital Access Service (DAS) for Priority Documents*

190. The SCT noted the progress in the implementation of the DAS for industrial designs by Members, as well as by the Hague International Design Registry.

191. The Chair concluded that the SCT would revert for an update to this item at its next session.

*Proposal by the Delegation of Spain*

192. The SCT considered document SCT/40/8.

193. The Chair concluded that the Secretariat would prepare a draft questionnaire concerning the proposal contained in document SCT/40/8 for consideration by the Committee at its next session.

**AGENDA ITEM 6: TRADEMARKS**

*International Non-Proprietary Names for Pharmaceutical Substances (INNs)*

194. The Secretariat informed the SCT on recent developments concerning the exchange of INN data between the World Health Organization (WHO) and WIPO as well as the conclusion of a Memorandum of Understanding (MoU) to that effect between both Organizations, and made a presentation demonstrating the inclusion of INN data in the WIPO Global Brands Database.

195. The Chair concluded that the SCT had taken note of this activity and that the Secretariat was requested to offer an update at the next session of the SCT.

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

196. The SCT considered documents SCT/32/2, SCT/39/8 Rev.2, SCT/39/9 and SCT/40/3.

197. The Chair concluded that:

- the SCT had taken note of document SCT/40/3;
- discussions on documents SCT/32/2 and SCT/39/8 Rev.2 would continue at the forty-first session of the SCT; and
- the Delegation of Peru would present a revised version of document SCT/39/9 for consideration at a future session.

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

198. The SCT considered document SCT/40/4 and requested the Secretariat to keep Member States informed of future developments in the DNS.

**AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS**

199. The SCT considered documents SCT/40/5 Prov. 2 and SCT/40/6 Prov. 2.

200. The Chair requested the Secretariat to:

- invite members and Intergovernmental Intellectual Property Organizations with observer status to submit additional or revised replies to Questionnaires I and II until January 31, 2019;
- finalize documents SCT/40/5 Prov. 2 and SCT/40/6 Prov. 2., for consideration at the 41<sup>st</sup> session of the SCT; and

- present the information contained in both documents in a database.

201. The Chair also concluded that half-day information sessions on geographical indications would be organized within the framework of the SCT, the topics of which would be discussed at the forty-first session of the SCT. To that effect, Members and Intergovernmental Intellectual Property Organizations were asked to propose possible topics for such information meetings ahead of the forty-first session of the SCT.

#### **OTHER MATTERS**

202. The Chair stated that the next session of the SCT would comprise four days (April 8 to 11, 2019).

#### **AGENDA ITEM 8: SUMMARY BY THE CHAIR**

203. The SCT approved the Summary by the Chair as contained in the present document.

#### **AGENDA ITEM 9: CLOSING OF THE SESSION**

204. The Chair closed the session on November 16, 2018.

[End of Annex II and of document]