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

Eleventh Session
Geneva, November 10 to 14, 2003

REPORT¹

adopted by the Standing Committee

¹ This Report was adopted at the twelfth session of the SCT. Following comments received on the draft report (document SCT/11/8 Prov.2) paragraphs 17, 21, 23, 44, 98, 125, 164, 228, 229, 237, 265 and 278 were modified.

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee” or “the SCT”) held its eleventh session, in Geneva, from November 10 to 14, 2003.
2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Canada, China, Colombia, Congo, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Denmark, Dominica, Dominican Republic, Egypt, El Salvador, Estonia, Finland, France, Germany, Guatemala, Haiti, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Kazakhstan, Kenya, Lao People’s Democratic Republic, Latvia, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malta, Mexico, Morocco, Nepal, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Singapore, Slovenia, Spain, Sudan, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela, Yemen (79). The European Communities were also represented in their capacity of member of the SCT.
3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), Benelux Trademark Office (BBM), African Union (AU), World Trade Organization (WTO) (4).
4. Representatives of the following international non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), Association of European Trade Marks Owners (MARQUES), Center for International Industrial Property Studies (CEIPI), European Brands Association (AIM), European Communities Trade Mark Association (ECTA), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), International Wine Law Association (AIDV), Japan Trademark Association (JTA), Law Association for Asia and the Pacific (LAWASIA) (12).
5. The list of participants is contained in Annex II of this Report.
6. Discussions were based on the following documents prepared by the Secretariat: “Draft Agenda” (document SCT/11/1 Prov.), “Draft Revised Trademark Law Treaty (TLT)” (document SCT/11/2), “Draft Revised Regulations under the Draft Revised Trademark Law Treaty (TLT)” (document SCT/11/3), “Notes” (document SCT/11/4), “The Protection of Country Names in the Domain Name System” (documents SCT/10/5, and 7 Corr.), “Options for a *De Novo* Arbitration Mechanism in Domain Name Disputes Involving Country Names” (document SCT/11/5), “Internet Domain Names and Geographical Indications” (document SCT/10/6), “Geographical Indications” (document SCT/10/4), and “Questionnaire on Trademark Law and Practice” (document SCT/11/6).
7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all the observations made.

Agenda Item 1: Opening of the Session

8. Mr. Shozo Uemura, Deputy Director General, opened the session and welcomed all the participants on behalf of the Director General of WIPO.
9. Mr. Denis Croze (WIPO) acted as Secretary to the Standing Committee.

Agenda Item 2: Adoption of the Agenda

10. The Draft Agenda (document SCT/11/1 Prov.) was adopted without modifications.

Agenda Item 3: Adoption of the Draft Report of the Tenth Session

11. The Secretariat informed the Standing Committee that, following the procedure adopted by the SCT, comments were made on the Electronic Forum of the SCT: Japan (irrespective of paragraph 79) and the Representative of CEIPI (paragraphs 154 and 176). The abovementioned paragraphs had consequently been amended in document SCT/10/9.
12. The Delegation of Germany requested modifications to paragraphs 27, 123, 130, 158, 225, 227, and the Representative of CEIPI requested a further modification to paragraph 176.
13. The SCT adopted the Draft Report of the tenth session (document SCT/10/9 Prov.2) as modified.

Agenda Item 4: Revision of the Trademark Law Treaty

14. The Chair introduced documents SCT/11/2, containing the draft revised Trademark Law Treaty (hereinafter referred to as “the Treaty” or “TLT”), SCT/11/3 containing draft revised Regulations under the draft revised TLT and SCT/11/4 containing Notes. The Chair reminded that the draft revised Articles and Regulations may be renumbered at a later stage. The Chair proposed to begin discussions with Article 1, items (iv) and (vii) and with Article 8 and related Rules 6 and 7, then continue with Article 13*bis* and related Rule 10, and to finally discuss Articles 17 to 21.

Article 1
(Abbreviated Expressions)

15. The Delegation of Pakistan observed that a preamble should be inserted in the TLT setting out the purposes of the Treaty. In addition, final clauses should be added at the end of the Treaty. The Delegation also pointed out that the items containing definitions on abbreviated expressions under Article 1 should be in alphabetical order. The Delegation further raised concern that only the term “communication” in item (iv) was defined but not the aspects which the communication was relating to, such as registration.

16. In response to the intervention of the Delegation of Pakistan, the Chair explained that the SCT was not in a position to draw up final clauses at this session and only item (iv) of Article 1 concerning the definition of “communication” was under discussion at this stage.

17. The Representative of CEIPI, supported by the Representative of the AIPPI, referred to Article 30 of the draft revised TLT which stated that the treaty should be signed in six languages, all texts being equally authentic; since, consequently, the order of the items in Article 1 had to be the same in all six languages, it was not possible to follow an alphabetical order, and the items should remain in the logical order in which they appeared in the draft. The representative also proposed to replace the term “mark” by “registration” in item (iv) as well as throughout the Treaty. Finally to avoid repetition, the expression “relating to” which appeared twice in that item should be replaced in one of the two cases by the expression “concerning”.

18. In reply to a suggestion of the Delegation of Sudan to delete the word “or” in the first sentence of item (iv), the Chair explained that the list in item (iv) was not exhaustive but only illustrative.

19. In reaction to the intervention of the Delegation of Sudan, the Representative of the AIPPI stressed that the word “or” should remain in the text. The representative, supported by the Delegation of Uruguay, referred to Note 1.02, according to which correspondence sent by the office did not constitute a communication as defined in item (iv). In contrast, Note 1.07 explained that the expression “procedure before the office” also covers procedures in which the office contacts an applicant, holder or other interested person in the course of proceedings related to an application or a registration.

20. The Delegation of Uruguay suggested then to add some explanations on this matter to Notes 1.02 and 1.07.

21. The Delegation of Japan said that in its understanding, appeal procedures were not covered by the term “communication” as defined in item (iv). The Delegation proposed to add the following sentence in Note 1.02: “Any communications relating to any procedures that are not covered by this Treaty such as appeal procedures, are not to be regarded as falling under the scope of the communications stipulated in this Article.” Such a note would help to prevent any misunderstanding as to the scope of communications defined in item (iv). In reply to this proposition, the Chair stated that the content of the statement would be reflected in the Notes.

22. The Secretariat referred to item (vii), which indicates that an “address for service” shall be construed as including references to “address for correspondence or address for legal service.”

23. The Representative of CEIPI noted that the French translation of “address for legal service” (i.e., *domicile élu*) did not really correspond to the English meaning. The representative asked for a clarification on the difference between address for service and address for legal service.

24. The Delegation of Australia noted that the TLT contained several references to an address for service. In its jurisdiction an address for service means the same as an address for legal service. The Delegation preferred to maintain the same language in this provision as in the corresponding provision of the PLT.

25. The Delegation of Pakistan noted that address for correspondence and address for legal service might be different. The Delegation had no objection to maintain both expressions in the Treaty.

26. The Representative of the AIPPI, supported by the Representative of CEIPI, suggested to delete the definition in item (vii) of Article 1 and to keep the original wording of the TLT.

27. It was decided that the Secretariat would study this question and modify, if necessary, the articles containing references to address for service, address for legal service and address for correspondence throughout the Treaty. It was also agreed to delete the definition in item (vii) of Article 1.

Article 8
(Communications)

28. The Secretariat introduced Article 8 and noted that this provision had been extensively discussed at the tenth session of the SCT. The current text of the Article was based on the agreements reached during those discussions.

Paragraph (1) [Means of Transmittal of Communications]

29. The Secretariat recalled that the provision allowed Member States complete freedom to choose the means of transmittal of communications. As no comments were raised by the members of the SCT, the Chair concluded that there was consensus on this provision.

Paragraph (2) [Language of Communications]

30. The Secretariat introduced the provision and explained that at its tenth session, the SCT had decided to maintain in subparagraph (a) wording similar to the corresponding provision in the Patent Law Treaty (“PLT”). At the request of the Delegation of Japan the last sentence of subparagraph (a) had been modified to state that no indication or element of the communication may be required to be in more than one language. The wording of subparagraphs (a) and (b) had been accepted at the tenth session. Subparagraph (c), as proposed by the Chair at the tenth session, had been amended by the Secretariat and the sentence “be supplied within a reasonable time limit” had been added.

31. In reply to a question of the Delegation of Australia as to what were the language requirements in subparagraph (a), the Representative of the European Communities explained that an application for a Community Trademark could be made in 11 languages but the procedure could only take place in two languages chosen by the applicant.

32. Following this discussion, it was agreed to add an explanation on the language requirements in the Notes and the Chair concluded that there was a consensus on this provision as presented by the Secretariat.

Paragraph (3) [Model International Forms]

33. The Secretariat informed that the formulation of this provision was inspired from paragraph (3) of Article 2 of the Joint Recommendation Concerning Trademark Licenses. The provision emphasizes the importance of the contents of a communication. It also acts as a safeguard for the applicant or holder since Member States may not provide for mandatory requirements additional or contrary to those contained in the Treaty or in the Regulations.

34. In response to a question of the Delegation of Switzerland, the Secretariat said that the French text should be corrected to read “*la présentation et la disposition*” instead of “*la présentation ou la disposition*.”

35. The Representative of CEIPI suggested that the provision should refer to “the relevant Model International Form.” The representative further noted that the Model International Forms should have perhaps been annexed to document SCT/11/2 with a view to updating them.

36. The Chair explained that a number of Model International Forms were annexed to the current text of the TLT. He agreed that although no forms had been annexed to document SCT/11/2, it would be necessary to review and update the existing forms to make them compatible with the revised TLT.

37. The Delegation of Australia, supported by the Delegation of the United States of America held the view that the wording “presentation and arrangement” contained in the current drafting suggested an actual form, while the principle agreed at the last session was that no Contracting Party shall refuse a communication where the elements correspond to those set out in the corresponding Model International Form. The Delegation further noted that it would be best to focus on the contents rather than on the form of presentation.

38. The Secretariat replied that this wording had been introduced at the request of several delegations during the previous session and proposed that the SCT consider the wording contained in Alternative A of document SCT/10/2: “Subject to paragraph (2), any Contracting Party shall accept the presentation of a communication, the contents of which correspond to the relevant Model International Form provided for in the Regulations, if any.”

39. As there were no objections raised from the floor, the Chair concluded that paragraph (3) was adopted as modified.

Paragraph (4) [Signature of Communications]

40. The Chair noted that in subparagraph (c), the following wording “Subject to subparagraph (b)” had been placed within square brackets, and four options were submitted to the consideration of the Committee: whether to delete the brackets, to delete the text included in brackets, to change this text or to introduce changes in subparagraph (b), as they were both

related. The Chair also noted that these provisions should be read in conjunction with Rule 6, whose contents correspond to Rule *5bis* of the previous draft Regulations, presented at the tenth session.

41. The Delegation of Australia expressed support for the the principle contained in subparagraph (b) and added that in its opinion, the effect of subparagraph (c) was stronger than that of (b). Therefore, it was appropriate to keep in that paragraph the wording which was currently within square brackets.

42. The Delegation of Pakistan held the view that subparagraph (b) needed reconsideration on the fact that it made it optional whether or not to require an attestation, notarization, authentication or legalization, except if the law of the Contracting Party so provides. In the view of the Delegation, a signature must be authenticated by a notary public or by any other appropriate means, because States cannot rely on unauthenticated signatures.

43. In reaction to the remark made by the Delegation of Pakistan, the Chair indicated that in commercial life, many documents are not notarized and it would in fact be difficult to manage a situation where attestations were always required. There was also the question as to what types of signatures were required under trademark law, in particular with a view to the increasing use of electronic communications, as opposed to communications on paper.

44. The Representative of CEIPI, supported by the Representative of the AIPPI, held the view that the intervention by the Delegation of Pakistan illustrated the need for the provision contained in subparagraph (b), except for the surrender of a registration. The representative requested clarification as to the intent of the last part of the subparagraph “or as prescribed in the Regulations,” which may allow for additional exceptions to be added. The representative also asked for clarification regarding the French version of document SCT/11/2 where the wording was “*et*” instead of “*ou*” before “as prescribed in the Regulations”. He also suggested that the wording in square brackets at the beginning of subparagraph (c) be amended to read “Notwithstanding subparagraph (b),” since this provision was an exception to the principle contained in subparagraph (b). Therefore, in case of reasonable doubt the Contracting Party may require any kind of evidence.

45. In reply to the intervention by CEIPI, the Secretariat noted the suggestion made to change the words “Subject to” for “Notwithstanding” in subparagraph (c). It further explained that reference to the Regulations in subparagraph (b) only referred to paragraph (6) of Rule 6 concerning the exception of certification of signature under paragraph (4)(b) of Article 8, where a Contracting Party may require that any signature be confirmed by a process for certifying signatures in electronic form, in a manner to be specified by the Contracting Party. This should not, in principle, allow for further specifications to be added in the Regulations.

46. The Representative of INTA, supported by the Representatives of the AIPPI and AIM, expressed the opinion that if the confirmation of an electronic signature was the only additional exception foreseen in subparagraph (b), it was necessary to spell it out, to prevent any increase in the number of exceptions.

47. The Representative of AIPLA supported the views of the foregoing speakers and added that use of the disjunctive “or” in the final sentence of subparagraph (b) may be interpreted as allowing a Contracting Party to require attestation of a signature in any case if its law so

provides. Therefore, the representative suggested that the sentence be redrafted to read “and if the law of the Contracting Party so provides.”

48. To address these concerns, the Chair explained that reference to a specific provision in the Regulations, such as Rule 6(6), would not be optimal, as the numbering of the Rules is likely to change in the case of amendments, which would also make it necessary to change the text of the Treaty. On the other hand, the proposal to include the contents of Rule 6(6) in the Treaty would merit further reflection.

49. After some discussion on various options put forward by delegations with a view to clarifying and limiting the scope of the exception contained in paragraph (4)(b) of Article 8, it was decided that the Secretariat draft a new text for the provision, taking into account the comments and observations made.

50. The revised text (Informal Document 1) was submitted for consideration by the SCT:

(4) *[Signature of Communications]*

(b) No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature, except, if the law of the Contracting Party so provides, where the signature concerns the surrender of a registration or except, in the case of a signature in electronic form, as prescribed in the Regulations.

51. In reply to a query by the Delegation of Uruguay, according to which the wording of the text in Spanish seemed to imply that there were three exceptions, the Chair explained that this text would be aligned with the wording in the other languages.

52. The Delegation of Australia, supported by the Representatives of the AIPPI and CEIPI, suggested to further simplify the structure of the paragraph by separating the two exceptions in two different items. This would also clarify the fact that there were only two exceptions.

53. Following this suggestion, the Chair read out the redrafted provision as follows:

“(b) No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature except,

(i) where the law of the Contracting Party so provides, if the signature concerns the surrender of a registration, or,

(ii) in the case of a signature in electronic form, as prescribed in the Regulations.”

54. In response to a question as to whether it was necessary to include, in the chapeau of the paragraph, the words “on a communication” after the word “signature,” the Chair explained that this addition was perhaps not necessary, as this provision is part of Article 8 which deals with communications. In addition, the Secretariat would check the different language versions to see whether it would be necessary to add these words, from a linguistic point of view.

55. After some discussion as to whether or not the sentence “where the law of the Contracting Party so provides” should be moved to the chapeau, it was agreed to keep it as suggested in item (i), as the sentence applied only to the exception contained in this item. The field of electronic communications referred to in item (ii) is rapidly changing, and any future developments in this area will have to be dealt with in the Regulations and not in the Treaty. In addition, reference to the Rules did not in any way mean that countries would be obliged to accept electronic communications, as suggested by one delegation, because the general provision of Article 8, paragraph (1) left entire freedom for Contracting Parties to decide on the means by which they wish to receive communications.

56. Following a suggestion by the Delegation of the United Kingdom to take into account the provisions relating to electronic signatures contained in the EU e-commerce Directive, the Chair declared that the Secretariat would review the legislation of several countries on this matter, including the EU Directive and would reflect the result of this research in the Notes.

57. It was then agreed that the Secretariat would provide a new draft containing the whole of paragraph (4) for discussion on the next day. This draft was presented in Informal Document 2 as follows:

(4) [Signature of Communications]

(a) Where a Contracting Party requires a communication to be signed, that Contracting Party shall accept any signature that complies with the requirements prescribed in the Regulations.

(b) No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature except,

(i) where the law of the Contracting Party so provides, if the signature concerns the surrender of a registration, or

(ii) in the case of a signature in electronic form, as prescribed in the Regulations.

(c) Notwithstanding subparagraph (b), a Contracting Party may require that evidence be filed with the Office only where the Office may reasonably doubt the authenticity of any signature.

58. Following a suggestion by the Delegation of Pakistan to delete the word “only” in subparagraph (c), the Secretariat explained that this word gave a strong emphasis to the fact that the office of a Contracting Party may require evidence only in one limited instance, where the office had doubts as to the authenticity of the signature.

59. In this context, the Delegation of the United Kingdom, supported by the Representative of the AIPPI recalled that the revision of the TLT was limited in its object and purpose. It had been determined from the outset that some provisions needed to be adapted to new developments, but the text of the Treaty as such should remain unchanged unless there is real need for further improvement.

60. As there were no additional observations on this matter, the Chair declared paragraph (4) adopted as proposed in Informal Document 2.

Paragraph (5) [Indications in Communications]

61. After introducing the provision contained in this paragraph, the Chair wondered if it would not be appropriate to include “or elements” after indications, as this was a wording consistently used in other articles of the Treaty.

62. The Delegation of Thailand expressed support for this inclusion but asked whether the requirements set out in the previous paragraph, namely (4)(a) and (b) referring to attestations, authentications, etc. would form part of the formalities of a communication.

63. The Chair explained that the formulation of paragraph (4)(b) “No Contracting Party may...” implied that if a Contracting Party was not allowed to require something, this could not be a formality in the sense of paragraph (5). However, there were exceptions, and if those applied, then it would be a formality and perhaps the Secretariat may wish to reflect on whether or not to add some clarification on the relationship between these two paragraphs in the Notes.

64. In reply to a query from the Representative of CEIPI as to whether the introductory phrase of this paragraph “with regard to the formalities of a communication” was needed, the Secretariat recalled that at the tenth session of the Committee, there was an important discussion on this subject, as a result of which it was concluded that this insertion of formalities was mainly to stress that the provision related to formalities contained in the Treaty and not to any other type of indication.

65. After some discussion as to the usefulness of retaining the introductory wording of paragraph (5), the Secretariat submitted to the consideration of the Committee the following wording:

(5) [Prohibition of Other Requirements] No Contracting Party may require that a communication comply with requirements other than those prescribed in this Article or in the Regulations.

66. In reaction to the position expressed by one delegation, the Secretariat explained that paragraph (5) might be interpreted as preventing Contracting Parties from demanding requirements mentioned in other articles. Therefore, the Secretariat proposed the following wording: “No Contracting Party may require that requirements concerning indications in communications other than those referred to in this Treaty or in the Regulations be complied with in respect of the communication.” The wording was inspired from paragraph (4) of Article 13*bis*.

67. In reply to a question raised by the Delegation of Australia, the Chair clarified that the difference with the previous wording was the reference to the Treaty, while the previous draft referred to Article 8.

68. The Delegation of Australia expressed its preference for the previous wording as the new drafting would broaden the scope of the provision. The Delegation suggested to add: “For the purpose of this Article,” at the beginning of the paragraph.

69. In reply to the intervention of the Delegation of Australia, the Representative of CEIPI stated that the expression “for the purpose of this Article” was unclear and supported the new wording proposed by the Secretariat, with the addition of the word “formal” before “requirements other than those...”

70. The Delegation of Australia further explained that in its legislation the expression “formal requirements” did not necessarily mean “formalities.”

71. The Delegation of Sweden felt that paragraph (5) might be confusing in light of the provision contained in Article 1, according to which “communication” referred to any application, or any request, declaration, document, correspondence or other information relating to an application or a registration.

72. In conclusion, it was agreed to keep the following formulation: “No Contracting Party may require that a communication comply with requirements other than those prescribed in this Article or in the Regulations.” A clarification on the issues raised by members of the SCT would be added to the Notes.

Paragraph (6) [Address for Correspondence, Address for Legal Service]

73. The Secretariat introduced the provision and explained that, as a result of the discussion at the tenth session of the SCT, item (iii), which provided for the possibility for a Contracting Party to require any other address provided for in the Regulations, had been deleted from paragraph (6), as stated in document SCT/10/2. The Secretariat referred to the previous discussion on item (vii) of Article 1, and recalled the decision taken to further discuss this question and modify, if necessary, the articles containing references to address for service, address for legal service and address for correspondence throughout the Treaty.

Paragraph (7) [Original of a Communication Filed in Electronic Form or by Electronic Means of Transmittal]

74. The Chair introduced paragraph (7) explaining that this paragraph, which had been imported from former Rule 5*bis*, was extensively discussed in previous sessions, and that the last sentence of this provision should read “within a reasonable time limit” in the singular.

Paragraph (8) [Notification]

75. The Delegation of Sweden, supported by the Delegation of Australia, said that before discussing this paragraph in any further detail, it was appropriate to consider whether Article 14 could be extended to cover all situations including where the office is obliged to notify the applicant, holder or other interested person giving the opportunity to comply with language requirements and to make observations within a reasonable time limit.

76. The Delegations of Argentina, France, Italy, the Russian Federation, Uruguay, and the Representative of CEIPI expressed the view that Article 14 covered the case where a request may be refused, whereas paragraph (8) referred to communications which may not have the status of a request before the office. Thus the two provisions needed to be kept separate at this stage of the discussion.

77. On this point, the Chair concluded that the Committee would discuss paragraph (8) independently from Article 14 and requested the Secretariat to consider extending the scope of the Article to absorb other similar provisions in the TLT. Then the Chair asked whether or not a reference to paragraph (2) should be added in order to allow an applicant to comply with the language requirement.

78. The Delegations of Australia, France and the Representative of the European Communities expressed their opposition to this proposal on the basis that, under their systems, if the office receives a communication which does not comply with the language requirement, it is not obliged to take any further action including notification. Indeed, an office could not be expected to reply to a communication if it could not understand its contents, nor could it give the applicant an opportunity to make observations.

79. In response to a question raised by the Representative of CEIPI, the Secretariat explained that the reference to paragraph (2) was deleted on the basis of discussions at the tenth session. If a communication was in a language not admitted by the office and the office was not able to understand the content of the communication, the office would not be obliged to send a notification.

80. The Representative of CEIPI added that indeed an office could not be held liable for not sending a notification if it failed to identify the source of the communication or its contents because they were, for example, in a different alphabet. However, in most cases offices were in a position to reply to the applicant and give him an opportunity to comply with the language requirement.

81. From the point of view of the users of the system, the Representative of the AIPPI expressed strong support for the inclusion of a reference to paragraph (2) in paragraph (8). In his opinion, users would suffer burdensome consequences if offices did not provide an opportunity to comply with the language requirement. Apart from the language of the application itself, other documents might need to be translated, or the office could require a second language to be indicated. Perhaps it was only necessary to provide for safeguards in cases where the office could not identify the origin or the contents of the communication.

82. In response to these comments, the Chair suggested to insert the reference to paragraph (2) within square brackets and to request the Secretariat to reflect whether any additional wording was needed in order to add precision to the concept, so that Contracting Parties may feel safe about this inclusion.

83. The Secretariat replied that language could be added along the lines that when one or more of the requirements under paragraphs (2) to (7) are not complied with in respect of a communication and the office is in a position to do so, the office shall notify the applicant, holder or other interested person. This would address the concern that when the office is not able to understand the communication it is not obliged to notify.

84. It was then agreed to insert the reference to paragraph (2) within square brackets and to keep the discussion on this matter open until the next session.

85. The Chair asked whether reference to paragraph (3) should also be excluded from paragraph (8), as it imposes an obligation on Member States to accept a form if it meets certain presentation and elements and it also imposes another requirement on applicants, in addition to the requirements specified under other articles regarding name, address, etc. The Chair called for comments from delegations.

86. The Delegation of Australia explained that under its law there were provisions defining a reasonable time limit. The Delegation further suggested that the reference to paragraph (3) be deleted from this provision because it did not concern a requirement by the office. Only references to paragraphs (4) to (7) should be maintained.

87. The Delegation of New Zealand, supported by the Delegations of Morocco and Pakistan, favored deletion of the reference to paragraph (3) and noted that if the communication was required to be on paper, the office could not receive communications in electronic form, irrespective of the fact that the contents corresponded to the Model International Forms. The Delegation of Morocco also proposed deletion of the reference to paragraph (7).

88. In reaction to a suggestion by the Delegation of Sweden the Chair noted that merging paragraph (8) of Article 8, and Articles 13*bis* and 14, may be discussed at a later stage. In conclusion, it was agreed to delete the reference to paragraph (3) but to maintain within square brackets the references to paragraphs (2) and (4) to (7) on the one hand, and (4) to (7) on the other hand.

89. In conclusion, the Committee agreed on the redraft of Article 8, as reproduced in Annex I of this Report.

Article 13bis
(Measures in Case of Failure to Comply with Time Limits)

90. The Secretariat introduced Article 13*bis* and explained that Alternatives A and B in document SCT/10/2 were merged in one single provision. Article 13*bis* should be read in conjunction with the related Rule 10. As a result of the discussions at the tenth session, the chapeau of paragraph (1) referred only to time limits which are less than six months irrespective of whether they are fixed by the office or by a statute. In the English text, subparagraphs (a), (b) and (c) in paragraph (1) should read items (i), (ii) and (iii). A Contracting Party has to provide for at least one of the alternatives mentioned in items (i), (ii) or (iii). In accordance with paragraph (2), the exceptions to the Article are provided in Rule 10(5). Paragraph (3) deals with the payment of a fee and paragraph (4) contains a prohibition of other requirements.

Paragraph (1) [Measures]

91. Following a request by the Delegation of Uruguay that a change similar to that inserted in the English version be included in the Spanish text, the Secretariat confirmed that subparagraphs (a), (b) and (c) will be changed to items (i), (ii) and (iii) in all languages.

92. The Representative of INTA suggested to insert in the chapeau of this paragraph the following sentence: “Where the Office finds that such failure occurred in spite of due care required by the circumstances having been taken or, at the option of the Contracting Party, that any delay was unintentional...” In response to this intervention, the Chair pointed out that the requirements of due care or unintentionality referred only to item (iii) of the paragraph.

93. In reply to a question raised by the Delegation of Sudan, the Secretariat explained that the paragraph referred to all procedures before the office, including renewals.

94. The Delegation of Australia raised concern as to the scope of the paragraph. In the view of the Delegation the provision should be applied very broadly taking into account the exceptions in paragraph (5) of Rule 10. The Delegation suggested that the time frame fixed in the provision should be three months. The time limit in Australia was 15 months and there was a possibility of an extension for a further six months. After that, a subsequent extension of six months was possible and also a grace period of 12 months. The Delegation pointed out that Australia had generous time limits, while many other countries had time limits stipulated by statute which were less than six months. The Delegation referred to a survey according to which, 30 countries had time limits of less than six months to respond to an examiner’s report.

95. The Delegation of Denmark welcomed the wording of the provision stating that it was clearer than in previous documents. In Denmark an application was examined within two months, an applicant had a two-month time limit to reply to an examiner’s report and then an extension of two to four months might be granted. The Delegation wondered whether this paragraph obliged Denmark to give further extensions.

96. In response to the question raised by the Delegation of Denmark, the Secretariat referred to the exceptions under paragraph (2) which were listed in paragraph (5) of Rule 10. In accordance with item (i) of that paragraph, a Contracting Party does not have to grant further extensions in respect of a time limit for which relief has already been granted.

97. The Delegation of Japan, supported by the Delegation of the Republic of Korea, noted that the scope of the provision was broadened. The Delegation suggested that the extension of the time limit and continued processing should only apply to the time limits fixed by the office and not to time limits fixed by statute. Moreover, the reinstatement of rights should be available only where the direct consequence of not complying with a time limit was a loss of rights.

98. In reaction to the interventions made by the Delegations of Japan and the Republic of Korea, the Delegation of Australia pointed out that the wording of the provision did not, in practice, broaden its scope, because it only established a minimum standard. A Contracting Party was only obliged to have one of the measures in items (i), (ii) and (iii). However, there was no prohibition for a Contracting Party to have more than one or all of those relief measures.

99. The Delegation of Pakistan pointed out that the time limit should not be less than six months. As regards renewal fees the Delegation suggested that a table of fees should be inserted in the Regulations. In reply to this suggestion the Chair explained that the fees were to be decided by a Contracting Party under the applicable law.

100. The Delegation of Italy indicated that under its legislation the time limit was six months, which was compatible with the provision in question.

101. The Delegation of Norway raised a question as to whether the period of grace provided for the payment of renewal fees under paragraph (1) of Article *5bis* of the Paris Convention was contradictory to item (iii), paragraph (5) of Rule 10 concerning the payment of renewal fees.

102. The Secretariat referred to Note R10.07 according to which, although a Contracting Party was not obliged to provide for the extension of, or continued processing in respect of, a time limit fixed for the payment of renewal fees, it was still obliged to provide for a grace period for the payment of such fees under paragraph (1) of Article *5bis* of the Paris Convention, and under paragraph (1)(c) of Article 13 of the Treaty and Rule 9.

103. The Delegation of Singapore explained that similarly to Australia and Denmark, its country had generous time limits. The examiner's report was made within two months and the period to reply to the report was four months. In addition, there was a possibility of extension. The Delegation raised concern about item (ii), paragraph (1) of Rule 10 concerning signatures. The applications to the Singaporean office are filed electronically and the office does not require a signature. The Delegation also suggested transferring paragraph (5) of Rule 10 concerning exceptions under Article *13bis* to the Treaty.

104. The Delegation of the United States of America noted that statutory time limits should not be separated from regulatory time limits. The Delegation preferred a three-month time limit in order to shorten the time for processing applications. Electronic processing should accelerate the procedures and increase transparency and legal certainty.

105. The Delegation of the United Kingdom emphasized that the wording of the provision was balanced. According to the legislation of its country extensions are not granted if the application is contrary to public policy. However, reinstatement of rights is a possibility in this kind of situation.

106. The Delegation of Switzerland, supported by the Representative of the European Communities, expressed support for the new text proposed by the Secretariat, as it provided offices with three possible choices to comply, with a time limit fixed either by law or by the office.

107. The Delegation of Sweden pointed out that if the exceptions to Article *13bis* set out in paragraph (5) of Rule 10 were kept, Article *13bis* would be applicable only to time limits fixed by an office in a registration case. In the view of the Delegation, there are not too many time limits fixed by law in most systems.

108. The Delegation of Brazil expressed the view that the provision in paragraph (1) would be more flexible for industrial property offices, for the public in general and for third parties if the time limit were reduced from six to two or three months.

109. The Representative of AIPLA supported the idea of reducing the time limit under this paragraph and establishing six months as a maximum.
110. The Representative of the ICC suggested to change the wording “less than six months” to “not more than six months,” as under the first formulation the six-month deadline itself was not included.
111. The Representative of FICPI said that, given the fact that certain systems provide for very short time limits, it was necessary to contemplate a time limit of not less than six months. Some countries already provided for two consecutive periods of three months.
112. The Delegation of Argentina expressed preference for the wording “less than.” The reference to a reasonable time limit should be transferred to item (i) of paragraph (1) since it is up to a Contracting Party to decide on this matter.
113. The Representative of the AIPPI suggested that the wording be “no more than” and the time limit should be three months. The representative pointed out that similar provisions existed in the Patent Law Treaty and they covered all time limits.
114. The Delegation of Ukraine, supported by the Delegation of Pakistan, stated that the wording should be “no more than” and the time limit should be six months, since Ukrainian legislation already follows this formulation.
115. The Delegation of France, supported by the Delegations of Canada and New Zealand, favored the wording “less than” and the six-month time limit. The Delegation of New Zealand added that, if the time limit was three months, the wording would have to be “no more than.”
116. The Delegation of Canada pointed out that the first sentence of the chapeau of paragraph (1) “where a person has failed to comply with a time limit” was contradictory to item (i), paragraph (1) of Rule 10 which stated that a request might be filed “prior” to the expiration of the time limit.
117. In response to the intervention of the Delegation of Canada, the Secretariat suggested the following wording: “Where an applicant, holder or other interested person is about to fail or has failed to comply with a time limit...”
118. The Delegation of Uruguay sought clarification as to the six-month time limit. Under its legislation, none of the provisions considered in items (i) to (iii) were applicable. While the system in that country did provide for the grace period at the time of renewal, no other extensions were possible. Since Article 13*bis* could not be implemented under its current legislation, the Delegation raised a reservation on this Article.
119. The Representative of the OAPI pointed out that in its 16 Member States the time limit of three months might be extended by two months. If the provision stated “no more than three months” the Members States would have to change their laws.

120. The Secretariat noted that there was a consensus on the first part of the chapeau in paragraph (1). In respect of the time limit there were several proposals as to the wording, whether it should be “less than” or “no more than,” and the time limit in question was suggested as either three months or six months.

121. The Chair suggested that, following the discussion the expressions “less than” and “no more than” and the time limits of three months and six months should appear in square brackets in the drafting for the next session.

122. In conclusion, it was agreed that the reference to “a reasonable time limit” would be inserted in item (i) of paragraph (1).

123. The Representative of CEIPI suggested that the chapeau of paragraph (1) start as follows: “A Contracting Party shall provide for at least one of the following procedures, in accordance with the requirements prescribed in the Regulations, for the case where an applicant, holder or other interested person fails to comply with a time limit...”

124. Referring to an earlier intervention of the Delegation of Canada, the Delegation of Denmark, supported by the Delegation of Australia, recalled that it had been suggested to add in the chapeau of paragraph (1) the words “or is about to fail” after “where an applicant, holder or other interested person fails,” in order to clarify that in the case of an extension of a time limit, the request is filed prior to the expiration of the time limit. After some discussion on this point, it was decided to insert the language “or is about to fail” in square brackets in the chapeau of paragraph (1).

125. Following a suggestion by the Representative of CEIPI, supported by the Delegation of Uruguay, the following changes were agreed in item (iii) of paragraph (1): firstly, to add after the word registration, “subject to a finding by the Office that the failure occurred in spite of due care required by the circumstances or, at the option of the Contracting Party, that the failure was unintentional.” As this wording was taken from item (iii), paragraph (3) of Rule 10, it would consequently be deleted from that provision.

126. The Secretariat read out the proposed new wording for paragraph (1) of Article 13bis:

A Contracting Party shall provide for at least one of the following procedures, in accordance with the requirements prescribed in the Regulations, for the case where an applicant holder or other interested person fails[, or is about to fail,] to comply with a time limit for an action in a procedure before the Office in respect of an application or a registration, and that time limit is [less than] [not more than] [six months][three months] :

- (i) an extension of a time limit for a reasonable period of time,*
- (ii) continued processing with respect to the application or registration,*

or,

(iii) reinstatement of the rights of the applicant or holder with respect to the application or registration, subject to a finding by the Office that the failure occurred in spite of due care required by the circumstances or, at the option of the Contracting Party, that the failure was unintentional.

127. As there were no further comments, the paragraph above was adopted as proposed.

Paragraph (2) [Exceptions]

128. In reply to a question of the Delegation of Pakistan, as to the relationship between paragraphs (1) and (2) and the Regulations, the Chair explained that paragraph (1) contains the principle that Member States are obliged to provide in their national law at least one of the measures which are set out in that paragraph and which are further elaborated in Rule 10. According to paragraph (2), a Contracting Party shall not be in the obligation to apply the measures contemplated in items (i), (ii) and (iii) of paragraph (1) with respect to the list of seven exceptions contained in paragraph (5) of Rule 10. This is a list of cases of failure to comply with time limits in respect of which Member States are not obliged to grant an extension of time limit, continued processing or reinstatement of rights.

Paragraph (3)[Fees]

129. Following a presentation by the Secretariat, paragraph (3) was adopted without modifications.

Paragraph (4) [Prohibition of Other Requirements]

130. The Representative of the European Communities suggested that the prohibited requirements be indicated in paragraph (4).

131. Following an earlier discussion on the need to harmonize the terminology used throughout the text of the TLT, the Secretariat suggested that the verb “require” be replaced by the verb “demand.” The Secretariat also invited Member States to evaluate this provision in relation to the provisions contained in paragraphs (1) to (3) of Rule 10.

132. In reply to a request by the Delegation of Australia, the Secretariat read the redrafted version of paragraph (4): “No Contracting Party may demand that requirements other than those referred to in this Treaty or in the Regulations be complied with in respect of the procedures provided for under paragraph (1).” The Representative of INTA supported this change. Paragraph (4) was adopted as redrafted.

Paragraph (5) [Opportunity to Make Observations in Case of Intended Refusal]

133. Following an earlier discussion, the Secretariat suggested to delete paragraph (5) and to redraft Article 14 as follows: “An application or a request under Articles 10 to 13*bis* may not be refused...”. The Delegations of Denmark, New Zealand and the Representative of the AIPPI supported this proposal.

134. The Delegation of Australia supported the drafting suggestion of the Secretariat. However, the Delegation wondered whether, in relation to time periods, this redrafted provision created an endless loop. This concern was shared by the Delegation of Denmark.

135. The Delegation of Germany, supported by the Representative of the European Communities, expressed concern about the redrafting of Article 14 in light of the deletion of paragraph (5). According to the Delegation, its legislation allowed for the reinstatement of rights to be decided once all the missing requirements had been complied with, and this made superfluous the need to provide an opportunity to make observations.

136. The Delegation of Australia said that perhaps the deletion of paragraph (5) and the redrafting of Article 14 would overcome the endless loop problem. The Delegation added that paragraph (4) of Rule 10 was a proper safeguard against refusals.

137. The Delegation of Morocco suggested that paragraph (5) be kept and that an exception on time limits be added in the Regulations to prevent the endless loop problem mentioned by the Delegation of Australia.

138. The Delegation of Uruguay wondered whether paragraph (5) could be left in square brackets for further discussion at the next session.

139. After some discussion, it was decided to delete paragraph (5). However, reference to Article 13*bis* in Article 14 would be left in square brackets for further discussion at the next session.

140. In conclusion, the Committee agreed on the redraft of Article 13*bis*, as reproduced in Annex I of this Report.

Chapter II *Trademark Licenses*

141. The Secretariat introduced Chapter II of the draft revised TLT and noted that Articles 17 to 21 were substantially taken from the provisions contained in the Joint Recommendation Concerning Trademark Licenses, which had been adopted by the WIPO General Assembly and by the Paris Union Assembly in September 2000. The Secretariat recalled the historical background leading to the adoption of the provisions and stated that the first draft of the provisions had been considered by the WIPO Committee of Experts on Trademark Licences in 1997, and later by the SCT at its first, third and fourth sessions in 1998, 1999 and 2000, respectively. The Secretariat further noted that during their discussions, SCT members decided to adapt the wording of the provisions to the wording used in the TLT, since the objective of both instruments was similar: the harmonization and simplification of formal requirements with regard to trademark procedures.

142. The Secretariat said that, before including the provisions as Chapter II of the Draft Revised Trademark Law Treaty, certain adjustments had been made to harmonize the provisions with the rest of the Treaty. The words "Member State" which referred to the special nature of the Joint Recommendation had been changed for "Contracting Party" and the provision on language had been stricken through, as this matter was already covered by Article 8 of the draft revised TLT.

143. The Chair noted that perhaps other provisions may also need to be revised for the sake of consistency, and called for general comments from delegations.

144. The Delegation of Brazil, supported by the Delegation of Argentina, recalled that during the eighth session of the SCT, it had expressed reservations as to the inclusion of WIPO joint recommendations in treaties. In the opinion of the Delegation, there were indeed very good reasons behind the decision by members of the Committee to adopt the result of their work as joint recommendations, that is, as instruments of “soft law” rather than as treaties. The Delegation believed that those reasons continued to be valid and that it would not be appropriate at this stage to have the text of the Joint Recommendation on Trademark Licenses or any other joint recommendation included in a treaty or in any other form of legally binding instrument. The Delegation also felt that in fact, the inclusion of the provisions on trademark licenses in the text of the draft revised TLT would go beyond the scope of the exercise which members of the Committee had agreed upon at the outset. For these reasons, the Delegation suggested that the Committee simply consider the deletion of the provisions contained in Chapter II.

145. The Chair recalled that whether the provisions were contained in a joint recommendation or in a treaty, they did not introduce an obligation for any country to record licences if such obligation did not already exist in its law. The provisions were designed to simplify the system of recordal of licenses for the benefit of users and other interested persons.

146. The Delegation of Egypt agreed with the statement made by the Delegation of Brazil and added that, at the time of adoption of the Joint Recommendation on Trademark Licenses, members considered that the provisions should be adopted as flexible rules and that it would not be adequate to change the nature of those rules. In addition, the Delegation held the view that this was not a technical issue but a legal and political issue, touching on the legal and standard-setting work of WIPO. The Delegation felt that introducing this element in the revision of the TLT would complicate the work of the Committee and suggested to delete Articles 17 to 21 from the text of the draft revised TLT.

147. In reply to a question by the Delegation of the Republic of Korea as to whether a Contracting Party was obliged to introduce a sole licensing system in its national law, the Secretariat explained that the wording “where applicable” in item (xi), paragraph (1) of Article 17 before the words “exclusive license, non-exclusive license and sole license” meant that the law of the Contracting Party could recognize one or more of these types of licenses.

148. The Delegation of Cuba said that it would also support the removal of the chapter on trademark licenses. However, if it were decided to include the provisions in the draft TLT, the Delegation would propose to introduce changes in certain provisions, such as the prohibition for a Contracting Party to request the furnishing of the license contract, or the non-recordal of information concerning the license. In addition, the Delegation would favor the inclusion of regulations allowing Contracting Parties the freedom to establish certain control mechanisms on anti-competitive practices which could derive from licensing procedures.

149. The Delegation of Pakistan expressed the view that only the principal provision should stay in the articles, while the details should be transferred to the Rules. This would reduce the burden on the Treaty and add some more weight to the Regulations.

150. The Delegation of Switzerland, supported by the Delegations of Portugal, Sweden, the United Kingdom, and the Representative of the European Communities, expressed support for the inclusion of the provisions on trademark licenses in the text of the draft revised TLT. The Delegation noted that the provisions stipulate a maximum list of requirements for the recordal of licenses, which is a helpful measure, particularly for the users of the system.

151. The Delegation of Indonesia supported the comments made by the Delegation of Cuba and expressed reservation with regard to paragraph (6) of Article 17, since Contracting Parties should not be prevented from setting additional conditions for the recordal of licenses.

152. The Delegation of the Russian Federation expressed support for the comments made by previous delegations as to the inclusion of the provisions on trademark licenses in the draft revised TLT and added that many of the provisions contained in the Joint Recommendation had already been included in Russian legislation. In the view of the Delegation, the text did not impose new obligations on Member States, as the formulation at the beginning of paragraph (1) of Article 17 clearly stated: “Where the law of the Contracting Party provides for the recordal of licenses.”

153. The Delegation of Uruguay said that, from a technical perspective, it had doubts about the inclusion of the provisions on trademark licenses in the text of the draft revised TLT. The Delegation said that the recordal of a license is at the limit of a formality and a condition of substance. The recordal of a license with the industrial property office is the source of its legal validity in relation to third parties. It establishes an *erga omnes* effect. Therefore, the Delegation had doubts as to whether it was appropriate to include these provisions in a treaty like the TLT, which was concerned with the harmonization of formalities.

154. In reply to the intervention by the Delegation of Uruguay, the Chair noted that the registration of a mark itself also had the effect of establishing the rights of the trademark holder in relation to third parties.

155. The Representative of INTA said that the right of countries to require the recordal of licenses was uncontested. Countries may consider that this is the only way to monitor the flow of technology or control the flow of currency out of the country. For trademark owners, the basic concern was that a technicality such as the failure to record a license may result in the loss of trademark rights and this became more critical when there were changes in the registration, or at the time of renewal, or when trademark rights were exercised in several countries.

156. The Representative of the AIPPI, supported by the Representative of FICPI, referred to the general question as to why the Joint Recommendation was established and why it was adopted in the form of a “soft-law” instrument. The representative noted that, from the beginning of the discussions on the provisions on trademark licenses, the Committee of Experts and subsequently the SCT used the same language of the TLT, to be as much as possible in accordance with that Treaty. For the majority of delegations, it was clear that at one point in time the provisions would be included in the TLT. However, at the time of discussion of the provisions on trademark licenses, it was not yet possible to revise the TLT, because other issues, such as the voting rights issue and the establishment of an assembly, had not been settled. Nevertheless, it was not the view of the majority of delegations that the provisions should stay as a soft-law instrument only.

157. The Representative of AIPLA supported the objective of the provisions, which was to simplify the formalities and procedures associated with the recordal of trademark licenses. The representative, supported by the Representative of INTA said that once the Committee would initiate discussions on the specific provisions, he would present comments on Article 20, one of the core provisions of Chapter II.

158. The Delegation of Australia, supported by the Representative of MARQUES, declared that the view of its Government, based on the overwhelming view of the users of the system, was that inclusion of the provisions on trademark licenses in the TLT was desirable. In Australia, users had expressed the need to limit the burden of requirements for the recordal of licenses and to avoid the effect of loss of rights due to the failure to meet an administrative procedure. The Delegation further noted that, as to the question of whether it was appropriate to move from a “soft-law” approach to incorporating these provisions and other similar instruments in a binding instrument, its view and that of other members of the SCT had always been that at some point in time, these provisions should be incorporated—in their present form—in a treaty. The Delegation added that, in relation to the provisions on trademark licenses, it was appropriate to include them in the TLT. The Delegation further noted that if members of the Committee had engaged in a legal harmonization exercise, they should not only consider to what extent the proposals put forward accommodate their national law but also be ready to start considering certain changes to what is desirable in terms of international harmonization. Otherwise, the outcome of the discussions may be a permissive instrument with no real value for Contracting Parties or for the users of the system.

159. The Delegation of the United States of America noted that the recordal of licenses was not required under its national law. However, the Delegation had actively participated in the negotiations leading to the adoption of the Joint Recommendation Concerning Trademark Licenses, which struck the right balance between systems that contemplated certain recordal requirements and users who may have difficulty in complying with those requirements. In the view of the Delegation, the provisions contained in the Joint Recommendation provided a compromise and a degree of certainty in the system. For these reasons, it was appropriate to include the provisions in the TLT, which was also a balance between technical and substantive policy interests.

160. The Representative of the ICC recalled that the TLT was concluded on the basis of compromise. The fact that the treaty did not have a union or an assembly showed to what extent members were ready to commit themselves to start building an instrument on trademark harmonization. However, in the view of the representative, it was almost unthinkable that a revision of the TLT would not include the Joint Recommendation Concerning Trademark Licenses, which was an intermediate step that enabled members to consolidate very important principles. Indeed, it was very important for interested circles to have these provisions included in the TLT and to give them the strength of an international treaty.

161. The Delegation of New Zealand declared that its country did provide for the recordal of trademark licenses, however the currently applicable provisions were substantially different from those proposed in Chapter II of the draft revised TLT. As a small country, New Zealand relied heavily on exports and its economic actors used the trademark system to do business overseas. Thus in the view of the Delegation, it was important to seize every occasion to at least explore opportunities for harmonization in all aspects of business law and intellectual property law, certainly for the benefit of users, but also for the benefit of the economies as a

whole. The Delegation urged members of the Committee to continue the discussions on trademark licenses and explore to what extent they can harmonize the corresponding provisions.

162. The Delegation of China said that the relevant provisions of its national law were significantly different from those proposed in Chapter II. However, the Delegation had no objection to the text and it had a positive attitude towards it, because the provisions were beneficial for the users of the system. The Delegation noted that every treaty was the fruit of compromise and it needed to have binding stipulations, otherwise it would have no force. However, it was also necessary to encourage States to become parties to the Treaty and in this light, it was necessary to recognize that they may need time to change their current legislation. To achieve this goal, the Delegation suggested to include some form of transitional rules.

163. The Delegation of Italy declared that its legislation provided for the recordal of licenses and therefore it supported the provisions contained in Chapter II. The Delegation wondered whether those delegations opposing the inclusion of the provisions on trademark licenses could further elaborate on the reasons for their opposition or signal what aspect or aspects of the provisions were conflicting.

164. The Delegation of Japan expressed its support for the continuation of discussions on the harmonization of trademark law, including the provisions on trademark licenses. However, the Delegation declared that it might be difficult for its country to accept the provisions on trademark licenses as they stood, because there were certain incompatibilities with the current national legislation. The Delegation requested further discussion of the provisions at the SCT.

165. The Delegation of the Republic of Moldova said that its national law provided for the recordal of licenses and that it was important to include these provisions in the Treaty, since it was difficult to see how trademark holders could be guaranteed without a system for the recordal of licenses. The Delegation fully supported inclusion of Articles 17 to 21 in the draft revised TLT but noted that, as suggested by the Delegation of Pakistan, some of the details contained in the provisions could be moved to the Regulations.

166. The Secretariat recalled the background which led to the inclusion of the provisions on trademark licenses in the draft revised TLT. In the Program and Budget for the 2002-2003 biennium Member States decided that WIPO convene four meetings of the SCT to consider current issues, including “the revision of the TLT to address, *inter alia*, the creation of an Assembly, inclusion of provisions on electronic filing, and the incorporation of the Joint Recommendation Concerning Trademark Licenses; preparation and convening of a Diplomatic Conference for the revision of the TLT.” Pursuant to this mandate, the Secretariat had prepared document SCT/11/2, including the provisions on trademark licenses. In the Program and Budget for the 2004-2005 biennium, it was envisaged that a diplomatic conference may be convened to consider the revision of the TLT, however the language used to describe the actual contents of the revised TLT was broader: “to establish a TLT Assembly and to introduce features concerning electronic filing and other procedures.” The Secretariat would now need more specific guidance from the Committee in respect of Chapter II of the draft revised TLT.

167. The Delegation of Brazil thanked the Secretariat for the explanations given on the background and mandate for the inclusion of the provisions in the draft revised TLT. However, in the view of the Delegation, the contents of the Program and Budget were deemed to be merely indicative and could not, in anyway prejudge the outcome of the processes taking place in the different WIPO Committees and other bodies. The Delegation expressed the view that the actual mandate for future work had to come from decisions taken by Member States in the context of substantive discussions in the various Committees and bodies. The Delegation noted that it was clear from the discussion that there was no agreement as to the inclusion of Chapter II in the draft revised TLT. Thus, if the Committee were to come back to this discussion during its next session—as suggested by some delegations—the whole chapter should be placed within square brackets. The Delegation further noted that it doubted as to the usefulness of engaging within a discussion of draft provisions which might not ultimately become part of the revised TLT.

168. The Chair noted that the view of the Delegation of Brazil was well taken on the point that the budgetary lines were of indicative nature. However, the Secretariat had to base its work on those indications, as a first step. Normally, the agenda of every Committee had an item on future work, where Member States decided on the issues in further detail. The Chair also noted that he interpreted the last intervention by the Delegation of Brazil as presenting a more flexible approach, whereby the Committee could continue discussions on trademark licenses, while the Delegation would maintain its reservations.

169. The Delegation of Egypt noted that its country was a member of the TLT and in that light it had to carefully look at the relationship between the Treaty and the Joint Recommendation Concerning Trademark Licenses. If the Joint Recommendation was an addition or a supplement to the TLT, then Member States had already decided the way in which they wanted to harmonize the issue of trademark licenses and there was no need to include this chapter in the draft revised TLT. The Delegation concurred with the Delegation of Brazil that the provisions should be placed within square brackets if they were to be discussed at the next session of the SCT, and added that this inclusion may slow down the work of the Committee, particularly in the perspective of the diplomatic conference envisaged to take place before the end of the next biennium.

170. The Delegation of Uruguay said that although it considered that the issue was difficult, after listening to other delegations and representatives of the user community, it did not think that it was advisable to strike out all of the provisions without discussing them one by one. However, it was necessary to find the right balance between the users of the system and trademark offices, whose role was to provide some assurance and guarantee in their activities.

171. The Delegation of New Zealand referred to its earlier intervention in support of the legal harmonization function of the Committee and added that this was perhaps a longer term goal, while a more immediate objective was to promote an understanding of the different systems applied in different countries. In this context, and recalling the intervention made by the Delegation of Italy, the Delegation suggested that Members specify which provisions were problematic to them, so that there may be a better understanding of their difficulties with the provisions proposed.

172. The Chair noted that his assessment on the status of the discussion was as follows: on the one hand, some delegations preferred not to deal with Articles 17 to 21 at all. On the other hand, certain delegations had expressed their satisfaction with the provisions as they

were drafted and would approve them subject to minor changes. Yet other delegations did not feel comfortable with the provisions as they stood in the draft and wished to change certain details, but accepted the principle of continuing discussions on Chapter II. The Chair concluded that the sense of the meeting was that the SCT should take this middle way, and continue discussions on the provisions on trademark licenses at its next session.

Rule 6
[Details Concerning the Signature Under Article 8(4)]

Paragraph (1) [Indications Accompanying Signature]

173. Paragraph (1) was adopted without modifications.

Paragraph (2) [Date of Signing]

174. Paragraph (2) was adopted without modifications.

Paragraph (3) [Signature of Communications on Paper]

175. In reply to a question by the Delegation of Pakistan, the Delegation of Australia, supported by the Delegation of Uruguay and the Representative of the AIPPI, explained that the word “seal” was kept in item (ii) of paragraph (3) because when a signature is required, a Contracting Party should be able to accept a wide range of identifications whereas this is not necessary according to paragraph (2) of Rule 6. For this reason, the word “seal” should be kept in item (ii) of paragraph (3).

Paragraph (4) [Signature of Communications Filed in Electronic Form or by Electronic Means of Transmittal Resulting in Graphic Representation]

176. The Delegation of France said that the provision in this paragraph, obliging a Contracting Party to consider that a communication sent by electronic means is signed if a graphic representation of the signature is provided, would be problematic under the legislation of that country, as the current French legal system provides for the replacement of the original signature by the use of electronic certification. The purpose was to secure the communication rather than to identify the person signing that communication.

177. In reply to the question raised by the Delegation of France, the Secretariat explained that there were probably two possibilities to resolve this issue. One would be to introduce a possibility rather than an obligation in paragraph (4), and another would be not to limit the scope of paragraph (4) to graphic representation. In the second case, other possibilities such as electronic certification could be introduced. Indeed, in many countries the discussion of this problem was not concluded and the question was still developing. Thus the provision should not be considered mandatory or else it should not be restricted to the graphic representation of a signature and provide for other technical means. This was an issue on which the Committee had to decide.

178. The Delegation of Australia expressed its disagreement with the views expressed by the Delegation of France with regard to paragraph (4) and wondered whether it would be appropriate to move away from the mandatory nature of the provision. In its view, making the provision permissive would put into question the value of the provision and then it was perhaps better to delete it. In addition, the Delegation raised a more general question as to whether having too many permissive provisions in the TLT was at all normative.

179. The Representative of the AIPPI observed that paragraph (3) contained only one mandatory provision, which was that a Member State shall accept a handwritten signature. The representation of a signature may be permitted, however, under paragraph (3)(ii). But under paragraph (4), where a communication is filed electronically and there can only be the representation of a signature, the provision is again mandatory. Thus a “may” provision under paragraph (3) becomes “shall” under (4). In his opinion, there was a need to harmonize these provisions.

180. In relation to comments made by one delegation regarding the possibility to introduce alternative wording in these provisions to the effect that a Contracting Party could require an electronic signature, in accordance with its laws, the Chair noted that in his understanding, the so-called electronic signature, rather than a graphical representation was a specific technique of coding messages in order to trace them back to the original sender, in a manner that the message could not be altered on its way to the recipient.

181. Paragraph (4) was adopted on the understanding that “shall” will be replaced by “may.” However, the Delegation of Australia reserved its right to further discuss this issue at the next session of the SCT.

Paragraph (5) [Signature of Communications Filed in Electronic Form Not Resulting in Graphic Representation of Signature]

182. Paragraph (5) was adopted without modifications.

Paragraph (6) [Exception to Certification of Signature Under Article 8(4)(b)]

183. Paragraph (6) was adopted without modifications

184. In conclusion, the Committee agreed on the redraft of Rule 6, as reproduced in Annex I of this Report.

Rule 7

[Details Concerning Indications Under Article 8(5) and (6)]

185. The Secretariat presented Rule 7 and recalled that a new Article 8 had been presented and adopted earlier. The Secretariat further noted that paragraph (1)(iii) should be amended to read: “where the representative is registered with the Office, the number or other indication under which he is so registered.”

Paragraph (1) [Details Concerning Indications Under Article 8(5)]

186. Paragraph (1) was adopted without modifications.

Paragraph (2) [Address for Correspondence and Address for Legal Service]

187. The Delegation of Pakistan felt that the words “on a territory prescribed by that Contracting Party” in paragraph (2) were too strong. In reply to this statement, the Secretariat drew attention to the verb “may,” which gave complete freedom to Member States on this matter.

188. The Delegation of Australia asked other delegations why there was a need to have an address for correspondence in a territory prescribed by the Contracting Party.

189. As no more questions were raised, paragraph (2) was adopted without modifications.

Paragraph (3) [Address Where No Representative Is Appointed] and Paragraph (4) [Address Where a Representative Is Appointed]

190. The Delegation of Australia asked the Secretariat whether in paragraphs (3) and (4), the word “and” instead of “or” should have been used between “address for correspondence” and “address for legal service.” The Delegation wondered whether paragraph (3) overrides the address provided in an application. In reply, the Secretariat stated that if a representative is appointed at a later stage, the address of that representative will be the address for correspondence or the address for legal service as stated in paragraph (4). The Delegation of Australia further inquired whether there were cases where an applicant wants to have an address for correspondence, an address for legal service and a representative.

191. As no more comments were raised, paragraphs (3) and (4) were adopted without modifications.

Paragraph (5) [Sanctions for Non-Compliance with Requirements]

192. The Secretariat explained that the notification referred to in paragraph (5)(b) was that of paragraph (8) of Article 8. The Secretariat informed that the word “limits” should be changed to “limit” and “apply” to “applies.”

193. In reply to a query of the Delegation of New Zealand, the Secretariat indicated that reference to “reasonable time limits” in paragraph (5)(b) would be changed to “a reasonable time limit” to harmonize this provision with others in the Treaty.

194. Paragraph (5) was adopted as modified.

195. In conclusion, the Committee agreed on the redraft of Rule 7, as reproduced in Annex I of this Report.

Rule 10

[Requirements Relating to Measures in Case of Failure to Comply with Time Limits]

196. The Secretariat explained that Rule 10 deals with the requirements relating to measures in case of failure to comply with a time limit. Paragraphs (1) to (3) address each of the possibilities offered to Member States under paragraph (1) of Article 13*bis*. The first paragraph of Rule 10 deals with the request for extension of a time limit, where the conditions are that it be filed prior to the expiration of the time limit, be signed by the applicant or holder and that the request contain an identification of the time limit in question. The second paragraph of the Rule refers to the request for continued processing, which takes place after the expiration of the time limit and has to also be signed by the applicant or holder and contain an identification of the time limit in question. Paragraph (3) concerning the request for reinstatement of rights, unlike the two previous ones, requires that the applicant or holder state the reason for the failure to comply with the time limit and therefore the office may require evidence in support of the reason for the failure. The definition of the words “due care” and “unintentionality” is left to the applicable law and practice of the Contracting Party concerned.

197. The Chair noted that there was no definition of these measures in the Treaty but this elaboration in the Rules allowed greater flexibility in case there would be a need to introduce changes to these notions in the future.

Paragraph (1) [Request for an Extension of a Time Limit]

198. The Representative of CEIPI wondered about the meaning of the wording “for a reasonable period of time” in paragraph (1). If the idea was that the extension must be reasonable, this phrase belonged in the Treaty, rather than in the Regulations which deal with the formalities or the contents of the request.

199. The Delegation of Australia, supported by the Delegations of Belgium, Canada, New Zealand, Pakistan, Sweden, and the Representatives of the AIPPI and CEIPI, suggested that the wording “shall require” in the chapeau of paragraphs (1) to (3) be replaced by “may require” as certain offices did not impose all of these requirements, and particularly those relating to signature.

200. The Representative of the European Communities pointed out that in the Spanish version of the text, paragraphs (1), (2) and (3) already contained the word “may.”

201. The Delegation of the United States of America noted its preference for the word “may” since, in respect of signatures this provision only contained a possibility to request a signature.

202. The Delegation of Australia stated that its office did not require signatures. The emphasis of the provision is to limit what an office may require. Instead of an identification of the time limit, paragraphs (1) to (3) should identify the application or registration number.

203. The Chair concluded that the change of “shall” for “may” had been accepted by the members of the Committee.

204. With regard to item (i) of paragraph (1), the Delegation of Belgium explained that in its country the extension of a time limit might not be required prior to the expiration of a time limit. An applicant has a two-month time limit to respond to an examiner's report and this time limit is extended automatically if there is no response. In addition, an applicant may request for another extension of a time limit.

205. The Representative of INTA noted that a Contracting Party should permit the request under paragraph (1) to be filed within a reasonable time limit after the expiration of the time limit. The representative further suggested replacing the formulation "signed by the applicant or holder" in items (ii) of paragraphs (1), (2) and (3) for the formulation "signed by a representative."

206. In reaction to this intervention, the Representative of the ICC said that another possibility would be not to replace the wording "signed by the applicant or holder" but to add "or by the representative" in all three items.

207. Following a suggestion of the Representative of CEIPI, supported by the Representatives of the AIPPI and FICPI, it was agreed to add the following wording "or the representative of the applicant or holder" at the end of the sentence in the three items (ii) of paragraphs (1), (2) and (3) of Rule 10.

Paragraph (2) [Request for Continued Processing]

208. The Delegation of Germany, supported by the Delegation of Argentina and the Representative of the European Communities, expressed the view that another requirement was probably needed in paragraphs (2) and (3), to state that the omitted act must be completed, because if someone needs continued processing or reinstatement of rights, he needs to at least complete the act that he has not fulfilled.

209. After some discussion, the Secretariat suggested to add the wording "that the omitted act be completed" as a new sentence after item (iii) in both paragraphs (2) and (3). The proposal was adopted by the Committee.

210. The Delegation of New Zealand suggested to transfer the contents of item (i) of paragraph (1) to the chapeau of Rule 10.

211. In reaction to the suggestion of the Delegation of New Zealand, the Representative of CEIPI expressed preference to maintain item (i) of paragraph (1) as it was in the current wording.

Paragraph (3) [Request for Reinstatement of Rights]

212. The Representative of CEIPI noted that the wording "with respect to an application or registration" which appeared in the chapeau of paragraph (3) should either be included in all paragraphs or be deleted for consistency. In the view of the representative, the list of requirements contained in paragraphs (1) to (3) was exhaustive and Contracting Parties could not require for anything which was not expressly provided, however the identification of the

application or registration to which the request referred should probably be amongst the requirements.

213. Following the suggestion by the Representative of CEIPI, the Secretariat proposed to delete the phrase “in respect of an application or a registration” in the chapeau of paragraph (3). This proposal was also adopted by the Committee.

214. In reply to a suggestion of the Delegation of the Republic of Korea, supported by the Delegation of Australia, the Secretariat suggested to add a new item (iv) in paragraph (3) to the effect that the request for reinstatement of rights contain an identification of the time limit in question. This addition was agreed by the Committee.

215. The Delegation of Germany noted that it had a problem with the formulation of item (iii) of paragraph (3) “that the request contain a declaration or other evidence.” As such, the wording suggested a mere declaration, which under the system applicable in its country could not be considered as evidence. Under that system, the applicant is required to present the facts on which the request for relief is based and then he is required to provide evidence in support of those facts.

216. The Chair explained that the word “declaration” translated into the German legal language would not mean evidence, except for evidence of the existence of the declaration itself, but not evidence of the facts, and asked the Secretariat to provide an explanation as to the origin and purpose of this wording.

217. The Secretariat stated that the provision had been inspired from the PLT. Many systems do not have the requirement to provide evidence, thus the wording “declaration or other evidence” seemed adequate. If in trying to address the concern of the Delegation of Germany “or” would be replaced by “and,” an additional requirement would be imposed on those systems which do not require evidence. Also, the wording “other evidence” could give a connotation that a declaration already includes evidence. Nevertheless, it would be up to the Committee to decide whether an additional requirement should be imposed.

218. The Delegation of Argentina was of the view that item (iii) of paragraph (3) should read: “...a declaration and other evidence...”

219. The Representative of the European Communities, supported by the Delegations of Congo and Uruguay, agreed with the proposal made by the Delegation of Germany, but suggested the following wording “set out the facts, arguments and evidence on which the request relies.”

220. After some discussion as to whether or not, under different systems of law, the word “declaration” included evidence, it was decided to include the wording suggested by the Representative of the European Communities, subject to further drafting by the Secretariat.

221. The Representative of CEIPI noted that the words “where the Office finds that such failure occurred in spite of due care required by the circumstances having been taken or, at the option of the Contracting Party, that any delay was unintentional” in item (iii) of paragraph (3) correspond to the definition of the remedy itself and should either be in a different provision of Rule 10 or in the Treaty.

222. Further to the decision of the SCT on this point after its discussion on Article 13*bis*, the Committee agreed to transfer this part of item (iii) of paragraph (3) to Article 13*bis*(1)(iii).

Paragraph (4) [Time Limit for Filing a Request]

223. Following a question from the Delegation of Slovenia with regard to the wording used in paragraph (4) to refer to reasonable time limits, the Secretariat recalled the explanations contained in Note R.10.03.

224. The Delegation of Japan, supported by the Delegation of Australia, observed that paragraph (4) refers to two time limits for two different measures. This made the provision complicated, particularly in the case of time limits for filing a request of reinstatement of rights, where usually, two kinds of periods are clearly stipulated: one was the period from the removal of the cause of failure and the second was the period from the date of expiration of the time limit for the action in question. The Delegation suggested to divide the time limits for reinstatement of rights from other time limits and to stipulate the period from the date of expiration of the time limit.

225. The Delegation of Germany noted that under its national legislation a request for reinstatement of rights may not be allowed after one year from the expiration of the time limit. In the view of the Delegation, the time limit covered by paragraph (4) ran from the date of the removal of the cause of failure, whereas the time limit in its national legislation was counted from the expiration of the original time limit which was not complied with. Thus if the cause of failure to comply was not removed within 12 months, there was no possibility to grant the relief.

226. The Delegation of Austria supported the interventions made by the Delegations of Japan and Germany and proposed to change the wording of paragraph (4), by transferring the time limit for the request for continuous processing to paragraph (2), so that paragraph (4) may only deal with the time limits concerning reinstatement of rights.

227. In response to the requests put forward by the foregoing delegations, the Secretariat suggested the following: firstly, to change the wording of item (i) of paragraph (2) to read: “be filed with the office after the expiration of that time limit” and secondly, to change the language of paragraph (4) along the lines of the previous Rule 9(6) [Alternative B] in document SCT/10/2 to read: “A request for reinstatement of rights may be filed within a period of time that shall be not less than [] months from the date of the removal of the cause of failure to comply with the time limit for the action in question or no less than [] months from the expiration of the time limit for the action in question, whichever is the earlier.”

228. The Delegation of Switzerland said that, while it was in favor of dividing this paragraph, it preferred to leave the specification of the time limits to each Contracting Party.

229. The Representative of the AIPPI proposed that, in order not to have too many fixed time limits, provision could be made for either “a reasonable time limit after the removal of the failure or a period of no less than a year after the expiration of the time limit, whichever is the earlier,” and then it was up to the Contracting Party to provide for 12 months or longer.

230. The Delegation of Cuba expressed the view that it was perhaps not adequate at this point to fix precise time limits. Some countries had recently passed new legislation, establishing specific time frames for this type of request and would probably not be able to establish new time frames.

231. The Chair stated that he would not make a rigid conclusion as to the provision contained in this paragraph and entrusted the Secretariat to redraft paragraph (4) according to its earlier suggestion, including the two time frames, firstly the reasonable time limit and the second time limit to be specified later, within square brackets. The Committee adopted the conclusion of the Chair.

Paragraph (5) [Exceptions Under Article 13bis]

232. The Delegation of Australia said that it agreed with the list of exceptions contained in paragraph (5) but asked SCT members to further reflect on exceptions to the time limits of Article 13bis under their national systems.

233. The Delegation of Sweden, supported by the Delegation of Denmark, agreed with the list of exceptions in paragraph (5) but deemed that they were substantive provisions that should be included in the Treaty, unless there were special reasons to do otherwise.

234. The Delegation of Pakistan supported the comments made by the Delegation of Sweden. However, regarding item (iv), the Delegation felt that an action by a board of appeal should be defined instead of leaving it to the discretion of the office. In reply to this comment, the Chair proposed that the definition of board of appeal be clarified in the Notes.

235. The Delegation of the Russian Federation sought clarification on the priority referred to in item (vi), since Article 3, subparagraphs (a)(vii) and (viii) referred to two different types of priority. The Delegation felt that it was not clear whether item (vi) addressed this question. Therefore, item (vi) should be redrafted or a Note should be included to indicate that it applies to both types of priority. In reply to this statement, the Chair indicated that item (vi) would be clarified in the Notes.

236. The Delegation of Uruguay suggested that in the Spanish version of items (iv) and (v), the word “*presentar*” be replaced by the word “*interponer*” because procedures are beyond the scope of Article 13bis. The Delegation felt that this change was in compliance with the notes in the English version. In reply to this request, the Chair stated that the Secretariat would look into the matter and make the necessary changes. Furthermore, the Delegation felt that the exceptions of paragraph (5) should not be moved to the Treaty, in order to avoid the difficult process of amending a treaty.

237. The Delegation of Japan, supported by the Representative of the JTA, stated that, from the standpoint of user-friendliness, item (iii) should not be an exception to Article 13bis. The Delegation stated further that the Patent Law Treaty obligates a Contracting Party to provide for a form of relief in case of failure to comply with a time limit for the payment of a renewal fee, and this obligation in the PLT was established as a means of improving Article 5bis(2) of the Paris Convention, and that a similar provision should be included in the TLT.

238. The Delegations of Australia and the United States of America favored keeping the payment of a renewal fee as an exception in the Rules.

239. The Delegations of Mexico and Cuba and the Representatives of CEIPI and INTA favored keeping the exceptions in paragraph (5). However amendments, additions or deletions of the exceptions contained in paragraph (5) should be done under strict conditions.

240. The Delegation of Australia noted that in a number of jurisdictions, the payment of a renewal fee was not independent from the request for payment. In reply to this statement, the Chair declared that Article *5bis* of the Paris Convention did not refer to the request for the payment of the renewal fee. The Delegation then explained that by implication, there is a request for payment of the renewal fee in the actual payment of a renewal fee.

241. The Delegation of the United Kingdom stated it did not have a definite stand as to whether the exceptions should stay in the Regulations or be moved to the Treaty. However, the Delegation expressed a preference for establishing strict conditions to amend them and felt that the payment and the request for payment of a renewal fee should be the same action.

242. The Delegation of Mexico pointed out that in the Spanish version of this text, the second reference to item (vi), paragraph (5) of Rule 10 should be changed to item (vii) and the Delegation of Cuba wondered whether item (iii) could be further clarified.

243. In conclusion, it was agreed that a number of delegations preferred to keep the exceptions in the Regulations, on the understanding that restrictions should be included to regulate any changes. Furthermore, it was agreed that item (iii) should be left within square brackets for further discussion at the next meeting.

244. In response to comments made by the Delegations of Australia and New Zealand as to the relationship between the requirements under Rules 7 and 10, and the need to further streamline or shorten the provisions contained in these rules, the Chair noted that this task could probably be entrusted to the Secretariat for the next session.

245. In conclusion, the Committee agreed on the redraft of Rule 10, as reproduced in Annex I of this Report.

Agenda Item 5: Internet Domain Names

Internet Domain Names and Country Names

246. Discussions on the protection of country names in the domain name system were based on documents SCT/10/5, SCT/10/7 Corr. and SCT/11/5.

247. The Secretariat provided an update on the status of the recommendations made by the Member States of WIPO in the context of the Second WIPO Internet Domain Name Process, which are currently under consideration by the Internet Corporation for Assigned Names and Numbers (ICANN).

248. Concerning the work to be undertaken at this session of the SCT, the Secretariat referred to the list of outstanding issues in paragraph 6 of document SCT/10/5 and recalled that, at its tenth session in March 2003, the SCT had decided not to recommend that the protection of country names in the domain name system be retroactive so as to also encompass existing registrations of domain names. At this session, the SCT would therefore need to address the following issues:

(a) whether protection should be extended to names by which countries are familiarly or commonly known, as provided in the cumulative list of notifications received from Member States (annexed to document SCT/10/7 Corr.);

(b) whether to recommend, in view of the immunities enjoyed by sovereign States, a special appeal mechanism by way of *de novo* arbitration. To facilitate the discussion of this issue, the Secretariat had prepared document SCT/11/5 which sets out possible options for such a mechanism.

249. The Secretariat stated that it could facilitate progress on the part of ICANN if the SCT could conclude its discussion of these outstanding issues at this meeting.

250. The Chair solicited views on whether the protection of country names should be extended to names by which countries are commonly or familiarly known.

251. The Delegation of Japan stated that it preferred to limit the protection of country names to the exact name of the country. The Delegations of Australia, Canada, New Zealand, the United Kingdom and the United States of America opposed extending protection to names by which countries are commonly or familiarly known.

252. The Delegation of Switzerland, supported by the Delegations of Cuba and Mexico, expressed a preference for extending protection to names by which countries are familiarly or commonly known.

253. The Delegations of Indonesia, Panama and the Ukraine stated that they supported the protection of country names in all official languages of the country concerned as well as in the official languages of the United Nations.

254. The Chair observed that the majority of delegations did not support an extension of the protection of country names to names by which countries are familiarly or commonly known. The Chair therefore concluded that no such recommendation would be made.

255. In response to a question put forward by the Delegation of Australia, the Secretariat confirmed that this conclusion would be communicated to ICANN.

256. The Chair then opened the discussion on the question whether a special appeal mechanism by way of *de novo* arbitration should be recommended to take account of the immunities enjoyed by sovereign States.

257. The Secretariat noted that the immunity of sovereign States from national jurisdiction was an accepted principle of international law. By way of illustration, the Secretariat referred to a recent decision in a dispute concerning the domain name "southafrica.com" in which a court in the United States of America had declined to assert jurisdiction over the Government

of South Africa. The Secretariat further explained that, in view of the immunity of sovereign States, disputes involving such States were, like disputes involving intergovernmental organizations, routinely referred to arbitration. Any *de novo* arbitration mechanism for sovereign States could be similar to the mechanism which Member States had previously proposed for intergovernmental organizations.

258. The Delegation of the Netherlands stated that its Government had already filed a case under the current UDRP and, in that context, had waived its immunity from other countries' jurisdiction for the limited purpose of providing a "mutual jurisdiction" under the UDRP. The Delegation asked how this would relate to the proposal to establish a *de novo* arbitration appeal mechanism for country names. In response, the Secretariat said that the Government of the Netherlands had submitted to a "mutual jurisdiction" because it had no choice if it wanted to invoke the UDRP in its current form.

259. The Delegation of the United States of America said that, in its opinion, an arbitral appeal mechanism would contribute to eliminating the four most important due process safeguards of the UDRP: the possibility of broad court review, the limitation of the procedure to narrow causes of action, the limitation of available remedies, and the limitation to trademark rights for which there is a firm basis in international law. The Delegation expressed concern that this might undermine the legitimacy of the UDRP as a whole. This was supported by the Delegation of Japan which further suggested that an exclusion mechanism for country names might provide more efficient protection than amending the UDRP.

260. The Delegation of Sweden supported the establishment of an arbitral appeal mechanism since countries might be dissuaded from filing a complaint if they had to submit to the jurisdiction of a foreign country's courts, which would undermine the efficiency of any protection afforded to country names. The Delegations of Denmark, New Zealand and Switzerland also expressed a preference for an arbitral appeal mechanism.

261. The Delegation of Australia opposed the establishment of an arbitral appeal mechanism and questioned the need for establishing it. The Delegation pointed out that a number of States had already filed complaints under the current UDRP without being dissuaded by its "mutual jurisdiction" requirement. This was supported by the Delegation of Canada which further stated that any Internet dispute resolution mechanism should be non-burdensome and cost-effective, and that an arbitral appeal mechanism would not meet these criteria. The Delegation of the Netherlands said that, although it had no definite view on the matter, it was not convinced that the introduction of an arbitral appeal mechanism was necessary.

262. The Chair observed that there was no agreement on this issue and concluded that the SCT would not make a recommendation to introduce a special appeal mechanism by way of *de novo* arbitration for country name disputes. The Chair further stated that this conclusion would also be communicated to ICANN.

Internet Domain Names and Geographical Indications

263. The discussion regarding the protection of geographical indications in the domain name system was based on document SCT/10/6.

264. The Representative of the European Communities stated that it attached high importance to the protection of geographical indications in the domain names system and recalled that the Final Report of the Second WIPO Internet Domain Name Process had found widespread evidence of the registration and use of geographical indications and other geographical source identifiers by persons who have no connection with the locality to which the identifiers refer. The Delegation said that such practices were misleading and would harm both the integrity of geographical indications as well as the credibility and reliability of the domain name system. The Delegation recalled that, at the last meeting of the WIPO General Assembly in September 2003, the presidency of the European Union had highlighted the importance of protecting geographical indications in the domain name system. In conclusion, the Delegation reiterated its view that the UDRP should be extended to provide protection for geographical indications, and that the SCT should not lose sight of this important issue. This was supported by the Delegation of Italy, speaking on behalf of the European Union, as well as the Delegations of the Czech Republic, France, Iran (Islamic Republic of), Mexico and Switzerland.

265. The Delegation of Australia opposed an extension of the UDRP to geographical indications as premature since no international agreement existed regarding their protection. This was supported by the Delegations of Canada, New Zealand, the United States of America and Uruguay.

Agenda Item 6: Geographical Indications

266. The Chair opened the floor for comments on this issue.

267. The Delegation of Australia thanked the Secretariat for document SCT/10/4 and suggested to discuss it. The Delegation said that the issues raised in the document illustrated the difficult nature of the protection of geographical indications. The Delegation recalled that at the last session of the SCT, the Representative of the OIV had stated that a geographical indication need not necessarily be a geographical term and that the term "Muscadet" was the name of a grape variety and a geographical indication at same time. The Delegation asked whether the name "Muscadet" was a protected geographical indication or the name of a grape variety which can be used by all, or both.

268. As there were no more comments, the Chair concluded that the SCT did not take any decision on this subject.

Agenda Item 7: Other Matters

269. The Secretariat recalled that the deadline to respond to the questionnaire on Trademark Law and Practice (document SCT/11/6) was the end of the year 2003.

270. The Representative of AIM raised the issue of national registers of well-known marks which had been established in some countries. The representative recalled that, in 1999, the WIPO General Assembly and the Paris Union Assembly adopted a Joint Recommendation which provided for flexible guidelines to determine well-known marks, and that the SCT opposed the creation of national registers for well-known marks. The representative believed that the establishment of these registers could have a negative impact on the flexible

guidelines of the Joint Recommendation and create legal uncertainty for well-known marks that are not on these registers. Finally, the representative recalled that the Paris Convention for the Protection of Industrial Property did not require the creation of a register for well-known marks. For these reasons, the representative suggested that this issue be included in the agenda of the next session. The Delegation of Egypt and the Representative of INTA supported this suggestion.

271. The Delegation of the United Kingdom proposed that the issue of the procedure for communications made pursuant to Article 6ter of the Paris Convention be included on the agenda of the next session. In connection with this request, the Secretariat informed Member States that an online database on communications made by virtue of Article 6ter of the Paris Convention would be available on the WIPO website in the near future.

272. The Delegation of Pakistan, supported by the Delegation of Egypt, requested that the topic of geographical indications be retained in the agenda of the next session of the SCT.

Agenda Item 8: Future Work

273. Following the discussions of the SCT during its eleventh session, the Secretariat summarized the issues proposed for discussion at the next meeting:

- a further discussion on the revision of the TLT (Treaty, Regulations and Notes);
- whether a recommendation should be made to the WIPO Assembly in 2004 to convene a diplomatic conference on the revision of the TLT in 2005;
- a discussion on the need to improve communications made by virtue of Article 6ter of the Paris Convention;
- a discussion on the dangers posed by the practice of establishing national registers of well-known marks;
- a discussion on the protection of geographical indications in the domain name space;
- a discussion on geographical indications in general.

Furthermore, the Secretariat asked Member States to decide the amount of time that should be devoted to each of these topics at the next session of the SCT.

274. Due to the possibility of holding a diplomatic conference in 2005, the Chair inquired whether five days should be devoted to a discussion on the revision of the TLT or whether some time should also be devoted to the other issues.

275. The Delegation of Australia recalled that it had been suggested to add a discussion on the questionnaire on trademark law and practice to the agenda of the next session. The Delegation also supported the proposal to hold a diplomatic conference in 2005. Although priority should be given to the discussion on the revision of the TLT, the Delegation suggested that one day should be set aside for discussions on other issues, notably on geographical indications. The Delegation suggested that the SCT could also envisage, if needed, to hold a two-week meeting or establish working groups on specific topics.

276. The Secretariat informed Member States that the next session of the SCT will take place from April 26 to April 30, 2004, and that a further session would take place before the end of 2004.

277. The Delegation of Canada wondered whether a third session of the SCT would take place before the diplomatic conference in 2005. The Secretariat replied that a third session could take place depending on when the diplomatic conference will be scheduled in 2005.

278. The Delegation of New Zealand suggested that the next session of the SCT focus on the revision of the TLT. However, discussions on geographical indications and Article 6*ter* of the Paris Convention should also be kept on the agenda.

279. The Delegation of Switzerland suggested that, at the next session, priority be given to the revision of the TLT. However, the Delegation expressed support for the discussion of a preliminary report on the questionnaire on trademark law and practice.

280. The Representative of INTA wondered whether a discussion on the administrative and final clauses of the TLT would be included in the agenda of the next meeting. The representative requested the Secretariat to provide the original administrative provisions presented in 1994 at the diplomatic conference for the adoption of the TLT.

281. The Chair indicated that the next draft would include such provisions. Furthermore, the Chair asked whether it could be agreed that at its next meeting, the SCT devote at least four full days to discussions on the revision of the TLT. The Delegation of Australia supported this proposal.

282. The Chair asked the SCT whether a discussion on Article 6*ter* should be included in the agenda of the next meeting. In reply, the Delegation of the United Kingdom suggested that the Secretariat produce a document on this subject.

283. In light of the various comments made, the Chair suggested that the Secretariat present a brief or preliminary report on the questionnaire and a comprehensive document on the revision of the TLT for the next session of the SCT.

Agenda Item 9: Adoption of the Summary by the Chair

284. The Chair proceeded to the adoption of the Summary by the Chair contained in document SCT/11/7 Prov. and stated that Articles 8, 13*bis* and 14, Rules 6, 7 and 10 as redrafted by the Secretariat during the meeting and adopted by the SCT, were contained in the Annex to the Summary by the Chair. Agenda items 1 to 3 were adopted without modifications.

285. The Delegation of Sweden pointed out that following an earlier discussion on paragraph (6) of Article 8, it was decided to delete item (vii) of Article 1. In reply to this statement, the Secretariat explained that since Article 1 was not discussed by Member States during this meeting, the Summary by the Chair should not make any reference to it for the moment.

286. The Delegation of New Zealand recalled that during the discussion on paragraph (8) of Article 8 it was suggested that the wording of this provision be amended to state that an office may have the ability to notify the holder or applicant and to make observations, even if the communication is received in a language not admitted by the office.

287. The Secretariat noted that although there was a consensus on the general principle of this provision further discussion will be required at the next meeting to solve this problem. The Secretariat explained that the first set of square brackets avoided any reference to the language provision but the second did not. Another way to solve this problem was to use the wording in the third set of square brackets (i.e. “in a language admitted by the office”). The Chair proposed to keep the current wording and draft Article 8 was adopted pending a further discussion.

288. Draft Article 13*bis* was adopted without modifications.

289. Draft Rules 6 and 7 were adopted without modifications.

290. Draft Rule 10 was adopted without modifications. The Delegation of Australia suggested, however, that paragraphs (1) to (3) be combined in one or two simpler provisions.

291. Chapter II on Trademark Licenses was adopted without modifications.

292. The Chair indicated that paragraphs (5) and (6) of Agenda item 5 were amended respectively as follows:

- with regard to the issues considered in paragraph (13) of document SCT/10/5 (“The Protection of Country Names in the Domain Name System”), the SCT decided to inform ICANN that no recommendation would be made to extend protection to names by which countries are familiarly or commonly known;
- in respect of the question of sovereign immunity of States, referred to in paragraph (18) of document SCT/10/5, the SCT decided to inform ICANN that no recommendation would be made to establish a special appeal mechanism by way of *de novo* arbitration.

293. Paragraphs (5) and (6) of Agenda item 5 were adopted with these modifications.

294. In reply to a question by the Delegation of Canada, as to whether any recommendation would be made to ICANN regarding paragraph (7) of Agenda item 5, the Secretariat informed that no such recommendation would be made.

295. Paragraph (7) of Agenda item 5 was adopted without modifications.

296. Agenda item 6 was adopted without modifications.

297. Paragraphs (9), (10) and (11) of Agenda item 7 were adopted without modifications.

298. Paragraphs (12) and (13) of Agenda item 8 were adopted without modifications.

299. The Secretariat informed Member States that paragraph (13) of Agenda item 8 had unfortunately been omitted in the Spanish version of the Summary by the Chair. This paragraph would be included in the adopted version.

300. The Summary by the Chair, as adopted by the Committee, is attached as Annex I to this Report.

Agenda Item 10: Closing of the Session

301. The Chair closed the eleventh session of the Standing Committee.

[Annex I follows]

ANNEX I

SUMMARY BY THE CHAIR

Agenda Item 1: Opening of the Session

1. Mr. Shozo Uemura, Deputy Director General of the World Intellectual Property Organization (WIPO), opened the session and welcomed the delegates on behalf of the Director General of WIPO.

Agenda Item 2: Adoption of the Draft Agenda

2. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) adopted the Draft Agenda (document SCT/11/1 Prov.) without modifications.

Agenda Item 3: Adoption of the Draft Report of the Tenth Session

3. The SCT adopted the Draft Report (document SCT/10/9 Prov.2) with minor modifications.

Agenda Item 4: Revision of the Trademark Law Treaty

4. The Standing Committee discussed the documents concerning the Draft Revised Trademark Law Treaty (TLT) (document SCT/11/2), Draft Revised Regulations under the Draft Revised Trademark Law Treaty (document SCT/11/3) and Notes (document SCT/11/4) and agreed, as follows:

Draft Article 8

Paragraph (1). There was consensus on this provision.

Paragraph (2), subparagraphs (a), (b) and (c). There was consensus on this provision.

Paragraph (3). Following discussion, consensus was reached on this provision as redrafted.

Paragraph (4), subparagraphs (a), (b) and (c). There was consensus on this provision as modified in Informal Document 2 prepared by the International Bureau.

Paragraph (5). There was consensus on this provision as redrafted.

Paragraph (6). There was consensus on this provision.

Paragraph (7). There was consensus on this provision.

Paragraph (8). There was consensus on this provision as redrafted. However, the inclusion of a reference to paragraph (2) was referred to the International Bureau for further study.

Draft Article 13bis

Paragraph (1). There was consensus on this provision as redrafted. However, some parts were referred to the SCT for further discussion concerning time limits.

Paragraph (2). There was consensus on this provision.

Paragraph (3). There was consensus on this provision.

Paragraph (4). There was consensus on this provision as redrafted.

Paragraph (5). There was consensus on the deletion of this provision. However, the inclusion of a reference to Article 13bis in Article 14 was referred to the International Bureau for further study and to the SCT for further discussion.

Draft Rule 6

Paragraph (1). There was consensus on this provision.

Paragraph (2). There was consensus on this provision.

Paragraph (3). There was consensus on this provision.

Paragraph (4). There was consensus on this provision as redrafted. However, one delegation was not able to join the consensus at this stage of the discussion.

Paragraph (5). There was consensus on this provision.

Paragraph (6). There was consensus on this provision.

Draft Rule 7

Paragraph (1). There was consensus on this provision.

Paragraph (2). There was consensus on this provision.

Paragraph (3). There was consensus on this provision.

Paragraph (4). There was consensus on this provision.

Paragraph (5)(a). There was consensus on this provision.

Paragraph (5)(b). There was consensus on this provision as redrafted.

Draft Rule 10

Paragraph (1). There was consensus on this provision as redrafted.

Paragraph (2). There was consensus on this provision as redrafted.

Paragraph (3). There was consensus on this provision as redrafted.

Paragraph (4). There was consensus on this provision as redrafted. However, the inclusion of a time limit was referred to the International Bureau for further study.

Paragraph (5). There was consensus on this provision as redrafted. However, item (iii) was referred to the International Bureau for further study and to the SCT for further discussion.

The text reflecting the results of the deliberations on Articles 8 and 13*bis* and Rules 6, 7 and 10 is contained in the Annex.

Chapter II: Trademark Licenses

After a general exchange of views which showed a difference of opinions as to whether this chapter should be included in the revised TLT, the Committee decided to pursue the examination of the provisions contained in Articles 17 to 21 at the next meeting of the SCT.

Agenda Item 5: Internet Domain Names

5. With regard to the issues considered in paragraph 13 of document SCT/10/5 (“The Protection of Country Names in the Domain Name System”), the SCT decided to inform ICANN that no recommendation would be made to extend protection to names by which countries are familiarly or commonly known.

6. In respect of the question of sovereign immunity of States, referred to in paragraph 18 of document SCT/10/5, the SCT decided to inform ICANN that no recommendation would be made to establish a special appeal mechanism by way of *de novo* arbitration.

7. With regard to the issue of domain names and geographical indications, further discussion was requested.

Agenda Item 6: Geographical Indications

8. With regard to the issue of geographical indications, further discussion was requested.

Agenda Item 7: Other Matters

9. The Committee was reminded that replies to the Questionnaire on Trademark Law and Practice (document SCT/11/6) should be sent to the International Bureau before the end of the year.

10. It was suggested that the registration of well-known marks in national registries deserves consideration by the Committee.

11. It was suggested that the protection provided under Article *6ter* of the Paris Convention deserves consideration by the Committee.

Agenda Item 8: Future Work

12. The SCT decided that priority should be given to the revision of the TLT. The SCT further agreed that its twelfth session would last five full working days and that the agenda of that session would devote at least four full days to work on the TLT, leaving the last day flexible for consideration of other issues including the WIPO Questionnaire on Trademark Law and Practice, Geographical Indications, Domain Names and Geographical Indications, Article *6ter* of the Paris Convention and the registration of well-known marks.

13. The provisional date of the twelfth session of the SCT will be April 26 to 30, 2004.

[Annex follows]

ANNEX

Article 8
Communications

(1) [*Means of Transmittal of Communications*] Any Contracting Party may choose the means of transmittal of communications.

(2) [*Language of Communications*]

(a) Any Contracting Party may require that any communication be in a language admitted by the Office. Where the Office admits more than one language, the applicant, holder or other interested person may be required to comply with any other language requirement applicable with respect to the Office, provided that no indication or element of the communication may be required to be in more than one language.

(b) No Contracting Party may require the attestation, notarization, authentication, legalization or any other certification of any translation of a communication other than as provided under this Treaty.

(c) Where an Office does not require a communication to be in a language admitted by the Office, it may require that a translation of that communication by an official translator or a representative, into a language admitted by the Office, be supplied within a reasonable time limit.

(3) [*Presentation of a Communication*] Subject to paragraph (2), any Contracting Party shall accept the presentation of a communication, the content of which corresponds to the relevant Model International Form, if any, provided for in the Regulations.

(4) [*Signature of Communications*]

(a) Where a Contracting Party requires a communication to be signed, that Contracting Party shall accept any signature that complies with the requirements prescribed in the Regulations.

(b) No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature except,

(i) where the law of the Contracting Party so provides, if the signature concerns the surrender of a registration, or,

(ii) in the case of a signature in electronic form, as prescribed in the Regulations.

(c) Notwithstanding subparagraph (b), a Contracting Party may require that evidence be filed with the Office only where the Office may reasonably doubt the authenticity of any signature.

(5) [*Prohibition of Other Requirements*] No Contracting Party may require that a communication comply with requirements other than those prescribed in this Article or in the Regulations.

(6) [*Address for Correspondence, Address for Legal Service*] Any Contracting Party may, subject to any provision prescribed in the Regulations, require that an applicant, holder or other interested person indicate in any communication an address for correspondence and/or an address for legal service.

(7) [*Original of a Communication Filed in Electronic Form or by Electronic Means of Transmittal*] Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal, it may require that the original of any such communication, accompanied by a letter identifying that earlier transmission, be filed on paper with the Office within a reasonable time limit.

(8) [*Notification*] Where one or more of the requirements under paragraphs [(2), and (4) to (7)][(4) to (7)] are not complied with in respect of a communication [in a language admitted by the Office], the Office shall notify the applicant, holder or other interested person, giving the opportunity to comply with any such requirement, and to make observations, within a reasonable time limit.

Article 13bis
Measures in Case of Failure to Comply with Time Limits

(1) [*Measures*] A Contracting Party shall provide for at least one of the following procedures, in accordance with the requirements prescribed in the Regulations, for the case where an applicant, holder or other interested person fails [,or is about to fail,] to comply with a time limit for an action in a procedure before the Office in respect of an application or a registration, and that time limit is [less than][not more than][six months][three months]:

- (i) an extension of the time limit for a reasonable period of time,
- (ii) continued processing with respect to the application or registration, or
- (iii) reinstatement of the rights of the applicant or holder with respect to the application or registration, subject to a finding by the Office that the failure occurred in spite of due care required by the circumstances or, at the option of the Contracting Party, that the failure was unintentional.

(2) [*Exceptions*] No Contracting Party shall be required to provide for any of the procedures referred to in paragraph (1) with respect to exceptions prescribed in the Regulations.

(3) [*Fees*] Any Contracting Party may require that a fee be paid in respect of a request under paragraph (1).

(4) [*Prohibition of Other Requirements*] No Contracting Party may demand that requirements other than those referred to in this Treaty or in the Regulations be complied with in respect of the procedures provided for under paragraph (1).

Article 14
Opportunity to Make Observations in Case of Intended Refusal

An application or a request under Articles 10 to 13[*bis*] may not be refused totally or in part by an Office without giving the applicant or the requesting party, as the case may be, an opportunity to make observations on the intended refusal within a reasonable time limit.

Rule 6
Details Concerning the Signature Under Article 8(4)

(1) [*Indications Accompanying Signature*] Any Contracting Party may require that the signature of the natural person who signs be accompanied by

(i) an indication in letters of the family or principal name and the given or secondary name or names of that person or, at the option of that person, of the name or names customarily used by the said person;

(ii) an indication of the capacity in which that person signed, where such capacity is not obvious from reading the communication.

(2) [*Date of Signing*] Any Contracting Party may require that a signature be accompanied by an indication of the date on which the signing was effected. Where that indication is required but is not supplied, the date on which the signing is deemed to have been effected shall be the date on which the communication bearing the signature was received by the Office or, if the Contracting Party so allows, a date earlier than the latter date.

(3) [*Signature of Communications on Paper*] Where a communication to the Office of a Contracting Party is on paper and a signature is required, that Contracting Party

(i) shall, subject to item (iii), accept a handwritten signature;

(ii) may permit, instead of a handwritten signature, the use of other forms of signature, such as a printed or stamped signature, or the use of a seal or of a bar-coded label;

(iii) may, where the natural person who signs the communication is a national of the Contracting Party and such person's address is on its territory, or where the legal entity on behalf of which the communication is signed is organized under its law and has either a domicile or a real and effective industrial or commercial establishment on its territory, require that a seal be used instead of a handwritten signature.

(4) [*Signature of Communications Filed in Electronic Form or by Electronic Means of Transmittal Resulting in Graphic Representation*] Where a Contracting Party allows the transmittal of communications in electronic form or by electronic means of transmittal, it may consider such a communication signed if a graphic representation of a signature accepted by that Contracting Party under paragraph (3) appears on that communication as received by the Office of that Contracting Party.

(5) [*Signature of Communications Filed in Electronic Form Not Resulting in Graphic Representation of Signature*] Where a Contracting Party allows the transmittal of communications in electronic form, and a graphic representation of a signature accepted by that Contracting Party under paragraph (3) does not appear on such a communication as received by the Office of that Contracting Party, the Contracting Party may require that the communication be signed using a signature in electronic form as prescribed by that Contracting Party.

(6) [*Exception to Certification of Signature Under Article 8(4)(b)*] Any Contracting Party may require that any signature referred to in paragraph (5) be confirmed by a process for certifying signatures in electronic form specified by that Contracting Party.

Rule 7

Details Concerning Indications Under Article 8(5), (6) and (8)

(1) [*Details Concerning Indications Under Article 8(5)*]

- (a) Any Contracting Party may require that any communication
- (i) indicate the name and address of the applicant, holder or other interested person;
 - (ii) indicate the number of the application or registration of the mark to which it relates;
 - (iii) contain, where the applicant, holder or other interested person is registered with the Office, the number or other indication under which he is so registered.
- (b) Any Contracting Party may require that any communication by a representative for the purposes of a procedure before the Office contain
- (i) the name and address of the representative;
 - (ii) a reference to the power of attorney, or other communication in which the appointment of that representative is or was effected, on the basis of which the said representative acts;
 - (iii) where the representative is registered with the Office, the number or other indication under which he is so registered.

(2) [*Address for Correspondence and Address for Legal Service*] Any Contracting Party may require that the address for correspondence and the address for legal service, referred to in Article 8(6), be on a territory prescribed by that Contracting Party.

(3) [*Address Where No Representative Is Appointed*] Where no representative is appointed and an applicant, holder or other interested person has provided, as his address, an address on a territory prescribed by the Contracting Party under paragraph (2), that Contracting Party shall consider that address to be the address for correspondence or the address for legal service, referred to in Article 8(6), as required by the Contracting Party.

(4) [*Address Where a Representative Is Appointed*] Where a representative is appointed, a Contracting Party shall consider the address of that representative to be the address for correspondence or the address for legal service, referred to in Article 8(6), as required by the Contracting Party.

(5) [*Sanctions for Non-Compliance with Requirements*]

(a) No Contracting Party may provide for the refusal of an application on grounds of failure to comply with any requirement to file a registration number or other indication under paragraph (1)(a)(iii) and (b)(iii).

(b) Where a notification has not been made because indications allowing the applicant, holder or other interested person to be contacted by the Office have not been filed, a reasonable time limit shall be granted before the Contracting Party applies such sanctions as is provided for in its law.

Rule 10

Requirements Relating to Measures in Case of Failure to Comply with Time Limits

(1) [*Request for an Extension of a Time Limit*] Where a Contracting Party provides for an extension of a time limit, it may require that the request

- (i) be filed with the Office prior to the expiration of that time limit,
- (ii) be signed by the applicant or holder or the representative of the applicant or holder,
- (iii) contain an identification of the time limit in question.

(2) [*Request for Continued Processing*] Where a Contracting Party provides for continued processing it may require that the request

- (i) be filed with the Office prior or after the expiration of that time limit,
- (ii) be signed by the applicant or holder or the representative of the applicant or holder,

(iii) contain an identification of the time limit in question, and that the omitted act be completed.

(3) [*Request for Reinstatement of Rights*] Where a Contracting Party provides for the reinstatement of the rights of the applicant or holder, it may require that the request

- (i) be filed with the Office,
 - (ii) be signed by the applicant or holder or the representative of the applicant or holder,
 - (iii) contain an identification of the time limit in question,
 - (iv) set out the facts and evidence in support of the reasons for the failure to comply with the time limit,
- and that the omitted act be completed.

(4) [*Time Limit for Filing a Request for Reinstatement of Rights Under Paragraph (3)*] A request for reinstatement of rights shall be filed within a reasonable time limit from the date of the removal of the cause of failure to comply with the time limit in question or, not less than [] months from the date of expiration of the time limit in question, whichever is the earlier.

(5) [*Exceptions Under Article 13bis(2)*] The exceptions referred to in Article 13bis(2) are the cases of failure to comply with a time limit:

- (i) for which relief has already been granted under Article 13bis(1)(i) or (ii);
- (ii) for making a request for relief under Article 13bis(1)(i) or (ii) or a request for reinstatement under Article 13bis(1)(iii);
- (iii) [(iii) for payment of a renewal fee];
- (iv) for an action before a board of appeal or other review body constituted in the framework of the Office;
- (v) for an action in inter partes proceedings;
- (vi) for the correction or addition of a priority claim;
- (vii) for filing the declaration referred to in Article 3(1)(a)(vii).

[Annex II follows]

ANNEXE II/ANNEX II

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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(dans l'ordre alphabétique des noms français des États)
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* Sur une décision du Comité permanent, les Communautés européennes ont obtenu le statut de membre sans droit de vote.

* Based on a decision of the Standing Committee, the European Communities were accorded member status without a right to vote.

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[Fin de l'annexe II et du document/
End of Annex II and of document]