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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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**STANDING COMMITTEE ON THE LAW OF TRADEMARKS,
INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS**

Thirteenth Session
Geneva, October 25 to 29, 2004

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” or “the SCT”) held its thirteenth session, in Geneva, from October 25 to 29, 2004.
2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Australia, Austria, Bangladesh, Belgium, Benin, Botswana, Brazil, Bulgaria, Burundi, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Democratic People’s Republic of Korea, Democratic Republic of Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Latvia, Lebanon, Libyan Arab Jamahiriya, Lithuania, Malta, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Serbia and Montenegro, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela (84). The European Communities were also represented in their capacity of member of the SCT.
3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), Benelux Trademark Office (BBM), World Trade Organization (WTO) (3).
4. Representatives of the following international non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), Center for International Industrial Property Studies (CEIPI), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), Exchange and Cooperation Centre for Latin America (ECCLA), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA) (11).
5. The list of participants is contained in Annex II of this Report.
6. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all observations made.

Agenda Item 1: Opening of the Session

7. Mr. Ernesto Rubio, Assistant Director General, opened the session and welcomed the participants on behalf of the Director General of WIPO.
8. Mr. Marcus Höpferger (WIPO) acted as Secretary to the Standing Committee.

Agenda Item 2: Adoption of the Agenda

9. The Draft Agenda (document SCT/13/1 Prov.) was adopted as it was proposed.

Agenda Item 3: Adoption of the Draft Report of the Twelfth Session

10. The Secretariat informed the Standing Committee that, following the preliminary publication of document SCT/12/7 Prov. on the Electronic Forum of the SCT, comments were received from the following delegations and observers: Japan (in respect of paragraphs 72, 73, 111 and 129), Switzerland (concerning the inclusion of a new paragraph 17) and CEIPI (in respect of paragraphs 25, 59, 66, 98, 116, 121 and 145). The abovementioned paragraphs had consequently been amended in document SCT/12/7 Prov.2.

11. The Delegation of Egypt requested modifications to paragraphs 137 and 194, the Delegation of New Zealand requested a modification to paragraph 93 and the Delegation of the Russian Federation requested a modification to paragraph 138.

12. The SCT adopted the Draft Report of the twelfth session (document SCT/12/7 Prov.2) as modified.

Agenda Item 4: Revision of the Trademark Law Treaty

13. Discussions were based on the following documents prepared by the Secretariat: “Draft Revised Trademark Law Treaty (TLT)” (document SCT/13/2), “Draft Revised Regulations under the Draft Revised Trademark Law Treaty (TLT)” (document SCT/13/3), “Notes” (document SCT/13/4) and “Observations by the Delegation of Switzerland Concerning Document SCT/12/2 (Draft Revised Trademark Law Treaty)” (document SCT/13/6).

Article 1
(Abbreviated Expressions)

14. The Secretariat explained that a horizontal provision which makes it clear that references to an Article should be construed as including references to the corresponding Rules had been introduced in Article 1(xxii) in order to facilitate the reading of the Treaty. The Secretariat suggested that references to paragraphs of an Article, like in Article 3(4), should also be covered by this amendment. It invited the Committee to consider whether the wording of Article 1(xxii) should be amended so as to read “references to an Article or to any paragraph of an Article shall be construed as including references to the corresponding rule(s) under the Regulations”.

15. The Delegation of Australia wondered whether, in line with the language proposed by the Secretariat, sub-paragraphs were to be mentioned as well.

16. The Chair noted that the Secretariat was entrusted to further clarify this issue.

Article 2
(Marks to Which the Treaty Applies)

Paragraph (1) [Nature of Marks]

17. The Delegation of Switzerland introduced document SCT/13/6 and explained that the communication contained in that document was a proposal for applying the TLT to hologram marks. The Delegation referred to the new draft of Article 2(1) which provided that the TLT should apply to visible signs except for hologram marks. It expressed the view that this provision covered certain new types of marks such as color, position and movement marks. In the opinion of the Delegation, the scope of the TLT should be as broad as possible in order to keep pace with technical developments and ensure its user-friendliness. Thus, the Delegation wondered about the reasons for treating hologram marks differently from other types of marks such as, for example, color marks. It emphasized that the inclusion of hologram marks in the Treaty would not impose an obligation on Contracting Parties to protect and register that kind of mark. If hologram marks were protected pursuant to domestic legislation in a Contracting Party, however, the application of the TLT to hologram marks would contribute to more clarity and transparency as regards the applicable procedure. The Delegation suggested that the inclusion of hologram marks in the TLT should be accompanied by the incorporation of a general provision in Article 3(1) which would allow Contracting Parties to require that the holder identify new types of marks at the time of application. It proposed to model such a provision on Article 3(1)(a)(xi) governing three-dimensional marks.

18. The Chair inquired whether hologram marks would raise difficulties in the process of publication because the different perspectives shown by such a mark could not be reproduced, for instance, by a photocopying machine.

19. The Delegations of Australia, Denmark, France, Germany, Japan, Latvia, the Netherlands, Sweden and the United Kingdom expressed support for the proposal made by the Delegation of Switzerland.

20. The Delegation of the United Kingdom stated that, in principle, hologram and movement marks were accepted for registration on the condition that the mark was capable of distinguishing products and services and would be represented graphically. The Delegation proposed to amend the wording of Article 3(1)(a)(xii) to “one or more representations of the mark”.

21. The Delegation of France stressed the potential need to adapt Rule 3 to hologram marks. The Delegation explained that the Office of its country accepted the registration of hologram marks since 12 years. If this type of mark was accepted for registration by an Office, it should not be dealt with differently from other marks.

22. The Delegation of Latvia, having expressed its support for the proposal contained in document SCT/13/6, said that if the proposal was accepted, it would have to result in a change of the provision dealing with reproduction of the mark.

23. The Representative of the European Communities indicated that the proposal was acceptable in principle. However, draft provisions reflecting all necessary changes to the present text should be prepared by the Secretariat before agreeing on a final text.
24. The Delegation of Croatia asked how to represent the changing forms of a hologram mark in the context of a registration. The Delegation also wondered whether the colors contained in a hologram mark could be protected.
25. The Delegation of Romania expressed support for a solution which would give the TLT a broad scope. However, the Delegation recalled that there were jurisdictions which did not provide for the registration of hologram or movement marks. It held the view that these types of marks could cause problems as regards their graphic representation. Therefore, regulations should be implemented specifying the conditions for the registration of hologram marks. In Article 3(1), a rule governing hologram marks should be established in line with subparagraph (a)(xi) of that Article.
26. The Delegation of Japan proposed the following wording in Article 2(1)(a) in order to clarify that a Contracting Party was not obliged to provide for the registration of certain marks: “This Treaty shall apply to marks consisting of visible signs. However, only those Contracting Parties which permit their registration shall be obliged to apply this Treaty to such marks.”
27. The Chair pointed out that the clarification sought by the Delegation of Japan was stipulated in Note 2.01. He explained that the TLT did not impose an obligation on Contracting Parties to accept certain types of marks, such as hologram marks. If certain marks to which the TLT was applicable could be registered in a Contracting Party to the TLT, however, the registration procedure should follow the rules set out in the TLT.
28. The Delegation of Australia said that it did not support the proposal by the Delegation of Japan. In the view of the Delegation, the clarification that there was no obligation to protect certain types of marks would not fit into Article 2.
29. The Delegation of Switzerland explained that a hologram mark could be represented by reproductions of the two images forming the basis of the hologram. In respect of the colors contained in a hologram mark, the Delegation indicated that the situation was comparable to figurative marks.
30. The Delegation of Australia stated that the protection of the two images serving as a basis for the hologram and an explanation of the movement should be sufficient for a registration to be effective.
31. The Delegation of Croatia raised the question whether, on its merits, a hologram mark was a two-dimensional mark represented by using hologram technique. It pointed out that, from the perspective of clients, the use of hologram technique could serve as a tool against counterfeiting of two-dimensional marks. The Delegation wondered whether, in future, it might become normal to protect two-dimensional marks in the shape of hologram marks.
32. The Chair pointed out that traditional two-dimensional marks differed from hologram marks in that a hologram mark required two images. He held the view that hologram marks could become more popular in view of the fight against counterfeiting. Furthermore, he

explained that the situation concerning the registration of hologram marks appeared to be comparable to marks composed of different elements, for instance words and images. He recalled the possibility to apply different protection regimes to the different elements constituting a mark.

33. The Delegation of Mexico expressed support for the proposal of the Delegation of Switzerland opening the possibility to introduce a protection regime for hologram marks which, currently, did not exist in Mexico.

34. The Delegation of Egypt pointed out that the position of countries which did not register hologram marks had to be reserved not only in the Notes but in the Regulations. The Delegation stated that draft provisions should first be presented in order to be able to fully understand the necessary changes.

35. The Representative of OAPI expressed his concern as to the proposal from the Delegation of Switzerland. He pointed out that there were many offices not having the technical means to process hologram marks, and insisted on a clarification in the TLT that Contracting Parties were not obliged to introduce protection for hologram marks.

36. The Representative of CEIPI, speaking also on behalf of FICPI, said that the concern of delegations that did not provide for the registration of hologram marks had to be taken seriously. This could be achieved by replacing “three-dimensional” with “hologram” in the existing text of Article 2(1)(a) and deleting the reference to hologram marks in Article 2(1)(b).

37. The Representative of the ICC expressed support for the proposal made by the Delegation of Switzerland.

38. The Chair concluded that there was consensus on the proposal contained in document SCT/13/6, and that the Secretariat was entrusted to prepare new wording for that provision, making it clear that the Draft Revised TLT did not oblige Contracting Parties to accept for registration marks not registrable under the applicable law. The Chair also noted that, as suggested by one delegation, there was a consequential change in Article 3(1)(a)(xii).

Article 3 (Application)

Paragraph (1) [Indications or Elements Contained in or Accompanying an Application; Fee]

item (a)(xii)

39. Following a suggestion by the Delegation of the United Kingdom, it was agreed to replace the word “reproductions” with “representations”, as a consequence of the changes introduced in Article 2.

Article 8
(*Communications*)

40. The Delegation of Canada asked whether Article 8(3)(b) would apply in a situation where the office required affidavits or other evidence to be provided in relation to opposition or other procedures covered by the TLT. According to the Delegation of Canada, it could be reasonably interpreted that the Commissioner of Oaths was perhaps authenticating the signature of the affiant as well as indicating that the contents of the affidavit were true. The Delegation would not support the idea that the presentation of affidavits fell within the scope of the authentication of a signature.

41. The Delegation of Australia said that Article 8(3)(b) and (c) dealt with the situation where there was doubt as to the authenticity of a signature rather than to a substantive content or claim made by the owner of a mark. In Australia, where there were doubts as to the veracity of certain claims, such as the ownership of a mark, the office could request that a statutory declaration be provided before proceeding with the registration. However, this type of situation did not seem to be covered by Article 8(3) and if any doubt subsisted in this respect, it had to be clarified in the Notes.

42. The Representative of the AIPPI was of the view that paragraph (3)(c) applied only to signatures. However, the question of whether or not affidavits were allowed under the TLT had to be dealt with in the context of Article 3 rather than under this provision. The requirements for an application were listed in Article 3, which also provided that no other requirements were permitted. The Representative added that it would be up to national authorities to make a determination of whether affidavits fell under the requirements prescribed by Article 3.

43. The Chair concluded that the Secretariat would review the notes on Article 8(3) to see whether any additional clarification was needed.

44. In reply to a question by the Delegation of Australia as to whether the TLT should determine the form of evidence to be provided, either in the form of affidavits, statutory declarations or other, the Chair clarified that this issue was left to the applicable law of the Contracting Party.

45. The Delegation of Egypt drew the attention of the Standing Committee to comments made by that Delegation during the discussions of this Article in previous sessions and declared that Egypt attached particular importance to the inclusion of an Agreed Statement at the Diplomatic Conference for the Adoption of the TLT similar to the statement adopted by the Diplomatic Conference for the Adoption of the Patent Law Treaty, on the need to provide for technical assistance to developing countries to help them comply with their obligations under Article 8. The Delegation stressed that many countries still did not have the capacities to deal with electronic filing.

46. The Chair confirmed that the statement by the Delegation of Egypt would be duly noted in the report.

47. The Chair concluded that there was consensus on Article 8 as a whole.

Rule 5

(Details Concerning Filing Date)

Paragraph (4) [Electronic Filing]

48. The Chair noted that the previous draft of this paragraph was restricted to telefacsimile, while the new drafting was not specific as to the type of technology used for the transmittal of communications. The Chair further noted that the drafting of this provision could be improved by changing the word “allows” for “permits” as it was stated in other parts of the draft. In addition, a communication filed in electronic form or by electronic means of transmittal should be sent to a specific address, and it would be up to each Contracting Party to determine which address or addresses should be used for the purposes of according a filing date.

49. The Delegation of Latvia said that if the filing of an application in electronic form or by electronic means of transmittal covered applications filed by telefacsimile, problems could arise with regard to the quality of the reproduction of a mark. The Delegation added that perhaps this new wording of paragraph (4) could cause problems for countries that applied the previous norm, whereby an applicant who filed an application by telefacsimile was required to provide the office with the original of the communication so filed within a time limit. Thus only when the office received the reproduction (i.e. a color reproduction) of the mark, it could confirm the application first received by telefacsimile. However, the new wording of the paragraph could be interpreted as allowing the office to raise a certain reservation to fixing the date of receipt of the application if the reproduction of the mark received by telefacsimile was not clear.

50. The Chair noted that this provision did not oblige Contracting Parties to accept telefacsimile transmissions, however if they did so, the provision of this paragraph had to be seen in the context of Article 5(1)(a)(iv) dealing with the requirements to accord a filing date whereby a sufficiently clear reproduction of the mark was required. Therefore, if color was claimed and the telefacsimile provided only a black and white reproduction of the mark, this particular requirement of Article 5 was not met.

51. The Secretariat further noted that the Rule allowing a Contracting Party to require the original of a communication sent by telefacsimile within one month of the first transmission had been kept in the draft text and was found in Rule 6(5)(ii). The Secretariat also noted that there was a difference in Rule 5(4) between the date of receipt and the filing date, strictly speaking. Whether the quality of an application received was sufficient to be accorded a filing date was a matter to be appreciated by the Office of a Contracting Party on a case-by case basis.

52. The Delegation of Australia reiterated the comments made in the framework of the discussion on Article 8, with regard to the date of receipt and the address to which a communication had been sent. The Delegation proposed to include in this Rule or in Article 8, language to the effect that a Contracting Party may nominate the address to which a communication must be sent in order to be considered as received by the Office. Although such a provision seemed obvious at first glance, there seemed to be an issue about sending a communication not only to the right e-mail address but also to the right telefacsimile number.

53. The Delegation of the United States of America supported the views expressed by the Delegation of Australia and suggested that the proposed wording could read “address or addresses”.

54. The Delegation of New Zealand said that in fact the issue of telefacsimile or e-mails sent to the wrong address had been a concern for the office of New Zealand and even though there existed in that country legislation to this effect, the current text of the TLT did not provide for Contracting Parties to be able to require a particular address. The Delegation further noted that in view of Rule 6(8), the prohibition of other requirements might prevent an office from specifying one or more addresses. Therefore, it was necessary to include a positive indication, either in the treaty or the regulations, to the effect that Contracting Parties were allowed to require communications to be sent to a specific address or addresses.

55. The Representative of CEIPI said that, in his understanding, paragraph (4) was also about filing date. The date of receipt of the elements derived from the wording of Article 5, which indicated that when certain elements were received, a filing date had to be accorded. The Representative further noted that the submission of the original of a telefacsimile transmission was related to the acceptance of the application. Therefore, if an original was requested and not furnished, the application could be rejected, but there would still be a filing date.

56. The Representative of FICPI supported the proposals made by the Delegations of Australia and the United States of America and further stressed that electronic means of transmittal may be overloaded and in such a situation, it was necessary to have at least an additional address to which communications may be sent.

57. The Representative of the AIPPI recalled that the original text of the TLT provided that each office could indicate an address to which applications had to be sent and if this address was not used, the application was simply not filed. The practice of certain offices had been to determine several telefacsimile numbers to which applications should be sent and the same could be done with e-mail addresses. However, in the opinion of the Representative, there was perhaps no need to include a provision to this effect either in the treaty or in the regulations.

58. The Chair noted that, with regard to the suggestion made by the Delegations of Australia and the United States of America, the Standing Committee could entrust the Secretariat with the task of finding the appropriate wording, as well as the proper place for the provision in the draft to be submitted for the next meeting of the SCT.

59. The Chair then noted that there was consensus on Rule 5(4).

Rule 6
(Details Concerning Communications)

Paragraphs (1) to (3)

60. The Chair concluded that there was consensus on these provisions.

Paragraph (4) [Signature of Communications Filed by Electronic Means of Transmittal]

61. The Delegation of Canada said that this paragraph seemed to refer to communications on paper only. However, the wording of the provision did not seem to necessarily restrict it to paper. The Delegation suggested that the wording of the provision be changed to read as follows: “A Contracting Party that permits the transmittal of communications on paper by electronic means of transmittal, shall consider any such communication signed if a graphic representation of signature accepted by that Contracting Party under paragraph (3) appears on that communication as received.”

62. The Delegation of Japan supported the proposal made by the Delegation of Canada.

63. The Delegation of Australia said that this provision in fact addressed three different situations: firstly, a communication on paper transmitted by electronic means, secondly, a reproduction of a signature accepted by the Contracting Party, and thirdly a situation where there is a paper communication, transmitted electronically, but not necessarily converted back to paper in an office, so that there was no printout. The Delegation added that the language proposed by the Delegation of Canada seemed to take into account these three kinds of situations.

64. The Representative of CEIPI supported the proposal of the Delegation of Canada and suggested that the words “on paper” be added to the title of paragraph (4), so as to clarify the scope of the provision. The Representative also suggested that the wording at the beginning of the sentence read: “that permits communications on paper to be transmitted by”.

65. The Chair noted that there was consensus on this provision subject to redrafting.

Paragraph (5) [Original of a Communication Filed by Electronic Means of Transmittal]

66. The Chair suggested that the words “on paper” be added in the text of this paragraph after the word “communications”, in a way similar to paragraph (4).

67. The Representative of CEIPI suggested that the two changes he had suggested for paragraph (4) also be made in paragraph (5).

68. The Chair noted that there was consensus on this provision subject to redrafting.

Paragraph (6) [Authentication of Communications in Electronic Form]

69. The Delegation of the Islamic Republic of Iran expressed the view that this Article and the Notes might create a certain problem in the case where an electronic form was sent by mail to another party and the first party wished to have a system of electronic authentication that the second party could not provide.

70. The Delegation of France commended the Secretariat for the effort invested in drafting this provision, which met the concerns expressed by the Delegation of France at the previous session of the SCT. The current drafting allowed France to put in place a semi-open system, similar to the one already implemented for patents. Such a system allowed accredited agents

and legal services working with the office, to make use of an electronic system which involved a certain amount of authentication. The Office had a key to some of that authentication and the agent or the legal service had the other part or key, and only the two together had the whole code, which allowed the transmission of information in a secure manner. The user community was satisfied with this system. The Delegation added that paragraph (6) was a “may” provision, that did not impose on Contracting Parties an obligation to put in place a similar system, while at the same time it allowed future adjustment to rapidly changing technologies.

71. The Delegation of the United States of America expressed concern about the meaning of the term “authentication” and what it would ultimately impose on Contracting Parties. While some of the systems described seemed to be non-burdensome and satisfactory to all parties, it was necessary to exercise caution and to avoid replicating in the electronic world the problems that had been faced in connection with authentication, notarization, attestation of communications on paper. The Delegation added that the United States Patent and Trademark Office had so far received 500,000 electronic applications. The office did not have an authentication requirement but had not experienced any problems in this connection.

72. The Delegation of Australia agreed with the position expressed by the Delegation of the United States of America and added that perhaps at some point in the future, it would be worth reviewing the requirements applied to electronic authentication in order to avoid those requirements which had turned out to be burdensome on owners. The Delegation said that perhaps one additional aspect needed to be addressed, either in the context of this paragraph or more generally, in the context of Article 8. In the paper world, an office could determine an address to which communications had to be sent if they were to be considered as filed with the office. This situation was more complicated in the electronic world, where each staff member of the office had an e-mail address. Therefore, the Delegation suggested that perhaps in the framework of Article 8 and for the purposes of communications, it might be necessary to allow an office to nominate an e-mail address where communications received may be considered as filed with the office.

73. The Delegation of Mexico indicated that in the legal system applied in Mexico, an expression of intent could only be shown by means of a signature, thus the Delegation wondered whether in the case of electronic filing, the office would be allowed to establish a system of prior registration, as it existed in some countries. The Delegation added that the office in Mexico was about to receive electronic applications and had envisaged a system of prior registration. However, the wording of paragraph (6) did not make it clear that such a system would be allowed. In the opinion of the Delegation, it was necessary to allow a Contracting Party to lay down certain formal requirements concerning electronic filing.

74. The Chair noted that paragraph (6) had to be seen in the context of Article 8(1), which provided that offices had total freedom to implement their electronic filing systems. The current draft of the Treaty and the Regulations did not attempt to harmonize the national requirements concerning electronic filing. This was left to the national laws of Contracting Parties as was stated in the last part of Note R6.04.

75. The Chair concluded that there was consensus on this provision and that the Secretariat would add clarifications to the Notes if needed.

Paragraph (7) [Notification]

76. The Chair noted that, by way of correcting a clerical error, references to Article 8(3) and (4) in the first line of subparagraph (a) should be changed to “Article 8(4) and (5)”. The Chair further noted that the last part of this subparagraph “and to make observations within a reasonable time limit” might not be needed in view of Article 22.

77. The Representative of CEIPI expressed a preference to keep the wording “and to make observations within a reasonable time limit” at the end of subparagraph (7)(a), because in some cases, the procedures under Article 22 and Rule 6(7) could be achieved in one single act. The Representative also noted that in this provision, there was no reference to Article 7 and suggested that it would be appropriate to keep that reference in this provision if it was kept in Article 22. In addition, the relationship between the Article and the Rule did not seem to be clear and it could be possible to integrate the Article in the Rule or *vice versa*. The Representative further noted that there was no exception relating to Article 8(2) in Article 22. Therefore, if an office were to refuse an application because it was not in the right language, that office was not obliged to ask for a correction, but it was still obliged to give an opportunity to make observations, which would not appear to be logical.

78. The Chair noted that the paragraph on notification was a new element in the TLT and it was included as a user-friendly provision. However, Article 22, dealing with the right to be heard and to make observations, also implied some form of notification. The Chair summarized the state of the discussion and possible redrafting of Rule 6(7) by stating that there were perhaps three possible options: (a) to keep this paragraph as it stood; (b) to introduce changes in this paragraph or to merge it with another provision; and (c) to delete the provision altogether, on the understanding the substance of this paragraph was already captured by Article 22. Under the second option, and given the importance of Article 22, it was perhaps better to move the contents of Rule 6(7) onto the treaty.

79. The Delegation of Australia held the view that if the Standing Committee decided on the third option to delete Rule 6(7), two elements would be missing: firstly, the reference to Article 8(3) and (4), although it was clear that applications or requests under the other provisions mentioned in Article 22 would be covered by the general provision on communications, and secondly the phrase: “giving the opportunity to comply with any such requirement”. In the opinion of the Delegation, it was important to keep this notion if Rule 6(7) were deleted.

80. The Chair noted that the interventions made on this paragraph seemed to indicate that there was consensus to integrate Rule 6(7) in Article 22, subject to redrafting.

Paragraph (8) [Sanctions for Non-Compliance with Requirements]

81. The Delegation of the Russian Federation noted that in the English version of the text, after item (ii), one sentence did not seem to be in line with the rest.

82. The Chair indicated that the full stop at the end of item (ii) should be removed, so that the sentence “except for applications filed in electronic form” be integrated in the paragraph.

83. The Delegation of Japan expressed support for the current drafting of this paragraph.

84. The Chair noted that there was consensus on this provision.

Articles 10 to 12

85. The Secretariat pointed out that, because of drafting changes which were consequential to Article 8, indications as to the person who was entitled to present a communication in certain provisions were missing. The Secretariat invited the Standing Committee to consider amendments to Articles 10 to 12. In Article 10(1)(a) and 12(1)(a), it needed to be clarified that each Contracting Party shall accept that the request "...be made by the holder in a communication...". In Article 11(1)(a), it needed to be stated that each Contracting Party shall accept that the request "...be made by the holder or by the person who acquired the ownership (hereinafter referred to as "new owner") in a communication...".

86. In response to a question raised by the Delegation of Australia, the Secretariat further explained that, because of the effect of Article 4(1)(b), there was no need to include a reference to a representative.

87. In reply to a question raised by the Delegation of the United Kingdom, the Secretariat clarified that a similar amendment did not appear to be necessary in Article 13(1)(a) because the renewal of a registration was often done by persons different from the holder, such as agents or trademark annuity firms.

88. The Chair concluded that it was agreed to introduce amendments to Articles 10 to 12 that became necessary as a result of the horizontal effect of Article 8.

Article 13
(Duration and Renewal of Registration)

89. The Delegation of Australia stated that it did not support the changes proposed for paragraph (2)(ii), and that it had a preference for the original text of the TLT.

90. The Representative of CEIPI expressed support for the intervention by the Delegation of Australia.

91. There was consensus on this provision, subject to omission in paragraph (2)(ii) of the words "except where Article 3(4)(iv) applies" and to any consequential change.

Article 14
(Measures in Case of Failure to Comply with Time Limits)

92. The Delegation of Canada said that under Articles 10 to 13, Contracting Parties were permitted to require in the request that the address or the name of the holder be included and/or that an indication of the registration number or application number be provided. The Delegation wondered whether such an indication could be required under Article 14.

93. The Chair said that the Secretariat would be entrusted with the task of looking into this matter and proposing the adequate wording and any explanations in the Notes if needed.

Paragraph (1) [Extension of Time Limits]

94. The Delegation of Germany expressed support for the current draft of this paragraph.

95. The Chair noted that there was consensus on this provision.

Paragraph (2) [Continued Processing]

Paragraph (3) [Reinstatement of Rights]

96. The Chair suggested that the Committee discuss these two provisions together, as they were both related.

97. The Delegation of Australia wondered whether it was desirable to include the word “shall” in paragraph (2). This provision, read in conjunction with paragraph (3), resulted in a circular provision and this was sufficient to guarantee that one of the remedies would be made available. Hence, the word “shall” could perhaps be kept only in paragraph (3). The Delegation further noted that the wording of the provision could be simplified, for example by deleting the sentence “and that Contracting Party does not provide for an extension of time limits under paragraph 1(ii) or for reinstatement of rights under paragraph (3)”.

98. The Delegation of Denmark recalled that, as it had expressed in previous sessions, there seemed to be some difficulty with the definition of continued processing. In the view of the Delegation, the definition of Article 1(ii) seemed to overlap with that of paragraph (2). The Delegation added that if the only difference between these two remedies was that in the case of continued processing, the omitted act must be completed, then that requirement which was currently in Rule 9 should be transferred to Article 14 as the last sentence of paragraph (2). This would help clarify the difference between the two remedies.

99. The Representative of CEIPI supported the suggestion made by the Delegation of Australia to simplify the text of paragraph (2) without changing the substance of the provision. However, caution should be exercised in preserving the objective of the provision which was that at least one measure of relief should be available for the case where a time limit had already expired without being complied with. The Representative added that, indeed the difference between paragraphs (1)(ii) and (2) was that the omitted act had to be completed under paragraph (2) and suggested to replace “may be required to” by “shall” in Rule 9(2)(ii) and in Rule 9(3)(b). The Representative further noted that there was perhaps a defect in the reference to the Regulations in Article 14(2), as it seemed to limit it to the request itself and not to encompass the element that the omitted act must be completed at the same time. In addition, the Representative requested that the word “concerned” be deleted in the seventh line of paragraph (3).

100. The Representative of FICPI expressed support for the suggestion made by the Delegation of Australia and the remarks made by the Representative of CEIPI. The Representative added that continued processing had proved to be a very useful remedy in

patent procedures and that one could look at the experience acquired by the European Patent Office in this field.

101. The Delegation of Croatia suggested that the text of Article 14 would be further clarified if at the end of the first three paragraphs a sentence would be included to read “any Contracting Party shall be obliged to provide for any of the procedures under paragraphs (1)(ii) to (3).”

102. The Representative of the European Communities declared its support for the text prepared by the Secretariat. She added that it was not necessary to repeat a debate which already took place in previous sessions of the SCT.

103. The Delegation of France supported the comments made by the Representative of the European Communities and declared itself in favor of keeping the structure of Article 14, as proposed by the Secretariat. The Delegation also supported the suggestions made by the Representative of CEIPI with a view to simplifying the text of Rule 9.

104. The Secretariat explained that if the Committee decided to reintroduce a choice of three measures, the text would in fact go back to the draft presented at the eleventh session of the SCT, and the discussion would be reopened once more. The current text was kept deliberately liberal, so that Contracting Parties may apply extension of time limits as a remedy if they so wished.

105. The Representative of CEIPI said that in order to further clarify that the reference to the Regulations in paragraph (2) covered not only the request but also the remedy, the wording in line 5 of this paragraph could be redrafted as follows: “the Contracting Party shall, upon request to be filed with the Office, provide for continued processing with respect to the application or registration, in accordance with the requirements prescribed in the Regulations”, and a similar change could be inserted in paragraph (3).

106. The Representative of the AIPPI supported the position expressed by the Representative of CEIPI and added that none of the interventions made on this Article seemed to contest the proposed structure. There was only a question about simplifying the text, which could perhaps be achieved by changing the three paragraphs into “may” provisions and adding a fourth paragraph which would allow for a choice between the measures proposed in paragraphs (1)(ii), (2) or (3).

107. The Chair concluded that the SCT had reached agreement on the text of Article 14(1) to (3), subject to minor drafting changes in paragraphs (2) and (3), as far as a reference to the corresponding Rule was concerned. The Chair also noted that even though the Standing Committee had accepted the current draft as agreed text, it was left to the Secretariat to reflect on this text with a view to presenting to the Committee at the next session improved wording for that draft without any changes as to its substance.

108. This second draft of Article 14(1) to (3) could be discussed at the fourteenth session of the SCT, it being understood that if that draft would not meet the consensus of the Standing Committee, the text as agreed at this session would remain.

Paragraph (4) [Exceptions]

109. The Chair noted that there was consensus on this provision.

Paragraph (5) [Fees]

110. The Chair noted that there was consensus on this provision.

Paragraph (6) [Prohibition of Other Requirements]

111. The Chair noted that there was consensus on this provision.

*Rule 9
(Requirements Relating to Measures in Case of
Failure to Comply with Time Limits)*

Paragraph (1) [Requirements Concerning Extension of Time Limits Under Article 14(1)]

112. The Delegation of Australia said that Rule 9(1)(a)(ii) and (b) seemed to dictate that a two month period be provided and that the extension of time limit be not less than two months. The Delegation wondered if it was appropriate to grant such an extension in all circumstances and, in particular, in cases where the failure to meet a time limit did not result in the loss of rights but had some other consequence. There could also be cases where the original time limit was shorter than two months and in those circumstances it would not be appropriate to extend it by two months.

113. The Delegation of New Zealand expressed reservations as to the notion that the extension of a time limit should be not less than two months counted from the date of expiry and not from the date of the request. In New Zealand a number of time limits applied were one month, which meant that the extension granted would be longer than the original time limit. In addition, the Delegation wondered whether an office needed to grant an extension of not less than two months under Rule 9(1)(b), when the person requesting may only need, for example, one week. This would create uncertainty concerning the available time for completing the action both for the office and also for other parties.

114. The Delegation of France supported the opinions expressed by the Delegations of Australia and New Zealand. Indeed, in trademark procedures before the office, there could be a need for minimal corrections, where the time limit would be one month. Thus extending the period by two months could be harmful even to the applicant, since although the correction had already been accepted, he would be bound to wait for three months. The Delegation suggested to shorten the time limit proposed.

115. The Delegation of Australia said that there was perhaps an issue as to whether the provision contained in Article 14(1)(i) should be retained in the text or not. The Delegation held the view that a link was needed between Rule 9(1)(a)(ii) and (1)(b), because Contracting Parties had to allow for an extension of time to be at least as long as to the point where the party was requesting it. Otherwise, it would not be possible to allow for a late extension of

two months if the requesting party could only have one month because the period had started passing. If this was not so, another set of provisions was needed, whereby the time limit did not run from the expiry of the time period, but from the date of the request.

116. The Representative of INTA expressed concern as to whether the time limits in these provisions were minimum or maximum time limits for requesting extensions. In order to create certainty for the trademark community as a whole, the Standing Committee should consider establishing an eight-month ceiling for these time limits, and particularly for extensions of time and continued processing.

117. The Representative of OAPI said that in the OAPI system, the office provided for an automatic extension of three months regardless of the type of request and the applicable legislation allowed for an additional extension of one month. If that office were to comply with the current text of this Rule, it would in fact have to grant approximately five months. The Delegation deemed this extension to be too long and not very useful.

118. The Secretariat indicated that there was perhaps a need to review Rule 9(1)(ii) and work out the time limits set forth in that provision. The intention behind the provision was to deal only with time limits where the request for the extension of the time limit was filed after the expiration of the time limit under Article 14(1)(ii), and it would be appropriate to deal only with cases where the extension of a time limit constituted a remedy for an applicant who wanted to get back into the procedure. The modalities to be applied by Contracting Parties, which allowed for the extension of time limits prior to the expiry of the time limit concerned, would be left to those Contracting Parties.

119. The Delegation of the Islamic Republic of Iran expressed support for the suggestion made by the Secretariat and added that the measures under study were envisaged to protect the holder, applicant or other interested person. If a holder was unable to fulfill the requirements in the first two months, he should not be restricted in the second stage. Furthermore, in some countries, there were long holidays, which meant that holders required more time.

120. The Chair noted that the form of relief contained in Article 14(1)(i) existed in some countries and it was the prototype measure in European countries. Therefore, it would be advisable to keep it in the draft and allow Contracting Parties to avail themselves of this possibility. However, the Rules would contain more precision on the second possibility, that was for the case where the request for extension was made after the expiration of the time limit.

121. The Delegation of New Zealand suggested to redraft the text of Rule 9(1)(b) in such a manner as to link the time limit to the date of receipt of the request, rather than to the date of expiry of the time limit concerned. The Delegation further suggested that reference to “not less than two months” in both paragraphs (1)(a) and (b) be replaced by a formulation whereby Contracting Parties remained free to determine what would be a reasonable length of time.

122. The Representative of the AIPPI was of the opinion that paragraph (1)(ii) had to be read in connection with paragraph (3) dealing with reinstatement of rights. Since there was no obligation for Contracting Parties to choose paragraph (3), the fall-back position stated in paragraph (1)(ii) had to be preserved for the sake of trademark holders who inattentively missed a time limit. Thus, a relatively long period of time had to be allowed after the date in

which a holder discovered that he missed a time limit. Thereafter, a reasonable period of time may be allowed, but the minimum period should be at least two months.

123. The Delegation of Australia cautioned about the effect of these provisions, which would apply to every time limit, whether shorter or longer than the period of extension.

124. The Chair noted that it appeared from the discussion that there was a notion of “discovery time” or “discovery period”, which had to be distinguished from the time that the applicant or holder needed to rectify the mistake. On this basis, an acceptable solution could be reached in the case where a country allowed for relief under Article 14(1)(ii). In this case, the discovery period would be two months, but the other time limit would be a reasonable period of time, so that the provision may be better adjusted and the doubling of two-month time periods be avoided.

125. The Representative of CEIPI said that with regard to the scope of Rule 9(1), there seemed to be a consensus that this Rule would be limited to the implementation of Article 14(1)(ii). The consequence then was that, on the one hand, Contracting Parties were free to decide whether to provide the relief under Article 14(1)(i) or not and, on the other hand, they were also free to provide for the applicable requirements. Hence, it was no longer necessary to maintain the provision of paragraph (1)(i) in the treaty but one could transfer its contents to the Notes or to have an Agreed Statement adopted by the Diplomatic Conference on this subject.

126. The Chair noted that the impact of an Agreed Statement on the application of law was not the same as a provision contained in the body of the treaty or its regulations.

127. From the point of view of the users of the system, the Representative of the AIPPI said that it would be best to retain in Article 14 a reference to the possibility Contracting Parties had to provide for the extension of time limits before the expiration of the time limit. That would be the principle, with no reference to the Rules because Contracting Parties were totally free to choose how they wished to implement the principle.

128. The Delegation of Australia held the view that the purpose of Article 14 was to provide relief for the failure to comply with a time limit and it seemed that an extension ahead of the expiry of the time limit did not fall into that category. The Delegation expressed concern about having a Note that would allow Contracting Parties to provide the remedy contained in Article 14(1)(i) if there was no mention of it in the treaty.

129. The Representative of FICPI noted that the current text of Article 14 made reference to “the extension for a period prescribed in the Regulations”, which covered both paragraphs (1)(i) and (ii). The Representative suggested that this reference should be narrowed to the second possibility only, as a consequence of the limitation of the scope of Rule 9(1).

130. The Chair explained that, in the draft to be submitted for the next session, the Secretariat would introduce any consequential changes needed.

131. The Chair then noted that there was consensus on this provision subject to redrafting.

Paragraph (2) [Requirements Concerning Continued Processing Under Article 14(2)]

132. The Secretariat referred to the last sentence of Rule 9(2)(ii) “The omitted act may be required to be completed within the same period”, which was slightly different from the wording submitted at the previous session and said that this change had been introduced in order to give more leeway to Contracting Parties as to whether or not they would require the omitted act to be completed.

133. The Delegation of Austria said that the legislation of Austria provided only for reinstatement of rights. However, since Rule 9(2) and (3) had equal wording, the Delegation suggested to end the phrase at “the omitted act may be required to be completed” without any reference to a time period.

134. The Delegation of Australia wondered if there were jurisdictions in which the omitted act was not required to be completed within the same period and suggested that the wording be changed for “the omitted act shall be completed”.

135. The Representative of the European Communities supported the suggestions made by both the Delegations of Austria and Australia, and further suggested that the wording could be changed to “the omitted act shall be required to be completed together with the request”.

136. The Representative of CEIPI said that the text presented at the previous session was perhaps incomplete, as it did not indicate when the omitted act should be completed. Therefore, a better approach would be to provide that the omitted act shall be completed within the same time period.

137. The Chair noted that there was consensus on this provision subject to redrafting.

Paragraph (3) [Requirements Concerning Reinstatement of Rights Under Article 14(3)]

138. The Delegation of Sweden said that it still needed clarification as to when the omitted act should be completed.

139. The Delegation of Australia suggested that the final part of Rule 9(3)(b) read “The omitted act shall be required to be completed within the same period or, at the discretion of the Contracting Party, together with the request”.

140. The Delegations of Austria and Sweden and the Representative of the European Communities supported the proposal made by the Delegation of Australia.

141. The Chair noted that there seemed to be consensus on this formula for both paragraphs (2) and (3).

142. The Delegation of Australia noted that if the intention behind the provision in paragraph (3)(c) was to set a cap for complying with the requirements in relation to reinstatement of rights, then the word “maximum” created confusion if read in conjunction with the words “of not less than” at the end of the phrase.

143. The Delegation of the United States of America expressed the view that Rule 9(3)(c) seemed to define Rule 9(3)(b) which required that the request for reinstatement be filed within a reasonable time limit. The Delegation wondered whether the use of the word “may” in Rule 9(3)(c) meant that the provision was merely elective and added that if the provision was in fact mandatory, then a minimum of two months should be provided as a reasonable time limit in which the request may be filed, rather than looking at this as a ceiling.

144. The Chair explained that subparagraphs (b) and (c) provide for two different time limits and recalled that, at a previous session, the Delegation of Germany had introduced the notion that a ceiling was needed in order to prevent a party, even if due care and unintentionality were proven, from coming back to the office too late. As explained by that Delegation, the applicable law in Germany provided for a ceiling of one year.

145. The Delegation of New Zealand, supported by the Delegation of the United States of America, said that one way of improving the wording of subparagraph (b) was to find some language that would explicitly state that the reasonable time limit of subparagraph (b) actually related to the time limit “after” the removal of the obstacle that caused failure.

146. The Delegation of France explained that, in the system applied in France, there was an interest in having these two time limits, which were cumulative and not alternative in nature. The institution of reinstatement of rights, as provided for in that country, tried to strike a balance between the interests of the holder and of those third parties. Therefore, there was one reasonable time limit of two months, counted from the date of removal of the cause of failure, which was designed to protect the rights of the mark holder, and a second time limit of six months, based on the non-observance of the requirements, which was designed to protect the rights of third parties. The Delegation added that the wording of paragraph (c) could be improved by deleting the words “of not less than”, but keeping the word “maximum”, because there had to be a ceiling for the second time limit, and 12 months seemed to be an acceptable time limit.

147. The Delegation of Austria suggested that in order to avoid confusion between the two time limits, the reference to subparagraphs (a) and (b) should be deleted and that the paragraph should read: “A Contracting Party may provide for a maximum time limit for filing the request for reinstatement of rights under Article 14(3) of not less than 12 months from the expiry of the time limit concerned.”

148. The Representative of the AIPPI said that establishing a maximum time limit of 12 months would be acceptable. However, a minimum time limit should also be established, in order to prevent Contracting Parties from providing too short a time limit. The Representative suggested that the provision read “at least six months but not more than 12 months”.

149. The Delegation of Switzerland was of the opinion that Rule 9(3)(c) should integrate 12 months as a maximum and six months as a minimum length of the so-called “absolute” time limit. The Delegation added that the provision should remain as a possibility and not as an obligation for Contracting Parties and that the word “may” should be kept in the text. The Delegation further suggested that the determination of the length of the “relative” time limit in Rule 9(3)(b) should be left to the appreciation of each Contracting Party and therefore the request should be filed within a reasonable time limit.

150. An extended debate followed amongst several delegations and representatives of intergovernmental and non-governmental organizations as to whether the provisions on time limits for reinstatement of rights in the draft Revised TLT could be inspired from the corresponding provisions in the Patent Law Treaty (PLT).

151. The Chair noted that the interventions made on this last point seemed to indicate that there was a rising consensus to replace the 12-month time limit proposed in Rule 9(3)(c) for a period of not less than six months, which would be counted from the expiration of the time limit concerned and to keep the paragraph as a “may” provision.

152. The Chair then noted that there was consensus on this provision subject to redrafting.

Paragraph (4) [Exceptions Under Article 14(4)]

item (i)

153. The Secretariat indicated, by way of a clerical correction, that reference to Article 14(ii) should read “Article 14(1)(ii)”.

154. The Delegation of Japan, supported by the Delegation of Jordan, held the view that Article 14(1)(i) should be included in Rule 9(4)(i), following the general principle established by Article 14(4) and Rule 9(4) that there should be no double relief once relief has already been granted. Thus, where a Contracting Party provided for an extension of a time limit before the expiry of that time limit and relief had already been granted, but the applicant once more failed to complete the omitted act during the extended time limit, a Contracting Party should be not be required to grant a second or any subsequent relief. In the view of the Delegation, it was necessary to include Article 14(1)(i) in Rule 9(4)(i) in order to avoid such a situation.

155. The Delegation of New Zealand said that, if the principle in Rule 9(4)(i) was to avoid double relief, then Article 14(3) concerning reinstatement of rights should also be included.

156. The Delegation of Sweden noted that it interpreted the provisions in question as meaning that a Contracting Party was not obliged to grant more than one instance of relief at the same stage, but that the Contracting Party could provide for several reliefs in different stages of the processing of an application if different time limits were involved.

157. The Delegation of France, supported by the Delegation of Switzerland, expressed agreement on the notion that there should be no double relief. However, if a reference to Article 14(1)(i) were included in Rule 9(4)(i), this would create problems with the structure of Article 14. According to that provision, if a Contracting Party provided for the extension of a time limit only prior to the expiration of the time limit, some other form of relief had to be provided. If Article 14(1)(i) was included as an exception, it was no longer clear why a Contracting Party should also provide for reinstatement of rights, because the requesting party would not be able to use that remedy in accordance with its national legislation.

158. The Delegation of Japan further clarified that the situation envisaged in its proposal was one where an applicant had successfully filed a request to extend a time limit before the expiration of the time limit and, in such a case, no Contracting Party should be required to provide any relief after the expiration of the time limit.

159. The Representative of FICPI expressed the view that Article 14(1)(i) could be considered a normal extension of time requested before the due date in the normal course of the procedure. The other remedies were really the formal relief measures, which arose when a special situation happened that caused the original time limit to be missed. If a routine request for extension of time was filed and an extension was granted in accordance with Article 14(1)(i), there was a new due date. And if at the end of that extended period something happened unintentionally or inadvertently, which caused that date to be missed, there seemed to be an agreement that a form of relief should be available at that time.

160. The Chair noted that the discussion showed that there was consensus as to the notion that Rule 9(4)(i) applied to all reliefs granted after the expiry of the due date. As to the inclusion of a reference to Article 14(1)(i), consultations would be engaged in order to further explore the repercussions of that inclusion, particularly in view of the fact that Article 14 itself might undergo changes in the new draft to be presented at the next session of the SCT.

item (ii)

161. The Chair noted that there was consensus on this provision.

item (iii)

162. The Chair noted that, following a suggestion by the Delegation of the Netherlands at the twelfth session of the SCT, it had been decided to remove the square brackets around this item, so that the payment of a renewal fee would also be an exception.

163. The Delegation of Australia indicated that, at that session, there was also agreement to keep this item as an exception because the Paris Convention already provided a form of mandatory relief in case of non-payment of a renewal fee.

164. The Representative of FICPI recalled that on previous occasions, FICPI had requested reconsideration of this point. However the difficulty was now removed, because it was clear that Contracting Parties were not required but were left free to allow for the list of exceptions in Rule 9(4). In addition, this provision did not put at risk the practice observed by many countries to allow for restoration after the non-payment of renewal fees.

165. The Chair noted that there was consensus on this provision.

item (iv)

166. The Chair noted that there was consensus on this provision.

item (v)

167. The Chair noted that there was consensus on this provision.

item (vi)

168. The Delegation of Japan indicated that the law of Japan provided for a unique system, which was defined as a new application for a trademark based on the amendment of an original application. Under this system, the date of amendment of an application would automatically become the new filing date. Therefore, the filing date should be fixed as early as possible, because third parties could be affected by that date. If Article 14 applied to the time limit for using this system, legal certainty could not be assured for third parties. The Delegation added that the nature of this time limit was similar to the time limit for filing the declaration under Article 3(1)(a)(vii) and (viii). The Delegation further suggested to rephrase Rule 9(4)(vi) to read: “for filing the declaration referred to in Article 3(1)(a)(vii) and (viii) or other declaration to accord the benefit of the filing date”.

169. The Delegation of New Zealand wondered whether, in view of the proposal made by the Delegation of Japan, an explanation should be added to the Notes in order to avoid any misunderstanding in the future as to the intent of this new provision.

170. The Delegation of Australia supported the suggestion made by the Delegation of New Zealand and added that it would be important to look at the repercussions of this new exception on the rest of the text.

171. The Chair said that the proposal made by the Delegation of Japan could be integrated in the text of Rule 9(4)(vi) and that, as suggested by the Delegations of Australia and New Zealand, explanations could be added in the Notes. The Secretariat would also check for any repercussions of this new drafting on the basic proposal.

172. The Chair then noted that there was consensus on this provision subject to redrafting.

item (vii)

173. The Chair noted that there was consensus on this provision.

Article 17
(Request for Recordal of a License)

Paragraph (1) [Contents of the Request for Recordal]

174. The Delegation of the Russian Federation indicated that this paragraph provided that the request for recordal had to be filed in accordance with the requirements prescribed in the Regulations. However, Rule 10(2) provided that a Contracting Party may require certain documents which were not referred to in Article 17(1). This provision seemed to run counter

to Article 17(4) containing a prohibition of other requirements. The Delegation suggested to overcome this situation in two ways: either to move the provision contained in Rule 10(2) to Article 17, after paragraph (1), or to introduce a new provision containing the relevant part of Rule 10(2) to read “Contracting Parties may require that the request for recordal of a license be accompanied by the documents stipulated in the Regulations”.

175. The Chair noted that the phrase “in accordance with the requirements prescribed in the Regulations” in Article 17(1) was intended to cover the required documents. However, the Secretariat would carefully look into this question and provide new wording if needed, to further clarify the link between this paragraph and Rule 10(2).

176. The Delegation of the Republic of Korea said that the provision, as currently drafted, did not consider the case of the co-ownership of a registration. The Delegation added that a provision similar to Article 11(1)(d) should be included for the case of recordal of a license, so that any Contracting Party may require the consent of co-holders, in addition to that of the parties to the contract.

177. The Secretariat explained that in the current draft, the question of the entitlement to record a license was no longer dealt with through the signature on the request, but in terms of the supporting documents in Rule 10(2). There were two types of supporting documents which a Contracting Party could require, i.e., an extract of the license contract indicating the parties to the contract, or an uncertified statement of license signed by both the holder and the licensee. The term holder was defined by Article 1(vi) and Note 1.04 relative to that item, indicated that “holder” should be construed as “holders” where the applicable law of a Contracting Party provided that several persons may jointly be holders. It followed that, where the request for the recording of a license was accompanied, for example, by a statement of license signed by the holder and the licensee, but there were several co-holders, a Contracting Party was free to request the signature of all co-holders.

178. The Delegation of Australia suggested to supplement the definition contained in Article 1(vi) with some of the wording from Note 1.04.

179. The Delegation of Japan supported the views expressed by the Delegation of the Republic of Korea and noted its preference for dealing with this question in the framework of Rule 10(2), by adding a new provision to clearly state that a Contracting Party may require the consent of all co-holders if the recordal of a license concerned several persons.

180. The Representative of the AIPPI expressed agreement with the new approach of the articles, which did not specify the person requesting the recordal and did not ask for any requirements to that effect. Indeed the question had to be looked at in the context of the supporting documents provided for in Rule 10(2). However, there could be a problem if the co-holder who concluded a license agreement did not choose the uncertified statement of license but the extract of the contract indicating the parties, certified by a notary public. In the latter case, the holder did not need to submit a document signed by all co-holders because reference was made to the parties, i.e., the licensor and the licensee, and not the holders.

181. The Secretariat explained that even where the supporting documents were provided, the office could refuse the recordal of a license if it appeared that several co-holders were involved, while the documentation presented to it showed only one holder.

182. The Chair noted that there was consensus on this provision subject to redrafting.

Paragraph (2) [Fees]

183. The Chair noted that there was consensus on this provision.

Paragraph (3) [Single Request Relating to Several Registrations]

184. The Secretariat noted that the reference to paragraph (1) at the end of this paragraph needed to be changed for a reference to the Regulations.

185. The Chair noted that there was consensus on this provision.

Paragraph (4) [Prohibition of Other Requirements]

186. The Delegation of Cuba said that it had given careful consideration to the changes introduced in the provisions concerning the recordal of licenses. However, some elements of the provisions continued to be incompatible with the national law of its country. According to those norms, the efficient control of technology transfers and anticompetitive practices was based on the evaluation of the license contracts and their recordal with the trademark office. Thus, the prohibition contained in this paragraph seemed to run counter to the requirements under the laws of Cuba. The Delegation suggested that a possible compromise could be reached by either including in the supporting documents under Rule 10(2) documentation allowing the Contracting Party to determine the scope of the license, the control by the trademark holder and the financial clauses, or to include new wording after Article 17(4)(iii) to the effect that “reservation is made to the provisions contained in national law with regard to the control of anti-competitive practices or promotion of technology transfers”.

187. The Delegation of Egypt recalled the reservations it had made at the last session of the SCT, particularly with regard to the prohibition for a Contracting Party to require the license contract itself. The Delegation noted its support for the proposals made by the Delegation of Cuba, which could help to reach a suitable solution, by taking into account the legislation of some countries.

188. The Delegation of Peru said that it was clear that certain clauses of the license contract had to remain confidential. However, Contracting Parties needed to have some certainty as to the terms of the license whose recordal was requested. Thus the prohibition to furnish the license contract itself could be maintained if offices would be enabled to request an extract of the contract, as was provided for in Rule 10(2)(i). In this manner, confidential clauses would be protected, but the necessary information would be made available to the office, allowing it to have certainty on the recordal of license.

189. The Delegation of Morocco said that a certified copy of the license contract was required for the recordal of trademark licenses with the office, so that the license may be opposable to third parties.

190. The Delegation of Brazil expressed support for the remarks made by other delegations, particularly from developing countries as to the provisions contained in Article 17. The Delegation further noted that this was the third time that the Committee discussed the provisions on trademark licenses and the inclusion of these provisions in the draft revised TLT continued to be controversial. Although the Delegation maintained a general reservation with regard to the entire section, it suggested that the SCT give careful consideration to the constructive options put forward by delegations.

191. The Representative of CEIPI said that Note 17.06, which referred to this paragraph, indicated that this provision did not prevent other authorities of Contracting Parties (for example, tax authorities or authorities establishing statistics) from requiring the parties to a license contract to furnish information in accordance with the applicable law. Thus, paragraph (4) was confined to the recordal of the license with the trademark office and this would probably address some of the concerns raised by delegations.

192. The Chair explained that the provisions on the recordal of trademark licenses would not impede on obligations for national authorities deriving from laws that regulated such questions as unfair trade or anti-competitive practices, transfer of technology or taxation. The provisions were intended to simplify the procedure for the recording of licenses, as far as the effects under trademark law were concerned. Given the concerns expressed by some delegations, it could be envisaged to add a paragraph to Article 17 along the lines of Note 17.06, to clearly state that the simplified procedures for the recording of licenses were without prejudice to obligations existing under national law, on the disclosure of information to national authorities responsible for fair trade, competition, transfer of technology, etc.

193. The Representative of the European Communities supported the explanation given and the proposal made by the Chair.

194. The Chair then noted that a number of delegations had made reservations to this provision and concluded that the substance of Note 17.06 would be moved to Article 17.

Paragraph (5) [Evidence]

195. The Delegation of Japan, supported by the Delegations of Australia and the Russian Federation, suggested to insert the following wording at the end of this paragraph: “or in any document referred to in the present Article”. The Delegation added that this wording was in line with Article 11(4), and allowed any Contracting Party to require further evidence in case of reasonable doubt relating not only to the request, but also to the supporting documents contemplated in Rule 10(2).

196. The Representative of CEIPI also expressed support for the suggestion made by the Delegation of Japan but noted that reference should be made to the Regulations rather than to the Article, since in the current drafting the supporting documents were found in the Regulations.

197. The Chair noted that there was consensus on this provision subject to redrafting.

Paragraph (6) [Requests Relating to Applications]

198. The Delegation of Latvia supported the current drafting of this paragraph.

199. The Chair then noted that there was consensus on this provision.

Article 18
(Request for Amendment or Cancellation of the Recordal of a License)

Paragraph (1) [Contents of the Request]

200. The Delegation of the Russian Federation said that, with regard to this paragraph, it had a comment similar to that on Article 17(1). The Delegation noted that the title of Article 18(1) “Contents of the Request” was misleading, as it referred to the request itself and not to the accompanying documents. In addition, Article 18(2), provided for a *mutatis mutandis* application of Article 17(2) to (5), including the prohibition of other requirements, which meant that a Contracting Party could not require anything which was not specifically provided for in Article 18(1). However, it seemed that a Contracting Party could request for additional documentation in the case of amendment or cancellation of a license. Therefore, Article 18(1) should also contain a reference to the supporting documents stipulated in the Regulations.

201. The Chair noted that there was consensus on this provision subject to redrafting.

Paragraph (2) [Other Requirements]

202. The Chair noted that there was consensus on this provision.

Rule 10
(Contents of the Request for Recordal of a License
or for Amendment or Cancellation of the Recordal of a License)

Paragraph (1) [Contents of Request]

203. The Representative of CEIPI suggested to omit the words “where applicable” in Rule 10(1)(a)(xi), as they seemed not to be in accordance with the chapeau of the provision and the explanation provided in the second sentence of Note R.10.06.

204. The Delegation of Australia noted that the same issue raised by the Representative of CEIPI could also be raised in relation to item (xii). However, the Delegation said that in its reading of the provision, there were a number of elements that a Contracting Party would always require, such as the name and address of the holder, but other elements were required only “where applicable”, for example, where the license was an exclusive license. Thus, this meant that for the latter elements, an additional condition needed to be fulfilled. The Delegation further noted a preference to deal with this issue in Rule 10 itself rather than in the Notes.

205. The Chair noted that there was consensus on this provision subject to redrafting of items (xi) and (xii).

Paragraph (2) [Supporting Documents for License]

206. The Delegation of Uruguay, supported by the Delegation of Peru, expressed the view that the prohibition established in Article 17(4)(ii) had to be read in conjunction with Rule 10(2) which provided for supporting documents to be submitted for the recordal of a license. The chapeau of paragraph (2) read “at the option of the requesting party”, the request may be accompanied by either (i) an extract of the license contract or (ii) an uncertified statement of license. In practice, the requesting party would take the option contained in item (ii), which did not seem entirely satisfactory. Therefore, the Delegation suggested, as an intermediate position, to eliminate the option of the requesting party to choose between the two items.

207. The Representative of the AIPPI, supported by the Delegations of Australia and the United States of America, the Representatives of the European Communities and of CEIPI, held the view that this deletion would modify the objective of the provision, which was to protect the licensee from any damaging act from the licensor. Through recordal, the license contract was made public and third parties were informed of its existence and could not in good faith apply for a trademark without having any rights under the license. The Representative added that consequently, the recordal of a license was mainly in the interest of the users and that changing the wording of the provision would substantially alter that balance of interests.

208. The Delegation of Switzerland referred to Article 2(2) of the Joint Recommendation Concerning Trademark Licenses, which provided a Contracting Party could accept either the signature of the holder or of his representative, or the signature of the licensee, accompanied by a certified extract of the license contract or an uncertified statement of license, while Rule 10(2) required that in all cases an extract or an uncertified statement of license signed by both the holder and the licensee be provided. The Delegation added that this seemed to be too stringent a requirement and that the choice established in the Joint Recommendation should be retained for the benefit of the users of the system.

209. The Delegation of Slovenia, the Representatives of the European Communities, the AIPPI and FICPI supported the views expressed by the Delegation of Switzerland.

210. The Delegation of Japan expressed support for the new wording and structure of Rule 10(2). However, in the opinion of the Delegation, Contracting Parties needed freedom to require two more supporting documents. Firstly, a document showing the consent of all co-holders to the recordal of the agreement, particularly those co-holders which were not parties to the license agreement. In this regard, the Delegation recalled that the previous text of Note 17.12 left freedom to the applicable law of the Contracting Party to determine whether all co-holders had to give their consent for the recordal of the license, whereas the current note did not seem to do so. The Delegation further noted that a provision similar to Rule 17(2)(b) of the PLT could be considered. Secondly, the Delegation held that Contracting Parties should also be free to request a document evidencing a license not resulting from a contract, but from a court decision. The Delegation explained that in the practice of its office, there had been a case in which a trademark infringement law-suit

resulted in a decision to grant a license. Therefore, the document presented for the recordal of the license was a court decision. The Delegation recalled that Article 11(1)(e) of the TLT allowed the presentation of court decisions in the case of change of ownership and Rule 17(2)(c) of the PLT also allowed such a document to be required.

211. The Delegations of the Republic of Korea and Morocco, and the Representatives of the AIPPI and CEIPI supported the first proposal made by the Delegation of Japan, namely the need to confirm the consent of all co-holders, particularly in view of the prohibition of other requirements contained in Article 17(4).

212. The Representative of CEIPI proposed that, for precision, the wording in the second line of Rule 10(2)(ii) be changed to read “these Regulations”. The Representative was of the opinion that where a settlement occurred between two parties in an infringement case and a license emerged under the guidance of a court, there was effectively a license contract covered by the existing provisions, without the need to provide for a different situation. The Representative suggested either to include an express definition of the word “contract” in the context of these provisions, which could also cover these settlements between parties resulting from legal proceedings, or to clarify the matter in the Notes. The Representative cautioned about the introduction of court decisions in the framework of licensing, as this could be mistaken for compulsory licensing, which was expressly forbidden by the Agreement on Trade-Related Aspects of Intellectual Property Rights in the field of trademarks.

213. The Delegation of Japan declared that it had noted with interest the issues raised by the Representative of CEIPI regarding court decisions, and that it was prepared to continue studying the matter.

214. The Delegation of the Russian Federation, supported by the Delegation of Japan, said that, in accordance with national law, the documents mentioned in Rule 10(2) needed to be provided. The practice of the office had shown that there was a need to submit the signature of both parties to the license contract as evidence of the agreement of both the holder and the licensee. The Delegation added that Rule 10(2) was formulated as a “may” provision, which meant that Contracting Parties were not obliged to require these documents.

215. The Delegation of Slovenia said that, in a spirit of compromise, it could accept the new wording of Rule 10(2).

216. The Delegation of Latvia supported the drafting of Rule 10(2) as proposed.

217. The Chair noted that this provision was left open for further discussion.

Paragraph (3) [Supporting Documents for Amendment or Cancellation]

218. The Delegation of Latvia recalled the opinion expressed by that delegation at the twelfth session of the SCT, namely that the rights of both parties of the licensing agreement should be taken into account in the process of amendment or cancellation. While the Delegation fully supported the wording of Rule 10(3)(i), it seemed that the wording of subparagraph (3)(ii) could be improved, as suggested in the written submission presented by FICPI. Indeed, the drafting of Rule 10(3)(ii), as proposed, left open the possibility that the request be filed by the licensee and be accompanied by a statement of consent also by the licensee. However, the

statement of consent by the licensee was only appropriate when the request was filed by the licensor and concerned a cancellation or amendment contrary to the licensee's interest. If the amendment was in favor of the licensee, at least the signature by or on behalf of the licensor should be provided. Therefore, the Delegation suggested that Rule 10(3)(ii) should not refer specifically to the licensee but to "the opposite party to the license agreement" or some similar wording.

219. The Delegation of Japan said that its initial position had been to request the inclusion of the same supporting documents as in paragraph (2). However, it now seemed that the wording of Rule 10(3)(i) was sufficiently broad as to cover court decisions. Nevertheless, the Delegation deemed that it was still necessary to include in this paragraph an item allowing Contracting Parties to require a document concerning the consent of the co-holders.

220. The Representative of the AIPPI supported the views expressed by both the Delegations of Japan and Latvia.

221. The Representative of the BBM said that from a practical point of view, Rule 10 could be divided in two different rules, as it concerned two separate articles of the draft revised TLT.

222. The Secretariat replied that Articles 17 and 18 had similar contents and that the requirements for recordal, amendment and cancellation of licenses were similar, which was the main reason for having one single rule for both articles. Nevertheless, the text could be improved to avoid any practical difficulties.

223. The Chair noted that there was consensus on this provision subject to redrafting.

Article 19
Effect of the Non-Recordal of a License

Paragraph (1) [Validity of the Registration and Protection of the Mark]

224. The Delegation of Mexico held the view that if the validity of the registration of a mark would not be affected by the lack of recordal of a license, it did not seem clear why Contracting Parties were allowed to require such recordal.

225. The Delegation of Morocco said that, while the recordal of a license did not affect the validity of the registration of a mark, it helped to enforce the licensed rights in relation to third parties.

226. The Chair then noted that there was consensus on this provision.

Paragraph (2) [Certain Rights of the Licensee]

227. The Delegation of Cuba recalled the views it had expressed in previous sessions, that this provision was incompatible with national law, which required the recordal of licenses.

228. The Representative of the AIPPI said that his reading of Article 19 was that it did not prevent any Contracting Party from requiring the recordal of a license. However, a Contracting Party could not invalidate the registration of a mark because of the lack of recordal of a license, and this was a confirmation of the relevant provision of the TRIPS Agreement.

229. The Delegation of Australia noted that the structure of paragraph (2) made it clear that this paragraph was not binding on Contracting Parties, because subparagraph (2)(b) provided that if subparagraph (a) was not compatible with the law of a Contracting Party, it would not apply with respect to that party.

230. The Representative of CEIPI said that this provision was in fact a form of reservation and noted that if the provision was kept as part of Article 19(2), some wording needed to be added in order to inform other Contracting Parties that the provision was incompatible with the laws of a particular State. Therefore, the Representative suggested to add language along the lines of “provided that the Contracting Party notifies the Director General accordingly”.

231. The Delegation of Mexico held the view that the provision contained in subparagraph (b) seemed to be innocuous and could well be removed from the text.

232. The Delegation of Australia recalled that during the discussions which led to the adoption of the Joint Recommendation on Trademark Licenses, subparagraph (b) was drawn up as a compromise between those Contracting Parties according to which subparagraph (a) was a desirable standard and those other Contracting Parties that could not accept it for a number of reasons.

233. The Chair noted that it followed from the discussion that the provision could be kept in the draft.

234. The Chair noted that there was consensus on this provision.

Article 20
Use of a Mark on Behalf of the Holder

235. The Delegation of Japan said that the text of explanatory note 20.01 in document SCT/12/4 read: “Article 20 only deals with situations in which the use by a person other than the holder might accrue to the benefit of the holder”, while the corresponding note in document SCT/13/4 had been amended with the result that this point was no longer clear. The Delegation added that there could be cases where use by a person other than the holder did not benefit the holder. The Delegation further suggested, either to add in Article 20 the phrase “except for the case resulting in a disadvantage for the holder”, or to restore the text of Note 20.01 as it was presented in document SCT/12/4.

236. The Delegation of Canada expressed support for the proposed drafting of Article 20, which reflected the general principle agreed at the twelfth session, that the use of a mark by a licensee should accrue to the holder, even if the license was not recorded. The Delegation noted that, in an effort to clarify that the TLT was procedural in nature, the wording of the provision could be changed to read: “A Contracting Party may not require the recordal of a

license as a condition for the use of a mark by a licensee to be deemed to constitute use by the holder”.

237. The Delegations of Australia and New Zealand and the Representatives of AIPLA and the ICC supported the suggestion made by the Delegation of Canada.

238. The Delegation of the Russian Federation said that the current drafting of Article 20 inferred that even where a license was not recorded, use by the licensee was considered use by the holder. According to the Delegation, this would be contrary to national law, which provided that if a license contract was not recorded, it was not valid, and this was considered to be important for third parties as a means to know exactly who was using a mark. The Delegation suggested that the last phrase of Article 20 “even where the license is not recorded with the Office or with any other national or regional authority” be deleted, or that the word “shall” be changed for “may” so as to change the binding character of the provision.

239. The Delegation of Latvia held the view that the language proposed by the Delegation of Canada seemed to narrow the effect of Article 20 in a considerable way, as compared to both the draft presented at the twelfth session and the draft submitted by the Secretariat at the current session. The Delegation added that, for the benefit of the trademark community it was perhaps preferable to keep the provision broad and not to restrict it to the recordal of licenses.

240. The Representatives of AIM, the AIPPI, ECTA and INTA supported the views expressed by the Delegation of Latvia and suggested to go back to the original text that this Article had in the Joint Recommendation on Trademark Licenses.

241. The Delegation of Peru inquired whether use of a mark by an authorized or exclusive distributor could be deemed to be equal to the use by a licensee and accrue to the holder, particularly for the purposes of preventing the cancellation of his mark.

242. The Representative of OAPI supported the text of Article 20 as proposed and added that, in his view, the use of a mark by an authorized distributor was deemed to be use by the holder himself.

243. The Representative of FICPI suggested the following text for Article 20 “When a mark has been used by a licensee, the registration of the mark shall not be cancelled or revoked on the ground of non-use merely because the license is not recorded with the office or with any other national or regional authority.”

244. The Delegation of New Zealand, supported by the Delegation of Australia and the Representative of AIPLA, said that the discussion at the twelfth session of the SCT indicated that the text of Article 20, as presented at that session, went beyond the scope of the recordal of licenses and touched on aspects of substantive law. Issues such as the consent and the control by the holder were also raised in the discussion and there was concern as to whether the provision sufficiently addressed such concerns. It was preferable then, to narrow the scope of the provision to the formalities relating to the recordal of licenses.

245. The Chair said that it followed from the interventions made, that there was agreement as to the underlying principle contained in the current draft of Article 20. However, the wording could be improved by drawing from the proposals made by the Delegation of Canada and the

Representative of FICPI. The Secretariat would be entrusted to redraft this provision and to look into any consequential changes of the new draft.

246. The Chair noted that there was consensus on this provision subject to redrafting.

Article 21
Indication of the License

247. The Chair noted that there was consensus on this provision.

Article 22
(Observations in Case of Intended Refusal)

248. The Delegation of the Islamic Republic of Iran referred to the last part of Note 22.01 and particularly to the notion of “refusal”, which was explained with three examples, and asked whether this was to be considered an exhaustive list. The Delegation added that if this was so, the explanation seemed to limit the notion of refusal, which should be understood broadly in the framework of Article 22.

249. The Chair confirmed that the notion of refusal in this context was to be understood in a broad sense and that the Notes to Article 22 could be further clarified if needed.

250. The Representative of the European Communities expressed disagreement to the reference to Article 14 in Article 22. The Representative added that if an office had all the elements to reach a decision, it should not be obliged to hear the requesting party once more and to extend the time limits or to provide for reinstatement of rights. This would not simplify matters for the office.

251. The Delegations of France, Germany, Portugal, Sweden and Switzerland supported the opinion expressed by the Delegation of the European Communities.

252. The Delegation of New Zealand did not share the opinions expressed by other delegations as to the removal of the reference to Article 14 in Article 22. In New Zealand, if the office proposed to use its discretionary power to refuse, it was obliged to give that person an opportunity to make observations or to be heard about the intended refusal of a request by the office. Thus, the Delegation was in favor of keeping the reference in the draft as proposed.

253. The Chair suggested to reserve a final decision on whether or not to include a reference to Article 14 in Article 22 until the Standing Committee would conclude the discussion on Article 14.

254. The Representative of CEIPI asked why a reference to Article 7 had been added in this provision. The Representative noted that Article 7 dealt with the division of application and registration, which was not proposed to be modified in its substance.

255. The Secretariat explained that on the basis of the comments received at the last session, the current draft of Article 22 was an attempt to extend the principle of the right to be heard to all situations where an applicant or holder was confronted with a potentially negative decision from the office.

256. The Chair confirmed that the reference to Article 7 would make the treaty more user-friendly and perhaps the non-inclusion of a reference to Article 14 would mean that this aspect would not be harmonized.

257. The Delegation of Australia supported the inclusion of a reference to Article 7 in Article 22 and added that it was also preferable to maintain the Note to Article 22 as it had been drafted in the original TLT. The Delegation also wondered whether the word “application” in this context meant an application for the registration of a trademark under Article 3. If that was the case, the Delegation suggested to add a comma after the word application, to clarify the text.

258. The Chair explained that Article 22 contained the very important principle of the right to be heard and that this provision had to be read in conjunction with Rule 6(7) which was also concerned with making observations but that it additionally dealt with the conditions according to which an opportunity to comply with the missing requirements would be granted. The Chair further noted that looking at the legislative history of these two provisions, at its twelfth session, the SCT had agreed to separate them, but it was now felt that the provision contained in Rule 6(7) had a certain relevance for applicants or holders and that it would be best to integrate it in the text of Article 22. As to the reference to Article 14, the Chair added that this should also be seen in the light of the new draft of that article.

259. The Chair then noted that there was consensus to redraft this provision in conjunction with Rule 6(7), which should be moved from the Regulations to the Treaty.

Article 23
(Regulations)

260. The Delegation of the Islamic Republic of Iran wondered whether Article 23(3)(a) was needed because, as was pointed out in Note 23.01, no rules were specified in the current draft Regulations to be amended only by unanimity.

261. The Chair observed that the provision could be maintained in case it was felt desirable to specify in future amendments to the Regulations a provision that would only be changed by unanimity.

262. The Delegation of New Zealand held the view that it would be preferable to maintain Article 23(3)(a) because the provision facilitated reactions to future developments.

263. The Representative of CEIPI expressed support for the statement made by the Delegation of New Zealand.

264. The Chair concluded that there was consensus on this provision.

Article 24
(*Assembly*)

265. The Representative of the European Communities referred to the reservation concerning Article 24(4)(b)(ii) which she had expressed at the twelfth session of the Standing Committee. The Representative informed the Standing Committee that the provision had been the subject of further internal consideration and, as a result of those considerations, she wished to withdraw that earlier reservation.

266. The Delegation of the Islamic Republic of Iran proposed to transfer the words “with the assistance of the International Bureau” from Article 24(2)(ii) to Article 25, since the latter article was dealing more generally with the tasks of the International Bureau.

267. The Delegation of Belgium informed the Standing Committee that the establishment of a new Benelux Intellectual Property Organization was to be finalized soon, and that the procedural rules of Article 24 would be acceptable for that Organization. The Delegation expressed support for Article 24 and the intervention by the Representative of the European Communities.

268. The Representative of CEIPI, referring to the intervention by the Islamic Republic of Iran, wondered whether Article 24(2)(ii) was necessary. As it could be inferred from Article 8(5) that the Model International Forms formed part of the Regulations, the Representative expressed the view that they were covered by Article 24(2)(iii) anyway.

269. The Representative of the ICC recalled the historical development of the TLT and welcomed the support for the establishment of an Assembly expressed by the Standing Committee.

270. The Chair concluded that there was consensus on this provision subject to possible changes to paragraph (2)(ii).

Article 25
(*International Bureau*)

271. There was consensus on this provision.

Article 26
(*Revision and Amendment*)

272. The Secretariat explained that, in contrast to the more liberal approach taken in the previous draft of the TLT, and as an outcome of the discussion that had taken place at the previous session of the SCT, the text of Article 26 had been amended so as to limit the power of the Assembly to change provisions of the TLT to Articles 24 and 25. As to the terminology used in Article 26, the Secretariat explained that the term “amendment” referred to the possibility to amend the Treaty through a decision by the Assembly, whereas the term “revision” referred to changes to the TLT adopted by a diplomatic conference.

273. The Delegation of Australia stated that it would welcome further facilitation of amendments to the Treaty. Although it regarded the new Article 26 as a move in the opposite direction, the Delegation indicated that it considered the Article to be acceptable. It pointed out, however, its remaining interest in further facilitating amendment procedures.

274. The Delegation of the Islamic Republic of Iran proposed to clarify the difference between revision and amendment. It wondered whether the change of all Rules could be seen as an amendment. Referring to Article 1(xxii), the Delegation also raised the question whether a revision of the Treaty was limited to those provisions that could not be amended by the Assembly.

275. The Secretariat explained that Article 1(xxii) clarified that a reference to an Article included the accompanying Rule but not *vice versa*.

276. The Chair pointed out that there were Rules capable of impacting on an Article. He recalled that, in the context of Article 8, the requirements to be fulfilled by an applicant were set out in the Regulations. In his view, Article 8 would be rendered more or less pointless without the Rules prescribed in the Regulations.

277. The Delegation of New Zealand, supported by the Delegation of Australia, expressed its concern with regard to paragraph (2)(c). The Delegation held the view that the use of the term “thus accepted” in the second sentence of paragraph (2)(c) was probably intended to refer to amendments that have been accepted by three-fourths of the Contracting Parties. However, as the term “acceptance” was also used in the first sentence of Article 26(2)(c) (“written notifications of acceptance”), there was some ambiguity. If “thus accepted” was read to refer to acceptance by each individual member, then this would appear to contradict the remainder of the sentence that the amendment would bind “all the contracting Parties...”. The Delegation concluded that it would be better if the two sentences of paragraph (2)(c) were separated out into two paragraphs (c) and (d). Whereas the first sentence of paragraph (2)(c) could be maintained in the new paragraph (c), the new paragraph (d) should read as follows: “Any amendments to the said provisions accepted by three-fourths of the Contracting Parties in accordance with subparagraph (c) shall bind all the Contracting Parties to this Treaty at the time the amendment enters into force, and States and intergovernmental organizations which become Contracting Parties at a subsequent date.”

278. The Delegation of the Islamic Republic of Iran expressed concern as to Article 26(2)(a) offering the possibility to amend Articles 24 and 25 through a decision by the Assembly. Although Articles 24 and 25 apparently were procedural articles, they contained substantive rules, for instance, in Article 24(2)(i). The Delegation wondered whether the task of developing the Treaty assigned to the Assembly in Article 24(2)(i) could be understood to include changes to Articles and Rules alike. Referring to Article 26(2)(c), it expressed concern that amendments by the Assembly could indirectly impact on the sovereignty of States.

279. The Chair pointed out that Article 24(2)(i) referred to preparatory work and drafting activities, as currently undertaken by the Standing Committee. He thus considered the provision not to imperil the sovereignty of Member States.

280. The Secretariat explained that Article 24 was of a programmatic nature, whereas Article 26 set forth a procedural framework for the revision of the Treaty by a diplomatic conference, or the amendment of two articles of the Treaty by a decision of the Assembly. Articles 24 and 26, thus, were not to be connected. Moreover, similar articles could be found in many WIPO-administered treaties, reflecting a widely accepted practice among States party to those treaties.

281. The Delegation of the Islamic Republic of Iran observed that, irrespective of the term “development of this Treaty” used in Article 24(2)(i), further substantive issues, such as the rules on the quorum in Article 24(3), would still be subjected to amendment decisions taken by the Assembly. The Delegation pointed out that amendments by the Assembly, like the deletion of Article 24(4)(a), could impact on Member States.

282. The Delegation of Australia wondered whether there was any firm understanding of the expression “members of the Assembly at the time the Assembly adopted the amendment” used in Article 26(2)(c). The Delegation raised the question whether this passage was to be understood as a reference to the members present at the prior deliberations. It suggested that the International Bureau should study carefully the treaties where this language stemmed from in order to rectify paragraph (2)(c) if necessary. Moreover, the Delegation raised the question whether the possibility offered in Article 26(2)(a) to amend Articles 24 and 25 through a decision by the Assembly would lead to a different standard for the amendment of potential future Regulations concerning these Articles.

283. The Representative of CEIPI, in response to the statement made by the Delegation of New Zealand, recalled that many treaties administered by WIPO contained the provision laid down in Article 26(2)(c). The Representative suggested therefore that any changes in that provision be submitted to the Legal Counsel of WIPO. With reference to the question raised by the Delegation of Australia, the Representative stated that amendments under Article 26(2)(a) and the revision by a diplomatic conference were two different ways of changing Articles 24 and 25. The amendment of potential Rules accompanying Articles 24 and 25 would follow the procedure under Article 26 if it were consequential on an amendment to Article 24 or Article 25 made under Article 26(2) but would otherwise follow the normal procedure prescribed in Article 23.

284. The Chair concluded that there was consensus on this provision subject to possible changes to the structure of paragraph (2)(c).

Article 27
(Becoming Party to the Treaty)

285. The Delegation of the Islamic Republic of Iran expressed its concern as to the specific use of the term “instrument” in paragraph (3)(b). It held the view that the article itself could not define terms of the Treaty. As the word “instrument”, in paragraph (3)(b), was defined so as to cover instruments of ratification and accession alike, the Delegation indicated that this specific use could pose difficulties in view of the definition of “instrument of ratification” laid down in Article 1(xvii). Moreover, the Delegation wondered whether paragraphs (3)(b) and (c) were intended to have an encouraging or deterrent effect on countries wishing to become party to the Treaty.

286. The Secretariat explained that paragraph (3)(b) dealt with the specific situation arising where States had a common office, like the Benelux Trademark Office, or became member of a regional organization, such as OAPI. It suggested to further clarify the functioning and meaning of the provision in the Note, for instance, as regards the specific use of the word “instrument”.

287. The Delegation of the Islamic Republic of Iran stated that it did not oppose the concept of Article 27(b) and (c). However, it considered it necessary to point out that the mechanism laid down in these provisions was not clear. The Delegation wondered in particular why a declaration made under paragraph (b) could easily be withdrawn pursuant to paragraph (c).

288. The Representative of CEIPI said that the specific use of the abbreviated term “instrument” in Article 27 only served the purpose of facilitating the reading of that provision. Otherwise, the expression “instrument of ratification or accession” would have to be used throughout the text which would make it long and complicated.

289. The Chair noted the proposal by the Secretariat to further clarify the provision in the accompanying Note. He concluded that there was consensus on this provision.

Article 28
(Application of the TLT 1994 and This Treaty)

290. The Secretariat explained that Article 28 had been incorporated into the TLT to clarify the interface between the TLT 1994 and the revised TLT. It observed that the new provision followed the general principles of international law set out in the Vienna Convention on the Law of Treaties.

291. The Representative of the European Communities stated that the final result of the work of the Standing Committee would be a revised TLT. She welcomed the new Article 28 against the background of the intention of the European Communities to adhere to the new Treaty. However, the Representative also pointed out that further consultations in the European Communities were necessary.

292. The Delegation of Australia observed that provisions similar to Article 28 worked well in the framework of the Madrid system. However, it emphasized that, in this latter context, the provision concerned the relationship to countries which were not members of the Madrid system. In the view of the Delegation, Article 28 raised the problem of treating registrations differently. Whereas the obligations from the revised TLT governed the relations to all other members of the revised TLT, the old principles stemming from the TLT 1994 would remain applicable to relations to the members of the TLT 1994. The Delegation concluded that simplification was needed, and stated that it would prefer the deletion of Article 28.

293. The Delegation of Côte d’Ivoire stated that the Contracting Parties to the TLT 1994 should be encouraged to adhere to the new TLT. The Delegation considered it complicated to apply two different treaties.

294. The Delegation of the Islamic Republic of Iran observed that countries could not be obliged to accede to a certain treaty. It proposed to clarify the language used in Article 28.

295. The Delegation of Chile expressed support for the intervention by the Delegation of the Islamic Republic of Iran. It recalled that Chile had entered into free-trade agreements with the European Communities and the United States of America containing the obligation to accede to the TLT 1994.

296. The Delegation of Mexico observed that the future TLT would be applicable only in respect of the mutual relations of Contracting Parties to both the revised TLT and the TLT 1994. As regards relations with Contracting Parties to the TLT 1994 not being party to the revised TLT, only the TLT 1994 should be applied.

297. The Chair concluded that this provision was left open for further discussion.

Article 29
(Entry into Force; Effective Date of Ratifications and Accessions)

298. The Delegation of Australia stated that there were two principles to be considered in the framework of Article 29. On the one hand, it was desirable to encourage the accession to and ratification of the new TLT. On the other hand, the difficulties posed by certain agreements, carrying an undertaking by countries to accede to the TLT 1994, had to be acknowledged. The Delegation also referred to the case that a national bill had already been drafted to pave the way for accession to the TLT 1994, in which the legislative effort should not be put at risk by a provision like the former paragraph (4). Nevertheless, the Delegation proposed to maintain the former paragraph (4). To offer solutions for the aforementioned problem situations, it suggested to either provide for a phase-out date covering all difficult situations or keep the membership open to those countries who already entered into bilateral agreements or had taken legislative steps. The Delegation stressed that, in any case, it would prefer to have a point in time where the TLT 1994 would be finally closed.

299. The Delegation of the United States of America expressed support for the deletion of the former paragraph (4). However, it also declared to be willing to consider the proposal made by the Delegation of Australia. The discussion, thus, should remain open.

300. The Chair pointed out that an agreed statement seeking to encourage adherence to the new TLT could be considered by the Standing Committee as well.

301. The Delegation of Australia indicated that it would prefer paragraph (4) to remain. It also expressed support for paragraphs (1) to (3).

302. The Representative of CEIPI questioned the legality and desirability of paragraph (4). The Representative held the view that paragraph (4), in fact, would alter the TLT 1994. Furthermore, he wondered whether the TLT 1994 should really be closed. There might be countries which were not in a position to adhere to the new instrument. In this case, the Representative deemed it preferable not to prevent such countries from entering the TLT system by preventing them from adhering to the TLT 1994.

303. The Chair concluded that there was consensus on paragraphs (1) to (3). Paragraph (4) would be reproduced in the next draft as is.

Article 30
(Reservations)

304. There was consensus on this provision.

Article 31
(Denunciation of the Treaty)

305. There was consensus on this provision.

Article 32
(Languages of the Treaty)

306. There was consensus on this provision.

Article 33
(Depositary)

307. There was consensus on this provision.

Agenda Item 5: Questionnaire on Trademark Law and Practice

308. The Secretariat made a report on the status of the work concerning the preparation of a summary of replies to the Questionnaire on Trademark Law and Practice (document SCT/11/6), and explained that the final version of the summary of replies would be circulated prior to the next session of the SCT.

309. The Delegations of Australia, Denmark, New Zealand and Switzerland and the Representative of the ICC expressed appreciation for the effort made by the Secretariat in preparing the status report.

310. The Delegation of Switzerland suggested that the full replies to the questionnaire that were submitted by SCT members and observers be made available by the Secretariat.

311. The Delegation of the United States of America said that it was in favor of transparency concerning the replies and comments to the questionnaire. However, the Delegation expressed concern about a possible misinterpretation of some of the answers bearing in mind that some of the questions could be understood in several ways.

312. In reaction to the concern expressed by the Delegation of the United States of America, the Delegations of Australia, Denmark and New Zealand noted that a general disclaimer concerning the content of the replies and comments would be useful. The Delegation of Australia further pointed out that the replies to the questionnaire might be obtained directly from the office that had prepared the replies in question.

313. The Chair noted that the Standing Committee had taken note of the status report presented by the Secretariat and that it had expressed its thanks and appreciation for the Secretariat's efforts in preparing a document summarizing all replies to the questionnaire.

Agenda Item 6: Internet Domain Names and Geographical Indications

314. The Representative of the European Communities stated that the European Communities attached high importance to the protection of geographical indications in the domain name system and that it would like to see progress in this regard. The Representative requested that the issue remain on the agenda of the SCT.

315. The Delegations of France and Switzerland expressed their support for the statement made by the Representative of the European Communities.

316. The Delegation of Australia stated that it shared the views of the Representative of the European Communities concerning the issue under consideration.

317. The Delegation of New Zealand proposed that the item be dealt with at the next session.

318. The Representative of the ICC said that the interested circles were in favor of continuing work on this topic.

319. The Chair concluded that there was consensus in the Standing Committee that the item be kept on the mid-term agenda of the SCT.

Agenda Item 7: Future Work

320. The Secretariat indicated that new working documents concerning the draft revised TLT would be prepared with a view to finalize, at the fourteenth session of the TLT, work on the basic proposal for the Diplomatic Conference for the adoption of a revised TLT. Furthermore, the summary document containing all replies received to the questionnaire on trademark law and practice would be finalized and published to that session of the SCT. The SCT was moreover invited to identify topics for future work and to present them at the fourteenth session, enabling the Secretariat to start in time with the preparation of the working documents for the fifteenth session of the SCT, which was going to take place at the end of the month of November 2005.

321. The Delegation of Switzerland stated that, with regard to future work, issues concerning harmonization of substantive trademark law and questions concerning the relationship between industrial design, works of applied arts and three-dimensional marks, as already taken up by document SCT/9/6, should be dealt with by the SCT.

322. The Delegation of Denmark suggested continuation of the work on document SCT/9/6.

323. The Delegation of Australia stated that work on the harmonization of substantive trademark law should be given priority in the future activities of the SCT.

324. The SCT decided that, at its fourteenth session, it would devote enough time to finalize the draft for a revised TLT and Regulations. It further decided that any remaining time would be devoted to consideration of the Summary of Replies to the Questionnaire on Trademark Law and Practice (document SCT/11/6) and to the future work.

Agenda Item 8: Adoption of the Summary by the Chair

325. The Standing Committee adopted the draft of the Summary by the Chair contained in document SCT/13/7 Prov. with modifications raised by the Delegation of Australia in respect of Article 3 and Agenda Item 5 (Questionnaire on Trademark Law and Practice), the Delegation of Japan in respect of Agenda Item 3 (Adoption of the Draft Report of the Twelfth Session), the Delegation of New Zealand in respect of Article 3 and the Representative of CEIPI in respect of Articles 1(xxii) and 4(3)(a).

Agenda Item 9: Closing of the Session

326. The Chair closed the thirteenth session of the Standing Committee.

[Annex I follows]

ANNEX I



SCT/13/7

ORIGINAL: English

DATE: October 29, 2004

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

**STANDING COMMITTEE ON THE LAW OF TRADEMARKS,
INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS**

Thirteenth Session
Geneva, October 25 to 29, 2004

SUMMARY BY THE CHAIR

Agenda Item 1: Opening of the Session

1. Mr. Ernesto Rubio, Assistant Director General of the World Intellectual Property Organization (WIPO), opened the session and welcomed the delegates on behalf of the Director General of WIPO.

Agenda Item 2: Adoption of the Agenda

2. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) adopted the Draft Agenda (document SCT/13/1 Prov.) without modifications.

Agenda Item 3: Adoption of the Draft Report of the Twelfth Session

3. The SCT adopted the Draft Report (document SCT/12/7 Prov. 2) with modifications as requested by the Delegations of Egypt, New Zealand and the Russian Federation.

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Agenda Item 4: Revision of the Trademark Law Treaty

4. Discussion was based on the following documents: SCT/13/2 (Draft Revised Trademark Law Treaty (TLT)), SCT/13/3 (Draft Revised Regulations under the Draft Revised Trademark Law Treaty), SCT/13/4 (Notes) and SCT/13/6 (Observations by the Delegation of Switzerland Concerning Document SCT/12/2 (Draft Revised Trademark Law Treaty)).

Article 1
Abbreviated Expressions

item (xxii). There was consensus on this provision subject to redrafting.

Article 2
Marks to Which the Treaty Applies

(1) [*Nature of Marks*]

The Chair concluded that there was consensus on the proposal contained in document SCT/13/6, and that the Secretariat was entrusted to prepare new wording for that provision, making it clear that the Draft Revised TLT did not oblige Contracting Parties to accept for registration marks not registrable under the applicable law. The Chair also noted that, as suggested by one delegation, there was a consequential change in Article 3(1)(a)(xii).

Article 4
Representation; Address for Service

(3) [*Power of Attorney*]

(a) There was consensus on this provision as redrafted.

Article 8
Communications

There was consensus on this Article as a whole.

Rule 6
Details Concerning Communications

(1) [*Indications Accompanying Signature of Communications on Paper*]

There was consensus on this provision.

(2) [*Date of Signing*]

There was consensus on this provision.

(3) [*Signature of Communications on Paper*]

There was consensus on this provision.

(4) [*Signature of Communications Filed by Electronic Means of Transmittal*]

There was consensus on this provision subject to redrafting.

(5) [*Original of a Communication Filed by Electronic Means of Transmittal*]

There was consensus on this provision subject to redrafting.

(6) [*Authentication of Communications in Electronic Form*]

There was consensus on this provision.

(7) [*Notification*]

It was decided to move this provision to Article 22 subject to redrafting.

(8) [*Sanctions for Non-Compliance with Requirements*]

There was consensus on this provision.

Article 22
Observations in Case of Intended Refusal

There was consensus to redraft this provision in conjunction with Rule 6(7), which should be moved from the Regulations to the Treaty.

Rule 5
Details Concerning Filing Date

(4) [*Electronic Filing*]

There was consensus on this provision.

Article 14
Measures in Case of Failure to Comply with Time Limits

(1) [*Extension of Time Limits*]

(2) [*Continued Processing*]

(3) [*Reinstatement of Right*]

The Chair concluded that the SCT had reached agreement on the text of Article 14(1) to (3), subject to minor drafting changes in paragraphs (2) and (3), as far as a reference to the corresponding Rule was concerned. The Chair also noted that even though the Standing Committee had accepted the current draft as agreed text, it was left to the Secretariat to reflect on this text with a view to present to the Standing Committee at the next session improved wording for that draft without any changes as to its substance.

This second draft of Article 14(1) to (3) could be discussed at the fourteenth session of the SCT, it being understood that if that draft would not meet the consensus of the Standing Committee, the text as agreed at this session would remain.

(4) [*Exceptions*]

There was consensus on this provision.

(5) [*Fees*]

There was consensus on this provision.

(6) [*Prohibition of Other Requirements*]

There was consensus on this provision.

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Rule 9
Requirements Relating to Measures in Case of Failure to Comply with Time Limits

(1) [*Requirements Concerning Extension of Time Limits Under Article 14(1)*]

There was consensus on this provision subject to redrafting.

(2) [*Requirements Concerning Continued Processing Under Article 14(2)*]

There was consensus on this provision subject to redrafting.

(3) [*Requirements Concerning Reinstatement of Rights Under Article 14(3)*]

There was consensus on this provision subject to redrafting.

(4) [*Exceptions Under Article 14(4)*]

item (i). This provision was left open for further discussion.

items (ii) to (v). There was consensus on these provisions.

item (vi). There was consensus on this provision subject to redrafting.

item (vii). There was consensus on this provision.

Articles 10 to 12

It was agreed to introduce amendments to these provisions that became necessary as a result of the horizontal effect of Article 8.

Article 13
Duration and Renewal of Registration

There was consensus on this provision, subject to omission in paragraph (2)(ii) of the words “except where Article 3(4)(iv) applies” and to any consequential change.

Article 17
Request for Recordal of a License

(1) [*Contents of the Request for Recordal*]

There was consensus on this provision subject to redrafting.

(2) [*Fees*]

(3) [*Single Request Relating to Several Registrations*]

There was consensus on these provisions.

(4) [*Prohibition of Other Requirements*]

The Chair noted that a number of delegations had made reservations to this provision. The Chair concluded that the substance of Note 17.06 would be moved to Article 17.

(5) [*Evidence*]

There was consensus on this provision subject to redrafting.

(6) [*Requests Relating to Applications*]

There was consensus on this provision.

Article 18
Request for Amendment or Cancellation of the Recordal of a License

(1) [*Contents of the Request*]

There was consensus on this provision subject to redrafting.

(2) [*Other Requirements*]

There was consensus on this provision.

Rule 10
Contents of the Request for Recordal of a License or for Amendment or Cancellation
of the Recordal of a License

(1) [*Contents of Request*]

There was consensus on this provision subject to redrafting of item (xi).

(2) [*Supporting Documents for License*]

This provision was left open for further discussion.

(3) [*Supporting Documents for Amendment or Cancellation*]

There was consensus on this provision subject to redrafting.

Article 19
Effects of Non-Recordal of a License

(1) [*Validity of the Registration and Protection of the Mark*]

There was consensus on this provision.

(2) [*Certain Rights of the Licensee*]

There was consensus on this provision.

Article 20
Use of a Mark on Behalf of the Holder

There was consensus on this provision subject to redrafting.

Article 21
Indication of the License

There was consensus on this provision.

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Article 23
Regulations

There was consensus on this provision.

Article 24
Assembly

There was consensus on this provision subject to possible changes to paragraph (2)(ii).

Article 25
International Bureau

There was consensus on this provision.

Article 26
Revision and Amendment

There was consensus on this provision subject to possible changes to the structure of paragraph (2)(c).

Article 27
Becoming Party to the Treaty

There was consensus on this provision.

Article 28
Application of the TLT 1994 and this Treaty

This provision was left open for further discussion.

Article 29
Entry into Force; Effective Date of Ratifications and Accessions

There was consensus on paragraphs (1) to (3). Paragraph (4) would be reproduced in the next draft as is.

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Article 30
Reservations

There was consensus on this provision.

Article 31
Denunciation of the Treaty

There was consensus on this provision.

Article 32
Languages of the Treaty

There was consensus on this provision.

Article 33
Depositary

There was consensus on this provision.

Agenda Item 5: Questionnaire on Trademark Law and Practice

5. The Standing Committee took note of the status report presented by the Secretariat concerning the preparation of a Summary of Replies to the Questionnaire on Trademark Law and Practice (document SCT/11/6). The Standing Committee thanked the Secretariat for the effort put in the preparation of the summary.

Agenda Item 6: Internet Domain Names and Geographical Indications

6. There was consensus that this item will be kept in the mid-term agenda of the SCT.

Agenda Item 7: Future Work

7. The SCT decided that it would devote enough time to finalize the draft for a revised TLT and its Regulations, at its fourteenth session. It further decided that the remaining time,

if any, would be devoted to consideration of the summary of replies to the questionnaire on trademark law and practice and to future work.

[Annex II follows]

ANNEX II

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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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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V. SECRETARIAT DE L'ORGANISATION MONDIALE
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