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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	45th Session of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) (Geneva, 28-30 March 2022) - Final EU/Member States statements

Delegations will find at annex, for information, the EU/Member States statements as delivered at the above-mentioned WIPO meeting.

**45th Session of the WIPO Standing Committee on the Law of Trademarks,
Industrial Design and Geographical Indication (SCT)**

(Geneva, 28-30 March 2022 – hybrid format)

Agenda Item 1

Opening Statement

1. Thank you Madam Deputy Director-General for giving me the floor. This statement is made by France, in its capacity as Presidency of the Council of the European Union, on behalf of the European Union and its 27 Member States. The EU and its Member States support the statements delivered by Group B and CEBS.
2. The EU condemns, in the strongest possible terms, the Russian Federation's unprovoked and unjustified war of aggression against Ukraine, and demands that Russia immediately ceases its military actions, unconditionally withdraws all forces and military equipment from the entire territory of Ukraine, and fully respects Ukraine's territorial integrity, sovereignty and independence with its internationally recognised borders. The EU also condemns the involvement of Belarus in this aggression against Ukraine.
3. The EU and its Member States would also like to recall that the EU has adopted a consistent policy of non-recognition towards the illegal annexation of Crimea and Sevastopol by the Russian Federation. On 20 March 2014, the European Council declared that it did not recognise the illegal referendum in Crimea, and considered it to be in clear violation of the Ukrainian Constitution. The European Council also condemned the illegal annexation of Crimea and Sevastopol by the Russian Federation and committed not to recognise it. This position was reiterated by the EU Heads of State or Government on 27 May 2014 and subsequently on multiple other occasions, notably in Declarations on behalf of the EU by the High Representative for Foreign Affairs and Security Policy.

4. Therefore, the EU and its Member States would like to call on WIPO members to adopt a position consistent with the policy of non-recognition of the illegal annexation of Crimea and Sevastopol in respect of intellectual property rights in cases where the address of the rightholder in the temporarily occupied territories of Ukraine bears the indication ‘the Russian Federation’ as country of origin.
5. In the EU, the EUIPO ensures that all data regarding parties’ addresses in EUIPO’s registry reflect Ukraine’s internationally recognised borders. Trade marks or any other IP right dealt by EUIPO with the proprietor’s address in temporarily occupied territories of Ukraine with the indication ‘the Russian Federation’ as a country of origin are therefore modified *ex officio* with the indication ‘Ukraine’ as a country of origin.
6. The EU supports Ukraine’s legitimate interest that all data regarding parties’ addresses in the WIPO registries, notably in the Madrid registry, reflect Ukraine’s internationally recognised borders.

Thank you.

Agenda Item 5, 1st indent

Industrial Designs

Proposal by the Delegation of the United States of America Regarding the Agenda for the Forty-Fifth Session of the SCT

(Document SCT/45/4)

Chair,

1. The EU and its Member States note the importance of the proposal by the Delegation of the United States of America regarding the agenda of the current SCT session, as contained in document SCT/45/4. We recall that at the 2021 General Assembly the Delegation of the United States of America highlighted the appropriateness of draft DLT discussions continuing in the SCT to enable the SCT to come to a recommendation.
2. In the context that the General Assembly has been considering the progress of the DLT since at least 2015, we note that the 2021 General Assembly indicated it would revisit the issue of the convening of a diplomatic conference on the DLT at its next session.
3. We note that no solution has been found on the two remaining open issues – namely the proposal for a disclosure requirement to be included in Article 3 of the Treaty, and the specific nature of the instrument on technical assistance and capacity building in implementing the Treaty. As regards the first outstanding issue, with reference to the various proposals discussed at the 2017, 2018 and 2019 General Assemblies, the EU and its Member States recall our active engagement in efforts to agree on appropriate wording in the context of Article 3, having come a long way from our initial position.
4. It is a regrettable fact that the General Assembly has not been able to reach a positive decision to convene a diplomatic conference for the adoption of the DLT in recent years. Considering the benefits of harmonising and simplifying design registration procedures for users and WIPO Members across the spectrum of development, the continued delay in its adoption is unfortunate.

5. At the 2021 General Assembly, we appreciated the efforts of the GA Chair and Friends of the Chair, and the committed endeavours of the Facilitator, Ambassador Socorro Flores Liera of Mexico, in conducting informal consultations with Regional Coordinators on the DLT and we noted the circulation of a new proposal. However, we found that some questions raised would call for substantive exchanges with the originators of the proposal, which were not possible during the last GA session given its hybrid format.
6. At this juncture, we refer to recent developments in WIPO as to challenges relating to conducting normative negotiations in hybrid format. In our view, the 2022 General Assembly would be in a much better position to continue discussions on the DLT as compared to the General Assembly last year.
7. Chair, the EU and its Member States stand ready to discuss and explore constructive solutions on the two remaining open issues at the next General Assembly.

Thank you.

Agenda Item 5, 2nd indent

Industrial Designs

Updated Proposal by the Delegations of Canada, Israel, Japan, the Republic of Korea, the United Kingdom and the United States of America for a Joint Recommendation Concerning Industrial Design Protection for Designs for Graphical User Interfaces

(Document SCT/44/6 Rev.3)

Chair,

1. As to the topic of Graphical User Interface (GUI), icon and type face/type font designs the EU and its Member States share the common understanding that currently existing divergences should be directly addressed and further work on these issues can pave the way for a more harmonised approach.
2. As regards future work on this topic, we welcomed from the start the proposal submitted by the delegations of Japan and the United States of America in document SCT/42/6. We reiterate our endorsement of adopting this joint recommendation as a practical way forward. We remain supportive of the rationale to provide for at least a common base line for GUI protection.
3. At the last session, we welcomed the revised proposal and found that amendments had been made in the right direction. We supported that the proposal had revised the draft recommendations to emphasise the non-obligatory nature of the joint recommendation and to highlight in the endnotes the correlating questions and responses from WIPO SCT questionnaires relating to the particular subject matter. We also appreciated that the proponents had incorporated some recommendations on drafting language, and we gave our follow-up feedback in detail.

4. We would like to thank the delegations of Canada, Israel, Japan, the Republic of Korea, the United Kingdom and the United States of America for the updated proposal in document SCT/44/6 Rev.3. We welcome and appreciate that our textual suggestion for the wording of endnote 6 relating to Recommendation 2 has been taken on board. Endnote 6 now reads: 'For greater clarity, sufficiency of disclosure or visibility requirements regarding the characteristics of the design itself in the Party still would not be affected.' We therefore find that the text of Recommendation 2, providing that industrial design protection is independent of operational/temporal limitations, has now been sufficiently clarified by the endnote.
5. Against that backdrop, we are fully supportive of the text of the updated proposal and welcome Canada, the Republic of Korea and the United Kingdom as co-sponsors. We are of the opinion that the adoption of recommendations on GUI will further contribute to the modernisation of practices on designs. The EU and its Member States are delighted to join the co-sponsors of the updated proposal as well.
6. Chair, we look forward to working together with other delegations to finalise the recommendations in order to foster a more harmonised approach.

Thank you.

Agenda item 5, 3rd indent

Industrial Designs

**Prototype for a Database Collecting the Responses to the Questionnaire on the
Temporary Protection of Industrial Designs**

(Document SCT/45/2)

Chair,

1. The EU and its Member States would like to thank WIPO for developing the Database Prototype on Temporary Protection of Industrial Designs at Certain International Exhibitions under Article 11 of the Paris Convention. We extend our thanks to the Secretariat for preparing the Update on the Database Prototype as contained in document SCT/45/2, as well as for the presentation of the prototype at this session.
2. We reiterate that the database should serve merely for information purposes, as a repository of information. Based on our understanding that it should not have any other further ramifications or implications on a policy or administrative level, we can support the extension of the prototype into a full database.

Thank you.

Agenda item 6, 1st indent

Trade Marks

Proposal by the Delegations of Georgia, Iceland, Indonesia, Jamaica, Liechtenstein, Malaysia, Mexico, Monaco, Peru, Senegal, Switzerland and the United Arab Emirates Concerning the Protection of Country Names and Geographical Names of National Significance

(Document SCT/43/6)

Chair,

1. On the topic of country names, the EU and its Member States would like to reiterate the interest in further discussing the proposal contained in document SCT/43/6.
2. While it remains pertinent to seek clarification from the co-sponsors about the relationship between this new proposal and previous proposals SCT/32/2 and SCT/39/8/Rev. 3, we would welcome an attempt to merge some concepts underlying previously submitted and long debated proposals on the table.
3. As we commented before, we continue to appreciate any endeavour that would neither imply a legislative exercise nor envisage any disruption of existing practices on descriptiveness and distinctiveness. With that caveat, we would welcome further clarification from the co-sponsors about whether their new revised proposal aims at establishing new grounds for refusal in trade mark laws.
4. With such considerations in mind, we look forward to continuing discussions on this proposal and stand ready to explore further it in cooperation with the co-sponsors and other delegations.

Thank you.

Agenda Item 6, 4th indent

Trade Marks

Returns to the Questionnaire on Nation-Brand Protection in Member States

(Document SCT/43/8 Rev.2)

Chair,

1. The EU and its Member States would like to thank the Secretariat for preparing a revised compilation of returns to the Questionnaire on Nation Brand Protection in Member States in document SCT/43/8 Rev. We also thank Members that submitted 13 new or updated responses and we welcome that the compilation now contains 65 returns overall.
2. We continue to have the favourable impression that nation brands identified in the responses can benefit from being protected as trade marks as well as by means of Article 6*ter* of the Paris Convention and significant problems relating to the protection of such identified national brands are not immediately apparent from the responses.
3. We are looking forward to hearing the views of other delegations and we remain open to continue exploring the state of play as regards nation brand protection in Member States.

Thank you.

Agenda Item 7

Geographical Indications

Proposal by the Delegation of the United States of America

(Document SCT/45/5)

Chair,

1. The EU and its Member States would like to thank the Secretariat and Members of the SCT for the work in preparing and delivering the information sessions on geographical indications. We consider the process of advancing the international debate on geographical indications has been a valuable and constructive exercise. We look forward to continuing the exercise on topics of common importance for geographical indications – to be addressed in information sessions that we consider highly productive and informative.
2. We support the first topic ‘Geographical indication protection for services and non-agricultural goods’ as proposed in Document SCT/45/5 from the United States (co-sponsored by Switzerland). We abstain from supporting the other two topics proposed by the United States.
3. For the next information session, we propose to include the following two subjects: first, ‘*How to protect GIs against evocation, including evocation through images*’. Right holders/producers often struggle when it comes to the evocation of their GIs through, inter alia, images. Puns, word games, plays on sounds or images can also lead to prohibited misuse, evocation or imitation of the protected name. Therefore, it would be beneficial to raise awareness and to increase knowledge on these practices. Second, the ‘*Protection of GIs in cases of translation, transcription or transliteration of the protected name*’. Similarly, translation, transliteration and transcription of protected names written and pronounced in an alphabet and/or a writing system that are different from the source language provide as many various cases of GI infringement.

Thank you.