

Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs

**Fourth Session
Geneva, June 16 to 18, 2014**

SUMMARY BY THE CHAIR

approved by the Working Group

1. The Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs (hereinafter referred to as “the Working Group”) met in Geneva from June 16 to 18, 2014.
2. The following members of the Hague Union were represented at the session: African Intellectual Property Organization (OAPI), Benin, Denmark, Estonia, European Union, France, Germany, Greece, Hungary, Latvia, Lithuania, Norway, Oman, Republic of Moldova, Romania, Spain, Suriname, Syrian Arab Republic, Switzerland, Tajikistan, Tunisia and Ukraine (22).
3. The following States were represented as observers: Cameroon, Canada, China, Czech Republic, Japan, Madagascar, Mexico, Republic of Korea, Russian Federation, United States of America, Viet Nam and Yemen (12).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: African Regional Intellectual Property Organization (ARIPO) and Benelux Office for Intellectual Property (BOIP) (2).
5. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: Association of European Trademark Owners (MARQUES), Japan Patent Attorneys Association (JPAA) and Knowledge Ecology International, Inc. (KEI) (3).

AGENDA ITEM 1: OPENING OF THE SESSION

6. The Chair, Mr. Mikael Francke Ravn (Denmark), opened the session of the Working Group and welcomed the participants. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO) made an opening address.
7. Ms. Päivi Lähdesmäki (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

8. The Working Group adopted the draft agenda (document H/LD/WG/4/1 Prov.) without modification.

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE THIRD SESSION OF THE WORKING GROUP ON THE LEGAL DEVELOPMENT OF THE HAGUE SYSTEM FOR THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

9. Discussions were based on document H/LD/WG/3/8 Prov.
10. The Working Group adopted the draft report (document H/LD/WG/3/8 Prov.) with a modification concerning the list of participants.

AGENDA ITEM 4: TYPES OF DOCUMENTS AND OTHER MATERIAL UNDER RULE 7(5)(F) AND (G) OF THE COMMON REGULATIONS AND THEIR SUBMISSION THROUGH THE INTERMEDIARY OF THE INTERNATIONAL BUREAU

11. Discussions were based on document H/LD/WG/4/2.
12. With respect to paragraph 25 of the document, the Chair noted that Rule 6 of the Common Regulations did not exclude the submission of documentation accompanying the international application in a working language other than that of the international application. The Chair further noted that nothing in paragraph 31 precluded the Office of any Contracting Party from having access to supporting documents either on an *ad hoc* basis or under a systematic basis pursuant to an agreement concluded under Section 204(a)(ii) of the Administrative Instructions.
13. The Chair concluded that the Working Group considered it desirable to add a new Section 408 to the Administrative Instructions, as contained in Annex I to document H/LD/WG/4/2, with a modification to paragraph (c), as set out in Annex I to the Summary by the Chair, with a date of entry into force of July 1, 2014.
14. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to the Schedule of Fees, as set out in Annex II to document H/LD/WG/4/2, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2015.

AGENDA ITEM 5: POSSIBLE INTRODUCTION OF A MECHANISM INTO THE HAGUE SYSTEM TO MAKE PUBLICLY AVAILABLE IN A CENTRALIZED MANNER AMENDMENTS TO AN INDUSTRIAL DESIGN FOLLOWING A PROCEDURE BEFORE AN OFFICE

15. Discussions were based on document H/LD/WG/4/3.

16. The Chair noted that the amendments indicated or contained in the notification or statement as referred to in proposed Rules 18(4)(c), 18*bis*(1)(c) and (2)(c), may be in the language of the Office which issued the said notification or statement and that this would be reflected in the document to be submitted to the Hague Union Assembly.

17. The Chair further noted that the circumstances under which the statements under proposed Rule 18*bis*(1) could be issued will be recalled in the document to be submitted to the Hague Union Assembly.

18. The Chair concluded that the Working Group considered favorably the submission of a proposal to amend the Common Regulations with respect to Rule 18(4) and Rule 18*bis*(1) and (2), as contained in the Annex to document H/LD/WG/4/2, with modifications to sub-paragraphs (c) and (d) of Rule 18*bis*(1), as set out in Annex II to the Summary by the Chair, for adoption, to the Assembly of the Hague Union, with the proposed date of entry into force of January 1, 2015.

AGENDA ITEM 6: REVISED PROPOSAL FOR A STANDARD DOCUMENT FOR THE PURPOSE OF ARTICLE 16(2) OF THE 1999 ACT OF THE HAGUE AGREEMENT AND ITS POSSIBLE SUBMISSION THROUGH THE INTERMEDIARY OF THE INTERNATIONAL BUREAU

19. Discussions were based on document H/LD/WG/4/4.

20. The Chair noted that at present three Contracting Parties have made a declaration under Article 16(2) of the 1999 Act, namely, the African Intellectual Property Organization (OAPI), Denmark and the Republic of Korea. However, the Delegation of Denmark informed the Working Group that the withdrawal of the said declaration by Denmark was underway. In the future, it is expected that a number of prospective Contracting Parties will make that declaration.

21. The Chair further noted that the standard document will be revised taking into consideration the proposals put forward during the session.

22. The Chair also noted that the Working Group favorably considered the submission of the standard document through the International Bureau and its electronic distribution to the Offices.

23. The Chair concluded that the Working Group favorably considered the submission of a proposal for a recommendation for making the standard document an acceptable document in the Contracting Parties having made a declaration under Article 16(2) of the 1999 Act, to the Assembly of the Hague Union, for adoption. The Chair further explained that the purpose of the recommendation was to merely encourage the Contracting Parties to accept the standard document as having the same effect as a statement or document which may be submitted for the same purpose under the law of the Contracting Party concerned.

AGENDA ITEM 7: OTHER MATTERS

24. Discussions were based on document H/LD/WG/4/5.

25. The Chair noted that the Delegations of current members of the Hague Union and Representatives of user organizations considered favorably the amendments to Part Four of the Administrative Instructions. The Chair further noted that a few prospective members of the Hague Union expressed their concern about the addition of the indication “by [...] or coloring” in amended Section 403. The Chair indicated that this topic would be revisited in the future.

26. The Chair concluded that the Working Group considered it desirable to amend Sections 402, 403 and 405 of the Administrative Instructions, as contained in the Annex to document H/LD/WG/4/5, with modifications to Section 403, as set out in Annex I to the Summary by the Chair, with a date of entry into force of July 1, 2014.
27. No other matters were raised by the Working Group under this item.

AGENDA ITEM 8: SUMMARY BY THE CHAIR

28. The Working Group approved the Summary by the Chair, as contained in the present document.

AGENDA ITEM 9: CLOSING OF THE SESSION

29. The Chair closed the session on June 18, 2014.

[Annexes follow]

Administrative Instructions for the Application of the Hague Agreement

(as in force on [July 1, 2014])

[...]

Part Four Requirements Concerning Reproductions and Other Elements of the International Application

[...]

Section 402: Representation of the Industrial Design

(a) The photographs and other graphic representations shall represent the industrial design alone, or the product in relation to which the industrial design is to be used, to the exclusion of any other object, accessory, person or animal.

(b) The dimensions of the representation of each industrial design appearing in a photograph or other graphic representation may not exceed 16 x 16 centimeters, and [in respect of at least one representation of each design](#), one of those dimensions must be at least 3 centimeters. With respect to the filing of international applications by electronic means, the International Bureau may establish a data format, the particulars of which shall be published on the web site of the Organization, to ensure compliance with these maximum and minimum dimensions.

(c) The following shall not be accepted.

- (i) technical drawings, particularly with axes and dimensions;
- (ii) explanatory text or legends [in the representation](#).

Section 403: [Disclaimers and Matter That Does Not Form Part of the Industrial Design or the Product in Relation to Which the Industrial Design is to be Used](#)

[\(a\)](#) Matter which is shown in a reproduction but for which protection is not sought may be indicated

- (i) in the description referred to in Rule 7(5)(a) and/or
- (ii) by means of dotted or broken lines [or coloring](#).

[\(b\)](#) [Notwithstanding Section 402\(a\), matter that does not form part of the industrial design or the product in relation to which the industrial design is to be used may be shown in a reproduction if it is indicated in accordance with paragraph \(a\).](#)

[...]

Section 405: Numbering of Reproductions and Legends

(a) The numbering stipulated for multiple international applications shall appear in the margin of each photograph or other graphic representation. When the same industrial design is represented from different angles, the numbering shall consist of two separate figures separated by a dot (e.g., 1.1, 1.2, 1.3, etc. for the first design, 2.1, 2.2, 2.3, etc. for the second design, and so on).

(b) The reproductions shall be submitted in ascending numerical order.

(c) Legends to indicate a specific view of the product (e.g., "front view", "top view", etc.) may be indicated in association with the numbering of the reproduction.

[...]

Section 408: Permitted Matters in the International Application and Permitted Documents Accompanying an International Application

(a) Where the applicant has made a declaration under Rule 7(5)(c) claiming priority of an earlier filing in the international application, that claim may be accompanied by a code allowing to retrieve that filing in a Digital Access Service for Priority Documents (DAS) digital library;

(b) Where the applicant wishes to benefit from a reduction of an individual designation fee as indicated in a declaration made under Article 7(2) of the 1999 Act by a designated Contracting Party, the international application may contain an indication or claim of the economic status entitling the applicant to the reduced fee as indicated in the declaration, as well as the certificate thereof, where applicable.

(c) (i) Where the applicant wishes to make a declaration concerning exception to lack of novelty in the international application, as may be prescribed under the law of a designated Contracting Party, the declaration shall be worded as follows, with the indication of those industrial designs to which the declaration relates:

"Declaration Concerning Exception to Lack of Novelty

"The applicant claims to benefit from exceptional treatments provided for in the applicable laws of the designated Contracting Parties concerned for disclosure of [all] the [following] industrial designs included in the present application."

(ii) Where the applicant wishes to submit documentation on the type and date of disclosure, the international application may be accompanied by such documentation.

(d) Where the applicant wishes to submit a statement as referred to in Rule 7(5)(g), the statement shall be in the format established by the International Bureau in agreement with the designated Contracting Party concerned.

[...]

[Annex II follows]

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

(as in force on [January 1, 2015])

*Rule 18
Notification of Refusal*

[...]

(4) [*Notification of Withdrawal of Refusal*] (a) The notification of any withdrawal of refusal shall relate to one international registration, shall be dated and shall be signed by the Office making the notification.

(b) The notification shall contain or indicate

- (i) the Office making the notification,
- (ii) the number of the international registration,
- (iii) where the withdrawal does not relate to all the industrial designs to

which the refusal applied, those to which it relates or does not relate, ~~and~~
(iv) the date on which the international registration produced the effect as a grant of protection under the applicable law, and

(iv) the date on which the refusal was withdrawn.

(c) Where the international registration was amended in a procedure before the Office, the notification shall also contain or indicate all amendments.

[...]

*Rule 18bis
Statement of Grant of Protection*

(1) [*Statement of Grant of Protection Where No Notification of ~~Provisional~~ Refusal Has Been Communicated*] (a) An Office which has not communicated a notification of refusal may, within the period applicable under Rule 18(1)(a) or (b), send to the International Bureau a statement to the effect that protection is granted to the industrial designs, or some of the industrial designs, as the case may be, that are the subject of the international registration in the Contracting Party concerned, it being understood that, where Rule 12(3) applies, the grant of protection will be subject to the payment of the second part of the individual designation fee.

(b) The statement shall indicate

- (i) the Office making the statement,
- (ii) the number of the international registration, ~~and~~
- (iii) where the statement does not relate to all the industrial designs that are the subject of the international registration, those to which it relates,

(iv) the date on which the international registration produced or shall produce the effect as a grant of protection under the applicable law, and

(v) the date of the statement.

(c) Where the international registration was amended in a procedure before the Office, the statement shall also contain or indicate all amendments.

(d) Notwithstanding subparagraph (a), where Rule 18(1)(c)(i) or (ii) applies, as the case may be, or where protection is granted to the industrial designs following amendments in a procedure before the Office, the said Office must send to the International Bureau the statement referred to in subparagraph (a).

(e) The applicable period referred to in subparagraph (a) shall be the period allowed pursuant to Rule 18(1)(c)(i) or (ii), as the case may be, to produce the effect as a grant of protection under the applicable law, with respect to a designation of Contracting Party having made a declaration under either of the aforementioned Rules.

(2) [Statement of Grant of Protection Following a Refusal] (a) An Office which has communicated a notification of refusal and which has decided to either partially or totally withdraw such refusal, may, instead of notifying a withdrawal of refusal in accordance with Rule 18(4)(a), send to the International Bureau a statement to the effect that protection is granted to the industrial designs, or some of the industrial designs, as the case may be, that are the subject of the international registration in the Contracting Party concerned, it being understood that, where Rule 12(3) applies, the grant of protection will be subject to the payment of the second part of the individual designation fee.

(b) The statement shall indicate

(i) the Office making the notification,

(ii) the number of the international registration,

(iii) where the statement does not relate to all the industrial designs that are

the subject of the international registration, those to which it relates or does not relate, ~~and~~

(iv) the date on which the international registration produced the effect as a grant of protection under the applicable law, and

(v) the date of the statement.

(c) Where the international registration was amended in a procedure before the Office, the statement shall also contain or indicate all amendments.

[...]

[...]

SCHEDULE OF FEES

(as in force on [January 1, 2015])

[...]

VII. *Services Provided by the International Bureau*

24. The International Bureau is authorized to collect a fee, whose amount it shall itself fix, for services not covered by this Schedule of Fees.

[End of Annex II and of document]