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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, 32nd Session (Geneva, 24 - 26 November 2014) - Final EU/Member States' statements

Delegations will find attached, for information, the statements pronounced on behalf of the European Union and its Member States at the above mentioned WIPO meeting.

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

32nd Session

(WIPO, Geneva, 24 - 26 November 2014)

Opening statement

Chairman,

The European Union and its Member States express our full support for your efforts to take the work on the draft Design Law Formalities Treaty to take the next logical step and agree on a recommendation to convene a Diplomatic Conference. We would also wish to thank the WIPO Secretariat for its excellent preparatory work for this meeting.

Chairman,

The European Union and its Member States would like to emphasize once again the great advantages to be gained through the alignment and simplification of design registration formalities for all users, in particular for SMEs, the driving force for economic growth for developed and developing countries alike.

To the EU and its Member States it is clear that the texts are appropriate to establish a framework that is flexible and dynamic, able to produce design law capable of keeping up with future technological, socio-economic and cultural changes.

It is our firm belief that all provisions of the Draft Articles and Regulations are technically mature, representing a significant step towards approximating and simplifying industrial design formalities and procedures. We need to preserve our achievements, and the level of harmonization achieved. Therefore we do not see the need for the discussions on the Draft Articles and Regulations

We therefore suggest focusing our efforts on a decision on convening a diplomatic conference.

Thank you, Chairman.

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Industrial Design Law and Practice – draft articles (SCT/31/2 rev)

Industrial Design Law and Practice – draft regulations (SCT/31/3)

Chairman,

The EU and its Member States believe that the Draft Articles and Regulations are technically mature. We would like to capture the achievements and the level of harmonization so far. We therefore do not support further discussions on the text. Our focus should be on the decision on convening a diplomatic conference. We remain open to proposals that could help us to reach this objective.

Thank you, Chairman.

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**Revised proposal by the Delegation of Jamaica and related documents (SCT/32/2, SCT/29/5
Rev, SCT/31/5, SCT/30/4)**

Chairman,

Chairman, on behalf of the EU and its Member States we would like to thank the Delegation of Jamaica for the revised proposed joint recommendation of the treatment of country names, as outlined in document SCT/32/2.

We fully understand the interest and importance some states attach to the protection of country names, and their use in national branding initiatives. We also recognise that use of country names as trademarks in ways which are deceptive or misleading as to the country of origin, adversely affect consumers. In this regard our concern extends not just to deceptive or misleading use of country names, but to such uses of geographical names more broadly.

Chairman, before we embark on any joint recommendation in this area, it is necessary to look at the issue from all perspectives, not just from the point of view of states and consumers, but also from the current users of country names in trademarks, who may legitimately use a country name which has become well-known or even generic. By investigating and taking account of this we could prevent upsetting legitimately held business practices.

Chairman, this notwithstanding, we believe that awareness raising activities can be usefully undertaken so as to publicise the available mechanisms for the refusal or invalidation of trade marks containing country names.

The European Union and its Member States look forward to participating constructively in future discussions on this topic. Furthermore, we believe awareness raising initiatives to be laudable, and would support further action by this Committee towards providing assistance and guidance in this respect.

Thank you, Chairman.

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Proposals by the Delegation of the United States (SCT/30/7 and SCT/31/7)

Chairman,

On behalf of the EU and its Member States I would like to thank the Delegation of the United States for their preparation of the proposal outlined in document SCT/31/7, setting out a work plan for exploring the feasibility of a Geographical Indications filing system.

The Lisbon System for the International Registration of Appellations of Origin is currently under review. The Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications will convene in 2015. A key aim of the revision is to provide for a means for obtaining geographical indication protection internationally, through a single registration, thus making the Lisbon System more attractive to countries that are currently not party, such that the system might expand, and reach a wider membership. The Working Group on the Development of the Lisbon System has now agreed on the texts which should constitute the basic proposal for the Diplomatic Conference. In this Working Group, all WIPO members as well as international organisations and non-government organisations were able to participate and make their views known. The work of the Working Group has been open, inclusive and of a transparent nature.

Chairman,

Whilst the prevailing divergent approaches to the protection of GIs is acknowledged, we believe that the best way to accommodate this diversity of national systems is through the expansion of the relevant registration systems run by WIPO: namely the Lisbon and Madrid Systems. Clearly, moving ahead with the revision of the Lisbon system should be WIPO's first priority on GIs and in there so doing, may lead to improvements in relation to the diversity and flexibility allowed to Member States by the TRIPS Agreement.

Consequently, we do not feel that such a work programme would add value at the present time, and are not in a position to endorse it.

Thank you, Chairman.

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**Proposal by the Delegations of the Czech Republic, France, Germany, Hungary, Italy,
Republic of Moldova, Switzerland (SCT/31/8 Rev.)**

Chairman,

On behalf of the EU and its Member States, I would like to thank the delegations of the Czech Republic, Germany, Hungary, Italy, the Republic of Moldova and Switzerland for their excellent proposal for work on GIs in the Domain Name System.

We note that this proposal has already gained support from a number of other delegations. The EU and its Member States attach great importance to the protection of geographical indication, because of their high commercial value. We are especially interested in the proposal to conduct a study that shall investigate:

- whether the need of users for the protection of geographical indications in the DNS has changed
- whether the measures available today for holders of geographical indications against infringing domain names are effective enough and
- how the existing legal and procedural framework could be improved.

In conclusion, we think the proposal by the proponents should serve as the basis for our future work on this issue under this agenda item.

Thank you, Chairman.

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Proposals by the African Group on Disclosure Requirements

Chairman,

The EU and its Member States are not in a position to support the proposal by the African Group, for reasons relating to both the form and substance of this proposal.

With regard to form, we would like to go back in time, and highlight the conclusions of the May 2014 WIPO General Assembly. The GA conclusions encouraged delegations to hold informal consultations prior to the 54th series of meetings of the WIPO Assemblies to take place in September 2014 with a view to resolving pending issues". At the time, the African Group stated that the question of technical assistance had to be resolved in order to reach agreement on convening a DIPCON. No reference was made to the new issues now raised by the African group coordinator.

Chair,

Reading from both the SCT and GA records, it is clear that the pending issues referred exclusively to the question of the provision of technical assistance. The EU has demonstrated broad flexibility on this issue to address the concerns voiced by developing countries. We strongly believe that our flexibility has met their legitimate expectations in this regard.

Up until this point our discussions on the DLT have been governed by a well established working method aimed at identifying problematic issues that require further discussion and provisionally closing off parts of the text on which consensus had been reached. The maturity of the text was not challenged at our previous meetings, clearly demonstrating that our discussions, except in regard to technical assistance, were now exhausted. Yet out the blue, we now find ourselves contemplating a series of amendments which are unrelated to industrial design filing procedures. The timing of the new proposal is proof that our negotiations are no longer being conducted in good faith.

On substance, we believe that the proposal has absolutely nothing to do with design formalities. It is irrelevant to the objectives of the DLT and indeed design law in general, instead it aims at politicizing a process which had reached a successful outcome at the technical level. The Design Law Treaty is aimed at simplifying and harmonizing current design formalities and procedures that are used in practice and in so doing will provide great advantage to all, including to SMEs in developing countries. Furthermore, it would appear that the amendments are intended to establish an artificial link between our work on DLT and discussions taking place elsewhere. The motivation appears purely political.

Chair,

In our opening statement we already stated that all provisions of the DLT are technically mature, representing a significant step towards approximating and simplifying industrial design formalities and procedures. As we need to preserve our achievements and the level of harmonization achieved we do not see the need to discuss the substance of the draft articles or these new amendments.

Chairman,

We would therefore urge the AG to withdraw its proposal, reconsider its position and engage in constructive bilateral dialogue.

Thank you, Mr. Chairman.

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Proposals by the African Group on Disclosure Requirements

Second statement

Chair,

We take note regretfully of the African groups request for new additions to be made to the draft text.

Should the Chair deem these amendments to be compatible with the longstanding working methods of this Committee, we would ask that our position be clearly reflected in a footnote to the amendments tabled by the African Group coordinator.

Finally Chairman the EU and its MS will need time to evaluate the full implications of this proposed amendment to assess if we are still in a position to support the convening of a DIPCON under these changed circumstances, and furthermore what consequences this will have for the flexibility we have shown in the past in relation to technical assistance as the basic objectives of simplification and harmonisation will no longer be met.

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Summary by the Chair, Geographical Indications

Mr. Chairman,

The EU supports the statements just made by Italy, France and Czech Republic. The EU believes that SCT is not the appropriate forum to discuss the revision of the Lisbon system, and that any discussion on the topic will be held at the Diplomatic Conference.

Thank you, Mr. Chairman.

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Closing Statement

Chairman,

It will come as no surprise that the EU and its MS are extremely disappointed with the outcome of this Session. Not only have we not made progress, we have taken a step back. Discussions on the technical aspects of DLT, which everyone assumed to be complete, have now been blown open by the amendment tabled by the African Group.

We now need to reflect on the wider implications of this proposal and consider how this impacts on our ability to convene a Diplomatic Conference under these changed circumstances and with this new text

Furthermore, we need to reflect on what consequences this will have for the flexibility the EU and its Member States have shown in the past in relation to technical assistance as the basic objectives of simplification and harmonisation would no longer be met.

Chairman,

Some broader issues are at stake here. This Organisation has always attempted to strike a balance between the interests of all stakeholders and facilitate agreement on issues where a common interest binds all members. By introducing their amendment on Disclosure requirement in the framework of DLT, the African Group has broken with the unwritten covenant which has hitherto provided a framework for constructive dialogue in this Organisation.

Chairman

We turn to our African friends and urge them once again to reconsider their position in the light of this statement. We hope that good sense will prevail which would allow us to at least move back to where we stood at the beginning of the week in relation to the possibility of convening a Diplomatic Conference on DLT.
