

# WIPO



H/EXTR/09/1  
ORIGINAL: French  
DATE : August 11, 2009

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

## EXTRAORDINARY MEETING OF CONTRACTING STATES TO THE LONDON (1934) ACT OF THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS

Geneva, September 23, 2009

PROPOSAL TO FREEZE THE APPLICATION OF THE 1934 ACT

*Document prepared by the International Bureau*

### I. INTRODUCTION

1. It is recalled that a first informal consultative meeting to discuss the relevance of the London Act of the Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter “the 1934 Act”) was held in Geneva on February 24, 2009. The 15 States party to the 1934 Act were invited to participate<sup>1</sup>. The following States were represented at the meeting: France, Germany, Indonesia, Monaco, Netherlands (representing the Netherlands Antilles), Spain, Switzerland and Tunisia (8).

2. The discussions, based on document H/IM/2/1 entitled “Possible Options to Reduce the Complexity of the Hague System Concerning the International Registration of Industrial Designs”, prepared by the International Bureau of the World Intellectual Property Organization (WIPO), led the participants to agree on the obsolete nature of the 1934 Act and the need to center the Hague system around the 1999 Act in order to reduce its complexity. Nevertheless, the participants in the meeting considered it was necessary to have detailed information on the procedure of termination for the 1934 Act and on the consequences of the termination, especially the effects of this termination on existing international deposits under the 1934 Act.

---

<sup>1</sup> The following 15 States are party to the 1934 Act: Benin, Côte d’Ivoire, Egypt, France, Germany, Indonesia, Liechtenstein, Monaco, Morocco, Netherlands (only in respect of the Netherlands Antilles), Senegal, Spain, Suriname, Switzerland and Tunisia.

3. The International Bureau therefore prepared document H/IM/3/1 entitled “Possible Termination of the 1934 Act” and convened the States party to the 1934 Act to a second informal consultative meeting, held in Geneva on May 12, 2009. The following States were represented at the meeting: Germany, Indonesia, Monaco, Netherlands (representing the Netherlands Antilles), Senegal, Spain, Switzerland and Tunisia (8).

4. This document proposed a termination procedure consisting of a collective decision to which each of the 15 Contracting States of the 1934 Act would agree. This decision could have been formalized during the forty-seventh series of meetings of the Assemblies of the Member States of WIPO in September 2009, on the occasion of an extraordinary meeting of the 15 concerned States. Moreover, the Hague Union Assembly itself would have been invited to amend the Common Regulations under the Hague Agreement, so as to reflect this decision in practice.

5. At the close of the debate in this second meeting, six delegations (Germany, Indonesia, Netherlands, Spain, Switzerland and Tunisia) declared that they were willing to consent to a collective decision to terminate the 1934 Act at the extraordinary meeting next September. The two other delegations at the meeting (Monaco and Senegal) did not make such a commitment but nor did they oppose it<sup>2</sup>.

6. However, issues were raised on the details concerning how Contracting Parties would express their consent to terminate the 1934 Act and, in particular, on the required formalities (credentials or full powers) for the delegations present at the extraordinary meeting. The International Bureau undertook to consult the Legal Counsel of the organization on the matter.

## II. TERMINATION OF THE 1934 ACT – ADDITIONAL INFORMATION ON THE REQUIRED FORMALITIES

7. It is recalled that since no provision is included in the 1934 Act on its termination, such termination can be decided on, under paragraph (b) of Article 54, Section 3 of the Vienna Convention on the Law of Treaties of May 23, 1969, with the consent of all 15 Contracting States.

8. As regards the required formalities, the consent of each Contracting State to this termination should be expressed in an instrument signed by the Head of State, the Head of Government or the Minister for Foreign Affairs of the State concerned or by one or more persons having been granted full powers by the Head of State, Head of Government or Minister for Foreign Affairs. For the States party to the Additional Act of Monaco, this instrument should also apply thereto<sup>3</sup>.

---

<sup>2</sup> Monaco and Morocco have since declared their consent to a collective decision to terminate the London Act through a *note verbale* from their Permanent Missions in Geneva, dated May 14, 2009 and July 17, 2009, respectively.

<sup>3</sup> The Contracting States to the 1934 Act, which are parties to the Additional Act of Monaco are: France, Germany, Liechtenstein, Monaco, Netherlands (as far as the Netherlands Antilles is concerned), Spain, Suriname and Switzerland.

### III. PROCEDURE FOR THE TERMINATION OF THE 1934 ACT – COURSE OF ACTION

9. Since the primary objective is to reduce the complexity of the Hague system, the termination of the 1934 Act remains the best solution. In this respect, it should be noted that although individual denunciations of the 1934 Act continue to be welcome, the termination procedure has the advantage over these of a single date for entry into force for all States concerned. Nevertheless, the International Bureau understands from exchanges it has had with one of the Contracting States since the second informal consultative meeting that consent for termination could not be communicated between now and the September 2009 Assemblies, as a parliamentary process must first be set in motion.

10. Thus, termination of the 1934 Act must now be envisaged on a medium-term basis. Without renouncing this objective, it is necessary, for the time being, to invite Contracting States to freeze the application of the 1934 Act. It is recalled, by way of example, that the application of the Trademark Registration Treaty (TRT) has thus been frozen since October 2, 1991. This means that the system ceased to function in the sense that no new accessions can be accepted and no new registrations may be made<sup>4</sup>.

11. A freeze decision could be taken during the forty-seventh series of meetings of the Assemblies of the Member States of WIPO, i.e. as of September 2009. With regard to the applicable formalities, it would be enough for the delegations representing the Contracting States to this Act (whether they are members of the Hague Union Assembly because they are bound by another Act or are party only to the 1934 Act) to have credentials in the form of a *note verbale* from the Permanent Mission in Geneva or the Ministry of Foreign Affairs, or a letter signed by the Permanent Representative in Geneva. Moreover, as the freezing of the application of a treaty can be reversed, it should not be necessary first to subject the issue to the parliamentary process that may be required, in some States, for a decision of termination, which is irreversible. In other words, freezing the application of the 1934 Act is to be seen as a mere decision affecting operations under that Act, and somewhat analogous to a decision made by the Hague Union Assembly when it adopts an amendment of the Common Regulations.

12. Deciding on a freeze during the forty-seventh series of meetings of the Assemblies of the Member States of WIPO, i.e. as of September 2009, would therefore ensure that the aim of simplifying the Hague system is achieved as soon as possible and to a very large extent. Especially on a practical level, as is the case for termination, the door would, from now on, be closed to any new designations under the 1934 Act. For designations existing at the time of the freeze, continuance of the rights acquired and the advantages resulting from centralized management, already mentioned with regard to termination in document H/IM/3/1, would be ensured *a fortiori* in the case of a freeze. Annex I contains a proposed text for such a possible freeze decision.

---

<sup>4</sup> “(a) It shall no longer be possible to file applications for international registration under the TRT (should, contrary to all expectations, [...] registrations be renewed, those renewals would, however, be accepted and processed according to the Treaty and the Regulation thereunder);” (see documents TRT/A/VII/1 and 2).

13. The International Bureau encourages any Contracting State which is in a position to express its consent to the freezing of the application of the 1934 Act before the Extraordinary meeting of September 23, 2009, takes place, to do so by means of a *note verbale* from the Permanent Mission in Geneva or the Ministry of Foreign Affairs. If such a *note verbale* is received by the Director General of WIPO before the meeting, there will be no necessity for the Contracting State in question to be represented at the Extraordinary meeting. The International Bureau will inform the other Contracting States of any consent so expressed.

14. As regards the Hague Union Assembly, it would be invited to amend the Common Regulations, so as to reflect the freeze decision in practice. Amendments to this end would be the same as those annexed to document H/IM/3/1.

15. For its part, the International Bureau shall continue to encourage each of the Contracting States to express their consent to the *termination* of the 1934 Act and to inform all the said States of any formal communications received to this end. Upon receipt of the last required instrument, the International Bureau would then issue a depositary notification concerning the decision taken. Annex II contains a model text of a communication for this purpose.

16. In the meantime, any denunciation of the 1934 Act received from a Contracting State shall continue to be treated as such in accordance with Article 22 (4) thereof<sup>5</sup>.

*17. The Contracting States to the 1934 Act are invited to freeze the application of this Act by adopting to this end the text proposed in Annex I as attached.*

[Annexes follow]

---

<sup>5</sup> In this respect, it will be noted that on June 3, 2009, Indonesia submitted its denunciation instrument of the 1934 Act to the Director General of WIPO. This denunciation shall therefore be effective from June 3, 2010.

ANNEX I

Text for the Decision to Freeze the Application of the 1934 Act

“The Contracting States to the London Act (1934) of the Hague Agreement Concerning the International Deposit of Industrial Designs (“1934 Act”), decide to freeze the application of this Act with effect from January 1, 2010. In taking this decision, the Contracting States intend that no new designation under the 1934 Act may be recorded in the International Register, but that this freeze shall be without prejudice to the continuation in force of designations recorded in the International Register before the effective date of the freeze. More precisely, the Contracting States to the 1934 Act recognize that it shall continue to be possible for these designations to be the subject of a prolongation or any other recording provided for in the Common Regulations under the 1999 Act, the 1960 Act and the 1934 Act of the Hague Agreement, in the version in force before the effective date of the freeze.”

[Annex II follows]

ANNEX II

Model Communication for Consent to the Termination of the 1934 Act

[Contracting State] hereby has the honor of extending to the Director General of the World Intellectual Property Organization (WIPO) its consent to the termination of the London Act (1934) of the Hague Agreement Concerning the International Deposit of Industrial Designs (“1934 Act”), [and of the Additional Act of Monaco<sup>6</sup>] effective three months after the Director General of WIPO receives the last consent required or when the last relevant denunciation takes effect, provided that it continues to be possible for any designation under the 1934 Act recorded in the International Register and still in effect at that date to be the subject of a prolongation or of any other recording provided for in the Common Regulations under the 1999 Act, the 1960 Act and the 1934 Act of the Hague Agreement, in the version in force before [January 1, 2010<sup>7</sup>].

[Head of State/Head of Government/Minister for Foreign Affairs]

[End of Annex II and of document]

---

<sup>6</sup> For the Contracting States to the 1934 Act, which are also party to the Additional Act of Monaco, i.e. France, Germany, Liechtenstein, Monaco, Netherlands (as far as the Netherlands Antilles is concerned), Spain, Suriname and Switzerland.

<sup>7</sup> In other words, the date on which it is expected that the decision to freeze the application of the 1934 Act will come into force.