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**POSSIBLE AREAS OF CONVERGENCE IN INDUSTRIAL DESIGN LAW
AND PRACTICE**

Document prepared by the Secretariat

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I. INTRODUCTION

1. At the twenty-second session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), held in Geneva from November 23 to 26, 2009, the SCT requested the Secretariat to provide a revised working document on possible areas for convergence on industrial design law and practice in SCT Members, to be considered by the SCT at its twenty-third session, highlighting the potential benefits that users and industrial design administrations could derive from convergence among Member States in industrial design law and practice. This document should take into account the proposals made at the twenty-second session and include comments made by delegations and observer representatives during that session. It should set out already identified possible areas of convergence, as well as indicate tendencies in the law and practice of SCT Members and areas where no concrete convergence could be established at this time (document SCT/22/8, paragraph 7).

2. Pursuant to that request, the Secretariat has prepared the present document, which is divided into four chapters. The first one highlights the potential benefits that users and industrial design administrations could derive from convergence among Member States in industrial design law and practice. The second sets out possible areas of convergence which have been already identified by the SCT over three sessions in the past. The third, entitled “Common Trends”, indicates areas in which there appear to be common tendencies in the law and practice of SCT Members. Finally, the fourth chapter, entitled “No Common Trend at Present”, relates to an area where no concrete convergence or common trend could be identified at this time.

3. It may be useful, at this stage, to recall the genesis of the work on industrial designs which was undertaken by the SCT at its sixteenth session, held in Geneva in 2006.

4. Work on industrial designs in the SCT began further to a request of the SCT at its fifteenth session, held in Geneva from November 28 to December 2, 2005, in which a number of delegations expressed an interest in commencing work on the harmonization and simplification of design registration procedures. Other delegations, while agreeing on the desirability of harmonization and simplification in design registration procedures, were of the view that any such initiative was subject to preparatory work. Accordingly, the International Bureau submitted to the SCT a preliminary information document on formalities concerning the procedures for design registration (document SCT/16/6), at its sixteenth session in 2006, as well as two questionnaires on industrial design law and practice, which were circulated among the members in 2007.

5. The replies to the questionnaires were compiled in document WIPO/STrad/INF/2 Rev.1. An analysis of the replies to the questionnaires was provided in document SCT/19/6, which was presented to the SCT at its twentieth session, held in Geneva in December 2008. This was followed by a document describing existing practices in SCT Members, as well as identifying possible areas of convergence on industrial design law and practice in such members (document SCT/21/4), which was presented to the SCT at its twenty-first session in June 2009. A revised document on possible areas of convergence (document SCT/22/6) was presented to the SCT at its twenty-second session, in November 2009.

6. The present document is not intended to present again a description and analysis of the existing approaches in the law and practice of SCT Members. Rather, its aim is to provide a synthesis of the results of the discussions to date, following from the preparatory work and meetings which have taken place, so as to enable the SCT to determine how it may wish to pursue its work on convergence in industrial design law and practice.

II. POTENTIAL BENEFITS DERIVING FROM CONVERGENCE AMONG MEMBER STATES IN INDUSTRIAL DESIGN LAW AND PRACTICE

(a) For Industrial Design Owners

7. The formalities and procedures relating to the protection of industrial designs are often complex, and frequently differ from jurisdiction to jurisdiction. Such complexity and divergence create difficulties for owners of industrial designs, particularly for those who wish to file in different jurisdictions.

8. A major hurdle for applicants concerns the need to prepare several different sets of reproductions in order to comply with divergent requirements concerning, for example, the number and form of the reproductions, or the views of the industrial design.

9. In certain jurisdictions, the procedures may be further complicated by the need to comply with certain formality requirements, such as the presentation of a transfer deed, or the certification or legalization of the signature on a communication.

10. In other cases, the divergence in practice and legislation may result in the impossibility for a design owner to obtain protection abroad, for instance where the owner has disclosed the design in its own territory, relying on the availability of a grace period for filing the application after the disclosure of the design.

11. The diversity of formalities and procedures has negative implications for owners of industrial designs, not only in terms of complexity and delays, but also in terms of costs. For instance, adapting the set of required reproductions to each jurisdiction in which protection is sought results in more time needed and in higher costs, not only to prepare such reproductions before filing, but also to correct the irregularities which are inevitably raised by the different offices.

12. The diversity of formalities and procedures may even result in a loss of rights, for instance when an irregularity resulting from non-compliance with a formal requirement fails to be corrected in time. Ultimately, the wide variety of procedures, as well as their complexity, may deter design owners from filing, even more so from filing abroad.

13. Convergence in a number of areas of industrial design procedures would be beneficial for industrial design owners in many ways. For example, as far as formal requirements are concerned, convergence would enable applicants to file a single set of reproductions in several jurisdictions. That would not only simplify the filing process and have an impact on costs, but would contribute to enhanced legal certainty and security, as the unintentional loss of substantive rights as a result of failure to comply with formal requirements could be avoided.

14. Finally, streamlined and convergent design registration procedures would encourage design owners to file domestically and abroad, as such owners would be able to act within a simplified and familiar framework in several countries.

(b) For Industrial Property Offices

15. Convergence in the procedures and formalities would also be advantageous for industrial property offices. In terms of the rationalization of work, for instance, the need to raise irregularities would be reduced, as applications complying with formal requirements in one territory would more likely be also regular in other territories.

16. Simplified procedures concerning signatures or the manner in which certain requirements may be satisfied, for example, would contribute to a reduction of the amount of paper received by offices, as well as to streamlining the examination process.

17. Convergence in the representation of industrial designs could lead to more homogeneous data collections, making it easier to search and retrieve industrial designs which may anticipate a design for which protection is sought.

18. Finally, as indicated above, simpler and less diverse procedures and formality requirements could encourage increscent filing of applications (from domestic and foreign applicants) which would have a positive impact on offices in terms of income.

III. POSSIBLE AREAS OF CONVERGENCE

19. This chapter sets out possible areas of convergence which have been already identified by the SCT, concerning the form and number of copies of reproductions, the views, other contents of the application generally required, the fulfillment of certain formalities where there is a requirement to file the application in the name of the creator, the division of applications, and communications. The text of each possible area of convergence is reproduced in italics, and takes into account proposals made by delegations at the twenty-second session of the SCT. It is followed by explanatory notes.

(a) Form of Reproduction

With regard to the form of reproduction of industrial designs, the SCT considers that offices should be required to accept graphic or photographic reproductions, and that the choice of the form of the reproduction should be left to the applicant. As the use of color as a distinctive feature of the design becomes more and more frequent, applicants should be allowed to represent industrial designs by way of color graphic or photographic reproductions. Where applicants present graphic reproductions of industrial designs, the use of dotted or stippled lines should be permitted to indicate matter for which protection is not claimed. Moreover, where the applicant chooses to submit drawings, the use of shading should be permitted to show more clearly the contours or volume of a three-dimensional design.

Notes

20. This possible area of convergence offers a solution to a well-known difficulty for applicants who file in several countries: the need to prepare several sets of reproductions to comply with different formal requirements. As the accepted form of reproduction, graphic or photographic, may vary from one jurisdiction to another, an applicant who files color *photographic* reproductions in one jurisdiction, for instance, may be required to file *graphic* reproductions in other jurisdictions, in color or in black and white, depending on what is admitted or required in each.

21. Moreover, an applicant who files a drawing in one jurisdiction, using dotted or stippled lines to indicate matter for which protection is not claimed, may have to file the same drawing, but without such lines, in those jurisdictions which do not accept the use of dotted or stippled lines. In yet other jurisdictions, the same applicant may be required to use shading on the drawing, instead of dotted or stippled lines, for the purpose of showing matter for which protection is not sought.

22. The solution outlined in this possible area of convergence would result in greater simplification for applicants, who would not only have the choice as to the form of reproduction to use, but, most importantly, would be guaranteed the acceptability of their choice in other jurisdictions. Thus, applicants would have the ability to use a single set of reproductions for filing in several countries.

(b) Number of Copies of Reproduction

With regard to the number of copies of each reproduction, the SCT considers that an office should not require more than three copies of each reproduction of the industrial design where the application is filed on paper, and not more than one copy where the application is filed electronically. In any case, one copy of a sufficiently clear reproduction should be enough for the purpose of granting a filing date.

Notes

23. This possible area of convergence lays down the principle that, where an application is filed on paper, not more than three copies of each reproduction should be required. This would result in an advantage for applicants in terms of simplification at the time of preparing an application.

24. Arguably, applications that are filed electronically do not require more than one copy of the reproduction, or reproductions, as the case may be. However, the number of copies of each reproduction is of particular importance with regard to applications filed on paper, when applicants may be required to submit a high number of copies of each reproduction.

25. Discussions in the SCT have revealed that, while receiving more than one copy could sometimes facilitate the processes for offices, there was rarely any practical need for offices to receive nowadays more than three copies. In this regard, several delegations which presently require more than three copies have indicated that they would not rule out bringing the number of copies down to three or less.

(c) Views

With regard to the views of the industrial design, the SCT considers that the applicant should be free to decide the number and types of views which are needed to fully disclose the industrial design, without prejudice to the fact that offices should be free to require additional views, including a specific type of view, at a later stage of the examination process, if they deem that such additional views are necessary to adequately disclose the industrial design. Such additional views should not, however, disclose new matter. Moreover, offices should be free to impose a maximum number of views, which should be sufficiently high so as to enable full disclosure of all types of industrial designs.

Notes

26. It is generally agreed that the reproductions of the industrial design should completely disclose the appearance of the claimed design, and that several views of the design may be needed to that end, particularly where the industrial design is three-dimensional.

27. The difficulty for applicants in this regard rests on the fact that the conditions regarding the views may vary from one jurisdiction to another. It follows that applicants may be required to prepare separate sets of reproductions, adapting the views of the industrial design to the different requirements.

28. Following this possible area of convergence, applicants would be free to determine, on a case by case basis, the number and types of views which are needed to fully disclose the industrial design. They would no longer need to vary the number of views in the application, depending on the jurisdictions in which they file.

29. At the same time, offices would have the advantage of not having to automatically examine certain views which, in some cases, could be considered to be superfluous. Instead, it would be for offices to call for further views, only where they would consider that such views are needed to adequately disclose the industrial design. It would also be for offices to discard any view disclosing new matter, submitted subsequent to the application.

30. With respect to the prescription of a maximum number of views in certain jurisdictions, the problem for applicants is that, in certain cases, the number is not sufficiently high so as to enable full disclosure of complex industrial designs. This possible area of convergence sets forth the principle that, where a maximum number of views is prescribed, such number should be sufficiently high to permit full disclosure of all types of industrial designs.

(d) Other Contents of the Application Generally Required

With regard to other contents of the application, the SCT considers that the following elements should be mandatory in any application for an industrial design: (i) a request for the registration or grant of protection of the industrial design in question, (ii) the name of the applicant, (iii) the address of the applicant, and (iv) an indication of the product or products which incorporate the industrial design or in relation to which the industrial design is to be used. Moreover, in certain jurisdictions, a claim or a statement of novelty, a description, and/or the indication of the identity of the creator of the design, may be mandatory elements of the application.

Notes

31. In addition to the reproductions, an application for the registration or grant of protection of industrial designs should contain a number of elements, which are identified in this possible area of convergence. Whether or not those elements would constitute a filing-date requirement is dealt with in the chapter on “Filing-date requirements”.

32. The text of this possible area of convergence takes account of the fact that, in some jurisdictions, certain elements, namely a claim or a statement of novelty, a description, or the indication of the identity of the creator, may be part of the mandatory contents of an application.

- (e) Formalities Where There is a Requirement to File the Application in the Name of the Creator

With regard to the requirement in certain jurisdictions that the application be filed in the name of the creator, the SCT considers that such requirement should be satisfied if:

- (i) *the name of the creator is indicated on the application form, and, where applicable,*
- (ii) *a statement of assignment, pre-printed on the application form, is made by the applicant, in the signing of the form.*

Notes

33. In some jurisdictions, there is a requirement that the application be filed in the name of the creator. That means that, if the applicant is not the creator, a statement of assignment or other evidence of the transfer of the design to the applicant must be provided.

34. This possible area of convergence aims at avoiding the need to supplement the application with transfer documents, where the applicant is not the creator. Instead, it would be sufficient for the applicant to declare, in the application, that the design has been assigned by the creator, as identified in the application form.

35. From the point of view of offices, the solution proposed in this possible area of convergence would have the positive effect of a reduction of the number of documents accompanying the application.

- (f) Division of Applications

With regard to applications in which protection is sought for several industrial designs, the SCT considers that, where all the industrial designs in an application cannot be filed in a single application, pursuant to the requirements under the applicable legislation, division of the application, without prejudice to the granting of the original filing date to the applications resulting from the division, should be made available.

Notes

36. In some jurisdictions, an application must be filed for each industrial design. In other jurisdictions, the possibility is offered of requesting protection for several industrial designs in one application, commonly referred to as “multiple application,” subject to the designs complying with certain requirements. Examples of such requirements are that the industrial designs apply to, or are constituted by products which belong to the same class of the Locarno International Classification, or that they conform to a condition of unity of design or unity of invention.

37. The aim of this possible area of convergence is to enable an applicant who seeks protection for several industrial designs in a single application, to request the division of the application, and maintain the date of the original filing in the applications resulting from the division.

38. Division under this possible area of convergence would not be limited to the case of “multiple applications” in which some of the designs do not conform to, for example, the “same-Locarno-class” or the unity of design requirement. Division would be also applicable to the case in which an application is filed for more than one industrial design, where the applicable legislation requires the filing of one application per industrial design.

(g) Communications

With regard to communications, the SCT considers that the means of transmittal of communications should be determined by offices. With regard to communications on paper, offices should have the possibility of requiring that such communications be signed. Offices may permit, instead of a handwritten signature, the use of other forms of signature. However, no attestation, notarization, authentication, legalization or other certification of any signature should be required by offices, except in individual specified cases.

Notes

39. Following this possible area of convergence, offices would be able to choose the means of transmittal of communications with them.

40. In addition, the aim of this possible area of converge is to simplify the procedures regarding communications, for the benefit of both users and offices.

41. In this regard the possible area of convergence establishes that a signature should not be subject to attestation, notarization, authentication, legalization or other certification, except in individual specified cases, for example in case of surrender of the registration.

IV. COMMON TRENDS

42. This chapter sets out areas for which convergence has not been established so far, but in respect of which there is an identifiable common trend in the law and practice of SCT Members. The purpose is to describe the prevailing approach followed in a given area by SCT Members, which could be usefully viewed as a basis for future work towards a possible common ground.

43. The areas concerned in this chapter are the following: filing-date requirements, deferment of publication and secret design, grace period for filing in the event of disclosure, structure of period of protection, and relief measures.

44. The common trend in the aforementioned areas has been identified taking into account the replies to the Questionnaires on Industrial Design Law and Practice, as well as comments made by delegations at the twenty-first and twenty-second sessions of the SCT.

(a) Filing-Date Requirements

With regard to the requirements for the granting of a filing date, the identifiable common trend in the law and practice of SCT Members is that the following elements are necessary and sufficient for the purposes of according a filing date to an industrial design application: an express or implicit indication to the effect that the elements are intended to be an application; indications allowing the identity of the applicant to be established; a sufficiently clear reproduction of the industrial design; indications allowing the applicant or its representative, if any, to be contacted.

Notes

45. This text contains a more reduced list of filing-date requirements than the one in document SCT/22/6¹. The reason is that, while the text in the aforementioned document attempted to reflect a possible area of convergence with regard to filing-date requirements, this text limits itself to describing an identifiable common trend.

46. The discussions at the twenty-second session revealed that, even with respect to the all-inclusive text put forward to the twenty-second session of the SCT, there are different positions regarding filing-date requirements.

47. The discussions also revealed, however, that there is a common trend in the determination of elements required for according a filing date. The more restricted list of elements contained in the text reproduced above reflects that common trend.

48. It is understood that, in certain jurisdictions, other elements, such as a description, a claim or the payment of a fee, may be required for the purposes of according a filing date. It is also understood that, in certain jurisdictions, an application has to be filed in a language accepted by the office concerned, in order to be accorded a filing date. However, those elements and requirement are not compulsory in a predominant number of members, which is the reason why they have not been included in the text above.

49. It is also to be noted that, following the suggestion of one delegation, the wording of the first element listed in the text above has been modified with respect to the text in document SCT/22/6, to read as follows: “*an express or implicit indication to the effect that the elements are intended to be an application.*”

50. This new wording is less stringent, and is consistent with the wording used to indicate the second and fourth filing-date requirements in the text, namely “indications allowing the identity of the applicant to be established” and “indications allowing the applicant, or its representative, if any, to be contacted.” It also parallels the wording of the first element required by Article 5 of the Patent Law Treaty for the purposes of the filing date.

(b) Deferment of Publication and Secret Design

With regard to deferment of publication and secret design, the identifiable common trend in the law and practice of SCT Members is that, in those jurisdictions in which registration or grant of protection of the industrial design occurs without prior examination as to novelty and/or originality, as the case may be, applicants are given the possibility of maintaining an industrial design unpublished for a period of at least six months from the filing date.

51. Discussions at the twenty-first and twenty-second sessions of the SCT have revealed that there is no area of convergence, at present, with respect to deferment of publication. The possibility of requesting the postponement of publication –through a deferment-of-publication system or through a secret-design system– is offered in nearly one half of the SCT Members which replied to the Questionnaires on Industrial Design Law and Practice, while it is not in the other half. Moreover, where the possibility of postponing publication is offered, the maximum deferment periods often vary from one jurisdiction to another, ranging from six to 30 months from the filing date or the priority date.

52. Discussions have also highlighted that the ability for the applicant to request the postponement of publication is of particular interest in those jurisdictions in which protection of the design is granted without a novelty and/or originality examination. In those jurisdictions, registration or grant of protection, and by the same token, publication, are likely to occur within a short period of time. By deferring publication, the applicant is able to maintain the design secret until the first release of the product, while securing legal protection, albeit limited during the deferment period, as from an earlier date.

53. In contrast, the interest for an applicant to request the postponement of publication is less evident in those countries in which registration or grant of protection takes place after novelty and/or originality examination. In those countries, the pendency period for an application is likely to be longer, and publication is therefore generally deferred *de facto*.

54. Taking the foregoing considerations into account, the replies to the Questionnaires on Industrial Design Law and Practice received from SCT Members in which registration or grant of protection of the industrial design occurs without prior substantive examination, have been carefully analyzed. The analysis has shown that there is an identifiable common trend in the law of those SCT Members. In most of them, applicants are given the possibility of maintaining an industrial design unpublished for a period of at least six months from the filing date.

(c) Grace Period for Filing in the Event of Disclosure

With regard to a grace period for filing in the event of disclosure of an industrial design, the identifiable common trend in the law and practice of SCT Members is that at least any disclosure made by the creator or her/his successor in title within a given period of time prior to the date of filing or the date of priority is without prejudice to the novelty and/or originality, as the case may be, of the industrial design.

Notes

55. While the positions regarding the duration of a grace period (six or 12 months) remain divergent, there is a predominant tendency in the law of SCT Members to admit that a disclosure made by the creator or her/his successor in title within a given period prior to the filing date or priority date of the industrial design will not constitute prior art against the industrial design for which protection is sought. It is understood that some jurisdictions do not provide for a grace period to file further to a disclosure.

56. The text reproduced above describes the identifiable common trend in the law and practice of SCT Members, while not prejudging the availability of a grace period in all jurisdictions.

57. Following the suggestion of one delegation, the words “at least” have been inserted before “any disclosure made by the creator or her/his successor in title.” That makes it clear that the common trend refers to a disclosure made “by the creator or her/his successor in title”, while not excluding that, in some countries, a disclosure made by another party, authorized or unauthorized, may also be covered by a grace period for filing.

58. The text also states that any applicable disclosure should be “without prejudice to the novelty and/or originality of the industrial design, as the case may be.” This language aims at covering the different requirements upon which the validity of a design may be based in the different jurisdictions.

(d) Structure of Period of Protection

With regard to the structure of the period of protection, the identifiable common trend in the law and practice of SCT Members is that such period is divided into an initial term of five years, renewable for additional five-year terms, up to the expiry of the maximum period which is provided for in the applicable legislation.

Note

59. This area of identifiable common trend does not concern the duration of the protection of an industrial design, but the *structure* of the period of protection (a single, non-renewable term, or separate, renewable terms).

60. The discussions during the twenty-first session of the SCT showed that there is not, at this stage, an identifiable area of convergence with regard to the structure of the period of protection of industrial designs. Some jurisdictions provide protection in one single,

non-renewable term, while in other jurisdictions, the period of protection is structured in separate terms. In other jurisdictions, the protection of an industrial design is subject to maintenance fees that have to be paid regularly.

61. The discussions also revealed, however, that there is an identifiable common trend with respect to the structure of the period of protection, which is described in the text above.

(e) Relief Measures

With regard to relief measures, the identifiable common trend in the law and practice of SCT Members is that offices provide for at least one of the three following relief measures in case of failure of the applicant or holder to comply with a time limit for action in a procedure before the office, after the expiry of such time limit: extension of the time limit, continued processing or reinstatement of rights.

62. The discussions have revealed that, while there is no identifiable area of convergence, at present, with regard to relief measures, there appears to be a common trend in the law and practice of SCT Members, as described in the text above.

63. It is understood that some SCT Members do not provide for any relief measure of the kind described above. It is also understood that, in some SCT Members, relief measures are available only for failure to comply with an expired time limit *fixed by the office*.

64. Finally, it is understood that, from the point of view of some SCT Members and users, the approach followed by the PLT should be favored when considering relief measures in the area of industrial designs².

V. NO COMMON TREND AT PRESENT

Specimens

65. The discussions during the previous sessions have revealed that there is a single issue in respect of which the approaches remain so divergent that it has not been viable to identify, at this time, concrete convergence or a common trend.

66. It may be useful to recall the different approaches to the question of specimens. Firstly, there are a number of legislations that do not permit the submission of specimens. In some of the jurisdictions in which the submission of specimens is not permitted, specimens may nonetheless be requested by offices at the time of examination.

67. Secondly, there are offices that accept specimens in the case of deferment of publication only, together with a requirement for the applicant to submit a reproduction at the time of publication.

68. Thirdly, there are offices that admit specimens for two-dimensional designs only, irrespective of any possible deferment of publication.

69. Finally, there are offices that admit specimens for both two and three-dimensional designs, usually subject to certain limits on size and weight.

70. The fact that no common trend has been identified to date with regard to specimens is without prejudice to possible future work by the SCT on that subject, if the Committee considers that convergence on this subject would be desirable for the benefit of users and administrations.

VI. CONCLUSION

71. This document begins by highlighting the potential benefits that users and industrial design administrations could derive from convergence among SCT Members in industrial design law and practice. It goes on to provide a snapshot of the situation regarding the level of convergence in SCT Members with respect to a number of issues in industrial design law and practice.

72. As far as this latter aspect is concerned, the document sets out, in the first place, possible areas of convergence which have been already identified by the SCT, concerning the form and number of copies of reproductions, the views, other contents of the application generally required, the fulfillment of certain formalities where there is a requirement to file the application in the name of the creator, the division of applications, and communications. In the second place, the document identifies the following areas in which there appear to be common tendencies in the law and practice of SCT Members: filing-date requirements, deferment of publication and secret design, grace period for filing in the event of disclosure, structure of period of protection, and relief measures. Finally, the document indicates a single area in respect of which no concrete convergence or common trend has been identified to date, namely specimens.

73. By highlighting the potential benefits that could be derived from convergence among SCT Members, the document recalls one of the leading principles of the work of the Committee, namely the interest of users and administrations. The snapshot of the situation regarding the level of convergence in SCT Members intends to provide a synthesis of the work and discussions that have taken place to date.

74. The SCT is invited to consider the present document, and to:

(i) comment upon the possible areas of convergence, the areas of common trend, and the area of no common trend at present;

(ii) amend the areas of common trend, add further possible areas of convergence, or omit any of them;

(iii) indicate how it wishes to pursue its work on convergence in industrial design law and practice.

[End of document]

¹ The text for a possible area of convergence on filing-date requirements that was put forward to the twenty-second session of the SCT reads as follows:

“With regard to the requirements for the granting of a filing date, consideration might be given to the possibility of converging towards the position that no indication or element other than those listed hereafter should be required for the purposes of according a filing date to an industrial design application: a request that the registration of, or grant of protection for, an industrial design is sought; indications allowing the identity of the applicant to be established; a sufficiently clear reproduction of the industrial design; indications allowing the applicant or its representative, if any, to be contacted; an indication of the product(s) which constitute the industrial design or in relation to which the industrial design is to be used. In addition, in certain jurisdictions, a description, a claim and the payment of a fee may be requested for the purposes of according a filing date.”

² According to Article 12(1) of the PLT, a Contracting Party shall provide that, where an applicant or owner has failed to comply with a time limit for an action in a procedure before the Office, and that failure has the direct consequence of causing a loss of rights with respect to an application or patent, the Office shall reinstate the rights of the applicant or owner with respect to the application or patent concerned, subject to certain conditions.