

Hague Agreement Concerning the International Registration of Industrial Designs

Amendments to the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement

1. At its thirty-sixth (16th extraordinary) session, which took place in Geneva from October 3 to 11, 2016, the Assembly of the Hague Union adopted amendments to Rule 5 of the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement (hereinafter referred to as the “Common Regulations”).
2. The purpose of the amendments to Rule 5 is to provide a safeguard against non-delivery of an electronic communication. It is likely that in the future, communications with the International Bureau would mostly take place in electronic format.

“SAFEGUARD MECHANISM” UNDER THE HAGUE SYSTEM

3. Under new paragraph (3) of Rule 5, failure of an interested party to meet a time limit for a communication addressed to the International Bureau that was sent electronically, would be excused where the interested party submits satisfactory evidence showing that the time limit was not met because of a failure in the electronic communication with the International Bureau or a failure that affects the locality of the interested party due to extraordinary circumstances beyond the control of the interested party. It should be noted that the latter applies to outages affecting a high number of users, such as all users in a large area of a city or country, rather than localized problems within a particular building. In the above-mentioned cases, a new communication should be effected no later than five days after the electronic communication service is resumed¹.

¹ It is recalled that the same safeguard mechanism already exists in the Madrid System for the International Registration of Marks, namely, Rule 5(3) of the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (hereinafter referred to as the “Common Regulations under the Madrid Agreement and the Protocol relating thereto”) has the same functions and structure as new paragraph (3) of Rule 5 (refer to Madrid Information Notice No. 17/2016).

4. Furthermore, the Hague Portfolio Manager, which is available on the WIPO website, allows an applicant to reply electronically to an irregularity notice issued by the International Bureau against an international application. The Portfolio Manager will be extended to also cover other types of actions, such as requests for the recording of a change in ownership or a change in the name or address of the holder, to cover the whole lifespan of the international registration. The proposed amendments to Rule 5 would also provide a safeguard against non-delivery of an electronic communication in the case of non-availability of electronic communications services.

5. Following the insertion of new paragraph (3), previous paragraph (3) of Rule 5 was renumbered as paragraph (4), and a reference to new paragraph (3) was added to paragraph (4). Therefore, the time limit for submitting the evidence and the missing communication will remain six months, which is also the same for communications sent through a postal or delivery service².

6. Finally, pursuant to Rule 12(3) of the Common Regulations, a declaration under Article 7(2) of the 1999 Act concerning an individual designation fee, may specify that the individual designation fee to be paid in respect of the Contracting Party concerned comprises two parts, the first to be paid at the time of filing the international application and the second part to be paid at a later date which is determined in accordance with the law of the Contracting Party concerned. Given that the applicable law provides for the time limit for the payment of the second part of the individual designation fee, including conditions for excuse of a delay in meeting that time limit, and that the second part of the individual designation fee may also be paid to the national Office concerned, new paragraph (5) of Rule 5 states that this Rule shall not apply to the payment of the second part of the individual designation fee through the International Bureau.

7. The amended text of the Common Regulations is reproduced in the Annex to this Information Notice.

8. A more detailed presentation of the amendments referred to above can be found in the Hague Union Assembly document H/A/36/1, which is available on the WIPO website at the following address: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=345176, and in the Working Group document H/LD/WG/5/2, available on the WIPO website at the following address: http://www.wipo.int/edocs/mdocs/hague/en/h_ld_wg_5/h_ld_wg_5_2.pdf.

9. The aforementioned amendments to Rule 5 of the Common Regulations will come into effect on January 1, 2017.

December 7, 2016

² This is in line with Rule 5(4) of the Common Regulations under the Madrid Agreement and the Protocol relating thereto.

**Common Regulations
Under the 1999 Act and the 1960 Act
of the Hague Agreement**

(as in force on January 1, 2017)

*Rule 5
Excuse of Delay in Meeting Time Limits*

[...]

(3) [*Communication Sent Electronically*] Failure by an interested party to meet a time limit for a communication addressed to the International Bureau and submitted by electronic means shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau, that the time limit was not met because of failure in the electronic communication with the International Bureau, or which affects the locality of the interested party owing to extraordinary circumstances beyond the control of the interested party, and that the communication was effected not later than five days after the electronic communication service was resumed.

(4) [*Limitation on Excuse*] Failure to meet a time limit shall be excused under this Rule only if the evidence referred to in paragraph (1), (2) or (3) and the communication or, where applicable, a duplicate thereof are received by the International Bureau not later than six months after the expiry of the time limit.

(5) [*Exception*] This rule shall not apply to the payment of the second part of the individual designation fee through the International Bureau as referred to in Rule 12(3)(c).

[End of Annex]