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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

**SPECIAL UNION FOR THE INTERNATIONAL CLASSIFICATION OF GOODS AND  
SERVICES FOR THE PURPOSES OF THE REGISTRATION OF MARKS  
(NICE UNION)**

**PREPARATORY WORKING GROUP**

**Twenty-Eighth Session  
Geneva, November 16 to 20, 2009**

DRAFT REPORT

*prepared by the Secretariat*

## INTRODUCTION

1. The Preparatory Working Group of the Committee of Experts of the Nice Union (hereinafter referred to as “the Preparatory Working Group”) held its twenty-eighth session in Geneva from November 16 to 20, 2009.
2. The following current members of the Preparatory Working Group were represented at the session: Australia, Austria, China, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Latvia, Luxembourg, Mexico, Netherlands, Norway, Republic of Korea, Romania, Russian Federation, Singapore, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States of America (26). The following States were represented by observers: Argentina, Brazil, Estonia and Poland (4). Representatives of the following international intergovernmental organizations took part in the session in an observer capacity: Benelux Organisation for Intellectual Property (BOIP) and the Commission of the European Communities (CEC). A representative of the following international non-governmental organization (NGO) attended the session in an observer capacity: International Trademark Association (INTA).

3. The Preparatory Working Group noted that, since its last session held from October 6 to 10, 2008, in accordance with the Rules of Procedure of the Committee of Experts of the Nice Union, two countries members of the Nice Union, namely, Italy and Turkey had become new members of the Preparatory Working Group.

4. The list of participants appears in Annex I to this report.

#### Agenda Item 1: Opening of the Session

5. The session was opened by Mr. Antonios Farassopoulos, Head, International Classifications and WIPO Standards Service, who welcomed the participants on behalf of the Director General.

#### Agenda Item 2: Election of a Chair and one Vice-Chair

6. The Preparatory Working Group unanimously elected Mr. Mike Foley (United Kingdom) as Chair and Ms. Chrissie Norman (Australia) as Vice-Chair.

7. Mr. Antonios Farassopoulos (WIPO) acted as Secretary of the session.

#### Agenda Item 3: Adoption of the Agenda

8. The Secretariat requested that the agenda be amended so as to delete Item 11 concerning the discussion of the suggestions of the International Bureau on future developments in the Nice Classification. It was noted that the International Bureau intended, by the twenty-first session of the Committee of Experts, to submit detailed proposals to the electronic forum for discussion and further consideration.

9. The Preparatory Working Group unanimously adopted the agenda as amended, which is reproduced in Annex II to this report.

10. As decided by the Governing Bodies of WIPO at their tenth series of meetings, held from September 24 to October 2, 1979 (see paragraphs 51 and 52 of document AB/X/32), the report on this session reflects only the conclusions of the Preparatory Working Group (decisions, recommendations, opinions, etc.) and does not, in particular, reproduce the statements made by any participant, except where a reservation in relation to any specific conclusion of the Preparatory Working Group was expressed or repeated after the conclusion was reached.

#### Agenda Item 4: Adoption of the draft report of the twenty-seventh session of the Preparatory Working Group of the Committee of Experts of the Nice Union (document CLIM/GTP/27/8 Prov.)

11. The Preparatory Working Group considered and unanimously adopted the draft report of its twenty-seventh session, held in Geneva from October 6 to 10, 2008.

Agenda Item 5: Consideration of proposals for changes to the ninth edition of the Nice Classification which could not be examined by the Preparatory Working Group at its twenty-seventh session (documents CLIM/GTP/27/2, CLIM/GTP/27/3 and CLIM/GTP/28/2)

12. Discussions were based on documents CLIM/GTP/27/2 and CLIM/GTP/27/3 containing the original proposals for changes to the Nice Classification submitted for the twenty-seventh session of the Preparatory Working Group, and on document CLIM/GTP/28/2 containing summary tables of the proposals which could not be examined by the Preparatory Working Group at that session.

13. The Preparatory Working Group approved a number of changes, which are shown in Annex III to this report.

Agenda Item 6: Consideration of additional proposals for changes to the ninth edition of the Nice Classification (documents CLIM/GTP/28/3, CLIM/GTP/28/4 and CLIM/GTP/28/5)

14. Further discussion was based on documents CLIM/GTP/28/3 and CLIM/GTP/28/4 containing additional original proposals for changes to the Nice Classification submitted for this session of the Preparatory Working Group, and on document CLIM/GTP/28/5 containing summary tables of those proposals.

15. The Preparatory Working Group approved a number of changes, which are shown in Annex IV to this report.

Agenda Item 7: Consideration of a proposal submitted by the International Bureau relating to translation problems in the Nice Classification (document CLIM/GTP/28/6)

16. Discussions were based on document CLIM/GTP/28/6.

17. The Preparatory Working Group approved a number of changes, which are shown in Annex V to this report.

Agenda Item 8: Consideration of a proposal for changes to Classes 5, 29 and 30 (documents CLIM/GTP/28/7 and CLIM/GTP/28/8)

18. Discussions were based on documents CLIM/GTP/28/7 (original proposals as submitted by Norway) and CLIM/GTP/28/8 (summary table of those proposals).

19. Norway presented a revised version of its proposal to merge the food classes 29 and 30 and the beverage classes 32 and 33, submitted to the Preparatory Working Group at its twenty-sixth session held in 2007. In this new version, Norway proposed merging only Classes 29 and 30 and introducing related changes in Classes 5 and 31.

20. The Chair invited the delegations to express their views on the principle of the proposal, i.e., the merging of the two food classes 29 and 30, rather than on the details concerning the modification of class headings, explanatory notes and individual indications of goods. A large number of delegations indicated strong support for the principle. They stressed the

importance of simplifying the classification of foodstuffs, which would be of great benefit for trademark registration applicants as well as for trademark examiners. Nevertheless, some delegations expressed concerns about the financial implications of merging two classes and about the possibility for such a change to set a trend towards merging other classes. Furthermore, some delegations stated that the transfer of certain goods from Class 5 to the new food class and the resulting changes in the wording of the related class headings and explanatory notes should be studied more carefully.

21. Although the proposal had considerable support, it could not obtain the necessary four-fifths majority of the countries represented and voting. The Preparatory Working Group invited Norway to submit a revised proposal to the electronic forum at the beginning of 2010 to allow a deeper discussion which could lead to a more consensual proposal being prepared and presented to the Committee of Experts.

Agenda Item 9: Consideration of a proposal for the restructuring of Class 9 (documents CLIM/GTP/28/9 and CLIM/GTP/28/10)

22. Discussions were based on documents CLIM/GTP/28/9 (original proposals as submitted by the United States of America) and CLIM/GTP/28/10 (summary table of those proposals).

23. The United States of America presented its proposal for splitting Class 9 into three classes, leaving some products in Class 9 and moving the rest to two new classes, 50 and 51. In general, the reason for proposing this amendment to the Nice Classification was the fact that Class 9 contained very dissimilar items. The proposal for splitting Class 9 included not only proposals for the transfer of goods from Class 9 to the new classes but also from Class 9 to Classes 7, 8, 10, 13, 16, 18, 20, 21, 26, 28 and 34.

24. The Chair invited the delegations to express their views, again, on the principle of splitting Class 9 into three classes rather than on the details of the proposal. Several delegations indicated support for a more logical classification of the products ranged under Class 9, as the class was becoming unmanageable due to the ever-growing number of trademarks registered for Class 9 goods. However, other delegations stated that they would need more extensive consultations with the users in order to take position on this matter. Certain delegations were of the opinion that substantial changes to the basic structure of the Classification, as well as an excessive number of classes, should be avoided. They also referred to the implications that such changes could have for databases and for the reclassification work in certain offices.

25. The proposal had considerable support, however, it failed to obtain the necessary four-fifths majority of the countries represented and voting. The Preparatory Working Group invited the United States to submit a revised proposal for changes to Class 9 to the electronic forum at the beginning of 2010, which could lead to a more consensual proposal being prepared and submitted to the Committee of Experts.

Agenda Item 10: Consideration of a proposal concerning the classification of nutritional supplements (document CLIM/GTP/28/11)

26. Discussions were based on document CLIM/GTP/28/11 containing questions on the current practice of national offices with regard to the classification of dietary supplements, food additives, dietetic food and beverages, and meal replacements.

27. The delegations were invited to comment on the document. Most of the delegations stated that they would welcome a common practice amongst the offices and would be opened to a decision to have all nutritional or dietary supplements classified in one class, preferably in Class 5, without specifying whether they were for medical purposes or not. As for food additives, offices classified them in Class 1 when they were for industrial purposes (including for the food industry) or in Classes 29 or 30 when they were for culinary purposes. The classification practice for dietetic food and beverages, meal replacements and food and beverages with special qualities, such as “low salt”, “low calories”, “gluten free”, was to classify them in the food and beverage Classes 29, 30 or 32, unless it was expressly indicated that the products were adapted for medical purposes, in which case they belonged to Class 5.

28. The International Bureau was invited to prepare a study according to the results of the debates and submit it to the electronic forum for further consideration.

Agenda Item 11: Next session of the Preparatory Working Group

29. The Preparatory Working Group noted that it would not hold its twenty-ninth session in May next year as planned. Instead, the twenty-first session of the Committee of Experts of the Nice Union, scheduled for November 8 to 12, 2010, would be held in Geneva from November 22 to December 1, 2010. A longer session would give the Committee enough time to go through all the recommendations made by the Preparatory Working Group during the current revision period, to adopt changes to the Nice Classifications and, additionally, to discuss and adopt the amendments to its Rules of Procedure, in accordance with the outcome of the third session of the *ad hoc* Working Group held in Geneva on November 16, 2009.

Agenda Item 12: Closing of the Session

30. The Chair closed the session.

[Annexes follow]