

WIPO第14回商標・工業デザイン及び地理的表示の法律に関する常設委員会(Standing Committee on The Law of Trademarks, Industrial Designs and Geographical Indications) (以下、単に「SCT」と称する) についての報告

平成17年7月20日  
国際活動委員会 田中 秀樹

WIPO国際事務局主催の第14回SCTが2005年4月18日(月)から4月22日(金)まで、ジュネーブのWIPO国際会議場に於いて開催され、国際活動委員会からオブザーバーとして参加致しましたので、その内容につきまして以下の通りご報告致します。

## 1. 出席国

WIPO加盟国特許庁からメンバーとして77か国の政府代表団及びEC代表、国際機関としてBBM (Bureau Benelux des Marques)、ARIPO (African Regional Intellectual Property Organization)、OAPI (African Intellectual Property Organization) が参加し、また、オブザーバーとして、非政府機関であるAIPLA、ECTA (European Communities Trade Mark Association)、AIM (European Brands Association)、AIPPI、INTA、FICPI、CCI(International Chamber of Commerce)、CEIPI (Center for International Industrial Property Studies)、ECCLA (Exchange and Cooperation Centre for Latin America) とJTAの10団体が参加した。日本政府代表として、特許庁より前回のメンバーと同様、総務部国際課多角的交渉対策室室長兼国際協力室室長の守安智氏(但し19日と20日はミュンヘンでの実体ハーモの会合に出席)・同課長補佐森山啓氏・審査業務部商標課調査班商標企画専門官荻野瑞樹氏・方式審査基準室方式基準班長松野邦昭氏・同室能登香理氏の5名とジュネーブ常駐代表部・高原一等書記官(特許庁より出向)の参加があった。なお、今回は構成委員の変更された年度初頭のため日本弁理士会からの参加はなかった。

## 2. SCTの議題について

(1) 会議冒頭において、WIPO事務局の副代表Ernesto Rubio氏による開会挨拶の後、議長にドイツ国のLi-Feng Schrock氏、副議長にケニア国のJames Otieno-Odek氏及びLuz Celeste Rios De Davis氏、事務秘書にMarcus Hoeffberger氏がそれぞれ選出された。次に、オブザーバーとしてCTA(\*) (China Trademark Association)、GRUR(German Association for Protection of Industrial Property)及びHealthChek(西アフリカの保健・知的所有権・政治経済文化の発展に関する非政府機関)の3団体が新たに承認された。

(2) 今回の議題も1994年に採択された商標法条約(TLT)の改正であり、昨年10月の第13回SCTで議論の対象となった箇所についての事務局が作成した修正案(SCT/13/2に記載された第1条から第3条、第5条、第8条、第10条から第14条、第17条から第20条、第22条、第24条、第26条、第29条及び第30条とこれらに対応する規則)に基づいて最終議論が進められた。なお、WIPO総会において来年3月13日より31日までの期間にジュネーブに於いて外交会議を召集することが決定されており、今回のSCTでまとめられた修正案はそこで審議にかけられ最終採択される予定である。

\*CTA:中華商標協会。1990年代に設立され、現在、572の団体会員(企業・商標代理人事務所)及び50名の商標実務者の合計662名の会員から構成される。

## 3. 修正案の概要

以下に修正案の紹介とその内容を概説する。

【第1条】(略称)

*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) “communication” means any application, or any request, declaration, correspondence or other information relating to an application or a registration, which is filed with the Office;
- (v) references to a “person” shall be construed as references to both a natural person and a legal entity;
- (vi) “holder” means the person whom the register of marks shows as the holder of the registration;
- (vii) “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;
- (viii) “procedure before the Office” means any procedure in proceedings before the Office with respect to an application or a registration;
- (ix) “Paris Convention” means the Paris Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, as revised and amended;
- (x) “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;
- (xi) “license” means a license for the use of a mark under the applicable law of a Contracting Party;
- (xii) “licensee” means the person to whom the holder grants a license;
- (xiii) “exclusive license” means a license which is only granted to one licensee and which excludes the holder from using the mark and from granting licenses to any other person;
- (xiv) “sole license” means a license which is only granted to one licensee and which excludes the holder from granting licenses to any other person but does not exclude the holder from using the mark;
- (xv) “non-exclusive license” means a license which does not exclude the holder from using the mark or from granting licenses to any other person;
- (xvi) “Contracting Party” means any State or intergovernmental organization party to this Treaty;
- (xvii) references to an “instrument of ratification” shall be construed as including references to instruments of acceptance and approval;
- (xviii) “Organization” means the World Intellectual Property Organization;
- (xix) “International Bureau” means the International Bureau of the Organization;
- (xx) “Director General” means the Director General of the Organization;
- (xxi) “Regulations” means the Regulations under this Treaty that are referred to in Article 23;
- (xxii) references to an “Article” or to a paragraph, subparagraph or item of an Article shall be construed as including references to the corresponding rule(s) under the Regulations;
- (xxiii) “Trademark Law Treaty 1994” means the Trademark Law Treaty and Regulations done at Geneva on October 27, 1994.

【説明】第1条は略称の定義規定である。(xxiii)項は「Trademark Law Treaty 1994」を定義しているが、日本政府代表から、第28条等では「TLT1994」と表記されている一方、第2条(1)では「This Treaty」と簡略化されているなど記載の齟齬が生じている旨の指摘があり、「(xxiii)“TLT 1994” means the Trademark Law Treaty done at Geneva on October 27, 1994. (“TLT1994”とは1994年

10月27日にジュネーブで採択された商標法条約を意味する。) 」と事務局によって訂正された。また、「Assembly (総会)」についても定義規定を追加することが合意された。

【第2条】 (この条約が適用される標章)

*Article 2*

*Marks to Which the Treaty Applies*

(1) [*Nature of Marks*]

(a) This Treaty shall apply to marks consisting of visible signs.

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

(c) Contracting Parties are not obliged to accept for registration signs that cannot be registered as marks under the applicable law.

(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.

【説明】 第2条は改正商標法条約が適用される標章の範囲について規定する。現行の商標法条約では第2条(1)(b)においてホログラム標章等への適用義務を排除している。当初案の第1項ではホログラム標章が除外されていたが、前回のSCTと同様、スイス国からホログラム標章を適用対象に含めるべきである旨の意見が出された。OAPIなどから反対の意見が出されたものの、スウェーデン他の国がスイス国の意見を指示する態度を表明し、議長判断によって、最終的に第1項のサブパラグラフ(a)(b)(c)が、以下のように一文にまとめられた。

「Any Contracting Party shall apply this Treaty to marks consisting of signs that can be registered as marks under its law. (いかなる締約国もその法令によって商標として登録されることのできる標識からなる標章についてこの条約を適用するものとする。)」  
これに伴い関係条文(第3条等)の修正があった。

【第3条】 (出願)

*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;

(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) where the mark is a hologram mark, a statement to that effect;

(xiii) where the mark consists of a non-visible sign, a statement to that effect and a representation of the mark as prescribed in the Regulations;

(xiv) a reproduction of the mark, as prescribed in the Regulations;

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

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

(xvii) 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;

(xviii) 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)(xviii), 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) [*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.

(3) [*Actual Use*] Any Contracting Party may require that, where a declaration of intention to use has been filed under paragraph (1)(a)(xviii), 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.

(4) [*Prohibition of Other Requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (3) and in Article 8 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.

(5) [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.

【説明】 第3条は出願の要件について規定する。第1項（願書に記載し又は添付するもの及び料金）(a)の(i)から(viii)まではそのまま承認された。同(ix)から(xiv)までは、以下の2アイテムに代わる。

item(ix) 「at least one representation of the mark, as prescribed in the Regulations;」

item(x) 「where applicable, a statement, as prescribed in the Regulations, indicating the type of mark as well as any specific requirements applicable to that type of mark, indicating that the applicant wishes that the mark be registered and published in the standard characters used by the Office, or indicating that the applicant wishes to claim color as a distinctive feature of the mark;」

第1項(a)の(xv)から(xviii)までは通番のみの変更で内容はそのまま承認された。本条第1項(b)及び(c)、第2項から第5項は事務局案通りで合意に至った。

【第三規則】（出願に関する細目）

### Rule 3

#### *Details Concerning the Application*

(1) [Standard Characters] Where the application contains a statement to the effect that the applicant wishes that the mark be registered and published in the standard characters (letters and numbers) used by the Office, the Office shall register and publish that mark in such standard characters.

「[標準文字]出願人が締約国の官庁によって指定された標準文字（文字及び数字）によって標章が登録され及び公告されることを希望する旨の陳述が願書に記載されている場合には、当該官庁は当該標準文字によって当該標章を登録し及び公告する。」

(2) [Mark Claiming Color] Where the application contains a statement to the effect that the applicant wishes to claim color as a distinctive feature of the mark, the application shall indicate 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.

「出願人が標章の識別力ある特徴として色彩を主張する旨の陳述が願書に記載される場合には、その色彩を願書に記載し、また、各色彩についてその色彩で表示される標章の主要箇所を願書に記載する。」

(3) [Number of Reproductions]（複製の数）

(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.

(4) [Reproduction of a Three-Dimensional Mark]（立体標章の複製）

(a) Where 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.

(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*.

(5)[*Reproduction of a Hologram Mark*] Where, pursuant to Article 3(1)(a)(xii), the application contains a statement to the effect that the mark is a hologram mark, one or several reproductions of the mark, as prescribed by the applicable law of the Contracting Party, shall be furnished.

「[ホログラムマークの複製]第3条(1)(a)(xii)に従って、標章がホログラム標章である旨の陳述が願書に記載される場合には、締約国の法令に従って、標章の複製を提出する。」

(6)[*Mark Consisting of a Non-Visible Sign*] Where the application contains a statement to the effect that the mark consists of a non-visible sign, a Contracting Party may require one or more representations of the mark, an indication of the type of mark and details concerning the mark, as prescribed by the law of that Contracting Party.

(6) [*Transliteration of the Mark*] For the purposes of Article 3(1)(a)(xv), 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.

(7) [*Translation of the Mark*] For the purposes of Article 3(1)(a)(xvi), 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.

(8) [*Time Limit for Furnishing Evidence of Actual Use of the Mark*] The time limit referred to in Article 3(3) 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.

【第4条】（代理及び送達のためのあて先）一本規定はそのまま承認された。

#### *Article 4*

##### *Representation; Address for Service*

(1) [*Representatives Admitted to Practice*]

(a) Any Contracting Party may require that a representative appointed for the purposes of any procedure before the Office

(i) have the right, under the applicable law, to practice before the Office in respect of applications and registrations;

(ii) provide, as his address, an address on a territory prescribed by the Contracting Party.

(b) An act, with respect to any procedure before the Office, by or in relation to a representative who complies with the requirements applied by the Contracting Party under subparagraph (a), shall have the effect of an act by or in relation to the applicant, holder or other interested person who appointed that representative.

(2) [*Mandatory Representation; Address for Service*]

(a) Any Contracting Party may require that, for the purposes of any procedure before the Office, an applicant, holder or other interested person who has neither a domicile nor a real and effective industrial or commercial establishment on its territory be represented by a representative.

(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 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.

(4) [*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.

(5) [*Prohibition of Other Requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (3) and (4) and in Article 8 be complied with in respect of the matters dealt with in those paragraphs.

(6) [*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 (4).

【第5条】（出願日）－本規定はそのまま承認された。

*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 8(2):

- (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 allowing the applicant or his representative, if any, to be

contacted by the Office;

- (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;
- (vi) where Article 3(1)(a)(xviii) or (b) applies, the declaration referred to in

Article 3(1)(a)(xviii) or the declaration and evidence referred to in Article 3(1)(b), respectively, as required by the law of the Contracting Party.

(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 8(2).

(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.

【第6条】（二以上の類に属する商品又はサービスに係る単一の登録）一本規定はそのまま承認された。

*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.

【第7条】（出願及び登録の分割）一本規定はそのまま承認された。

*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,

(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.

【第 8 条】（提出物）

#### *Article 8 Communications*

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

(2) [*Language of Communications*]

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

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

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

(3) [*Signature of Communications on Paper*]

(a) Any Contracting Party may require that a communication on paper be signed by the applicant, holder or other interested person. Where a Contracting Party requires a communication on paper to be signed, that Contracting Party shall accept any signature that complies with the requirements prescribed in the Regulations.

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

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

(4) [*Communications Filed in Electronic Form or by Electronic Means of Transmittal*]

Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal, it may require that any such communications comply with the requirements prescribed in the Regulations.

(5) [*Presentation of a Communication*] Subject to paragraphs (1) to (4), any Contracting Party shall accept the presentation of a communication the content of which corresponds to the relevant Model International Form, if any, provided for in the Regulations.

(6) [*Prohibition of Other Requirements*] No Contracting Party may demand that, in respect of paragraphs (1) to (5), requirements other than those referred to in this Article be complied with.

【説明】本条は通信手段と書式、言語、署名、電子フォーラム又は電磁的手段による通信その他を規定する。第1項は「Any Contracting Party may choose the means of transmittal of communications and whether it accepts communication on paper, communications in electronic form or any other form of communication.」と修正され、第2項から第4項まではそのまま承認された。第5項は「Any Contracting Party shall accept the presentation of a communication the content of which corresponds to the relevant Model International Form, if any, provided for in the Regulations」と修正され、第6項はそのまま承認された。

【第9条】（商品又はサービスの分類）

#### 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.

【説明】本規定は商品及び役務の区分について規定する。そのまま承認された。

【第10条】（氏名若しくは名称又は住所の変更）

#### 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 by the holder in a communication indicating the registration number of the registration concerned and the change to be recorded.

(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, in respect of the request, a fee be paid to the Office.

(d) 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.

(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) and in Article 8 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.

【説明】本規定は商標権者の氏名又は名称並びに住所又は居所の変更について規定する。デンマーク国から誰が住所や名義人の変更が可能か明確にするべきではないかとの指摘があったが、最終的に、そのまま承認された。なお、多件一通主義の質問があったが、第10条(1)(d)に「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.」（変更の記録は、当該変更が二以上の登録に係るものであっても、一の申請書で求めることができる。ただし、すべての関係する登録の登録番号が当該申請書に記載されている場合に限る。）とある。

【第11条】（権利の移転）

*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 by the holder or by the person who acquired the ownership (hereinafter referred to as “new owner”) in a communication indicating the registration number of the registration concerned and the change to be recorded.

(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;

(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) [*Change in the Ownership of an Application*] Paragraph (1) 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.

(3) [*Prohibition of Other Requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) and in Article 8 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.
- (4) [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.

【説明】本規定は出願人及び登録名義人の変更について規定する。そのまま承認された。

【第 12 条】（誤りの訂正）－本規定はそのまま承認された。

#### 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 by the holder in a communication indicating the registration number of the registration concerned, the mistake to be corrected and the correction to be entered.
- (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, in respect of the request, a fee be paid to the Office.
- (d) 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) and in Article 8 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.

【第 13 条】（登録の存続期間及び更新）一本規定はそのまま承認された。

*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.

(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.

(2) [*Prohibition of Other Requirements*] No Contracting Party may demand that requirements other than those referred to in paragraph (1) and in Article 8 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 any other register of marks;
- (iii) the furnishing of a declaration and/or evidence concerning use of the mark.

(3) [*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.

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

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

【第 14 条】（却下し又は拒絶しようとする場合の意見）

*Article 14*

### *Relief Measures in Case of Failure to Comply with Time Limits*

(1) [*Relief Measure Before the Expiry of a Time Limit*] A Contracting Party may provide for the extension of a time limit for an action in a procedure before the Office in respect of an application or a registration, if a request to that effect is filed with the Office prior to the expiry of the time limit.

「(1) (期間満了前の救済措置) 締約国は期間満了前に期間の延長請求がなされた場合には、出願や登録に関して官庁に対する応答のための期間延長を認めることができる。」

(2) [*Relief Measures After the Expiry of a Time Limit*] Where an applicant, holder or other interested party has failed to comply with a time limit (“the time limit concerned”) for an action in a procedure before the Office of a Contracting Party in respect of an application or a registration, the Contracting Party shall provide for one or more of the following relief measures, in accordance with the requirements prescribed in the Regulations, if a request to that effect is filed with the Office:

(i) extension of the time limit concerned for the period prescribed in the Regulations;

(ii) continued processing with respect to the application or registration;

(iii) reinstatement of the rights of the applicant, holder or other interested person with respect to the application or registration if the Office finds that the failure to comply with the time limit concerned occurred in spite of due care required by the circumstances having been taken or, at the option of the Contracting Party, that the failure was unintentional.

「(2) (期間満了後の救済措置) 出願人、商標権者又は他の利害関係人が出願又は登録に関して、締約国の官庁に対する手続きのための期限に応じるのを徒過した場合、締約国は規則に定める要件に従って、請求により、以下の救済措置の一又はそれ以上を認めることができる。(i) 規則に定める期間に関する期限延長等」

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

「(3) (例外) いかなる締約国も規則に定める例外に関して、本条(1)及び(2)に規定されるいかなる救済措置も要求されない。」

(4) [*Fees*] Any Contracting Party may require that a fee be paid in respect of any of the relief measures referred to in paragraphs (1) and (2).

(5) [*Prohibition of Other Requirements*] No Contracting Party may demand that requirements other than those referred to in this Article and in Article 8 be complied with in respect of any of the relief measures referred to in paragraphs (1) and (2).

【説明】 第1項の期間満了前の救済措置はそのまま承認された。第2項については、FICPI より

「interested person」「interested party」など文言について不一致であるとの指摘があった。商標法条約全体を通して、どちらに統一すべきかを事務局が検討することになった。オーストラリア国より第1条(v)の「person」「or persons」を考慮すべきであるとの指摘あり。第3項から第5項については、第1項への言及を除外してそのまま承認された。なお、日本政府代表より、規則9(4)(vii)の「for filing a declaration which, under the Law of the Contracting Party, may establish a new filing date for a pending application, and」について最終的に合意する旨コメントあり。

【第15条】 (パリ条約を遵守する義務) 一本規定はそのまま承認された。

### *Article 15*

#### *Obligation to Comply with the Paris Convention*

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

【第16条】（サービス・マーク）一本規定はそのまま承認された。

*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.

【第17条】（ライセンスの登録申請）

*Article 17*  
*Request for Recordal of a License*

(1) [*Contents of the Request for Recordal*] Where the law of a Contracting Party provides for the recordal of a license with its Office, that Contracting Party may require that the request for recordal

- (i) be filed in accordance with the requirements prescribed in the Regulations, and
- (ii) be accompanied by the supporting documents prescribed in the Regulations.

「締約国の法令がライセンスの登録について規定している場合には、締約国は登録申請が以下の条件に従うことを求めることができる。

- (i) 規則に定める要件に従って申請されること
- (ii) 規則に定める必要書類を提出すること」

(2) [*Fees*] Any Contracting Party may require that, in respect of the recordal of a license, a fee be paid to the Office.

(3) [*Single Request Relating to Several Registrations*] A single request shall be sufficient even where the license relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request, the holder and the licensee are the same for all registrations, and the request indicates the scope of the license in accordance with the Regulations with respect to all registrations.

(4) [*Prohibition of Other Requirements*]

(a) No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) and in Article 8 be complied with in respect of the recordal of a license with its Office. In particular, the following may not be required:

- (i) the furnishing of the registration certificate of the mark which is the subject of the license;
- (ii) the furnishing of the license contract or a translation of it;
- (iii) an indication of the financial terms of the license contract.

(b) Subparagraph (a) is without prejudice to any obligations existing under the law of a Contracting Party concerning the disclosure of information for purposes other than the recording of the license in the register of marks.

「条項(a)は標章登録簿にライセンスの登録以外を目的とする情報の開示に関しては締約国の法令に従ったいかなる義務をも妨げるものではない。」

(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 or in any document referred to in the Regulations.

「証拠いかなる締約国も、申請書や規則に定める書類中の記載について、その真実性に合理的な疑いがある場合には、証拠の提出を求めることができる。」

(6) [*Requests Relating to Applications*] Paragraphs (1) to (5) shall apply, *mutatis mutandis*, to requests for recordal of a license for an application, where the applicable law of a Contracting Party provides for such recordal.

【説明】第17条(4)は、ライセンス登録に際して締約国官庁からの要求を制限する規定であるが、前回のSCT会議において多くの国が懸念を示したことを考慮し、事務局が新たに(b)項を設ける案を提

示した。日本政府代表より、第10規則の訂正内容によって事務局案第17条(1)を支持する旨のコメントあり。第17条(1)の見出しにある「Contents」を「Requirements」と修正するのみで事務局案が承認された。

【第10規則】（ライセンスの登録申請及びライセンス登録の変更又は抹消申請に関する細目）

*Rule 10*

*Details Concerning the Request for Recordal of a License or for  
Amendment or Cancellation of the Recordal of a License*

(1) [*Contents of Request*]

(a) A Contracting Party may require that the request for recordal of a license under Article 17(1) contain some or all of the following indications or elements:

- (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,
- (iv) the name and address of the licensee,
- (v) where the licensee has a representative, the name and address of that representative,
- (vi) where the licensee has an address for service, such address,
- (vii) the name of a State of which the licensee is a national if he is a

national of any State, the name of a State in which the licensee has his domicile, if any, and the name of a State in which the licensee has a real and effective industrial or commercial establishment, if any,

- (viii) where the holder or the licensee 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,
- (ix) the registration number of the mark which is the subject of the license,
- (x) the names of the goods and/or services for which the license is granted, 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,
- (xi) whether the license is an exclusive license, a non-exclusive license, or a sole license,
- (xii) where applicable, that the license concerns only a part of the territory covered by the registration, together with an explicit indication of that part of the territory,
- (xiii) the duration of the license.

(b) A Contracting Party may require that the request for recordal of an amendment or cancellation of the recordal of a license under Article 18(1) contain some or all of the following indications or elements:

- (i) the indications specified in items (i) to (ix) of subparagraph (a),
- (ii) where the amendment or cancellation concerns any of the indications or elements specified under subparagraph (a), the nature and scope of the amendment or cancellation to be recorded.

(2) [*Supporting Documents for Recordal of a License*]

(a) A Contracting Party may require that the request for recordal of a license be accompanied, at the option of the requesting party, by one of the following:

- (i) an extract of the license contract indicating the parties and the rights being licensed, certified by a notary public or any other competent public authority as being a true extract of the contract, or

(ii) an uncertified statement of license, the contents of which correspond to the statement of license Form provided for in the Regulations, and signed by both the holder or his representative and the licensee or his representative.

(b) Any Contracting Party may require that any co-holder who is not a party to the license contract give his express consent to the license in a document signed by him.

「いかなる締約国も、ライセンス契約に対しては、当事者でない共有者からの署名された書面による明示の同意を求めることができる。」

(3) [*Supporting Documents for Cancellation of Recordal of a License*] A Contracting Party may require that the request for cancellation of the recordal of a license be accompanied, at the option of the requesting party, by one of the following:

(i) documents substantiating the requested cancellation of the recordal of the license,  
or

(ii) an uncertified statement of cancellation of license, the contents of which correspond to the statement of cancellation of license Form provided for in these Regulations, and signed by both the holder or his representative and the licensee or his representative.

(4) [*Supporting Documents for Amendment of Recordal of a License*] A Contracting Party may require that the request for amendment of the recordal of a license be accompanied, at the option of the requesting party, by one of the following:

(i) documents substantiating the requested amendment of the recordal of the license,  
or

(ii) an uncertified statement of amendment of license, the contents of which correspond to the statement of amendment of license Form provided for in these Regulations, and signed by both the holder or his representative and the licensee or his representative.

(4)[ライセンス登録の変更のための付属書類]締約国はライセンスの変更登録申請には申請者の選択により、次のいずれかを添付することを求めることができる。

(i) ライセンス登録の変更を裏付ける書面

(ii) ライセンスの変更の陳述書であって証明を要しないもの、共有者又はその代理人及びライセンス被許諾者又はその代理人によって署名されたライセンス様式の変更記載に対応する内容

【説明】本規定(1)は見出しの「Contents」を「Requirements」と修正するのみで合意。(2)はライセンス登録の付属書類、(3)はライセンス登録の抹消のための付属書類について規定するが、それぞれ(ii)の「or his representative」を削除するのみで合意。(2)について、日本は事務局案の支持を表明すると共に、(3)(4)にも(2)のパラグラフ(b)が付加することを求めた(最終的には(4)のみに付加)。(4)はライセンス登録の変更のための付属書類について規定するが、(2)のパラグラフ(b)と同旨のパラグラフを付加することで合意。ここで、LicenseにはSub-Licenseが除外されるかという疑義があるが、Licenseeとはthe holderがlicenseした者(Article 1(xii))とあり、holderとは標章登録簿に登録の権利者として登録される者(Article 1(vi))で、registrationとは官庁による商標登録を意味するとある(Article 1(ii))。しかし、Licenseとは締約国の法律が定める商標の使用に関するライセンスとあり(Article(xi))、わが国では特にライセンスとサブライセンスを文言上分けていないと理解することが可能である。専用使用権が共有に係る場合は、準用する特許法第73条第3項の類推解釈で、通常使用権を許諾する場合は、専用使用権の共有者の同意が必要になると解釈されているので、かかる場合の手当てを明確にしておくべきではなかったかと思われる。

【第18条】（ライセンス登録の変更又は抹消申請）

*Article 18*

*Request for Amendment or Cancellation of the Recordal of a License*

(1) [Contents of the Request] Where the law of a Contracting Party provides for the recordal of a license with its Office, that Contracting Party may require that the request for amendment or cancellation of the recordal of a license

(i) be filed in accordance with the requirements prescribed in the Regulations, and

(ii) be accompanied by the supporting documents prescribed in the Regulations.

(2) [Other Requirements] Article 17(2) to (5) shall apply, *mutatis mutandis*, to requests for amendment or cancellation of the recordal of a license.

【説明】本規定(1)の見出しにおいて「Contents」を「Requirements」とすること、(2)において、第17条(2)から(6)までの規定が適用される旨の修正がなされた。

【第19条】（ライセンスの未登録の効果）—本規定はそのまま承認された。

*Article 19*

*Effects of the Non-Recordal of a License*

(1) [Validity of the Registration and Protection of the Mark] The non-recordal of a license with the Office or with any other authority of the Contracting Party shall not affect the validity of the registration of the mark which is the subject of the license, or the protection of that mark.

(2) [Certain Rights of the Licensee] A Contracting Party may not require the recordal of a license as a condition for any right that the licensee may have under the law of that Contracting Party to join infringement proceedings initiated by the holder or to obtain, by way of such proceedings, damages resulting from an infringement of the mark which is the subject of the license.

【第20条】（商標権者に代わる標章の使用）

*Article 20*

*Use of a Mark on Behalf of the Holder*

A Contracting Party may not require the recordal of a license as a condition for the use of a mark by a licensee to be deemed to constitute use by the holder.

【説明】本条は使用権者による商標の使用が商標権者による商標の使用とみなされるためにはライセンスが登録されていることを要しない旨を規定するが、ロシア国から適用をより明確にするべきである旨の意見があり、標章の登録、権利維持、権利行使に際して登録を要しない旨の再修正案（「A Contracting Party may not require the recordal of a license as a condition for the use of a mark by a licensee to be deemed to constitute use by the holder in proceedings relating to the acquisition, maintenance and enforcement of marks.」）が承認された。

【第21条】（ライセンスの表示）—本規定はそのまま承認された。

*Article 21*

*Indication of the License*

Where the law of a Contracting Party requires an indication that the mark is used under a license, full or partial non-compliance with that requirement shall not affect the validity of the registration of the mark which is the subject of the license or the protection of that mark, and shall not affect the application of Article 20.

【第22条】（拒絶する場合の釈明）

*Article 22*

*Observations in Case of Intended Refusal*

An application under Article 3 or a request under Articles 7, 10 to 14, 17 and 18 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.

【説明】本条は、第3条に規定する出願又は第7条、第10条から第14条、第17条及び第18条に規定する申請は官庁によって、合理的な期間内に釈明する機会を申請人に与えることなくその全て又は一部について拒絶されない旨を規定する。最終的に注釈への内容説明と「In respect of Article 14, no Office would need to give an opportunity to make observations where the requesting party has already had an opportunity to present an observation on the facts which the decision is to be based.」の文言を末尾に付することで合意。

【第23条】（規則）－本規定はそのまま承認された。

*Article 23*

*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*] 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 provisions of the Regulations which may be amended only by unanimity.

(b) Any amendment of the Regulations resulting in the addition of provisions to, or the deletion of provisions from, the provisions specified in the Regulations pursuant to subparagraph (a) shall require unanimity.

(c) In determining whether unanimity is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

(4) [*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.

【第24条】（総会）－本規定はそのまま承認された。

*Article 24*

*Assembly*

(1) [*Composition*]

(a) The Contracting Parties shall have an Assembly.

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

(2) [*Tasks*] The Assembly shall

(i) deal with matters concerning the development of this Treaty;

(ii) amend the Regulations, including the Model International Forms;

(iii) determine the conditions for the date of application of each amendment referred to in item (ii);

(iv) perform such other functions as are appropriate under this Treaty.

(3) [*Quorum*]

(a) One-half of the members of the Assembly which are States shall constitute a quorum.

(b) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and 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 this period, the number of such members having thus expressed their vote or abstention attains the number of the members 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.

(4) [*Taking Decisions in the Assembly*]

(a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

(ii) any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa. In addition, no such intergovernmental organization shall participate in the vote if any one of its Member States party to this Treaty is a Member State of another such intergovernmental organization and that other intergovernmental organization participates in that vote.

(5) [*Majorities*]

(a) Subject to Articles 23(2) and (3) and 26(2)(b), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

(6) [*Sessions*] The Assembly shall meet 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.

(7) [*Rules of Procedure*] The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions.

【第 25 条】（国際事務局）—本規定はそのまま承認された。

*Article 25*

*International Bureau*

(1) [*Administrative Tasks*]

(a) The International Bureau shall perform the administrative tasks concerning this Treaty.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) [*Meetings Other than Sessions of the Assembly*] The Director General shall convene any committee and working group established by the Assembly.

[Article 25, continued]

(3) [*Role of the International Bureau in the Assembly and Other Meetings*]

(a) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly.

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

(4) [*Conferences*]

(a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with member States of the Organization, intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(5) [*Other Tasks*] The International Bureau shall carry out any other tasks assigned to it in relation to this Treaty.

【第 26 条】 (改正及び修正)

#### Article 26

##### *Revision and Amendment*

(1) [*Revision of the Treaty*] This Treaty may be revised by a diplomatic conference. The convocation of any diplomatic conference shall be decided by the Assembly.

(2) [*Amendment by the Assembly of Certain Provisions of the Treaty*]

(a) Articles 24 and 25 may be amended by the Assembly. Proposals for amendment may be initiated by any Contracting Party or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(b) Adoption of any amendment to the Articles referred to in subparagraph (a) shall require three-fourths of the votes cast.

(c) Any amendment to the provisions referred to in subparagraph (a) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties. Any amendment to the said provisions shall bind all the Contracting Parties at the time the amendment enters into force, and States and intergovernmental organizations which become Contracting Parties at a subsequent date.

【説明】本規定は、本商標法条約が外交会議において改正される可能性があり、総会において外交会議の招集を決定される旨、第 24 条及び第 25 条が総会において修正する可能性がある旨を規定する。日本政府代表より、再修正案を検討するが、場合によっては、外交会議において再修正を求める可能性がある旨コメントがあった。

【第 27 条】 (締約国となるための手続)

#### Article 27

##### *Becoming Party to the Treaty*

(1) [*Eligibility*] The following entities may sign and, subject to paragraphs (2) and (3) and Article 29(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*] 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 27(3), 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.

【説明】第27条は締約国になるための適格性・批准又は加入・批准書又は加入書の寄託の効果の発生などの一定の条件及び手続きについて規定する。本条(3)の(b)及び(c)は削除された。事務局よりの趣旨説明の後合意に至った。

【第28条】（1994年商標法条約及び改正商標法条約の適用）

#### *Article 28*

#### *Application of the TLT 1994 and This Treaty*

(1) [*Relations Between Contracting Parties to Both This Treaty and the TLT 1994*] This Treaty alone shall be applicable as regards the mutual relations of Contracting Parties to both this Treaty and the TLT 1994.

(2) [*Relations Between Contracting Parties to This Treaty and Contracting Parties to the TLT 1994 That Are not Party to This Treaty*] Any Contracting Party to both this Treaty and the TLT 1994 shall continue to apply the TLT 1994 in its relations with Contracting Parties to the TLT 1994 that are not party to this Treaty.

【説明】本規定は、1994年商標法条約及び今回の改正商標法条約の関係について規定するものであり、双方に加盟している締約国同士では改正商標法条約が適用され、どちらか一方のみに加盟している締約国同士においては、双方に加盟している締約国が1994年商標法条約には加盟しているが改正商標法条約には加盟していない国に対して、1994年商標法条約を適用する旨を規定する。事務局よりの趣旨説明及び若干の参加国代表よりの質問の後に最終合意に至った。

【第29条】（効力の発生及び批准・加入の効力の発生）

*Article 29*

*Entry into Force;*

*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 27(1) and that have an effective date according to Article 27(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.

【説明】本規定は、批准書又は加入書を寄託することによって第27条(3)に従った効力が発生する旨、5か国からの批准書又は加入書が寄託されてから3月で発効する旨、発効以降は批准書又は加入書が寄託された日から3月で効力が発生する旨を規定する。第2項が「This Treaty shall enter into force three months after five States or intergovernmental organizations referred to Article 27(1)(ii) have deposited their instruments of ratification or accession.」として政府間機関も対象となる旨変更があった。OAPIより削除された第4項は依然として有用ではないかという意見が出されたが、最終的に事務局の修正案通り削除することで合意に至った。

【第30条】（留保）

*Article 30*

*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), 5, 7, 8(5), 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) [*Certain Rights of the Licensee*] Any State or intergovernmental organization may declare through a reservation that, notwithstanding Article 19(2), it requires the recordal of a license as a condition for any right that the licensee may have under the law of that State or intergovernmental organization to join infringement proceedings initiated by the holder or to obtain, by way of such proceedings, damages resulting from an infringement of the mark which is the subject of the license.

(3) [*Modalities*] Any reservation under paragraph (1) or (2) 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.

(4) [*Withdrawal*] Any reservation under paragraph (1) or (2) may be withdrawn at any time.

(5) [*Prohibition of Other Reservations*] No reservation to this Treaty other than the reservation allowed under paragraphs (1) and (2) shall be permitted.

【説明】第19条(2)の規定に関わらず、留保を付することにより、締約国等の国内法令に従って、使用権者が侵害手続きに加わることのできる条件としてライセンスが登録されていることを要求することができる旨の規定(第2項)が新たに追加された。

【第31条】(条約の破棄)

*Article 31*  
*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.

【説明】第31条はいずれの締約国も事務局長に宛てた通告によりこの条約を破棄することができる旨(1項)、破棄は事務局長がその通告を受領した日から1年で効力を生ずる旨、破棄は一定の出願又は登録されている標章については適用されない旨(2項)を規定する。変更なし。

【第32条】(条約の言語及び署名)

*Article 32*  
*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) An official text in a language not referred to in subparagraph (a) that is an official language of a 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.

【説明】第32条(言語及び署名)は英語・アラビア語・中国語・フランス語・ロシア語・スペイン語で作成される正本に署名する旨、採択から1年間は機関の本部において署名のために開放しておく旨を規定する。変更なし。

【第33条】(寄託者)

*Article 33*  
*Depositary*

The Director General shall be the depositary of this Treaty.

【説明】第33条はこの条約の寄託者は事務局長とする旨を規定する。変更なし。

#### 4. その他

(1) 次回のSCTは2005年11月28日から12月2日まで開催される予定。

(2) 次回以降の議題として、CCIからマドリッド協定・マドリッド協定議定書、AIMから周知商標の保護や実体審査のハーモナイゼーションなどの意見が出された。締約国及びオブザーバーは7月1日までに事務局に書面で議題を提供することができる。 以上