

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

Thirty-Sixth Session
Geneva, October 17 to 19, 2016

REPORT

*adopted by the Standing Committee**

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 thirty-sixth session, in Geneva, from October 17 to 19, 2016.
2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Argentina, Australia, Austria, Azerbaidjan, Bahamas, Belarus, Belgium, Brazil, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Denmark, Djibouti, Democratic People’s Republic of Korea, Dominican Republic, El Salvador, Finland, France, Gabon, Ghana, Germany, Greece, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kuwait, Latvia, Lebanon, Lithuania, Malaysia, Mexico, Monaco, Morocco, Mozambique, Nepal, Nigeria, Norway, Oman, Panama, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia, Singapore, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Tunisia, Turkey, Uganda, Ukraine, Uruguay, United Kingdom, United States of America, Viet Nam, Yemen (86). The European Union was represented in its capacity as a special member of the SCT. Palestine was represented in its capacity as Observer.

* This Report was adopted at the thirty-seventh session of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Union (AU), Benelux Organisation for Intellectual Property (BOIP), World Trade Organization (WTO) (3).
4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: Association des industries de marque (AIM), Association française des praticiens du droit des marques et modèles (APRAM), Centre for International Intellectual Property Studies (CEIPI), European Law Student's Association (ELSA International), Intellectual Property Owners Association (IPO), International Association for the Protection of Intellectual Property (AIPPI), International Wine Law Association (AIDV), International Federation of Intellectual Property Attorneys (FICPI), International Trademark Association (INTA), Internet Corporation for Assigned Names and Numbers (ICANN), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), MARQUES - Association of European Trade Mark Owners, Organization for an International Geographical Indications Network (oriGIn) (14).
5. The list of participants is contained in Annex II of this document.
6. The Secretariat noted the interventions made and recorded them.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the thirty-sixth session of the SCT and welcomed the participants.
8. Mr. David Muls (WIPO) acted as Secretary to the SCT.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

9. The SCT adopted the draft Agenda (document SCT/36/1 Prov.).

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-FIFTH SESSION

10. The SCT adopted the draft Report of the thirty-fifth session (document SCT/35/8 Prov.).

General Statements

11. The Delegation of Greece, speaking on behalf of Group B, took note of the conclusion of the WIPO fifty-sixth General Assemblies, where regrettably no agreement was reached to convene a diplomatic conference for the adoption of a Design Law Treaty (DLT). The Group expressed its disappointment that considerations falling outside of the scope of the Treaty were preventing users from benefiting of formality simplification of the industrial design system. Group B could agree that the text submitted to the 2014 General Assembly and contained in document SCT/31/2 be sent to the future diplomatic conference. The Group appreciated the explanations provided during the thirty-fifth session of the SCT but noted that these did not contribute to the goal of reducing formalities. Notwithstanding, Group B remained strongly supportive of the SCT as an important forum for all member countries to discuss issues, facilitate coordination and provide guidance on the progressive development of international intellectual property law on trademarks, industrial designs and geographical indications. Group B was committed to engaging and working collaboratively to advance the SCT work in these areas. The Group acknowledged the conclusion of the Summary by the Chair of the

thirty-fifth session that sufficient time would be allocated to discussing the protection of country names against registration and use as trademarks, and looked forward to a constructive discussion on geographical indications.

12. The Delegation of Latvia, speaking on behalf of the Group of Central European and Baltic States (CEBS Group), referred to documents SCT/36/2 entitled “Compilation of the Replies to the Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs” and SCT/36/3 entitled “Information on the Digital Access Service for Priority Documents (DAS)”, and said that the Group believed they were a good basis for discussions. The CEBS Group expressed disappointment concerning the DLT, concerning which the Member States failed to reach consensus during the negotiations held at the General Assembly. The Group stated that the DLT should not remain on the Agenda of the Committee, except as a reminder that once flexibility is reached, the issue could be moved forward. In the view of the CEBS Group, the DLT was finalized several years ago. This was a procedural treaty which did not address substantive issues. Its aim was facilitating access to the protection of intellectual property by harmonizing and simplifying the registration formalities, and this would be beneficial to the users and allow them to have higher legal predictability at the national and international level. The Group believed that the reasons behind the absence of agreement on convening a diplomatic conference were political and not technical. Therefore, there was no reason to discuss the DLT in the Committee and the solution should be found at the political level during the next General Assembly. The Group pointed out that a number of other important questions were included in the Agenda of the present committee, namely the protection of country names and geographical indications. The Group supported the proposal co-sponsored by a number of the CEBS Member States, concerning the protection of geographical indications in the domain name system and stood ready to engage in a constructive manner in all SCT discussions.

13. The Delegation of India, speaking on behalf of the Asia Pacific Group, said that it attached great significance to intellectual property as an important catalyst of socioeconomic and technological development. Not only did an equitable and just international intellectual property regime promote innovation but it was also adjustable to the diverse developmental needs of the Member States. The work of the Committee should therefore be geared towards maintaining the equilibrium between the interests of right holders and those of the larger public welfare, and focus on finding agreement among Member States on the text of a possible DLT. Like any other international instrument, the implementation of the DLT should be accompanied with enhanced capacity of member countries to carry out the obligations arising out of the new Treaty and the proposed draft should address the important issue of capacity building within the intellectual property regimes of the developing and least developed countries (LDCs). The Group therefore favored the inclusion of a specific provision on technical assistance in the main body of the proposed DLT and called for consensus to be found among all Member States. Most of the members of the Asia Pacific Group supported the principle of disclosure of the source that had an impact on the appearance of an industrial design. As sovereign Member States of WIPO, countries should have the flexibility to include as part of the design eligibility criteria elements that were considered important to complete the formalities for protection of industrial designs within their jurisdiction. The Group noted the decision taken by the last WIPO General Assembly that Member States would continue considering, during the 2017 General Assembly, the convening of a diplomatic conference for the adoption of a DLT to develop simplified standards for industrial design registration procedures which could take place at the end of the first half of 2018. The Group was ready to engage constructively with other groups towards a complete resolution of the outstanding issues, especially bridging the position gaps concerning Article 3(1)(a)(ix) and Article 22 of the draft Treaty. Developing countries should have ample policy space to shape their industrial design protection system in accordance with national interests, as it was envisaged in the TRIPS Agreement. The Group was open to discuss the joint proposal submitted by the Delegations of Israel, Japan and the United States of America, entitled “Industrial Design and Emerging Technologies: Similarities and Differences in the Protection of New Technological Designs”, with the view to understanding the new

technological advancements in electronics and the consequent effect on development of industrial designs in the new age media such as social media, smartphone and tablet technology including icon designs and graphical user interfaces. With regard to the extension of the digital access service to industrial designs, the Group was of the view that applicants could reduce the burden of preparing the required documents for priority claims. In addition, there was a need for international action to prevent undue registration or use of country names as trademarks and the Group supported the proposal made by the Delegation of Jamaica for the development and future adoption of a Joint Recommendation. The Group also supported the proposal made by the Delegation of the United States of America to develop a survey on existing national geographical indications regimes, to enhance the understanding of the commonalities and different approaches to the protection of geographical indications adopted by various Member States. The Group hoped to see progress towards consensus on the issue of protection of country names and geographical indications. In addition, the report of the Secretariat relating to trademarks in the Domain Name System (DNS) provided very useful information about various services and procedures available to trademark owners to prevent bad faith registration or use of domain names. The Asia Pacific Group requested the Secretariat to continue providing details about the specific tools and mechanisms deployed, if any, to facilitate affordable access and use of such services by users from developing and least developed countries. The Delegation indicated that some members of the Group had different national positions on the issue of disclosure and would make their own statements in that regard.

14. The Delegation of Nigeria, speaking on behalf of the African Group, regretted the outcome of the 2016 General Assembly negotiations on matters concerning the convening of a diplomatic conference for the adoption of the DLT. The Group believed that resistance to the inclusion of the interests of a significant number of the diverse members of WIPO had proved a fundamental barrier to progress in the draft DLT. Particular reference was made to the African Group request for inclusion, in Article 3(1)(ix), of the disclosure of the original source of traditional knowledge, traditional cultural expressions and genetic/biological resources utilized in industrial designs as part of a non-mandatory closed list of requirements for industrial design applications. The Group highlighted the exponential growth of industrial designs in the intellectual property ecosystem. The draft DLT was designed to limit the requirements countries may impose on applicants, and therefore the Group pointed out the difficulty to consciously facilitate an instrument that could exclude different forms of knowledge and intellectual activity that may be involved in the implementation of industrial designs. It was still unclear to the Group why the list of requirements for industrial design protection applications should be a maximum closed list of standards. For these reasons, as well as the need to provide legal certainty in the text, the African Group remained convinced of the need to include a disclosure requirement in the text of the draft DLT. In the same vein, the Group looked forward to the inclusion of an effective provision on capacity building and technical assistance to suit the needs of developing and least developed countries, in order to ensure that they will be capable of implementing and deriving benefits from the DLT. Given the ample time for reflection and possible informal consultations on the draft DLT before the 2017 General Assembly, the Group hoped that a workable solution could be reached. At the current session of the SCT, members of the group would engage in the discussion of the remaining issues, namely trademarks, geographical indications and the new proposal concerning industrial designs.

15. The Delegation of Chile, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), regretted that during the recent General Assemblies it was not possible to reach an agreement on the convening of a diplomatic conference on the DLT. The Group reiterated that effective technical assistance and strengthening of national capacities would continue to be of crucial importance for the region, which is composed of developing countries members of WIPO. The Group hoped that during the next session of the General Assembly in 2017 a consensus could be reached on the convening of a diplomatic conference. In addition, the protection of country names constituted a very important issue for the Group,

which was of the view that country names provided a valuable opportunity for nation branding schemes to bring value through the use of trademarks, especially for developing countries. However, the Group noted that there was a lack of internationally-consistent protection of country names, as it had been confirmed during the twenty-ninth session of the Committee and in the Study prepared by the Secretariat to determine possible best practices for the protection of country names against registration as trademarks or elements of trademarks. The Group reiterated its commitment to continuing with discussions on the protection of country names against registration and use as trademarks and expressed interest in the debates on the proposal made by the Delegation of Jamaica (document SCT/32/2). In accordance with the decision of the General Assembly, the Group looked forward to discussions on the different systems for protection of geographical indications within the SCT mandate and covering all aspects of this issue.

16. The Delegation of the European Union, speaking on behalf of the European Union and its member states, profoundly regretted that the General Assembly had been unable to reach agreement to finalize the discussions on the DLT. Against the experience of the failed negotiations of the General Assembly, the Delegation believed that the Committee should turn to the other relevant topics on its Agenda. During the previous session, where most of the time was dedicated to finalizing agreement on the DLT, it was decided that country names would remain on the Agenda and that the SCT would revert to that issue at its next session. The Delegation expected then, to hold constructive and substantive discussions on that issue. Over the years, a number of documents had been tabled on the broader aspects of geographical indications and the European Union looked forward to continuing with the discussions on this matter during SCT/36. The Delegation clarified, however, that the work of the SCT should not aim to interpret or revise the provisions of the Lisbon Agreement or the Geneva Act, and that any future revision of the Geneva Act was the exclusive prerogative of the members of the Lisbon Union. The European Union and its member states believed that conducting a study on geographical indications and the domain name system would fall within the scope of the decision by the General Assembly to examine the different systems for protection of geographical indications within its current mandate, and therefore supported such a study by the Secretariat.

17. The Delegation of China noted that despite the progress made regarding the DLT, the text had not still met with the expectations of the Member States. The Delegation expected that discussions could advance during the current session and the 2017 General Assembly. Two items seemed to be of particular concern: technical assistance and the disclosure requirement. The Delegation hoped that results could be achieved in relation to trademarks and geographical indications.

18. The Delegation of the Republic of Korea, believed that the DLT would be a precious tool for design creators around the world, and would benefit not only large enterprises but also small and medium sized companies and individuals in developing and least developed countries, since the objective of the DLT was to simplify and harmonize design application procedures and make it easier for design creators to apply both with their national intellectual property offices and also with foreign intellectual property offices. The Delegation believed that a disclosure requirement in design applications for subject matter using or directly based on traditional knowledge, traditional cultural expressions or genetic resources would not be appropriate in the process of harmonizing formalities, considering that disclosure was a substantive requirement which would affect the registrability of designs rather than being a formality and therefore, fell outside of the scope of the DLT. The Delegation was concerned by the fact that inserting the disclosure requirement in the DLT would place an undue burden on applicants of industrial design rights. The Delegation hoped that the meeting could be used as a platform to facilitate the holding of the diplomatic conference and bring these long ongoing discussions to a fruitful conclusion. Regarding the new technological designs, such as the Graphical User Interface (GUI), icons and typeface/font, the Delegation fully supported the proposal made by the Delegations of Israel,

Japan and the United States of America in document SCT/35/6, on which the Delegation was ready to participate and exchange opinions. The Delegation also supported the expansion of the WIPO DAS to priority documents for industrial designs, as this would benefit applicants by reducing their burden when preparing the required priority claim documents. With regard to the protection of country names, the Delegation considered it necessary to prevent the undue registration or use of country names as trademarks but pointed out the need to protect the rights of current legitimate users of country names in trademarks that may have even become well-known or acquired recognition in the domestic market. With regard to geographical indications, the Delegation fully supported the proposals made by the Delegation of the United States of America contained in documents SCT/30/7, SCT/31/7 and SCT/34/5. Considering the limitations of the recently adopted new Act of the Lisbon Agreement, which did not take into account all the various national geographical indication regimes that were implemented by the Member States, the Delegation deemed it necessary to conduct a further study on geographical indications to carefully review the feasibility of an international geographical indications filing system under the SCT.

AGENDA ITEM 4: INDUSTRIAL DESIGNS

Industrial Design Law and Practice – Draft Articles and Draft Regulations

19. The Chair recalled that “the WIPO General Assembly decided that, at its next session in October 2017, it will continue considering the convening of a diplomatic conference on the DLT, to take place at the end of the first half of 2018”. The Chair drew the SCT’s attention to the fact that that decision was different from the decision of the 2015 General Assembly, which requested the SCT to finalize the text of the basic proposal for the DLT. The Chair, noting the work carried out during the informal consultations which had taken place at the 2016 General Assembly, said that, although a result had not been achieved on a disclosure requirement and on technical assistance, the draft DLT was a valuable document. Expressing his optimism, he also recalled that the General Assembly had referred to it being the appropriate forum to discuss those matters and the possibility of convening a diplomatic conference. Pointing out that everybody recognized the importance of industrial designs, the Chair stated that the draft DLT was not supposed to be a one-size-fits-all treaty, but be flexible enough to include specificities and specific features in different areas.

20. The Delegation of Nigeria, speaking on behalf of the African Group, stated that the African Group welcomed any level of negotiation on the draft DLT, in order to find a solution and be able to convene a diplomatic conference with an instrument that would be functional and meaningful for African intellectual property offices.

21. The Delegation of Latvia, speaking on behalf of the CEBS Group, recalled that it was not ready to discuss the draft DLT in a substantive manner in the current session of the SCT.

22. The Delegation of the European Union, speaking on behalf of the European Union and its member states, expressed its disappointment that the General Assembly had been unable to reach agreement in relation to the DLT. Noting that the text of the DLT had been stabilized since 2014, the Delegation stated that, acknowledging the mandate of the General Assembly in 2015, solutions had been discussed extensively to accommodate the need for policy space in order to comply with national or regional requirements and the matter of technical assistance. The Delegation pointed out that the European Union and its member states had demonstrated a great deal of flexibility and understanding during those discussions and at the 2016 General Assembly. The Delegation considered that discussions at the General Assembly had reached a deadlock of a political nature, and therefore concluded that there was no need for further discussions on matters of substance related to the DLT in the framework of the SCT.

23. The Delegation of France, expressing its disappointment that the 2016 WIPO General Assembly had not resulted in convening a diplomatic conference for the adoption of the DLT, stated that the DLT should not be discussed within the SCT between the current session and the next General Assembly, since the work on the essence of the draft DLT had been concluded and the decision to convene a diplomatic conference was a political decision and no longer a technical matter.

24. The Delegation of Greece, speaking on behalf of Group B, reiterated its regret that considerations falling outside of the scope of the treaty were currently preventing users from benefitting from a simplification of formalities in the industrial design system. The Delegation recalled that, at the 2014 General Assembly, Group B had stood ready to agree on sending the text to a diplomatic conference in 2015 and that regrettably no agreement had been reached.

25. The Delegation of Nigeria, speaking on behalf of the African Group, regretted that some statements from demandeurs of the treaty did not enable the process to move forward. In its view, wishing to disregard what had occurred in the Committee since November 2014 was problematic and meant, for the African Group, a lack of desire for success on the DLT. While reiterating its wish to hold consultations in order not to miss an opportunity to move forward, the Delegation, however, pointed out that it would not be ready to discuss on the basis of the 2014 text, as deleting what had happened during the last two years was not possible. In its opinion, it was meaningless to meet if no discussion beyond the draft DLT text of November 2014 was desired. The Delegation concluded by announcing its readiness to hold consultations if Member States were willing to engage on the discussions which had taken place since then.

26. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recalled that during the General Assembly, extensive informal consultations had been held on the text of the DLT, and in particular on the provisions relating to African concerns. Those concerns had been fully addressed in a very transparent manner, and the offers that had been made showed a real intent of flexibility and inclusiveness on the part of the European Union and its member states. The Delegation considered that in the context of informal consultations, the discussions had gone as far as they could, and that it was the time for political decision making in order to reach a decision on convening a diplomatic conference.

27. The Chair, noting the disappointment expressed by delegations about the fact that the situation had not moved forward at the 2016 WIPO General Assembly, observed that the positions had not changed since then.

28. The Chair concluded that, while the DLT would remain on its Agenda, the SCT should abide by the decision of the General Assembly.

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

29. Discussion was based on document SCT/36/2.

30. The Secretariat introduced document SCT/36/2, informing the Committee that 46 replies to the *Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs* had been received in due time, and were reflected in document SCT/36/2, and that five additional replies had been received at a later stage.

31. The Delegation of the United States of America, thanking the Member States for their replies to the questionnaire, said that the document was extremely informative and very helpful. The Delegation pointed out that graphical user interface (GUI), icon and typeface/type font designs, and all other emerging areas in the field of industrial designs, constituted an increasingly important topic for its intellectual property office. Observing that those types of

designs were becoming more and more prevalent and were often even the most prevalent types of designs in its jurisdiction, the Delegation said that the information contained in the document helped understanding the current framework and various designs systems across the globe. In its opinion, document SCT/36/2 was also very helpful to users of industrial design systems. The Delegation concluded by saying that it looked forward to hearing further comments and details on the topic.

32. The Delegation of Israel thanked the Delegations of Japan and the United States of America, with whom it had worked closely on the subject of industrial designs and emerging technologies, as reflected in document SCT/35/6 Rev. 2, the Secretariat for the compilation of the replies, as well as all responding Offices. Expressing the view that document SCT/36/2 was an invaluable document, the Delegation informed the Committee of the fact that a process for the replacement of the current design law statute of Israel, based on the United Kingdom Statute of 1919, by a modern statute, was currently going on, so as to create a system of protection of both registered and unregistered designs. The Delegation explained that, while the proposed design bill specifically mentioned GUIs, icon and typeface/type font designs as design subject matter, controversies had been evidenced, in the course of preliminary discussions on the bill, as to the scope and duration of the protection of those designs and as to whether those items should be protected under *sui generis* design law, under copyright law, or under both laws and, in that case, to what extent. The Delegation reported that digital typeface designers had lobbied in Israel for a full copyright protection for digital typefaces, instead of a *sui generis* design protection. Although there was a consensus on the fact that old fashioned typefaces had always been protected in Israel under the design law only, the Delegation pointed out that a change in technology could be interpreted, at least for some members of the public, as a change of the very essence of the subject matter and protection of such items. Consequently, any reference to emerging technologies under the design law, or intellectual property law in general, should be carefully crafted. In that framework, the Delegation stressed the fact that document SCT/36/2 had been of tremendous assistance in understanding the various national approaches for the protection of GUIs, icon and typeface/type font designs. Observing that national laws followed diverse approaches to the issue, the Delegation stated that the questionnaire had shed light on how social and economic balances had found expression at the national level in the 44 Member States and two intergovernmental organizations that had replied. Moreover, it had provided the Committee with a starting point for thinking about the way to address the issue, with a view to assisting Member States in legislating design protection levels that would be most suitable for their individual conditions.

33. The Delegation of Japan, thanking the Secretariat for its work, as well as Member States for having submitted their replies, observed that document SCT/36/2 enabled SCT members to determine the types of protection and related laws, the method and filing application requirements, as well as the scope of protection of GUIs, icon and typeface/type font designs, when design law applied in each responding State. The Delegation therefore considered that the document was truly useful reference material, not only for intellectual property offices of Member States, but also for users.

34. The Delegation of China, considering that GUI, icon and typeface/type font designs were an important issue, underlined the fact that the new and emerging protection needs showed the dynamic activity in the design field. The Delegation reported that the Chinese Office had adapted to those new needs by revising the patent examination guide and introducing the protection of those three emerging elements, which had been welcomed by users. While indicating that it had now gained some new experience in that area, the Delegation expressed the view that typeface/type font designs needed further study. The Delegation concluded that document SCT/36/2 was very helpful for countries to understand other countries' practices and improve their own practices and that it would continue to pay attention to that topic.

35. The Delegation of the European Union, speaking on behalf of the European Union and its member states, noted that document SCT/36/2 pointed towards the fact that most jurisdictions protected GUIs, icon and typeface/type font designs as designs, but also under copyright and trademark laws. The Delegation said that the legal regime applicable in the European single market for designs contained a broad notion of possible subject matter of designs and allowed for design protection of graphical symbols and logos. The regime included the protection of animated GUIs and icons, as set out also in the recent convergence program of the intellectual property offices of the European Trade Mark and Design Network on the graphic representation of designs. Concerning typefaces, the Delegation noted that they could be registered with the product indication - typographic typeface - where the formal requirements, as stipulated by Article 4 of the Community Design Implementing Regulation, were met.

36. The Delegation of the Republic of Moldova, lending its support to that Agenda item, highlighted the significance of the topic nowadays. Reporting that, in its jurisdiction, there were legal provisions and some experience relating to GUI, icon and typeface/type font designs, the Delegation stressed the importance of continuing to discuss that topic and finding the best way to protect those designs.

37. The Delegation of Brazil, thanking the proponents for bringing the topic to the discussion and the Secretariat for the compilation of the replies, expressed the hope that debates within the SCT would continue providing elements for Member States when considering the matter, taking into account that the current international framework already provided adequate guidance and policy space for members when addressing those aspects. The Delegation informed the SCT that, in its jurisdiction, GUIs were registerable as two dimensional ornamental patents. However, the representation should not contain text, logo or trademarks. The Delegation explained that the protection of animated icons as industrial designs was not possible in its country. Moreover, letters were not allowed to be included in the representation of an industrial design, and symbols could be used as elements of industrial designs, as long as they were not official symbols such as State emblems, armories or flags. The Delegation concluded by saying that the field of application of industrial designs did not limit by itself the protection granted by its registration.

38. The Delegation of Canada, expressing its appreciation to the Secretariat for the work carried out and to the Member States for having shared detailed information about their respective frameworks and approaches, declared that the survey was particularly timely and useful for Canada since its intellectual property office was contemplating changes to the examination procedure relating to animated designs, including GUIs and animated icons. Reporting that its Office had consulted with stakeholders on a number of options to improve the examination of animated design applications, the Delegation expressed its support for further study and discussions on that area at future SCT sessions.

39. The Representative of the JTA, expressing its gratitude to the Delegations of Israel, Japan and the United States of America for their joint proposal, as well as to the Secretariat for the compilation of the replies, declared its interest in discussing the topic at the international level.

40. The Delegation of the Russian Federation, thanking the Secretariat for the compilation of the replies and the Member States for their responses, underlined the importance of document SCT/36/2, in particular because of the ratification process of the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs, which was currently under way in its country. Noting the differences in practices and approaches in various jurisdictions, the Delegation expressed the hope that the compilation would help improving the approaches in protecting industrial property, and declared its readiness to continue working on the document.

41. The Delegation of the United States of America said that it suggested including in document SCT/36/2 the five additional replies referred to by the Secretariat, so as to build a further robust document. In its view, the document could also include replies from Member States which had not yet responded to the questionnaire and reflect additional and/or revised replies from Member States which had already submitted their answers but wished to provide more accurate responses.
42. The Delegation of Japan stated that it also believed that keeping the questionnaire open for a certain time period would be worthwhile in order to further enrich the survey's result and improve its use and to allow Member States to submit their replies or additional comments.
43. The Delegation of Israel said that it lent its support to the proposal put forward by the Delegation of the United States of America, as seconded by the Delegation of Japan, which could further contribute to the understanding of different legal systems and make document SCT/36/2 even more inclusive, comprehensive and invaluable.
44. The Delegation of the Republic of Korea, thanking the Secretariat for the compilation of Member States' replies to the questionnaire, expressed the wish to share its experience with other SCT members. In its view, it would be useful to allow Member States to briefly present their experience at one of the next sessions of the SCT. Due to electronic communication issues between the International Bureau of WIPO and its intellectual property office, the Delegation regretted that document SCT/36/2 did not include its replies and announced their submission by the next session of the SCT.
45. The Representative of the IPO, expressing its gratitude to the Secretariat for having prepared the questionnaire and having compiled the replies in document SCT/36/2, informed the Committee that IPO's members already considered the compilation as extremely valuable. The Representative wondered whether it could answer to the questionnaire and provide an enhanced perspective from the point of view of its members and their counsels, which were familiar with design law regimes worldwide, not only with regard to the procurement of designs but also with regard to their enforcement.
46. The Delegation of Canada, expressing support for the proposal of the United States of America to further continue the document, was of the view that an evergreen document would be useful to users to understand how the various jurisdictions provided protection and to be aware of the applicable rules.
47. The Representative of the JTA wondered whether it could provide answers to the questionnaire from the business sector's viewpoint in the future sessions of the SCT.
48. The Delegation of Nigeria, lending it support to the proposal of the United States of America to keep the questionnaire open so as to allow other countries to submit their replies, observed that numerous reforms were going on in intellectual property offices across the world and were leading to changes and guidelines in those areas.
49. The Delegation of Sudan, thanking the Secretariat for the preparation of document SCT/36/2, echoed the statements made by the Delegations of the United States of America, Japan and Nigeria.

50. After discussions, the Chair requested the Secretariat to:

- invite Member States to submit additional and/or revised replies to the *Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*;
- invite accredited NGOs to submit comments and observations on the topic, from the perspective of their experience;
- compile all replies, comments and observations received in a revised document SCT/36/2, to be presented to the next session of the SCT; and
- prepare a document analyzing the replies, comments and observations received, for consideration of the SCT at its next session.

Digital Access Service (DAS) for Priority Documents

51. Discussion was based on document SCT/36/3.

52. The Secretariat introduced document SCT/36/3 and made a PowerPoint presentation on the DAS.

53. In reply to a question raised by the Chair, the Secretariat confirmed that starting the use of the DAS for priority documents relating to industrial designs applications would require the involvement of at least two intellectual property offices.

54. The Delegation of the United States of America, expressing its appreciation for the presentation made by the Secretariat, informed the SCT that it had asked information on the DAS, which was already actively used for patent applications in its jurisdiction, as its use for designs was currently contemplated. Underlining the progress of its analysis on that matter and expressing the hope to start using the DAS for designs in 2017, the Delegation reported that many stakeholders had identified the use of that service as a priority because handling paper documents entailed significant costs, in particular for small and medium-sized enterprises (SMEs). The Delegation indicated that, with the DAS, a step could be avoided with respect to applications under the Hague System, for which a representative was currently required to file priority documents within its intellectual property office. The DAS would therefore enable applicants to proceed in an efficient manner in pursuing their rights. Mentioning possible issues due to the submission of priority documents not complying with certification requirements, the Delegation further pointed out that using the DAS would reduce the risk of rejection of priority dates. In its view, the use of the DAS for designs would be beneficial not only to applicants but also to its Office, as it would provide increased efficiency and offer an opportunity for automation. The Delegation reiterated that the DAS would also be beneficial in the Hague System context and stressed the fact that the DAS could be more helpful to users if other intellectual property offices would also contemplate it. Recalling that the Hague System had recently been implemented in its jurisdiction, the Delegation concluded by saying that considering the DAS now was timely as, in its opinion, working simultaneously on the DAS and on the Hague System could be very efficient since those two subjects could require a hand-in-hand work for preparing the automation.

55. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for document SCT/36/3 and the related presentation and recalled that the DAS was a WIPO electronic system allowing for the exchange of priority documents and similar documents between intellectual property offices. Drawing the attention of the SCT to the fact that, at the moment, the system was only used for patent documents, but

also allowed the exchange of other intellectual property documents, including certified design priority documents, the Delegation stated that it wished to acknowledge the importance of improved handling of priority documents in industrial design cases.

56. The Representative of MARQUES, thanking the Secretariat for the presentation, said that using the DAS would allow tremendous savings for trademark and design owners. Having understood that the DAS could already be used in the field of designs if countries so wished, the Representative expressed the hope for its implementation by European Union countries and other countries in the near future.

57. The Representative of the JTA, concurring with the views expressed by the Representative of MARQUES, said that it expected that the SCT would encourage discussions on the topic so that the DAS be implemented for industrial design applications. Referring to the accession of Japan to the Hague Agreement in 2015, the Representative indicated that applicants designating Japan through the Hague System were required to submit, with the Japanese Patent Office, priority documents within three months from the date of publication of the registration. In case of failure to do so, applicants could not benefit from the priority date. Given the limited and short time period to submit priority documents, the Representative was of the view that implementing the DAS would prevent applicants from losing the advantage of a priority claim in case of designation of Japan or other countries.

58. The Delegation of Spain, thanking the Secretariat for the presentation, expressed its gratitude to WIPO for having provided assistance and support to the Spanish intellectual property office for the implementation of the DAS in the field of patents. Reporting that such implementation had been a great success, enabling the intellectual property office to reduce costs for applicants, the Delegation announced its readiness to work on that topic in the area of designs.

59. The Representative of the IPO declared that it supported the extension of the DAS to design priority documents. After providing an example of the costs incurred in the handling of certified paper copies of priority documents in relation to a filing in the United States of America, the Representative concluded that those costs were an unnecessary burden, especially for smaller applicants. Pointing out that timing was also an issue, the Representative indicated that the three-month time period provided for by Article 4(D)(3) of the Paris Convention for the Protection of Industrial Property could be short where paper copies had to be obtained, scanned and processed. For those reasons, the Representative said that it would welcome the move of intellectual property offices in the 21st century.

60. The Representative of INTA, associating itself with the statements made by other users' organizations in favor of the service, said that it would appeal to intellectual property offices to offer the DAS to applicants, not only for industrial design priority documents, but also for trademarks priority documents.

61. The Chair said that the SCT took note of document SCT/36/3 and the PowerPoint presentation on the DAS for Priority Documents made by the Secretariat.

62. While encouraging Member States to consider using the DAS for exchange of priority documents for industrial designs and trademarks, the Chair concluded that the SCT would take stock of the progress made in this regard at its future sessions.

AGENDA ITEM 5: TRADEMARKS

Protection of Country Names Against Registration and Use as Trademarks: Practices, Approaches and Possible Areas of Convergences; Revised Proposal by the Delegation of Jamaica.

63. Discussion was based on documents SCT/35/4 and SCT/32/2.

64. The Delegation of Iran (Islamic Republic of) highlighted the great importance of the protection of country names and took note of document SCT/35/4. The Delegation hoped that the discussion in the SCT would lead to tangible results as the studies undertaken by the Secretariat indicated a need for international action to prevent the registration or use of country names as trademarks.

65. The Delegation of Latvia, speaking on behalf of the CEBS Group, took note of the documents presented under this Agenda item. The group informed that it was examining the six possible areas of convergence and stated being open for discussion regarding possible areas of convergence Nos. 1, 2, 5 and 6 but still considering if it was willing to discuss possible areas of convergence Nos. 3 and 4 which seemed to be of a substantive nature.

66. The Delegation of European Union, speaking on behalf of the European Union and its member states stressed that document SCT/35/4 confirmed the notion that before, during and after the trademark registration process, several opportunities were available for third parties to invoke the protection of country names. The Delegation stated that several grounds could be raised to refuse or invalidate trademarks; namely for lack of distinctiveness, for being descriptive, for being contrary to public policy, or for being misleading, deceptive, or false. The Delegation further indicated that two options were available to address the concerns raised; first, it may be resorted to awareness-raising activities on the available mechanisms for the refusal or invalidation of trademarks containing country names. Secondly, the protection of country names may be addressed in trademark examination manuals in order to raise awareness of the already widely existing possibilities to refuse or invalidate the registration as a trademark of signs consisting of or containing a country name. The Delegation affirmed that the European Union and its member states were not opposed to discussing possible areas of convergence Nos. 1, 2, 5 and 6 but possible areas Nos. 3 and 4 should be outside the scope of the work of the SCT at the current stage as progress would be difficult. The Delegation looked forward to participating constructively in future discussions on the topic.

67. The Delegation of Jamaica underscored that since 2009, it had advocated within the SCT for more consistent, adequate, and effective protection for country names as they are of equal importance as flags or armorial bearings, already protected under the Paris Convention. The Delegation affirmed that its view and the view of several other members of the SCT was that although protection was available in theory for country names, such protection was often limited, leaving ample opportunity for persons and entities to nevertheless abuse or unfairly free ride on the goodwill and reputation of a country name. Furthermore, the protection theoretically existing for country names was not comprehensive nor adequate and insufficient in practice. Indeed, trademarks containing the name of a state would be granted registration in the vast majority of Member States if they were not considered descriptive of the goods for which registration was sought. Similarly, trademarks containing the name of a state would be accepted in the vast majority of states if the mark did not consist exclusively of a country name and included additional words and/or figurative elements. The Delegation reiterated that the aim of document SCT/32/2 was not to prescribe rules that intellectual property offices should follow, nor to create additional obligations but to establish a coherent and consistent framework to guide intellectual property offices and other competent authorities in their use of trademarks, domain names, and business identifiers which consist of, or contain, country names. The Delegation found document SCT/35/4 to be very useful, especially the possible areas of

convergence. Including more practical data regarding the trademark practice and trademark law interpretation in different Member States, such as the circumstances and practical details about when a trademark would be considered misleading, deceptive or false, and who would be entitled to file an opposition to a trademark which contains a country name could also be beneficial. These data would lead to identifying more possible areas of convergence but also possible areas of divergence. The Delegation expressed its readiness to work with all Member States and the Secretariat to find solutions that would lead to the effective protection of country names and enjoy the consensus of the entire membership.

68. The Delegation of Italy declared itself in favor of not totally closing the door to evaluating a possible convergence among the national models on substantive normative issues such as areas of convergence Nos. 1 and 5.

69. The Delegation of Hungary saw merit in continuing the work on this topic and held the view that a lot would depend on how the more particular questions concerning identification of areas of convergence were defined and especially what constitutes a country name. The Delegation affirmed its readiness to consider further work on the possible area of convergence regarding the deceptive or misleading nature of a trademark application, with a view to raising more precise questions concerning the criteria of deceptiveness, not only in the context of country names, but also in a broader sense as there existed a divergence of practices among certain intellectual property offices. More questions in the area could be considered such as the role that an applicant may play in the deceptive nature of a trademark or whether only definitive deceptiveness should be interpreted as a ground for refusal. The Delegation stood ready to provide more detailed input on these issues.

70. The Delegation of Spain supported the statement made by the Delegation of European Union about the proposal by the Delegation of Jamaica and document SCT/35/4 and considered that country names were appropriately protected under the European legislation on trademarks. If third parties considered themselves to be damaged by a trademark which was contrary to public order, deceptive or misleading, there would be a ground for refusal. The Delegation was prepared to continue working on this issue.

71. The Delegation of Monaco expressed its hope that the SCT would continue to work on the protection of country names and affirmed that even though there were, in theory, mechanisms to protect the names of states against registration and use as a trademark, the practice was more complex. Authorities in Monaco had for more than 15 years tried to protect the designations "Monaco" and "Monte Carlo" throughout the world. The Delegation stated that protection for country names was neither uniform, nor decisive. It required a lot of human resources, money, and furthermore, did not guarantee either to consumers or local businessmen, the preservation of the image of the country in question. The Delegation expressed its willingness to continue the work on this topic and affirmed that the proposal by the Delegation of Jamaica could be an excellent basis.

72. The Delegation of Chile, speaking on behalf of GRULAC, affirmed that the protection of country names was very important for the group and supported the proposal by the Delegation of Jamaica contained in document SCT/32/2.

73. The Delegation of Switzerland thanked the Secretariat for the preparation of document SCT/35/8 Prov., namely the report of the previous session of the SCT, which evidenced the growing interest of countries to improve the protection of country names. The Delegation supported the proposal by the Delegation of Jamaica to continue working on the convergence document SCT/35/4 and would consider requesting the Secretariat to issue a new questionnaire or a complementary questionnaire to obtain more practical information from Member States. The Delegation affirmed that the work to identify other possible areas of convergence among the laws and practices of Member States should be continued, particularly as regards

opposition procedures and their time limits but also what countries do to prevent country names from being registered as trademarks or being used on products that do not come from the country in question.

74. The Delegation of Korea believed that documents SCT/35/4 and SCT/32/2 were useful in establishing a consistent framework to guide national offices in the use or registration of trademarks containing country names. The Delegation recommended inserting a new safeguard provision along the same lines as Article 4(d) (ii) of the Joint Recommendation Concerning Provision on the Protection of Well-Known Marks which stated that the protection could not be claimed if the subsequent mark is applied for or registered before the first mark became well-known in the Member State concerned. This kind of safeguard would add legal certainty and predictability to the draft joint recommendation.

75. The Delegation of Iran (Islamic Republic of) supported the revised version of the proposal by the Delegation of Jamaica and hoped to see the development and adoption of a joint recommendation on the protection of country names.

76. The Delegation of France supported continuing the work in the SCT on this topic and any initiative to know the real practice of offices dealing with applications that contained country names. The Delegation affirmed that it wished to continue looking at the possible areas of convergence, particularly areas Nos. 1 and 2.

77. The Representative of Japan Trademark Association (JTA) recommended changing the language in possible area of convergence No. 2 to “where the use of that name is descriptive of or indirectly suggestive to the place of origin of the goods or the nature or quality of services provided.” The Representative further recommended that possible area of convergence No. 3 read “where the use of that name renders the mark as a whole misleading, deceptive or false in relation to the origin of the goods or indirectly suggestive to the nature or quality of services provided.” Similarly, the Representative recommended that possible area of convergence No. 4 read “where the use of that name renders the mark as a whole misleading, deceptive or false in relation to the origin of the goods or the nature or quality of the services provided.”

78. After discussions, the Chair concluded that this item would remain on the Agenda of the SCT; and requested the Secretariat to invite Members to submit, in priority, comments and observations to Areas of Convergence No. 1 (Notion of Country Name), No. 2 (Non-registrable if Considered Descriptive), No. 5 (Invalidation and Opposition Procedures) and No. 6 (Use as a Mark), including practical examples of how these principles are applied in their jurisdictions.

Update on Trademark-Related Aspects of the Domain Name System (DNS)

79. Discussion was based on document SCT/36/4.

80. The Delegation of Hungary thanked the Secretariat for the update contained in the document and expressed support for maintaining this item on the Agenda. The Delegation requested further explanations from the Secretariat on any experiences gained from monitoring the Uniform Rapid Suspension System (URS). Concerning the review of the Rights Protection Mechanisms (RPM) initiated at the Internet Corporation for Assigned Names and Numbers (ICANN), the Delegation inquired from the Secretariat about the tentative timeline for the review of the Uniform Domain Name Dispute Resolution Policy (UDRP), to take place as the second phase of ICANN's RPM review process.

81. The Secretariat explained that WIPO's decision not to participate as a dispute resolution provider for the URS took account of operational and policy considerations. The Secretariat noted that for a number of reasons the URS has not received a significant uptake in the new generic Top-Level Domains (gTLDs) compared to the existing UDRP. Regarding ICANN's RPM review, the Secretariat explained that the UDRP review is tentatively set for the beginning of 2018 at the earliest, but given the substantive overlap of the URS and the URDP, the Secretariat continues to closely monitor the review process particularly in the event the projected timeline is advanced.

82. The Delegation of Switzerland expressed support for the statement made by the Delegation of Hungary and thanked the Secretariat for the document and briefing. The Delegation further noted its support for the Secretariat's continued monitoring of developments in the DNS.

83. The Representative of ICANN also thanked the Secretariat for the update reflected in the document. Concerning protection of IGO acronyms, the Representative noted that ICANN, although not an addressee, has responded to a letter from the United Nations Secretary General to Member State Representatives seeking assistance from their governments to that end. The Representative indicated that, currently, there is a temporary bar on registration of domain names containing IGO acronyms at the second level and that work remains ongoing to find a solution which balances IGO concerns with third-party registration interests. In this regard, the Representative explained that, as indicated in the document, a small group including IGOs, the ICANN Board and the Governmental Advisory Committee has produced a compromise proposal, which nevertheless remains subject to consideration by the ICANN community. Further, the Representative noted that there is a Policy Development Process under way at ICANN to discuss on what terms an additional new TLD application process should be opened to further expand the gTLD space.

84. The Delegation of France also thanked the Secretariat for the document and underlined the difficulty in protecting geographical terms on the Internet, particularly in the DNS. Noting this difficulty, the Delegation further referenced its proposal contained in document SCT/34/6 for a study on geographical indications.

85. The Chair thanked the Secretariat for the update and highlighted the importance of continued monitoring of DNS developments particularly as this relates to trademark protection. The Chair noted that electronic commerce currently represents an estimated six per cent of global trade and that it is projected to increase to 13 per cent by 2020, based on the World Economic Forum's presentation at WIPO. The Chair suggested that electronic trade may eventually comprise an even greater portion of all trade and expressed hope for continued safeguarding of intellectual property rights in the DNS.

86. The SCT considered document SCT/36/4 and requested the Secretariat to keep Member States informed of future developments in the DNS.

AGENDA ITEM 6: GEOGRAPHICAL INDICATIONS

87. Discussions were based on documents SCT/30/7, SCT/31/7, SCT/31/8 Rev.5 and SCT/34/6.

88. The Delegation of Latvia, on behalf of the CEBS Group, recalled that the General Assembly had directed the SCT to examine different systems for protection of geographical indications within its current mandate and covering all aspects. At the outset, the CEBS Group had expressed its support to the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, Republic of Moldova, Spain and Switzerland to study the

protection of geographical indications in the DNS or on the Internet. Expressing the view that the proposal was in line with the work of the SCT and the General Assembly decision, the Delegation considered it crucial to have an in-depth analysis of the current situation, as conceptual gaps on this issue had been discovered during the expansion of the Top Level Domain and it was important to better understand the complexities surrounding geographical indications and their protection in the DNS. Regarding other proposals under Agenda item 6, the Delegation said that the CEBS Group position remained unchanged. Though a number of tabled proposals had suggested addressing geographical indications, the Delegation wished to understand the value of the proposed studies, as the two systems for geographical indication protection, namely the trademark and the *sui generis* systems, were well-known to the members of the Committee. Noting that some proposals went beyond the analysis of national systems, the Delegation concluded that those proposals would not fit into the SCT mandate.

89. The Delegation of the European Union, speaking on behalf of the European Union and its member states, wished to address the broad range of issues in relation to geographical indications, since a wide variety of documents had been tabled under that Agenda item. The Delegation stressed the fact that a future work plan on geographical indications within the SCT should respect the SCT's mandate. As a consequence, the work of the SCT should not aim to interpret or revise the provisions of the Geneva Act of the Lisbon Agreement, since any future revision of that Act was the exclusive prerogative of the Lisbon Union. As a consequence, the examination of the different systems for protection of geographical indications within the current mandate and covering all aspects could not be based upon the proposals contained in documents SCT/30/7, SCT/31/7 and SCT/34/5, as they related to the Lisbon Agreement and the Geneva Act of the Lisbon Agreement. The Delegation believed that the Committee's future work should focus on substantive discussions on geographical indications and the DNS, or Internet names.

90. The Delegation of Hungary, referring to the joint proposal by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, Republic of Moldova, Spain, and Switzerland, recalled that the proposal had been introduced in detail during the thirty-first session of the SCT. Reiterating the position that the joint proposal was based on current and real needs of GI users, the Delegation observed that the proposal generated broad support from Member States of the SCT. Therefore, in order to initiate substantive discussion on it, the Delegation wished to take advantage of informal discussions.

91. The Delegation of France, referring to the 2015 General Assembly decision on geographical indications, said that the latter should not be used as a pretext to reexamine all the studies that had already been done at previous sessions of the Committee. On the contrary, the Delegation believed that that decision should be seen as an opportunity to examine a number of questions not covered so far, for example, the protection of geographical indications on the Internet, the problematics of domain names, and the relevance of using other types of intellectual property, such as collective marks and certification marks to protect geographical indications.

92. The Delegation of Portugal said that, taking into account the decision by the 2015 General Assembly, it concurred with other delegations which believed that the task assigned to the SCT, namely to examine the different geographical indication protection systems, had to be carried out within the current mandate of the SCT. Therefore, it could not cover any revision of the Lisbon System or be based upon any documentation related to the Lisbon Agreement or the Geneva Act of the Lisbon Agreement, as referred to in documents SCT/30/7 and SCT/31/7. In that context, the Delegation believed that there were matters which required additional attention of the Committee, and which threatened the protection of geographical indications worldwide, such as the protection of geographical indications and country names in the DNS or the protection of geographical indications on the Internet. The Delegation expressed the view that those matters deserved further discussion within the SCT in order to find common and

appropriate solutions in the near future. Finally, considering that the topics proposed by the Delegation of France in document SCT/34/6 were of great interest, the Delegation expressed its support to the idea that matters on the relation of geographical indications with collective and certification trademarks and the use of geographical names in trademarks would be a basis for future SCT work.

93. The Delegation of China, recalling the various discussions on geographical indications at the previous sessions of the SCT, thanked the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, Republic of Moldova, Spain and Switzerland for the proposal put forward in document SCT/31/8 Rev.4, as well as the Delegation of the United States of America for the proposal contained in documents SCT/30/7 and SCT/31/7. The Delegation, recalling that the 2015 General Assembly had guided the SCT to examine the different systems for protection of geographical indications within its current mandate and covering all aspects, expressed the wish to make further steps towards implementing that decision and discussing all proposals on the Agenda item under consideration.

94. The Delegation of Jamaica expressed its support for the joint proposal contained in document SCT/31/8 Rev.5, which it considered to be a good basis for future work. The Delegation said that it looked forward to conducting informal consultations as a possible way forward on the Agenda item under consideration.

95. The Delegation of Chile, emphasizing the importance and the relevance of the discussion of geographical indications within the SCT, said that it was important to fulfill the mandate given by the General Assembly, i.e., to examine the different systems for protection of geographical indications within the current mandate and covering all aspects. At the same time, the Delegation stated that it stood ready to discuss the interaction of geographical indications with the DNS, as it believed that the discussion of the proposals should be inclusive and reflect all concerns. The Delegation concluded by expressing its support for the initiatives that might add any conceptual value to the discussion, based on a balanced work plan on geographical indications.

96. The Delegation of Spain, referring to document SCT/31/8 Rev. 5, recalled the important objective that the proposal aimed to reach, namely the possible extension of the WIPO UDRP to country names and geographical indications, currently limited to trademark rights only. The Delegation lent its support to the proposal made by the Delegation of France in document SCT/34/6, which aimed to examine the protection of geographical indications in national systems and the protection of geographical indications on the Internet and in the DNS. The Delegation concluded by highlighting the importance of collecting information on those subjects, so that the protection of geographical indications could be considered in the broadest possible manner.

97. The Delegation of Romania, referring to the proposal contained in document SCT/31/8 Rev. 5 on the protection of country names and geographical indications in the DNS, shared the view that carrying out a survey on geographical indications and the DNS would be an important activity, in line with the work of the SCT, which could benefit WIPO Member States and users. The Delegation, expressing its support for the preparation of a study as proposed in document SCT/31/8 Rev. 5, requested to be added in the list of co-sponsors of that proposal.

98. The Delegation of Switzerland, recalling that its position on the proposal contained in document SCT/31/8 Rev.5, of which the Delegation was a co-sponsor, had been expressed in the previous two sessions of the SCT, reiterated that the substance of the proposal should be included in the SCT workplan on geographical indications. The Delegation concluded by noting that informal discussions were needed in order to make progress on the subject.

99. The Delegation of Italy, expressing its support for the proposal made by the Delegation of France, commended the proposal to conduct a study on the protection of geographical indications within the DNS. Sharing the concerns expressed in the proposal, the Delegation acknowledged its interest in investigating the links between geographical indications and the DNS.

100. The Delegation of Brazil pointed out that its country attached great importance to the discussion of the topic under consideration, as geographical indications generated value for producers, especially in the agricultural sector. The Delegation, noting that Brazil had been investing in the development of a geographical indication protection system, expressed its openness for a constructive dialogue on a balanced work plan on geographical indications, within the mandate given by the General Assembly.

101. The Delegation of the Russian Federation reiterated its full support for carrying out a survey on issues related to the different national systems for the protection of geographical indications, within the mandate given by the General Assembly. In this regard, the Delegation proposed to take as a basis for that study the information contained in documents SCT/6/3 and SCT/8/5 and complement the research by new data related to the protection of geographical indications through collective and certification marks and to the protection of geographical indications on the Internet.

102. The Chair noted that although all delegations that had taken the floor had expressed support for further work, some of them expressly limited their support to conduct such work only on the basis of one specific proposal. The Chair suspended the session and invited Group Coordinators and interested Member States to hold informal consultations.

[Suspension]

103. The Chair informed the Committee on the outcome of the informal consultations.

104. After discussions, the Chair concluded that:

- (a) at SCT/37, an information session will take place in two parts addressing:
 - (i) the features, experiences and practices of the different national and regional geographical indication protection systems, and
 - (ii) the protection of geographical indications on the Internet, and geographical indications and country names in the DNS;
- (b) further discussions regarding the work program to support the General Assembly mandate will follow the information session; and
- (c) all proposals on this item will remain on the Agenda.

AGENDA ITEM 7: ADOPTION OF THE SUMMARY BY THE CHAIR

105. In reply to a question raised by the Delegation of the United States of America, the Chair confirmed that the wording of the second indent of paragraph 15 of the provisional Summary by the Chair (document SCT/36/5 Prov.) was flexible enough to incorporate a discussion at the next session regarding the survey proposed by that Delegation during the course of the informal consultations.

106. The SCT approved the Summary by the Chair as presented in document SCT/36/5.

AGENDA ITEM 8: CLOSING OF THE SESSION

107. The Chair closed the session on October 19, 2016.

[Annexes follow]



SCT/36/5
ORIGINAL: ENGLISH
DATE: OCTOBER 19, 2016

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

Thirty-sixth Session
Geneva, October 17 to 19, 2016

SUMMARY BY THE CHAIR

adopted by the Committee

AGENDA ITEM 1: OPENING OF THE SESSION

108. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the thirty-sixth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

109. Mr. David Muls (WIPO) acted as Secretary to the SCT.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

110. The SCT adopted the draft Agenda (document SCT/36/1 Prov.).

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-FIFTH SESSION

111. The SCT adopted the draft Report of the thirty-fifth session (document SCT/35/8 Prov.).

AGENDA ITEM 4: INDUSTRIAL DESIGNS

Design Law Treaty (DLT)

112. The Chair recalled that “the [2016] WIPO General Assembly decided that, at its next session in October 2017, it will continue considering the convening of a diplomatic conference on the DLT, to take place at the end of the first half of 2018”, and noted that all statements concerning the draft DLT would be recorded in the Report.

113. The Chair concluded that, while the DLT would remain on its Agenda, the SCT should abide by the decision of the General Assembly.

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

114. The SCT considered document SCT/36/2.

115. After discussions, the Chair requested the Secretariat to:

- invite Member States to submit additional and/or revised replies to the *Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*;
- invite accredited NGOs to submit comments and observations on the topic, from the perspective of their experience;
- compile all replies, comments and observations received in a revised document SCT/36/2, to be presented to the next session of the SCT; and
- prepare a document analyzing the replies, comments and observations received, for consideration of the SCT at its next session.

Information on the Digital Access Service (DAS) for Priority Documents

116. The SCT took note of document SCT/36/3 and the PowerPoint presentation on the DAS for priority documents made by the Secretariat.

117. While encouraging Member States to consider using the DAS for the exchange of priority documents for industrial designs and trademarks, the Chair concluded that the SCT would take stock of the progress made in this regard at its future sessions.

AGENDA ITEM 5: TRADEMARKS

Protection of Country Names Against Registration and Use as Trademarks

118. The SCT considered documents SCT/35/4 and SCT/32/2.

119. The Chair noted that all statements concerning documents SCT/35/4 and SCT/32/2 would be recorded in the Report.

120. After discussions, the Chair concluded that this item would remain on the Agenda of the SCT; and requested the Secretariat to invite Members to submit, in priority, comments and observations to Areas of Convergence No. 1 (Notion of Country Name), No. 2 (Non-registrable if Considered Descriptive), No. 5 (Invalidation and Opposition Procedures) and No. 6 (Use as a Mark), including practical examples of how these principles are applied in their jurisdictions.

Update on Trademark-related Aspects of the Domain Name System (DNS)

121. The SCT considered document SCT/36/4 and requested the Secretariat to keep Member States informed of future developments in the Domain Name System (DNS).

AGENDA ITEM 6: GEOGRAPHICAL INDICATIONS

122. After discussions, the Chair concluded that:

- (d) at SCT/37, an information session will take place in two parts addressing:
 - (i) the features, experiences and practices of the different national and regional geographical indication protection systems, and
 - (ii) the protection of geographical indications on the Internet, and geographical indications and country names in the DNS;
- (e) further discussions regarding the work program to support the General Assembly mandate will follow the information session; and
- (f) all proposals on this item will remain on the Agenda.

AGENDA ITEM 7: SUMMARY BY THE CHAIR

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

AGENDA ITEM 8: CLOSING OF THE SESSION

124. The Chair closed the session on October 19, 2016.

[Annex II follows]



SCT/36/INF/1
ORIGINAL: FRANCAIS/ANGLAIS
DATE: 19 OCTOBRE 2016 / OCTOBER 19, 2016

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

**Trente-sixième session
Genève, 17 – 19 octobre 2016**

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

**Thirty-Sixth Session
Geneva, October 17 to 19, 2016**

**LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS**

*établie par le Secrétariat
prepared by the Secretariat*

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des États/in the alphabetical order of the names in French of the states)

AFRIQUE DU SUD/SOUTH AFRICA

Fleurette COETZEE (Ms.), Senior Manager, Trademarks Division, Department of Trade and Industry, Companies and Intellectual Property Commission (CIPC), Pretoria
fcoetzee@cipc.co.za

Victoria DIDISHE (Ms.), Manager, Patents and Designs, Department of Trade and Industry, Companies and Intellectual Property Commission (CIPC), Pretoria
vdishe@cipc.co.za

Sabonga MPONGOSHA, Advisor, Office of the Chief State Law Advisor, Department of International Relations and Cooperation, Pretoria

Tania STEENKAMP HEFER (Ms.), Expert, Office of the Chief State Law Advisor, Department of International Relations and Cooperation, Pretoria
steenkampt@dirco.gov.za

ALGÉRIE/ALGERIA

Naima KEBOUR (Mme), examinatrice spécialiste, Département des marques, Institut national algérien de la propriété industrielle (INAPI), Ministère de l'industrie, de la petite et moyenne entreprise et de la promotion des investissements, Alger
naimakebour2000@gmail.com

Zakia BOUYAGOUB (Mme), assistante technique principale, Département des marques, Institut national algérien de la propriété industrielle (INAPI), Ministère de l'industrie, de la petite et moyenne entreprise et de la promotion des investissements, Alger
zakia.bouyagoub@gmail.com

ALLEMAGNE/GERMANY

Christiane WILD (Ms.), Senior Trademark Examiner, Trademarks and Designs Department, German Patent and Trade Mark Office (DPMA), Munich

Pamela WILLE (Ms.), Counsellor, Economic Division, Permanent Mission, Geneva
wi-2-io@genf.diplo.de

ARGENTINE/ARGENTINA

María Inés RODRÍGUEZ (Sra.), Consejera, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Celia POOLE (Ms.), General Manager, Trade Marks and Designs Group, IP Australia, Canberra
celia.poole@ipaaustralia.gov.au

Tanya DUTHIE (Ms.), Assistant Director, International Policy and Cooperation, IP Australia, Canberra
tanya.duthie@ipaaustralia.gov.au

AUTRICHE/AUSTRIA

Walter LEDERMÜLLER, Lawyer, Expert for International Trademark Affairs, Trademark Examiner, Expert, Legal Department for International Trademark Affairs, The Austrian Patent Office, Federal Ministry for Transport, Innovation and Technology, Vienna
walter.ledermueller@patentamt.at

AZERBAÏDJAN/AZERBAIJAN

Ramin HAJIYEV, Head, Trademark Examination Department, State Committee for Standardization, Metrology and Patents of the Republic of Azerbaijan, Baku
hacra1000@gmail.com

BAHAMAS

Bernadette BUTLER (Ms.), Minister Counsellor, Permanent Mission, Geneva
bbutler@bahamasmission.ch

BÉLARUS/BELARUS

Andrew SHELEG, Head, Examination Division, Trademarks Department, National Center of Intellectual Property (NCIP), State Committee on Science and Technologies, Minsk

BELGIQUE/BELGIUM

Sandrine PLATTEAU (Mme), premier secrétaire, Mission permanente, Genève

BRÉSIL/BRAZIL

Caue OLIVEIRA FANHA, Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

CAMEROUN/CAMEROON

Boubakar LIKIBY, secrétaire permanent, Comité national de développement des technologies, Ministère de la recherche scientifique et de l'innovation (MINRESI), Yaoundé
likibyboubakar@gmail.com

Aurélien ETEKI NKONGO, premier secrétaire, Mission permanente, Genève

CANADA

Sandra NEWSOME (Ms.), Manager, Legislation and Practices, Copyright and Industrial Design Branch, Canadian Intellectual Property Office (CIPO), Ottawa

Georges ELEFTHERIOU, Trade Policy Officer, Intellectual Property Trade Policy Division, Global Affairs Canada, Government of Canada, Ottawa

Frédérique DELAPRÉE (Ms.), Second Secretary, Permanent Mission, Geneva
frederique.delapree@international.gc.ca

CHILI/CHILE

Nelson CAMPOS, Asesor Legal, Departamento de Propiedad Intelectual, Dirección General de Relaciones Económicas Internacionales, Ministerio de Relaciones Exteriores, Santiago
ncampos@direcon.gob.cl

Marcela PAIVA (Sra.), Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra
mpaiva@minrel.gov.cl

CHINE/CHINA

LI Zheng, Sector Chief, State Intellectual Property Office of the People's Republic of China (SIPO), Beijing
zhangling_1@sipo.gov.cn

YAO Xin, Vice Investigator, State Intellectual Property Office of the People's Republic of China (SIPO), Beijing
yaoxin@sipo.gov.cn

ZHANG Ling, Program Officer, State Intellectual Property Office of the People's Republic of China (SIPO), Beijing
zhangling_1@sipo.gov.cn

POON Man Han Joyce (Ms.), Assistant Director, Intellectual Property Department, Government of the Hong Kong Special Administrative Region (SAR) of the People's Republic of China
joycepoon@ipd.gov.hk

COLOMBIE/COLOMBIA

Beatriz LONDOÑO SOTO (Sra.), Embajadora, Representante Permanente, Misión Permanente, Ginebra

Juan Carlos GONZÁLEZ, Representante Permanente, Embajador, Misión permanente ante la Organización Mundial del Comercio (OMC), Ginebra

Juan Camilo SARETZKI FORERO, Consejero, Misión Permanente, Ginebra

Manuel Andrés CHACÓN, Consejero, Misión permanente ante la Organización Mundial del Comercio (OMC), Ginebra

CONGO

Omer IBOMBO, chef, Service de la promotion de la propriété industrielle, Antenne nationale de la propriété industrielle (ANPI), Direction générale de l'industrie, Ministère du développement industriel et de la promotion du secteur privé, Brazzaville
oibombo@yahoo.fr

COSTA RICA

Cristián MENA CHINCHILLA, Director, Registro de Propiedad Industrial, Registro Nacional, Ministerio de Justicia y Paz, San José
cmena@rnp.go.cr

Marco JIMÉNEZ CARMIOLO, Junta Administrativa, Registro Nacional, Ministerio de Justicia y Paz, San José

CÔTE D'IVOIRE

Kouabran Alexis KOUAME, sous-directeur en charge des indications géographiques, Office ivoirien de la propriété intellectuelle (OIPI), Abidjan
kwabran@yahoo.fr

Kumou MANKONGA, premier secrétaire, Mission permanente, Genève

CROATIE/CROATIA

Višnja KUZMANOVIĆ (Ms.), Head, Trademarks and Industrial Designs Department, Trademarks and Industrial Designs Department, State Intellectual Property Office of the Republic of Croatia (SIPO), Zagreb
visnja.kuzmanovic@dziv.hr

CUBA

Madelyn RODRÍGUEZ LARA (Sra.), Primera Secretaria, Misión Permanente, Ginebra
m_rodriguez@missioncuba.ch

DANEMARK/DENMARK

Hanne Sigridur FLENSMARK (Ms.), Special Legal Advisor, Danish Patent and Trademark Office (DKPTO), Ministry of Business and Growth, Taastrup

DJIBOUTI

Djama Mahamoud ALI, Counsellor, Permanent Mission, Geneva

EL SALVADOR

Katia CARBALLO (Sra.), Ministra Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra
kcarballo@minec.gov.sv

ESPAGNE/SPAIN

Paloma HERREROS RAMOS (Sra.), Jefa, Servicio de Examen de Marcas, Departamento de Signos Distintivos, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Energía y Turismo, Madrid

Gerardo PEÑAS GARCÍA, Jefe, Área de Examen de Modelos, Diseños y Semiconductores, Departamento de Patentes e Información Tecnológica, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Energía y Turismo, Madrid

Oriol ESCALAS NOLLA, Asesor, Misión Permanente, Ginebra

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Amy COTTON (Ms.), Senior Counsel, Office of Policy and International Affairs, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria, Virginia
amy.cotton@uspto.gov

David GERK, Patent Attorney-Advisor, Office of Policy and International Affairs, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria, Virginia
david.gerk@uspto.gov

Yasmine FULENA (Ms.), Intellectual Property Attaché, Permanent Mission to the World Trade Organization (WTO), Geneva

Kristine SCHLEGELMILCH (Ms.), Advisor, Intellectual Property Attaché, Permanent Mission, Geneva

EX-RÉPUBLIQUE YUGOSLAVE DE MACÉDOINE/THE FORMER YUGOSLAV REPUBLIC
OF MACEDONIA

Dalila JARMOVA (Ms.), Head, Trademarks Section, Trademarks, Industrial Design and Geographical Indications Department, State Office of Industrial Property (SOIP), Skopje
dalilaj@ippo.gov.mk

Defrime AMATI BEKJIROVA (Ms.), Advisor, State Office of Industrial Property (SOIP), Skopje
amati.defrime@ippo.gov.mk

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Roman ZAKHAROV, Director, Trademarks Department, Russian Academy of Intellectual Property (FIPS), Moscow

Gennady IVANOV, Deputy Director, Chamber of Patent Disputes, Russian Academy of Intellectual Property (FIPS), Moscow

Elena SOROKINA (Ms.), Head of Division, Law Department, Federal Service of Intellectual Property (ROSPATENT), Moscow

Anna ROGOLEVA (Ms.), Counsellor, Law Department, Federal Service of Intellectual Property (ROSPATENT), Moscow

FINLANDE/FINLAND

Reetta NURMINEN (Ms.), Legal Officer, Finnish Patent and Registration Board, Helsinki

Nina SANTAHARJU (Ms.), Legal Officer, Finnish Patent and Registration Board, Helsinki
nina.santaharju@prh.fi

FRANCE

Véronique FOUKS (Mme), chef, Service juridique, Institut national de l'origine et de la qualité, Ministère de l'agriculture, Montreuil-sous-Bois

Indira LEMONT SPIRE (Mme), conseillère juridique, Service des affaires européennes et internationales, Institut national de la propriété industrielle (INPI), Courbevoie
ilemontspire@inpi.fr

GABON

Edwige KOUMBY MISSAMBO (Ms.), First Counsellor, Permanent Mission, Geneva

GHANA

Alexander BEN-ACQUAAH, Minister-Counsellor, Permanent Mission, Geneva

Joseph OWUSU-ANSAH, First Secretary, Permanent Mission, Geneva

GRÈCE/GREECE

Myrto LAMBROU MAURER (Ms.), Head, International Affairs, Industrial Property Organization (OBI), Athens

HONDURAS

Rafael Humberto ESCOBAR, Subdirector General de Propiedad Intelectual, Dirección General de Propiedad Intelectual (DIGEPIH), Tegucigalpa
rhescoabar_2004@yahoo.com

HONGRIE/HUNGARY

Imre GONDA, Deputy Head, Trademark, Model and Design Department, Hungarian Intellectual Property Office (HIPO), Budapest
imre.gonda@hipo.gov.hu

INDE/INDIA

Madhurjya THAKUR, Deputy Controller, Patent and Design, Office of the Controller-General of Patents, Designs and Trademarks, Department of Industrial Policy Promotions (DIPP), Ministry of Commerce and Industry, Kolkata

Sumit SETH, First Secretary, Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Erry Wahyu PRASETYO, Third Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva
erry.prasetyo@mission-indonesia.org

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Mohammad MOEIN ESLAM, Legal Expert, Tehran

Reza DEHGHANI, First Secretary, Permanent Mission, Geneva
rezadehghani58@yahoo.com

IRLANDE/IRELAND

Mary KILLEEN (Ms.), Attaché, Permanent Mission, Geneva
mary.killeen@dfa.ie

ISRAËL/ISRAEL

Na'ama DANIEL (Ms.), Advisor, Legislation and Legal Counsel, Intellectual Property Law Department, Ministry of Justice, Jerusalem
naamada@justice.gov.il

Dan ZAFRIR, Advisor, Permanent Mission, Geneva
reporter3@geneva.mfa.gov.il

ITALIE/ITALY

Bruno MASSIMILIANO, Expert, Italian Patent and Trademark Office, Directorate General of Combating Counterfeiting, Ministry of Economic Development (UIBM), Rome
massimiliano.bruno@mise.gov.it

Michele MILLE (Ms.), Expert, Ministry of Economic Development (UIBM), Rome
michelle.mille.ext@mise.gov.it

Matteo EVANGELISTA, First Secretary, Permanent Mission, Geneva
matteo.evangelista@esteri.it

Alessandro MANDANICI, First Secretary, Permanent Mission, Geneva
alessandro.mandanici@esteri.it

Carlo FAVARETTO, Intern, Permanent Mission, Geneva
wipostage.ginevra@esteri.it

JAMAÏQUE/JAMAICA

Marcus GOFFE, Acting Deputy Director, Legal Counsel, Jamaica Intellectual Property Office (JIPO), Kingston
marcus.goffe@jipo.gov.jm

Simara HOWELL (Ms.), First Secretary, Permanent Mission, Geneva

JAPON/JAPAN

Hiroyuki ITO, Director, Design Registration System Planning Office, Japan Patent Office (JPO), Tokyo

Masataka TAKENOUCI, Specialist for Trademark Planning, Trademark Division, Japan Patent Office (JPO), Tokyo

Kenji SAITO, First Secretary, Permanent Mission, Geneva
kenji.saito@mofa.go.jp

KENYA

Christian LANGAT, Trademark Examiner, Trademark Section, Kenya Industrial Property Institute (KIPI), Ministry of Trade and Industry, Nairobi
christianlangat@gmail.com

Peter KAMAU, Counsellor, Permanent Mission, Geneva
pmkantau2012@gmail.com

Stanley MWENDIA, Expert, Permanent Mission, Geneva

KOWEÏT/KUWAIT

Abdulaziz TAQI, Commercial Attaché, Permanent Mission, Geneva

LETTONIE/LATVIA

Janis KARKLINS, Ambassador, Permanent Representative, Permanent Mission, Geneva

Liene GRIKE (Ms.), Advisor, Economic and Intellectual Property Affairs, Permanent Mission, Geneva

LIBAN/LEBANON

Wissam EL AMIL, Head, Intellectual Property Rights, Office of Intellectual Property, Department of Intellectual Property, Directorate General of Economy and Trade, Ministry of Economy and Trade, Beirut
wamil@economy.gov.lb

LITUANIE/LITHUANIA

Lina MICKIENĖ (Ms.), Deputy Director, State Patent Bureau of the Republic of Lithuania, Vilnius
lina.mickiene@vpb.gov.lt

MALAISIE/MALAYSIA

Azahar ABDUL RAZAB, Senior Director, Trademark and Geographical Indication Division, Intellectual Property Corporation of Malaysia (MyIPO), Kuala Lumpur
azaharazab@myip.gov.my

MAROC/MOROCCO

Adil EL MALIKI, directeur général, Office marocain de la propriété industrielle et commerciale (OMPIC), Casablanca
adil.elmaliki@ompic.org.ma

MEXIQUE/MEXICO

Alfredo Carlos RENDÓN ALGARA, Director General Adjunto, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México

Karla Priscila JUÁREZ BERMÚDEZ (Sra.), Especialista en Propiedad Industrial, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México

María del Pilar ESCOBAR BAUTISTA (Sra.), Consejera, Misión Permanente, Ginebra

MONACO

Gilles REALINI, premier secrétaire, Mission permanente, Genève
grealini@gouv.mc

MOZAMBIQUE

Margo Andrea BAGLEY (Ms.), Expert Advisor, Government of Mozambique (Professor of Law, University of Virginia School of Law), Charlottesville
mbagley@virginia.edu

NÉPAL/NEPAL

Madhav Prasad SUBEDI, Under Secretary, Ministry of Industry, Kathmandu

NIGÉRIA/NIGERIA

Ruth OKEDIJI (Ms.), Expert Advisor, Nigerian Copyright Commission (NCC), Federal Ministry of Information and Culture, Abuja
rokediji@umn.edu

Peter EMUZE, chargé d'affaires, a.i., Permanent Mission, Geneva

Chichi UMESI (Ms.), First Secretary, Permanent Mission, Geneva

NORVÈGE/NORWAY

Trine HVAMMEN-NICHOLSON (Ms.), Senior Legal Advisor, Norwegian Industrial Property Office (NIPO), Oslo
thv@patentstyret.no

Ingeborg Anne RÅSBERG (Ms.), Senior Legal Advisor, Norwegian Industrial Property Office (NIPO), Oslo
iar@patentstyret.no

OMAN

Ali ALMAMARI, Head, Industrial Property Intellectual Property Department, Ministry of
Commerce and Industry, Muscat
ahsn500@yahoo.com

Mohammad ALBALOUSHI, First Secretary, Permanent Mission, Geneva

PANAMA

Krizia MATTHEWS, Consejero Legal, Misión Permanente ante la Organización Mundial del
Comercio (OMC), Ginebra

OUGANDA/UGANDA

George TEBAGANA, Economic Affairs Officer, Economic Affairs, Permanent Mission, Geneva
tebgeowill@yahoo.com

PHILIPPINES

Arnel TALISAYON, First Secretary, Permanent Mission, Geneva
agtalisayon@gmail.com

Jayroma BAYOTAS (Ms.), Attaché, Permanent Mission, Geneva
jheng0503bayotas@gmail.com

POLOGNE/POLAND

Edyta DEMBY-SIWEK (Ms.), Director, Trademark Department, Patent Office of the Republic of
Poland, Warsaw
edemby-siwiek@uprp.pl

Anna DACHOWSKA (Ms.), Expert, Trademark Department, Patent Office of the Republic of
Poland, Warsaw
adachowska@uprp.pl

Wojciech PIATKOWSKI, Minister Counsellor, Permanent Mission, Geneva

PORTUGAL

João PINA DE MORAIS, First Secretary, Permanent Mission, Geneva

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

KIM Min-Hee (Ms.), Deputy Director, Korean Intellectual Property Office (KIPO), Daejeon
kmhkmh@korea.kr

KIM Shin, Judge, Suwon District Court, The Judiciary, Daejeon

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Simion LEVITCHI, Head, Trademarks and Industrial Designs Department, State Agency on Intellectual Property of the Republic of Moldova (AGEPI), Chisinau
simion.levitchi@agepi.gov.md

RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

Ysset ROMÁN MALDONADO (Sra.), Ministra Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/DEMOCRATIC PEOPLE'S
REPUBLIC OF KOREA

CHOE Chi Ho, Director General, Trademarks, Industrial Designs and Geographical Indications, Invention Office of the Democratic People's Republic of Korea, Pyongyang

IM Jong Thae, Senior Examiner, Trademarks, Industrial Designs and Geographical Indications, Invention Office of the Democratic People's Republic of Korea, Pyongyang

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Raddka STUPKOVÁ (Ms.), Head, Trademarks Section, Industrial Property Office, Prague
rstupkova@upv.cz

ROUMANIE/ROMANIA

Alice Mihaela POSTĂVARU (Ms.), Head, Designs Division, Legal, Appeals, International Cooperation and European Affairs Directorate, State Office for Inventions and Trademarks (OSIM), Bucharest
postavaru.alice@osim.ro

Gratiela COSTACHE (Ms.), Legal Advisor, Legal Department, State Office for Inventions and Trademarks (OSIM), Bucharest
gratiela.duduta@osim.ro

ROYAUME-UNI/UNITED KINGDOM

Clare HURLEY (Ms.), Head, Brands and International Trade Mark Policy, Intellectual Property Office, Newport

SAINT-SIÈGE/HOLY SEE

Carlo Maria MARENGHI, Intellectual Property and Trademark Attaché, Permanent Mission, Geneva
mission.holy-see@itu.ch

SÉNÉGAL/SENEGAL

Lamine Ka MBAYE, premier secrétaire, Mission permanente, Genève

SERBIA

Marija BOŽIĆ (Ms.), Head, International Trademark Department, Intellectual Property Office of the Republic of Serbia, Belgrade
mbozic@zis.gov.rs

SINGAPOUR/SINGAPORE

Mei Lin TAN (Ms.), Senior Legal Counsel, Trade Marks, Intellectual Property Office of Singapore (IPOS), Singapore
tan_mei_lin@ipos.gov.sg

Isabelle TAN (Ms.), Acting Director, Trade Marks, Intellectual Property Office of Singapore (IPOS), Singapore

SLOVAQUIE/SLOVAKIA

Emil ZATKULIAK, First Secretary, Permanent Representation of the Slovak Republic to the European Union, Ministry of Foreign and European Affairs of the Slovak Republic, Brussels

SOUDAN/SUDAN

Azza MOHAMMED ABDALLA HASSAN (Ms.), Second Secretary, Permanent Mission, Geneva
mission.sudan@bluewin.ch

SUÈDE/SWEDEN

Gustav MELANDER, Legal Advisor, Swedish Patent and Registration Office (SPRO), Söderhamn
gustav.melander@prv.se

Josefin PARK (Ms.), Legal Advisor, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm
josefin.park@gov.se

Charlotte SVENSSON (Ms.) Legal Intern, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm
charlotte.e.svensson@regeringskansliet.se

SUISSE/SWITZERLAND

Gilles AEBISCHER, conseiller juridique, Division du droit et des affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Nicolas GUYOT YOUN, conseiller juridique, Division du droit et des affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Marie KRAUS (Mme), conseillère juridique, Division du droit et des affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Erik THÉVENOD-MOTTET, conseiller juridique, expert en indications géographiques, Institut fédéral de la propriété intellectuelle (IPI), Berne

Reynald VEILLARD, conseiller, Mission permanente, Genève

TADJIKISTAN/TAJIKISTAN

Parviz MIRALIEV, Head, Department of International Registration of Trademarks, National Center for Patents and Information (NCPI), Ministry of Economic Development and Trade of the Republic of Tajikistan, Dushanbe

THAÏLANDE/THAILAND

Udomsit PATTRADEELUCK, Legal Officer, Department of Intellectual Property (DIP), Ministry of Commerce, Nonthaburi
udomsitp@gmail.com

TIMOR-LESTE

Natalina Maria AMARAL DA COSTA (Ms.), Chief, Department of License, Ministry of Commerce, Industry and Environment, Dili
mamarcho0408@gmail.com

João Castro PEREIRA, Employee, Manufacturing, Ministry of Commerce, Industry and Environment, Dili

TUNISIE/TUNISIA

Walid DOUDECH, Ambassador, Permanent Mission, Geneva
at.geneve@diplomatie.gov.tn

Naouali NASREDDINE, Counsellor, Permanent Mission, Geneva
n.naouali@diplomatie.gov.tn

TURQUIE/TURKEY

Osman GÖKTÜRK, Second Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

UKRAINE

Valentyna HAIDUK (Ms.), Head, Department of Rights for Indications, Ministry of Economic Development and Trade, State Intellectual Property Service, State Enterprise "Ukrainian Institute of Industrial Property" (SE UIPV), Kiyv
v.gayduk@ukrpatent.org

Iryna DEUNDIAK (Ms.), Chief Expert, Department of International Registrations, Ministry of Economic Development and Trade, State Intellectual Property Service, State Enterprise "Ukrainian Institute of Industrial Property" (SE UIPV), Kiyv
i.deundiak@ukrpatent.org

URUGUAY

Gabriela Lourdes ESPÁRRAGO CASALES (Sra.), Encargada de la División de Signos Distintivos, Dirección Nacional de la Propiedad Industrial (DNPI), Ministerio de Industria, Energía y Minas (MIEM), Montevideo

Juan José BARBOZA, Consejero, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

VIET NAM

Quang Tuan NGUYEN, Head, Industrial Design Division, National Office of Intellectual Property (NOIP), Hanoi

YEMEN

Hussein AL-ASHWAL, Second Secretary, Permanent Mission, Geneva
h.alashwal@yahoo.com

UNION EUROPÉENNE*/EUROPEAN UNION*

Margreet GROENENBOOM (Ms.), Legal and Policy Affairs Officer, Directorate General for the Internal Market and Services, European Commission, Brussels

Stephan HANNE, Policy Officer, International Cooperation and Legal Affairs Department, European Union Intellectual Property Office (EUIPO), Alicante

Oliver HALL-ALLEN, First Counsellor, Permanent Mission, Geneva

Lucas VOLMAN, Intern, Permanent Mission, Geneva

* 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.

II. OBSERVATEURS/OBSERVERS

PALESTINE

Samer MASRI, Manager, Intellectual Property Department, Industrial Property Office, Ministry of National Economy, Nablus

Ibrahim MUSA, Counsellor, Permanent Mission, Geneva

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION BENELUX DE LA PROPRIÉTÉ INTELLECTUELLE (OBPI)/BENELUX
ORGANISATION FOR INTELLECTUAL PROPERTY (BOIP)

Camille JANSSEN, juriste, Département des affaires juridiques, La Haye
cjanssen@boip.int

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE
ORGANIZATION (WTO)

Wolf MEIER-EWERT, Counsellor, Geneva

UNION AFRICAINE (UA)/AFRICAN UNION (AU)

Georges Remi NAMEKONG, Senior Economist, Permanent Delegation, Geneva

IV. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/
INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association des industries de marque (AIM)/European Brands Association (AIM)
Hubert DOLÉAC, conseiller juridique principal en propriété intellectuelle, Vevey

Association européenne des étudiants en droit (ELSA International)/European Law Student's
Association (ELSA International)

Elif Benan YAMAN (Ms.), Head, Brussels
Bjorka DUKA (Ms.), Member, Brussels
Christina LEMKE (Ms.), Member, Brussels
Federica SIGNORETTI (Ms.), Member, Brussels
Kelly VERNY (Ms.), Member, Brussels

Association française des praticiens du droit des marques et modèles (APRAM)
Giulio MARTELLINI, Representative, Torino
g.martellini@ip-skill.it

Association internationale des juristes pour le droit de la vigne et du vin (AIDV)/International Wine Law Association (AIDV)

Matthijs GEUZE, Representative, Divonne-les-Bains
matthijs.geuze77@gmail.com

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International Association for the Protection of Intellectual Property (AIPPI)

Irmak YALCINER (Ms.), Observer, Zurich

Association internationale pour les marques (INTA)/International Trademark Association (INTA)

Bruno MACHADO, Geneva Representative, Rolle
bruno.machado@bluewing.ch

Association japonaise des conseils en brevets (JPAA)/Japan Patent Attorneys Association (JPAA)

Jiro MATSUDA, Expert, Tokyo
gyoumukokusai@jpaa.or.jp
Yoshiki TOHYAMA, Expert, Tokyo
gyoumukokusai@jpaa.or.jp
Kenji TAGUCHI, Expert, Tokyo
gyoumukokusai@jpaa.or.jp

Association japonaise pour les marques (JTA)/Japan Trademark Association (JTA)

Tomohiro NAKARUMA, Chair, Designs Committee, Nagoya-shi
nakamura.t@wi.kualnet.jp; nakamura@ipworld.jp

Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)

François CURCHOD, chargé de mission, Genolier
francois.curchod@vtxnet.ch

Fédération internationale des conseils en propriété intellectuelle (FICPI)/International Federation of Intellectual Property Attorneys (FICPI)

Toni POLSON ASHTON (Ms.), CET Group 1, Toronto
ashton@simip.com

Intellectual Property Owners Association (IPO)

Richard STOCKTON, Attorney, Chicago
rstockton@bannerwitcoff.com

MARQUES - Association des propriétaires européens de marques de commerce/

MARQUES - Association of European Trade Mark Owners

Peter GUSTAV, Member, Designs Team, Copenhagen

Organisation pour un réseau international des indications géographiques (oriGIn)/Organization for an International Geographical Indications Network (oriGIn)

Massimo VITTORI, Managing Director, Geneva

Société pour l'attribution des noms de domaine et des numéros sur Internet (ICANN)/Internet Corporation for Assigned Names and Numbers (ICANN)

Nigel HICKSON, Vice President, Europe and Middle East, Geneva
nigel.hickson@icann.org

Tarek KAMEL MAHMOUD, Senior Advisor to the President for Government and IGO Engagement, Geneva

V. BUREAU/OFFICERS

Président/Chair: Adil El MALIKI (Maroc/Morocco)

Vice-présidents/Vice-chairs: Imre GONDA (Hongrie/Hungary)
Alfredo Carlos RENDÓN ALGARA (Mexique/Mexico)

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

Francis GURRY, directeur général/Director General

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

David MULS, directeur principal, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Senior Director, Law and Legislative Advice Division, Brands and Designs Sector

Brian BECKHAM, chef, Section du règlement des litiges relatifs à l'Internet, Centre d'arbitrage et de médiation de l'OMPI, Secteur des brevets et de la technologie/Head, Internet Dispute Resolution Section, WIPO Arbitration and Mediation Center, Patents and Technology Sector

Martha PARRA FRIEDLI (Mme/Ms.), chef, Section du droit des marques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Head, Trademark Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Marie-Paule RIZO (Mme/Ms.), chef, Section du droit des dessins et modèles et des indications géographiques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Head, Design and Geographical Indication Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Marina FOSCHI (Mme/Ms.), juriste, Section du droit des dessins et modèles et des indications géographiques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Legal Officer, Design and Geographical Indication Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Violeta GHETU (Mme/Ms.), juriste, Section du droit des dessins et modèles et des indications géographiques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Legal Officer, Design and Geographical Indication Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Nathalie FRIGANT (Mme/Ms.), juriste adjointe, Section du droit des dessins et modèles et des indications géographiques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Assistant Legal Officer, Design and Geographical Indication Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Noëlle MOUTOUT (Mme/Ms.), juriste adjointe, Section du droit des marques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Assistant Legal Officer, Trademark Law Section, Law and Legislative Advice Division, Brands and Designs Sector

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