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STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS

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DRAFT QUESTIONNAIRE ON INDUSTRIAL DESIGN LAW AND PRACTICE (PART II)

prepared by the Secretariat

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INTRODUCTION

- 1. At the seventeenth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), held in Geneva from May 7 to 11, 2007, the SCT requested the Secretariat to develop, in addition to the Questionnaire on Industrial Design Law and Practice (Part I), a second questionnaire on the basis of additional questions by SCT Members (see document SCT/17/8 prov., paragraph 432). Accordingly, the Secretariat has prepared the present document which contains, in its Annex, a draft Part II of the Questionnaire on Industrial Design Law and Practice.
- 2. This draft questionnaire takes into account the comments and suggestions made by the SCT at its seventeenth session, as well as the written comments which the Secretariat received until the end of June 2007.
 - 3. The SCT is invited to comment on the draft Questionnaire presented in the Annex, with a view to finalizing it and to circulating it as soon as possible thereafter.

[Annex follows]

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ANNEX

DRAFT QUESTIONNAIRE ON INDUSTRIAL DESIGN LAW AND PRACTICE (PART II)

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I. SYSTEM OF INDUSTRIAL DESIGN PROTECTION

Q1:	According to the	he applicable	law, protection t	for industrial of	designs is	provided under
		T T	· · · ·) I · · · · · · · ·			r

_	design patent legislation	yes□	$no\square$	n/a□
_	registered industrial design legislation	yes□	$no\square$	n/a□
_	unregistered industrial design legislation	yes□	$no\square$	n/a
_	Copyright legislation	yes□	$no\square$	n/a□
_	protection against unfair competition legislation	yes□	$no\square$	n/a
_	other			

II. SUBJECT MATTER OF INDUSTRIAL DESIGN

Q2: The following subject matter may be protected as an industrial design:

_	a typeface	yes□ no□ n/a□
_	colors	yes□ no□ n/a□
_	a graphic symbol, such as a drawing, picture or	
	logo	yes□ no□ n/a□
_	ornamentation, such as figurative elements and	•
	patterns	yes□ no□ n/a□
-	product packaging	yes□ no□ n/a□
-	product shape	yes□ no□ n/a□
-	get-up and trade dress	yes□ no□ n/a□
-	a specific texture or material	yes□ no□ n/a□
-	a graphical user interface	yes□ no□ n/a□
_	an architectural structure	yes□ no□ n/a□
-	the appearance of a product of variable form,	
	such as a fountain or an inflatable balloon	yes□ no□ n/a□
-	labels	yes□ no□ n/a□
_	holograms	yes□ no□ n/a□
_	other	
A par	t of a product may constitute an industrial design	yes□ no□ n/a□

III. INDUSTRIAL DESIGN APPLICATION

Q3:

- (a) Division of a Multiple Design Application
- Q4: Where the industrial designs in a multiple design application do not meet the necessary requirement to be included in a single application, the applicant may divide the application yes no n/a

Q5:		division should take place within a given time limit please specify the time limit:	yes□ no□ n/a□ months from
	(b)	Allowed Disclosure Before Application	
Q6:	before	closure of the industrial design within a given period of the date of filing, or the priority date of the application wed, without affecting the requirement of novelty of	ion (grace period),
	If yes,	please specify the period of time:	
Q7:	A "gra - - -	the designer a person authorized by the designer any person other	yes□ no□ n/a□ yes□ no□ n/a□ yes□ no□ n/a□
	(c)	Changes to Industrial Design After Application	
Q8:	Amen	dments to the industrial design after the application h	nas been filed are allowed. yes□ no□ n/a□
	If yes,	please specify the circumstances under which the an	nendments are allowed:
	_ _	under all circumstances only where the changes relate to non-essential	yes□ no□ n/a□
	_	features of the industrial design other	yes□ no□ n/a□
Q9:	filed e	e the amendments to the industrial design after the apexceed the scope of the original application, the application on the date of the amendments.	•
	If yes,	the Office informs the applicant of that fact.	yes□ no□ n/a□

IV.	EXAMINATION						
	(a)	Substantive Examination					
Q10:	The Office examines industrial design applications for compliance with substantive requirements:						
	_ _ _ _	upon request of the applicant upon request of a third party ex officio including an examination as to local or regional novelty, when the criterion for validity of the desig right is worldwide novelty	yes□ yes□ n	no□ no□ no□	n/a□ n/a□		
Q11:		Office examines industrial design applications for conrements:	npliano	ce with	substantive		
	_ _	before registration of the industrial design after registration of the industrial design		no□ no□			
Q12:	When examining an industrial design as to novelty, the Office takes into account:						
	- - -	the <i>essential features</i> of the industrial design <i>all</i> the features of the industrial design other	-	no□ no□			
Q13:	When examining an industrial design as to originality, the Office takes into account:						
	_ _ _	the <i>essential features</i> of the industrial design the <i>overall impression</i> left by the industrial design other	-	no□ no□			
Q14:	durin	Office finds grounds for refusing the industrial design the procedure of substantive examination, the Officads to the applicant before sending a final decision of	e notif refusa	ies tho	ose		
Q15:	-	s, the applicant is given the opportunity to express his erning the invoked grounds for refusal.	-	on to th no□			
Q16:		grounds for refusal are not overcome by the applicantion of refusal.		Office no□			
	(b)	Time Lapse for First Office Action					
Q17:		verage, the period of time between the date of filing a cation and the date of issue of a first office action is _	n indu	strial c	lesign months.		

V.	DURATION AND SCOPE OF PROTECTION						
	(a)	Commencement of Period of Protection					
Q18:		ding to the applicable law, the registration of an ind od of time which starts to run from:	ustrial d	lesigr	is effected for		
	- -	the date of filing of the application the date of registration of the industrial design the date of publication of the industrial design	yes□ yes□	no□	n/a□		
	_	other					
	(b)	Scope of Protection					
Q19:	The so	cope of protection afforded by a right in an industria of:	l design	is de	etermined on the		
	_	the reproduction only	yes□	no□	n/a□		
	_	the reproduction and claims	yes□	no□	n/a□		
	_	the reproduction and a description of the characteristic features other	yes□	no□	n/a□		
Q20:	before known opinio	e an infringement action on the basis of a registered a Court or Tribunal, the plaintiff may submit a form designs which are relevant to such registered industrial as to the registrability of that industrial design, pretry/Industrial Property Office.	nal sear strial de	ch reg sign, by the	port on prior or a technical		
Q21:		ormal report or technical opinion mentioned in Q20 rities other than a Court or Tribunal (for example, at		stoms).		
Q22:		er to determine whether a protected industrial designarial design, a comparison is made between:	n is infr	inged	by another		
	-	the essential features of the protected industrial de- and the essential features of the allegedly infringin industrial design the overall impression created by the protected ind- and the allegedly infringing industrial design other	g yes□	desig	n		

Q23:	is infringed by another					
	 the designer an informed user any user other 	yes no n/a yes no n/a yes no n/a				
VI.	APPEALS					
Q24:	Is there a procedure for filing an appeal against a decision to grant or refuse the registration of an industrial design? yes no n/a					
Q25:	If yes, before what authority:					
	 the Registry/Industrial Property Office an Administrative Body a Court or Tribunal other 	yes□ no□ n/a□ yes□ no□ n/a□ yes□ no□ n/a□				
Q26:	If yes, within what period:					
	days from the date of issuing of the decision days from the date of receipt of the decision months from the date of issuing of the decision months from the date of receipt of the decision months from the date of receipt of the decision months from the date of receipt of the decision months from the date of receipt of the decision months from the date of receipt of the decision months from the date of receipt of the decision months from the date of receipt of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the decision months from the date of issuing of the date of issuing of the date of issuing of t	on by the applicant.				
VII.	DISPUTE SETTLEMENT					
Q27:	Disputes between parties may be referred to a dispute-settlement procedure:	yes□ no□ n/a□				
Q28:	If yes, the following disputes may be referred to a dispute-settlement procedure:					
	 those concerning a final decision of refusal of an industrial design application those concerning an alleged infringement other 	yes no n/a yes no n/a				

VIII.	INVA		TION	PRO	CEEDIN	GS
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V 111.	шил	ELIDATION I ROCLEDINGS	
	(a)	Possible Grounds	
Q 29:	A regi	stration of an industrial design may be invalidated	on the grounds that t
	_	is not new	yes□ no□ n/a□
	_	is not original	yes□ no□ n/a□
	_	is dictated by technical or functional	•
		considerations	yes□ no□ n/a□
	_ _	is contrary to morality or public order other	yes□ no□ n/a□
	(b)	Competent Authority	
Q30:	A regi	stration of an industrial design may be declared in ity:	valid by the followin
	_	the Registrar	yes□ no□ n/a□
	_	an Administrative Body	yes \square no \square n/a \square
	_	a Court or Tribunal	yes□ no□ n/a□
	_	other	
IX.	RELA	ATION WITH TRADEMARKS	
	(a)	Subject Matter Enjoying Co-existing Protection	
Q31:		rding to the applicable law, the following subject misting protection as a trademark and an industrial d	
	_	a typeface	yes□ no□ n/a□
	_	colors	yes□ no□ n/a□
	-	a graphic symbol, such as a drawing, picture	,
		or logo	yes□ no□ n/a□
	_	ornamentation, such as figurative elements	1
		and patterns	yes□ no□ n/a□
	-	product packaging	yes□ no□ n/a□
	_	product shape	yes□ no□ n/a□
	_	get-up and trade dress	yes□ no□ n/a□
	_	a specific texture or material other	yes□ no□ n/a□
Q32:	-	tected industrial design may acquire distinctivenes uring the period of industrial design protection	s in the sense of trad
			yes□ no□ n/a□
			-

	(b)	Subject Matter Dictated Essentially by Technical or	Functional Considerations
Q33:	According to the applicable law, subject matter that is dictated essentially by technical or functional considerations is excluded from:		
	_	protection as a trademark If yes, such exclusion is limited to three-dimensional	yes□ no□ n/a□
		subject matter	yes□ no□ n/a□
Q34:		ding to the applicable law, subject matter that is dictactional considerations is excluded from:	ted essentially by technical
-	_	protection as an industrial design If yes, such exclusion is limited to three-dimensional	
		subject matter	yes□ no□ n/a□
	(c)	Enforcement of Cumulative Rights	
Q35:		e of subject matter enjoying cumulative protection, tra- rights can be invoked in parallel before the courts:	ademark and industrial
	_ _	without having to satisfy any specific requirements only if the interested party shows a distinct legitima	
	_	each of the two protection regimes other	yes□ no□ n/a□
X.	RELA	TION WITH COPYRIGHT	
Q36:	Subjec	et matter which is protected under industrial design la	ıw:
	_	may be protected at the same time under copyright	law
		(cumulative protection)	yes□ no□ n/a□
	_	cannot be protected under copyright law	yes□ no□ n/a□
	_	may be protected under copyright law under certain	
	_	conditions only other	yes□ no□ n/a□
Q37:		the subject matter which is protected under industriated under copyright law under certain conditions only ing:	· ·
	_	that the subject-matter can be identified <i>separately</i> independently of, the functional	from, and exist
	_	aspect of the product that the subject-matter presents a <i>high</i> or <i>marked</i>	yes□ no□ n/a□
	_	artistic character other	yes□ no□ n/a□

Q38:	In case of subject matter enjoying co-existing protection, copyright and industrial design rights can be invoked in parallel before the courts:		
	-	without having to satisfy any specific requirement only if the interested party shows a distinct legitin with regard to each of the two protection regimes other	nate interest
XI.	PUBLICATION OF THE QUESTIONNAIRE		
Q39:		s to this questionnaire may be published WIPO website	yes□ no□
		[En	d of Annex and of document]