

**RECORDS
OF THE DIPLOMATIC CONFERENCE
FOR THE CONCLUSION OF THE TRADEMARK LAW TREATY**



**WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)**

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OF THE DIPLOMATIC CONFERENCE
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EDITOR'S NOTE

The Records of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty held in Geneva, from October 10 to 28, 1994, contain the documents described below relating to that Conference which were issued before, during and after the Conference, as well as indexes to those documents.

Trademark Law Treaty

In this part of the Records, the final text--that is the text as adopted and signed--of the Trademark Law Treaty appears on the right-hand (odd number) pages of the first part of this volume (up to page 73). On the opposite, left-hand (even number) pages (up to page 72) appears the text of the draft of the said Treaty as presented to the Diplomatic Conference. In order to facilitate the comparison of the draft with the final text, those pages do not contain in full the text of the draft where the texts are identical.

Regulations under the Trademark Law Treaty

This part of the Records reproduces on the right-hand (odd number) pages the final text of the Regulations under the Trademark Law Treaty and the Model International Forms (pages 77 to 177) and on the opposite, left-hand (even number) pages the draft of the said Regulations and of the Model International Forms as presented to the Diplomatic Conference (pages 76 to 176). The text of the draft Regulations and Model International Forms is only reproduced where it is not identical with the text of the Regulations and Model International Forms as adopted by the Diplomatic Conference.

Recommendation

This part of the Records (page 181) reproduces a Recommendation which was adopted by the Diplomatic Conference.

Agreed Statements

This part of the Records (pages 184 to 185) contains the text of the Agreed Statements which were adopted by the Diplomatic Conference.

Signatories of the Trademark Law Treaty

In this part of the Records (page 189), a list of the signatories of the Treaty is reproduced.

Final Act of the Diplomatic Conference and Signatories of the Final Act

Page 193 of the Records contains the text of the Final Act of the Diplomatic Conference and a list of signatories of the Final Act.

Conference Documents

This part (pages 197 to 332) contains a list of the three series of documents distributed before and during the Diplomatic Conference: "TLT/DC" (56 documents), "TLT/DC/DC" (9 documents) and "TLT/DC/INF" (7 documents).

Summary Minutes

This part (pages 335 to 518) contains the summary minutes of the sessions of the Plenary of the Diplomatic Conference (pages 335 to 379) and the Main Committee of the Diplomatic Conference (pages 380 to 518).

Participants

This part lists the individuals who, in the Diplomatic Conference, represented member delegations (pages 521 to 546), special delegations (page 549), observer delegations (pages 548 to 549), intergovernmental organizations (page 549), international non-governmental organizations (pages 550 to 551) and the World Intellectual Property Organization (pages 551). This part lists also the officers of the Diplomatic Conference and the officers and members of the Committees of the Diplomatic Conference (pages 552 to 554).

Indexes

The Records contain six different indexes (pages 557 to 611).

The first index (pages 558 to 564) lists by number each Article of the Treaty and Rule of the Regulations under the Treaty and indicates, under each of them, the pages where the text of the Article or Rule appears in these Records, the pages where the written proposals for amendments to the Article or Rule are produced and, finally, the serial numbers of those paragraphs of the summary minutes which reflect the discussion on the Article or Rule.

The second index (pages 565 to 574) is an alphabetical list of the States having the status of "member delegation" indicating, under the name of each such State, the pages of these Records on which the names of the members of its delegation appear, and the pages on which the written proposal(s) for amendments submitted and the interventions made on behalf of that State can be found.

The third index (page 575) is an alphabetical list of the intergovernmental organizations having the status of "special delegation" indicating, under the name of each such organization, the pages of these Records on which the names of the members of its delegation appear, and the pages on which the written proposal(s) for amendments submitted and the interventions made on behalf of that organization can be found.

The fourth index (pages 575 to 576) is an alphabetical list of the States having the status of "observer delegation" indicating, under the name of each such State, the pages of these Records on which the names of observers representing it appear, and the pages on which the interventions made on its behalf can be found.

The fifth index (pages 577 to 579) is an alphabetical list of intergovernmental organizations and of non-governmental organizations indicating, under the name of each organization, the pages of these Records on which the names of observers representing it, as well as the interventions made on its behalf can be found.

The sixth index (pages 580 to 611) is an alphabetical list of the individual participants indicating, under the name of each individual, the State or organization which she or he represented, as well as the pages of these Records on which her or his name appears, together with that of the State or organization represented by her or him as an officer of the Conference or as an officer or a member of a Committee, or as a speaker in the Plenary or the Main Committee.

Geneva, April 1995

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TRADEMARK LAW TREATY

**Draft of the Trademark Law Treaty
as presented to the Diplomatic Conference**

**Text of the Trademark Law Treaty
as adopted by the Diplomatic Conference**

DRAFT TRADEMARK LAW TREATY

LIST OF ARTICLES

Article 1:	Abbreviated Expressions
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Article 3:	Application
Article 4:	Representation; Address for Service
Article 5:	Filing Date
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Article 25:	Denunciation of the Treaty
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TRADEMARK LAW TREATY

LIST OF ARTICLES

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Article 7:	Division of Application and Registration
Article 8:	Signature
Article 9:	Classification of Goods and/or Services
Article 10:	Changes in Names or Addresses
Article 11:	Change in Ownership
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Article 14:	Observations in Case of Intended Refusal
Article 15:	Obligation to Comply with the Paris Convention
Article 16:	Service Marks
Article 17:	Regulations
Article 18:	Revision; Protocols
Article 19:	Becoming Party to the Treaty
Article 20:	Effective Date of Ratifications and Accessions
Article 21:	Reservations
Article 22:	Transitional Provisions
Article 23:	Denunciation of the Treaty
Article 24:	Languages of the Treaty; Signature
Article 25:	Depositary

Article 1Abbreviated Expressions

[Same as in the Final Text.]

(i) [Same as in the Final Text.]

(ii) [Same as in the Final Text.]

(iii) [Same as in the Final Text.]

(iv) [Same as in the Final Text.]

(v) [Same as in the Final Text.]

(vi) [Same as in the Final Text.]

(vii) [Same as in the Final Text.]

(viii) [Same as in the Final Text.]

(ix) [Same as in the Final Text, except that in the Draft, the word "regional" appears before the words "intergovernmental organization."]

(x) [Same as in the Final Text.]

(xi) "Assembly" means the Assembly of the Contracting Parties that is referred to in Article 17; [In the Final Text, there is no provision corresponding to item (xi) of the Draft.]

(xii) "Union" means the Union referred to in Article 16; [In the Final Text, there is no provision corresponding to item (xii) of the Draft.]

(xiii) [Same as item (xi) in the Final Text.]

(xiv) [Same as item (xii) in the Final Text.]

(xv) [Same as item (xiii) in the Final Text, except that the reference to "Article 17" in the Final Text appears as reference to "Article 19" in the Draft.]

Article 1

Abbreviated Expressions

For the purposes of this Treaty, unless expressly stated otherwise:

- (i) "Office" means the agency entrusted by a Contracting Party with the registration of marks;
- (ii) "registration" means the registration of a mark by an Office;
- (iii) "application" means an application for registration;
- (iv) references to a "person" shall be construed as references to both a natural person and a legal entity;
- (v) "holder" means the person whom the register of marks shows as the holder of the registration;
- (vi) "register of marks" means the collection of data maintained by an Office, which includes the contents of all registrations and all data recorded in respect of all registrations, irrespective of the medium in which such data are stored;
- (vii) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, as revised and amended;
- (viii) "Nice Classification" means the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, signed at Nice on June 15, 1957, as revised and amended;
- (ix) "Contracting Party" means any State or intergovernmental organization party to this Treaty;
- (x) references to an "instrument of ratification" shall be construed as including references to instruments of acceptance and approval;
- (xi) "Organization" means the World Intellectual Property Organization;
- (xii) "Director General" means the Director General of the Organization;
- (xiii) "Regulations" means the Regulations under this Treaty that are referred to in Article 17.

Article 2Marks to Which the Treaty Applies

[Same as in the Final Text.]

Article 3Application

[Subparagraph (1)(a) items (i) to (vi) are the same as in the Final Text.]

Article 2

Marks to Which the Treaty Applies

(1) [Nature of Marks] (a) This Treaty shall apply to marks consisting of visible signs, provided that only those Contracting Parties which accept for registration three-dimensional marks shall be obliged to apply this Treaty to such marks.

(b) This Treaty shall not apply to hologram marks and to marks not consisting of visible signs, in particular, sound marks and olfactory marks.

(2) [Kinds of Marks] (a) This Treaty shall apply to marks relating to goods (trademarks) or services (service marks) or both goods and services.

(b) This Treaty shall not apply to collective marks, certification marks and guarantee marks.

Article 3

Application

(1) [Indications or Elements Contained in or Accompanying an Application; Fee] (a) Any Contracting Party may require that an application contain some or all of the following indications or elements:

(i) a request for registration;

(ii) the name and address of the applicant;

(iii) the name of a State of which the applicant is a national if he is the national of any State, the name of a State in which the applicant has his domicile, if any, and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;

(iv) where the applicant is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;

(v) where the applicant has a representative, the name and address of that representative;

(vi) where an address for service is required under Article 4(2)(b), such address;

[Article 3(1)(a), continued]

(vii) where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with an indication

- of the name of the country with whose national Office the earlier application was filed, or, where the earlier application was filed with an Office other than a national Office, the name of that Office,
- of the date on which the earlier application was filed and,
- where available, of the application number of the earlier application;

(viii) [Same as in the Final Text, except that the word "display" in the Final Texts appears as "presentation" in the Draft.]

[Subparagraph (1)(a) items (ix) to (xiv) are the same as in the Final Text.]

(xv) the names of the goods and/or services for which the registration is sought, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of the said Classification to which that group of goods or services belongs;

(xvi) a signature by, or other self-identification of, the person specified in paragraph (4);

[Article 3(1)(a), continued]

(vii) where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration of priority that may be required pursuant to Article 4 of the Paris Convention;

(viii) where the applicant wishes to take advantage of any protection resulting from the display of goods and/or services in an exhibition, a declaration to that effect, together with indications in support of that declaration, as required by the law of the Contracting Party;

(ix) where the Office of the Contracting Party uses characters (letters and numbers) that it considers as being standard and where the applicant wishes that the mark be registered and published in standard characters, a statement to that effect;

(x) where the applicant wishes to claim color as a distinctive feature of the mark, a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color;

(xi) where the mark is a three-dimensional mark, a statement to that effect;

(xii) one or more reproductions of the mark;

(xiii) a transliteration of the mark or of certain parts of the mark;

(xiv) a translation of the mark or of certain parts of the mark;

(xv) the names of the goods and/or services for which the registration is sought, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification;

(xvi) a signature by the person specified in paragraph (4);

[Article 3(1)(a), continued]

(xvii) [Same as in the Final Text.]

(b) [Same as in the Final Text.]

(c) [Same as in the Final Text.]

(2) [Same introductory phrase as in the Final Text.]

(i) [Same as in the Final Text.]

(ii) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(iii) where the Contracting Party allows the transmittal of communications to its Office by electronic means and the application is so transmitted, if such transmittal is effected in the manner prescribed in the Regulations. [In the Final Text, there is no provision corresponding to item (iii) of the Draft.]

(3) [Language] Any Contracting Party may require that the application be in the language, or in one of the languages, admitted by its Office.

(4) [Signature] (a) Any Contracting Party may require that the application be signed by the applicant or, at the option of the applicant, by his representative.

(b) [Same as in the Final Text.]

(5) [Same as in the Final Text.]

[Article 3(1)(a), continued]

(xvii) a declaration of intention to use the mark, as required by the law of the Contracting Party.

(b) The applicant may file, instead of or in addition to the declaration of intention to use the mark referred to in subparagraph (a)(xvii), a declaration of actual use of the mark and evidence to that effect, as required by the law of the Contracting Party.

(c) Any Contracting Party may require that, in respect of the application, fees be paid to the Office.

(2) [Presentation] As regards the requirements concerning the presentation of the application, no Contracting Party shall refuse the application,

(i) where the application is presented in writing on paper, if it is presented, subject to paragraph (3), on a form corresponding to the application Form provided for in the Regulations,

(ii) where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the application is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (3), to the application Form referred to in item (i).

(3) [Language] Any Contracting Party may require that the application be in the language, or in one of the languages, admitted by the Office. Where the Office admits more than one language, the applicant may be required to comply with any other language requirement applicable with respect to the Office, provided that the application may not be required to be in more than one language.

(4) [Signature] (a) The signature referred to in paragraph (1)(a)(xvi) may be the signature of the applicant or the signature of his representative.

(b) Notwithstanding subparagraph (a), any Contracting Party may require that the declarations referred to in paragraph (1)(a)(xvii) and (b) be signed by the applicant himself even if he has a representative.

(5) [Single Application for Goods and/or Services in Several Classes] One and the same application may relate to several goods and/or services, irrespective of whether they belong to one class or to several classes of the Nice Classification.

[Article 3, continued]

(6) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(7) [Same as in the Final Text.]

(8) [Same as in the Final Text, except that the words "the Office" appearing in the second and third line of the Final Text appear as "its Office" and "that Office," respectively, in the Draft.]

Article 4

Representation; Address for Service

(1) [Same as in the Final Text except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(2)(a) [Same as in the Final Text except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

[Article 3, continued]

(6) [Actual Use] Any Contracting Party may require that, where a declaration of intention to use has been filed under paragraph (1)(a)(xvii), the applicant furnish to the Office within a time limit fixed in its law, subject to the minimum time limit prescribed in the Regulations, evidence of the actual use of the mark, as required by the said law.

(7) [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (4) and (6) be complied with in respect of the application. In particular, the following may not be required in respect of the application throughout its pendency:

(i) the furnishing of any certificate of, or extract from, a register of commerce;

(ii) an indication of the applicant's carrying on of an industrial or commercial activity, as well as the furnishing of evidence to that effect;

(iii) an indication of the applicant's carrying on of an activity corresponding to the goods and/or services listed in the application, as well as the furnishing of evidence to that effect;

(iv) the furnishing of evidence to the effect that the mark has been registered in the register of marks of another Contracting Party or of a State party to the Paris Convention which is not a Contracting Party, except where the applicant claims the application of Article 6quinquies of the Paris Convention.

(8) [Evidence] Any Contracting Party may require that evidence be furnished to the Office in the course of the examination of the application where the Office may reasonably doubt the veracity of any indication or element contained in the application.

Article 4

Representation; Address for Service

(1) [Representatives Admitted to Practice] Any Contracting Party may require that any person appointed as representative for the purposes of any procedure before the Office be a representative admitted to practice before the Office.

(2) [Mandatory Representation; Address for Service] (a) Any Contracting Party may require that, for the purposes of any procedure before the Office, any person who has neither a domicile nor a real and effective industrial or commercial establishment on its territory be represented by a representative.

[Article 4(2), continued]

(b) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(3)(a) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(b) [Same as in the Final Text.]

(c) [Same as in the Final Text.]

(d) Where a communication is submitted to the Office by a person who refers to himself in the communication as a representative but where the Office is, at the time of the receipt of the communication, not in possession of the required power of attorney, the Contracting Party may require that the power of attorney be submitted to its Office within the time limit fixed by the Contracting Party, subject to the minimum time limit prescribed in the Regulations.

(e) [Same introductory phrase as in the Final Text.]

(i) [Same as in the Final Text.]

(ii) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(iii) where the Contracting Party allows the transmittal of communications to its Office by electronic means and the power of attorney is so transmitted, if such transmittal is effected in the manner prescribed in the Regulations. [In the Final Text, there is no provision corresponding to item (iii) of the Draft.]

[Article 4(2), continued]

(b) Any Contracting Party may, to the extent that it does not require representation in accordance with subparagraph (a), require that, for the purposes of any procedure before the Office, any person who has neither a domicile nor a real and effective industrial or commercial establishment on its territory have an address for service on that territory.

(3) [Power of Attorney] (a) Whenever a Contracting Party allows or requires an applicant, a holder or any other interested person to be represented by a representative before the Office, it may require that the representative be appointed in a separate communication (hereinafter referred to as "power of attorney") indicating the name of, and signed by, the applicant, the holder or the other person, as the case may be.

(b) The power of attorney may relate to one or more applications and/or registrations identified in the power of attorney or, subject to any exception indicated by the appointing person, to all existing and future applications and/or registrations of that person.

(c) The power of attorney may limit the powers of the representative to certain acts. Any Contracting Party may require that any power of attorney under which the representative has the right to withdraw an application or to surrender a registration contain an express indication to that effect.

(d) Where a communication is submitted to the Office by a person who refers to himself in the communication as a representative but where the Office is, at the time of the receipt of the communication, not in possession of the required power of attorney, the Contracting Party may require that the power of attorney be submitted to the Office within the time limit fixed by the Contracting Party, subject to the minimum time limit prescribed in the Regulations. Any Contracting Party may provide that, where the power of attorney has not been submitted to the Office within the time limit fixed by the Contracting Party, the communication by the said person shall have no effect.

(e) As regards the requirements concerning the presentation and contents of the power of attorney, no Contracting Party shall refuse the effects of the power of attorney,

(i) where the power of attorney is presented in writing on paper, if it is presented, subject to paragraph (4), on a form corresponding to the power of attorney Form provided for in the Regulations,

(ii) where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the power of attorney is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (4), to the power of attorney Form referred to in item (i).

[Article 4(3), continued]

(4) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(5) [Same as in the Final Text, except that the words "the Office" appearing in the second and the third line of the Final Text appear as "its Office" and "that Office," respectively in the Draft.]

(6) [Same as in the Final Text.]

(7) [Same as in the Final Text, except that the words "the Office" appearing twice in the second line of the Final Text appear as "its Office" and "that Office," respectively, in the Draft.]

Article 5

Filing Date

[Same as in the Final Text.]

[Article 4, continued]

(4) [Language] Any Contracting Party may require that the power of attorney be in the language, or in one of the languages, admitted by the Office.

(5) [Reference to Power of Attorney] Any Contracting Party may require that any communication made to the Office by a representative for the purposes of a procedure before the Office contain a reference to the power of attorney on the basis of which the representative acts.

(6) [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (3) to (5) be complied with in respect of the matters dealt with in those paragraphs.

(7) [Evidence] Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in any communication referred to in paragraphs (2) to (5).

Article 5

Filing Date

(1) [Permitted Requirements] (a) Subject to subparagraph (b) and paragraph (2), a Contracting Party shall accord as the filing date of an application the date on which the Office received the following indications and elements in the language required under Article 3(3):

(i) an express or implicit indication that the registration of a mark is sought;

(ii) indications allowing the identity of the applicant to be established;

(iii) indications sufficient to contact the applicant or his representative, if any, by mail;

(iv) a sufficiently clear reproduction of the mark whose registration is sought;

(v) the list of the goods and/or services for which the registration is sought;

Article 6

Single Registration for Goods and/or Services in Several Classes

[Same as in the Final Text.]

Article 7

Division of Application and Registration

[Same as in the Final Text.]

[Article 5(1), continued]

(vi) where Article 3(1)(a)(xvii) or (b) applies, the declaration referred to in Article 3(1)(a)(xvii) or the declaration and evidence referred to in Article 3(1)(b), respectively, as required by the law of the Contracting Party, those declarations being, if so required by the said law, signed by the applicant himself even if he has a representative.

(b) Any Contracting Party may accord as the filing date of the application the date on which the Office received only some, rather than all, of the indications and elements referred to in subparagraph (a) or received them in a language other than the language required under Article 3(3).

(2) [Permitted Additional Requirement] (a) A Contracting Party may provide that no filing date shall be accorded until the required fees are paid.

(b) A Contracting Party may apply the requirement referred to in subparagraph (a) only if it applied such requirement at the time of becoming party to this Treaty.

(3) [Corrections and Time Limits] The modalities of, and time limits for, corrections under paragraphs (1) and (2) shall be fixed in the Regulations.

(4) [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) be complied with in respect of the filing date.

Article 6

Single Registration for Goods and/or Services in Several Classes

Where goods and/or services belonging to several classes of the Nice Classification have been included in one and the same application, such an application shall result in one and the same registration.

Article 7

Division of Application and Registration

(1) [Division of Application] (a) Any application listing several goods and/or services (hereinafter referred to as "initial application") may,

(i) at least until the decision by the Office on the registration of the mark,

Article 8

Signature and Other Means of Self-Identification

- (1) [Same as in the Final Text.]

[Article 7(1), continued]

- (ii) during any opposition proceedings against the decision of the Office to register the mark,
- (iii) during any appeal proceedings against the decision on the registration of the mark,

be divided by the applicant or at his request into two or more applications (hereinafter referred to as "divisional applications") by distributing among the latter the goods and/or services listed in the initial application. The divisional applications shall preserve the filing date of the initial application and the benefit of the right of priority, if any.

(b) Any Contracting Party shall, subject to subparagraph (a), be free to establish requirements for the division of an application, including the payment of fees.

(2) [Division of Registration] Paragraph (1) shall apply, mutatis mutandis, with respect to a division of a registration. Such a division shall be permitted

(i) during any proceedings in which the validity of the registration is challenged before the Office by a third party,

(ii) during any appeal proceedings against a decision taken by the Office during the former proceedings,

provided that a Contracting Party may exclude the possibility of the division of registrations if its law allows third parties to oppose the registration of a mark before the mark is registered.

Article 8

Signature

(1) [Communication 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) shall be free to allow, 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,

(iii) may, where the natural person who signs the communication is its national and such person's address is in its territory, require that a seal be used instead of a handwritten signature,

[Article 8, continued]

(2)(a) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(b) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(3) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft, and the words "the Contracting Party" at the end of the paragraph in the Final Text appears as "it" in the Draft.]

(4) [Same as in the Final Text.]

Article 9

Classification of Goods and/or Services

(1) [Indications of Goods and/or Services] Each registration and any publication effected by an Office which concerns an application or registration and which indicates goods and/or services shall indicate the goods and/or services by their names, grouped according to the classes of the Nice Classification, and each group shall be preceded by the number of the class of the said Classification to which that group of goods or services belongs.

(2) [Same as in the Final Text.]

[Article 8(1), continued]

(iv) may, where a seal is used, require that the seal be accompanied by an indication in letters of the name of the natural person whose seal is used.

(2) [Communication by Telefacsimile] (a) Where a Contracting Party allows the transmittal of communications to the Office by telefacsimile, it shall consider the communication signed if, on the printout produced by the telefacsimile, the reproduction of the signature, or the reproduction of the seal together with, where required under paragraph (1)(iv), the indication in letters of the name of the natural person whose seal is used, appears.

(b) The Contracting Party referred to in subparagraph (a) may require that the paper whose reproduction was transmitted by telefacsimile be filed with the Office within a certain period, subject to the minimum period prescribed in the Regulations.

(3) [Communication by Electronic Means] Where a Contracting Party allows the transmittal of communications to the Office by electronic means, it shall consider the communication signed if the latter identifies the sender of the communication by electronic means as prescribed by the Contracting Party.

(4) [Prohibition of Requirement of Certification] No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature or other means of self-identification referred to in the preceding paragraphs, except, if the law of the Contracting Party so provides, where the signature concerns the surrender of a registration.

Article 9

Classification of Goods and/or Services

(1) [Indications of Goods and/or Services] Each registration and any publication effected by an Office which concerns an application or registration and which indicates goods and/or services shall indicate the goods and/or services by their names, grouped according to the classes of the Nice Classification, and each group shall be preceded by the number of the class of that Classification to which that group of goods or services belongs and shall be presented in the order of the classes of the said Classification.

(2) [Goods or Services in the Same Class or in Different Classes] (a) Goods or services may not be considered as being similar to each other on the ground that, in any registration or publication by the Office, they appear in the same class of the Nice Classification.

(b) Goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication by the Office, they appear in different classes of the Nice Classification.

Article 10Changes in Names or Addresses

(1)(a) [Same introductory phrase as in the Final Text.]

(i) [Same as in the Final Text.]

(ii) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(iii) where the Contracting Party allows the transmittal of communications to its Office by electronic means and the request is so transmitted, if such transmittal is effected in the manner prescribed in the Regulations.

(b) [Same as in the Final Text.]

(c) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(d) [Same as in the Final Text.]

(e) [Same as in the Final Text.]

(2) [Same as in the Final Text.]

Article 10

Changes in Names or Addresses

(1) [Changes in the Name or Address of the Holder] (a) Where there is no change in the person of the holder but there is a change in his name and/or address, each Contracting Party shall accept that a request for the recordal of the change by the Office in its register of marks be made in a communication signed by the holder or his representative and indicating the registration number of the registration concerned and the change to be recorded. As regards the requirements concerning the presentation of the request, no Contracting Party shall refuse the request,

(i) where the request is presented in writing on paper, if it is presented, subject to subparagraph (c), on a form corresponding to the request Form provided for in the Regulations,

(ii) where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to subparagraph (c), to the request Form referred to in item (i).

(b) Any Contracting Party may require that the request indicate

(i) the name and address of the holder;

(ii) where the holder has a representative, the name and address of that representative;

(iii) where the holder has an address for service, such address.

(c) Any Contracting Party may require that the request be in the language, or in one of the languages, admitted by the Office.

(d) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(e) A single request shall be sufficient even where the change relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request.

(2) [Change in the Name or Address of the Applicant] Paragraph (1) shall apply, mutatis mutandis, where the change concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or his representative, the request otherwise identifies that application as prescribed in the Regulations.

[Article 10, continued]

(3) [Same as in the Final Text.]

(4) [Same as in the Final Text.]

(5) [Same as in the Final Text, except that the words "the Office" appearing twice in the second line of the Final Text appear as "its Office" and "that Office," respectively, in the Draft.]

Article 11

Change in Ownership

(1)(a) [Same introductory phrase as in the Final Text.]

(i) [Same as in the Final Text.]

(ii) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(iii) where the Contracting Party allows the transmittal of communications to its Office by electronic means and the request is so transmitted, if such transmittal is effected in the manner prescribed in the Regulations. [In the Final Text, there is no provision corresponding to item (iii) of the Draft.]

[Article 10, continued]

(3) [Change in the Name or Address of the Representative or in the Address for Service] Paragraph (1) shall apply, mutatis mutandis, to any change in the name or address of the representative, if any, and to any change relating to the address for service, if any.

(4) [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) be complied with in respect of the request referred to in this Article. In particular, the furnishing of any certificate concerning the change may not be required.

(5) [Evidence] Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in the request.

Article 11

Change in Ownership

(1) [Change in the Ownership of a Registration] (a) Where there is a change in the person of the holder, each Contracting Party shall accept that a request for the recordal of the change by the Office in its register of marks be made in a communication signed by the holder or his representative, or by the person who acquired the ownership (hereinafter referred to as "new owner") or his representative, and indicating the registration number of the registration concerned and the change to be recorded. As regards the requirements concerning the presentation of the request, no Contracting Party shall refuse the request,

(i) where the request is presented in writing on paper, if it is presented, subject to paragraph (2)(a), on a form corresponding to the request Form provided for in the Regulations,

(ii) where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (2)(a), to the request Form referred to in item (i).

[Article 11(1), continued]

(b) [Same as in the Final Text.]

(c) [Same as in the Final Text.]

(d) [Same as in the Final Text.]

(e) [Same as in the Final Text.]

(f) [Same as in the Final Text.]

[Article 11(1), continued]

(b) Where the change in ownership results from a contract, any Contracting Party may require that the request indicate that fact and be accompanied, at the option of the requesting party, by one of the following:

(i) a copy of the contract, which copy may be required to be certified, by a notary public or any other competent public authority, as being in conformity with the original contract;

(ii) an extract of the contract showing the change in ownership, which extract may be required to be certified, by a notary public or any other competent public authority, as being a true extract of the contract;

(iii) an uncertified certificate of transfer drawn up in the form and with the content as prescribed in the Regulations and signed by both the holder and the new owner;

(iv) an uncertified transfer document drawn up in the form and with the content as prescribed in the Regulations and signed by both the holder and the new owner.

(c) Where the change in ownership results from a merger, any Contracting Party may require that the request indicate that fact and be accompanied by a copy of a document, which document originates from the competent authority and evidences the merger, such as a copy of an extract from a register of commerce, and that that copy be certified by the authority which issued the document or by a notary public or any other competent public authority, as being in conformity with the original document.

(d) Where there is a change in the person of one or more but not all of several co-holders and such change in ownership results from a contract or a merger, any Contracting Party may require that any co-holder in respect of which there is no change in ownership give his express consent to the change in ownership in a document signed by him.

(e) Where the change in ownership does not result from a contract or a merger but from another ground, for example, from operation of law or a court decision, any Contracting Party may require that the request indicate that fact and be accompanied by a copy of a document evidencing the change and that that copy be certified as being in conformity with the original document by the authority which issued the document or by a notary public or any other competent public authority.

(f) Any Contracting Party may require that the request indicate

(i) the name and address of the holder;

(ii) the name and address of the new owner;

(iii) the name of a State of which the new owner is a national if he is the national of any State, the name of a State in which the new owner has his domicile, if any, and the name of a State in which the new owner has a real and effective industrial or commercial establishment, if any;

[Article 11(1), continued]

(g) [Same as in the Final Text.]

(h) [Same as in the Final Text.]

(i) [Same as in the Final Text.]

(2)(a) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(b) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(3) [Same as in the Final Text.]

[Article 11(1)(f), continued]

(iv) where the new owner is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;

(v) where the holder has a representative, the name and address of that representative;

(vi) where the holder has an address for service, such address;

(vii) where the new owner has a representative, the name and address of that representative;

(viii) where the new owner is required to have an address for service under Article 4(2)(b), such address.

(g) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(h) A single request shall be sufficient even where the change relates to more than one registration, provided that the holder and the new owner are the same for each registration and that the registration numbers of all registrations concerned are indicated in the request.

(i) Where the change of ownership does not affect all the goods and/or services listed in the holder's registration, and the applicable law allows the recording of such change, the Office shall create a separate registration referring to the goods and/or services in respect of which the ownership has changed.

(2) [Language; Translation] (a) Any Contracting Party may require that the request, the certificate of transfer or the transfer document referred to in paragraph (1) be in the language, or in one of the languages, admitted by the Office.

(b) Any Contracting Party may require that, if the documents referred to in paragraph (1)(b)(i) and (ii), (c) and (e) are not in the language, or in one of the languages, admitted by the Office, the request be accompanied by a translation or a certified translation of the required document in the language, or in one of the languages, admitted by the Office.

(3) [Change in the Ownership of an Application] Paragraphs (1) and (2) shall apply, mutatis mutandis, where the change in ownership concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or his representative, the request otherwise identifies that application as prescribed in the Regulations.

[Article 11, continued]

(4) [Same as in the Final Text.]

(5) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

Article 12

Correction of a Mistake

(1)(a) [Same introductory phrase as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(i) [Same as in the Final Text.]

(ii) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(iii) where the Contracting Party allows the transmittal of communications to its Office by electronic means and the request is so transmitted, if such transmittal is effected in the manner prescribed in the Regulations. [In the Final Text, there is no provision corresponding to item (iii) of the Draft.]

[Article 11, continued]

(4) [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) be complied with in respect of the request referred to in this Article. In particular, the following may not be required:

(i) subject to paragraph (1)(c), the furnishing of any certificate of, or extract from, a register of commerce;

(ii) an indication of the new owner's carrying on of an industrial or commercial activity, as well as the furnishing of evidence to that effect;

(iii) an indication of the new owner's carrying on of an activity corresponding to the goods and/or services affected by the change in ownership, as well as the furnishing of evidence to either effect;

(iv) an indication that the holder transferred, entirely or in part, his business or the relevant goodwill to the new owner, as well as the furnishing of evidence to either effect.

(5) [Evidence] Any Contracting Party may require that evidence, or further evidence where paragraph (1)(c) or (e) applies, be furnished to the Office where that Office may reasonably doubt the veracity of any indication contained in the request or in any document referred to in the present Article.

Article 12

Correction of a Mistake

(1) [Correction of a Mistake in Respect of a Registration] (a) Each Contracting Party shall accept that the request for the correction of a mistake which was made in the application or other request communicated to the Office and which mistake is reflected in its register of marks and/or any publication by the Office be made in a communication signed by the holder or his representative and indicating the registration number of the registration concerned, the mistake to be corrected and the correction to be entered. As regards the requirements concerning the presentation of the request, no Contracting Party shall refuse the request,

(i) where the request is presented in writing on paper, if it is presented, subject to subparagraph (c), on a form corresponding to the request Form provided for in the Regulations,

(ii) where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to subparagraph (c), to the request Form referred to in item (i).

[Article 12(1), continued]

(b) [Same as in the Final Text.]

(c) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(d) [Same as in the Final Text.]

(e) [Same as in the Final Text.]

(2) [Same as in the Final Text.]

(3) [Same as in the Final Text.]

(4) [Same as in the Final Text, except that the words "the Office" appearing twice in the second line of the Final Text appear as "its Office" and "that Office," respectively, in the Draft.]

[In the Draft, there is no provision corresponding to paragraph (5) of the Final Text.]

(5) [Same as Article 12(6) in the Final Text, except that the reference to paragraph (5) in the Final Text does not appear in the Draft.]

[Article 12(1), continued]

(b) Any Contracting Party may require that the request indicate

(i) the name and address of the holder;

(ii) where the holder has a representative, the name and address of that representative;

(iii) where the holder has an address for service, such address.

(c) Any Contracting Party may require that the request be in the language, or in one of the languages, admitted by the Office.

(d) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(e) A single request shall be sufficient even where the correction relates to more than one registration of the same person, provided that the mistake and the requested correction are the same for each registration and that the registration numbers of all registrations concerned are indicated in the request.

(2) [Correction of a Mistake in Respect of an Application]

Paragraph (1) shall apply, mutatis mutandis, where the mistake concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or his representative, the request otherwise identifies that application as prescribed in the Regulations.

(3) [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) be complied with in respect of the request referred to in this Article.

(4) [Evidence] Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt that the alleged mistake is in fact a mistake.

(5) [Mistakes Made by the Office] The Office of a Contracting Party shall correct its own mistakes, ex officio or upon request, for no fee.

(6) [Uncorrectable Mistakes] No Contracting Party shall be obliged to apply paragraphs (1), (2) and (5) to any mistake which cannot be corrected under its law.

Article 13Duration and Renewal of Registration

(1)(a) [Subparagraph (1)(a) items (i) to (vi) are the same as in the Final Text.]

(vii) where the Contracting Party allows the renewal of a registration to be made for some only of the goods and/or services which are recorded in the register of marks and such a renewal is requested, the names of the recorded goods and/or services for which the renewal is requested or the names of the recorded goods and/or services for which the renewal is not requested, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of the said Classification to which that group of goods or services belongs;

(viii) a signature by, or other self-identification of, the holder or, at the option of the holder, his representative.

[In the Draft, there is no provision corresponding to item (ix) of the Final Text.]

(b) Any Contracting Party may require that, in respect of the request for renewal, a fee be paid to the Office. Once the fee has been paid in respect of the initial period of the registration or of any renewal period, no further payment may be required for the maintenance of the registration in respect of that period.

(c) [Same as in the Final Text, except that the word "corresponding" in the Final Text does not appear in the Draft.]

Article 13

Duration and Renewal of Registration

(1) [Indications or Elements Contained in or Accompanying a Request for Renewal; Fee] (a) Any Contracting Party may require that the renewal of a registration be subject to the filing of a request and that such request contain some or all of the following indications:

(i) an indication that renewal is sought;

(ii) the name and address of the holder;

(iii) the registration number of the registration concerned;

(iv) at the option of the Contracting Party, the filing date of the application which resulted in the registration concerned or the registration date of the registration concerned;

(v) where the holder has a representative, the name and address of that representative;

(vi) where the holder has an address for service, such address;

(vii) where the Contracting Party allows the renewal of a registration to be made for some only of the goods and/or services which are recorded in the register of marks and such a renewal is requested, the names of the recorded goods and/or services for which the renewal is requested or the names of the recorded goods and/or services for which the renewal is not requested, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification;

(viii) where a Contracting Party allows a request for renewal to be filed by a person other than the holder or his representative and the request is filed by such a person, the name and address of that person;

(ix) a signature by the holder or his representative or, where item (viii) applies, a signature by the person referred to in that item.

(b) Any Contracting Party may require that, in respect of the request for renewal, a fee be paid to the Office. Once the fee has been paid in respect of the initial period of the registration or of any renewal period, no further payment may be required for the maintenance of the registration in respect of that period. Fees associated with the furnishing of a declaration and/or evidence of use shall not be regarded, for the purposes of this subparagraph, as payments required for the maintenance of the registration and shall not be affected by this subparagraph.

(c) Any Contracting Party may require that the request for renewal be presented, and the corresponding fee referred to in subparagraph (b) be paid, to the Office within the period fixed by the law of the Contracting Party, subject to the minimum periods prescribed in the Regulations.

[Article 13, continued]

(2) [Same introductory phrase as in the Final Text.]

(i) [Same as in the Final Text.]

(ii) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(iii) where the Contracting Party allows the transmittal of communications to its Office by electronic means and the request is so transmitted, if such transmittal is effected in the manner prescribed in the Regulations. [In the Final Text, there is no provision corresponding to item (iii) of the Draft.]

(3) [Same as in the Final Text, except that the words "the Office" in the Final Text appear as "its Office" in the Draft.]

(4) [Same as in the Final Text.]

(5) [Same as in the Final Text, except that the words "the Office" appearing in the second and third line of the Final Text appear as "its Office" and "that Office," respectively, in the Draft.]

(6) [Same as in the Final Text.]

(7) [Same as in the Final Text.]

[Article 13, continued]

(2) [Presentation] As regards the requirements concerning the presentation of the request for renewal, no Contracting Party shall refuse the request,

(i) where the request is presented in writing on paper, if it is presented, subject to paragraph (3), on a form corresponding to the request Form provided for in the Regulations,

(ii) where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (3), to the request Form referred to in item (i).

(3) [Language] Any Contracting Party may require that the request for renewal be in the language, or in one of the languages, admitted by the Office.

(4) [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) be complied with in respect of the request for renewal. In particular, the following may not be required:

(i) any reproduction or other identification of the mark;

(ii) the furnishing of evidence to the effect that the mark has been registered, or that its registration has been renewed, in the register of marks of any other Contracting Party;

(iii) the furnishing of a declaration and/or evidence concerning use of the mark.

(5) [Evidence] Any Contracting Party may require that evidence be furnished to the Office in the course of the examination of the request for renewal where the Office may reasonably doubt the veracity of any indication or element contained in the request for renewal.

(6) [Prohibition of Substantive Examination] No Office of a Contracting Party may, for the purposes of effecting the renewal, examine the registration as to substance.

(7) [Duration] The duration of the initial period of the registration, and the duration of each renewal period, shall be 10 years.

Article 14Observations in Case of Intended Refusal

[Same as in the Final Text.]

[In the Draft, there is no provision corresponding to Article 15 of the Final Text.]

Article 15Service Marks

The Contracting Parties shall apply the provisions of the Paris Convention which concern trademarks to service marks.

Article 16Establishment of a Union

The Contracting Parties of this Treaty constitute a Union for the purposes of this Treaty. [In the Final Text, there is no provision corresponding to Article 16 of the Draft.]

Article 14

Observations in Case of Intended Refusal

An application or a request under Articles 10 to 13 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.

Article 15

Obligation to Comply with the Paris Convention

Any Contracting Party shall comply with the provisions of the Paris Convention which concern marks.

Article 16

Service Marks

Any Contracting Party shall register service marks and apply to such marks the provisions of the Paris Convention which concern trademarks.

Article 17Assembly

(1) [Composition] (a) The Union shall have an Assembly consisting of the Contracting Parties.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) The Union shall not bear the expenses of the participation of any delegation in any session of the Assembly.

(2) [Tasks] (a) The Assembly shall

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;

(ii) decide the modification of certain provisions of this Treaty in accordance with Article 20(2) and decide on the date of entry into force of any such modification;

(iii) exercise such rights and perform such tasks as are specifically conferred upon it or assigned to it under this Treaty;

(iv) give directions to the Director General concerning the preparations for any conference referred to in Article 20(1) or Article 21 and decide the convocation of any such conference;

(v) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(vi) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;

(vii) determine which States and intergovernmental organizations, other than Contracting Parties, and which non-governmental organizations shall be admitted to its meetings as observers;

(viii) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

[Article 17, continued]

(3) [Representation] A delegate may represent one Contracting Party only.

Alternative A

(4) [Voting] (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any regional intergovernmental organization referred to in Article 22(1)(ii) that is a Contracting Party may exercise the right to vote of its member States that are Contracting Parties and are present at the time of voting. The regional intergovernmental organization may not, in a given vote, exercise the said right to vote if any of its member States participates in the vote or expressly abstains.

Alternative B

(4) [Voting] (a) Each Contracting Party that is a State and any regional intergovernmental organization referred to in Article 22(1)(ii) that is a Contracting Party, provided that the member States of that organization also maintain Offices in which marks may be registered with effect in their territory, shall have one vote and shall vote only in its own name.

(b) Any regional intergovernmental organization referred to in Article 22(1)(ii), other than those referred to in subparagraph (a), that is a Contracting Party may exercise the right to vote of its member States that are Contracting Parties and are present at the time of voting. The regional intergovernmental organization may not, in a given vote, exercise the said right to vote if any of its member States participates in the vote or expressly abstains.

(5) [Quorum] (a) One-half of the Contracting Parties that have the right to vote shall constitute a quorum.

(b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence.

(c) In the case provided for in subparagraph (b), the International Bureau shall communicate the decisions of the Assembly (other than those concerning the Assembly's own procedure) to the Contracting Parties having the right to vote which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of that period, the number of Contracting Parties having thus expressed their vote or abstention attains the number of Contracting Parties which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

[Article 17, continued]

(6) [Majorities] (a) Subject to Articles 19(2)(b) and (3) and 20(2), the decisions of the Assembly shall require a majority of the votes cast.

(b) Abstentions shall not be considered as votes.

(7) [Sessions] (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the Contracting Parties or on the Director General's own initiative.

(8) [Rules of Procedure] The Assembly shall adopt its own rules of procedure.

[In the Final Text, there is no provision corresponding to Article 17 of the Draft.]

Article 18

International Bureau

(1) [Tasks] The International Bureau of the Organization shall

(i) perform the administrative tasks concerning the Union, as well as any tasks specifically assigned to it by the Assembly;

(ii) provide the secretariat of the conferences referred to in Articles 20(1) and 21, of the Assembly, of the committees and working groups established by the Assembly, and of any other meeting convened by the Director General under the aegis of the Union.

(2) [Director General] The Director General shall be the chief executive of the Union and shall represent the Union.

(3) [Meetings Other Than Sessions of the Assembly] The Director General shall convene any committee and working group established by the Assembly and all other meetings dealing with matters of concern to the Union.

(4) [Role of the International Bureau in the Assembly and Other Meetings] (a) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly, and any other meetings convened by the Director General under the aegis of the Union.

[Article 18(4), continued]

(b) The Director General or a staff member designated by him shall be ex officio secretary of the Assembly, and of the committees, working groups and other meetings referred to in subparagraph (a).

(5) [Conferences] (a) The Director General shall, in accordance with the directions of the Assembly, make the preparations for any conference referred to in Article 20(1) or Article 21.

(b) The Director General may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and staff members designated by him shall take part, without the right to vote, in the discussions at any conference referred to in subparagraph (a).

(d) The Director General or a staff member designated by him shall be ex officio secretary of any conference referred to in subparagraph (a).

[In the Final Text, there is no provision corresponding to Article 18 of the Draft.]

Article 19

Regulations

(1) [Same as Article 17(1) in the Final Text.]

(2) [Amending the Regulations] (a) The Assembly may amend the Regulations.

(b) Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.

(3) [Requirement of Unanimity] (a) The Regulations may specify rules which may be amended only by unanimous consent.

(b) Exclusion, for the future, of any rule designated as requiring unanimous consent for amendment from such requirement shall require unanimous consent.

(c) Inclusion, for the future, of the requirement of unanimous consent for the amendment of any rule shall require unanimous consent.

[In the Final Text, there is no provision corresponding to Article 19(2) and (3) of the Draft.]

(4) [Same as Article 17(2) in the Final Text.]

Article 17

Regulations

(1) [Content] (a) The Regulations annexed to this Treaty provide rules concerning

(i) matters which this Treaty expressly provides to be "prescribed in the Regulations";

(ii) any details useful in the implementation of the provisions of this Treaty;

(iii) any administrative requirements, matters or procedures.

(b) The Regulations also contain Model International Forms.

(2) [Conflict Between the Treaty and the Regulations] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

Article 20Revision and Modification

(1) [Revision] This Treaty may be revised by a conference of the Contracting Parties.

(2) [Modification] With the exception of Articles 2, 15, 16 and 19 to 27, the provisions of this Treaty may be modified by a decision of the Assembly, provided that no Contracting Party votes against the modification. [In the Final Text, there is no provision corresponding to paragraph (2) of the Draft.]

Article 21Protocols

(1) [Adoption of Protocols] For the purposes of further developing the harmonization of laws on marks, protocols may be adopted by a conference of the Contracting Parties.

(2) [Becoming Party to a Protocol] Only Contracting Parties may become party to any protocol adopted under paragraph (1). [In the Final Text, there is no provision corresponding to paragraph (2) of the Draft.]

Article 18

Revision; Protocols

(1) [Revision] This Treaty may be revised by a diplomatic conference.

(2) [Protocols] For the purposes of further developing the harmonization of laws on marks, protocols may be adopted by a diplomatic conference in so far as those protocols do not contravene the provisions of this Treaty.

Article 22Becoming Party to the Treaty

(1) [Eligibility] The following entities may sign and, subject to paragraphs (2) and (3) and Article 23, become party to this Treaty:

(i) any State party to the Paris Convention in respect of which marks may be registered with its own Office ;

(ii) any regional intergovernmental organization which maintains a regional Office in which marks may be registered with effect in all its member States, provided that all those States are party to the Paris Convention;

(iii) any State party to the Paris Convention in respect of which marks may be registered only through the Office of another specified State that is a party to the Paris Convention;

(iv) any State party to the Paris Convention in respect of which marks may be registered only through the regional Office maintained by a regional intergovernmental organization of which that State is a member;

(v) any State party to the Paris Convention in respect of which marks may be registered only through an Office common to a group of States party to the Paris Convention.

(2) [Same as Article 19(2) in the Final Text.]

(3)(a) [Same introductory phrase as in Article 19(3)(a) in the Final Text.]

(i) [Same as Article 19(3)(a)(i) in the Final Text.]

(ii) in the case of a regional intergovernmental organization, the date on which the following condition is fulfilled: the instrument of the regional intergovernmental organization has been deposited and the instruments of all the regional intergovernmental organization's member States have been deposited;

(iii) [Same as Article 19(3)(a)(iii) in the Final Text.]

Article 19

Becoming Party to the Treaty

(1) [Eligibility] The following entities may sign and, subject to paragraphs (2) and (3) and Article 20(1) and (3), become party to this Treaty:

(i) any State member of the Organization in respect of which marks may be registered with its own Office;

(ii) any intergovernmental organization which maintains an Office in which marks may be registered with effect in the territory in which the constituting treaty of the intergovernmental organization applies, in all its member States or in those of its member States which are designated for such purpose in the relevant application, provided that all the member States of the intergovernmental organization are members of the Organization;

(iii) any State member of the Organization in respect of which marks may be registered only through the Office of another specified State that is a member of the Organization;

(iv) any State member of the Organization in respect of which marks may be registered only through the Office maintained by an intergovernmental organization of which that State is a member;

(v) any State member of the Organization in respect of which marks may be registered only through an Office common to a group of States members of the Organization.

(2) [Ratification or Accession] Any entity referred to in paragraph (1) may deposit

(i) an instrument of ratification, if it has signed this Treaty,

(ii) an instrument of accession, if it has not signed this Treaty.

(3) [Effective Date of Deposit] (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be,

(i) in the case of a State referred to in paragraph (1)(i), the date on which the instrument of that State is deposited;

(ii) in the case of an intergovernmental organization, the date on which the instrument of that intergovernmental organization is deposited;

(iii) in the case of a State referred to in paragraph (1)(iii), the date on which the following condition is fulfilled: the instrument of that State has been deposited and the instrument of the other, specified State has been deposited;

[Article 22(3)(a), continued]

(iv) [Same as Article 19(3)(a)(iv) in the Final Text.]

(v) [Same as Article 19(3)(a)(v) in the Final Text.]

(b) Any instrument of ratification or accession (hereinafter referred to as "instrument") of a State may be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one other State or one regional intergovernmental organization, or the instruments of two other States, or the instruments of one other State and one regional intergovernmental organization, specified by name and eligible to become party to this Treaty, is or are also deposited. The instrument containing such a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is fulfilled. However, when the deposit of any instrument specified in the declaration is, itself, accompanied by a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

(c) [Same as Article 19(3)(c) in the Final Text.]

[Article 19(3)(a), continued]

(iv) in the case of a State referred to in paragraph (1)(iv), the date applicable under (ii), above;

(v) in the case of a State member of a group of States referred to in paragraph (1)(v), the date on which the instruments of all the States members of the group have been deposited.

(b) Any instrument of ratification or accession (referred to in this subparagraph as "instrument") of a State may be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one other State or one intergovernmental organization, or the instruments of two other States, or the instruments of one other State and one intergovernmental organization, specified by name and eligible to become party to this Treaty, is or are also deposited. The instrument containing such a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is fulfilled. However, when the deposit of any instrument specified in the declaration is, itself, accompanied by a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

(c) Any declaration made under paragraph (b) may be withdrawn, in its entirety or in part, at any time. Any such withdrawal shall become effective on the date on which the notification of withdrawal is received by the Director General.

Article 23Effective Date of Ratifications and Accessions

(1) [Same as Article 20(1) in the Final Text, except that the references to Article 19(1) and Article 19(3) appear as references to Article 22(1) and Article 22(3), respectively, in the Draft.]

(2) [Entry Into Force of the Treaty] This Treaty shall enter into force three months after five entities have deposited their instruments of ratification or accession.

(3) [Same as Article 20(3) in the Final Text.]

Article 24Reservations

(1) [Same as in Article 21(1) of the Final Text, except that, in the Draft, the word "regional" appears before the words "intergovernmental organization."]

(10) [Prohibition of Other Reservations] No reservations to this Treaty other than the reservations allowed under paragraphs (1) to (7) are permitted.

Article 20

Effective Date of Ratifications and Accessions

(1) [Instruments to Be Taken Into Consideration] For the purposes of this Article, only instruments of ratification or accession that are deposited by entities referred to in Article 19(1) and that have an effective date according to Article 19(3) shall be taken into consideration.

(2) [Entry Into Force of the Treaty] This Treaty shall enter into force three months after five States have deposited their instruments of ratification or accession.

(3) [Entry Into Force of Ratifications and Accessions Subsequent to the Entry Into Force of the Treaty] Any entity not covered by paragraph (2) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession.

Article 21

Reservations

(1) [Special Kinds of Marks] Any State or intergovernmental organization may declare through a reservation that, notwithstanding Article 2(1)(a) and (2)(a), any of the provisions of Articles 3(1) and (2), 5, 7, 11 and 13 shall not apply to associated marks, defensive marks or derivative marks. Such reservation shall specify those of the aforementioned provisions to which the reservation relates.

(2) [Modalities] Any reservation under paragraph (1) shall be made in a declaration accompanying the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the reservation.

(3) [Withdrawal] Any reservation under paragraph (1) may be withdrawn at any time.

(4) [Prohibition of Other Reservations] No reservation to this Treaty other than the reservation allowed under paragraph (1) shall be permitted.

Article 24Reservations

(2) [Single Application for Goods and Services in Several Classes] Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding Article 3(5), an application may be filed with its Office only in respect of goods or services which belong to one class of the Nice Classification.

(3) [Single Power of Attorney for More Than One Application and/or Registration] Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding Article 4(3)(b), a power of attorney may only relate to one application or one registration.

(4) [Prohibition of Requirement of Certification of Signature of Power of Attorney and of Signature of Application] Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding Article 8(4), the signature of any power of attorney or the signature by the applicant of any application may be required to be the subject of an attestation, notarization, authentication, legalization or other certification.

(5) [Single Request for More Than One Application and/or Registration in Respect of a Change in Name and/or Address, a Change in Ownership or a Correction of a Mistake] Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding Article 10(1)(e) and (2), Article 11(1)(h) and (3) and Article 12(1)(e) and (2), a request for the recordal of a change in name and/or address, a request for the recordal of a change in ownership and a request for the correction of a mistake may only relate to one application or one registration.

(6) [Furnishing, on the Occasion of Renewal, of Declaration and/or Evidence Concerning Use] Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding Article 13(4)(iii), it will require, on the occasion of renewal, the furnishing of a declaration and/or of evidence concerning use of the mark.

Article 22

Transitional Provisions

(1) [Single Application for Goods and Services in Several Classes; Division of Application] (a) Any State or intergovernmental organization may declare that, notwithstanding Article 3(5), an application may be filed with the Office only in respect of goods or services which belong to one class of the Nice Classification.

(b) Any State or intergovernmental organization may declare that, notwithstanding Article 6, where goods and/or services belonging to several classes of the Nice Classification have been included in one and the same application, such application shall result in two or more registrations in the register of marks, provided that each and every such registration shall bear a reference to all other such registrations resulting from the said application.

(c) Any State or intergovernmental organization that has made a declaration under subparagraph (a) may declare that, notwithstanding Article 7(1), no application may be divided.

(2) [Single Power of Attorney for More Than One Application and/or Registration] Any State or intergovernmental organization may declare that, notwithstanding Article 4(3)(b), a power of attorney may only relate to one application or one registration.

(3) [Prohibition of Requirement of Certification of Signature of Power of Attorney and of Signature of Application] Any State or intergovernmental organization may declare that, notwithstanding Article 8(4), the signature of a power of attorney or the signature by the applicant of an application may be required to be the subject of an attestation, notarization, authentication, legalization or other certification.

(4) [Single Request for More Than One Application and/or Registration in Respect of a Change in Name and/or Address, a Change in Ownership or a Correction of a Mistake] Any State or intergovernmental organization may declare that, notwithstanding Article 10(1)(e), (2) and (3), Article 11(1)(h) and (3) and Article 12(1)(e) and (2), a request for the recordal of a change in name and/or address, a request for the recordal of a change in ownership and a request for the correction of a mistake may only relate to one application or one registration.

(5) [Furnishing, on the Occasion of Renewal, of Declaration and/or Evidence Concerning Use] Any State or intergovernmental organization may declare that, notwithstanding Article 13(4)(iii), it will require, on the occasion of renewal, the furnishing of a declaration and/or of evidence concerning use of the mark.

[Article 24, continued]

(7) [Substantive Examination on the Occasion of Renewal] Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding Article 13(6), its Office may, on the occasion of the first renewal of a registration covering services, examine such registration as to substance, provided that such examination shall be limited to the elimination of multiple registrations based on applications filed during a period of six months following the entry into force of the law of such State or organization that introduced, before the entry into force of this Treaty, the possibility of registering service marks.

(8) [Common Provisions] (a) Any reservation under paragraphs (1) to (7) shall be made in a declaration accompanying the instrument of ratification of, or accession to, this Treaty of the State or regional intergovernmental organization concerned.

(b) A State or a regional intergovernmental organization may make a reservation under paragraphs (2) to (5) and (7) only if, at the time of becoming party to this Treaty, the continued application of its law would, without such a reservation, be contrary to the relevant provisions of this Treaty and if the instrument referred to in subparagraph (a) is deposited, or is considered as deposited under Article 22(3)(b), not later than the end of the fourth calendar year after the year in which this Treaty was adopted.

(c) A State or a regional intergovernmental organization may make a reservation under paragraph (6) only if, at the time of becoming party to this Treaty, the continued application of its law would, without such a reservation, be contrary to the relevant provisions of this Treaty.

(9) [Loss of Effect of Reservation] Any reservation under paragraphs (2) to (6) shall lose its effect at the end of the fourth calendar year following the date on which the Contracting Party concerned becomes bound by this Treaty.

[Article 22, continued]

(6) [Substantive Examination on the Occasion of Renewal] Any State or intergovernmental organization may declare that, notwithstanding Article 13(6), the Office may, on the occasion of the first renewal of a registration covering services, examine such registration as to substance, provided that such examination shall be limited to the elimination of multiple registrations based on applications filed during a period of six months following the entry into force of the law of such State or organization that introduced, before the entry into force of this Treaty, the possibility of registering service marks.

(7) [Common Provisions] (a) A State or an intergovernmental organization may make a declaration under paragraphs (1) to (6) only if, at the time of depositing its instrument of ratification of, or accession to, this Treaty, the continued application of its law would, without such a declaration, be contrary to the relevant provisions of this Treaty.

(b) Any declaration under paragraphs (1) to (6) shall accompany the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the declaration.

(c) Any declaration made under paragraphs (1) to (6) may be withdrawn at any time.

(8) [Loss of Effect of Declaration] (a) Subject to subparagraph (c), any declaration made under paragraphs (1) to (5) by a State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, or by an intergovernmental organization each member of which is such a State, shall lose its effect at the end of a period of eight years from the date of entry into force of this Treaty.

(b) Subject to subparagraph (c), any declaration made under paragraphs (1) to (5) by a State other than a State referred to in subparagraph (a), or by an intergovernmental organization other than an intergovernmental organization referred to in subparagraph (a), shall lose its effect at the end of a period of six years from the date of entry into force of this Treaty.

(c) Where a declaration made under paragraphs (1) to (5) has not been withdrawn under paragraph (7)(c), or has not lost its effect under subparagraph (a) or (b), before October 28, 2004, it shall lose its effect on October 28, 2004.

(9) [Becoming Party to the Treaty] Until December 31, 1999, any State which, on the date of the adoption of this Treaty, is a member of the International (Paris) Union for the Protection of Industrial Property without being a member of the Organization may, notwithstanding Article 19(1)(i), become a party to this Treaty if marks may be registered with its own Office.

Article 25Denunciation of the Treaty

[Same as Article 23 in the Final Text.]

Article 26Languages of the Treaty; Signature

(1)(a) [Same as Article 24(1)(a) in the Final Text.]

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) [Same as Article 24(2) in the Final Text.]

Article 27Depositary

[Same as Article 25 in the Final Text.]

Article 23

Denunciation of the Treaty

(1) [Notification] Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

(2) [Effective Date] Denunciation shall take effect one year from the date on which the Director General has received the notification. It shall not affect the application of this Treaty to any application pending or any mark registered in respect of the denouncing Contracting Party at the time of the expiration of the said one-year period, provided that the denouncing Contracting Party may, after the expiration of the said one-year period, discontinue applying this Treaty to any registration as from the date on which that registration is due for renewal.

Article 24

Languages of the Treaty; Signature

(1) [Original Texts; Official Texts] (a) This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(b) At the request of a Contracting Party, an official text in a language not referred to in subparagraph (a) that is an official language of that Contracting Party shall be established by the Director General after consultation with the said Contracting Party and any other interested Contracting Party.

(2) [Time Limit for Signature] This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 25

Depositary

The Director General shall be the depositary of this Treaty.

**REGULATIONS UNDER THE
TRADEMARK LAW TREATY**

Draft of the Regulations under the
Trademark Law Treaty as presented to the
Diplomatic Conference

Text of the Regulations under the
Trademark Law Treaty as adopted by the
the Diplomatic Conference

DRAFT REGULATIONS UNDER THE
TRADEMARK LAW TREATYList of Rules

- Rule 1: Abbreviated Expressions
Rule 2: Manner of Indicating Names and Addresses
Rule 3: Details Concerning the Application
Rule 4: Details Concerning Electronic Communications
Rule 5: Details Concerning Representation
Rule 6: Details Concerning the Filing Date
Rule 7: Signature and Other Means of Self-Identification
Rule 8: Manner of Identification of an Application
Without Its Application Number
Rule 9: Details Concerning Duration and Renewal

List of Model International Forms

[Same as in the Final Text except that the words "and/or" in the title of Form N° 7 in the Final Text appear as "or" in the Draft.]

REGULATIONS UNDER THE
TRADEMARK LAW TREATY

List of Rules

- Rule 1: Abbreviated Expressions
- Rule 2: Manner of Indicating Names and Addresses
- Rule 3: Details Concerning the Application
- Rule 4: Details Concerning Representation
- Rule 5: Details Concerning the Filing Date
- Rule 6: Details Concerning the Signature
- Rule 7: Manner of Identification of an Application
Without Its Application Number
- Rule 8: Details Concerning Duration and Renewal

List of Model International Forms

- Form N° 1 Application for the Registration of a Mark
- Form N° 2 Power of Attorney
- Form N° 3 Request for the Recordal of Change(s) in Name(s)
and/or Address(es)
- Form N° 4 Request for the Recordal of a Change in Ownership
in Respect of Registration(s) and/or Application(s)
for Registration of Marks
- Form N° 5 Certificate of Transfer in Respect of Registration(s)
and/or Application(s) for Registration of Marks
- Form N° 6 Transfer Document in Respect of Registration(s)
and/or Application(s) for Registration of Marks
- Form N° 7 Request for the Correction of Mistake(s) in
Registration(s) and/or Application(s) for
Registration of Marks
- Form N° 8 Request for the Renewal of a Registration

Rule 1Abbreviated Expressions

[Same as in the Final Text.]

Rule 2Manner of Indicating Names and Addresses

[Same as in the Final Text.]

Rule 1

Abbreviated Expressions

(1) ["Treaty"; "Article"] (a) In these Regulations, the word "Treaty" means the Trademark Law Treaty.

(b) In these Regulations, the word "Article" refers to the specified Article of the Treaty.

(2) [Abbreviated Expressions Defined in the Treaty] The abbreviated expressions defined in Article 1 for the purposes of the Treaty shall have the same meaning for the purposes of the Regulations.

Rule 2

Manner of Indicating Names and Addresses

(1) [Names] (a) Where the name of a person is to be indicated, any Contracting Party may require,

(i) where the person is a natural person, that the name to be indicated be the family or principal name and the given or secondary name or names of that person or that the name to be indicated be, at that person's option, the name or names customarily used by the said person;

(ii) where the person is a legal entity, that the name to be indicated be the full official designation of the legal entity.

(b) Where the name of a representative which is a firm or partnership is to be indicated, any Contracting Party shall accept as indication of the name the indication that the firm or partnership customarily uses.

(2) [Addresses] (a) Where the address of a person is to be indicated, any Contracting Party may require that the address be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address and, in any case, consist of all the relevant administrative units up to, and including, the house or building number, if any.

(b) Where a communication to the Office of a Contracting Party is in the name of two or more persons with different addresses, that Contracting Party may require that such communication indicate a single address as the address for correspondence.

(c) The indication of an address may contain a telephone number and a telefacsimile number and, for the purposes of correspondence, an address different from the address indicated under subparagraph (a).

(d) Subparagraphs (a) and (c) shall apply, mutatis mutandis, to addresses for service.

Rule 3Details Concerning the Application

[Paragraphs 1 to 5 are the same as in the Final Text.]

[Rule 2, continued]

(3) [Script to Be Used] Any Contracting Party may require that any indication referred to in paragraphs (1) and (2) be in the script used by the Office.

Rule 3

Details Concerning the Application

(1) [Standard Characters] Where, pursuant to Article 3(1)(a)(ix), the application contains a statement to the effect that the applicant wishes that the mark be registered and published in the standard characters used by the Office of the Contracting Party, the Office shall register and publish that mark in such standard characters.

(2) [Number of Reproductions] (a) Where the application does not contain a statement to the effect that the applicant wishes to claim color as a distinctive feature of the mark, a Contracting Party may not require more than

(i) five reproductions of the mark in black and white where the application may not, under the law of that Contracting Party, or does not contain a statement to the effect that the applicant wishes the mark to be registered and published in the standard characters used by the Office of the said Contracting Party;

(ii) one reproduction of the mark in black and white where the application contains a statement to the effect that the applicant wishes the mark to be registered and published in the standard characters used by the Office of that Contracting Party.

(b) Where the application contains a statement to the effect that the applicant wishes to claim color as a distinctive feature of the mark, a Contracting Party may not require more than five reproductions of the mark in black and white and five reproductions of the mark in color.

(3) [Reproduction of a Three-Dimensional Mark] (a) Where, pursuant to Article 3(1)(a)(xi), the application contains a statement to the effect that the mark is a three-dimensional mark, the reproduction of the mark shall consist of a two-dimensional graphic or photographic reproduction.

(b) The reproduction furnished under subparagraph (a) may, at the option of the applicant, consist of one single view of the mark or of several different views of the mark.

(c) Where the Office considers that the reproduction of the mark furnished by the applicant under subparagraph (a) does not sufficiently show the particulars of the three-dimensional mark, it may invite the applicant to furnish, within a reasonable time limit fixed in the invitation, up to six different views of the mark and/or a description by words of that mark.

[Rule 3, continued]

(6) [Time Limit for Furnishing Evidence of Actual Use of the Mark] The time limit referred to in Article 3(6) shall not be shorter than six months counted from the date of allowance of the application by the Office of the Contracting Party where that application was filed. That time limit shall be extendable, subject to the conditions provided for by the law of that Contracting Party, by periods of at least six months each, up to a total extension of at least two years and a half.

Rule 4

Details Concerning Electronic Communications

[Reserved]

[In the Final Text, there is no provision corresponding to Rule 4 of the Draft.]

[Rule 3(3), continued]

(d) Where the Office considers that the different views and/or the description of the mark referred to in subparagraph (c) still do not sufficiently show the particulars of the three-dimensional mark, it may invite the applicant to furnish, within a reasonable time limit fixed in the invitation, a specimen of the mark.

(e) Paragraph (2)(a)(i) and (b) shall apply mutatis mutandis.

(4) [Transliteration of the Mark] For the purposes of Article 3(1)(a)(xiii), where the mark consists of or contains matter in script other than the script used by the Office or numbers expressed in numerals other than numerals used by the Office, a transliteration of such matter in the script and numerals used by the Office may be required.

(5) [Translation of the Mark] For the purposes of Article 3(1)(a)(xiv), where the mark consists of or contains a word or words in a language other than the language, or one of the languages, admitted by the Office, a translation of that word or those words into that language or one of those languages may be required.

(6) [Time Limit for Furnishing Evidence of Actual Use of the Mark] The time limit referred to in Article 3(6) shall not be shorter than six months counted from the date of allowance of the application by the Office of the Contracting Party where that application was filed. The applicant or holder shall have the right to an extension of that time limit, subject to the conditions provided for by the law of that Contracting Party, by periods of at least six months each, up to a total extension of at least two years and a half.

Rule 5Details Concerning Representation

[Same as Rule 4 in the Final Text.]

Rule 6Details Concerning the Filing Date

[Same as Rule 5 in the Final Text, except that the words "its Office" and "that Office" in the third line of draft Rule 6(3) and in item (i) of draft Rule 6(3) appear as "the Office," respectively, in Rule 5(3) of the Final Text, the word "regional" in draft Rule 6(3)(ii) does not appear in Rule 5(3)(ii) of the Final Text and the reference to Article 22(1)(ii) in draft Rule 6(3)(ii) is replaced by a reference to Article 19(1)(ii) in Rule 5(3)(ii) of the Final Text.]

Rule 4

Details Concerning Representation

The time limit referred to in Article 4(3)(d) shall be counted from the date of receipt of the communication referred to in that Article by the Office of the Contracting Party concerned and shall not be less than one month where the address of the person on whose behalf the communication is made is on the territory of that Contracting Party and not less than two months where such an address is outside the territory of that Contracting Party.

Rule 5

Details Concerning the Filing Date

(1) [Procedure in Case of Non-Compliance with Requirements] If the application does not, at the time of its receipt by the Office, comply with any of the applicable requirements of Article 5(1)(a) or (2)(a), the Office shall promptly invite the applicant to comply with such requirements within a time limit indicated in the invitation, which time limit shall be at least one month from the date of the invitation where the applicant's address is on the territory of the Contracting Party concerned and at least two months where the applicant's address is outside the territory of the Contracting Party concerned. Compliance with the invitation may be subject to the payment of a special fee. Even if the Office fails to send the said invitation, the said requirements remain unaffected.

(2) [Filing Date in Case of Correction] If, within the time limit indicated in the invitation, the applicant complies with the invitation referred to in paragraph (1) and pays any required special fee, the filing date shall be the date on which all the required indications and elements referred to in Article 5(1)(a) have been received by the Office and, where applicable, the required fee referred to in Article 5(2)(a) has been paid to the Office. Otherwise, the application shall be treated as if it had not been filed.

(3) [Date of Receipt] Each Contracting Party shall be free to determine the circumstances in which the receipt of a document or the payment of a fee shall be deemed to constitute receipt by or payment to the Office in cases in which the document was actually received by or payment was actually made to

(i) a branch or sub-office of the Office,

(ii) a national Office on behalf of the Office of the Contracting Party, where the Contracting Party is an intergovernmental organization referred to in Article 19(1)(ii),

(iii) an official postal service,

(iv) a delivery service, other than an official postal service, specified by the Contracting Party.

Rule 7Signature and Other Means of Self-Identification

[Same as Rule 6 in the Final Text, except that, in Rule 7 of the Draft, the title appears as above, the words "the name or names customarily used" appearing in paragraph (1) of the Final Text appear as "the name customarily used" and paragraph (3) appears as follows.]

(3) [Date] A signature or seal may be accompanied by an indication of the date on which the signing or sealing was effected.

[Rule 5, continued]

(4) [Use of Telefacsimile] Where a Contracting Party allows the filing of an application by telefacsimile and the application is filed by telefacsimile, the date of receipt of the telefacsimile by the Office of that Contracting Party shall constitute the date of receipt of the application, provided that the said Contracting Party may require that the original of such application reach the Office within a time limit which shall be at least one month from the day on which the telefacsimile was received by the said Office.

Rule 6

Details Concerning the Signature

(1) [Legal Entities] Where a communication is signed on behalf of a legal entity, any Contracting Party may require that the signature, or the seal, of the natural person who signs or whose seal is used be accompanied by 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.

(2) [Communication by Telefacsimile] The period referred to in Article 8(2)(b) shall not be less than one month from the date of the receipt of a transmittal by telefacsimile.

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

Rule 8Manner of Identification of an Application
Without Its Application Number

[Same as Rule 7 in the Final Text.]

Rule 9Details Concerning Duration and Renewal

[Same as Rule 8 in the Final Text, except that the words "and/or" in the second sentence of Rule 8 in the Final Text appear as "and" in the second sentence of Rule 9 in the Draft.]

Rule 7

Manner of Identification of an Application
Without Its Application Number

(1) [Manner of Identification] Where it is required that an application be identified by its application number but where such a number has not yet been issued or is not known to the applicant or his representative, that application shall be considered identified if the following is supplied:

(i) the provisional application number, if any, given by the Office, or

(ii) a copy of the application, or

(iii) a reproduction of the mark, accompanied by an indication of the date on which, to the best knowledge of the applicant or the representative, the application was received by the Office and an identification number given to the application by the applicant or the representative.

(2) [Prohibition of Other Requirements] No Contracting Party may demand that requirements other than those referred to in paragraph (1) be complied with in order for an application to be identified where its application number has not yet been issued or is not known to the applicant or his representative.

Rule 8

Details Concerning Duration and Renewal

For the purposes of Article 13(1)(c), the period during which the request for renewal may be presented and the renewal fee may be paid shall start at least six months before the date on which the renewal is due and shall end at the earliest six months after that date. If the request for renewal is presented and/or the renewal fees are paid after the date on which the renewal is due, any Contracting Party may subject the renewal to the payment of a surcharge.

MODEL INTERNATIONAL FORM N° 1

APPLICATION FOR THE REGISTRATION OF A MARK

[Same as in the Final Text.]

-
1. [Same as in the Final Text.]
-

MODEL INTERNATIONAL FORM N° 1

APPLICATION FOR THE REGISTRATION OF A MARK

submitted to the Office of

For Office use only

Reference number of applicant:*

Reference number of representative:*

1. Request for Registration

Registration of the mark reproduced in the present application is hereby requested.

* The reference number allotted by the applicant and/or the reference number allotted by the representative to the present application may be indicated in this space.

Form N° 1, page 2

2. [Same as in the Final Text.]

Form N° 1, page 2

2. Applicant(s)

2.1 If the applicant is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

2.2 If the applicant is a legal entity, the entity's
full official designation:

2.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

2.4 State of nationality:

State of domicile:

State of establishment:**

2.5 Where the applicant is a legal entity, indicate

- the legal nature of the legal entity:
- the State, and, where applicable, the territorial unit within that State, under the law of which the legal entity is organized:

2.6 ☐ Check this box if there is more than one applicant; in that case, list them on an additional sheet and indicate, in respect of each of them, the data referred to in items 2.1 or 2.2, 2.3, 2.4 and 2.5.***

* The names to be indicated under (a) and (b) are either the full names of the applicant or the names customarily used by the applicant.

** "Establishment" means a real and effective industrial or commercial establishment.

*** Where several applicants are listed on the additional sheet with different addresses and there is no representative, the address for correspondence must be underlined on the additional sheet.

Form N° 1, page 3

3. [Same as in the Final Text.]

4. [Same as in the Final Text.]

Form N° 1, page 3

3. Representative

3.1 ☐ The applicant is not represented.

3.2 ☐ The applicant is represented.

3.2.1 Identification of the representative

3.2.1.1 Name:

3.2.1.2 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

3.2.2 ☐ The power of attorney is already in the possession of the Office. Serial number:*

3.2.3 ☐ The power of attorney is attached.

3.2.4 ☐ The power of attorney will be furnished at a later date.

3.2.5 ☐ No power of attorney is needed.

4. Address for Service**

* To be left blank if the power of attorney has not, or has not yet, been allotted a serial number or if the serial number is not yet known to the applicant or the representative.

** An address for service must be indicated in the space available under the title of item 4 where the applicant does not have or, if there is more than one applicant, where none of the applicants has a domicile or a real and effective industrial or commercial establishment on the territory of the Contracting Party whose Office is the Office named on the first page of the present application, except where a representative is indicated in item 3.

Form N° 1, page 4

5. Claiming of Priority

☐ The applicant hereby claims the following priority:

5.1 Country (Office) of first filing:*

5.2 Date of first filing:

5.3 Application number of first filing (if available):

5.4 ☐ Check this box if there is more than one filing whose priority is claimed; in that case, list them in an additional sheet and indicate, in respect of each of them, the data referred to in items 5.1, 5.2 and 5.3 and the goods and/or services mentioned in each of them.

* [Same as in the Final Text.]

Form N° 1, page 4

5. Claiming of Priority

☐ The applicant hereby claims the following priority:

5.1 Country (Office) of first filing:*

5.2 Date of first filing:

5.3 Application number of first filing (if available):

5.4 The certified copy of the application the priority of which is claimed**

5.4.1 ☐ is attached.

5.4.2 ☐ will be furnished within three months from the filing date of the present application.

5.5 The translation of the certified copy

5.5.1 ☐ is attached.

5.5.2 ☐ will be furnished within three months from the filing date of the present application.

5.6 ☐ Check this box if there is more than one filing whose priority is claimed; in that case, list them in an additional sheet and indicate, in respect of each of them, the information referred to in items 5.1, 5.2, 5.3, 5.4 and 5.5 and the goods and/or services mentioned in each of them.

* Where the application the priority of which is claimed was filed with an Office other than a national Office (e.g., OAPI, the Benelux Trademark Office and the Office for Harmonization in the Internal Market (trade marks and designs), the name of that Office has to be indicated instead of the name of a country. Otherwise, not the name of the Office but the name of the country must be indicated.

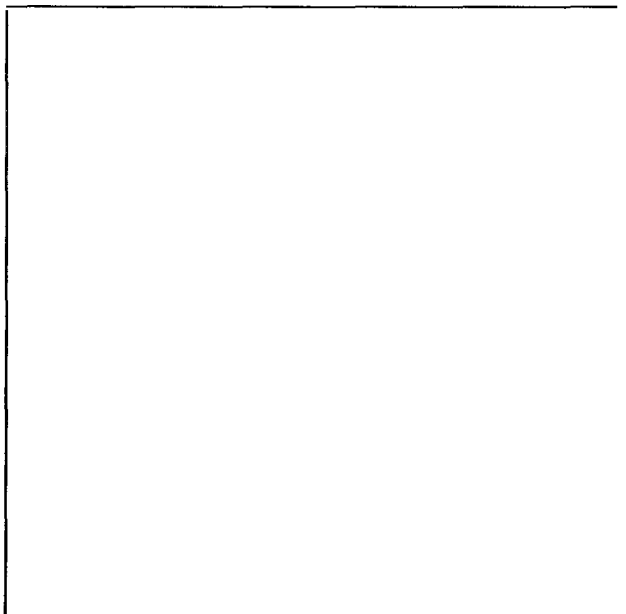
** "Certified copy" means a copy of the application the priority of which is claimed, certified as being in conformity with the original by the Office which received such application.

Form N° 1, page 5

6. [Same as in the Final Text.]

7. [Same as in the Final Text.]

8. **Reproduction of the Mark**



Form N° 1, page 5

6. Registration(s) in the Country (Office) of Origin*

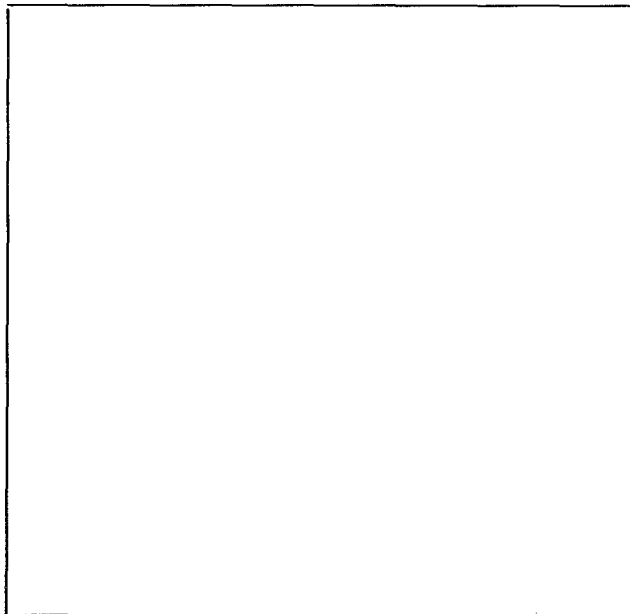
☐ The certificate(s) of registration in the country (Office) of origin is (are) attached.

7. Protection Resulting From Display in an Exhibition

☐ Check this box if the applicant wishes to take advantage of any protection resulting from the display of goods and/or services in an exhibition. In that case, give the details on an additional sheet.

8. Reproduction of the Mark

(8 cm x 8 cm)



* To be filled in where the applicant wishes to furnish evidence under Article 6quinquies A(1) of the Paris Convention when filing the application.

Form N° 1, page 6

[Items 8.1 to 8.5 are the same as in the Final Text.]

9. [Same as in the Final Text.]

10. [Same as in the Final Text.]

Form N° 1, page 6

8.1 ☐ The applicant wishes that the Office register and publish the mark in the standard characters used by it.*

8.2 ☐ Color is claimed as a distinctive feature of the mark.

8.2.1 Name(s) of the color(s) claimed:

8.2.2 Principal parts of the mark which are in that (those) color(s):

8.3 ☐ The mark is three-dimensional.

☐ ... ** different views of the mark are attached.

8.4 ... *** reproduction(s) of the mark in black and white is (are) attached.

8.5 ... *** reproduction(s) of the mark in color is (are) attached.

9. Transliteration of the Mark

The mark or part of the mark is transliterated as follows:

10. Translation of the Mark

The mark or part of the mark is translated as follows:

* Such a wish cannot be expressed in respect of marks which contain or consist of figurative elements. If, in the opinion of the Office, they do contain such elements, the Office will ignore the wish of the applicant and will register and publish the mark as appearing in the square.

** If several different views of the mark are not included in the square provided in item 8 but are attached, check this box and indicate the number of those different views.

*** Indicate the number of reproductions in black and white and/or color.

Form N° 1, page 7

11. [Same as in the Final Text.]

12. [Same as in the Final Text.]

[In the Draft, there is no provision corresponding to item 13 of the Final Text.]

Form N° 1, page 7

11. Goods and/or Services

Names of the goods and/or services:*

☐ Check this box if the space above is not sufficient; in that case, give the names of the goods and/or services on an additional sheet.

12. Declaration Concerning Intention to Use or Actual Use; Evidence of Actual Use

12.1 ☐ Check this box if a declaration is attached.

12.2 ☐ Check this box if evidence of actual use is attached.

13. Requirements Relating to Languages

☐ Check this box if an attachment is enclosed in order to comply with any language requirement applicable with respect to the Office.**

* Where the goods and/or services belong to more than one class of the Nice Classification, they must be grouped according to the classes of that Classification. The number of each class must be indicated and the goods and/or services belonging to the same class must be grouped following the indication of the number of that class. Each group of goods or services must be presented in the order of the classes of the Nice Classification. Where all the goods or services belong to one class of the Nice Classification, the number of that class must be indicated.

** This box is not to be used if the Office does not admit more than one language.

Form N° 1, page 8

13. Signature or Seal

13.1 Name of the natural person who signs or whose seal is used:

13.2 Capacity of the natural person who signs or whose seal is used:

13.2.1 ☐ Applicant.**13.2.2 ☐ Representative.

13.3 Date of signature or of apposition of the seal:

13.4 Signature or seal:

14. Fee

14.1 Currency and amount of the fee paid in connection with the present application:

14.2 Method of payment:

15. [Same as item 16 in the Final Text.]

** This box is to be checked even if the applicant is a legal entity and the natural person who signs or apposes his seal does it on behalf of that entity.

Form N° 1, page 8

14. Signature or Seal

14.1 Name of the natural person who signs or whose seal is used:

14.2 Check the appropriate box according to whether the signature is given, or the seal is used, by or on behalf of the

14.2.1 ☐ applicant.

14.2.2 ☐ representative.

14.3 Date of signature or of sealing:

14.4 Signature or seal:

15. Fee(s)

15.1 Currency and amount(s) of the fee(s) paid in connection with the present application:

15.2 Method of payment:

16. Additional Sheets and Attachments

☐ Check this box if additional sheets and/or attachments are enclosed and indicate the total number of such sheets and/or attachments:

MODEL INTERNATIONAL FORM N° 2

POWER OF ATTORNEY

[Same as in the Final Text, except that the word "name" in the second and third sentence of the footnote to item 2 in the Final Text appears in plural in the footnote to item 2 of draft Model International Form 2, the corresponding verbs are in plural form, and the words "of sealing" in item 6(2) of the Final Text appear as "apposition of the seal" in the Draft.]

MODEL INTERNATIONAL FORM N° 2

POWER OF ATTORNEY

for procedures before the Office of

For Office use only

Reference number of person
making the appointment:*

1. **Appointment**

The undersigned hereby appoints as his representative the person identified in item 3, below.

2. **Name of the Person Making the Appointment****

3. **Representative**

3.1 Name:

3.2 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

* The reference number allotted by the person making the appointment to this power of attorney may be indicated in this space.

** If the person making the appointment is the applicant (or one of the applicants), the name to be indicated is that of that applicant, as indicated in the application(s) to which this power relates. If the said person is the holder (or one of the holders), the name to be indicated is that of that holder, as recorded in the register of marks. If the said person is an interested person other than an applicant or holder, the name to be indicated is the full name of that person or the name customarily used by that person.

Form N° 2, page 2

Form N° 2, page 2

4. Application(s) and/or Registration(s) Concerned

This power of attorney concerns:

4.1 ☐ all existing and future applications and/or registrations of the person making the appointment, subject to any exception indicated on an additional sheet.

4.2 ☐ the following application(s) and/or registration(s):

4.2.1 the application(s) concerning the following mark(s):*

4.2.2 the application(s) having the following application number(s)** as well as any registration(s) resulting therefrom:

4.2.3 the registration(s) having the following registration number(s):

4.2.4 ☐ If the spaces under 4.2.1, 4.2.2 or 4.2.3 are not sufficient, check this box and provide the information on an additional sheet.

* Complete this item if the power of attorney is filed with the Office together with the application(s).

** Where the application number of an application has not yet been issued or is not known to the applicant or his representative, that application may be identified by furnishing either: (i) the provisional application number, if any, given by the Office, or (ii) a copy of the application, or (iii) a reproduction of the mark, accompanied by an indication of the date on which, to the best knowledge of the applicant or his representative, the application was received by the Office and an identification number given to the application by the applicant or his representative.

Form N° 2, page 3

Form N° 2, page 3

5. Scope of the Power of Attorney

5.1 ☐ Check this box if the representative has the right to act as representative for all purposes, including, where the person making the appointment is an applicant or a holder, the following purposes:

5.1.1 ☐ withdrawal of the application(s)

5.1.2 ☐ surrender of the registration(s)

5.2 ☐ Check this box if the representative does not have the right to act as representative for all purposes and indicate here or on an additional sheet the purposes excluded from the powers of the representative:

6. Signature or Seal

6.1 Name of the natural person who signs or whose seal is used:

6.2 Date of signature or of sealing:

6.3 Signature or seal:

7. Additional Sheets and Attachments

☐ Check this box if additional sheets and/or attachments are enclosed and indicate the total number of such sheets and/or attachments:

MODEL INTERNATIONAL FORM N° 3

REQUEST FOR THE RECORDAL OF CHANGE(S)
IN NAME(S) OR ADDRESS(ES)

[Items 1 to 6 are the same as in the Final Text.]

MODEL INTERNATIONAL FORM N° 3

REQUEST FOR THE RECORDAL OF CHANGE(S)
IN NAME(S) OR ADDRESS(ES)

in respect of registration(s) and/or
application(s) for registration of mark(s)

submitted to the Office of

For Office use only

Reference number of holder
and/or applicant:*
Reference number of representative:*

1. Request for Recordal

The recordal of the change(s) indicated in the present request is hereby requested.

2. Registration(s) and/or Application(s) Concerned

The present request concerns the following registration(s) and/or application(s):

2.1 Registration number(s):

2.2 Application number(s):**

2.3 ☐ If the spaces under 2.1 or 2.2 are not sufficient, check
this box and provide the information on an additional sheet.

* The reference number allotted by the holder and/or applicant and/or the reference number allotted by the representative to the present request may be indicated in this space.

** Where the application number of an application has not yet been issued or is not known to the applicant or his representative, that application may be identified by furnishing either: (i) the provisional application number, if any, given by the Office, or (ii) a copy of the application, or (iii) a reproduction of the mark, accompanied by an indication of the date on which, to the best knowledge of the applicant or his representative, the application was received by the Office and an identification number given to the application by the applicant or his representative.

Form N° 3, page 2

Form N° 3, page 2

3. Holder(s) and/or Applicant(s)

3.1 If the holder and/or applicant is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

3.2 If the holder and/or applicant is a legal entity, the entity's
full official designation:

3.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

3.4 ☐ Check this box if there is more than one holder and/or
applicant; in that case, list them on an additional sheet
and indicate, in respect of each of them, the data referred
to in items 3.1 or 3.2 and 3.3.

4. Representative

4.1 Name:

4.2 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

4.3 Serial number of the power of attorney:**

5. Address for Service

* The names to be indicated under (a) and (b) are those which were indicated in the application(s), or are recorded in respect of the registration(s), to which the present request relates.

** To be left blank if the power of attorney has not, or has not yet, been allotted a serial number or if the serial number is not yet known to the holder and/or applicant or the representative.

Form N° 3, page 3

7. Signature or Seal

7.1 Name of the natural person who signs or whose seal is used:

7.2 Capacity of the natural person who signs or whose seal is used:

7.2.1 ☐ Holder and/or applicant.**

7.2.2 ☐ Representative.

7.3 Date of signature or of apposition of the seal:

7.4 Signature or seal:

****** This box is to be checked even if the holder and/or applicant is a legal entity and the natural person who signs or apposes his seal does it on behalf of that entity.

Form N° 3, page 3

6. Indication of the Change(s)

6.1 Data to be changed:

Data as changed:*

6.2 ☐ Check this box if the above space is insufficient; in that case, indicate on an additional sheet the data to be changed with the data as changed.

7. Signature or Seal

7.1 Name of the natural person who signs or whose seal is used:

7.2 Check the appropriate box according to whether the signature is given, or the seal is used, by or on behalf of the

7.2.1 ☐ holder and/or applicant.

7.2.2 ☐ representative.

7.3 Date of signature or of sealing:

7.4 Signature or seal:

* Indicate the name(s) and/or address(es) as changed.

Form N° 3, page 4.

[Items 8 and 9 are the same as in the Final Text.]

Form N° 3, page 4

8. **Fee**

8.1 Currency and amount of the fee paid in connection with the present request for the recordal of change(s):

8.2 Method of payment:

9. **Additional Sheets and Attachments**

☐ Check this box if additional sheets and/or attachments are enclosed and indicate the total number of such sheets and/or attachments:

MODEL INTERNATIONAL FORM N° 4

REQUEST FOR THE RECORDAL OF A CHANGE
IN OWNERSHIP

[Items 1 to 10 are the same as in the Final Text, except that the words "by the change" in the penultimate line of item 3.3 of the Final Text do not appear in item 3.3 of draft International Model Form No.4, and the words "Holder," "Applicant" and "Owner" in the titles of items 7, 9 and 10 in the Final Text appear with an optional plural form in the corresponding places of draft Model International Form No.4.]

MODEL INTERNATIONAL FORM N° 4

REQUEST FOR THE RECORDAL OF A CHANGE
IN OWNERSHIP

in respect of registration(s) and/or
application(s) for registration of marks

submitted to the Office of

For Office use only

Reference number of holder
and/or applicant:*
Reference number of representative:*

1. Request for Recordal

The recordal of the change in ownership indicated in the present request
is hereby requested.

2. Registration(s) and/or Application(s) Concerned

The present request concerns the following registration(s) and/or
application(s):

2.1 Registration number(s):

2.2 Application number(s):**

2.3 ☐ If the spaces under 2.1 or 2.2 are not sufficient, check
this box and provide the information on an additional sheet.

* The reference number allotted by the holder and/or applicant and/or the
reference number allotted by the representative to the present request may be
indicated in this space.

** Where the application number of an application has not yet been issued
or is not known to the applicant or his representative, that application may
be identified by furnishing either: (i) the provisional application number,
if any, given by the Office, or (ii) a copy of the application, or (iii) a
reproduction of the mark, accompanied by an indication of the date on which,
to the best knowledge of the applicant or his representative, the application
was received by the Office and an identification number given to the
application by the applicant or his representative.

Form N° 4, page 2.

Form N° 4, page 2

3. Goods and/or Services Affected by the Change

- 3.1 ☐ Check this box where all the goods and/or services listed in the application(s) and/or registration(s) referred to in item 2 are affected by the change.
- 3.2 ☐ Check this box where item 2 mentions only one application or registration and where only some of the goods and/or services listed in that application or registration are affected by the change and indicate the goods and/or services that should appear in the application or registration of the new owner (in which case the goods and/or services not indicated will remain in the application or registration of the applicant or holder):
- 3.3 ☐ Check this box where item 2 mentions more than one application or registration and if in respect of at least one of them the change affects less than all the goods and/or services listed. In this case, indicate on an additional sheet, separately in respect of each application and/or registration, whether the change affects all the goods and/or services or only some of them. In respect of any application or registration where only some of the goods and/or services are affected by the change, make the indication in the way specified in item 3.2.
-

Form N° 4, page 3

Form N° 4, page 3

4. Basis for the Change in Ownership

4.1 ☐ The change in ownership results from a contract.

One of the following documents is enclosed:

4.1.1 ☐ a copy, certified as being in conformity with the original, of the contract.

4.1.2 ☐ an extract, certified as being a true extract, of the contract.

4.1.3 ☐ a certificate of transfer.

4.1.4 ☐ a transfer document.

4.2 ☐ The change in ownership results from a merger.

A copy, certified as being in conformity with the original, of the following document, evidencing the merger, is enclosed:

4.2.1 ☐ extract from the register of commerce.

4.2.2 ☐ other document originating from the competent authority.

4.3 ☐ The change in ownership does not result from a contract or a merger.

4.3.1 ☐ A copy, certified as being in conformity with the original, of a document evidencing the change is enclosed.

Form N° 4, page 4.

Form N° 4, page 4

5. Holder(s) and/or Applicant(s)

5.1 If the holder and/or applicant is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

5.2 If the holder and/or applicant is a legal entity, the entity's
full official designation:

5.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with area code)

5.4 ☐ Check this box if there is more than one holder and/or
applicant affected by the change; in that case, list them
on an additional sheet and indicate, in respect of each of
them, the data referred to in items 5.1 or 5.2 and 5.3.

5.5 ☐ Check this box if the holder and/or applicant, or one of the
holders and/or applicants, has changed names and/or
addresses without requesting the recordal of that change,
and enclose a document evidencing that the person having
transferred the ownership and the holder and/or applicant
are the same person.

6. Representative of the Holder and/or Applicant

6.1 Name:

6.2 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

6.3 Serial number of the power of attorney:**

* The names to be indicated under (a) and (b) are those which were
indicated in the application(s), or are recorded in respect of the
registration(s), to which the present request relates.

** To be left blank if the power of attorney has not, or has not yet, been
allotted a serial number or if the serial number is not yet known to the
holder and/or applicant or the representative.

Form N° 4, page 5.

Form N° 4, page 5.

7. Address for Service of the Holder and/or Applicant

8. New Owner(s)

8.1 If the new owner is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

8.2 If the new owner is a legal entity, the entity's
full official designation:

8.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

8.4 State of nationality:

State of domicile:

State of establishment:**

8.5 Where the new owner is a legal entity, indicate

- the legal nature of the legal entity:
- the State, and, where applicable, the territorial unit within that State, under the law of which the legal entity is organized:

8.6 ☐ Check this box if there is more than one new owner; in that case, list them on an additional sheet and indicate, in respect of each of them, the data referred to in items 8.1 or 8.2, 8.3, 8.4 and 8.5.***

* The names to be indicated under (a) and (b) are either the full names of the new owner or the names customarily used by the new owner.

** "Establishment" means a real and effective industrial or commercial establishment.

*** Where several new owners are listed on the additional sheet with different addresses and there is no representative, the address for correspondence must be underlined on the additional sheet.

Form N° 4, page 6.

Form N° 4, page 6

9. Representative of the New Owner

9.1 ☐ The new owner is not represented.

9.2 ☐ The new owner is represented.

9.2.1 Identification of the representative

9.2.1.1 Name:

9.2.1.2 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

9.2.2 ☐ The power of attorney is already in the possession of the Office. Serial number:*

9.2.3 ☐ The power of attorney is attached.

9.2.4 ☐ The power of attorney will be furnished at a later date.

9.2.5 ☐ No power of attorney is needed.

10. Address for Service of the New Owner**

* To be left blank if the power of attorney has not, or has not yet, been allotted a serial number or if the serial number is not yet known to the new owner or the representative.

** An address for service must be indicated in the space available under the title of item 10 where the new owner does not have or, if there is more than one new owner, where none of the new owners has a domicile or a real and effective industrial or commercial establishment on the territory of the Contracting Party whose Office is the Office named on the first page of the present request, except where a representative is indicated in item 9.

Form N° 4, page 7

11. Signature or Seal

11.1 Name of the natural person who signs or whose seal is used:

11.2 Capacity of the natural person who signs or whose seal is used:

11.2.1 ☐ Holder and/or applicant.*11.2.2 ☐ New owner.**11.2.3 ☐ Representative.

11.3 Date of signature or of apposition of the seal:

11.4 Signature or seal:

12. [Items 12 and 13 are the same as in the Final Text.]

* This box is to be checked even if the holder and/or applicant is a legal entity and the natural person who signs or apposes his seal does it on behalf of that entity.

** This box is to be checked even if the new owner is a legal entity and the natural person who signs or apposes his seal does it on behalf of that entity.

Form N° 4, page 7

11. Signature or Seal

11.1 Name of the natural person who signs or whose seal is used:

11.2 Check the appropriate box according to whether the signature is given, or the seal is used, by or on behalf of the

11.2.1 ☐ holder and/or applicant.

11.2.2 ☐ new owner.

11.2.3 ☐ representative.

11.3 Date of signature or of sealing:

11.4 Signature or seal:

12. Fee

12.1 Currency and amount of the fee paid in connection with the present request for the recordal of a change in ownership:

12.2 Method of payment:

13. Additional Sheets and Attachments

☐ Check this box if additional sheets and/or attachments are enclosed and indicate the total number of such sheets and/or attachments:

MODEL INTERNATIONAL FORM N° 5

CERTIFICATE OF TRANSFER

[Same as in the Final Text, except that the words "by the transfer" in the penultimate line of item 3.3 in the Final Text do not appear in item 3.3 of draft Model International Form No.5, and the words "Date of signature(s) or of sealing(s) in items 6.1.2 and 6.2.2 in the Final Text appear as "Date of signature(s) or of apposition of the seal(s)" in the respective items of draft Model International Form No.5.]

MODEL INTERNATIONAL FORM N° 5

CERTIFICATE OF TRANSFER

in respect of registration(s) and/or
application(s) for registration of marks

submitted to the Office of

For Office use only

1. Certification

The undersigned transferor(s) and transferee(s) hereby certify that the ownership of the registration(s) and/or application(s) identified below has been transferred by contract.

2. Registration(s) and/or Application(s) Concerned

The present certificate concerns the transfer of the following registration(s) and/or application(s):

2.1 Registration number(s):

2.2 Application number(s):*

2.3 ☐ If the spaces under 2.1 or 2.2 are not sufficient, check this box and provide the information on an additional sheet.

* Where the application number of an application has not yet been issued or is not known to the transferor or his representative, that application may be identified by furnishing either: (i) the provisional application number, if any, given by the Office, or (ii) a copy of the application, or (iii) a reproduction of the mark, accompanied by an indication of the date on which, to the best knowledge of the transferor or his representative, the application was received by the Office and an identification number given to the application by the transferor or his representative.

Form N° 5, page 2

Form N° 5, page 2

3. Goods and/or Services Affected by the Transfer

3.1 ☐ Check this box where all the goods and/or services listed in the application(s) and/or registration(s) referred to in item 2 have been affected by the transfer.

3.2 ☐ Check this box where item 2 mentions only one application or registration and where only some of the goods and/or services listed in that application or registration have been affected by the transfer and indicate the goods and/or services that have been affected by the transfer:

3.3 ☐ Check this box where item 2 mentions more than one application or registration and if in respect of at least one of them the transfer has affected less than all the goods and/or services listed. In this case, indicate on an additional sheet, separately in respect of each application and/or registration, whether the transfer affected all the goods and/or services or only some of them. In respect of any application or registration where only some of the goods and/or services were affected by the transfer, make the indication in the way specified in item 3.2.

Form N° 5, page 3.

Form N° 5, page 3.

4. Transferor(s)

4.1 If the transferor is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

4.2 If the transferor is a legal entity, the entity's
full official designation:

4.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with area code)

4.4 ☐ Check this box if there is more than one transferor; in that case, list them on an additional sheet and indicate, in respect of each of them, the data referred to in items 4.1 or 4.2 and 4.3.

* The names to be indicated under (a) and (b) are those which were indicated in the application(s), or are recorded in respect of the registration(s), to which the present certificate relates.

Form N° 5, page 4

Form N° 5, page 4

5. Transferee(s)

5.1 If the transferee is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

5.2 If the transferee is a legal entity, the entity's
full official designation:

5.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

5.4 ☐ Check this box if there is more than one transferee; in
that case, list them on an additional sheet and indicate, in
respect of each of them, the data referred to in items 5.1
or 5.2 and 5.3.

* The names to be indicated under (a) and (b) are either the full names of
the transferee or the names customarily used by the transferee.

Form N° 5, page 5

Form N° 5, page 5

6. Signatures or Seals

6.1 Signature(s) or seals(s) of the transferor(s)

6.1.1 Name(s) of the natural person(s) who sign(s) or whose seal(s) is (are) used:

6.1.2 Date of signature(s) or of sealing(s):

6.1.3 Signature(s) or seal(s):

6.2 Signature(s) or seal(s) of the transferee(s)

6.2.1 Name(s) of the natural person(s) who sign(s) or whose seal(s) is (are) used:

6.2.2 Date of signature(s) or of sealing(s):

6.2.3 Signature(s) or seal(s):

7. Additional Sheets and Attachments

☐

Check this box if additional sheets and/or attachments are enclosed and indicate the total number of such sheets and/or attachments:

MODEL INTERNATIONAL FORM N° 6

TRANSFER DOCUMENT

[Same as in the Final Text except that the words "by the transfer" in the penultimate line of item 3.3 in the Final Text do not appear in item 3.3 of draft Model International Form No.6, and the words "Date of signature(s) or of sealing(s)" in items 7.1.2 and 7.2.2 in the Final Text appear as "Date of signature(s) or of apposition of the seal(s)" in the respective items of draft Model International Form No.6.]

MODEL INTERNATIONAL FORM N° 6

TRANSFER DOCUMENT

in respect of registration(s) and/or
application(s) for registration of marks

submitted to the Office of

For Office use only

1. Declaration of Transfer

The undersigned transferor(s) transfers (transfer) to the undersigned transferee(s) the ownership of the registration(s) and/or application(s) identified below.

2. Registration(s) and/or Application(s) Concerned

The present document concerns the transfer of the following registration(s) and/or application(s):

2.1 Registration number(s):

2.2 Application number(s):*

2.3 ☐ If the spaces under 2.1 or 2.2 are not sufficient, check this box and provide the information on an additional sheet.

* Where the application number of an application has not yet been issued or is not known to the transferor or his representative, that application may be identified by furnishing either: (i) the provisional application number, if any, given by the Office, or (ii) a copy of the application, or (iii) a reproduction of the mark, accompanied by an indication of the date on which, to the best knowledge of the transferor or his representative, the application was received by the Office and an identification number given to the application by the transferor or his representative.

Form N° 6, page 2

Form N° 6, page 2

3. Goods and/or Services Affected by the Transfer

- 3.1 ☐ Check this box where all the goods and/or services listed in the application(s) and/or registration(s) referred to in item 2 are affected by the transfer.
- 3.2 ☐ Check this box where item 2 mentions only one application or registration and where only some of the goods and/or services listed in that application or registration are affected by the transfer and indicate the goods and/or services that are affected by the transfer:
- 3.3 ☐ Check this box where item 2 mentions more than one application or registration and if in respect of at least one of them the transfer affects less than all the goods and/or services listed. In this case, indicate on an additional sheet, separately in respect of each application and/or registration, whether the transfer affects all the goods and/or services or only some of them. In respect of any application or registration where only some of the goods and/or services are affected by the transfer, make the indication in the way specified in item 3.2.
-

Form N° 6, page 3

Form N° 6, page 3

4. **Transferor(s)**

4.1 If the transferor is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

4.2 If the transferor is a legal entity, the entity's
full official designation:

4.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with area code)

4.4 ☐ Check this box if there is more than one transferor; in that case, list them on an additional sheet and indicate, in respect of each of them, the data referred to in items 4.1 or 4.2 and 4.3.

* The names to be indicated under (a) and (b) are those which were indicated in the application(s), or are recorded in respect of the registration(s), to which the present document relates.

Form N° 6, page 4

Form N° 6, page 4

5. Transferee(s)

5.1 If the transferee is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

5.2 If the transferee is a legal entity, the entity's
full official designation:

5.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

5.4 ☐ Check this box if there is more than one transferee; in that case, list them on an additional sheet and indicate, in respect of each of them, the data referred to in items 5.1 or 5.2 and 5.3.

6. Additional Indications (see the Annex to this Form (attached))

(the furnishing of any of those indications is optional
for the purposes of recordal of the change in ownership)

☐ Check this box if the Annex is used.

* The names to be indicated under (a) and (b) are either the full names of the transferee or the names customarily used by the transferee.

Form N° 6, page 5.

Form N° 6, page 5

7. Signatures or Seals

7.1 Signature(s) or seal(s) of the transferor(s)

7.1.1 Name(s) of the natural person(s) who sign(s) or whose seal(s) is (are) used:

7.1.2 Date of signature(s) or of sealing(s):

7.1.3 Signature(s) or seal(s):

7.2 Signature(s) or seal(s) of the transferee(s)

7.2.1 Name(s) of the natural person(s) who sign(s) or whose seal(s) is (are) used:

7.2.2 Date of signature(s) or of sealing(s):

7.2.3 Signature(s) or seal(s):

8. Additional Sheets, Attachments and Annex

☐ Check this box if additional sheets and/or attachments are enclosed and indicate the total number of such sheets and/or attachments:

☐ Check this box if an Annex is enclosed and indicate the number of the pages of the Annex and the number of any additional sheets to the Annex:

Annex to Form N° 6Additional Indications Relating
to a Transfer Document (Item 6)

[Same as in the Final Text.]

Annex to Form N° 6

Additional Indications Relating
to a Transfer Document (Item 6)

A. Transfer of Goodwill or Business

(a) ☐ Check this box where the transfer is made with the relevant goodwill or the business in respect of all the goods and/or services listed in the application(s) and/or registration(s) referred to in item 2 of the transfer document.

(b) ☐ Check this box where item 2 of the transfer document mentions only one application or registration and where the transfer is made with the relevant goodwill or the business in respect of only some of the goods and/or services listed in that application or registration and indicate the goods and/or services in respect of which the transfer is made with the relevant goodwill or the business:

(c) ☐ Check this box where item 2 of the transfer document mentions more than one application or registration and if in respect of at least one of them the transfer is made with the relevant goodwill or the business in respect of less than all the goods and/or services listed. In this case, indicate on an additional sheet, separately in respect of each application and/or registration, whether the transfer is made with the relevant goodwill or the business in respect of all the goods and/or services or only some of them. In respect of any application or registration where the transfer is made with the relevant goodwill or the business in respect of only some of the goods and/or services, make the indication in the way specified in item (b).

Annex to Form N° 6, page 2

Annex to Form N° 6, page 2

B. Transfer of Rights Resulting from Use

The rights, arising from the use of the mark, are transferred in respect of

- (a) ☐ all registration(s) and/or application(s).
(b) ☐ only the following registration(s) and/or application(s):

C. Transfer of the Right to Sue

☐ The transferee shall have the right to sue for past infringements.

D. Consideration

- (a) ☐ The transfer is effected in consideration for money received.
(b) ☐ The transfer is effected in consideration for money received and other good and valuable consideration.
(c) ☐ The transferor hereby acknowledges receipt of the above-mentioned consideration.

E. Effective Date of the Transfer

- (a) ☐ The transfer is effective as of the date of signature of the present transfer document.
(b) ☐ The transfer is effective as of the following date:

MODEL INTERNATIONAL FORM N° 7

REQUEST FOR THE CORRECTION OF MISTAKE(S)

[Items 1 to 6 are the same as in the Final Text.]

MODEL INTERNATIONAL FORM N° 7

REQUEST FOR THE CORRECTION OF MISTAKE(S)

in registration(s) and/or application(s) for registration of marks
submitted to the Office of

For Office use only

Reference number of holder
and/or applicant:*
Reference number of representative:*

1. Request for Correction

The correction(s) identified in the present request is (are) hereby
requested.

2. Registration(s) and/or Application(s) Concerned

The present request concerns the following registration(s) and/or
application(s):

2.1 Registration number(s):

2.2 Application number(s):**

2.3 ☐ If the spaces under 2.1 or 2.2 are not sufficient, check
this box and provide the information on an additional sheet.

* The reference number allotted by the holder and/or applicant and/or the
reference number allotted by the representative to the present request may be
indicated in this space.

** Where the application number of an application has not yet been issued
or is not known to the applicant or his representative, that application may
be identified by furnishing either: (i) the provisional application number,
if any, given by the Office, or (ii) a copy of the application, or (iii) a
reproduction of the mark, accompanied by an indication of the date on which,
to the best knowledge of the applicant or his representative, the application
was received by the Office and an identification number given to the
application by the applicant or his representative.

Form N° 7, page 2

Form N° 7, page 2

3. Holder(s) and/or Applicant(s)

3.1 If the holder and/or applicant is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

3.2 If the holder and/or applicant is a legal entity, the entity's
full official designation:

3.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

3.4 ☐ Check this box if there is more than one holder and/or
applicant; in that case, list them on an additional sheet
and indicate, in respect of each of them, the data referred
to in items 3.1 or 3.2 and 3.3.

4. Representative

4.1 Name:

4.2 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

4.3 Serial number of the power of attorney:**

* The names to be indicated under (a) and (b) are those which were indicated in the application(s), or are recorded in respect of the registration(s), to which the present request relates.

** To be left blank if the power of attorney has not, or has not yet, been allotted a serial number or if the serial number is not yet known to the holder and/or applicant or the representative.

Form N° 7, page 3

7. Signature or Seal

7.1 Name of the natural person who signs or whose seal is used:

7.2 Capacity of the natural person who signs or whose seal is used:

7.2.1 ☐ Holder and/or applicant.*7.2.2 ☐ Representative.

7.3 Date of signature or of apposition of the seal:

7.4 Signature or seal:

* This box is to be checked even if the holder and/or applicant is a legal entity and the natural person who signs or apposes his seal does it on behalf of that entity.

Form N° 7, page 3

5. Address for Service

6. Indication of Mistake(s) and Correction(s)

6.1 Data to be corrected:

Data as corrected:

- 6.2 ☐ Check this box if the above space is insufficient; in that case, indicate on an additional sheet the data to be corrected with the data as corrected.
-

7. Signature or Seal

7.1 Name of the natural person who signs or whose seal is used:

7.2 Check the appropriate box according to whether the signature is given, or the seal is used, by or on behalf of the

7.2.1 ☐ holder and/or applicant.

7.2.2 ☐ representative.

7.3 Date of signature or of sealing:

7.4 Signature or seal:

Form N° 7, page 4

[Items 8 and 9 are the same as in the Final Text.]

Form N° 7, page 4

8. Fee

8.1 Currency and amount of the fee paid in connection with the present request for correction:

8.2 Method of payment:

9. Additional Sheets and Attachments

☐ Check this box if additional sheets and/or attachments are enclosed and indicate the total number of such sheets and/or attachments:

MODEL INTERNATIONAL FORM N° 8

REQUEST FOR THE RENEWAL OF A REGISTRATION

[Items 1 to 5 are the same as in the Final Text, except that the words "of the Holder" in the titles of items 4 and 5 in the Final Text do not appear in the titles of items 4 and 5 of draft Model International Form No.8.]

MODEL INTERNATIONAL FORM N° 8

REQUEST FOR THE RENEWAL OF A REGISTRATION

submitted to the Office of

For Office use only

Reference number of holder:*

Reference number of representative:*

1. Indication That a Renewal Is Sought

The renewal of the registration identified in the present request is hereby requested.

2. Registration Concerned

2.1 Registration number:

2.2 Filing date of the application which resulted in the registration:

Registration date:

* The reference number allotted by the holder and/or the reference number allotted by the representative to the present request for renewal may be indicated in this space.

Form N° 8, page 2

Form N° 8, page 2

3. Holder(s)

3.1 If the holder is a natural person, the person's

(a) family or principal name:*

(b) given or secondary name(s):*

3.2 If the holder is a legal entity, the entity's
full official designation:

3.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

3.4 ☐ Check this box if there is more than one holder; in that case, list them on an additional sheet and indicate, in respect of each of them, the data referred to in items 3.1 or 3.2 and 3.3.

* The names to be indicated under (a) and (b) are those which are recorded in respect of the registration to which the present request relates.

Form N° 8, page 3

Form N° 8, page 3

4. Representative of the Holder

4.1 Name:

4.2 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

4.3 Serial number of the power of attorney:*

5. Address for Service of the Holder

* To be left blank if the power of attorney has not, or has not yet, been allotted a serial number or if the serial number is not yet known to the holder or the representative.

Form N° 8, page 4

6. Goods and/or Services*

- 6.1 ☐ Renewal is requested for all the goods and/or services covered by the registration.
- 6.2 ☐ Renewal is only requested for the following goods and/or services covered by the registration:**
- 6.3 ☐ Renewal is requested for all the goods and/or services covered by the registration except the following:***
- 6.4 ☐ Check this box if the above space is insufficient and use an additional sheet.
-

* Check only one of boxes 6.1, 6.2 or 6.3.

** The list of the goods and/or services for which renewal is requested must be presented in the same way as it appears in the registration (grouping according to the classes of the Nice Classification, starting with an indication of the number of the relevant class).

*** The goods and/or services for which renewal is not requested must, where they belong to more than one class of the Nice Classification, be grouped according to the classes of that Classification, starting with an indication of the number of the relevant class.

Form N° 8, page 4

6. Goods and/or Services*

- 6.1 ☐ Renewal is requested for all the goods and/or services covered by the registration.
- 6.2 ☐ Renewal is only requested for the following goods and/or services covered by the registration:**
- 6.3 ☐ Renewal is requested for all the goods and/or services covered by the registration except the following:***
- 6.4 ☐ Check this box if the above space is insufficient and use an additional sheet.
-

* Check only one of boxes 6.1, 6.2 or 6.3.

** The list of the goods and/or services for which renewal is requested must be presented in the same way as it appears in the registration (grouping according to the classes of the Nice Classification, starting with an indication of the number of the relevant class and, where the goods or services belong to more than one class, presentation in the order of the classes of that Classification).

*** The goods and/or services for which renewal is not requested must, where they belong to more than one class of the Nice Classification, be grouped according to the classes of that Classification, starting with an indication of the number of the relevant class and presented in the order of the classes of the said Classification.

Form N° 8, page 5

[In the Draft, there is no provision corresponding to item 7 of the Final Text.]

Form N° 8, page 5

**7. Person, Other Than the Holder or the Representative of the Holder, who
Files the Present Request For Renewal**

IMPORTANT: A person other than the holder or the representative of the holder may file a request for renewal only where the Contracting Party concerned allows it. Consequently, the present item cannot be completed if the Contracting Party whose Office is the Office identified on the first page of the present request for renewal does not allow a request for renewal to be filed by a person other than the holder or the representative of the holder.

☐ Check this box if the present request for renewal is filed by a person other than the holder or the representative of the holder.

7.1 If the person is a natural person, the person's

(a) family or principal name:

(b) given or secondary name(s):

**7.2 If the person is a legal entity, the entity's
full official designation:**

7.3 Address (including postal code and country):

Telephone number(s):
(with the area code)

Telefacsimile number(s):
(with the area code)

Form N° 8, page 6

7. Signature or Seal

7.1 Name of the natural person who signs or whose seal is used:

7.2 Capacity of the natural person who signs or whose seal is used:

7.2.1 ☐ Holder.*7.2.2 ☐ Representative.

7.3 Date of signature or of apposition of the seal:

7.4 Signature or seal:

[Items 8 and 9 are the same as items 9 and 10 in the Final Text.]

* This box is to be checked even if the holder is a legal entity and the natural person who signs or apposes his seal does it on behalf of that entity.

Form N° 8, page 6

8. Signature or Seal

8.1 Name of the natural person who signs or whose seal is used:

8.2 Check the appropriate box according to whether the signature is given, or the seal is used, by or on behalf of the

8.2.1 ☐ holder.

8.2.2 ☐ representative of the holder.

8.2.3 ☐ person referred to in item 7.

8.3 Date of signature or of sealing:

8.4 Signature or seal:

9. Fee

9.1 Currency and amount of the fee paid in connection with the present request for renewal:

9.2 Method of payment:

10. Additional Sheets

☐ Check this box if additional sheets are enclosed and indicate the total number of such sheets:

RECOMMENDATION

Recommendation adopted by the Diplomatic Conference on October 27, 1994

The Diplomatic Conference
for the Conclusion of the Trademark Law Treaty

recommends

that the competent bodies of WIPO should, in future budgets, specially provide funds for the purposes of offering to developing countries assistance in the implementation of the Trademark Law Treaty, in particular, as regards the adaptation of their laws and regulations and the modernization of the equipment and procedures of their trademark registries.

AGREED STATEMENTS

Agreed Statements adopted by the Diplomatic Conference on October 27, 1994

1. The Diplomatic Conference understood that any Contracting Party was free to establish the structure and the amount of the fees and other payments concerning marks. In adopting this statement, the Conference noted that the examples given during the discussions and reflected in the Records of the Conference fell within the present statement.
2. When adopting Article 11(4), the Diplomatic Conference understood that non-compliance with any fiscal requirement of the law of a Contracting Party may be a ground for cancelling a recordal.
3. When adopting Article 13, the Diplomatic Conference understood that nothing in the Treaty prevented a Contracting Party from applying the requirements of its law in respect of the use of the mark which is the subject of a registration, provided that the compliance with such requirements is not required within the framework of the procedure for the renewal of that registration.
4. When adopting Rule 8, the Diplomatic Conference understood that, at least for the purposes of that Rule, any Contracting Party was free to consider that the date on which the renewal is due is the same as the date on which the renewal fee is due to be paid.
5. When adopting the Model International Forms, the Diplomatic Conference understood that
 - (i) where some of the elements of those Forms cannot be required under the law applicable with respect to the Office of a Contracting Party or in practice are not required, the said Office should prepare an "Individualized International Form" from which those elements should be omitted;
 - (ii) no Individualized International Form can contain references to mandatory elements that would be additional to the elements referred to in the corresponding Model International Form and would be contrary to the Treaty or the Regulations;
 - (iii) any Contracting Party may provide in its Individualized International Forms the possibility of indicating optional elements, such as the date on which the relevant communication is submitted to the Office or, in the power of attorney Form, the address of the person making the appointment, it being understood that such elements cannot be required;

(iv) a Contracting Party is not obliged to have Individualized International Forms and may continue to use its present forms as long as those forms comply with the provisions of the Treaty and the Regulations;

(v) in any Individualized International Form the elements may be in a different order and with different spacing than in the Model International Form;

(vi) any Individualized International Form will be in the language or languages admitted by the interested Office;

(vii) each Contracting Party must accept any application, request or appointment of representative presented on a form corresponding to the relevant Model International Form or Individualized International Form as long as its language requirement is complied with;

(viii) where, pursuant to a transitional provision, certain elements of a Model International Form are not applicable, or certain elements not appearing in a Model International Form may be required, with respect to a Contracting Party, the corresponding Individualized International Form of that Contracting Party should be adapted accordingly.

6. When adopting Model International Form N° 1, the Diplomatic Conference understood that any Contracting Party whose requirements concerning evidence in support of the claiming of priority are less stringent than those contained in items 5.4 and 5.5 of the said Form should modify its Individualized International Form accordingly.

**SIGNATORIES OF THE
TRADEMARK LAW TREATY**

The following Delegations signed the Trademark Law Treaty, adopted at the Diplomatic Conference on October 27, 1994*:

Austria, Belarus, Belgium, Bosnia and Herzegovina, China, Côte d'Ivoire, Cuba, Czech Republic, Denmark, Dominican Republic, Germany (November 7, 1994), Greece (November 14, 1994), Hungary, Indonesia, Israel, Italy, Kenya, Latvia, Liechtenstein (March 8, 1995), Lithuania, Luxembourg, Malta, Mexico, Monaco, Portugal, Republic of Moldova, Russian Federation, Slovakia, Senegal (November 18, 1994), Slovenia, South Africa, Spain (March 29, 1995), Swaziland, Switzerland, Togo, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States of America, Uruguay (41).

* Editor's Note: All signatures were affixed on October 28, 1994, unless otherwise indicated.

**FINAL ACT
OF THE DIPLOMATIC CONFERENCE**

SIGNATORIES OF THE FINAL ACT

FINAL ACT
OF THE
DIPLOMATIC CONFERENCE FOR THE CONCLUSION
OF THE TRADEMARK LAW TREATY

In accordance with the decisions by the Governing Bodies of the World Intellectual Property Organization (WIPO) made at their twenty-second series of meetings (1991) and following preparations carried out by WIPO, the Diplomatic Conference for the Conclusion of the Trademark Law Treaty was held from October 10 to 28, 1994, at the headquarters of WIPO at Geneva.

The Diplomatic Conference adopted the Trademark Law Treaty, which was opened for signature on October 28, 1994.

SIGNATURE OF THE FINAL ACT
OF THE
DIPLOMATIC CONFERENCE FOR THE CONCLUSION
OF THE TRADEMARK LAW TREATY

The following Delegations signed, on October 28, 1994, the Final Act of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty, adopted at the Diplomatic Conference on October 27, 1994: Australia, Austria, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Hungary, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Mongolia, Netherlands, New Zealand, Norway, Paraguay, Philippines, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Togo, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela, Zambia, Zimbabwe, European Communities (68).

CONFERENCE DOCUMENTS

CONFERENCE DOCUMENTS "TLT/DC," TLT/DC/DC," and "TLT/DC/INF" SERIES

Document Number	Source	Subject
TLT/DC/1	The Preparatory Meeting for the Diplomatic Conference for the Conclusion of the Trademark Law Treaty	Proposed Agenda of the Diplomatic Conference
TLT/DC/2	The Preparatory Meeting for the Diplomatic Conference for the Conclusion of the Trademark Law Treaty	Proposed Rules of Procedure
TLT/DC/3	The Director General of WIPO	The "Basic Proposal" for the Treaty
TLT/DC/4	The Director General of WIPO	The "Basic Proposal" for the Regulations
TLT/DC/5	The Director General of WIPO	Notes on the Basic Proposal for the Treaty and Regulations
TLT/DC/6	The Plenary of the Diplomatic Conference	Rules of Procedures (as adopted on October 10, 1994, by the Diplomatic Conference)
TLT/DC/7	The Director General of WIPO	Draft Treaty (Suggestions by the Director General of WIPO)
TLT/DC/8	The Delegation of the European Communities	Draft Article 3(1)(a) (vii)
TLT/DC/9	The Delegation of the European Communities	Draft Article 3(3)
TLT/DC/10	The Delegation of the European Communities	Draft Rule 9
TLT/DC/11	The Delegation of the United States of America	Draft Article 12

Document Number	Source	Subject
TLT/DC/12	The Director General of WIPO	Draft Treaty (revision of document TLT/DC/7)
TLT/DC/13	The Delegation of Israel	Draft Article 6
TLT/DC/14	The Delegation of Romania	Draft Article 4(3)(d)
TLT/DC/15	The Delegation of Romania	Draft Article 10(1)
TLT/DC/16	The Delegation of Romania	Draft Rule 9
TLT/DC/17	The Delegation of the United States of America	Draft Article 2(2)(a)
TLT/DC/18	The Delegation of the United States of America	Draft Rule 7(3)
TLT/DC/19	The Delegation of Spain	Draft Article 7(1)(a)
TLT/DC/20	The Delegation of Spain	Draft Article 11(5)
TLT/DC/21	The Delegation of Spain	Draft Rule 5
TLT/DC/22	The Delegation of Spain	Draft Rule 6(1)
TLT/DC/23	The Delegation of Japan	Draft Article 7(2)
TLT/DC/24	The Delegation of Japan	Draft Article 13(1)(a)
TLT/DC/25	The Delegation of Japan	Draft Article 24(5)
TLT/DC/26	The Delegation of Hungary	Draft Article 5(2)
TLT/DC/27	The Delegation of the Philippines	Draft Article 11(4)(iv)
TLT/DC/28	The Delegation of the United States of America	Draft Article 13(1)(b)
TLT/DC/29	The Delegation of the United States	Draft Article 15
TLT/DC/30	The Delegation of Turkey	Draft Article 24(1) and (9)

Document Number	Source	Subject
TLT/DC/31	The Delegation of Cameroon	Draft Article 13(1) and (4)
TLT/DC/32	The Delegation of Israel	Draft Article 24(2)
TLT/DC/33	The International Bureau	Draft Agreed Statement
TLT/DC/34	The Delegation of Spain	Draft Article 24
TLT/DC/35	The Delegation of Cameroon	Draft Article 24(9)
TLT/DC/36	The Director General of WIPO (Text drafted at the request of the Delegations of Australia, Brazil, Canada, Indonesia, Israel, Japan, Mexico, New Zealand, the Philippines and the United States of America)	Draft Article 17(4)
TLT/DC/37	The Delegation of Canada	Draft Articles 17(4) and 23(2)
TLT/DC/38	The Credentials Committee	Report of the Credentials Committee
TLT/DC/39	The Delegation of Germany	Recommendation of the Diplomatic Conference
TLT/DC/40	The Delegation of Germany	Draft Treaty
TLT/DC/41 Rev.	The Delegations members of the Steering Committee	Draft Treaty
TLT/DC/42	The Chairman of the Credentials Committee	Report of the Chairman of the Credentials Committee
TLT/DC/43	The Drafting Committee	Draft Treaty (Text submitted by the Drafting Committee to the Main Committee)
TLT/DC/44	The Drafting Committee	Draft Regulations (Text submitted by the Drafting Committee to the Main Committee)

Document Number	Source	Subject
TLT/DC/45	The Drafting Committee	Draft Recommendation (Text submitted by the Drafting Committee to the Main Committee)
TLT/DC/46	The Drafting Committee	Draft Agreed Statements (Text submitted by the Drafting Committee to the Main Committee)
TLT/DC/47	The Main Committee	Draft Treaty (Text submitted by the Main Committee to the Conference, meeting in Plenary)
TLT/DC/48	The Main Committee	Draft Regulations (Text submitted by the Main Committee to the Conference, meeting in Plenary)
TLT/DC/49	The Main Committee	Draft Recommendation (Text submitted by the Main Committee to the Conference, meeting in Plenary)
TLT/DC/50	The Main Committee	Draft Agreed Statements (Text submitted by the Main Committee to the Conference, meeting in Plenary)
TLT/DC/51	The Drafting Committee	Draft Final Act (Text submitted by the Drafting Committee to the Conference, meeting in Plenary)

Document Number	Source	Subject
TLT/DC/52	The Chairman of the Credentials Committee	Second Report of the Chairman of the Credentials Committee
TLT/DC/53	The Plenary of the Diplomatic Conference	Trademark Law Treaty and Regulations Under the Trademark Law Treaty (adopted by the Diplomatic Conference on October 27, 1994)
TLT/DC/53 Corr.	The International Bureau of WIPO	Corrigendum to Document TLT/DC/53
TLT/DC/54	The Plenary of the Diplomatic Conference	Recommendation (adopted by the Diplomatic Conference on October 27, 1994)
TLT/DC/55	The Plenary of the Diplomatic Conference	Agreed Statements (adopted by the Diplomatic Conference on October 27, 1994)
TLT/DC/56	The Plenary of the Diplomatic Conference	Final Act (adopted by the Diplomatic Conference on October 27, 1994)
TLT/DC/DC/1	The Secretariat of the Conference	Draft Articles 1 to 15 (Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference)

Document Number	Source	Subject
TLT/DC/DC/2	The Secretariat of the Conference	Draft Regulations (Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference)
TLT/DC/DC/3 Rev.	The Secretariat of the Conference	Draft Agreed Statements (Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference)
TLT/DC/DC/4	The Secretariat of the Conference	Draft Model International Forms (Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference)
TLT/DC/DC/5	The Secretariat of the Conference	Draft Articles 16, 22, 23, 24, <u>24bis</u> , 25, 26, 27 (Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference)
TLT/DC/DC/6	The Secretariat of the Conference	Draft Articles 1 to 15, 22, 23, 24, <u>24bis</u> , 25, 26 and 27 (Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference)

Document Number	Source	Subject
TLT/DC/DC/7	The Secretariat of the Conference	Draft Regulations (Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference)
TLT/DC/DC/8	The Secretariat of the Conference	Draft Final Act (prepared by the Secretariat of the Diplomatic Conference)
TLT/DC/DC/9	The Secretariat of the Conference	Draft Treaty (Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference)
TLT/DC/INF/1	The Secretariat of the Conference	List of Participants in the Diplomatic Conference
TLT/DC/INF/2	The Secretariat of the Conference	History of the Preparations for the Trademark Law Treaty
TLT/DC/INF/2 Corr.	The Secretariat of the Conference	History of the Preparations for the Trademark Law Treaty; corrigendum by the International Bureau
TLT/DC/INF/3 Rev.	The Secretariat of the Conference	Officers and Committees
TLT/DC/INF/4	The Secretariat of the Conference	List of Proposals for Amendment of Provisions of the Basic Proposal, Published During the Diplomatic Conference

Document Number	Source	Subject
TLT/DC/INF/5 Rev.	The Secretariat of the Conference	List of Documents of the Diplomatic Conference
TLT/DC/INF/6 Rev.	The Secretariat of the Conference	Signature of the Final Act (Memorandum by the Secretariat)
TLT/DC/INF/7 Rev.	The Secretariat of the Conference	Signature of the Trademark Law Treaty (Memorandum by the Secretariat)

TLT/DC/1

December 22, 1993 (Original: English)

Source: THE PREPARATORY MEETING FOR THE DIPLOMATIC CONFERENCE FOR THE
CONCLUSION OF THE TRADEMARK LAW TREATY

Proposed Agenda of the Diplomatic Conference Established by the Preparatory
Meeting for the Diplomatic Conference for the Conclusion of the Trademark Law
Treaty

1. Opening of the Conference by the Director General of WIPO
2. Consideration and adoption of the Rules of Procedure
3. Election of the President of the Conference
4. Consideration and adoption of the Agenda
5. Election of the Vice-Presidents of the Conference
6. Election of the members of the Credentials Committee
7. Election of the members of the Drafting Committee
8. Consideration of the first report of the Credentials Committee
9. Opening declarations by Delegations and by representatives of
Observer Organizations
10. Consideration of the texts proposed by the Main Committee
11. Consideration of the second report of the Credentials Committee
12. Adoption of the Treaty and the Regulations
13. Adoption of any recommendation, resolution, agreed statement or final
act
14. Closing declarations by Delegations and by representatives of
Observer Organizations
15. Closing of the Conference by the President*

[End]

* Immediately after the closing of the Conference, the Final Act, if any,
and the Treaty will be open for signature.

TLT/DC/2

December 22, 1993 (Original: English)

Source: THE PREPARATORY MEETING FOR THE DIPLOMATIC CONFERENCE FOR THE
CONCLUSION OF THE TRADEMARK LAW TREATY

Proposed Rules of Procedure* Established by the Preparatory Meeting
for the Diplomatic Conference for the Conclusion of the Trademark Law Treaty

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* These proposed Rules of Procedure will apply provisionally until such time as the Diplomatic Conference adopts its Rules of Procedure under the relevant item of the agenda. Under Rule 34(1), such adoption requires a majority of two-thirds of the Member Delegations present and voting.

[TLT/DC/2, continued]

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[TLT/DC/2, continued]

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CHAPTER I: OBJECTIVE, COMPETENCE, COMPOSITION, SECRETARIAT

Rule 1: Objective and Competence

(1) The objective of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty (hereinafter referred to as "the Conference") is to negotiate and adopt, on the basis of the drafts contained in document TLT/DC/3 and 4, a treaty on the harmonization of laws for the protection of marks and regulations under that treaty (hereinafter referred to as "the Treaty" and "the Regulations," respectively).

(2) The Conference, meeting in Plenary, shall be competent to:

(i) adopt these Rules of Procedure (hereinafter referred to as "these Rules") and to make any amendments thereto;

(ii) adopt the agenda of the Conference;

(iii) decide on credentials, full powers, letters or other documents presented in accordance with Rules 6, 7 and 8 of these Rules;

(iv) adopt the Treaty and the Regulations;

(v) adopt any recommendation or resolution whose subject matter is germane to the Treaty;

(vi) adopt any agreed statements to be included in the Records of the Conference;

(vii) adopt any final act of the Conference;

(viii) deal with all other matters referred to it by these Rules or appearing on its agenda.

Rule 2: Composition

(1) The Conference shall consist of:

(i) delegations of the States members of the International (Paris) Union for the Protection of Industrial Property (hereinafter referred to as "the Paris Union"),

[TLT/DC/2, continued]

(ii) delegations of the States members of the World Intellectual Property Organization (WIPO) other than those referred to in item (i),

(iii) delegations of any organization described in Article 22(1)(ii) of the basic proposal,

(iv) representatives of other intergovernmental and of non-governmental organizations invited to the Conference.

(2) Hereinafter, the delegations referred to in paragraph (1)(i) are called "Member Delegations," the delegations referred to in paragraph (1)(ii) are called "Observer Delegations," the delegations referred to in paragraph (1)(iii) are called "Special Delegations," and the representatives referred to in paragraph (1)(iv) are called "representatives of Observer Organizations." The term "Delegations," as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations, Observer Delegations and Special Delegations; it shall not include the representatives of Observer Organizations.

(3) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

Rule 3: Secretariat

(1) The Conference shall have a Secretariat provided by the International Bureau of WIPO (hereinafter referred to as "the International Bureau").

(2) The Director General of WIPO and any official of the International Bureau designated by the Director General of WIPO may participate in the discussions of the Conference, meeting in Plenary, as well as in any committee or working group thereof and may, at any time, make oral or written statements, observations or suggestions to the Conference, meeting in Plenary, and any committee or working group thereof concerning any question under consideration.

(3) The Director General of WIPO shall, from among the staff of the International Bureau, designate the Secretary of the Conference and a Secretary for each committee and for each working group.

(4) The Secretary of the Conference shall direct the staff required by the Conference.

(5) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents; the interpretation of oral interventions; and the performance of all other secretarial work required for the Conference.

(6) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference. The International Bureau shall distribute the final documents of the Conference after the Conference.

[TLT/DC/2, continued]

CHAPTER II: REPRESENTATION

Rule 4: Composition of Delegations

(1) Each Delegation shall consist of one or more delegates and may include alternate delegates and advisors. Each Delegation shall have a Head of Delegation and may have an Alternate or Deputy Head of Delegation.

(2) An alternate delegate or an advisor may also act as a delegate on designation by the Head of his Delegation.

Rule 5: Representatives of Observer Organizations

An Observer Organization may be represented by one or more representatives.

Rule 6: Credentials and Full Powers

(1) Each Delegation shall present credentials.

(2) Full powers shall be required for signing the Treaty. Such powers may be included in the credentials.

Rule 7: Letters of Appointment

The representatives of Observer Organizations shall present a letter or other document appointing them.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 shall be presented to the Secretary of the Conference, preferably not later than twenty-four hours after the opening of the Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee referred to in Rule 11 shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7, respectively, and shall report to the Conference, meeting in Plenary.

(2) The final decision on the said credentials, full powers, letters or other documents shall be within the competence of the Conference, meeting in Plenary. Such decision shall be made as soon as possible and in any case before the adoption of the Treaty.

[TLT/DC/2, continued]

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and representatives of Observer Organizations shall be entitled to participate provisionally in the deliberations of the Conference as provided in these Rules.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

(1) The Conference shall have a Credentials Committee.

(2) The Credentials Committee shall consist of seven members elected by the Conference, meeting in Plenary, from among the States whose delegations are Member Delegations.

Rule 12: Main Committee and Working Groups

(1) The Conference shall have a Main Committee. The Main Committee shall consist of all the Member Delegations. It shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the Treaty and the Regulations and any recommendation, resolution or agreed statement referred to in Rule 1(2)(v) and (vi).

(2) The Main Committee may create working groups. In creating a working group, it shall specify its tasks. The Main Committee shall decide on the number of the members of any working group and shall elect them from among the Member Delegations.

Rule 13: Drafting Committee

(1) The Conference shall have a Drafting Committee.

(2) The Drafting Committee shall consist of ten members elected by the Conference, meeting in Plenary, from among the Member Delegations, as well as, ex officio, the Chairman of the Main Committee.

(3) The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Main Committee. The Drafting Committee shall not alter the substance of texts submitted to it, but shall coordinate and review the drafting of all texts approved by the Main Committee, and shall submit the texts so reviewed for final approval to the Main Committee.

[TLT/DC/2, continued]

Rule 14: Steering Committee

(1) The Steering Committee of the Conference shall consist of the President and Vice-Presidents of the Conference, the Chairman of the Credentials Committee, the Chairman of the Main Committee and the Chairman of the Drafting Committee, and also the Chairman of any working group from the time of its creation until the completion of its task. The meetings of the Steering Committee shall be presided over by the President of the Conference.

(2) If the Chairman of a committee or of a working group is absent during a meeting of the Steering Committee, one of the Vice-Chairmen of the committee or working group concerned, in the order of precedence indicated in Rule 15(4), shall sit and vote in the Steering Committee.

(3) The Steering Committee shall meet from time to time to review the progress of the Conference and to make decisions for furthering such progress, including, in particular, decisions on the coordinating of the meetings of the Plenary, the committees and the working groups.

(4) The Steering Committee shall propose the text of any final act of the Conference for adoption by the Conference, meeting in Plenary.

Rule 15: Officers

(1) The Conference, meeting in Plenary and presided over by the Director General of WIPO, shall elect its President, and then, presided over by its President, shall elect nine Vice-Presidents.

(2) The Credentials Committee, the Main Committee and the Drafting Committee shall each elect a Chairman and two Vice-Chairmen.

(3) Each of the bodies mentioned in paragraphs (1) and (2) shall elect its officers from among the delegates of those Delegations which are members of it. The Main Committee shall elect a Chairman and two Vice-Chairmen of each working group.

(4) Precedence among the Vice-Presidents or Vice-Chairmen of a given body shall depend on the place occupied by the name of the State of each of them in the list of Member Delegations established in the alphabetical order of the names in French, beginning with the Member Delegation whose name shall have been drawn by lot by the President of the Conference.

(5) All officers must be members of Member Delegations.

Rule 16: Acting President or Acting Chairman

(1) If the President of the Conference or any Chairman is absent from any meeting of the body (the Conference, meeting in Plenary, the committee or working group) to be chaired by him, such meeting shall be presided over, as Acting President or Acting Chairman, by that Vice-President or Vice-Chairman of that body who, among the Vice-Presidents or Vice-Chairmen present, has precedence over the others.

[TLT/DC/2, continued]

(2) If all the officers of a body (Conference, meeting in Plenary, the committee or working group) are absent from any meeting of the body concerned, that body shall elect an Acting President or Acting Chairman, as the case may be.

Rule 17: Replacement of President or Chairman

If the President or any Chairman is unable to perform his functions for the remainder of the duration of the Conference, a new President or Chairman shall be elected.

Rule 18: Vote by Presiding Officer

(1) No President or Chairman, whether elected as such or Acting (hereinafter referred to as "the Presiding Officer"), shall take part in voting. Another member of his Delegation may vote in its name.

(2) Where the Presiding Officer is the only member of his Delegation, he may vote, but only after all other Delegations have voted.

Rule 19: Quorum

(1) A quorum shall be required in the Conference, meeting in Plenary, and shall be constituted by one-half of the Member Delegations represented at the Conference.

(2) A quorum shall be required for the meetings of any committee or working group; it shall be constituted by one-half of the members of that committee or working group.

Rule 20: General Powers of the Presiding Officer

(1) In addition to exercising the powers conferred upon him elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. He shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat.

(2) The Presiding Officer may propose to the Plenary of the Conference or to the committee or working group the limitation of time to be allowed to each speaker, the limitation of the number of times each Delegation may speak on any question, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion. Such proposals of the Presiding Officer shall be considered as adopted unless immediately rejected.

[TLT/DC/2, continued]

Rule 21: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 22 and 23, the Presiding Officer shall call upon speakers in the order in which they signify their desire to speak.

(2) The Presiding Officer may call a speaker to order if his remarks are not relevant to the subject under discussion.

Rule 22: Precedence

(1) Member Delegations asking for the floor are generally given precedence over Observer Delegations asking for the floor, and both categories of Delegations are generally given precedence over representatives of Observer Organizations.

(2) The Chairman of a committee or working group may be given precedence during discussions relating to the work of the Committee or working group concerned.

(3) The Director General of WIPO or his representative may be given precedence for making statements, observations or suggestions.

Rule 23: Points of Order

(1) During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless the appeal is approved.

(2) The Member Delegation that has risen to a point of order under paragraph (1) may not speak on the substance of the matter under discussion.

Rule 24: Limit on Speeches

In any meeting, the decision may be taken to limit the time to be allowed to each speaker and the number of times each Delegation or each representative of an Observer Organization may speak on any question. When the debate is limited and a Delegation or a representative of an Observer Organization has used up its allotted time, the Presiding Officer shall call it to order without delay.

[TLT/DC/2, continued]

Rule 25: Closing of List of Speakers

(1) During the discussion of any given question, the Presiding Officer may announce the list of participants who have signified their wish to speak and decide to close the list as to that question. The Presiding Officer may nevertheless accord the right of reply to any speaker if a speech, delivered after he has decided to close the list of speakers, makes it desirable.

(2) Any decision made by the Presiding Officer under paragraph (1) may be the subject of an appeal under Rule 23.

Rule 26: Adjournment or Closure of Debate

Any Member Delegation may at any time move the adjournment or closure of the debate on the question under discussion, whether or not any other participant has signified his wish to speak. In addition to the proposer of the motion to adjourn or close the debate, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing it, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time allowed to speakers under this Rule.

Rule 27: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.

Rule 28: Order of Procedural Motions; Content of Interventions on Such Motions

(1) Subject to Rule 23, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (i) to suspend the meeting,
- (ii) to adjourn the meeting,
- (iii) to adjourn the debate on the question under discussion,
- (iv) to close the debate on the question under discussion.

(2) Any Member Delegation that has been given the floor on a procedural motion may speak on that motion only, and may not speak on the substance of the matter under discussion.

Rule 29: Basic Proposal and Proposals for Amendment

(1)(a) Documents TLT/DC/3 and 4 shall constitute the basis of the discussions in the Conference, and the text of the draft Treaty and Regulations contained in those documents shall constitute the "basic proposal."

[TLT/DC/2, continued]

(b) Where, for any given Article or Rule, there are two or three alternatives in the basic proposal, consisting of either two or three texts, or one or two texts and an alternative that there should be no such Article or Rule, the alternatives shall be designated with the letters A, B and, where applicable, C, and shall have equal status. Discussions shall take place simultaneously on the alternatives and, if voting is necessary and there is no consensus on which alternative should be put to the vote first, each Member Delegation shall be invited to indicate its preference among the two or three alternatives. The alternative supported by more Member Delegations than the other alternative or, where there are three alternatives, any of the other alternatives, shall be put to the vote first.

(c) Wherever the basic proposal contains words within square brackets, only the text that is not within square brackets shall be regarded as part of the basic proposal, whereas words within square brackets shall be treated as a proposal for amendment if presented as provided in paragraph (2).

(2) Any Member Delegation may propose amendments to the basic proposal.

(3) Proposals for amendment shall, as a rule, be submitted in writing and handed to the Secretary of the competent body (the Conference, meeting in Plenary, the committee or working group). The Secretariat shall distribute copies to the Delegations and the representatives of Observer Organizations concerned. As a general rule, a proposal for amendment cannot be taken into consideration and discussed or put to the vote at a meeting unless copies of it have been distributed not later than three hours before it is taken into consideration. The Presiding Officer may, however, permit the taking into consideration and discussion of a proposal for amendment even though copies of it have not been distributed or have been distributed less than three hours before it is taken into consideration.

Rule 30: Decisions on Competence

(1) If a Member Delegation moves that a duly seconded proposal should not be taken into consideration by the Conference because it is outside the latter's competence, that motion shall be decided upon by the Conference, meeting in Plenary, and shall be put to the vote before the proposal is taken into consideration.

(2) If the motion referred to in paragraph (1), above, is made in a body other than the Conference, meeting in Plenary, it shall be referred to the Conference, meeting in Plenary, for a ruling.

Rule 31: Withdrawal of Procedural Motions and Proposals for Amendment

Any procedural motion and any proposal for amendment may be withdrawn by the Member Delegation that has made it, at any time before voting on it has commenced, provided that no amendment to it has been proposed by another Member Delegation. Any motion or proposal thus withdrawn may be reintroduced by any other Member Delegation.

[TLT/DC/2, continued]

Rule 32: Reconsideration of Matters Decided

When any matter has been decided by a body (the Conference, meeting in Plenary, a committee or working group), it may not be reconsidered by that body unless so decided by the majority applicable under Rule 34(1)(iv). In addition to the proposer of the motion to reconsider, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote.

CHAPTER VI: VOTING

Rule 33: Right to Vote

Each Member Delegation shall have the right to vote. A Member Delegation shall have one vote, may represent itself only and may vote in its name only.

Rule 34: Required Majorities

(1) All decisions of all bodies (the Conference, meeting in Plenary, the committees and working groups) shall be made as far as possible by consensus. If it is not possible to attain consensus, the following decisions shall require a majority of two-thirds of the Member Delegations present and voting:

- (i) adoption by the Conference, meeting in Plenary, of these Rules,
- (ii) adoption by the Conference, meeting in Plenary, of any amendments to these Rules,
- (iii) adoption by any of the bodies of any proposal for amendment to the basic proposal,
- (iv) decision by any of the bodies to reconsider, under Rule 32, a matter decided,
- (v) adoption by the Conference, meeting in Plenary, of the Treaty and the Regulations,

whereas all other decisions of all bodies shall require a simple majority of the Member Delegations present and voting.

(2) For the purpose of these Rules, references to Member Delegations "present and voting" shall be construed as references to Member Delegations present and casting an affirmative or negative vote. Express abstention, non-voting or absence during a vote shall not be counted.

[TLT/DC/2, continued]

Rule 35: Requirement of Seconding; Method of Voting

(1) Any proposal for amendment made by a Member Delegation shall be put to a vote only if seconded by at least one other Member Delegation.

(2) Voting on any question shall be by show of hands unless a Member Delegation, seconded by at least one other Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the alphabetical order of the names in French of the States, beginning with the Member Delegation whose name shall have been drawn by lot by the Presiding Officer.

Rule 36: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit a Member Delegation to explain its vote or its abstention, either before or after the voting.

Rule 37: Division of Proposals

Any Member Delegation may move that parts of the basic proposal or of any proposal for amendment be voted upon separately. If the request for division is objected to, the motion for division shall be put to a vote. In addition to the proposer of the motion for division, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing it. If the motion for division is carried, all parts of the basic proposal or of the proposal for amendment that have been separately approved shall again be put to the vote, together, as a whole. If all operative parts of the basic proposal or of the proposal for amendment have been rejected, the basic proposal or the proposal for amendment shall be considered rejected as a whole.

Rule 38: Voting on Proposals for Amendment

(1) Any proposal for amendment shall be voted upon before the text to which it relates is voted upon.

(2) Proposals for amendment relating to the same text shall be put to the vote in the order of their substantive remoteness from the said text, the most remote being put to the vote first and the least remote being put to the vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such proposal or text shall not be put to the vote.

(3) If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to the vote.

[TLT/DC/2, continued]

(4) Any proposal the purpose of which is to add to or delete from a text shall be considered a proposal for amendment.

Rule 39: Voting on Proposals on the Same Question

Subject to Rule 38, where two or more proposals relate to the same question, the body concerned (the Conference, meeting in Plenary, the committee or working group) shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 40: Equally Divided Votes

(1) If a vote is equally divided on a matter--other than the election of officers--that calls for a simple majority, the proposal shall be considered rejected.

(2) If a vote is equally divided on a proposal for electing a given person as an officer, the vote shall be repeated, if the nomination is maintained, until either that nomination is adopted or rejected or another person is elected for the position in question.

CHAPTER VII: LANGUAGES AND MINUTES

Rule 41: Languages of Oral Interventions

(1) Subject to paragraph (2), oral interventions made in the meetings of any body (the Conference, meeting in Plenary, the committee or working group) shall be in Arabic, Chinese, English, French, Russian or Spanish, and interpretation shall be provided by the Secretariat into the other five languages.

(2) Any committee or working group may, if none of its members objects, decide to dispense with interpretation or to limit it to fewer languages than are referred to in paragraph (1).

Rule 42: Summary Minutes

(1) Provisional summary minutes of the Plenary meetings of the Conference and of the meetings of the Main Committee shall be drawn up by the International Bureau and shall be made available as soon as possible after the closing of the Conference to all speakers, who shall, within two months after the minutes have been made available, inform the International Bureau of any suggestions for changes in the minutes of their own interventions.

(2) The final summary minutes shall be published in due course by the International Bureau.

[TLT/DC/2, continued]

Rule 43: Languages of Documents and Summary Minutes

(1) Any written proposal shall be presented to the Secretariat in Arabic, Chinese, English, French, Russian or Spanish. Such proposal shall be distributed by the Secretariat in Arabic, Chinese, English, French, Russian and Spanish.

(2) Reports of the committees and working groups shall be distributed in Arabic, Chinese, English, French, Russian and Spanish. Information documents of the Secretariat shall be distributed in English and French.

(3)(a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English or French; if the speaker has used another language, his intervention shall be rendered in English or French as may be decided by the International Bureau.

(b) The final summary minutes shall be made available in English and French.

(4) The text of the Treaty and of the Regulations and of any recommendation or resolution, agreed statement or final act adopted by the Conference shall be made available in the languages in which it is adopted.

CHAPTER VIII: OPEN AND CLOSED MEETINGS

Rule 44: Meetings of the Conference and of the Main Committee

The Plenary meetings of the Conference and the meetings of the Main Committee shall be open to the public unless the Conference, meeting in Plenary, or the Main Committee, as the case may be, decides otherwise.

Rule 45: Meetings of Other Committees and of Working Groups

The meetings of any committee other than the Main Committee and the meetings of any working group shall be open only to the members of the committee or working group concerned and the Secretariat.

CHAPTER IX: SPECIAL DELEGATIONS

Rule 46: Special Delegations

Special Delegations shall have the same status as Member Delegations, except that Special Delegations shall not have the right

(i) to vote, or

(ii) to be elected member of the Credentials Committee.

[TLT/DC/2, continued]

CHAPTER X: OBSERVERS

Rule 47: Observers

(1) Observer Delegations may attend, and make oral statements in, the Plenary meetings of the Conference and the meetings of the Main Committee.

(2) Representatives of Observer Organizations may attend the Plenary meetings of the Conference and the meetings of the Main Committee. Upon the invitation of the Presiding Officer, they may make oral statements in those meetings on questions within the scope of their activities.

(3) Written statements submitted by Observer Delegations or by representatives of Observer Organizations on subjects for which they have a special competence and which are related to the work of the Conference shall be distributed by the Secretariat to the participants in the quantities and in the languages in which the statements are made available.

CHAPTER XI: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 48: Amendments to the Rules of Procedure

With the exception of the present Rule, these Rules may be amended by the Conference, meeting in Plenary.

CHAPTER XII: FINAL ACT

Rule 49: Final Act

If a final act is adopted, it shall be open for signature by any Delegation.

[End]

TLT/DC/3

March 28, 1994 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

The "Basic Proposal" for the Treaty

Editor's Note: Document TLT/DC/3 contains the text of the Basic Proposal. It is reproduced on the even numbered pages from 12 to 72 of these Records.

[End]

TLT/DC/4

March 28, 1994 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

The "Basic Proposal" for the Regulations

Editor's Note: Document TLT/DC/4 contains the text of the Basic Proposal. It is reproduced on the even numbered pages from 76 to 176 of these Records.

[End]

TLT/DC/5

May 4, 1994 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Notes on the Basic Proposal for the Treaty and Regulations

I. GENERAL EXPLANATIONS ON THE NOTES

0.01 This document contains notes on the Draft Trademark Law Treaty contained in document TLT/DC/3 and the Draft Regulations under that Treaty and Model International Forms contained in document TLT/DC/4 (hereinafter referred to as

[TLT/DC/5, continued]

the "Draft Treaty" or "Treaty" and the "Draft Regulations" or "Regulations," respectively).

0.02 Notes have been prepared only with respect to those provisions of the Draft Treaty and the Draft Regulations and to those items of the Model International Forms where comments seemed to be useful.

II. NOTES ON THE DRAFT TREATY

Note on Article 1 (Abbreviated Expressions)

1.01 Item (iv). Neither the Treaty nor the Regulations contain a definition of what constitutes a legal entity. This is left to the applicable law of the Contracting Party where protection of a mark is sought.

1.02 Item (v). Where the applicable law of a Contracting Party provides that several persons may jointly be holders, the word "holder" must be construed as including "holders."

1.03 Item (vi). The term "register of marks" is used in Articles 10(1)(a) and 11(1)(a). It is restricted to the collection of data concerning registered marks, excluding therefore the collection of data concerning pending applications.

1.04 Item (ix). Article 22(1)(ii) contains the conditions that a "regional intergovernmental organization" has to fulfil to be eligible for becoming a Contracting Party.

Note on Article 2 (Marks to Which the Treaty Applies)

2.01 Paragraph (1)(a) has the effect that, where a visible sign is three-dimensional, a Contracting Party must provide for the possibility of its registration as a mark only if the law applicable to that Contracting Party allows the registration of three-dimensional marks. The Treaty would not require Contracting Parties which accept three-dimensional marks for registration to notify this fact to the International Bureau since the relevant information is easily available (for example, in the law collections published by WIPO).

2.02 Paragraph (1)(b) excludes from the application of the Treaty holograms as well as non-visible signs, in particular, sound marks and olfactory marks. One of the reasons for having excluded those kinds of marks is that they cannot be easily reproduced by graphic means. A further reason is that very few countries specifically provide for the registration of such marks in their national law. However, if a Contracting Party provides for the registration of such marks, it should, to the extent possible, apply the provisions of the Treaty to those marks.

[TLT/DC/5, continued]

2.03 Paragraph (2)(a) has the effect that Contracting Parties are obliged under the Treaty to register service marks and that a country can only accede to the Treaty if it registers them.

2.04 Paragraph (2)(b) has the effect that Contracting Parties are not obliged to apply the obligations under the Treaty to what could be called "non-individual" marks (collective marks, certification marks, guarantee marks). The reason is that the registration of those marks requires the fulfilment of special, vastly varying conditions in the different countries, a fact that would make harmonization particularly difficult. Furthermore, the percentage of the number of the said marks in the total number of the marks is very small so that the fact that they remain outside the harmonization effort will have little impact on the significance of the Treaty. Naturally, in the future, if a need were felt for harmonizing the laws of the Contracting Parties in respect of such marks, a Protocol under Article 21 could cover such marks.

Note on Article 3
(Application)

3.01 Paragraph (1)(a) contains a list of indications and elements which may be required in respect of an application. That list, as it follows from the introductory phrase of paragraph (7), is exhaustive except that, as provided in item (iv) of paragraph (7), where the applicant claims the benefit of Article 6quinquies of the Paris Convention, a Contracting Party may require, before deciding on the registration of the mark, a certificate of the registration in the country of origin.

3.02 Item (i). The wording of this item means that an Office can consider that an application which does not contain an express request for registration is defective. Such a case could not occur where the application is made on a Form prepared in accordance with the Regulations since such a Form contains an express request for registration. It is to be noted that even an implicit request for registration is sufficient under Article 5(1)(a)(i) for the purposes of according of a filing date (see Note 5.03).

3.03 Item (ii). The details concerning the indication of the name and address of the applicant are specified in the Regulations (see Rule 2(1)(a) and (2)).

3.04 Item (iii). The indication of a State of nationality, of a State of domicile and of a State of real and effective industrial or commercial establishment may be relevant for the application of international conventions (see, for example, Articles 2 and 3 of the Paris Convention). As regards the term "domicile" in respect of legal entities, its interpretation is left to the Contracting Parties; thus, that term could mean, for example, the place of the legal headquarters of the entity or its principal place of business. It follows from the introductory phrase of paragraph (1)(a) that a Contracting Party need not require the indication of all three States (even if their indication would be possible); it may be satisfied if only two or one are indicated and even where none is indicated.

[TLT/DC/5, continued]

3.05 Item (iv). Where, in a State, a legal entity may be constituted under the particular law of a territorial unit existing within such State, the name of that territorial unit must be given. A Contracting Party may require the indication of both the name of the State and, where applicable, the name of the territorial unit within that State (for example, United States of America and California).

3.06 Item (v). The details concerning the indication of the name and address of the representative are specified in the Regulations (see Rule 2(1) and (2)). The representative can be a natural person, a legal entity or a partnership.

3.07 Item (vi). The details concerning the indication of an address for service are specified in the Regulations (see Rule 2(2)(a), (c) and (d)).

3.08 Item (vii). This item does not affect the rules concerning the case where the priority is claimed subsequent to the filing of the application, a possibility which is allowed under Article 4D(1) of the Paris Convention. Moreover, this item does not affect the possibility of asking, subsequent to the filing of the application, for proof under Article 4D(3) and (5) of the Paris Convention. Finally, in view of Article 15 of this Treaty, it should be noted that Contracting Parties must apply the provisions of the Paris Convention relating to the claiming of priority not only to trademarks but also to service marks.

3.09 Item (viii). This item would apply where the temporary protection referred to in Article 11 of the Paris Convention is invoked at the time of filing the application. Its inclusion into Article 3(1)(a) does not mean, however, that a Contracting Party is prevented from allowing the benefit of such temporary protection to be invoked at a later stage. Nor does it affect the possibility of requiring, under Article 11(3) of the Paris Convention, documentary evidence as proof of identity of the article or articles exhibited and of the date of its or their introduction in the exhibition. Furthermore, in view of Article 15 of this Treaty, it should be noted that Contracting Parties must apply the provisions of Article 11 of the Paris Convention to services. Finally, this provision enables an applicant to take advantage of a temporary protection resulting from the presentation of goods and/or services in an exhibition other than an official or officially recognized international exhibition (such as a national exhibition) if the law of the Contracting Party allows for such a possibility.

3.10 Item (ix). The consequences of such a statement are specified in the Regulations (see Rule 3(1)).

3.11 Item (x). The fact that the applicant claims color has consequences on the number of reproductions of the mark which have to be furnished (see Rule 3(2)(b)).

3.12 Item (xi). What "reproduction" as required under item (xii) means in the case of a three-dimensional mark is defined in the Regulations (see Rule 3(3)).

[TLT/DC/5, continued]

3.13 Item (xii). The details relating to the number and type of reproduction are dealt with in the Regulations (see Rule 3(2)). It goes without saying that no Office is obliged to accept a reproduction the quality of which is insufficient for the purposes of, inter alia, publication.

3.14 Item (xiii). The details concerning transliteration are contained in the Regulations (see Rule 3(4)).

3.15 Item (xiv). Contracting Parties must be allowed to require a translation of the mark because a translation may be indispensable, for example, in order to evaluate the distinctive character of the mark and a possible conflict with public order. The details concerning translation are contained in the Regulations (see Rule 3(5)).

3.16 Item (xv). Whereas a grouping of names of goods and/or services according to the classes of the Nice Classification is required, the use of the terms of the Alphabetical List established in respect of that Classification is not required. It should be noted that the goods and/or services must be listed in the language, or in one of the languages, admitted by the Office where the application is filed (in respect of bilingual Forms, see Note 3.26). As regards the terms used by an applicant to designate the goods and/or services in the application, a Contracting Party is free, in the course of the examination of that application, to require that any term that is general or too vague be replaced by a term or terms that is or are specific and clear.

3.17 Item (xvi). The "person specified in paragraph (4)" is the applicant or his representative. As regards the "other self-identification" Article 8 allows, under certain circumstances, a seal, the reproduction of a signature or identification by electronic means (such as by way of an identification number or name).

3.18 Item (xvii) is a requirement which is provided for in the laws of certain countries, for example, the laws of Canada and the United States of America. The words "as required by the law of the Contracting Party" clearly indicate that such a declaration would have to be worded in exactly the terms and in the language prescribed by the law of the Contracting Party. For example, in the United States of America, the declaration of bona fide intention to use the mark forms part of a more general statement.

3.19 The expression "law" is to be understood to include, in this provision and throughout the Treaty and the Regulations, all binding norms issued by the legislative or the executive branch of the Government, including any rules issued by the Office, as well as court decisions.

3.20 Paragraph (1)(b) corresponds to a provision existing, for example, in the laws of Canada and the United States of America. If an applicant makes actual use of his mark in respect of all the goods and/or services listed in the application, he may file his application on the basis of actual use. He may also file his application on the basis of both intention to use and actual use where he actually uses the mark in respect of some of the goods and/or services listed in the application and intends to use the mark in respect of the other goods and/or services listed in the application.

[TLT/DC/5, continued]

3.21 Paragraph (1)(c). In addition to the fee to be paid in respect of the application, there may be separate fees for the publication of the application and the registration. However, it is also possible (and compatible with the Treaty) to combine those fees and require payment of such a combined fee (which may nevertheless be called "application fee") at the time of filing the application.

3.22 Paragraph (2). This provision, which deals with the presentation of the application, appears also with a similar wording in other parts of the Treaty (in Article 4(3)(e) as regards a power of attorney, in Article 10(1)(a) in respect of a request for the recordal of a change in names or addresses, in Article 11(1)(a) as regards a request for the recordal of a change in ownership, in Article 12(1)(a) in respect of a request for the correction of a mistake and in Article 13(2) in respect of a request for renewal). It should be noted that, while a Contracting Party is obliged to accept an application presented on a form corresponding to the application Form contained in the Regulations, an applicant is free to use any other Form acceptable to the Contracting Party.

3.23 Paragraph (2)(i). The Regulations contain a Model International Form (Form N° 1) which has been prepared in the languages of the Treaty as provided for in Article 26(1)(a) (English, Arabic, Chinese, French, Russian and Spanish). This Form may be used as such (where the language, or one of the languages, admitted by a Contracting Party is one of the languages of the Treaty) or in a translation into the language, or one of the languages, admitted by a Contracting Party (where neither the language nor one of the languages admitted by that Contracting Party is a language of the Treaty). See also Note 3.26 as regards bilingual forms and Notes F0.02 to F0.04 in Part IV of the present document concerning all Model International Forms.

3.24 Paragraph (2)(ii). As regards communication by telefacsimile, see Article 8(2).

3.25 Paragraph (2)(iii). The Regulations will contain in Rule 4 details in respect of electronic transmittals when more experience has been gained with respect to electronic transmittals and, in particular, electronic filing of applications. Since this time has not yet come, the content of Rule 4 will be established by the Assembly of the Contracting Parties after the entry into force of this Treaty.

3.26 Paragraph (3). This provision does not allow a Contracting Party to refuse a bilingual application Form where one of the languages used on the Form is a language admitted by that Contracting Party. However, in such a situation, the applicant would not be able to rely on the other language of the Form which is not a language admitted by the Contracting Party.

3.27 Paragraph (4)(a). Paragraph (1)(a)(xvi) allows a Contracting Party to require that the application be signed, whereas paragraph (4)(a) specifies that, where the Contracting Party requires a signature, the applicant may, if he has a representative, choose either to sign the application himself or to have his representative signing it. It should be understood that, where the applicant is a legal entity, the application, if it is not signed by a representative, will be signed on behalf of, rather than by, the applicant

[TLT/DC/5, continued]

(see Rule 7(1)). However, the question as to whether a person is lawfully authorized or empowered to sign on behalf of a legal entity is to be determined in accordance with the national law applicable to that entity.

3.28 As regards the case where the application is signed by a representative, Article 4(3)(d) allows the Contracting Party concerned to require that the document appointing the representative be submitted to its Office within the time limit fixed by the Contracting Party, subject to the minimum time limit fixed in Rule 5.

3.29 Paragraph (4)(b). For example, the United States of America requires that a declaration of intent to use or actual use be signed by the applicant himself and does not allow that it be signed by the representative of the applicant even when the applicant has given express authorization to the contrary.

3.30 Paragraph (5). As regards the registration of a mark for goods and/or services belonging to several classes, see Article 6.

3.31 As regards the possible transitional period for some Contracting Parties, see Article 24(2).

3.32 It is to be noted that Contracting Parties are free to base the amount of the fee to be paid for an application on the number of classes to which belong the goods and/or services included in the application. Thus, for Contracting Parties at present practising a single class application system, the transition to the multiclass application system provided for by the Treaty need not cause any loss of income.

3.33 Paragraph (6). A requirement relating to the furnishing of evidence of actual use of the mark prior to the registration of the mark, in cases where the application was not filed on the basis of actual use, exists in a few countries (for example, Canada and the United States of America).

3.34 The Regulations provide in Rule 3(6) for a minimum time limit for furnishing evidence of actual use under paragraph (6), which time limit can be extended under the law of a Contracting Party (see also Note R 3.10, below).

3.35 Paragraph (7). This paragraph establishes the exhaustive character of the list of requirements under paragraphs (1) to (4) and (6) not only at the time of filing of the application but also throughout the application stage ending with registration, always subject, naturally, to the possibility of requiring under paragraph (8) the furnishing of evidence. It should, however, be understood that paragraph (7) does not preclude a Contracting Party from requiring, where necessary, during the examination of an application, additional indications from the applicant concerning the registrability of the mark, for example, a statement of consent by a person whose name is the same as, or appears in, the mark, a description of the mark or documents concerning the ability of a certain person (such as a minor or a person under tutelage) to file an application.

[TLT/DC/5, continued]

3.36 The examples given in items (i) to (iv) concern information or documents which cannot be required during the whole pendency of an application. The list is not exhaustive. The items listed merely serve to illustrate the effects of the Treaty with respect to some of the currently applied formalities which are particularly unnecessary and undesirable. Other examples could be, for example, further requirements concerning the identification of the applicant such as his fiscal identification number or a requirement to furnish, where the applicant is a legal entity, a document evidencing that the person signing on behalf of that legal entity is a duly authorized officer thereof (such evidence could, however, be required in case of doubt, pursuant to paragraph (8)).

3.37 Item (i). The furnishing of a certificate of, or an extract from, the register of commerce is prohibited because, even if an applicant is not registered in the register of commerce, he should not be precluded from obtaining the registration of his mark.

3.38 Item (ii). The indication of the carrying on of an industrial or commercial activity, and the furnishing of evidence to that effect, is prohibited because marks may be owned by entities which themselves do not carry on any industrial or commercial activity, for example, holdings.

3.39 It has been argued that the requirement of such an indication would prevent the registration of a mark by a counterfeiter. However, a determined counterfeiter would not be prevented from registering the mark belonging to another enterprise because of the requirement of an indication of the carrying on, by him, of an industrial or commercial activity. A counterfeiter could easily be in a position to make such an indication and furnish relevant evidence. It is rather the fact that the counterfeiter's mark is identical or closely similar to the mark belonging to another enterprise which establishes counterfeiting and which must be taken into account in any proceedings instituted by the holder of the mark, or even ex officio if the applicable law so provides.

3.40 Item (iii). A requirement of an indication of the applicant's carrying on of an activity corresponding to the goods and services listed in the application and the furnishing of evidence to that effect is prohibited because the desired result--namely, avoiding failure to use the mark for the goods and/or services listed in the application--can be (and usually is) achieved through provisions requiring the use of the mark within certain time limits or enabling the mark to be cancelled at the request of an interested person if the mark has not been used within a certain time limit (generally, five years).

3.41 Item (iv). Article 6 of the Paris Convention prohibits making the protection of a mark dependent on its registration in another country party to the Paris Convention, including the country of origin. Therefore, evidence to the effect that the mark has been registered in another Contracting Party or in a State party to the Paris Convention which is not a Contracting Party cannot be required. However, Article 6quinquies of the Paris Convention permits requiring a certificate of registration in the country of origin where the applicant invokes the benefit of Article 6quinquies (see also Note 3.01, above).

[TLT/DC/5, continued]

3.42 Paragraph (8). Evidence may be required whenever the application contains an allegation the veracity of which is doubtful. This applies even in the case of an allegation which is not required to be made under the law of the Contracting Party concerned. In the case of an allegation which is required to be made under that law, the provision of paragraph (8) constitutes an exception to the prohibition contained in paragraph (7). Such would be the case, for example, where the applicant claims the benefit of Article 3 of the Paris Convention but there is doubt as to the veracity of the applicant's allegations as to his domicile, etc.

3.43 The term "examination of the application" includes any opposition procedure (which may take place before or after the registration of a mark). This provision does not relate to the correction of mistakes, but to cases where the Office believes that an indication or an element under paragraph (1), (4) or (6) is not true.

3.44 The Office of a Contracting Party which is a country party to the Paris Convention may also invoke this paragraph when it has to fulfill an obligation under the Paris Convention (for example, where it has reasonable doubts concerning the right of the applicant to file an application for a mark which may constitute a sign, or be similar to a sign, protected under Article 6ter of the Paris Convention).

Note on Article 4

(Representation; Address for Service)

4.01 Article 4 does not apply to "representatives" who are employees or officials of a legal entity (whether applicant or holder), for example, to "in-house counsels" of a corporation. It typically applies to trademark agents and attorneys "in private practice." This Article relates only to the appointment itself and to the possible limitation of the appointment, but does not deal with the termination of the appointment. In the latter respect, and in respect of any other matter relating to representation which is not covered by the Treaty, a Contracting Party will only apply its own law. For example, a Contracting Party may provide that the appointment of a new representative terminates the appointment of all previous representatives. Or, a Contracting Party may allow sub-representation and, if that is the case, require that, where the power of a representative extends to the appointment of one or more sub-representatives, the power of attorney expressly authorize a representative to appoint such sub-representatives (see Note F2.05, below).

4.02 Paragraph (1). Under this provision, a Contracting Party is allowed to require that the appointed representative be a person who is admitted to practice before its Office. A Contracting Party, however, may have a less strict requirement and may, for example, merely require the appointed representative to have a permanent address on its territory.

4.03 Paragraph (2)(a). This requirement may apply, for example, where the applicant or, in the case of a transfer of the registration, the transferee, has neither a domicile nor an establishment in the territory of the Contracting Party concerned.

[TLT/DC/5, continued]

4.04 Paragraph (2)(b). The laws of some countries do not require that a representative be appointed before their Offices even where the applicant or the new owner has neither a domicile nor a real and effective industrial or commercial establishment on the territory of those countries. The laws of some of those countries however require, for the purposes of facilitating correspondence with the person concerned, that an address for service in their territory be indicated. The words "to the extent that" mean that a Contracting Party is free to consider, for example, that the indication of an address for service is sufficient at the time of filing of an application or of filing of a request for recordal of a change in ownership but that, if an Office action occurs in respect of that application or request, the applicant or the new owner which has neither a domicile nor a real and effective industrial or commercial establishment on its territory must appoint a representative.

4.05 Paragraph (3)(a). It follows from this paragraph that a Contracting Party may refuse the appointment of a representative made by oral communication (since the communication may be required to be signed) or in a written communication other than a power of attorney, for example, a statement in the application itself, in the request for renewal itself, or in the request itself for recordal of a change or of a correction (since the communication may be required to be separate). The reference, in this provision, to "any other interested person" covers, for example, an opponent.

4.06 Paragraph (3)(b). This provision (read in conjunction with Article 24(3) relating to a possible reservation in respect of the scope of a power of attorney) puts an obligation on Contracting Parties to accept a single power of attorney in respect of several applications, several registrations or both applications and registrations of the same person. Contracting Parties must also accept what is sometimes referred to as a "general power of attorney," that is, a power of attorney that relates to all existing and future applications and/or registrations of the same person. In respect of the latter type of power of attorney to which the words "subject to any exception indicated by that person" relate, a Contracting Party must allow the person making the appointment to indicate possible exceptions in the power of attorney itself (for example, appointment only for future applications and registrations) or to make exceptions at a later time.

4.07 Article 4 does not regulate further details of the so-called "general power of attorney." For example, each Contracting Party is free to allow that several representatives be appointed in such a power of attorney or that several of those powers of attorney, each relating to different representatives, be made by the same person.

4.08 Paragraph (3)(c). An applicant or holder could appoint a representative in respect of certain matters (for example, filing of applications and renewal of registrations) and appoint another representative in respect of other matters (for example, treatment of objections and oppositions). Alternatively, where the applicant or holder does not need to appoint a representative (for example, for domestic applications and registrations), he could carry out certain operations (for example, filing of applications) himself and appoint a representative only for the remaining matters. The

[TLT/DC/5, continued]

possibility for a Contracting Party to require that the right for a representative to withdraw an application or surrender a registration be expressly mentioned in the power of attorney is justified in view of the particularly important consequences of such acts.

4.09 Paragraph (3)(e). As regards the presentation of the power of attorney, see the Notes relating to the presentation of the application under Article 3(2) (Notes 3.22 to 3.25). The Regulations contain a Model International Form for the power of attorney (Form N° 2).

4.10 Paragraph (4). Reference is made to the Notes under Article 3(2)(i) and (3) (see Notes 3.23 and 3.26).

4.11 Paragraph (6). This paragraph establishes the exhaustive character of the list of requirements under paragraphs (3) to (5) with respect to the matter of representation as covered by the Treaty subject, naturally, to the possibility of requiring under paragraph (7) the furnishing of evidence and to the transitional periods provided for in Article 24(3) in respect of paragraph (3)(b).

Note on Article 5
(Filing Date)

5.01 Article 5 establishes the requirements for according a filing date. The fact that, for the said purpose, a Contracting Party cannot require more indications and elements than those mentioned in paragraph (1)(a) (subject to paragraph (2)) follows from paragraph (4).

5.02 Paragraph (1)(a). "Subject to subparagraph (b) and to paragraph (2)" means that Contracting Parties may require less than the furnishing of the indications and elements referred to in items (i) to (vi) or, on the other hand, in addition to those indications and elements, the payment of a fee.

5.03 Item (i). "Implicit" means that a Contracting Party must accord a filing date even where the request is not express but merely follows from the circumstances.

5.04 Item (ii). Such indications could, for example, consist of the applicant's identification code (rather than his name) in Offices which allow the use of such codes in the case of, for example, electronic filings.

5.05 Item (iii). Such indications could, for example, consist of less than the full address.

5.06 Item (iv). Although, in certain circumstances (see Rule 3(2)(a)(i)), more than one reproduction of the mark may be required, the according of the filing date could not be denied if only one reproduction is furnished or if, among the reproductions furnished, only one reproduction is "sufficiently clear."

[TLT/DC/5, continued]

5.07 Paragraph (2). There is only one permitted additional requirement: the requirement to pay the required fees. Such requirement still exists in some countries. This paragraph allows the continuation of the said requirement. However, a Contracting Party may not introduce this requirement once it has become bound by the Treaty.

5.08 Paragraph (3). The details are provided for in Rule 6.

5.09 Paragraph (4). The wording of this provision is similar to the wording of the corresponding provisions in other Articles (Article 3(7); Article 4(6); Article 5(4); Article 8(4); Article 10(4); Article 11(4); Article 12(3); Article 13(4)).

Note on Article 6

(Single Registration for Goods and/or
Services in Several Classes)

6.01 It goes without saying that the application will result in a registration only if all the conditions of allowance are fulfilled.

6.02 It also goes without saying that, if the application is (under Article 7) divided into several applications, there will be as many registrations as there are applications.

Note on Article 7

(Division of Application and Registration)

7.01 Paragraph (1)(a). A division of the initial application may relate to some of the goods or services included in the initial application (which may be either a single class or a multiple class application) or to one or several classes of goods and/or services covered by the (multiple class) initial application. The words "decision by the Office on the registration," or "decision on the registration," respectively, appearing in items (i) and (iii), concern a decision to register or not to register. Typically, the applicant is interested in dividing the application where an opposition has been filed against the registration of the mark only with respect to some of the listed goods or services. In such a situation, a division into two divisional applications has the consequence that one of the divisional applications can immediately result in a registration and the opposition proceedings will continue only with respect to the other divisional application. Article 7 does not oblige Contracting Parties to allow division of the applications after the (positive or negative) decision by the Office on the registration of the mark; this is so because, once a positive decision is made, any request for division would hamper the registration of the mark and its publication and, once a negative decision is made, division may be requested during appeal proceedings against the decision but not if no appeal is filed. Of course, each Contracting Party is free to allow division in situations where this is not required by the Treaty.

7.02 Paragraph (1)(b). The words "requirements for the division" mean, in particular, the elements of and the indications to be given in the request for division.

[TLT/DC/5, continued]

7.03 Paragraph (2). Typically, the possibility of dividing a registration is needed in Contracting Parties according to the laws of which opposition can only be made once the mark has been registered ("post-grant opposition"). If the opposition relates only to some of the goods and/or services covered by the registration, the holder should have an opportunity to divide his registration. This will be useful to him, for example, if he intends to negotiate partial transfer or license agreements in respect of the goods and/or services which are not affected by the said procedure. It is to be noted that the proviso of this paragraph allows a Contracting Party to exclude post-grant division if the law of that Contracting Party allows opposition to applications (that is, pre-grant opposition).

Note on Article 8
(Signature and Other Means of
Self-Identification)

8.01 Article 8 applies whenever a signature or other means of self-identification is required, whether such requirement is mentioned in the Treaty or follows only from the national law. The only possible exceptions are contained in paragraph (4), in fine.

8.02 Paragraph (2)(b). Rule 7 of the Regulations contains the details in respect of the period referred to in this paragraph.

8.03 Paragraph (4). The exception which is contained in the last part of the provision is justified because of the particular importance of surrenders. The only other possible exception is referred to in Article 24(4) and must be based on a reservation; it may concern the certification of signatures on an application or a power of attorney and on no other document.

Note on Article 9
(Classification of Goods and/or Services)

9.01 Paragraph (1). The Nice Classification consists of 34 classes of goods and eight classes of services, each having a number (from 1 to 42). The Nice Agreement requires that any official document or publication of an Office contain, in respect of any registration, the class number(s) of the goods and/or services to which the mark relates. This Article goes further. It requires not only that the applicable class number(s) be indicated but also that the goods and/or services belonging to the same class be grouped together and indicated after the corresponding class number. While 38 States are party to the Nice Agreement, almost 80 States not party to that Agreement also use the Nice Classification.

9.02 Paragraph (2) is consistent with Article 2(1) of the Nice Agreement which provides, inter alia, that "the [Nice] Classification shall not bind the countries of the Special [Nice] Union in respect of ... the evaluation of the extent of the protection afforded to any given mark ..."

[TLT/DC/5, continued]

Note on Article 10
(Change in Names or Addresses)

10.01 Paragraph (1)(a). It follows from the wording of this paragraph that a Contracting Party may refuse a request made by oral communication. It is also clear that this Article applies to changes in names, changes in addresses and changes in both names and addresses (see also Note 10.08).

10.02 As regards the presentation of the request, see the Notes under Article 3(2) (Notes 3.22 to 3.25). The Regulations contain a Model International Form (Form N° 3) for the request for recordal of a change in names or addresses. Although that form does not call for the furnishing of a reproduction of the mark or marks concerned, it should be understood that no Contracting Party may refuse the request because such reproduction or reproductions have been furnished.

10.03 Paragraph (1)(b). The names and addresses referred to in paragraph (1)(b) must be those which are recorded in the register of marks of the Office concerned. If that is not the case, the Office can require either the furnishing of evidence under paragraph (5) or that another change be recorded beforehand. For example, where the residence of the holder is recorded in the register of marks of an Office as being "City X" and the request for the recordal of the change in the name indicates "City Y" as the holder's residence, the Office concerned may refuse the request as long as the recordal of the change in the address is not requested.

10.04 Paragraph (1)(c). Reference is made to the Note under Article 3(2)(i) and (3) (see Notes 3.23 and 3.26).

10.05 Paragraph (1)(d). The amount of the fee could differ depending on the number of the registrations or applications involved (see paragraph (2)).

10.06 Paragraph (2). The use of the words "mutatis mutandis" means, in respect of a request relating to one or several applications, that a Contracting Party is free not to record the change in its register of marks but to record it in a data base concerning pending applications; in such a case, the change would be included in the register of marks once the mark is registered.

10.07 Where a single request relates to both registrations and applications and a Contracting Party treats, from the computerization viewpoint, changes concerning registrations and changes concerning applications in a different manner, that Contracting Party could meet its requirements by making copies of the request.

10.08 Paragraph (4) establishes the exhaustive character of the list of requirements under paragraphs (1) to (3). One of the requirements which would be prohibited is the requirement of the furnishing of a certified copy of the recordal of the change in the register of companies as a condition for the recordal of the change in the register of marks.

[TLT/DC/5, continued]

10.09 Paragraph (5). This provision would enable Contracting Parties to require evidence, for example, in the case of a change in both names and addresses where there is a doubt as to whether such change is not in fact a disguised change in ownership.

Note on Article 11
(Change in Ownership)

11.01 It is to be noted that, where an applicant or holder intends to request the recordal of a change in ownership by one of the means provided for in this Article, no Contracting Party may require more than what is provided in Article 11. On the other hand, if a person intends to request the recordal of a change in ownership in a Contracting Party by means other than those covered by Article 11 but admitted by that Contracting Party, the latter is entitled to require that the request comply with all the requirements applicable under its law to such means (which requirements may be stricter than those provided for in Article 11). It is also to be noted that this Article deals with the procedures which should be fulfilled before an industrial property Office and not before any other authorities of a country, for example, the fiscal authorities.

11.02 Paragraph (1)(a). Reference is made to the explanations concerning Article 10(1)(a) (see Notes 10.01 and 10.02).

11.03 The term "new owner" rather than "new holder" is used because, at the time of the request for recordal of the change in ownership, the person who has acquired the rights is not yet a holder since he is not recorded as such in the register of marks.

11.04 The Regulations contain a Model International Form (Form N° 4) for the request for recordal of a change in ownership (see Notes 3.22 to 3.25).

11.05 Paragraph (1)(b) to (e) distinguish between a change in ownership which results from a contract (assignment, etc.), a change in ownership which results from a merger and a change in ownership which results from operation of law or from a court decision (inheritance, bankruptcy, etc.).

11.06 Paragraph (1)(b) relates to the change in ownership which results from a contract. Any Contracting Party may require that the request indicate the fact that the change in ownership results from a contract and that the request be accompanied by a document evidencing the change in ownership. Items (i) to (iv) list four different documents, and it is up to the requesting party to choose one of them for furnishing it with his request. Where the requesting party chooses to furnish a certificate of transfer or a transfer document (items (iii) and (iv)), no Contracting Party may require that this certificate or document be the subject of any form of certification; on the other hand, where the requesting party chooses to furnish a copy of the contract or an extract of the contract (items (i) and (ii)), a Contracting Party is free to require that the copy or the extract be certified. The Regulations provide for a model certificate of transfer (Form N° 5) and a model transfer document (Form N° 6). The latter can be qualified as a model contract (in a short

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version). One of the important points in respect of a certificate of transfer (item (iii)) and a transfer document (item (iv)) is that they must be signed by both the holder and the new owner and that they cannot be signed by representatives.

11.07 Paragraph (1)(c) relates to the change in ownership which results from a merger. The request must, if the Contracting Party so requires, indicate the fact that the change in ownership results from a merger and be accompanied by a copy of a document evidencing the merger. This document must originate from the competent authority. It may, for example, be an extract from a register of commerce. It need not be signed by the holder and the new owner. The Contracting Party may only require that a copy of the document be furnished; it may not require the original of the document. On the other hand, it may require that the copy be certified.

11.08 Paragraph (1)(d). Where a co-holder transfers his share in a registration, he may, under the applicable law, need the consent of any other co-holder. The Treaty allows Contracting Parties to require the furnishing of a document in which the said consent is given. However, the use of the words "any Contracting Party may require" makes it clear that a Contracting Party could, for example, be satisfied if the request for the recordal of the change in ownership is signed by a representative of the co-owners if the latter had appointed him to represent them.

11.09 Paragraph (1)(e) relates to any change in ownership which results neither from a contract nor from a merger. In such a case, the Contracting Party may require that the request indicate the fact that the change in ownership does not result from a contract or a merger and be accompanied by a copy of any document which it deems appropriate to evidence the change. Although the Contracting Party may not require that the original of such a document be furnished, it may however require that the copy emanate from the authority which issued the document or be certified.

11.10 It follows from Article 8(4) that no Contracting Party may require that any signature appearing in a request (paragraph (1)(a)) or in any document (paragraphs (1)(b) to (e)) be the subject of any kind of certification.

11.11 Paragraph (1)(f). As regards item (iv), reference is made to the explanations given under Article 3(1)(a)(iv) (see Note 3.05).

11.12 Paragraph (1)(g). Reference is made to the explanations given under Article 10(1)(d) (see Note 10.05).

11.13 Paragraph (1)(i). This provision deals with the consequences of a request for the recordal of a change of ownership in the case where the change is partial in the sense that the change concerns some only of the goods and/or services covered by the registration. In such a case, the Office must split up the registration: the original registration will continue to exist, without the reference to the goods and/or services in respect of which the ownership has changed, whereas a separate registration has to be created for the said goods and/or services. It is left to each Contracting Party to decide how the separate registration should be identified. This can be done, for example, by giving it the same number as the number of the original

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registration, together with a capital letter; this would be in accordance with the practice under the Madrid Agreement Concerning the International Registration of Marks (see Rule 22(2) of the Regulations under the Madrid Agreement). Paragraph (1)(i) only applies where a Contracting Party allows the said kind of partial change in ownership. Since this Treaty does not cover the substantive conditions relating to the change in ownership of a registration, a Contracting Party is free to refuse a partial change in ownership and, consequently, a request for recordal of such a partial change in ownership.

11.14 Paragraph (2). Reference is made to the explanations given under Article 3(2)(i) and (3) (see Notes 3.23 and 3.26).

11.15 Paragraph (3). Reference is made to the explanations given under Article 10(2) (see Notes 10.06 and 10.07) and to the explanations given under Article 11(1)(i) (Note 11.13, above, last two sentences).

11.16 Paragraph (4). This paragraph establishes the exhaustive character of the list of requirements under paragraphs (1) to (3) with respect to a request for the recordal of a change in ownership, always subject, naturally, to the possibility of requiring under paragraph (5) the furnishing of evidence. The examples given in items (i) to (iv) are not exhaustive. Another example of a prohibited requirement could be making the admissibility of the request dependent on an advertisement of the change in ownership in one or several newspapers. Since the Treaty does not regulate the substantive requirements relating to the validity of a change in ownership, a Contracting Party may require the fulfillment of additional conditions, for example, in situations concerning inheritance, bankruptcy or tutelage, or the condition that the validity of the transfer depends on the transfer of the relevant goodwill.

11.17 Item (iv). This provision does not concern the question as to whether the transfer is valid in the absence of a transfer of the relevant business or goodwill (see the preceding note, last sentence). It only relates to the formal requirements which are not allowed in respect of the request for recordal of the transfer.

Note on Article 12
(Correction of a Mistake)

12.01 Article 12 is drafted along the same lines as Articles 10 and 11.

12.02 Paragraph (1)(a). It is clear from the wording of this provision that this Article relates to mistakes attributable to the applicant or to the holder, or to his representative. In the case of mistakes attributable to an Office, the latter may adopt a different procedure such as ex officio correction or, where the mistake is noticed by the applicant or the holder, or by his representative, correction following a request made by the applicant, etc., in a simple letter. Reference is also made to the explanations given under Article 10(1)(a) (see Notes 10.01 and 10.02).

12.03 The Regulations contain a Model International Form (Form N° 7) for the correction of a mistake (see Notes 3.22 to 3.25).

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12.04 Paragraph (1)(b). Reference is made to the explanations given under Article 10(1)(b) (see Note 10.03).

12.05 Paragraph (1)(c). Reference is made to the explanations given under Article 3(2)(i) and (3) (see Notes 3.23 and 3.26).

12.06 Paragraph (1)(d). Reference is made to the explanations given under Article 10(1)(d) (see Note 10.05).

12.07 Paragraph (2). Reference is made to the explanations given under Article 10(2) (see Notes 10.06 and 10.07).

12.08 Paragraph (5). It would hardly be possible to define in the Treaty what kinds of mistake can or cannot be corrected, since there are many differences among national laws which would make it extremely difficult to achieve harmonization in this respect.

Note on Article 13

(Duration and Renewal of Registration)

13.01 Article 13 attempts to provide, in respect of requests for renewal, for a provision similar to the one which exists in respect of the filing of an application (see Article 3). This Article not only covers the duration of the renewal but also the duration of the initial registration.

13.02 Paragraph (1)(a) contains an exhaustive list of the indications and elements which may be required in respect of a renewal. The exhaustive character of that list follows from paragraph (4). This list constitutes a maximum, and Contracting Parties are free to require fewer indications or elements. For example, Contracting Parties may accept renewals effected by the mere payment of the renewal fee.

13.03 Item (i). See the comments relating to Article 3(1)(a)(i) with respect to a request for registration (Note 3.02, first two sentences).

13.04 Item (iv). Two dates are indicated in this provision because, according to the laws of some countries, the initial duration of a registration is calculated from the date of filing of the application which resulted in the registration, while, according to the laws of other countries, that duration is calculated from the date of registration. Some Contracting Parties may not require the furnishing of any date if they consider that the indication of the registration number under item (iii) is sufficient to identify the registration which is the subject of the request for renewal. On the other hand, any Contracting Party requiring the furnishing of a date will have to choose which of the two dates (filing date or registration date) it wishes to require.

13.05 Item (vii). It is clear from the introductory words of this item that any Contracting Party is free not to allow a limitation of the list of goods and/or services to take place together with the procedure of request for renewal. In those Contracting Parties, a limitation of the list of goods and/or services still has to precede or follow the renewal.

[TLT/DC/5, continued]

13.06 Paragraph (1)(b). This provision does not prohibit a Contracting Party from requiring an additional fee or a higher renewal fee where such Contracting Party allows, under paragraph (1)(a)(vii), that a limitation of the list of goods and/or services be made in the request for renewal itself and such limitation is requested. The second sentence of this provision makes it clear that, for any 10-year period, a Contracting Party is only allowed to require the payment of one set of fees. The use of the words "maintenance of a registration" makes it clear that a Contracting Party may require the payment of a fee connected with requirements relating to the proof of use of the registered mark (outside the renewal procedure).

13.07 Paragraph (1)(c). As regards the minimum period, see Rule 9.

13.08 Paragraph (2). As regards the presentation of the request, see the Notes under Article 3(2) (Notes 3.22 to 3.25). The Regulations contain a Model International Form (Form N° 8) for the request for the renewal of a registration.

13.09 Paragraph (3). Reference is made to the comments made under Article 3(2)(i) and (3) (see Notes 3.23 and 3.26).

13.10 Paragraph (4). This paragraph establishes the exhaustive character of the list of requirements under paragraphs (1) to (3), always subject, naturally, to the possibility of requiring under paragraph (5) the furnishing of evidence.

13.11 The examples given in items (i) and (ii) of paragraph (4) are not exhaustive. They serve to illustrate the effects of the Treaty with respect to some formalities which seem to be particularly unnecessary and undesirable at the time of renewal. Other examples could be, for example, the furnishing of the original or a copy of the certificate of registration of the mark which is the subject of the request for renewal, or requirements such as those mentioned under Article 3(7).

13.12 Item (i). The furnishing of any reproduction or any other identification (for example, the simple indication of a mark published in standard characters) of the mark which is the subject of the request for renewal is prohibited because it would be superfluous since the mark is the same as the one which was initially registered (if this were not the case, a new application would have to be filed) and since the publication of a renewal need not contain the mark (it only needs to refer to the number of the initial registration without having to republish the reproduction of the mark). The practice of not re-publishing the mark is already followed by a number of countries and has advantageous consequences both for the holders of registrations (lower renewal fee, in particular, where the re-publishing of the reproduction of the mark would have to be in color) and for the Offices (simplification of administrative work and reduction of the space needed in the official bulletin in respect of renewals). Naturally, nothing in the Treaty prohibits a Contracting Party from republishing, in connection with the publication of the renewal, the reproduction of the mark as registered, which the Office has in its files. What is prohibited is to require from the holder reproductions at the time of the request for renewal.

[TLT/DC/5, continued]

13.13 Item (ii). This item corresponds to Article 6(3) of the Paris Convention according to which the protection of a mark registered in a country of the Union is unaffected by the fate of the registration of the same mark in other countries.

13.14 Item (iii). In respect of this item, a reservation can be made under Article 24(6).

13.15 Paragraph (6) means that the procedure relating to the renewal of a registration cannot include examination as to substance (see, however, Note 13.17).

13.16 A number of countries have recently amended their laws on marks to provide for a simplified procedure of renewal excluding any re-examination of the mark as to substance (mainly in respect of distinctiveness). Naturally, independently from and outside of the procedure of renewal, a Contracting Party may always invalidate, ex officio or at the request of a third party, a registration on substantive grounds (for example, conflict with any emblems protected under Article 6ter of the Paris Convention or misleading character of the mark as to the quality of the goods).

13.17 A reservation with respect to substantive examination can be made under Article 24(7) with respect to the special situation referred to in that Article.

13.18 Paragraph (7). This provision aims at harmonizing the duration of the initial registration and of each renewal. As regards the duration of the initial registration, the proposed ten years correspond to the duration provided for in most national laws. Even those countries (mainly those which have laws similar to the law of the United Kingdom) which provide for an initial duration of seven years plan to adopt, when amending their laws, a duration of 10 years. As regards the duration of each renewal, 10 years is compatible with most of the national laws.

13.19 Neither this Treaty nor the Regulations fix the date from which the initial period of registration (date of application or registration date) is counted. However, a future amendment of the Regulations may do so.

13.20 General. It is understood that nothing in the Treaty prevents a Contracting Party from applying the requirements of its law in respect of the use of the mark which is the subject of a registration, provided that the compliance with such requirements is not linked with the procedure for the renewal of that registration. It is suggested that this understanding be reflected in the Records of the Diplomatic Conference which will adopt the Treaty.

Note on Article 14

(Observations in Case of Intended Refusal)

14.01 This Article concerns refusals in respect of applications, requests for the recordal of a change in names or addresses (Article 10), requests for the recordal of a change in ownership (Article 11), requests for the correction of a mistake (Article 12) and requests for renewal (Article 13). The notion of

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"refusal" includes the cases where those applications or requests are to be "deemed to be withdrawn" or are to be "deemed not to have been filed." It is to be noted that, where an application did not comply with one of the filing date requirements as provided for in Article 5 and an invitation was issued under Rule 6, the Office of a Contracting Party can treat the application as if it had not been filed without having to issue a second invitation to make observations if the applicant had not complied with the first invitation.

14.02 Otherwise, the possibility to make observations should be given to the applicant or holder in all cases, even if the refusal is based on non-payment or insufficient payment of fees or on the late presentation of the request for renewal.

14.03 Where the applicant or holder has a representative, the opportunity to make observations will be notified to the representative rather than to the applicant or holder.

14.04 The term "Office" does not include an appeal board even if it is part of or is otherwise connected to the Office. Therefore, Article 14 does not allow barring the opportunity to submit observations to the Office because of possibility of appeal to such an appeal board.

Note on Article 15
(Service Marks)

15.01 According to Article 6sexies of the Paris Convention, the countries party to that Convention are free not to register service marks. The present Article means that, by becoming Contracting Parties to this Treaty, those countries surrender that freedom and are obliged to register service marks and apply to service marks all the relevant provisions of the Paris Convention. They are the following:

- Article 2, which deals with national treatment for nationals of countries of the Paris Union;
- Article 3, which concerns the same treatment which should be afforded to certain categories of persons as for nationals of countries of the Paris Union;
- Article 4A to D, which deal with the right of priority;
- Article 5C and D, which deal with the questions of failure to use a mark, use of the mark in a form different from the one registered, use of the mark by co-proprietors and marking;
- Article 5bis, which deals with the period of grace for the payment of fees for the maintenance of rights;
- Article 6, which deals with the conditions of registration and the independence of protection of the same mark in different countries;
- Article 6bis, which deals with well-known marks;

[TLT/DC/5, continued]

- Article 6ter, which deals with the prohibitions concerning State emblems, official hallmarks and emblems of intergovernmental organizations;
- Article 6quater, which deals the question of assignment of marks;
- Article 6quinquies, which deals with the protection of marks registered in one country of the Paris Union in the other countries of that Union;
- Article 6septies, which deals with the registration of a mark in the name of the agent or representative of the proprietor without the latter's authorization;
- Article 7, which deals with the nature of the goods to which the mark is applied;
- Article 9, which deals with seizure, on importation, etc., of goods unlawfully bearing a mark;
- Article 10ter, which deals with remedies and the right to sue;
- Article 11, which deals with temporary protection at certain international exhibitions;
- Article 12, which deals with special national industrial property services.

15.02 The only reason for which Article 7bis of the Paris Convention is not included in the above list is that the present Treaty does not apply to collective marks whether for goods or services (see Article 2(2)(b)).

Note on Article 16
(Establishment of a Union)

16.01 It is to be noted that the Union established for the purposes of this Treaty is one of those Unions administered by WIPO which entail no financial obligation for their members.

Note on Article 17
(Assembly)

17.01 Paragraph (2)(a)(ii). According Article 20(2), all provisions of the Treaty may be modified by the Assembly, except Articles 2 (Marks to Which the Treaty Applies), 15 (Service Marks), 16 (Establishment of a Union), 19 (Regulations) and 20 to 27 (Final Clauses). It is to be noted that, according to Article 20(2), any modification requires that no Contracting Party vote against it.

17.02 Paragraph (4). In accordance with a decision made by the Committee of Experts during its sixth session (1993) (see document HM/CE/VI/6, paragraph 254), two alternatives of this paragraph are presented, each having, in the basic proposal, an equal status. The two alternatives are designated with two letters,

[TLT/DC/5, continued]

namely, "A" and "B." Rule 29(1)(b) of the Proposed Rules of Procedure of the Diplomatic Conference (document TLT/DC/2) contains the following provision dealing with such alternatives:

"Where, for any given Article or Rule, there are two or three alternatives in the basic proposal, consisting of either two or three texts, or one or two texts and an alternative that there should be no such Article or Rule, the alternatives shall be designated with the letters A, B and, where applicable, C, and shall have equal status. Discussions shall take place simultaneously on the alternatives and, if voting is necessary and there is no consensus on which alternative should be put to the vote first, each Member Delegation shall be invited to indicate its preference among the two or three alternatives. The alternative supported by more Member Delegations than the other alternative or, where there are three alternatives, any of the other alternatives, shall be put to the vote first."

17.03 The first alternative (Alternative A) corresponds to the text which was submitted by the International Bureau to the sixth session of the Committee of Experts (except that the word "intergovernmental" was inserted in the expression "regional intergovernmental organization").

17.04 The second alternative (Alternative B) consists of the text which was proposed by the Delegation of the European Communities during the sixth session of the Committee of Experts.

17.05 The issue that the Committee of Experts could not resolve is, in essence and in respect of the European Communities, whether those Communities (once they maintain their regional Office in which marks may be registered) should have the right to vote in their own name. The answer is "No" under Alternative A, and it is "Yes" under Alternative B. It is to be noted that, under both Alternatives, each member State of the Communities would have the right to vote.

17.06 Paragraph (6). Article 19(2)(b) requires a three-fourth majority for amending the Regulations, except where the Regulations themselves require unanimous consent for amending certain rules. (The draft Regulations do not require such unanimity for any of the Rules.) Article 20(2) requires unanimity for the modification of any of the articles of the Treaty that can be modified by the Assembly; only 12 Articles cannot be modified by the Assembly (Articles 2, 15, 16, 19 to 27).

Note on Article 18
(International Bureau)

Note on Article 19
(Regulations)

19.01 Paragraph (3). In the draft of the Regulations which is contained in document TLT/DC/4, no Rules are specified as being capable of amendment by unanimous consent only.

[TLT/DC/5, continued]

Note on Article 20
(Revision and Modification)

20.01 The main differences between a revision (paragraph (1)) and a modification (paragraph (2)) of the Treaty are the following: a revision of the Treaty can only result from a diplomatic conference and, in such a conference, a decision can be taken by majority or unanimity depending on the Rules of Procedure of the Conference; the revised Treaty (that is, the instrument adopted by the diplomatic conference) will require for its entry into force the number of ratifications or accessions indicated in the revised Treaty, and will bind only those States and regional intergovernmental organizations that have deposited their instrument of ratification of or accession to the revised Treaty; on the other hand, a modification of the Treaty by a decision of the Assembly--which decision must be unanimous--will enter into force without any ratification or accession and will be binding on all Contracting Parties.

20.02 Paragraph (1). It is to be noted that any provision of the Treaty may be revised by a diplomatic conference.

20.03 Paragraph (2). Under this provision, not all the Articles of the Treaty can be modified by the Assembly (see explanations under Note 20.01). A modification by the Assembly may be made with respect to one, some or all the provisions of Articles 1, 3 to 14, 17 and 18. It should be underlined that a major safeguard is provided since a modification can only be effective if no Contracting Party votes against the modification or, in other words, if there is a unanimous vote in favor of the modification (it being remembered that, according to Article 17(6)(b), abstentions are not considered as votes).

20.04 All the matters covered by Articles 1 and 3 to 14 may be subject to relatively fast evolution because of changes occurring in the laws of Contracting Parties or because of technological developments. Therefore, it should be possible to modify those Articles without a diplomatic conference. As regards Articles 17 and 18, which deal with the Assembly and the International Bureau, respectively, it is usual in treaties concluded under the aegis of WIPO that such provisions can be modified without a diplomatic conference.

Note on Article 21
(Protocols)

21.01 Paragraph (1). This paragraph would enable further harmonization in the field of marks without having to revise or modify the Treaty. A Protocol under this Article could deal with matters not dealt with at all in the present Treaty (for example, collective marks, certification marks and guarantee marks) but it could also deal with matters dealt with in the present Treaty. For example, it could limit the maximum list of the indications and elements which could be required under the Treaty in an application or in a request for renewal, it being understood that such limitation would be effective only for those of the Contracting Parties of the Treaty which would ratify or accede to the Protocol.

[TLT/DC/5, continued]

21.02 Paragraph (2). It is essential that parties to any protocol be already bound by this Treaty since a protocol is an extension of this Treaty.

Note on Article 22
(Becoming Party to the Treaty)

22.01 Paragraph (1)(i). The States party to the Paris Convention in respect of which marks may not be registered in their own Offices are covered by items (iii), (iv) and (v).

22.02 Paragraph (1)(ii). At the present time, there is only one regional intergovernmental organization--the "Organisation africaine de la propriété intellectuelle" (OAPI)--that would have the right to become a party to the Treaty (provided that all its member States become party to the Treaty, see paragraph (3)(a)(ii)) since it is an organization that maintains an Office in which marks may be registered with effect in all its member States and since all its members States are members of the Paris Union. The European Communities, whose member States are all members of the Paris Union, would have the right to become a party to the Treaty as soon as marks may be registered in the Community Trademark Office (and provided that all its member States become party to the Treaty, see paragraph (3)(a)(ii)).

22.03 Requiring that regional intergovernmental organizations have a trademark office is indispensable since the obligations contained in the substantive provisions (Articles 1 to 15) can be respected only through actions of a trademark office.

22.04 Paragraph (1)(iii). The States that, at the present time, would have the right to become party to the Treaty thanks to the words "through the Office of another, specified State" would include the Holy See and San Marino (provided that Italy, that would be the other, specified State, becomes a party to the Treaty, see paragraph (3)(a)(iii)) since, in the Holy See and in San Marino, registrations effected in the Office of Italy have effect and since the Holy See and San Marino are members of the Paris Union.

22.05 Paragraph (1)(iv). The States that, at the present time, would have the right to become party to the Treaty by virtue of this provision are the 14 States members of OAPI (provided that OAPI itself becomes a party to the Treaty and that all the member States of OAPI become party to the Treaty, see paragraph (3)(a)(iv)) since, in those 14 States, registrations effected in the Office of OAPI have effect, since none of those States maintains a national Office through which marks may be registered and since those States are all members of the Paris Union.

22.06 Paragraph (1)(v). The Benelux States (Belgium, Luxembourg and the Netherlands) would have the right to become party to the Treaty under this provision, since they maintain a common Office--the Benelux Trademark Office--which is not considered to be the Office of a regional intergovernmental organization within the meaning of paragraph (1)(ii) and since they are all members of the Paris Union.

[TLT/DC/5, continued]

22.07 Paragraph (1)(i) to (v). The requirement that all the States referred to in paragraph (1) be party to the Paris Convention flows from the consideration that the basic norms of international cooperation in the field of industrial property laid down in the Paris Convention should be applicable in the territories of all the States in which the Treaty will be applicable.

22.08 Paragraph (2). It follows from Article 1(x) that, even if a signatory State or regional intergovernmental organization calls its instrument an instrument of "acceptance" or an instrument of "approval," it will be considered, for the purposes of the Treaty, as an instrument of "ratification."

22.09 Paragraph (3)(a). Item (ii) aims at ensuring that a regional intergovernmental organization cannot become a party to the Treaty before all its member States are party to it. This provision would apply to OAPI and, once marks can be registered in the Community Trademark Office, to the European Communities. As regards the member States of OAPI or of the European Communities, a distinction has to be made between those two regional intergovernmental organizations: in the first case, a State member of OAPI cannot become a party to the Treaty before OAPI itself and before all the other States members of OAPI are also party to it (item (iv)) since the Treaty should become applicable to the whole territory of OAPI at the same time; in the second case, a State member of the European Communities can (except in the case of the Benelux States, see paragraph 22.11, below) become a party to the Treaty on its own (item (i)) even after marks can be registered in the Community Trademark Office since such a State maintains, and will continue to maintain, a national Office through which marks may be registered.

22.10 Under item (iii), the Holy See or San Marino cannot become a party to the Treaty before Italy is a party to it.

22.11 Under item (v), a Benelux State cannot become a party to the Treaty before the other two Benelux States are party to it, which means that the instruments of the three Benelux States will, irrespective of the date on which each of them is deposited, be considered to be deposited on the same date (the date of the last deposit).

22.12 Paragraph (3)(b). The application of this provision may affect the operation of paragraph (3)(a), as shown in the following (hypothetical) example: if one of the Benelux States specifies the United States of America under paragraph (3)(b), the instruments of the three Benelux States will not be considered to be deposited until the United States of America has deposited its own instrument, even if the other two Benelux States have not made such a specification.

Note on Article 23
(Effective Date of Ratifications
and Accessions)

23.01 Paragraph (1). It is to be noted that a regional intergovernmental organization's instrument of ratification or accession is effective only once all its member States become party to the Treaty (see Article 22(3)(a)(ii)) and that the instruments of ratification or accession of States maintaining a common Office are effective only once all of them have deposited their instruments of ratification or accession (see Article 22(3)(a)(v)).

[TLT/DC/5, continued]

23.02 Paragraph (3). Whereas paragraph (2) deals with the initial entry into force of the Treaty, this paragraph deals with the entry into force of the Treaty in respect of States or regional intergovernmental organizations that did not cause the initial entry into force of the Treaty.

Note on Article 24
(Reservations)

24.01 Paragraph (1) allows making a reservation with respect to special kinds of marks which are identical or similar to each other and are owned by the same person. Those marks, without such a reservation, would be governed by the Treaty and the Regulations. The reason for such a reservation is that the said special kinds of marks can be governed by special provisions of the laws of the Contracting Parties--in particular, as regards the contents of applications and the division of applications and registrations--which are not compatible with the Treaty and the Regulations and in respect of which an adaptation of the law of Contracting Parties to the Treaty and the Regulations might be considered to be too difficult to achieve for the moment. Those special kinds consist of associated marks, defensive marks and derivative marks.

24.02 The concept of associated mark means, in essence, that a mark identical with, or similar to, marks already registered by the same person and used for identical or similar goods and/or services can be registered only as an associated mark. If the applicant does not file an application for an associated mark, the Office may decide that the mark, once registered, be considered associated with other registered marks of the same holder. The main consequence of such a registration is that associated marks cannot be transferred separately to different persons because they are so similar that there would be a likelihood of confusion if they were owned by different persons.

24.03 The concept of defensive mark serves in some countries the purpose of protecting marks which have become well-known. Where a registered mark has become well-known among the consumers for the goods and/or services covered, its holder may obtain registration of the same mark for goods and/or services belonging to other classes of the Nice Classification even where, in respect of those latter goods and/or services, the mark is not used or is not intended to be used. It is considered that the use by others of the well-known registered mark for different goods and/or services could be taken as indicating a connection between those goods and/or services and the holder of the well-known mark. In other countries, there exists a different concept of defensive marks: in addition to the mark to be protected, the holder applies for the registration of similar marks (for the same goods and/or services) in order to ensure a broad scope of protection as regards similar marks.

24.04 The concept of derivative mark, which exists in some countries, means that the holder of a registered mark may subsequently file, in respect of a mark displaying the same principal distinctive feature as the earlier registered mark, with variations that are not substantial or relate to its secondary elements, one or more applications for goods or services which are identical to the ones covered by the earlier registration. Those subsequent applications will be registered as derivative marks which, as is the case for associated marks, cannot be assigned separately.

[TLT/DC/5, continued]

24.05 In view of the fact that in a reservation possible under paragraph (1), not all the provisions of Articles 1 to 15 need to be made inapplicable because of the special nature of the marks in question, only one, several or all of the provisions of Articles 3(1) and (2), 5, 7, 11 and 13 may be reserved. Since a Contracting Party is free to select among the said provisions those which it wants to reserve, such selection must be specified. It is to be noted that, among the seven different kinds of permitted reservations, this is the only one that is not limited in time.

24.06 Paragraph (2) is intended to facilitate transition from the single-class system (presently applicable, for example, in China, Japan, Spain and some Latin American countries) to the multi-class system required by the Treaty (Article 3(5)). The maximum duration of a reservation under this paragraph is four years (see paragraph (9)).

24.07 Paragraph (3) is intended to facilitate transition from a system in which a separate power of attorney is needed for each application or registration (presently existing, for example, in Japan) to a system, required by the Treaty (Article 4(3)(b)), in which one and the same power of attorney may relate to several applications or registrations. The maximum duration of a reservation under this paragraph is four years (see paragraph (9)).

24.08 Paragraph (4) is intended to facilitate transition from a system in which the signature of a power of attorney or an application requires certification (presently in force, for example, in Spain and some Latin American countries) to a system, required by the Treaty (Article 8(4)), in which such certification cannot be required. The maximum duration of a reservation under this paragraph is four years (see paragraph (9)).

24.09 Paragraph (5) is intended to facilitate transition from a system in which a request for the recordal of a change in name, address or ownership or for the correction of a mistake may relate to one application only or one registration only (presently in force, for example, in Japan and Spain) to a system, required by the Treaty (Articles 10(1)(e) and (2), 11(1)(b) and (3), 12(1)(e) and (2)), in which such a request may relate to several applications or registrations. The maximum duration of a reservation under this paragraph is four years (see paragraph (9)).

24.10 Paragraph (6) is intended to facilitate transition from a system (presently in force, for example, in Japan, the United States of America and some Latin American countries) in which, at the time of the renewal of the registration, a declaration and/or evidence concerning the use of the mark must be furnished to a system, required by the Treaty (Article 13(4)(iii)), in which such a declaration and/or evidence cannot be required at the time of the renewal (but only at other times). The maximum duration of a reservation under this paragraph is four years (see paragraph (9)).

24.11 Paragraph (7) is intended to facilitate the transition from a special situation existing under the law of Japan to the requirement of the Treaty (under Article 13(6) of which examination in connection with renewal is not permitted). The facilitation is limited in time since it allows examination of service marks at the time of the first renewal only.

[TLT/DC/5, continued]

Note on Article 25
(Denunciation of the Treaty)

Note on Article 26
(Languages of the Treaty; Signature)

Note on Article 27
(Depositary)

III. NOTES ON THE DRAFT REGULATIONS

Note on Rule 1
(Abbreviated Expressions)

Note on Rule 2
(Manner of Indicating Names and Addresses)

R2.01 Paragraph (1)(a). The words "any Contracting Party may require", which appear in the introductory phrase, make it clear, here, as well as in other provisions of this Rule (see, in particular, paragraphs (2)(a) and (b)) that any Contracting Party is entitled to require fewer indications or elements than those mentioned (and allowed) by the said provisions.

R2.02 It is left to the law of the Contracting Party to decide whether the family or principal name has to precede or follow the given or secondary name.

R2.03 Paragraph (1)(b). In order to facilitate the administrative procedure before the Office, the firm or partnership need to indicate its name only in the manner in which such name is customarily used.

R2.04 Paragraph (2)(b). This provision does not intend to regulate the question of who has the right to be an applicant. Therefore, as regards applicants, it only applies where the law of a Contracting Party allows applications to be filed by several applicants.

R2.05 Paragraph (2)(c). The indication of a telephone number and of a telefacsimile number is not mandatory. It is, however, recommended to give such indications so that the Office of a Contracting Party can establish contacts through the most efficient and rapid means of communication.

[TLT/DC/5, continued]

Note on Rule 3
(Details Concerning the Application)

R3.01 Paragraph (1). A mark which consists of a word, a letter or a numeral, or any combination thereof, which is not depicted in a special form or for which it is indifferent that the letters of the Latin alphabet used appear in lower case, upper case or a combination thereof is, at least in countries using the Latin alphabet and Arabic numbers, frequently registered and published by the interested Office in the standard characters used by that Office. No Office is obliged to register and publish a mark in the characters used in the application if those characters do not correspond to what are regarded as standard characters by that Office.

R3.02 Paragraph (2). The number of reproductions which may be required includes the reproduction which is contained in the application. Thus if, under subparagraph (a)(ii), only one reproduction may be required and the application contains the reproduction of the mark, no additional reproduction may be required; if, under subparagraph (a)(i), five reproductions may be required and the application contains the reproduction of the mark, four additional reproductions may be required on an additional sheet.

R3.03 Subparagraph (a) deals with the case where the mark does not contain a statement to the effect that color is claimed. In the case where the applicant does not wish the mark to be registered and published in the standard characters used by the Office of the Contracting Party concerned, up to five reproductions (in black and white) may be required (item (i)); otherwise, only one reproduction in black and white may be required (item (ii)).

R3.04 Subparagraph (b) deals with the case where the application contains a statement to the effect that the applicant claims colors. A maximum of 10 reproductions (five in color and five in black and white) may be required.

R3.05 Paragraph (2) does not deal with the questions of the size and quality of the reproductions. As regards the quality, see Note 3.13, last sentence, under Article 3(1)(a)(xii). As regards the size, see the Notes on the Model International Form N°1 (Application for the Registration of a Mark), items 8 and 8.1.

R3.06 Paragraph (3)(a). The words "shall consist" make it clear that the applicant cannot spontaneously file with the Office a specimen of the mark instead of or in addition to two-dimensional reproductions of that mark. However, any Contracting Party is free to accept that the applicant, in addition to two-dimensional reproductions, also furnishes a specimen.

R3.07 Paragraph (3)(b) enables the applicant to furnish, for the purposes of reproduction, one single view or several different views of the mark (for example, a scent bottle). This provision, however, does not impose any obligation on a Contracting Party as regards the number of views it should publish. A Contracting Party is therefore free to provide that only one view of the three-dimensional mark will be published and, in such a case, it may require that, where the applicant furnishes several different views, he indicate the view which the Office should publish. If the applicant does not give such an indication, the Office may invite him to do so.

[TLT/DC/5, continued]

R3.08 Paragraph (3)(c) and (d). These provisions deal with the cases where the Office of a Contracting Party considers that the particulars of a three-dimensional mark are not sufficiently shown by the reproductions furnished.

R3.09 Paragraph (3)(e). This provision makes it clear that, in the case of three-dimensional marks, the number of reproductions of each view is the same as for two-dimensional marks and that the reference to standard characters does not apply to three-dimensional marks.

R3.10 Paragraph (6). A Contracting Party may subject the obtention of extensions of the minimum time limit of six months to various conditions, for example, the possible payment of fees or the submission of documents or indications justifying the reason why actual use has not commenced.

Note on Rule 4
(Details Concerning Electronic
Communications)

R4.01 The contents of this Rule are reserved until more experience has been gained with respect to electronic communications and, in particular, electronic filing of applications. Consequently, it will be for the Assembly of the Contracting Parties to establish the content of this Rule once the Treaty enters into force.

Note on Rule 5
(Details Concerning Representation)

R5.01 The time limit of two months for persons residing abroad takes into account the fact that postal transmittal usually takes more time between two countries than inside one country. These time limits of one month and two months start from the date on which, under Article 4(3)(d), a communication is submitted to the Office of a Contracting Party without the required power of attorney. Neither the Treaty nor the Regulations provide that such Office is obliged to send a notification requesting the furnishing of the missing power of attorney.

Note on Rule 6
(Details Concerning the Filing
Date Requirements)

R6.01 Paragraph (1). The special time limit for applicants residing abroad is considered justified not only because more time is required for postal transmittal from abroad than for transmittal inside the country but also because a local representative should be given enough time to communicate with the applicant residing abroad. Naturally, where the applicant has a representative, the invitation referred to in paragraph (1) will be sent to that representative instead of the applicant.

[TLT/DC/5, continued]

R6.02 The final sentence of paragraph (1) is intended to make it clear that a failure on the part of the Office to send the required invitation does not exempt the applicant from his obligation to comply with any of the applicable requirements of Article 5 of the Treaty. The reasons for such a failure can be, for example, the impossibility for the Office to contact the applicant or a general strike. In any case, the final consequence will be that the applicant will not be afforded a filing date.

R6.03 Paragraph (2). The expression "shall be treated as if it had not been filed" should be understood as covering also the case where a Contracting Party considers the application withdrawn (rather than not filed).

R6.04 The last sentence of paragraph (2) does not oblige any Contracting Party to refund the fees paid in connection with the filing of the application.

R6.05 Paragraph (4). The Offices of each Contracting Party should, to the extent possible, alert rapidly the sender of an illegible fax. This may be done, for example, by way of an automatic "refaxing" system.

Note on Rule 7

(Signature and Other Means of
Self-Identification)

R7.01 Paragraph (2). Only one minimum period (of one month) is proposed in this Rule, this period being identical, whether the communication is sent from a place on the territory of the Contracting Party concerned or from a place outside that territory. The Rule does not provide for a longer minimum period for communications sent from a place outside the said territory because the paper whose reproduction was transmitted by telefacsimile can be sent at the same time as the transmittal by telefacsimile and one month appears to be sufficient for mailing to all destinations. Of course, Contracting Parties are free to provide for a longer period.

Note on Rule 8

(Manner of Identification of an Application
Without its Application Number)

R8.01 Paragraph (1) deals with the indications and elements which a person, communicating with its Office, must furnish to identify an application the number of which is not known. Each of items (i), (ii) and (iii) constitutes a maximum requirement.

R8.02 Paragraph (2). This provision does not prohibit Contracting Parties from allowing an applicant to give less information (for example, under paragraph (1)(iii), only the reproduction of the mark) or from accepting other means of identification.

[TLT/DC/5, continued]

Note on Rule 9
(Details Concerning Duration
and Renewal)

R9.01 This provision aims at providing a minimum period during which a holder can present a request for renewal of a registration and can pay the renewal fees.

R9.02 As regards the presentation of the request for renewal and the payment of the renewal fees before the date on which renewal is due, the proposed minimum period of six months would be compatible with the laws of most countries and enable those countries which allow for a longer period (generally, one year) to maintain it. It should be noted that a period of one year is provided for by the present Regulations under the Madrid Agreement (Rule 25(2)).

R9.03 As regards the presentation of the request for renewal and the payment of the renewal fees after the date on which renewal is due, the proposed minimum period of six months would, with respect to the payment of the renewal fees, correspond to the laws of most countries and the period of grace provided for in Article 5bis of the Paris Convention which should be applicable to the renewal of a trademark registration since such renewals are intended to maintain an industrial property right in force. As for the presentation of the request for renewal, most countries seem to extend to it the grace period provided for the payment of renewal fees (and, in that latter respect, required under the Paris Convention). The minimum period of six months which is proposed corresponds in fact to the period which is allowed under the laws of a number of countries. However, a number of countries provide for a shorter period (for example, one month, two months or three months) or no period. It should finally be underlined that a Contracting Party could require, where the request for renewal is filed during the grace period, the payment of a surcharge which can be higher than the surcharge to be paid where only the renewal fees were paid during the grace period. Furthermore, nothing prevents a Contracting Party from requiring a surcharge the amount of which would be progressive (for example, a given amount if the request is presented during the first month of the grace period, a given higher amount if the request is presented during the second month of the grace period, and so on).

IV. NOTES ON MODEL INTERNATIONAL FORMS

Explanations on the footnotes appearing
in the Model International Forms

F0.01 The stars which appear next to words or sentences in the draft Model International Forms contained in document TLT/DC/4 call for footnotes which appear on the same page as the said words or sentences.

[TLT/DC/5, continued]

Note concerning all Model International Forms

F0.02 The "Model International Forms" refer to--and leave space for filling in--all the elements (information) that, under the Treaty and the Regulations, Contracting Parties may require to be furnished. Some of those elements, however, cannot or, de facto, are not required under the national or regional law applicable by the Office concerned. Where this is the case, the national or regional Office should prepare an "Individualized International Form," that is, a Form from which the reference to elements of the Model International Form which are inapplicable for the purposes of the Office in question should be omitted. Naturally, no such individualized Form can contain references to mandatory elements that would be additional to the elements referred to in the corresponding model Form and would be contrary to the Treaty or the Regulations. It is understood that no Contracting Party is obliged to have Individualized International Forms; any Contracting Party may continue to use its present forms as long as those forms comply with the provisions of the Treaty and the Regulations.

F0.03 It is understood that in any Individualized International Form the elements may be in a different order and with different spacing than in the Model International Form.

F0.04 Any Individualized International Form will be in the language or languages admitted by the interested Office.

F0.05 Each Contracting Party must accept that any application, request or appointment of representative be presented on a form corresponding to the relevant Model International Form or Individualized International Form as long as its language requirement is complied with.

F0.06 In respect of all the proposed Model International Forms, it could be decided, at a later stage, to use INID Codes.

Note on Form N° 1

(Application for the Registration of a Mark)

F1.01 Title of the Form. In any Individualized International Form, the dots will be replaced by the name of the Office.

F1.02 Item 1 (Request for Registration). Under the laws of some countries, there exist several Registers of marks (for example, a Principal Register and a Supplemental Register exist in the United States of America) or several different parts of the same Register. Such countries may adapt their Individualized International Form in order to allow the applicant to indicate on which Register, or on which part of the Register, the mark should be registered.

F1.03 Subitem 2.5. In its Individualized International Form, a Contracting Party may adapt subitem 2.5 according to the requirements of its law. For example, the Individualized International Form of a Contracting Party which does not require the indication of a territorial unit (such as one of the

[TLT/DC/5, continued]

50 States that constitute the United States of America) would simply refer to "the legal nature of the legal entity" and to "the State under the law of which the legal entity is organized."

Fl.04 Subitem 3.2. This subitem should appear in the Individualized International Form even if the Office does not require representation since any applicant may be represented even if he is not obliged to be represented. Where the furnishing of a document appointing the representative ("power of attorney") is required, the applicant has a minimum time limit to furnish such a document (see Rule 5), and the Individualized International Form should indicate the time limit applicable before the Office. The representative can be a natural person, a legal entity or a partnership.

Fl.05 Subitem 3.2.5. Contracting Parties where no power of attorney is needed are those where no formal appointment of the representative is needed either in respect of any representative or in respect of certain categories of representative (for example, in some countries, the category of "mandataire agréé," that is, an agent registered with the Office and admitted to practice before the Office without a power of attorney having to be submitted). Offices before which any representative needs a power of attorney should, in their Individualized International Form, omit item 3.2.5.

Fl.06 Item 4 (Address for Service). Any Contracting Party which, in the case where the applicant has neither a domicile nor a real and effective industrial or commercial establishment on the territory of the Contracting Party with whose Office the application is filed, does not require the applicant to appoint a local representative may require the applicant to indicate an address for service. On the other hand, item 4 should be omitted from the Individualized International Form of any Contracting Party which, in the above-mentioned circumstances, does not require an address for service to be indicated or always requires the appointment of a local representative.

Fl.07 Item 8 (Reproduction of the Mark). The dimensions of the square are mandatory for all Offices. Consequently, no Office may require other dimensions in its Individualized International Form. However, an Office may allow the applicant to furnish a reproduction of the mark in other dimensions. Moreover, where the applicant wishes that the mark be registered and published in standard characters (see Article 3(1)(a)(ix), Rule 3(1) and subitem 8.1), the mark could be typed on an additional sheet.

Fl.08 Subitem 8.1. If the applicant does not check the box in item 8.1, the Office will register and publish the mark as appearing in the square in item 8.

Fl.09 Subitem 8.3. In the case of a three-dimensional mark, the reproduction must consist of a two-dimensional graphic or photographic reproduction (the number of copies being the same as for two-dimensional marks; see Note Fl.10, below). Those reproductions may consist of a single view of the mark or of several different views. It is only where the Office does not consider that or those reproductions satisfactory (for the purposes of showing the particulars of the three-dimensional mark) that it may require additional (but not more than a total of six) views or a description by words of the mark and, if that is still considered not to be sufficient for showing the particulars

[TLT/DC/5, continued]

of the mark, a specimen of the mark. It is understood that no Contracting Party is obliged to publish more than one view where several views of the mark are furnished. Where the applicant furnishes several views, a Contracting Party which only publishes one view may require from the applicant that he expressly indicate which view should be published (which can be done either by including the view to be published in the square provided in item 8 or by specifying that view on the additional sheet containing all the different views). On the other hand, if a Contracting Party publishes, in the case where the applicant submits different views, all those views, the applicant could include several views in the square provided in item 8 or include the different views in an attachment sheet. The second footnote appearing on page 6 of the Model International Form will have to be adapted, in any Individualized International Form, to the situation prevailing in the Contracting Party concerned.

F1.10 Subitems 8.4 and 8.5. Any Contracting Party may require that a certain number of reproductions in color or in black and white of the mark be furnished (see Rule 3(2)). Rule 3(2)(a) deals with the case where the application does not contain a statement to the effect that color is claimed; in such a case, where the mark is to be registered and published in the standard characters used by the Office of a Contracting Party, only one reproduction (in black and white) may be required; otherwise, a maximum of five reproductions in black and white may be required. Rule 3(2)(b) deals with the case where the application contains a statement to the effect that the applicant claims colors; in such a case, a maximum of 10 reproductions (five in color and five in black and white) can be required.

F1.11 Item 9 (Transliteration of the Mark). The transliteration, where required, should follow the phonetics of the language, or one of the languages, admitted by the Office concerned.

F1.12 Item 10 (Translation of the Mark). The translation, where required, must be into the language, or one of the languages, admitted by the Office.

F1.13 Item 11 (Goods and/or Services). Where the application is filed with the Office of a Contracting Party which has made a reservation under Article 24(2) of the Treaty, goods or services belonging to one class only may be indicated. In such a case, the Individualized International Form should, instead of the footnote under item 11, contain a footnote reading as follows: "The class according to the Nice Classification to which the goods or services belong must be indicated by the number of that class."

F1.14 Item 12 (Declaration Concerning Intention to Use or Actual Use; Evidence of Actual Use). This item should be left out from the Individualized International Form of any Office before which such declarations are not required. According to present laws, this item will be needed in the Individualized International Forms of, for example, Canada and the United States of America. On the other hand, where subitem 12.1 is needed, the exact wording of the declaration could be spelled out in the Individualized International Form instead of the declaration being attached to the Form. As regards the signature of any declaration under subitem 12.1, the Individualized International Form of a Contracting Party should, where applicable, specify in a footnote whether such declaration needs to be signed

[TLT/DC/5, continued]

by the applicant himself even if he has a representative. Finally, in a Contracting Party which only requires a declaration of actual use (and not evidence of use), the Individualized International Form may omit subitem 12.2.

F1.15 Item 13 (Signature or Seal). This item will have to be adapted in the Individualized International Form of the Contracting Party concerned. Where the Contracting Party does not allow a seal to be used instead of a handwritten signature, all references to a seal should be omitted; where the Contracting Party allows the use of forms of signature other than a handwritten signature, such as a printed signature or a stamped signature, subitem 12.4 should be accompanied by a footnote indicating how to sign the application. In any case, no certification of the signature or seal may be required (see however Note F1.17, below).

F1.16 Subitem 13.1. This subitem should be omitted from the Individualized International Form of the Office of any Contracting Party which does not have any of the following requirements:

(i) the requirement that a seal be used instead of a handwritten signature and that the name of the natural person whose seal is used be indicated in letters;

(ii) the requirement that, where the Contracting Party concerned allows the use of a seal instead of a handwritten signature and a seal is used, the name of the natural person whose seal is used be indicated in letters;

(iii) the requirement that, where the applicant is a legal entity and the application bears the signature or seal of the natural person signing on behalf of that entity, the name of the natural person who signs or whose seal is used on behalf of that legal entity be indicated (evidence on authorization to sign or use a seal on behalf of a legal entity may not be required, except in case of doubt).

F1.17 Subitem 13.4. Where the application is filed with the Office of a Contracting Party which has made a reservation under Article 24(4) of the Treaty, the signature may need to be certified. In such a case, the Individualized International Form should specify whether such a certification is required and by whom such a certification must be made.

F1.18 Item 14 (Fee). Each Office may introduce further details in its Individualized International Form to indicate the various methods of payment accepted by it (transfer to bank account, payment by cheque, cash, fiscal stamps, etc.).

Note on Form N° 2
(Power of Attorney)

F2.01 Title of the Form. In any Individualized International Form, the dots will be replaced by the name of the Office.

[TLT/DC/5, continued]

F2.02 Item 3 (Representative). The representative can be a natural person, a legal entity or a partnership. In any Contracting Party, the appointment of a representative may be refused if such a representative is not admitted to practice before the Office of that Contracting Party (see Article 4(1)).

F2.03 Item 4 (Application(s) and/or Registration(s) Concerned);

Subitem 4.2.1. This subitem is intended to cover the case where the power of attorney is filed together with one or more applications.

F2.04 Subitem 4.2.2. As regards the means of identification of an application the application number of which is not known, the corresponding footnote will be adapted by each Contracting Party in its Individualized International Form according to the requirements of its law or to the practice of its Office, it being understood that a Contracting Party may require less than what is provided for in Rule 8(1).

F2.05 Item 5 (Scope of the Power of Attorney). As regards any matter relating to representation which is outside the scope of the Treaty, any Contracting Party may provide for additional indications in its Individualized International Form. For example, a Contracting Party may add an additional box in respect of the appointment of a sub-representative where the law of that Contracting Party requires that the possibility for a representative to appoint sub-representatives be expressly mentioned in the power of attorney.

F2.06 Item 6 (Signature or Seal). This item will have to be adapted in the Individualized International Form of the Contracting Party concerned. Where the Contracting Party does not allow a seal to be used instead of a handwritten signature, all references to a seal should be omitted; where the Contracting Party allows the use of forms of signature other than a handwritten signature, such as a printed signature or a stamped signature, item 6.3 should be accompanied by a footnote indicating how to sign the power of attorney. In any case, no certification of the signature or seal may be required (see however Note F2.08, below).

F2.07 Subitem 6.1. This subitem should be omitted from the Individualized International Form of the Office of any Contracting Party which does not have any of the following requirements:

(i) the requirement that a seal be used instead of a handwritten signature and that the name of the natural person whose seal is used be indicated in letters;

(ii) the requirement that, where the Contracting Party concerned allows the use of a seal instead of a handwritten signature and a seal is used, the name of the natural person whose seal is used be indicated in letters;

(iii) the requirement that, where the person appointing the representative is a legal entity and the request bears the signature or seal of the natural person signing on behalf of that entity, the name of the natural person who signs or whose seal is used on behalf of that legal entity be indicated (evidence on authorization to sign or use a seal on behalf of a legal entity may not be required, except in case of doubt).

[TLT/DC/5, continued]

F2.08 Subitem 6.3. Where the power of attorney is filed with the Office of a Contracting Party which has made a reservation under Article 24(4) of the Treaty, the signature may need to be certified. In such a case, the Individualized International Form should specify whether such a certification is required and by whom such a certification must be made.

Note on Form N° 3
(Request for the Recordal of Change(s)
in Name(s) and/or Address(es))

F3.01 Title of the Form. In any Individualized International Form, the dots will be replaced by the name of the Office.

F3.02 Item 2 (Registration(s) and/or Application(s) Concerned):
Subitem 2.2. As regards the means of identification of an application the application number of which is not known, the corresponding footnote will be adapted by each Contracting Party in its Individualized International Form according to the requirements of its law or to the practice of its Office, it being understood that a Contracting Party may require less than what is provided for in Rule 8(1).

F3.03 Item 4 (Representative). This item should appear in the Individualized International Form even if the Office does not require representation since any holder and/or applicant may be represented even if he is not obliged to be represented.

F3.04 Item 6 (Indication of the Change(s)). The change(s) may concern the name of any holder and/or applicant, the name of any representative as well as the address, telephone number or telefacsimile number of any holder, applicant or representative, and the address for service.

F3.05 Item 7 (Signature or Seal). This item will have to be adapted in the Individualized International Form of the Contracting Party concerned. Where the Contracting Party does not allow a seal to be used instead of a handwritten signature, all references to a seal should be omitted; where the Contracting Party allows the use of forms of signature other than a handwritten signature, such as a printed signature or a stamped signature, item 7.4 should be accompanied by a footnote indicating how to sign the request. In any case, no certification of the signature or seal may be required.

F3.06 Subitem 7.1. This subitem should be omitted from the Individualized International Form of the Office of any Contracting Party which does not have any of the following requirements:

(i) the requirement that a seal be used instead of a handwritten signature and that the name of the natural person whose seal is used be indicated in letters;

(ii) the requirement that, where the Contracting Party concerned allows the use of a seal instead of a handwritten signature and a seal is used, the name of the natural person whose seal is used be indicated in letters;

[TLT/DC/5, continued]

(iii) the requirement that, where the applicant and/or holder is a legal entity and the request bears the signature or seal of the natural person signing on behalf of that entity, the name of the natural person who signs or whose seal is used on behalf of that legal entity be indicated (evidence on authorization to sign or use a seal on behalf of a legal entity may not be required, except in case of doubt).

F3.07 Item 8 (Fee). Each Office may introduce further details in its Individualized International Form to indicate the various methods of payment accepted by it (transfer to bank account, payment by cheque, cash, fiscal stamps, etc.). Furthermore, where the change of address(es) results from a decision of an authority and the recordal is, consequently, free of charge, the Individualized International Form should contain an appropriate item to this effect.

Note on Form N° 4

(Request for the Recordal of a Change in
Ownership in Respect of Registration(s)
and/or Application(s) for Registration of Marks)

F4.01 Item 1 (Request for Recordal). In any Individualized International Form, the dots will be replaced by the name of the Office.

F4.02 Item 2 (Registration(s) and/or Application(s) Concerned):

Subitem 2.2. As regards the means of identification of an application the application number of which is not known, the corresponding footnote will be adapted by each Contracting Party in its Individualized International Form according to the requirements of its law or to the practice of its Office, it being understood that a Contracting Party may require less than what is provided for in Rule 8(1).

F4.03 Item 3 (Goods and/or Services Affected by the Change). Where the change in ownership only relates to some of the goods and/or services covered by an application and/or registration, the Model International Form provides that only those goods and/or services which are covered by the change in ownership and which will appear in the application and/or registration of the new owner should be listed under subitem 3.2 (and in an additional sheet if the box under subitem 3.3 is checked). Naturally, where a Contracting Party allows also the indication of those goods and/or services which should remain in the application and/or registration of the applicant and/or holder, the Individualized International Form of that Contracting Party should provide for such a possibility. On the other hand, the Individualized International Form of a Contracting Party that does not allow partial changes in ownership (see Note 11.13, last sentence) should omit item 3 altogether.

F4.04 Item 4 (Basis for the Change in Ownership). This item distinguishes between a change in ownership which results from a contract (assignment, etc.), a change in ownership which results from a merger and a change in ownership which does not result either from a contract or a merger but from operation of law (inheritance, bankruptcy, etc.) or from a court decision. Depending on the basis for the change in ownership, each Contracting Party may require that certain documents evidencing the change be furnished.

[TLT/DC/5, continued]

F4.05 Subitems 4.1, 4.2 and 4.3 should be limited to the first line or sentence of each of those items in the Individualized International Form of any Contracting Party not requiring the request for the recordal of a change in ownership to be accompanied by any document evidencing the change.

F4.06 The expressions ", certified as being in conformity with the original," and ", certified as being a true extract," should be omitted from the Individualized International Form of any Contracting Party not requiring such a certification.

F4.07 No Contracting Party may require that a certificate of transfer (see Model International Form N°5) or a transfer document (see Model International Form N°6) be certified.

F4.08 Item 5 (Holder and/or Applicant). In the case of a transfer by contract, the "holder and/or applicant" is the transferor.

F4.09 Item 8 (New Owner); Subitem 8.5. In its Individualized International Form, a Contracting Party may adapt subitem 8.5 according to the requirements of its law. For example, the Individualized International Form of a Contracting Party which does not require the indication of a territorial unit (such as one of the 50 States that constitute the United States of America) would simply refer to "the legal nature of the legal entity" and to "the State under the law of which the legal entity is organized."

F4.10 Item 9 (Representative of the New Owner(s)); Subitem 9.2. This subitem should appear in the Individualized International Form even if the Office does not require representation since any new owner may be represented even if he is not obliged to be represented. Where the furnishing of a document appointing the representative ("power of attorney") is required, the new owner has a minimum time limit to furnish such a document (see Rule 5), and the Individualized International Form should indicate the time limit applicable before the Office. The representative can be a natural person, a legal entity or a partnership.

F4.11 Subitem 9.2.5. Contracting Parties where no power of attorney is needed are those where no formal appointment of the representative is needed either in respect of any representative or in respect of certain categories of representative (for example, in some countries, the category of "mandataire agréé," that is, an agent registered with the Office and admitted to practice before the Office without a power of attorney having to be submitted). Offices before which any representative needs a power of attorney should, in their Individualized International Form, omit item 9.2.5.

F4.12 Item 10 (Address for Service of the New Owner(s)). Any Contracting Party which, in the case where the new owner has neither a domicile nor a real and effective industrial or commercial establishment on the territory of the Contracting Party with whose Office the request for renewal is filed, does not require the new owner to appoint a local representative may require the new owner to indicate an address for service. On the other hand, item 10 should be omitted from the Individualized International Form of any Contracting Party which, in the above-mentioned circumstances, does not require an address for service to be indicated or always requires the appointment of a representative who has the nationality of the Contracting Party and resides on its territory.

[TLT/DC/5, continued]

F4.13 Item 11 (Signature or Seal). This item will have to be adapted in the Individualized International Form of the Contracting Party concerned. Where the Contracting Party does not allow a seal to be used instead of a handwritten signature, all references to a seal should be omitted; where the Contracting Party allows the use of forms of signature other than a handwritten signature, such as a printed signature or a stamped signature, item 11.4 should be accompanied by a footnote indicating how to sign the request. In any case, no certification of the signature or seal may be required.

F4.14 Subitem 11.1. This subitem should be omitted from the Individualized International Form of the Office of any Contracting Party which does not have any of the following requirements:

(i) the requirement that a seal be used instead of a handwritten signature and that the name of the natural person whose seal is used be indicated in letters;

(ii) the requirement that, where the Contracting Party concerned allows the use of a seal instead of a handwritten signature and a seal is used, the name of the natural person whose seal is used be indicated in letters;

(iii) the requirement that, where the holder and/or applicant or the new owner is a legal entity and the request bears the signature or seal of the natural person signing on behalf of that entity, the name of the natural person who signs or whose seal is used on behalf of that legal entity be indicated (evidence on authorization to sign or use a seal on behalf of a legal entity may not be required, except in case of doubt).

F4.15 Item 12 (Fee). Each Office may introduce further details in its Individualized International Form to indicate the various methods of payment accepted by it (transfer to bank account, payment by cheque, cash, fiscal stamps, etc.).

F4.16 Item 13 (Additional Sheets and Attachments). Where, in the case referred to in Article 11(1)(d) (change in the person of one or more but not all of several co-holders), the express consent of any co-holder is required, that consent may be given on an additional sheet or by adding the signature of the said co-holder on the request.

Note on Form N° 5

(Certificate of Transfer in Respect of Registration(s)
and/or Application(s) for Registration of Marks)

F5.01 Title of the Form. In any Individualized International Form, the dots will be replaced by the name of the Office.

F5.02 Item 2 (Registration(s) and/or Application(s) Concerned);

Subitem 2.2. As regards the means of identification of an application the application number of which is not known, the corresponding footnote will be adapted by each Contracting Party in its Individualized International Form

[TLT/DC/5, continued]

according to the requirements of its law or to the practice of its Office, it being understood that a Contracting Party may require less than what is provided for in Rule 8(1).

F5.03 Item 3 (Goods and/or Services Affected by the Transfer). Where the transfer only relates to some of the goods and/or services covered by an application and/or registration, the Model International Form provides that only those goods and/or services which are covered by the transfer and which will appear in the application and/or registration of the transferee should be listed under subitem 3.2 (and in an additional sheet if the box under subitem 3.3 is checked). Naturally, where a Contracting Party allows also the indication of those goods and/or services which should remain in the application and/or registration of the transferor, the Individualized International Form of that Contracting Party should provide for such a possibility. On the other hand, the Individualized International Form of a Contracting Party that does not allow partial changes in ownership (see Note 11.13, last sentence) should omit item 3 altogether.

F5.04 Item 6 (Signature or Seal). This item will have to be adapted in the Individualized International Form of the Contracting Party concerned. Where the Contracting Party does not allow a seal to be used instead of a handwritten signature, all references to a seal should be omitted; where the Contracting Party allows the use of forms of signature other than a handwritten signature, such as a printed signature or a stamped signature, items 6.1.3 and 6.2.3 should be accompanied by a footnote indicating how to sign the certificate of transfer. In any case, no certification of the signature or seal may be required.

F5.05 Subitems 6.1.1 and 6.2.1 should be omitted from the Individualized International Form of the Office of any Contracting Party which, on the one hand, does not allow, in the case of co-ownership, one of the co-transferors or co-transferees to sign the certificate of transfer on behalf of all of them (in the case of such a Contracting Party, the signature (or seals) of all the co-transferors and of all the co-transferees must appear under subitems 6.1.3 and 6.2.3) and which, on the other hand, does not have any of the following requirements:

(i) the requirement that a seal be used instead of a handwritten signature and that the name of the natural person whose seal is used be indicated in letters;

(ii) the requirement that, where the Contracting Party concerned allows the use of a seal instead of a handwritten signature and a seal is used, the name of the natural person whose seal is used be indicated in letters;

(iii) the requirement that, where the transferor or the transferee is a legal entity and the request bears the signature or seal of the natural person signing on behalf of that entity, the name of the natural person who signs or whose seal is used on behalf of that legal entity be indicated (evidence on authorization to sign or use a seal on behalf of a legal entity may not be required, except in case of doubt).

[TLT/DC/5, continued]

F5.06 Item 7 (Additional Sheets and Attachments). Where, in the case referred to in Article 11(1)(d) (change in the person of one or more but not all of several co-holders), the express consent of any co-holder is required, that consent may be given on an additional sheet or by adding the signature of the said co-holder on the certificate of transfer.

Note on Form N° 6

(Transfer Document in Respect of Registration(s)
and/or Application(s) for Registration of Marks)

F6.01 Title of the Form. In any Individualized International Form, the dots will be replaced by the name of the Office.

F6.02 Item 2 (Registration(s) and/or Application(s) Concerned); Subitem 2. As regards the means of identification of an application the application number of which is not known, the corresponding footnote will be adapted by each Contracting Party in its Individualized International Form according to the requirements of its law or to the practice of its Office, it being understood that a Contracting Party may require less than what is provided for in Rule 8(1).

F6.03 Item 3 (Goods and/or Services Affected by the Transfer). Where the transfer only relates to some of the goods and/or services covered by an application and/or registration, the Model International Form provides that only those goods and/or services which are covered by the transfer and which will appear in the application and/or registration of the transferee should be listed under subitem 3.2 (and in an additional sheet if the box under subitem 3.3 is checked). Naturally, where a Contracting Party allows also the indication of those goods and/or services which should remain in the application and/or registration of the transferor, the Individualized International Form of that Contracting Party should provide for such a possibility. On the other hand, the Individualized International Form of a Contracting Party that does not allow partial changes in ownership (see Note 11.13, last sentence) should omit item 3 altogether.

F6.04 Item 6 (Additional Indications). In some countries (for example, the United States of America), a transfer document may contain those indications in respect of the transfer of goodwill or business, the transfer of rights resulting from the use of the mark, the transfer of the right to sue, the fact that the transfer was made for consideration and the effective date of the transfer. Since the furnishing of any of the indications mentioned in the enclosure to this Form is optional for the purposes of recordal of the transfer, Offices will have to accept the transfer document for the purposes of the recordal of the change in ownership whether or not the enclosure is completed. In any case, the recordal of a change in ownership by a Contracting Party in its register of marks is not to be understood as a recognition of the validity of the transfer itself, since such validity can always be challenged before the Court. However, the furnishing of the indications relating to the transfer of goodwill or business is recommended, in view of possible Court proceedings, with respect to those Contracting Parties which require such transfer as a condition of validity of the transfer of the mark itself.

[TLT/DC/5, continued]

F6.05 Item 7 (Signature or Seal). This item will have to be adapted in the Individualized International Form of the Contracting Party concerned. Where the Contracting Party does not allow a seal to be used instead of a handwritten signature, all references to a seal should be omitted; where the Contracting Party allows the use of forms of signature other than a handwritten signature, such as a printed signature or a stamped signature, subitems 7.1.3 and 7.2.3 should be accompanied by a footnote indicating how to sign the document of transfer. In any case, no certification of the signature or seal may be required.

F6.06 Subitems 7.1.1 and 7.2.1 should be omitted from the Individualized International Form of the Office of any Contracting Party which, on the one hand, does not allow, in the case of co-ownership, one of the co-transferors or co-transferees to sign the transfer document on behalf of all of them (in the case of such a Contracting Party, the signature (or seals) of all the co-transferors and of all the co-transferees must appear under subitems 7.1.3 and 7.2.3) and which, on the other hand, does not have any of the following requirements:

(i) the requirement that a seal be used instead of a handwritten signature and that the name of the natural person whose seal is used be indicated in letters;

(ii) the requirement that, where the Contracting Party concerned allows the use of a seal instead of a handwritten signature and a seal is used, the name of the natural person whose seal is used be indicated in letters;

(iii) the requirement that, where the transferor or the transferee is a legal entity and the request bears the signature or seal of the natural person signing on behalf of that entity, the name of the natural person who signs or whose seal is used on behalf of that legal entity be indicated (evidence on authorization to sign or use a seal on behalf of a legal entity may not be required, except in case of doubt).

F6.07 Subitem 8 (Additional Sheets and Attachments). Where, in the case referred to in Article 11(1)(d) (change in the person of one or more but not all of several co-holders), the express consent of any co-holder is required, that consent may be given on an additional sheet or by adding the signature of the said co-holder on the transfer document.

Note on Form N° 7

(Request for the Correction of Mistake(s)
in Registration(s) or Application(s) for Registration of Marks)

F7.01 Item 1 (Request for Correction). In any Individualized International Form, the dots will be replaced by the name of the Office.

F7.02 Item 2 (Registration(s) and/or Application(s) Concerned); Subitem 2.2. As regards the means of identification of an application the application number of which is not known, the corresponding footnote will be adapted by each Contracting Party in its Individualized International Form

[TLT/DC/5, continued]

according to the requirements of its law or to the practice of its Office, it being understood that a Contracting Party may require less than what is provided for in Rule 8(1).

F7.03 Item 4 (Representative). This item should appear in the Individualized International Form even if the Office does not require representation since any applicant and/or holder may be represented even if he is not obliged to be represented.

F7.04 Item 7 (Signature or Seal). This item will have to be adapted in the Individualized International Form of the Contracting Party concerned. Where the Contracting Party does not allow a seal to be used instead of a handwritten signature, all references to a seal should be omitted; where the Contracting Party allows the use of forms of signature other than a handwritten signature, such as a printed signature or a stamped signature, item 7.4 should be accompanied by a footnote indicating how to sign the request. In any case, no certification of the signature or seal may be required.

F7.05 Subitem 7.1. This subitem should be omitted from the Individualized International Form of the Office of any Contracting Party which does not have any of the following requirements:

(i) the requirement that a seal be used instead of a handwritten signature and that the name of the natural person whose seal is used be indicated in letters;

(ii) the requirement that, where the Contracting Party concerned allows the use of a seal instead of a handwritten signature and a seal is used, the name of the natural person whose seal is used be indicated in letters;

(iii) the requirement that, where the applicant and/or holder is a legal entity and the request bears the signature or seal of the natural person signing on behalf of that entity, the name of the natural person who signs or whose seal is used on behalf of that legal entity be indicated (evidence on authorization to sign or use a seal on behalf of a legal entity may not be required, except in case of doubt).

F7.06 Item 8 (Fee). Each Office may introduce further details in its Individualized International Form to indicate the various methods of payment accepted by it (transfer to bank account, payment by cheque, cash, fiscal stamps, etc.).

Note on Form N° 8

(Request for the Renewal of a Registration)

F8.01 Title of the Form. In any Individualized International Form, the dots will be replaced by the name of the Office.

[TLT/DC/5, continued]

F8.02 Item 2 (Registration Concerned). In any Individualized International Form, only one of the two dates (filing date or registration date) may appear since no Contracting Party may require that both dates be indicated (see Note 13.04).

F8.03 Item 4 (Representative). This item should appear in the Individualized International Form even if the Office does not require representation since any holder may be represented even if he is not obliged to be represented.

F8.04 Item 6 (Goods and/or Services). This item should not appear in the Individualized International Form if the Contracting Party concerned does not allow the renewal of a registration for less than all the goods and/or services which are covered by the registration.

F8.05 Item 7 (Signature or Seal). This item will have to be adapted in the Individualized International Form of the Contracting Party concerned. Where the Contracting Party does not allow a seal to be used instead of a handwritten signature, all references to a seal should be omitted; where the Contracting Party allows the use of forms of signature other than a handwritten signature, such as a printed signature or a stamped signature, item 7.4 should be accompanied by a footnote indicating how to sign the request. In any case, no certification of the signature or seal may be required.

F8.06 Subitem 7.1. This subitem should be omitted from the Individualized International Form of the Office of any Contracting Party which does not have any of the following requirements:

(i) the requirement that a seal be used instead of a handwritten signature and that the name of the natural person whose seal is used be indicated in letters;

(ii) the requirement that, where the Contracting Party concerned allows the use of a seal instead of a handwritten signature and a seal is used, the name of the natural person whose seal is used be indicated in letters;

(iii) the requirement that, where the holder is a legal entity and the request for renewal bears the signature or seal of the natural person signing on behalf of that entity, the name of the natural person who signs or whose seal is used on behalf of that legal entity be indicated (evidence on authorization to sign or use a seal on behalf of a legal entity may not be required, except in case of doubt).

F8.07 Item 8 (Fee). Each Office may introduce further details in its Individualized International Form to indicate the various methods of payment accepted by it (transfer to bank account, payment by cheque, cash, fiscal stamps, etc.).

F8.08 (Additional Sheets). Where a Contracting Party has made a reservation under Article 24(6), the declaration and/or evidence concerning use of the mark is to be attached to the request (only during the period during which the reservation has effect).

[End]

TLT/DC/6

October 12, 1994 (Original: English)

Source: THE PLENARY OF THE DIPLOMATIC CONFERENCE

Rules of Procedure

Editor's Note: The Rules of Procedure adopted by the Diplomatic Conference are those set forth in document TLT/DC/2. It is reproduced on pages 206 to 221 of these Records.

[End]

TLT/DC/7

October 12, 1994 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Suggestions by the Director General of WIPO

DRAFT TREATY

1. Item (xi) of Article 1 (Abbreviated Expressions) should read as follows:

"(xi) "Consultative Committee" means the Consultative Committee that is referred to in Article 17;"

2. Item (xii) (abbreviated expression for "Union") of Article 1 should be deleted.

3. Article 16 (Establishment of a Union) should be replaced by the following Article:

"Article 16 [new]

Obligation to Comply with the Paris Convention

Any Contracting Party shall comply with the provisions of the Stockholm Act (1967) of the Paris Convention which concern trademarks even if it is not party to the Paris Convention or is not bound by those provisions of the said Act."

[TLT/DC/7, continued]

4. Article 17 (Assembly) should be replaced by the following Article:

"Article 17 [new]

"Consultative Committee

(1) [Composition and Tasks] (a) A Consultative Committee consisting of the Contracting Parties shall be convened from time to time by the Director General in order to give advice on the amendment of the Regulations, in accordance with Article 19(2) [new], and on any other matter of relevance to this Treaty.

(b) The Consultative Committee shall not take any decision and shall not proceed to any vote.

(2) [Observers] Interested intergovernmental organizations other than Contracting Parties and interested non-governmental organizations shall be invited as observers to meetings of the Consultative Committee."

5. Article 18 (International Bureau) should be deleted.

6. Article 19 (Regulations) should read as follows:

"Article 19

Regulations

(1) [Content] (a) The Regulations annexed to this Treaty provide rules concerning

(i) matters which this Treaty expressly provides to be "prescribed in the Regulations";

(ii) any details useful in the implementation of the provisions of this Treaty;

(iii) any administrative requirements, matters or procedures.

(b) The Regulations also contain Model International Forms.

(2) [Amending the Regulations] (a) After having heard the advice of the Consultative Committee, the Director General may amend the Regulations and shall fix the date of entry into force of any amendment of the Regulations. Such date may not be earlier than six months after the amendment has been notified by the Director General to the Contracting Parties.

(b) Any Contracting Party may declare that i shall not be bound by a given amendment of the Regulations, provided that the declaration to that effect reaches the Director General before the date of entry into force of the amendment. In such a case, the Contracting Party shall remain bound by the provision of the Regulations which was binding it before its amendment entered into force.

[TLT/DC/7, continued]

(c) Any declaration made under subparagraph (b) may be withdrawn at any time.

(3) [Conflict Between the Treaty and the Regulations] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail."

7. Article 20 (Revision and Modification) should be deleted.

8. Article 21 (Protocols) should read as follows:

"Article 21

Protocols

(1) [Adoption of Protocols] For the purposes of further developing the harmonization of laws on marks, protocols may be adopted by a diplomatic conference.

(2) [Becoming Party to a Protocol] Only Contracting Parties may become party to any protocol adopted under paragraph (1)."

9. Article 22 (Becoming Party to the Treaty) should read as follows:

"Article 22

Becoming Party to the Treaty

(1) [Eligibility] The following entities may sign and, subject to paragraphs (2) and (3) and Article 23, become party to this Treaty:

(i) any State member of the Organization in respect of which marks may be registered with its own Office;

(ii) any regional intergovernmental organization which maintains a regional Office in which marks may be registered with effect in all its member States¹ or in those of its member States which are designated for such purpose in the relevant application,² provided that all those States are members of the Organization;

(iii) any State member of the Organization in respect of which marks may be registered only through the Office of another specified State that is a member of the Organization;³

1. For example, the European Communities and the "Organisation africaine de la propriété intellectuelle" (OAPI).

2. For example, the African Regional Industrial Property Organization (ARIPO) once the Banjul Protocol on Marks is in force.

3. For example, the Holy See and San Marino.

[TLT/DC/7, continued]

(iv) any State member of the Organization in respect of which marks may be registered only through the regional Office maintained by a regional intergovernmental organization of which that State is a member;⁴

(v) any State member of the Organization in respect of which marks may be registered only through an Office common to a group of States members of the Organization.⁵

(2) [Ratification or Accession] Any entity referred to in paragraph (1) may deposit

(i) an instrument of ratification, if it has signed this Treaty,

(ii) an instrument of accession, if it has not signed this Treaty.

(3) [Effective Date of Deposit] (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be,

(i) in the case of a State referred to in paragraph (1)(i), the date on which the instrument of that State is deposited;

(ii) in the case of a regional intergovernmental organization, the date on which the following condition is fulfilled: the instrument of the regional intergovernmental organization has been deposited and the instruments of five of the regional intergovernmental organization's member States have been deposited;

(iii) in the case of a State referred to in paragraph (1)(iii), the date on which the following condition is fulfilled: the instrument of that State has been deposited and the instrument of the other, specified State has been deposited;

(iv) in the case of a State referred to in paragraph (1)(iv), the date applicable under (ii), above;

(v) in the case of a State member of a group of States referred to in paragraph (1)(v), the date on which the instruments of all the States members of the group have been deposited.

(b) Any instrument of ratification or accession (hereinafter referred to as "instrument") of a State may be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one other State or one regional intergovernmental organization, or the instruments of two other States, or the instruments of one other State and one regional intergovernmental organization, specified by name and eligible to become party to this Treaty, is or are also deposited. The instrument containing such

4. For example, the 14 States members of OAPI.

5. For example, the Benelux States (Belgium, Luxembourg and the Netherlands).

[TLT/DC/7, continued]

a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is fulfilled. However, when the deposit of any instrument specified in the declaration is, itself, accompanied by a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

(c) Any declaration made under paragraph (b) may be withdrawn, in its entirety or in part, at any time. Any such withdrawal shall become effective on the date on which the notification of withdrawal is received by the Director General."

10. Article 26 (Languages of the Treaty; Signature) should read as follows:

"Article 26

Languages of the Treaty; Signature

(1) [Original Texts; Official Texts] (a) This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(b) Official texts shall be established by the Director General, at the request of and after consultation with the interested Contracting Parties, in any other language that is an official language of a Contracting Party.

(2) [Time Limit for Signature] This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption."

[End]

TLT/DC/8

October 12, 1994 (Original: English)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Proposal by the Delegation of the European Communities

DRAFT ARTICLE 3(1)(a)(vii)

Article 3(1)(a)(vii) should be amended to read as follows:

"(vii) where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration of priority that may be required pursuant to Article 4 of the Paris Convention;"

[End]

TLT/DC/9

October 12, 1994 (Original: English)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Proposal by the Delegation of the European Communities

DRAFT ARTICLE 3(3)

Article 3(3) should be amended to read as follows:

"(3) [Language] Any Contracting Party may require that the application be in the language, or in one of the languages, admitted by its Office and comply with any other language requirement applicable to its Office."

[End]

TLT/DC/10

October 12, 1994 (Original: English)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Proposal by the Delegation of the European Communities

DRAFT RULE 9

Rule 9 should be amended to read as follows:

"For the purposes of Article 13(1)(c), the period during which the request for renewal may be presented and the renewal fee may be paid shall start at least six months before the date on which the renewal fee is due and shall end at the earliest six months after that date. If the request for renewal is presented and the renewal fees are paid after the date on which the renewal fee is due, any Contracting Party may subject the renewal to the payment of a surcharge."

[End]

TLT/DC/11

October 13, 1994 (Original: English)

Source: THE DELEGATION OF THE UNITED STATES OF AMERICA

Proposal by the Delegation of the United States of America

DRAFT ARTICLE 12

Article 12 should be amended by adding a new paragraph (6) to read as follows:

"(6) [Office Mistakes] The Office of a Contracting Party shall correct its own mistakes, according to its own procedures, ex officio or upon request, for no additional fee. Paragraphs (1) and (2) shall apply, mutatis mutandis, to the submission of a request to correct an office mistake."

[End]

TLT/DC/12

October 13, 1994 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Suggestions by the Director General of WIPO*

DRAFT TREATY

1. Item (xi) of Article 1 (Abbreviated Expressions) should read as follows:

"(xi) "Consultative Committee" means the Consultative Committee that is referred to in Article 17;"

2. Item (xii) (abbreviated expression for "Union") of Article 1 should be deleted.

3. Article 16 (Establishment of a Union) should be replaced by the following Article:

* The present document is a revision of document TLT/DC/7.

[TLT/DC/12, continued]

"Article 16 [new]

Obligation to Comply with the Paris Convention

Any Contracting Party shall comply with the provisions of the Paris Convention which concern trademarks."

4. Article 17 (Assembly) should be replaced by the following Article:

"Article 17 [new]

"Consultative Committee

(1) [Composition and Tasks] (a) A Consultative Committee consisting of the Contracting Parties shall be convened by the Director General in order to discuss possible amendments to the Regulations and any other matter of relevance to this Treaty.

(b) The Consultative Committee shall not take any decision and shall not proceed to any vote.

(2) [Observers] Interested intergovernmental organizations, other than Contracting Parties, and interested non-governmental organizations shall be invited as observers to meetings of the Consultative Committee."

5. Article 18 (International Bureau) should be deleted.

6. Article 19 (Regulations) should read as follows:

"Article 19

Regulations

(1) [Content] (a) The Regulations annexed to this Treaty provide rules concerning

(i) matters which this Treaty expressly provides to be "prescribed in the Regulations";

(ii) any details useful in the implementation of the provisions of this Treaty;

(iii) any administrative requirements, matters or procedures.

(b) The Regulations also contain Model International Forms.

[TLT/DC/12, continued]

(2) [Amending the Regulations] (a) After discussions in the Consultative Committee, the Director General may amend the Regulations and shall fix the date of entry into force of any amendment of the Regulations. Such date may not be earlier than six months after the amendment has been notified by the Director General to the Contracting Parties.

(b) Any Contracting Party may declare that it shall not be bound by a given amendment of the Regulations, provided that the declaration to that effect reaches the Director General before the date of entry into force of the amendment. In such a case, the Contracting Party shall remain bound by the provision of the Regulations which was binding it before the amendment of that provision entered into force.

(c) Any declaration made under subparagraph (b) may be withdrawn at any time.

(3) [Conflict Between the Treaty and the Regulations] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail."

7. Article 20 (Revision and Modification) should be deleted.

8. Article 21 (Protocols) should read as follows:

"Article 21

Protocols

(1) [Adoption of Protocols] For the purposes of further developing the harmonization of laws on marks, protocols may be adopted by a diplomatic conference.

(2) [Becoming Party to a Protocol] Only Contracting Parties may become party to any protocol adopted under paragraph (1)."

9. Article 22 (Becoming Party to the Treaty) should read as follows:

"Article 22

Becoming Party to the Treaty

(1) [Eligibility] The following entities may sign and, subject to paragraphs (2) and (3) and Article 23, become party to this Treaty:

(i) any State member of the Organization in respect of which marks may be registered with its own Office;

[TLT/DC/12, continued]

(ii) any _ intergovernmental organization which maintains an Office in which marks may be registered with effect in all its member States¹ or in those of its member States which are designated for such purpose in the relevant application,² provided that all those States are members of the Organization;

(iii) any State member of the Organization in respect of which marks may be registered only through the Office of another specified State that is a member of the Organization;³

(iv) any State member of the Organization in respect of which marks may be registered only through the _ Office maintained by an intergovernmental organization of which that State is a member;⁴

(v) any State member of the Organization in respect of which marks may be registered only through an Office common to a group of States members of the Organization.⁵

(2) [Ratification or Accession] Any entity referred to in paragraph (1) may deposit

(i) an instrument of ratification, if it has signed this Treaty,

(ii) an instrument of accession, if it has not signed this Treaty.

(3) [Effective Date of Deposit] (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be,

(i) in the case of a State referred to in paragraph (1)(i), the date on which the instrument of that State is deposited;

(ii) in the case of an intergovernmental organization, the date on which the instrument of that intergovernmental organization is deposited _;

(iii) in the case of a State referred to in paragraph (1)(iii), the date on which the following condition is fulfilled: the instrument of that State has been deposited and the instrument of the other, specified State has been deposited;

1. For example, the European Communities and the "Organisation africaine de la propriété intellectuelle" (OAPI).

2. For example, the African Regional Industrial Property Organization (ARIPO) once the Banjul Protocol on Marks is in force.

3. For example, the Holy See and San Marino.

4. For example, the 14 States members of OAPI.

5. For example, the Benelux States (Belgium, Luxembourg and the Netherlands).

[TLT/DC/12, continued]

(iv) in the case of a State referred to in paragraph (1)(iv), the date applicable under (ii), above;

(v) in the case of a State member of a group of States referred to in paragraph (1)(v), the date on which the instruments of all the States members of the group have been deposited.

(b) Any instrument of ratification or accession (hereinafter referred to as "instrument") of a State may be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one other State or one _ intergovernmental organization, or the instruments of two other States, or the instruments of one other State and one _ intergovernmental organization, specified by name and eligible to become party to this Treaty, is or are also deposited. The instrument containing such a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is fulfilled. However, when the deposit of any instrument specified in the declaration is, itself, accompanied by a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

(c) Any declaration made under paragraph (b) may be withdrawn, in its entirety or in part, at any time. Any such withdrawal shall become effective on the date on which the notification of withdrawal is received by the Director General."

10. Article 23 (Effective Date of Ratifications and Accessions) should read as follows:

"Article 23

Effective Date of Ratifications and Accessions

(1) [Instruments to Be Taken Into Consideration] For the purposes of this Article, only instruments of ratification or accession that are deposited by entities referred to in Article 22(1) and that have an effective date according to Article 22(3) shall be taken into consideration.

(2) [Entry Into Force of the Treaty] This Treaty shall enter into force three months after five States have deposited their instruments of ratification or accession.

(3) [Entry Into Force of Ratifications and Accessions Subsequent to the Entry Into Force of the Treaty] Any entity not covered by paragraph (2) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession."

[TLT/DC/12, continued]

11. Article 26 (Languages of the Treaty; Signature) should read as follows:

"Article 26

Languages of the Treaty; Signature

(1) [Original Texts; Official Texts] (a) This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(b) Official texts shall be established by the Director General, at the request of and after consultation with the interested Contracting Parties, in any other language that is an official language of a Contracting Party.

(2) [Time Limit for Signature] This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption."

12. The word "regional" should be deleted from all the provisions of the draft Treaty and the draft Regulations where it appears.

[End]

TLT/DC/13

October 13, 1994 (Original: English)

Source: THE DELEGATION OF ISRAEL

Proposal by the Delegation of Israel

DRAFT ARTICLE 6

Article 6 should be amended to read as follows:

"Where goods and/or services belonging to several classes of the Nice Classification have been included in one and the same application, such an application may result, at the option of a Contracting Party, in one and the same registration."

Explanatory Note

Where an assignment is made, a licence is granted or a charge levied in respect of different classes of goods and/or services to different persons, this may occasion administrative and procedural difficulties if all such goods and/or services are set out in one and the same registration.

[TLT/DC/13, continued]

In order to overcome such difficulties and in the light of the fact that Article 6, as it stands drawn, appears to be mandatory with no possibility of exercising any kind of reservation, the foregoing amendment to Article 6 is proposed which, in fact, will give an option to those States which, like Israel, fully support the provisions of Article 3(5) but might encounter procedural and administrative difficulties at the post-registration stage.

[End]

TLT/DC/14

October 13, 1994 (Original: French)

Source: THE DELEGATION OF ROMANIA

Proposal by the Delegation of Romania

DRAFT ARTICLE 4(3)(d)

Article 4(3)(d) should be amended to read as follows:

"(d) Where a communication is submitted to the Office by a person who refers to himself in the communication as a representative but where the Office is, at the time of receipt of the communication, not in possession of the required power of attorney, the Contracting Party may require that the power of attorney be submitted to its Office within the time limit fixed by the Contracting Party, subject to the minimum time limit prescribed in the Regulations. Where the power of attorney has not been submitted to the Office within the time limit fixed by it, the communication by the unauthorized person shall have no effect."

[End]

TLT/DC/15

October 13, 1994 (Original: French)

Source: THE DELEGATION OF ROMANIA

Proposal by the Delegation of Romania

DRAFT ARTICLE 10(1)

Article 10(1) should be amended by the addition of the following subparagraph:

[TLT/DC/15, continued]

"(f) Where the change in the address or name of the applicant or holder concerns two or more applications or, as the case may be, two or more registrations, the amount of the fee may vary according to the number of such applications or registrations."

[End]

TLT/DC/16

October 13, 1994 (Original: French)

Source: THE DELEGATION OF ROMANIA

Proposal by the Delegation of Romania

DRAFT RULE 9

Rule 9 should be amended by the addition of the following paragraph:

"Where the Contracting Party allows limitation of the list of goods and services as part of the procedure for requesting renewal, it may charge an additional fee."

[End]

TLT/DC/17

October 13, 1994 (Original: English)

Source: THE DELEGATION OF THE UNITED STATES OF AMERICA

Proposal by the Delegation of the United States of America

DRAFT ARTICLE 2(2)(a)

Article 2(2)(a) should be amended to read as follows:

"(a) This Treaty shall apply to marks relating to goods (trademarks) or services (service marks) or both goods and services, and Contracting Parties are obliged under this Treaty to register such marks."

[End]

TLT/DC/18

October 13, 1994 (Original: English)

Source: THE DELEGATION OF THE UNITED STATES OF AMERICA

Proposal by the Delegation of the United States of America

DRAFT RULE 7(3)

Rule 7(3) should be amended to read as follows:

"(3) [Date] A signature or seal may be required to be accompanied by an indication of the date on which the signing or sealing was effected."

[End]

TLT/DC/19

October 13, 1994 (Original: Spanish)

Source: THE DELEGATION OF SPAIN

Proposal by the Delegation of Spain

DRAFT ARTICLE 7(1)(a)

Article 7(1)(a) should be amended to read as follows:

"(1) [Division of Application] (a) Any application listing several goods and/or services (hereinafter referred to as "initial application") may,

- (i) at least until the decision by the Office on the registration of the mark,
- (ii) during any opposition proceedings against the decision of the Office to register the mark,
- (iii) during any appeal proceedings against the decision on the registration of the mark,

be divided by the applicant or at his request into two or more applications (hereinafter referred to as "divisional applications") by distributing among the latter the classes or the goods and/or services listed in the initial application, as provided by the law of the Contracting Party."

[End]

TLT/DC/20

October 13, 1994 (Original: Spanish)

Source: THE DELEGATION OF SPAIN

Proposal by the Delegation of Spain

DRAFT ARTICLE 11(5)

Article 11(5) (new) should be worded as follows:

"(5) Any Contracting Party may refuse recordal of a change of ownership where any appropriate fees have not been paid."

The present paragraph (5) should become paragraph (6), without amendment.

[End]

TLT/DC/21

October 13, 1994 (Original: Spanish)

Source: THE DELEGATION OF SPAIN

Proposal by the Delegation of Spain

DRAFT RULE 5

Rule 5 should be amended to read as follows:

"The time limit referred to in Article 4(3)(d) shall be counted from the date of receipt of the communication referred to in that Article by the Office of the Contracting Party concerned and shall not be less than one month _."

[End]

TLT/DC/22

October 13, 1994 (Original: Spanish)

Source: THE DELEGATION OF SPAIN

Proposal by the Delegation of Spain

DRAFT RULE 6(1)

Rule 6 should be amended to read as follows:

[TLT/DC/22, continued]

"(1) [Procedure in Case of Non-Compliance with Requirements] If the application does not, at the time of its receipt by the Office, comply with any of the applicable requirements of Article 5(1)(a) or (2)(a), the Office shall promptly invite the applicant to comply with such requirements within a time limit indicated in the invitation, which time limit shall be at least one month from the date of the invitation. Compliance with the invitation may be subject to the payment of a special fee. Even if the Office fails to send the said invitation, the said requirements remain unaffected."

[End]

TLT/DC/23

October 13, 1994 (Original: English)

Source: THE DELEGATION OF JAPAN

Proposal by the Delegation of Japan

DRAFT ARTICLE 7(2)

Article 7(2) should be amended to read as follows:

"(2) [Division of Registration] Paragraph (1) shall apply, mutatis mutandis, with respect to a division of a registration. Such a division shall be permitted

- (i) during any proceedings in which the validity of the registration is challenged before the Office by a third party,
- (ii) during any appeal proceedings against a decision taken by the Office during the former proceedings,

provided that a Contracting Party may exclude the possibility of the division of registrations if its law allows third parties to oppose the registration of a mark before the mark is registered, or if its law allows that the validity of the registration is challenged with respect to any of the goods and/or services."

[End]

TLT/DC/24

October 13, 1994 (Original: English)

Source: THE DELEGATION OF JAPAN

Proposal by the Delegation of Japan

DRAFT ARTICLE 13(1)(a)

Article 13(1)(a) should be amended to read as follows:

"(a) Any Contracting Party may require that the renewal of a registration be subject to the filing of a request and that such request contain some or all of the following indications:

- (i) [No change]
- (ii) [No change]
- (iii) the name and address of the interested party;
- (iv) [Present (iii)]
- (v) [Present (iv)]
- (vi) where the holder or the interested party has a representative, the name and address of that representative;
- (vii) [Present (vi)]
- (viii) [Present (vii)]
- (ix) [Present (viii)]."

[End]

TLT/DC/25

October 13, 1994 (Original: English)

Source: THE DELEGATION OF JAPAN

Proposal by the Delegation of Japan

DRAFT ARTICLE 24(5)

Article 24(5) should be amended to read as follows:

"(5) [Single Request for More Than One Application and/or Registration in Respect of a Change in Name and/or Address, a Change in Ownership or a Correction of a Mistake] Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding Article 10(1)(e), (2) and (3), Article 11(1)(h) and (3) and Article 12(1)(e) and (2), a request for the recordal of a change in name and/or address, a request for the recordal of a change in ownership and a request for the correction of a mistake may only relate to one application or one registration."

[End]

TLT/DC/26

October 13, 1994 (Original: English)

Source: THE DELEGATION OF HUNGARY

Proposal by the Delegation of Hungary

DRAFT ARTICLE 5(2)

Article 5(2) should be amended to read as follows:

"(2) [Permitted Additional Requirement] A Contracting Party may provide that no filing date shall be accorded until the required fees are paid."

Subparagrah (b) should be deleted.

[End]

TLT/DC/27

October 13, 1994 (Original: English)

Source: THE DELEGATION OF THE PHILIPPINES

Proposal by the Delegation of the Philippines

DRAFT ARTICLE 11(4)(iv)

Article 11(4)(iv) should be amended to read as follows:

"(iv) an indication that the holder transferred, entirely or in part, his business or the relevant goodwill to the new owner, as well as the furnishing of evidence to either effect, unless such indication and/or evidence is required by the law of a Contracting Party."

[End]

TLT/DC/28

October 14, 1994 (Original: English)

Source: THE DELEGATION OF THE UNITED STATES OF AMERICA

Proposal by the Delegation of the United States of America

DRAFT ARTICLE 13(1)(b)

Article 13(1)(b) should be amended by adding the following sentence at the end of the provision:

"Fees associated with evidence of use are not affected by this provision."

[End]

TLT/DC/29

October 14, 1994 (Original: English)

Source: THE DELEGATION OF THE UNITED STATES OF AMERICA

Proposal by the Delegation of the United States of America

DRAFT ARTICLE 15

Article 15 should be amended to read as follows:

[TLT/DC/29, continued]

"The Contracting Parties shall register, and apply the provisions of the Paris Convention which concern trademarks to, service marks."

[End]

TLT/DC/30

October 14, 1994 (Original: English)

Source: THE DELEGATION OF TURKEY

Proposal by the Delegation of Turkey

DRAFT ARTICLE 24(1) AND (9)

Article 24 (1) should be amended by adding a new subparagraph (b) to read as follows:

"(1) [Special Kinds of Marks] (a) Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding Article 2(1)(a) and (2)(a), any of the provisions of Articles 3(1) and (2), 5, 7, 11 and 13 shall not apply to associated marks, defensive marks or derivative marks. Such a reservation shall specify those of the aforementioned provisions to which the reservation relates.

(b) Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding Article 2(1)(a) and (2)(a), it does not apply any of the provisions of the Treaty concerning service marks."

Article 24 (9) should be amended to read as follows:

"(9) [Loss of Effect of Reservation] Any reservation under paragraphs (1)(b) to (6) shall lose its effect at the end of the fourth calendar year following the date on which the Contracting Party concerned becomes bound by this Treaty."

[End]

TLT/DC/31

October 14, 1994 (Original: French)

Source: THE DELEGATION OF CAMEROON

Proposal by the Delegation of Cameroon

DRAFT ARTICLE 13(1) AND (4)

1. Article 13(1)(a) should be amended to read as follows:

"(1) [Indications or Elements Contained in or Accompanying a Request for Renewal; Fee] (a) Any Contracting Party may require that the renewal of a registration be subject to the filing of a request and that such request contain some or all of the following indications:

- (i) [No change]
- (ii) [No change]
- (iii) [No change]
- (iv) [No change]
- (v) [No change]
- (vi) [No change]
- (vii) [No change]
- (viii) [No change]
- (ix) Furnishing of evidence concerning use of the mark."

2. Article 13(4)(iii) should be deleted.

[End]

TLT/DC/32

October 14, 1994 (Original: English)

Source: THE DELEGATION OF ISRAEL

Proposal by the Delegation of Israel

DRAFT ARTICLE 24(2)

1. The present Article 24(2) should become Article 24(2)(a).

[TLT/DC/32, continued]

2. Article 24(2)(b) (new) should be worded as follows:

"Any State or regional intergovernmental organization may declare through a reservation that, notwithstanding the provisions of Article 6, where goods and/or services belonging to several classes of the Nice Classification have been included in one and the same application, such an application shall result in two or more registrations in the register of marks provided that each and every such registration shall bear a clear reference to all other such registrations emanating from one and the same application, by means of an identification symbol adopted by the Contracting Party."

[End]

TLT/DC/33

October 14, 1994 (Original: English)

Source: THE INTERNATIONAL BUREAU

Suggestion by the International Bureau

DRAFT AGREED STATEMENT

It is suggested that the following agreed statement be included in the Records of the Conference:

"When adopting Articles 3(1)(c), 7(1)(b), 10(1)(b), 11(1)(g), 12(1)(d) and 13(1)(b) as well as Rule 6(1), the Diplomatic Conference understood that any Contracting Party was entirely free to establish the structure and the amount of the fees referred to in those provisions according to its needs and wishes. In particular, any Contracting Party is free

(i) to base the amount of the fee to be paid for an application on the number of classes to which the goods and/or services included in the application belong;

(ii) in the cases referred to in Articles 10(1)(e), 11(1)(h) and 12(1)(e), to decide that the amount of the fee to be paid in respect of the request concerned shall vary according to the number of the applications, of the registrations or of the applications and registrations, as the case may be, that are covered by the request; and

(iii) to require an additional fee or a higher renewal fee where the Contracting Party allows, under Article 13(1)(a)(vii), that a limitation of the list of goods and/or services be made in the request for renewal itself and such limitation is requested."

[End]

TLT/DC/34

October 17, 1994 (Original: Spanish)

Source: THE DELEGATION OF SPAIN

Proposal by the Delegation of Spain

DRAFT ARTICLE 24

1. Article 24(8) (new) should read as follows:

"(8) [Division of Application and Registration] Any State or regional intergovernmental organization that has made a reservation under Article 24(2) may declare, notwithstanding the provisions of Article 7(1), that no divisional application may be submitted to its Office until four years have elapsed since the reservation under Article 24(2) has ceased to have effect for that State or regional intergovernmental organization."

2. Article 24(8) (according to the Basic Proposal) and Articles 24(9) and 24(10) should be renumbered 24(9), 24(10) and 24(11), respectively.

TLT/DC/35

October 17, 1994 (Original: French)

Source: THE DELEGATION OF CAMEROON

Proposals by the Delegation of Cameroon

DRAFT ARTICLE 24(9)

Proposal No. 1

Paragraph (9) of Article 24 should be completed with the following sentence:

"This time limit may, however, be extended to 10 calendar years for developing countries."

Proposal No. 2

Paragraph (9) of Article 24 should be completed with the following sentence:

"At the end of this transitional period, the Director General shall convene a review conference to make an assessment of the application of the Treaty."

[End]

TLT/DC/36

October 17, 1994 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Text drafted by the Director General of WIPO at the request of the Delegations of Australia, Brazil, Canada, Indonesia, Israel, Japan, Mexico, New Zealand, the Philippines and the United States of America

DRAFT ARTICLE 17(4)

The text so drafted is based on the text of Article IX(1) of the Agreement Establishing the World Trade Organization as well as on footnotes 1 and 2 appearing under that Article. The texts of Article IX(1) of that Agreement and its footnotes appear in the Annex to the present document.

[End]

TLT/DC/37

October 19, 1994 (Original: English)

Source: THE DELEGATION OF CANADA

Proposal by the Delegation of Canada

DRAFT ARTICLES 17(4) AND 23(2)

1. Article 17(4) should be worded as follows:

"(4) [Decision-Making] (a) The Assembly shall endeavor to make its decisions by consensus. Consensus shall be considered as attained if no Contracting Party, present at the meeting when the decision is taken, formally objects to the proposed decision. Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.

(b) At meetings of the Assembly, each Contracting Party shall have one vote. Where intergovernmental organizations referred to in Article 22(1)(ii) exercise their right to vote, they shall have a number of votes equal to the number of their member States which are Contracting Parties and are present at the time of voting. The number of votes of intergovernmental organizations and their member States shall in no case exceed the number of the member States of each such intergovernmental organization that are Contracting Parties. Where a Contracting Party is a member of more than one intergovernmental organization, its right to vote may be exercised one time only."

[TLT/DC/37, continued]

2. Article 23(2) should be amended to read as follows:

"(2) [Entry Into Force of the Treaty] This Treaty shall enter into force three months after the date on which five States have deposited their instruments of ratification or accession."

[End]

TLT/DC/38

October 19, 1994 (Original: English)

Source: THE CREDENTIALS COMMITTEE

Report prepared by the Secretariat

REPORT OF THE CREDENTIALS COMMITTEE

1. The Credentials Committee (hereinafter referred to as "the Committee"), established on October 10, 1994, by the Diplomatic Conference for the Conclusion of the Trademark Law Treaty, met on October 19, 1994.
2. The Delegations of the following States members of the Committee attended the meeting: Czech Republic, Denmark, Iran (Islamic Republic of), Portugal, Republic of Korea, Sudan, Trinidad and Tobago (7).
3. The Committee unanimously elected Mr. Ali Ahmed Sahlool (Sudan) as Chairman and Mr. Mohammad Hossein Moayedoddin (Iran (Islamic Republic of)), Mr. José Mota Maia (Portugal) and Mrs. Annette Gonzales (Trinidad and Tobago) as Vice-Chairmen.
4. In accordance with Rule 9(1) of the Rules of Procedures adopted by the Conference on October 10, 1994 (hereinafter referred to as "the Rules of Procedure"), the Committee examined the credentials, full powers, letters or other documents of appointment presented for the purposes of Rules 6 and 7 by delegations of States members of the International (Paris) Union for the Protection of Industrial Property (hereinafter referred to as "the Paris Union"), participating in the Conference in accordance with Rule 2(1)(i) of the Rules of Procedure (hereinafter referred to as "Member Delegations"), by delegations of States members of the World Intellectual Property Organization (WIPO) other than those members of the Paris Union, participating in the Conference in accordance with Rule 2(1)(ii) of the Rules of Procedure (hereinafter referred to as "Observer Delegations"), and by the delegations of the European Communities and the Organisation africaine de la propriété intellectuelle, participating in the Conference in accordance with Rule 2(1)(iii) of the Rules of Procedure (hereinafter referred to as "Special Delegations"), as well as by the representatives of intergovernmental and non-governmental organizations, participating in the Conference in accordance with Rule 2(1)(iv) of the Rules of Procedure (hereinafter referred to as "representatives of Observer Organizations").

[TLT/DC/38, continued]

5. On the basis of the information provided by the Secretariat as to the practice prevailing in other diplomatic conferences and in particular in diplomatic conferences convened by the World Intellectual Property Organization (WIPO), the Committee decided to recommend to the Conference, meeting in Plenary, that the following criteria should be applied by the Committee in its examination of, and should govern the decision of the Conference on, the credentials, full powers, letters or other documents presented for the purposes of Rules 6 and 7 of the Rules of Procedure:

(i) as far as any State is concerned, its delegation's credentials and full powers should be accepted if they were signed by that State's Head of State, Head of Government or Minister for Foreign Affairs; credentials, but not full powers, should be accepted if they were contained in a note verbale or letter of that State's Permanent Representative in Geneva or in a note verbale of that State's Ministry of Foreign Affairs or its Permanent Mission in Geneva and should not otherwise be accepted, in particular, a communication emanating from a Minister other than the Minister for Foreign Affairs, or from an official other than the Permanent Representative or Chargé d'affaires a.i. in Geneva, should not be treated as credentials;

(ii) as far as any Organization is concerned, its representative's letter or other document of appointment should be accepted if it is signed by the Head (Director General, Secretary General or President) or Deputy Head or official responsible for external affairs of the Organization;

(iii) facsimile and telex communications should be accepted if, as to their source, the requirements stated in points (i) and (ii) were fulfilled.

6. Pending a final decision by the Conference, meeting in Plenary, on the said criteria, the Committee decided to apply those criteria to the documents received by it.

7. Accordingly, the Committee found in order

(a) as far as Member Delegations are concerned,

(i) the credentials and full powers (that is, credentials for participating in the Conference and full powers to sign the Trademark Law Treaty) of the delegations of the following 37 States:

Austria
Belgium
Chile
Côte d'Ivoire
Cuba
Czech Republic
Democratic People's
Republic of Korea
Denmark
Germany

Monaco
Morocco
New Zealand
Poland
Portugal
Republic of Korea
Republic of Moldova
Russian Federation
Slovakia
Slovenia

[TLT/DC/38, continued]

Greece	South Africa
Hungary	Spain
Indonesia	Swaziland
Israel	Switzerland
Italy	Togo
Kenya	Turkey
Liechtenstein	Ukraine
Lithuania	United Kingdom
Malta	Viet Nam

(ii) the credentials (without full powers) of the delegations of the following 44 States:

Algeria	Lesotho
Argentina	Luxembourg
Australia	Mexico
Belarus	Mongolia
Bolivia	Netherlands
Brazil	Norway
Bulgaria	Paraguay
Cameroon	Philippines
Canada	Romania
China	Senegal
Croatia	Sri Lanka
Cyprus	Sudan
Dominican Republic	Sweden
Egypt	The former Yugoslav Republic of Macedonia
El Salvador	Trinidad and Tobago
Estonia	Tunisia
Finland	United Republic of Tanzania
France	United States of America
Iran (Islamic Republic of)	Uruguay
Iraq	Zambia
Ireland	Zimbabwe
Japan	
Latvia	

(b) as far as Observer Delegations are concerned, the credentials of the delegations of the following six States:

Colombia	Pakistan
Ecuador	Peru
Guatemala	Venezuela

(c) as far as the Special Delegations are concerned, the credentials of the Delegation of the European Communities and the Delegation of the Organisation africaine de la propriété intellectuelle (2);

(d) as far as the representatives of Observer Organizations are concerned, the letters or documents of appointment of representatives of the following Observer Organizations (listed in the alphabetical order of the name of the organization according to its name in French if it exists or, if it does not exist, according to its name in another language):

[TLT/DC/38, continued]

- (i) intergovernmental organizations: United Nations (UN); General Agreement on Tariffs and Trade (GATT); Benelux Trademark Office (BBM); Organization of African Unity (OAU) (4);
- (ii) non-governmental organizations: Brazilian Association of Industrial Property (ABPI); European Communities Trade Mark Association (ECTA); European Association of Industries of Branded Products (AIM); Hungarian Trademark Association (HTA); International Association for the Protection of Industrial Property (AIPPI); International Chamber of Commerce (ICC); Committee of National Institutes of Patent Agents (CNIPA); European Chemical Industry Council (CEFIC); Federation of German Industry (BDI); International Federation of Industrial Property Attorneys (FICPI); Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI); Institute of Trade Marks Agents (ITMA); International Trademark Association (INTA); Japan Intellectual Property Association (JIPA); Japan Patent Attorneys Association (JPAA); Japan Trademark Association (JTA); International League on Competition Law (LIDC); Arab Society for the Protection of Industrial Property (ASPIP); Union of Industrial and Employers' Confederations of Europe (UNICE); Union of European Practitioners in Industrial Property (UEPIP) (20).

8. The Committee noted that, in accordance with established practices, a designation of representation implied, in principle, in the absence of any express reservation, the right of signature, and that it should be left to each delegation to interpret the scope of its credentials.

9. The Committee recommends to the Conference, meeting in Plenary, to accept the credentials and full powers of the delegations mentioned in paragraph 7(a), above, the credentials of the delegations mentioned in paragraph 7(b) and (c), above, and the letters or documents of appointment of the representatives of the organizations mentioned in paragraph 7(d), above.

10. The Committee expressed the wish that the Secretariat should bring Rules 6 ("Credentials and Full Powers"), 7 ("Letters of Appointment") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of Member Delegations or Observer Delegations not having presented credentials or full powers and of the representative of Observer Organizations not having presented letters or other documents of appointment.

11. The Committee decided that a report on its meeting should be prepared by the Secretariat and issued as its report, to be presented by the Chairman of the Committee to the Conference, meeting in Plenary.

12. The Committee authorized its Chairman to examine any further communications concerning Member Delegations, Observer Delegations, Special Delegations or Observer Organizations which might be received by the Secretariat after the close of its meeting and to report thereon to the Conference, meeting in Plenary, unless the Chairman deemed it necessary to convene the Committee to examine and report on those communications.

[End]

TLT/DC/39

October 20, 1994 (Original: English)

Source: THE DELEGATION OF GERMANY

Proposal by the Delegation of Germany

RECOMMENDATION OF THE DIPLOMATIC CONFERENCE

The following recommendation should be adopted:

"The Diplomatic Conference
for the Conclusion of the Trademark Law Treaty

recommends

that the competent bodies of WIPO should, in future budgets, specially provide funds for the purposes of offering to developing countries assistance in the implementation of the Trademark Law Treaty, in particular, as regards the adaptation of their laws and regulations and the modernization of the equipment and procedures of their trademark registries."

[End]

TLT/DC/40

October 20, 1994 (Original: English)

Source: THE DELEGATION OF GERMANY

Proposal by the Delegation of Germany

DRAFT TREATY

1. Article 17 (Assembly) should be replaced by the following Article:

"Article 17 [new]

"Consultative Committee

(1) [Composition and Tasks] (a) A Consultative Committee consisting of the Contracting Parties shall be convened by the Director General in order to discuss possible amendments to the Regulations and any other matter of relevance to this Treaty.

[TLT/DC/40, continued]

(b) The Consultative Committee shall not take any decision and shall not proceed to any vote.

(2) [Observers] Member States of the Organization, not being Contracting Parties, interested intergovernmental organizations, other than Contracting Parties, and interested non-governmental organizations shall be invited as observers to meetings of the Consultative Committee."

2. Article 18 (International Bureau) should be deleted.

3. Article 19 (Regulations) should read as follows:

"Article 19

Regulations

(1) [Content] (a) The Regulations annexed to this Treaty provide rules concerning

(i) matters which this Treaty expressly provides to be "prescribed in the Regulations";

(ii) any details useful in the implementation of the provisions of this Treaty;

(iii) any administrative requirements, matters or procedures.

(b) The Regulations also contain Model International Forms.

(2) [Amending the Regulations] (a) After discussions in the Consultative Committee, the Director General may amend the Regulations and shall fix the date of entry into force of any amendment of the Regulations. Such date may not be earlier than six months after the amendment has been notified by the Director General to the Contracting Parties.

(b) Any Contracting Party may declare that it shall not be bound by a given amendment of the Regulations, provided that the declaration to that effect reaches the Director General before the date of entry into force of the amendment. In such a case, the Contracting Party shall remain bound by the provision of the Regulations which was binding it before the amendment of that provision entered into force.

(c) Any declaration made under subparagraph (b) may be withdrawn at any time.

(3) [Conflict Between the Treaty and the Regulations] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail."

4. Article 20 (Revision and Modification) should be deleted.

[TLT/DC/40, continued]

5. Article 21 (Protocols) should read as follows:

"Article 21

Protocols

(1) [Adoption of Protocols] For the purposes of further developing the harmonization of laws on marks, protocols may be adopted by a diplomatic conference.

(2) [Becoming Party to a Protocol] Only Contracting Parties may become party to any protocol adopted under paragraph (1)."

[End]

TLT/DC/41 Rev.

October 25, 1994 (Original: English)

Source: THE DELEGATIONS MEMBERS OF THE STEERING COMMITTEE

Proposals by the Delegations members of the Steering Committee

DRAFT TREATY

1. Items (xi) and (xii) (abbreviated expressions for "Assembly" and for "Union") of Article 1 should be deleted.
2. Article 3(2)(iii), Article 4(3)(e)(iii), Article 10(1)(a)(iii), Article 11(1)(a)(iii), Article 12(1)(a)(iii) and Article 13(2)(iii) should be deleted.
3. Article 16 (Establishment of a Union) should be deleted.
4. Article 17 (Assembly) should be deleted.
5. Article 18 (International Bureau) should be deleted.
6. Paragraphs (2) and (3) of Article 19 (Regulations) should be deleted.
7. Article 20 (Revision and Modification) and Article 21 (Protocols) should be replaced by the following Article:

"Article 20

Revision; Protocols

- (1) [Revision] This Treaty may be revised by a diplomatic conference.

[TLT/DC/41 Rev., continued]

(2) [Protocols] For the purposes of further developing the harmonization of laws on marks, protocols may be adopted by a diplomatic conference in so far as those protocols do not contravene the provisions of this Treaty."

[End]

TLT/DC/42

October 25, 1994 (Original: English)

Source: THE CHAIRMAN OF THE CREDENTIALS COMMITTEE

Report of the Chairman of the Credentials Committee

Since the meeting of the Credentials Committee on October 19, 1994 (see document TLT/DC/38), the full powers of the Delegation of Luxembourg, the full powers of the Delegation of the United States of America and the full powers of the Delegation of Uruguay have been received.

[End]

TLT/DC/43

October 26, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE DRAFTING COMMITTEE

Draft Treaty submitted by the Drafting Committee to the Main Committee

Editor's Note: This document contains the text of the draft Treaty as submitted to the Main Committee by the Drafting Committee. It is not reproduced hereunder. The text of this document is the same as the Final Text adopted by the Diplomatic Conference (see the odd numbered pages from 13 to 73 of these Records), except that Article 22(9) of the Final Text does not appear in this document.

[End]

TLT/DC/44

October 26, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE DRAFTING COMMITTEE

Draft Regulations submitted by the Drafting Committee to the Main Committee

Editor's Note: This document contains the text of the draft Regulations as submitted to the Main Committee by the Drafting Committee. It is not reproduced hereunder. The text of this document is the same as the Final Text (see the odd numbered pages from 77 to 177 of these Records).

[End]

TLT/DC/45

October 26, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE DRAFTING COMMITTEE

Draft Recommendation submitted by the Drafting Committee to the Main Committee

Editor's Note: This document contains the text of the draft Recommendation submitted by the Drafting Committee to the Main Committee. It is not reproduced hereunder. The text of this document is the same as the Final Text adopted by the Diplomatic Conference (see page 181 of these Records).

[End]

TLT/DC/46

October 26, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE DRAFTING COMMITTEE

Draft Agreed Statements submitted by the Drafting Committee to the Main Committee

Editor's Note: This document contains the text of the draft Agreed Statements submitted by the Drafting Committee to the Main Committee. It is not reproduced hereunder. The text of this document is the same as the Final Text adopted by the Diplomatic Conference (see pages 184 to 185 of these Records), except that Agreed Statement 2 of the Final Text does not appear in this document and draft Agreed Statements 2 to 5 appear as Agreed Statements 3 to 6, respectively, in the Final Text.

TLT/DC/47

October 27, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE MAIN COMMITTEE

Draft Treaty submitted by the Main Committee to the Conference,
meeting in Plenary

Editor's Note: This document contains the text of the Treaty as adopted by the Main Committee on October 26, 1994. It is not reproduced hereunder. The text of this document is the same as the Final Text adopted by the Diplomatic Conference (see the odd numbered pages from 13 to 73 of these Records).

[End]

TLT/DC/48

October 27, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE MAIN COMMITTEE

Draft Regulations submitted by the Main Committee to the Conference,
meeting in Plenary

Editor's Note: This document contains the text of the Regulations as adopted by the Main Committee on October 26, 1994. It is not reproduced hereunder. The text of this document is the same as the Final Text adopted by the Diplomatic Conference (see the odd numbered pages from 77 to 177 of these Records).

[End]

TLT/DC/49

October 27, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE MAIN COMMITTEE

Draft Recommendation submitted by the Main Committee to the Conference,
meeting in Plenary

Editor's Note: This document contains the text of the Recommendation as adopted by the Main Committee on October 26, 1994. It is not reproduced

hereunder. The text of this document is the same as the Final Text adopted by the Diplomatic Conference (see page 181 of these Records).

[End]

TLT/DC/50

October 27, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE MAIN COMMITTEE

Draft Agreed Statements submitted by the Main Committee to the Conference,
meeting in Plenary

Editor's Note: This document contains the text of the Agreed Statements as adopted by the Main Committee on October 26, 1994. It is not reproduced hereunder. The text of this document is the same as the Final Text adopted by the Diplomatic Conference (see pages 184 and 185 of these Records).

[End]

TLT/DC/51

October 27, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE DRAFTING COMMITTEE

Draft Final Act submitted by the Drafting Committee to the Conference,
meeting in Plenary

Editor's Note: This document contains the text of the Final Act as submitted to the Plenary of the Diplomatic Conference by the Drafting Committee. It is not reproduced hereunder. The text of this document is the same as the Final Text adopted by the Diplomatic Conference (see page 193 of these Records).

[End]

TLT/DC/52

October 27, 1994 (Original: English)

Source: THE CHAIRMAN OF THE CREDENTIALS COMMITTEE

Second Report of the Chairman of the Credentials Committee

Since the meeting of the Credentials Committee on October 19, 1994 (see document TLT/DC/38) and the first report of the Chairman of the Credentials Committee (see document TLT/DC/42), the full powers of the Delegation of China have been received.

[End]

TLT/DC/53

October 28, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE PLENARY OF THE DIPLOMATIC CONFERENCE

Trademark Law Treaty and Regulations Under the Trademark Law Treaty
adopted by the Diplomatic Conference on October 27, 1994

Editor's Note: Document TLT/DC/53 contains the text of the Trademark Law Treaty and the Regulations under the Trademark Law Treaty adopted by the Diplomatic Conference on October 27, 1994. It is reproduced on the odd numbered pages from 13 to 177 of these Records.

[End]

TLT/DC/53 Corr.

November 30, 1994 (Original: English)

Source: THE INTERNATIONAL BUREAU

Corrigendum to Document TLT/DC/53

In Article 22(8) of the Trademark Law Treaty, as contained in document TLT/DC/53, the expression "declaration made under paragraphs (1) to (6)" is to be replaced, in subparagraphs (a), (b) and (c), by the expression "declaration made under paragraphs (1) to (5)."

[End]

TLT/DC/54

October 28, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE PLENARY OF THE DIPLOMATIC CONFERENCE

Recommendation adopted by the Diplomatic Conference on October 27, 1994

Editor's Note: Document TLT/DC/54 contains the text of the Recommendation adopted by the Diplomatic Conference on October 27, 1994. It is reproduced on page 181 of these Records.

[End]

TLT/DC/55

October 28, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE PLENARY OF THE DIPLOMATIC CONFERENCE

Agreed Statements adopted by the Diplomatic Conference on October 27, 1994

Editor's Note: Document TLT/DC/55 contains the text of the Agreed Statements adopted by the Diplomatic Conference on October 27, 1994. It is reproduced on pages 184 and 185 of these Records.

[End]

TLT/DC/56

October 28, 1994 (Original: English/Arabic/
Chinese/French/
Russian/Spanish)

Source: THE SECRETARIAT OF THE CONFERENCE

Final Act adopted by the Diplomatic Conference on October 27, 1994

Editor's Note: Document TLT/DC/56 contains the Final Act adopted by the Diplomatic Conference on October 27, 1994. It is reproduced on page 193 of these Records.

[End]

TLT/DC/DC/1

October 18, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Basic Proposals for the Treaty

DRAFT ARTICLES 1 TO 15

Editor's Note: Document TLT/DC/DC/1 contains the text of Articles 1 to 15 of the draft Treaty submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced hereunder.

[End]

TLT/DC/DC/2

October 18, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft Regulations

Editor's Note: Document TLT/DC/DC/2 contains the text of the draft Regulations submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced hereunder.

[End]

TLT/DC/DC/3 Rev.

October 24, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft Agreed Statements

Editor's Note: Document TLT/DC/DC/3 Rev. contains the text of the draft Agreed Statements submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced hereunder.

[End]

TLT/DC/DC/4

October 18, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft Model International Forms

Editor's Note: Document TLT/DC/DC/4 contains the text of the draft Model International Forms submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced hereunder.

[End]

TLT/DC/DC/5

October 20, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic ConferenceDRAFT ARTICLES 16, 22, 23, 24, 24**bis**, 25, 26, 27

Editor's Note: Document TLT/DC/DC/5 contains the text of Articles 16, 22, 23, 24, 24**bis**, 25, 26 and 27 of the draft Treaty submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced hereunder.

[End]

TLT/DC/DC/6

October 24, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft submitted to the Drafting Committee by the Secretariat of the Diplomatic ConferenceDRAFT ARTICLES 1 to 15, 22, 23, 24, 24**bis**, 25, 26, and 27

Editor's Note: Document TLT/DC/DC/6 contains the text of Articles 1 to 15, 22, 23, 24, 24**bis**, 25, 26 and 27 of the draft Treaty submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced hereunder.

[End]

TLT/DC/DC/7

October 24, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft Regulations

Editor's Note: Document TLT/DC/DC/7 contains the text of the draft Regulations submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced hereunder.

[End]

TLT/DC/DC/8

October 25, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft Final Act

Editor's Note: Document TLT/DC/DC/8 contains the text of the draft Final Act submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced hereunder.

[End]

TLT/DC/DC/9

October 25, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft Treaty

Editor's Note: Document TLT/DC/DC/9 contains the text of the draft Treaty submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced hereunder.

[End]

TLT/DC/INF/1

October 28, 1994 (Original: français/English)

Source: THE SECRETARIAT OF THE CONFERENCE

List of Participants

Editor's Note: This document contains the list of participants. It is not reproduced here. For the list of participants, see pages 521 to 551 of these Records.

[End]

TLT/DC/INF/2

May 4, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

History of the Preparations for the Trademark Law Treaty

1. The present document is a brief summary of the history of the proposed "Trademark Law Treaty," that is, the Treaty whose draft is contained in documents TLT/DC/3 and TLT/DC/4 of the World Intellectual Property Organization (WIPO). The texts (Treaty and Regulations) contained in those documents form the basis for the discussions in the Diplomatic Conference and constitute, under the proposed Rules of Procedure, the "basic proposal."
2. The history of the proposed Treaty started with the adoption by the competent Governing Bodies of WIPO and the International Union for the Protection of Industrial Property (Paris Union) of a proposal, made in 1987 by the Director General of WIPO to the Governing Bodies of WIPO that work should start on a draft treaty on the harmonization on certain legislative provisions for the protection of trademarks, which was expected to deal, in particular, with the definition of trademarks and service marks; the formalities of applications for registration; the registration of service marks; the protection of well-known marks; the duration of the validity of the registration and renewals; the requirements of actual use of the mark; the use of the international classifications of Nice and Vienna (see WIPO document AB/XVIII/2, Annex A, item PRG.04(1)(a)).
3. The preparation of the proposed Treaty was undertaken by the WIPO "Committee of Experts on the Harmonization of Laws for the Protection of Marks" (hereinafter referred to as the "Committee of Experts"), which held its first session in Geneva from November 27 to December 1, 1989. Following a

[TLT/DC/INF/2, continued]

decision that had been taken by the Governing Bodies of WIPO and the Unions administered by WIPO during their twentieth series of meetings (September 25 to October 4, 1989), in addition to the member States of the Paris Union which were represented in the Committee of Experts, the European Communities participated in the Committee of Experts as a full member (see WIPO document AB/XX/20, paragraph 163). Between 1989 and 1993, the Committee of Experts held six sessions: one in 1989, one in 1990, two in 1992 and two in 1993.

4. The work of the Committee of Experts was inspired at the beginning by the wish to achieve harmonization of substantive and procedural matters of trademark law. Accordingly, the provisions for the proposed Treaty which were prepared by WIPO for the first two sessions of the Committee of Experts (see documents HM/CE/I/2 and HM/CE/II/2) dealt with the following matters: registrable signs; absolute grounds for refusal of registration; conflicts with prior rights; conditions and effects of registration of marks for goods and marks for services; international classification; filing date; certain requirements concerning registration; use as a condition of registration; notification of grounds for refusal and observations; expeditious processing of the application; publication of applications and registrations; changes in registrations.

5. When the Governing Bodies of WIPO approved WIPO's program for the 1992-93 biennium (which provided for the continuation of the work of the Committee of Experts), note was taken of a resolution which had been adopted by the Council of Presidents of the International Association for the Protection of Industrial Property (AIPPI) at its meeting in Lucerne, Switzerland, on September 20, 1991. In this resolution, AIPPI strongly recommended that the member States of the Paris Union initiate appropriate procedures to arrive as soon as practicable at an international harmonization of formalities in the field of trademarks (see WIPO document HM/CE/III/2, Annex). In this connection, the Governing Bodies approved a statement by the Director General of WIPO that the preparatory documents of the International Bureau to be presented to the Committee of Experts would contain proposals for the simplification of formalities (see WIPO document AB/XXII/22, paragraphs 180 and 181). Accordingly, the International Bureau submitted to the Committee of Experts for its third session (which took place from June 1 to 5, 1992) the substantive provisions of a draft treaty the scope of which was limited to the simplification of administrative procedures. Administrative procedures were defined as procedures before a national or regional office dealing with the registration of marks and mainly relating to the following issues (the article in parentheses indicates the corresponding article in the proposed treaty):

- the form and contents of an application for registration (Article 3);
- the appointment, or the termination of the appointment, of a representative in respect of one or several applications or registrations (Article 4);

[TLT/DC/INF/2, continued]

- the form and content of requests for the recording of a change in names or addresses (Article 10) or in ownership (Article 11) relating to one or several applications or registrations and for the correction of the same mistake (Article 12) relating to one or several applications or registrations.

6. The Committee of Experts, in its third session, approved the proposed change of scope of the draft treaty. In the subsequent sessions of the Committee of Experts (fourth session from November 16 to 20, 1992, fifth session from June 7 to 18, 1993, and sixth session from November 29 to December 10, 1993), in particular, the following additional issues were addressed:

- kind and nature of the marks to which the Treaty should apply (Article 2);
- requirements which an application has to meet in order to obtain a filing date (Article 5);
- division of application or registration (Article 7);
- form and contents of requests for renewal (Article 13).

7. In addition, the Committee of Experts considered, from its fifth session onwards, a set of model international forms. The forms relate to the following:

- application for the registration of a mark;
- power of attorney;
- request for the recordal of change(s) in name(s) and/or address(es);
- request for the recordal of a change in ownership in respect of registration(s) and/or applications for registration of marks;
- certificate of transfer in respect of registration(s) and/or application(s) for registration of marks;
- transfer document in respect of registration(s) and/or applications for registration of marks;
- request for the correction of mistake(s) in registration(s) or application(s) for registration of marks;
- request for the renewal of registration.

8. The basic proposal for the Treaty includes 16 substantive articles. In addition to the matters referred to in paragraphs 5 to 7, above, those substantive articles contain abbreviated expressions (Article 1) and deal with

[TLT/DC/INF/2, continued]

multi-class registrations (Article 6), signatures (Article 8), the classification of goods and services (Article 9), observations in case of intended refusal (Article 14) and service marks (Article 15). The basic proposal for the Regulations contains nine Rules as well as eight model international forms.

9. The basic proposal for the Treaty also contains 12 articles dealing with administrative and other miscellaneous matters, as well as the final clauses. They are: Article 16 (Establishment of a Union), Article 17 (Assembly), Article 18 (International Bureau), Article 19 (Regulations), Article 20 (Revision and Modification), Article 21 (Protocols), Article 22 (Becoming Party to the Treaty), Article 23 (Effective Date of Ratifications and Accessions), Article 24 (Reservations), Article 25 (Denunciation of the Treaty), Article 26 (Languages of the Treaty; Signature) and Article 27 (Depositary). These draft articles were considered for the first time at the fifth session of the Committee of Experts (June 1993).

10. The 12 articles referred to in the preceding paragraph are similar to those in other treaties administered by WIPO, with the exception of Articles 17, 21 and 22. Article 17(4) deals with the question of the right to vote in the Assembly of the Union. Because the Committee of Experts could not agree on a common position, Article 17(4) of the basic proposal contains two alternatives: Alternative A gives to each Contracting Party that is a State one vote in the Assembly. Alternative B gives one vote in the Assembly also to a Contracting Party that is a regional intergovernmental organization which maintains a regional Office in which marks may be registered with effect in all its member States, and whose member States maintain Offices in which marks may be registered with effect in their territory. Article 21, which provides for the conclusion of protocols, is inspired by the evolutionary nature of the process of harmonization manifested by the history of the preparations of the proposed Treaty. Article 22 addresses the question of who may become party to the Treaty. Under paragraph (1)(ii) of this Article, any regional intergovernmental organization which maintains a regional Office in which marks may be registered with effect in all its member States, provided that all those States are party to the Paris Convention, may become party to the Treaty. Regional intergovernmental organizations that would be eligible to become a party to the Treaty in accordance with this provision are the Organisation Africaine de la Propriété Intellectuelle (OAPI) and, once they maintain a regional Office in which marks may be registered with effect in all their member States, the European Communities.

11. The work of the Committee of Experts generated much interest. Already its first session was attended by 68 delegations and representatives of non-governmental organizations. A table showing the attendance in the meetings of the Committee of Experts is provided in the Annex to this document.

12. In all the meetings of the Committee of Experts, the International Bureau acted as secretariat. Moreover, in preparation of the first session of the Committee of Experts, the International Bureau conducted an extensive study concerning questions related to trademark law in some or all of the member

[TLT/DC/INF/2, continued]

States of the Paris Convention. This information is contained in document HM/CE/I/INF/1 Rev.. However, the most important task of the Secretariat consisted in preparing, for each session, beginning with the second session (June 1990), the draft texts of the Treaty and, from the fifth session (June 1993) onwards, the draft texts of the Regulations and the draft model international forms to be considered by the Committee of Experts, always accompanied by explanatory notes. The volume of those texts and notes is considerable: an average of over 110 pages for each session, with a total of almost 700 pages for the six sessions.

13. Towards the end of each session, the Secretariat prepared a draft report, summarizing the discussions and any conclusions reached on specific points. The average number of paragraphs in each of the six reports is more than 200, so that the total number of paragraphs of the six reports amounts to over 1200.

14. It should be noted that the discussions in each meeting were among three main groups of participants: the delegations of governments and intergovernmental organizations, the representatives of non-governmental organizations, and the Secretariat, which explained and, if the trend of the discussion so required, modified its draft proposal. The participation of the representatives of non-governmental organizations reflected the views of the users of the trademark system, since such representatives were mainly trademark lawyers or agents, both corporate counsel and independent practitioners.

15. The preparatory work for the Treaty was completed in a Preparatory Meeting for the Diplomatic Conference, which took place from December 7 to 10, 1993, and which dealt with the proposed agenda and the proposed Rules of Procedure of the Diplomatic Conference as well as with the invitations and organizational matters concerning the Diplomatic Conference. All the required decisions were taken by the Preparatory Meeting. Final adoption of the agenda and the Rules of Procedure is within the competence of the Diplomatic Conference.

16. The evolution of the proposed Treaty was not only reflected by the documents of the Secretariat distributed to each government and interested organization but also by the publication, in the monthly issues of the WIPO periodical Industrial Property, of a Note on each of the sessions of the Committee of Experts (see Industrial Property, 1990, pp. 101 and 375; 1992, p. 244; 1993 pp. 89 and 289; 1994, page 71) and on the Preparatory Meeting (see Industrial Property, 1994, page 89). Thus, not only the invitees to the meetings but also the general public were kept informed of the development of the proposed Trademark Law Treaty.

17. Through a gradual process, the proposed Trademark Law Treaty came to address many important issues in the field of administrative procedures concerning marks for which there exist divergencies in treatment among national and regional laws, but for which harmonization is desired. It is intended that the proposed Treaty achieve worldwide harmonization and

[TLT/DC/INF/2, continued]

simplification of administrative procedures relating to marks which would be for the benefit of trademark offices, trademark owners and their professional representatives.

ANNEX

Participants in Meetings of the Committee of Experts on
the Harmonization of Law for the Protection of Marks

I. MEMBERS

State	Meeting					
	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
Algeria	X	X	X			X
Argentina	X				X	X
Australia			X	X	X	X
Austria	X	X	X	X	X	X
Bangladesh			X	X		
Belarus						X
Belgium	X	X	X	X	X	X
Bolivia						X
Brazil	X		X	X	X	X
Bulgaria	X		X	X	X	X

[TLT/DC/INF/2, continued]

State	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
Cameroon	X					
Canada	X	X	X	X	X	X
Chile			X	X	X	X
China	X	X	X		X	X
Côte d'Ivoire				X	X	
Croatia						X
Cuba				X		X
Czechoslovakia (until December 31, 1992)		X	X			
Czech Republic (until January 1, 1993)					X	X
Democratic People's Republic of Korea	X	X	X	X	X	X
Denmark	X	X	X	X	X	X
Dominican Republic				X		
Egypt	X			X	X	X
Finland	X	X	X	X	X	X
France	X	X	X	X	X	X

[TLT/DC/INF/2, continued]

State	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
German Democratic Republic (until October 2, 1990)	X	X				
Germany	X	X	X	X	X	X
Ghana						X
Greece	X	X	X	X		
Hungary	X	X	X	X	X	X
Indonesia		X	X	X	X	X
Iraq	X	X				
Ireland	X	X	X	X	X	X
Italy	X	X	X	X	X	X
Japan	X	X	X	X	X	X
Kenya				X	X	X
Latvia					X	X
Lesotho			X		X	X
Libya	X	X			X	X
Luxembourg					X	X

[TLT/DC/INF/2, continued]

State	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
Malawi						X
Malta				X	X	X
Mexico	X	X	X	X	X	X
Morocco			X	X	X	X
Netherlands	X	X	X	X	X	X
New Zealand		X	X	X	X	X
Nigeria	X					X
Norway	X	X	X	X	X	X
Philippines			X			X
Portugal	X	X	X	X	X	X
Republic of Korea	X	X	X	X	X	X
Romania		X	X	X	X	X
Russian Federation (since December 25, 1991)			X	X	X	X
Senegal	X					X
Slovenia				X	X	X

[TLT/DC/INF/2, continued]

State	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
Soviet Union (until December 24, 1991)	X	X				
Spain	X	X	X	X	X	X
Sri Lanka	X					X
Swaziland			X	X	X	X
Sweden	X	X	X	X	X	X
Switzerland	X	X	X	X	X	X
The former Yugoslav Republic of Macedonia						X
Trinidad and Tobago						X
Tunisia	X					X
Turkey	X	X				X
Ukraine				X	X	X
United Kingdom	X	X	X	X	X	X
United States of America	X	X	X	X	X	X
Uruguay						X
Viet Nam			X			

[TLT/DC/INF/2, continued]

State	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
Yugoslavia	X				X	
Zimbabwe					X	
European Communities	X	X	X	X	X	X
Total	41	35	41	43	48	61

II. OBSERVERS

State	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
Angola		X	X	X		
Chile	X	X				
Colombia				X		X
Ecuador		X				X
Guatemala				X		
Honduras				X		
India	X	X	X	X	X	
Lithuania			X	X	X	

[TLT/DC/INF/2, continued]

State	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
Namibia				X		
Pakistan						X
Panama	X					
Peru				X		X
Saudi Arabia						X
Swaziland		X				
Thailand				X	X	X
United Arab Emirates			X		X	
Total	3	5	4	9	4	6

III. INTERGOVERNMENTAL ORGANIZATIONS

Organization	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
United Nations Conference on Trade and Development (UNCTAD)					X	X

[TLT/DC/INF/2, continued]

Organization	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
General Agreement on Tariffs and Trade (GATT)	X			X		
African Intellectual Property Organization (OAPI)						X
Benelux Trademark Office (BBM)	X	X	X	X	X	X
Organization of African Unity (OAU)		X	X	X		
Total	2	2	2	3	2	3

IV. NON-GOVERNMENTAL ORGANIZATIONS

Organization	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
European Association of Industries of Branded Products (AIM)	X	X	X	X	X	X
International Association for the Protection of Industrial Property (AIPPI)	X	X	X	X	X	X

[TLT/DC/INF/2, continued]

Organization	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
Asian Patent Attorneys Association (APAA)	X		X	X	X	X
Inter American Association of Industrial Property (ASIPI)						X
International Association for the Advancement of Teaching and Research in Industrial Property (ATRIP)			X			
Federation of German Industry (BDI)	X	X	X		X	
Benelux Association of Trade mark and Design Agents (BMM)	X	X				
Center for International Industrial Property Studies (CEIPI)	X	X				
Chartered Institute of Patent Agents (United Kingdom) (CIPA)	X	X				X
Committee of National Institutes of Patent Agents (CNIPA)	X	X	X	X		X

[TLT/DC/INF/2, continued]

Organization	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
Deutsche Vereinigung für Gewerblichen Rechtsschutz und Urheberrecht e.V. (Germany) (DVGR)	X		X			
European Communities Trade Mark Practi- tioner's Association (ECTA)	X	X	X	X	X	X
European Federation of Pharmaceutical Industries' Associations (EFPIA)	X	X				
International Federation of Industrial Property Attorneys (FICPI)	X	X	X	X	X	X
Hungarian Trademark Association (HTA)			X	X	X	X
International Advertising Association (IAA)		X				
International Chamber of Commerce (ICC)	X	X	X	X	X	X

[TLT/DC/INF/2, continued]

Organization	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
International Federation of Pharmaceutical Manufacturers' Associations (IFPMA)	X	X				
Italian National Institute for the Defense, Identification and Certification of the Authenticity of Trademarks (INDICAM)	X	X				
The International Trademark Association (INTA) (former United States Trademark Association (USTA))	X	X	X	X	X	X
Institute of Trade Mark Agents (United Kingdom) (ITMA)	X	X	X		X	
Japan Patent Association (JPA)	X	X	X	X	X	X
The Patent Attorneys Association of Japan (JPAA)				X	X	X
Japan Trademark Association (JTA)			X	X	X	X
Licensing Executives Society (LES)	X	X				

[TLT/DC/INF/2, continued]

Organization	Nov/Dec 1989	June 1990	June 1992	Nov 1992	June 1993	Nov/Dec 1993
International League on Competition Law (LIDC)		X	X			
Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI)	X	X	X		X	X
Pharmaceutical Trade Marks Group (United Kingdom) (PTMG)		X				
Trade Marks, Patents and Designs Federation (United Kingdom) (TMPDF)	X	X	X			
Union of European Practitioners in Industrial Property (UEPIP)	X	X	X		X	
Union of Industrial and Employers' Confederations of Europe (UNICE)	X	X	X	X	X	
Union of Manufac- turers for the International Protec- tion of Industrial and Artistic Property (UNIFAB)	X		X	X	X	X
Total	24	24	20	14	17	16

[End]

TLT/DC/INF/2 Corr.

October 25, 1994 (Original: English/French)

Source: THE INTERNATIONAL BUREAU

Corrigendum to Document TLT/DC/INF/2

On page 5, in paragraph 12, on the sixth line from the beginning, the reference should read HM/CE/I/INF/1 Rev..

[End]

TLT/DC/INF/3 Rev.

October 26, 1994 (Original: français/English)

Source: THE SECRETARIAT OF THE CONFERENCE

Officers and Committees

Editor's Note: This document contains a list of officers and members of the Conference, the Credentials Committee, the Main Committee, the Drafting Committee and the Steering Committee. For the full list of officers of the Conference, see pages 552 and 554 of these Records.

[End]

TLT/DC/INF/4

October 28, 1994 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

List of Proposals for Amendment of Provisions of the Basic Proposal
(in the Order of the Provisions) Published during the Diplomatic Conference

Article 2 (Marks to Which the Treaty Applies):

Paragraph (2) (Kinds of Marks):

- United States of America (TLT/DC/17)

[TLT/DC/INF/4, continued]

Article 3 (Application):

Paragraph (1) (Indications or Elements Contained in or Accompanying an Application; Fee):

- European Communities (TLT/DC/8)

Paragraph (3) (Language):

- European Communities (TLT/DC/9)

Article 4 (Representation; Address for Service):

Paragraph (3) (Power of Attorney):

- Romania (TLT/DC/14)

Article 5 (Filing Date):

Paragraph (2) (Permitted Additional Requirement):

- Hungary (TLT/DC/26)

Article 6 (Single Registration for Goods and/or Services in Several Classes):

- Israel (TLT/DC/13)

Article 7 (Division of Application and Registration):

Paragraph (1) (Division of Application):

- Spain (TLT/DC/19)

Paragraph (2) (Division of Registration):

- Japan (TLT/DC/23)

Article 10 (Changes in Names or Addresses):

Paragraph (1) (Changes in the Name or Address of the Holder):

- Romania (TLT/DC/15)

[TLT/DC/INF/4, continued]

Article 11 (Change in Ownership):

Paragraph (4) (Prohibition of Other Requirements):

- Philippines (TLT/DC/27)

Paragraph (5) (Evidence):

- Spain (TLT/DC/20)

Article 12 (Correction of a Mistake):

- United States of America (TLT/DC/11)

Article 13 (Duration and Renewal of Registration):

Paragraph (1) (Indications or Elements Contained in or Accompanying a Request for Renewal; Fee):

- Japan (TLT/DC/24)
- United States of America (TLT/DC/28)
- Cameroon (TLT/DC/31)

Paragraph (4) (Prohibition of Other Requirements):

- Cameroon (TLT/DC/31)

Article 15 (Service Marks):

- United States of America (TLT/DC/29)

Article 17 (Assembly):

- Germany (TLT/DC/40)

Paragraph (4) (Voting):

- Canada (TLT/DC/37)

Article 19 (Regulations):

- Germany (TLT/DC/40)

[TLT/DC/INF/4, continued]

Article 21 (Protocols):

- Germany (TLT/DC/40)

Article 23 (Effective Date of Ratifications and Accessions):

Paragraph (2) (Entry Into Force of the Treaty):

- Canada (TLT/DC/37)

Article 24 (Reservations):

- Spain (TLT/DC/34)

Paragraph (1) (Special Kinds of Marks):

- Turkey (TLT/DC/30)

Paragraph (2) (Single Application for Goods and Services in Several Classes):

- Israel (TLT/DC/32)

Paragraph (5) (Single Request for More Than One Application and/or Registration in Respect of a Change in Name and/or Address, a Change in Ownership or a Correction of a Mistake):

- Japan (TLT/DC/25)

Paragraph (9) (Loss of Effect of Reservation):

- Turkey (TLT/DC/30)
- Cameroon (TLT/DC/35)

Rule 5 (Details Concerning Representation):

- Spain (TLT/DC/21)

Rule 6 (Details Concerning the Filing Date):

Paragraph (1) (Procedure in Case of Non-Compliance with Requirements):

- Spain (TLT/DC/22)

[TLT/DC/INF/4, continued]

Rule 7 (Signature and Other Means of Self-Identification):

Paragraph (3) (Date):

- United States of America (TLT/DC/18)

Rule 9 (Details Concerning Duration and Renewal):

- European Communities (TLT/DC/10)
- Romania (TLT/DC/16)

Recommendation

- Germany (TLT/DC/39)

[End]

TLT/DC/INF/5 Rev.

November 30, 1994 (Original: français/English)

Source: THE SECRETARIAT OF THE CONFERENCE

List of documents of the Diplomatic Conference

Editor's Note: This document contains the final list of documents of the Diplomatic Conference. It is not reproduced here. For the full list of the Conference documents, see pages 197 to 204 of these Records.

[End]

TLT/DC/INF/6 Rev.

October 28, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Signature of the Final Act of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty

Editor's Note: This document contains the list of the signatories of the Final Act of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty. It is reproduced on page 193 of these Records.

[End]

TLT/DC/INF/7 Rev.

October 28, 1994 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Signature of the Trademark Law Treaty

Editor's Note: This document contains the list of the signatories of the Trademark Law Treaty adopted at the Diplomatic Conference. It is reproduced on page 189 of these Records.

[End]

SUMMARY MINUTES

PLENARY OF THE DIPLOMATIC CONFERENCE

President: Mr. M. Vargas Campos (Mexico)

Secretary: Mr. François Curchod (WIPO)

<u>First Meeting</u> <u>Monday, October 10, 1994</u> <u>Morning</u>

Opening of the Conference

1.1 Mr. BOGSCH (Director General of WIPO) opened the Diplomatic Conference for the Conclusion of the Trademark Law Treaty and welcomed the participants.

1.2 The Director General referred to the draft Agenda contained in document TLT/DC/1, and stated that the draft Agenda would serve as a guide until the meeting reached the question of the adoption of the Agenda, which was presently item 4 of the draft Agenda.

Consideration and Adoption of the Rules of Procedure

1.3 The Director General then asked the meeting to turn to a consideration of the draft Rules of Procedure contained in document TLT/DC/2.

1.4 He took up Rules 1 to 41 which, in the absence of any discussion, he declared to be adopted.

2. Mr. CURCHOD (WIPO) explained that the Secretariat would draw up provisional summary minutes during the Conference in order to speed up the procedure. That practice had been successfully adopted for the first part of the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned.

3.1 There being no other discussion, the Director General declared Rule 42 adopted and turned to Rules 43 to 49 which, in the absence of discussion, he declared to be adopted.

3.2 The Director General declared the totality of the Rules of Procedure to be adopted.

3.3 The Director General invited representatives of various groups of delegations to meet in informal meetings to consult on the questions of officers in general, membership of the Drafting Committee, and membership of the Credentials Committee.

3.4 There being no objections to the procedure proposed by the Director General, the Director General adjourned the meeting so that the informal groups could convene.

[Suspension]

Election of the President of the Conference

4. The Director General resumed the meeting and turned to item 3 of the Agenda, namely, the election of the President of the Conference. The Director General presented the name of His Excellency Ambassador Marcelo Vargas Campos of Mexico. No interventions were made. He declared Mr. Vargas Campos to be elected unanimously as President. He then congratulated Mr. Vargas Campos and asked him to take the chair designated for the President.

5.1 The PRESIDENT thanked all the participants at the Diplomatic Conference for the trust they had placed in him to preside over the Conference. He viewed that trust as an honor to his country, Mexico, for the efforts it had made to strengthen its intellectual property system. He recalled that only ten days previously an amendment to the Industrial Property Law of Mexico had come into force, which incorporated the international trends in this field, including those deriving from the TRIPS Agreement and the NAFTA Agreement. The Treaty to be negotiated at this Conference would bring about important improvements in the field of trademarks, to the benefit of all the users of the trademark system.

5.2 He stated that the objective of the Trademark Law Treaty was to harmonize the national and regional legislations in the field of marks, mainly in respect of formalities and procedure. Existing legislations contained a number of burdensome requirements to obtain and maintain trademark protection which varied from country to country and which were not indispensable for the proper functioning of the trademark system. It was the purpose of the proposed Treaty to eliminate such requirements so as to make the obtaining and maintaining of protection simpler and cheaper. It was obvious that such improvements would especially benefit the owners of marks. The changes would also be advantageous to their professional representatives, trademark agents and attorneys, whose tasks would be simplified and who could expect to handle more cases as a result since the simplifications brought about by the proposed Treaty would stimulate the owners of marks to file more applications in a larger number of countries. For all those reasons, the draft Trademark Law Treaty had received unanimous support from the interested circles throughout the world.

5.3 He added that trademark offices would also benefit from the simplification brought about by the Treaty. It had to be recognized, however, that offices would have to modify their practices in a number of respects, which would not always be easy and would take time. That was particularly true where extensive adaptations of computerized systems would be required. Consequently, the proposed Treaty envisaged that, for the most difficult cases, transitional periods be given to implement the necessary changes, thus allowing full harmonization to be achieved in the fields covered by the Treaty within a maximum period of eight years.

5.4 He noted that a political problem which had nothing to do with trademark law and practice had to be solved in order for the Diplomatic Conference to achieve success. All the participants, therefore, had to do their best in a spirit of cooperation to find a solution, acceptable to everyone, to the so-called voting rights issue. Otherwise the world trademark community would be deprived of the major improvements expected from the adoption and entry into force of the Trademark Law Treaty.

5.5 At a time when the prominent role of the World Intellectual Property Organization as the norm-setting forum in the field of intellectual property was to be reaffirmed, not only by statements made in international meetings but also by facts, it was essential that the Trademark Law Treaty be adopted in a form widely acceptable. That was essential for the future of the Organization. Political will would be required to adopt the proposed Treaty at this Diplomatic Conference, and also to bring it into force and implement it in national and regional legislation.

5.6 The PRESIDENT adjourned the meeting.

<u>Second Meeting</u> <u>Monday, October 10, 1994</u> <u>Afternoon</u>

Consideration and Adoption of the Agenda

6.1 The PRESIDENT opened the second meeting of the Plenary of the Diplomatic Conference, and turned to a consideration of item 4 (Consideration and Adoption of the Agenda).

6.2 In the absence of any discussion, he declared the Agenda to be adopted.

Election of the Vice-Presidents of the Conference Election of the Members of the Credentials Committee Election of the Members of the Drafting Committee

7.1 The PRESIDENT stated that he was now ready to report on the informal discussions concerning elections. He invited the Deputy Director General of WIPO to present the proposal under these three agenda items.

8.1 Mr. CURCHOD (WIPO) presented the proposal for a package under the three agenda items. As far as the Vice-Presidents of the Conference were concerned, it was proposed that they be 10, rather than nine, and it was proposed that they be the delegates from the following countries: Australia, Chile, Finland, Germany, Indonesia, Malawi, Philippines, Romania, Russian Federation, and Togo.

8.2 As far as the Credentials Committee was concerned, it was proposed that the Chairman be Mr. Sahloul from Sudan, that there be three Vice-Chairmen and that they be delegates from the Islamic Republic of Iran, Portugal, and Trinidad and Tobago, and that the other three members be the Czech Republic, Denmark and the Republic of Korea.

8.3 As far as the Main Committee was concerned, it was proposed that the Chairman be Mr. Sugden from the United Kingdom and the two Vice-Chairmen be delegates from Côte d'Ivoire and Cuba.

8.4 As far as the Drafting Committee was concerned, it was proposed that it should consist of 14, rather than 10, members, that the Chairman be Mr. Kirk from the United States of America, that there should be three, rather than two, Vice-Chairmen, that the three Vice-Chairmen be delegates from Cameroon, France and Spain and that the other 10 elected members be the following: Argentina, Brazil, Canada, China, the Democratic People's Republic of Korea, Egypt, Japan, South Africa, Ukraine and the European Communities.

8.5 It was recalled that the Chairman of the Main Committee would be an ex officio member of the Drafting Committee.

8.6 Mr. Curchod stated that if those proposals had the approval of the Conference, the Rules of Procedure would have to be modified accordingly.

9. The PRESIDENT requested clarification as to the required amendments to the Rules of Procedure.

10.1 Mr. CURCHOD (WIPO) explained that the provisions of two of the Rules of Procedure would have to be amended, that was to say Rule 13(2), concerning the Drafting Committee, and Rule 15(1) and (2), concerning the Officers.

10.2 In the case of Rule 13(2), the words "ten members elected" would have to be replaced by the words "14 members elected."

10.3 In the case of Rule 15(1), the words "nine Vice-Presidents" would have to be replaced by the words "ten Vice-Presidents."

10.4 In the case of paragraph (2) of Rule 15, it would have to be divided into two separate sentences: "The Credentials Committee and the Drafting Committee shall each elect a Chairman and three Vice-Chairmen." and "The Main Committee shall elect a Chairman and two Vice-Chairmen."

11.1 The PRESIDENT then asked whether there were any objections to the proposals. There being no objections, he declared the proposals to be adopted by consensus.

11.2 He stated that, in light of the fact that the Credentials Committee had just been elected, consideration of item 8 of the Agenda would be postponed.

Opening Declarations

12. The PRESIDENT then turned to item 9 of the Agenda (Opening Declarations by Delegations and by representatives of Observer Organizations).

13. Practically all delegations and representatives of organizations which took the floor expressed their warm congratulations to Mr. Vargas Campos of the Delegation of Mexico on his unanimous election as President of the Diplomatic Conference and the confidence that, thanks to his competence and experience, he would lead the Conference to a successful result. In addition, they congratulated Dr. Bogisch, the Director General of WIPO, and the staff of the International Bureau of WIPO for the excellence of the preparatory documents and of the conference services.

14.1 Mr. ALVAREZ (Spain) expressed his Delegation's appreciation of the relevance of this Diplomatic Conference for effective protection of important industrial property rights such as marks. Marks allowed enterprises to make their goods and services known to consumers, thereby becoming the symbol and guarantee of the quality of the relevant goods and services. He welcomed with satisfaction the conclusion of international instruments such as the draft Treaty, which had the objective of simplifying and ensuring maximum protection for marks on the international level.

14.2 He recalled that Spain had been at the vanguard of the process for the international harmonization of trademark law. Spain had hosted the Diplomatic Conference which adopted the first international convention in the field of marks, namely, the Madrid Agreement of 1891 Concerning the International Registration of Marks, of which Spain was one of the first to accede. Following the same tradition, Spain had hosted, almost one century later, in 1989, a Diplomatic Conference at which the Protocol to the Madrid Agreement was adopted. That instrument completed the system of international registration of marks by facilitating the entry of new States to the Madrid Union and opening to a larger number of users the benefits of a system which simplifies the protection of marks in different countries. Spain had in this respect again taken the lead by becoming the first country to have ratified the Madrid Protocol. As a further contribution of Spain to the international protection of marks, the headquarters of the Office for Harmonization in the Internal Market had been established in Spain. The importance of that Office, the Community Trademark Office, could not be understated considering its role in providing a large number of users with the possibility of protecting their marks in the entire territory of the European Communities under the same legal system.

14.3 He added that positive support should be given to any initiative, such as the proposed Treaty, which aimed at simplifying procedures and reducing costs for the registration of marks. However, the necessary balance of all the interests involved should not be overlooked. From the standpoint of the applicant, speediness of procedure was essential, but third parties affected should also enjoy certain rights which should be guaranteed. Spain had undertaken important efforts to offer a balanced system for the protection of marks in which all applications were subjected to an examination for prior rights and an opposition procedure was provided. The system was pioneering in establishing clear deadlines binding the Office to decide its cases within stated periods.

14.4 Consistent with its traditional course of action in favor of the protection of marks, Spain was now prepared to support the Trademark Law Treaty, which would bring about an important simplification of administrative formalities and would therefore constitute a great leap forward towards the better protection of trademark rights at the international level. A few questions remained, however, which presented some difficulties and which would imply substantial amendments for Spanish legislation. In particular, the multiple-class registration system which the Treaty would establish as a mandatory obligation was noteworthy. However, since the Spanish Delegation was aware of an international trend which clearly favored the multiclass system, the necessary efforts would be undertaken to adjust fully to the new system as a contribution by Spain toward the harmonizing spirit of the draft Treaty. He felt that it would be encouraging, and would demonstrate a disposition towards harmonization on behalf of the rest of the delegations, if the alignment of Spain on the multiclass system were facilitated by contemplating conditions which would allow for an orderly adoption of such a system, such as an extension of the transitional period of the reservation provided for the adoption of the multiclass system and the possibility of requiring that the division of applications and registration be made on the basis of the classes of the Nice Classification.

15.1 Mr. GROSSENBACHER (Switzerland) stated that Switzerland had always shown great interest in WIPO's activities in the field of the harmonization of intellectual property law in general and of trademark law in particular. That was witnessed by the part played by Switzerland in the conclusion of the Protocol Relating to the Madrid Agreement as also in the preparatory work on the Draft Patent Law Harmonization Treaty. He stressed the importance of a Treaty on trademark law for the free movement of goods and noted that it was vital for an exporting country such as his own.

15.2 As for the basic proposal for the envisaged Treaty, Mr. Grossenbacher welcomed the work done by both the Committee of Experts and the Secretariat and felt it constituted an excellent basis for discussions. His Delegation was obliged to regret the fact that the Draft Treaty was restricted to procedural rules and would have preferred that the substantive rules also be harmonized. He nevertheless noted a number of advantages to be obtained from the Treaty, particularly the model international forms and the provisions aimed at removing the certification formalities for signatures.

15.3 Mr. Grossenbacher expressed his satisfaction that the basic proposal was well balanced and remarked that the Committee of Experts had chosen the right approach. He reaffirmed that his Delegation would do its utmost to ensure that the Conference had a successful outcome and hoped that the political issues involved in the Treaty would not jeopardize it and would not overshadow the technical and practical matters for the benefit of the users of marks.

16.1 Mr. EKSTEEN (South Africa) recalled that South Africa became a member of the World Intellectual Property Organization in March 1975. Prior to that, South Africa had already been a party to the Paris Convention and the Berne Convention. He stated that the exclusion during the past 17 years from participation in WIPO meetings and activities ended on July 29 of this year

and that the Delegation's presence and participation here today was an honor for South Africa. He pointed out that the draft Trademark Law Treaty was being considered in order to further international trade and that South Africa was committed to free trade and that it believed in open participation and competition in the market place in a manner which respects and ensures intellectual property rights without creating undue barriers. He stated that South Africa was thus fully supportive of any proposal which would grant the nationals of Convention countries ready access to the Register of Trademarks of South Africa and, by reciprocity, grant nationals of South Africa ready access to the registries of other member countries.

16.2 He noted that the harmonization of intellectual property laws internationally was an end to be desired and that the work that had gone into the preparation of the draft Treaty demonstrated that desire on the part of all those countries that had been involved in its preparation.

16.3 He recalled that President Mandela, in addressing a joint sitting of the United States Congress last week, spoke of a new world order and referred to the importance of cooperative effort in the world to uplift those who most needed uplifting. He noted that South Africa had only recently moved into a truly democratic situation and in doing so South Africa was trying to give equal opportunity to all its people in their new-found emancipation. He emphasized that South Africa was very conscious of still existing inequities in its own society and in the world and he pointed out that, if the Trademark Law Treaty were to promote trade for the benefit of those who need benefit and not to benefit those who are least in need, it was essential that compromises be made on points which tend to favor the more powerful over the less powerful. He emphasized that agreement and consensus could be reached only if compromises were made and that his Delegation was here in a spirit of negotiation, ready to make the reasonable concessions that were needed to produce a treaty which all could support and from which all would benefit.

16.4 He pointed out that in spite of South Africa's past isolation and exclusion from full participation in WIPO, and more particularly the process that produced this draft Treaty and its Regulations, his country attempted to keep abreast of international trends and to accommodate them in the domestic legislation relating to intellectual property. He stated that, although the present Trademarks Act and Regulations complied in most respects with the proposals before that Conference, it had not been left at that. He confirmed that a new Trademarks Act, No. 194 of 1993, was adopted in South Africa in 1993 and would come into force on January 1, 1995. He stated that the new Act accorded with the requirements of the General Agreement on Tariffs and Trade and was almost completely consonant with the provisions of the draft Trademark Law Treaty. He stated that, if that Conference should adopt Article 6 of the draft Treaty in its present form, South Africa would probably not exercise its rights in terms of Article 24(2) and (9) of the draft Treaty but would rather amend its draft Regulations to harmonize them with the Treaty.

16.5 He stated that South Africa accepted that its readmission to meetings and conferences of WIPO not only created opportunities, but also imposed a number of responsibilities. He declared that South Africa, within the limitations imposed by human and financial resources at its disposal, intended to play its part.

16.6 He noted that South Africa had a special role to play in Africa which applied more particularly to the States in the Southern African region. He emphasized that South Africa had experience and expertise to share with its fellow Africans, that it was strategically well-placed to assist WIPO in its development programs, and that it could participate in technology and expertise exchanges with the rest of Africa. On the other hand, South Africa also had a great deal to learn as it interacted with its peers in Africa, and it could benefit from the programs of WIPO. He stated that South Africa, in the spirit of the ideas of President Mandela to which he had referred earlier, had the desire that intellectual property laws and treaties should benefit not only those who already are well-provided for, but also enable the less privileged to derive active benefit as human resources are developed in accord with those laws and treaties for the benefit of all.

16.7 He reiterated that South African domestic trademark laws accorded with what it was hoped would be achieved at the Conference. He stated that, in general, the laws of South Africa complied with the provisions of most international treaties on the protection of intellectual property, even though it may not be party to all of them. He added that the laws were up-to-date, that a new Designs Act would become effective on January 1, 1995, that the Copyright Act had been updated in 1992, and that the Patents Act was no older than that of the United Kingdom. He recalled that South Africa acknowledged the need for protection against unfair competition and noted that South Africa had a strong Institute of Intellectual Property Lawyers and that the statutory Advisory Committee on Intellectual Property advised the Government on an ongoing basis.

16.8 He stated that the readmission of South Africa to the international fold would enable it to join other conventions in addition to those that it already was a member of since the inception of the country, namely the Paris and Berne Conventions. He stated that steps had already been taken to join others such as the Budapest Treaty and that the Patent Cooperation Treaty was being considered by the relevant authorities. South Africa had in this regard received a kind offer from the Director General of WIPO to assist in examining the desirability of South Africa joining the treaties administered by WIPO.

17. Mr. OLSSON (Sweden) stated that the efforts to establish a treaty on the simplification of the procedures for obtaining and maintaining protection of trademarks and service marks through registration were very much appreciated by his country. He stated that his Delegation considered it extremely important to facilitate and streamline registration and renewal procedures, thereby decreasing costs, to the benefit of applicants and trademark owners. He emphasized that the private sector and interested circles in Sweden welcomed the adoption of the Trademark Law Treaty, and hoped that it would be in such a form that it was acceptable to all the major trading nations of the world. His Delegation would generally be able to accept the contents of the basic proposal. In particular, he welcomed the harmonization of the requirements for according a filing date, the provisions on multiclass applications, the prohibition of the requirement of certification in many instances and the proposed elimination of, in his view, superfluous requirements for renewal. He also welcomed draft Article 15, which required that the provisions of the Paris Convention be applied to

service marks. Although he did not envisage the need for his country to make reservations, he recognized that this need could exist for other Contracting Parties requiring a transitional period in respect of the entering into force of certain provisions in the Treaty.

18.1 Mr. ROMERO (Chile) stated that his Delegation attended the Diplomatic Conference with a constructive spirit to adopt a Trademark Law Treaty which would harmonize the administrative aspects of the different national laws dealing with trademark rights. While he reiterated his Delegation's preference for a treaty which dealt with the substantive aspects of trademark law, he nevertheless felt that the draft Treaty was of interest to a country like Chile which had experienced a considerable increase in trademark applications and whose enterprises had begun to seek protection for their trademarks abroad in accordance with the internationalization of the country's economy. He believed that the draft Treaty would alleviate the work of national offices and have a positive economic effect on Chilean companies operating abroad.

18.2 He noted, however, that his Delegation still had serious difficulties regarding a number of the provisions of the draft Treaty, in particular to those which related to certain formalities which characterized his country's legal system and to some of the articles relating to norms of international public law. With regard to Article 17(4) of the proposed Treaty, his Delegation favored Alternative A, although he believed that a compromise solution should be sought in order to accommodate all the parties involved. He also expressed some concerns with respect to the provisions relating to amendment of the Treaty. He concluded by stating that his Delegation could not commit its position in advance with regard to the whole of the draft Treaty, but that it would depend on the evolution and the spirit of compromise of the Conference.

19.1 MR. BESELER (European Communities) stated that the European Community welcomed the convening of a Diplomatic Conference for the conclusion of the Trademark Law Treaty. Observing that the European Community had always supported any multilateral initiative to harmonize intellectual property laws at worldwide level, he placed emphasis on the two major qualities of the initiative taken by WIPO. To begin with, the ever growing part played by trademarks within the economies of the developed and developing countries was a factor that contributed to promoting trade in goods and services and establishing new trade flows between States. The second was the fact that, for the first time at international level, it had been envisaged to simplify the procedural rules with respect to marks and, consequently, remove an obstacle to the registration of marks. He further noted that the proposed harmonization would not fail to encourage enterprises to make a greater use of marks in a greater number of countries.

19.2 Mr. Beseler noted that the Treaty, in conjunction with other existing conventions, particularly the Madrid Agreement and, above all, the Protocol Relating to that Agreement, would contribute to achieving considerable progress both with respect to the registration and renewal of marks on a worldwide scale and with respect to their international protection. He concluded by stating that the European Community intended to make an active and constructive contribution to an outcome giving satisfaction to all delegations.

20.1 Mr. MOTA MAIA (Portugal) expressed his satisfaction at participating in the Diplomatic Conference, but nevertheless regretted that it was not dealing with the harmonization of substantive matters. He further stressed the importance of simplifying the administrative procedures relating to marks and noted that the Conference was taking place at a very important juncture for the international registration of marks. He pointed out that the existing system had given full satisfaction to its users and that the Madrid Protocol had been drawn up to enable certain other countries to also participate in that Agreement. He referred to the importance of the Community Trademark and, greeting the establishment of the Office for Harmonization in the Internal Market, he expressed the wish that it would soon be possible to effect registrations with that Office. He then noted that there were various provisions of importance with respect to marks in the Agreement on the Uruguay Round.

20.2 Mr. Mota Maia pointed out that his Delegation attached particular importance to the success of the Conference. Although he was aware of the difficulties that could be experienced by some countries, he nevertheless felt that a spirit of compromise would lead the Conference to a successful outcome. To conclude, he emphasized that Portugal would endeavor to develop a constructive spirit and that it wished every success for the Conference.

21. Mr. OUSHAKOV (Russian Federation) stated that the goal of the discussions was harmonization and unification of the administrative procedures relating to registrations of trademarks, prolongation of their validity, introduction of modifications and transfer. He expressed the view that the work of the Diplomatic Conference was aimed at making the above-mentioned procedures universal and less expensive, and at making the activities of national offices more flexible. He expressed the readiness of his Delegation to work on the draft Treaty in the spirit of constructive cooperation and compromise in order to reach a positive result. He concluded by expressing the hope that the joint work would result in successful completion of the Diplomatic Conference, which in turn would contribute to the development of economic cooperation between the States party to the future Treaty.

22. Mr. NIEDERLEITHINGER (Germany) stated that Germany attached great significance to the simplification of procedures for obtaining trademark protection and administration of trademark rights. He was convinced that the Trademark Law Treaty would constitute a further contribution toward worldwide harmonization of procedures for obtaining and protecting trademark rights, and hoped that the draft Treaty would be accepted by as large a number of States as possible. In view of the great significance attached to the protection of trademarks in international commerce, the intention to simplify and harmonize the procedure had also been very much welcomed in German economic circles. He mentioned that in Germany the new Trademarks Act would enter into force on 1 January 1995. The standards set by the draft Trademark Law Treaty had already been taken into account in the drafting of that Act.

23.1 Mr. KIRK (United States of America) stated that the United States of America strongly supported the effort to harmonize and simplify trademark application and registration procedures around the world, and believed that the procedural issues addressed by the proposed Treaty would benefit greatly from harmonization and simplification. He noted that this would, in turn,

greatly facilitate the ease with which trademark owners could protect their marks multinationally. By setting maximum procedural requirements with specific prohibitions for filing an application, renewing a registration, recording changes in name, address or ownership, and correcting mistakes, the proposed Treaty effectively accomplished its goal.

23.2 He recalled that the proposed Treaty limited the extent to which a Party could require authentication of any signature and prohibited certain overreaching requirements, such as those requiring an applicant for registration to provide certificates from a registry of commerce or prove that it was doing business in a Contracting Party. He welcomed these restraints and noted that these were areas that presented major roadblocks for trademark owners seeking to obtain or maintain trademark registrations, especially those which did business internationally. He stated that the United States of America respected, in the spirit of compromise and accommodation to differing registration systems, the need for limited transition periods for some of the requirements in the draft Treaty.

23.3 He emphasized that the issue of most concern in the proposed Treaty for the United States of America involved the voting provisions in Alternative B of Article 17(4) and the entry into force provisions in Article 23. He stated that the United States of America supported Alternative A of Article 17(4), which would give States the right to vote and permit regional intergovernmental organizations to cast their members votes in certain specified circumstances. He emphasized that the United States of America was strongly opposed to Alternative B, which proposed to grant a vote to regional intergovernmental organizations independent of, and in addition to, the votes of their member States. He noted that the United States of America was opposed to Article 23 as proposed because it would permit the regional intergovernmental organizations, in addition to their members, to be counted towards the number of entities required to bring the Treaty into force.

23.4 He pointed out that proponents of Alternative B and of Article 23 had sought to justify their proposal on the ground that it addressed an exceptional situation warranted by the creation of separate and parallel systems in which a regional intergovernmental organization and its member States exercise authority concurrently over the same subject matter. He stated that this suggested that regional intergovernmental organizations and their member States could create additional competence and thereby expand their cumulative power under a treaty at the expense of the other Contracting Parties. He stated that this was inconsistent with what the United States of America believed had been the operative principle internationally to date, namely, that regional intergovernmental organization participation be alternative, not additional, to the member States of a regional intergovernmental organization.

23.5 He emphasized that the United States of America strongly urged the Conference to work toward a resolution that permitted all potential parties to accept or reject the Treaty on its substantive merits. He stated that, if these provisions were not altered, the United States of America, unfortunately, would not be able to join the Treaty.

24. Mr. ENÄJÄRVI (Finland) recalled that the importance of trademarks was constantly growing worldwide and thus the work of the Diplomatic Conference was very important. He stated that his Delegation was prepared to work toward a successful conclusion of the Diplomatic Conference.

25.1 Mr. JAKL (Czech Republic) noted that his country was one which had a long tradition in the field of registration of trademarks. He noted that the Czech Republic had continued its membership in international multilateral treaties concerning trademarks as a successor State to Czechoslovakia. He considered the work on harmonization of trademark laws to be one of the important steps in the development of international cooperation. The interest of the Czech Republic in this work was based on the increasing role of trademarks in connection with the transition of the country to a market economy system. He pointed out that the number of trademark applications filed by national and foreign users had increased many times since 1989.

25.2 He stated that, although the proposal for the Trademark Law Treaty did not apply to substantive trademark law, there was great importance attributed to uniform procedures, especially with respect to the determination of maximum requirements concerning the application.

25.3 He also announced that a new trademark law would enter into force next year in his country, which would introduce extensive examination, opposition proceedings and protection of rights of the trademark owners against unfair competition. He noted that, in respect of the legal regulations concerning trademarks, the aim was to harmonize the system with the legislation on the protection of industrial property rights in the European Communities. The proposed new trademark law also included substantial restrictions on formal requirements in respect of trademark applications that were in accordance with the proposal for the Trademark Law Treaty. These changes were highly appreciated in the Czech Republic because previous practices substantially reduced the speed of registration while they could not prevent infringement of the rights of trademark owners.

26.1 Mr. THIAM (OAPI) emphasized the significant political content of the opening statement made by the President, whose competence he noted and which, he felt, was an extremely positive sign for the conduct and outcome of the Conference. He observed that, through the Treaty, WIPO was significantly developing relations between the nations and between men and addressed his congratulations to the Organization on that account.

26.2 The developing countries members of OAPI welcomed the fact that the Trademark Law Treaty was approaching its conclusion despite the fact that some provisions could raise problems for certain common legislations, such as those of the OAPI Member States. In a concern to ensure that the intellectual property titles issued by their common office should contribute to their economic progress, those States insisted on the concept of proved working.

26.3 Mr. Thiam noted that trademarks became not only a basic element in trade, but also an element of strategy for the collectivity. Mr. Thiam concluded by reaffirming that OAPI would make a full contribution to ensure that the Conference was a success and that a spirit of true cooperation would guide its conclusion.

27.1 Mr. RICHARDS (Australia) stated that the importance of the draft Trademark Law Treaty to Australia became apparent in 1992, when Australia commenced a comprehensive review of its trademark system with the view to modernizing trademark legislation. This process had resulted in a draft Trademark Bill which accorded with the proposed Trademark Law Treaty and the requirements of the TRIPS Agreement. He noted that the review, which had involved extensive national and international consultation, had taken into account a wide range of views of users of the trademark system and had sought to adopt efficient administrative practices. He expected the new legislation to be finally passed by the Australian Parliament in the first half of 1995 and to be fully operative by the end of 1995.

27.2 He stated that, while the original scope of the work of the Committee of Experts included certain substantive legislative proposals for the protection of trademarks, their non-inclusion in the basic proposal before the Conference did not lessen its importance. He hoped that, under the draft Treaty, the difficulties that applicants for trademark registration sometimes encounter in processing their application in various countries would be substantively reduced through uniformity of the administrative procedures among member States.

28.1 Mr. LEESTI (Canada) stated that the pressures of a progressively global marketplace were moving governments and the business community toward greater reliance on the harmonization and the adoption of international standards. He noted that Canada attached considerable importance to multilateral efforts to harmonize and standardize business framework laws and practices, and recognized that in many instances continued reliance on distinct or unique national requirements was no longer sufficient to insure competitive success. Canada was supportive of the efforts of WIPO to conclude a Treaty that would reduce or minimize procedures or differences among countries in relation to the acquisition of trademark protection. He noted that Canada also supported the use of international standardized forms and the simplification of formal procedures in the trademark area in the belief that this would benefit members of the business community seeking trademark protection around the world and would lead to greater efficiency for trademark offices.

28.2 He stated that one major issue to be debated by this Conference was the status of the European Communities and other regional intergovernmental organizations in the Treaty, and emphasized that, as a matter of principle, Canada was opposed to an extra vote for intergovernmental organizations in treaties. He stated that such a provision would give intergovernmental organizations and the member States more powers and advantages than other contracting parties. It was for that reason that Canada was also opposed to the provisions of the draft Treaty as set out in Article 23(2), which allowed

an intergovernmental organization's instrument of ratification or accession to count toward the number of parties needed to bring the Treaty into force. He stated that Canada would not be able to support the adoption of a Treaty which contained these proposals and therefore was looking forward to working constructively with other delegations to resolve those issues.

29. Mr. STRENC (Romania) noted with satisfaction that the draft for the Trademark Law Treaty took into account both the point of view of intellectual property offices and that of users. He explained that his Delegation had great hopes for the Treaty since it was most important for those economies that were in transition and would not fail to contribute to the development of international cooperation. He wished every success to the draft Trademark Law Treaty and promised that his Delegation would contribute fully to the success of the Conference.

30.1 Mr. KAWAMOTO (Japan) stated that in recent years there had been a remarkable increase in the international trade of goods and services, and that these needed to be protected by intellectual property rights. As a result, there was a growing need, not only for the speedy and suitably-defined granting of intellectual property rights, but also for a simple and unified procedure for obtaining those rights throughout the world. Japan was making great efforts to expedite the granting of rights within its own trademark system. He stated that Japan, which received more than 150,000 trademark applications a year, recognized that the most effective way to simplify and unify the procedures for obtaining intellectual property rights was for a large number of countries to conclude a treaty to harmonize their trademark systems.

30.2 He added that the draft Trademark Law Treaty met the requirements of many countries and users for three reasons: first, the draft Treaty proposed that both multi-class applications and single requests concerning more than one application should be accepted; second, it proposed simplifying the submission of the necessary documentation, including prohibition of requirements of certification; and third, it proposed the implementation of a simple procedure for the renewal of registrations. He stated that Japan could accept the proposals of the draft Treaty dealing with the harmonization of world trademark systems with a few reservations.

30.3 He further stated that his Delegation was aware that certain issues such as the problem of voting rights still remained unsolved. He noted that this issue had no direct bearing on the substance of the Treaty, which sought to attain the harmonization of trademark systems on the concept of "user-friendliness." He also stated that the problem of voting rights should be dealt with in accordance with the international practices which had been followed in many previous treaties. He hoped that all delegates would make every effort to conclude this Conference successfully by solving the remaining problems, in order to contribute to the balanced growth of the world economy.

31.1 Mr. SMITH (Norway) stated that trademarks played an increasingly important role in international trade. He pointed out that Norway, as a small country, was largely dependent on import and export of goods and had therefore not only been interested in, but had always encouraged the setting up of, international and regional instruments which would strengthen and harmonize

substantive trademark laws and administrative procedures in this field. In the context of recent international and regional initiatives, he stated that Norway had indicated its intention to ratify the Madrid Protocol on International Registration of Marks as of January 1, 1996. He emphasized that the draft Trademark Law Treaty was a valuable supplement to that agreement. He added that Norway had also applied for full membership in the European Communities, which would entail major implications in respect of harmonization of trademark law.

31.2 He further stated that the Trademark Law Treaty and the existing international and regional instruments in the trademark field would form a forceful combination to the benefit of trademark applicants and trademark owners. He was of the opinion that provisions of the new Treaty would have a major harmonizing effect, making it easier for both applicants and owners to comply with the procedures in the participating countries, and would result in more efficient, simplified and inexpensive trademark registration systems throughout the world. He concluded by stating that the draft Treaty could function as a good basis for international consensus in this area.

32. The PRESIDENT adjourned the meeting.

<u>Third Meeting</u> <u>Tuesday October 11, 1994</u> <u>Morning</u>

33.1 Mr. YAMBAO (Philippines) stated that his country was engaged in reviewing its intellectual property legislation in accordance with its international commitments and the desire that this be responsive to changing times. For this reason, the Diplomatic Conference took place at an appropriate time. He recalled that the Philippines was among those Asian countries being members of Unions administered by WIPO which had the oldest intellectual property legislation. The commitment of the Philippines to protect intellectual property, today, was greater than ever. Stating the importance of the protection of intellectual property with a view to intellectual activity and productivity, he expressed the confidence of the Philippines that the proposed Treaty would promote the economic growth of developing nations by facilitating international trade and the transfer of technologies.

33.2 He said that, in general, the Delegation of the Philippines was satisfied with the basic proposal and that interested circles in the Philippines had already recognized many provisions of the basic proposal as relevant and useful accomplishments. In particular, he welcomed the model international forms and the abolishment of superfluous requirements. He concluded in saying that, considering the particular circumstances and

conditions of his country, his Delegation might have to avail itself of the provisions on reservations in order to overcome the transition to the new system provided by the proposed Treaty. However, this, in no way, diminished the enthusiasm of his Delegation and its support for this landmark initiative simplifying and harmonizing trademark procedures.

34.1 Mr. CAO (China) stated that his Government attached great importance to the protection of intellectual property. He recalled that recently the government of China published a White Paper which reflected, in particular, the importance of industrial property for the economic and cultural prosperity of the country.

34.2 Since protection of industrial property represented one of the preconditions for successful development of trade, China had adopted and improved a number of industrial property laws in order to keep up with the international trends in this field. In 1993, the trademark law and regulations were both amended expanding the scope of protection of trademarks. Procedures for correcting mistakes and supplementing additional information became available. A system of examination reports was introduced that made the procedure for obtaining protection easier for trademark applicants, facilitating the increase of the number of trademark applications received domestically and from abroad. He further recalled that, in 1993, 170,000 trademark applications were filed in China, 130,000 relating to new trademarks, which put China in the first rank in the world in that respect.

34.3 To show China's commitment to effective trademark protection and to the conclusion of the Trademark Law Treaty, the Delegation was headed by the Director General of the State Administration for Industry and Commerce which supervised trademarks, protection against unfair competition, registration of enterprises and private business, advertising activities and activities on the market. The Delegation of China was in favor of the Trademark Law Treaty and regarded it as an instrument of simplification and harmonization of trademark laws. It expressed its will to participate in the Diplomatic Conference with an active and cooperative attitude so that the Treaty could be adopted at the end of the Diplomatic Conference.

35. Mr. FURSTNER (Netherlands) stated that the adoption of the proposed Treaty presupposed the will to modernize administrative procedures relating to trademark laws and that the Netherlands would have to amend their laws relating to such procedures. Although the proposed Treaty related only to formalities and not to substantive trademark law, it was of the greatest importance for trademark owners who were operating worldwide. Referring to certain problems which could endanger the successful conclusion of the work, he said that it was important to keep in mind that the global application of the proposed Treaty was the main target. Urging all the delegations to take reasonable positions, he said that the proposed Treaty should not be put in jeopardy by what the interested circles in the Netherlands called petty principles.

36. Mr. RAFEINER (Austria) recalled the growing importance of trademarks in a world where economic borders were increasingly removed and welcomed the proposed Treaty. He stated that the adoption of the Treaty would necessitate certain changes in the trademark law of Austria but that his country was

willing to introduce those changes. He further expressed his hope that the goal of the Diplomatic Conference would be achieved and that the proposed Treaty would be adopted in a form that was acceptable for all.

37.1 Mr. SUGDEN (United Kingdom) recalled that the United Kingdom attached great importance to harmonization, which was in the interest of users who were seeking worldwide protection for trademarks. In that respect, the proposed Treaty contained many significant provisions, such as the obligation to provide for the registration of service marks, the multiple class registration system and the abolition of the requirement of legalization of documents. He said that those examples showed that the proposed Treaty was progressive. The successful conclusion of the proposed Treaty was favored by the interested circles in his country, and he expressed his hope that it would not fail because of the vote issue.

37.2 He informed the Plenary that the United Kingdom had adopted a new Trademark Act which would enter into force at the end of October and which was governed by the principles contained in the proposed Treaty. He further said that his country would ratify the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks at the end of the year. He concluded by expressing his hope that the work would be brought to a successful conclusion in a friendly and cooperative spirit.

38. Mr. FERNÁNDEZ-FINALÉ (Cuba) stated that Cuba had made considerable efforts to modernize its legislation in the field of marks. In this connection, the required constitutional procedure was under way with a view to acceding to the Nice Agreement and the Vienna Agreement which established international classifications related to marks, and steps were also being taken towards accession to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Cuba recognized the importance of the Treaty which was before this Conference in view of its relevance in the context of liberalized international trade and of enhanced international cooperation in the establishment of internationally accepted norms in the field of intellectual property. Cuba had been closely following the preparatory work leading to this Diplomatic Conference and recognized its significance in the simplification of administrative procedures in the field of marks, and its relevance in the development and improvement of Cuba's own trademark system. It hoped that the work of the Diplomatic Conference would be concluded in a manner which allowed a maximum number of States to adhere to the Trademark Law Treaty.

39. Mr. WALLBERG (Denmark) stated that the discussion which had taken place in the Committee of Experts had shown that it was difficult to find a proper balance between formalities which were necessary and those which were unnecessary. He considered that a certain amount of formal requirements which enabled trademark offices and trademark owners to obtain correct and durable registrations to be necessary. In that respect, he said that the basic proposal had struck the balance between the necessary and the unnecessary formal requirements in an excellent way. For this reason, he was looking forward to participate in the Diplomatic Conference and, at a later stage, to the implementation of the proposed Treaty into national law.

40. Mr. PRETNAR (Slovenia) stated that his Delegation favored the success of the Diplomatic Conference, although, at the moment, the much desired consensus on the question of voting did not seem to exist. He said that Slovenia was a small country whose welfare depended on free trade and that it was annually exporting goods worth US\$ 6 billion. It was for this reason that his country favoured world-wide harmonization of intellectual property rights and, in particular, trademark rights and procedures. He considered trademarks to be the key for world-wide recognition of his country as well as of products originating from Slovenia and, therefore, wanted the Diplomatic Conference to become a success. He drew attention to the fact that much of the contents of the proposed Treaty were already implemented into the national law of his country.

41. Mr. GAUTO VIELMAN (Paraguay) stated that his Delegation attached the utmost importance to the conclusion of the Treaty before this Conference, in view of its relevance for both the users of the trademark system and the national offices entrusted with its administration. At a time when improving efficiency was essential, the Trademark Law Treaty would provide a means to that goal in trademark offices, which constituted an essential link in the proper functioning of any trademark system. He mentioned that Paraguay would soon be concluding a cooperation agreement with WIPO aimed at improving and modernizing its industrial property system. That project included, in particular, the modernization of legislation in the field of marks. The provisions contained in the Treaty before this Conference would be incorporated in the new legislation on trademarks to be prepared as part of the activities under that cooperation project.

42. Mr. McCARDLE (New Zealand) stated that he welcomed the harmonization and simplification of procedures relating to trademarks and expressed his support for the objectives set by the proposed Treaty. He said that his country was in the process of reforming its Trademark Act and that the administrative reforms proposed were essentially consistent with the provisions of the proposed Treaty. For this reason, the proposed Treaty had come at an opportune time. In conclusion, he said that he was looking forward to the finalization of the proposed Treaty and stated his readiness to work together with the other participants in order to achieve that aim.

43.1 Mr. PARK (Republic of Korea) expressed his high level of satisfaction with the various programs for intellectual property development planned and executed by WIPO. He stated that he sincerely hoped that the recent efforts to harmonize trademark law at the international level would come to fruition at this Diplomatic Conference and that the proposed Trademark Law Treaty would be born. He said that the Republic of Korea had made a concerted effort to cope effectively with international trends and to play an active role in international cooperative meetings. Thus, it had participated actively in multilateral and bilateral international meetings on intellectual property right issues, including meetings on the harmonization of trademark laws.

43.2 He said that, currently, his country was reviewing the revisions that would be necessary to comply with the provisions of the proposed Treaty and that, based on the results of the study, it would enact the necessary legal measures. In that regard, his country had taken steps toward modernization and streamlining of the administrative organizations and procedures. In 1992,

the Republic of Korea launched a seven-year computerization plan for the industrial property administration which would result in the establishment of a paperless system for all administrative activities including an electronic application system. It was intended to adopt a color-mark system and the Nice Classification. In addition, the introduction of a multiple class application and registration system had been carefully studied. He said that, in spite of the steps his country was taking to harmonize trademark laws, several provisions in the proposed Treaty, including the multiple class system and the prohibition of certification of a signature would be difficult to adopt in his country. For this reason, he requested that those provisions remained optional or that they would be adjusted in order to reflect the situation prevailing in each country, so that as many countries as possible could reach a consensus on the provision of the proposed Treaty. He concluded by expressing his sincere hopes that the Diplomatic Conference would be successful.

44.1 Mr. BOVAL (France) regretted that the draft Treaty did not address substantive law and was limited to formalities, but nevertheless noted the usefulness of accomplishing harmonization. He observed that harmonization was all the more appropriate for the fact that trademark law, just as the whole of industrial property, had in recent years assumed considerable importance that had been reflected during 1994, at international level, by the signing of the TRIPS Agreement and, at European level, by the creation of the Community trademark. That mark constituted a major innovation since it was the first autonomous and unitary industrial property right with effect throughout the Community. Mr. Boval emphasized that the system was completely open to all applicants for trademarks, whether European or nationals of non-member countries.

44.2 Mr. Boval said that it was important for the harmonization of trademark law to take into account those new factors and for it to avoid the rigid attitudes that had led, in the recent past, to a number of difficulties for certain of WIPO's projects.

45. Mr. KANSIL (Indonesia) stated that his Delegation would participate fully and constructively in the Diplomatic Conference for the Conclusion of the Trademark Law Treaty and expressed his hope that it would be concluded successfully.

46. Mr. OPHIR (Israel) recalled the tremendous importance which was attached to the worldwide protection of trademarks and service marks. He stated that, due to the ever-increasing international trade and the lifting of trade barriers, the importance of harmonization and simplification of trademark procedures could not be over-stated. He said that the provisions contained in the basic proposal were designed to facilitate, through harmonization, the protection of marks. Furthermore, he said that Israel had comprehensive trademark legislation which required modernization and modification at the procedural and the substantive level. To that end, new legislation had been drafted by the Trademark Law Revision Committee which had been set up by the Minister of Justice. For this reason, the outcome of the Diplomatic Conference was of considerable importance with regard to the formulation of the final version of the proposed statutory trademark provisions in Israel. He agreed with the observations made by previous Delegations that, in general, the provisions set out in the basic proposal

were clear and well-balanced. Subject to certain observations and proposals which he would make at the appropriate place, he supported the basic proposal for the proposed Treaty and the Regulations thereunder. Although there was divergence of opinion on certain issues, he expressed his hope that, in a spirit of goodwill, compromise and understanding, those issues would be resolved, thus enabling the establishment of a Treaty of such wide-reaching international importance. The Delegation of Israel would work toward a successful conclusion of the deliberations which lay ahead.

47. Mr. O'REILLY (Ireland) said that Ireland was a country with a small and open economy and therefore was in need of measures to ease trade. He considered the proposed Treaty to be such a measure. He stated that, in general, where a contracting party to a treaty accepted the duties of the treaty, it should also be entitled to all the rights conferred by the treaty. In this respect, he thought that Alternative B of Article 17 struck the appropriate balance of rights. For this reason, he supported that Alternative, which he considered to be the most important aspect of the proposed Treaty. He concluded by stating that he was looking forward to a positive conclusion of the Diplomatic Conference.

48.1 Mr. PEETERS (Belgium) pointed out that Belgium had been one of the founder members of the Madrid Agreement and that, for over a century, his country had taken part in all initiatives to facilitate access to the registration of marks for the benefit of the economic operators.

48.2 Mr. Peeters stated that, despite the fact that they appeared secondary to users, the institutional aspects of the draft Treaty were also of importance. He added that all members of the future Assembly should enjoy an autonomous and equal voting right. His Delegation attached fundamental importance to that point and its inclusion in the Treaty would determine Belgium's accession to the Treaty.

49. Mr. SZEMZO (Hungary) stated that his Delegation intended to take an active part in the Diplomatic Conference and to sign the concluded Treaty. He said that Hungary had seen a sharp increase of trademark applications and that this increase was, first of all, due to an increased number of applications by foreign trademark owners. The intellectual property administration of Hungary intended to apply internationally accepted principles relating to the administration of trademarks such as those contained in the proposed Treaty. As a result of the proposed Treaty, applications for trademark registrations would become simpler, quicker and less expensive and this was to the benefit of trademark owners. He drew attention to Law No. 9 of 1969 on Trademarks, the revision of which would provide an opportunity for Hungary to harmonize its national law with the proposed Treaty. In conclusion, he wished every success to the Diplomatic Conference.

50.1 Mr. SPENCER (Trinidad and Tobago) said that, through a gradual process, the proposed Treaty had addressed many important issues in the field of administrative procedures concerning marks. The successful conclusion of the proposed Treaty would achieve world-wide harmonization and simplification of those procedures which would redound to the benefit of trademark offices, trademark owners and their professional representatives. He said that his

country welcomed that initiative as it was aware of the many difficulties faced by users of marks when attempting to achieve registration in other countries. If the basic proposal was adopted, it would result in great improvements regarding administrative procedures relating to application and administration of marks.

50.2 He stated that Trinidad and Tobago was presently engaged in a modernization exercise in all areas of intellectual property. It had also undertaken the review of its trademark system in view of the TRIPS Agreement and other intellectual property rights agreements which it had entered into with some industrialized countries. He concluded in reiterating the commitment of his country to support the objectives of harmonization and expressed his sincere hopes that those objectives would be achieved.

51.1 Mr. AMIGO CASTAÑEDA (Mexico) stated that policies recently implemented by Mexico had aimed towards establishing a high level of protection for industrial property rights as an essential component of the internationalization of the Mexican economy, following the opening of its frontiers to foreign trade which had started almost five years previously. Since then, Mexico had undertaken considerable efforts to modernize its industrial property system. On the international level, Mexico had subscribed to a number of important agreements on free trade which included provisions dealing with industrial property. Mexico had also ratified the Uruguay Round and, therefore, the TRIPS Agreement. At the national level a Mexican Industrial Property Institute (IMPI) had been established as a public decentralized organization in charge of administering the industrial property system. New legislation had been enacted in 1991, which greatly improved the level of protection for industrial property, and in 1994 substantial amendments to that legislation had improved that protection even further by incorporating the most recent international trends in this field. That legislation would be supplemented by implementing regulations in the near future.

51.2 He declared that Mexico was prepared to harmonize its legislation with other treaties which may be concluded in the future, to the extent that they provided advantages for the users of the industrial property system and for the countries' industrial property office. He concluded by offering his Delegation's best efforts to find solutions to the issues raised by the Trademark Law Treaty, in particular, the question relating to the recognition of a voting right for regional intergovernmental organizations and the transition to a multiclass application and registration system.

52. Mr. PAK (Democratic People's Republic of Korea) stated that trademarks played an important role in the intellectual property system and the national economy of his country. In this respect, he recalled that his country was a member of the Madrid Union Concerning the International Registration of Marks. For those reasons, his Delegation would take part in the Diplomatic Conference with great interest. He said that, in principle, his Delegation supported the basic proposal and, where it had different opinions on certain provisions, it would make comments at the appropriate time. In conclusion, he urged the Delegations to make every effort to conclude the proposed Treaty in a cooperative and constructive spirit.

53.1 Mrs. ABOMO BELINGA ZANGHA (Cameroon) observed that the Bangui Agreement, of which Annex III was devoted to trademarks and service marks, represented the basic legislation of Cameroon in that matter. That Convention had made it possible to promote the industrial development of its Member States due to protection for intellectual property rights that was as effective and uniform as possible.

53.2 She pointed to the possibility of contradictions existing between provisions in the draft Treaty and those in the Bangui Agreement, due doubtlessly to the weak participation of the countries of French-speaking Africa, members of the Bangui Agreement, in the preparatory work for the present Conference. She noted that the draft Treaty excluded collective marks from its scope and observed that such marks had in the past represented a very important factor in furthering the cooperative and handcraft movement in her country and in other developing countries by reason of the low investment capability of individuals. The Delegation of Cameroon attached great importance to that matter and hoped that an appropriate solution would be found.

53.3 With regard to Article 13 concerning the matter of proof in the event of renewal of a registration, the Delegation of Cameroon noted a contradiction between the Bangui Agreement and the draft Treaty. Mrs. Abomo Belinga Zangha said that the matter would have to be examined in the light of the developments that had been observed in order to judge whether it was opportune to maintain prior proof or not. Finally, on the question of participation by the intergovernmental organizations, the Delegation of Cameroon stated its willingness to give in-depth thought to that topic. Mrs. Abomo Belinga Zangha concluded by stating that her Delegation was approaching the Conference with an open mind and wished to contribute as effectively as possible to the success of its discussions.

54. Mr. SIMELANE (Swaziland) stated that Swaziland was one of the developing countries that had closely followed and attended almost all the meetings of the Committee of Experts since 1989. This was due to the great interest his country attached to the conclusion of the proposed Treaty. He said that trademarks were a vehicle for the promotion of trade and improvement of socio-economic development amongst all countries of the world. The conclusion of the proposed Treaty would contribute to achieving those results. Therefore, it was the wish of Swaziland that the proposed Treaty should be concluded without further delay. Referring to issues where consensus had not yet been reached, he stated that the Diplomatic Conference should approach those questions with open hearts, tolerance and a compromising spirit. The disagreements on certain points should not result in the abandonment or delay of the finalization of that important Treaty.

55.1 Mr. TROISE (Italy) observed that his Delegation was approaching the Conference in an open and constructive spirit and emphasized the extremely useful nature of the draft Treaty which would be particularly advantageous to users. He added that a number of items required amendments in order to meet the expectations of users. Amongst those, he mentioned the matter of the voting system. In the hope that a simple solution that was satisfactory for

all parties could be found, he nevertheless added that such a solution had to take into account the real situation, particularly the existence of the Office for Harmonization in the Internal Market.

55.2 Mr. Troise concluded by reaffirming that his Delegation believed unreservedly that alternative B for Article 17 of the basic proposal represented the only solution to the problem of voting.

56.1 Mr. ZAHARAN (Egypt) stated that the importance of trademark legislation could be gauged by the important role played by trade and industry in the prosperity and well-being of nations, since without such protection trade and industry would be prone to deviations due to unfair competition resulting from the falsification of marks. Governments had found that legislating domestically for the protection of marks was inadequate and that it was therefore necessary to draw up international rules and regulations which would take into account the interests of all countries in order to provide sufficient protection for their goods, particularly in the light of the proliferation of illicit trade and counterfeit goods.

56.2 He noted that Egyptian law was generally in line with the proposed Trademark Law Treaty. There were, however, aspects which required some harmonization. In order that the Treaty may be accepted by the largest possible number of countries, technical assistance should be extended to developing countries so that their legislations may be brought in line with the provisions of the Treaty which was before the Conference. Adoption of the Treaty would be a true step towards reducing discrepancies between national legislations in that vital field, which had received great attention in Egypt over recent years. In 1939 Egypt had adopted its trademark law; in 1951 Egypt had acceded to the Paris Convention for the Protection of Industrial Property, and in 1952 it had ratified the Madrid Agreement Concerning the International Registration of Marks. The provisions contained in the proposed Treaty were an important basis for discussion, and he felt that it was therefore possible to arrive at a consensus in order to adopt those provisions and enhance the international trading system. The Trademark Law Treaty, once concluded, would bolster the results achieved in the Uruguay Round, especially the TRIPS Agreement.

56.3 He noted that some of the provisions of the proposed Treaty required broader consultations because they raised some difficulties for a number of countries. One such difficulty was the voting system, but he hoped that cooperation and dialogue would elicit acceptable solutions to that issue. At the same time there were other issues that warranted further consultation towards a solution that would achieve the objective of facilitating the task of applicants, while at the same time not create problems of implementation for the States, for example, Article 3 regarding the possibility of registering marks for goods and services in several classes, and Article 8(4), which deals with the prohibition of requirements of legalization and authentication.

57. Mr. MUCHAE (Kenya) stated that Kenya fully supported the proposed Treaty and expressed his country's commitment to contributing to the success of the Diplomatic Conference. He said that the Government of Kenya had

decided to amend the trademark law of Kenya to bring it in conformity with the proposed Treaty. To that end, a new trademark bill would be drafted and introduced into Parliament in 1995. Furthermore, he said that on December 1 of this year, the Trademark (Amendment) Act, 1994 will come into force, which will provide for the registration of service marks. Further updating of the intellectual property legislation of Kenya concerned patent and industrial design law, and he said that a comprehensive bill would be ready for introduction into Parliament in 1995. He concluded by stating that his Delegation supported Alternative A of Article 17 of the proposed Treaty.

58.1 Mr. GEROULAKOS (Greece) stressed the importance and usefulness of the Trademark Law Treaty and noted that the main objectives of the Treaty were simplicity and effectiveness. He observed that those two basic characteristics would enable users to acquire, maintain and transfer their marks by means of simple, clear and inexpensive procedures.

58.2 Mr. Geroulakos announced that, as from November 1, 1994, Greece would possess a new Trademark Law based largely on the principles underlying the Treaty. Aware of the very great utility of the Treaty, he stated that his Delegation would act to make the Conference a success.

59. Mr. CHIRAMBO (Malawi) stated that his country attached great importance to the proposed Treaty, because it was preparing a draft new trademark law and considered the revision of its existing law as part of an overall effort to improve the investment climate in his country. Furthermore, as a member of ARIPO which had recently adopted the Banjul Protocol on Marks, Malawi intended to implement the provisions of that Protocol by including them in its national law. In this respect, he stated that Malawi intended its new trademark law to be in line with the provisions of the proposed Treaty and other agreed international trends in the field. He further said that many provisions of the proposed Treaty were already in the draft law of his country. However, with regard to Articles 6 and 17 of the proposed Treaty, he said that it would be difficult for his Delegation to accept these provisions. In conclusion, he said his Delegation would participate in the Diplomatic Conference with an open mind and in a spirit of compromise on these and similar matters, and he asked the other Delegations to adopt the same attitude.

60. Mr. TOURÉ (Côte d'Ivoire) emphasized the special importance attached by his country to the aims of the Conference and noted that, with the exception of one or two articles in the basic proposal, his Delegation did not see any major difficulties. He referred to Annex III of the Bangui Agreement and announced that his Delegation would have comments to make subsequently on a number of articles that could raise problems for the OAPI Member States.

61.1 Mrs. MÁRQUEZ (Venezuela) stated that her country had given significant demonstrations of the importance it attached to the protection of industrial property. Together with the rest of the countries which form the Andean Group, Venezuela had adopted a modern regime of industrial property which had considerably raised the level of protection for industrial property. Within the same regional context, Venezuela had adopted modern legislation for the protection of plant varieties and for the protection of copyright and

neighboring rights, and had also established an autonomous industrial property administration to provide a more efficient registration of industrial property rights. On the international level, Venezuela had adopted the GATT Agreement, concluded a trade agreement with Colombia and Mexico within the so-called Group of Three, and had concluded a bilateral agreement with Brazil, all of which contained substantial provisions on the protection of intellectual property. Venezuela was also in the process of concluding the procedure for accession to the Paris Convention for the Protection of Industrial Property and to the Patent Cooperation Treaty (PCT).

61.2 Her Delegation was persuaded that the harmonization of legislation at the international level such as would be achieved at this Conference would introduce simplicity in the procedures and efficiency in the operation of the industrial property system. In this connection she expressed the willingness of her country to introduce and discuss with the other member countries of the Andean Group issues which would lead to further harmonization of that regional industrial property system with the Trademark Law Treaty, in particular as regards the adoption of a multiclass application and registration system.

62. Mr. KARAAHMET (Turkey) informed the Plenary of the steps which his country had taken in order to modernize its industrial property legislation. Parts of this modernization were the establishment of the Turkish Patent Institute on June 24, 1994, and the accession of Turkey to the substantive provisions of the Stockholm Act of the Paris Convention which had been approved by the Council of Ministers on September 23, 1994. He stated that it was the intention of Turkey to comply with all the provisions of the proposed Treaty and, consequently, also to provide for the registration of service marks, which today was not possible in Turkey. However, such amendment of its law would require further time and, therefore, he asked for a transitional period in the proposed Treaty with regard to the obligation of the registration of service marks. He concluded in stating his belief that the Diplomatic Conference would reach its objectives successfully and the willingness of his Delegation to make a positive effort to bring the Diplomatic Conference to a successful end.

63. Mr. KARUNARATNA (Sri Lanka) said that his country was well aware of the important role the protection of intellectual property rights played in sustainable economic development. He stated that the trademark law of Sri Lanka, which had been prepared under the aegis of WIPO, already contained many of the principles of the proposed Treaty. He expressed the interest of his Delegation in the successful conclusion of the Diplomatic Conference and, in that respect, assured that his Delegation would contribute in all possible ways to make the Diplomatic Conference a success.

64. Mrs. PII (Lesotho) said that the emergence of the trademark law of Lesotho in 1989 had led to a great increase in trademark applications. She stated that the national trademark law of Lesotho was to a large extent in conformity with the proposed Treaty. She expressed her understanding that the harmonization of laws of national countries with different legal systems was not an easy task. However, she said that she was hopeful that the spirit of compromise would bring about the success of the Diplomatic Conference and the adoption of the proposed Treaty which her Delegation wholeheartedly supported.

65. Mr. PORUBSKÝ (Slovakia) stated that, as a successor State of Czechoslovakia, Slovakia assumed full responsibility for all intellectual property matters and, in particular, for the protection of trademarks. In that respect, he said that Slovakia was preparing a new trademark law and that the results of the Diplomatic Conference would strongly stimulate that legislation. He concluded in expressing the full support of his Delegation to the conclusion of the Diplomatic Conference.

66.1 Mr. KATO (Togo) pointed out that Togo was a member of the Bangui Agreement and that that Agreement fulfilled a legal and economic need which explained the special importance afforded by his Delegation to the registration of marks.

66.2 Mr. Kato stated that the basic proposal was in line with the concerns of his country, but that two articles raised problems, that was Article 2, which did not appear to permit groupings to use a collective mark, and Article 13 on proving use of a mark.

67. Mr. FALL (Senegal) noted the capital importance of the draft Treaty for trademark offices, owners of marks and their representatives. Senegal supported the basic provisions of the Treaty in the same way as the harmonization and simplification of the administrative procedures for registering service marks, since they would contribute to the development of international trade. He stated that Senegal adhered, subject to a few adjustments that would be explained in the discussions on substance, to the draft Trademark Law Treaty. He hoped that the viewpoint of the developing countries would be taken into due account and he assured the President of the contribution his Delegation would make to the successful outcome of the Conference.

68. The PRESIDENT adjourned the meeting.

<u>Fourth Meeting</u> <u>Tuesday, October 11, 1994</u> <u>Afternoon</u>

69. Mr. WEGE-NZOMWITA (OAU) stressed the importance at international level, and particularly for the African region, of trademark law and noted the important part it played within intellectual property and also as a factor in the harmonious promotion of increased international trade. The OAU strongly supported the principle of concluding the Trademark Law Treaty, particularly to the extent it took into due account the interests and specific needs of the African continent. Noting the spirit of openness, dialogue and compromise on the part of the OAU member countries, Mr. Wega-Nzomwita promised that his organization would spare no effort to ensure that the national laws of its Member States would be brought into conformity with the provisions of the Treaty in order to facilitate its implementation. In that connection, he called upon the technical assistance of WIPO.

70. Mr. OTTEVANGERS (UEPIP) emphasized the importance of the conclusion of the Trademark Law Treaty in the interest of trademark owners and trademark practitioners. He stated that the substantive provisions of the Trademark Law Treaty would lead to a substantial reduction of formalities and costs for the users of the trademark systems throughout the world. He expressed the concern that differences of opinion concerning institutional questions might have a negative effect on the adoption and early worldwide acceptance of the Trademark Law Treaty. His organization hoped and trusted that the parties involved would be able to work out a compromise so that the institutional questions could be resolved in a way that was satisfactory to all participants.

71.1 Mr. van KAAM (UNICE) expressed the active interest of European industry in the Treaty. He emphasized that the importance of this Treaty was not limited to certain countries or territories. Trademarks were most valuable assets for a company and deserved adequate protection, which should be obtained through a simple, efficient and cost-effective administrative procedure. He noted that delays in obtaining trademark protection by way of registration might result in a situation where companies could not enforce their rights, could not defend their legal and commercial interests and consequently could not compete effectively. Such delays were often due to divergencies in administrative procedures and formalities. He noted that harmonization would contribute to a better and quicker protection of industry's rights and improve its legal and commercial position.

71.2 He further stated that differences in position on issues like voting rights, which were of a political nature only, was not in the interest of trademark owners or industry. It was not the task of the users to give a judgment on the legal or political validity of different arguments, since they had to work worldwide and had to cooperate with trademark administrations in all countries. He emphasized that, if neither side was prepared to compromise, this was a matter of great concern to the interested circles, since it would jeopardize the proposed Treaty and would deprive industry of harmonization of formalities and a better system of trademark protection. He stated that it was the responsibility of the politicians to create the conditions enabling companies to protect their rights on a global scale in an efficient way. He called upon both sides to overcome these differences in position or to come to a position which would make it possible that as many countries as possible could become members of the Treaty.

72. Mr. DE SAMPAIO (ICC) noted that WIPO represented a factor of legal security in a world of constant change and informed the meeting that ICC would distribute a document during the Conference. Referring to two paragraphs in that document, he mentioned that refusal of a compromise solution for Article 17 would be unacceptable for worldwide trade and would indeed cast serious doubts on the negotiations. In its statement, the International Chamber of Commerce indeed called on all governments to actively support the conclusion of the Treaty and, for those that had formulated reservations, to reconsider their stances in view of the general advantages offered by the Treaty.

73.1 Mr. CATOMÉRIS (FICPI) recalled that FICPI, established in 1906, was an international organization consisting of some 3,000 members from more than 60 countries. He noted that the members of FICPI assumed the responsibility for instituting searches, filing and prosecuting applications for the protection of trademarks and other rights, as well as for the transfer and maintenance of such industrial property rights. He noted that statistics from WIPO indicated that in 1991 some 750,000 registrations of marks were granted throughout the world, and that the more than 20,000 registrations granted in accordance with the Madrid Agreement corresponded to about 200,000 national trademark registrations. He pointed out that national and international registrations represented roughly 12 million trademark registrations in force at the end of 1991 and that many of those trademark registrations were obtained by FICPI members who were, as a consequence, among the most interested parties amongst the present non-governmental organizations.

73.2 As regards the question of the European Communities being granted a voting right, FICPI felt that such a possible claim should not jeopardize the valuable objectives of the Treaty. He noted that the voting right of the European Communities in the Assembly of the Madrid Union could be explained as stemming from the specific situation under the Madrid Protocol, whereby the Community Trademark Office could act as a designated Office instead of the national offices of the member States of the European Communities. He stated that in the Assembly under the Trademark Law Treaty, however, the legitimate interests of the European Communities would be taken care of by its member States. He expressed approval that the Trademark Law Treaty provided for further development in the future, insofar as the Treaty would be open for harmonization of substantive matters, and expressed the hope that the proposed Trademark Law Treaty would be accepted as a truly world-wide treaty, not limited to European member States, but would include other countries like the United States of America, Japan, China and the South East Asian and the Latin American countries.

74.1 Mr. MACPHERSON (INTA) stated on behalf of the over 2800 members representing trademark owners in some 110 countries that his Organization supported the goal of the draft Treaty to reduce unnecessary formalities in order to simplify and expedite administrative procedures for registering and protecting trademarks. He noted that for the intellectual property community as a whole and for trademark owners in particular, the last few years could be characterized as some of the most exciting and productive in furthering the objectives of harmonization of trademark laws and protecting trademarks. He pointed out that, in Europe, the implementation of the EC harmonization directive on trademarks and the establishment of the Community Trademark Office would facilitate trademark registration and enhance protection and, in the Americas, regional cooperative efforts like MERCOSUR, the ANDEAN Pact and NAFTA, as well as ongoing bilateral agreements, were standardizing the treatment of trademarks. National efforts in Asia and Africa had also contributed to the modernization of trademark laws, and several countries were amending their laws in order to accede to the Madrid Protocol. He noted that the TRIPS Agreement contained fundamental principles of trademark protection to which GATT members must adhere.

74.2 He noted that the proposed Trademark Law Treaty reflected these international trends and that the Treaty would simplify trademark administrative procedures around the world by significantly streamlining current formalities and reducing the massive amount of paper work in this area. The significant savings would enable trademark owners to invest more in their businesses, develop new markets and create more jobs. He stated that the Treaty would be a tremendous step forward in providing a foundation for further harmonization and simplification in the future.

74.3 He recalled that there were, however, two significant hurdles ahead for this Conference. The first was the issue of legalization and certification of trademark related documents which the proposed Treaty would significantly reduce. He noted that for many nations such legalization requirements were deeply rooted in their legal systems and that trademark owners, however, found such requirements burdensome, time consuming and without any real benefit. He recalled that, despite the natural resistance to change what is familiar and traditional, the trend, in many regions of the world through such agreements as the Central American Convention for the Protection of Industrial Property, had been to eliminate most legalization requirements on trademark related documents, recognizing that, whatever revenues that have been lost would be more than offset by increased activity in their economies.

74.4 The second major issue facing the Conference was on voting rights. He stated that, again, the problem was resistance to change by moving beyond the traditional concepts of sovereignty, both by those nations objecting to granting intergovernmental organizations an additional vote, and by the member States of these organizations which appeared unprepared to relinquish their sovereign rights on such matters to a regional body. He stated that the trend was for a greater role of intergovernmental organizations in regional and international affairs, and pointed out the recently concluded agreement to establish the World Trade Organization which allowed intergovernmental organizations to vote in lieu of one of its member States.

74.5 He concluded that INTA was convinced that the Delegates would find creative and effective solutions so that their historical momentum would be sustained and that the future would continue to be replete with success.

75. Mr. HARLÉ (AIPPI) referred to his organization's collaboration in preparing the draft and, joining the opinions expressed by the non-governmental organizations that had taken the floor before him, referred to the contents of the statement adopted by AIPPI in Copenhagen in June 1994, calling on the members of the Diplomatic Conference to make every needful effort towards adoption of the Trademark Law Treaty. Observing that harmonization of laws was an extremely arduous operation, Mr. Harlé advocated a practical approach and pointed to the advantages that the Treaty would bring with it, particularly to users, and above all to applicants. He therefore appealed to the Conference delegates to do their utmost to ensure that their tasks led to a successful outcome in a spirit of unity and progress.

76. Mr. KUNZE (AIM) noted that all national European associations of industries of branded products were members of AIM and that all those industries and direct members strongly supported a Trademark Law Treaty that would be acceded to by as many countries world-wide as possible. He agreed with other international organizations such as UNICE, INTA and FICPI in their substantive argumentation in respect of the importance of the Trademark Law Treaty.

77. Mr. PASTOR (BDI) stated that since the beginning of the negotiations on this Treaty in 1989, the German industry had actively supported the objectives of the Treaty to facilitate the procedures for obtaining and maintaining valid trademark registrations. He noted that it was the impression of his Organization that certain unnecessary formalities in trademark registration procedures in the past had the sole purpose of generating fees and simultaneously serving as trade barriers preventing industry from entering foreign markets. He concluded by urging all delegations to keep in mind that the Treaty was for the benefit of trademark owners and that the Conference should not be used as a battlefield for dogmatic principles on voting rights. He asked the delegations to show enough flexibility in order to successfully conclude the Trademark Law Treaty.

78. Mr. LIPPERT (CNIPA) stated that his organization was satisfied with the present version of the draft Treaty, which he found was a good compromise considering the worldwide differences in opinions concerning trademark protection. He noted that the members of CNIPA needed this Treaty for the simplification and harmonization of procedures in respect of registration of trademarks. He called upon the Conference not to jeopardize the conclusion of the Treaty for political reasons but to find a compromise on the political issues. He concluded by expressing the hope that the Conference would adopt the proposed Trademark Law Treaty and that as many countries as possible would join the Treaty.

79.1 The PRESIDENT indicated that item 9 of the agenda was completed. Sixty-two speakers had been heard. He summed up the discussions by stating that three main points had been agreed: (i) There existed a consensus on the need to complete a treaty because a treaty is useful; (ii) some delegations recalled that the negotiations on the Treaty were originally focused on substantive issues; many delegations regretted the loss of the substantive issues; others recognized that the harmonization of procedures was a step forward in that even such harmonization was not easy to achieve; this was confirmed by delegations who said that harmonization of procedures were important to the expansion of trade; and (iii) everyone agreed that the basic proposal was a good basis for the work of the Conference and there were just a few technical aspects which the Conference would have to consider to achieve a better solution. One important point of a legal/political nature remained which could jeopardize the Conference. Positions of support for either Alternative A or B of Article 17(4) were presented by some delegations, but the majority of delegations stated that there needed to be a compromise solution. He stated that the solution would not arrive from putting the question to a vote, because a vote in the Main Committee would not achieve the two thirds majority needed in the Plenary for the adoption of the Treaty as a whole.

79.2 The President then made a suggestion for a recommendation by the Plenary. He suggested that the Plenary recommended that the Main Committee discussion begin with Article 17(4) in order to try to find a compromise solution, avoiding debate and focusing on alternative proposals that delegations may propose. The President believed that, if a solution could be found to this issue, a Treaty would be concluded at this Diplomatic Conference.

79.3 There were no objections and the resolution was considered to be adopted. The President adjourned the meeting.

<u>Fifth Meeting</u> <u>Thursday, October 27, 1994</u> <u>Afternoon</u>

80.1 The PRESIDENT opened the session of the Plenary of the Conference and welcomed all those present. He noted that this session was particularly important because the Trademark Law Treaty was to be approved and formally adopted by the Conference.

80.2 The President recalled that in his opening speech he had predicted that the work of this Conference would lead to important improvements in the field of trademarks for the benefit of users throughout the world. At the conclusion of the work, he felt satisfaction at the success obtained by the unanimous adoption of a very momentous Treaty. He rendered tribute to the spirit of compromise and political will shown by all the participants at the Diplomatic Conference which had permitted that outcome. Although the compromise arrangement which had been reached in one particular point might not be totally satisfactory for all the parties, he remained confident that the Treaty would be ratified and brought into force over the next few years and would be applied successfully and without any difficulties.

80.3 He noted with pleasure that during the negotiations the substance of the Treaty as contained in the basic proposal had received general support, such that only a few amendments were made. At this time the Conference could express its gratitude to each and every delegation and to the Director General and the staff of the International Bureau for their performance. As a representative of a developing country, he felt particularly pleased at the spirit of international cooperation that had prevailed throughout the Conference regarding the adoption of special periods of transition for certain countries and the adoption of a recommendation directed to the competent bodies of WIPO to promote technical assistance for developing countries in order to implement the Treaty. He noted the present need to reaffirm, not only in writing but also in fact, the prominent and prevailing role of WIPO as the proper forum for the future establishment of norms in the field of intellectual property. That had been reaffirmed at this time by the unanimous adoption of the Trademark Law Treaty.

Report of the Credentials Committee

81. The PRESIDENT then turned to items 8 and 11 of the agenda (Consideration of the first report of the Credentials Committee and Consideration of the second report of the Credentials Committee), and invited the Chairman of the Credentials Committee, Mr. Sahlool of Sudan, to present the report.

82.1 Mr. SAHLOOL (Sudan), speaking in his capacity as Chairman of the Credentials Committee, stated that he had the privilege and the honor to present to the Conference the report of the Credentials Committee, which had met, under his chairmanship, on October 19, 1994. He wished to briefly summarize the main points of the report as contained in document TLT/DC/38, and supplement the report with additional information relating to the credentials, full powers or letters or other documents of appointment received since the Credentials Committee last met as contained in documents TLT/DC/42 and TLT/DC/52.

82.2 The Credentials Committee consisted of seven States, namely the Czech Republic, Denmark, the Islamic Republic of Iran, Portugal, the Republic of Korea, Sudan and Trinidad and Tobago. Each State had been represented at the meeting.

82.3 Mr. Sahlool stated that the Credentials Committee had examined the documents presented as credentials, full powers or letters of appointment by the Governments of the States and by the organizations participating in the Conference.

82.4 The criteria which the Credentials Committee applied in its examination of the credentials, full powers, letters or other documents of appointment presented for the purposes of Rules 6 and 7 of the Rules of Procedure were set forth in paragraph 5 of the report. The Committee recommended to the Conference, meeting in Plenary, that those criteria should govern the decision of the Conference on this matter.

82.5 He further stated that the delegations in respect of which the Committee had found that credentials and full powers, or credentials alone, existed in the name of their delegates were listed in paragraph 7(a), (b) and (c) of the report.

82.6 The organizations in respect of which the Committee found that letters or other documents of appointment existed in the name of their representatives in the Conference were listed in paragraph 7(d) of the report.

82.7 He reported that the Credentials Committee recommended to the Conference the acceptance of the credentials, full powers and letters or other documents of appointment of the Delegations and Observer Organizations listed in paragraph 7 of the report.

82.8 Mr. Sahlool observed that, since the meeting on October 19, 1994, of the Credentials Committee, the Secretariat had received, as indicated in documents TLT/DC/42 and TLT/DC/52, the full powers of the Delegation of China, the Delegation of Luxembourg, the Delegation of the United States of America and the Delegation of Uruguay. In addition, the full powers of the Delegation

of Trinidad and Tobago had just been received. He brought those documents to the attention of the Conference for their acceptance pursuant to paragraph 12 of the report and proposed that the names of China, Luxembourg, Trinidad and Tobago, the United States of America and Uruguay be added to the list of States having presented credentials and full powers.

82.9 Mr. Sahlool drew the attention of the Conference to paragraph 8 of the report, which stated: "The Committee noted that, in accordance with established practices, a designation of representation implied, in principle, in the absence of any express reservation, the right of signature, and that it should be left to each delegation to interpret the scope of its credentials." In this connection, he suggested that it would greatly facilitate the work of the Secretariat and that of the Credentials Committee in any future diplomatic conference if the wording in the documents presented by delegations clearly delineated the scope of the authority conferred, by mentioning that it extended not only to participating in the deliberations and the voting but, as well, where it was so intended, to signing the final act and to signing the treaty or other international instruments adopted by the Diplomatic Conference.

82.10 He concluded by expressing his appreciation and that of the members of the Credentials Committee for the excellent preparations made by the Secretariat which greatly facilitated the tasks of the Credentials Committee.

83. The PRESIDENT thanked the Chairman of the Credentials Committee for having presented the report. There being no observations, the President declared the report of the Credentials Committee to be adopted.

Consideration of the Texts Proposed by the Main Committee

84.1 The PRESIDENT moved on to item 10 of the agenda (Consideration of the texts proposed by the Main Committee), and noted that the International Bureau had prepared the final texts proposed by the Main Committee for adoption by the Conference. He suggested that each document as a whole be submitted for the adoption, and no objection was made to this procedure.

84.2 The President submitted to the Conference the text of the Draft Trademark Law Treaty contained in document TLT/DC/47. Noting that no observations were made, he declared the text of the Draft Treaty adopted.

84.3 The President submitted to the Conference the text of the Draft Regulations Under the Trademark Law Treaty contained in document TLT/DC/48. Noting that no observations were made, he declared the text of the Draft Regulations adopted.

Adoption of the Treaty and the Regulations

85. The PRESIDENT moved on to item 12 of the agenda (Adoption of the Treaty and the Regulations) and submitted to the Conference the entirety of the Draft Trademark Law Treaty and Draft Regulations Under the Trademark Law Treaty as contained in documents TLT/DC/47 and TLT/DC/48. Noting that no observations were made, he declared the Treaty and the Regulations adopted unanimously.

Adoption of Any Recommendation, Resolution, Agreed Statement or Final Act

86.1 The PRESIDENT moved on to item 13 of the agenda (Adoption of any recommendation, resolution, agreed statement or final act), and submitted to the Conference the Draft Recommendation contained in document TLT/DC/49. Noting that no observations were made, he declared the Recommendation adopted.

86.2 The President submitted to the Conference the Draft Agreed Statements contained in document TLT/DC/50. Noting that no observations were made, he declared the Agreed Statements adopted.

86.3 The President submitted to the Conference the Draft Final Act of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty contained in document TLT/DC/51. Noting that no observations were made, he declared the Final Act adopted.

Closing Declarations

87. The PRESIDENT moved on to item 14 of the agenda (Closing declarations by Delegations and by representatives of Observer Organizations) and opened the floor for closing statements.

88. Practically all delegations and representatives of organizations which took the floor expressed their sincere appreciation to the President of the Conference and the Vice-Presidents, and to the Chairmen of the Main Committee, the Drafting Committee, the Credentials Committee and the informal Working Group and their Vice-Chairmen for their efforts to seek a compromise solution and their leadership in bringing the Conference to a successful conclusion. In addition, they expressed their appreciation to Dr. Bogsch, the Director General of WIPO and the staff of the International Bureau of WIPO for the preparatory work that had been done prior to the conference and for the excellence of the work performed at the Conference itself, to the interpreters, who enabled the delegates to understand each other at the Conference, and to those working behind the scenes to make the Conference run smoothly. Finally, they expressed their appreciation to each of the delegations for their cooperative and constructive approach during the Conference, and offered their congratulations for the healthy spirit of compromise which resulted in a successful conclusion of the Conference.

89.1 Mr. ZAHARAN (Egypt) stated that the negotiations during the Conference had led to the unanimous adoption of the Trademark Law Treaty, which would help countries harmonize their trademark laws and would make international trade and economy more dynamic. The provisions of the Treaty would also contribute to facilitating matters for those who sought to register trademarks and would help them overcome many administrative obstacles to that end.

89.2 His Delegation wished, however, to express its position on the procedural problem which had occupied several days of the Conference and which had led to a conflict that had threatened its success, namely the question of according to intergovernmental organizations an additional vote independently of the votes granted to the member States of those organizations. His

Delegation had always attached great importance to respect for the principles of international law concerning the conclusion of international treaties which provided for the creation of an Assembly of the Contracting Parties for amending a treaty's provisions when changes were required. All the options for alternatives proposed during the negotiations ran up against the problem of voting rights in such an Assembly and the status of intergovernmental organizations. His Delegation felt that this question was a political problem, the solution to which had to be found in political fora where a decision could be reached on the status of intergovernmental organizations in international treaties. Since the Trademark Law Treaty was a technical treaty aimed at simplifying and harmonizing laws in the field of intellectual property, he felt obliged to express certain concern over the compromise which had been reached. That compromise had led to a provision which required that amendment of the Treaty be effected through a diplomatic conference, without providing any rules regarding the convening of such conference, the procedures to be followed, the authorities that may convene such a conference, the required quorum or the time for convening the conference.

89.3 Nevertheless, since the Plenary had adopted the Treaty, and since his Delegation had joined the unanimous will of the Conference, he wished to express his Delegation's views with respect to the possibility of convening a diplomatic conference to revise the Trademark Law Treaty. He noted that any country or group of countries would be entitled to inform the governing bodies of WIPO of its desire that a meeting be convened to amend the Treaty or its Regulations, following the procedure required for convening an extraordinary Assembly of WIPO. That prompted him to mention the possible need to amend the General Rules of Procedure of WIPO so as to bring them into line with the aforementioned situation. He noted that the second part of the first Chapter of the Rules of Procedure drew no distinction between convening an ordinary or an extraordinary session of the Governing Bodies of WIPO, and that they should be clarified so that the Contracting Parties would know clearly what role they would play.

90. Mr. ENAJARVI (Finland) expressed his Delegation's pleasure with the unanimous decision reached in concluding the Trademark Law Treaty. He observed that the Treaty would reduce costs and save time, and that it would also serve to promote international trade. He therefore hoped that as many participants as possible would sign and ratify the Treaty. He stated that his country would sign and ratify the Treaty as soon as possible. He urged all delegations to be satisfied with the Treaty, even if all wishes had not been fulfilled.

91.1 Mrs. ROAD D'IMPERIO (Uruguay) said that the Trademark Law Treaty which had been adopted, and which her Delegation would have the honor of signing on behalf of the Government of Uruguay, was a far-reaching instrument for intellectual property. The Treaty simplified and harmonized administrative procedures, removing obstacles for applicants and their representatives and making the registration of marks easier. The Treaty was, therefore, likely to facilitate trade among countries.

91.2 She noted that a large number of the Treaty's provisions coincided with those of the current law of Uruguay, and that the new draft trademark law which was under consideration by the national congress of Uruguay closely followed the Treaty as well. Regarding the organizational aspects of the Treaty, her Delegation would have preferred it to have the same structure as other treaties administered by WIPO, particularly as regards the inclusion of an Assembly that could decide on amendments to its provisions, and the establishment of a Union. In spite of those shortcomings, she believed that the compromise solution which was finally achieved adequately safeguarded the objectives of the Conference, namely the adoption of a Trademark Law Treaty acceptable to the participants as a whole.

92. Mr. OUSHAKOV (Russian Federation) expressed his Delegation's satisfaction with the results of the Conference. He expressed gratitude to other delegations for maintaining the spirit of compromise throughout the discussions. He further emphasized the importance of continuation of the process of harmonization of trademark registration procedures. This Treaty dealt with harmonization of administrative procedures and the further goal should be, in his opinion, harmonization of substantive provisions of trademark laws.

93. Mr. MICHIE (South Africa), on behalf of both the African Group and his own Delegation, expressed satisfaction with the successful conclusion of the Trademark Law Treaty. He praised the constructive spirit of the Diplomatic Conference, which had led to a worthwhile Treaty. He stated that his Delegation looked forward to signing the Treaty at the conclusion of the Diplomatic Conference and to ratifying the Treaty in due course.

94. Mr. GAUTO VIELMAN (Paraguay) emphasized that the Trademark Law Treaty was important, first, because it reaffirmed the role played by WIPO in the orientation and the development of intellectual property throughout the world. It was also important because it would provide industrial property offices with a useful instrument to improve their effectiveness and efficiency, particularly in the case of developing countries. The Treaty would become a vehicle for modernizing national administrative systems and procedures, and would provide a reference for their development through training, equipment and the acquisition of technology and experience from other countries. His Delegation, therefore, welcomed the adoption of the Treaty and committed itself to devoting its best endeavors to have the Treaty approved by his country's Congress and duly ratified within the shortest possible time.

95.1 Mr. LIU (China) stated that the Conference represented a constructive step forward in the field of trademarks and that the Treaty was a document which marked our era in the international trademark system. His Delegation highly appreciated the Treaty. He further recalled that China had always adopted a constructive and cooperative attitude towards trademark protection, had always respected the international norms in that field and contributed to the promotion of this Treaty.

95.2 He added that his Government had always protected intellectual property and, in particular, trademarks, which represented an important component in his Government's policy of reforms and openness. China actively

participated in the activities of international organizations and worked towards reinforcing trade and cooperation with other countries in the world in the field of intellectual property. As a result, his Delegation was mandated to sign the Treaty on behalf of the Government of China.

96. Mr. OPHIR (Israel) praised the spirit of compromise and understanding that prevailed throughout the Conference and which facilitated a solution to the one problem that could have become a stumbling block to a successful Treaty. While that solution was not agreed as being ideal for every delegation, it was acceptable to all delegations at the Conference. The Trademark Law Treaty would be of importance to holders and to offices, and would have a positive impact on all Contracting Parties. He stated that his Delegation had received instructions to immediately sign the Treaty, and that the provisions of his Government's new law would be adapted to the provisions of the Treaty. He expressed agreement with the statement of the Delegation of Russia that the Trademark Law Treaty is only a first step, and looked forward to future harmonization on substantive trademark law.

97. Mr. KANSIL (Indonesia) announced that his Government was revising its trademark law, and expressed the hope that the results of the Trademark Law Treaty could be incorporated into that law.

98. Mr. SUGDEN (United Kingdom), speaking in his capacity as Chairman of the Main Committee, thanked all the Delegations for their kind words, and reiterated that his task had been made easy by the cooperative and enthusiastic attitude of all delegations. On behalf of his own Delegation, he remarked that the Trademark Law Treaty strengthened WIPO and contained important procedures that would be of benefit to trademark owners worldwide. He stated that his Delegation intended to sign the Treaty at the conclusion of the Diplomatic Conference, and hoped that his country would ratify the Treaty within a short time.

99. Mr. SCHAFERS (Germany) expressed his Delegation's satisfaction with the content of the Treaty, which he said strengthened and enhanced WIPO's treaty-making role in the field of intellectual property. He stated that his Delegation intended to sign the Treaty immediately following the conclusion of the Diplomatic Conference, and that his Government intended to give the highest priority to seeking parliamentary approval for both the Trademark Law Treaty and the Madrid Protocol, possibly within the course of the next year. He announced that the new trademark law of Germany had just been signed by the President of the Republic, and that it was therefore now definitive that the law would enter into force on January 1, 1995.

100. Mr. SZARKA (Hungary) welcomed the adoption of the Trademark Law Treaty, which would be of benefit to trademark owners and officers alike. He stated that he was confident that as a consequence of its pragmatic and practical contents the Treaty would work even without an Assembly.

101. Mr. KIRK (United States of America) praised the cooperative and constructive approach of the delegations in the Conference, and especially the flexibility shown by some delegations to accommodate the legitimate needs and concerns of other delegations. However, he did not believe that an effort to

give intergovernmental organizations a right to vote under an international treaty in the same way as a sovereign nation would qualify as such a legitimate concern. Therefore, he associated his Delegation with the statements of other Delegations which expressed their regret concerning the administrative and organizational shortcomings of the Treaty. He stated, however, that the substance of the Treaty was sound, that his Delegation intended to sign the Treaty, and that his Government committed itself to seeking approval of the Treaty in its relevant legislative body.

102.1 Mr. MOTA MAIA (Portugal) stated that the Trademark Law Treaty represented the accomplishment of a process that had begun with the first meeting of the Committee of Experts in 1989. He stressed that, despite its scope that was more limited than had been initially envisaged, such a treaty on the harmonization of administrative procedures constituted nevertheless an international legal instrument of undeniable significance for applicants, for trademark professionals and for national and regional offices. Mr. Mota Maia therefore welcomed the outcome of the Diplomatic Conference, in the debates of which he had been most happy to have participated from the very beginning as in the meetings of the Committee of Experts.

102.2 Mr. Mota Maia noted that the conclusion of the Treaty constituted an obvious proof that international cooperation was possible where the participants arrived with a constructive spirit and with the determination to achieve a positive outcome. He further noted that the fact that the Treaty had been concluded within the framework of WIPO showed that that organization had maintained its initiative, its creative capabilities and its dynamism, all highly positive signs with a view both to current work and to new projects. He added that the three weeks of debates had provided a good example of international cooperation and neutral understanding of the concerns and interests of each party and he formulated the wish that such an example of harmonization of points of view, concluded within the framework of WIPO, could have repercussions in other forums.

102.3 Mr. Mota Maia pointed out that the conclusion of a treaty was not an end in itself and that it was essential if the harmonization of national and regional laws was to have an effect that the Treaty be signed, ratified and should enter into force as quickly as possible, involving the largest possible number of countries. Mr. Mota Maia stated that the Delegation of Portugal would be pleased to sign the Treaty the next day and added that the new Portuguese Patent and Trademark Law that was to be submitted the following week to the Council of Ministers already took into account the provisions of the new Treaty.

103. Mr. FILIPOV (The former Yugoslav Republic of Macedonia) stated that the Republic of Macedonia would be for the first time in a position to sign the Final Act at a Diplomatic Conference held under the auspices of WIPO for a treaty concerning intellectual property. He saw this step as an initiative for more active inclusion of his country in the process of international development of intellectual property. His country was committed to continual promotion and improvement of its intellectual property laws, as well as collaboration with WIPO and other countries in the south-east region of Europe. He concluded by stating that he hoped that the spirit of compromise and goodwill that existed at this Diplomatic Conference would extend to the countries of that region as well.

104. Mr. SIMON (Switzerland) expressed his great satisfaction at the felicitous conclusion of the Diplomatic Conference as also with the contents of the Trademark Law Treaty that represented an important step forwards on the path of trademark law harmonization. He hoped that it would not be the end of the harmonization process and that that process would continue. He added that Switzerland was ready to sign the Treaty which, beyond the support of the delegations present, also would enjoy the support of the concerned circles. Mr. Simon concluded with a wish that the Treaty should enjoy the same success as the Diplomatic Conference.

105. Mrs. PREGLAU (Austria) stated that, although the Trademark Law Treaty was not in the form as planned at the beginning of the Committee of Experts meetings, nor in the form of the basic proposal originally submitted to the Diplomatic Conference, and even though not everyone was fully satisfied with the content of the Treaty, the contents of the Treaty were the only possible compromise that could have led to an agreement. This was a necessary Treaty, and its success would depend on its implementation in national trademark laws. Time will be needed before the practical consequences of the Treaty would become apparent, and positive development of the Treaty would require readiness to cooperate in the everyday work for which the Treaty is the basis.

106.1 Mrs. KORONEOU (Greece) noted that the delegate of the former Yugoslav Republic of Macedonia had referred in his closing declaration to the "Republic of Macedonia." She observed that such a title was not authorized within the United Nations system and that, consequently, that Delegation could only speak as the Former Yugoslav Republic of Macedonia.

106.2 Mrs. Koroneou further stated that the Treaty represented the crowning of long, arduous and methodical work on the part of WIPO, that she congratulated on the positive outcome of the Conference.

107.1 Mr. FRANZONE (European Communities) stated that his Delegation welcomed the positive outcome of the Diplomatic Conference. He stressed that such an outcome had been made possible by the constructive approach adopted by all delegations and by the personal efforts made by the President of the Diplomatic Conference and by the Director General and that the European Community paid a special tribute to both of them.

107.2 Noting that the Trademark Law Treaty represented significant progress in the protection of trademarks at international level, for the benefit of undertakings of all countries that would be encouraged to make greater use of trademarks, Mr. Franzzone welcomed the fact that the essential role of WIPO in the protection of intellectual property had been reaffirmed by that success. He stressed, in that context, the fact that the excellent quality of the work done by the International Bureau had constituted one of the decisive elements for the success of the Treaty and constituted one of the most valuable advantages for any other convention to be drawn up in future within WIPO.

107.3 Mr. Franzzone remarked that one question in particular had occupied the attention of the Conference debates and that, in that context, the European Community had advocated a solution other than the one adopted by the Treaty. He nevertheless emphasized that the result obtained due to the spirit of

compromise on the part of all delegations constituted the best possible solution within the context of the Conference. To conclude, he added that the Community would endeavor to give full effect as rapidly as possible to the Trademark Law Treaty.

108. Mr. STRENC (Romania) expressed his Delegation's satisfaction with the Trademark Law Treaty, whose unanimous adoption proved that goodwill, perseverance and professional work could succeed in avoiding difficulties. He stated that the Trademark Law Treaty was a good treaty and would help all governments and intergovernmental organizations reach harmonization on trademark procedures. He hoped it would also encourage international trade among nations. He stated that his Government would, as soon as possible, empower its Ambassador to sign the Treaty, and would make all necessary arrangements to ratify the Treaty in the near future. He felt that the success of this Diplomatic Conference exhibited a good example for other similar conferences under WIPO auspices. He hoped that adoption of the Treaty would be followed quickly by its entry into force.

109. Mrs. MOSHYNSKAJA (Ukraine) recalled that her country participated for the first time as an independent State in the elaboration of a complicated international treaty in the field of protection of industrial property. Participation in the Conference was very instructive for her Delegation, which was prepared to sign the Treaty since its new national trademark law was to a large extent compatible with the provisions of the Treaty.

110. Miss CABRERA RIOS (Bolivia) associated herself with the statements of other Delegations and wished, in particular, to thank in advance the Governing Bodies of WIPO for their implementation in due course of the recommendation of the Diplomatic Conference regarding the technical assistance for developing countries, which she hoped would soon become a fact.

111. Mr. OLSSON (Sweden) stated that the Trademark Law Treaty was of particular importance to the business community, both internationally and within his country. His country would now assess the implications of the Treaty and would take steps to ratify it, hopefully in a short time. He also expressed the belief that the conclusion of the Trademark Law Treaty was a success for WIPO.

112. Mr. FURSTNER (Netherlands) stated that the Trademark Law Treaty contained the substantive provisions, including the Regulations and Forms, which were the goals of the Diplomatic Conference. He hoped that industry would now be faced with fewer difficult procedures throughout the world, and also hoped that further harmonization would be possible. He stated that the European Communities had adopted their "first" directive of harmonization, and suggested that the Conference could consider the Trademark Law Treaty to be a "first" treaty to be followed by others. His Delegation was satisfied that the political and institutional problems had been solved in a way that, while not ideal, was workable. He stated, however, that there were other projects continuing within the framework of WIPO, for example, the proposed revision of the Hague Agreement Concerning the International Deposit of Industrial Designs, which involved similar problems. He felt that the solutions found in the present Diplomatic Conference would be less appropriate in other systems such as the Hague system, and expressed the hope that similar problems could be prevented from arising in future conferences.

113. Mr. PRETNAR (Slovenia) expressed his Delegation's satisfaction with the outcome of the Diplomatic Conference. He indicated that his Delegation would sign the Treaty at the conclusion of the Conference and that his Government would place a high priority on ratification in the near future. The successful conclusion of the Treaty was important for his country, which would for the first time become a signatory as a sovereign State to an intellectual property treaty. He stated that the solution adopted in the Trademark Law Treaty, namely a system without a Union or an Assembly, was a new and ingenious solution that he considered could open a new way for work within WIPO in the future. He was impressed that the Treaty had been adopted unanimously, unlike other treaties in the past, and advocated a "constructive cooperation" which could lead to new impetus for the work of WIPO in the next century. Such a strengthening of WIPO was supported by a majority of member States in the recent meetings of the Governing Bodies of the Organization.

114. Mr. SUZUKI (JIPA) declared that his organization, the former Japan Patent Organization, was represented at all six Committee of Experts meetings preceding the Diplomatic Conference. He applauded the adoption of the Trademark Law Treaty, which he hoped would further worldwide harmonization of trademark procedures. He praised the constructive, frank and friendly atmosphere of the Conference, and thanked the International Bureau for inviting his Organization to attend both the Committee of Experts meetings and the Diplomatic Conference.

115. Mr. DE SAMPAIO (ICC) observed that, in its declaration of principle, the International Chamber of Commerce had called upon all participants to conclude the Trademark Law Treaty. He expressed his satisfaction at the goodwill and the spirit of compromise and wisdom that had presided the debates of the Conference and, on behalf of the business circles represented by ICC in over one hundred countries, he welcomed the opening of that new path in worldwide trade with respect to trademark law, and which would now have to be developed.

116. Mr. CATOMÉRIS (FICPI) expressed his organization's satisfaction at the work accomplished in the Diplomatic Conference. He hoped that the Trademark Law Treaty would be ratified as quickly as possible in order to be applied also as rapidly as possible. He further stated that what had been achieved should not be considered the end but rather as a point of departure, as was the initial intention, with a view to harmonizing matters of substantive trademark law.

117. The PRESIDENT closed the meeting.

Sixth Meeting
Friday, October 28, 1994
Morning

Closing Declarations (continued)

118. The PRESIDENT opened the session and announced that several additional delegations had requested the floor to make closing statements.

119. Mr. KAWAMOTO (Japan) expressed his Delegation's appreciation for the final result of the Conference, which consisted of harmonization and simplification of procedures relating to marks which, in effect, benefited the users of marks. Furthermore, the Treaty would facilitate world trade, a result that was expressly welcomed by his Delegation. He declared that the adherence to the Treaty by Japan would entail important changes in the trademark system of his country. This was especially true with regard to the change to a multiple class application system and the resultant necessary changes in the computer system of the Office of Japan. In this respect, he stated that, at present, there were 1.3 million marks registered in Japan and that the Office received some 150,000 applications per year, figures which showed the difficulties of changing the present system. However, he expressed the will of his country to make a strong effort to comply with the Treaty as early as possible and, where necessary, to change its law. He recalled that all participants of the Diplomatic Conference did their best in order to overcome various difficult problems in a spirit of cooperation which eventually lead to the adoption of the excellent Treaty.

120. Mr. FILIPOV (The Former Yugoslav Republic of Macedonia) presented the following statement: "The Delegation of the Republic of Macedonia accepts the Final Act of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty."

121. Ms. BAUTISTA (Philippines) stated that the Treaty, which had been adopted by the Conference simplified and harmonized trademark registration procedures. It reduced the requirements to essentials and eliminated the superfluous. It would thereby help administrators in streamlining their operations. Above all, it would benefit trademark owners and users by saving them considerable time, effort and expense which were entailed by current procedures. While the Philippines had only been able to participate in some of the expert meetings, her Delegation considered itself privileged having participated in the preparation and the adoption of the Treaty and would strongly endorse the Treaty to the authorities of her country. The Treaty would help the Office of her country in its ongoing efforts preparing drafts to modernize the trademark law and regulations. She expressed the optimism of her Delegation about the ratification of the Treaty in due time because of the benefit the public would derive from its implementation.

122. Mr. KUNZE (AIM and AIPPI), also speaking on behalf of the INTA, asserted that the Trademark Law Treaty had been concluded in the interest of users, namely trademark owners and their representatives. He recalled that the Treaty in its present form, concentrating on harmonization and simplification of procedures, went back to an initiative taken by the AIPPI in 1991. That approach had, from the beginning, been very actively supported by AIM and INTA. On behalf of all three Organizations, he expressed satisfaction over the conclusion of the Treaty. It fully corresponded to the realistic wishes of users and would help to make their life easier in the future. He was convinced that the Offices of the Contracting Parties would also profit from the harmonized provisions which would enable them to establish simple and modern procedures. He concluded by stating that the final version of the Treaty, which would be attractive to many potential Contracting Parties, was due to the political will of all delegations to overcome the problems which existed mainly outside the technical framework of the Treaty. He emphasized that the relatively minor problems relating to the substantive provisions of the Treaty were solved in an admirable spirit of compromise.

123. Mr. GEROULAKOS (Greece) welcomed the positive outcome of the Diplomatic Conference and announced his intention of signing the Treaty. He further wished to protest at the statement made by the Delegation of the Former Yugoslav Republic of Macedonia on behalf of the "Republic of Macedonia." He observed that no country existed under that name and that the political agreement concluded under the aegis of the United Nations Security Council had to be respected.

124. Mrs. ABOMO BELINGA ZANGHA (Cameroon) expressed her Delegation's satisfaction at the conclusion of the Treaty and stated that, despite the problems of adaptation the Treaty would incur for the developing countries, Cameroon would sign the Treaty and would make its best efforts to ratify as soon as possible. She further thanked the Conference for its initiative in favor of technical assistance afforded to the developing countries.

125. Mr. SPENCER (Trinidad and Tobago) expressed his Delegation's satisfaction with the results of the Diplomatic Conference, and its wish that the Treaty would be ratified and enter into force as soon as possible.

126. Mr. THIAM (OAPI) welcomed the fact that the contents of the Treaty, that were fundamental for international trade in goods and services, was in compliance with the hopes of OAPI. He added that his organization would make all the necessary endeavors to promote awareness in its member States and to assist them, with the support of WIPO, to adapt their laws to the Treaty.

127. Mr. FALL (Senegal) submitted the following statement on behalf of the Ambassador of his country who was unable to be present: "The Trademark Law Treaty takes on a quite special significance for my country as a member of the African Intellectual Property Organization (OAPI). Indeed, with the adoption of the recommendation calling upon the competent bodies of WIPO to provide in their future budgets funds specially devoted to financing assistance to the developing countries in the implementation of the Treaty, our member countries, through OAPI, will set about the task of harmonizing our laws,

regulations and procedures for registering trademarks with the relevant provisions of the Treaty. As far as my own country is concerned, I can confirm that the approval and ratification process for this instrument will be put in hand without delay."

128. Mr. ILIEV (Bulgaria) expressed his Delegation's satisfaction with the results of the Conference. The adopted Treaty represents one more step in strengthening cooperation in the field of industrial property. He concluded by expressing the interest of his country to be party to the Treaty.

129. Mr. TOURÉ (Côte d'Ivoire) stated that Côte d'Ivoire, as the other member countries of OAPI, was active in revising the Bangui Agreement and adapting it to the present Treaty. He further expressed his satisfaction with regard to the Resolution, proposed by Germany and approved by the Conference, with regard to technical assistance to be given to the developing countries to help them to strengthen their structures and to implement the Treaty.

130. Mr. ZELENY (Belarus) associated himself with the preceding statements of delegations which appreciated the work and results of the Conference, and indicated that the Republic of Belarus would adhere to the Treaty in the near future.

131. The PRESIDENT requested that the Secretariat inform the Conference as to the status of the powers and credentials of the delegations.

132. Mr. CURCHOD (WIPO) announced that the Secretariat had received the full powers of the Delegation of Mexico and the letters of accreditation of Malawi and Nigeria. He further said that if other delegations still had letters of accreditation or full powers to be submitted, they should be handed in at once.

133. The PRESIDENT then invited Dr. Arpad Bogsch, the Director General of WIPO, to make a statement.

134.1 Mr. BOGSCH (Director General of WIPO) presented the following statement: "The conclusion of the Trademark Law Treaty is a new milestone in the history of the World Intellectual Property Organization. It is a milestone because the TLT is a Treaty which will truly harmonize and simplify the acquisition and maintenance of trademark rights. It is also a milestone because it will do that on a global basis. And, thirdly, it is a milestone because both the owners of the marks and the national and regional registries of marks will benefit by it.

134.2 "The Treaty is the result of the three-week long work of some 300 delegates who participated in the Diplomatic Conference. It is the result of their knowledge and their will to successfully accomplish their task.

134.3 "I congratulate them and, in particular, Ambassador Marcelo Vargas Campos from Mexico, the President of the Diplomatic Conference, Alec Sugden from the United Kingdom, Chairman of the Main Committee and Michael Kirk from the United States of America, Chairman of the Drafting Committee. WIPO congratulates also Ambassador Sahloul and Mr. Harms, Chairmen of the Credentials Committee and the Working Group, respectively.

134.4 "Honorable Delegates, WIPO owes all of you gratitude since it is you, the participants in this Diplomatic Conference, who created the Trademark Law Treaty of WIPO.

134.5 "Congratulations are also due to the participants of the preparatory meetings held over the last five years, whether the participants were representing governments or international organizations, public or private. Without the encouragement, advice and active participation of the interested private circles, the Trademark Law Treaty could not have been created.

134.6 "Lastly, with your permission, Mr. President, and with the permission of the delegates, I shall name some of the WIPO staff whose work was indispensable for arriving at our goal. I wish to name them because it is only fair that the records of the Diplomatic Conference perpetuate their names.

134.7 "François Curchod was the leader of the staff team from which most of the Secretariat's intellectual contribution concerning the substance of the Trademark Law Treaty originated. This team comprised also Ludwig Baeumer, Pierre Maugué and Bernard Ibos. They improved and polished our documents between each of the five preparatory meetings and between the last of such meetings and this Conference. The enthusiasm and the uncompromising desire for quality of François Curchod had a basic importance.

134.8 "But I shall be grateful if you allow me also to name some 20 more of my colleagues who directly participated in the preparatory work and/or the work of this Conference. They are Gust Ledakis, our Legal Counsel, and his assistant Ricardo Sateler. The translators, directed by Bernard Dondenne, and the interpreters, directed by Mrs. Pat Longley. Pierre Sihlé, Ignacio Pérez-Fernández, Vladimir Moujjevlev, Miss Wang Binying, Sherif Saadallah and Miss Diane Chadarevian assisted the Drafting Committee in establishing the French, Spanish, Russian, Chinese and Arabic texts of this Treaty. The drafters of the Summary Minutes are Albert Tramposch, Octavio Espinosa, Serguei Zotine, Miss Sonja Schilling, Marcus Höpperger, Niels Svendsen and Denis Croze. Finally, the documents were reproduced under the supervision of Jacques Schweizer, whereas the conference room attendants, led by Carlos Claa, were Mrs. Edith Nettel, Antoni Neusser, Yves Lonergan, Miss Manouri Pike, Philippe Tombini, Michel Ciampi and Paul Wittig. I thank them and my other colleagues, too many to name them all, who were serving our meetings."

135. The PRESIDENT thanked the Director General and referred to the applause of those gathered in the room as a token of deep gratitude for all those who had worked over the past five years toward the objective that had been concluded at the Diplomatic Conference.

Closing of the Conference

136. The PRESIDENT moved on to item 15 of the agenda (Closing of the Conference by the President). He stated that, immediately after the closing of the Conference the signature of the Final Act and the Treaty would take place. As President of the Conference, he thanked all the delegates for the honor of having elected him to that office. He then declared formally closed the Diplomatic Conference for the Conclusion of the Trademark Law Treaty, held in Geneva, October 10 to 28, 1994.

MAIN COMMITTEE OF THE DIPLOMATIC CONFERENCE

Chairman: Mr. A. Sugden (United Kingdom)

Secretary: Mr. L. Baeumer (WIPO)

First Meeting
Tuesday, October 11, 1994
Afternoon

1. The PRESIDENT declared the first meeting of the Main Committee open and, referring to the election of the Chairman and Vice-Chairmen reported in paragraph 11.1 of the summary minutes of the Plenary, above, invited the Chairman, Mr. Sugden (United Kingdom), to take the chair.

2.1 The CHAIRMAN thanked the delegations for having entrusted to him the task of chairing the Main Committee, and considered it an honor for his country and a privilege for himself. He observed that the delegations had expressed their intention to be flexible, and noted the comments of the interested circles which had clearly indicated that the Treaty was important and that political aspects should not jeopardize the conclusion of the Treaty. In line with the resolution proposed by the President of the Conference and adopted by the Plenary, the Chairman indicated that he intended to start the discussion with Article 17(4). He reemphasized that there was no need to repeat the prepared positions on the two alternatives but that suggestions for alternative proposals would be welcome.

2.2 He suggested the following manner of working for the Committee on this issue. First, the discussion would be strictly informal, and no delegation would be bound by the statements made in this preliminary orientation discussion. The delegates could take note of, and reflect on, the proposals, and take time to refresh the instructions from their Governments. If necessary, a working group could be set up to look at any possible solutions to bridge the gap between Article 17(4) Alternatives A and B.

2.3 The Chairman then summarized the text of Article 17(4), stating preliminarily that Article 17(4) was based on the fundamental assumption that Article 22(1)(ii) would be included in the Treaty, and that a regional international organization could be a member of the Treaty. Alternative A of Article 17(4) provided that a regional international organization would have no extra vote. Alternative B provided that a regional international organization would have an extra vote in addition to those of its member States. He also mentioned the possibility of another possible alternative which would be to abolish the idea of voting in the Treaty altogether.

3. Mr. BOGSCH (Director General of WIPO) referred to Article 22(1)(ii), stating that it is a basic assumption that a regional international organization can become party to the Treaty, with the proviso that all member States of the regional international organization would be party to the Paris Convention. He wished to reserve this question, stating that this principle could be altered to apply to regional international organizations whose member States were members of WIPO or the United Nations, provided that, if any member State was not a party to the Paris Convention, it would agree to respect the trademark provisions of the Paris Convention. The purpose of such a provision would be to de-link the Trademark Law Treaty from the Paris Convention. The reason for this would be that since the TRIPS Agreement under the GATT Uruguay Round incorporated the substantive provisions of the Paris Convention, a country which was not a member of the Paris Convention but, as a member of the World Trade Organization (WTO), was bound by its provisions should be able to become party to the Trademark Law Treaty. This covered most countries, since most countries were party to either the Paris Convention or to TRIPS. However, countries that were bound by neither the Paris Convention nor TRIPS could still become members of the Trademark Law Treaty under this proposal if they were members of WIPO or the United Nations and they promised to respect the Paris Convention obligations on trademarks. This was particularly necessary because the provisions of the Paris Convention concerning priority should be binding on all members of the proposed Treaty.

4. The CHAIRMAN thanked the Director General for his forward-looking proposal and opened the floor for comments concerning proposed Article 17(4).

5.1 Mr. BESELER (European Communities) stated that, although he might disagree on certain important points of this Treaty he nevertheless wanted the Conference to be successful. He declined to comment at this stage on the latest proposal by the Chairman for a compromise, and presented the following reasons why the European Communities preferred Alternative B to Alternative A of Article 17(4).

5.2 "The Trademark Law Treaty is addressed to all States or regional intergovernmental organizations which maintain a national or regional trade mark office. All the substantive provisions of the Treaty (Articles 1 to 15) have to be applied by such an office. Possession of an office is consequently a test or the crucial test which must be satisfied by anyone wishing to become a party to the Treaty.

5.3 "In the European Community, there are both national trademarks and the Community trademarks, which are registered by distinct offices and are governed by independent, substantive and procedural rules. The Community trademarks do not replace national trademarks, but stand alongside them as a separate right, obtained by a single registration valid for the whole of the Community. At present, this situation has no equivalent anywhere in the world. The Community has accordingly asked that, by way of exception, it should have voting rights independent of those of its Member States.

5.4 "In its memoranda of last April and August, the Community drew attention to the vital point underlying this request: there are parallel and distinct areas of competence for the member States and for the Community, the

member States being competent in respect of their national offices and the Community in respect of the Community trademark and no other. The provisions on procedure--the subject of the present Treaty--are quite divergent in the Member States of the Community as far as their national trademarks are concerned. Some have a system of registration without prior examination, others have not; some have provision for examination as to absolute grounds for refusal without an opposition procedure, others have not; some have provision for a similar examination with an opposition procedure, others have not; some systems involve an automatic examination for prior rights, others do not. There would be serious difficulties in the way of any attempt at harmonization, and the Community is not contemplating such a step. Instead, the Community has opted for the creation of a Community trademark office. This trademark is governed by its own rules of procedure, laid down at Community level. Despite the divergences with their own systems, the member States have accepted these rules for two main reasons: first, they are tailored to the particular situation of the Community trademark; and, second, they do not affect the member States' own systems.

5.5 "Four arguments have been put forward against a separate voting right for the Community. First, it has been asserted that the area of application of the Community trademark is identical with the territories of the member States. But it is not identical to the area of application of the member States' trademarks, nor to the sum of all these national territories. For historical reasons, the Treaty establishing the Community does not apply in certain parts of the territory of member States, for example, the Faeroe Islands, The Isle of Man and the French overseas territories. Thus, the area of application of the Community trade mark is not equal to the sum of the territories of all the member States.

5.6 "Second, it has also been asserted that the member States, acting through the Council of the European Community, could ensure that the procedures governing the Community trademark were aligned with those governing the national trademarks. But the national rules are not identical, and will continue to do so. The member States could not apply the same or similar rules to the Community mark as they do to their own trademarks. In the follow-up to this Treaty the Community member States will decide their positions and cast their votes with their own interests and their own particular registration systems in mind. If the Community has no voting rights, there will be no one to speak for the Community or to take account of the particular situation of the Community Trade Mark Office.

5.7 "Furthermore, it has been said that the system of Community trademarks will in the last resort be governed by national law. This is not so. Of course, there is administrative and judicial cooperation between the Community and its member States. But the last word in all disputes concerning Community trademarks and the interpretation of the law lies with the European Court of Justice, which is independent from national courts.

5.8 "Lastly, it has also been said that the Community and other regional intergovernmental organizations ought to fall in with the practice normally followed at the international level. They should indicate those aspects for which they are competent and could then exercise the right to vote. The

Community's answer to this idea would have to be this: The Community has competence for all the substantive rules of the Treaty where the Community trademark is concerned, but it has competence for none of them where national trademarks are concerned. The Community has competence to ensure that the Community Office in Alicante implements the Treaty, but it has no competence to ensure that the national trademark offices implement the Treaty. The situation is exceptional, and the conventional criteria are inadequate to deal with this situation, which does not arise in the classical patterns of international law. To apply the conventional criteria would make the Trademark Law Treaty unworkable as far as the Community is concerned, with all the consequences that might entail. This is a vital point which all delegations should take into account.

5.9 "Turning to the impact on international law and practice of the right to a separate vote for the Community, the Community realizes that States which are not members of the Community may have misgivings about allowing independent voting rights to the Community, fearing the impact this might have on other treaties. However, this request is a very exceptional one; the Community can restate its firm intention not to question the practice followed in numerous other international treaties. It is because the conventional criteria are not suited to the particular situation that it is putting this request forward here. Separate voting rights for the Community will not have a precedential effect for other treaties and other areas. Separate voting rights would be justified only in very exceptional cases.

5.10 "If community or regional legislation had the effect of harmonizing national bodies of legislation, each applicable in its own territory, no additional voting rights would be justified. This is the normal position with the Community and other regional intergovernmental organizations. The Community is in this situation, for example, with regard to the Uruguay Round Agreements or the 1992 Convention on Biological Diversity. Before separate voting rights are called for there must be, from a Community point of view, a Community or regional protection which stands alongside national protection rights. The one must be independent of the others as regards conditions and procedures and prospective right-holders must have the choice between one and the other. All these conditions do not occur in combination outside the industrial property field. Thus Alternative B does not give regional intergovernmental organizations a right to vote simply because they have jurisdiction in the matter. It imposes a further test: the member States of the organization must also maintain offices at which trademarks can be registered which have effect only in their own territory. There is no question here of improper expansion of powers of regional organizations or unwarranted duplication of voting rights.

5.11 "Finally, it has been contended that to accept separate voting rights for regional intergovernmental organizations would dilute the powers of other parties to the Treaty. But the effects of an accession to the Treaty are the same whether it is the Community or any other new State which is acceding. Every State which is party to the Treaty loses a little of its influence when a new member joins, because from an arithmetic point of view its vote counts for a little less. But this is no reason for limiting the participation in a treaty. Each accession to this Treaty is counterbalanced by the rights the old States acquire with respect to the new one and by the advantages secured

for them by the accession. The same applies to the Community. By acceding to the Treaty, the Community will provide the other parties with the guarantee that the Treaty will apply to the Community trademark and the Community Trademark Office. In return the Community ought to have the right to vote like any other party. And it is in everyone's interest that the Treaty should be applied as widely as possible.

5.12 "In conclusion, the Community has its own trademark office to the benefit of everyone. We have collaborated constructively in the elaboration of this Treaty and we want to continue to do so in the future, but we cannot do this as second-class members. Full membership with full voting rights of the Community would not mean a revolution in international law. Our situation is exceptional. Of course, it may one day also present itself in Africa, for the MERCOSUR or even in North America. NAFTA may one day have its own trademark office. We would be ready in this situation to grant them separate voting rights. In the meantime, we would consider it unrealistic to treat the European Trademark Office, which once may become one of the most important trademark offices, as if it did not exist."

6. Mr. KIRK (United States of America) recalled that he had earlier stated his country's position in the Plenary, and hoped that a compromise could be achieved. He recalled the statements of the user organizations, which said that they did not want to lose this opportunity for a harmonization Treaty because of a political problem, and that if there was no compromise solution, the user community would be the loser. He encouraged other delegations to offer potential compromise solutions, and to focus away from the debate between Alternatives A and B because he considered that all would lose in such a debate.

7.1 Mr. BOGSCH (Director General of WIPO) then suggested two solutions. The first solution, which he referred to as Alternative AB, being a compromise between Alternatives A and B, was the solution that was agreed to in the GATT Uruguay Round negotiations, as reflected in Article IX of the Agreement Establishing the World Trade Organization, including the footnotes to that Article.

7.2 The second solution, which he referred to as Alternative AB_{bis}, would be a more drastic solution. No Contracting Party would have the right to vote, and there would be no Assembly. This situation existed in other international treaties.

8.1 The CHAIRMAN stated that, with respect to solution AB_{bis}, it would be possible to build in some flexibility. For instance, the Treaty could authorize the International Bureau to make amendments to the Regulations or the Forms with the oversight of an Advisory Committee that would not have the same voting problem as an Assembly. However, significant changes could only be made by calling a Diplomatic Conference. He also indicated in the alternatives that perhaps authority to modify the Regulations could be transferred to the Paris Union Assembly.

8.2 The Chairman read out the provision of the WTO Agreement that dealt with voting by the European Communities. That Agreement stated, "where the European Communities has exercised the right to vote, they shall have a number of votes equal to the number of their member States which are members of the WTO." A footnote further stated, "the number of votes of the European Communities and its member States shall in no case exceed the number of the member States of the European Communities." Therefore, under solution AB, the European Communities would still have a separate vote, but the combined votes of the European Communities and its member States would not exceed the number of member States. However, the Chairman believed that this proposal had already been rejected by the European Communities.

8.3 The Chairman recalled that most delegations had advised flexibility in their statements, including the European Communities, and again requested possible solutions from the floor.

9. Mr. O'REILLY (Ireland) suggested a possible way of bypassing the problem of voting rights by looking at the definition of the required majorities instead. There were rules in the Treaty which required votes on the basis of a simple majority, or a two thirds majority, for instance. He suggested adopting Alternative B, but compensating by changing the rules for the required majorities.

10.1 The CHAIRMAN indicated that the required majority could, for example, have to be 50 percent plus or minus one, or two thirds plus or minus one.

10.2 The Chairman responded to the proposal of the Delegation of Ireland by stating that delegations were present with clear instructions from their governments, that it could be difficult to explain this proposal to their particular governments, and that it might be difficult to adopt in certain legislatures. He suggested that a basis for a solution might be found by considering existing solutions in other treaties such as the WTO Agreement, the UPOV Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits.

11. Mr. PRETNAR (Slovenia) stated that his Delegation supported Alternative B of the Treaty for pragmatic and political reasons, but indicated some sympathy for the Director General's proposal AB. He suggested that the issue of voting rights could be postponed, especially since Article 22 of the basic proposal listed types of organizations that could become party to the Treaty other than regional international organizations. He suggested that the right to vote be decided after experience was gained with the Treaty. Within a few years after entry into force, the situation might change, especially once the Community Trademark Office had started its operations. He suggested not to abolish the Assembly, but to go along with the thinking behind the suggested solution of the Director General.

12. Mr. EKSTEEN (South Africa) requested a text for compromise proposal AB that would be appropriate to this Treaty, and suggested the adjournment of the meeting.

13. The CHAIRMAN indicated that the Director General would develop the text if sufficient interest was seen. However, he noted that the Delegation of South Africa was the only delegation that had expressed interest so far.

14.1 Mr. BOVAL (France) stated that France firmly supported the position expressed by the European Communities and, referring to the positions expressed previously by the non-governmental organizations, said that those positions did not correspond exactly to reality for all participant States. In France, he claimed, the majority of the profession considered Alternative B to be justified and it was important that the Community should have the right to vote in view of the creation of the Community trademark.

14.2 Mr. Boval stated that he was in fact at a loss to understand the difference between the first compromise proposed, which was to reduce the European Community to a maximum of twelve votes, and Alternative A of the basic proposal. He further noted that the fact that one of the parties that would enter into obligations under the Treaty could not, on the other hand, assert its rights constituted a significant legal problem. As to the second compromise that had been proposed, that was to say the absence of an Assembly, he held such a procedure to be delicate and difficult to manage. Although it in no way wished to exclude the possibility of a compromise, the French Delegation nevertheless pointed out that the first solution proposed appeared contrary to the position of the European Community.

15.1 Mr. MOTA MAIA (Portugal) shared the arguments put forward by the European Communities. He thanked the Director General for the proposals he had made and which he considered an important subject of reflection, but had some doubts as to the applicability of those Alternatives.

15.2 Raising a question that he qualified as juridico-logical, Mr. Mota Maia noted that the positions of those that defended Alternative A and those that defended Alternative B were not in fact so far removed since both Alternatives accepted the European Communities as a Contracting Party to the Treaty. He therefore wondered how a full party could be told that it may exercise all rights except the right to vote.

16. The CHAIRMAN indicated that there were two possibilities now: either a choice between Alternative A and B, or a compromise solution. He was of the opinion that only a compromise solution would work in achieving a Treaty. He indicated that the proposal of the Director General did differ from Alternative A, in that under the WTO Agreement the European Communities had a stated right to vote, with the stated number limit, written into the WTO Agreement.

17. Mr. BESELER (European Communities) stated that the WTO Agreement presented a good text, but emphasized that the situations were different. The WTO dealt with trade policy, where there was a complete transfer of competence from the member States to the European Communities. The present draft Treaty dealt with trademark offices. He indicated that it might be possible to redraft the WTO Agreement text to take account of the situation of the Community Trademark Office. Regarding the Director General's solution ABbis, he stated that this could be considered, but suggested that the solution be restricted to the bare minimum. He questioned whether it would be necessary to give up the entire Assembly.

18. The CHAIRMAN suggested that perhaps it would be possible to keep the Assembly and simply eliminate the provision on voting.

19. Mr. BOGSCH (Director General of WIPO), in response to the request of the Delegation of South Africa for a draft text of solution AB, stated that he preferred to wait until the groups of delegations met the next morning.

20. The CHAIRMAN announced several meetings of groups of delegations for the following morning and adjourned the meeting.

Second Meeting
Wednesday, October 12, 1994
Morning

Article 17(4): Voting (continued)

21.1 The CHAIRMAN opened the meeting and expressed his hopes that the group meetings which had preceded the meeting of the Main Committee were productive. He said that several delegations seemed to be anxious that the work on the substantive parts of the proposed Treaty was not delayed by political considerations. He had the feeling that many delegations could accept any agreement that was reached between the two main protagonists. Although a vote of strength would be possible, such a decision would always be unacceptable and unsatisfying for one side.

21.2 Summarizing the possible ways forward, he said that a promising proposal had been made by the Director General of WIPO, namely to adopt a similar solution as had been accepted in the Agreement Establishing the World Trade Organization. This solution would give the European Communities the right to vote in their own name, subject to a provision limiting the overall number of votes to the number of its member States. Another solution could be to give a vote to every Contracting Party, including the European Communities, but to limit the right of the European Communities to vote in cases where all its member States voted en bloc. Furthermore, he referred to the proposal which had been made by the Delegation of Ireland, which would give the European Communities a right to vote, whereby the required majorities would be adjusted according to the question which was put to a vote.

21.3 A more drastic solution would consist of abolishing all provisions of the proposed Treaty relating to a vote by the Contracting Parties. Under such a solution, the power to amend the proposed Regulations or the International Model Forms would be either shifted to the Director General of WIPO or another body, such as, for example, the Assembly of the Paris Union. A further solution would be that the proposed Treaty provided for an Assembly in which the Contracting Parties would not have the right to vote. The Chairman concluded by suggesting that he should set out the most promising proposals in writing so that delegations would have an opportunity to consult with their capitals.

22.1 Mr. BOVAL (France) stated that the proposal consisting of deciding the debate on Article 17 during the morning did not appear altogether satisfactory to his Delegation. He considered that the problem raised by that Article warranted more time and more clarity. He said that France did not share the view that the choice between Alternatives A and B of the basic proposal did not depend on logical considerations. In order to pronounce on the various possible opinions that had been proposed, he wished that the participants in the Diplomatic Conference should be able to express themselves on the matter of principle that had been raised.

22.2 Mr. Boval said that the question was whether it was reasonable that an intergovernmental organization that was a Contracting Party should not enjoy a voting right and therefore should not vote. He considered that the matter could not be avoided and that a debate had to be held in the Conference.

23. The CHAIRMAN stated, in reply to the intervention of the Delegation of France, that he had not intended to suggest that a solution to the voting issue would be found in two hours. What he had intended was to invite the delegations to engage in orientation discussions which could show possible ways out of the situation.

24. Mr. EKSTEEN (South Africa) stated that the preliminary position of the African Group was that it had no preference for either Alternative of Article 17(4) of the proposed Treaty. He said that the African Group believed that the adoption of the proposed Treaty was of the utmost importance and called upon the main antagonists not to restate their positions but to work positively on a compromise solution. He concluded in reiterating the support of the African Group for any compromise solution that could be reached.

25. Mr. SERRÃO (Portugal) stated that the Portuguese Delegation, without being opposed to the general approach defined by the Chairman, supported the French Delegation in that the opinion of all delegations should be heard in the light of the various possible opinions that had been proposed, since it considered that proposal to concern the true basis of the problem. It was important that all delegations should be able to express themselves on the matter of principle that had been raised in the light of the various possible options that had been put forward with respect to Article 17.

26. Mr. CARRASCO PRADAS (Spain) supported the statements made by France and Portugal.

27. Mr. REZA ZAVAREIE (Islamic Republic of Iran) stated that the disputed problem could not be resolved through a solution found by the protagonists alone. He said that his Delegation was of the opinion that the issue under consideration implied important legal principles with far reaching consequences for the future. In this context, he asked how the term intergovernmental organization would be defined and whether, if his country together with a neighbouring country formed a regional office for the registration of marks, such an office would be eligible to become a Contracting Party to the proposed Treaty and would have a right to vote. He further stated that the decision which was going to be taken also had

implications for interparliamentary unions, because there also existed a European Parliament which had a system of weighted votes. This, in turn, would have further implications on international organizations such as the International Labour Organization or even the United Nations, its General Assembly and the Security Council. The seriousness of the question was evident and there was a need to consider the political implications of the problem for the future. Before his Delegation could state its position, it would have to know precisely what the impact of the decision would be for the future of intergovernmental organizations.

28. The CHAIRMAN said that the likelihood of the decision as a precedent would have to be evaluated. While the European Communities had stated that a provision in this Treaty would not create a precedent for other treaties, it was clear that all treaties may be used as examples during negotiations for other treaties.

29. Mr. OLSSON (Sweden) stated that his country was not a member of the European Communities, but that his Delegation considered that there were valid legal and political reasons to give a vote to the European Communities. He said that his Delegation supported Alternative B of Article 17(4) of the proposed Treaty, but that it would not exclude a compromise solution.

30. Mrs. RUDLOFF-SCHÄFFER (Germany) stated that her Delegation, on behalf of the German Presidency of the Council of the European Communities and its member States, supported the statement which had been made by the Delegation of the European Communities the day before and the statements of the Delegations of France, Spain and Portugal of that day. She said that, due to the independent and additional thirteenth trademark system, it was justified to give a separate vote to the European Communities as was provided in Alternative B of Article 17(4) of the proposed Treaty. Since it was possible that procedures within the member States of the European Communities were diverging, it was important to enable the Commission of the European Communities to ensure that the Community Trademark Regulation was aligned to the proposed Treaty. She concluded in reiterating that the provision granting a right to vote to the European Communities was not of a character to set a precedent.

31. Mr. O'REILLY (Ireland) recalled the general statement that his Delegation had made the day before and withdrew the suggestion his Delegation had made previously.

32. Mr. OUSHAKOV (Russian Federation) called on the protagonists of the two Alternatives in Article 17(4) to demonstrate political will and make every effort to find a solution. He emphasized that his Delegation was prepared to approve of any mutually acceptable solution leading to consensus.

33. Mr. GEROULAKOS (Greece) stated that, as a member of the European Communities, he fully shared the position taken the preceding day by the Delegate of the European Communities. He further confirmed his support for the proposal made by France, that was to wait until the position of the other delegations was known before taking a final decision.

34. Mr. GAUTO VIELMAN (Paraguay) stated on behalf of the Latin American and Caribbean Group that the Group had agreed not to adopt any group position in respect of the issues relating to the rights of regional intergovernmental organizations in the Trademark Law Treaty, in order to maintain the greatest flexibility possible. It had therefore been agreed that each country of the Group would independently contribute its own ideas at the appropriate time.

35. Mr. TROISE (Italy) referred to the statement his Delegation had made the day before. He expressed the support of his Delegation for Alternative B of Article 17(4) of the proposed Treaty and for the statement of the Delegation of the European Communities.

36. Mr. ENAJÄRVI (Finland) stated that his Delegation supported the statements which had been made by the Delegations of France and Portugal, and that it agreed with the statement of the Delegation of Sweden. He said that his Delegation fully supported Alternative B of Article 17(4) of the proposed Treaty.

37. Mrs. PREGLAU (Austria) stated that her Delegation, being from a country that was about to become a member of the European Communities, could go along with the statement that had been made by the Delegation of the European Communities. She said that her Delegation considered that position to be logical and legally justified. She concluded in expressing the deep hope of her Delegation that a solution to this problem would be found.

38.1 Mr. ROMERO (Chile) pointed out that in respect of the issue under consideration, procedural aspects should be distinguished from questions of substance. As regarded procedure, a working group could be established to find solutions to the issue under consideration. Such solutions should, however, take into consideration the fact that the voting issue contained in Article 17 was linked to other Articles of the draft Treaty, in particular Article 20 which referred to the possibility of making amendments to the Treaty and the Regulations. Any change in Article 17 should be examined in the light of the possible repercussions on the other provisions contained in the Treaty.

38.2 As regards the questions of substance, his Delegation favored Alternative A in Article 17(4) for the reasons which had already been expressed and because of the fact that the adoption of a different solution would invariably create a precedent in international law. Two other solutions which had been outlined earlier could be given further consideration. One was based on the approach adopted in the Agreement Establishing the World Trade Organization. The other solution outlined by the Director General would consist in substituting the Assembly with a different body, and could become the basis for a good compromise solution. A consultative committee could be created under the Treaty which would be entrusted with monitoring the development of the Treaty, its Regulations and the proposed Forms, and would prepare any amendments or improvements with the assistance of the International Bureau. It could safely be assumed that the amendment of the Regulations and the forms would generally not require a vote because such technical matters could be agreed by consensus. Some of the tasks assigned to the Assembly under Article 17(2) of the proposed Treaty could be reserved for

a Diplomatic Conference of the contracting parties and other tasks could be assigned to the consultative body mentioned earlier. He concluded that in a Treaty such as the one before this Conference it did not seem absolutely necessary to maintain the provisions establishing a formal Union nor an Assembly in the form envisaged in the basic proposal.

39. Mr. KAWAMOTO (Japan) stated that the Delegation of Japan supported Alternative A of Article 17(4) of the proposed Treaty. His Delegation was of the opinion that a regional intergovernmental organization had competence in respect of certain matters as a result of a transfer of competence from the member States. In such a case the member States were no longer competent to take an international commitment in respect of that matter so it was inappropriate that the regional intergovernmental organization and the member States should exercise their right to vote concurrently. He said that the Delegation of the European Communities had emphasized that national trademarks of its member States and the Community trademark were quite separate and distinct in terms of both rules and scopes and the co-existence of national trademarks and the Community trademarks justified the request for an exceptional solution giving an independent vote to the Community. However, the Regulation on the Community trademark was adopted and revised by the Council of the European Communities and, therefore, the Community trademark depended on its member States' intentions and on the method of the work of this body.

40. Mr. JAKL (Czech Republic) stated that his Delegation supported the statements of the Delegations of France, Portugal and Finland. In conclusion, he called for a compromise solution.

41. Miss TOSONOTTI (Argentina) expressed her Delegation's support for Alternative A of Article 17(4) of the proposed Treaty. Alternative B seemed unacceptable for the reasons which had already been mentioned. However, her Delegation was prepared to consider a compromise solution which would allow to overcome the present situation. In that sense, she deemed the two suggestions which were made by the Director General to be a basis for finding such a solution, namely the system adopted by the WTO, or the substitution of the Assembly by a different body, for example a consultative committee, as was suggested by the Delegation of Chile. This latter alternative appeared to be particularly attractive, since it linked the matter of voting in the Assembly under Article 17 with other articles of the basic proposal.

42. The CHAIRMAN summarized the discussion so far by stating that several delegations were willing to explore the alternative that would remove the Assembly. He mentioned that it would need to be decided whether an advisory body would operate by consensus or merely give advice.

43.1 Mr. STRENC (Romania) gave his support to the argument put forward the preceding day by the delegate of the European Community, for three reasons: firstly, because the Community trademark did not replace the national marks and that the Office for Harmonization in the Internal Market did not replace the national Offices; secondly, because the two systems would co-exist with specific differences; finally, because it was a situation of an exceptional nature.

43.2 Mr. Strenc said that he supported the positions of France and Portugal and would abstain from any reference, at that stage in the discussions, to Article 17 since he considered it preferable to wait in order to reach a compromise.

44. Mrs. MARKIDES (Cyprus) stated that, at present, Cyprus was not a member of the European Communities. She said that her Delegation associated itself with the position of the Delegation of Germany and that it supported the position of the European Communities.

45. Mr. van der EIJK (Netherlands) referred to the statement his Delegation had made the day before and said that he hoped that a way out of the complicated situation could be found. He stated that his Delegation fully agreed with the position of the European Communities and that it supported the statement which had been made by the Delegation of Germany.

46. Mr. GAUTO VIELMAN (Paraguay) stated that his Delegation would, in principle, support Alternative A in Article 17(4). It seemed evident, however, that a compromise solution would be needed to resolve the impasse. The two possible solutions outlined by the Director General earlier seemed to be a good basis for a compromise, namely the system adopted in the framework of the World Trade Organization, and the possibility of replacing the Assembly with a different body in which the voting issue would be avoided. The latter solution would have to take into consideration the need to amend Article 20 together with Article 17. A working group could be set up within the Main Committee to find a solution and determine what functions of the Assembly could be transferred to a consultative council in which there was no voting.

47. Mr. SIMON (Switzerland) shared the reasoning put forward by the Delegate of the European Communities. In view of the fact that it was an exceptional situation, he said that in the event of having to choose between Alternatives A and B, his Delegation would choose Alternative B. However, in a concern to reach an agreement on the substance of the Treaty, he emphasized that his Delegation would take its decision in consequence with the aim of achieving a compromise that was to the advantage of the economic actors.

48. Mr. POLYAKOV (Latvia) stated that, in principle, his Delegation supported the position of the European Communities. However, he considered that any compromise that could be found would be positive. He concluded in presenting a proposal of his Delegation, whereby Alternative B of Article 17(4) of the proposed Treaty would be adopted. However, any Contracting Party would be free to make a reservation that, notwithstanding Article 17(6)(a) and Article 19(2)(b), this State may consider itself not bound by a decision of the Assembly if the decision has been taken by $50\% + X$ of the votes cast, where X is the number of the regional intergovernmental organizations referred to in Article 22(1)(ii), or by exactly three-fourths of the votes cast including X votes of the regional intergovernmental organizations, voting for the said decision.

49. Mr. YAMBAO (Philippines) stated that the position of the European Communities presented a departure from international practice. It reflected the transitional nature of the present situation in the European Communities

but not the permanent character of the proposed Treaty. He said that, as a precedent for other intergovernmental organizations, this position was not acceptable, because it seemed to be unequal. In that regard, Alternative A of Article 17(4) of the proposed Treaty was the better solution and perhaps the best of all options. He stated the readiness of his Delegation to consider any solution that was fair to all parties. He concluded in expressing the support of his Delegation for the statement made by the Delegation of the Islamic Republic of Iran and said that any solution should be carefully studied as to its implications for the future.

50. Mr. PEETERS (Belgium) stated that his Delegation, along the lines of the declaration made by France, did not intend to renounce its logical position with respect to the problem raised. It supported the arguments put forward the preceding day by the European Communities and pronounced clearly in favor of Alternative B.

51. Mr. WALLBERG (Denmark) said that, because of good legal and political arguments, his Delegation associated itself with the Delegations having expressed their support for the position of the European Communities.

52. Mr. CAMENZULI (Malta) stated that his Delegation supported the position of the European Communities and Alternative B of Article 17(4) of the proposed Treaty. He concluded in calling on all delegations to find a compromise solution.

53.1 Mr. KIRK (United States of America) said that the majority of delegations which had supported the position of the European Communities were either member States of the European Communities, potential member States or States within its sphere of influence, so there was one block of votes. Many legal and political arguments had been put forward as justification for this proposal. Unfortunately, his Delegation could not share those same praises. It had been said by the Delegation of the European Communities that possession of a trademark office was a crucial test for an independent vote. If one was to take this to its logical extreme, the number of votes would actually be reduced since the Benelux Office handled three States. Therefore, this must not be the real reason for the request. It was said that the impact of the proposal would have no impact on other Treaties. Although this might be true with respect to existing Treaties, his Delegation had already heard similar proposals in the ongoing negotiations to revise the Hague Agreement Concerning the International Deposit of Industrial Designs and, it thought, also in the Dispute Settlement Agreement that was under negotiation.

53.2 He stated that the European Communities had said that the decrease in voting power of member States as a result of the present proposal in Alternative B was the same as the decrease in voting power when an additional State joined a treaty. However, there was a significant difference between, for example, the accession of a country like the People's Republic of China, which added one billion citizens to the reach of a particular agreement, and simply giving an extra vote to the European Communities. In fact, as he understood from the day before, the Community trademark would not even be effective for all of the areas covered by the national trademark offices in the European Communities. Another crucial issue was one of control and whether or not the European Communities and the Community Trademark Office was

indeed independent with its separate system. A quick review of the Regulation establishing the Community Trademark Office revealed some interesting facts. The Community Trademark Regulation created an administrative board. That board was made up of one representative of each member State and a representative from the Commission. That administrative board prepared a list of candidates for the positions of President and Vice-Presidents of the Community Trade Mark Office. The Council of the European Communities, again made up of representatives of each member State, appointed the President and Vice-Presidents. It also exercised disciplinary authority over those officers. Therefore, the officers of the Community Trademark Office were selected with full participation of every member State. Further, the administrative board, which consisted of representatives of each of the member States of the European Communities, advised the President of the Community Trademark Office on matters for which the Office was responsible. The board must be consulted before the adoption of examination guidelines. The board could deliver opinions to the President on any matter it considered necessary and it should meet at least annually to discuss those matters and could at its discretion choose to exclude the President from the discussion. It seemed to his Delegation that this was a rather strong control that the member States held over the activities of the Community Trademark Office, but it did not stop there. There was a budget committee. The budget committee was made up of representatives from member States. Each year, the President of the Community Trade Mark Office prepared a budget and sent the budget to the budget committee for its consideration, any adjustment it believed necessary and adoption. The budget committee appointed a financial controller that reviewed the finances of the Community Trade Mark Office. Proposals for fees, implementation rules and procedures for the board of appeals must be submitted to another committee made up of the member States' representatives for its opinion which was then, if it was affirmative, adopted, by the Commission of the European Communities.

53.3 In conclusion, he stated that the control that the member States had of the Community Trade Mark Office was total. It was beyond comprehension to believe that a President whose very position in Office depended on the member States was going to ignore the wishes of the member States of the European Communities. However, his Delegation was willing to look for a compromise. Since it had to consult in a such a case with its capital, he said that it would prefer if the suggestion for a compromise was made in writing.

54. The CHAIRMAN, acknowledging that the Regulation creating the Community trademark was itself a product of the member States, reminded the delegations that they had promised flexibility but had not yet indicated which compromise proposals they might consider.

55. Mr. TODD (United Kingdom) stated that his Delegation supported the statement of the Delegation of the European Communities. A separate vote was logical because the Community trademark was a system parallel to the trademark systems of its member States, although the Community Trademark Office was administered by the member States of the European Communities. He recalled the positions put forward by the representatives of industry and expressed his concern that the proposed Treaty might fail because of political reasons.

56. Mr. PORUBSKÝ (Slovakia) stated that his Delegation supported the statement of the Delegation of the European Communities and those of the Delegations of its member States.

57. Mrs. GONZALES (Trinidad and Tobago) stated that her Delegation supported Alternative A of Article 17(4) of the proposed Treaty. She expressed her support for the establishment of a working group that could consider all solutions which had been brought forward. She concluded by urging all delegations to find a compromise solution.

58. Miss CABRERA RIOS (Bolivia) expressed her Delegation's support for Alternative A of Article 17(4). Her Delegation could, however, also support other alternatives based on Alternative A or on the alternative outlined by the Director General whereby the Assembly would be replaced by a different body.

59. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) stated that Mexico preferred Alternative A of Article 17(4) for the reasons which had already been expressed. Although other alternatives could be explored, she wished to recall that this Diplomatic Conference had been convened to conclude a treaty among States and not among trademark offices. With respect to the position of the European Communities, that meant that the Conference should deal with 12 States and not with 13 offices. Those States were free to establish any institutions which they deemed appropriate, but such agreements could not be allowed to alter established international law. If the trademark offices of those countries wished to establish agreements among themselves, they could also resort to the usual legal institutions existing in international law, generally known as executive agreements or inter-institutional agreements. Her Delegation considered it unfortunate that WIPO should find itself involved in the establishment of a legal precedent which would go beyond the Organization's specialized competence in the field of intellectual property. It was felt that the agreement reached in respect of the European Communities in the GATT for the purposes of the World Trade Organization should already be regarded as a broad concession. Her Delegation would, however, consider with due attention any other proposals which could lead to an agreed solution to the issue under consideration.

60. Mr. OPHIR (Israel) recalled the importance of the proposed Treaty and said that the two proposals which had been made by the Director General merited further exploration. He said that he had given a proposal to the Chairman which would try to solve the problem by adopting a solution distinguishing between the grant of the right to vote and the exercise of that right. However, his Delegation would support any compromise solution that would achieve a general consensus.

61. Mr. RICHARDS (Australia) stated that his Delegation supported Alternative A of Article 17(4) of the proposed Treaty. He urged the delegations to move on with the work more quickly. Calling for caution, he stated that, when considering any proposals for solutions, Alternative A of Article 17(4) of the proposed Treaty should be regarded as the international norm and any suggestion should start from that point. He said that proposals for solutions should be made in writing because his Delegation would have to consult with its capital before it could support any suggested solution. Emphasizing the importance and the benefits for trademark users of the proposed Treaty, he called on all the delegations to find a common solution.

62. Mr. KARAAHMET (Turkey) said that Turkey was not yet a member of the European Communities. Recalling the independence of the Community Trademark Office, he expressed the support of his Delegation for Alternative B of Article 17(4) of the proposed Treaty.
63. Mr. McCARDLE (New Zealand) stated that his Delegation supported Alternative A of Article 17(4) of the proposed Treaty. He said that his Delegation was willing to consider compromise solutions but that such solutions would have to be presented on paper.
64. Mr. KANSIL (Indonesia) stated that his Delegation supported Alternative A of Article 17(4) of the proposed Treaty. He emphasized that it was very important to find a compromise solution to the problem.
65. Ms. TANGEVALD-JENSEN (Norway) said that her country, like Finland and Sweden, had applied for membership in the European Communities. She stated the her Delegation supported Alternative B of Article 17(4) of the proposed Treaty.
66. Mr. CHO (Republic of Korea) stated that his Delegation wholly supported Alternative A of Article 17(4) of the proposed Treaty because Alternative B of that Article would give a right of double voting to the European Communities.
67. Mrs. MÁRQUEZ (Venezuela) expressed her support for the statements made by the Delegations of Chile and Mexico. Her Delegation therefore preferred Alternative A in Article 17(4). She wished, however, to examine more closely the alternatives suggested by the Director General, in particular the one which would replace the Assembly by a consultative council or a similar body.
68. The CHAIRMAN concluded that, so far, the discussions had not shown an overwhelming majority for either of the proposed Alternatives of Article 17(4) of the proposed Treaty. There was a substantial majority for Alternative B which was due to the opinion expressed by the member States of the European Communities and States closely linked to it. He said he had gained the impression that some 30 delegations had supported Alternative B, whereas Alternative A was supported by some 15 delegations. That showed that there was a need for a further alternative solution. He was not convinced that the establishment of a working group to examine all the proposed solutions would be successful and said that the two possibilities which had been suggested by the Director General of WIPO were the most promising. One consisted of the adoption of the formula which had been agreed upon in the Agreement Establishing the Multilateral Trade Organization. The other would result in the abolishment of the Assembly in the proposed Treaty, or the abolishment of the power of voting within such an Assembly.
69. Mr. BOGSCH (Director General of WIPO) explained that his suggestion to abolish the Assembly and all votings could be presented in writing and put at the disposal of the delegations at 8.30 a.m. of the following day.
70. The CHAIRMAN concluded that there was no opposition to the Director General preparing his suggestion in writing, and asked him to prepare a text of the suggestion that would indicate all of the amendments necessary to implement the solution.

71. Mr. ROMERO (Chile) acknowledged that the Director General's proposals followed the lines suggested by his Delegation earlier on. His Delegation therefore supported the procedure suggested by the Director General.

72. Mr. KIRK (United States of America) stated that consultations which his Delegation had with interested circles revealed that much importance was attached to the notes accompanying the basic proposal and contained in document TLT/DC/5. He said that his Delegation believed that those notes provided a most useful guidance to the interpretation of the proposed Treaty. He requested clarification of the legal status of the notes and he urged that they would accompany the final text of the proposed Treaty.

73. The CHAIRMAN said that it was possible for the Main Committee to recommend to the Plenary to give certain importance to the notes.

74. Mr. BOGSCH (Director General of WIPO) said that it was a good idea to publish the notes either with the Records of the Diplomatic Conference or even before. However, the present notes would have to be adjusted according to the results of the Diplomatic Conference. In any case the revised notes would be available when the ratification of the proposed Treaty was considered by a potential Contracting Party.

75. Mr. YAMBAO (Philippines) announced that the Asian Group would meet at 9.30 a.m. of the following day in Room B.

76. The CHAIRMAN adjourned the meeting.

<u>Third Meeting</u> <u>Wednesday, October 12, 1994</u> <u>Afternoon</u>

Article 1: Abbreviated Expressions

77. The CHAIRMAN opened the meeting and indicated that the discussion would now begin on the provisions in the draft Treaty and the draft Regulations accompanied by the notes, as presented in documents TLT/DC/3, TLT/DC/4 and TLT/DC/5. He suggested that the Rules be discussed in connection with the Articles in the draft Treaty to which they relate, as was the case in the discussions by the Committee of Experts. He also suggested that the discussions begin with Article 1. As there were no objections to this procedure he invited the International Bureau to introduce Article 1 of the draft Treaty.

78. Mr. BAEUMER (WIPO) explained that Article 1 contained abbreviated expressions of certain terms used in the Treaty which required explanation. They might be subject to changes according to possible amendments in the relevant provisions of the Treaty.

79. Mr. KAWAMOTO (Japan) requested clarification on the legal status of the notes in respect of the draft Articles and draft Rules, since the notes were very important for the national implementation of the Treaty. In respect of Article 1 he asked if there was any difference between the title "Abbreviated Expressions" and "Definitions" which was used in other Treaties such as the PCT. He proposed to adopt the title "Definitions."

80. The CHAIRMAN stated that it might be possible to make the notes in one of the formal preparatory documents of the Conference. He indicated that it would not be possible to go into detailed discussions concerning the notes and suggested that delegations indicate which notes they would like to have reflected in the minutes. He stated that there would be no time for confirmation of the notes as a definitive interpretation of the text in the Treaty. He then invited the International Bureau to clarify the question from Japan concerning the title of Article 1.

81. Mr. BAEUMER (WIPO) noted that there was not much difference between "Abbreviated Expressions" and "Definitions," but that the term "Abbreviated Expressions" was found to be more appropriate. The intention was to simplify the terminology so that it would not be necessary to repeatedly use the full titles of the terms listed in Article 1.

82. The CHAIRMAN noted that the term "Abbreviated Expressions" was more accurate. The Chairman then turned to the items under Article 1 and concluded that items (i) through to (viii) of Article 1 were approved as proposed with the clarification that the reference in (vii) to the Paris Convention referred to the latest adopted text of the Convention.

83. Mr. REZA ZAVAREIE (Islamic Republic of Iran) proposed that the approval of item (ix) should be postponed until the discussion on Article 22(1)(ii) concerning the inclusion of regional intergovernmental organizations. His Delegation was opposed to the membership of such regional intergovernmental organizations in the Treaty as explained earlier.

84.1 The CHAIRMAN found it reasonable that this item be put aside until the question of regional intergovernmental organizations was dealt with in Article 22. He concluded that items (x), (xiii) and (xiv) were approved as proposed. Items (ix), (xi), (xii) and (xv) were put aside pending the proposal by the Director General.

Rule 1: Abbreviated Expressions (ad Article 1)

84.2 The CHAIRMAN then turned to Rule 1 of document TLT/DC/4 and invited the Committee to discuss this Rule. As there were no comments, the Chairman concluded that Rule 1 was approved as proposed.

Article 2: Marks to Which the Treaty Applies

84.3 The CHAIRMAN then turned to Article 2 and asked the International Bureau of WIPO to introduce its provisions.

85. Mr. BAEUMER (WIPO) noted that Article 2 defined the scope of the Treaty as regards the different kinds of marks. Paragraph (1)(a) limited the scope of application of the Treaty to visible signs. The paragraph also provided that, if a Contracting Party accepted for registration three-dimensional marks only then would it be obliged to apply the provisions of the Treaty to such marks. Paragraph (1)(b) supplemented this provision by confirming that such non-visible signs as sound marks and olfactory marks remained outside the scope of the Treaty. Each Contracting Party was free to accept such marks for registration. While there was no obligation to apply the Treaty to such marks, Contracting Parties were permitted and encouraged to do so. The same also applied to hologram marks, which were a special kind of visible sign for which there might be special requirements.

86. The CHAIRMAN then invited the delegations to discuss Article 2(1)(a).

87. Mr. MOTA MAIA (Portugal) said that the drafting of the Article could raise some problems of interpretation in so far as recourse was had to a new expression, that was to say "marks consisting of visible signs." He pointed out that the Directive of the Council of the European Communities on the approximation of national laws relating to trademarks used, for its part, the notion of signs capable of being represented graphically.

88. The CHAIRMAN recognized that this aspect of being able to see the mark had always caused some difficulties in various provisions in national laws. He drew attention to the text of the TRIPS Agreement which permitted members to require as a condition for registration that signs be visually perceptible. He asked if the Delegate from Portugal had any specific text to propose.

89. Mr. MOTA MAIA (Portugal) proposed that there be added to the wording of Article 2(1), after "visible signs," the words "capable of being represented graphically." The Delegate of Portugal held that such an amendment would have the advantage of reconciling the two approaches.

90. Mr. GEROULAKOS (Greece) said that he had no difficulty in supporting the position of Portugal, but noted nevertheless that the addition of "capable of being represented graphically" prevented the exclusion of sound marks as intended by paragraph (1)(b) of that Article. With reference to the possible transcription of sound marks, as notes of music for example, Mr. Geroulakos considered that the term "visible signs" had been chosen for that precise reason.

91. The CHAIRMAN expressed his concern if the text in Article 2 was amended to a form whose scope was different from the text contained in the TRIPS Agreement.

92. Mr. BORGES (France) supported the proposal by Portugal in the event, particularly, that such marks were to be published in future.

93. The CHAIRMAN asked if there was anyone opposed to the proposal by Portugal.

94. Mr. KIRK (United States of America) expressed the same concern as the Chairman in respect of the TRIPS Agreement and stated that refusal of a mark which was visually perceptible but could not be presented graphically might be inconsistent with the TRIPS Agreement.

95. Mr. TODD (United Kingdom) indicated that there perhaps was some confusion about what this particular Article was attempting to achieve. In his view it was not intended to indicate to Contracting Parties what sorts of signs they must register. The TRIPS Agreement and the European Community Directive dealt with the question of which signs should be accepted for registration, but the present draft Treaty was concerned with procedural matters. He stated that the Treaty should avoid dealing with the question of what sort of marks must be registered and that the question of the signs referred to in subparagraph (1)(b) could be dealt with by saying that where countries do accept such marks they should apply the Treaty to the extent possible.

96. Mr. KUNZE (AIM and AIPPI) suggested that this issue should be seen in the context of Article 24(1). He proposed these marks should be dealt with in this Article so that the Treaty was not excluded as a whole concerning sound marks, hologram marks, etc.

97. Mr. HARMS (South Africa) expressed his preference for the present text and indicated that amendments would have drafting consequences for other articles. He suggested that in Note 2.02, the words "it should" could be changed to "ought to."

98.1 Mr. MOTA MAIA (Portugal) wished for a clarification and pointed out that the draft Treaty dealt with registration procedures. He noted in that respect that Article 3 referred to a request for registration. It was therefore important that the marks to which the Treaty applied should be clearly defined. Since visible signs could not include olfactory marks, since Article 2(1)(b) specifically excluded sound marks and olfactory marks, and since paragraph 2.02 of the Notes on the draft Treaty and Regulations set out very clearly that holograms and non-visible signs were excluded from the scope of the Treaty, Mr. Mota Maia deduced that such was the case for the reason that it was difficult to reproduce such marks by graphical means. Thus the need to introduce his amendment.

98.2 He concluded by stating that his proposal added to the requirement of visibility that of graphical representation, which indeed underlined the Note he had mentioned, and added that his proposal had been made with the aim of clarification.

99. The CHAIRMAN explained that there were two lines of thought. A visible sign was one that a person could actually see. The European Communities Directive, on the other hand, had a broader meaning because it included marks such as sound marks, which were not visibly perceptible but which could be represented graphically, for instance through musical notes.

100. Mrs. GORLENKO (Russian Federation) recalled that during the sessions of the Committee of Experts the problem of the scope of application of the future Treaty had been discussed and the decision had been reached not to

apply it to exotic marks. Her Delegation, however, did not have a problem in respect of exotic marks since they were covered in its national legislation, but inclusion of such marks in the Treaty might complicate the work since it could require modification of other Articles of the Treaty. She expressed the view that the basic provisions of the Treaty should not be modified.

101. The CHAIRMAN agreed that there would be certain problems applying the Treaty to exotic marks, which might need specific rules. He suggested that the Treaty could include a statement such as "as far as possible the Treaty would apply to exotic marks".

102. Mr. PRETNAR (Slovenia) supported the proposal by Portugal, but with the deletion of the term "graphical" so that the amendment would only refer to marks capable of reproduction. This accorded with language in other places of the draft Treaty, for example in Rule 3.

103. Mr. OLSSON (Sweden) expressed his sympathy with the line of thought of the United Kingdom. He questioned whether the second part of subparagraph (1)(a) was necessary because three-dimensional marks were also visible signs. With the deletion of the clause, the Treaty would apply to all visible signs.

104. Mr. BAEUMER (WIPO) stated that the last clause of subparagraph (1)(a) was necessary because not all countries accepted the registration of three-dimensional marks. The present wording would not oblige countries to register three-dimensional marks.

105. Mr. FALL (Senegal) held that the provisions of Article 2(1)(b) were sufficiently clear and was favorable to maintaining the Article as it stood.

106. The CHAIRMAN asked the Portuguese Delegation if it insisted on its proposal.

107. Mr. MOTA MAIA (Portugal) said that he did not wish to maintain his proposal at any price. He further wondered whether the collective marks referred to in paragraph (2)(b) of Article 2 could not be given a treatment identical to that afforded to three-dimensional marks in paragraph (1)(a) of that same Article, that was to say, a Contracting Party would not be required to apply the Treaty to collective marks unless the legislation applicable to that Contracting Party permitted the registration of collective marks.

108. Mr. O'REILLY (Ireland) supported the text of the basic proposal.

109.1 The CHAIRMAN concluded, in the absence of further comments in support of the proposal by Portugal and the comments made by the United Kingdom, that subparagraph (1)(a) and (b) were approved as proposed.

109.2 The Chairman then turned to paragraph (2) and invited the International Bureau to introduce its provisions.

110. Mr. BAEUMER (WIPO) noted that paragraph (2) dealt with two kinds of marks. Subparagraph (2)(a) provided that the Treaty would apply not only to marks for goods but also to marks for services. This was an extension of the provisions of the Paris Convention, requiring that marks for services should not only be protected but accepted for registration.

111. The CHAIRMAN then invited comments on subparagraph (2)(a).

112. Mrs. WALTERS (United States of America) referred to Note 2.03 which stated that this subparagraph had the effect that Contracting Parties were obliged under the Treaty to register service marks and that a country could only accede to the Treaty if it registered such marks. As this was not clear in the subparagraph itself, she suggested that the wording of the Note should be part of that subparagraph.

113. The CHAIRMAN observed that this subparagraph should be read in relation to Article 15, which required that the provisions of the Paris Convention concerning trademarks be applied to service marks. The result was that Contracting Parties would be required to register service marks.

114. Mr. OPHIR (Israel) stated that Note 2.03 should be changed to properly reflect the substance of paragraph (2)(a).

115. Mr. BOGSCH (Director General of WIPO) confirmed that the notes would be changed in order to reflect that Article 2(2)(a) should be read together with Article 15 with the result that Contracting Parties were obliged to register service marks.

116. Mr. STRENC (Romania), noting a slight difference of terminology between the French and English wordings of Article 2(2)(a), suggested that the words "and/or" be inserted and that, consequently, the end of the sentence should be deleted so that it would read as follows: "le présent traité est applicable aux marques relatives à des produits (marques de produits) et/ou à des services (marques de services)." He therefore suggested that a corresponding abbreviation be inserted in Article 1.

117. The CHAIRMAN stated that this was a drafting point which would be considered by the Drafting Committee.

118. Mr. KARAAHMET (Turkey) stated that his country was prepared to provide for the registration of service marks but that his country needed a transitional period.

119. The CHAIRMAN concluded that subparagraph (2)(a) was approved subject to the drafting point. He then turned to subparagraph (2)(b) and noted that not all countries accepted the registration of collective, certification and guarantee marks. Since they were often the subject of special regulations, Contracting Parties should therefore not be obliged to apply the Treaty to these marks.

120. Mr. MOTA MAIA (Portugal) was willing to accept the explanations that had been given him. He emphasized that he had spoken only because the present draft Treaty did not satisfy Article 7**bis** of the Paris Convention that required the registration of collective marks, certification marks and guarantee marks.

121. Mr. THIAM (OAPI) said that he also accepted the explanations that had been given. He observed that the protection of non-individual marks (collective and certification marks) was subject to special conditions that explained the complexity of harmonizing that field. Referring to Note 2.04 of the Notes relating to the draft Treaty and Regulations, he expressed a wish that those notes should be reproduced in the Records of the Conference.

122. Mr. BOGSCH (Director General of WIPO) stated that the contents of the Note would be reproduced in the records of the Conference.

123. Mr. FALL (Senegal) had wished to speak prior to the intervention by the delegate of OAPI in order to support the viewpoint of the Delegation of Portugal with respect to collective marks and to draw the attention of the Conference to that item. In view of the explanations that had been obtained for him by the Chairman, the Director General and also in view of the statement by the Delegate of OAPI, he expressed his satisfaction at the situation.

124. The CHAIRMAN concluded that subparagraph (2)(b) was approved as proposed.

125. Mr. DE SAMPAIO (ICC) wished to speak on an item he had raised throughout the six years of preparatory work for the present Conference, that was the terminology for the title of the Conference in English, which referred to "Trademark Law Treaty" compared with the title of the Treaty in French which referred to "droit des marques."

126. The CHAIRMAN stated that the question of the title of the Treaty had been discussed extensively at the Committee of Experts Meetings and that it had been decided to retain the title Trademark Law Treaty. The term trademarks was a well-known expression in English, and unless the meeting wanted to reopen the question, he suggested to leave the title as it is.

Article 3: Application

127.1 The CHAIRMAN then opened the discussion on Article 3. He emphasized that Article 3 contained a maximum list of all the indications and elements which a Contracting Party was allowed to require up to the point of registration of an application.

127.2 The Chairman concluded that subparagraph (1)(a), items (i) to (iv) were approved as proposed.

128. Mr. KAWAMOTO (Japan) asked whether the term "representative" in item (v) of subparagraph (1)(a) was in conformity with the term "agent" in the Paris Convention.

129.1 The CHAIRMAN stated that the meaning of the terms was basically the same although, since the term "agent" may in some countries imply some form of certification, the term "representative" was broader.

129.2 He concluded that subparagraph (1)(a), items (v) and (vi) were approved as proposed.

130. Mr. SCHWAB (European Communities) suggested an amendment to subparagraph (1)(a) item (vii). He stated that item (vii) of the basic proposal contained an enumeration of indications which Contracting Parties may require where the applicant wishes to take advantage of the priority of an earlier application. Paragraph (7) of Article 3 specified that the list of requirements in paragraph (1) was exhaustive. Under Article 4 of the Paris

Convention, the countries of the Paris Union could require any person making a declaration of priority to produce a copy of the earlier application and a translation at any time within three months of the filing of the application. It was not clear from the wording of this paragraph whether Contracting Parties could require the filing of these documents in connection with an application. While an explanation was given in Note 3.08, this did not reflect the wording of the text of the relevant paragraph in the Treaty itself. He suggested including a provision in item (vii) that the applicant who wishes to take advantage of the priority of an earlier application may be required to comply with any of the requirements provided for in Article 4 of the Paris Convention. The Delegation of the European Community would present a written proposal to take account of this.

131. Mr. SZARKA (Hungary) drew attention to the Paris Convention where the term "State" was used and asked whether this term should be also used in item (vii).

132. The CHAIRMAN noted that this point would be a matter for the Drafting Committee and indicated that the Committee would come back to item (vii) in respect of the written proposal of the European Communities.

133. Mrs. WALTERS (United States of America) indicated that her Delegation would propose a text for amendment of subparagraph (1)(a), item (viii).

134. Ms. MORARU (Romania) was in favor of the proposed wording but nevertheless suggested the addition ahead of the word "exhibition" of the words "official international" in order to maintain the wording in the spirit of Article 11 of the Paris Convention.

135. The CHAIRMAN recalled that the intention by the Committee of Experts was to go further than the Paris Convention.

136. Ms. MORARU (Romania) did not wish to press her proposal, but nevertheless observed that if the Treaty was to refer to national legislation, the provisions of the latter had to remain within the framework of the Paris Convention.

137. Mr. BOGSCH (Director General of WIPO) confirmed this and referred to the clarification in Note 3.09, last sentence.

138.1 The CHAIRMAN stated that the Committee would come back to item (viii) at a later stage when the Committee had received the proposal from the United States of America.

138.2 He concluded that subparagraph (1)(a), items (ix) to (xv) were approved as proposed.

139. Mr. RICHARDS (Australia) proposed a new text in respect of item (xv). He stated that this item, being part of an exhaustive list, says only that the goods and services should be grouped according to the classes of the Nice classification. He pointed out that Rule 9 of the Madrid Protocol also requires that the classes be presented in the order of classes in the Nice Classification. He suggested having a similar provision in this list, and proposed including, after the word "classification," the phrase "presented in the order of the classes of that classification."

140. Mr. TROICUK (Canada) supported the proposal of the Delegation of Australia.

141. The CHAIRMAN concluded that the Australian proposal referred to in paragraph 139 was approved by the Committee.

142. Mr. CHUNG (Republic of Korea) stated that the Republic of Korea did not apply the Nice Classification. He suggested that this Classification should be optional for Contracting Parties or that Contracting Parties should have the freedom to decide when it would take effect for their territories. This would allow time for transition from the present classification system.

143.1 The CHAIRMAN noted that the proposed Treaty did not prevent a Contracting Party from using a different system, but the Contracting Party could not refuse an application that was in accordance with item (xv).

143.2 The Chairman concluded that subparagraph (1)(a), item (xv), was approved with the amendment proposed by Australia and accepted in paragraph 141, above, and that subparagraph (1)(a), items (xvi) through (xvii) and subparagraph (2) were approved as proposed.

144. Mr. von MÜHLENDahl (European Communities) suggested an amendment in respect of Article 3(3) in order to facilitate the special problems regarding an Office that admitted several languages. He stated that languages played a role in different aspects of trademark application practice, for example with respect to the application form, translation of priority documents and other supporting documents, and multilanguage systems for certain procedures such as oppositions. He suggested adding the following language to paragraph (3): "and complies with other language requirements applicable to its Office."

145. The CHAIRMAN noted that the Committee would come back to this provision when the written proposal was available.

146. Mr. REZA ZAVAREIE (Islamic Republic of Iran) inquired whether it would be possible to group all the provisions on languages in one article.

147. Mr. BAEUMER (WIPO) noted that the structure of the draft Treaty was a result of six meetings of the Committee of Experts. He suggested keeping this structure as it would take time to modify the Treaty, and such modification would probably not be helpful.

148. The CHAIRMAN concluded, in the absence of further comments, that the structure in respect of articles concerning languages should be maintained, and turned to Article 3, paragraph (4).

149. Mr. CAO (China) stated that under Chinese trademark law a seal must be affixed together with a signature and suggested that subparagraph (4)(a) be amended accordingly.

150.1 The CHAIRMAN requested that the Chinese Delegation take this point up in connection with Article 8 concerning signature and other means of self-identification.

150.2 He concluded that paragraph (4) was approved as proposed.

151. Mr. OPHIR (Israel) supported the provisions in Article 3(5) but pointed out that Israel did not yet apply the multi-class application system. He suggested that a time limit of one to three years should be introduced instead of a general reservation to allow Contracting Parties to apply this provision, for example, to computer systems.

152. Mr. ABOULMAGD (Egypt) stated that a multi class system was not applied in Egypt and indicated that his Delegation would come back on this question in connection with Article 24.

153. Mr. CHO (Republic of Korea) noted that a multi class system was not applied in the Republic of Korea and that this country needed time to introduce such a system. He suggested that such a system should be optional for Contracting Parties.

154.1 The CHAIRMAN noted that many countries now applied the multiclass system and other countries were in the process of changing their laws in order to apply this system. He reminded those countries which have problems with introducing multiclass systems that a limited reservation would be available in connection with Article 24, and that this should meet their needs.

154.2 He concluded that paragraphs (5) and (6) were approved as proposed.

155. Mr. CAO (China) referred to certain restrictions existing in China in respect of trademarks to be used on certain products. In particular, in order to obtain registration of trademarks relating to medicaments for human use or tobacco-based products, the applicant must furnish certificates from the Department of Health or from another competent authority. He suggested supplementing paragraph (1)(a) of Article 3 with a new subparagraph (xviii) providing for the furnishing of certificates in accordance with the national law of the Contracting Party.

156. The CHAIRMAN recalled that it was normal in many cases to require marketing approval for a product, but this but was not directly linked with trademark applications. He invited the Delegation of China to put forward a written proposal.

157. Mr. ROMERO (Chile) suggested reducing the introductory portion of Article 3(7) as follows: "No Contracting Party may demand that the following requirements be complied with in respect of the application." He explained that his Delegation did not have any objection to prohibiting the requirements mentioned in Article 3(7) of the basic proposal, but would like to avoid a broad prohibition of the possibility of requesting certain specific items to comply with national law. For example, in some countries trademark fees were regarded as taxes, and must therefore comply with tax law. In particular, Chilean tax law required that any payment of taxes must include the payer's fiscal identification number. The possibility of requiring the applicant to indicate his fiscal identification number would permit compliance with the relevant provisions of the tax law, thus avoiding an unnecessary conflict of laws. The suggested amendment would therefore confine the prohibition under Article 3(7) to the four cases mentioned in the basic proposal.

158. The CHAIRMAN indicated that the suggestion by Chile was very far reaching and undermined much of what had been achieved in respect of simplification of the requirements which were needed in respect of trademark applications.

159. Mr. BOGSCH (Director General of WIPO) asked if everyone including foreign applicants must use a fiscal identification number in Chile.

160. Mr. ROMERO (Chile), replying to the Director General, explained that in Chile the requirement to indicate the fiscal identification number stemmed from tax legislation, not trademark law. Any person paying taxes in Chile, including payment of a trademark fee, must have such a number.

161. Mr. PRETNAR (Slovenia) noted in response to the intervention of the Delegation of China that he supported the present text and referred to Article 15(4) of the TRIPS Agreement which provided that "the nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark."

162. Mr. KUNZE (AIM and AIPPI) expressed his surprise that agents for the registration of foreign marks paid taxes in Chile and wondered how the agent could ask for and get a taxation number which the applicant did not know about. Trademark fees should be only for the work of trademark registration.

163. The CHAIRMAN noted that it was his impression that the majority in the Committee did not want to open up this provision and he suggested if there were any specific points, such as tax identification, they be discussed in conjunction with the reservations under Article 24.

164. Mr. DE SAMPAIO (ICC) recalled that the goal of the Committee was to change for the better and suggested that all delegations reflect further on the information that had been received on this item.

165. Mr. CATOMÉRIS (FICPI) recalled that the fiscal identification issue had been discussed during the last six meetings of the Committee of Experts which had rejected this point as falling outside the scope of the Treaty. He indicated that FICPI would be opposed to an escape clause in Article 24 on this matter.

166. The CHAIRMAN concluded that paragraphs (7) and (8) were approved as proposed.

Rule 2: Manner of Indicating Names and Addresses (ad Article 3)

167. The CHAIRMAN then turned to the rules in Document TLT/DC/4 relating to Article 3.

168. He concluded that Rule 2 was approved as proposed.

Rule 3: Details Concerning the Application (ad Article 3)

169. The Chairman concluded that Rule 3 was approved as proposed.

Rule 4: Details Concerning Electronic Communications (ad Article 3)

170. Mr. BOGSCH (Director General of WIPO) confirmed that Rule 4 would not be part of the Regulations to be adopted by the Diplomatic Conference.

171. The CHAIRMAN adjourned the meeting.

<u>Fourth Meeting</u> <u>Thursday, October 13, 1994</u> <u>Morning</u>

172. The CHAIRMAN opened the meeting and summarized the discussions which had taken place the day before. He said that Articles 1 to 3 of the basic proposal for the Treaty and Rules 1 to 4 of the basic proposal for the Regulations had been discussed and that, subject to few outstanding issues, agreement had been reached on those provisions. He then invited the Director General of WIPO to introduce the proposal contained in document TLT/DC/7.

173.1 Mr. BOGSCH (Director General of WIPO) explained the suggestions contained in document TLT/DC/7. The main changes that the suggestions would introduce would be the elimination of the voting issue and the de-linking of the proposed Treaty from the Paris Convention. The term "Assembly" would be deleted from Article 1 and would be replaced by a Consultative Committee. The definition of the term "Union" would be deleted because the proposal did not provide for the establishment of a Union. "De-linking" from the Paris Convention meant that it would no longer be necessary to be a member of the Paris Union to accede to the Treaty. But since the trademark obligations under the Paris Convention needed to be applied by everyone, it would be necessary to state an obligation for the Contracting Parties to comply with the obligations under the Paris Convention. As a consequence of the elimination of the Assembly, the Article concerning the International Bureau was deleted because, in the absence of an Assembly, the International Bureau did not have any real function to perform. The Director General drew particular attention to the fact that the Consultative Committee could not take any decision and could not proceed to any vote.

173.2 Referring to the difficult question of how the Regulations should be amended, the Director General stated that, because there was no vote in the Consultative Committee, decisions could not be taken, not even by consensus, and that therefore any Contracting Party should have the right not to apply any given amendment, that is, any Contracting Party that did not agree with an amendment could decline to implement it; in such a case, it would continue to be bound by the original provision of the Regulations. As a further consequence of the omission of the Assembly, the suggested solution deleted the Article on revision and modification of the proposed Treaty. Because the suggested solution wanted to avoid any discussion on the right to vote, it

merely provided that Protocols to the proposed Treaty had to be concluded by a diplomatic conference, without indicating who would participate in such a Conference. The question would be left to the Diplomatic Conference itself.

173.3 The footnotes relating to Article 22 in the suggested solution intended to illuminate the meaning of items (ii) to (v) of paragraph (1) of that Article. The replacement, in Article 22(3)(ii), of the words "the instruments of all of the regional intergovernmental organization's member States" by "the instruments of five of the regional intergovernmental organization's member States" intended to avoid a situation where the instrument of ratification of a regional intergovernmental organization could be counted among those instruments of ratifications which were necessary to cause the entry into force of the proposed Treaty. The change to Article 26 contained in the proposal was necessary because the suggested text would abolish the Assembly and, therefore, official texts of the proposed Treaty in other languages could not be decided by the Assembly, but would be established merely at the request of Contracting Parties.

174. The CHAIRMAN invited the delegations to make preliminary comments on the suggested solution which should serve to clarify eventual ambiguities. He said that a substantive discussion on the suggested solution would only be possible once the delegations had received instructions from their capitals. In the meantime, discussions on the substantive provisions of the proposed Treaty would continue and, where the suggestions by the Director General of WIPO had effect on a provision under discussion, that provision would be reserved.

175. Mr. GAUTO VIELMAN (Paraguay), on behalf of the Latin American and the Caribbean Group, stated that the Group had undertaken a preliminary examination of the Director General's suggestions in document TLT/DC/7. Those suggestions had been well received and considered a good basis for further discussion. Nevertheless, the process of discussion to define those suggested amendments should be accelerated in order that the respective capitals may be consulted as soon as possible and instructions obtained in good time. The Group proposed that a working group be set up by the Committee to discuss the suggested amendments.

176. The CHAIRMAN said that he had doubts as to whether it was useful to discuss the proposal of the Director General of WIPO in a separate working group. Because that issue was of tremendous importance, it should be debated in the Main Committee.

177. Mr. FALL (Senegal) thanked the Director General for the quality of his suggestions and held them to be an excellent basis for discussion both in their substance and in their form.

178. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) stated that her Delegation was prepared to examine the suggestions contained in document TLT/DC/7 with great care. Nevertheless, her Delegation would also like to examine other proposals, in particular one based on the first option outlined the previous day by the Director General, based on the solution adopted in the context of the WTO Agreement.

179. The CHAIRMAN said that the suggestion by the Director General of WIPO referring to a solution similar to the one that had been adopted in the WTO Agreement did not exist on paper. That proposal did not seem to be acceptable for the Delegation of the European Communities and the delegations supporting that Delegation's point of view.

180. Mr. OUSHAKOV (Russian Federation) welcomed the suggestions by the Director General which represented an attempt to find a way out of the impasse and to reach a compromise. He indicated that the document TLT/DC/7 represented a good basis for discussion.

181. Ms. WHELTON (Canada) stated that the suggestions by the Director General of WIPO were fairly novel and that her Delegation had to consult with its capital before it could take any position on it. She said that, however, at that early stage, her Delegation would also like to forward alternative proposals to its capital and asked for a second proposal to be made in writing implementing an approach similar to the one in the WTO Agreement.

182. Mr. BOGSCH (Director General of WIPO) stated that, for the moment, the Secretariat had received the invitation to prepare only one proposal.

183. The CHAIRMAN said that, amongst all the possible solutions which had been discussed the day before, the suggestions by the Director General of WIPO to abolish the provisions of the proposed Treaty relating to a Union were the most promising. Because there had been a considerable measure of agreement on that point, the Secretariat had undertaken to prepare a paper version of that proposal.

184.1 Mr. ROMERO (Chile) stated that his Delegation preferred the solution suggested in document TLT/DC/7. Work should concentrate on those suggestions in order to define one single clear proposal on which clear instructions could be obtained from the Capitals.

184.2 With respect to the amendment suggested in Article 22(3)(ii) of document TLT/DC/7, he noted that the requirement that "all" the member States of an intergovernmental organization accede to the Treaty had been replaced by the requirement that only "five" such States accede. His Delegation would prefer to maintain the original text on that point, since the amended text would not cover the case where an intergovernmental organization had less than five members, for example MERCOSUR. If the text had to be changed, it would be preferable to require that a specified fraction of the membership of the intergovernmental organization accede to the Treaty, for example "half" or "one third" of the organization's member States.

185. Mr. BOGSCH (Director General of WIPO) explained that the number five in Article 22(3)(ii) of his suggestions was chosen because Article 23(2) provided for the entry into force of the proposed Treaty three months after five entities had deposited their instruments of ratification or accession. Since some delegations had indicated their objection to a provision under which the entry into force of the proposed Treaty could be triggered by the accession to it of, or its ratification by, a regional intergovernmental organization, "five" in Article 22(3)(ii) would prevent this from happening.

186. The CHAIRMAN suggested that changing the word "entities" to "States" in Article 23(2) could solve that particular problem.

187.1 Mr. KIRK (United States of America) concurred with the Chairman's suggestion to change "entities" to "States" in Article 23(2). He said that his country could not accept Article 23(2) of the basic proposal which provided that the Treaty shall enter into force three months after five entities have deposited their instruments of ratification or accession. He doubted whether a change to five member States in Article 22(3)(ii) would increase the likelihood that his country would accept Article 23(2).

187.2 Concerning Article 17(1) of the suggestions by the Director General, he said that the notion of "giving advice" could carry a connotation of decision making and, therefore, caused concern to his Delegation. With regard to Article 17(2) of the suggested solution, he suggested that commas be inserted after the word "organizations" in the first line and after the word "parties" in the second line to clarify that interested non-governmental organizations would be eligible for observer status.

187.3 Referring to the statement of the Delegation of Mexico, he said that his Delegation had sympathy with an approach enlarging the options which would be taken into consideration. He stated that the WTO Agreement was a recent precedent that should be looked at, since it contained in its annex the TRIPS Agreement which dealt with both substantial and procedural aspects of trademark law. He concluded in saying that, although the European Communities had signed the WTO Agreement, there seemed to still be a problem as to the division of competences between the European Communities and its member States, and that this question had been referred to the European Court of Justice.

188. Mr. MOAYEDODDIN (Islamic Republic of Iran) referred to the statement his Delegation had made the day before and stated that it had problems accepting the notion of a regional intergovernmental organization. He asked whether the notion regional was not restrictive and whether other intergovernmental organizations such as ECO or the Islamic Conference would be eligible for becoming a Contracting Party if they chose to establish a trademark office. He also inquired whether, if two countries established a common office for the registration of trademarks, those two countries would form a regional intergovernmental organization for the purposes of the proposed Treaty. With regard to Article 17 of the suggestions by the Director General, he believed that the function of the Consultative Committee was ambiguous. In particular, he asked if clarification could be provided with regard to the notion that the Consultative Committee would be convened from time to time.

189. Mr. BOGSCH (Director General of WIPO) explained that the retention of the adjective "regional" was the result of the discussions of the Committees of Experts.

190. Mr. YAMBAO (Philippines) said that the suggestions by the Director General of WIPO should be carefully studied but that, in any case, his Delegation would need to consult with its capital before it could take a position on it. He urged the delegations to continue with the discussions on the substantive provisions of the basic proposal until they had received instructions as to how to react to the suggestions.

191. The CHAIRMAN said that an approach that would exclude intergovernmental organizations from becoming Contracting Parties of the proposed Treaty was contrary to a main aim of the proposed Treaty.

192.1 Mr. BESELER (European Communities) remarked that his Delegation would not take a final position with regard to the proposal of the Director General but that, as a preliminary reaction, it was not satisfied because it wanted an additional vote. However, he said that a real compromise solution was a solution that did not satisfy any party and, from that point of view, his Delegation was prepared to consider the proposal and consult with the competent authorities of the European Community.

192.2 With regard to possible proposals adopting the approach which had been chosen under the WTO Agreement, he believed that these were not comparable situations because the WTO negotiations had taken place two years ago at a time when the Office for Harmonization in the Internal Market (Trademarks and Designs) did not yet exist. Since that time the Office has come into existence, and it would have to follow the provisions of the proposed Treaty, provisions which were not contained in the Agreement on TRIPS. He concluded in stating that the advantage of the suggestions by the Director General was that they were a solution that did not solve the problem but rather avoided it, and it would not be the first time that avoiding a problem would be the key to the success of a diplomatic conference.

193.1 Mr. AMORIN (Uruguay) stated that his Delegation would have preferred to maintain, in the Treaty, a decision-making body such as the Assembly and a voting system based on the WTO model. He therefore joined the Delegations of Mexico, Canada and others in requesting that other options not be discarded at this time. His Delegation also believed that a working group with an open participation by all the delegations should be set up by the Committee to discuss this matter.

193.2 With respect to Article 23(2), he supported replacing the word "entities" with the word "States". With respect to Article 22(3)(ii), his Delegation supported the proposal made by the Delegation of Chile that accessions should be required in terms of a fraction of full membership rather than providing for a fixed number of accessions.

194. Mr. BOGSCH (Director General of WIPO) said that a revised draft would be issued which addressed the points raised by the Delegations of Chile and the United States of America, and the problem relating to entry into force.

195. The CHAIRMAN said that it was premature to set up a working group for discussing the proposal of the Director General of WIPO because, at that stage, it was not clear whether the delegations would receive instructions which would allow them to discuss that proposal.

196. Mr. HARMS (South Africa) said that it was essential that the delegations received instructions as to how to react to the proposal of the Director General of WIPO and that they should only afterwards discuss the substance of that proposal. He considered it premature to set up a working group that would discuss that matter at the appropriate time.

197. Mr. ABOULMAGD (Egypt) said that the proposal of the Director General was a sound basis for a fruitful discussion. Such a discussion would have to take into account the implications of the proposal going beyond the Diplomatic Conference and thus being of interest to all delegations. As a preliminary remark, he said that Article 17(1)(a) of the suggested solution which provided that the Consultative Committee would meet from time to time would need to be more specific. With regard to Article 19(2) of the suggested solution, he said that this provision needed careful consideration before his Delegation could make any comments on it. In conclusion, he emphasized that the suggested solution would have implications for other intergovernmental organizations.

198. Mr. KIRK (United States of America) suggested replacement, in Article 17(1)(a), of the words "give advice" by the word "discuss." This would make the provision more neutral.

199. The CHAIRMAN suggested that simple omission of the words "from time to time" from Article 17(1)(a) of the proposal could solve the inherent ambiguity. If there were no changes to be made, there would be no reason to convene the Committee.

200. Mr. RICHARDS (Australia) said that before his Delegation would be able to comment on the suggestions by the Director General, it would have to consult its capital. However, supporting the statements which had been made by the Delegations of the United States of America and Canada, he asked that the option remain open which would take into account the solution that had been agreed upon in the WTO Agreement.

201. Mr. McCARDLE (New Zealand) stated that because of the ingenious character of the suggestions by the Director General of WIPO, his Delegation would need some time for consultations with its capital. He concluded by saying that it would be better not to exclude other options from discussion.

202. Mr. SCHAFERS (Germany) stated that the position of his Delegation was similar to that of the Delegation of the European Communities in that, while he would have preferred a solution giving an additional vote to the European Communities, he could go along with the suggestions by the Director General, subject to some refinements. With regard to the further procedure that had to be followed in the European Communities, he explained that the suggested solution would be presented to the Permanent Committee of Representatives of member States of the European Communities (COREPER) in Brussels. Referring to Article 19(2) of the suggested solution, he remarked that such a competence for the Director General of WIPO was a deviation from normal procedures. However, that innovation was acceptable to his Delegation because the suggestions contained the necessary safeguards. He concluded in stating that it would be better to discuss the suggested solution in the Main Committee rather than setting up a separate working group for this task.

203. Mr. ENAJÄRVI (Finland) said that his Delegation fully agreed with the statement of the Delegation of the European Communities. Although he could not give an opinion on the substance of the suggestions by the Director General, he said that the solution envisaged by that proposal was an elegant try to solve the problem. He concluded in recalling that harmonization of trademark law was the main purpose of the Diplomatic Conference.

204.1 Mrs. ABOMO BELINGA ZANGHA (Cameroon) congratulated the Director General on the quality of the suggestions that had been submitted and which appeared to suit her Delegation. The Delegation nevertheless wished to make a preliminary remark concerning Article 22 on the requirements and conditions for becoming a party to the Treaty. She noted the analogy made between the European Communities and OAPI and wished to point out that, contrary to the European Communities, OAPI did not maintain an office, but constituted an office.

204.2 Mrs. Abomo Belinga Zangha added that OAPI could not become a party to the Treaty until a decision was taken by its Administrative Council composed of its fourteen Member States. As to the matter of depositing the instrument of ratification or accession of an intergovernmental organization, Cameroon held the limit of five instruments to be too strict and advocated the notion of one half of the members.

205. Mr. BOGSCH (Director General of WIPO) explained that any international organization or office could do only what its administrative board authorized, and that it therefore would not deposit an instrument of ratification without express authorization.

206. Mr. PAK (Democratic People's Republic of Korea) referred to the statement of the Delegation of the Philippines. He said that there was some concern among the members of the Asian Group as far as the question of membership of intergovernmental organizations or regional intergovernmental organizations was concerned and, in that respect, recalled the statement of the Delegation of the Islamic Republic of Iran. Furthermore, he stated that some of the members of the Asian Group felt that there was a need to further elaborate the question of the tasks of the Consultative Committee. In particular, if the Assembly were to be abolished, there would be nobody with the task of reviewing implementation of the proposed Treaty.

207. Mr. BOGSCH (Director General of WIPO) responded that it was the role of the Contracting Parties to implement the proposed Treaty. The role of the International Bureau would be restricted to the establishment of possible amendments to the Regulations. Referring to the term "regional," he said that this notion was not necessarily a geographical one. It could also apply to other groupings, for example, the region of Islamic States or the region of Spanish speaking countries.

208. Mr. CAO (China) stated that document TLT/DC/7 represented one more basis for successful completion of the Diplomatic Conference. His Delegation was also interested in the solution contained in the WTO Agreement.

209. The CHAIRMAN said that there had been many calls for considering an alternative proposal implementing the solution that had been reached in the WTO Agreement. He recalled that the main difficulties with the two Alternatives for Article 17(4) of the proposed Treaty were that Alternative A did not give a separate vote to regional intergovernmental organizations, whereas Alternative B gave a separate vote to such Contracting Parties. The compromise in the suggestions by the Director General of WIPO was the fact that it gave neither 12 nor 13 votes to the European Communities but no vote to any Contracting Party at all. He said that the solution contained in the WTO Agreement gave only 12 votes to the European Communities and, therefore, it would not be possible to regard it as being a compromise solution.

210. Mr. ARRUDA (Brazil) expressed support for the suggestion of the Delegation of Mexico that a proposal adopting the solution found in the WTO Agreement be distributed in written form and be discussed.

211. Mr. KAWAMOTO (Japan) said that his Delegation had not received instructions from its capital and therefore would not comment officially on the substance of the suggestions by the Director General. He stated that the Regulations formed an indispensable part of the proposed Treaty and that, under the proposal, the Regulations could be substantially amended by the Director General of WIPO and not by the Contracting Parties. From both the legal and substantive viewpoints, such a procedure could not be allowed. The suggestions had far reaching effects and had no precedent, and he believed his capital would have many legal questions.

212. The CHAIRMAN observed that this was the first time this problem had been addressed. Other delegations had expressed willingness to accept the suggestions, which were not without precedent.

213. Mr. OLSSON (Sweden) characterized the suggestions as an ingenious and novel way of accomplishing the overall aim. He did not feel the need for additional suggestions or working groups.

214. Mr. KUNZE (AIM and AIPPI) recalled the spirit of the opening declarations where many delegations had stated that they were prepared to work towards a compromise solution. The suggestions by the Director General presented, in his view, an excellent compromise and did not pose unsurmountable problems. However, it seemed now that new diplomatic problems were emerging and that there was a call for a second proposal on the basis of the WTO Agreement. It appeared that such a solution would never be acceptable for the Delegation of the European Communities, the Delegations of its member States nor the Delegations supporting their position. Insisting on a solution following the WTO Agreement would endanger the success of the Diplomatic Conference. He concluded in appealing to all delegations to accept the suggestions by the Director General for further discussions because it was in that solution that he saw the only way out of the deadlock situation.

215. Mr. KIRK (United States of America) stated that the problems over the voting provisions were the result of one group seeking to change traditional rules in international law, which raised serious concerns, and that political considerations should be addressed by official delegations.

216. The CHAIRMAN announced that a revised version of document TLT/DC/7 (document TLT/DC/12) would be issued, which would take into account all the suggestions that had been made. He asked the delegations to consult with their respective capitals on the basis of the revised document.

217. Mr. BOGSCH (Director General of WIPO) stated that, if there was no objection, the suggestions would also remove the term "regional" from the Treaty as a whole.

218. Mr. YAMBAO (Philippines) referred to the statement of the Delegation of Japan and said that the proposal of the Director General of WIPO would give the Director General the power to make Regulations. That proposal would reverse the traditional order in international law, whereby the States made

decisions and the Secretariat advised them, and not vice versa. He requested more information regarding the Regulation making power of the Director General under the proposal.

219. Mr. BOGSCH (Director General of WIPO) reiterated that the speciality of his suggestions was that the Secretariat would make amendments that were not binding on any Contracting Party which did not like the amendments.

220. Mr. GAUTO VIELMAN (Paraguay) stated that his Delegation welcomed the suggestions in document TLT/DC/7 as a transactional proposal. Its substance should not be discussed until the countries had received instructions from their capitals. Paraguay therefore reserved its position with respect to those suggestions.

221. The CHAIRMAN then suspended the orientation discussion on Article 17(4) of the basic proposal. He said the discussion would not be opened on document TLT/DC/12 until the delegations had received instructions from their capitals. If the suggestions contained in document TLT/DC/12 were accepted in principle, they would be discussed as to its substance in the coming week. If they were not accepted in principle, it would be necessary to go back to the basic proposal and find other solutions. He said that the Secretariat was not mandated to prepare an alternative proposal.

Article 3: Application

222. The CHAIRMAN opened the discussions on that Article and asked the Delegation of the European Communities to present its proposal contained in document TLT/DC/8.

223.1 Mr. SCHWAB (European Communities) said that he had presented on the preceding day the grounds that had led his Delegation to make that proposal. He felt that the wording as presented and the comments that had been made on that subject required clarification, particularly since the Notes on the draft Treaty and Regulations made reference to the Paris Convention. Since Article 3(1)(a)(vii), which gave an exhaustive list, did not permit any other formalities to be required, the Delegation of the European Community had doubts on the compatibility of that provision with the minimum conditions contained in Article 4D(3) of the Paris Convention. Paragraph 8 of Article 3 of the Draft Treaty, that made it possible to require certain evidence, did not seem to make it possible to require a translation despite the fact that such was laid down in Article 4D(3) of the Paris Convention.

223.2 Mr. Schwab noted that the evidence provided for in that Article was already required by most of the national offices and that the Office for Harmonization in the Internal Market required a copy of the application and a translation into one of the languages of the Office to be furnished. The Delegation of the European Community could see a potential problem and wondered whether, as mentioned in its proposal, an explicit reference to the formalities required under the Paris Convention should not be made.

224. The CHAIRMAN added that the proposal of the Delegation of the European Communities would ensure that Contracting Parties could require in all cases a copy and a translation of the priority document throughout the pendency of the application.

225. Mr. TROICUK (Canada) stated that his Delegation attached much importance to the notes accompanying the basic proposal and asked whether there would be an opportunity to review them before the final adoption of the Treaty.

226. Mr. BOGSCH (Director General of WIPO) said that this would not be possible because, if the notes were revised, they would have to be agreed upon by the meeting. However, there would not be sufficient time to do this because of the great volume of the notes.

227. The CHAIRMAN said that it would be possible to reflect in the Records of the Diplomatic Conference where a delegation attached particular importance to a given note.

228. Mr. SCHAFERS (Germany) expressed his Delegation's support for the proposal of the Delegation of the European Communities.

229. Mr. TODD (United Kingdom) expressed the support of his Delegation for the proposal of the Delegation of the European Communities. He explained that in cases where the priority application covered fewer classes than the subsequent application, it was important that a copy of the priority document be available. Article 3(8), which allowed an Office to ask for further evidence when it had reasonable doubts as to the veracity of the information, seemed not to cover the described situation because there would have been no bad faith.

230. Mr. SZEMZO (Hungary) expressed his Delegation's support for the proposal of the Delegation of the European Communities, which eliminated the problem of the use of the word "countries" in the text.

231. Mr. HARMS (South Africa) asked whether the proposal of the European Communities intended that the application itself had to be accompanied by the priority document. He said that the Office of his country allowed applicants three months to furnish the copy of the priority application and a translation.

232. The CHAIRMAN stated that the requirement to file the priority documents was not a filing date requirement under draft Article 5 and that, under the Paris Convention, applicants had the right to furnish such documents within three months from the filing date.

233. Mr. KUNZE (AIM and AIPPI) remarked that, from the user's point of view, the proposal of the Delegation of the European Communities presented no problem. It was, however, important that the submission of the priority document would not be considered as a filing date requirement. In any case, the claiming of priority did not occur that often in practice.

234. Mr. OPHIR (Israel) stated that his Delegation supported the proposal of the Delegation of the European Communities, but inquired why that proposal did not contain an indication that a Contracting Party could require that the priority document be filed in a language accepted by its Office.

235.1 The CHAIRMAN explained that Article 4D of the Paris Convention allowed Contracting Parties to require translations of the priority document.

235.2 The Chairman concluded that the proposal of the Delegation of the European Communities contained in document TLT/DC/8 was approved. He stated that this change in the basic proposal would necessitate a revision of the notes to elucidate the obligations of Contracting Parties under the Paris Convention. He then invited the delegation of the European Communities to introduce its proposal contained in document TLT/DC/9.

236. Mr. von MUHLENDahl (European Communities) explained that the proposal of his Delegation was intended to ensure that the procedures concerning languages used in the Offices of Contracting Parties would have to be observed by applicants. He said that Offices working with a multilingual system, such as the Office for Harmonization in the Internal Market (Trademarks and Designs), would need a provision such as the one proposed in order to ensure that applicants complied, for example, with language requirements in opposition procedures. The intention of the proposal of his Delegation was to cover the entire procedure in one provision rather than spelling out all possible situations in which a specific language requirement was applicable.

237. Mr. BOGSCH (Director General of WIPO) said that Article 3(3) of the basic proposal would not limit an Office's language regime. Rather, the provision required only that the application could be in a language admitted by the Office of a Contracting Party. Since, under the European Community Trademark Regulation an applicant seemed to be under an obligation to indicate a second language which was different from the language of the application for the purposes of opposition and similar proceedings, he suggested that a new item could be added to Article 3(1)(a) to provide that a Contracting Party had the freedom to require that applicants indicated in the application a language, admitted by the Office and different from the language of the application, the use of which the applicant would accept as a possible language of proceedings for opposition, revocation or invalidation.

238. Mr. von MUHLENDahl (European Communities) said that the suggestions by the Director General were tempting and, initially, his Delegation had had the same idea. However, the language regime of the Office was a difficult one and many of the details had not been worked out yet. Therefore his Delegation had opted for a general clause which would cover all potential situations.

239. Mr. BOGSCH (Director General of WIPO) remarked that the proposed approach seemed to be too broad and asked whether it would be possible for the Delegation of the European Communities to reformulate it.

240. The CHAIRMAN adjourned the meeting.

Fifth Meeting
Thursday, October 13, 1994
Afternoon

Article 3: Application

241. The CHAIRMAN opened the meeting and returned to Article 3(3). He invited the Delegation of the European Communities to indicate whether its proposal contained in document TLT/DC/9 had been reconsidered.

242. Mr. von MÜHLEND AHL (European Communities) stated that the proposed amendment was necessary to accommodate those offices which admitted several languages, such as the new Office set up by the European Community. He suggested amending the proposal to include, after the word "and" on the second line, the words ", where an Office has more than one official language," and to change the word "its" on the third line to "this."

243. Mr. PRETNAR (Slovenia) expressed his Delegation's support for the proposal of the Delegation of the European Communities.

244. Mr. O'REILLY (Ireland) expressed his Delegation's support for the proposal of the Delegation of the European Communities.

245. Mrs. WALTERS (United States of America) stated that she fully understood the problems indicated by the European Communities in respect of the future work of the Community Trademark Office. While she would have preferred the provision to be more specific, she indicated that her Delegation could accept the proposal.

246. The CHAIRMAN, noting that the amendment would require certain additional explanations in the note, concluded that Article 3(3) was approved as amended by the proposal of the Delegation of the European Communities contained in document TLT/DC/9, as further amended by the oral suggestion of the Delegation of the European Communities.

Rule 4: Details Concerning Electronic Communications

247. Mr. KAWAMOTO (Japan) suggested that Rule 4 should be deleted since at present it does not contain any provision.

248. Mr. CURCHOD (WIPO) noted that the deletion would have effect on Article 3(2)(iii) and on corresponding articles in the Treaty. He suggested to change these provisions to say "in the manner to be prescribed in the Regulations."

249. The CHAIRMAN concluded that the oral suggestion of the Delegation of Japan to delete Rule 4, subject to the consequential amendments suggested by the International Bureau, was approved.

Article 4: Representation; Address for Service

250. The CHAIRMAN concluded that, in the absence of discussion, paragraphs (1) to (3)(c) of Article 4 were approved as proposed.

251. The CHAIRMAN invited the Delegation of Romania to introduce the substance of its proposal relating to Article 4(3)(d).

252. Ms. MORARU (Romania) proposed that there be added at the end of subparagraph (d) of Article 4(3) the following sentence: "Where the power of attorney has not been submitted to the Office within the time limit fixed by the Office, the communication made by the unauthorized person shall have no effect." She noted, in support of her proposal, that where a party did not submit the power of attorney within the set time limit, no sanction had been provided for and that the situation had therefore to be remedied.

253.1 The CHAIRMAN noted that the Committee seemed to be in favor of the proposal by Romania. The Committee would however come back to the written proposal for final approval.

253.2 The Chairman concluded that paragraphs (3)(e) and (4) to (6) were approved as proposed, subject to the consequential amendment to paragraph 3(e)(iii).

254. Mr. OPHIR (Israel) stated, with reference to paragraph (7), that Israeli law defined the term "evidence" as involving formal documentation that could lead to proof. He suggested that the word "evidence" be replaced with the word "proof."

255. Mr. BOGSCH (Director General of WIPO) stated generally it was understood that "evidence" was an offer of proof. Whether it constituted proof depended from the judgement of the Office.

256. The CHAIRMAN, in the absence of further comments, concluded that Article 4(7) was approved as proposed.

Rule 4: Details Concerning Representation (ad Article 4) [former Rule 5]

257. The CHAIRMAN turned to Rule 4 [former Rule 5] and noted that a proposal submitted by the Delegation of Spain was under preparation. He invited the Delegation to explain its proposal.

258. Mr. CARRASCO PRADAS (Spain) outlined his Delegation's proposal for the amendment of Rule 4 [former Rule 5] as proposing deletion of the text of Rule 4 [former Rule 5] that followed after the word "month." With that amendment, Contracting Parties could apply the one-month time limit for submission of the required power of attorney regardless of the place of residence of the person granting the power. He explained that with modern means of telecommunication a longer time limit was not required.

259. The CHAIRMAN recalled that this point had been intensively discussed in the Committee of Experts and noted that the amendment suggested by Spain would cause difficulties for applicants with addresses outside the territory of the Contracting Party concerned.

260. Mr. KUNZE (AIM and AIPPI) recalled that the proposed Trademark Law Treaty did not oblige any office to introduce modern means of communications and suggested keeping the text in its present form.

261. Mr. OPHIR (Israel) questioned whether it was necessary to fix an absolute time limit for the submission of the power of attorney mentioned in Article 3(d), and suggested that the question of time limits be left to the Contracting Parties.

262. The CHAIRMAN stated that the intention of this Rule was not to fix an absolute time limit but to make sure that there is a minimum allowable time limit. The intention was to give those who might have difficulties with mailing an opportunity to fulfill the requirements.

263. Mr. McDERMOTT (Canada) noted that his country had always been opposed to a one-month time limit, and favored retaining the text in the basic proposal.

264. The CHAIRMAN concluded that there was insufficient support for the proposal by Israel.

265. Mr. ROGERS (Chile) said that his Delegation reserved its right to come back to Article 4 at the appropriate time.

266. The CHAIRMAN recalled that Article 4 had been approved and, if Chile wanted to come back to this Article, a written proposal and approval of the Committee would be needed. He would resume discussion of the proposal of the Delegation of Spain when the written text was available.

Article 5: Filing Date

267. The CHAIRMAN turned to Article 5 and, in the absence of discussion, concluded that paragraph (1)(a), items (i) to (v), were approved as proposed.

268. Mr. STRENC (Romania) suggested that "et/ou" be inserted in the French version of the basic proposal in place of "ou" in order to make the French version conform with the English version.

269.1 The CHAIRMAN noted that the point raised by Romania would be taken up by the Drafting Committee.

269.2 The Chairman concluded that paragraphs (1)(a), item (vi), (1)(b) and (2)(a) were approved as proposed, subject to the drafting point.

270. Mr. KOYANAGI (Japan) suggested, in respect of Article 5(2)(b), that the word "applied" should be replaced with the word "applies" to make it clear that a Contracting Party can only require a fee according to paragraph (2)(a) if that provision applies in the country at the time of becoming a party to this Treaty.

271.1 The CHAIRMAN found the proposal by Japan reasonable and stated that this would be dealt with in the Drafting Committee.

271.2 He concluded that, subject to this drafting point, paragraphs (2)(b), (3) and (4) were approved as proposed.

Rule 5: Details Concerning the Filing Date (ad Article 5) [former Rule 6]

272. The CHAIRMAN turned to Rule 5 [former Rule 6] and invited the Delegation of Spain to introduce its proposal, which was under preparation, in the understanding that the final discussion would take place when the Committee received the proposal in writing.

273. Mr. CARRASCO PRADAS (Spain) explained his Delegation's proposal for the amendment of Rule 5(1) [former Rule 6(1)]. It proposed deleting, in the first sentence of Rule 5(1) [former Rule 6(1)], the text following the word "month". The reasons and the effects of that proposal were the same as for the proposal presented by his Delegation in relation to Rule 4 [former Rule 5].

274.1 The CHAIRMAN stated that this provision would be put before the Committee when the written proposal was received.

274.2 The Chairman concluded that paragraphs (2) to (4) were approved as proposed. The approval of paragraph (3)(ii) was subject to the decision with respect to deletion of the term "regional," as suggested by the Director General.

Article 6: Single Registration for Goods and/or Services in Several Classes

275. The CHAIRMAN then turned to Article 6 and invited the Delegation from Israel to introduce its proposal, which was under preparation, in the understanding that the final discussion would take place when the Committee had received the proposal in writing.

276. Mr. OPHIR (Israel) suggested that the last sentence of Article 6 should read "such an application may result, at the option of a Contracting Party, in one and the same registration." The reason for this proposal was that the present mandatory provision could lead to administrative and procedural difficulties in the case where an assignment was made or a license granted in respect of different classes of goods and/or services to different persons. He noted that the Delegation of Israel fully supported the provisions in Article 3(5) concerning single applications. The present wording of Article 6, however, caused difficulties.

277. The CHAIRMAN indicated that the proposal by Israel went directly to the heart of Article 6 and asked whether the problem faced by Israel might be solved in connection with Article 7 on division of applications and registrations.

278. Mrs. BEHRENS (CNIPA) suggested including, at the end of Article 6, the phrase, "subject to the provisions in Article 7."

279. The CHAIRMAN noted that in the absence of any further comments, his provisional conclusion was that Article 6 was approved as proposed. It would, however, be necessary to see the proposal from the Delegation of Israel in writing.

Article 7: Division of Application and Registration

280. The CHAIRMAN then turned to Article 7 and invited the Delegation of Spain to explain its proposal, on the understanding that the final discussion would take place once the written proposal was received.

281. Mr. CARRASCO PRADAS (Spain) explained his Delegation's proposal for the amendment of Article 7. The purpose of the amendment was to allow Contracting Parties to provide that the division of applications and of registrations must be effected in terms of classes of the Nice Classification, in accordance with the domestic legislation of the Party concerned.

282.1 The CHAIRMAN noted that the Committee would come back to the proposal from Spain concerning paragraph (1)(a).

282.2 He concluded that paragraph 7(1)(b) was approved as proposed, and invited Japan to explain its proposal in respect of Article 7(2)(i) and (ii).

283. Mr. KAWAMOTO (Japan) referred to the proposal by the Delegation of Japan in document TLT/DC/23 concerning draft Article 7(2), and to Note 7.03 in document TLT/DC/5. He explained that the division of registrations was important and useful for holders because they could negotiate partial transfers or license agreements in respect of goods and services which were not affected by the post-grant opposition procedure. He noted that under Japanese Law the validity of a registration could be disputed with respect to each of the goods and services, and the holder could negotiate freely in respect of the rest of the goods and services. He therefore found the last sentence of paragraph (2) too restrictive and suggested adding the following phrase to paragraph (2): "or if its law allows that the validity of the registration is challenged with respect to any of the goods and/or services."

284. Mr. CURCHOD (WIPO) noted that the proposal by the Delegation of Japan would give a Contracting Party an additional reason for excluding division of registrations.

285. The CHAIRMAN concluded that some more time was needed for reflection and that the Committee would come back on this point.

Article 8: Signature and Other Means of Self-Identification

286. The CHAIRMAN turned to Article 8 and invited the Committee to discuss the Article.

287. Mr. CAO (China) stated that his Delegation agreed with the provisions of paragraph 8(1)(ii) and had no comments on it.

288. The CHAIRMAN concluded that paragraphs (1) to (3) were approved as proposed.

289.1 Mr. MUÑOZ RIVERA (Mexico) suggested that the word "attestation" be deleted in paragraph (4). This would allow Contracting Parties to require private attestations by witnesses, which were different from public notarized

attestations. The purpose of paragraph (4) was to prohibit only the latter, not the former. Prohibiting all forms of "attestation" went beyond the intended scope of that Article.

289.2 Mr. Muñoz Rivera explained that it could be regarded both a problem of language and of substance. Under Mexican law, a witnessed signature could be required for certain purposes. Such signing before witnesses was also called "attestation," but it fell outside the intended scope of the prohibition of paragraph (4). To avoid that ambiguity it was proposed to delete the expression "attestation" in that paragraph. He observed that deleting the word "attestation" would not affect the scope of paragraph (4), since the same provisions specified that any "other certification" was prohibited. That would cover notarized attestations.

290. Miss TOSONOTTI (Argentina) stated that her Delegation also had certain concerns regarding paragraph (4). In particular, Contracting Parties should be allowed to require the certification of signatures, not only in cases of surrender of rights, but also in cases of transfer and other acts of disposal of rights in a mark. She would come back to this question in connection with Article 24.

291. Mr. ROMERO (Chile) remarked that his Delegation had the same concerns as had been expressed by the Delegation of Argentina, and would raise the point in connection with Article 24. His Delegation also supported the proposal of Mexico to delete the word "attestation" in paragraph (4), and further proposed deleting the word "legalization" in the same Article.

292. The CHAIRMAN recognized that this provision was an important part of the draft Treaty and that there had been a great deal of concern about validation of signatures, which has significant effect on trademark owners. He also noted that Argentina was in favor of the proposal from Mexico and that Argentina perhaps wanted to go further.

293. Mr. CHO (Republic of Korea) stated that it was very difficult to confirm whether or not information concerning the change of rights, such as the transfer of rights, the creation of a license or a pledge, was true. It was desirable that certification of a signature providing the veracity of information concerning the change of rights was always required as a way of protecting third parties as well as the holders of those rights. He therefore suggested that the exception relating to the surrender of a registration should be extended to other cases concerning change of rights such as a change in ownership of an application or a registration, the creation and transfer of a license, or a pledge.

294. The CHAIRMAN noted the suggestion of the Delegation of the Republic of Korea concerned the last part of paragraph (4), which it was recommending should be extended to cover transfer of rights.

295. Mr. ABOULMAGD (Egypt) referred to a problem of translation. In the Arab text, there was no reference to authorization, authentication or legalization. He agreed with the concerns expressed by Argentina and Chile in respect of the legalization of signatures, because Egypt required authentication, not only for signatures, but also for documents translated from other languages.

296. Mrs. WALTERS (United States of America) stated that this provision was one of the most important in the draft Treaty and expressed opposition to any deletion in paragraph (4) or to the addition of anything in relation to surrender of a registration.

297. The CHAIRMAN noted as far as he understood the intention by the first proposal from Mexico was to delete the reference to "attestation" so that in case of certain circumstances the signature could be required to be attested in front of witnesses.

298. Mr. MUÑOZ RIVERA (Mexico) stated that, as an alternative to his initial proposal, in the Spanish text of Article 8(4) the conjunction "or" could be inserted in lieu of the comma after the word "attestation".

299. Mr. CURCHOD (WIPO) asked for the exact concern of the Delegation of Mexico. If the Delegation wanted to replace, in the Spanish Text, the comma between "attestation" and "certification" with "or", it would mean that no Contracting Party could require an attestation through a public notary but could require some other kinds of attestations.

300. Mr. PRETNAR (Slovenia) agreed with the United States concerning the importance of this provision and suggested that the problem was perhaps one of drafting.

301. The CHAIRMAN stated that this was not only a drafting problem because Mexico wanted their procedure concerning witnesses to continue in respect of trademark applications.

302. Mr. HARMS (South Africa) fully supported the view taken by the United States of America.

303. Mr. RICHARDS (Australia) expressed concern with regard to paragraph (4) in the context of evidence presented before hearings. He raised the question whether the present wording included such things as evidence. If that was the case, there was a problem in respect of the way Australia conducted hearings in the Australian Office.

304. Mr. KAWAMOTO (Japan) stated that there were many complaints from patent attorneys in Japan concerning legalization. He agreed with the intervention by the United States of America and suggested to retain the text of the basic proposal in paragraph (4).

305. The CHAIRMAN noted that the intention of the provision of the basic proposal was intended to eliminate even requirements for private witnesses, which could have adverse legal consequences.

306. Mr. SCHÄFERS (Germany) stated that his Delegation was in favor of the text of the basic proposal in paragraph (4) which, he found, was a fair and balanced provision, especially in light of the reservation provided for in Article 24.

307. Mr. TODD (United Kingdom) supported the statement of the Delegation of Germany and recalled that this question had been discussed at several meetings in the Committee of Experts.

308. Mr. SIMON (Switzerland) supported the text of the basic proposal.

309. Mrs. GORLENKO (Russian Federation) drew attention to the fact that, in the Russian text of paragraph (4), the word "surrender" was translated in Russian to mean "assignment" and, in her opinion, covered transfer of rights. This matter might be solved in the Drafting Committee. She further stated that her Delegation preferred that the provision cover transfer of rights in respect of a registration.

310. The CHAIRMAN pointed out that "surrender" meant giving up the registration and hoped that the problem raised by the Russian Federation was a question of drafting. However, the term "surrender" did not cover transfer of rights. He invited the Russian Federation to reflect further on this problem.

311. Mr. van der EIJK (Netherlands) supported the present text of the basic proposal.

312. Mr. TROICUK (Canada) underlined the importance of paragraph (4) and supported the text of the basic proposal.

313. Mr. ROMERO (Chile) expressed his Delegation's support for the statement made by the Republic of Korea with respect to expanding the exception provided for in paragraph (4) in order to include the case of transfer of rights in a mark.

314. The CHAIRMAN indicated that the two issues should be dealt with separately. The first issue was concerned with the prohibition of attestation, notarization or authentication, etc., and the other issue dealt with the exceptions at the end of paragraph (4).

315. Mr. BOGSCH (Director General of WIPO) noted that the problem perhaps was that even a private certification, as opposed to a public certification, involved various requirements in the national law, for example, that the witness should be more than 18 years old or should have a domicile in the country. If only witnesses who were domiciled in the country of the Office could be accepted as witnesses in respect of a private certification, this would make the life for applicants very difficult. He stated that it was not possible to enumerate all the possible requirements of a private attestation and that was why the text should be left as it was.

316.1 The CHAIRMAN noted that any attempt to narrow down the wording of paragraph (4) would open the area where particular requirements might be imposed. This question was therefore not a matter of clarification but a matter of reducing the number of the situations to which the provision applied. He reiterated that the majority of the Committee was in favor of maintaining the present wording of paragraph (4) and asked the Delegation of Mexico if it was prepared to withdraw its proposal or if this Delegation wanted the question to be put to a vote.

316.2 The Chairman confirmed that any improvement of the text could be dealt with by the Drafting Committee. He then turned to the suggestion of the Delegation of the Republic of Korea that broadened paragraph (4) to also cover a reference to transfer.

317. Mr. BOGSCH (Director General of WIPO) indicated that perhaps there was a misunderstanding in respect of the proposal from the Republic of Korea. It seemed to him that this problem was covered by Article 11 concerning change of ownership. After the surrender there was no longer a trademark registration to own.

318.1 The CHAIRMAN concluded that there was insufficient support for the oral suggestion of the Delegation of Mexico, and that the problem raised by the Republic of Korea would be dealt with in connection with Article 11.

318.2 He concluded that paragraph (4) was approved as proposed, subject to any improvement in respect of language by the Drafting Committee.

Rule 6: Signature and Other Means of Self-Identification (ad Article 8)
[former Rule 7]

319. The CHAIRMAN then turned to Rule 6 [former Rule 7] and concluded, in the absence of any comments, that paragraphs (1) and (2) were approved as proposed. He invited the Delegation of the United States of America to introduce its proposal concerning paragraph (3).

320. Mrs. WALTERS (United States of America) stated that the present text of paragraph (3) made it permissive, at the discretion of the applicant or the Office, that the signature or seal might be accompanied by an indication of the date on which the signing or sealing was effected. She suggested that this provision should authorize the Contracting Party to require the signature to be accompanied by such an indication.

321. Mr. CURCHOD (WIPO) recalled that the intention of this paragraph was to allow the applicant to indicate the date on which he signed if he felt that this was useful, as provided for in the Forms, but that the intention was not to allow a Contracting Party to require such an indication. The proposal by the Delegation of the United States of America was therefore a matter of substance.

322. Mr. BOGSCH (Director General of WIPO) asked the Delegation of the United States of America what the legal significance was of the date of signature. He noted that the date that had a significant effect was the date of arrival of the application.

323. Mrs. WALTERS (United States of America) explained that this question was connected with the problem where two applications are filed on the same date.

324. The CHAIRMAN asked if there were any comments on this proposal.

325. Mr. ROMERO (Chile) expressed his Delegation's support for the proposal of the Delegation of the United States of America.

326. Mr. KUNZE (AIM) inquired as to the legal consequence of a missing date.

327. Mrs. WALTERS (United States of America) stated that in case of a missing date the applicant would be asked to indicate the date of signature.

328. The CHAIRMAN noted that the proposal of the Delegation of the United States of America would be taken up after the written proposal had been distributed.

Article 9: Classification of Goods and/or Services

329. The CHAIRMAN then turned to Article 9 and, in the absence of any comments, he concluded that Article 9 was approved as proposed.

Article 10: Changes in Names or Addresses

330. The CHAIRMAN then turned to Article 10 and concluded that paragraph (1)(a) to (d) was approved as proposed. The approval of paragraph (1)(a)(iii) was subject to the amendment following from the deletion of Rule 4.

331. Mr. ABOULMAGD (Egypt) noted that paragraph (1)(e) did not indicate whether a Contracting Party was allowed to require several fees in respect of several registrations within a single request for changes in names and addresses. In Egypt such fees were requested and he suggested that paragraph (1)(e) reflect that Contracting Parties were allowed to require several fees.

332. The CHAIRMAN referred to Note 10.05 which clearly indicated that Contracting Parties were allowed to require several fees.

333. Ms. MORARU (Romania) proposed that paragraph (1) be amended by adding a subparagraph reading as follows: "Where the change in the address or the name of the applicant or the holder concerns more than one application or, where appropriate, more than one registration, the amount of the fee may vary depending on the number of applications or registrations." Mrs. Moraru admitted that such a comment existed in the Notes on the draft Treaty and Regulations but, believing that they had no legal value, remarked that it would be desirable for it to be inserted in the actual text of the Treaty. She further stated that, if such was impossible, a note of that kind should be inserted in the Regulations.

334. Mr. BOGSCH (Director General of WIPO) drew attention to the fact that there were many other fees required by an Office and that it would therefore be insufficient to deal with a specific case. In any event, each office was free to determine the fees.

335. Mr. ABOULMAGD (Egypt) stated that the text in paragraph (3) indicated that a single request could imply a single fee, and he maintained his proposal which perhaps could be solved in the Drafting Committee.

336. Miss BEHRENS (CNIPA) suggested that the problem could be dealt with by replacing the term "fee" with "fees" in subparagraph (d).

337.1 The CHAIRMAN noted that the suggestion by CNIPA could be taken as an invitation to introduce further fees, and he indicated that the Main Committee would come back to this provision.

337.2 He concluded that Article 10(2) was approved as proposed.

338. Mr. KAWAMOTO (Japan) recalled the request for a reservation by Japan in respect of single requests for more than one application and/or registration in respect of a change in name and/or addresses, etc., and suggested that paragraph (3) of Article 10 should be mentioned in the reservation of Article 24(5).

339. The CHAIRMAN noted that this request would be taken up in connection with Article 24(5). He concluded, in the absence of comments, that paragraphs (3) to (5) were approved as proposed.

Rule 7: Manner of Identification of an Application Without Its Application Number [former Rule 8]

340.1 The CHAIRMAN then turned to Rule 7 [former Rule 8] and concluded, in the absence of any comments, that Rule 7 [former Rule 8] was adopted as proposed.

340.2 The Chairman adjourned the meeting.

<u>Sixth Meeting</u> <u>Friday, October 14, 1994</u> <u>Morning</u>

Article 4: Representation; Address for Service

341. The CHAIRMAN opened the meeting and asked the Delegation of Romania to introduce its proposal contained in document TLT/DC/14.

342. Mr. CURCHOD (WIPO) felt that the amendment proposed by the Delegation of Romania would oblige all the Contracting Parties to refuse any communication made by a person who had not been duly authorized by means of a power of attorney. He proposed that the Contracting Parties should be at liberty, but not obliged, to refuse any such communication.

343. Ms. MORARU (Romania) expressed her satisfaction at the proposal made by the Deputy Director General.

344. Mrs. WALTERS (United States of America) said that her Delegation supported the statement of Mr. Curchod.

345. Mr. HARMS (South Africa) asked whether the proposal of the Delegation of Romania would not limit the discretion of Contracting Parties to accept a later filed power of attorney where their laws allowed them to do so.

346. The CHAIRMAN responded that this was the effect of the proposal of the Delegation of Romania but that the proposal of the Secretariat would avoid such effect.

347. Mr. CURCHOD (WIPO) said that, subject to possible improvement, the amendment to Article 4(3)(d) could read as follows: "Any Contracting Party may provide that, where the power of attorney has not been submitted to the Office within the time limit fixed by the Contracting Party, the communication made by the unauthorized person shall have no effect."

348. Ms. MORARU (Romania) thanked the Deputy Director General for his drafting proposal with which she was in full agreement.

349. The CHAIRMAN concluded that the proposal of the Delegation of Romania in document TLT/DC/14, as amended by the suggestion of the Secretariat, was approved.

Article 5: Filing Date

350. The CHAIRMAN recalled that the Committee had reached agreement on Article 5(2)(b) and that this provision had been approved subject to drafting changes which were to be introduced by the Drafting Committee. He then asked if there were any seconds to the proposal of the Delegation of Hungary contained in document TLT/DC/26.

351. Mr. SZEMZÖ (Hungary) stated that, since no other delegation had seconded the proposal, his Delegation withdrew it.

Article 6: Single Registration for Goods and/or Services in Several Classes

352. The CHAIRMAN said that the discussion on that Article had already been concluded. However, the Delegation of Israel had made a proposal with regard to Article 6 and this proposal was contained in document TLT/DC/13.

353. Mr. OPHIR (Israel) explained that his Delegation fully supported Article 3(5) of the basic proposal, which makes it mandatory for Contracting Parties to provide for a multiple-class application system. The intention of the proposal of his Delegation was to allow Contracting Parties whose law provided for a multiple-class application, but a single class registration, system to continue with that practice in order to avoid procedural and administrative difficulties at the post-registration stage.

354. The CHAIRMAN concluded that, since no delegation seconded the proposal of the Delegation of Israel, the discussion would not be reopened on that point.

Article 7: Division of Application and Registration

355. The CHAIRMAN asked the Delegation of Spain to introduce its proposal which was contained in document TLT/DC/19.

356. Mr. GÓMEZ MONTERO (Spain) explained the proposal of his Delegation to amend draft Article 7(1)(a). He recalled that the Spanish Delegation had already expressed its willingness to switch from a single class system to a multiple-class system, in spite of the difficulties which such a shift would produce in the trademark office. It had also announced that it proposed examining the possibility of requiring that a division of applications or registrations be effected in terms of whole classes of the Nice classification, and not in terms of individual products or services covered by the application or registration. The proposal submitted by the Delegation aimed at allowing Contracting Parties to provide that a division of an application or registration must be effected by distributing among the divisional applications the goods or services grouped by whole classes of the classification. A Contracting Party could, therefore, disallow the division of applications or registrations in a manner which would separate products or services which were originally contained within the same class. He drew the Committee's attention to the fact that the proposal only contained an option for the Contracting Parties, so that any Contracting Party wishing to allow the division of applications or registrations by individual goods or services could still provide for such a system. His Delegation believed that this flexibility would greatly help those countries which did not at this time have experience with a multiclass system to adjust gradually.

357. Mr. CURCHOD (WIPO) said that it would be possible to interpret the expression "as provided by the law of the Contracting Party," which would be added to the text of the basic proposal by the proposal of the Delegation of Spain, in such a broad sense that this might allow unintended restrictions.

358. The CHAIRMAN said that he understood the proposal of the Delegation of Spain in the sense that it would make it possible to divide an application only into different classes but not into different goods or services relating to the same class.

359. Mr. ABOULMAGD (Egypt) stated that his Delegation seconded the proposal of the Delegation of Spain.

360. Mr. MUÑOZ RIVERA (Mexico) expressed his Delegation's support for the proposal of the Delegation of Spain.

361. Miss TOSONOTTI (Argentina) expressed her Delegation's support for the proposal of Spain.

362. Mr. KUNZE (AIM and AIPPI) stated that, because the nature of goods and services that were in one class of the international classification was often quite dissimilar, it was important for users that it be possible to divide applications not only into classes but also within classes. For this reason, he supported the basic proposal.

363. Mrs. WALTERS (United States of America) stated that her Delegation was of the opinion that the proposal of the Delegation of Spain was against the spirit of the proposed Treaty. Therefore, her Delegation supported the basic proposal.

364. The CHAIRMAN said that the acceptance of a multiple class application system and a division of applications by all Contracting Parties was already a great step towards harmonization.

365. Mr. GÓMEZ MONTERO (Spain) noted that the acceptance by Spain of a multiclass system already indicated his country's recognition of the harmonization objectives of the Trademark Law Treaty. Spain did not object to the basic principle of division of applications and registrations. It was only interested in seeking an intermediate approach between the single and multiclass systems which would cater to the interests of the offices which had to undergo adjustment, as well as the interests of users of the system who had no experience with a multiclass system. The Spanish proposal should be seen as a first step towards further harmonization in the adoption of a multiclass system.

366. Mr. SCHÄFERS (Germany) observed that the proposal of the Delegation of Spain was a deviation from the spirit of harmonization and, for that reason, he supported the basic proposal.

367. Mr. HARMS (South Africa) said that once the principle of division had been accepted, it would have to be brought to its logical conclusion. For the same reasons as had been stated by the Delegations of the United States of America and Germany, his Delegation supported the basic proposal.

368. Mr. BORGES (France) went along with the preceding remarks that had been made, particularly those of the Delegation of Germany, but nevertheless stated that he understood the point of view presented by the Spanish Delegation. He therefore suggested that a provision be inserted in the Article of the basic proposal concerning reservations that would enable countries concerned to adapt their laws accordingly.

369. Mr. FRANZONE (European Communities) said that the Community trademark system did not explicitly permit either an application or a registration to be divided. He had nevertheless listened with attention to the observations made by the Spanish Delegation and understood their concern. He thought that the suggestion made by the Delegation of France could enable a flexible solution to be found that was adapted to the problems raised by certain delegations.

370. The CHAIRMAN reminded the Committee that there was already a provision in Article 24 of the basic proposal to delay implementation of a multi-class system, and that this would also give time to adapt to a system of divisional applications.

371. Mrs. PREGLAU (Austria) expressed her Delegation's support for the basic proposal.

372. The CHAIRMAN asked for an informal show of hands and remarked that some 30 delegations were opposed to the proposal of the Delegation of Spain whereas some 10 were in favour of it. Therefore, the proposal would not be regarded as having sufficient support.

373. Mr. TOURÉ (Côte d'Ivoire) referred to the intermediate proposal made by the Chairman and asked whether it would not be possible to pronounce on that proposal also.

374. Mr. SERRÃO (Portugal) wished to explain the vote of the Delegation of Portugal that had not yet clearly defined its position and stated that he agreed with the Delegation of Spain. He therefore wished that the question raised be dealt with under Article 24.

375. The CHAIRMAN said that the discussion whether the proposal of the Delegation of Spain would be included in a reservation under Article 24 of the proposed Treaty would be suspended until the Committee reached the discussion of that provision.

376. Mr. ROMERO (Chile) stated that his Delegation would like to explain its abstention in the show of hands requested by the Chairman, in connection with the proposal by the Delegation of Spain. The Chilean trademark system already had a multiclass system which his Delegation supported and recommended. His Delegation, however, had sympathy for those countries which would be required to shift from a single-class system to a multiple class system, and believed that an adequate solution should be found for those cases. His Delegation therefore supported the suggestion that this issue be solved by adopting appropriate transitional provisions or reservations in the Treaty.

377. The CHAIRMAN invited the Delegation of Japan to introduce its proposal contained in document TLT/DC/23.

378. Mr. KAWAMOTO (Japan), referring to Note 7.03 of document TLT/DC/5, said that the advantage of Article 7(2) of the basic proposal was that the owner of a registration would be allowed to transfer parts of his registration. However, he said that the law of his country allowed owners of registrations whose validity was disputed to do the same without actually providing for a division of registration. Therefore, it would be difficult to explain to the parliament of his country why the law had to be changed in order to allow something that was already possible.

379. Mrs. WALTERS (United States of America) asked the Delegation of Japan for clarification as to whether if, under the law of Japan, a registration was invalidated only with respect to some of the goods or services in a class, the entire registration would fall.

380. Mr. WATANABE (Japan) replied that, if the registration of a trademark was successfully challenged in Japan, only the parts that had been challenged would be deleted.

381. Mr. SCHAFERS (Germany) stated that his Delegation opposed the proposal of the Delegation of Japan.

382. Mr. KUNZE (AIM and AIPPI) expressed opposition to the proposal of the Delegation of Japan because, under that proposal, every Contracting Party that provided for a post-grant opposition and invalidation procedure would be allowed to refuse divisions of registration. Therefore, he suggested that Note 7.03 also referred to invalidation procedures.

383. The CHAIRMAN concluded that there was not sufficient support for the proposal of the Delegation of Japan.

Article 10: Changes in Names or Addresses

384.1 The CHAIRMAN invited the Delegation of Romania to introduce its proposal contained in document TLT/DC/15.

384.2 The Chairman said that there seemed to be agreement in principle in favor of the substance of the proposal of the Delegation of Romania. The question was whether that proposal should be included in the text of the proposed Treaty, or whether it was sufficient to make a statement in the notes.

385. Ms. MORARU (Romania) did not wish to repeat what she had said the previous day concerning the legal value of the explanatory notes and said that if her proposal did not meet with the agreement of the other delegations, the Delegation of Romania would not press it further.

386. Mr. CURCHOD (WIPO) proposed a compromise under which the Main Committee would expressly confirm that the amount of the fee could vary where a change concerned more than one application or more than one registration. Mr. Curchod said that if the Main Committee reached agreement on that point, it would be mentioned in the Records of the Conference, which would give that agreement greater importance than a simple explanatory note.

387. Ms. MORARU (Romania) said that her Delegation was in agreement with the suggestion made by the Deputy Director General.

388. Mr. GÓMEZ MONTERO (Spain) drew the Committee's attention to the possible danger of a strict literal interpretation of the proposal of the Delegation of Romania. The amended provision could in practice limit the freedom of Contracting Parties to structure their fees for the recordal of changes in names or addresses on the basis of the classes covered by the applications or registrations affected by the changes. The Romanian proposal could be interpreted in the sense that fees may only vary according to the number of applications or registrations involved, which would unduly limit the freedom of Contracting Parties and could result in substantial reduction of revenue for offices, in particular those switching from a single-class to a multiclass system.

389. The CHAIRMAN stated that this could be construed as requiring separate filings under another name if the fees for requesting a change of name were multiplied. A compromise might be to include a general statement in the Records of the Diplomatic Conference.

390. Mr. CURCHOD (WIPO) said that it was not the intention of the proposed Treaty to introduce a harmonization of fees. The Rules of Procedure allowed the inclusion of an agreed statement in the Records of the Diplomatic Conference, if approved by the Plenary, that would reflect that there was a formal understanding of the Conference on that point. The Secretariat could prepare a draft statement which the Main Committee could then discuss.

391. Mr. ABOULMAGD (Egypt) asked whether it was possible to have an explicit statement in the proposed Treaty setting out the principle that Contracting Parties retained complete freedom to set fees.

392. The CHAIRMAN responded that an express statement with reference to the freedom of Contracting Parties to set fees in connection with the provision under discussion would possibly give rise to a contrario arguments in connection with other provisions of the proposed Treaty. It was preferable to

include an agreed statement into the Records of the Diplomatic Conference that would reflect that Contracting Parties were not limited in setting fees. Such an agreed statement in the Records of the Diplomatic Conference had more weight than a mere note.

393. Mr. CAO (China) expressed himself in favor of the suggestion made by Mr. Curchod (WIPO) to include in the Records of the Diplomatic Conference a general statement concerning fees.

394. Mr. ABOULMAGD (Egypt) said that his Delegation would reserve its position until it had seen the draft statement prepared by the Secretariat.

395. The CHAIRMAN invited the Secretariat to draft a statement for consideration by the Committee.

Rule 4: Details Concerning Representation [former Rule 5]; Rule 5: Details Concerning the Filing Date [former Rule 6]

396. The CHAIRMAN asked the Delegation of Spain to introduce its proposals contained in documents TLT/DC/21 and TLT/DC/22. He said that the proposals could be discussed together because they related to the same kind of problem.

397. Mr. GÓMEZ MONTERO (Spain) explained the proposals of his Delegation to amend draft Rules 4 and 5(1) [former 5 and 6(1)], as contained in documents TLT/DC/21 and TLT/DC/22, respectively. The purpose of those proposals was to establish a single, uniform time limit to comply with the requirements concerning representation and the filing date, without distinguishing between residents and non-residents in a given country. His Delegation felt that, at the present time, in view of the development of modern communications, even applicants domiciled in a foreign country would not need a time limit longer than one month. It was also noted that, in most cases, the missing documents or elements requiring submission to the trademark office could be provided directly by the local representative of an applicant domiciled abroad. Finally, eliminating any distinction between residents and non-residents would avoid distortions in regional contexts such as Europe, where a regional registration system co-existed with a number of national registration systems. Under the Community Trademark Regulation an applicant residing in a European country different from Spain, who filed an application with the Community Trademark Office, would be regarded as a "resident," whereas the same applicant would be considered as a "non-resident" if he applied for national trademark registrations directly with the offices of the member States of the European Communities.

398. The CHAIRMAN concluded that there was not sufficient support for the proposals of the Delegation of Spain.

Rule 6: Signature and other Means of Self-Identification [former Rule 7]

399. The CHAIRMAN invited the Delegation of the United States of America to introduce its proposal contained in document TLT/DC/18.

400. Mrs. WALTERS (United States of America) explained that in certain situations the Office of her country relied on the date of the signature of the application. As an example, she said that where two applications were filed at the same day, the date of the signature would be taken into consideration in order to give priority to one application.

401. Mr. CURCHOD (WIPO) said that the International Model Forms provided for an indication of the date of the signature. However, the proposal of the United States of America would make such an indication mandatory.

402. Miss QUIRINO (Philippines) expressed her Delegation's support for the proposal of the Delegation of the United States of America.

403. Mr. ABOULMAGD (Egypt) expressed the support of his Delegation for the proposal of the Delegation of the United States of America.

404. Mr. ROMERO (Chile) expressed his Delegation's support for the proposal of the United States of America.

405. Mr. KUNZE (AIM and AIPPI) said that from his point of view the requirement of furnishing the date of signature was not to be opposed as long as non-compliance with that requirement did not lead to a rejection of the application.

406. Mr. BOGSCH (Director General of WIPO) referred to a statement the Delegation of the United States of America had made the day before, according to which the absence of a date of signature was a correctable error.

407. The CHAIRMAN suggested that the proposal of the Delegation of the United States of America could be supplemented by a provision creating a rebuttable presumption to the effect that, in the absence of an indication of the date of the seal or signature, the date of the reception of the application would be deemed to be the date of the seal or signature.

408. Mr. BORGES (France) said that his Delegation had not altogether understood the tenor of the final wording of the amendment to the proposal by the Delegation of the United States of America.

409. The CHAIRMAN concluded that the proposal of the Delegation of the United States of America contained in document TLT/DC/18 had been approved, subject to the inclusion of the rebuttable presumption to which he had referred.

Article 11: Change in Ownership

410.1 The CHAIRMAN recalled that it was already agreed to change the expression "prescribed" in Article 11(1)(iii) into "to be prescribed."

410.2 He concluded that paragraphs (1) to (3) were approved as proposed.

411. Mrs. WALTERS (United States of America) explained that, under the law of the United States of America, recording an assignment was not necessarily the same as having a valid assignment. Several requirements would have to be met in order for a trademark or service mark assignment to be legally valid,

for example, the assignment must include a transfer of goodwill. While assignments not reciting a transfer of goodwill would be recorded pursuant to the proposed Treaty, her Delegation wanted to note for the record that such assignments might not be valid. The trademark law of the United States of America also limited the assignment of a mark that had not been used but was the subject of a pending intent-to-use application. Such a mark could not be validly assigned before a verified statement of use was filed, except to a successor to the applicant's business. The United States of America intended to take reasonable precautions in the processing of recordal of assignments to remind trademark owners of those provisions of substantive trademark law.

412. Miss QUIRINO (Philippines) suggested a revision of Article 11(4)(iv) of the proposed Treaty in a manner that would allow Contracting Parties to require an applicant to declare and/or furnish evidence that the goodwill of a mark had been transferred together with a mark. She inquired whether a reservation would be in order, if the suggested revision was not acceptable.

413. Mrs. WALTERS (United States of America) suggested that the proposal of the Delegation of the Philippines should be limited to Contracting Parties whose laws required the transfer of goodwill together with the transfer of a mark at the time of the entry into force of the proposed Treaty.

414. Mr. BORGES (France) pointed out that the matter had been the subject of numerous discussions during meetings of the Committee of Experts and it had been concluded by consensus that the Treaty would deal only with administrative matters between offices. Observing that the problem raised in that case was not of the competence of the offices, Mr. Borges stated that his Delegation was not in favor of the proposal by the Philippines and preferred to maintain the wording of the basic proposal as it stood.

415. Mr. OUSHAKOV (Russian Federation) expressed the view that the proposal of the Delegation of Philippines should not be accepted, and referred to the arguments of the Delegation of France.

416. Mr. van der EIJK (Netherlands) said that his Delegation opposed the proposal of the Delegation of the Philippines because it would make Article 11(4) meaningless.

417. Miss QUIRINO (Philippines) agreed with the statement that had been made by the Delegation of the United States of America.

418. The CHAIRMAN concluded that the proposal of the Delegation of the Philippines had not received sufficient support and invited the Delegation of Spain to introduce its proposal contained in document TLT/DC/20.

419. Mr. MARTINEZ TEJEDOR (Spain) explained his Delegation's proposal to insert a new paragraph in draft Article 11. He drew the Committee's attention to the fact that the word "tributos" in the original Spanish text of his Delegation's proposal had been mistranslated in English and French as "fees" and "taxes," respectively. The correct translation would have been "taxes" and "impôts," respectively. The reason for the proposed new paragraph was that, under Spanish Law, every public office was required to verify that any person following a procedure before that Office had complied with any

applicable obligations under fiscal or tax law relating to the procedure under consideration. In the case of the transfer of rights in a mark, the Trademark Office had to be satisfied that any taxes relating to the transfer operation or contract had been duly paid, failing which it could not proceed to the recordal of the transfer. If such obligation had not been complied with, the Office would require compliance before recordal was effected. His Delegation therefore preferred that these grounds for refusing the recordal of changes in ownership appear expressly in the Treaty, rather than in the notes.

420. The CHAIRMAN stated that it was his understanding that the intent of the provision of the basic proposal was to separate the act of recording transfers on the register of an office from any reason which might affect the validity of the transfer, and that tax provisions would be separate from the procedures of the office.

421. Mr. CURCHOD (WIPO) expressed agreement with the Chairman's understanding, and stated that the issue had been discussed by the Committee of Experts. He said that perhaps that problem was taken care of by the last sentence of Note 11.01. The understanding of that note was that, if fiscal or other requirements of a Contracting Party were not complied with, a recordal of a change of ownership could not be prevented, although it would be possible to cancel it subsequently.

422. Mr. HARMS (South Africa) said that his Delegation opposed the proposal of the Delegation of Spain. The wording could allow refusal to record based on failure to pay taxes in other countries.

423. Mr. ROMERO (Chile) expressed his Delegation's support for the proposal of Spain, for the reasons given by the Spanish Delegation. He also requested that the statement of the Chairman concerning the different nature of the subject matter of the Trademark Law Treaty and of other matters governed by separate legislation in a given country be included in the records of the Diplomatic Conference.

424. Mr. ENÄJÄRVI (Finland) inquired whether the proposal would result in a situation where a new owner would be refused recordal of the transfer because the former owner had failed to pay taxes.

425. The CHAIRMAN stated that, while this might be the effect of the proposal, it did not seem to be the intent.

426. Mr. MARTINEZ TEJEDOR (Spain) clarified that it was not the purpose of his Delegation's proposal to define or monitor the fiscal systems of other countries. The proposal only related to taxes which were generated in the country in which the recordal was to take place, by virtue of an assignment or transfer of rights, in accordance with national tax law. Any tax law would clearly indicate which person was liable for what taxes in connection with an assignment or transfer.

427. Mrs. GORLENKO (Russian Federation) pointed out that the Trademark Law Treaty could not take into account specific features of various legislations and, in particular, tax law. Therefore, her Delegation did not support the proposal of the Delegation of Spain.

428. The CHAIRMAN concluded that there was not sufficient support for the proposal of the Delegation of Spain. However, he said that it was possible to try to make a statement for the Records of the Diplomatic Conference which would reflect the position of the Delegation of Spain.

429. Mr. MARTINEZ TEJEDOR (Spain) supported the request by the Delegation of Chile that the records note the statement of the Chairman in the sense that subject matter dealt with by the Trademark Law Treaty was to be considered separate and independent from any fiscal or tax legislation in a given Contracting Party.

430. The CHAIRMAN adjourned the meeting.

Seventh Meeting
Friday, October 14, 1994
Afternoon

Article 11: Change in Ownership

431. The CHAIRMAN opened the meeting. He suggested that, although the meeting had concluded its discussions on Article 11, Japan should have the opportunity to present its comments concerning Article 11(2)(b).

432. Mr. WATANABE (Japan) suggested that a reference to Article 11(1)(d) be included in Article 11(2)(b) in order to allow Contracting Parties to require a translation of the document showing the consent of co-owners to a transfer.

433. Mr. CURCHOD (WIPO) explained that the provision of Article 11(1)(d) was introduced quite late into the proposed Treaty. It was felt that consent of the remaining co-holders was not something which necessarily required translation in all cases. He recalled that it might be very difficult in some cases for the party requesting the recordal of the transfer to contact the remaining co-holders, which could be quite numerous.

434. Mr. WATANABE (Japan) asked for clarification whether, for example, in a case where the consent had been submitted in a foreign language, the Office of a Contracting Party would be allowed to request the submission of the translation in accordance with Article 11(5).

435. The CHAIRMAN confirmed that Article 11(5) of the proposed Treaty would allow a Contracting Party to require the furnishing of such evidence, and concluded the discussion on Article 11.

Article 12: Correction of a Mistake

436.1 The CHAIRMAN turned to Article 12 and concluded that paragraphs (1) to (5) were approved as proposed, subject to a consequential amendment (the addition of the words "to be") in paragraph (1)(a)(iii).

436.2 The Chairman then invited the Delegation of the United States of America to introduce its proposal contained in document TLT/DC/11 concerning the addition of a new paragraph (6) to Article 12.

437. Mrs. WALTERS (United States of America) noted that the present draft of Article 12 only related to mistakes on the part of the holder who would have to pay a fee for any such correction. The proposal intended to give the holder an opportunity to request the correction of mistakes made by the Office. The Office should then be obliged to correct the mistake, without charging a fee, according to the procedures adopted by the Office in respect of corrections of mistakes.

438. The CHAIRMAN noted that the proposal was seconded by several delegations.

439. Mr. MARTINEZ TEJEDOR (Spain) requested confirmation that Article 12(1)(a) concerned only the correction of mistakes originating in the applicant, and that the said provision did not deal with mistakes caused by the trademark office.

440. Mr. SCHÄFERS (Germany) agreed in principle with the proposal made by the United States of America. He pointed out certain drafting problems in relation to the term "mutatis mutandis," which also appeared in paragraph (2), in particular in respect of ex officio corrections, and stated that the existence of several subparagraphs in paragraph (1) made the provision difficult to read.

441. The CHAIRMAN suggested the deletion of the second sentence of the proposal.

442. Mrs. WALTERS (United States of America) insisted on maintaining the second sentence and suggested that this problem be referred to the Drafting Committee.

443. The CHAIRMAN concluded that the proposal of the United States of America contained in document TLT/DC/11 was approved, subject to the drafting point.

Article 13: Duration and Renewal of Registration

444. The CHAIRMAN then turned to Article 13. In the absence of comment, he concluded that paragraph (1)(a), items (i) and (ii) were approved as proposed, and he invited the Delegation of Japan to introduce its proposal in document TLT/DC/24.

445. Mr. KAWAMOTO (Japan) referred to the Japanese Law which allowed not only the holder but also an interested third party, including a licensee, to pay the renewal fee. It was important for the interested party to ensure that

the renewal fee was paid and this should not be excluded by the Treaty. He therefore suggested that this be reflected in the provision of paragraph (1)(a)(iii).

446. The CHAIRMAN noted that the proposal would imply that if something went wrong with the payment of the fee the right person could then be contacted.

447. Mr. CHUNG (Republic of Korea) noted that the same system as in Japan applied in the Republic of Korea. He supported the proposal of the Delegation of Japan.

448. Mr. CURCHOD (WIPO) stated that it was permitted under item (ii) to require an indication of the name and address of the holder as a means of identifying the registration, rather than a means of identifying the source of the payment. The text of the basic proposal would not oblige Contracting Parties to eliminate the possibility of third parties paying renewal fees.

449. Mr. PRETNAR (Slovenia) indicated that the law in his country also allowed a third party to pay renewal fees. The provision in paragraph (1) was only concerned with the indications that should be contained in a request for renewal, and did not prevent a third party from paying the renewal fee. He found the basic proposal sufficient to meet the concerns expressed by Japan. He pointed out that paragraph (1)(a)(viii) would perhaps need to be amended to allow for signatures by the interested parties.

450. The CHAIRMAN indicated that the proposal from Japan would make it obligatory to require the name and address of the interested party.

451. Mr. CATOMÉRIS (FICPI) drew attention to special agencies which paid fees in respect of renewal without indicating their identity. If the fee was not sufficient, the Office would have difficulty determining the source of the payment. He therefore found the proposal from Japan reasonable.

452. Mr. POTGIETER (South Africa) found the term "interested party" too vague and considered that the term might cover more than the Delegation of Japan had in mind.

453. The CHAIRMAN suggested making the provision suggested by Japan conditional to the effect that, if a request were made by someone other than the holder or his representative, the names and addresses should be indicated.

454. Mr. KAWAMOTO (Japan) indicated that his Delegation could accept this amendment to the proposal.

455. Mr. KUNZE (AIM and AIPPI) stated his support in principle for the proposal by the Chairman, but indicated that the main problem was within paragraph (1)(a)(viii) concerning signatures.

456. Mrs. GORLENKO (Russian Federation) indicated that her Delegation might have difficulties with that proposal since in its national law a request for renewal of a registration might be filed only by the holder of registration or his representative.

457. The CHAIRMAN underlined that there should be no obligation for an office to make such a request.

458. Mr. CURCHOD (WIPO) suggested language such as "where the Contracting Party allows the request to be filed by a party other than the holder or his representative, the name and address of that party, etc." The intention was to allow the national Office in Japan to continue its practice, and at the same time to allow the law in the Russian Federation to continue to require that only the holder of the registration could renew the registration.

459. Mr. KUNZE (AIM and AIPPI) expressed support the proposal of the Deputy Director General.

460. Mr. KAWAMOTO (Japan) stated that his Delegation had no objection to the proposal.

461. The CHAIRMAN concluded that paragraph (1)(a) was approved with the amendment proposed by the Delegation of Japan in document TLT/DC/24, as further amended by the oral suggestion of the Deputy Director General, and subject to improvement by the Drafting Committee. He then invited the Delegation of Cameroon to introduce its proposal contained in TLT/DC/31 concerning paragraphs 13(1) and (4).

462. Mr. LOBE (Cameroon) expressed, on behalf of the signatories of the Bangui Accord, concern about paragraph (4)(iii), which prohibited requiring the furnishing of a declaration and/or evidence concerning the use of a mark in respect of a request for renewal. He stated that, if a declaration of intention to use or proof of actual use could be acceptable when the applicant first applied to register a mark, he could not see any reason why this requirement should not be acceptable as a requirement for renewal.

463. Mr. CURCHOD (WIPO) responded that this matter had been amply discussed during the last meeting of the Committee of Experts. The solution which had been reached was that, in order to make the renewal procedure simpler, the requirement of furnishing evidence concerning use of the mark would be de-linked from the renewal procedure. Recognizing that a number of national and regional laws, such as the Bangui Agreement, contain the requirement that evidence concerning the use of the mark must be furnished together with the application for renewal, a transitional provision was proposed in the form of a limited reservation in Article 24(6).

464. Mrs. DZIETHAM (Cameroon) regretted that the OAPI member countries had not participated sufficiently in the work of the Committees of Experts on the basic proposal to ensure that their points of view were taken into account. She explained that the registration of a mark with OAPI resulted in protection for that mark in the fourteen member States and that renewal of the mark was subject to proof of effective use of the mark in at least one member State. She emphasized the fact that requirement of proof in the laws of the OAPI member States derived from the concern of those States to ensure that the marks that were issued were effectively worked in order to contribute to the development of the States rather than to see those marks used to close a market. Mrs. Dzietham said that the approximation of the Treaty provisions with those of the law in force in her country would be such as to facilitate not only the application of the Treaty in her country but also in those of the OAPI members.

465. Mr. THIAM (OAPI) observed that the Delegation of Cameroon had mentioned all the arguments that spoke in favor of their proposal. He noted in relation to the provisions of Article 24(6), according to which a regional intergovernmental organization could declare through a reservation that it would require, on the occasion of renewal, the furnishing of evidence concerning use of a mark, that the comment given in the Notes on the draft Treaty and Regulations (24.10) limited the maximum duration of a reservation under that paragraph to four years. In view of the fact that no revision of the Bangui Agreement was scheduled for the near future, Mr. Thiam wondered what the consequences of that provision would be after the four-year period.

466. Mr. TOURÉ (Côte d'Ivoire) supported, for the reasons already put forward, the amendment proposed by the Delegation of Cameroon. He observed that the aim of the draft Trademark Law Treaty was to simplify registration procedures and noted that the provisions of the Bangui Agreement on the furnishing of evidence concerning use of a mark had never raised any problems. Since he did not wish to see that provision excluded from the present Treaty, to ensure that marks were effectively used and not monopolized for reasons of blocking, he declared that he was not altogether satisfied with the provisions of Article 24.

467.1 Mrs. WALTERS (United States of America) recognized the importance of continued use of a registered trademark, and the need to require periodic evidence of continued use of the mark. This was currently the required practice for renewal in the United States of America. She recalled that in the Committee of Experts it was agreed for purposes of harmonization and simplification that it would be appropriate to de-link the use requirement from the renewal requirements. In the spirit of harmonization, the United States of America planned to change its law to this effect. She suggested that it be reflected in the records of the Conference that periodic evidence of use of a registered mark was appropriate, and suggested that this might solve the problems for Cameroon and the other countries.

467.2 Mrs. Walters explained that the understanding was stated in Note 13.06 to the effect that the use of the words "maintenance of a registration" in Article 13(1)(b) made it clear that a Contracting Party may require the payment of a fee connected with requirements relating to the proof of use of the registered mark outside the renewal procedure. In addition, a general statement in Note 13.20 said it was understood that nothing in the Treaty prevented a Contracting Party from employing the requirements of its law in respect of the use of the mark, which is the subject of a registration, provided that the compliance with such requirements was not linked with the procedure for the renewal of that registration. She suggested an amendment to paragraph (b) which would clarify that the words "maintenance of the registration" did not refer to the requirement for evidence of use, and that the payment of fees associated with that evidence was not precluded by the paragraph.

468. Mr. AMIGO CASTAÑEDA (Mexico) said he had noted with interest the intervention of the Delegation of the United States of America regarding their approach to the proof of use of registered marks by requiring periodical evidence thereof. He recalled that the Mexican Industrial Property Law still required a declaration of use of the mark in conjunction with the renewal of a registration. He gave several reasons which justified maintaining a strict user requirement for marks, in particular that such requirement could help

remedy cases of the misuse of trademark rights to frustrate or hamper other persons' legitimate business activities. His Delegation would examine in depth the provisions of the basic proposal which required de-linking proof of use requirements from renewal proceedings, although implementing such provisions would require amendments to the Mexican law.

469. Mr. BOGSCH (Director General of WIPO) said that he believed that the Delegation of Mexico wanted to allow for a requirement of a declaration of use and not for the proof of use.

470. Mr. AMIGO CASTAÑEDA (Mexico) explained that proof of use was not required for the purposes of renewal of a registration, but only a declaration of use of the mark.

471. Mrs. GORLENKO (Russian Federation) stated that the Delegation highly appreciated the Bangui Agreement but recalled that during the sessions of the Committee of Experts it had been agreed to try to simplify to the maximum extent the procedures relating to renewal, to the extent that it should be treated as a purely mechanical act. She stated that if one turned to the problem of use or evidence of use, other legal provisions could be applied. She recalled that many legislations provided for the possibility of cancellation of registration in case of continuous non-use during certain period of time. The problem of use should be dealt with in the frame of such provisions. Otherwise, her Delegation saw a possible solution to that problem within Article 24 of the Treaty, or by adoption of a special statement in the Records of the Diplomatic Conference.

472. The CHAIRMAN noted that the Committee was now dealing with three proposals: a requirement of evidence of use, a declaration of use and maintaining the basic proposal with a reference to Article 24(6).

473. Mr. KUNZE (AIM and AIPPI) stated that the providing of evidence of use as a condition for renewal was not required to solve the problem of abuse with respect to the trademark which was not used, since most laws provided for invalidation actions after a grace period in case of non-use. Providing the paperwork on evidence of use in connection with renewal was very burdensome for the trademark holders, especially for those with many registrations, and in general a trademark holder would only renew his trademark if he used the trademark because of the fees to be paid for the renewal.

474. Mr. HARMS (South Africa) supported the suggestion of the Delegation of the Russian Federation.

475. Mr. ROMERO (Chile) expressed his Delegation's preference for the text as contained in the Basic Proposal.

476. Mr. von MÜHLENDahl (European Communities) supported the text of the basic proposal and referred to Article 24(6) on reservations concerning evidence of use. He recalled that this question had been intensively discussed within the European Community in connection with the Community Directive to Approximate the Laws of the Member States Relating to Trademarks, where the requirement of evidence of use in connection with renewal was rejected.

477. Mr. SCHÄFERS (Germany) expressed his Delegation's support for the basic proposal.

478. Mr. CAO (China) supported the Basic Proposal and expressed the view that the problem under the discussion could be solved in other Articles of the Treaty.

479. Mr. TODD (United Kingdom) expressed his Delegation's support for the basic proposal and for the statement of the Delegation of the European Communities and underlined that the exclusion of furnishing a declaration concerning evidence of use was in the interest of both holders and Offices.

480. Mr. SIMON (Switzerland) expressed his Delegation's support for the basic proposal and referred to Article 24(6) as a solution to the problem.

481.1 The CHAIRMAN then called for an informal show of hands on the proposal by Cameroon in order to establish the position of the Committee. He noted that a great majority were against the proposal from Cameroon (35 opposed and 6 in favor). He concluded that there was insufficient support for the proposal.

481.2 He further stated, given that Cameroon and others who had spoken in favor of the proposal from Cameroon could consider the procedures adopted in the United States and Mexico concerning periodic evidence of use, that it should be reflected in the Records of the Diplomatic Conference that Article 13 concerned the procedures for renewal and that nothing in the Treaty prevented a Contracting Party from applying the requirements of its law in respect of continued use of the mark, provided that the compliance with such requirements was not linked with the procedure for renewal.

482. Mrs. DZIETHAM (Cameroon) thanked the delegations, particularly those of the United States and of Mexico, whose contributions would be most useful to them. She stated that the group of OAPI States would not fail to concert their views on that matter and to draw the necessary practical conclusions. The International Bureau of WIPO would be kept duly informed of the outcome of those discussions.

483. Mr. FALL (Senegal) strongly supported the proposal made by the Delegation of Cameroon.

484.1 The CHAIRMAN concluded that Article 13(1)(a) was approved as proposed, and turned to the proposal of the United States of America contained in document TLT/DC/28.

484.2 He concluded that this proposal was approved as proposed. He further concluded that paragraphs (1)(c) to (7) were approved as proposed subject to the consequential amendment of subparagraph (2)(iii) in respect of the deletion of Rule 4.

Rule 8: Details Concerning Duration and Renewal (ad Article 13)
[former Rule 9]

485. The CHAIRMAN then turned to Rule 8 [former Rule 9]. He invited the Delegation of the European Communities to present its proposal contained in document TLT/DC/10.

486.1 Mr. FRANZONE (European Communities) was not sure as to the conformity of the system proposed by Rule 8 [former Rule 9] with the Community trademark system. Under the Regulations on the Community trademark, requests for renewal and payment of fees had to be made within a period of six months expiring on the last day of the month during which protection lapsed. Failing that, the request could still be submitted and the fees paid within an additional period of six months taking effect on the day following the day referred to above, subject to payment of a surcharge. Mr. Franzone added that the system had been chosen for two reasons: to facilitate the management of trademarks by undertakings and to give the trademark owner a subsequent period, that could be from one to thirty days, since, independently of the filing date of the application, it was the last day of the month in which protection expired that was taken into account.

486.2 Starting from the principle that in all States the day in point, that is to say the day on which the time limit began to run, was the same for payment of the fee and for filing of the renewal request, the Delegation of the European Community proposed that "on which the renewal fee is due" be inserted into Rule 8 [former Rule 9]. The proposal by the Delegation of the European Community had been made both out of a concern to establish a system that would provide maximum guarantees for the holders of trademarks and would also make the least possible changes to Rule 8 [former Rule 9] as proposed.

487. The CHAIRMAN noted that the proposal was seconded by several delegations.

488. Mrs. WALTERS (United States of America) remarked that the proposal could create confusion in respect of the different fees mentioned in the Rule and expressed her Delegation's opposition to the proposal.

489. Mr. BOGSCH (Director General of WIPO) asked for clarification as to when the renewal fee was due, and inquired whether the intention of the proposal was to extend the period. If that was the case, he suggested that the words "at least" as contained in the basic proposal should be sufficient.

490.1 Mr. FRANZONE (European Communities) confirmed his Delegation's full agreement with the period of at least six months and an additional time limit of six months, subject to payment of a surcharge. He added that the essential question here concerned the date of reference, for two reasons: firstly, because, under the Community system, if the request was submitted prior to the reference date, it would not be held acceptable since it would have been submitted too early, the period during which it should have been submitted having not yet begun. The second reason concerned the matter of surcharges.

490.2 Mr. Franzone confirmed that the aim of the proposal made by his Delegation was not to ask the other parties to extend the six-months period and the six-month additional time limit, or to change their own systems, but simply to enable the rule to be adapted to the Community trademark system as

he had described. The proposal was therefore based on the principle under which, in all laws, the reference date was identical for the filing of the renewal request and for the payment of the fee. Thus, by linking the two aspects, the proposal by the Delegation of the European Community made the date on which the renewal fee was to be paid coincide with the date on which the request for renewal had to be submitted. Such a system would have the advantage, according to Mr. Franzone, of determining a reference date that would satisfy everybody and that would comply with all legal traditions.

491. Mrs. BEHRENS (CNIPA) noted that as far as she was aware nothing in the Treaty or Rules stated that the renewal fee was due on the anniversary date of the trademark. She wondered whether the wording in line three in the English text concerning the date on which the renewal was due could not, in the case of the European Communities, equally apply to the 30th or the 31st of the month in any event. In this case no amendment would be required.

492. The CHAIRMAN agreed that, at least in relation to this Rule, the date when renewal was due was the same as the date when the renewal fee was due. He noted that there was a feeling among the Delegations that clarification was needed.

493. Mr. BOGSCH (Director General of WIPO) stated that this interpretation should be reflected in the records.

494. The CHAIRMAN concluded that a statement would be included in the records of the Conference. He then invited the Delegation of Romania to introduce its proposal contained in document TLT/DC/16.

495. Ms. MORARU (Romania) explained that the amendment proposed by her Delegation was intended to give prior permission to a Contracting Party. She added that the proposal had been made by reason of the fact that an identical provision was contained in the Regulations under the Madrid Agreement, that was to say payment of a fee for limitation of the list of goods and services requested subsequently to international registration.

496.1 Mr. CURCHOD (WIPO) said that the proposal by the Delegation of Romania reproduced the contents of Note 13.06 given in document TLT/DC/5 which the Delegation wished to transfer to the actual text of the Regulations.

496.2 Mr. Curchod explained that the International Bureau had drafted an Agreed Statement that was intended to be formally approved by the Conference and which concerned the matter of fees and the freedom of Contracting Parties to set those fees in accordance with their own wishes and needs. He added that the Agreed Statement, which was to be distributed very shortly, would also cover the contents of Note 13.06.

497. Ms. MORARU (Romania) said that her Delegation approved the proposal by the Deputy Director General.

498. The CHAIRMAN concluded that Rule 8 [former Rule 9] was adopted as proposed.

Article 14: Observations in Case of Intended Refusal

499. The CHAIRMAN then turned to Article 14 and concluded that this Article was approved as proposed.

Article 15: Service Marks

500. The CHAIRMAN then turned to Article 15 and invited the United States of America to introduce its proposal contained in document TLT/DC/29.

501. Mrs. WALTERS (United States of America) said her Delegation's proposal was to include in Article 15 an obligation to Contracting Parties to register service marks. She found this amendment necessary in the light of Article 6sexies in the Paris Convention, which provided that service marks should be protected but explicitly did not require their registration. According to other articles in the Paris Convention, there was an assumption for such registration, but it should be stated as mandatory in the text of the Treaty.

502. Mr. SCHAFERS (Germany) expressed his Delegation's support for the proposal by the United States of America.

503. Mr. STRENC (Romania) said that his Delegation supported the proposal made by the Delegation of the United States.

504. Mr. MARTINEZ TEJEDOR (Spain) said he had no problems with the substance of the proposal of the Delegation of the United States of America concerning Article 15, but that the Spanish translation of that proposal seemed to require some improvement.

505.1 The CHAIRMAN concluded that Article 15 as amended in accordance with the proposal from the United States of America contained in document TLT/DC/29 was approved, subject to clarification by the Drafting Committee.

505.2 The Chairman adjourned the meeting.

<u>Eighth Meeting</u> <u>Monday, October 17, 1994</u> <u>Morning</u>

506. The CHAIRMAN opened the meeting and noted a request from the Latin American Group for a group meeting in order to discuss a suggestion from the Delegation of Canada in respect of the suggestions by the Director General contained in document TLT/DC/12.

507. Ms. WHELTON (Canada) expressed her Delegation's support for the request from the Latin American Group for adjournment of the meeting.

508. The CHAIRMAN indicated that he did not, at this stage, intend to have a substantial discussion on the suggestions by the Director General concerning Article 17. In order, however, to allow the Latin American Group to conduct their discussions, he suspended the meeting.

[Suspension]

509. The CHAIRMAN reopened the meeting and invited the Delegation of Canada to present its suggestion for a procedure to be followed by the Committee.

510.1 Ms. WHELTON (Canada), on behalf of the Delegations of Australia, Brazil, Canada, Indonesia, Israel, Japan, Mexico, New Zealand, the Philippines and the United States of America, stated that these Delegations had made a preliminary review of the suggestions by the Director General contained in document TLT/DC/12, and that there were a number of outstanding issues related to the suggestions that were still of concern and would require considerable further study. Under the circumstances, these Delegations considered that it was necessary to develop all options for resolving the voting issue, particularly options which were less drastic and were more in keeping with currently known and accepted approaches. They considered that the suggestion by the Director General referred to as Alternative AB, which would adopt an approach similar to the one contained in the Agreement Establishing the World Trade Organization, provided one of the most promising options for consideration.

510.2 The Delegations considered it essential that a draft text be put forward as soon as possible so that the Committee would be able to carry out a thorough and careful review of this alternative. It was the view of the Delegations that the Secretariat was best placed to prepare such a text. Ms. Whelton accordingly requested that the Director General prepare and submit to the Conference within 24 hours a draft of another option taking into account the wording contained in the Agreement Establishing the World Trade Organization to deal with the voting question.

511. The CHAIRMAN noted that the suggestion of the Delegation of Canada had been supported by the Delegations mentioned. He recalled the conclusion made earlier that there had not been sufficient support for Alternative AB, but invited other delegations to express their views.

512. Mr. SCHWAB (European Communities) expressed the disappointment of his Delegation with the initiative stated by Canada. He indicated that his Delegation had difficulties with the suggestions by the Director General contained in document TLT/DC/12, but could eventually agree with those suggestions in order to reach a compromise. He underlined that a solution based on the text of the Agreement Establishing the World Trade Organization could not be considered to be a compromise. He stated that his Delegation would be firmly against such a proposal, and added that such a proposal would put the result of the Diplomatic Conference in question.

513. Mr. KIRK (United States of America) confirmed the support of his Delegation to the statement by the Delegation of Canada, and underlined that his Delegation would like to see a compromise proposal along the lines of the text on voting of the Agreement Establishing the World Trade Organization.

514. Mr. SCHÄFERS (Germany) expressed the support of his Delegation for the statement by the Delegation of the European Communities. He indicated that the Director General had committed himself to the compromise suggestions and should not be asked to prepare a suggestion which was not a neutral one. If the suggestion indicated by the Delegation of Canada was to be put forward, it should be drafted by the delegations concerned.

515. Mr. JAGUARIBE (Brazil) expressed his Delegation's support for the suggestion by the Delegation of Canada, which he characterized as a procedural suggestion intended to open up the negotiations. He stated that the suggestion reflected one of the original options put forth by the Director General, and was necessary in order to obtain a complete picture.

516. Mr. GAUTO VIELMAN (Paraguay) expressed his Delegation's support for the suggestion of the Delegation of Canada. He recalled that his Delegation had received with satisfaction the suggestions of the Director General contained in document TLT/DC/12. Although at that time he had stated that the Director General's suggestions for a solution might still require some improvement, his Delegation regarded those suggestions as a valid option. The request by the Delegation of Canada on behalf of a number of countries that an alternative option be submitted seemed to be a matter of procedure. Consideration of a second possible option to solve the voting rights issue could not cause prejudice to the Conference. If, however, the move to have such a second option put before the Conference were to be rejected, that could be considered unusual and awkward, and there could be future doubts about why this option was not considered by the Conference.

517. Miss TOSONOTTI (Argentina) expressed her Delegation's wish that alternative proposals to solve the issue in question be put before the Conference. Her Delegation had already requested submission of a second option earlier in the discussions.

518. The CHAIRMAN stated that it was reasonable that the Director General should prepare a written text on the basis of the request of the Delegations named by the Delegation of Canada, based on Article IX(1) of the Agreement Establishing the World Trade Organization, including footnotes 1 and 2 appearing under that Article. He stated that the text would not be a suggestion by the Director General, but would be a text prepared in response to the request of the Delegation of Canada and the other named Delegations for submission to the Committee.

Model International Forms

519. The CHAIRMAN then turned to the Model International Forms contained in document TLT/DC/4, and invited the Deputy Director General to introduce them.

520. Mr. CURCHOD (WIPO) noted with respect to the model international forms that some of them would have to be modified following the amendments made to the Treaty the preceding week. He suggested that the matter be dealt with by the Drafting Committee. He further announced that the Secretariat was to submit to the Drafting Committee a number of purely formal modifications, particularly in order to harmonize the terminology in the Treaty in the various languages.

521. The CHAIRMAN indicated that it was the role of the Drafting Committee to make consequential amendments to the basic proposal, and to assure that corresponding terminology was used in all language versions. In the absence of any comments, he stated that the procedures suggested by the Deputy Director General would be followed.

522. Mr. KAWAMOTO (Japan) stated that Notes F0.02 to F0.04 contained in document TLT/DC/5 were very important for the implementation of the Treaty and for the preparation of Individualized Forms. He suggested that the contents of those notes should be incorporated into the Articles and the Rules. If this was not possible, he suggested that the notes be approved by the Diplomatic Conference.

523. The CHAIRMAN stated that there were two ways to proceed; first, a Rule could be added to the Regulations containing the substance of those notes; or, second, the Conference could confirm that the points contained in those notes were accepted by the Conference as proper ways to interpret provisions of the Treaty.

524. Mr. CURCHOD (WIPO) stated that the Secretariat would prefer the second way of proceeding, and offered to prepare a draft statement which reflected the contents of Notes F0.02 to F0.04. He further suggested that Note F0.05 also be included.

525. Mr. KAWAMOTO (Japan) expressed the support of his Delegation for the suggestion by the Deputy Director General.

526. The CHAIRMAN concluded that the Secretariat would prepare a statement on Notes F0.02 to F0.05 for consideration by the Conference.

527. Mr. KAWAMOTO (Japan) stated that, under the first-to-file system of his country, the submission date of a trademark application was an important element of information to include in a trademark application. Under the current practice in Japan, this date would constitute the filing date under certain circumstances. Mr. Kawamoto stated that he wished to confirm that it was permissible, under the Treaty, the Regulations, and the Forms to allow an applicant or a holder the option of indicating the date of submission in the individualized international forms.

528. Mr. CURCHOD (WIPO) stated that the intention was not to preclude an applicant or holder from adding additional optional indications, as long as these were not considered to be mandatory by the Office.

529. Mr. HIGUCHI (JPAA) noted that, in Japan, in the case where communication was made by mail, the mailing date was considered to be the submission date and thus, in the case of an application, could be regarded to

be the filing date. This was a fair system which treated the applicants or holders equally wherever they lived. He mentioned that the applicants wished the proposed Treaty to allow them to indicate the mailing date or submission date in the communication at their option, at least in the Individualized Form.

530. Miss SUGIMOTO (JTA) remarked that the submission date was very important under the system of her country, and noted that if the submission date was not given in the application, the receiving date was regarded as the filing date.

531. The CHAIRMAN indicated that the current discussion seemed to be a substantive discussion concerning the contents of Article 5 of the Treaty with respect to the filing date. Since Article 5 seemed to suggest that the filing date would be the date of receipt of the application by an Office, the suggestion of Japan seemed to be to modify Article 5, and that, in light of the fact that Article 5 had already been discussed, such a suggestion would require a two-thirds majority for approval by the Committee to proceed.

532. Mr. SCHAFERS (Germany) recalled that the problem raised by the Delegation of Japan had been discussed in the context of the draft Patent Law Treaty and noted that the practice in Japan had been accommodated in that context.

533. Mr. CURCHOD (WIPO) noted that Rule 5(3) [former Rule 6(3)] had been taken from the draft Patent Law Treaty. According to this Rule, a Contracting Party would be free to determine the circumstances in which the receipt of a document or the payment of a fee would be deemed to constitute receipt by or payment to its Office in cases in which the document was actually received by or payment was actually made to, inter alia, an official postal service. He stated that the practice in Japan of accepting the mailing date as the filing date was covered by that provision.

534. Mr. KAWAMOTO (Japan) expressed his Delegation's acceptance of the explanation by the Deputy Director General.

535. The CHAIRMAN concluded that the interpretation by the Deputy Director General would be reflected in the records.

International Model Form No.1: Application for the Registration of a Mark

536. The CHAIRMAN then invited comments on Model International Form No. 1.

537. Mr. SCHWAB (European Communities) suggested that the wording in item 5.1 of Form No. 1 concerning "country (office)" should be repeated in item 6, where there was only a reference to "country." The amendment was needed to take account of the "telle quelle" principle contained in Article 6quinquies of the Paris Convention that should also apply to the Community trademark.

538. The CHAIRMAN concluded that this suggestion was a consequential point, and would be addressed by the Drafting Committee.

539. Mr. WATANABE (Japan) suggested that, because under the law of Japan an applicant may have more than one representative, it should be possible to indicate this information under item 3 in the same way as item 2.6 allowed an indication that there was more than one applicant. In case where there was more than one person who signed or whose seal was used, it should also be possible to indicate this information under item 13.

540. Mr. GAUTO VIELMAN (Paraguay) explained that in his country the Industrial Property Office kept a register of industrial property agents. Registered agents were given a registration number which had to be indicated in the application form. He therefore inquired whether such registration numbers could be included in Form No. 1 as one of the data to be supplied.

541. Mr. CURCHOD (WIPO) asked the Delegation of Paraguay whether the indication of the number of the representative was required or optional in an application.

542. Mr. GAUTO VIELMAN (Paraguay) explained that, while, under the current Paraguayan procedure, the applicant was required to include the registration number of the industrial property agent where appropriate, a missing number would be inserted by the Office in order not to burden the applicant.

543. The CHAIRMAN noted that, if the indication of the number of the representative was optional, the Office of Paraguay could issue its own guidelines on what could be added in the Individualized Form, but that the Model International Form should be acceptable.

544. Mr. HARMS (South Africa) asked whether, if an applicant were permitted to have more than one representative, an Office would be obliged to communicate with all the representatives.

545. Mr. WATANABE (Japan) responded that the question of how to indicate all representatives was separate from the question of how to communicate with an applicant who has indicated more than one representative. Under the practice of Japan, the first listed representative would be the representative for communication with the Office. The question posed by the Delegation of Japan was how to indicate the names of all the representatives on the application form.

546. The CHAIRMAN noted that Article 4 concerning representation did not preclude a Contracting Party from allowing the indication of several representatives. If such a possibility were included in the Model International Form, however, this might imply that Contracting Parties would be required to accept the appointment of multiple representatives. He suggested that the problem raised by the Delegation of Japan be dealt with by the Japanese Office in its Individualized Form by way of a non-mandatory provision allowing the indication of several representatives, for example, in a separate letter or annex to the application.

547. Mr. WATANABE (Japan) expressed his Delegation's acceptance of the suggestion by the Chairman.

548. Mrs. MOSHYNSKAJA (Ukraine) proposed to add Note F0.06 to the list of Notes which should be included in the agreed statements of the Diplomatic Conference, since Note F0.06 related to INID Codes which played an important role in automatization and search of information.

549. Mr. CURCHOD (WIPO) stated that Note F0.06 was of a different nature than Notes F0.02 to F0.05, and that it would be preferable not to have a statement that included the word "decision," which might open up the question concerning voting.

550. The CHAIRMAN adjourned the meeting.

<u>Ninth Meeting</u> <u>Monday, October 17, 1994</u> <u>Afternoon</u>

Model International Form No. 1: Application for the
Registration of a Mark (continued)

551. The CHAIRMAN opened the meeting and invited additional comments concerning Model International Form No. 1.

552. Mr. STRENC (Romania) suggested that, to achieve coherence with Article 3 of the basic proposal, the words "Etat de la nationalité" be replaced by "Etat du ressortissant" in paragraph 2.4 of Form No. 1.

553. Mr. CURCHOD (WIPO) explained that it was a drafting problem that did not affect the English wording. He suggested that paragraph 2.4 should be headed "Etat dont le déposant est ressortissant."

554. Mr. STRENC (Romania) stated that his Delegation accepted the proposal made by the Deputy Director General.

555. The CHAIRMAN concluded that the query of the Delegation of Romania would be referred to the Drafting Committee.

556. Mr. PARKES (UEPIP) asked whether it would be possible to indicate several names of representatives under point 3.2.1.1 of the Form, although that point referred to the "name" of the representative in singular. He added that, under the administrative practice of the European Patent Office, in such cases the name of one representative was given on the application form and the names of the other persons who were authorized to represent the applicant were given on an additional sheet attached to the application.

557. Mr. CURCHOD (WIPO) referred to the reply that had been given to the question of the Delegation of Japan and explained that it would be preferable to maintain the word "name" in singular, on the understanding that it was possible to indicate several names under that heading. Furthermore, it would

be possible for national administrations to provide, on the individualized versions of the forms, for the furnishing of optional information such as, for example, the names of additional representatives.

558. Mr. MARTINEZ TEJEDOR (Spain) sought confirmation that, under item 14.1 of the Form, an industrial property office could require that more than one fee be paid with the application.

559. The CHAIRMAN replied that the matter would be covered by the agreed statement regarding the freedom of Contracting Parties to determine fees.

560. Mr. CURCHOD (WIPO) mentioned Article 3(1)(c) that used the plural for the fees to be paid in respect of the application and to Note 3.21 of the Notes on the Treaty that also referred to fees that could be due.

561. The CHAIRMAN concluded that Model International Form No. 1 was approved as proposed, subject to clarification by the Drafting Committee of item 14.1.

Model International Form No. 2: Power of Attorney

562. Mr. KAWAMOTO (Japan) requested confirmation whether, under item 2 of Form No. 2, an applicant would be allowed to furnish the address of the person making the appointment.

563. Mr. CURCHOD (WIPO) remarked that the optional furnishing of the address of the person appointing the agent would not be contrary to the proposed Treaty. However, under the proposed Treaty, such a requirement could not be mandatory.

564. The CHAIRMAN concluded that Model International Form No. 2 was approved as proposed.

Model International Form No. 3: Request for the Recordal of Change(s) in Name(s) and/or Address(es)

565. The CHAIRMAN concluded that Model International Form No. 3 was approved as proposed.

Model International Form No. 4: Request for the Recordal of a Change in Ownership in Respect of Registration(s) and/or Application(s) for Registration of Marks

566. The CHAIRMAN concluded that Model International Form No. 4 was approved as proposed.

Model International Form No. 5: Certificate of Transfer in Respect of Registration(s) and/or Application(s) for Registration of Marks

567. The CHAIRMAN concluded that Model International Form No. 5 was approved as proposed, subject to consequential amendments based on changes to the provisions of the draft Treaty.

Model International Form No. 6: Transfer Document in Respect of Registration(s) and/or Application(s) for Registration of Marks

568. Miss QUIRINO (Philippines), with a view to the legal requirements applicable to transfers of marks in her country, suggested the addition of a footnote to item 6 of Form No. 6 reflecting the contents of Note F6.04 in document TLT/DC/5.

569. The CHAIRMAN remarked that the purpose of a footnote in the Model International Forms was to explain how to fill in the form, and not to give information concerning the legal background of the information that was furnished. He stated that the concern of the Delegation of the Philippines was covered by the general statement in point F6.04 of document TLT/DC/5.

570. Mr. OPHIR (Israel) asked whether item C. on page 2 of the Annex to Form No. 6 was optional.

571. Mr. CURCHOD (WIPO) responded that item 6 of Form No. 6 made it clear that the information which was to be furnished in the Annex to that form was optional.

572. The CHAIRMAN concluded that Model International Form No. 6 was approved as proposed.

Model International Form No. 7: Request for the Correction of Mistakes in Registration(s) or Application(s) for Registration of Marks

573. Mr. CURCHOD (WIPO) pointed out an error on page 52 with respect to item 6.1 in Form No. 7 concerning the elements following correction: the first footnote at the bottom of page 52 of the document should be deleted.

574. The CHAIRMAN concluded that Model International Form No. 7 was approved as proposed, subject to the deletion of the first footnote on page 52 of document TLT/DC/4.

Model International Form No. 8: Request for the Renewal of a Registration

575. Mr. CURCHOD (WIPO) said that the title of item 5 in the French version of the form should read "domicile élu" and not "élection de domicile."

576. The CHAIRMAN concluded that Model International Form No. 8 was approved as proposed, subject to changes in drafting to be made by the Drafting Committee.

Agreed Statements

577. The CHAIRMAN invited the Secretariat to present its suggestions for agreed statements which would be included in the Records of the Diplomatic Conference.

578. Mr. CURCHOD (WIPO) informed the Committee that the Secretariat had prepared suggestions for the text of four agreed statements. The first suggestion was contained in document TLT/DC/33, and consisted of a general statement and three examples. The examples corresponded to declarations made by the Delegation of Romania and the Delegation of Egypt. Mr. Curchod pointed out that the word "entirely" should be deleted from the introductory phrase of the proposed text.

579. Mr. KIRK (United States of America) expressed the concern of his Delegation over the examples given in the second part of the suggestion of the Secretariat. He asked whether a more general statement with a slightly altered introductory phrase would satisfy the Delegations of Romania and Egypt.

580. The CHAIRMAN explained that it was felt that there was a need to give examples in order to provide some guidance on how to interpret the general principle, and to respond to suggestions which had been made by some delegations in the meetings of the Main Committee.

581. Mr. BOGSCH (Director General of WIPO) suggested restructuring the text of the agreed statement. One should start with a general statement saying that the Diplomatic Conference understood that Contracting Parties were free to establish the structure and the amount of fees relating to the registration of marks. After this general statement, one should note that the summary minutes of the Diplomatic Conference refer to document TLT/DC/33 which provides some examples of that freedom with regard to fees. He further stated that the first two lines of the proposed statement, which contained specific references to provisions of the Treaty, could give the impression that the statement would only apply to those provisions, whereas it was intended to be a general principle.

582. Mr. ABOULMAGD (Egypt) stated that his Delegation preferred to explore the possibility of retaining specific references in the text of the statement. He inquired as to the legal status of such a declaration.

583. The CHAIRMAN responded that the legal status of an agreed statement was that such a statement indicated the meaning attached to the provisions of the Treaty by the Diplomatic Conference, and was meant to give guidance to national legislators in drafting implementing legislation.

584. Ms. MORARU (Romania) said that she was perfectly in agreement with the suggestion made by the Director General, particularly since the items (ii) and (iii) presented by her Delegation had been retained.

585. Mrs. MOSHYNSKAJA (Ukraine) expressed the view that the draft agreed statement should refer to Article 10(1)(d) and not to Article 10(1)(b).

586. The CHAIRMAN stated that the suggestion of the Delegation of Ukraine seemed reasonable and referred the question to the Drafting Committee.

587. Mr. BOGSCH (Director General of WIPO) summarized the amended suggestion for an agreed statement which would read as follows: "The Diplomatic Conference understood that any Contracting Party was free to establish the structure and the amount of fees concerning the registration of marks." The summary minutes of the discussions in the Main Committee would state, "When approving the agreed statement, the Committee noted that the following examples were in point ...," and would list the examples contained in document TLT/DC/33.

588. Mr. RICHARDS (Australia) expressed the support of his Delegation for the suggestion of the Director General. He said that, in particular, the deletion of references to certain provisions in the agreed statement would reduce the risk of an a contrario argument.

589. Mr. MARTINEZ TEJEDOR (Spain) expressed his Delegation's agreement with the Director General's suggestion. He requested, however, that the agreed statement refer not only to "fees" but more generally to any "payments" applicable to the procedure contemplated in the Treaty.

590. Mr. ABOULMAGD (Egypt) said that his Delegation failed to see the harm in including the examples in the agreed statement. It was at the request of his Delegation that the examples referred to in item (ii) of document TLT/DC/33 were included in the suggestion for the agreed statement, and his Delegation was now concerned that the examples were being relegated to the Conference minutes.

591. The CHAIRMAN suggested the addition of a sentence to the agreed statement along the lines that the Diplomatic Conference noted with agreement that the examples mentioned in the discussion fell within the scope of that statement.

592. Mr. ROMERO (Chile) gave his Delegation's support to the request made by the Delegation of Spain. He could also accept the suggestion made by the Director General.

593. Mr. KUNZE (AIM and AIPPI) remarked that it was common in many countries to charge higher fees where several registrations were concerned by an administrative action, and that all these countries would interpret the Treaty in the way advocated by the Delegation of Egypt.

594. Mr. BOGSCH (Director General of WIPO) explained that the term "fees" which was to be used in the agreed statement was not subject to a strict interpretation. Since the introductory phrase of the agreed statement as suggested in document TLT/DC/33 was to be taken out, there was no enumeration of provisions dealing with fees and Contracting Parties would have a total freedom on that point. Examples were only given to illustrate the principle.

595. The CHAIRMAN stated that the agreed statement would contain a "signpost" pointing to the examples in document TLT/DC/33, which would form part of the Records of the Diplomatic Conference. He concluded that the statement as suggested by the Secretariat in document TLT/DC/33 and as amended by the discussions in the Committee was agreed.

596. Mr. CURCHOD remarked that the suggestion for the second agreed statement dealt with Article 11(4) and took into account the positions of the Delegations of Chile and Spain on that matter. He suggested that the wording of the agreed statement would be along such lines as: "When adopting Article 11(4), the Diplomatic Conference understood that non-compliance with any requirement of the law of a Contracting Party concerning the validity of the change in ownership, including any fiscal requirement, may not be a ground for refusing the recordal of the change in ownership, but may be a ground for cancelling such a recordal."

597. The CHAIRMAN concluded that, subject to drafting changes to be made by the Drafting Committee, the text of the statement suggested by the Secretariat in paragraph 596 was agreed by the Main Committee.

598. Mr. CURCHOD (WIPO) presented the suggestion for the third agreed statement, which was based on the wish of the Main Committee that the text of Note 13.20 of document TLT/DC/5 should be reflected in an agreed statement. The suggested wording of that statement was: "When adopting Article 13, the Diplomatic Conference understood that nothing in the Treaty prevented a Contracting Party from applying the requirements of its law in respect of the use of the mark which is the subject of a registration, provided that the compliance with such requirements is not linked with the procedure for the renewal of that registration."

599. The CHAIRMAN concluded that, subject to drafting changes to be made by the Drafting Committee, the text of the statement as suggested by the Secretariat in paragraph 598 was agreed by the Main Committee.

600. Mr. CURCHOD (WIPO) introduced the suggestion for the fourth agreed statement, which was based on the conclusion of the Chairman in the discussion of Rule 8 [formerly Rule 9]. The suggestion for the wording of that statement was: "When adopting Rule 8 [formerly Rule 9], the Diplomatic Conference understood that, at least for the purposes of that Rule, any Contracting Party was free to consider that the date on which the renewal is due is the same as the date on which the renewal fee is due to be paid."

601. The CHAIRMAN concluded that, subject to drafting changes to be made by the Drafting Committee, the text of the statement suggested by the Secretariat in paragraph 600 was agreed by the Main Committee.

Article 24: Reservations

602. The CHAIRMAN invited the Delegation of Turkey to introduce its proposal contained in document TLT/DC/30.

603. Mr. KARAAHMET (Turkey) explained that, while his Delegation supported Article 2(2)(a) of the proposed Treaty in principle, his country had not yet provided for the registration of service marks. Although a new trademark law making service marks registrable in Turkey was under preparation, his country would need a transitional period and therefore made the proposal to add a new paragraph (1)(b) with respect to registration of service marks.

604. The CHAIRMAN suggested taking up the text of paragraph (1) of the basic proposal before discussing the proposal of the Delegation of Turkey.

605. Mr. ROMERO (Chile) raised a general point regarding the terminology used in Article 24. He noted that the term "reservations" could cause confusion because it was being used in the Basic Proposal in a sense which was different from the one generally understood in international law. The Vienna Convention on the Law of Treaties stated that reservations were normally of a permanent nature, except for a few special cases. Most of the provisions contained in Article 24 seemed to provide for transitional provisions rather than reservations. His Delegation therefore suggested that the expression "transitional provisions" be substituted for the expression "reservations" in the title of Article 24 and wherever else appropriate. Alternatively, two separate articles could be included in the Treaty, one for "reservations" and another for "transitional provisions."

606. Mr. BOGSCH (Director General of WIPO) remarked that the proposal of the Delegation of Chile was excellent because it made the text of the proposed Treaty more accurate and more elegant.

607. Mrs. DZIETHAM (Cameroon) said that her Delegation supported the statement made by the Delegation of Chile and went along with the proposal made by the Delegation of Turkey that the transitional period should be extended.

608. Mr. SCHÄFERS (Germany) said that his Delegation supported the proposal made by the Delegation of Chile. He believed that Article 24 should not contain any reference to reservations. Instead, he proposed that the word "declaration" be used. He said that such a solution would suit his Delegation since, under the law of Germany, any declaration that was made with regard to an international treaty had to be published in the official gazette.

609. The CHAIRMAN concluded that the Main Committee had approved the principle suggested by the Delegation of Chile in paragraph 605 that Article 24 be divided into two articles, one containing permanent reservations and one dealing with transitional provisions. The final wording would be considered by the Drafting Committee. He then turned to paragraph (1) of the basic proposal.

610. Mr. CURCHOD (WIPO), with reference to the proposal of the Delegation of Turkey contained in document TLT/DC/30, asked how long the Delegation of Turkey thought its country would need in order to introduce the registrability of service marks.

611. Mr. KARAAHMET (Turkey) stated that his country would only need about two years for introducing the changes to its trademark law that would allow the registrability of service marks. In the light of the foregoing discussion, he withdrew the proposal of his Delegation contained in document TLT/DC/30.

612. The CHAIRMAN then invited the Delegation of Israel to introduce its proposal contained in document TLT/DC/32.

613. Mr. OPHIR (Israel) said that his Delegation supported the proposal of the Delegation of Chile to divide Article 24 into two provisions, one dealing with reservations and one dealing with transitional provisions. He then stated that the proposal of his Delegation contained in document TLT/DC/32 was transitional in nature and reflected a purely administrative problem of his country. He explained that, although his country would accept one application for registration referring to several classes of goods and services, for administrative reasons his country was not in a position to accept that such a multiple class application resulted in a multiple class registration. In practice, his country would divide all multiple class applications immediately after registration. Such a division would facilitate administrative actions with regard to registrations such as transfers of one of several classes covered by the registration or the granting of licences.

614. The CHAIRMAN observed that the effect of the proposal would be less than the effect of paragraph (2) of the basic proposal.

615. Mr. CURCHOD (WIPO) inquired as to the administrative difficulties foreseen by the Delegation of Israel.

616. Mr. OPHIR (Israel) responded that the proposal would greatly simplify transfer, and registration of transfer, of one out of several classes included in a single application. This would also be the case for grant of rights and licenses. He stated that the transfers in question would occur after registration.

617. Mr. TODD (United Kingdom) offered his Delegation's understanding that, under Article 6 of the proposed Treaty, a single registration would not have to remain a single registration for all time.

618. The CHAIRMAN observed that the same effect as that proposed by the Delegation of Israel could be achieved through the use of divisional applications under Article 7.

619. Mr. CHUNG (Republic of Korea) stated that the change from a single class to a multiple class system presented many problems for his country. For that reason, he proposed that Article 3 of the proposed Treaty should either be optional, or each Contracting Party should be given the freedom to decide when that provision would become effective for it. It was only under that condition that his Delegation would be able to accept the Treaty early.

620. Mr. HARMS (South Africa) said that his Delegation was of the opinion that paragraph (2) covered the situation addressed by the Delegation of Israel and suggested that that provision be used as a basis for dealing with the problem.

621. Mr. KUNZE (AIM and AIPPI) inquired as to whether the Delegation of Israel intended that all multiple-class applications would result in multiple registrations, or whether this would happen only in certain specific cases where the applicant wished to obtain a multiple class registration.

622. The CHAIRMAN observed that the second possibility was already within the scope of the Treaty.

623. Mr. OPHIR (Israel) agreed that the second possibility posed by the representative of AIPPI would be possible under the present wording of the Treaty. The proposal was that all registrations would be divided immediately after registration.

624.1 The CHAIRMAN concluded, in the absence of any opposition, that paragraph (2) was approved as modified by the proposal of the Delegation of Israel contained in document TLT/DC/32, and that paragraphs (3) and (4) were approved as proposed.

624.2 The Chairman then turned to proposal of the Delegation of Japan contained in document TLT/DC/25, which he noted was intended to correct a clerical error. He concluded that paragraph (5) was approved as proposed, subject to the addition of a reference to Article 10(3), and that paragraphs (6) and (7) were approved as proposed, and invited the Delegation of Spain to introduce its proposal contained in document TLT/DC/34.

625. Mr. MARTINEZ TEJEDOR (Spain) explained his Delegation's proposal in document TLT/DC/34 to insert a new paragraph (8) in Article 24. He recalled that Spain had expressed its willingness to switch from a single class system to a multiple class system, noting the considerable effort and expenditure that such a change would imply, with respect not only to legislation but also to the operation of the trademark office and the computer system it was using at present. The proposal would give Spain and other countries in the same situation an additional transitional period to delay the start of processing of divisional applications after introducing the multiple class system. He emphasized the fact that such a measure would have a temporary character only and was aimed at giving the office time to implement and adjust to all the changes mentioned earlier.

626. The CHAIRMAN noted that the proposal was seconded by several delegations and stated that, although the proposal of the Delegation of Spain was temporary in its nature, it would add another four years of transitional period to Article 24(2). Such an additional transitional period would represent a lengthy departure from the proposed Treaty.

627. Mr. CURCHOD (WIPO) asked whether the reservation contained in the proposal by the Delegation of Spain would concern not only division of the application (Article 7(1)), but also division of registrations (Article 7(2)).

628. Mr. MARTINEZ TEJEDOR (Spain) clarified that his Delegation's proposal only referred to the division of applications, and not to the division of registrations.

629. The CHAIRMAN asked the Delegation of Spain why an additional period of four years was needed in addition to the eight years already provided for in paragraph (2).

630. Mr. MARTINEZ TEJEDOR (Spain) explained that the additional transitional period was required in view of the fact that the Spanish Office had neither experience with multiple class applications nor with the division of applications. Until multiple class applications were actually received and processed by the Office, the full repercussions of the required modifications could not be assessed. The additional transitional period would provide the necessary time to adjust the procedures to process divisional applications.

631. Mr. BOGSCH (Director General of WIPO) remarked that the proposal of the Delegation of Spain, if approved, would present a further weakening of the proposed Treaty.

632. Mr. TODD (United Kingdom) observed that his country was about to introduce a multiple class system, and expected that providing for the division of applications would facilitate this.

633. Mr. GAUTO VIELMAN (Paraguay) explained that Paraguay, like Spain, did not have any experience with a multiple class system, and that a four-year transitional period could prove to be too short for adjustment. Paraguay would probably want to accede to the Trademark Law Treaty as soon as possible, but the Industrial Property Office would need additional time to start accepting and processing requests for the division of multiple class applications.

634. Mrs. WALTERS (United States of America) said that her Delegation agreed with the statement of the Delegation of the United Kingdom and believed that a further transitional provision would weaken the proposed Treaty. She said that the experience of her country with a multiple class system was that providing for division of applications made the administration of such a system easier.

635. Mr. HARMS (South Africa) expressed the support of his Delegation for the statement of the Delegation of the United States of America.

636. Mrs. GORLENKO (Russian Federation) noted that its national law did not provide for a system of division of applications. She expressed the view that introduction of multiple class applications and the possibility of division of applications and registrations would be of great benefit to applicants. Therefore, her country would be ready to change its practice and legislation to accommodate these provisions.

637. Mr. RICHARDS (Australia) said that his country would introduce a multiple class system in the next year. Although his Delegation had sympathy with the positions of the Delegations of Spain and Paraguay, it was in agreement with the Delegations of the United States of America and the United Kingdom, and was opposed to any further dilution of the proposed Treaty.

638. The CHAIRMAN suggested the introduction of an overall time cap as a possible solution to the problem.

639. Mr. MARTINEZ TEJEDOR (Spain) reiterated that his Delegation was not opposed to the adoption of a multiple class system nor to the possibility of dividing multiple class applications. His Delegation had already expressed Spain's willingness to switch to a system consistent with the Trademark Law Treaty. All that was requested at this time was an extension of the transitional period for the purposes of achieving that adjustment. If the Committee had no objection with regard to the substance of the proposal, the question of the transitional period could be dealt with in conjunction with paragraphs (8) and (9) of the basic proposal.

640. Mr. SIMON (Switzerland) said that experience of the multiple class system in Switzerland had shown the practical implications noted by the preceding delegations to be considerably overestimated. He nevertheless understood their problems and fears, but considered the twelve-year period to be much too long. In that respect, he had noted with special attention the words of the Delegation of Spain in the preceding statement.

641. Mr. ROMERO (Chile) expressed his Delegation's support for the statements of the Delegations of Spain and Switzerland. The concerns expressed earlier by the Delegations of Spain and Paraguay should be taken into consideration. He therefore suggested postponing the discussion on the extension of the transitional period until paragraphs (8) and (9) of Article 24 were discussed. He also suggested that, at the appropriate time, consideration be given to establishing identical transitional periods for all the cases contemplated in Article 24, rather than different periods for each case, since the latter approach could be a source of confusion.

642. Mr. ABOULMAGD (Egypt) noted that some countries, like his own, had only recently began considering whether to align their national laws with the proposed Treaty. While a transitional period of four years might be sufficient for some countries, an additional period of four years would encourage countries to quickly adhere to the proposed Treaty. He considered that a solution providing for an overall time cap was attractive, as long as it was sufficient to allow Contracting Parties to amend their national laws. Such a solution would further universal adherence to the proposed Treaty and would be in the interest of all Contracting Parties.

643. Mr. JAGUARIBE (Brazil) expressed his Delegation's agreement with the statements of the Delegations of Egypt and Chile, and further stated that facilitating the adherence to the proposed Treaty would strengthen rather than weaken it.

644. Mr. BOGSCH (Director General of WIPO) suggested a period of eight years for an overall time cap as a reasonable solution.

645. Mr. KUNZE (AIM and AIPPI) stated that an additional transitional period of four years for the introduction of division of applications was unfortunate because a multiple class application system was linked to the division of applications. He recalled that it was the Delegation of India which had suggested to allow for the division of applications in the proposed Treaty in response to adoption of mandatory acceptance of multiple class applications. Multiple class systems without the possibility of division of applications were not user friendly.

646. Mr. CATOMÉRIS (FICPI) pointed out the value for users not only of a multiple class system but also of the entry into force of the present Treaty as soon as possible. He emphasized that the time factor should not be underestimated all the more since the incorporation of substantive matters could be envisaged for the future. He added that, if the time required by a Committee of Experts to draw up basic proposals was taken into account, the time limits as mentioned in the Treaty did not appear to lack a sense of reality for implementing the structural reforms.

647. Mr. CHUNG (Republic of Korea) suggested that the problem should be dealt with after paragraph (9) was dealt with.

648. Mr. BOGSCH (Director General of WIPO) agreed with the suggestion of the Delegation of Chile that the question of time limits should be discussed first. He suggested an overall time period of eight years, so that every Contracting Party would know that the transitional provisions would lose their effect on December 31, 2002.

649. Mr. FRANZONE (European Communities) explained that the multiple class system existed within the Community trademark system, but not the system of division of applications, on the other hand. He stated that the European Communities could nevertheless comply with the time limits laid down in the Treaty although it understood the viewpoints expressed by the Delegations of Spain and Paraguay. He further considered the proposal by Chile to be interesting and to warrant further reflection.

650. Mr. ABOULMAGD (Egypt) said that his Delegation supported the idea of an overall time cap as suggested and explained by the Director General.

651. The CHAIRMAN adjourned the meeting.

Tenth Meeting
Tuesday, October 18, 1994
Morning

Article 24: Reservations

652. The CHAIRMAN opened the meeting and returned to the proposal of the Delegation of Spain contained in document TLT/DC/34.

653. Mr. CURCHOD (WIPO) asked the Delegation of Spain for clarification concerning the scope of their proposal. Did the proposal apply solely to the division of applications (as could be thought from the reference to Article 7(1) and not to Article 7(2)) or did it also apply to the division of registrations (as could be deduced from the title of the proposal in square brackets (division of application and registration))?

654. Mr. MARTINEZ TEJEDOR (Spain) replied that the proposal of his Delegation related only to the division of applications, and not to the division of registrations. He suggested correcting the title of paragraph (8) in the proposal by deleting the words "and registration."

655. The CHAIRMAN asked if the Delegation of Spain had any comments on his suggestion to remove the reference to a time period in its proposal, so that the proposal would be subject to a single overall time limit.

656. Mr. MARTINEZ TEJEDOR (Spain) said that the reference in the proposal to paragraph (2) simply established a day on which the time period would begin. However, the important point was the period of time which the country would have to implement the changes required to comply fully with a multiple class registration system. The length of that period was more important than the date on which it started.

657. The CHAIRMAN suggested to move the discussion to a consideration of the time period under paragraphs (8) and (9) of the basic proposal.

658. Mr. BOGSCH (Director General of WIPO) clarified the amended proposal of the Delegation of Spain by stating that the transitional provision on division of applications could apply to those countries which would take advantage of the transitional provision in respect of the multiclass system, and that the two reservations would have effect during the same period. He noted that the duration of the transitional period could, of course, be shortened if a country so wished.

659. The CHAIRMAN concluded that the proposal of the Delegation of Spain contained in document TLT/DC/34, as amended according to the explanation in paragraphs 657 and 661, was approved. He then invited the Committee to comment on paragraph (8)(a) of the basic proposal.

660. Mr. BOGSCH (Director General of WIPO) noted that paragraph (8) would be redrafted in order to delete the reference to reservations.

661. Mr. ROMERO (Chile) noted that paragraphs (8) and (9) were complementary. He therefore suggested examining first paragraph (9), in respect of which a proposal had been submitted, since the discussion on that paragraph might determine the changes to be made in respect of paragraph (8).

662. The CHAIRMAN then invited the Committee to discuss the basic question of time limits in respect of when a reservation under Article (24) should lose its effect.

663. Mr. BOGSCH (Director General of WIPO) stated that there was a question of principle concerning whether the same time limit should apply to all countries. On the one hand, all countries faced expenditures of time and resources to modify their Office procedures. On the other hand, the current trend, for example, in the TRIPS Agreement, was that longer time limits would apply in respect of developing and least developed countries. He suggested a fixed time limit that would apply irrespective of the date on which a country acceded to the Treaty. If a differential time limit were adopted, it could be, for example, until 2002 for developing countries and until 2000 for industrialized countries.

664. Mr. JAGUARIBE (Brazil) stated that his Delegation recognized the necessity for two different time limits as indicated by the Director General. He suggested, however, that the time limits start from the date of entry into force of the Treaty, rather than constitute a fixed time limit. He noted that his Delegation would have no difficulties with a time limit of eight years from the date of entry into force of the Treaty.

665. The CHAIRMAN invited the Delegation of Cameroon to make general comments concerning its proposal contained in document TLT/DC/34, which was pertinent to the present discussion.

666. Mrs. DZIETHAM (Cameroon) noted with satisfaction that the statements made by the Director General and by the Delegation of Brazil adopted the same approach as the proposal by her Delegation. She explained that the main aim of that proposal was to obtain an extension of the transitional period and, in that respect, she was satisfied with the suggestion made by the Director General as also with the proposal by the Delegation of Brazil.

667. Mr. BOGSCH (Director General of WIPO) said that it would be appropriate to provide for a fixed time limit beginning from the date of adoption of the Treaty to avoid any uncertainty concerning the expiration of the time limit.

668. Mr. GAUTO VIELMAN (Paraguay) indicated that a transitional period which was too long might, in countries like Paraguay, have the undesirable effect that momentum for accession to the Trademark Law Treaty would be lost. It would therefore seem preferable to have a fixed transitional period to be computed from the date of adoption of the Treaty. On the other hand, computing a transitional period on the basis of the suggestion of the Delegation of Brazil might not result in an excessively long transitional period if the Treaty were brought into force within a short time. He considered it appropriate that the length of the transitional periods needed by developing countries would depend heavily on the cooperation and assistance which they may receive from WIPO for implementation of the Treaty. He concluded by asking the International Bureau for further enlightenment as to the length of time which should be expected for the Trademark Law Treaty to come into force. If that period were short, an eight year transitional period could be appropriate.

669. Mr. MTANGO (United Republic of Tanzania) expressed the support of his Delegation for the proposal of the Delegation of Cameroon. He noted that many of the least developed countries would have great difficulties in implementing the Trademark Law Treaty, since they did not have the legal infrastructure required to fulfill its requirements. He referred to the time limits in the TRIPS Agreement, where special attention had been taken in respect of the least developed countries. These countries would need substantial time for implementing the Treaty, although any future assistance from WIPO could help in this respect.

670. The CHAIRMAN noted that the proposed Treaty differed from the TRIPS Agreement in that it dealt with procedural, not substantive, issues. The abolition of complicated procedures under the Trademark Law Treaty should ease the problems of even least developed countries.

671. Mr. BOGSCH (Director General of WIPO) agreed that the proposed Treaty had the objective of simplifying the registration procedures for trademarks. He confirmed that the International Bureau would assist and advise countries when implementing the Treaty, in the same way as it had previously done in respect of other treaties administered by WIPO.

672. Mr. ABLOUMAGD (Egypt) stated that the criteria in respect of time limits should be objective and based on the entry into force of the Treaty. If the time limits were based on adoption of the Treaty and the Treaty only entered into force after six years, the countries would be left with a very short transitional period for implementing the Treaty.

673. Mr. BOGSCH (Director General of WIPO) stated that his suggestion concerning a fixed time limit was based on the most objective criterion, namely the date of adoption of the Treaty. He hoped that countries would begin to modify their laws before the Treaty had entered into force.

674. Mr. ROMERO (Chile) supported the suggestion of the Delegation of Brazil. A transitional period computed from the date of entry into force of the Treaty seemed preferable in view of the fact that only five ratifications would be needed to bring the Treaty into force, which should not take too long. He noted, however, that, in countries like Chile, national legislatures would need time to amend not only the laws directly related to trademarks, but also other laws which would be affected by the provisions of the Treaty, in particular, the notarial procedures. On the assumption that the Treaty could be brought into force approximately one year after its signature, a transitional period of eight years would amount to a total of nine years after conclusion of the Treaty, which should not be considered excessive. Moreover, developing countries would probably need a somewhat longer period of transition to adjust to certain requirements under the new Treaty.

675. Miss TOSONOTTI (Argentina) expressed her Delegation's support for the suggestion of the Delegation of Brazil that the transitional period be computed from the date of entry into force of the Treaty. Like other countries, Argentina would have to undertake considerable effort to adjust its trademark legislation and operations to implement the Treaty. Moreover, since the entry of the largest possible number of countries should be encouraged, the special situation of developing countries should be taken into account. In that connection she also supported the proposal submitted by the Delegation of Cameroon.

676. Mr. SCHAFERS (Germany) expressed the support of his Delegation for the principle of a fixed time limit as suggested by the Director General. He noted that the implementation of the draft Treaty did not cause any problems for Germany, and said that a speedy procedure in Germany as regards the ratification of the Treaty could be expected, perhaps in as little as one year. He also recognized the need for technical assistance in developing countries in respect of implementing the Treaty. He suggested that the Committee adopt a statement addressed to the Governing Bodies of WIPO containing a recommendation to commit resources to technical assistance for developing countries to aid them with implementation of the Treaty.

677. Mr. KIRK (United States of America) expressed the acknowledgement of his Delegation that certain countries might need more time for the implementation of the Treaty, but expressed his concern in respect of a lengthy period which would remove the incentive for countries to adhere to the Treaty. The situation with respect to the time limits concerning the TRIPS Agreement was different because the TRIPS Agreement was intended to enter into

force soon after its adoption. He indicated that the transitional provisions would concern the most important provisions in the Treaty with respect to simplification of application procedures, and consequently delays would create less incentive for other countries to accede to the Treaty. He indicated that the United States of America could accept a time limit of eight years from the date of signature.

678. Mrs. MOSHYNSKAJA (Ukraine) pointed out that the Trademark Office in Ukraine had been established only two years earlier, and that the Ukrainian Trademark Law had entered into force on July 1, 1994. Even so, her country was making efforts to bring its trademark practices in line with the provision of the proposed Treaty. She expressed the view that her Office experienced certain difficulties because of the absence of harmonization of procedures, and would like to see the Treaty enter into force as soon as possible.

679. Mr. FRANZONE (European Community) noted with interest the system of fixed date presented by the Director General, but nevertheless wondered whether that system had the necessary flexibility to meet the interests and concerns of the delegations that had previously spoken. He pointed out, just as the Delegate of Argentina, that the aim of all States was to obtain a Treaty that would be rapidly applicable to everyone and stated that the proposal by Brazil was acceptable on condition that the time limit for entry into force of the Treaty was within a reasonable period. He emphasized in that respect, in support of the declaration made by the Delegation of Germany, that the nature of the Treaty should enable it to enter into force rapidly. He added that the Delegation of the European Community proposed to speak subsequently in the discussions on the point referred to by the Delegation of Tanzania concerning the least developed countries.

680. The CHAIRMAN stated that there had been substantial support for a time limit running from the date of entry into force of the Treaty, on the expectation that the Treaty would enter into force relatively quickly. He suggested developing this issue further and invited comments on the time limit itself.

681.1 Mrs. DZIETHAM (Cameroon) emphasized that Cameroon was extremely keen to become a party to the present Treaty and that it would doubtlessly be signed within six months by her country. She nevertheless pointed out that it was not for the plenipotentiaries participating in the negotiations to take that decision and that it would be for the competent authorities of her country to pronounce. She added that, contrary to certain other African delegations that were participating in the Conference with full powers, the Delegation of Cameroon was not in such a situation and had therefore made its proposal in order to demonstrate its country's interest in becoming party to the Treaty.

681.2 Mrs. Dzietham referred to the specific nature and complexity of the situation of the OAPI member countries. Due to the need to convene a Diplomatic Conference of the OAPI member countries in order to revise the Bangui Agreement and subsequently adapt the internal domestic procedures, those countries needed a longer time limit than that laid down in the Treaty. She further thanked the Delegation of Germany for its draft Resolution on technical assistance to the developing countries.

682. Mr. BOGSCH (Director General of WIPO) suggested combining the two time limits referred to by the Delegation of Cameroon by adopting a time limit based on the date of entry into force, perhaps six years for industrialized countries and eight years for developing countries, with a maximum time limit based on the date of adoption, perhaps the year 2002.

683. The CHAIRMAN then suggested a time limit of eight years for developing countries and six years for industrialized countries from entry into force of the Treaty combined with an overall time limit of ten years from the adoption of the Treaty.

684. Mr. FICSOR (Hungary) stated that the main question was whether the transitional period could create an incentive to accede to the Treaty as soon as possible. He noted that if the period was counted from the entry into force of the Treaty, this incentive would be lost. His Delegation therefore supported the suggestion of the Chairman.

685. Mr. MTANGO (United Republic of Tanzania) stated that his country supported the harmonization of trademark laws but that compliance with the draft Treaty would require sufficient time. With regard to the implementation of the draft Treaty, he expressed the gratitude of his Delegation to the Director General and to the Delegation of Germany for their endorsement of technical assistance to developing countries.

686. The CHAIRMAN confirmed that the statement on technical assistance to developing countries with respect to the implementation of the Treaty would be reflected in the records.

687. Mr. HARMS (South Africa) recalled that his country fell between the developing and industrialized countries. He noted that, in order to liberalize international trade, restrictions on registration of trademarks should be removed. He underlined that his Delegation could accept any provision that led to a speedy entry into force of the Treaty, acceded to by as many countries as possible.

688. Mr. ABOULMAGD (Egypt) expressed the support of his Delegation for the proposal by the Chairman, and suggested a text along the following lines: "Any reservation under paragraphs (2) to (6) should lose its effects not later than eight years after the date of entry into force of the draft Treaty, but in any event not later than in the year 2004."

689. Mr. OPHIR (Israel) expressed his Delegation's agreement with the comments made by the Delegations of South Africa and Egypt, and expressed the support of his Delegation for the suggestion by the Chairman.

690. Mr. FALL (Senegal) said that the proposal made by the Delegation of Cameroon reflected the legitimate concerns of the OAPI member countries, including his own. He supported that proposal all the more firmly for the fact that his country was extremely attached to the future of the draft Treaty. Mr. Fall thanked the Delegation of Germany for its proposal on the technical assistance to be afforded to the least developed countries and

expressed a wish that the proposal should be integrated within the Treaty or should be the subject of an associated text. He further thanked the Director General for WIPO's unfailing readiness to assist and cooperate with the least developed countries.

691. Mr. PALMEIRA LAMPREIA (Brazil) expressed the support of his Delegation for the suggestion by the Chairman and indicated that his Delegation hoped to implement the Treaty in a short time.

692. Mr. ROMERO (Chile) expressed his Delegation's support for the suggestion by the Chairman.

693. Miss CABRERA RIOS (Bolivia) expressed her Delegation's support for the suggestion of the Chairman.

694. Mr. TOURÉ (Côte d'Ivoire) had followed the preceding statements with attention and wished to congratulate the delegates on their constructive approach and their understanding of the developing countries. He supported the proposal by the Delegation of Germany and expressed his gratitude to that Delegation as also to the Director General for his willingness to move in accordance with that proposal. He pointed out that the adaptation of the Bangui Agreement to the current Treaty was a prior requisite for ratification of the current Treaty by the OAPI member countries and expressed the support of his Delegation for the proposal by the Delegation of Cameroon to obtain an additional time limit enabling the various stages of adaptation to be completed. He moreover considered the proposal made by the Chairman to be extremely valuable and gave him the support of his Delegation.

695. Mr. GAUTO VIELMAN (Paraguay) expressed his Delegation's support for the suggestion by the Chairman. The time limits which would be established under that proposal were appropriate, in particular, if developing countries were to receive technical assistance from WIPO. He also welcomed the suggestion of the Delegation of Germany that a resolution be adopted by the Conference to support such technical assistance.

696. Mr. THIAM (OAPI) had listened with particular interest to the preceding interventions as a regional intellectual property office that was required to apply the Bangui Agreement. He pointed out that 80 percent of the marks registered with OAPI came from industrialized countries. Mr. Thiam further emphasized that the revision of the Libreville Agreement following the adoption of the Bangui Agreement that had created the present OAPI had considerably delayed the entry into force of that Agreement which had happened only 17 years later. Although awareness of the importance of intellectual property was not at the time what it was today, thanks to technical assistance from WIPO, and could explain that delay, Mr. Thiam held that a specific time limit for the developing countries as required by the proposal made by the Delegation of Cameroon was altogether justified. He further stated his support for the proposal by the Chairman and for that by the Delegation of Germany.

697. Mr. CAO (China) expressed his Delegation's support for the proposal of the Delegation of Cameroon, for the suggestion of the Delegation of Germany concerning assistance to certain countries in implementing the provisions of the Treaty, and for the suggestion by the Director General concerning introduction of an overall time limit for reservations.

698. Mrs. MARQUEZ (Venezuela) expressed her Delegation's support for the suggestion by the Chairman, since it reflected the flexibility and wishes of most of the delegations and would encourage an early coming into force of the Treaty. She also expressed her Delegation's appreciation for the suggestion of the German Delegation aimed at directing further financial resources to the benefit of developing countries.

699. Mr. KAWAMOTO (Japan) noted that the transition period for introduction of the multiple class system in Japan was expected to last, at least, about three to four years. He expressed his Delegation's support for the suggestion by the Chairman.

700. Mr. JAKL (Czech Republic) expressed the support of his Delegation for the suggestion by the Chairman, and for a statement on technical assistance to be included in the Conference records.

701. Mr. KUNZE (AIM and AIPPI) expressed, on behalf of the organizations represented by him, certain misgivings in respect of the suggestion by the Chairman, which would lead to longer transitional periods than those contained in the basic proposal. He noted that even those countries whose trademark laws were in conformity with the draft Treaty would need at least two years to ratify the Treaty, which would lead to the compliance of all countries at the earliest in ten years. He suggested, since many developing countries had stated that eight years would be sufficient, that the two year extension be limited to least developed countries.

702.1 The CHAIRMAN concluded that the Committee had approved his suggestion that the time limit in Article 24(9) should be six years from the date of entry into force of the Treaty for industrialized countries and eight years from the date of entry into force for developing countries, subject to an overall time limit of ten years from the date of adoption of the Treaty. The drafting of the provision would be left to the Drafting Committee, and could be based on the language suggested by the Delegation of Egypt. He stated that this conclusion excluded any further need for discussion of paragraphs (8) and (9), which would be dealt with by the Drafting Committee.

702.2 He also concluded that paragraph (10) was approved as proposed, subject to being moved to a new Article concerning reservations by the Drafting Committee.

702.3 The Chairman further concluded that a statement concerning the provision of technical assistance by WIPO to developing countries to aid in implementation of the Trademark Law Treaty would be included in the records. He suggested that the Delegation of Germany together with the International Bureau prepare a draft text.

703. Mr. ABOULMAGD (Egypt) suggested the insertion of a provision with the effect that a Contracting Party could withdraw its reservation at any stage.

704. The CHAIRMAN concluded that the suggestion of the Delegation of Egypt in paragraph 703 was approved, and referred the wording of the provision to the Drafting Committee.

Article 16 [new]: Obligation to Comply with the Paris Convention

705. The CHAIRMAN then turned to the suggestion by the Director General contained in document TLT/DC/12, paragraph 3, concerning Article 16[new], and recalled that the Committee already had a preliminary discussion on this suggestion. He invited the Director General to introduce his suggestion.

706. Mr. BOGSCH (Director General of WIPO) stated that the new Article 16 was necessary in order to broaden the Treaty in the sense that countries other than members to the Paris Convention could adhere to the Treaty.

707. The CHAIRMAN concluded that paragraph 3. of document TLT/DC/12 was approved.

Article 22: Becoming Party to the Treaty

708. The CHAIRMAN then turned to the suggestions of the Director General contained in document TLT/DC/12, paragraph 9., concerning Article 22. He concluded that the suggestion concerning paragraph (1)(i) was approved.

709. Mr. KIRK (United States of America) asked why the Benelux Trademark Office was not covered by the provision in paragraph (1)(ii). He further asked whether the Benelux Office could designate itself as an international organization.

710. Mr. BOGSCH (Director General of WIPO) noted that the Benelux Trademark Office was not an international organization and therefore could not become a Contracting Party under paragraph (1)(ii).

711. Mr. PAK (Democratic People's Republic of Korea) suggested a clarification of the introduction phrase of the suggestion for paragraph (1), and proposed to change "Article 23" to "Article 23(1) and (3)."
Article 23(2) did not concern conditions for the eligibility to become party to the Treaty.

712. The CHAIRMAN stated that this suggestion was useful and should be considered by the Drafting Committee.

713. Mr. KAWAMOTO (Japan) suggested that the wording in the suggestion for paragraph (1)(ii) be amended in order that an intergovernmental organization could only become a Contracting Party to the Treaty if it had been duly authorized in this respect according to its internal procedures.

714. Mr. BOGSCH (Director General of WIPO) noted that no entity would be able to sign the Treaty without proper authorization by its governing council, and suggested that the proposal by the Delegation of Japan be reflected in the minutes.

715. The CHAIRMAN suggested that the Delegation of Japan have consultations with the Delegation of the European Communities on this point.

716. Mr. REZA ZAVAREIE (Islamic Republic of Iran) noted that his Delegation still had problems with the eligibility of intergovernmental organizations to become Contracting Parties, and that it did not yet have instructions to support this provision.

717. Mrs. DZIETHAM (Cameroon) pointed out that she had previously noted the analogy made erroneously between the European Communities and OAPI which, contrary to the European Communities, did not maintain an Office, but constituted an Office. She further pointed out that OAPI could not become party to the Treaty until there had been a discussion in the Administrative Council of that Organization and approval was given by its fourteen Member States.

718. Mr. CURCHOD (WIPO) questioned the difference made by the Delegate of Cameroon between OAPI and the European Communities, since the status of OAPI as an intergovernmental organization was in no way doubted by the Secretariat. Mr. Curchod nevertheless proposed that the word "gérer" be modified in the French version if that was what had caused the problem.

719. Mr. TOURÉ (Côte d'Ivoire) pointed out that Article 1(1) of the Bangui Agreement provided that OAPI should constitute, for each of its member States, the national trademark registration service and therefore said that he entered a reservation for the same reason as the Delegation of Cameroon.

720. Mr. KUNZE (AIM and AIPPI) suggested that the problem was with the French text only.

721. Mr. CHIRAMBO (Malawi) expressed his Delegation's appreciation that the new wording of Article 22(1)(ii) made it possible for the African Regional Industrial Property Organization (ARIPO) to become a party to the Treaty once its Banjul Protocol on Marks entered into force. He further suggested that the substance contained in footnote 2 to the suggestion for Article 22(1)(ii) be included in the notes.

722. The CHAIRMAN adjourned the meeting.

<u>Eleventh Meeting</u> <u>Wednesday, October 19, 1994</u> <u>Afternoon</u>

Article 22: Becoming Party to the Treaty (continued)

723. The CHAIRMAN opened the meeting and invited comments on Article 22(1)(ii) of the suggestions by the Director General contained in document TLT/DC/12.

724. Mr. CURCHOD (WIPO) stated that, following discussions held after the meeting of the Main Committee with a number of African delegations and with the Delegate of OAPI, those delegations had concluded that the wording of Article 22(1)(ii) was such as to enable OAPI to accede to the Treaty, but that it would nevertheless be a matter for the Administrative Council of that Organization to decide. He therefore noted the fact that the text as presented in the basic proposal was acceptable to the African delegations and to OAPI.

725. The CHAIRMAN then invited comments with respect to the remarks that had been made by the Delegation of the Islamic Republic of Iran concerning the eligibility of international organizations to become Contracting Parties.

726. Mr. REZA ZAVAREIE (Islamic Republic of Iran) stated that his Delegation believed that intergovernmental organizations were able to sufficiently reflect their positions through their member States. He said that the Office for Harmonization in the Internal Market (trade marks and designs) of the European Communities was under control of the member States of the European Communities and that the European Community Trademark Regulation was a product of the member States of the European Communities. His Delegation considered that the proposed Treaty would be strengthened by a Union and by an Assembly. Since the proposed Treaty dealt only with technical aspects, any political discussions would exceed the mandate of a technical agency and should therefore be left to the appropriate political forum.

727. Mr. KIRK (United States of America) remarked that his Delegation had no problems with intergovernmental organizations such as the European Communities, OAPI or ARIPO becoming members of the proposed Treaty. However, he expressed concern with respect to the status of the Benelux Trademark Office. His Delegation understood that the Benelux Trademark Office was not in a position to become a party to the proposed Treaty under Article 22(1)(ii) of the suggestions of the Director General contained in document TLT/DC/12 because it was not an intergovernmental organization. He asked for clarification as to what constituted an intergovernmental organization. He noted that, if the Benelux Trademark Office changed its status and became an intergovernmental organization, it would then be eligible to become a Contracting Party to the proposed Treaty under paragraph (1)(ii). Such a situation potentially could lead to multiple representation of a Contracting Party which was a member State of more than one intergovernmental organization. In order to avoid this, his Delegation was seeking some guidelines on how to limit the provision under discussion.

728. Mr. PEETERS (Belgium) stated that the Benelux Trademark Office, which had been set up by a Convention concluded by Belgium, the Netherlands and Luxembourg, and whose Administrative Council was appointed by those three countries, did not constitute an intergovernmental organization. He pointed out that there existed, however, an intergovernmental organization known as the Benelux Economic Union, but that it had no relationship with the Benelux Trademark Office. He added that if the latter was to change its status, the signing of a new Treaty between the various States would become necessary and he mentioned that such was not envisaged.

729. Mr. BOGSCH (Director General of WIPO) said that, in theory, there was no impediment to the transformation of the Benelux Trademark Office into an intergovernmental organization. If that were to happen, the resultant organization would qualify for membership under paragraph (1)(ii). However, he considered that problem to be related to the voting issue and suggested that it be discussed at a later stage.

730. Mr. ITO (Japan) stated that his Delegation was of the opinion that the proposed Treaty should contain an obligation for an intergovernmental organization to specify the authorization under which it applied to become a Contracting Party to the proposed Treaty. To that end, he suggested that a new subparagraph (b) be introduced to paragraph (1) whose wording would be: "(b) Any intergovernmental organization referred to in subparagraph (a)(i) and its member States shall, without any derogation from the obligation under this Treaty, decide on their respective responsibilities for the performance of their obligations under this Treaty. In such case, the organization and its member States shall not be entitled to exercise rights under this Treaty concurrently. In its instrument of ratification or accession, the organization shall declare the extent of its competence with respect to the matter governed by this Treaty. The organization shall also inform the Director General of any substantial modification in the extent of its competence."

731. Mr. BOGSCH (Director General of WIPO) stated that the decisive question was whether the adhering organization was competent for the registration of marks and whether it was in a position to fulfil its obligations under the proposed Treaty, and that, therefore, he believed that the current wording of the provision would be sufficient.

732. Mr. BESELER (European Communities) declared that the European Community was competent to deal with all matters related to trademark law. The relevant legal provisions were adopted by the competent bodies and published, and he did not see any need to amend the basic proposal in the sense of the suggestion of the Delegation of Japan.

733. Mr. ITO (Japan) said that the suggestion of his Delegation was not aimed only at the European Communities, but that it would also be applicable to intergovernmental organizations that did not yet exist.

734. Mr. BOGSCH (Director General of WIPO) drew attention to the role of the Director General as depositary. If there were reasonable doubts as to the qualification of the depositing intergovernmental organization to become a Contracting Party of the proposed Treaty, the Director General would refuse to accept the instrument. If he wrongly refused an instrument, it would be possible to challenge that decision in the appropriate forum, for example in the General Assembly of WIPO.

735. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) asked for clarification as to the manner in which a controversy would be dealt with if an intergovernmental organization which had become a member of the Trademark Law Treaty were misapplying or misinterpreting the provisions of the Treaty. She enquired who would be responsible for amending the legislation applied by such organization if it turned out to be inconsistent with the Treaty.

736. The CHAIRMAN stated in reply to the Delegation of Mexico that the competency of an intergovernmental organization depended on the structure of that organization. No particular sanctions were built into the proposed Treaty but dispute settlement options may in the future be available in certain fora.

737. Mr. STRENC (Romania) suggested that the term "instrument" be defined through the addition of the words "of ratification or accession" when it is used for the first time in the proposed Treaty, rather than in subparagraph (3)(b).

738. Mr. BOGSCH (Director General of WIPO), responding to the suggestion of the Delegation of Romania, stated that it should be clarified that the definition of "instrument" would apply only to subparagraph (3)(b).

739. The CHAIRMAN concluded that Article 22 in the wording of the suggestions by the Director General contained in document TLT/DC/12 was approved, subject to the drafting point mentioned in paragraphs 737 and 738 and the inclusion of the discussion concerning Article 22 in the Records of the Conference.

Article 23: Effective Date of Ratifications and Accessions

740.1 The CHAIRMAN opened discussions of the suggestion for Article 23 contained in document TLT/DC/12.

740.2 In the absence of discussion, the Chairman concluded that the suggestion contained in Article 23, paragraph (1) of document TLT/DC/12 was approved.

741. Mr. TROICUK (Canada) said, with regard to paragraph (2), that that suggestion was identical with the proposal by his Delegation contained in document TLT/DC/37.

742. Mr. CURCHOD (WIPO) pointed out that there was a minor difference in wording between the proposal of the Delegation of Canada and the provision under consideration, but that he preferred the drafting in the version under consideration which made it clear that the five instruments need not be deposited on the same day.

743. Mr. BESELER (European Communities) said that his Delegation considered that the provision under discussion was linked to the voting issue and reserved its position.

744. Mr. MANGACHI (United Republic of Tanzania) asked for clarification as to the source for selecting the number five in paragraph (2). He said that other international conventions, such as conventions on the protection of the environment, required adherence by as many as 50 States to bring it into force. He considered five to be too small a number.

745. Mr. BOGSCH (Director General of WIPO) said that the proposed Treaty was not comparable to an environmental convention which required adherence by a great number of countries simultaneously, and recalled that the number five had been agreed upon in the Committee of Experts meetings as sufficient for the entry into force.

746. Mr. KUNZE (AIM and AIPPI) expressed the hope that the proposed Treaty would enter into force as soon as possible and suggested that it would be acceptable if it entered into force through the accessions of three States.

747. The CHAIRMAN concluded that the suggestions contained in Article 23, paragraphs (2) and (3) of document TLT/DC/12 were approved.

Article 25: Denunciation of the Treaty

748. In the absence of discussion, the CHAIRMAN concluded that Article 25 of the basic proposal was approved as proposed.

Article 26: Languages of the Treaty; Signature

749. The CHAIRMAN invited comments on the suggestion for Article 26 contained in document TLT/DC/12.

750.1 Mr. MOTA MAIA (Portugal) pointed out that Article 26 of the basic proposal laid down the languages in which the original texts and the official texts were to be established. He emphasized that the Portuguese Delegation, supported by other delegations, had expressed during the meetings of the Committee of Experts its concern at the Article as it appeared in the basic proposal. He observed that his Delegation had even proposed modifications to that provision, but which had not been followed. Emphasizing the fact that paragraph (1) of Article 26 contained a list of six languages in which the original texts were to be established, Mr. Mota Maia noted that the wording of that Article departed from the corresponding provisions of treaties previously concluded within the framework of WIPO, particularly the Paris Union, the PCT, the Madrid Agreement and Protocol, and others.

750.2 Noting that such a wording placed other languages, particularly the Portuguese language, in a difficult situation that could appear discriminatory, Mr. Mota Maia added that the situation would not fail to be taken into account by the authorities of his country when they decided on the ratification of the Treaty.

750.3 Mr. Mota Maia noted that two types of solution could be envisaged at that stage in the discussions: inclusion of Portuguese in the list of languages in which the original texts were to be established and the adoption of the conventional wording that was to establish original texts in French and English and to provide for the establishment of official texts in the other languages. Observing that the first solution, which had not been taken into consideration by the Committee of Experts, had little chance, for obvious practical reasons at that stage in the discussions, of being taken into consideration, he stated that the second solution would have the advantage not

only of satisfying a large number of countries that were liable to have official texts established in their national languages, but also of simplifying the establishment of authentic original texts, thus reducing the risk of possible conflicts of law arising from interpretation.

750.4 Aware of the legitimate expectations of the countries whose languages appeared in the first paragraph of Article 26, Mr. Mota Maia concluded his declaration by regretting that the new wording adopted in the basic proposal appeared to discriminate against the Portuguese language.

751. Mr. BOGSCH (Director General of WIPO) pointed out to the delegate of Portugal that the basic proposal was not a text prepared by the International Bureau, but one drafted by the Committee of Experts and that, consequently, the choices made were not the responsibility of the Director General. He further underlined the considerable changes that had taken place since the drafting of the Berne and Paris Conventions, particularly in the shape of the introduction of Spanish, Chinese, Russian and Arabic, which today constituted the official languages of the United Nations, and the possibility of introducing other languages in the future.

752. Mr. FALL (Senegal) observed that Senegal, during the meetings of the Committee of Experts, had not only given its support to the proposals made by Portugal, but had also asked that the German language be considered an official language of WIPO.

753. Mr. JAGUARIBE (Brazil) expressed his Delegation's support for the statement by the Delegation of Portugal.

754. Mr. PETROV (Bulgaria) suggested the inclusion of a standard provision at the end of Article 26(1) requiring that the Director General send certified copies of the Treaty to Contracting Parties.

755. Mr. BOGSCH (Director General of WIPO) responded that, under the Vienna Convention on the Law of Treaties, it was one of the duties of the depositary of a treaty to prepare and distribute authentic texts to the Contracting Parties.

756. Mr. MARTINEZ TEJEDOR (Spain) stated his Delegation's recognition for the efforts which Portugal had undertaken for a considerable period of time to obtain full recognition of the Portuguese language as an original language for the treaties administered by WIPO. He therefore associated his Delegation with the wishes expressed by the Director General, that the situation may continue to evolve towards the day where it becomes technically feasible to include Portuguese as one of the original languages of the said treaties.

757. The CHAIRMAN concluded that the suggestion in Article 26 of the suggestions by the Director General contained in document TLT/DC/12 were approved, subject to inclusion of the statement of the Delegation of Portugal in the Records of the Conference.

Article 27: Depositary

758.1 In the absence of discussion, the CHAIRMAN concluded that Article 27 of the basic proposal had been approved as proposed.

758.2 He recalled that, under item 12 of the suggestions of the Director General contained in document TLT/DC/12, the word "regional" would be deleted from all the provisions of the proposed Treaty and Regulations where it appeared, as a consequential change based on the decision of the Committee regarding Article 22.

Article 17: Assembly

759. The CHAIRMAN declared that an orientation discussion had already taken place concerning the voting provision of Article 17(4) and that, in addition to Alternatives A and B of the basic proposal, further suggestions had been made. In that respect, he referred to the suggestions by the Director General which were contained in documents TLT/DC/7 and TLT/DC/12, and to a text drafted by the Director General of WIPO at the request of ten delegations contained in document TLT/DC/36. A further proposal had been made by the Delegation of Canada contained in document TLT/DC/37. The Chairman invited the Delegation of Canada to introduce its proposal.

760. Mr. TROICUK (Canada) explained that the proposal by his Delegation was made in an effort to find a compromise solution which took into account the position of the European Communities and conformed with the traditional rules and practices of international law. In particular, the proposal of his Delegation intended to accommodate the roles of intergovernmental organizations and to meet the concerns of the European Communities as regards Alternative A by allowing the European Communities to be represented in the Assembly. Under the proposal of his Delegation, the European Communities would also be able to take part in the decision making process since the Assembly would endeavor to take decisions by consensus. Only in exceptional cases would the Assembly proceed to a vote, and in such situations the European Communities were given the right to vote with the limitation that the number of votes including those of their member States would in no case exceed the number of their member States which were Contracting Parties. The vote of a State which was a member of two organizations could only be exercised once. The proposed Treaty would enter into force after five States had deposited their instruments of accession or ratification. He concluded that the proposal of the Delegation of Canada was a compromise solution because it gave significantly more rights to the European Communities than Alternative A of the basic proposal, and at the same time met the concerns of many delegations which saw international principles undermined by Alternative B.

761. Mr. BESELER (European Communities) stated that his Delegation had carefully studied the proposal of the Delegation of Canada. After the earlier informal discussions had shown that a majority of delegations were in favour of Alternative B of the basic proposal, the Director General of WIPO had unanimously been asked to present one compromise solution. This new proposal of the Delegation of Canada was a mixture of Alternative A and other elements and fell short of recognizing the Office for Harmonization in the Internal Market and the precedent of the Protocol Relating to the Madrid Agreement

Concerning the International Registration of Marks. It allowed only a en bloc vote of the member States of the European Community and, as a new condition, required member States to be present at the time of voting. He stated that his Delegation did not see the proposal of the Delegation of Canada as an acceptable compromise solution.

762. Mr. BOGSCH (Director General of WIPO) inquired of the Delegation of Canada whether, under Article 17(4)(a) of its proposal, if all member States of the European Communities supported a decision but the European Communities opposed it, the European Communities could block a consensus. If so, they had, in fact, a 13th vote.

763. Mr. TROICUK (Canada) responded that the intention was that the role of an intergovernmental organization in the obtaining of a consensus was to be sorted out between the organization and its member States.

764. Mr. KIRK (United States of America) expressed his Delegation's support for the proposal by the Delegation of Canada, which had elements of compromise. Among the merits of that proposal were that all intergovernmental organizations were treated equally, whereas the Alternative B proposal created a two-tiered system with voting for only one type of intergovernmental organization. Additionally, the benefits for the Contracting Parties of an Assembly, which would be given up by the suggestion of the Director General, were retained. He believed that an Assembly was necessary to control the operation of the Treaty, especially with respect to the Regulations and the Forms. Although his Delegation realized that, under the suggestions of the Director General, Contracting Parties were not bound to accept amendments to the Regulations or the Forms. However, the Director General would have substantial power, whereas, member States should be in control. In that respect, a Union with an Assembly would provide the Contracting Parties with control over future developments. He stated that it was inconceivable how the European Communities, whose trademark office was under the total control of its member States, would vote differently from an unanimous view of its member States. If, under the Canadian proposal, consensus was not reached and there was a vote, each intergovernmental organization would have a number of votes equal to the number of its member States. This approach was taken in the Agreement Establishing the World Trade Organization, which was signed in April of this year, and it would be an appropriate and timely approach under the Trademark Law Treaty as well.

765. Mr. ROMERO (Chile) believed that the proposal by the Delegation of Canada, based on the solution adopted for the World Trade Organization, contained new elements for a possible solution. The suggestions by the Director General contained in document TLT/DC/12 had a number of developments which could lead to a solution as well. Both proposals appeared to have equal support in the Main Committee. In order to avoid a fruitless debate, he proposed that a working group be established in order to discuss the two alternative approaches together with any other proposal which may be put forth.

766. The CHAIRMAN requested clarification from the Delegation of Canada as to whether, under its proposal, an intergovernmental organization could itself formally object to a proposed decision.

767. Mr. TROICUK (Canada) said that his Delegation agreed with the explanations given by the Delegation of the United States of America, in that his Delegation had an understanding that controversial issues would be solved within an intergovernmental organization and that it was unlikely that intergovernmental organizations would vote differently from their member States. However, if such a situation did occur, an intergovernmental organization would have the right to block the forming of a consensus.

768. Mr. SCHAFERS (Germany) expressed his Delegation's agreement with the statement by the Delegation of the European Communities, and its support for Alternative B of the basic proposal. However, it was prepared to go along with the suggestions of the Director General contained in document TLT/DC/12. He said that the proposal of the Delegation of Canada was not acceptable, even though it was based on a text which had been approved by the parliament of Germany, since the Agreement Establishing the World Trade Organization had been negotiated in a different environment in which the European Communities spoke on behalf of their member States. This was due to the subject matter of those negotiations, trade policy, for which the European Communities had exclusive international competence. He explained that the trademark system of the European Communities had to be seen as a whole. A vote would not be given to the Office for Harmonization in the Internal Market but to the European Communities because the system existed not only for registration but also for enforcement of rights. The enforcement was to be assured by the member States of the European Communities through courts which were under the ultimate control of the European Court of Justice.

769. Mr. O'REILLY (Ireland) expressed his Delegation's support for the statements of the Delegations of the European Communities and Germany. It did not regard the proposal of the Delegation of Canada to be a compromise, but could accept the suggestions of the Director General contained in document TLT/DC/12. He concluded by stating that the issue should be discussed by all delegations, but that his Delegation did not see any purpose in establishing a working group.

770. Mr. ITO (Japan) expressed his Delegation's agreement with the statements of the Delegations of Canada and the United States of America. He felt that the suggestions of the Director General contained in document TLT/DC/12 were unsatisfactory and, from the point of view of the proposed Treaty, might even be counterproductive. He concluded in stating that, while the preference of his Delegation was for Alternative A of the basic proposal, it could support the proposal of the Delegation of Canada as a compromise.

771. Mr. SZEMZO (Hungary) said that his Delegation could support the suggestions of the Director General contained in document TLT/DC/12. Such a solution would leave it open in the future to find appropriate ways of dealing with the question of membership of intergovernmental organizations.

772. Mr. HARMS (South Africa) stated, on behalf of the African Group, that the Group had decided not to take a position on Alternatives A and B, but rather to seek a compromise. However, the Delegation of South Africa itself opposed Alternative B of the basic proposal. Concerning the suggestions of the Director General contained in document TLT/DC/12, the African Group

welcomed that initiative but had serious technical and legal reservations, as had already been described by the Delegations of the United States of America and Japan. He stated that consensus in the African Group was that the proposed Treaty should have an Assembly that was able to amend the Regulations, and that abolishing the Assembly would endanger the objectives of the proposed Treaty. Furthermore, the African Group felt that it was important to keep in mind the lack of current precedent, and the important effect such a decision would have as a future precedent. In the name of the African Group, he welcomed the proposal of the Delegation of Canada and said that it deserved further development. In the name of his Delegation, he supported the proposal of the Delegation of Canada.

773. Mr. BOGSCH (Director General of WIPO) suggested that the proposed Treaty not contain any provision on the possibility of amending the Regulations. As a consequence, no power would be given to the Director General of WIPO, and there would be no Consultative Committee or Assembly. .

774. The CHAIRMAN added that such a solution would still give scope for the Director General to publish guidelines, for example, with regard to electronic filing.

775. Mr. ABOULMAGD (Egypt) reiterated that his Delegation was prepared to consider any compromise solution. The proposal of the Delegation of Canada addressed some of the concerns of his Delegation because it retained the Assembly and the authority of Contracting Parties to review and to modify the Regulations, and it avoided a duality or even multiplicity of regimes that could result from the non binding nature of the amendment procedure for the Regulations as proposed in document TLT/DC/12. He hoped that the Canadian proposal would receive appropriate consideration on its merits. He underlined the importance of the issue at hand and said that a departure from principles of international law was only justified in exceptional situations, but that such a situation did not exist under the present circumstances.

776. Mr. MANGACHI (United Republic of Tanzania) expressed his Delegation's support for Alternative A of the basic proposal, and for the establishment of a working group for dealing with the voting issue. He said that it was not an easy task to decide the issue since it was a question of defining the roles of regional blocs. Although it was true that the European Communities had certain competences, he asked whether that would justify the kind of recognition it was requesting. The question should be addressed squarely whether regional organizations at a certain level should be treated as States.

777. Mr. YAMBAO (Philippines) expressed the support of his Delegation in favor of Alternative A of the basic proposal, and for the proposal of the Delegation of Canada. He said that he felt uncomfortable with the abolition of the Assembly and considered it ironical that States would lose their customary role as decisions-makers as a result of a request by an entity that was not a State. Bearing in mind the background of many States which had to struggle for a long time to obtain their sovereignty, he cherished the role that States played in decision making bodies. He said the Canadian proposal had elements of a compromise. Any voting rights for intergovernmental organizations were compromises because voting proceeded from the sovereignty of States. The proposed Treaty was not a treaty between trademark Offices because the enforcement of trademark rights was ensured by States.

778.1 Mr. SIMON (Switzerland) observed that his Delegation had stressed in its opening statement the need to find a compromise on that matter in order to reach agreement on the substance of the Treaty. Stressing that neither Alternative A, nor Alternative B for Article 17(4) appeared capable of enjoying a majority, he noted that the logical solution would therefore seem to be to move towards a compromise solution, that was to say a system without voting rights. That was all the more so since the draft Article drawn up by the Director General at the request of a number of delegations (document TLT/DC/36) and the proposal by the Delegation of Canada (document TLT/DC/37) corresponded from a material point of view to Alternative A. Mr. Simon added that the suggestion by the Director General to suppress the problem of voting rights, since it gave satisfaction neither to the advocates of Alternative A nor to those of Alternative B, appeared to constitute by essence a true compromise solution.

778.2 He reaffirmed his Delegation's keen wish that a compromise should be found to enable the Trademark Law Treaty to reach a successful end and referred to the spirit of compromise that had so frequently been mentioned by the various delegations during the discussions on the non-institutional aspects of the Treaty. Emphasizing the wish of the great majority of delegations, not only to conclude the Treaty, but also to apply it, he noted that the idea of eliminating voting rights could go further and that it could be considered that the Treaty itself was not necessary. He added that his Delegation did not share that point of view and would find it most regrettable if the Treaty were not to be adopted. The failure to find a compromise would be all the more regrettable for the fact that agreement existed on the substance of the Treaty as also on a proposal by the Director General that was capable of arriving at a compromise.

778.3 Mr. Simon noted, to conclude, that a precedent of the same type existed institutionally in the Madrid Agreement Concerning the International Registration of Marks, prior to the entry into force of the 1967 Stockholm Act, and asked whether the Secretariat could present that precedent to the Main Committee. Finally, he emphasized that his Delegation would be in favor of setting up a working group, on condition however that it was a member of such a group.

779. Mr. BOGSCH (Director General of WIPO) observed that an Assembly was not a necessary ingredient for an intellectual property law treaty. For example, the Paris and the Berne Conventions did not have Assemblies for some 80 years.

780. The CHAIRMAN stated that an Assembly was also not necessarily a guarantee that a treaty would be amended, as the Paris Convention had not been revised since its Assembly was put in place.

781. Mr. CHUNG (Republic of Korea) expressed the support of his Delegation for the proposal of the Delegation of Canada. He believed that double voting was unreasonable and incompatible with international practice.

782. Mr. KANSIL (Indonesia) referred to the earlier intervention of his Delegation when it stated that it was in favor of Alternative A of the basic proposal, and expressed his Delegation's support for the proposal of the Delegation of Canada.

783. Mr. SENADHIRA (Sri Lanka) stated that his Delegation supported Alternative A of the basic proposal. However, as a compromise solution, he expressed support for the proposal of the Delegation of Canada.

784. Mr. RICHARDS (Australia) expressed agreement with the statement of the Delegation of Egypt. He believed that the suggestions by the Director General contained in document TLT/DC/12 moved away from international law and would set an unwelcome precedent. He said that the proposal by the Delegation of Canada was a compromise in that it accommodated the true role of intergovernmental organizations, and expressed his Delegation's support for that proposal.

785. Mrs. JIMENEZ HERNANDEZ (Mexico) expressed her Delegation's support for the proposal of the Delegation of Canada because it presented a valid compromise solution and incorporated a number of significant changes and improvements over Alternative A of the basic proposal. The proposal demonstrated greater flexibility than that shown by the European Communities, whose position seemed to be that, if they did not receive their thirteenth vote, no party should have any vote. Her Delegation found it difficult to entertain such a proposition. States had an inalienable right to vote in international relations. The States involved in the Trademark Law Treaty would be deprived of the right to vote if the Assembly established by the Treaty were to be discarded, and that would create additional complications regarding the administration of the Treaty. She noted that all the essential provisions of the proposed Treaty had been agreed by the Committee, and that the only outstanding issue was that relating to voting rights. That clearly indicated that such an issue was in fact alien to a treaty on marks and to the area of competence of WIPO. As regarded the establishment of a working group, that could be supported by her Delegation because no efforts should be spared in seeking a solution to the issue under consideration.

786. Mr. JAGUARIBE (Brazil) expressed agreement with the statements of the Delegations of Canada, Egypt and the Philippines, and stated that his Delegation saw the issue under discussion as a procedural question which would set a precedent. He believed that a WIPO treaty dealing with trademarks was not the appropriate forum to discuss the voting issue. He expressed the support of his Delegation for the proposal of the Delegation of Canada because it introduced certain elements which were worthy of being discussed. He called for a limited number of delegations to constitute a working group because discussions would be more open, no records would be prepared and the delegations would know that they would be able to reconsider their positions.

787. Mr. McCARDLE (New Zealand) stated that, although his Delegation continued to support Alternative A of the basic proposal, it might also be able to accept the proposal of the Delegation of Canada. He opposed the suggestions by the Director General contained in document TLT/DC/12, and called for the establishment of a working group to deal with the issue.

788. Mr. PEETERS (Belgium) said that, for the reasons given by the Delegation of the European Communities, he considered the proposal by Canada to be unacceptable and incapable of constituting a compromise. He noted that a consequence of the proposal by Canada would be, even if it authorized the European Communities to speak on behalf of its member States, to prohibit that organization from expressing an autonomous position on behalf of its own system of trademark registration.

789. Mr. GAUTO VIELMAN (Paraguay) said that his Delegation's initial preference for Alternative A of Article 17(4) of the Basic Proposal did not mean that it had no sympathy for the interests of the European Communities. His Delegation supported the proposal by the Delegation of Canada, provided that the member States of the European Communities also found it acceptable. The Director General's suggestions contained in document TLT/DC/12 had also been welcomed as a good solution. Replacing the Assembly by a Consultative Council seemed to be a new and innovative approach which in fact could turn out to be a good solution. His Delegation supported the establishment of a working group to examine all proposals.

790. Ms. KADIR (Trinidad and Tobago) said that, although her Delegation had supported Alternative A in its first intervention, it now supported the proposal of the Delegation of Canada in order to arrive at a compromise solution. She also supported the establishment of a working group to deal with the issue.

791. Mr. ROMERO (Chile) pointed out that his Delegation was prepared to participate in a working group to find a solution, and that either of the two positions under discussion would be acceptable for his Delegation if a consensus were reached. A working group could have an open or a limited membership, and the fact that there would be no records should make the discussions freer and easier. The results of the working group would have to be submitted to the Main Committee and ultimately to the Plenary of the Conference for approval. The working group could have a single mandate, namely, to find a consensus solution to the voting rights issue.

792. The CHAIRMAN expressed appreciation for the flexibility shown by several delegations.

793. Mr. OUSHAKOV (Russian Federation) once again emphasized that his Delegation held a flexible position concerning voting rights. He stated that his Delegation would greatly regret if the Treaty were to be sacrificed because of lack of agreement on voting rights. He expressed himself in favor of the suggestions by the Director General contained in document TLT/DC/12, which might lead to a positive result. He also did not exclude the text contained in document TLT/DC/36. He was not against creation of a working group if it would help to overcome the deadlock.

794. Mr. DE SAMPAIO (ICC) drew the attention of delegates to the decision to be taken the following day by the Council of Ministers of a Member State of the European Union to adopt a new law on marks that would introduce a multiple class system after 100 years of a single class system. He pointed out that the Trademark Law Treaty was applied even before its entry into force and observed the extent to which the draft Treaty had already had a positive influence on various States.

795. The CHAIRMAN adjourned the meeting.

Twelfth Meeting
Thursday, October 20, 1994
Morning

796.1 The CHAIRMAN opened the meeting and recalled the status of the discussions on the issue of voting rights. He remarked that the Committee had held an orientation discussion the previous week and that the present discussion was the first formal discussion on this issue. First, he noted that the discussions on voting rights had been based originally on Article 17(4) of the basic proposal containing two Alternatives, A and B. Alternative A provided, in particular, that a regional intergovernmental organization that was a Contracting Party might exercise the right to vote of its member States if they were Contracting Parties and were present at the time of voting. Alternative B provided that a regional intergovernmental organization, as a Contracting Party, might have the right to vote. Following the discussion last week, he commented that it would be unproductive to put Alternatives A and B to a vote.

796.2 Second, he referred to the suggestions made by the Director General contained in document TLT/DC/12. A number of delegations had favored these suggestions while others expressed concerns in respect of abolishing the right to vote and giving the power to amend the regulations to the Director General of WIPO.

796.3 Third, he referred to the proposal by the Delegation of Canada contained in document TLT/DC/37. This proposal had been favored by quite a number of delegations.

796.4 Fourth, he referred to the text drafted by the Director General at the request of a number of delegations contained in document TLT/DC/36.

796.5 He recalled that a limited number of delegations had expressed their flexibility in offering support for any proposal that could attain a consensus in the Committee.

796.6 The Chairman said that a number of delegations had suggested setting up a working group to informally discuss the issue of voting rights. The Chairman acknowledged the difficulties in combining the suggestions and proposals contained in documents TLT/DC/12 and TLT/DC/37 and added that it might be considered to establish a working group. In such an event, he suggested that two or three representatives from each of the main groups in the Committee should be represented in the working group.

796.7 The Chairman invited the delegations to comment on the voting issue, especially those delegations which had not yet spoken on this point. He also invited the delegations to comment on the suggestion of establishing a working group. He indicated that the suggestions made by the Director General cited

in document TLT/DC/12 had become a formal proposal by the Delegation of Germany contained in document TLT/DC/40 and invited the Delegation of Germany to introduce its proposal.

797. Mr. SCHÄFERS (Germany) confirmed that the proposal was the same as in document TLT/DC/12, with the exception of one refinement concerning the observer status of Member States which are not members of WIPO. He also noted that those Articles which had already been finally dealt with by the Committee were omitted.

798. The CHAIRMAN indicated that the proposal by the Delegation of Germany could be included without difficulty in the discussions. He further noted in respect of the setting up of a working group that, according to the Rules of Procedure, the Committee should elect the Chairman of this group. The terms of reference in respect of the working group could be along the lines proposed earlier by the Delegation of Chile.

799.1 Mr. OPHIR (Israel) stated that it would be unfortunate if the establishment of a Trademark Law Treaty was to be undermined by a failure to reach a consensus on an issue which, although of considerable importance to those involved, did not necessarily fall within the ambit of harmonization. Agreement had been reached by consensus on all the substantive articles and regulations of the draft Treaty. Accordingly, he commented that it would be regrettable and ironic if the Conference would end fruitlessly on the issue of voting rights.

799.2 He expressed his Delegation's support for the establishment of a working group and suggested that several representatives from each group of countries should be included, as well as the European Communities, some of the Member States of the European Communities, and any State which had submitted a proposal for the resolution of Article 17(4). He maintained that the working group should be large enough to give an accurate representation of all members concerned and that the terms of reference should include a comprehensive examination of all suggestions and proposals, including their disadvantages and implications. He felt that by these means a compromise solution could be reached by consensus and recommended to the Main Committee.

799.3 Mr. Ophir stated that the working group could be expected to examine any new proposals, which might include the suggestion that, for the purposes of the Treaty, all decisions of the Assembly be reached by consensus only. He asserted that such a possibility would retain the Assembly, abolish voting and, by implication, grant each Contracting Party a veto which should amount to no more than the vote to intergovernmental organizations under the Canadian proposal. He considered the proposal of the Delegation of Canada contained in document TLT/DC/37 to be the most useful starting point for the working group as a basis for a compromise solution, yet maintained that any alternative proposal to which a common agreement could be reached would be acceptable. He remarked that, apart from the suggestions made by the Director General, each of the proposed compromises had been one-sided. In view of this, he suggested that the European Communities submit a compromise proposal of their own.

800. Mr. SCHÄFERS (Germany) stated on behalf of the European Communities, its member States and the four future member States of the European Communities that the general feeling was negative in respect of the

establishment of a working group. He noted that the positions of the various groups in the Committee were very different and that most delegations were interested in following the discussion. However, in the spirit of compromise, these Delegations recommended that the Main Committee transform itself into an informal working group without the participation of observers and that the discussion should not be recorded. This transformation into an informal group would also solve the problem concerning the election of a chairman for the working group.

801. The CHAIRMAN underlined that those delegations which did not want to participate in the work of an informal group were not obliged to participate.

802. Mr. HARMS (South Africa) stated on behalf of the African Group that the Delegations of that Group wished to take part in the debate on voting rights with an attitude of active neutrality, but indicated that those Delegations would not necessarily accept any suggestion agreed upon by the main parties. He noted that a debate on Alternatives A and B of the basic proposal would not lead to a compromise, and he supported the view of the Delegation of Brazil that this Conference was not convened to create international law. He indicated that his Delegation would favorably consider the proposal by the Delegation of Canada, or any other compromise proposal that would be in the interest of the Trademark Law Treaty. He expressed the support of his Delegation to the proposal of the Delegation of Germany in respect of an informal discussion open to all delegations, in which there should be no record of the discussion.

803. Mr. JAKL (Czech Republic) expressed the support of his Delegation for the statement of the Delegation of the European Communities, and for the suggestions contained in documents TLT/DC/12 and TLT/DC/40 and reiterated the willingness of his Delegation to find a successful compromise. He stated that, first, it should be decided whether provisions relating to voting were necessary for the Treaty at all. His Delegation was of the opinion that such provisions were not indispensable and, therefore, favored accepting a compromise solution in that sense.

804. Mr. BESELER (European Communities) expressed the support of his Delegation for the suggestion of the Delegation of Germany to have an informal discussion in the Committee. As to the request from the Delegation of Israel that the European Community propose a compromise text, he stated that such a compromise had been presented in the proposal by the Delegation of Germany contained in document TLT/DC/40. He stated that his Delegation could not support the setting-up of a working group as this would require a lengthy debate on how to limit the participation in the group.

805. Mr. OLSSON (Sweden) stated that his Delegation was not in a position to support the proposal by the Delegation of Canada contained in document TLT/DC/37, but rather supported the Alternative B of the basic proposal. However, if this Alternative was not generally acceptable, his Delegation could support the proposal by the Delegation of Germany contained in document TLT/DC/40. Concerning the establishment of a working group, he could support the transformation of the Main Committee into an informal group as suggested by the Delegation of Germany.

806. Mr. FERNÁNDEZ FINALE (Cuba) said that his Delegation had come to the Diplomatic Conference with a flexible position. The Committee was now confronted with a situation where a vote might be required to decide between two unreconcilable positions. He therefore urged the opposing sides to come to a common solution on this issue, which was purely political and which had no bearing on trademark law. That conflict should not be allowed to endanger the conclusion of the Trademark Law Treaty. With regard to the establishment of a working group, he thought that an open membership would be more conducive to achieving a consensus solution.

807. Mr. STRENC (Romania) expressed the support of his Delegation for the proposal by the Delegation of Germany contained in document TLT/DC/40, and noted that the abolition of an Assembly was not outside the framework of earlier treaties under WIPO. He emphasized, however, the flexibility of his Delegation. With respect to the establishment of a working group his Delegation supported an open-ended informal group with the present Chairman of the Main Committee as Chairman.

808. Mr. MUCHAE (Kenya) stated that, although his Delegation supported Alternative (A) in the basic proposal, it was prepared to consent to a compromise proposal. He said that his Delegation was of the view that the controversial issue of the vote should not be allowed to derail the conclusion of the Trademark Law Treaty. He advocated the Delegation of Canada's compromise proposal contained in document TLT/DC/37, which guaranteed the retention of the Assembly and the right to vote. His Delegation feared, however, that the "no-vote-no-assembly" proposal contained in document TLT/DC/40 could lead to an uncontrollable situation. He concluded that, if an acceptable compromise solution could not be agreed upon, his Delegation would recommend that the Diplomatic Conference consider restricting membership of the proposed Treaty for the time being to member States. Once a workable solution was found, interested intergovernmental organizations could be allowed to accede to the Treaty. His Delegation welcomed the idea of establishing a working group as suggested by the Delegation of Germany.

809. Mr. van der EIJK (Netherlands) stated that the European Communities had shown flexibility and that the proposal by the Delegation of Germany contained in document TLT/DC/40 was the most promising solution so far. The proposal was neutral, and there was no need to choose between Alternatives A and B of the basic proposal. Although the proposal by the Delegation of Germany might give rise to certain difficulties, he thought the proposal was acceptable because he believed that a solution on the question of intergovernmental organization could be reached in future and that this solution could be incorporated in the Treaty. He underlined that the proposal by the Delegation of Canada contained in document TLT/DC/37 basically was in line with Alternative A of the basic proposal, which denied the right of the European Communities to vote in relation to the Community trademark system. His Delegation could therefore not support that proposal.

810.1 Mr. IANNANTUONO (Italy) pointed out, as other countries of the European Communities had already done, that the European Communities could not exercise the voting rights allocated to its member States just as those member States could not vote on behalf of the Communities since those Communities maintained, in the same manner as a State, an autonomous system of trademark

registration and that there existed no Community harmonization with respect to the national trademark registration procedures. Consequently, the WTO solution that had been proposed could not be a precedent in such a context.

810.2 He added that the Decision by the Council of the European Union authorizing the Commission and the Member States implied that Alternative A of Article 17(4) of the basic proposal and all the other proposals based on that same logic were unacceptable. The same applied to the proposal made by the Delegation of Canada and the text drawn up by the Director General of WIPO at the request of a number of delegations. Mr. Iannantuono said that those instructions had led his Delegation to accept only the Alternative B of Article 17 or, as a compromise, the suggestions made by the Director General to be found in Document TLT/DC/12 concerning the suppression of the voting procedures.

810.3 He added that his Delegation was altogether willing to study and support other compromise proposals, particularly that made by the Delegation of Germany. He further expressed the support of his Delegation for the proposal to set up a working group with the task of looking for a compromise.

811. Mr. CARSTAD (Denmark) stated that his Delegation supported Article 17(4), Alternative B, and expressed a positive attitude towards the proposal by the Delegation of Germany contained in document TLT/DC/40. His Delegation found the concerns expressed by the United States of America exaggerated in respect of the powers of the Director General in this proposal. He did not find it likely that the Director General would decide on any amendments against the views of the Consultative Committee established under the proposal. He stated that his Delegation could not support the proposal by the Delegation of Canada contained in document TLT/DC/37, as it had a detrimental effect for the European Communities. With regard to the establishment of a working group he supported the suggestion made by the Delegation of Germany.

812. Mr. MANOUSAKIS (Greece) expressed the support of his Delegation for the proposal by the Delegation of Germany contained in document TLT/DC/40, and for the suggestion by the Delegation of Germany with regard to the setting up of an informal group.

813. Mrs. LAHTINEN (Finland) expressed the preference of her Delegation in favor of Alternative B of the basic proposal. It could, however, also support the concepts put forward in the proposal by the Delegation of Germany contained in document TLT/DC/40. She further noted that the proposal by the Delegation of Canada contained in document TLT/DC/37 seemed not to be acceptable to her Delegation. Concerning the establishment of a working group, she expressed her Delegation's support for the suggestion by the Delegation of Germany.

814.1 Mr. MOTA MAIA (Portugal) said that the Delegation of Germany had spoken on behalf of the member States of the European Communities and that his Delegation had supported what had been said, particularly with respect to the creation of a working group. He referred to the analysis that had been made by the Chairman at the beginning of the morning and noted that, apart from Alternatives A and B of the basic proposal, the various proposals that had

been put forward simply constituted variations of Alternative A. In that respect, he stated that the proposal by the Delegation of Canada was even less acceptable than Alternative A of the basic proposal and that, consequently, the Delegation of Portugal could not support that proposal.

814.2 He noted that, with the exception of the suggestion made by the Director General (Document TLT/DC/12), the legal bases for the proposals that had been made were exclusively those of Alternatives A and B, which therefore explained the absence of compromise at that stage in the discussions. Mr. Mota Maia therefore concluded that only a variant of Alternative B or the suggestion made by the Director General, could be such as to constitute a solution. He asked the Director General whether suggestions made in document TLT/DC/12 could be transitional and could be reconsidered some years after the entry into force of the Treaty. He concluded by referring to the spirit declared at the beginning of the Conference by all delegations in favor not only of a compromise, but also of the success of the Treaty.

815. The CHAIRMAN noted that the suggestion by the Delegation of Portugal would imply an additional provision in the Treaty which would require that member States meet in perhaps five years for a new Diplomatic Conference. He further noted that the aim of the informal group would be to explore how to adjust the proposals put forward. On the one side the proposal by the Delegation of Canada contained in document TLT/DC/37 did not reproduce verbatim the text contained in the Agreement Establishing the World Trade Organization, and on the other hand the proposal by the Delegation of Germany contained in document TLT/DC/40 could be adjusted by removing the provisions in respect of the responsibility to amend the Rules under the Treaty as suggested by the Delegation of Portugal.

816.1 Mr. BOVAL (France) stated that the solution proposed by Canada was altogether unacceptable for his Delegation and could in no event constitute a compromise. He pointed out that, as a result of various delegations having mentioned in the discussions the difficulties they encountered in adapting their substantive trademark law to the present Treaty, the Delegation of France had accepted, in a spirit of cooperation, compromises on those various points. He added that his Delegation was experiencing similar difficulties with the institutional problems to those experienced by various States on the technical problems. He emphasized that the institutional problem raised by the co-existence of a Community trademark with the national marks of the European Community member States had to be examined with as much attention and with as much will to succeed as the other technical problems discussed since the beginning of the Conference. He noted that the Office for Harmonization in the Internal Market had already been set up even if it was not yet fully operational and that it was doubtlessly destined to become a very important office at international level and that, consequently, it would not appear excessive for its existence to be taken into due account.

816.2 Mr. Boval added that a precedent existed with respect to voting by the European Communities under the Madrid Protocol and emphasized that the adoption of such a provision would not entail significant implications, except perhaps in the field of industrial designs. He stated that the importance of an additional vote afforded to the European Communities had not to be exaggerated in relation to some hundred member States who could be expected to

ratify the Treaty. He concluded with the wish that a true compromise should be found and referred to the proposal by Germany contained in Document TLT/DC/40 that opened the way to a solution with precedents at international level and within WIPO and which appeared altogether practicable under the proposed Treaty.

817. Mrs. PREGLAU (Austria) expressed the support of her Delegation for the proposal of the Delegation of Germany contained in document TLT/DC/40. With respect to a working group, she supported the suggestion of the Delegation of Germany.

818. Mr. KARAAHMET (Turkey) stated that the Trademark Office of the European Communities would be independent of the European member States. His Delegation supported Alternative B of the basic proposal, but he also indicated the support of his Delegation for the proposal by the Delegation of Germany contained in document TLT/DC/40.

819. Mrs. MARKIDES (Cyprus) expressed the support of her Delegation for Alternative B of the basic proposal, but indicated that her Delegation could support the proposal by the Delegation of Germany contained in document TLT/DC/40. Her Delegation could not accept the proposal by the Delegation of Canada contained in document TLT/DC/37. Concerning the establishment of an informal group, her Delegation could support the suggestion by the Delegation of Germany.

820. Mr. WARR (Malta) expressed his Delegation's support for the proposal by the Delegation of Germany contained in document TLT/DC/12. He further supported the suggestion by the Delegation of Germany in respect of setting up an informal group.

821. Mr. FALL (Senegal) referred to the fact that he had expressed in his opening statement the open and constructive spirit of his Delegation with regard to the present Treaty. He also mentioned that he had gone along, from the beginning, with the suggestions made by the Director General in an attempt to avoid the institutional deadlock towards which the Conference was moving. He added, just as the Chairman of the African group, that his Delegation assumed a neutral but active attitude in order to help in finding a compromise. He stated his support for the position taken by the Chairman of the African group with respect to the setting-up of a working group, but emphasized that such a group should undertake a true discussion of the proposals made and not simply listen to the position taken by each country.

822. The CHAIRMAN fully endorsed the suggestion by the Delegation of Senegal that delegations should look at the proposals on the table.

823. Mr. POLYAKOV (Latvia) expressed his Delegation's support for Alternative B of the basic proposal. His Delegation could not support the proposal by the Delegation of Canada contained in document TLT/DC/37. He referred to the suggestion by his Delegation made earlier, and expressed support for the proposal of the Delegation of Germany contained in document TLT/DC/40. This proposal could be refined with respect to the decisions by the Director General amending the rules by adding that such decisions should only take effect if there were a consensus in the Consultative Committee set up according to that proposal.

824. Mr. PIANO (Slovenia) expressed his Delegation's support for the statement of the Delegation of Germany.

825. Ms. TANGEVALD-JENSEN (Norway) expressed her Delegation's support for Alternative B of the basic proposal, the proposal of the Delegation of Germany contained in document TLT/DC/40, and the statement of the Delegation of Germany concerning the working group.

826. Mr. MARTINEZ TEJEDOR (Spain) reiterated his Delegation's support for Alternative B of the basic proposal. He noted the need for a system which would allow an active participation by the European Communities in the establishment and development of the Trademark Law Treaty. Only such participation would guarantee adequate worldwide harmonization. The proposal submitted by the Delegation of Canada seemed unacceptable, since it did not contain a compromise solution but only a variation of Alternative A of the basic proposal.

827. The CHAIRMAN summarized that there was a balance between the proposals made by the Delegation of Canada cited in document TLT/DC/37 and of the Delegation of Germany cited in document TLT/DC/40. He observed that there had been a majority in favor of informal discussions and asked if there were any objections to meeting in a large group.

828. Mr. JAGUARIBE (Brazil) expressed his Delegation's flexibility with regard to a small and open-ended working group. His Delegation would accept a small working group that did not necessarily include the participation of the Delegation of Brazil. However, he envisaged that a change in this group should result in a new mood of compromise, and suggested that the informal discussions be continued in another room for those delegations who were so inclined.

829. Mr. GAUTO VIELMAN (Paraguay) proposed that the working group consist of a reduced number of members and work in an informal atmosphere. A working group with a large membership would risk getting bogged down in a new deadlock. His Delegation was prepared to decline participating in a limited working group.

830. The CHAIRMAN invited a show of hands to decide either the establishment of a small group or an open-ended group with the possibility for all delegations to participate. He concluded that there was a slight majority in favor of an open-ended group.

831. Mr. RICHARDS (Australia) suggested fixing a time limit for deliberations of the working group.

832. Mr. VARGAS CAMPOS (Mexico) noted that the debate which was taking place was leading the Main Committee back to the point of departure. The Delegation of Mexico was totally flexible as to the solution to be adopted, while recognizing that the opposed camps had valid reasons to defend their positions. An agreed solution which combined the interests of both sides had to be worked out. To that end, a working group with open membership could conduct its business on an informal basis, without any records being established. It seemed necessary, however, to agree that the working group would not draft any formal proposals, lest it run the risk of becoming a

drafting group. If the working group arrived at any concrete conclusions, those could be stated in writing for submission to the Main Committee. That procedure would prevent the working group from deviating from its assigned task.

833. Mr. BOGSCH (Director General of WIPO) recalled that translation in the smaller meeting room was only available in English, French and Spanish. Translation in Arabic, Chinese and Russian was available only in the larger meeting room.

834. The CHAIRMAN stated that the smaller room would hold only one person from each Delegation which participated.

835. Mr. SCHÄFERS (Germany) suggested that the group stayed in the larger room and assured the Delegation of Brazil that Germany and other European Community countries would participate openly in the discussions.

836. The CHAIRMAN invited comments from those delegations which would not have a translation if the meeting was held in the smaller room.

837. Mr. ABOULMAGD (Egypt) noted that the missing translation was a disadvantage for the Arabic speaking delegations. He also pointed out the difficulties in having simultaneous meetings with the Drafting Committee. In order to have a more relaxed and informal atmosphere during the discussions, he suggested removing the name plates in the Conference Room, and to conduct the meeting without records or minutes. He thought that through such measures the informal atmosphere which was sought could be created without putting any delegations at a disadvantage.

838. Mr. BOVAL (France) expressed the support of his Delegation for the proposal by Germany and also for that by Egypt and noted that the idea of changing rooms appeared to entail more drawbacks than advantages. He emphasized that the essential point in the activities of the working group resided in the suppression of minutes.

839. The CHAIRMAN invited a show of hands in respect of which room to be used. He concluded that a great majority had expressed the wish to stay in the larger conference room.

840. Mr. ROMERO (Chile) regretted the extended discussion on minor points of procedure, such as the choice of meeting rooms. His Delegation was entirely flexible regarding the issue under discussion. It wished, however, to support the request of the Delegation of Australia that a fixed time frame be established for the working group to conclude its work.

841. The CHAIRMAN turned to the issue of electing a Chairman for the informal group, and suggested Mr. Vargas Campos from the Delegation of Mexico to fulfil this role.

842. Mr. GAUTO VIELMAN (Paraguay) suggested that one of the Vice-chairmen of the Main Committee should preside over the working group.

843. Mr. SCHÄFERS (Germany) recalled that the Main Committee should only transform itself into an informal group and suggested that the Chairman of the Committee continue as Chairman for the informal group. He referred to the neutrality of Mr. Sugden which was recognized by all delegations and to the technical knowledge shown by him.

844. Mr. ROMERO (Chile) suggested that the working group should be presided over by a member of one of the delegations which had expressed a neutral position on the issue under consideration. He believed there were at least six countries which had explicitly stated that their position was neutral and impartial in connection with the voting rights issue.

845. Mr. SCHÄFERS (Germany) drew the attention to the neutral position expressed by the Delegation of Switzerland and suggested that this Delegation undertake the Chairmanship of the informal group.

846. Mr. VARGAS CAMPOS (Mexico) observed that the working group would be convened under the aegis of the Main Committee, for which two Vice-chairmen had already been elected. In that respect his Delegation endorsed the suggestion of the Delegation of Paraguay that one of those Vice-chairmen direct the working group. He proposed that the representative of Cuba, Mr. Fernández Finalé, who was one of the Vice-chairmen of the Main Committee and had expressed his Delegation's full neutrality and flexibility on the issue under consideration, could be elected to preside over the working group.

847. Mr. BOGSCH (Director General of WIPO) recalled that Mr. Touré from the Delegation of Côte d'Ivoire and Mr. Fernández Finalé from the Delegation of Cuba had been elected Vice-chairmen.

848. The CHAIRMAN noted that the Vice-chairman from Côte d'Ivoire was not available to serve as Chairman for the informal group.

849. Mr. RICHARDS (Australia) suggested Mr. Harms from the Delegation of South Africa as Chairman.

850. Mr. FALL (Senegal) said that his Delegation supported the proposal made by the Delegation of Australia.

851. Miss TOSONOTTI (Argentina) supported the suggestion of the Delegation of Mexico that the representative of Cuba chair the working group.

852. Mr. ROMERO (Chile) supported the suggestion that the representative of Cuba preside over the working group.

853.1 The CHAIRMAN noted that two candidates had been suggested. One was Mr. Fernández Finalé who was Director of the National Office for Inventions, Technical Information and Marks in Cuba, and the other one was Mr. Harms, Judge of Appeals, Chairman of the Advisory Committee on Patents, Trademarks, Designs and Copyright in South Africa. The Chairman invited a show of hands

in respect of the two candidates. He concluded that Mr. Harms was elected Chairman of the informal group by a large majority. He further noted that the Vice-chairmen should be elected by the group itself.

853.2 The Chairman then adjourned the meeting.

<u>Thirteenth Meeting</u> <u>Friday, October 21, 1994</u> <u>Morning</u>

854. The CHAIRMAN opened the meeting and invited the Chairman of the informal ad hoc working group to report on the work of that group.

855. Mr. HARMS (South Africa), in his capacity as Chairman of the working group, informed the Committee that the discussions of the working group had been very useful and frank. As the discussions had been off the record, he could not report on the individual statements by the delegations. He noted that the working group had taken full account of the proposals put forward, and he anticipated new suggestions, some of which could develop into formal proposals to the Main Committee. He noted that positions had been softened and certain new directions been suggested by several delegations. He stated that the working group had, however, not solved the problems. As a result, other proposals were now in the process of being put forward.

856. Mr. CURCHOD (WIPO) proposed that the practice for submitting proposals should remain informal.

857. The CHAIRMAN confirmed that it would be easier for those delegations wanting to forward proposals to do so informally.

858. Mr. MOTA MAIA (Portugal) considered the work accomplished by the working group as most positive and noted that a number of new ideas had been put forward. He observed that some criticism had also been expressed, but emphasized with satisfaction that the authors of the ideas had stated their willingness to incorporate those comments. Consequently, Mr. Mota Maia wondered whether it would not be judicious to convene the working group again to discuss a new proposal in the light of those ideas and criticisms. He added that his Delegation preferred the holding of an open meeting in which everyone could express his point of view rather than the meeting of a restricted group.

859. The CHAIRMAN confirmed that he had no difficulty in a continuation of the working group.

860. Mr. SCHAFERS (Germany) confirmed that the meeting of the working group had been very useful and creative. He drew attention to a suggestion made by the Delegation of Chile under which all decisions by the Assembly concerning

the Treaty and Regulations would be taken by consensus. His delegation found this suggestion very interesting and would like to see the suggestion on paper for further study by the working group at a later stage.

861. Mr. BOGSCH (Director General of WIPO) emphasized the necessity for further reflection by the delegations. He stated that any suggestion under which decisions of the Assembly would be taken by consensus was not realistic, since it implied that intergovernmental organizations would have veto power. A veto was much stronger than the right to vote, since a veto could stop all others from making a decision. He acknowledged that, while an initial decision procedure could be based on consensus, a second step would have to be built into the procedure where consensus was not reached. He noted that the decision-making procedure under the text of Article IX of the Agreement Establishing the World Trade Organization could serve as a basis for the discussions, but that this solution was not acceptable to some delegations. As an alternative, he suggested avoiding the political issue of voting altogether by deciding that the Treaty would function, for example, for ten years without being modified, after which the Contracting Parties would meet in order to discuss possible ways to modify the Treaty or the Regulations. He emphasized that the solution on the voting issue should be acceptable to all parties, including the European Communities which were expected to play an important role in the field of trademarks.

862. Mr. ROMERO (Chile) in reply to the comments made by Mr. Schäfers from Germany said that discussions in the working group had allowed some fresh ideas to be suggested and that his Delegation had made some suggestions in connection with Articles 17, 20 and 21 of the basic proposal. Although he had no objection to allowing those documents to circulate among the delegations, he recalled that the working group was supposed to operate in an unofficial environment. His Delegation's suggestions were very preliminary, and in the meantime some further elaboration of those ideas had taken place. He therefore did not wish that his Delegation's written ideas be considered as formal proposals.

863. The CHAIRMAN recalled that the discussions had tended to concentrate on the proposal by the Delegation of Germany contained in document TLT/DC/40, rather than on the text concerning the decision-making procedure in the Agreement establishing the World Trade Organization. He indicated that there still might be scope for further elaboration for a solution based on that text.

864. Mr. SCHWAB (European Communities) said that, in order to facilitate discussion, his Delegation would like to have in writing, even informally, the proposals that had been put forward the preceding day. He emphasized the fruitful nature of the discussions that had taken place the previous day and acknowledged, in the proposal on consensus, the underlying possibility of voting rights for intergovernmental organizations. He nevertheless stated that his Delegation had not had sufficient time to reflect on all the implications of such a solution.

865. Mr. GAUTO VIELMAN (Paraguay) said his Delegation agreed with what had been expressed by the Director General. A solution based on a rule of consensus seemed attractive, but in the long run would not achieve a definitive solution to all the cases which could arise. His Delegation supported the proposal by the Delegation of Canada on the condition that such proposal could be accepted

by the countries of the European Communities, but that did not seem to be the case. The suggestions presented by the Director General in document TLT/DC/12 contained a possible solution which was reminiscent of an arbitration procedure, where two sides in disagreement would seek the advice or decision of a third person. The Committee may wish to consider exploring possible solutions which included some sort of arbitration as a alternative to a voting procedure.

866. Mr. ABOULMAGD (Egypt) stated that the working group had been very useful and constructive, and that the suggestions made had been helpful. He reserved further comments on the voting issue for the discussions in the working group, which he suggested should continue its work. For this purpose, he asked if the oral proposals could be put into writing.

867. The CHAIRMAN confirmed that the International Bureau would assist in putting these proposals in writing as non-papers.

868. Mr. MANGACHI (United Republic of Tanzania) welcomed the comments by the Director General and expressed a similar concern in respect of the solution of the voting issue based on consensus. He noted that this question had to do with the sovereignty of States, and indicated that States could not accept being put on the same footing as an intergovernmental organization, especially where an intergovernmental organization could veto a decision of the member States.

869. The CHAIRMAN acknowledged that the solution based on consensus would have to take into account what would happen if there were no consensus.

870. Mr. VARGAS CAMPOS (Mexico) wished to appeal to the Committee in his capacity as President of the Diplomatic Conference. He agreed with the Chairman and the Director General that only a compromise solution could be entertained, but such solution could be different from those which had been submitted so far. In his view, three facts had to be taken into account. First, the Committee had before it a Treaty, the technical and substantive parts of which had been agreed. It was only a legal and political issue which prevented the Conference from concluding the Trademark Law Treaty. Second, there was a relationship between the Trademark Law Treaty and its Regulations. The Regulations could not be amended beyond what was stipulated in the Treaty. The question of voting, therefore, could not relate to any fundamental changes in the system established by the Treaty itself. Furthermore, a number of transitional provisions had been agreed upon, and it was likely that the situation would evolve over the years to come. It seemed appropriate that the Contracting Parties be prepared to wait for some time before thinking of making any changes in the Treaty or the Regulations. Finally, he felt that the issue of the voting rights had been magnified beyond proportion, since the Trademark Law Treaty was a technical treaty under which the amendments which could be made outside of a Diplomatic Conference were very limited. It seemed, therefore, that, because of the political issue under discussion, the importance of the voting rights was being overstated and this was preventing the conclusion of the Treaty. The delegations attending the Conference wanted the Treaty to be adopted. He thought that a solution was at hand, but it may have to be found in an idea different from the two which were being considered at the time.

871. Mr. BOGSCH (Director General of WIPO) agreed with the Delegation of Mexico that there was little of substance that could be changed by modification of the Regulations. He noted, in respect of his earlier suggestion, that, if a need to modify the Treaty or Regulations arose, consultations could take place between Contracting Parties in order to examine how to formalize changes, but preferably only after all of the transitional provisions had expired.

872. Mr. TROICUK (Canada) endorsed the comment of the Director General with respect to the need to find a solution acceptable to all. Concerning the option for making all decisions by consensus, he indicated that his Delegation had contacted its government since the meeting of the working group and reported that such an option would not be acceptable, since the ability to block a consensus by exercising a veto was considered equivalent to a vote. His Delegation would have serious difficulties with allowing an intergovernmental organization to block the will of sovereign states. He also believed that the option of removing all provisions regarding an Assembly from the Treaty was not the best solution. He reiterated his Delegation's strong support for the option based on the text of the Agreement Establishing the World Trade Organization as the best compromise solution. However, he could be flexible with regard to the wording of that solution, in particular, with respect to the requirement that member States be present at the time of voting. He supported continuing the working group on an informal basis.

873. Mr. REZA ZAVAREIE (Islamic Republic of Iran) expressed his agreement with the statement of the Delegation of the United Republic of Tanzania, which had emphasized that an intergovernmental organization should not be treated on the same footing as a sovereign State and should not have the ability to veto the decisions of States. He considered that the best solution would be the suggestion made by the Director General, which would leave aside the question of voting so that the technical provisions of the Treaty could enter into force.

874.1 Mr. FALL (Senegal) emphasized that his Delegation had found the discussions in the working group most interesting since it had been possible for all points of view to be openly expressed and a number of constructive proposals had been presented. He went along with the proposal by the President of the Diplomatic Conference and with the suggestion made by the Director General for finding a solution that was acceptable to all.

874.2 He pointed out that the participants in the Conference were required to find a political solution to a legal problem which was that of affording or not to an intergovernmental organization the right to be party to a treaty. He remarked on the virtues of a consensus and emphasized that consensus as practised in GATT had always enabled a solution to be found without having recourse to a vote. He likewise noted that within the present Conference itself all the technical aspects of the basic proposal had been adopted by consensus and without having to vote. Mr. Fall therefore felt it was possible to find a solution and reaffirmed the importance attached by his Delegation to the possibility for an intergovernmental organization to be party to the present Treaty.

875. Mr. BOVAL (France) wished to salute on behalf of his Delegation the suggestion put forward by the Director General, which was marked by a spirit of realism and revealed great experience of negotiation. Reaffirming the

absolute need to reach a compromise that was acceptable to all, he considered that proposal to be most valuable. Mr. Boval further confirmed that the solution that had been brought up once more by the Delegation of Canada could not constitute a solution acceptable to his Delegation.

876. Mr. SCHÄFERS (Germany) stated that his Delegation could go along with the suggestion of the Director General to let the institutional structure disappear from the Treaty and to reduce the role of the Director General to that of a depositary. He did not expect major changes to occur in trademark practice in the next ten to 15 years. He further expressed his Delegation's support for an Assembly which would make decisions by consensus, a suggestion which was based on the view of many delegations that an institutional structure was needed. He stated that this would be an excellent solution for the European Communities, since a veto right is the strongest position that an entity could have within an Assembly. He pointed out, however, that, taking into account the realities of the European Communities' internal structure, it would be inconceivable that the European Communities would block a consensus if all of its member States were in favor of a particular proposal. The European Communities had always been in the forefront of changes, and it would not block forward looking decisions. He stated that there existed the possibility for an intergovernmental organization to have the right to a veto on paper, while making a political commitment that it would never block any consensus.

877. The CHAIRMAN remarked that it appeared as though the European Communities were asserting that it needed a veto, but that it would never use it.

878.1 Mr. BOGSCH (Director General of WIPO) pointed out that the question of a veto went beyond the question of the role of the European Communities. For example, if a veto was exercised by a State, the Assembly would still need a second procedure for completing the decision making process, namely voting. If the European Communities could vote at that point, then they would have a 13th vote, which would not be acceptable to many delegations.

878.2 The Director General offered a more precise text for his earlier suggestion, which could be worded as follows: "The Diplomatic Conference decides that if ten Contracting Parties propose it, but not before the year 2004, the Contracting Parties will meet for consultations to examine the possible methods for amending the Regulations." A second sentence could be added to emphasize that consultations did not imply any voting.

879.1 Mrs. DZIETHAM (Cameroon) shared the point of view expressed by the other delegations as to the highly positive nature of the working group's discussions. She noted that the solution proposed by the Delegation of Portugal, improved by that of the Delegation of Israel, appeared to constitute a satisfactory basis.

879.2 Mrs. Dzietham wished that an assembly should be maintained in the Treaty to take into account the concerns of a number of States, particularly the African States. She further observed that, although the consensus solution appeared to have the preference of a large number of States, that did not mean that all worries had been removed, particularly with regard to the possibility of blocking by means of a veto right. In that respect, it noted with satisfaction the declaration by the Delegation of Germany pursuant to

which the European Community would not use its right of veto and suggested that that assurance should in fact be set down in writing in the minutes of the Conference. Mrs. Dzietham wondered whether it would not be advisable to deal with the matter of voting rights to be afforded to an intergovernmental organization directly in a clear and frank manner.

880. The CHAIRMAN stated that he believed it would be difficult for intergovernmental organizations like the European Communities to give a written guarantee that they would never exercise their right to veto a consensus. The Chairman reiterated that the Conference was looking, not for a majority or a super-majority, but for a solution that would be acceptable for everyone.

881. Mr. OPHIR (Israel) noted that the meeting of the working group had been useful and constructive. He considered it inconceivable that the Treaty be jeopardized because of the voting issue, but equally inconceivable to conclude a Treaty that was not acceptable to all delegations. He stated that every proposal merited consideration, and felt that it would be helpful if the proposals could be presented to the Committee. He advocated a further meeting of the working group, and hoped that it would lead to discussions on all proposals that had been put forward.

882. Mr. KIRK (United States of America), in response to the question of the Delegation of Cameroon whether delegations could accept a 13th vote for the European Communities, stated that his Delegation definitely could not accept a separate vote for the European Communities. The suggestion that there be an Assembly which takes decisions by consensus would also not be acceptable to his Delegation. However, he observed that the Committee had not exhausted all possible solutions, and referred to the suggestions put forward by the President of the Conference and the Director General. He stated that, if a solution to the problem were to be achieved, namely a Treaty which all parties could join, these thoughts must be followed up.

883. Mr. SCHWAB (European Communities) wished to state very clearly that his Delegation was prepared to accept the suggestion by the Director General if all parties were willing to do the same thing. He further stated that the European Community had never advocated the setting-up of a system based solely on consensus. His Delegation had envisaged that solution following the debates that had taken place the preceding day as a means of avoiding a deadlock.

884. The CHAIRMAN noted that there had been considerable agreement that further study of the need for an Assembly and its possible voting rules should continue in the informal working group. He therefore closed the discussion in the Main Committee concerning Article 17(4) for the time being, and invited the Delegation of Germany to introduce its proposal contained in document TLT/DC/39.

885. Mr. SCHAFERS (Germany) presented the proposal contained in document TLT/DC/39, which was intended to reflect his Delegation's oral suggestion in an earlier meeting of the Committee as well as the concerns of several delegations with respect to the lack of technical infrastructure in some countries for the implementation of the Treaty. The proposal contained a resolution to be adopted by the Diplomatic Conference, recommending to the

competent bodies of WIPO that funds be set aside for the purpose of assisting developing countries with the implementation of the Trademark Law Treaty. This would mean that future draft budgets would contain a line indicating the amount of funds specially allocated for technical assistance to developing countries with respect to the implementation of the Treaty.

886. The CHAIRMAN indicated that there had been widespread support in principle for the oral suggestion of the Delegation of Germany, and stated that the Committee would take up the proposal later in its deliberations based on the text of document TLT/DC/39.

887. Mrs. BEHRENS (CNIPA) stated that she would be leaving Geneva and wished to thank WIPO for the organization of the Conference and the preparation of the written documents. She also wished to thank the delegations for their indulgence in listening to the views of the non-governmental organizations. She congratulated the delegations on their spirit of compromise concerning substantive provisions of the proposed Treaty, and expressed the hope that the Conference would continue in the same spirit and result in a successful Treaty.

888. The CHAIRMAN adjourned the meeting.

Fourteenth Meeting
Tuesday, October 25, 1994
Morning

889. The CHAIRMAN opened the meeting. He declared that the Diplomatic Conference had reached its decisive stage and expressed his thanks to those delegations which had prepared non-papers for discussion in the working group. In particular, he thanked the members of the Steering Committee for their hard work which resulted in the proposal contained in document TLT/DC/41 Rev. The Chairman indicated that the proposal contained in document TLT/DC/41 Rev. had the full support of the Steering Committee and invited the President of the Diplomatic Conference to introduce it.

890.1 Mr. VARGAS CAMPOS (Mexico), speaking in his capacity as President of the Diplomatic Conference, said he wanted to dedicate his first words to all the delegates present at the Conference for the assistance he had received in his search for a proposal which could serve as the basis for a consensus. He presented the proposals contained in document TLT/DC/41 Rev. on behalf of the Delegations members of the Steering Committee. He indicated that he had also discussed the proposals with the coordinators of the different regional groups, so the proposals could be known by all the participants and the greatest transparency maintained during the negotiations. Having taken into consideration all the points of view, the proposals before the Main Committee could be regarded as the basis for a consensus solution.

890.2 He explained that the proposal aimed at achieving a Treaty which could be accepted by this Conference. With that objective in mind, it was proposed to delete Articles 16, 17 and 18 of the basic proposal which dealt, respectively, with the establishment of a Union, the Assembly and the International Bureau. The provisions regarding the amendment of the Regulations and the required consent for an amendment, contained in paragraphs (2) and (3) of Article 19, had also been deleted. The core of the proposal was the combination of Articles 20 and 21 of the basic proposal into a new Article 20 dealing with the revision of the Treaty and the establishment of protocols to further harmonize the laws of marks. Revision of the Treaty and the establishment of protocols would be the task of diplomatic conferences convened for that purpose. The new Article 20 reflected the desire of the Conference that the Trademark Law Treaty may, in due course, be further developed and expanded. The proposal also discarded several provisions contained in the basic proposal regarding the transmittal of communications by electronic means. In the absence of detailed provisions in the Regulations, the Delegations members of the Steering Committee concluded that the rules which would govern the transmittal and acceptance of such communications had to be determined by "gentlemen's agreements" between the parties involved. The only reference to communications by electronic means specifically maintained was Article 8(3), which allowed Contracting Parties to prescribe the conditions for the identification of senders of such communications.

890.3 Although the initial version of the proposals in document TLT/DC/41 contained a decision by the Diplomatic Conference on a mechanism for consultations aimed at amending the Regulations, it was abandoned in the revised version. The Delegations members of the Steering Committee found that such a decision was unnecessary in view of the proposal for a new Article 20 which would allow diplomatic conferences to be convened to revise or expand the Treaty. Moreover, since the Trademark Law Treaty would be open to all members of the World Intellectual Property Organization, requests to convene a diplomatic conference under Article 20 as proposed could be entertained by any session of the General Assembly of WIPO at any point in time. In practice, the General Assembly of WIPO would function as the competent body to take any decisions concerning the revision of the Treaty and the conclusion of protocols in its connection.

890.4 He emphasized that the proposals under consideration had emerged as the product of the efforts of all the delegations participating at the Conference, and should therefore be regarded as a proposal by all the participants. He hoped that the same spirit would continue, allowing them to be adopted without any further debate so that the Conference could continue its work towards a successful conclusion.

891. The CHAIRMAN expressed his thanks to the President of the Diplomatic Conference, emphasizing the active and vigorous role he played in the deliberations of the Steering Committee. He further extended his thanks to the Delegations members of the Steering Committee and to the Director General of WIPO and his staff. He declared that it was his personal belief that the proposals by the Delegations members of the Steering Committee contained in document TLT/DC/41 Rev. were the only way forward. The Chairman paid tribute to the discussions of the working group and to its Chairman, Mr. Harms.

892. Mr. HARMS (South Africa), speaking in his capacity as Chairman of the working group, declared that the deliberations of the working group had been brought to an end by the intervention of the President of the Diplomatic Conference and the submission of the proposals by the Delegations members of the Steering Committee contained in document TLT/DC/41 Rev. Speaking on behalf of the African Group, he expressed the Group's support for that proposal. However, he expressed the regret and dissatisfaction of some of the Delegations members of the African Group, because the proposal did not solve the problem but merely postponed it. Those Delegations considered that the issue was of a political nature and that it was raised in an inappropriate forum. He concluded by expressing his thanks to the President of the Diplomatic Conference for his leadership and stated that, at least, the compromise found would permit the adoption of the proposed Treaty.

893. Mr. REZA ZAVAREIE (Islamic Republic of Iran) expressed the appreciation of his Delegation for the compromise which had been proposed by the Delegations members of the Steering Committee. This compromise allowed the most important goal of the Diplomatic Conference to be reached which consisted in adopting the substantive provisions of the proposed Treaty. He said, however, that while, under the basic proposal, the membership of the proposed Treaty had been open to member States of the Paris Convention, the suggestion of the Director General of WIPO contained in document TLT/DC/12 provided that only member States of WIPO were eligible to become members of the proposed Treaty. This would limit the potential membership of the proposed Treaty. Since the aim of the proposed Treaty was harmonization, it would be appropriate if as many States as possible could adhere to it. Therefore, his Delegation suggested amending Article 22(1)(i) to provide that States either member of WIPO or of the Paris Convention could become member of the proposed Treaty.

894. The CHAIRMAN said that the Main Committee had already discussed Article 22 of the proposed Treaty. The text was approved and was under consideration by the Drafting Committee. He said that, unless the suggestion of the Delegation of the Islamic Republic of Iran was supported by a two-thirds majority of the Committee, discussions on that point could not be reopened. He declared that one of the reasons why membership of the proposed Treaty was confined to members of WIPO was that any revision conference would be within the framework of that organization.

895. Mr. GAUTO VIELMAN (Paraguay), speaking on behalf of the Latin American and Caribbean Group, stated that the Group supported the proposals contained in document TLT/DC/41 Rev. Although the proposals had not been regarded as the best solution by all the members of the Group, they had been found to contain a solution which the Conference could accept. He recalled the saying that the best agreement was the one which was possible. The countries of the Group therefore wished to support the proposals under consideration with a view to achieving an agreement, and hoped the proposals could be approved by the Committee in the same spirit and without unnecessary debate.

896. The CHAIRMAN endorsed the statement of the Delegation of Paraguay that the best agreement was the one that could be achieved.

897. Mr. YAMBAO (Philippines) stated that consultations within the Asian Group had shown that this Group had no problems with the proposals by the Delegations members of the Steering Committee contained in document

TLT/DC/41 Rev. He expressed congratulations to the President of the Diplomatic Conference for his initiative and the leadership he had demonstrated in finding a solution.

898. Mr. ABOULMAGD (Egypt) expressed concern over the imperfection of the proposals by the Delegations members of the Steering Committee and recalled that his Delegation repeatedly had voiced its preference for the maintenance of the Assembly. He further stated the concern of his Delegation over the lack of clarity of the reference to the Diplomatic Conference and its role, as contained in the proposals by the Delegations members of the Steering Committee. Nevertheless, he expressed his Delegation's support for the proposals, and expressed gratitude to those who had worked in order to achieve the compromise which was before the Committee.

899. The CHAIRMAN concluded that the proposals by Delegations members of the Steering Committee contained in document TLT/DC/41 Rev. were approved. He expressed his appreciation to all parties involved in finding that solution and, in particular, to the President of the Diplomatic Conference, Ambassador Vargas Campos.

Draft Recommendation

900. The CHAIRMAN invited the Delegation of Germany to introduce its proposal contained in document TLT/DC/39.

901. Mr. SCHAFERS (Germany) declared that, in the light of the adoption of the proposals contained in document TLT/DC/41 Rev., his Delegation considered document TLT/DC/40 to be superseded. With regard to document TLT/DC/39, he referred to the introductory remarks which had been given earlier by his Delegation. He explained that the intention of the proposal was that funds be provided in order to give assistance only to developing countries in implementing the proposed Treaty, and that no wider scope of assistance was envisaged by the draft recommendation. This proposal was made in order to echo the specific concerns which had been raised by delegations from developing countries in the discussions during the Diplomatic Conference.

902. Mr. KIRK (United States of America) expressed his Delegation's support for the concept of the proposal of the Delegation of Germany to offer assistance to developing countries for the implementation of the proposed Treaty. His Delegation felt that it was important that developing countries could address the problems which they faced in implementing the proposed Treaty. In accordance with instructions which he had received from his capital, however, he stated that the assistance envisaged should be achieved on the basis of existing funds without a program growth within the Organization.

903. Mr. PRETNAR (Slovenia) expressed the support of his Delegation for the proposals by the Delegation of Germany. He suggested that the proposed assistance should not be limited to the implementation of the proposed Treaty but extend to all matters of trademark law. In that respect, he recalled the contents of an article he had written four years ago, in which the strengthening of the trademark systems of developing countries was identified as the most important tool for technology transfer in those countries. He

also drew the attention of the Committee to circular letter C. N 1544 of the Director General of WIPO calling for proposals to be included in the draft budget for the next biennium, and called on other delegations to make suggestions taking up the point his Delegation was raising.

904.1 The CHAIRMAN said that he was confident that the assistance provided to developing countries by WIPO was not limited to the implementation of the proposed Treaty. He was reluctant to open up the wording of the proposed recommendation and said that it needed to be related to the present Conference. He concluded that the text of the proposal contained in document TLT/DC/39 was approved.

904.2 The Chairman adjourned the meeting.

Fifteenth Meeting
Wednesday, October 26, 1994
Afternoon

905. The CHAIRMAN opened the meeting for consideration of the texts of the Draft Treaty contained in document TLT/DC/43, the Draft Regulations contained in document TLT/DC/44, the Draft Recommendation contained in document TLT/DC/45 and the Draft Agreed Statements contained in document TLT/DC/46. He invited the Chairman of the Drafting Committee to present the outcome of the Drafting Committee's work.

906. Mr. KIRK (United States of America), speaking in his capacity as Chairman of the Drafting Committee, stated that there had been a great sense of cooperation and goodwill in the Drafting Committee. He highlighted several areas in which there were differences between the present drafts and the basic proposal contained in documents TLT/DC/3 and TLT/DC/4. In Article 3(1)(a)(xvi) the words "or other self-identification of" had been deleted because the Drafting Committee considered the words to be unnecessary in view of the definition of signatures contained in Article 8. In Article 3(2)(ii) and elsewhere in the Treaty and in the Regulations, the phrase "its Office" has been replaced by the words "the Office". In Article 3(3) the language had been amended by the Drafting Committee in order to make it crystal clear that, where the Office of a Contracting Party admitted more than one language, the applicant could not be required to file in more than one of those languages. In Article 12, a new paragraph (5) had been inserted which corresponded to the first sentence of the proposal made by the Delegation of the United States of America contained in document TLT/DC/11 for a new provision concerning mistakes made by an Office. The Drafting Committee had also amended the title of the paragraph and edited the suggestion of the United States of America. In Article 13(1)(a) a new item (viii) had been added which corresponded in substance to the proposal made by the Delegation of Japan contained in document TLT/DC/24, and item (ix) (formerly item (viii)) had been amended to take into

account the signature by persons other than the holder or his representative. In Article 13(1)(b) the Drafting Committee had added a sentence on the basis of a proposal made in the Main Committee by the Delegation of the United States of America and adopted by the Committee. In the new Article that was suggested initially by the Director General, entitled "Obligation to Comply with the Paris Convention" in document TLT/DC/12 (Article 16 [new]), the final word in the English version had been changed from "trademarks" to "marks," and this new Article had been placed in the Treaty as Article 15. In Article 19(1)(ii) the Drafting Committee took account of a specific problem of the European Communities, namely that the total of the territories of the member States did not correspond to the territories in which the constituting Treaty of the European Communities applied. In Rule 3(6), the Drafting Committee had amended the beginning of the second sentence to clarify that it was the applicant or holder who had the right to extensions of time to furnish evidence of actual use of the mark. Rule 6(3) had been reworded on the basis of a proposal made by the Delegation of the United States of America and the comments which were made following that proposal regarding what the effect of failure to supply a date of signature would be where a Contracting Party required such a date. He noted that a number of other editorial changes had been made to conform the various texts in the six languages to each other.

Draft Treaty

907. The CHAIRMAN then turned to the text of the Draft Treaty submitted by the Drafting Committee to the Main Committee as contained in document TLT/DC/43. He opened the discussion on Article 1 and noted that there were no requests to take the floor.

908. Article 1 was adopted as proposed by the Drafting Committee.

909. The CHAIRMAN opened the discussion on Article 2 and noted that there were no requests to take the floor.

910. Article 2 was adopted as proposed by the Drafting Committee.

911. The CHAIRMAN opened the discussion on Article 3 and noted that there were no requests to take the floor.

912. Article 3 was adopted as proposed by the Drafting Committee.

913. The CHAIRMAN opened the discussion on Article 4 and noted that there were no requests to take the floor.

914. Article 4 was adopted as proposed by the Drafting Committee.

915. The CHAIRMAN opened the discussion on Article 5 and noted that there were no requests to take the floor.

916. Article 5 was adopted as proposed by the Drafting Committee.

917. The CHAIRMAN opened the discussion on Article 6 and noted that there were no requests to take the floor.

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918. Article 6 was adopted as proposed by the Drafting Committee.
919. The CHAIRMAN opened the discussion on Article 7 and noted that there were no requests to take the floor.
920. Article 7 was adopted as proposed by the Drafting Committee.
921. The CHAIRMAN opened the discussion on Article 8 and noted that there were no requests to take the floor.
922. Article 8 was adopted as proposed by the Drafting Committee.
923. The CHAIRMAN opened the discussion on Article 9.
924. Mr. BORGES (France) pointed out a typing error in paragraph (1), in the conjugation of the verb "mentionner," stating that the verb should be in the plural since it referred to both registration and publication.
925. Article 9 was adopted as proposed by the Drafting Committee subject to correction of the text as suggested in paragraph 924.
926. The CHAIRMAN opened the discussion on Article 10 and noted that there were no requests to take the floor.
927. Article 10 was adopted as proposed by the Drafting Committee.
928. The CHAIRMAN opened the discussion on Article 11 and noted that there were no requests to take the floor.
929. Article 11 was adopted as proposed by the Drafting Committee.
930. The CHAIRMAN opened the discussion on Article 12 and noted that there were no requests to take the floor.
931. Article 12 was adopted as proposed by the Drafting Committee.
932. The CHAIRMAN opened the discussion on Article 13 and noted that there were no requests to take the floor.
933. Article 13 was adopted as proposed by the Drafting Committee.
934. The CHAIRMAN opened the discussion on Article 14 and noted that there were no requests to take the floor.
935. Article 14 was adopted as proposed by the Drafting Committee.
936. The CHAIRMAN opened the discussion on Article 15 and noted that there were no requests to take the floor.
937. Article 15 was adopted as proposed by the Drafting Committee.
938. The CHAIRMAN opened the discussion on Article 16 and noted that there were no requests to take the floor.
939. Article 16 was adopted as proposed by the Drafting Committee.

940. The CHAIRMAN opened the discussion on Article 17 and noted that there were no requests to take the floor.

941. Article 17 was adopted as proposed by the Drafting Committee.

942. The CHAIRMAN opened the discussion on Article 18 and noted that there were no requests to take the floor.

943. Article 18 was adopted as proposed by the Drafting Committee.

944. The CHAIRMAN opened the discussion on Article 19 and noted that there were no requests to take the floor.

945. Article 19 was adopted as proposed by the Drafting Committee.

946. The CHAIRMAN opened the discussion on Article 20 and noted that there were no requests to take the floor.

947. Article 20 was adopted as proposed by the Drafting Committee.

948. The CHAIRMAN opened the discussion on Article 21 and noted that there were no requests to take the floor.

949. Article 21 was adopted as proposed by the Drafting Committee.

950. The CHAIRMAN opened the discussion on Article 22.

951. Mr. BOGSCH (Director General of WIPO) recalled that the basic proposal that had been presented to the Conference had linked the proposed Treaty to the Paris Convention, but had been changed by the Main Committee in order to allow only those States which were members of WIPO to become party to the Treaty. He noted that four countries, namely the Islamic Republic of Iran, the Dominican Republic, Nigeria and Syria would not be able to become members of the Treaty because these countries were not yet party to the WIPO Convention. However, the Delegations of those countries had come to the Diplomatic Conference with the expectation that their countries would be eligible to become Contracting Parties. In order to allow those four countries to become party to the Treaty, he suggested the insertion of a new paragraph (9) in Article 22 with the following wording: "Until December 31, 1999, any State which, on the date of the adoption of this Treaty, is a member of the Paris Convention for the Protection of Industrial Property without being a member of the Organization may, notwithstanding Article 19(1)(i), become party to this Treaty if marks may be registered with its own Office."

952. The CHAIRMAN noted that the suggestion by the Director General acknowledged the legitimate expectations of the four countries named, and observed that the suggestion would not apply to any additional countries. He invited delegations to comment on the oral suggestion by the Director General, and he noted that no delegation was opposed to revision of the Article in the way suggested by the Director General.

953. Article 22 was adopted as proposed by the Drafting Committee with the addition of a new paragraph (9) as suggested by the Director General in paragraph 951.

954. Mr. REZA ZAVAREIE (Islamic Republic of Iran) expressed his Delegation's appreciation for the Committee's approval of the suggestion by the Director General.

955. The CHAIRMAN opened the discussion on Article 23 and noted that there were no requests to take the floor.

956. Article 23 was adopted as proposed by the Drafting Committee.

957. The CHAIRMAN opened the discussion on Article 24 and noted that there were no requests to take the floor.

958. Article 24 was adopted as proposed by the Drafting Committee.

959. The CHAIRMAN opened the discussion on Article 25 and noted that there were no requests to take the floor.

960. Article 25 was adopted as proposed by the Drafting Committee.

961. Mr. STRENC (Romania) recalled the earlier suggestion by his Delegation in respect of the phrase "goods and/or services," and noted that there was a difference between the English and French texts, in that the English version utilized the term "and/or" while the French text utilized only "ou." He suggested that the French text also utilize the term "et/ou" throughout the Treaty and the Regulations.

962. Mr. CURCHOD (WIPO) explained that the question had been discussed at length by the Drafting Committee and that it had been pointed out, on the basis of earlier WIPO treaties, that in French the conjunction "ou" could indicate either a true alternative or an equivalent and in such case signified "et." He therefore added that it had not been felt necessary by the delegations of the French-speaking countries in the Drafting Committee to amend the wording of the draft Treaty.

963. The CHAIRMAN noted that the text had been approved by the Drafting Committee after a long discussion on this issue, and suggested that the point should not be taken up again.

964. Mr. STRENC (Romania) noted that, while the French text, to the regret of his Delegation, would be missing something, his Delegation could agree to the proposal by the Drafting Committee.

965. The CHAIRMAN confirmed that note would be taken of the comments made by the Delegation of Romania.

Draft Regulations

966. The CHAIRMAN then turned to the Draft Regulations contained in document TLT/DC/44. He opened the discussion on Rule 1 and noted that there were no requests to take the floor.

967. Rule 1 was adopted as proposed by the Drafting Committee.

968. The CHAIRMAN opened the discussion on Rule 2 and noted that there were no requests to take the floor.

969. Rule 2 was adopted as proposed by the Drafting Committee.

970. The CHAIRMAN opened the discussion on Rule 3 and noted that there were no requests to take the floor.

971. Rule 3 was adopted as proposed by the Drafting Committee.

972. The CHAIRMAN opened the discussion on Rule 4 and noted that there were no requests to take the floor.

973. Rule 4 was adopted as proposed by the Drafting Committee.

974. The CHAIRMAN opened the discussion on Rule 5 and noted that there were no requests to take the floor.

975. Rule 5 was adopted as proposed by the Drafting Committee.

976. The CHAIRMAN opened the discussion on Rule 6 and noted that there were no requests to take the floor.

977. Rule 6 was adopted as proposed by the Drafting Committee.

978. The CHAIRMAN opened the discussion on Rule 7 and noted that there were no requests to take the floor.

979. Rule 7 was adopted as proposed by the Drafting Committee.

980. The CHAIRMAN opened the discussion on Rule 8 and noted that there were no requests to take the floor.

981. Rule 8 was adopted as proposed by the Drafting Committee.

Model International Forms

982. The CHAIRMAN then turned to the text of the Model International Forms as contained in document TLT/DC/44, and opened the discussion on Model International Form No. 1. He noted that there were no requests to take the floor.

983. Model International Form No. 1 was adopted as proposed by the Drafting Committee.

984. The CHAIRMAN opened the discussion on Model International Form No.2 and noted that there were no requests to take the floor.

985. Model International Form No. 2 was adopted as proposed by the Drafting Committee.

986. The CHAIRMAN opened the discussion on Model International Form No.3 and noted that there were no requests to take the floor.

987. Model International Form No. 3 was adopted as proposed by the Drafting Committee.

988. The CHAIRMAN opened the discussion on Model International Form No.4 and noted that there were no requests to take the floor.

989. Model International Form No. 4 was adopted as proposed by the Drafting Committee.

990. The CHAIRMAN opened the discussion on Model International Form No.5 and noted that there were no requests to take the floor.

991. Model International Form No. 5 was adopted as proposed by the Drafting Committee.

992. The CHAIRMAN opened the discussion on Model International Form No.6 and noted that there were no requests to take the floor.

993. Model International Form No. 6 was adopted as proposed by the Drafting Committee.

994. The CHAIRMAN opened the discussion on Model International Form No.7 and noted that there were no requests to take the floor.

995. Model International Form No. 7 was adopted as proposed by the Drafting Committee.

996. The CHAIRMAN opened the discussion on Model International Form No.8 and noted that there were no requests to take the floor.

997. Model International Form No. 8 was adopted as proposed by the Drafting Committee.

998. The CHAIRMAN concluded that the Main Committee had adopted the text of the draft Treaty contained in document TLT/DC/43, subject to the modifications adopted in paragraphs 924 and 951, and the text of the draft Regulations and the Model International Forms contained in document TLT/DC/44. He then concluded that it was the proposal of the Main Committee that the Plenary of the Diplomatic Conference adopt the texts.

Draft Agreed Statements

999. The CHAIRMAN then turned to the text of the Draft Agreed Statements submitted by the Drafting Committee to the Main Committee, as contained in document TLT/DC/46. He opened the discussion on Draft Agreed Statement 1 and noted that there were no requests to take the floor.

1000. Draft Agreed Statement 1 was adopted as proposed by the Drafting Committee.

1001. The CHAIRMAN opened the discussion on Draft Agreed Statement 2 and noted that there were no requests to take the floor.

1002. Draft Agreed Statement 2 was adopted as proposed by the Drafting Committee.

1003. The CHAIRMAN opened the discussion on Draft Agreed Statement 3 and noted that there were no requests to take the floor.

1004. Draft Agreed Statement 3 was adopted as proposed by the Drafting Committee.

1005. The CHAIRMAN opened the discussion on Draft Agreed Statement 4 and noted that there were no requests to take the floor.

1006. Draft Agreed Statement 4 was adopted as proposed by the Drafting Committee.

1007. Mr. ROMERO (Chile) noted that the Agreed Statements submitted by the Drafting Committee did not include the statement, discussed and agreed on by the Main Committee, relating to the understanding that fiscal obligations provided under the general domestic legislation of a Contracting Party should be regarded as separate from the Trademark Law Treaty, and that the provisions of the Treaty would not be regarded as affecting any fiscal obligations under domestic legislation. He recalled that the Main Committee had agreed with that interpretation, but did not see it reflected in any of the Agreed Statements which were before the Committee.

1008. Mr. KIRK (United States of America), speaking in his capacity as Chairman of the Drafting Committee, noted that the Drafting Committee had considered a statement which reflected the point referred to by the Delegation of Chile. He pointed out however, that the Delegation of Spain, which had initially raised this question in the Main Committee, had indicated in the Drafting Committee that the statement was not needed.

1009. Mr. ROMERO (Chile) recalled that his Delegation had supported the Delegation of Spain in the Main Committee in connection with the statement and that the statement had been accepted by the Main Committee. He asked whether the draft Agreed Statements could be amended to reflect that understanding.

1010. Mr. CURCHOD (WIPO) explained that when the matter had been discussed in the Drafting Committee, various delegations had raised the matter of the interpretation to be given to Article 11. It then transpired that the a contrario interpretations that could arise were liable to raise more problems than they resolved. Mr. Curchod added that the Drafting Committee had therefore decided, in view of the fact that fiscal matters would be referred to in the minutes of the Conference, that it was not necessary to make them the subject of an agreed statement.

1011. Mr. GÓMEZ MONTERO (Spain) said that his Delegation could endorse what had been explained by the Deputy Director General regarding the reasons that the proposed Agreed Statement be deleted. He noted that Draft Agreed Statement 1 as contained in document TLT/DC/46, in conjunction with the statements which would appear in the records, satisfied the Delegation of Spain in connection with the question of domestic fiscal requirements.

1012. Mr. ROMERO (Chile) pointed out that the Rules of Procedure provided that the Drafting Committee could not, in performing its tasks, alter the substance of any text agreed upon by the Main Committee. In this case, the Drafting Committee had omitted an Agreed Statement which the Main Committee had decided should be included. He noted that the Agreed Statement in question related to an issue which was highly sensitive for his Delegation.

1013. The CHAIRMAN pointed out that the Drafting Committee had not been able to find a text which would solve this point in an acceptable way.

1014. Mr. KIRK (United States of America), speaking in his capacity as Chairman of the Drafting Committee, recalled that the second part of the text of the statement considered by the Drafting Committee stated, "whereas non-compliance with any substantive requirement of the said law concerning validity of the change in ownership may be, subject to Article 14, a ground for refusing the recordal of the change in ownership." He observed that the Drafting Committee could not agree to include this text because of its potential breadth of interpretation. The Drafting Committee had therefore decided to rely solely on the Records of the Conference.

1015. The CHAIRMAN recalled he had understood the problem in the Drafting Committee to be the difficulty in distinguishing between formal and substantial requirements. He suggested to try to draft a shorter text which only referred to fiscal requirements to meet the concern of the Delegation of Chile.

1016. Mr. VARGAS CAMPOS (Mexico) expressed his Delegation's position that the wording of Agreed Statement 1 in document TLT/DC/46, which expressly gave Contracting Parties freedom to establish the structure of the fees and other payments concerning marks, was broad enough to cover the concerns expressed by the Delegation of Chile. He also noted that Agreed Statement 1 expressly referred to the discussions which were reflected in the Records of the Conference in support of the desired interpretation.

1017. The CHAIRMAN pointed out that the concern of the Delegation of Chile with respect to cancellation of a recordal of change in ownership because of failure to comply with fiscal requirements might not be covered by Draft Agreed Statement 1.

1018. Mr. ROMERO (Chile) said that his Delegation had not participated in the Drafting Committee and, therefore, could not ascertain whether the discussions which took place in that Committee and the consequential deletion of the proposed draft Agreed Statement were consistent with his Delegation's interests. Although Agreed Statement 1 was broadly worded, it did not seem to cover the point made in the proposed additional Agreed Statement, which was particularly sensitive to his Delegation.

1019. The CHAIRMAN noted that the request raised by the Delegation of Chile was legitimate, since this point had been agreed upon by the Main Committee.

1020. Mr. CURCHOD (WIPO) suggested that the wording of the statement be as follows: "When adopting Article 11(4), the Diplomatic Conference understood that non-compliance with any fiscal requirement of the law of a Contracting Party could not be grounds for refusing recordal of a change, but could be grounds for cancelling such recordal."

1021. Mr. ALVAREZ ALVAREZ (Spain) said that the suggested text of an Agreed Statement that had been read out by the Deputy Director General would be unacceptable for his Delegation. Its inclusion would prevent his Delegation from signing the Treaty.

1022. Mr. KIRK (United States of America), speaking in his capacity as Chairman of the Drafting Committee, noted that the text suggested by the Deputy Director General was very close to the first half of the text considered by the Drafting Committee. On behalf of his own Delegation, he expressed willingness to accept the suggested wording.

1023. Mr. VARGAS CAMPOS (Mexico) suggested that a possible solution might be for the Delegation of Chile to explain its interpretation of the question regarding domestic fiscal requirements and its belief that such an interpretation would be covered by Draft Agreed Statement 1; that interpretation could then be reflected in the Records of the Conference.

1024. Mr. ROMERO (Chile) proposed that the Committee take a short recess to allow his Delegation to discuss with the Delegation of Spain and the Chairman of the Drafting Committee possible language which might reflect the Main Committee's agreement on this matter.

1025. The CHAIRMAN, before suspending the meeting, opened the discussion on Draft Agreed Statement 5 and noted that there were no requests to take the floor.

1026. Draft Agreed Statement 5 was adopted as proposed by the Drafting Committee.

Draft Recommendation

1027. The CHAIRMAN then opened discussion on the text of the Draft Recommendation submitted by the Drafting Committee to the Main Committee as contained in document TLT/DC/45, and noted that there were no requests to take the floor.

1028. The text of the Draft Recommendation contained in document TLT/DC/45 was adopted as proposed by the Drafting Committee.

1029. The CHAIRMAN suspended the meeting to allow for informal discussions concerning the request by the Delegation of Chile.

[Suspension]

1030. The CHAIRMAN reopened the meeting and invited the Chairman of the Drafting Committee to present the text of a Draft Agreed Statement as requested by the Delegation of Chile.

1031. Mr. KIRK (United States of America), speaking in his capacity as Chairman of the Drafting Committee, suggested the following wording for a Draft Agreed Statement: "When adopting Article 11(4), the Diplomatic Conference understood that non-compliance with any fiscal requirement of the

law of a Contracting Party may be a ground for cancelling a recordal." He noted that this text had been drafted in cooperation with the Delegation of Spain and the Delegation of Chile, which had both agreed to the text.

1032. Mr. ROMERO (Chile) said that the text of the Draft Agreed Statement as suggested by the Chairman of the Drafting Committee was acceptable to his Delegation. He thanked the Spanish Delegation, the Chairman of the Main Committee and the Chairman of the Drafting Committee for their spirit of understanding and cooperation in finding this solution.

1033. Mr. ALVAREZ ALVAREZ (Spain) expressed his Delegation's willingness to accept the text as suggested by the Chairman of the Drafting Committee. He also wished to thank the Delegation of Chile and the Chairmen of the Main Committee and of the Drafting Committee for their contributions to this agreed solution.

1034. The CHAIRMAN invited other delegations to comment on the suggestion made by the Chairman of the Drafting Committee, and noted that there were no requests to take the floor.

1035. The Draft Agreed Statement suggested by the Chairman of the Drafting Committee in paragraph 1031 was adopted.

1036. The CHAIRMAN concluded that the Main Committee had adopted the text of the Draft Agreed Statements contained in document TLT/DC/46, subject to the addition of an Agreed Statement (see the preceding paragraph).

1037. Mr. CURCHOD (WIPO) said that the Secretariat's attention had been drawn to paragraph (2) of Article 18 of the draft Treaty (Document TLT/DC/43) which, in its French version, did not contain a phrase that had been expressly approved the preceding day by the Main Committee. Consequently, paragraph (2) of Article 18 had to read as follows: "(2) [Protocoles] Aux fins d'une plus grande harmonisation du droit des marques, des protocoles peuvent être adoptés par une conférence diplomatique en tant que ces protocoles ne contreviendraient pas aux dispositions du présent traité." Mr. Curchod added that the omission concerned only the French version of the draft Treaty and presented the apologies of the Secretariat.

1038. The CHAIRMAN stated that this error would be corrected in the French text of document TLT/DC/43.

1039. Mr. CHIRAMBO (Malawi) pointed out that, in Article 18(2) of the English version of document TLT/DC/43, the word "provision" should read "provisions."

1040.1 The CHAIRMAN stated that this error would be corrected in the English text of document TLT/DC/43.

1040.2 The Chairman concluded that the texts approved by the Main Committee would be presented to the Plenary with the recommendation that the texts be adopted by the Diplomatic Conference.

1040.3 He then noted that the work of the Main Committee had finished. He thanked all delegations for their understanding and their readiness to compromise, which had made it possible to achieve agreement on the draft Treaty and the Regulations, as well as the other texts. He noted that the

adoption of the Treaty and the Regulations would be of great benefit to applicants and to holders of trademarks as well as to national offices. He also thanked the governmental and non-governmental organizations for their cooperation and expressed his appreciation of the work of the Director General and his staff. He also conveyed his gratitude to the interpreters and other behind the scene staff.

1041. Mr. KIRK (United States of America) expressed the gratitude of his Delegation for the excellent way the Chairman had run the Main Committee which could not have achieved as much as it had without the Chairman's guidance.

1042. The CHAIRMAN closed the final meeting of the Main Committee.

[End]

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840; 844; 852; 862;
1007; 1009; 1012; 1018;
1024; 1032

RUDLOFF-SCHÄFFER C. (Germany)

Delegate: 529

Interventions in the Main Committee: 30

SACOFF R. (United States of America)

Private Sector Adviser: 545

SAHL C. (Luxembourg)

Delegate: 534

SAHLOOL A.A. (Sudan)

Head of the Delegation: 541

Interventions in the Plenary: 82

SALMAN M. (Iraq)

Head of the Delegation: 530

SALMON P. (United States of America)

Adviser: 545

SANNIKOV A.O. (Belarus)

Delegate: 522

SCHÄFERS A. (Germany)

Deputy Head of the Delegation: 528

Interventions in the Plenary: 99

Interventions in the Main Committee: 202; 228; 306; 366; 381;
440; 477; 502; 514; 532;
608; 676; 768; 797; 800;
835; 843; 845; 860; 876;
885; 901

SCHLESSER F. (Luxembourg)

Delegate: 534

SCHNEIDER M. (Switzerland)

Delegate: 542

SCHWAB B. (European Communities (EC))

Alternate Head of the Delegation: 547

Interventions in the Main Committee: 130; 223; 512; 537; 864;
883

SENADHIRA G.T. (Sri Lanka)

Delegate: 541

Interventions in the Main Committee: 783

SERRÃO R. (Portugal)

Delegate: 537

Interventions in the Main Committee: 25; 374

SHIN C.-J. (Republic of Korea)

Deputy Head of the Delegation: 538

SHONGWE B.S. (Swaziland)

Delegate: 542

SIMELANE E.T. (Swaziland)

Delegate: 542

Interventions in the Plenary: 54

SIMELANE M.M. (Swaziland)

Head of Delegation: 542

SIMMONS T.M.J. (United Kingdom)

Adviser: 544

SIMON J. (Switzerland)

Alternate Head of the Delegation: 542

Interventions in the Plenary: 104

Interventions in the Main Committee: 47; 308; 480; 640; 778

SIMON E.L. (Benelux Trademark Office (BBM))

Observer: 549

SLIPCHENKO O. (Ukraine)

Head of the Delegation: 544

SMITH J. (Norway)

Head of the Delegation: 536

Interventions in the Plenary: 31

SPENCER T. (Trinidad and Tobago)

Head of the Delegation: 543

Interventions in the Plenary: 50; 125

SPENCER A.Y. (Institute of Trade Mark Agents (ITMA))

Observer: 550

STASHKOV E.M. (Republic of Moldova)

Head of the Delegation: 548

STILIN V. (Croatia)

Delegate: 525

STRENC A.C. (Romania)

Head of the Delegation: 538

Interventions in the Plenary: 29; 108

Interventions in the Main Committee: 43; 116; 268; 503; 552;
554; 737; 807; 961; 964

SUGDEN A. (United Kingdom)

Head of the Delegation: 544

Interventions in the Plenary: 37; 98

As Chairman of the Main Committee: 2; 4; 8; 10; 13; 16;
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SUGDEN A. (United Kingdom) (continued)

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1001; 1003; 1005; 1013;
1015; 1017; 1019; 1025;
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SUGIMOTO Y. (Japan Trademark Association (JTA))

Observer: 551

Interventions in the Main Committee: 530

SUZUKI H. (Japan Intellectual Property Association (JIPA))

Observer: 551

Interventions in the Plenary: 114

SZARKA E. (Hungary)

Head of the Delegation: 529

Interventions in the Plenary: 100

Interventions in the Main Committee: 131

SZEMZO G. (Hungary)

Delegate: 529

Interventions in the Plenary: 49

Interventions in the Main Committee: 230; 351; 771

TAN V.H. (Viet Nam)

Delegate: 546

TANAKA T. (Japan)

Alternate Delegate: 532

TANGEVALD-JENSEN T. (Norway)

Delegate: 536

Interventions in the Main Committee: 65; 825

TASHIRO S. (Japan)

Alternate Delegate: 532

THIAM P.A. (African Intellectual Property Organization (OAPI))

Head of the Delegation: 547

Interventions in the Plenary: 26; 126

Interventions in the Main Committee: 121; 465; 696

THUR T. (Croatia)

Delegate: 525

TIAN L. (China)

Adviser: 525

TIRONI E. (Chile)

Head of the Delegation: 529

TIRUMURTI T.S. (India)

Delegate: 548

TODD M. (United Kingdom)

Delegate: 548

Interventions in the Main Committee: 55; 95; 229; 307; 479;
617; 632

TOSONOTTI M.C. (Argentina)

Delegate: 521

Interventions in the Main Committee: 41; 290; 361; 517; 675;
851

TOURÉ A. (Côte d'Ivoire)

Head of the Delegation: 525

Interventions in the Plenary: 60; 129

Interventions in the Main Committee: 373; 466; 694; 719

TROICUK A. (Canada)

Alternate Head of the Delegation: 524

Interventions in the Main Committee: 140; 225; 312; 741; 760;
763; 767; 872

TROISE T. (Italy)

Head of the Delegation: 531

Interventions in the Plenary: 55

Interventions in the Main Committee: 35

TSOG B. (Mongolia)

Delegate: 535

URRUELA PRADO F. (Guatemala)

Head of the Delegation: 548

VALENTINO M. (Malta)

Delegate: 534

VALTCHANOVA S. (Bulgaria)

Delegate: 523

van der EIJK W. (Netherlands)

Deputy Head of the Delegation: 536

Interventions in the Main Committee: 45; 311; 416; 809

VAN NOORDWYK C.J. (South Africa)

Delegate: 540

van KAAM M. (Union of Industrial and Employers' Confederations of Europe
(UNICE))

Observer: 551

Interventions in the Plenary: 71

VARGAS CAMPOS M. (Mexico)

Alternate Head of the Delegation: 535

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118; 131; 135; 136
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1016; 1023

VIRTANEN M.-L. (Finland)

Delegate: 528

von MUHLENDAHL A. (European Communities (EC))

Senior Adviser: 547

Interventions in the Main Committee: 144; 236; 238; 242; 476

WALKER D. (New Zealand)

Delegate: 536

WALLBERG K. (Denmark)

Delegate: 526

Interventions in the Plenary: 39

Interventions in the Main Committee: 51

WALTERS C. (United States of America)

Advisers: 545

Interventions in the Main Committee: 112; 133; 245; 296; 320;
323; 327; 344; 363; 379;
400; 411; 413; 437; 442;
467; 488; 500; 634

WAN J. (China)

Delegate: 524

WANG T. (China)

Delegate: 524

WARR G. (Malta)

Delegate: 534

Interventions in the Main Committee: 820

WATANABE H. (Japan)

Alternate Delegate: 532

Interventions in the Main Committee: 380; 432; 434; 539; 545;
547

WATERS A.C. (United Kingdom)

Advisers: 544

WEGE-NZOMWITA V. (Organization of African Unity (OAU))

Observer: 549

Interventions in the Plenary: 69

WHELTON C.A. (Canada)

Advisor: 524

Interventions in the Main Committee: 181; 507; 510

WILCZYNSKI A. (United States of America)

Adviser: 545

WILLEMS L. (Belgium)

Head of the Delegation: 522

WILLIAMS N.C.R. (United Kingdom)

Delegate: 544

WINKLER M. (Germany)

Delegate: 529

WINTER F. (Federation of German Industry (BDI))

Observer: 550

YAHAGI T. (Japan)

Alternate Delegate: 532

YAMAGUCHI A. (Japan)

Adviser: 532

YAMBAO J.J. (Philippines)

Delegate: 537

Interventions in the Plenary: 33

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896

YASSIN S.M. (Malaysia)

Head of the Delegation: 534

YOUSSEF A. (Egypt)

Delegate: 527

ZAHARAN M. (Egypt)

Head of the Delegation: 527

Interventions in the Plenary: 56; 89

ZELENY P. (Belarus)

Head of the Delegation: 522

Interventions in the Plenary: 130

ŽUŽUL M. (Croatia)

Head of the Delegation: 525

