

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

Third Special Session - Preparation of the Basic Proposal for the Diplomatic Conference to Conclude and Adopt a Design Law Treaty (DLT)
Geneva, October 2 to 6, 2023

DRAFT REPORT

prepared by the Secretariat

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee”, “the Committee” or “the SCT”) held its Third Special Session, in Geneva and in hybrid mode, from October 2 to 6, 2023.
2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Belarus, Belgium, Benin, Bhutan, Botswana, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Côte d'Ivoire, Croatia, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Eswatini, Fiji, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kyrgyzstan, Kuwait, Lithuania, Malaysia, Mauritania, Mexico, Morocco, Mozambique, Nepal, Netherlands (Kingdom of the), Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Samoa, Saudi Arabia, Sierra Leone, Singapore, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Türkiye, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Zambia, Zimbabwe (103). The European Union was represented in its capacity as a special member of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Union (AU), Benelux Organization for Intellectual Property (BOIP), Eurasian Economic Commission (EEC), Eurasian Patent Organization (EAPO), South Center (SC), World Trade Organization (WTO) (6).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: Association of Trade Mark and Design Law Practitioners (APRAM), Center for International Intellectual Property Studies (CEIPI), Digital Law Center (DLC), European Communities Trade Mark Association (ECTA), European Law Students' Association (ELSA International), German Association for the Protection of Industrial Property and Copyright Law (GRUR), Inter-American Association of Industrial Property (ASIPI), International Association for the Protection of Intellectual Property (AIPPI), International Chamber of Commerce (ICC), International Olympic Committee (IOC), International Trademark Association (INTA), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), *Maloca Internationale*, MARQUES – Association of European Trademark Owners, Native American Rights Fund (NARF) (17).

5. The list of participants is contained in the Annex to this document.

6. The Secretariat noted the interventions made and recorded them.

AGENDA ITEM 1: OPENING OF THE SESSION

7. The Chair opened the Third Special Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

8. Ms. Wang Binying, Deputy Director General of the World Intellectual Property Organization (WIPO), welcomed the participants on behalf of Mr. Daren Tang, Director General of WIPO.

9. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

AGENDA ITEM 2: ADOPTION OF THE AGENDA, FOLLOWED BY OPENING STATEMENTS BY DELEGATIONS

10. The SCT adopted the draft Agenda (see document SCT/S3/1 Prov.).

General Statements

11. The Delegation of Ukraine expressed its sincere gratitude to the Chair and the Secretariat for the preparation of the Third Special Session of the SCT. Acknowledging the unwavering commitment of the Member States of WIPO to bring the text of the draft Design Law Treaty (DLT) to completion, the Delegation was confident that that legal instrument would substantially impact the safeguarding of industrial design rights for all stakeholders. However, as the Committee was embarking on discussions concerning the upcoming diplomatic conference and the particularities of global harmonization of design rights protection, the Delegation felt compelled to draw the Committee's attention to the deliberate violation of international law by the Russian Federation and the devastating nature of its aggressive role against Ukraine. Noting that 586 days had passed since the Russian Federation had started a full-scale invasion of Ukraine, the Delegation stated that the Russian forces continued to launch daily attacks on Ukraine. In September 2023, Ukraine had suffered a series of massive attacks by Russian missiles and drones, particularly in the Izmail district of the Odesa region, with the

intent to destroy the port and agricultural facilities. The Delegation mentioned that, in direct violation of international humanitarian law, the Russian Federation had deliberately targeted civilian infrastructures, causing damages and destruction to cultural, educational, and religious buildings and intellectual property (IP) assets of the Ukrainian people. As noted during the 2023 WIPO General Assembly, the negative impacts, described in document A/64/8 “Report on Assistance and Support for Ukraine’s Innovation and Creativity Sector and Intellectual Property System”, would only grow. The Delegation reported that the number of civilian infrastructure facilities damaged and destroyed in Ukraine had exceeded 125.000. Those numbers did not include the temporarily occupied areas. Furthermore, the Delegation remarked that the Russian Federation continued to misuse WIPO resources to legitimize its military occupation and continued to falsely indicate the address of applicants from the temporarily occupied territories of Ukraine as an address from the Russian Federation, particularly through WIPO systems. The Delegation considered that that attempt fundamentally contradicted the mission and the vision of WIPO and was a blatant violation of several United Nations General Assembly Resolutions. For the Delegation, the Russian war of aggression against Ukraine undermined the efforts of WIPO and other United Nations agencies to address global challenges on the path to sustainable development, while simultaneously taking advantage of all privileges and abusing international humanitarian and IP law. The Delegation believed that it was imperative that the Russian Federation be denied of any privileges and honors in WIPO. The Delegation concluded by expressing its heartfelt gratitude to the Secretariat and all WIPO Member States that continued to offer unwavering support and solidarity to Ukraine and its people and condemned, in the strongest possible terms, the Russian Federation’s war of aggression and its violation of international law, including the United Nations Charter.

12. The Delegation of Poland, speaking on behalf of the Central European and Baltic States (CEBS) Group, condemned the continued Russian Federation’s war of aggression against Ukraine, which was a clear violation of international law. Since the very beginning of the Russian Federation’s invasion against Ukraine, the Group had received alarming reports of attacks against civilians and civilian infrastructures, as well as violations of human rights in Ukraine. Considering that the international community should be aware of the dramatic human rights and humanitarian consequences of the war, the Group demanded the Russian Federation to immediately stop the war. The “Report on Assistance and Support for Ukraine’s Innovation and Creativity Sector and Intellectual Property System”, as contained in document A/64/8 and presented during the 2023 WIPO General Assembly, confirmed the sad reality of the significant negative impact of the Russian Federation’s war of aggression against Ukraine. That was reflected not only in the unprecedented damage of the infrastructure serving scientific, educational, research and cultural institutions but, most importantly, in the loss of the potential and capacity of the stakeholders of the Ukrainian IP ecosystem. As the numbers spoke for themselves, the Group reported that there was a year-to-year reduction of 44 percent of trademarks applications, 55 percent of industrial design applications, 46 percent of utility models applications and 20 percent of patent applications. Those numbers constituted an alarming testimony of the destructive impact of the war on the Ukrainian IP ecosystem. The Group welcomed the WIPO General Assembly decision to continue relevant assistance and support for Ukraine’s IP sector, hoping for its recovery, as well as further reporting to Member States. The Delegation reaffirmed that the UN General Assembly Resolution A/RES-ES 11/4, condemning the attempted annexation of Ukraine’s territories, was a clear international indication that no territorial acquisition resulting from threat or the use of force should be recognized as legal. The Delegation concluded by expressing the Group’s support and solidarity with Ukraine and the Ukrainian people.

13. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, expressed the Group’s full solidarity with the people of Ukraine. The Group referred to the WIPO General Assembly’s decision, contained in document A/63/8, on *Assistance and Support for Ukraine’s Innovation and Creativity Sector and Intellectual Property System* and observed that, according to the report contained in document A/64/8 and issued on June 7, 2023,

following the General Assembly's decision, the Russian Federation's war against Ukraine had resulted in a decrease of IP filings that were of direct relevance to the Committee. As compared to the year 2021, the year 2022 had seen a drop in industrial design applications by 55 percent and a decrease in trademark applications by 44 percent. For the Group, the Russian Federation's attempts to annex the Ukrainian territories, declared on September 30, 2022, violated the territorial integrity and national sovereignty of Ukraine. Expressing the view that the Russian Federation was violating international law, the Delegation said that the Group did not recognize the attempted annexation of Ukrainian territories into the Russian Federation. For the Delegation, Ukraine's territorial integrity and sovereignty should be fully respected within the global IP system.

14. The Delegation of Spain, speaking on behalf of the European Union and its member states, expressed its solidarity with Ukraine and supported the sovereignty and territorial integrity of Ukraine within its internationally-recognized borders. The Delegation demanded that the Russian Federation immediately stop its invasion of Ukraine and cease all violations of international law. The Delegation added that the Russian Federation should instantly and completely withdraw its troops from the whole territory of Ukraine and fully respect Ukraine's territorial integrity, sovereignty and independence within its internationally-recognized borders. While Ukraine had shown that innovation could be pursued even in the most severe circumstances, the Delegation noted that it was, at the same time, clear that innovation was helped by international cooperation. At the present Special Session of the SCT, the Delegation looked forward to discussing how WIPO could work towards strengthening international cooperation by developing a DLT that would help harmonize regulations and procedures. In light of the negative impact on the Ukrainian IP ecosystem and the ongoing Russian Federation's war of aggression, as reported in document A/64/8, the Delegation recognized the importance of WIPO's assistance and support for Ukraine's innovation and creativity sector and IP system. Hence, it welcomed the decision of the Sixty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO to continue those activities, hoping for a prompt and efficient recovery process of the Ukrainian IP ecosystem. Affirming that it would stand by Ukraine with steadfast support as long as it took, the Delegation concluded by reiterating the European Union and its member states' continued support and solidarity with Ukraine and the Ukrainian people.

15. The Delegation of the Russian Federation, expressing the wish to exercise its right of reply, considered that it was hard to imagine a more inappropriate forum to politicize anti-Russian statements. The Delegation recalled that the only purpose of the Third Special Session of the SCT, as mandated by the WIPO General Assembly in 2022, was to discuss a future international treaty, which would enhance the legal protection of industrial designs and bring the inter-State relations in that area to a new level. The Delegation observed that the Treaty did not touch in any way on questions of war and peace. The Committee was facing several objectives, which would need to be tackled in the following days, in a very limited period of time. Despite that, the Delegation remarked that individual delegations, guided by purely political motives, allowed themselves to waste precious time to make statements, which were contrary to the reality, and which did not relate to the substance of the matters on the SCT Agenda. At the very outset of the meeting, the Delegation had heard an appeal from the Deputy Director General of WIPO to work closely and cohesively. However, for the Delegation, the deliberate politicization of the Committee's work and double standards would not be conducive to a constructive dialog and good faith negotiations. In that respect, the Delegation said that it would tirelessly keep calling for WIPO's mandate to be respected. The Delegation concluded by stating that it counted on the support of the Secretariat for ensuring compliance with the Rules of Procedure in the course of the Committee's work.

16. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of the Group of Latin American and the Caribbean Countries (GRULAC), commended the fact that the Committee was able to meet to fulfill the mandate, agreed by the WIPO General Assembly in

July 2022, to close existing gaps to allow Member States to facilitate the conclusion and adoption of a DLT. The Delegation thanked the Secretariat for documents SCT/S3/4 and 5, which incorporated documents SCT/35/2 and 3, as well as the 2019 proposal considered by the WIPO General Assembly, into the draft Articles and draft Regulations, and which would be the basis for the Committee's work during the Special Session. While paying tribute to the outstanding efforts of the Chair, the Vice-Chairs and the Secretariat in successfully advancing the work of the SCT, the Delegation informed the Committee that the Group trusted the working method proposed by the Chair. The Group believed that, to reduce the number of pending issues, the Committee needed the willing commitment of every member, through a shared constructive dialog. This would allow the Committee to move forward smoothly towards the Preparatory Committee of the Diplomatic Conference to Conclude and Adopt a Design Law Treaty (DLT) (the Preparatory Committee), leading to the diplomatic conference. Reiterating its unswerving support for the inclusion of provisions relating to technical assistance and capacity building, regardless of their nature, the Delegation observed that many countries in the Latin American and Caribbean region would require that type of support to be able to implement the Treaty. Therefore, the effectiveness of technical assistance and capacity building continued to be a fundamental concern for the Latin American and Caribbean region, which included developing countries. For the Group, the proposed DLT should strike a balance among the needs of its future signatories, including the preservation of industrial design protection space and a provision for technical assistance and capacity building that addressed the needs of developing countries' IP frameworks. The Delegation observed that developing and least-developed countries (LDCs), as well as the Group, had expressed an interest in reaching a consensus on pending issues, such as the issue of disclosure in design registration applications. The Delegation concluded by stating that the Committee could count on the Group's will and commitment to enter the final phase of the process with the constructive spirit that had characterized its contributions throughout all the years of negotiations.

17. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, congratulated the Chair and the Vice-Chairs on their election and thanked the Chair for leading the Special Session of the SCT and the Secretariat for the organization of the session and the preparation of the working documents. Confident that the Committee would be able to make progress, the Delegation announced that the Group was fully committed to participate constructively and actively in the preparation of the diplomatic conference, on the basis of documents SCT/S3/4 and 5, and looked forward to fruitful discussions. The Delegation remarked that the session was the last official SCT session on the DLT, and as such provided an important opportunity to make progress on substantive issues in the draft DLT. Consequently, the Committee should work efficiently in a transparent and inclusive manner and make full use of the time available during the Special Session. In that sense, the Group supported the working method proposed by the Chair, a methodology consistent with the regular practice of the SCT and, more broadly, WIPO textual discussions. The Delegation also outlined a few substantive issues, which were important to all the Groups. Firstly, the Delegation highlighted the increasing importance of the protection of industrial designs and the need to avoid further delay in the adoption of the DLT, in the interest of users of the IP system at the global level. Secondly, the Delegation underscored the well-recognized and long-agreed objective of the DLT, which was the simplification of procedures for applicants in multiple jurisdictions to facilitate international trade and investment. Observing that the DLT was of particular importance and urgency for small and medium-sized enterprises (SMEs), including for individual designers across the globe, the Group was of the view that the aforementioned objective and the users' interests should guide the Committee's discussions. Assuring the Chair that it could count on the continued engagement of all the Group's members in the work of the Committee, the Delegation concluded by stating that the Group remained committed to contribute constructively to achieving mutually acceptable results on the path towards the diplomatic conference.

18. The Delegation of Poland, speaking on behalf of the CEBS Group, thanked the Chair and the Vice-Chairs for leading the Special Session, and commended the Secretariat for the efforts invested in preparing the session, as well as the Deputy Director General of WIPO for her opening remarks. The Delegation also congratulated the Chair and the Vice-Chairs elected for SCT/47 and wished them all the success in their work. Expressing the hope that significant progress would be made in preparation of the diplomatic conference, the Group appreciated the fact that the Committee would address the issues of interest to all participating countries and seek to take into account, in the drafting of the text, the proposals put forward. In the Group's viewpoint, in the modern world, the industrial design system should be modernized and adapted to current challenges. At the same time, procedures should be user friendly. The Group thanked WIPO Member States for their efforts in finalizing the work on the text of the DLT, which would greatly facilitate the functioning of the industrial design system, as its basic elements would be harmonized. The Group expected that the Treaty would bring significant benefits to stakeholders, especially SMEs, which would be able to obtain protection efficiently and effectively for their designs. As the diplomatic conference approached, the Delegation expressed the hope that the Special Session of the SCT would reach a consensual, well-balanced, and workable outcome for all. The Delegation said that the Committee could count on the Group's constructive engagement in the process.

19. The Delegation of Ghana, speaking on behalf of the African Group, thanked the Chair and the Vice-Chairs for their efforts in steering the Committee's work and the Secretariat and other relevant parties for their hard work towards successfully convening the Special Session of the SCT. Welcoming the decision of the WIPO General Assembly to convene two diplomatic conferences, namely one to conclude and adopt a DLT and one to conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources, the Delegation recalled that the mandate of the Special Session of the SCT was to address and close any existing gaps in the draft Articles and draft Rules, to a sufficient level, before convening the diplomatic conference on the DLT in 2024. Recognizing the critical contribution of designs to job creation and economic growth of all countries, the Group highlighted the positive impact of an international instrument concerning the registration formalities of those IP rights on innovation and competitiveness of national industries. However, such an instrument should be balanced and take into account the needs of all Member States, regardless of their level of development. In the Group's viewpoint, the SCT Special Session represented a unique opportunity for all members to exchange ideas and forge solutions that could enhance the coherence and efficiency of the administration of design law systems. For the Group, the discussions within the SCT would play a pivotal role in shaping the future of design protection for the benefit of all stakeholders. The Group looked forward to reaching a mutual acceptable outcome that considered the legitimate interests of all parties. In that regard, the Group stressed the importance of provisions that addressed technical assistance to ensure that Member States be equipped to effectively implement the future instrument. Besides, the Group reiterated the need for policy space for disclosure requirements, that safeguarded the designs of indigenous peoples and local communities, as anticipated in the draft Articles, and increasingly recognized by a number of international agreements. As it was confident that, with a work of expertise in the Special Session, the education and the collective will of Member States, the Committee could make significant strides in further closing the gaps in the draft Treaty, the Delegation concluded that the Group looked forward to productive discussions during the Special Session.

20. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asia and the Pacific Group, congratulated the Chair and the Vice-Chairs on their election and thanked the Secretariat for its continuous efforts in preparing and organizing the SCT Special Session. The Group believed that the Committee needed to bear in mind the decision taken by the WIPO General Assembly in July 2022 and its mandate to further close any existing gaps to a sufficient level and build a common understanding on the core issues related to the draft DLT. Pointing out that designers' work created economic and social benefits that improved, not only their own

lives, but also the life of their community and the creative eco-system, the Delegation considered that the Treaty would benefit the community of designers, who translated their ideas into assets. Therefore, the Committee's efforts should be intended to support designers who were at the heart of the Treaty. In the Group's viewpoint, any decision depended on the recognition of all State's priorities, following a constructive and positive approach by all. Accordingly, urging all Member States to work on the basis of a mutual respect, with the objective to overcome remaining differences and to submit the draft instrument to the diplomatic conference, the Group considered that the Committee should make efforts to close the existing gaps in the SCT Special Session to reach a mutually acceptable outcome for all parties. For several members of the Group, technical assistance and capacity building remained an important component of the instrument to encourage and enhance the capacity of Contracting Parties to fulfill the obligations arising from the Treaty. That would allow offices of LDCs and developing countries, considering the different levels of development, to fully benefit from the implementation of the DLT. The Group was of the opinion that the instrument should provide Member States with the policy space, clarity, and predictability, as well as design eligibility criteria, that were deemed important to complete the formalities for protection of industrial designs within their jurisdiction. The Delegation added that several members of the Group expressed their preference to discuss the administrative clauses and final provisions of the Treaty within the Preparatory Committee. While believing that the discussions and the final decision on the issues required an inclusive approach that took into account all parties' legitimate concerns, the Delegation expressed the Group's readiness to engage in a constructive discussion to overcome all remaining differences and close existing gaps between all Member States.

21. The Delegation of China, commending the Secretariat for the preparation of the Special Session of the SCT, underscored the session's great significance with respect to the convening of the Diplomatic Conference to Conclude and Adopt a DLT, as scheduled in 2024. The Delegation recalled that the delegations and the Secretariat had previously carried out a substantial work on the DLT, which had achieved preliminary results. Expressing the hope for achieving progress thanks to the efforts of all parties during the Special Session, the Delegation called on all members to demonstrate greater flexibility and to fully understand and respect each other's concerns. For the Delegation, dealing with reservations in a reasonable manner would allow greater flexibility and inclusiveness, enabling the DLT provisions to gain wider acceptance and greater influence.

22. The Delegation of the European Union, speaking on behalf of the European Union and its member states, congratulated the Chair and the Vice-Chairs on their election and thanked them for their efforts in facilitating the work on the DLT. The Delegation also thanked the Deputy Director General of WIPO for her opening remarks and the Secretariat for the preparation of the Special Session of the SCT. As regards to potential outcomes of the negotiations, the Delegation reiterated its view that harmonizing and simplifying design registration formalities was highly beneficial for all users of the industrial design system, in particular SMEs in developed and developing countries alike. Having studied the text on which the discussions would be based, the Delegation was convinced that it was appropriate to create the foundations for a flexible, dynamic, and forward-looking framework for industrial design formalities and procedures. The Delegation drew the Committee's attention to the fact that, since the draft text of the DLT had been last substantially discussed within the SCT, the European Union had been undertaking a comprehensive reform of its design legislation. Consequently, the Delegation announced that it would put forward proposals during the Special Session to accommodate those amendments. The Delegation concluded by stating that it remained committed to engage in discussions constructively during the Special Session as well as during the forthcoming Preparatory Committee and the diplomatic conference.

23. The Delegation of the Russian Federation, while welcoming the Deputy Director General of WIPO, the Chair and the Vice-Chairs, expressed its gratitude to the Secretariat for the organization of the Special Session and the preparation of the working documents. The Delegation was confident that, thanks to the wise leadership of the Chair, the Committee would be able to engage in fruitful discussions and to reduce the remaining differences on the draft DLT. Expressing concerns about the procedure to conduct the Special Session because of the uncertainty between the traditional general statements and the political interventions of some countries, the Delegation sought clarification from the Secretariat on the status of such political statements. Since the Committee was involved directly in the law of trademarks, industrial designs and geographical indications, the Delegation wished to clarify the point concerning the applications from the Russian Federation. The Delegation explained that the Russian Federation proceeded based on the principle of the free will of applicants, who were free to define their nationality themselves. In its work, the Russian Federation was guided by its Constitution and the national legislation of the Russian Federation, which applied to the entire Russian territory without exception. In addition, the Russian Federation was guided by the existing legislation on the grant of legal protection and the facilitation of the international registration of IP. The Delegation reiterated the importance of constructive multilateral dialog, with a view to identifying compromise and to striving for consensus, to properly ensure the preparation of a diplomatic conference in 2024. Given the volume and the importance of the work to be conducted during the forthcoming days, the Delegation expressed the hope that, when discussing the documents, all participants would focus on the development of mutually acceptable solutions, mutually respecting each others' positions, as had been the case in the recent session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), as well as in the related Preparatory Committee. The Delegation observed that a lack of political will to engage in negotiations openly and conscientiously would jeopardize the positive outcome of the SCT Special Session, the Preparatory Committee, and the diplomatic conference itself. The Delegation believed that all members should follow the Rules of Procedure and the working method proposed by the Chair, be flexible, and adopt a constructive approach to the negotiation process.

24. The Representative of CEIPI underscored the importance of bearing in mind the essential objective of the DLT, which was to facilitate the obtaining and maintenance of legal protection for creators of industrial designs. That was even more important, insofar as many of those creators were part of small companies or worked on their own, particularly in developing countries. The Representative considered that such objective should be properly taken into account during the discussions within the Special Session of the SCT and during the diplomatic conference itself.

AGENDA ITEM 3: ELECTION OF A CHAIR AND TWO VICE-CHAIRS FOR SCT/47

25. The Chair invited the Secretariat to introduce the Agenda Item.

26. The Secretariat reminded the Committee that, in accordance with the General Rules of Procedure of WIPO, as amended in July 2022, officers were no longer elected at the session which they were about to preside over, but at the previous session. For that reason, Agenda Item 3 concerned the election of a Chair and two Vice-Chairs for SCT/47.

27. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, proposed the nomination of Ms. Loreto Bresky (Chile) as Chair of SCT/47.

28. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asia and Pacific Group, put forward the nomination of Ms. Fatema Al Hosani (United Arab Emirates) as Vice-Chair of SCT/47.

29. The Delegation of Ghana, speaking on behalf of the African Group, proposed the nomination of Ms. Marie Béatrice Nanga Nguele (Cameroon) as Vice-Chair of SCT/47.

30. The Delegation of Poland, speaking on behalf of the CEBS Group, expressed support for the election of the nominated candidates. In line with the established practice to nominate candidates ahead of time, the Delegation informed the Committee that its Group would propose the nomination of Ms. Lina Mickienė, Deputy Director of the State Patent Bureau of the Republic of Lithuania, for Vice-Chair of the forty-eighth SCT session.

31. The SCT elected, for the forty-seventh session of the SCT, Ms. Loreto Bresky (Chile) as Chair and Ms. Fatema Al Hosani (United Arab Emirates) and Ms. Marie Béatrice Nanga Nguele (Cameroon) as Vice-Chairs.

AGENDA ITEM 4: RULES OF PROCEDURE

32. The SCT considered document SCT/S3/2.

33. The Chair invited the Secretariat to introduce the document.

34. The Secretariat explained that the Committee's work was governed by the General Rules of Procedure of WIPO, supplemented by Special Rules of Procedure adopted by the Committee itself. In light of the amendment of the General Rules of Procedure of WIPO, in July 2022, the Chair and the Vice-Chairs were no longer elected at the session for which they were supposed to preside over. Instead, their elections would come into effect at the end of the session where the elections took place. As more than a year could elapse between that election and the session over which the Chair and the Vice-Chairs were supposed to preside, document SCT/S3/2 contained a proposal to repeal one of the SCT Special Rules of Procedure, which foresaw that the Chair and the Vice-Chairs were elected for one year.

35. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, supported the repeal of the SCT Special Rules of Procedure, as proposed in document SCT/S3/2.

36. The Delegation of Brazil indicated that it could not support the proposed change at that point in time, as it would need to consult with its capital.

37. The Chair suspended the discussion on document SCT/S3/2.

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38. The Chair resumed the discussion on document SCT/S3/2.

39. At the request of the Chair, the Secretariat explained that the proposed repeal would not have an impact on the election of officers for SCT/47. However, it would allow more frequent changes in elected officers, if so desired by the Committee in the future.

40. The Delegation of Brazil, after further consideration and in light of the clarification given by the Secretariat, announced that it agreed with the proposed repeal of the SCT Special Rules of Procedure. However, the Delegation wondered which Rules of Procedure would apply after such repeal.

41. The Secretariat explained that, once the SCT Special Rules of Procedure was repealed, the Committee would fall back on the General Rules of Procedure of WIPO and, in particular on Article 9, which provided that the officers were elected for the term of the session for which they were elected. The Secretariat pointed out that a derogation from the General Rules of

Procedure of WIPO would still apply to the SCT, allowing officers to be immediately eligible for reelection.

42. The Delegation of Brazil thanked the Secretariat for the explanation.

43. The Delegation of Nigeria wondered what had prompted the proposal to repeal the SCT Special Rules of Procedure under consideration.

44. The Secretariat recalled that the SCT Special Rules of Procedure had been established a long time ago. As the Committee usually held two sessions per year, it was then felt that it would be more effective to elect officers for a year to avoid re-elections for the second session of the year. The Secretariat explained that the General Rules of Procedure of WIPO had changed in July 2022 and that the Chair and the Vice-Chairs were no longer elected at the session for which they were supposed to preside over. It was therefore conceivable that more than a year could elapse between two sessions. In such case, the elections would have to be repeated. The repeal of the SCT Special Rules of Procedure under consideration was meant to avoid that situation.

45. The Delegation of Nigeria thanked the Secretariat for the explanation.

46. The SCT decided to repeal the SCT Special Rules of Procedure, which provided that “the Standing Committee elects the Chair and the two Vice-Chairs for one year”.

AGENDA ITEM 5: ACCREDITATION OF AN OBSERVER

47. The SCT considered document SCT/S3/3.

48. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, expressed support for the accreditation of the International Olympic Committee (IOC) as an observer in sessions of the SCT.

49. The SCT approved the accreditation of the International Olympic Committee (IOC).

AGENDA ITEM 6: INDUSTRIAL DESIGN LAW AND PRACTICE – DRAFT ARTICLES

AGENDA ITEM 7: INDUSTRIAL DESIGN LAW AND PRACTICE – DRAFT REGULATIONS

Revised Indicative Timetable and Proposed Working Method by the Chair

50. The SCT considered document SCT/S3/INF/1 Rev.

51. The Chair recalled that the proposed working method, reflected in document SCT/S3/INF/1 Rev., had been presented, during meetings held on September 19 and 28, 2023, to the Groups’ coordinators and delegations. The proposed working method was based on the mandate given by the 2022 WIPO General Assembly, that had “directed the SCT to meet in a special session for five days [...] to further close any existing gaps to a sufficient level”. The working method listed five Clusters of provisions: *Cluster A* concerned the provisions that were the subject of alternative options or proposals supported by several delegations, except administrative provisions and final clauses; *Cluster B* related to the provisions that were the subject of individual proposals, except administrative provisions and final clauses; *Cluster C* concerned the provisions that were the subject of individual reservations; *Cluster D* dealt with the administrative provisions and final clauses that were the subject of alternative options or proposals supported by several delegations, or the subject of individual proposals and, finally, *Cluster E* related to other provisions that were the subject of a proposal, if any. Then, the Chair explained that, with a view to further closing existing gaps in

the text of the Basic Proposal, it was proposed to start the discussions with the provisions under Cluster A and, as regards provisions under Clusters B to D, to proceed as followed:

– Regarding provisions that were the subject of individual proposals: if the proposal was supported by at least another delegation, it would be transferred from the footnote to the main text of the concerned provision, as an alternative option appearing in brackets; however, if the proposal was not supported by at least another delegation, the footnote would be deleted. That would be without prejudice to the right of the delegation concerned to present the proposal at the diplomatic conference.

– Regarding provisions that were the subject of individual reservations: if the delegation that had indicated the intention to make the reservation made a proposal that was supported by at least another delegation, the proposal would be inserted in the main text of the concerned provision, as an alternative option appearing in brackets; however, if a proposal was not presented or, where a proposal was presented, it was not supported by at least another delegation, the footnote indicating a reservation would be deleted. That would be without prejudice to any delegation's ability to make a reservation at the diplomatic conference.

– Regarding other provisions that were the subject of a proposal under Cluster E: it was proposed that the SCT considered those provisions if time allowed, and that the course of action concerning those provisions be decided by the Committee at that time.

52. The Delegation of Nigeria thanked the Chair for the coherent, clear, and concise explanation of the proposed working method, which had helped to dispel some of its concerns. The Delegation noted with gratitude that the new proposals referred to existing current proposals and were not an open invitation for additional proposals from Member States. The Delegation took note of the responsibility of Member States to engage in the gap closing-process in good faith and of the external boundaries within which to work, in order to get the text across the finish line.

Industrial Design Law and Practice – Draft Articles
Industrial Design Law and Practice - Draft Regulations

53. The SCT considered documents SCT/S3/4 and 5.

54. The Chair proposed to review provision after provision after a brief introduction by the Secretariat of the point to be considered by the Committee. Members would then be invited to comment on the provision at stake.

A. Provisions that were the subject of alternative options or proposals supported by several delegations, except administrative provisions and final clauses

(i) Article 1bis concerning general principles

55. The Chair opened the discussion on draft Article 1bis and invited the Secretariat to introduce the point under consideration.

56. The Secretariat firstly recalled that document SCT/S3/4 contained draft Articles on Industrial Design Law and Practice and that document SCT/S3/5 contained draft Rules on Industrial Design Law and Practice. As mandated by the 2022 WIPO General Assembly, those documents were based on the contents of documents SCT/35/2 and 3 and incorporated the 2019 proposal considered by the WIPO General Assembly. Those would constitute the substantive articles and rules of the Basic Proposal for the diplomatic conference. Then, turning specifically to Article 1bis, the Secretariat recalled that, following the WIPO General Assembly decision in 2015, the SCT had continued to discuss the DLT. As a result of the discussions

held during SCT/34 in 2015, several conclusions by the Chair had been introduced into document SCT/35/2 and, notably, Article 1*bis* concerning general principles. That provision had been proposed by the Chair of the SCT/34 as a possible way forward to complete the discussion on a disclosure requirement. The Secretariat observed that Article 1*bis* had also been in the proposal made by Ambassador Socorro Flores Liera (Mexico) to the fifty-first (24th ordinary) session of the 2019 WIPO General Assembly, which was referred to as “the 2019 proposal” in the WIPO General Assembly decision of 2022. The Secretariat reminded the Committee that Article 1*bis*(1) mirrored Article 2(2) of the Patent Law Treaty (PLT) and aimed at reinforcing the nature of the proposed Treaty as a formalities Treaty. The Secretariat added that Article 27(5) of the Patent Cooperation Treaty (PCT) contained a similar provision. The Secretariat recalled that Article 1*bis*(2) aimed at safeguarding obligations that Contracting Parties could have under prior treaties. Finally, the Secretariat indicated that SCT members were invited to consider whether to retain the provision or to try closing the gap in any other manner.

57. The Delegation of Poland, speaking on behalf of the CEBS Group, expressed support for Article 1*bis* of the draft Treaty, which fulfilled the objectives of the Treaty to harmonize and simplify the design registration formalities without affecting the provisions of the substantive law.

58. The Delegation of India welcomed the decision of the 2022 WIPO General Assembly to Convene a Diplomatic Conference to Conclude and Adopt a DLT by 2024. While thanking the Secretariat for the preparation of documents SCT/S3/4 and 5, the Delegation looked forward to constructive and fruitful discussions during the Special Session of the SCT and the subsequent Preparatory Committee. In its understanding, the DLT Articles and Regulations would be limited to the procedural aspects of filing industrial design applications in a Contracting Party, whereas the substantial aspects of the examination of applications for registration of industrial designs should continue to be governed by the provisions of the domestic law of each Contracting Party. The Delegation therefore welcomed the incorporation of Article 1*bis* in the proposed draft Articles.

59. The Delegation of the Russian Federation, welcoming the decision of the 2022 WIPO General Assembly to Convene a Diplomatic Conference to Conclude and Adopt a DLT in 2024, expressed its readiness for a constructive multilateral dialog to ensure the due preparation for the diplomatic conference and to bring closer Member States’s approaches. Turning to Article 1*bis*, the Delegation stated that it lent its support to the current version of the draft provision, as contained in document SCT/S3/4.

60. The Delegation of the European Union, speaking on behalf of the European Union and its member states, expressed support for the current wording of Article 1*bis*, which is in line with the objective of the DLT to harmonize and simplify design registration formalities without affecting provisions of substantive law.

61. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, observed that, in recent years, the Committee had not dealt with the substantive provisions to achieve the DLT’s objective. While priority had been given to the provision on technical assistance and capacity building and a more recent proposal on a disclosure requirement, the Group pointed out that numerous other provisions were also subject to alternative options or proposals. As the objective was to close any existing gaps to a sufficient level, a pragmatic approach would be welcome. The Delegation announced that, under Agenda Items 6 and 7, the Group would make several general interventions on relevant draft Articles and that members of the Group would also intervene in their national capacity to comment in more detail the various issues at stake. Turning to Article 1*bis* concerning general principles, the Group supported the currently proposed text, and in particular paragraph (1) of the draft Article, as the language was in line with the objective of the DLT to harmonize and simplify formal requirements of design registrations abroad, while leaving substantive law untouched.

62. The Delegation of the United Kingdom, thanking the Secretariat for the preparation of the SCT Special Session, aligned itself with the statement made by the Delegation of Netherlands (Kingdom of the), on behalf of Group B, and, therefore, supported the inclusion of Article 1*bis* in the draft Treaty.

63. The Delegation of Japan, commending the Secretariat for its hard work in organizing the Special Session of the SCT, expressed its readiness to engage in constructive discussions during the session. The Delegation lent its support to Article 1*bis* as currently drafted and requested that the footnotes to the article be deleted since they merely explained the history of the provision at stake, without contributing to the understanding of its content.

64. The Delegation of the United States of America, congratulating the Chair and the Vice-Chairs on their election, looked forward to the Chair's guidance in improving and advancing the text of the draft Treaty during the Special Session. After thanking the Deputy Director General of WIPO and the Secretariat for the preparation of the Special Session, the Delegation lent its support to the statement made by the Delegation of Netherlands (Kingdom of the), on behalf of Group B, on Article 1*bis*.

65. The Chair noted that the SCT decided to delete the brackets and the footnotes to that article.

(ii) Article 3(1)(a)(ix) concerning the option to require a disclosure in design applications of the origin or source of traditional cultural expressions, traditional knowledge or biological/genetic resources utilized or incorporated in the industrial design

66. The Chair opened the discussion on draft Article 3(1)(a)(ix) and invited the Secretariat to introduce the point under consideration.

67. The Secretariat recalled that Article 3, and the corresponding rules under that provision, laid down a list of indications or elements that could be required in an application by a Contracting Party. The Secretariat drew the Committee's attention to the two options under Article 3(1)(a)(ix): *Option A* contained a proposal that had been put forward by the Delegation of Nigeria, on behalf of the African Group, at SCT/34 in 2015, revising its first proposal made on that topic at SCT/32 in 2014, while *Option B*, along with the related footnote, had been proposed by Ambassador Socorro Flores Liera to the WIPO General Assembly in 2019 and was part of the 2019 proposal, to which the WIPO General Assembly decision of 2022 referred. The gist of the 2019 proposal by Ambassador Socorro Flores Liera was to upgrade that rule to an article, thereby guaranteeing that the subject matter of the rule could not be amended by the future DLT Assembly.

68. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, as regards the proposed Article 3(1)(a)(ix) concerning requiring or providing for a disclosure of the origin or source of traditional cultural expressions (TCEs), traditional knowledge (TK) or biological/genetic resources (GRs) utilized or incorporated in the industrial design, said that the Group remained open to hear from the proponents how the proposal would simplify industrial design procedures for applicants, while re-emphasizing that the aim of the DLT was to streamline and harmonize filing procedures and formalities for the registration of industrial designs.

69. The Delegation of Ghana, speaking on behalf of the African Group, stated that it maintained its position on Article 3(1)(a)(ix). The Group felt the need to have a policy space for disclosure requirements that safeguarded the designs of indigenous peoples and local communities. For the Group, the text was necessary insofar as it provided the space for Member States that were bound by their national legislation, or by instruments or agreements to which they were party, to continue to abide by those legislations. The Delegation announced

that members of the Group would make interventions on the draft Article and develop further arguments in that regard.

70. The Delegation of the Russian Federation considered that Option A was the most clearly-formulated option, as it entailed the disclosure of specific information and data. In its understanding, Option A involved the description of the origin or source of TCEs, TK or biological/genetic resources utilized or incorporated in the industrial design. The Delegation highlighted, however, the lack of clarity as to what an office should do with those information and data during the examination of the application. In that regard, the Delegation considered that the issue required further discussions. Turning to Option B, the Delegation observed that the proposed text lacked clarity about the information that should be known by the applicant and subsequently communicated to the office. For the Delegation, the list of elements to be indicated by the applicant in the application was not exhaustive. That was evidenced by the inclusion of item (x) in Article 3(1)(a), which referred to “any further indication or element prescribed in the Regulations”. The Delegation considered that the applicant would therefore independently decide which element to submit in its application. In addition, there were issues about what the office should do with those elements. While adopting a flexible approach and remaining open to a dialogue to achieve consensus, the Delegation sought clarification on how, according to Option B, an indication of any prior application or registration, or of other information, was correlated with any further indication or element prescribed in the Regulations. The Delegation said that it perceived Option B as in contradiction with Article 3(2) of the draft Treaty.

71. The Delegation of India reiterated its support for the proposal made by the Delegation of Nigeria, on behalf of the African Group, at SCT/34, to include a disclosure of the origin or source of TCEs, TK or biological/genetic resources utilized or incorporated in the industrial design under Article 3(1)(a)(ix) of the draft Treaty. Therefore, the Delegation expressed support for Option A.

72. The Delegation of the United States of America, recalling that the main purpose of the draft DLT was to simplify, streamline and align formalities associated with registered industrial design rights, reminded the Committee that, through two decades of discussions within the SCT, that purpose had been the focus and direction with which Member States had advanced discussions on the draft Treaty. For the Delegation, having a clear purpose was beneficial, as it provided a clear evaluative mechanism in determining the pertinence of the provisions. In the Delegation’s opinion, when considering a proposed provision, the Committee should ask itself if the latter fulfilled the goal to simplify, streamline and align industrial design formalities. If not or, even worse, if the proposed provision would make formalities more complicated, more disparate and challenging for applicants, such as SMEs, pursuing protection for their new designs, the Committee should then reconsider the appropriateness of the provision. The Delegation remarked that Article 3 of the draft Treaty was directed to a critical aspect of the industrial design registration process and system, as it set out the permissible contents of an application. Aligning the indications or elements required in applications would benefit the applicants who would not be obliged to create a wholly unique application for each jurisdiction in which an application was filed. The Delegation remarked that, in many instances, even if offices across jurisdictions were already requiring similar information, they could, however, do so in slightly different formats or arrangements at present. As such, the DLT and, in particular Article 3 of the draft Treaty, as well as the corresponding Rule 2, provided great benefits to applicants, as they gave a more straightforward expectation as to what they would need in preparing their applications. The Delegation added that Article 3 and Rule 2 would also be of benefit to offices looking at prior art in the form of previous design registrations and evaluating priority claims since the material in the application would have enhanced consistency. The Delegation stressed the importance for Article 3 to contain a list of items as brief as possible, limited to only those items absolutely needed and already commonly regarded by many offices across the globe. Turning to the options under Article 3(1)(a)(ix) of the draft Treaty, the Delegation stated

that it could not support the inclusion of either Option A or Option B. For the Delegation, it was clear that such a provision, even if germane to industrial designs, would undermine the purpose of the DLT to simplify and streamline formalities in relation to applications for registration of industrial designs. Reference to, and consideration of, biological or genetic resources was readily recognized by industrial design experts from across the globe as a misaligned statement, something from the patent system but not germane to industrial designs and ornamental appearances of articles of products. As regularly highlighted in relation to the proposal, which seemed to artificially import concepts not relevant to industrial designs, the Delegation further observed that Rule 2(1)(x) already provided a broad and flexible provision to capture legitimate concerns related to the disclosure of information known by applicants and privy to them, such as the awareness of prior art material to registrability. Reiterating that it could not support either option under Article 3(1)(a)(ix), the Delegation pointed out that it could also not support other formulations beyond the well-drafted language in existing Rule 2(1)(x). Given the Committee's enhanced focus on preparing the text for the diplomatic conference during the Special Session of the SCT, the Delegation believed that the discussion pertained to Rule 2(1)(x) because Options A and B under Article 3(1)(a)(ix) were deviations of Rule 2(1)(x). The Delegation observed that, at present, those provisions overlapped and contradicted. The Delegation therefore proposed moving Options A and B to Rule 2(1)(x), creating three options for that provision. For the Delegation, that was necessary to prevent the provisions from being inherently conflicting and ambiguous and to create a simplified manner for considering Options A and B, along with their companion provision in Rule 2(1)(x), which was a provision that had already enjoyed consensus throughout the discussions on DLT.

73. The Delegation of Iran (Islamic Republic of), speaking in its national capacity, lent support to the proposal made by the Delegation of Nigeria, on behalf of the African Group, at SCT/34.

74. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recalled that the aim of the DLT was to harmonize the rules pertaining to the filing of industrial design applications to make design protection more easily accessible for applicants. As no substantive discussions in the Committee had taken place recently on how the proposed disclosure requirement would streamline design procedures, the Delegation remained open to hearing from proponents how the proposal would simplify industrial design procedures for the benefit of all applicants.

75. The Delegation of Venezuela (Bolivarian Republic of), speaking in its national capacity, endorsed the statement made by the Delegation of Ghana, on behalf of the African Group, and expressed support for Option A. In its understanding, the proposal gave some political space to Member States and would allow them to decide, in their sovereign capacity, whether to include that item in their law and practice. In the Delegation's viewpoint, leaving some political space available was wise considering technological advances as well as other forthcoming developments not familiar to Member States yet.

76. The Delegation of Poland, speaking on behalf of the CEBS Group, aligned itself with the statement made by the Delegation of the European Union, on behalf of the European Union and its member states.

77. The Delegation of the Republic of Korea, after having congratulated the Chair and the Vice-Chairs on their election and expressed its gratitude to the Secretariat for the preparation of the Special Session, informed the Committee that it did not agree with the inclusion of a disclosure requirement under Option A or B in the draft DLT. For the Delegation, in light of the DLT's aim, neither option was relevant to the matters to be dealt with by the DLT. In addition, the Delegation reported that its domestic users had expressed concerns about those options, which would excessively impede the freedom of design creators, and thereby discourage enthusiasm for creative endeavors and design applications.

78. The Delegation of Canada congratulated the Chair and the Vice-Chairs on their election and thanked the Chair for guiding the work of the Special Session of the SCT and the Secretariat for its preparation. On the issue of a disclosure requirement, the Delegation believed that indigenous peoples should have the right to maintain, control, protect, and develop their GRs, TK and TCEs. The support of Canada in that regard was demonstrated by its commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), including its Article 31, in consultation and cooperation with indigenous peoples. While being mindful that the domestic context could be different across the WIPO membership, the Delegation indicated that Canada was working through the issue of a disclosure requirement in full recognition of Canada's reconciliation with indigenous peoples and in consideration of its commitment to implement the UNDRIP. As the question faced with every initiative, including the one before the Committee, was to determine the best manner to achieve its objective, the Delegation stressed the need for the Committee to ask whether a disclosure mechanism in the industrial design context achieved the goals that it was meant to achieve. As a great deal of time had passed since first raised, the Delegation believed that it would be prudent to better understand the experiences in the industrial design regimes of members regarding a disclosure requirement in respect of industrial design applications. The Delegation considered that the Committee should have informative and creative discussions on the issue. In this regard, the Delegation thanked the Delegation of the United States of America for its view in respect of Rule 2 and observed that Option B largely reflected the language of Rule 2(1)(x). That was therefore a helpful suggestion to facilitate discussions as one way forward. Additionally, the Delegation prioritized the member-driven processes that underpinned all aspects of WIPO's normative agenda. While recognizing and supporting the interest in narrowing gaps with a view to meeting the timelines of a diplomatic conference, the Delegation was of the opinion that substance - and not timelines - should be the main driver of negotiations. For the Delegation, a clear understanding of the substance and how all obligations could be meaningfully and horizontally implemented by all potential signatories was a key pillar of negotiating any new and predictable international framework for IP.

79. The Delegation of Thailand, after congratulating the Chair and the Vice-Chairs on their election and wishing the Chair success in guiding the deliberations, thanked the Deputy Director General of WIPO and the Secretariat for the excellent preparation of the Special Session. The Delegation lent its support to Article 3(1)(a)(ix), as proposed by the Delegation of Nigeria, on behalf of the African Group. The Delegation was of the view that, in principle, if the constituent element was influenced by TK or TCEs, or utilized them, in the overall appearance of the design, the disclosure of origin and source should be made. As it believed that applicants should know that they had utilized elements of TK or TCEs in their designs, the Delegation considered that the disclosure requirement would not create difficulties for them or make the application process more complicated.

80. The Delegation of the United Kingdom aligned itself with the respective statements made by the Delegations of the United States of America, the European Union, on behalf of the European Union and its member states, and the Republic of Korea. As already mentioned, the aim of the DLT was to simplify and streamline industrial design procedures. In the Delegation's viewpoint, the proposed text to include a provision on disclosure did not contribute to that aim.

81. The Delegation of China, underlining the importance of the topics related to TK and TCEs and the indication of origin or source, observed that certain members had expressed their interest in those topics. For the Delegation, in view of harmonizing that area, it would be useful to consider the requests of Member States in a balanced manner and to strengthen national protection of TCEs and TKs.

82. The Delegation of Uganda, congratulating the Chair and the Vice-Chairs on their election, lent its support to the disclosure requirement as proposed by the Delegation of Nigeria, on behalf of the African Group, in 2014, and endorsed the statement delivered by the Delegation of Ghana, on behalf of the African Group.

83. The Delegation of Japan, expressing support for the statements made by the Delegations of Netherlands (Kingdom of the), on behalf of Group B, the Republic of Korea and the United Kingdom, declared that it could not accept either Option A or Option B. While fully recognizing that the Treaty could benefit all Member States and users in terms of reducing their operational burden, the Delegation did not see any need to include a disclosure requirement in the Treaty, in view of the DLT's objective. Finally, the Delegation expressed the wish to consider, during the diplomatic conference, the proposal put forward by the Delegation of the United States of America, and supported by the Delegation of Canada, to move the options at stake to Rule 2(1)(ix).

84. The Delegation of Nigeria, aligning itself with the position and statement made by the Delegation of Ghana, on behalf of the African Group, thanked all the delegations that had supported that position. While stressing the importance of simplifying and streamlining the process to obtain design protection around the world, the Delegation believed that simplifying and streamlining should not be at the disadvantage or loss of innovation by indigenous peoples and local communities. For the Delegation, simplifying and streamlining in the manner suggested by the Delegations of Japan, the Republic of Korea and the United States of America would simply paper over the existing inequities and moral wrongs, which were already embedded in the existing system. Considering that the inclusion of a disclosure would impede enthusiasm by innovators would suggest that the efforts within WIPO would be directed only at innovators coming from particular geographic territories and that innovators who were indigenous and came from local communities in the global South and whose designs and whose cultivation of GRs had required creativity ought to remain excluded from the modern IP system. For the Delegation, simplification and streamlining of the acquisition of designs that were built on the backs, the labors and the creativity of indigenous peoples was not innovation, but misappropriation or, at worst, theft. The Delegation recalled that the sole goal of the African Group's proposal was to create policy space for countries who were already committed to sustain the integrity of the IP system by ensuring that granted designs were truly innovative. The structure of the present instrument purported to create a cap or a ceiling, to remove the autonomy and the flexibility that sovereign States would normally have to adjust and to ensure that the innovation system was inclusive, transparent, fair, and maintained integrity. The Delegation viewed the idea that a formalities treaty would allow fraud, or would relegate innovation, based on a violation of national, regional or international law, to stand in the face of existing obligations and existing international agreements purporting to protect indigenous peoples in local communities, as anti-historical, anti-innovation and anti-inclusive innovation. The Delegation observed that the policy space that the proposal represented was necessary to accommodate existing obligations in regional laws, already requiring disclosure, and to address the very rapid registration of designs that included TCEs, TK and GRs. For the Delegation, the day had come for the IP system to acknowledge the legitimacy of innovation, which occurred not only in Europe, in the United States of America, in Canada or in non-global South countries. The Delegation stated that the policy space to recognize and to defend innovations that had been misappropriated or unlawfully accessed for the use of the modern industrial design system was necessary and consistent with the obligations of WIPO. The Delegation concluded by declaring that the African Group's proposal to create policy space for countries, to acknowledge, to protect and to defend the integrity of the IP system was ripe, necessary, and just.

85. The Delegation of Niger, thanking the Chair and the Vice-Chairs for their efforts in guiding the Committee's work and the Secretariat for the preparation of the Special Session, welcomed the decision of the 2022 WIPO General Assembly to convene a Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources

and Traditional Knowledge Associated with Genetic Resource and a Diplomatic Conference to Conclude and Adopt a DLT. The Delegation lent its support to the proposals of the African Group concerning technical assistance and disclosure requirement and congratulated all countries having supported those proposals.

86. The Delegation of Brazil expressed its appreciation for the statement made by the Delegation of Nigeria, with which it fully aligned itself, and its support for the language introduced by the African Group as Option A.

87. The Representative of AIPPI, extending its congratulations to the Chair and the Vice-Chairs, thanked the Secretariat for the preparation and organization of the Special Session and the delegations for continuing to bring the draft Treaty to its fruition. The Representative reminded the Committee that the International Association for the Protection of Intellectual Property (AIPPI) was one of the world's leading non-profit associations dedicated to the development and improvement of laws for the protection of IP. AIPPI was politically neutral, based in Switzerland and had over 9,000 members worldwide, from 110 countries, including all continents. The Representative thanked the delegations that had reminded the Committee of the DLT's purpose to simplify and streamline procedures. Highlighting the fact that Article 3 was the centerpiece of the draft Treaty, the Representative recalled that there had been some restraint in making sure that the list under that provision be kept to a minimum. The elements or indications under Article 3 were all very familiar to those who operated in the realm of design as well as to applicants and SMEs since they truly represented the basics. In that context, the Representative was of the view that including, as a centerpiece element, the text proposed in either Option A or Option B would serve the great risk of confusing and complicating the matter. Whereas AIPPI's members had filed over one million design registrations, not a single member could think of any design application that had implicated biological or genetic resources. The Representative wondered how applicants would know the origin or source, considering that the terms "disclosure of the origin or source" were ambiguous and fuzzy. By way of analogy, the same question could be raised about the origin of the rhythm or the structure of a pop song in the music realm. For the Representative, such a disclosure was asking far too much of applicants and SMEs. Furthermore, if the proposed text was implemented, the terms TCEs and TK would need to be defined as those were not elements readily known by applicants. In the Representative's opinion, those terms would confuse and confound the matter, instead of simplifying or streamlining the process. Furthermore, as a matter of logic, AIPPI was sympathetic that design rights should not be granted for non-novel subject matters. Hence, the Representative agreed that, if a design, as a whole, was not novel, it should not be protected. The Representative considered that Option A delved into the individual components, features or aspects that were not what designs protected. The Representative recalled that designs protected the composite, the amalgam, the overall visual impression of the whole and that was what needed to be novel. Therefore, for the Delegation, to delve into those individual features did not reconcile with the purpose of design rights. In conclusion, the Representative urged the Committee to continue to exercise prudence and restraint, to think about the matter through the eyes of the users and to ensure simplifying and streamlining the process, which was the stated goal.

88. The Representative of JPAA congratulated the Chair and the Vice-Chairs on their election and thanked the Secretariat for the preparation of the Special Session. Noting that the DLT aimed at providing minimum standards and ensuring the harmonization of formality requirements differing from country to country –thereby reducing the procedural burden of applicants–, the Representative was of the view that adding a disclosure requirement regarding the origin or source of TCEs, TK or biological/genetic resources did not contribute to that objective. The Representative stressed the fact that the addition of that disclosure requirement would be contrary to the purpose of the DLT as it would rather increase the procedural burden on applicants.

89. The Representative of MARQUES, thanking the Chair, the Secretariat and all delegations for the opportunity to participate in the Special Session of the SCT, informed the Committee that brand owners in its organization were also proprietors of designs. For the Representative, aligning and applying a minimum of requirements in all countries would be very beneficial for the sake of predictability and consistency, especially to the benefit of SMEs, individual designers and applicants. To that effect, a closed list of indications or elements that could be required in an application could prove reasonable, as long as such a list complied with, and did not depart from, the standards currently applied in a majority of jurisdictions and, therefore, did not harm the accessibility and functionality of the international design protection system for the users and stakeholders concerned. Recalling that MARQUES had been involved for years in all meetings of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), the Representative stated that MARQUES had advocated for the respect and protection of those rights among its members. In that sense, MARQUES valued the proposals made by the Delegation of Nigeria, on behalf of the African Group, aimed at including wording in Article 3(1)(a)(ix) to the effect of addressing the protection of those rights within the context of the envisaged international design protection system by the DLT. Therefore, the Representative announced that MARQUES would support the adoption of a wording for Article 3(1)(a)(ix) that could remain brief and flexible for the provision to be understood properly by the relevant stakeholders. Considering that a combination of Options A and B could prove to be the most balanced and clearest approach, the Representative believed that the transfer of the wording into a more appropriate provision could also be the viable solution to ensure clarity.

90. The Representative of NARF, expressing support for Option A, thanked the African Group, as well as the other delegations that had supported that option. The Representative stressed the importance of the topic and the need to ensure that indigenous peoples be able to protect their TK, TCEs and GRs from misuse and misappropriation in any design. As it considered that TK was inherently a part of indigenous peoples' symbols, the Delegation believed that the idea that indigenous peoples could not protect their TK and TCEs would only lead to continued harm of indigenous peoples through the IP process.

91. The Representative of Maloca *Internationale*, thanking the African Group as its position was favorable to indigenous peoples, announced that it was working on the topic and that it supported the statement made by the Representative of NARF.

92. The Chair suspended the discussion on Article 3(1)(a)(ix).

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93. The Chair, resuming the discussion on Article 3(1)(a)(ix), recalled that a number of delegations were in favor of Option A, some delegations did not agree to either option and some delegations had proposed to move those options to Rule 2. The Chair also recalled that there had been a request to hear from countries with regard to practices regarding disclosure.

94. The Delegation of Japan, wondering whether any delegation had expressed support for Option B, suggested to delete it if that was not the case.

95. The Delegation of the United States of America recalled that, in its opinion, the proper place to discuss the issue under consideration was in relation to Rule 2(1)(x). Therefore, the Delegation reiterated its proposal to move the entire bracketed text on Option A and Option B to Rule 2.

96. The Delegation of the United Kingdom lent its support to the proposal put forward by the Delegation of the United States of America.

97. The Delegation of the Russian Federation said that it needed additional time to examine the proposal of the United States of America.

98. The Delegation of Nigeria sought clarification as to the procedural mechanism in relation to the proposal by the Delegation of the United States of America. In particular, the Delegation wondered whether the language would be duplicated in Rule 2 and would thus appear twice.

99. The Delegation of the United States of America specified that its proposal was merely to move Option A and Option B to Rule 2.

100. The Delegation of Uruguay, wondering why the Delegation of the United States of America would prefer to move the options under consideration to Rule 2, sought clarification as to whether the rules would have the same legal weight in the domestic law as the Treaty itself.

101. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, stressed again the importance of keeping Option A in the draft Article. Although it was looking for a compromise solution, the Group viewed that topic as a priority.

102. The Delegation of Ghana, speaking on behalf of the African Group, considered that the proposal put forward by the Delegation of the United States of America was a new proposal and observed that the Committee had not started to examine new proposals yet. In addition, for the Group, the text should not be moved to another provision.

103. The Delegation of the Russian Federation, wishing to have a comprehensive analysis of the proposal's implications and its possible ties with the Hague Agreement, requested to revert to the matter at a later stage.

104. The Delegation of China was of the view that requests of all parties should be reflected in a balanced manner in the DLT. As many developing countries had expressed strong opinions about a disclosure requirement of TK and TCEs, the Delegation believed that their requests should be given due consideration. Finally, the Delegation requested additional time to conduct a comprehensive analysis of the proposal, the content of which was not sufficiently clear.

105. The Delegation of the United States of America, referring to the questions raised by the Delegation of Uruguay, outlined that, as regards the implementation of treaties, the United States of America took on obligations of articles and regulations and gave equal seriousness to articles and regulations. That was, for instance, the case for the implementation of the Hague Agreement. Everything was thus important. For the Delegation, Article 3(1)(a)(x), which referred to "any further indication or element prescribed in the regulations", gave essentially equal standing to the rules. As the Committee was moving towards a diplomatic conference, members had to create an implementable instrument. That was the thrust of the proposal to consider the options with Rule 2(1)(x), which was the proper place to have the discussion as the topic was quickly evolving and developing. For the Delegation, placing the topic in a rule allowed more flexibility but did not make it less important. The Delegation gave the examples of rules such as speed limits or building codes that would not be put in a country's constitution because the details specificities and the need to constantly update them. The Delegation further added that its proposal would allow the diplomatic conference to further update and evaluate the question and was the most constructive way forward to implement the Treaty.

106. The Delegation of Nigeria, stressing the importance of moving forward, wondered when it would be appropriate for new proposals to be discussed by the Committee. From a procedural point of view, procedure could sometimes matter more than substance. For the Delegation, some clear rules were needed so that, when there was an opportunity to examine new proposals, other delegations could also introduce their proposals at that time.

107. The Chair indicated that, according to the agreed working method, new proposals were grouped together under Cluster E and would be addressed if time was available to the Committee. In the Chair's understanding, the proposal of the United States of America was not as such a new proposal, but was part of the discussion on Article 3(1)(a)(ix).

108. The Chair suspended the discussion on Article 3(1)(a)(ix).

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(iii) Article 5(2), (3), (4) and (5) concerning filing-date requirements

109. The Chair opened the discussion on draft Article 5(2), (3), (4) and (5) and invited the Secretariat to introduce the point under consideration.

110. The Secretariat explained that the Committee was invited to consider the maintenance or removal of paragraph (2) of Article 5 in the draft Treaty. The Secretariat noted that the brackets in paragraphs (3) to (5) were cross-references, which were consequential to the maintenance or removal of paragraph (2). The Secretariat recalled that the filing date was an essential element for any design application as it was the decisive point in time for the assessment of novelty, as well as the date on which a claim of priority under the Paris Convention for the Protection of Industrial Property ("the Paris Convention") could be based in subsequent applications. It was therefore important to grant the filing date as soon as possible insofar as its postponement could result in a definitive loss of rights on the design. On that premise, paragraph (1) of Article 5 set out a minimalistic list of indications and elements that could be required by a Contracting Party for the purpose of according a filing date and only listed those indications or elements enabling an office to determine who filed what. Recalling that, in past sessions of the SCT, while several delegations had been favorable to that minimalistic list, other delegations had indicated that they needed additional requirements in the list. Hence, paragraph (2) of Article 5 allowed a Contracting Party to require additional elements, listed under subparagraph (b), under certain conditions. The Secretariat pointed out that the Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs ("1999 Act") and the Singapore Treaty on the Law of Trademarks (STLT) contained a similar provision permitting additional requirements.

111. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, noting that paragraph (1)(a) set out a list of requirements that could be established by a Contracting Party for the purpose of according a filing date, stated that the Group reiterated the importance of keeping that list to the minimum since, in the field of industrial designs, delays in according the filing date could result in a definitive loss of rights. For the Group, filing-date requirements should be of such significance that, without them, it would not be possible for an office to identify the applicant and the content of the application, namely "who filed what".

112. The Delegation of the United Kingdom expressed support for the inclusion of paragraph (2) in Article 5 of the draft Treaty as it would allow Contracting Parties to continue to require elements considered important to accord a filing date. For the Delegation, that reflected a pragmatic approach allowing parties to join the DLT without the need to amend the domestic legislation and practice.

113. The Delegation of the Russian Federation lent its support to the inclusion of paragraph (2) in Article 5, enabling a Contracting Party to require additional indications or elements to accord a filing date, if those existed in the law of the Contracting Party at the time it became party to the Treaty and provided that they were notified in a declaration to the Director General of WIPO.

114. The Delegation of Nigeria did not support the addition of paragraph (2) in Article 5 to the extent that the proposed provision limited the permitted additional requirements to Contracting Parties whose laws, at the time of ratification, already contained them. In the Delegation's

viewpoint, that condition removed important policy space for potential Member States wishing to join the Treaty. Besides, the Delegation stressed the importance of adding a claim to the list of filing-date requirements as it was the essential component of what was protected by the design. A claim enabled designers to know against what they could claim, promoted transparency and allowed Member States to track the integrity with which the claimant had filed the application.

115. The Chair noted that the SCT decided to keep the brackets in those provisions.

(iv) Article 15(4)(b) concerning the prohibition of other requirements in requests for recording of a license or a security interest

116. The Chair opened the discussion on Article 15(4)(b) and invited the Secretariat to introduce the point under consideration.

117. The Secretariat indicated that Article 15(4)(a) provided that a Contracting Party could not request any requirement other than those referred to in paragraphs (1) to (3) and in Article 10 in respect of the recording of a license. However, Article 15(4)(b) provided that the prohibition of other requirements under subparagraph (a) was without prejudice to any obligations existing under the law of a Contracting Party concerning the disclosure of information for purposes other than the recording of the license. Pointing out that the option under discussion concerned the final portion of subparagraph (b), appearing in brackets, which made a reference to a specific type of obligation, namely that resulting from any requirements by tax authorities or monetary authorities, the Secretariat indicated that the question to be addressed by the Committee was whether to include the text in brackets in subparagraph (b) or not.

118. The Chair invited the Delegations of Brazil and Indonesia to take the floor to the extent that the text under consideration in brackets had been put forward by those delegations.

119. The Delegation of China, referring to Article 15(4)(a)(ii), wondered whether a license contract that included financial terms could be recorded.

120. The Secretariat replied that, if the request for recording concerned a license contract that contained financial terms, it would not fall within the prohibition under Article 15(4)(a)(ii).

121. The Delegation of China thanked the Secretariat for the clarification.

122. The Delegation of Brazil, congratulating the Chair and the Vice-Chairs on their election and thanking the Secretariat for the preparation of the Special Session of the SCT, requested more time to update its position on the proposed text, and asked the Chair to return to the topic at a later stage.

123. The Chair suspended the discussion on Article 15(4)(b).

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124. The Chair, resuming the discussion on Article 15(4)(b), asked the Delegation of Brazil whether it could communicate its position to the Committee.

125. The Delegation of Brazil, expressing appreciation for the additional time given to consult on the language under consideration, was satisfied that the language that was not in brackets sufficed to address its concerns related to the safeguard of possible requirements. Therefore, the Delegation confirmed that it withdrew its proposal for additional language.

126. The Chair noted that the SCT decided to delete the text in brackets and the footnote to that article.

(v) Article 17(2) concerning the effects of the non-recording of a license

127. The Chair opened the discussion on Article 17(2) and invited the Secretariat to introduce the point under consideration.

128. The Secretariat explained that the question was to determine if a Contracting Party could require the recording of a license as a condition for the licensee to join infringement proceedings initiated by the holder or to obtain, by way of such proceedings, damages resulting from an infringement of the industrial design which was the subject of the license.

129. The Chair invited the Delegations of Brazil, Chile and Pakistan to take the floor to the extent that the proposal to delete the word “not”, which appeared in brackets, had been put forward by those Delegations.

130. The Delegation of Chile signaled that its objective was to keep some political space. As it needed to further consult with its capital on that point, the Delegation requested to revert to the point at a later stage.

131. The Delegation of Brazil indicated that its objective was to eliminate redundancy. The Delegation was of the view that the term “may” made the term “not” unnecessary in the sentence at stake, as the term “may” already incorporated the “may not” idea. Therefore, the Delegation maintained its proposal to delete the term “not”.

132. The Delegation of the European Union, speaking on behalf of the European Union and its member states, was favorable to keeping the option open for Contracting Parties to require the recording of a license and, hence, supported the proposal to delete the word “not” in brackets.

133. The Delegation of Japan expressed its preference for the inclusion of the word “not” without brackets in Article 17(2) for user-friendliness and harmonization purposes. The Delegation added that the proposed language was in line with the STLT. For the Delegation, the mandatory recording of a license as a condition to join infringement proceedings and obtain damages would surely impose additional burden on users. In addition, in light of the discussions held in previous SCT sessions on that point, and with reference to Article 29(1)(c) of the Draft Rules of Procedure of the Diplomatic Conference, the Delegation believed that “may not” should be the basic proposal and that “may” shall be treated as a proposal for amendment.

134. The Delegation of Poland, speaking on behalf of the CEBS Group, aligned itself with the position of the Delegation of the European Union and supported the deletion of the word “not” in brackets in Article 17(2), so as to keep the option open for Contracting Parties.

135. The Delegation of the United States of America lent its support to the statement made by the Delegation of Japan. Referring to Notes 17.02 and 17.03, the Delegation observed that, as already pointed out by the Delegation of Japan, the provision under consideration was modeled on Article 19(2) of the STLT. The purpose of the provision was not to harmonize the question whether a licensee should be allowed to join proceedings initiated by a licensor or whether it could receive damages from an infringement proceeding. That question was left to the national law. The Delegation outlined that, instead, the provision merely clarified that a licensee was able to exercise whatever rights were available under domestic law without having to record the license. Therefore, the Delegation supported the provision as drafted, without removing the bracketed text, namely the word “not”. For the Delegation, that word should be retained as its removal would seemingly render the provision meaningless.

136. The Delegation of the Russian Federation, stating that it would adopt a flexible approach regarding Article 17, to achieve consensus, expressed support for the removal of the word “not”, as it considered that a duly recorded license agreement was a prerequisite for the licensee to join infringement proceedings and obtain damages. Since the amendment was not of an

editorial nature but rather of a substantive one, the Delegation declared that it was ready to engage in a constructive dialogue with other interested members.

137. The Delegation of Canada stated that it did not support the deletion of the word “not” in Article 17(2) and concurred with the view expressed by the Delegation of Japan that the proposal should rather concern the word “may”. In the Delegation’s viewpoint, the proposal would have the effect of increasing the burden on Canadian industrial design stakeholders seeking to obtain remedies and was incompatible with the objectives of the DLT of streamlining and harmonizing industrial design procedures and formalities. The Delegation further added that such requirements imposed burdens and introduced uncertainty for industrial design stakeholders seeking to enforce their rights in other jurisdictions.

138. The Delegation of Nigeria, requesting additional time to examine the point, sought in the meantime clarification on Article 17. To the extent that the DLT was meant to both streamline and make it easier for innovators to secure their rights, the recording of a license provided notice to third parties that the right was no longer freely available. It also provided legal certainty as to the ownership of the design. As certain jurisdictions recognized the validity of oral licenses, the Delegation expressed concerns about removing the word “not” in the article as the latter did not clearly refer to written licenses and did not distinguish between oral licenses and written licenses. The Delegation said, however, that it would be open to consider the removal of the brackets if it were clear that the provision was limited to written licenses. Without that clarity though, it would seem that Contracting Parties should have the option of determining which kinds of licenses should or should not be recorded. For the Delegation, that provision would render chaos both on standing requirements as well as on the kinds of claims that third parties could assert against an innocent, naive or unwary design owner.

139. The Delegation of Colombia, reporting that in its law the recording of a license was mandatory, was of the view that the word “not” should be deleted.

140. The Chair suggested to reflect both options, namely “may” and “may not”, in brackets, in Article 17(2) of the draft Treaty.

141. The Delegation of the Russian Federation observed that the word “may not” prescribed a clear prohibition, whereas the word “may” allowed Contracting Parties to require the recording of a license and was not as strict as “may not”. The Delegation expressed the hope that the Committee could address the issue during the negotiation process.

142. The Representative of AIPPI reminded the Committee that, in 2006, AIPPI had studied the issue among 80 participating countries and had issued a Resolution entitled “*Contracts regarding Intellectual Property Rights (assignments and licenses) and third parties*”. AIPPI had resolved that, for the purposes of the effect of the contract between the parties of a transaction, it should not be required that the transaction be registered in any registry. While it should be encouraged, it should not be obligatory to register the transaction. As the DLT aimed at streamlining and simplifying filing processes, the Representative remarked that the provision under consideration seemed to delve into things far beyond that objective, as it concerned what should be standing for an infringement cause of action or what could be the potential pool of remedies by way of damages. The Representative pointed out that there was not a single other reference, in the draft Articles and draft Rules, to the terms “infringement” or “damages” for good reasons since those topics seemed outside the bounds of the DLT. For AIPPI, there was no need to delve directly into substantive law. Recalling that there had been a lot of restraint in other areas to avoid getting into substantive law, the Representative drew the Committee’s attention to the position of AIPPI in favor of dropping the entire provision.

143. The Chair noted that the SCT decided to reflect two alternative options appearing in brackets in Article 17(2), as shown below, and to delete the footnote:

(2) [Certain Rights of the Licensee] A Contracting Party [may] [may not] require the recording of a license as a condition for any right that the licensee may have under the law of that Contracting Party to join infringement proceedings initiated by the holder or to obtain, by way of such proceedings, damages resulting from an infringement of the industrial design which is the subject of the license.

(vi) Article 22/Resolution concerning technical assistance and capacity-building

144. The Chair opened the discussion on Article 22/Resolution and invited the Secretariat to introduce the point under consideration.

Article in the Treaty or Resolution

145. The Secretariat recalled that, in 2012, the WIPO General Assembly had directed the SCT to consider appropriate provisions regarding technical assistance and capacity building for developing countries and LDCs in the implementation of the DLT. Following that request, the Secretariat had prepared document SCT/28/4, which provided an overview of provisions regarding technical assistance and capacity building contained in WIPO-administered treaties. Although that document had then been subsequently revised, it was still considered as relevant and useful to have a view of the situation in WIPO-administered treaties. In 2013, at SCT/29, there had been three proposals concerning technical assistance and capacity building: one from the Delegation of the European Union, another from the African Group and a third one from the Delegation of the Republic of Korea. The Secretariat recalled that, back then, the Chair of the SCT had also proposed, through a non-paper, a draft Article or Resolution combining elements from the three proposals. The Secretariat informed the Committee that the text in document SCT/S3/4 contained proposals stemming from the individual proposals and the Chair's proposal, which had been discussed at several sessions of the SCT, and reflected also proposals of another non-paper by the Chair in 2015. The Secretariat then indicated that the question to address was to determine whether the provisions on technical assistance and capacity building should be contained in an article in the Treaty or in a resolution.

146. The Delegation of India reiterated its position, as previously stated at SCT/34 and SCT/35, according to which the technical implementation of the Treaty should be accompanied with augmented capacity in the Contracting Parties, as the obligations of the Treaty would entail amending the national law, creating new capacity to handle more applications and developing legal skills to manage the increased number of applications. Therefore, the Delegation strongly supported the inclusion of an article on technical assistance and capacity building in the main draft of the Treaty to help Contracting Parties to meet their obligations.

147. The Delegation of Japan informed the Committee that, for many years, Japan had provided technical assistance and capacity building in the establishment and implementation of IP systems in developing countries. The Government of Japan had contributed for more than 100 million Swiss francs in more than 100 countries in areas such as design protection, through Japan's funds-in-trust at WIPO. Based on Japan's long-term experience, the Delegation was of the view that matters to be included within technical assistance and capacity building projects, as well as the manner to implement those, should be carefully tailor-made or selected according to the needs and developmental stage of individual countries and their changing social environments. Therefore, flexibility was key to reach satisfaction levels in each recipient country and to provide sustainable technical assistance. The Delegation concluded by stating that, to ensure such a flexibility, it would be more sensible and beneficial to include technical assistance and capacity building in a resolution by the diplomatic conference, supplementary to the DLT, rather than in the main body of the Treaty.

148. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, reiterated that the Group was of the view that WIPO had already been successfully delivering technical assistance and would continue to do so within its institutional mandate, irrespective of whether a provision was included in any treaty. Furthermore, for the Group, the form of technical assistance should be flexible considering the situation of each country. In view of that nature, Member States should not be restricted by the Treaty to provide any particular form of technical assistance. In the Group's opinion, inserting a specific provision in the Treaty, rather than drafting a separate document, did not constitute the most appropriate way to reflect the needs of Member States. The Delegation added that the approach should be consistent with the practice in other WIPO treaties.

149. The Delegation of the Russian Federation underscored the importance of providing the appropriate technical assistance to developing countries and LDCs for the purpose of effectively implementing the Treaty in those countries. In view of the vital nature of the issue of technical assistance, the Delegation stressed the need to provide such assistance.

150. The Delegation of China, highlighting the importance of technical assistance and capacity building to promote the effective implementation of the Treaty, remarked that all Contracting Parties would benefit from technical assistance and capacity building.

151. The Chair suspended the discussion on Article 22/Resolution.

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152. The Chair, resuming the discussion on Article 22/Resolution, suggested that the Committee examine each paragraph of the provision, starting with paragraph (2)(a)(ii) of Article 22/Resolution.

Article 22/Resolution(2)(a)(ii)

153. The Secretariat explained that, in addition to the question of whether the provision should be an article in the Treaty or a resolution to the Treaty, a portion of Article 22/Resolution(2)(a)(ii) was placed into brackets, as followed: *“Technical assistance and capacity building activities provided under this Treaty shall be for the implementation of this Treaty and, where requested, include (...) (ii) building up the necessary capacity of the Offices, including but not limited to providing training of human resources, [and providing appropriate equipment and technology as well as the required infrastructure]”*. The question therefore was whether to delete that last portion, maintain it in brackets, or to delete the brackets.

154. The Delegation of the United States of America recalled that the United States of America, as one of the most consistent and voluminous providers of technical assistance, notably through its global IP Academy, housed in the United States Patent and Trademark Office (USPTO), strongly supported technical assistance to facilitate the implementation of the DLT. Pointing out that the Committee should find the right mechanisms to effectively provide for technical assistance, the Delegation expressed concerns about inserting it in an article and binding non-Contracting Parties. Furthermore, the Delegation considered that the discussion should not separate the place where the provision could be inserted from its content. The Delegation recalled that document 28/4/Rev, which provided an overview of technical assistance and capacity-building provisions in WIPO-administered treaties, in particular the PLT and the STLT, had been used for guidance, as the provision under discussion was the equivalent in the field of industrial designs. Instead of putting only the terms “Article 22/Resolution” between brackets until the issue was resolved, the Delegation proposed putting the whole provision between brackets, to help understanding it, before determining which of those provisions were acceptable.

155. The Delegation of France, after having congratulated the Chair and Vice-Chairs on their election and thanked the Secretariat for the preparation of the Special Session, aligned itself with the statement made by the Delegations of Netherlands (Kingdom of the), on behalf of Group B, and of Japan, and supported the setting up of technical assistance for developing countries and LDCs. The Delegation commended the work delivered by WIPO in that regard. Observing that the current discussion concerned the development of an international legal instrument aimed at simplifying industrial designs procedures, the Delegation held the view that including technical assistance in a stand-alone document such as a resolution would facilitate the implementation of the instrument by Contracting Parties and should be an acceptable compromise for all.

156. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, indicated a preference for the inclusion of technical assistance in an article as well as a preference to have sub-item (ii) of paragraph 2(a) in the text.

157. The Delegation of Ghana, speaking on behalf of the African Group, expressed its preference to keep paragraph 2 as it was, as an article.

158. The Delegation of Egypt, after having congratulated the Chair and Vice Chairs on their election, supported the inclusion of an article on technical assistance and capacity building in the proposed text of the Treaty. The Delegation was favorable to paragraph 2 as it was.

159. The Delegation of Morocco, congratulating the Chair and Vice-Chairs on their election and thanking the Secretariat for the preparation of the Special Session, echoed the statement made by the Delegation of Ghana, on behalf of the African Group, and supported the inclusion of technical assistance in an article, given its importance in the implementation of the Treaty in Contracting Parties, in particular developing countries and LDCs.

160. The Delegation of Iran (Islamic Republic of), speaking in its national capacity, held that the development of an international instrument should be accompanied by enhanced capacity of Member States to carry out obligations arising from the Treaty. Therefore, the provision on technical assistance should take the form of an article in the text, to underline the fact that adapting national legal systems and practices to the DLT procedures may require technical assistance from WIPO. In addition, the Delegation was in favor of retaining paragraph 2 as it stood.

161. The Delegation of Brazil aligned itself with the declaration made by the Delegation of Venezuela (Bolivarian Republic of), on behalf of GRULAC, and reiterated that technical assistance should be a legally binding provision of the DLT in the form of an article, since an article would provide legal certainty and predictability for the parties. The Delegation underlined the fact that the article was in line with the spirit of the WIPO Development Agenda, in particular recommendations 1, 12, and 15.

162. The Delegation of Algeria, congratulating the Chair on its election, believed that Article 22/Resolution on technical assistance and capacity building should be an integral part of the Treaty, as it contributed to balancing interests so that developing countries could be supported in implementing the Treaty and be well equipped to do so.

163. The Delegation of the United States of America maintained that it could not support removing the brackets in Article 22/Resolution(2)(a)(ii) as it did not believe it to be an appropriate provision. Suggesting including the whole provision into brackets, pending the final decision that could be taken at the diplomatic conference on Article 22/Resolution, the Delegation considered that it was not advisable to examine each provision one after the other and including them individually into brackets. The Delegation indicated that it was unable, at that stage, to support the removal of the brackets from the provision.

164. The Delegation of France indicated that it was not in favor of removing the brackets around Article 22/Resolution(2)(a)(ii).

Article 22/Resolution(2)(b)

165. The Chair then turned to paragraph (2)(b) of Article 22/Resolution and invited the Secretariat to introduce the point under consideration.

166. The Secretariat indicated that under Article/Resolution 22(2)(b), brackets were placed around the abbreviation “WIPO” to qualify the type of activities and measures, as well as around the words “allocation and”. The question concerned whether the Committee believed that those terms would add information to the subparagraph and whether they should be maintained or could be deleted. The Secretariat explained that the brackets around the words “and Article 24(1)(c)”, referring to Article 24(c) which was also in brackets, concerned the question of whether the expenses of the delegations attending the DLT Assembly should be borne by the Contracting Party or whether the Organization would contribute to them. Finally, the requirement given to the Organization to enter into agreements with international financing organizations, other intergovernmental organizations and governments in order to provide financial support for technical assistance had also been put into brackets.

167. The Delegation of the Russian Federation recalled the importance of technical assistance, which, to a large extent, would facilitate the process of implementing the provisions of the Treaty, particularly for the benefit of developing countries and LDCs. In addition, the Delegation asked whether Article 22/Resolution(2)(b) implied that the allocation of resources for the provision of technical assistance would be targeted, and how the technical assistance would be approved and delivered.

168. The Delegation of Japan was concerned about the second sentence of paragraph (2)(b), which could impose too much burden on WIPO, and requested clarification as to whether that sentence had precedents and whether it was feasible for WIPO.

169. The Delegation of the United States of America shared the concerns expressed by the Delegation of Japan, as well as concerning the reference to Article 24(1)(c). The Delegation therefore expressed the wish to retain the brackets around that reference as well as around the last sentence of paragraph (2)(b). The Delegation recalled that it had significant concerns about the ability or the appropriateness, from a treaty-governance perspective, of a subset of Member States, that were Contracting Parties, binding all Member States on issues dealt with by WIPO at large.

170. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, expressed flexibility regarding the brackets in that text.

171. The Delegation of the Russian Federation said that it had no objection concerning the removal of the brackets in the first part of the paragraph around the words “[allocation and]”. Regarding the second part, the Delegation held the view that removing the reference to WIPO would not make sense, since WIPO’s mandate covered technical assistance.

172. The Delegation of Kyrgyzstan supported the removal of brackets in the first paragraph around the words “[allocation and]” and the retention of the Organization’s name.

173. The Delegation of Japan, supporting the statement made by the Delegation of the United States of America, said that it would prefer the deletion of the terms “and Article 24(1)(c)” because it considered it redundant, and Article 24 had another purpose.

174. The Delegation of Australia, congratulating the Chair on its election and thanking the Secretariat for the preparation of the Special Session, held the view that Article 22/Resolution

contained, in various places, very specific obligations that did not seem suitable for an article but could be considered as part of a much more detailed resolution. The Delegation therefore supported the proposal made by the Delegation of the United States of America to put Article 22/Resolution in its entirety into brackets but continue discussing the individual elements and provisions. The Delegation also lent its support to the interventions made by the Delegations of Japan and of the United States of America in relation to Article 24(1)(c).

175. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, requested time to consult the Group, as some members would like to retain the reference to Article 24(1)(c).

176. The Delegation of Nigeria expressed its preference for retaining the reference to Article 24(1)(c).

177. The Secretariat, replying to the question concerning possible precedents in relation to the second sentence of Article 22/Resolution(2)(b), drew the Committee's attention to document SCT/28/4 Rev., identifying provisions in the WIPO-administered treaties that could be considered similar to the one under discussion.

178. The Delegation of Iran (Islamic Republic of) expressed its preference for keeping the reference to Article 24(1)(c), as it considered it necessary to have a reference to the granting of financial assistance to developing countries, and in particular LDCs, to facilitate participation in accordance with the established practices of the United Nations General Assembly or the WIPO practice.

179. The Delegation of the Russian Federation requested additional time to discuss the matter.

180. The Delegation of the United Kingdom aligned itself with the statement made by the Delegation of Netherlands (Kingdom of the), on behalf of Group B. While recognizing the importance of technical assistance and capacity building, the Delegation was of the view that it should be flexible and adaptable to take account of the specific circumstances of each country. Regarding the final sentence of Article 22/Resolution(2)(b), the Delegation was not in a position to agree to the deletion of the brackets at that moment.

181. The Delegation of France stated that it would favor maintaining the brackets.

182. The Chair said that the brackets around "and Article 24(1)(c)" and around the last sentence of Article 22/Resolution(2)(b) would be kept.

Article 22/Resolution(3)(a)

183. The Chair turned to paragraph (3)(a) of Article 22/Resolution and invited the Secretariat to introduce the point under consideration.

184. The Secretariat recalled that the entire subparagraph (a) of Article 22/Resolution(3), was bracketed. That provision provided that WIPO was urged to expedite the creation of a digital library system for registered designs.

185. The Chair recalled that the proposal dated back to 2012 and that, in 2015, the WIPO Global Design Database had been implemented, including around 50 million registered designs from 39 Member States. Since that seemed to relate to the content of the provision at stake, the Chair requested the views of the delegations as to whether subparagraph (a) of Article 22/Resolution(3) could be deleted.

186. The Delegation of the Russian Federation, while expressing flexibility concerning the wording of the provision, held that the brackets around Article 22/Resolution(3)(a) should be removed, as the provision would facilitate inter-agencies information exchanges and allow the effective implementation of other provisions of the Treaty.

187. The Delegation of the United States of America supported, from a substantive perspective, the creation of a digital library system for registered designs. However, the Delegation considered that the WIPO Global Design Database satisfied what the thrust of that provision was attempting to get at. While being open and flexible and believing that it was an excellent provision, the Delegation considered that including it as an article in a treaty was problematic from an institutional and governance perspective. The Delegation pointed out that both the PLT and the STLT used language where the diplomatic conference requested the WIPO General Assembly or WIPO to consider those things as they provided technical assistance. That was the normal operation of technical assistance, otherwise there would be an instance where Contracting Parties would be purporting to prioritize technical assistance so that the DLT would be prioritized ahead of other potential technical assistance provisions. In the Delegation's viewpoint, that should not be the direction to follow at WIPO since the WIPO Program and Budget Committee and the WIPO General Assembly all took decisions on those matters. The Delegation viewed the provision as creating obligations on a third party, WIPO. While underlying its strong support to technical assistance, the Delegation urged the delegations to consider where the provisions should be placed, since other instances, such as the WIPO General Assembly or the WIPO Program and Budget Committee, could also take decisions on those matters.

188. The Delegation of Nigeria, while supporting technical assistance as being crucial for many countries, which would otherwise be marginalized and excluded from participating in the Assembly and the work that the Treaty intended to achieve, requested clarifications about the purpose of the digital library system and its relationship with technical assistance, in view of the existing database. The Delegation expressed concern about the potential pressure that could be put on smaller communities, including indigenous communities, which could hold registered yet unpublished designs. Expressing reservations about the provision, the Delegation argued that, for religious or sacred reasons, it could not be endorsed without considering designs that should not be available or publicly accessible. Finally, the Delegation asked clarification as to the meaning of the proposed deletion of paragraph (3)(a).

189. The Chair explained that it believed that the commitment contained in that provision was already covered by the existing WIPO Global Design Database. Therefore, the Chair asked delegations whether they would agree to delete that provision.

190. The Delegation of the Russian Federation reiterated its support in favor of retaining the provision. In light of the Chair's explanation, the Delegation said that it stood ready to consider rewording it to ensure the proper functioning of the digital library system. In addition, the Delegation pointed out that the WIPO Global Design Database had been created some time ago but did not cover all WIPO Member States. Since the technical process of connecting to that database was quite complex, the Delegation suggested retaining the provision, with a wording that would address the concerns of Member States.

191. The Delegation of the Republic of Moldova understood that every national office wishing to publish their industrial designs through the WIPO Global Design Database could contact WIPO. It therefore rested on national offices to decide when they wished to participate in, and connect to, that database. The Delegation requested clarification as to the purpose of the provision, since a library had already been created.

192. The Delegation of Colombia considered that the provision should not be deleted, but rather reworded to guarantee the functioning and enhancing of the digital library.

193. The Chair said that the provision would be maintained in brackets but, in light of the comments made by some delegations, encouraged members to work on an alternative wording for the provision, which could be reviewed at a later stage.

194. The Chair suspended the discussion on Article 22/Resolution(3)(a).

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195. The Chair, resuming the discussion on Article 22/Resolution(3)(a), invited the Delegation of the Russian Federation, which had expressed its interest in suggesting an alternative text, to outline its proposal.

196. The Delegation of the Russian Federation, after having thanked the Secretariat for the clarification on the background of the provision and on the WIPO Global Design Database, informed the Committee that it had held consultations with interested delegations and WIPO's Representatives who managed the WIPO Global Design Database. In that connection, the Delegation suggested updating the text of the provision since digital libraries had already been developed. The Delegation proposed to provide that WIPO would be urged to encourage the participation of Contracting Parties into the existing digital libraries for registered designs as well as to ensure the access to them. Observing that the WIPO Global Design Database currently covered 39 countries only, the Delegation considered that the coverage was not sufficient for a harmonious work amongst all Member States and exchange of information. Therefore, the Delegation stressed the importance for WIPO to make all the necessary efforts to attract Member States, involve them in the work of the database and guarantee access to the database.

197. The Delegations of China, India, Kyrgyzstan, Niger and Venezuela (Bolivian Republic of), on behalf of GRULAC, expressed support for the alternative text proposed by the Delegation of the Russian Federation.

Article 22/Resolution(3)(b)

198. The Chair turned to paragraph (3)(b) of Article 22/Resolution and invited the Secretariat to introduce the point under consideration.

199. The Secretariat recalled that Article 22/Resolution(3)(b) concerned the establishment of a fee reduction system by Contracting Parties to the Treaty to the benefit of design creators.

200. The Delegation of Japan was of the view that harmonization of fee systems among Contracting Parties was not the intended purpose of the DLT. It explained that the Japan Patent Office (JPO) had a self-supporting accounting system under which it was responsible for sustainable and stable IP services provided to a variety of businesses and social environments in the jurisdiction. Indicating that the schedule of fees for applications or maintenance of industrial designs was relatively low compared to actual costs, the Delegation considered that the introduction of a fee reduction system could greatly affect the maintenance of the Japan Patent Office accounting system and assumed other offices might have similar budget systems. The Delegation therefore expressed concern about the proposed fee reduction system and requested the deletion of the whole paragraph.

201. The Delegation of the United Kingdom agreed with the statement made by the Delegation of Japan and held the view that fees levied by registration offices should not be dealt with by the DLT, as they were not related to the assistance in the implementation of the Treaty. Considering that fees were the responsibility of each office, the Delegation supported the deletion of the provision.

202. The Delegation of Canada supported the statements made by the Delegations of Japan and the United Kingdom and expressed concern about the obligation imposed on Contracting Parties to implement a fee reduction system in respect of designs creators. The Delegation explained that the Canadian Intellectual Property Office (CIPO) functioned on a cost-recovery basis and was unable to provide for such a measure under Canada's industrial design system, nor did it have the legislative authority to do so. In addition, the Delegation considered that the provision had no place in a formalities Treaty and should not bind offices as to how they charged fees.

203. The Delegation of the Republic of Korea supported the statements delivered by the Delegations of Canada, Japan and the United Kingdom to delete subparagraph (b), as it believed that the policy on fees should be left to the discretion of each Contracting Party.

204. The Delegation of India favored the removal of brackets around subparagraph (b), as the fee reduction would encourage more filings from developing countries and generate value.

205. The Delegation of Switzerland, congratulating the Chair and Vice-Chairs on their election, expressed concern about the establishment of a fee reduction system for SMEs, to apply to nationals or residents of a developing country or an LDC. The Delegation underlined the fact that the fees at issue were national fees. Indicating that the fee system in Switzerland was the same for all individuals and legal entities and was governed by the principles of cost recovery and equivalence, the Delegation said that it would be legally difficult to implement such fee reductions for national applications.

206. The Delegation of the United States of America endorsed the statements made by the Delegations of Canada, Japan, the Republic of Korea, Switzerland and the United Kingdom, and expressed concern about the provision, which constituted a challenge, if not a legal problem, in an article. Furthermore, the Delegation said that the country had implemented a fee discount system for regular entities, SMEs, and micro-entities, however not based on where they came from. Indicating that its Office provided for a cost recovery system, the Delegation felt that the question should be left to the discretion of each Member State and stated that if a consensus could not be reached on deleting the provision, it was in favor of at least retaining the brackets around that provision.

207. The Delegation of the European Union, speaking on behalf of the European Union and its member states, indicated a preference for the fee reduction provided for in the second sentence of Article 22(3)(b) to be open equally to all applicants, whether individuals or SMEs, and therefore proposed deleting the last sentence in brackets.

208. The Delegation of Poland, speaking on behalf of the CEBS Group, supported the position expressed by the Delegation of the European Union concerning the deletion of the last sentence in brackets in Article 22(3)(b). Pointing out that Article 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") required equal treatment on nationality and prohibited discrimination on that base, the Group said that a provision on fees exemptions only for nationals and residents of developing countries or LDCs would contradict those provisions.

209. The Delegation of Germany supported the statements made by the Delegations of the European Union and Poland, on behalf of the CEBS Group, and agreed with the proposed deletion of the whole subparagraph (b).

210. The Representative of MARQUES called for the adoption of provisions that could prove to be, on the one hand, sufficiently clear and precise to guarantee predictability, legal certainty and consistency and, on the other, sufficiently flexible, fair and balanced to ensure that the Treaty could be implemented by all Contracting Parties without hindrance due to legal constraints arising from possible conflicts between DLT provisions and national legislation, or insufficient

technical and/or financial capacity on the part of some of the Contracting Parties. In that context, MARQUES endorsed the statements made by many delegations expressing their intention to work actively on the review of the draft Articles in a way that would fairly reconcile all interests from the point of view of the national offices of the Contracting Parties, the organization of the International Bureau as administrator of the international design protection system and as provider of technical assistance aimed at capacity building, as well as the users of the international design protection system. In that context, MARQUES noted that the WIPO Global Design Database already constituted a comprehensive digital library of registered designs, but that its current scope was not fully comprehensive and there might be discrepancies in its records, due to the incompleteness or only partial availability of data coming from the original sources. The Representative considered that the WIPO Global Design Database might need to be technically improved and expanded to become an effective search facility in support of the objectives of the DLT, and that all Contracting Parties should therefore cooperate with WIPO in providing information on registered designs. The Representative held the view that consensus on a revised text of paragraph (3) of Article 22/Resolution was possible.

211. The Delegation of Brazil held the view that deleting part of the provision would upset the balance of the article itself and requested additional time for internal consultations.

212. The Delegation of Iran (Islamic Republic of), considering it important that design creators and SMEs in developing countries, especially LDCs, should be able to benefit from the provision in question, supported maintaining the reference to that specific sentence.

213. The Delegation of Kyrgyzstan expressed the wish to keep the second sentence in subparagraph (b).

214. The Chair suspended the discussion on paragraph (3)(b) of Article 22/Resolution.

Proposal by the Delegation of the United States of America with respect to Article 22/Resolution

215. The Chair, resuming the discussion on Article 22/Resolution, recalled that the Delegation of the United States of America had proposed to put brackets around the whole Article/Resolution 22.

216. The Delegation of the Russian Federation requested further explanations on that proposal as, in its view, most of the text had been agreed upon.

217. The Delegation of the United States of America recalled that, for a long period of time, there had been an Article/Resolution in brackets in the text. For many delegations, the ability to take on board a text depended on whether it was included in a resolution or in an article. In the Delegation's viewpoint, to both properly reflect the long standing debate and to enable further progress where delegations could feel comfortable taking on board a text that they would not feel comfortable if it was in one place or another, it would make sense to have brackets around the entire article, knowing and better understanding that there was still a decision to be made with the article or resolution.

218. The Delegation of Brazil, referring to the statement of the Delegation of the Russian Federation and in light of the explanation given by the Delegation of the United States of America, recalled that the mandate given to the Special Session of the SCT was to close the gaps on concepts and language. That was important in terms of methodology but also in a broader aspect of not resorting to either bracketing text or offering no placement or replacements or no proposals taken on board. In the Delegation's opinion, accepting an agreed language without bracketing in the text was a clear example of closing the gaps in terms of proposing something that was not on the table. That respected the mandate given by the WIPO General Assembly.

219. The Delegation of Ghana, speaking on behalf of the African Group, informed the Committee that the Group did not support the proposal to put the whole article in brackets. For the Group, the proposal put forward by the Delegation of the United States of America felt in the provisions under Cluster E as per the Chair's working method. The Delegation recalled that the course of action concerning provisions under Cluster E had not yet been decided by the Committee.

220. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, did not support the proposal by the Delegation of the United States of America as putting brackets around the whole article did not help the Committee. For the Group, that would rather move the Committee backwards.

221. The Chair suspended the discussion on Article 22/Resolution.

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222. The Chair, resuming the discussion on Article 22/Resolution, recalled that the Committee's decision on the proposal put forward by the Delegation of the United States of America was still pending. In addition, the Chair noted that the proposal put forward by the Delegation of the United States of America on Article 3(1)(a)(ix) was also still pending. The Chair observed that the Committee needed to take a decision on the manner to deal with those proposals.

223. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asia and Pacific Group, indicated that several Group's members had an issue with the new proposal on Article 22/Resolution, as well as the new proposal on Article 3(1)(a)(ix), and were, therefore, not in favor of accepting it. For those Group's members, the mandate of the Special Session of the SCT was to narrow down the existing gaps and, therefore, it was not acceptable to open new discussions on new proposals on those very important articles.

224. The Chair asked the Committee whether the proposals on Article 3(1)(a)(ix) and on Article 22/Resolution were to be discussed immediately or as part of the provisions put under Cluster E.

225. The Delegation of the United States of America believed that, as regards Article 22/Resolution, putting the entire provision in brackets would help to move forward. The Delegation would agree to removing any other brackets in the text if the entirety of the provision was put in brackets. For the Delegation, the form dictated substance in many ways.

226. The Delegation of the Russian Federation, reaffirming its flexible approach to discussing the article, believed that putting the entire text of the provision in brackets would not be conducive to any progress in the discussions. The Delegation had the impression that the text was at that moment quite close to being agreed. Hence, placing the entire text in brackets would amount to make two steps back and throw into question the text of the entire article rather than sorting out specific disagreements with regards to the text of that provision. The Delegation indicated that it would make better sense to focus on specific issues rather than do a roll-back to make progress in the discussion and achieve a consensus.

227. The Delegation of Ghana, speaking on behalf of the African Group, expressed the wish to include the proposals put forward by the Delegation of the United States of America under Cluster E.

228. The Delegation of the United States of America pointed out that Article 3(1)(a)(ix) as well as Article 22/Resolution, were listed under Cluster A in document SCT/S3/INF/1 Rev. In comparison with the other work already done, the Delegation considered that the proposals were not new and were part of ongoing discussions.

229. The Delegation of Australia expressed support for the proposal by the Delegation of the United States of America to bracket Article 22/Resolution in its entirety. While strongly supporting the provision of technical assistance under the Treaty, the Delegation said that it was flexible on the format. For the Delegation, putting in brackets the provision would provide flexibility in outcomes, whether that be an article alone, a resolution or other platform or a combination of both. For instance, an appropriate outcome could be for some commitments to be captured in the Treaty itself, with some other more detailed commitments addressed in a resolution. The Delegation observed that the advantage of a resolution, as noted previously, was that the commitments could be enlivened before the entry into force of the Treaty.

230. The Chair noted that:

- the SCT decided to delete the brackets around “allocation and” and around “WIPO” in paragraph (2)(b);
- the SCT decided to replace the text in paragraph (3)(a) with the following text:

(3) [Other Provisions] (a) The World Intellectual Property Organization is urged to encourage the participation of Contracting Parties into the existing digital libraries for registered designs, as well as to ensure the access to them. Contracting Parties shall endeavor to communicate published registered design information through such systems. The Organization shall support Contracting Parties in their efforts to exchange information through those systems.
- the SCT took the decision concerning a new or alternative proposal on that provision reflected under Cluster E “Other provisions that are the subject of a proposal”.

(vii) Article 23(1), in conjunction with Rule 17, concerning Model International Forms in the Regulations

231. The Chair opened the discussion on Article 23(1), in conjunction with Rule 17, and invited the Secretariat to introduce the point under consideration.

232. The Secretariat indicated that Article 23(1)(b), providing that “the Regulations provide for the publication of model international forms to be established by the Assembly”, was in brackets, similar to Article 24(2)(ii), which provided for the establishment of model international forms. Therefore, the fate of Article 23 depended on the fate of Article 24(2)(ii), in particular on whether or not the Committee agreed that the Assembly should establish model international forms.

233. The Delegation of the Russian Federation was in favor of retaining Article 23(1)(b), which provided for the publication of model international forms, as well as the maintenance of a similar provision in Article 24(2)(ii). As an alternative, the Delegation stood ready to consider the analogous provision set in the STLT.

234. The Delegation of Egypt supported maintaining Article 23(1)(b) and deleting the brackets.

235. The Delegation of Japan sought clarification as to whether the use of model international forms by the Contracting Parties would be mandatory as was the case in the PLT and the STLT, which prescribed that the Contracting Parties should accept the presentation of communications, the contents of which corresponded to the relevant model international forms.

236. The Secretariat clarified that the draft DLT did not include a provision similar to Article 8(5) of the STLT, requiring Contracting Parties to accept communications, the contents of which corresponded to the model international forms.

237. The Delegation of Morocco was in favor of removing the brackets in Article 23(1)(b), given that model international forms correspond to the harmonization spirit of the DLT.

238. The Delegation of Kyrgyzstan supported the deletion of the brackets.

239. The Delegation of Colombia agreed to delete the brackets and considered that sub-paragraph (b) should be maintained.

240. The Delegation of El Salvador, echoing the statement made by the Delegation of Colombia, was in favor of deleting the brackets and keeping the provision.

241. The Delegation of Nigeria requested clarification as to whether the amendment of the Model International Forms would require three-fourths of the votes cast, as provided for in Article 23(2) for amending the Regulations.

242. The Secretariat explained that Article 4 provided that the Assembly should take its decisions by consensus and, in the absence of consensus, by a vote in accordance with Article 24(4)(b). However, as the text did not stipulate that the Regulations contained the model international forms, any amendment to those forms would have to be adopted by the simple majority provided for in Article 24(5), namely, two-thirds of the votes cast.

243. The Delegation of Nigeria expressed the wish to retain the brackets until further clarification was provided on how those forms would be modified and on the level of voting required.

244. The Chair suspended the discussion on Article 23(1), in conjunction with Rule 17.

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245. The Chair, resuming the discussion on Article 23(1), recalled that the Delegation of Nigeria had requested time to consider the provision.

246. The Delegation of Nigeria stated that it had reflected on the provision but was not in a position to support the removal of the brackets at that point. Highlighting that the work on the issue was not finished yet, the Delegation said that it was expecting to receive feedback, at which point it could offer a definitive decision.

247. The Chair suspended the discussion on Article 23(1)(b).

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248. The Chair, resuming the discussion on Article 23(1)(b), asked the Delegation of Nigeria whether it wished to keep the brackets around paragraph 1(b).

249. The Delegation of Nigeria indicated that it requested the maintenance of the brackets for that text.

250. The Chair noted that the SCT decided to keep the brackets in those provisions.

B. Provisions that are the subject of individual proposals, except administrative provisions and final clauses

(i) Article 2(1) concerning a specific reference to “divisional applications” at the end of paragraph (1)

251. The Chair opened the discussion on Article 2(1) and invited the Secretariat to introduce the point under consideration.

252. The Secretariat recalled that, under Article 2(1), which provided that “The Treaty shall apply to national and regional applications which are filed with or for, the Office of a Contracting Party”, a footnote contained a proposal made by the Delegation of the United States of America to add “and to divisional applications thereof” at the end of the paragraph.

253. The Delegation of the United States of America stated that Note 2.03 relating to that article suggested that the Treaty was intended to apply to applications, including divisional applications of national or regional applications, although it was not clear from a plain reading of the text that that conclusion could logically be reached. Deferring to the practices of each country, the Delegation understood that there could be cases where countries divided applications into divisional applications at their own discretion, and that those applications would not necessarily be considered as having been filed, but created as a mechanism by the office. The Delegation therefore indicated that the proposal was rather a legal drafting suggestion, made for clarity.

254. The Delegation of the United Kingdom supported the proposal made by the Delegation of the United States of America, which provided additional clarification to applicants.

255. The Delegation of Iran (Islamic Republic of) requested additional time to consider the proposal, as its actual meaning and framework did not seem clear to it.

256. The Chair noted that the SCT decided to transfer the proposal from the Delegation of the United States of America from the footnote to the main text of Article 2(1), as an option appearing in brackets, as follows:

(1) [Applications] This Treaty shall apply to national and regional applications which are filed with, or for, the Office of a Contracting Party [and to divisional applications thereof].

(ii) Article 5(1) concerning permitted requirements for the granting of a filing date

257. The Chair opened the discussion on Article 5(1) and invited the Secretariat to introduce the point under consideration.

258. The Secretariat explained that Article 5(1) contained a minimalistic list of only four elements that could be required by Contracting Parties for the purpose of according a filing date. The reason was that a postponement of the filing date could have very negative effects and even lead to the loss of the rights on the design. The Secretariat enumerated additional elements that had been proposed by delegations as filing-date requirements, listed under the footnote: “a claim” proposed by the Delegation of the United States of America; “a brief description” and “where the appointment of a representative is mandatory, such appointment” proposed by the Delegation of China, and “any further indication or element as prescribed under the applicable law” proposed by the Delegation of India.

259. The Delegation of the United States of America thought that the provision was the backbone of the DLT, a foundational provision from a philosophical perspective. The Delegation pointed out that a claim served an important role in identifying the subject matter sought for protection and in defining the scope of a design patent in the United States of America. Even though including a claim in an application was legally required to be awarded a filing date in the United States of America, the Delegation considered that it was critical to keep, in the list under Article 5(1) of the draft Treaty, only the indications and elements widely required and absolute necessary to determine who filed what. Since Article 5(2)(b) of the draft Treaty would permit to require a claim, providing the notification of a declaration to the Director General of WIPO, the Delegation informed the Committee that it withdrew its proposal to add “a claim” in the list under Article 5(1), but supported the inclusion of a claim under Article 5(2)(b).

260. The Delegation of China, expressing support for the inclusion of paragraph (2) in Article 5, announced that it withdrew its proposal, reflected in the footnote, to add “a brief description” and “where the appointment of a representative is mandatory, such appointment” to the list of filing-date requirements.

261. The Delegation of Nigeria recalled that it preferred including a claim in the list of requirements. However, given that the methodology did not specify how to proceed in the event of withdrawal by the main proponent and interest on the part of another delegation, the Delegation asked the Chair to clarify whether it should make the proposal itself or simply keep it in brackets.

262. The Chair clarified that, although the original proposal had been withdrawn, that did not prevent any other delegation from making a new proposal.

263. The Delegation of India maintained its proposal to add any further indications or elements as prescribed under the applicable law to the list of filing-date requirements under Article 5(1). It believed that that proposal would enable member countries to accommodate their country-specific requirements while filing an application for registration of industrial designs, without resorting to specifying such requirements in a declaration.

264. The Delegation of Brazil supported the proposal presented by the Delegation of India.

265. The Representative of AIPPI considered Article 5 as a critical element of the DLT, at the heart of the notion of simplification and rationalization, which AIPPI and users were watching very closely. The Representative expressed gratitude to the Delegations of China and the United States of America for their flexibility in removing the two proposals referred to in the footnotes and for not moving those provisions to the maximum list. Considering that the proposal added in brackets by the Delegation of India blew the lid off the maximum requirements, the Representative stressed that, for that provision to be applicable and achieve the objective set, it could not contain an open-ended provision such as the one suggested in the newly added brackets, which would be contrary to the objectives of the DLT. Therefore, AIPPI called for a reaffirmation of the stated objective of simplification.

266. The Delegation of Greece echoed the concerns raised by the Representative of AIPPI and, pointing that Article 3 set the requirements for the content of an application and Article 5 provided the minimum requirements for according a filing date, asked what further indications could affect the filing date.

267. The Delegation of India explained that its proposal had been drawn up to provide countries with flexibility in deciding on current and future requirements. In the event of a change in their legislation, Contracting Parties should have the possibility of deciding on the requirements for filing a design application in their country. That was the reason why the Delegation reiterated its proposal to include any additional indication or element prescribed by

the applicable legislation in the list of requirements relating to the filing date referred to in Article 5(1).

268. The Representative of AIPPI, responding to the question raised by the Delegation of Greece, indicated that what could be included in the proposed provision could go as far as the imagination would allow, for example provisions such as those withdrawn by the Delegations of China and the United States of America. In addition, a country could impose other requirements for a filing date, such as a claim, a written description of the design, surface shading, a certain number of views, or fees. The Representative considered that the proposal therefore placed applicants back in their current difficult situation, and the burdens they had to bear in order to obtain a filing date.

269. The Chair noted that:

- the Delegation of the United States of America withdrew its proposal in the footnote to that article;
- the Delegation of China withdrew its proposal in the footnote to that article;
- the SCT decided to transfer the proposal from the Delegation of India from the footnote to the main text of Article 5(1), as an option appearing in brackets, as follows:

- (1) *[Permitted Requirements] (a) Subject to subparagraph (b) and paragraph (2), a Contracting Party shall accord as the filing date of an application the date on which the Office receives the following indications and elements, in a language admitted by the Office:*
 - (i) *an express or implicit indication to the effect that the elements are intended to be an application;*
 - (ii) *indications allowing the identity of the applicant to be established;*
 - (iii) *a sufficiently clear representation of the industrial design;*
 - (iv) *indications allowing the applicant or the applicant's representative, if any, to be contacted;*
 - [(v) any further indication or element as prescribed under the applicable law].*

(iii) Article 5(2)(b)(i) concerning permitted additional requirements

270. The Chair opened the discussion on Article 5(2)(b)(i) and invited the Secretariat to introduce the point under consideration.

271. The Secretariat explained that the footnote to Article 5(2)(b)(i), containing a proposal by the Delegation of Japan, although placed in paragraph 2, was also linked to paragraph 1, since the proposal was to maintain “an indication of the product or products which incorporate the industrial design, or in relation to which the industrial design is to be used”, as an item of paragraph 1(a).

272. The Delegation of Japan, considering that the simplification of the filing-date requirements would be beneficial for the users, withdrew its proposal under the footnote to that Article, for the sake of compromise and to contribute to the objectives of the DLT.

273. The Chair noted that the Delegation of Japan withdrew its proposal in the footnote to that Article.

(iv) Article 13 concerning the nature of the provision on reinstatement of rights

274. The Chair opened the discussion on Article 13 and invited the Secretariat to introduce the point under consideration.

275. The Secretariat indicated that Article 13 obliged a Contracting Party to provide for the reinstatement of rights, subject to a finding by the office that the failure to comply with the time limit had occurred in spite of due care required by the circumstances, or, at the option of the Contracting Party, was unintentional. The footnote to that article contained a proposal by the Delegation of India to make Article 13 optional, namely, to provide for the reinstatement of rights as an optional measure rather than a mandatory one.

276. The Delegation of India maintained its proposal to make the provision optional and, accordingly, proposed to replace the term “shall” by “may” in Article 13(1).

277. The Delegation of Colombia also felt that the provision should be optional, as its country did not provide for reinstatement.

278. The Chair noted that the SCT decided to transfer the proposal from the Delegation of India from the footnote to the main text of Article 13(1), as an alternative option appearing in brackets, as follows:

(1) [Reinstatement of Rights] A Contracting Party [shall] [may] provide that, where an applicant or holder has failed to comply with a time limit for an action in a procedure before the Office, and that failure has the direct consequence of causing a loss of rights with respect to an application or a registration, the Office shall reinstate the rights of the applicant or holder with respect to that application or registration, if: [...]

(v) Article 14(2) concerning the nature of paragraph (2), related to restoration of the right of priority

279. The Chair opened the discussion on Article 14(2) and invited the Secretariat to introduce the point under consideration.

280. The Secretariat indicated that the footnote under Article 14(2), requiring a Contracting Party to provide for the restoration of the right of priority in certain circumstances, contained a proposal by the Delegation of India to make the provision optional rather than mandatory.

281. The Delegation of India maintained its proposal to replace the word “shall” by “may” in that provision.

282. The Delegation of the Russian Federation supported the proposal made by the Delegation of India, as the proposed wording gave member States greater flexibility.

283. The Chair noted that the SCT decided to transfer the proposal from the Delegation of India from the footnote to the main text of Article 14(2), as an alternative option appearing in brackets, as follows:

(2) [Delayed Filing of the Subsequent Application] A Contracting Party [shall] [may] provide that, where an application (“the subsequent application”) which claims or could have claimed the priority of an earlier application has a filing date which is later than the date on which the priority period expired, but within the time limit prescribed in the Regulations, the Office shall restore the right of priority, if: [...]

(vi) Article 17(1) concerning the nature of paragraph (1), related to the effects of the non-recording of a license

284. The Chair opened the discussion on Article 17(1) and invited the Secretariat to introduce the point under consideration.

285. The Secretariat drew the Committee's attention to Note 17.01 that explained the aim of paragraph (1), which was to separate the question of the validity and protection of an industrial design from the question of the registration of the license concerning the industrial design. Thus, Article 17 provided mandatorily that the non-registration of a license with the office should not affect the validity of the registration of the industrial design. The footnote to that article contained a proposal from the Delegation of Iran (Islamic Republic of) to turn that obligation into an option.

286. The Delegation of Iran (Islamic Republic of) announced that it withdrew its proposal for the sake of narrowing down existing gaps.

287. The Delegation of the Republic of Korea supported the retention of the current language using "shall". Stating that the mechanism for the restoration of the priority right under Article 14(2) operated only in exceptional circumstances, the Delegation believed it necessary to provide an additional opportunity to applicants who, despite exercising due care, failed to comply with the priority period, as that would protect individuals or SMEs, which could face difficulties in dealing with an unforeseen situation.

288. The Chair noted that the Delegation of Iran (Islamic Republic of) withdrew its proposal in the footnote to that article.

(vii) Article 22(2) concerning technical assistance and capacity building

289. The Chair opened the discussion on Article 22/Resolution(2) and invited the Secretariat to introduce the point under consideration.

290. The Secretariat indicated that a footnote to that Article/Resolution contained a proposal by the Delegation of the United States of America to insert the words "assistance with" after the word "include" in paragraph (2)(a) of Article 22/Resolution.

291. The Delegation of the United States of America maintained that adding "assistance with" would be an appropriate wording, as the provision seemed to ask WIPO to establish frameworks and build capacity, while, in fact, WIPO merely provided assistance in setting up a legislative framework.

292. The Delegation of Japan supported the proposal made by the Delegation of the United States of America, which made the provision more meaningful and reasonable.

293. The Delegation of the Republic of Korea supported the proposal made by the Delegation of the United States of America. Considering that the content of the provision intended to help Contracting Parties that were developing countries or LDCs to meet the conditions set out in paragraph (2)(i) and (ii), the Delegation felt that the proposal was logical and sound.

294. The Delegation of Germany supported the statement made by the Delegation of the United States of America.

295. The Delegation of Canada lent its support to the proposal made by the Delegation of the United States of America, which constituted a very useful clarification regarding the scope of technical assistance.

296. The Chair noted that the SCT decided to transfer the proposal from the Delegation of the United States of America from the footnote to the main text of paragraph (2)(a), as an option appearing in brackets, as follows:

(2) [Technical Assistance and Capacity Building] (a) Technical assistance and capacity building activities provided under this Treaty shall be for the implementation of this Treaty and, where requested, include [assistance with]: [...]

(viii) Rule 3(4) concerning the number of copies of representation of an industrial design

297. The Chair opened the discussion on Rule 3(4) and invited the Secretariat to introduce the point under consideration.

298. The Secretariat indicated that the footnote under Rule 3(4) contained a proposal by the Delegation of India suggesting replacing the maximum of three copies by four copies of the representation of an industrial design, when the application was filed on paper.

299. The Delegation of India informed the Committee of the withdrawal of its proposal.

300. The Chair noted that the Delegation of India withdrew its proposal in the footnote to that rule.

(ix) Rule 6 concerning the starting point for calculating the minimum period to maintain an industrial design unpublished

301. The Chair opened the discussion on Rule 6 and invited the Secretariat to introduce the point under consideration.

302. The Secretariat explained that the footnote under Rule 6 contained a proposal by the Delegation of Japan according to which the minimum period should always be calculated from the filing date and not from the priority date.

303. The Delegation of Japan maintained its proposal and further proposed deleting the sentence “or when priority is claimed from the priority date” from Rule 6, to ensure that applicants always had a minimum period of six months to keep the design unpublished, regardless of the priority date. The Delegation illustrated the proposal with the case of a priority claim for which the second filing was made shortly before the expiry of the six months, leaving a short period for deferment of publication. The Delegation considered that, if the period for keeping a design unpublished was instead calculated from the date of filing, irrespective of whether or not a priority claim had been made, applicants would be able to take full advantage of the provisions of Article 9, since the design that was the subject of the subsequent filing could remain unpublished for six months from the date of filing in the second country.

304. The Delegation of the United States of America supported the proposal made by the Delegation of Japan, as it helped harmonizing and streamlining procedures for applicants. In addition, it would ease the proceedings for offices, since relying always on the filing date would be easier.

305. The Delegation of the Republic of Moldova supported the proposal of the Delegation of Japan, as it enabled all applicants to be treated equally.

306. The Delegation of the Republic of Korea, aligning itself with the proposal made by the Delegation of Japan, considered that there could be cases where the period of deferment of publication provided for in the Treaty could be under-utilized when the starting point was the priority date. The Delegation stated that the request to keep the design unpublished was a

strategic approach used by applicants which had proved beneficial in several jurisdictions, including under the Hague System. To secure its benefits, the Delegation therefore considered it desirable to unify the starting point as the filing date.

307. The Representative of JPAA, supporting the proposal made by the Delegation of Japan, considered that if the starting point of the period for keeping an industrial design unpublished was the priority date, that period could be considerably reduced, or even non-existent, from the moment the user filed an application in a second country and claimed priority. The Representative held that, for users of the design system, the importance of prescribing a minimum period laid in the adjustment between the time when the applicant starts using the industrial design and the publication of the industrial design, with the aim of protecting the industrial design against imitation by third parties. Therefore, achieving that objective was crucial to the IP strategy of users. Assuming that the priority date was adopted as the starting date, that would require the applicant to use the industrial design within six months of the filing date in the first country, which could be highly detrimental to users' IP strategy. If the filing date was adopted as the starting date for keeping the industrial design unpublished where the minimum period was set at 6 months, it could be possible to meet the substantial objective outlined above, especially where the first country provided for deferment of publication. The JPAA therefore considered it preferable to adopt the filing date as the starting date for the period during which an industrial design was kept unpublished. Alternatively, if the minimum period was set at 12 months or more from the priority date as the starting date, the industrial design would remain unpublished for at least six months from the filing date of the design application in the second country of priority. The Representative concluded that that would make it much easier to meet the essential objective of prescribing a minimum period, namely adjusting the time between the moment when the applicant started using the industrial design and the moment when it was published, and such a system would be very useful and beneficial for the IP strategy of users.

308. The Representative of JTA supported the proposal put forward by the Delegation of Japan and stated that, from the viewpoint of a patent-design attorney, it was crucial for small and medium-sized enterprises and individual creators to be able to control the timing of the publication of their designs, to develop a global design strategy. The Representative held that a sensational launch of a design increased the product's market value and could represent a major commercial success for SMEs and individual designers on a small budget. However, in some cases, applicants were reluctant to file such applications in countries where the filed designs would be published before the products were launched. Therefore, an internationally harmonized system, providing applicants with the opportunity to increase the economic potential of creative designs, would certainly stimulate design creation as well as design applications worldwide.

309. The Delegation of Morocco associated itself with the delegations that had supported the proposal referring to the filing date as the starting point of the deferment of publication, which was more logical and simpler for all applicants.

310. The Representative of AIPPI endorsed the choice of the filing date rather than the priority date. However, AIPPI drew the Committee's attention to the fact that there were several jurisdictions where the priority date did not only mean the Paris Convention priority date for international priority claims, but also provided for national priority claims. The Representative therefore considered that the current proposal should not allow an applicant to file subsequent applications and for each of them obtain a new deferment period.

311. The Delegation of Switzerland stated that, while not being opposed to the change, it had concerns along the same lines as AIPPI, as it should not be possible to have an indefinite deferment of publication by making strategic applications for the same design at international level. On the other hand, the Delegation felt that the change would influence national legislation and that many States would therefore need to amend their laws.

312. The Delegation of Denmark aligned itself with the statement made the Delegation of Switzerland and considered that deleting the provision from the text would have influence not only its national law but also the European Union Design Law, which would require time to be assessed.

313. The Delegations of Germany, Greece, Poland, in its national capacity, and Sweden supported the statements made by the Delegations of Denmark and Switzerland.

314. The Delegation of the United States of America joined those delegations who felt that the Committee needed to reflect on the meaning of the filing date and how it could be accompanied by a caveat. The Delegation indicated that it was not sure what would be the best way to reflect that, for instance through a footnote, but thought that there was a way of capturing the progress made.

315. The Chair noted that the SCT decided to transfer the proposal from the Delegation of Japan from the footnote to the main text of Rule 6, as an option appearing in brackets, as follows:

The minimum period referred to in Article 9(1) shall be six months from the filing date [or, where priority is claimed, from the priority date].

(x) Rule 7(7)(ii) concerning the time limit for filing the original of a communication on paper filed by electronic means of transmittal

316. The Chair opened the discussion on Rule 7(7)(ii) and invited the Secretariat to introduce the point under consideration.

317. The Secretariat noted that the footnote to Rule 7(7)(ii) contained a proposal by the Delegation of India to replace the time limit to require the original of a communication of at least one month by “at least 15 days”, from the date on which the office received the communication by electronic means.

318. The Delegation of India maintained its proposal to replace the time limit of at least one month by a time limit of at least 15 days in the rule under consideration.

319. The Delegations of Egypt and the Russian Federation supported the proposal made by the Delegation of India.

320. The Chair noted that the SCT decided to transfer the proposal from the Delegation of India from the footnote to the main text of Rule 7(7)(ii), as an alternative option appearing in brackets, as follows:

(7) [Original of a Communication on Paper Filed by Electronic Means of Transmittal] A Contracting Party that provides for communications on paper to be filed by electronic means of transmittal may require that the original of any such communication be filed with the Office:

(i) accompanied by a letter identifying that earlier transmission; and

- (ii) *within a time limit which shall be at least [one month] [15 days] from the date on which the Office received the communication by electronic means of transmittal.*

(xi) Rule 13(2)(a) concerning supporting documents for recording of a license

321. The Chair opened the discussion on Rule 13(2)(a) and invited the Secretariat to introduce the point under consideration.

322. The Secretariat clarified that, where the license was a freely concluded agreement, a Contracting Party might require that the request for recording be accompanied, at the option of the requesting party, either by a copy of the license agreement or by an extract of the agreement. As mentioned in the footnote to Article 13(2)(a), the Delegation of Brazil had proposed to delete the words “at the option of the requesting party”. In other words, the requesting party would have no choice, and it would be up to the office of the Contracting Party to require either a copy of the agreement, or an extract. In addition, Rule 13(2)(a)(i) provided that, where a copy of the agreement was a supporting document filed with the request for recording of a license, the copy of the agreement might be certified at the option of the requesting party, thus offering some flexibility. The Delegation of Brazil had also proposed that the words “at the option of the requesting party” in that subparagraph be deleted.

323. The Delegation of Brazil indicated that it maintained its proposals.

324. The Delegation of India supported both proposals made by the Delegation of Brazil.

325. The Chair noted that the SCT decided to transfer the proposal from the Delegation of Brazil from the footnotes to the main text of Rule 13(2)(a), as an option appearing in brackets, as follows:

- (2) *[Supporting Documents for Recording of a License] (a) Where the license is a freely concluded agreement, a Contracting Party may require that the request for the recording of a license be accompanied [, at the option of the requesting party,] by one of the following:*
- (i) *a copy of the agreement, which copy may be required to be certified [, at the option of the requesting party,] by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original agreement; [...]*

C. Provisions that are subject to individual reservations

(i) Article 4(2)(b) concerning mandatory representation

326. The Chair opened the discussion on Article 4(2)(b) and asked the Delegation of China whether it maintained its reservation and could make a proposal.

327. The Delegation of China underlined the fact that several parties had made significant efforts to promote the DLT discussion process. The Delegation felt that, currently, specific provisions still raised issues, due to differences in national legislations. To facilitate consensus on the DLT, the Delegation suggested that a reservation be made to give greater flexibility to the Treaty. At present, China's national legislation did not provide for any exception to the mandatory representation of an applicant in connection with an application, and if a foreign applicant wished to apply without representation, the office would not be able to contact the

applicant, or the application would not reach the office. That could result in a loss of rights for the applicant. In view of the above, the Delegation maintained its reservation on the article.

328. The Delegation of Türkiye, while indicating that it did not oppose to the text, explained that the Turkish national legislation required mandatory representation of the applicant, holder or any other interested person who had neither a domicile nor a real and effective industrial or commercial establishment in Türkiye.

329. The Delegation of the Russian Federation drew the Committee's attention to Article 4(2)(b), according to which an applicant, holder, or other interested person who had neither a domicile nor a real and effective industrial or commercial establishment in the territory of the Contracting Party could act himself/herself before the office for the filing of an application, for the purposes of the filing date, and for the mere payment of a fee. The Delegation indicated that, in the Russian Federation, foreign applicants should interact with the IP office through patent attorneys who were registered in the Russian Federation and had the required specialization. Therefore, an application for registration of an industrial design filed independently by a foreign applicant would not be accepted, and the filing date not granted. Furthermore, the Delegation observed that it was not possible to establish the filing date when the application had not been filed in accordance with the applicable requirements. The IP office would thus have to request the missing information from the applicant, and the request could not be sent to a foreign applicant who was not properly represented. In addition, fees should be paid through an agent through a personal account, allowing the IP office to check the identity of the patent attorney. In that respect, the Delegation of the Russian Federation believed that consideration should be given to rewording Article 4(2)(b) or to deleting it.

330. The Delegation of Zambia stated that its national legislation did not allow an individual or a foreign company to file the application directly with the office, unless going through an agent in the country. The Delegation therefore considered that that type of provision would not be applicable unless the law was amended. The Delegation also added that, even if an agent were to follow the application, in the case of infringement, or where the language differed from that of the country of origin of the application, the question remained as to how the applicant who had filed the application directly would appear before the courts.

331. The Secretariat drew the Committee's attention to Article 4(2)(a), which provided that "(...) a Contracting Party may require that, for the purposes of any procedure before the Office, an applicant, holder or other interested person who has neither a domicile nor a real and effective industrial commercial establishment in its territory appoint a representative". Paragraph 2(b) provided an exception for two different proceedings before the office: on the one hand, the payment of a fee and, on the other, the filing of an application to obtain a filing date. If no representative was appointed, the office could, under those provisions, reject the application or request the appointment of a representative. The Secretariat stressed that, given that electronic filing was becoming the norm, in the light of modern communication technologies and the way in which filings were made, that item would be understood in a very different context, and wished to reassure delegations that the general principle that foreign applicants, holders or interested parties wishing to act before the office should be represented would not be challenged by the proposed text.

332. The Delegation of Brazil requested that the explanation provided by the Secretariat on the meaning of that provision be included in the report of the Special Session to enable member States to interpret the provision.

333. The Delegation of the United States of America, echoing the explanation made by the Secretariat, considered that the provision was essential for SMEs and individual designers, as it was important for those small entities to be able to file and obtain a filing date. As explained by the Secretariat, a fee was sometimes required to complete all those steps, without having to

search for and choose a counsel. The Delegation pointed out that, every day, industrial design rights could be threatened while applicants waited to find a counsel, whether because of a disclosure or a competitor trying to gain access to the market. The Delegation further noted that many of the countries that had raised concerns were members of the Hague Agreement and that, under the Geneva Act (1999), filing was permitted without the need to identify a representative in the country, which was one of the streamlining features of the Hague System. Therefore, while acknowledging the possibility in national design practices to require representation, the Delegation considered that some of the design rights accrued in those jurisdictions were consistent with what was proposed.

334. The Delegation of the Russian Federation noted that, as a party to the Hague Agreement, WIPO in practice played the role of official representative in the international registration of industrial designs, carrying out a formal examination and controlling the accuracy of the information contained in the application and accompanying documents before the application was sent to national IP offices. The Delegation felt that that should be taken into account when considering the question.

335. The Delegation of Georgia expressed its support to the basic text as clarified by the Secretariat.

336. The Representative of Maloca *Internationale* agreed that the objective was to facilitate access to industrial design protection for medium-sized enterprises. However, the Representative was not sure whether the facilitation offered by the Hague System constituted the best way, given the other issues the Committee was dealing with, in particular Article 3. The Representative said that he would further elaborate on Article 3 when the Committee would discuss it.

337. The Chair suspended the discussion on Article 4(2)(b).

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338. The Chair, resuming the discussion on Article 4(2)(b), gave the floor to the Delegation of China.

339. The Delegation of China, raising a concern regarding Article 4(2)(b), explained that China had previously reserved its position, which had been documented in a footnote. As there was no specific proposal during the discussion of that article, the footnote had been removed. Noticing that several other Member States shared similar views on that provision during the discussions held over the course of the week, the Delegation indicated its intention to propose modifications to that article for the Committee's consideration.

340. The Chair, acknowledging the announcement of the Delegation of China to introduce a new proposal, indicated that the new proposal would be presented under Cluster E.

341. The Chair suspended the discussion on Article 4(2)(b).

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342. The Chair resumed the discussion on Article 4(2)(b) and gave the floor to the Delegation of China.

343. The Delegation of China, noting that it had reserved its position on Article 4(2)(b) at the thirtieth session of the SCT, informed about the withdrawal of the reservation, in the spirit of cooperation.

344. The Chair noted that the SCT decided to delete the footnote to that article.

(ii) Article 6 concerning the duration of the grace period for layout designs of integrated circuits and the acts of disclosure that would give rise to a grace period

345. The Chair opened the discussion on Article 6 and asked the Delegations of South Africa and China whether they maintained their reservations and could make a proposal.

346. The Delegation of South Africa informed the Committee of the withdrawal of its reservation.

347. The Delegation of China felt that the provision was too vague, which would lead to the public not being able to judge whether a design had already entered the public domain. This would increase the risk of conflicts and costs for society. Noting that the PLT did not include an analogous provision, and to avoid differences, the Delegation proposed to limit the provision to a disclosure made for the first time for the purpose of public interest, for the first time at an international exhibition at given academic or technological activities or by a third party without the consent of the applicant.

348. The Chair, after having invited the Delegation of China to submit its proposal to the Secretariat, suspended the discussion on Article 6.

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349. The Chair, resuming the discussion on Article 6, asked the Delegation of China whether it could present its proposal.

350. The Delegation of China indicated that it needed more time to review its proposal and report back to the Chair later.

351. The Chair invited the Delegation of China to revert to its proposal at a later stage.

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352. The Representative of AIPPI, stressing the importance of Article 6 of the draft Treaty, mentioned that the current language of that article was too narrow to achieve the goal of a grace period, namely that an applicant's own disclosure during the grace period did not work to its disadvantage. The Representative signaled that many jurisdictions did not only require "novelty" or "originality", but they also required, for instance, novelty and individual character, novelty and creativity, novelty and distinctly different or novelty and a particular appearance. For the Representative, all those different phraseologies needed to be considered by the Committee so that Article 6 achieved its goal of being comprehensive enough, not only with respect to each Member State's national law, but also to protect the interests of each national to ensure that if they were filing abroad, they would not be penalized because the applicable law did not fit within the particular specific words of "novelty" and "originality". The Representative added that the issue could be fixed by stating that the disclosure should be without prejudice to the eligibility for registration of the industrial design and believed that such a language would achieve the goal of Article 6 of the DLT.

353. The Representative of MARQUES echoed the comments made by the Representative of AIPPI in relation to the grace period under Article 6 and agreed that the wording relating to novelty and/or originality should be reviewed and discussed, as it could be too narrow if, where applicable, the design system of one of the Contracting Parties provided for an eligibility criteria for protection other than novelty and originality.

354. The Chair suspended the discussion on Article 6.

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355. The Chair, resuming the discussion on Article 6, invited the Secretariat to clarify the details of the reservation.

356. The Secretariat recalled that, at the thirtieth session of the SCT, the Delegation of China made a reservation with respect to the acts of disclosure that gave rise to the grace period, proposing that they should be limited to “disclosure at an exhibition, disclosure at a prescribed academic or technological meeting or disclosure by any person without the consent of the applicant”. According to the Chair’s working method, if the Delegation of China were to make a proposal that would receive support from one delegation, it would be included within brackets in Article 6 and the footnote in question would be removed from the text.

357. The Chair gave the floor to the Delegation of China.

358. The Delegation of China maintained the reservation and informed the Committee that it had submitted a proposal to the Secretariat.

359. The Chair confirmed that the proposal from the Delegation of China had been received by the Secretariat and was being prepared for distribution to all delegations.

360. The Delegation of Brazil, requesting clarification on the effects on the calculation of time limits of the footnote to Article 6 shown with an asterisk, wondered how that footnote would be reflected in the Basic Proposal.

361. The Secretariat, explaining that the footnote did not identify a proposal or a reservation, said its purpose was to clarify how time limits were to be calculated. The Secretariat further explained that the clarification could be included in another appropriate place in the text, for instance in a provision relating to how time limits should be defined.

362. The Delegation of Brazil, acknowledging the objective to close the gaps, indicated that the text of the footnote could potentially be seen as a gap. The Delegation suggested including the following text as a third paragraph in Article 1*bis* “General Principles”: “Time limits expressed in months in the Treaty and Regulations can be calculated by Contracting Parties in accordance with the national law.” Explaining that that proposal was based on an understanding shared by the SCT, the Delegation believed that the inclusion of the text in the General Principles would provide clarity.

363. The Secretariat, noting that Article 6 was not the only article referring to time limits expressed in months, suggested incorporating the text into Article 1 “Abbreviated Expressions”, as a new item (xxiv). It could be construed as per the lines of item (xxiii), to clarify from the outset that, where time limits were being expressed in months in the Treaty and regulations, they could be calculated by Contracting Parties in accordance with their national law.

364. The Delegation of South Africa reiterated its reservation on the grace period concerning layout designs of integrated circuits, in respect of which a grace period of two years would apply. The Delegation clarified that South African national law distinguished between aesthetic and functional designs. That distinction was the reason behind the two-year grace period for disclosure for layout designs of integrated circuits in South Africa.

365. The Chair recalled that the footnote mentioning the reservation of the Delegation of South Africa had been removed, but that the SCT decision was without prejudice to the Delegation of South Africa’s right to express a reservation in the diplomatic conference. The Chair pointed out that the Delegation’s intervention would be reflected in the report of the SCT Special Session.

366. The Chair suspended the discussion on Article 6.

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367. The Chair, resuming the discussion on Article 6, gave the floor to the Delegation of China.

368. The Delegation of China said that the DLT should reflect the concerns and interests of each country in a balanced manner and that the Treaty should be flexible enough to accommodate relevant concerns of each country. That would also enable a smoother ratification of the Treaty in different countries. The Delegation held that the article concerning the grace period for novelty was very important because it dealt with the assessment of novelty, for which countries adopted different methodologies, some of which were not reflected in the current text. In a spirit of cooperation, the Delegation had proposed different options to Member States in the application of the grace period for novelty, and expressed its readiness to discuss the proposal to make the article more inclusive and reduce any reservations it could raise. The Delegation therefore proposed the following text with respect to Article 6: “[*(1)*] [...] [*(2)(a)*] *A Contracting Party whose law, at the time it becomes party to this Treaty, provides that the grace period under paragraph (1) is triggered by acts other than those referred to in paragraph (1) may, in a declaration, notify the Director General that the grace period shall be triggered in the territory of that Contracting Party only by those acts. (b) The acts that may be notified pursuant to subparagraph (a) are the following: (i) A disclosure of the industrial design made for the first time for the purpose of public interest when a state of emergency or an extraordinary situation occurred in the country; (ii) A disclosure of the industrial design made for the first time at an international exhibition, at prescribed academic or technological activities; (iii) A disclosure of the industrial design by another person without the consent of the applicant*”.

369. The Delegation of India, announcing that it also intended to make a proposal on Article 6, which mostly aligned with the proposal by the Delegation of China, expressed support for that proposal.

370. The Delegation of the Russian Federation indicated that it would prefer not to specify how and under which circumstances the disclosure of information should be made. However, to reach consensus on that matter and advance the discussion, the Delegation stood ready to show flexibility and agreed with the proposal put forward by the Delegation of China, since it offered flexibility to Contracting Parties.

371. The Delegation of Iran (Islamic Republic of) supported the proposal made by the Delegation of China.

372. The Delegation of the United States of America indicated that it was not able to support the proposal put forward by the Delegation of China as, in its opinion, it created more divergent practices, in contradiction with the streamlining objective of the Treaty.

373. The Chair noted that:

- the SCT decided to delete the footnote containing the reservation by the Delegation of South Africa;
- the Delegation of China made a proposal in relation to the footnote in that article;
- the SCT decided to reflect the proposal made by the Delegation of China in the main text of Article 6 as an option appearing in brackets as follows:

[*(1)*] [...]

[(2)(a) A Contracting Party whose law, at the time it becomes party to this Treaty, provides that the grace period under paragraph (1) is triggered by acts other than those referred to in paragraph (1) may, in a declaration, notify the Director General that the grace period shall be triggered in the territory of that Contracting Party only by those acts.

(b) The acts that may be notified pursuant to subparagraph (a) are the following:

(i) A disclosure of the industrial design made for the first time for the purpose of public interest when a state of emergency or an extraordinary situation occurred in the country;

(ii) A disclosure of the industrial design made for the first time at an international exhibition, at prescribed academic or technological activities;

(iii) A disclosure of the industrial design by another person without the consent of the applicant.

(c) Any declaration notified under subparagraph (a) may be withdrawn at any time.]

- the SCT decided to delete the footnote to that article.

(iii) Article 12(2) concerning relief in respect of time limits

374. The Chair opened the discussion on Article 12(2) and asked the Delegation of India whether it maintained its reservation and could make a proposal.

375. The Delegation of India, reiterating its reservation on the mandatory nature of Article 12(2), proposed an alternative option under which the provision should be optional. In the Delegation's viewpoint, the matter should be left to the governing laws and regulations of the office of the Contracting Parties.

376. The Delegation of China lent its support the revision of Article 12(2) and the proposal to include the word "may" in the provision to maintain flexibility.

377. The Chair noted that:

- the Delegation of India made a proposal in relation to the footnote to that article;
- the SCT decided to reflect the proposal made by the Delegation of India in the main text of Article 12(2), as an alternative option appearing in brackets, as follows:

(2) [Continued Processing] Where an applicant or holder has failed to comply with a time limit fixed by the Office of a Contracting Party for an action in a procedure before the Office, and that Contracting Party does not provide for the extension of a time limit under paragraph (1)(ii), the Contracting Party [shall] [may] provide for continued processing with respect to the application or registration and, if necessary, reinstatement of the rights of the applicant or holder with respect to that application or registration, if: [...]

- the SCT decided to delete the footnote to that article.

(iv) Article 14(2) concerning restoration of the right of priority

378. The Chair opened the discussion on Article 14(2) and asked the Delegation of China whether it maintained its reservation and could make a proposal.

379. The Delegation of China, maintaining its reservation, sought clarification as to whether the DLT would allow for Member States' reservations.

380. The Secretariat drew the attention of the Committee to the administrative clauses and final provisions, which included an Article 29 entitled "Reservations". At present, that provision did not contain any text. The Secretariat explained that reservations reflected a form of negotiation technique. Whereas the diplomatic conference would try to achieve a text agreeable to all members, it could happen that certain delegations could not join a consensus or decision on a draft text. At that point in time, the diplomatic conference could then decide to introduce certain reservations to certain provisions or transitional provisions to offer flexibility to members to adhere to the Treaty at a later stage, taking into consideration the specific situation in their laws. The Secretariat underlined the fact that reservations were usually considered as the last resort to resolve an issue. Whether a reservation went into the text depended on the decision of the diplomatic conference. That explained the fact that reservations were at present left open. The situation could be revisited while discussing the administrative clauses and final provisions during the diplomatic conference. Reservations would have to be proposed by Member States and agreed upon by the diplomatic conference to be reflected in the Treaty.

381. The Delegation of China thanked the Secretariat for the clarification.

382. The Chair recalled that, under Cluster A, Article 14(2) had already been examined by the Committee and that the SCT had decided to transfer the proposal from the Delegation of India from the footnote to the main text of the provision, as an alternative option appearing in brackets. The Chair wondered whether that would address the concern expressed by the Delegation of China.

383. The Delegation of China requested additional time to consider the matter.

384. The Chair suspended the discussion on Article 14(2).

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385. The Chair, resuming the discussion on Article 14(2), asked the Delegation of China whether it maintained its reservation, in light of the proposal of the Delegation of India that had already been incorporated in the text.

386. The Delegation of China replied that, in the spirit of cooperation and to promote progress, it would be willing to withdraw its reservation regarding that article.

387. The Chair noted that the SCT decided to delete the footnote containing the reservation by the Delegation of China.

(v) Article 20 concerning changes in names or addresses

388. The Chair opened the discussion on Article 20 and asked the Delegation of India whether it maintained its reservation and intended to make a proposal.

389. The Delegation of India reiterated its position, as previously stated at SCT/33, that Contracting Parties should be given flexibility in deciding the mode of filing requests for changing names and addresses. Therefore, the Delegation proposed that the term "shall" be replaced by the term "may" in Article 20(1).

390. The Chair noted that the SCT decided to delete the footnote containing the reservation by the Delegation of India.

D. Administrative provisions and final clauses that are subject of alternative options or proposals supported by several delegations, or the subject of individual proposals

391. The Chair opened the discussion on the provisions listed under Cluster D.

392. The Delegation of Denmark expressed the view that the mandate of the SCT Special Session did not include discussions on the administrative provisions and final clauses. As it had understood that those discussions would take place within the Preparatory Committee, the Delegation informed the Committee that different delegates from Denmark would attend the Preparatory Committee. The Delegation therefore counted on the Committee's indulgence and requested the postponement of the discussions on that topic.

393. The Delegation of Germany, understanding that some delegations had different delegates for the two committees, lent its support to the postponement request of the Delegation of Denmark.

394. The Chair suggested to leave the review of the provisions under Cluster D for the time being and to move to the discussion on the provisions under Cluster E.

395. The Delegation of Denmark thanked the Chair and the Committee for their flexibility and the proposal by the Chair that would allow contacts with the whole Delegation of Denmark.

396. The Chair noted that provisions under Group D would be considered by the Preparatory Committee.

E. Other provisions that are the subject of a proposal

Discussions on the working method with respect to proposals under Cluster E

397. The Chair recalled that the Committee still needed to decide the manner to deal with the new proposals under Cluster E. In light of the WIPO General Assembly's mandate, the Chair observed that, during the Special Session, the Committee had the opportunity to discuss - and possibly reach agreement on - proposals, which, if not discussed during the session, would anyway be discussed during the diplomatic conference. Therefore, to prepare a text as clean as possible, the Chair proposed to look at each new proposal put forward by Member States. If a proposal was supported by one or more delegations, the Committee should proceed in the same way already applied to other proposals and include the text in brackets. If the proposal did not receive support from any delegation, then it would not appear in the text. The Chair reminded the Committee that the proposed working methodology was notwithstanding the right of any delegation to introduce a proposal in due time during the diplomatic conference.

398. The Delegation of the European Union, speaking on behalf of the European Union and its member states, expressed support for the methodology proposed by the Chair.

399. The Delegation of Ghana, speaking on behalf of the African Group, informed the Committee that the Group would need to further consult on the proposed methodology.

400. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, was in favor of the methodology suggested by the Chair.

401. The Delegation of Venezuela (Bolivian Republic of), speaking on behalf of GRULAC, also requested time to hold consultations within the Group.

402. The Delegation of Poland, speaking on behalf of the CEBS Group, stated that it could go along with the methodology proposed by the Chair.

403. The Delegation of Kyrgyzstan expressed support for the methodology proposed by the Chair.

404. The Delegation of Germany lent its support to the statement made by the Delegation of the European Union, on behalf of the European Union and its member states, and to the Chair's proposed methodology. In the Delegation's opinion, that methodology was a wise approach as it did not face the problem of distinguishing old and new proposals and treated all proposals in the same way. There was an advantage to apply the same methodology both to old and new proposals and allow the Committee to make good progress.

405. The Delegation of Japan fully supported the proposed methodology and respected the Chair's efforts to move forward efficiently.

406. The Delegation of Nigeria, as well as the Delegation of Ghana, on behalf of the African Group and the Delegation of Venezuela (Bolivian Republic of), on behalf of GRULAC, expressed the need to think about the proposed methodology and to consult with their capitals. The Delegation expressed concerns about the proposed methodology as it conflated provisions that had been the subject of careful deliberation, reflection and discussions for years. For the Delegation, since the boundary lines, interests and differences were clear, delegations had had time to consult with their capitals, to debate and to figure out the areas of compromise and consensus. Hence, the Delegation was of the view that treating those new proposals as equal to the wideness of the debates that the Committee had had over the years over the existing proposals, was both inequitable and procedurally problematic.

407. The Chair, inviting the delegations to discuss the matter, suspended the discussion on the working method with respect to proposals under Cluster E.

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408. The Chair resumed the discussion on the working method with respect to proposals under Cluster E.

409. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asia and Pacific Group, expressed its gratitude to all Groups' coordinators that had collaborated with the Group of the Asia and Pacific Group to find a possible way forward in dealing with new proposals, based on common grounds and understanding. Emphasizing the value of allowing all Member States the opportunity to listen to any new proposal and related-explanations, the Delegation suggested that those new proposals could be presented to the plenary meeting. The Delegation further suggested that proposals that gained consensus could be included in the existing text within brackets, while proposals that did not enjoy consensus could be gathered in an information document or annex, to be submitted along with the Basic Proposal. The Rules of Procedure governing the diplomatic conference would then apply, should the Member States wish to introduce them at the diplomatic conference. Considering the proposal to be fair, as it allowed Member States to understand the rationale of the proposals and, when necessary, take it back to their capitals for further discussion in preparation for the diplomatic conference, the Delegation stressed the fact that it respected both the right of all Member States to present new proposals and the mandate of the Special Session to close existing gaps through a process of mutual dialogue and understanding. Expressing the hope that the proposal would enjoy consensus, the Delegation reiterated its appreciation to the Groups' coordinators that had willingly supported that joint effort.

410. The Chair, emphasizing the importance of taking into account the mandate received from the WIPO General Assembly to address existing gaps in the text, expressed the intention to be open for discussion of new proposals, as it was crucial to ensure transparency and anticipate matters that might arise during the diplomatic conference. Acknowledging the interests of all represented countries, the Chair believed that a decision against having that discussion

wouldn't be fair or responsible for his role as Chair of that Special Session. Requesting Member States to show flexibility, which had been instrumental in advancing discussions thus far, the Chair proposed to convene an informal meeting of coordinators plus two representatives for each Group and to reconvene afterwards to discuss the outcomes of that meeting.

411. In reply to a clarification request by the Delegation of China, the Chair confirmed that discussion of pending issues under Clusters A, B, C and D would be continued after the discussion of new proposals, emphasizing that the Chair's proposed Working Method for Items 6 and 7 of the Agenda would continue to apply to those pending issues.

412. The Delegation of Nigeria expressed concern regarding the need for sufficient time to work on closing the gaps in the existing document, and conveyed its trepidation about the potential derailment from the work on the main document to discussions of new issues, particularly when outstanding issues were still pending. The Delegation mentioned that it wanted to formally raise that concern and emphasized the importance of not losing sight of the main task during the Special Session.

413. The Chair suspended the discussion on the working method with respect to proposals under Cluster E.

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414. The Chair, resuming the discussion on the working method with respect to proposals under Cluster E, announced that, after a constructive informal meeting and discussion with all delegations, with the aim of finding a way forward for a proposal that could be approved by all delegations, the Delegation of Venezuela (Bolivarian Republic of) would present that proposal on behalf of GRULAC. Subsequently, the regional Group coordinators were invited to share their respective views.

415. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, expressed the willingness to advance the work. However, highlighting the absence of a clear methodology with consensus from all members and considering some suggestions that had arisen during those discussions, the Delegation proposed that countries be given the opportunity to present new proposals and once the content of those proposals would be known, a collective decision could be made on how to address them. That approach would help save time by avoiding the need to discuss proposals without prior knowledge of their substance, as the Committee should continue to make progress. The Delegation suggested to address the new proposals after completing the discussions on Clusters A, B, C and D.

416. The Chair, informing the Committee of the fact that a meeting had taken place with Group coordinators, during which Group B, the CEBS Group and the African Group had expressed their agreement with the proposal put forth by the Delegation of Venezuela (Bolivarian Republic of), on behalf of GRULAC, inquired whether the APG was ready to provide a statement to the Committee.

417. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asia and the Pacific Group, expressed its gratitude to GRULAC for the constructive proposal and conveyed its willingness to support it.

418. The Chair suspended the discussion on the working method with respect to proposals under Cluster E.

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419. The Chair, resuming the discussion on the working method with respect to proposals under Cluster E, informed the Committee that an agreement had been found on the

methodology relating to the proposals under that cluster. New proposals examined under Cluster E would be included in the text of the draft Articles and draft Rules, if they received support from at least one delegation. The proposal would then be enclosed within brackets, with a footnote stating the delegation making the proposal, followed by an indication of delegations that supported and those that did not support the proposal. Additionally, those proposals would be listed in an annex.

Examination of other provisions that are the subject of a proposal

420. The Chair opened the discussion on other provisions that are the subject to a proposal under Cluster E, indicating that the new proposals would be presented in the order of submission by delegations and assessed in accordance with the agreed-upon process. Each proposal would be subject to a separate discussion. Then, the Chair invited the Secretariat to introduce the point under consideration.

421. The Secretariat referred to three proposals put forward respectively by the Delegations of Japan (document SCT/S3/6), the United States of America (document SCT/S3/7) and the Republic of Korea (document SCT/S3/8).

Proposals made by the Delegation of Japan, as contained in document SCT/S3/6

422. The Chair opened the discussion on the proposals of the Delegation of Japan, as contained in document SCT/S3/6, and invited the Delegation of Japan to present its proposals.

423. The Delegation of Japan indicated that the purpose of its proposals was to further narrow existing gaps in the interpretation of the draft Articles and Regulations of the DLT. The first proposal suggested a note clarifying Article 1(viii), along the following lines: "It is understood that the words "procedure before the Office" would not cover judicial procedures under the applicable law. It takes account of the variety of legal systems between offices. In particular, in many countries, there is a distinct division between the "Courts" and the "Office". In others the distinction is less clear in that judicial bodies are formally part of the Office. The words "judicial procedures" are intended to include the procedures of internal bodies where those bodies are covered by the general administrative law but not where they are covered by the general judicial law". Considering that the DLT had the same structure and purposes as the PLT and STLT, the Delegation was of the opinion that the sentence "procedure before the Office" in Article 1(viii) of the DLT would not cover judicial procedures under the applicable law. A similar clarification was proposed for inclusion in the Resolution by the Diplomatic Conference, in line with the PLT and STLT. In Article 6, the Delegation suggested to harmonize the grace period for the benefit of users, by deleting the words "six or" from Article 6, which would read as follows: "A disclosure of the industrial design during a period of 12 months preceding the date of filing of application or if priority is claimed the date of priority". Considering that when the subsequent application was filed shortly after the priority date it would be difficult or even impossible for offices carrying a substantive examination to reopen or examine cases after such examination, the Delegation proposed to insert a paragraph (3) under Rule 12, providing for an exception: "[Exception] No contracting party shall be obliged to provide for the correction or addition of a priority claim under Article 14(1), where the request referred to in Article 14(1)(i) is received after the substantive examination of the application has been completed." The Delegation felt that that would benefit applicants wishing to protect and register their industrial designs as early as possible. Moreover, the Delegation suggested adding a note under Article 14, reading as follows: "This paragraph does not necessarily intend to affect the result of substantive examination, that is, a judgement made by the Office on whether or not the industrial design can be registered. A Contracting Party may disregard the request for the correction or addition of a priority claim with respect to a subsequent application for which its Office finished substantive examination (– see Rule 12(3) [Exception]). Otherwise, some Offices would have to wait for the

period of priority referred to in the Paris Convention to expire with respect to all applications, as the correction or addition of priority claims which can be filed during this period could affect the registrability of industrial designs. Such Office's choice of practice would not benefit applicants who would like to receive the result of substantive examination from the Office, and have their industrial design registered as early as possible." Noting that the current draft of the DLT did not set a deadline for filing priority documents, such as the priority certificate issued by the first country, the Delegation held the view that that precluded offices and applicants from applying a standard procedure and that applicants might be prevented from benefitting from the priority of an earlier application, due to a lack of evidence or documents substantiating the priority.

Therefore, the Delegation proposed adding a second note under Article 14(1) reading as follows: "A Contracting Party should note the relationship between the time limit prescribed in Rule 12(2) for filing a request for the correction or addition of a priority claim under this provision and the time limit prescribed under its own law for filing evidence in support of the declaration that may be required pursuant to Article 4 of the Paris Convention (see Article 3(1) (vii)) such as priority documents, and, if necessary, take an appropriate action by taking into account the purpose of this provision. For example, when the correction or addition of a priority claim under this provision causes a change in the priority date, the priority claim should not be disregarded on the grounds that the time limit for filing such evidence has expired. Otherwise, there is no point in allowing the correction or addition of a priority claim in the above-mentioned example." Moreover, the Delegation indicated that some countries, including Japan, provided for a "related design system", allowing for the protection of multiple variations of a single design concept. The related design system was therefore an exception to the prohibition of double patenting under the Japan Design Act, under which a similar design should be rejected based on the prior design. The Delegation explained that such system was subject to certain limitations to avoid double patenting after registration and that the main design and its related designs could not be separated during their validity period. In addition, the principal design and its related designs should always be registered in the name of the same holder, and the principal design could not be transferred separately from its related designs. Therefore, the Delegation proposed adding notes to Articles 15, 16 and 19, allowing offices to require users to file a collective request for recording in respect of several industrial designs. The Delegation gave the example of the proposed note under Article 15: "Paragraph (4) does not exclude the possibility of requiring a collective request for several "related" registrations in offices. A Contracting Party may, as provided for under its applicable law, require the collective request for recording an exclusive license in respect of several "related" designs." Finally, the Delegation proposed adding a new note to Articles 3, 10 and 11, with reference to note 6.15 relating to Article 6 of the PLT, allowing Contracting Parties to require users that they include in communications the indications necessary for Offices to collect fees. For instance, a note relating to Article 10 would read as follows: "Paragraph (7). A Contracting Party is permitted to require indications which are necessary for Offices to collect fees, such as the amount of fees and the method of payment, to be contained in communications which are referred to in Article 1(1)(a)(ix), including applications and requests for renewal. In practice, such information is necessary for Offices to collect required fees."

424. The Delegation of the Russian Federation, thanking the Delegation of Japan for the explanations, sought confirmation from the Secretariat of whether the notes to the articles were subject to discussion or not during the Special Session, as over the past days the Committee had neither discussed the notes nor sought to amend them.

425. The Secretariat clarified that the notes had been prepared by the Secretariat and were neither subject to negotiation nor adoption, since the Committee only negotiated the text of the Treaty and the regulations. The Secretariat indicated that the notes could be published in an information document, as an aid for interpretation.

426. The Delegation of the Russian Federation requested the Delegation of Japan to update their proposal by removing the amendments on the notes.

427. The Delegation of the United States of America, lending its support to the proposals made by the Delegation of Japan concerning Article 6 and Rule 12(2), held the view that they both aimed at simplifying and streamlining formalities for designs. Regarding Rule 12(2), the Delegation indicated that, as a substantive examination office, it saw merit for further discussion, as the proposal by the Delegation of Japan was logical and constituted an improvement of language.

428. The Delegation of Switzerland, thanking the Delegation of Japan for the proposals and lending its support to the proposed note under Article 1, said it shared the understanding concerning the term "Office". The Delegation moreover considered that the proposal under Article 6 would clearly constitute a simplification and clarification that the grace period was 12 months. The Delegation did not comment on the proposals concerning examining offices, which was not the case of Switzerland.

429. The Delegation of Niger noted that, while the proposals from the Delegation of Japan were relevant, it needed time to carefully examine them and understand their implications.

430. The Delegation of Canada, supporting the proposals made by the Delegation of Japan, considered that the provisions served to modernize the Treaty in view of the many developments in the field of industrial designs since the Treaty had been last examined.

431. The Delegation of Japan expressed its willingness to discuss the notes and requested the Secretariat to amend them according to the proposals made.

432. The Delegation of the Republic of Korea lent its support to the proposals made by the Delegation of Japan and considered that the proposed deletion of the six-month option for the grace period under Article 6 would provide users with a more predictable industrial design system. In addition, the Delegation indicated that given the time required before the final decision of the Office, claims of priority might be filed after the conclusion of the substantive examination, and held the view that the proposal under Rule 12 could thus ensure consistency in examination. Indicating that the Korean national law prescribed three months from the filing date for the submission of priority documents, the Delegation acknowledged the need to allow users to request the correction or addition of a priority claim as proposed under Article 14. Finally, the Delegation supported the proposal to allow collective requests for multiple, related designs, as that was an essential matter in the Republic of Korea.

433. The Delegation of the United Kingdom thanked the Delegation of Japan for the proposals. Indicating that the UK IP Office performed both administrative and judicial functions, the Delegation endorsed the proposal to provide clarification under Article 1, adding that a confirmation that judicial functions performed by national offices did not fall within the scope of the DLT, in line with both the PLT and the STLT, would be welcome. Under Article 14, the Delegation agreed with the principle of the proposal by the Delegation of Japan that there should be an additional exception to the moment a priority could be claimed. The Delegation felt that limiting the filing of a priority claim either to the completion of the substantive examination, or prior to publication of the application, would provide certainty for third parties and avoid unnecessary delay in the registration of a design.

434. The Delegation of Australia, echoing the comments made by the Delegation of the United Kingdom, lent its support to the proposal made by the Delegation of Japan concerning Article 1 and held the view that it would provide valuable certainty and clarity in the interpretation of the text. The Delegation also supported the proposal under Article 6.

435. The Delegation of India indicated that it did not support the proposal to amend Article 6 by deleting the terms "six months" and was of the opinion that both options of six and 12 months should be retained as such. In addition, the Delegation requested more time to study the other proposals.

436. The Delegation of Nigeria, while acknowledging that the proposal under Article 1 was consistent with the STLT and the PLT, echoed the concern raised by the Delegation of the United Kingdom concerning judicial procedures. It requested clarifications about the terms “judicial procedures” and whether they related only to court procedures or also included quasi-judicial procedures within offices, such as intra-office contestations over priority or post filing disputes. Furthermore, the Delegation felt that for countries with less mature examination systems and high development priorities, the twelve-month grace period under Article 6 was upsetting, particularly for downstream innovators who needed greater certainty at an early stage. The Delegation stated that since the Treaty’s global user base was much larger and more diverse than the PLT’s user base, it was reluctant to delete “six or”. Concerning the restoration of the priority right and the exception excluding the obligation to provide for corrections or additions to a priority claim under Article 14, the Delegation pointed out that in the Office’s practice, when the substantive examination was completed, corrections could be made during a certain period, and asked whether the intention of the proposal was to exclude that kind of national rule, which offered discretion to the Office. Finally, noting the overlap between the principal and the related design, the Delegation recalled that it had proposed not to remove the requirement for a claim in Article 3, and indicated that the Office had a strict policy against the use of a design to essentially reinforce an underlying design which may not be as distinctive. Since the claims helped the Office to determine what were the legitimate boundaries of the underlying or main design, the Delegation asked how that decision could be made internally by the Office in the absence of a description or claim.

437. The Delegation of Japan clarified, regarding Article 1, that when the application did not comply with the requirements set out in the guidelines, the Office had to reject it. Therefore, applicants could appeal to the Office under general administrative law, in some cases on formal examination, rather than under Design Law. As was the case for the PLT or STLT, it thus appeared necessary in some instances to rely on general administrative law within an office. The Delegation indicated that the determination of whether the substantive examination had been completed depended on whether the registration had been issued and the registration paid and in such a case, it was almost impossible for the Office to invalidate the registration. Therefore, the Delegation considered that the exception under Article 14 was necessary and that applicants or right holders would not need to file the priority claim documents again, since the registration had already been issued. Finally, the Delegation clarified that the Japanese Design Act did not provide for a claim for design applications, although it existed for utility patent applications.

438. The Representative of the JPAA supported all the proposals made by the Delegation of Japan. The Representative considered that those proposals would clarify design application practices under the DLT and further enhance the value of the Treaty from the perspective of companies and IP practitioners, by increasing predictability in the design system in each Contracting Party.

439. The Representative of JTA lent its support to all the proposals made by the Delegation of Japan and held the view that they would allow users to smoothly seek design protection in the Contracting Parties.

Proposals made by the Delegation of the United States of America, as contained in document SCT/S3/7

440. The Chair opened the discussion on the proposals of the Delegation of the United States of America, as contained in document SCT/S3/7 and invited the Delegation to present them.

441. The Delegation of the United States of America stated that, bearing in mind the Treaty’s objective to simplify and streamline formalities, and considering the constant evolution of industrial design rights, it had endeavored to draft the proposed provisions in such a way as to

make them precise and easy to understand, while adapting them to the different design systems in the world. The Delegation proposed to insert a provision concerning the term of protection, written broadly to take account of the various systems, whether they were registration systems providing for three successive terms of five years with renewals, or systems with a single 15-year term. The Delegation pointed out that the starting point could vary to take account of the different systems around the world. Noting that technology had progressed significantly, the Delegation underlined the fact that filings were now largely electronic, which was particularly useful for SMEs, especially in rural areas, where they could not always access to various infrastructures but could electronically access to IP Offices. The Delegation further held that, for the sake of transparency, it would be very useful to maintain a database enabling designers to know whether design rights existed. However, that would not be an obligation that offices should assume from an infrastructure perspective, but rather a matter of making their information and data available, such as provided for in the Global Design Database or the European Union Design View, to which a number of countries already participated. Recalling that up to 26 countries participated in the WIPO Digital Access Service (DAS) for electronic exchange of priority documents, the Delegation explained that while the infrastructure was already in place, the WIPO DAS was not the only way and that any type of priority document exchange could be chosen, as long as the information was made available. Regarding the proposed addition to Rule 2, the Delegation considered that partial designs played an important role in the modern digital world, preventing copycats from making minor changes to a design and escaping infringement. With the proposal, designers could thus ensure that the visual impression essential to their designs was protected. Referring to the proposal made by the Representative of AIPPI in connection with Article 6 and the proposal made by the Delegation of Japan, the Delegation said that it saw great merit in that proposed text and wished to take it on board with a minor change by adding the word “public” after the word “a”.

442. The Delegation of Canada supported the proposals put forward by the Delegation of the United States of America and stated that they modernized the Treaty. In particular, the provision for the electronic exchange of priority documents had updated the Treaty. The Delegation also supported AIPPI’s proposal for Option B, as amended by the Delegation of the United States of America to include the word “public”, considering that wording to be a useful addition for the benefit of stakeholders.

443. The Delegation of Ghana, speaking on behalf of the African Group, stated that it could not support any of the proposals. Regarding Article 9*bis* on the term of protection, the Delegation considered that since the Treaty dealt with formalities, the proposed provision was not appropriate as it related to substance. In addition, it was inconsistent with the laws of certain Member States in the African region. Noting from the proposed wording that the provisions were mandatory, the Delegation therefore was not able to support them.

444. The Delegation of the United Kingdom supported the proposals made by the Delegation of the United States of America and endorsed its comment concerning the passing of time resulting in gaps in the Treaty’s effectiveness for current users. In addition, the Delegation echoed the comments provided by the Delegation of Canada on the need to ensure that the Treaty was modernized and adapted to contemporary times.

445. The Delegation of Japan expressed its appreciation to the Delegation of the United States of America and supported the proposals concerning Article 9*bis* and Rule 2, which would increase the benefits for applicants and right holders and promote the use of design rights worldwide.

446. The Delegation of Switzerland, thanking the Delegation of the United States of America for the proposals, requested clarification on Article 9*ter*, as to whether the “system for electronic application” included the possibility to file a design by a simple email or implied that Contracting Parties should provide for an online tool for filing design applications.

447. The Delegation of the United States of America clarified that the intention of the proposal was to provide flexibility for electronic means to file applications and said it would welcome any drafting contribution to better capture that purpose. In addition, it expressed readiness to consider addressing certain issues within the Regulations. The Delegation felt it important for the Committee to take into account the problems associated with electronic technology, as well as the significance of electronic technology in enabling applicants to file applications from anywhere in the world.

448. The Delegation of Germany, thanking the Delegation of the United States of America for the proposals, stated that some systems, like all European systems including the German one, operated on the basis of design renewal with the payment of fees. While supporting the proposed Article 9*bis*, the Delegation expressed the view that the wording should be clear about how the renewal upon payment of the fees could be achieved.

449. The Delegation of Zimbabwe expressed concern about the term of protection, as it related to a substantive matter and would be inappropriate in a formality Treaty. Moreover, the proposed minimum duration of 15 years would imply that the term could be extended and therefore would be unacceptable to some delegations. The Delegation held the view that the Treaty should ensure a balance in terms of access to rights and that mandatory requirements concerning an electronic system would place an unjustified burden on offices and Member States, given the different levels of technological development.

450. The Delegation of Iran (Islamic Republic of) supported the position expressed by the Delegation of Ghana, on behalf of the African Group, holding the view that substantive issues should not be introduced in the draft DLT.

451. The Delegation of Colombia indicated that its national legislation did not provide for the protection of a section or part of a product and that only the whole design could be protected.

452. The Delegation of Switzerland supported the proposal made by the Delegation of the United States of America.

453. The Delegation of the Republic of Korea lent its support to all the proposals made by the Delegation of the United States of America, which, in its opinion, would contribute to the modernization of the industrial design system. In particular, the proposal for the electronic exchange of priority documents would reduce the time and costs involved in preparing and submitting documents, making it easier for applicants. Furthermore, the Delegation considered that the partial design constituted a mechanism that extended the scope of eligible subjects for design protection, providing designers with broad and flexible options for effectively protecting their designs.

454. The Delegation of the United States of America, replying to the comments made by the Delegation of Zimbabwe, clarified that the intention of the proposal was not to add any requirement in terms of infrastructure or computing technology, but to provide for functionality and enable the exchange of information. Likewise, since databases referred to in Article 9*ter* already existed, the aim of the proposal was to allow for the sending of information. The Delegation expressed its readiness to discuss ways to address the concerns expressed by other delegations and improve the proposed language.

455. The Delegation of Australia, expressing support for the statements of the Delegations of Canada and the United Kingdom, calling for a modern and efficient Treaty for the benefit of users, endorsed the proposals concerning Article 6, Article 9*ter* and Article 14*bis*.

456. The Delegation of Sweden echoed the concerns raised by the Delegation of Germany.

457. The Delegation of Zambia aligned itself with the statement made by the Delegation of Ghana, on behalf of the African Group, and recalled that in most sub-Saharan countries the laws did not provide for the minimum period envisaged in the proposal. Insofar as Article 26 of the TRIPS Agreement provided for a minimum term of protection of 10 years, the Delegation believed that the proposal for a minimum term of protection of 15 years constituted a TRIPS-plus provision. It considered that before accepting such a position, capitals should carry out a new consultation to take an informed decision, but as it stood, the Delegation did not support the proposal on that point.

Proposals made by the Delegation of the Republic of Korea, as contained in document SCT/S3/8

458. The Chair opened the discussion on the proposals of the Delegation of the Republic of Korea, as contained in document SCT/S3/8, and invited the Delegation to present them.

459. The Delegation of the Republic of Korea indicated that its proposal concerned the addition of a sentence to the note on Article 5(4). The Delegation recalled that the purpose of the proposal was to clarify that the notification and time limits laid down in Article 5(4) concerning permitted additional requirements should apply only to those Contracting Parties which, in accordance with Article 5(2), had chosen to impose such requirements.

460. The Delegation of Japan, strongly supporting the proposal made by the Delegation of the Republic of Korea, said that it was necessary to amend the note on that provision. The Delegation hoped that the Secretariat would amend the note before the diplomatic conference.

461. The Chair suspended the discussion on documents SCT/S3/6, 7 and 8.

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462. The Chair resumed the discussions on documents SCT/S3/6, 7 and 8 and informed the Committee that, according to the agreed methodology, the proposals examined under Cluster E would be included in the main text of the draft Articles and draft Rules, if they received support from at least one delegation. The proposal would then be enclosed within brackets, with a footnote stating the delegation making the proposal, followed by an indication of delegations that supported and those that did not support the proposal. Additionally, those proposals would be listed in an annex.

463. The Chair proposed to examine first the proposals that were already explained and published on the SCT webpage, beginning with the set of proposals presented by the Delegation of Japan. Emphasizing that only the proposals related to articles and rules would be examined, and that the Notes would not be an integral part of the text, the Chair explained the procedure to follow. Firstly, the Chair would announce the article or rule in question, inquire about delegations' support, and, in the affirmative, incorporate it into the text. Subsequently, the Chair would ask if the delegations wished to have their support or opposition recorded in a footnote.

Proposal made by the Delegation of Japan with respect to Article 6, as contained in document SCT/S3/6

464. The Chair opened the discussion on the proposal put forward by the Delegation of Japan on Article 6 and invited delegations to comment on it.

465. The Delegation of Canada endorsed the proposal put forward by the Delegation of Japan, requesting the support to be documented in the footnote.

466. The Delegations of Australia, Switzerland, the Republic of Korea, the United Kingdom and the United States of America conveyed their support for the proposal made by the Delegation of Japan.

467. The Delegation of India reiterated that it did not support the proposal to remove the option of 6 months from Article 6.

468. The Delegation of China did not support the proposal as it deviated from its position that the Treaty should provide for more flexibility.

469. The Delegations of Ghana and the Russian Federation, on behalf of the African Group, were not in a position to support the proposal made by the Delegation of Japan.

470. The Delegation of Brazil was not able to lend its support to the proposal, as it contradicted national legislation, expressing its preference to maintain flexibility within the Treaty.

471. The Delegation of Iran (Islamic Republic of) expressed its opposition to the proposal, requesting the opposition to be recorded in the footnote.

472. The Chair announced that the proposal by the Delegation of Japan on Article 6 would be incorporated into the draft Articles according to the agreed methodology.

Proposal made by the Delegation of Japan with respect to Rule 12, as contained in document SCT/S3/6

473. The Chair opened the discussion on the proposal put forward by the Delegation of Japan on Rule 12(3) and invited delegations to comment on it.

474. The Delegations of Canada, Nigeria, the Republic of Korea, the United Kingdom and the United States of America expressed their support for the proposal made by the Delegation of Japan.

475. The Chair announced that the proposal by the Delegation of Japan on Rule 12 would be incorporated into the draft Rules according to the agreed methodology.

Proposal made by the Delegation of the United States of America with respect to Article 9bis "Term of Protection", as contained in document SCT/S3/7

476. The Chair opened the discussion on the proposal put forward by the Delegation of the United States of America on Article 9bis, "Term of Protection", and invited delegations to comment on it.

477. The Delegation of Ghana, speaking on behalf of the African Group, said that it was not able to support the proposal made by the Delegation of the United States of America.

478. The Delegations of Canada, Japan, Switzerland, the Republic of Korea and the United Kingdom expressed their support for the proposal made by the Delegation of the United States of America.

479. The Delegation of Nigeria endorsed the statement made by the Delegation of Ghana, on behalf of the African Group. Expressing its inability to endorse the proposal made by the Delegation of the United States of America, the Delegation wished to suggest an amendment to that proposal and inquired about the most opportune moment to do so.

480. The Chair, reminding everyone that the evaluation of the new proposals would be carried out within the limits of available time for analysis and debate, noted that there were provisions

from Cluster D that had not been examined yet. The Chair then requested the Delegation of Nigeria to forward the proposal to the Secretariat.

481. The Delegation of Nigeria expressed the preference to present a proposal for Article 9*bis*, noting that it could potentially influence the support, or lack thereof, from other delegations for the proposal currently being examined. At that moment, the Delegation clarified that it did not endorse the proposal.

482. The Delegation of the Russian Federation said that it was unable to support the current wording of the proposal and stood ready to work together with other interested parties on the text of the proposal.

483. The Delegation of Nigeria, emphasizing its inability to support the current formulation of the proposal, believed that it was crucial for Member States to have the option of complying with either Article 17 of the Hague Agreement or Article 26 of the TRIPS Agreement, depending on the Treaty to which they were Contracting Parties. Stating its intention to submit a proposal for that article, the Delegation made a request for the term “may” to be considered as an alternative to “shall” in the proposed Article 9.

484. The Delegations of Ecuador and Peru did not support the proposal made by the Delegation of the United States of America.

485. The Delegation of China was not ready to support the proposal but expressed willingness to participate in any potential future consultations concerning that article.

486. The Delegation of Iran (Islamic Republic of), speaking in its national capacity, endorsed the statement made by the Delegation of Nigeria. The Delegation indicated that the proposal was inconsistent with its national legislation on industrial designs.

487. The Delegation of Nigeria said that it had sent the proposal to the Secretariat and sought confirmation that its understanding was accurate, namely, that all new proposals presented at the SCT would be included in the text.

488. The Delegation of South Africa expressed its disagreement with the proposal made by the United States of America, while supporting the proposal made by the African Group.

489. The Delegation of Germany, reiterating the remark made by the Delegation of Nigeria regarding new proposals, mentioned the existence of a proposal from the Delegation of the European Union and expressed interest in hearing the proposal and engaging in discussions about it.

490. The Delegation of Colombia, noting that the existing term of protection for an industrial design in Colombia was ten years, expressed the view that accepting the proposal would pose challenges for the country. As a result, it did not lend its support to it.

491. The Delegation of Brazil, recognizing the value of the proposal, held the perspective that such a provision was not trade-related and did not align with the aim of the instrument on registration formalities. Consequently, it could not endorse the proposal.

492. The Chair announced that the proposal by the Delegation of the United States of America on Article 9*bis* would be incorporated into the draft Articles according to the agreed methodology.

Proposal made by the Delegation of the United States of America on Article 9ter “Electronic Industrial Design System”, as contained in document SCT/S3/7

493. The Chair opened the discussion on the proposal put forward by the Delegation of the United States of America on Article 9ter, “Electronic Industrial Design System”, invited delegations to comment on it.

494. The Delegation of Nigeria, reflecting on the use of an electronic industrial design system, did not believe it should be mandatory, and expressed concerns about both the resource obligations and the costs of maintaining it. Pointing out that communities, especially in rural areas, and small and medium enterprises were not fully online, the Delegation believed that that provision would exclude at least two-thirds of the world’s population due to the limited availability of the Internet. While acknowledging the efficiency for more sophisticated users, the Delegation believed that a significant portion of the world’s population would be unable to participate in the design system if it were mandatory. Therefore, the Delegation could not support a mandatory provision but expressed a willingness to consider a discretionary one. Additionally, the Delegation raised concerns about indigenous peoples and local communities who have expressed that they would not want their designs in a publicly available electronic system, especially sacred designs. Concluding that it could support a discretionary provision under Article 9ter(a), but could not support Article 9ter(b) without either excluding the designs of Indigenous People and Local Communities (IPLCs) or making it subject to their consent, the Delegation announced that it had submitted a proposal to the Secretariat reflecting those concerns and looked forward to hearing from other delegations.

495. The Delegation of the Republic of Korea lent its support to the proposal on Article 9ter.

496. The Delegation of Canada expressed support for the proposal put forward by the Delegation of the United States of America.

497. The Delegation of Uruguay endorsed the proposal on Article 9ter, and declared its flexibility as to the level of obligation it might have when the text was reviewed at the diplomatic conference.

498. The Delegation of Ghana, speaking on behalf of the African Group, could not support the proposal because of its mandatory nature.

499. The Delegation of the United States, expressing gratitude to the Delegation of Nigeria for the interest in further discussing the proposal, clarified that the proposal was not targeted at infrastructure, but rather focused on functionality, intending to facilitate electronic filing and the inclusion of designs in databases without providing for the infrastructure itself.

500. The Delegation of Zimbabwe did not support Article 9ter.

501. The Delegation of Uganda stated that it could not lend its support to the proposal. The delegation expressed the view that most developing countries lack sufficient capacity to maintain online databases of registered industrial designs.

502. The Delegation of the United Kingdom stood in favor of the inclusion of the provision into the text of the Basic Proposal.

503. The Delegation of Switzerland expressed its support for the proposal made by the Delegation of the United States of America on Article 9ter.

504. The Delegation of the Russian Federation said that it could not support the current wording of the proposal, but expressed its readiness to collaborate on refining the text. In light of the concerns voiced by Member States during the discussion of the proposal, the Delegation

believed that the issues related to technical implementation and resource allocation concerning that article could be associated with technical assistance, especially to developing countries and LDCs, for the purpose of implementation of the Treaty.

505. The Delegation of Iran (Islamic Republic of), speaking in its national capacity, did not support the proposal.

506. The Delegation of Morocco, aligning itself with the statement made by the Delegation of Ghana, on behalf of the African Group, expressed an interest in continuing discussions regarding the introduction of an electronic design system and in replacing “shall” with “may”, with the aim of addressing the concerns of all Member States.

507. The Delegation of Australia expressed its support for the proposal put forth by the United States of America, indicating its willingness to also support a more flexible provision.

508. The Delegation of Egypt, expressing its gratitude to the Delegation of the United States of America for the proposal, stated that it was unable to accept it. In line with the statement made by the Delegation of Ghana, on behalf of the African Group, the Delegation emphasized that the mandatory language of the proposal and its technical requirements would pose challenges for many developing countries and LDCs.

509. The Chair announced that the proposal by the Delegation of the United States of America on Article 9~~ter~~ would be incorporated into the draft Articles according to the agreed methodology.

Proposal made by the Delegation of the United States of America on Article 14bis “Electronic Priority Document Exchange”, as contained in document SCT/S3/7

510. The Chair opened the discussion on the proposal put forward by the Delegation of the United States of America on Article 14~~bis~~, “Electronic Priority Document Exchange”, and invited delegations to comment on it.

511. The Delegation of Nigeria, expressing its interest in exchanging views on Article 14~~bis~~, mentioned that it could not endorse it. However, the Delegation indicated that it would present an alternative proposal regarding the mandatory aspect of the provision. Voicing concerns about the security of electronically-exchanged priority documents and the potential for errors, the delegation expressed its willingness to explore a discretionary system supported by paper exchanges.

512. The Delegation of Canada expressed its support for the proposal made by the Delegation of the United States of America.

513. The Delegation of Ghana, speaking on behalf of the African Group, indicated a lack of support for the proposal due to its mandatory nature.

514. The Delegation of the Russian Federation expressed its inability to support the current wording of the proposal. The Delegation argued that the responsibility for ensuring electronic priority documents exchange should rest with the organization, the administrator of the platform, rather than Member States.

515. The Delegation of Uruguay, endorsing the proposal on Article 14~~bis~~, expressed its flexibility regarding the level of obligation it might assume when the text was reviewed at the diplomatic conference.

516. The Delegation of Australia conveyed its support for the proposal put forth by the Delegation of the United States of America and expressed its readiness to also support a more flexible provision.

517. The Delegation of the Republic of Korea lent its support to the proposal made by the Delegation of the United States of America.

518. The Delegation of Switzerland expressed its support for the proposal made by the Delegation of the United States of America on Article 14*bis*.

519. The Delegation of Paraguay was not able to accept the proposal made by the Delegation of the United States of America.

520. The Delegation of Ecuador was not in a position to go along with the proposal on Article 14*bis*.

521. The Chair announced that the proposal by the Delegation of the United States of America on Article 14*bis* would be incorporated into the draft Articles according to the agreed methodology.

Proposal made by the Delegation of the United States of America on Rule 2, as contained in document SCT/S3/7

522. The Chair opened the discussion on the proposal put forward by the Delegation of the United States of America on Rule 2, as contained in document SCT/S3/7, and invited delegations to comment on it.

523. The Delegations of Canada, Japan, Switzerland, the Republic of Korea and the United Kingdom endorsed the proposal on Rule 2 made by the Delegation of the United States of America.

524. The Delegation of Nigeria, expressing its inability to support the proposal due to its broad application, believed that the language of the proposal appeared to be influenced by the Apple vs. Samsung trials and some of the concerns raised during that multi-judicial litigation.

525. The Delegation of Ghana, speaking on behalf of the African Group, indicated that it was not prepared to support the proposal at that moment.

526. The Delegations of China, Colombia, Ecuador, Iran (Islamic Republic of), speaking in its national capacity, Peru, the Russian Federation and Zambia said that they were not in a position to support the proposal.

527. The Chair announced that the proposal by the Delegation of the United States of America on Rule 2 would be incorporated into the draft Rules according to the agreed methodology.

Proposal made by the Delegation of the United States of America with respect to Article 6

528. The Chair opened the discussion on the proposal made by the Delegation of the United States of America with respect to Article 6, based on the previous intervention of AIPPI on that provision.

529. The Delegation of the Republic of Moldova, recognizing that the proposal would benefit applicants by encompassing all eligibility criteria for the registration of industrial designs, not only novelty and/or originality, expressed its support for the proposal made by the Delegation of the United States of America.

530. The Delegations of Australia, Canada, Switzerland, Ukraine and the United Kingdom, expressed their support for the proposal put forward by the Delegation of the United States of America.

531. The Delegation of Nigeria, thanking the Delegation of the United States of America, said that it required additional time for reflection on the proposal, also in view of the proposal made by the Delegation of India on Article 6, as endorsed by the Delegation of China. Furthermore, the Delegation highlighted its inability to support the proposal, primarily due to its exclusive 12-month grace period without the alternative of six months. However, the Delegation expressed its willingness to participate in discussions, acknowledging certain advantageous aspects of the proposal.

532. The Delegations of China, India and the Russian Federation opposed to the proposal made by the Delegation of the United States of America.

533. The Delegation of Egypt, expressing gratitude to the Delegation of the United States of America for the proposal, stated that it required additional time to assess the proposal.

534. The Chair announced that the proposal by the Delegation of the United States of America on Article 6 would be incorporated into the draft Articles according to the agreed methodology.

Proposal made by the Delegation of the United States of America with respect to Article 3(1)(a)(ix)

535. The Chair recalled that, during the Special Session, the Delegation of the United States of America had put forward a proposal on Article 3(1)(a)(ix) and invited the Secretariat to introduce the point under consideration.

536. The Secretariat clarified that the proposal involved transferring Options A and B in Article 3(1)(a)(ix) to Rule 2(1).

537. The Chair inquired whether any delegation would support the proposal of transferring options A and B from Article 3(1)(a)(ix) to Rule 2(1), within brackets.

538. The Delegation of the United Kingdom stood in favor of the proposal made by the Delegation of the United States of America.

539. The Delegation of Ghana, speaking on behalf of the African Group, voiced its opposition to the proposal presented by the Delegation of the United States of America. The Delegation reiterated its stance that the provision should continue to be housed within Article 3.

540. The Delegation of Venezuela, speaking on behalf of GRULAC, expressed disagreement with the proposal to relocate the options to Rule 2.

541. The Delegation of Iran (Islamic Republic of), speaking in its national capacity, said that it was not able to support the proposal.

542. The Delegation of Algeria, aligning itself with the statement made by the Delegation of Ghana, on behalf of the African Group, did not lend its support to the proposal put forward by the Delegation of the United States of America.

543. The Delegation of India did not support the proposal made by the Delegation of the United States of America.

544. The Delegation of Nigeria, aligning itself with the statement made by the Delegation of Ghana, on behalf of the African Group, did not endorse the relocation of the provision into the rules. In addition, the Delegation requested clarification on the procedure involved.

545. The Chair, in response to the clarification request from the Delegation of Nigeria, explained that, according to the agreed methodology, since the proposal to transfer Options A and B from Article 3(1)(a)(ix) to Rule 2(1) had received support from at least one delegation, it would be placed within brackets in the text of the rule with a footnote indicating all supporting and opposing delegations. However, the text would also be retained in Article 3(1)(a)(ix) and in the list of new proposals.

546. The Delegation of Uganda, reiterating its reservation to the proposal made by the Delegation from the United States of America, aligned itself with the statement made by the Delegation of Ghana, on behalf of the African Group.

547. The Representative of Maloca *Internationale*, having listened to various participants in the negotiation over the week, highlighted two key observations. Firstly, there was a perceived challenge in establishing a connection between GRs and industrial designs. Secondly, there was a need for greater clarity regarding the relationship between TK, TCEs and industrial designs. The Representative pointed out that, as a measure of prudence, the negotiated text should leave open the possibility for Member States to register the possible use of GRs in the protection of designs, as well as TK and TCEs.

548. The Chair announced that the proposal by the Delegation of the United States of America to move Options A and B from Article 3(1)(a)(ix) to Rule 2(1) would be reflected into the draft Rules according to the agreed methodology and that both options would also be retained in the text of Article 3(1)(a)(ix).

Proposal made by the Delegation of the United States of America with respect to Article 22/Resolution

549. The Chair recalled that, during the Special Session, the Delegation of the United States of America had proposed to put all the text of Article 22/Resolution into brackets.

550. The Delegation of Ghana, speaking on behalf of the African Group, restated the Group's position that Article 22/Resolution should not be enclosed in brackets and should remain in its current placement.

551. The Delegation of the Russian Federation expressed its disagreement with the proposal made by the Delegation of the United States of America.

552. The Delegation of Egypt, aligning itself with the statement made by the Delegation of Ghana, on behalf of the African Group, did not support the proposal.

553. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, expressed disagreement with the proposal to enclose Article 22/Resolution within brackets.

554. The Delegation of India did not support the proposal made by the Delegation of the United States of America.

555. The Delegation of Australia endorsed the proposal put forward by the Delegation of the United States of America.

556. The Delegation of Iran (Islamic Republic of), speaking in its national capacity, expressed dissent from the proposal, asserting that Article 22/Resolution was an essential part of the text and should remain in its current position.

557. The Delegations of Morocco, Zambia and Zimbabwe aligned themselves with the statement made by the Delegation of Ghana, on behalf of the African Group.

558. The Delegation of Switzerland, indicating its support for the proposal presented by the Delegation of the United States of America, recommended eliminating all the brackets within the provision.

559. The Chair, regarding the suggestion put forth by the Delegation of Switzerland as a new proposal, announced that it would be reevaluated, pending time availability.

560. The Delegation of Brazil, aligning itself with the statement made by the Delegation of Venezuela (Bolivarian Republic of), on behalf of GRULAC, proposed to clarify in the footnote that the proposal involved bracketing the article itself.

561. The Delegation of Uganda, aligning itself with the statement made by the Delegation of Ghana, on behalf of the African Group, expressed the view that an article that outlined technical assistance to ensure the implementation of the Treaty in developing countries should be an integral part of the Treaty.

562. The Chair announced that the proposal by the Delegation of the United States of America on Article 22/Resolution would be incorporated into the draft Articles according to the agreed methodology.

Proposals made by the Delegation of Nigeria on Article 9bis, "Term of Protection", Article 9quater, "Electronic Industrial Design System", and Article 9quinquies, "Exceptions for Publicly Accessible Design Databases"

563. The Chair opened the discussion on the three proposals put forward during the Special Session by the Delegation of Nigeria on Article 9bis, "Term of Protection", Article 9quater "Electronic Industrial Design System", and Article 9quinquies, "Exceptions for Publicly Accessible Design Databases", and invited the Delegation of Nigeria to introduce its proposals.

564. The Delegation of Nigeria, as regard its proposal on Article 9bis, expressed concern about the mandatory nature of the substantive provision on the term of protection proposed by the Delegation of the United States of America, noting that the international system already presented two different standards for the duration of design protection. The first was in Article 17 of the Hague Agreement and the second was in Article 26 of the TRIPS Agreement, which left the term open to Member States but established a minimum of ten years. The Delegation expressed the view that Contracting Parties should have the option to comply either with Article 17 of the Hague Agreement or Article 26 of the TRIPS Agreement. Then, turning to its second proposal on Article 9quater, the Delegation held the view that a mandatory electronic industrial design system was not in the best interest of many of the designers. Therefore, the Delegation proposed an Article 9quater (1), as followed "A Contracting Party may provide a system for electronic applications." The Delegation said that it was not currently in a position to mandate exclusively electronic submissions and desired flexibility in that regard. While acknowledging the potential for all countries to adopt electronic submissions in the future, the Delegation highlighted the current limitations faced by the African continent, particularly Nigeria, the largest country on the continent, in fully embracing electronic submissions at present. The Delegation pointed out that Article 9quater (2) clearly stated that "Contracting Parties shall not be required to provide a publicly available electronic information system, nor an online database of registered industrial designs". While acknowledging the functionality of the proposal, the Delegation noted a challenge in that the databases were not securely managed at the national level, exposing them to potential cybersecurity risks. The Delegation expressed an inability to comply with the mandatory requirement for a publicly available electronic information system. While recognizing the idea as a potential goal for the international design system, the Delegation could not agree to it at that moment. Finally, the Delegation turned to its last proposal in Article 9quinquies concerning exceptions for publicly accessible design databases. The Delegation asserted the importance of obtaining permission from indigenous peoples and

local communities (IPLCs) owners of TK or TCEs before including the designs incorporating, or based on, such knowledge, in any publicly accessible database. The Delegation sought to ensure that Contracting Parties, when committing or exercising discretion to establish publicly accessible databases, considered the interests of IPLCs, especially of foreign IPLCs.

565. The Delegation of Zambia expressed its support for the proposals put forward by the Delegation of Nigeria.

566. The Delegation of the Russian Federation, expressing gratitude to the Delegation of Nigeria for preparing and presenting alternative proposals, said that it had also submitted an alternative proposal to the Secretariat. After carefully listening to the proposal made by the Delegation of Nigeria, the Delegation believed that the proposed texts were more or less aligned with its own proposal. Consequently, the Delegation expressed readiness to collaborate further to develop a consolidated proposal on the texts.

567. The Delegation of Niger, thanking the Delegation of Nigeria, expressed support for the alternative proposals.

568. The Delegation of the United States of America expressed gratitude to the Delegation of Nigeria for the proposal and for actively participating in the discussions on various topics outlined in document SCT/S3/7, now integrated into the text of the Treaty for consideration at the diplomatic conference. While acknowledging receipt of those proposals, the Delegation conveyed the need for time to thoroughly evaluate them. The Delegation looked forward to engaging in discussions, either in advance of, or during, the diplomatic conference, but at the current moment, it was not in a position to lend its support to the proposals.

569. The Delegation of Yemen, expressing similar concerns, gave its endorsement to the alternative proposals presented by the Delegation of Nigeria.

570. The Delegation of Brazil expressed its support for the alternative proposals presented by the Delegation of Nigeria concerning the term of protection and exceptions for publicly accessible design databases. In reference to the electronic industrial design system, the Delegation extended its thanks to the Delegation of the United States of America for introducing the issue. Noting that it aligned with Brazil's priorities, the Delegation expressed its interest in closely following the discussions on the language within the article.

571. The Delegation of France, expressing gratitude to the Delegation of Nigeria for the proposals, declined to endorse them at that moment and that additional time was required for a thorough review before a decision could be made.

572. The Delegation of Mauritania stood in favor of the proposals submitted by the Delegation of Nigeria.

573. The Delegation of Kyrgyzstan, expressing support for the proposals put forward by the Delegation of Nigeria, offered its assistance in contributing to the work on refining the language of the alternative texts.

574. The Delegation of Japan, while reserving its position on the article that pertained to exceptions for publicly accessible design databases, highlighted the absence of an agreed-upon definition for TK or TCEs in any forum. The Delegation expressed the belief that the provision, as it stood, could complicate the management of design databases by Offices.

575. The Delegation of the United Kingdom, expressing gratitude to the Delegation of Nigeria for the proposals, voiced shared concerns with the Delegation of Japan. Consequently, the Delegation declined support to those proposals, stressing the need for additional time to consider them thoroughly.

576. The Delegation of Canada expressed the need to consider the text in consultation with indigenous peoples in Canada.

577. The Delegation of Zimbabwe expressed support for the proposals made by the Delegation of Nigeria.

578. The Delegation of Uganda, expressing gratitude to the Delegation of Nigeria, believed that the proposals offered a balanced position in the IP registration system, considering the national circumstances and the stage of development. Consequently, the Delegation announced its support for the proposals.

579. The Representative of the African Union, extending its thanks to the Delegation of Nigeria for the proposals and emphasizing their particular relevance to many African Union members, expressed its full support for the three proposals.

580. The Delegation of Sweden opposed to the proposals made by the Delegation of Nigeria concerning Article 9*quinquies*.

581. The Chair announced that the proposals by the Delegation of Nigeria on Articles 9*bis*, 9*quater* and 9*quinquies* would be incorporated into the draft Articles according to the agreed methodology.

Proposal made by the Delegation of the European Union with respect to Article 5(1)(b)

582. The Chair opened the discussion on the proposal made by the Delegation of the European Union with respect to Article 5(1)(b).

583. The Delegation of the European Union, speaking on behalf of the European Union and its member states, said that the proposal referred to the identification of the applicant. The Delegation noted that the existing wording of Article 5(1)(b) permitted anonymous applications to receive a filing date. Considering the fundamental principle of legal certainty in all IP procedures, as affirmed in Note 5.01, the Delegation suggested inserting the reference to “indications allowing the identity of the applicant to be established” when granting a filing date.

584. The Delegation of Nigeria sought clarification on whether the proposed amendment included the possibility of identifying Artificial Intelligence (AI) systems as applicants.

585. The Delegation of the European Union, speaking on behalf of the European Union and its member states, clarified that the intention behind the proposal was to include indications related to physical persons and corporations filing the applications.

586. The Delegation of Nigeria, requesting the clarification to be documented in the notes or as a footnote to the text, expressed its support for the proposal made by the Delegation of the European Union.

587. The Delegation of Poland, speaking on behalf of the CEBS Group, endorsed the proposal put forward by the Delegation of the European Union.

588. The Delegation of Germany, thanking the Delegation of the European Union, expressed support for the proposal. The Delegation held the view that the list of filing-date requirements should be kept to a minimum. Referring to Note 5.01, which emphasized the significance of filing-date requirements in determining “who” filed “what,” the Delegation believed that the proposal was appropriate as it did not impose additional burdens on the applicant, aligning with the objectives of the DLT.

589. The Delegation of Denmark, endorsing the statement made by the Delegation of Germany, emphasized that Article 1 defined an applicant as a person identified by the records of the Office, according to the applicable law, either as the individual applying for registration or as another person filing or prosecuting the application. The Delegation observed that the definition of a person, and whether it included AI systems, could vary based on the law of each Contracting Party, therefore that point should be taken into account when deciding on a note to that article.

590. The Delegation of Japan, deeming the proposal presented by the Delegation of the European Union reasonable, expressed its support for the proposal.

591. The Delegation of the United States of America, in response to the question raised by the Delegation of Nigeria and the clarification provided by the Delegation of Denmark, added that Article 1(xi) included a definition of the “applicant,” while Article 1(vii) defined a “person” to encompass both natural persons and legal entities. The Delegation, considering those provisions clear, believed that there was no need for a reference or note to the article.

592. The Delegation of Canada stood in favor of the proposal submitted by the Delegation of the European Union.

593. The Delegations of Georgia and Ukraine, aligning themselves with the statement made by the Delegation of Poland, on behalf of the CEBS Group, expressed their support for the proposal made by the Delegation of the European Union.

594. The Chair announced that the proposal by the Delegation of the European Union on Article 5(1)(b) would be incorporated into the draft Articles according to the agreed methodology.

Proposal made by the Delegation of India with respect to Article 6

595. The Chair opened the discussion on the proposal made by the Delegation of India with respect to Article 6.

596. The Delegation of India recalled that the existing text of Article 6 obligated Contracting Parties to offer a grace period of six or 12 months for the disclosure of a design, encompassing disclosures made by the owner or creator, even through the introduction of products into the market. The proposal sought to narrow the scope of Article 6 by limiting the grace period to disclosures made by the creator or his/her successor in title at an exhibition, or by a person who acquired information about the industrial design directly or indirectly, including through an abuse, from the creator or his/her successor in title, without the creator’s consent. The Delegation believed that any additional grace period should be determined by the substantive law of contracting parties.

597. The Delegation of Niger expressed its support for the proposal made by the Delegation of India.

598. The Delegation of China, expressing the view that the proposal was constructive and merited discussion, endorsed the proposal presented by the Delegation of India.

599. The Delegation of Nepal stood in favor of the proposal submitted by the Delegation of India.

600. The Delegation of France did not support the proposal put forth by the Delegation of India.

601. The Delegation of the United States of America dissented from the proposed amendment to Article 6, contending that the proposal would move away from streamlining and harmonizing

design formalities for the benefit of applicants. Specifically, the Delegation argued that it would expose many designers to the risk of inadvertently losing their rights, even if something occurred shortly before they filed, which contradicted the purpose and aim of the DLT.

602. The Delegation of Ukraine was not able to support the proposal made by the Delegation of India.

603. The Delegation of the United Kingdom was not in a position to support the proposal put forth by the Delegation of India.

604. The Delegation of the Russian Federation, expressing gratitude to the Delegation of India for presenting a constructive proposal that could potentially lead to consensus, stated its readiness to work on the text with the Delegation of India and other interested delegations and facilitate its inclusion in the Treaty.

605. The Delegation of Japan said that it did not support the proposal and expressed concern about the fact that it restricted the acts giving rise to the grace period to disclosures only in certain exhibitions.

606. The Delegation of Canada wished to register its opposition to the proposal made by the Delegation of India to Article 6.

607. The Delegation of the Republic of Korea was not able to support the proposal submitted by the Delegation of India.

608. The Representative of MARQUES opposed the proposal presented by the Delegation of India, aligning with the reasons stated by the Delegation of the United States of America. The Representative objected to imposing more limitations on designers, emphasizing that the grace period was crucial for designers worldwide, not just those from developed countries.

609. The Chair announced that the proposal by the Delegation of India on Article 6 would be incorporated into the draft Articles according to the agreed methodology.

Proposal made by the Delegation of Brazil with respect to Article 1

610. The Chair recalled that the Delegation of Brazil had proposed to move the footnote in Article 6, regarding the calculation of time limits expressed in months, to Article 1, "Abbreviated Expressions".

611. The Delegation of Brazil proposed that the language of the footnote be transformed into a new item (xxiv) of Article 1, "Abbreviated Expressions". The proposed text aimed to accommodate countries whose laws established time limits in days rather than months, reading: "Time limits expressed in months in the Treaty and Regulations can be calculated by Contracting Parties in accordance with their national law."

612. The Delegations of Egypt, Nigeria and Peru expressed their support for the proposal put forward by the Delegation of Brazil.

613. The Chair announced that the proposal by the Delegation of Brazil to move the footnote in Article 6, regarding the expression of time limits, to Article 1 would be incorporated into the draft Articles according to the agreed methodology.

AGENDA ITEM 8: SUMMARY BY THE CHAIR

614. The Chair, stating that the Chair's draft summary had been published on the SCT web page in English, provided an explanation of the document's structure. The Chair then started with the review of items, following the order in which the provisions had been discussed.

615. The Chair concluded that there were no comments on the draft summary for Agenda Items 1 to 5. Consequently, the Chair suggested moving to Agenda Items 6 and 7.

616. The Delegation of the Russian Federation proposed amendments to the last phrase of paragraph 17, so that it read: "The SCT took the decision concerning new or alternative proposals on that provision reflected in paragraph 36 [38 in document SCT/S3/9]".

617. The Delegation of the United States of America expressed a neutral stance on the wording.

618. The Delegation of Japan wished to insert a new paragraph under the title of Cluster E so that the paragraph would read: "The Delegation of Japan made proposals on the addition of notes and understanding with respect to Article 1(viii), Article 14, Article 15, Article 16, Article 19, Article 3, Article 10 and Article 11, as contained in document SCT/S3/6".

619. The Delegation of the Republic of Korea wished to add a paragraph that would read: "The Delegation of the Republic of Korea made a proposal on modification of Note 5.07 to Article 5(4)".

620. The Delegation of the Russian Federation requested to add, under the title of Cluster E, the following paragraph: "The Delegation of the Russian Delegation has forwarded to the Secretariat alternative textual proposals with respect to Articles 9*bis*, 9*ter* and 14*bis*".

621. The Delegation of India, in the same vein, requested to introduce the sentence: "The Delegation of India has forwarded to the Secretariat an alternative proposal on Rule 2".

622. The Chair, thanking the Delegation of the Russian Federation and the Delegation of India for their comments, pointed out that, since the alternative texts had not been deliberated within the Committee, it would not be appropriate to include them in the Chair's Summary.

623. The Secretariat clarified the procedural aspects governing the Committee's procedure, indicating that it was not within the Secretariat's purview to determine which proposals could be discussed. The Secretariat said that such decision rested with the delegations, who could request the floor and present proposals before the Committee.

624. The Delegation of the Russian Federation, thanking the Secretariat for the clarification, recalled that during the week, with the aim of time efficiency, it had shown flexibility by agreeing not to discuss the proposals immediately, but to defer them to a later stage. Noting that the proposals had been submitted, the Delegation requested that the Summary by the Chair reflect that such proposals had been formally submitted.

625. The Delegation of India, aligning with the view expressed by the Delegation of the Russian Federation, said that it had consistently sought the floor on Article 6 and Rule 2 on numerous occasions.

626. The Delegation of the United States of America, echoing the comments made by the Secretariat, proposed to add the following sentence in relation to those proposals: "However, these proposals were not discussed by the Committee".

627. The Delegation of Canada, echoing the comments made by the Secretariat and aligning with the statement made by the Delegation of the United States of America, said that the Summary by the Chair should reflect the record of what had been discussed within the Committee. To avoid uncertainty for those who had not attended the Committee, the Delegation expressed support for the sentence proposed by the Delegation of the United States of America.

628. The Delegation of Japan said that the sentence proposed by the Delegation of the United States of America should be connected to the proposals by the Delegations of the Russian Federation and India, since the proposals by the Delegations of Japan and the Republic of Korea had been discussed.

629. The Delegation of the Russian Federation, in the interest of compromise and consensus-reaching, expressed willingness to agree to the suggested editorial change. However, the Delegation proposed that the sentence encompassed all proposals, including those related to the Notes, as they had not been discussed either.

630. The Delegation of the Republic of Moldova, as a way forward, proposed to change the sentence in “However, these proposals were not presented to the Committee” and to indicate that the proposal by the Delegation of the Republic of Korea was contained in document SCT/S3/8.

631. The Chair suspended the discussion and invited the Delegations of India, Japan, the Republic of Korea and the Russian Federation to collaborate on a text that would garner acceptance from all delegations.

632. Upon presenting the text to the Committee, the Chair noted that no further comments were recorded.

633. The Delegation of the Russian Federation suggested adding in paragraph 36 [38 in document SCT/S3/9] the specification that the proposals referred to in the preceding paragraph “have been discussed”.

634. The Chair, not recording any other comments, proposed to adopt the Summary by the Chair.

635. The SCT adopted the Summary by the Chair, as contained in document SCT/S3/9.

AGENDA ITEM 9: CLOSING OF THE SESSION

636. The Chair invited the delegations to deliver their closing statements.

637. The Delegation of Iran (the Islamic Republic of), speaking on behalf of the Asia and the Pacific Group, expressed gratitude to the Chair and the Secretariat for their support and leadership, which contributed to successful outcomes. The Delegation also extended its thanks to the group coordinators for their diligent efforts in exploring possible ways forward on new proposals based on common ground and consensus. Recognizing that the progress achieved during the week was the result of significant efforts, flexibility and willingness to bridge existing gaps in accordance with the General Assembly mandate to provide a workable draft Treaty for the diplomatic conference, the Delegation expressed the hope to witness a similar spirit at the upcoming diplomatic conference.

638. The Delegation of Netherlands (Kingdom of the), speaking on behalf of Group B, thanked the Chair and the Vice-Chairs for the wise leadership during that Special Session, the

Secretariat for its hard work before and during the session, the interpreters and the Conference Service for their professionalism and availability. Acknowledging the progress achieved during the week, the Delegation underscored the fact that a substantial amount of work remained for the diplomatic conference. Anticipating discussions on administrative provisions, final clauses and arrangements for the diplomatic conference at the upcoming Preparatory Committee, the Delegation reassured the full support and constructive spirit from Group B in advancing towards the conclusion of the DLT.

639. The Delegation of Poland, speaking on behalf of the CEBS Group, expressed its gratitude to the Chair and the Vice-Chairs for guiding the work of the Special Session of the SCT, as well as to the Secretariat, the interpreters and the Conference Service, who had ensured excellent work conditions for all. Offering wholehearted thanks to the group coordinators, Member States, and all stakeholders for fostering a friendly climate and cooperative atmosphere throughout the week, the Delegation emphasized the significance of that session as a crucial step before the diplomatic conference. In conclusion, the Delegation reaffirmed the CEBS Group's commitment to maintaining a constructive engagement in the future work, with the aim of achieving positive outcomes at both the Preparatory Committee and the diplomatic conference.

640. The Delegation of Venezuela (Bolivarian Republic of), speaking on behalf of GRULAC, acknowledged the leadership of the Chair, the excellent efforts of the Secretariat and the spirit of cooperation that facilitated the fulfillment of the mandate to narrow gaps and prepare for the upcoming Preparatory Committee. Expressing satisfaction with the accomplished work, the Delegation attributed the success to the commitment of all present. Highlighting GRULAC's ongoing commitment to building bridges wherever possible to ensure the success of the diplomatic conference, the Delegation emphasized the importance of listening to each other as a key factor in that collaborative process.

641. The Delegation of Ghana, speaking on behalf of the African Group, expressed its gratitude to the Chair, the Vice-chairs and all contributors for their efforts in making the Special Session a success, and looked forward to further deliberations at the upcoming diplomatic conference.

642. The Delegation of China extended its gratitude to the Chair for his wise leadership and commended the Secretariat for the excellent coordination of the session. The Delegation also acknowledged the extensive work of the regional coordinators and expressed appreciation to all delegations for their flexibility and constructive approach, which contributed to fruitful results. Expressing the hope that members would continue the deliberations in the same spirit during the upcoming week, the Delegation looked forward to participating in those discussions.

643. The Delegation of the European Union, speaking on behalf of the European Union and its member states, expressed sincere gratitude to the Chair and Vice-Chairs for their skillful guidance throughout the session and acknowledged the valuable contribution of the Secretariat to the Committee's work. While welcoming the progress achieved in narrowing gaps in the draft DLT during the week, the Delegation recognized that much work remained to be done in preparation for the upcoming diplomatic conference. Reassuring that the European Union and its member states remained committed to continuing discussions in an open and constructive manner, the Delegation looked forward to engaging in discussions related to the diplomatic conference at the Preparatory Committee in the following week.

644. The Chair closed the Third Special Session of the SCT on October 6, 2023.

[Annex follows]



SCT/S3/INF/2

ORIGINAL: FRANÇAIS/ENGLISH

DATE: 9 OCTOBRE 2023/OCTOBER 9, 2023

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

**Troisième session spéciale – Élaboration de la proposition de base pour la conférence diplomatique en vue de la conclusion et de l’adoption d’un traité sur le droit des dessins et modèles (DLT)
Genève, 2 – 6 octobre 2023**

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

**Third Special Session – Preparation of the Basic Proposal for the Diplomatic Conference to Conclude and Adopt a Design Law Treaty (DLT)
Geneva, October 2 to 6, 2023**

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LIST OF PARTICIPANTS**

*établie par le Secrétariat/
prepared by the Secretariat*

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