



European Communities Trade Mark Association

23rd session of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications on 30 June, 1-2 July 2010

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The twenty-third session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) took place on 30 June, 1 and 2 July at WIPO.

ECTA congratulated the new Chairman and Vice-Chairs of the SCT, as well as the Secretariat of the SCT in connection with the document SCT/23/5 of 12 February 2010 "[Possible Areas of Convergence in Industrial Design Law and Practice](#)"

Regarding the abovementioned topic, *possible areas of convergence in Industrial Design Law and Practice*, two documents were distributed beforehand, from the United Kingdom delegation "[Non-paper from the United Kingdom on future work on harmonisation of design laws](#)" and from the [Association MARQUES](#) .

The possible areas of convergence in Industrial Design Law and Practice indicated in the document SCT/23/5 were reviewed, especially in relation to the form of reproduction, number of copies of reproduction, views, other contents of the application generally required, formalities where there is a requirement to file the application in the name of the creator, division of applicants and communications. All the participating delegations (the "most active" being Australia, Germany, Brazil, the Russian Federation, Japan, the UK, the USA, Spain and China) agreed with the contents of the said document from the perspective that there are in fact areas where it is worth carrying out work in terms of convergence as a first step towards possible harmonisation in Industrial Design Law and Practice. Beside some of the delegations such as Brazil, the Russian Federation, the USA and China, which pointed out the detailed areas identified in the abovementioned working document where convergence would be more difficult to achieve, most of the delegations approved the said areas of convergence.

The document SCT/23/5 will consequently continue to be further discussed and developed.

A discussion then followed on the common trends identified in the document SCT/23/5, specifically with regard to the filing-date requirements, deferment of publication and secret design, grace period for filing in the event of disclosure, structure of period of protection and relief measures.

As far as filing-date requirements are concerned, various issues were pointed out but there were no common trends in connection with the filing date requirements.

The US delegation, pointed out in that respect an important difference in the US system with regard to the identification of the applicant of a design. In fact, it is only necessary under the US system to identify the creator and not the applicant.

The delegation of the Russian Federation drew attention to the fact that its legal system required a title for the design together with the representation thereof, which might be different from other systems.

Regarding the grace period for filing in the event of disclosure, it was highlighted by the Australian delegation that it would be difficult to reach a consensus and the Chinese delegation suggested a harmonised period of six months.

As regards the structure of period of protection and relief measures, great difficulties in the identification of common trends were indicated by the delegations of the USA, China and Uruguay.

However, in general terms, the Secretariat of the SCT pointed out that in document SCT/23/5, the intention was not to exclude any country with differences in terms of common trends, especially since the document was drawn up on the basis of an ambitious and successful questionnaire within the scope of the SCT, which is summarised in the document [WIPO/STrad/INF/2 Ver. 1](#) of 20 October 2008.

Thus, there is an awareness of the differences of the legal systems of certain countries with respect to designs, but it was nevertheless possible to identify common trends in relation to most of the formalities (besides the filing date requirements). This was demonstrated by the statistics resulting from the responses to the questionnaire organised by the SCT.

A discussion then followed on the chapter “No common trend at present”, consisting simply of the matter of specimens, regarding which it was confirmed by some of the delegations that there was in fact no common trend.

In view of the conclusions set forth in document SCT/23/5, it was mentioned once again that document SCT/23/5, in relation to the possible areas of convergence in Industrial Design Law and Practice, should continue to be discussed and developed.

After this discussion on document SCT/23/5, the floor was handed to David Stone, MARQUES’ representative, who presented their paper on possible areas of convergence in Industrial Design Law and Practice.

The UK delegation also provided a brief contextualisation of the “Non-paper from the United Kingdom on future work on harmonisation of design laws”. The key idea resulting from this document is that endeavours must be made towards a future harmonisation of design laws by means of an international treaty, to be discussed at a diplomatic conference during the biennium 2012-2013.

ECTA expressed its agreement with the two abovementioned documents and stated that ECTA would produce in due course – for the next session of the SCT – a Position Paper on the matter at issue.

The non-paper of the UK met with the approval of nearly all the delegations present, with particular mention to the position of agreement on the part of the EU, conveyed through the Spanish delegation.

However, some of the delegations raised reservations to the holding of a diplomatic conference during the 2012-2013 biennium, for example the Japanese delegation which, although agreeing with the idea, considered that the proposed date might still be too early.

The US delegation emphasised the fact that additional work was required, on the basis of document SCT/23/5, and although it approved the idea of a diplomatic conference, it considered that it was premature to hold it during the 2012-2013 biennium. However, it supported the idea of immediately recommending to the General Assembly (GA) of WIPO that the budget funding for the diplomatic conference be discussed.

At this point, the Brazilian delegation went even further by stating that as well as considering that it was too early to talk of such a diplomatic conference (with a view to discussing an international treaty), it was also too early even to recommend to the GA of WIPO that the said discussion be held on the budget.

The Chinese delegation also supported this viewpoint.

Finally, on the basis of these positions, the future work of the SCT was analysed and the new Chairman requested that all the delegations consider the following two options:

1. Recommending to the GA of WIPO that the budget be discussed for the diplomatic conference to be held during the 2012-2013 biennium, provided that progress was made with regard to the discussion of the points that would still need to be debated and harmonised on the basis of document SCT/23/5. This option was expressly approved by the German, UK and EU delegations (the latter through the Spanish delegation).

OR

2. Postponing the decision on item 1 above until the next session of the SCT, including the discussion of the non-paper of the United Kingdom as an item on the agenda. This option was approved by the Russian, Brazilian and Chinese delegations.

Adil El Maliki, the Moroccan Chairman of the SCT, announced that the second proposal would be more prudent, which resulted in a diplomatic act that went some way towards relieving the tension created by the antagonistic positions.

The fact is that no immediate impact was caused by the non-paper of the United Kingdom, namely with regard to the holding of a diplomatic conference during the 2012-2013 biennium for the purpose of discussing an international treaty on the harmonisation of design laws.

All working documents of the meeting can be found [HERE](#).

The next session of the Working Group will take place at WIPO in November 2010.

12 July 2010