



**SUMMARIES OF
CONVENTIONS, TREATIES
AND AGREEMENTS
ADMINISTERED BY WIPO** **| 2011**

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PART I

SUMMARY OF THE CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO CONVENTION) (1967)

The WIPO Convention, the constituent instrument of the World Intellectual Property Organization (WIPO), was signed at Stockholm on July 14, 1967, entered into force in 1970 and was amended in 1979. WIPO is an intergovernmental organization that became in 1974 one of the specialized agencies of the United Nations system of organizations.

The origins of WIPO go back to 1883 and 1886 when the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, respectively, were concluded. Both Conventions provided for the establishment of an "International Bureau." The two bureaus were united in 1893 and, in 1970, were replaced by the World Intellectual Property Organization, by virtue of the WIPO Convention.

WIPO's two main objectives are **(i)** to promote the protection of intellectual property worldwide; and **(ii)** to ensure administrative cooperation among the intellectual property Unions established by the treaties that WIPO administers.

In order to attain these objectives, WIPO, in addition to performing the administrative tasks of the Unions, undertakes a number of activities, including: **(i)** normative activities, involving the setting of norms and standards for the protection and enforcement of intellectual property rights through the conclusion of international treaties; **(ii)** program activities, involving legal and technical assistance to States in the field of intellectual property; **(iii)** international classification and standardization activities, involving cooperation among industrial property offices concerning patent, trademark and industrial design documentation; and **(iv)** registration activities, involving services related to international applications for patents for inventions and for the registration of marks and industrial designs.

Membership in WIPO is open to any State which is a member of any of the Unions and to any other State satisfying one of the following conditions: **(i)** it is a member of the United Nations, any of the specialized agencies brought into relationship with the United Nations, or the International Atomic Energy Agency; **(ii)** it is a party to the Statute of the International Court of Justice; or **(iii)** it has been invited by the General Assembly of WIPO to become a party to the Convention. There are no obligations arising from membership of WIPO concerning other treaties administered by WIPO. Accession to WIPO is effected by means of the deposit with the Director General of WIPO of an instrument of accession to the WIPO Convention.

The WIPO Convention establishes three main organs: The WIPO General Assembly, the WIPO Conference and the WIPO Coordination Committee. The WIPO General Assembly is composed of the Member States of WIPO which are also members of any of the Unions. Its main functions are, *inter alia*, the appointment of the Director General upon nomination by the Coordination Committee, review and approval of the reports of the Director General and the reports and activities of the Coordination Committee, adoption of the biennial budget common to the Unions and adoption of the financial regulations of the Organization.

The WIPO Conference is composed of the States party to the WIPO Convention. It is, *inter alia*, the competent body for adopting amendments to the Convention, for all matters relating to legal and technical assistance, and it establishes the biennial program of such assistance. It is also competent to discuss matters of general interest in the field of intellectual property, and it may adopt recommendations relating to such matters.

The WIPO Coordination Committee is composed of members elected from among the members of the Executive Committee of the Paris Union and the Executive Committee of the Berne Union. Its main functions are to give advice to the organs of the Unions, the General Assembly, the Conference, and to the Director General, on all administrative and financial matters of interest to these bodies. It also prepares the draft agenda of the General Assembly and the draft agenda of the Conference. Where appropriate, the Coordination Committee nominates a candidate for the post of Director General for appointment by the General Assembly.

The principal sources of income of WIPO's regular budget are the fees paid by the users of the international registration services, and the contributions paid by the governments of Member States. Each State belongs to one of 14 classes, which determines the amount of its contribution. Class I, with the highest contribution, involves the payment of 25 contribution units, whereas Class *Ster*, with the lowest contribution, involves the payment of 1/32 of one contribution unit. By virtue of the unitary contribution system adopted by Member States in 1993, the amount of each State's contribution is the same whether that State is a member only of WIPO, or only of one or more Unions, or both WIPO and one or more Unions.

The Secretariat of the Organization is called the International Bureau. The executive head of the International Bureau is the Director General who is appointed by the WIPO General Assembly and is assisted by two or more Deputy Directors General.

The headquarters of the Organization are in Geneva, Switzerland. The Organization has Liaison Offices in Brazil (Rio de Janeiro), Japan (Tokyo), Singapore (Singapore) and the United States of America (at the United Nations in New York).

The Organization benefits from the privileges and immunities granted to international organizations and their officials in the fulfillment of its objectives and exercise of its functions, and has concluded a headquarters agreement with the Swiss Confederation to that effect.





PART II:
INDUSTRIAL PROPERTY
TREATIES

SUMMARY OF THE BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE (1977)

The main feature of the Treaty is that a Contracting State that allows or requires the deposit of microorganisms for the purposes of patent procedure must recognize, for such purposes, the deposit of a microorganism with any "international depositary authority," irrespective of whether that authority is on or outside the territory of the said State.

Disclosure of the invention is a requirement for the grant of patents. Normally, an invention is disclosed by means of a written description. Where an invention involves a microorganism not available to the public, or the use of it, disclosure is not possible in writing but can only be effected by the deposit, with a specialized institution, of a sample of the microorganism. In practice, the term "microorganism" is interpreted in a broad sense, covering biological material the deposit of which is necessary for the purposes of disclosure, in particular regarding inventions relating to the food and pharmaceutical fields.

It is in order to eliminate the need to deposit in each country in which protection is sought that the Treaty provides that the deposit of a microorganism with any "international depositary authority" suffices for the purposes of patent procedure before the national patent offices of all of the Contracting States and before any regional patent office (if such a regional office declares that it recognizes the effects of the Treaty). The European Patent Organisation (EPO), the Eurasian Patent Organization (EAPO) and the African Regional Intellectual Property Organization (ARIPO) have made such declarations.

What the Treaty calls an "international depositary authority" is a scientific institution – typically a "culture collection" – capable of storing microorganisms. An institution acquires "international depositary authority" status through the furnishing, by the Contracting State of the territory in which it is located, of assurances to the Director General of WIPO to the effect that the said institution complies and will continue to comply with certain requirements of the Treaty.

The Treaty makes the patent system of the Contracting State more attractive, because it is primarily advantageous to depositors if they are applicants for patents in several Contracting States. The deposit of a microorganism under the procedures provided for in the Treaty will save depositors money and increase their security. It saves depositors money because, instead of depositing the microorganism in each and every Contracting State in which they file a patent

application referring to that microorganism, they deposit it only once with one depositary authority. The Treaty increases the security of the depositor by establishing a uniform system of deposit, recognition and furnishing of samples of microorganisms.

The Treaty does not provide for the institution of a budget, but it does create a Union and an Assembly whose members are the States party to the Treaty. The main task of the Assembly is the amendment of the Regulations under the Treaty. No State can be requested to pay contributions to the International Bureau of WIPO on account of its membership in the Budapest Union or to establish an “international depositary authority.”

The Budapest Treaty was concluded in 1977.

The Treaty (the full text of which is available at www.wipo.int/treaties) is open to States party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series). Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS (1925)

Two Acts of the Hague Agreement are currently in operation – the 1999 Act and the 1960 Act. In September 2009, it was decided to freeze the application of the 1934 Act of the Hague Agreement, thus simplifying and streamlining overall administration of the international design registration system.

An international design registration may be obtained only by a natural person or legal entity having a connection – through establishment, domicile, nationality or, under the 1999 Act, habitual residence – with a Contracting Party to either of the two Acts.

An international application may be governed by the 1999 Act, the 1960 Act or both, depending on the Contracting Party with which the applicant has the connection described above (hereafter referred to as “Contracting Party of origin”). Over 99 per cent of international registrations currently in force are governed (exclusively or in part) by either the 1999 or the 1960 Act.

THE 1960 AND THE 1999 ACTS

Under the 1960 or the 1999 Act, the international registration of an industrial design may be sought with the International Bureau of WIPO, either directly or through the industrial property office of the Contracting Party of origin if the law of that Contracting Party so permits or requires. In practice, however, virtually all international applications are filed directly with the International Bureau, and the majority are filed through the electronic filing interface on WIPO’s website.

An international registration is based on an application and one or more photographs or other graphic representations of the designs. The application can contain up to 100 designs relating to products falling within the same class of the International Classification established by the Locarno Agreement. It must include a list of the Contracting Parties in which the international registration is to have effect and the designation of the article or articles in which it is intended to incorporate the designs or which constitute the designs.

An international registration may extend its effects to the Contracting Party of origin unless the legislation of that Contracting Party provides otherwise. The application may be in English, French or, as of April 1, 2010, Spanish.

The photographs or other graphic representations of the designs submitted by the applicant are published in the **International Designs Bulletin**, issued monthly on CD-ROM and online.

Depending on the Contracting Parties designated, applicants may request that the publication be deferred by a period not exceeding 30 months from the date of the international registration or, if priority is claimed, from the priority date.

Each Contracting Party designated by the applicant may refuse protection within 6 months, or possibly 12 months under the 1999 Act, from the date of publication of the international registration. Refusal of protection can only be based on requirements of the domestic law other than the formalities and administrative acts to be accomplished under the domestic law by the office of the Contracting Party that refuses protection.

If no refusal is notified by a given designated Contracting Party within the prescribed time limit (or if such refusal has subsequently been withdrawn), the international registration has effect as a grant of protection in that Contracting Party, under the law of that Contracting Party.

The term of protection is five years, renewable for at least one five-year period under the 1960 Act, or two such periods under the 1999 Act. If the legislation of a Contracting Party provides for a longer term of protection, protection of the same duration shall, on the basis of the international registration and its renewals, be granted in that Contracting Party to designs that have been the subject of an international registration. To improve access to the Hague system for design creators from least developed countries (LDCs), in 2007 the Hague Assembly approved an amendment to the Schedule of Fees applicable under the system, reducing the costs for applicants from LDCs of filing applications under the Hague Agreement. Effectively, in the case of international applications governed exclusively or partly by the 1999 Act and/or the 1960 Act, this reduced to 10 per cent the amounts of all the fees prescribed in the Schedule of Fees. This scheme was broadened in 2008.

THE 1934 ACT

The application of the 1934 Act was frozen as of January 1, 2010, meaning that no new registration or designation could be entered in the International Register as of that date. However, the renewal of existing designations under the 1934 Act and the recording in the International Register of any change affecting such designations will continue to be possible up to the maximum duration of protection under the 1934 Act (15 years).

GENERAL

The WIPO Secretariat publishes a **Guide to the International Registration of Industrial Designs** for users of the Hague system.

The Hague Agreement, concluded in 1925, was revised at London in 1934 and at The Hague in 1960. It was completed by an Additional Act signed at Monaco in 1961 and by a Complementary Act signed at Stockholm in 1967, which was amended in 1979. As noted above, a further Act was adopted at Geneva in 1999.

The Hague Agreement created a Union. Since 1970, that Union has had an Assembly. Every member country of the Union that has adhered to the Complementary Act of Stockholm is a member of the Assembly. Among the most important tasks of the Assembly are the adoption of the biennial program and budget of the Union and the adoption and modification of the implementing regulations, including the fixing of the fees connected with the use of the Hague system.

The 1999 Act of the Agreement (the full text of which is available at www.wipo.int/treaties) is open to any WIPO Member State and to certain intergovernmental organizations. Instruments of ratification or accession must be deposited with the Director General of WIPO. While the 1960 Act remains open to States party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series), it is the more advantageous 1999 Act that governments of prospective Contracting Parties are encouraged to join.

SUMMARY OF THE LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION (1958)

The Lisbon Agreement aims to provide for the protection of appellations of origin, that is, the “geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors” (Article 2). Such denominations are registered by the International Bureau of WIPO in Geneva upon the request of the competent authority of a Contracting State. The International Bureau keeps the International Register of Appellations of Origin and formally notifies such registrations to the other Contracting States. It also publishes them in the Lisbon system’s official bulletin **Appellations of Origin**. A Contracting State may declare, within one year of receiving the notice of registration, that it cannot ensure the protection of a registered appellation within its territory (Article 5(3)). Such a declaration must include grounds for the refusal of protection. Contracting States may subsequently withdraw a refusal, according to a procedure foreseen under the Lisbon system. A registered appellation will be protected against usurpation or imitation, even when used in translation or accompanied by words such as “kind,” “type” or the like (Article 3), and may not be presumed to have become generic in a Contracting State as long as it continues to be protected in the country of origin (Article 6).

Since January 2010, Contracting States have the option to issue a statement of grant of protection, thus improving communication regarding the status of international registrations in member countries. These statements can be issued by Contracting States that know, well before the expiry of the one-year refusal period under Article 5(3), that they will not issue a declaration of refusal of protection; or the statement can take the place of the notification of withdrawal of a refusal already given.

The Lisbon Agreement, concluded in 1958, was revised at Stockholm in 1967, and amended in 1979. The Lisbon Agreement created a Union which has an Assembly. Every State member of the Union that has adhered to at least the administrative and final clauses of the Stockholm Act is a member of the Assembly.

The Agreement (the full text of which is available at www.wipo.int/treaties) is open to States party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series). Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE LOCARNO AGREEMENT ESTABLISHING AN INTERNATIONAL CLASSIFICATION FOR INDUSTRIAL DESIGNS (1968)

The Agreement establishes a classification for industrial designs (the Locarno Classification). The competent offices of the Contracting States must indicate in official documents reflecting the deposit or registration of industrial designs the numbers of the classes and subclasses of the Classification to which the goods incorporating the designs belong. This must also be done in any publication the offices issue in respect of the deposit or registration.

The Classification consists of a list of 32 classes and 219 subclasses and an alphabetical list of goods with an indication of the class and subclass to which each product belongs. The latter comprises 7,024 items.

A Committee of Experts, in which all Contracting States are represented, set up under the Agreement, is entrusted with the task of periodically revising the Classification. The current edition is the ninth, which entered into force on January 1, 2009.

The Classification is applied by 51 States party to the Locarno Agreement. The Classification is also applied by the International Bureau of WIPO in the administration of the Hague Agreement Concerning the International Registration of Industrial Designs (see the relevant **Summary** in this series), and by the African Intellectual Property Organization (OAPI), the African Regional Intellectual Property Organization (ARIPO), the Benelux Organisation for Intellectual Property (BOIP) and the European Union Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM).

The Locarno Agreement, concluded in 1968, was amended in 1979. The Locarno Agreement created a Union, which has an Assembly. Every State member of the Union is a member of the Assembly. Among the most important tasks of the Assembly is the adoption of the biennial program and budget of the Union.

The Agreement (the full text of which is available at www.wipo.int/treaties) is open to States party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series). Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS (1891) AND THE PROTOCOL RELATING TO THAT AGREEMENT (1989)

INTRODUCTION

The Madrid System for the International Registration of Marks is governed by two treaties:

- the **Madrid Agreement**, concluded in 1891 and revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and amended in 1979, and
- the **Protocol** relating to that Agreement, concluded in 1989, which aims to make the Madrid system more flexible and more compatible with the domestic legislation of certain countries or intergovernmental organizations that had not been able to accede to the Agreement. States and organizations party to the Madrid system are collectively referred to as Contracting Parties.

The system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated Contracting Parties.

WHO MAY USE THE SYSTEM?

An application for international registration (international application) may be filed only by a natural person or legal entity having a connection – through establishment, domicile or nationality – with a Contracting Party to the Agreement or the Protocol.

A mark may be the subject of an international application only if it has already been registered with the trademark office (referred to as the office of origin) of the Contracting Party with which the applicant has the necessary connections. However, where all the designations are effected under the Protocol (see below), the international application may be based simply on an application for registration filed with the office of origin. An international application must be presented to the International Bureau of WIPO through the intermediary of the office of origin.

THE INTERNATIONAL APPLICATION

An application for international registration must designate one or more Contracting Parties in which protection is sought. Further designations can be effected subsequently. A Contracting Party may be designated only if it is party to the same treaty as the Contracting Party whose office is the office of origin. The latter cannot itself be designated in the international application.

The designation of a given Contracting Party is made either under the Agreement or the Protocol, depending on which treaty is common to the Contracting Parties concerned. If both

Contracting Parties are party to the Agreement and the Protocol, the designation will be governed by the Protocol. This follows the repeal of the so-called “safeguard clause”, which took effect on January 1, 2008.

Also, from September 1, 2008, a full trilingual regime (English, French and Spanish) became operative – that is, an international application can now be filed in any of the three languages, irrespective of which treaty or treaties govern the application, unless the office of origin restricts that choice to one or two of these languages.

The filing of an international application is subject to the payment of a basic fee (which is reduced to 10 per cent of the prescribed amount for international applications filed by applicants whose country of origin is an LDC, in accordance with the list established by the United Nations), a supplementary fee for each class of goods and/or services beyond the first three classes, and a complementary fee for each Contracting Party designated. However, a Contracting Party to the Protocol may declare that, when it is designated under the Protocol, the complementary fee is replaced by an individual fee, whose amount is determined by the Contracting Party concerned but may not be higher than the amount that would be payable for the registration of a mark with its office.

INTERNATIONAL REGISTRATION

Once the International Bureau receives an international application, it carries out an examination for compliance with the requirements of the Agreement, the Protocol and their Common Regulations. This examination is restricted to formalities, including the classification and comprehensibility of the list of goods and/or services. If there are no irregularities in the application, the International Bureau records the mark in the International Register, publishes the international registration in the **WIPO Gazette of International Marks** (hereinafter referred to as “the Gazette”), and notifies it to each designated Contracting Party. Any matter of substance, such as whether the mark qualifies for protection or whether it is in conflict with an earlier mark in a particular Contracting Party, is determined by that Contracting Party’s trademark office under the applicable domestic legislation. From January 2009, the paper version of the Gazette was discontinued and replaced by a web-based version (e Gazette) on the Madrid system website.

STATEMENT OF GRANT OF PROTECTION OR REFUSAL OF PROTECTION

From January 1, 2011, the office of each designated Contracting Party shall issue a statement of grant of protection under Rule 18*ter* of the Common Regulations.

However, when designated Contracting Parties examine the international registration for compliance with their domestic legislation, and if some substantive provisions are not complied with, they have the right to refuse protection in their territory. Any such refusal, including an indication of the grounds on which it is based, must be communicated to the International

Bureau, normally within 12 months from the date of notification. However, a Contracting Party to the Protocol may declare that, when it is designated **under the Protocol**, this time limit is extended to 18 months. That Contracting Party may also declare that a refusal based on an opposition may be communicated to the International Bureau even after the 18-month time limit.

The refusal is communicated to the holder of the registration or the holder's representative before the International Bureau, recorded in the International Register and published in the Gazette. The procedure subsequent to a refusal (such as an appeal or a review) is carried out directly by the competent administration and/or court of the Contracting Party concerned and the holder, without the involvement of the International Bureau. The final decision concerning the refusal must, however, be communicated to the International Bureau, which records and publishes it.

EFFECTS OF AN INTERNATIONAL REGISTRATION

The effects of an international registration in each designated Contracting Party are, from the date of the international registration, the same as if the mark had been deposited directly with the office of that Contracting Party. If no refusal is issued within the applicable time limit, or if a refusal originally notified by a Contracting Party is subsequently withdrawn, the protection of the mark is, from the date of the international registration, the same as if it had been registered by the office of that Contracting Party.

An international registration is effective for 10 years. It may be renewed for further periods of 10 years on payment of the prescribed fees.

Protection may be limited with regard to some or all of the goods or services or may be renounced with regard to only some of the designated Contracting Parties. An international registration may be transferred in relation to all or some of the designated Contracting Parties and all or some of the goods or services indicated.

ADVANTAGES OF THE MADRID SYSTEM

The Madrid system offers several advantages for trademark owners. Instead of filing a separate national application in each country of interest, in several different languages, in accordance with different national or regional procedural rules and regulations and paying several different (and often higher) fees, an international registration may be obtained by simply filing one application with the International Bureau (through the office of the home country), in one language (English, French or Spanish) and paying one set of fees.

Similar advantages exist for maintaining and renewing a registration. Likewise, if the international registration is assigned to a third party, or is otherwise changed, such as a change in name and/or address, this may be recorded with effect for all designated Contracting Parties by means of a single procedural step.

To facilitate the work of the users of the Madrid system, the International Bureau publishes a **Guide to the International Registration of Marks under the Madrid Agreement and the Madrid Protocol**. The full texts of the Madrid Agreement and Protocol are available at www.wipo.int/treaties.

The Madrid Agreement and Protocol are open to any State party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series). The two treaties are parallel and independent, and States may adhere to either or both of them. In addition, an intergovernmental organization that maintains its own office for the registration of marks may become party to the Protocol. Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE MADRID AGREEMENT FOR THE REPRESSION OF FALSE OR DECEPTIVE INDICATIONS OF SOURCE ON GOOD (1891)

According to the Agreement, all goods bearing a false or deceptive indication of source, by which one of the Contracting States, or a place situated therein, is directly or indirectly indicated as being the country or place of origin, must be seized on importation, or such importation must be prohibited, or other actions and sanctions must be applied in connection with such importation.

The Agreement provides for the cases and the manner in which seizure may be requested and effected. It prohibits the use, in connection with the sale, display or offering for sale of any goods, of all indications in the nature of publicity capable of deceiving the public as to the source of the goods. It is reserved to the courts of each Contracting State to decide which appellations (other than regional appellations concerning the source of products of the vine) do not, on account of their generic character, come within the scope of the Agreement. The Agreement does not provide for the establishment of a Union, governing body or budget.

The Agreement, concluded in 1891, was revised at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967.

The Agreement (the full text of which is available at www.wipo.int/treaties) is open to States party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series). Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE NAIROBI TREATY ON THE PROTECTION OF THE OLYMPIC SYMBOL (1981)

All States party to the Treaty are under the obligation to protect the Olympic symbol – five interlaced rings – against use for commercial purposes (in advertisements, on goods, as a mark, etc.) without the authorization of the International Olympic Committee.

An important effect of the Treaty is that, if the International Olympic Committee grants authorization to use the Olympic symbol in a State party to the Treaty, the National Olympic Committee of that State is entitled to a part in any revenue the International Olympic Committee obtains for granting the said authorization.

The Treaty does not provide for the institution of a Union, governing body or budget.

The Treaty (the full text of which is available at www.wipo.int/treaties) is open to any State member of WIPO, the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series), the United Nations or any of the specialized agencies brought into relationship with the United Nations. Instruments of ratification, acceptance, approval or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES OF THE REGISTRATION OF MARKS (1957)

The Agreement establishes a classification of goods and services for the purposes of registering trademarks and service marks (the Nice Classification). The trademark offices of Contracting States must indicate, in official documents and publications in connection with each registration, the numbers of the classes of the Classification to which the goods or services for which the mark is registered belong.

The Classification consists of a list of classes – 34 for goods and 11 for services – and an alphabetical list of the goods and services. The latter comprises some 11,000 items. Both lists are amended and supplemented periodically by a Committee of Experts in which all Contracting States are represented. The current edition of the Classification is the ninth, which entered into force on January 1, 2007.

Although only 83 States are party to the Nice Agreement, the trademark offices of about 65 additional States, as well as the International Bureau of WIPO, the African Intellectual Property Organization (OAPI), the African Regional Intellectual Property Organization (ARIPO), the Benelux Organisation for Intellectual Property (BOIP) and the European Union Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), actually use the Classification.

The Nice Agreement created a Union, which has an Assembly. Every State member of the Union which has adhered to the Stockholm Act or the Geneva Act of the Nice Agreement is a member of the Assembly. Among the most important tasks of the Assembly is the adoption of the biennial program and budget of the Union.

The Agreement, concluded in 1957, was revised at Stockholm in 1967 and at Geneva in 1977, and was amended in 1979.

The Agreement (the full text of which is available at www.wipo.int/treaties) is open to States party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series). Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (1883)

The Convention applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models (a kind of “small-scale patent” provided for by the laws of some countries), service marks, trade names (designations under which an industrial or commercial activity is carried out), geographical indications (indications of source and appellations of origin) and the repression of unfair competition.

The substantive provisions of the Convention fall into three main categories: national treatment, right of priority and common rules.

(1) Under the provisions on **national treatment**, the Convention provides that, as regards the protection of industrial property, each Contracting State must grant the **same** protection to nationals of other Contracting States that it grants to its own nationals. Nationals of non-Contracting States are also entitled to national treatment under the Convention if they are domiciled or have a real and effective industrial or commercial establishment in a Contracting State.

(2) The Convention provides for the **right of priority** in the case of patents (and utility models where they exist), marks and industrial designs. This right means that, on the basis of a regular first application filed **in one** of the Contracting States, the applicant may, within a certain period of time (12 months for patents and utility models; 6 months for industrial designs and marks), apply for protection **in any of the other** Contracting States. These subsequent applications will be regarded as if they had been filed on the same day as the first application. In other words, they will have priority (hence the expression “right of priority”) over applications filed by others during the said period of time for the same invention, utility model, mark or industrial design. Moreover, these subsequent applications, being based on the first application, will not be affected by any event that takes place in the interval, such as the publication of an invention or the sale of articles bearing a mark or incorporating an industrial design. One of the great practical advantages of this provision is that applicants seeking protection in several countries are not required to present all of their applications at the same time but have 6 or 12 months to decide in which countries they wish to seek protection, and to organize with due care the steps necessary for securing protection.

(3) The Convention lays down a few **common rules** that all Contracting States must follow. The most important are:

(a) Patents. Patents granted in different Contracting States for the same invention **are independent of each other**: the granting of a patent in one Contracting State does not oblige other Contracting States to grant a patent; a patent cannot be refused, annulled or terminated in any Contracting State on the ground that it has been refused or annulled or has terminated in any other Contracting State.

The inventor has **the right to be named** as such in the patent.

The grant of a patent may not be refused, and a patent may not be invalidated, on the ground that the sale of the patented product, or of a product obtained by means of the patented process, is subject to restrictions or limitations resulting from the domestic law.

Each Contracting State that takes legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exclusive rights conferred by a patent may do so only with **certain limitations**. Thus, a compulsory license (a license not granted by the owner of the patent but by a public authority of the State concerned) based on failure to work or insufficient working of the patented invention may only be granted pursuant to a request filed after three years from the grant of the patent or four years from the filing date of the patent application, and it must be refused if the patentee gives legitimate reasons to justify this inaction. Furthermore, forfeiture of a patent may not be provided for, except in cases where the grant of a compulsory license would not have been sufficient to prevent the abuse. In the latter case, proceedings for forfeiture of a patent may be instituted, but only after the expiration of two years from the grant of the first compulsory license.

(b) Marks. The Paris Convention does not regulate the conditions for the **filing and registration of marks** which are determined in each Contracting State by domestic law. Consequently, no application for the registration of a mark filed by a national of a Contracting State may be refused, nor may a registration be invalidated, on the ground that filing, registration or renewal **has not been effected in the country of origin**. The registration of a mark obtained in one Contracting State is **independent** of its possible registration in any other country, including the country of origin; consequently, the lapse or annulment of the registration of a mark in one Contracting State will not affect the validity of the registration in other Contracting States.

Where a mark has been **duly registered in the country of origin**, it must, on request, be accepted for filing and protected in its original form in the other Contracting States. Nevertheless, registration may be refused in well-defined cases, such as where the mark would infringe the acquired rights of third parties; where it is devoid of distinctive character; where it is contrary to morality or public order; or where it is of such a nature as to be liable to deceive the public.

If, in any Contracting State, the use of a registered mark is compulsory, the registration cannot be canceled for non-use until after a reasonable period, and then only if the owner cannot justify this inaction.

Each Contracting State must refuse registration and prohibit the use of marks that constitute a reproduction, imitation or translation, liable to create confusion, of a mark used for identical and similar goods and considered by the competent authority of that State to be **well known in that State** and to already belong to a person entitled to the benefits of the Convention.

Each Contracting State must likewise refuse registration and prohibit the use of marks that consist of or contain, without authorization, armorial bearings, **State emblems** and official signs and hallmarks of Contracting States, provided they have been communicated through the International Bureau of WIPO. The same provisions apply to armorial bearings, flags, other emblems, abbreviations and names of certain intergovernmental organizations.

Collective marks must be granted protection.

(c) Industrial Designs. Industrial designs must be protected in each Contracting State, and protection may not be forfeited on the ground that articles incorporating the design are not manufactured in that State.

(d) Trade Names. Protection must be granted to trade names in each Contracting State without there being an obligation to file or register the names.

(e) Indications of Source. Measures must be taken by each Contracting State against direct or indirect use of a false indication of the source of goods or the identity of their producer, manufacturer or trader.

(f) Unfair Competition. Each Contracting State must provide for effective protection against unfair competition.

The Paris Union, established by the Convention, has an Assembly and an Executive Committee. Every State member of the Union which has adhered to at least the administrative and final provisions of the Stockholm Act (1967) is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member *ex officio*.

The establishment of the biennial program and budget of the WIPO Secretariat – as far as the Paris Union is concerned – is the task of its Assembly.

The Paris Convention, concluded in 1883, was revised at Brussels in 1900, at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967, and was amended in 1979.

The Convention (the full text of which is available at www.wipo.int/treaties) is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE PATENT COOPERATION TREATY (PCT) (1970)

The Patent Cooperation Treaty makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an “international” patent application. Such an application may be filed by anyone who is a national or resident of a PCT Contracting State. It may generally be filed with the national patent office of the Contracting State of which the applicant is a national or resident or, at the applicant’s option, with the International Bureau of WIPO in Geneva.

If the applicant is a national or resident of a Contracting State party to the European Patent Convention, the Harare Protocol on Patents and Industrial Designs (Harare Protocol), the Bangui Agreement, or the Eurasian Patent Convention, the international application may also be filed with the European Patent Office (EPO), the African Regional Intellectual Property Organization (ARIPO), the African Intellectual Property Organization (OAPI) or the Eurasian Patent Office (EAPO), respectively.

The Treaty regulates in detail the formal requirements with which international applications must comply.

Filing a PCT application has the effect of automatically designating all Contracting States bound by the PCT on the international filing date. The effect of the international application is the same in each designated State as if a national patent application had been filed with the national patent office of that State.

The international application is subjected to an international search. That search is carried out by one of the competent International Searching Authorities (ISA) under the PCT¹ and results in an international search report, that is, a listing of the citations of published documents that might affect the patentability of the invention claimed in the international application. In addition, a preliminary and non-binding written opinion on whether the invention appears to meet patentability criteria in light of the search report results is also issued.

The international search report and written opinion are communicated to the applicant who, after evaluating their content, may decide to withdraw the application, in particular where the content of the report and opinion suggests that the granting of patents is unlikely, or the applicant may decide to amend the claims in the application.

1. The patent offices of Australia, Austria, Brazil, Canada, China, Finland, Japan, the Republic of Korea, the Russian Federation, Spain, Sweden, the United States of America, the European Patent Office and the Nordic Patent Institute act as International Searching Authorities under the PCT (status on January 1, 2011). Agreements enabling the offices of Egypt and Israel to act as ISAs have been signed; however, these offices have not yet commenced operations.

If the international application is not withdrawn, it is published by the International Bureau, together with the international search report. The written opinion is not published at that time.

Before the expiration of 19 months from the priority date, the applicant has the option to request a Supplementary International Searching Authority (SISA) (an ISA willing to offer this service) to carry out an additional search of relevant documentation, specifically focusing on documents in the particular language in which that Authority specializes. The goal of this additional search is to reduce the likelihood of further documents coming to light in the national phase that would make granting the patent unlikely.

An applicant that decides to continue with the international application with a view to obtaining national (or regional) patents can, in relation to most Contracting States, wait until the end of the thirtieth month from the priority date to commence the national procedure before each designated office by furnishing a translation (where necessary) of the application into the official language of that office, paying to it the necessary fees and acquiring the services of local patent agents.

If the applicant wishes to make amendments to the application – for example, in order to address documents identified in the search report and conclusions made in the written opinion – and to have the potential patentability of the “as-amended” application reviewed – an optional international preliminary examination may be requested. The result of the preliminary examination is an international preliminary report on patentability (IPRP Chapter II) which is prepared by one of the competent International Preliminary Examining Authorities (IPEA) under the PCT² and which contains a preliminary and non-binding opinion on the patentability of the claimed invention. It provides the applicant with an even stronger basis on which to evaluate the chances of obtaining a patent and, if the report is favorable, a stronger basis on which to continue with the application before national and regional patent offices. If no international preliminary examination has been requested, the International Bureau establishes an international preliminary report on patentability (IPRP Chapter I) on the basis of the written opinion of the ISA and communicates this report to the designated offices.

The procedure under the PCT has great advantages for applicants, patent offices and the general public:

(i) applicants have up to 18 months more than if they had not used the PCT to reflect on the desirability of seeking protection in foreign countries, appoint local patent agents in each foreign country, prepare the necessary translations and pay national fees;

(ii) applicants can rest assured that, if their international application is in the form prescribed by the PCT, it cannot be rejected on formal grounds by any designated office during the national phase;

(iii) on the basis of the international search report and the written opinion, applicants can evaluate with reasonable probability the chances of their invention being patented;

2. The patent offices of Australia, Austria, Brazil, Canada, China, Finland, Japan, the Republic of Korea, the Russian Federation, Spain, Sweden, the United States of America, the European Patent Office and the Nordic Patent Institute act as International Preliminary Examining Authorities under the PCT (status on January 1, 2011). Agreements enabling the offices of Egypt and Israel to act as IPEAs have been signed; however, these offices have not yet commenced operations.

(iv) applicants have the possibility, during the optional international preliminary examination, to amend the international application and thus put it in order before processing by the various patent offices;

(v) the search and examination work of patent offices can be considerably reduced or eliminated thanks to the international search report, the written opinion and, where applicable, the international preliminary report on patentability which are communicated to designated offices together with the international application;

(vi) since each international application is published with an international search report, third parties are in a better position to formulate a well-founded opinion about the potential patentability of the claimed invention; and

(vii) for applicants, international publication puts the world on notice of their applications, which can be an effective means of advertising and looking for potential licensees.

Ultimately, the PCT:

- brings the world within reach;
- postpones the major costs associated with international patent protection;
- provides a strong basis for patenting decisions; and
- is used by the world's major corporations, research institutions and universities in seeking international patent protection.

The PCT created a Union which has an Assembly. Every State party to the PCT is a member of the Assembly. Among the most important tasks of the Assembly are the amendment of the Regulations issued under the Treaty, the adoption of the biennial program and budget of the Union and the fixing of certain fees connected with the use of the PCT system.

The Assembly of the PCT Union has established a special measure to benefit (1) natural persons who are nationals of and reside in States with a *per capita* national income below US\$3,000, or who are nationals of and reside in one of the States listed in the Schedule of Fees under the PCT Regulations, and (2) applicants, whether natural persons or not, who are nationals of and reside in States classified as LDCs by the United Nations. That benefit consists of a reduction of 90 percent of certain fees under the Treaty.

Details concerning the PCT can be obtained by consulting the PCT website (www.wipo.int/pct/en/applicants.html), the **PCT Applicant's Guide**, published by WIPO in English and French (Chinese, German and Japanese editions, not published by WIPO, also exist) and the PCT Newsletter, published by WIPO in English.

The PCT (the full text of which is available at www.wipo.int/treaties) was concluded in 1970, amended in 1979 and modified in 1984 and in 2001.

It is open to States party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series). Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE PATENT LAW TREATY (PLT) (2000)

The aim of the Patent Law Treaty (PLT) is to harmonize and streamline formal procedures in respect of national and regional patent applications and patents and, thus, to make such procedures more user friendly. With the significant exception of filing date requirements, the PLT provides maximum sets of requirements that the office of a Contracting Party may apply. This means that a Contracting Party is free to provide for requirements that are more generous from the viewpoint of applicants and owners, but that the requirements under the PLT are mandatory as to the maximum an office can require from applicants or owners. The Treaty contains, in particular, provisions on the following issues:

- Requirements for obtaining a filing date were standardized in order to minimize the risks that applicants could inadvertently lose the filing date, which is of utmost importance in the patent procedure. The PLT requires that the office of any Contracting Party must accord a filing date to an application upon compliance with three simple formal requirements: first, an indication that the elements received by the office are intended to be an application for a patent for an invention; second, indications that would allow the office to identify or to contact the applicant (however, a Contracting Party is allowed to require indications on both); third, a part which appears to be a description of the invention. No additional elements can be required for according a filing date. In particular, a Contracting Party cannot include one or more claims or a filing fee in a filing date requirement. As mentioned above, these requirements are not maximum requirements but constitute absolute requirements, so that a Contracting Party would not be allowed to accord a filing date unless all those requirements are complied with.
- A set of formal requirements for national and regional applications was standardized by incorporating into the PLT the requirements relating to form or content of international applications under the PCT, including the contents of the PCT request Form and the use of that request Form accompanied by an indication that the application is to be treated as a national application. This eliminates or reduces procedural gaps between national, regional and international patent systems.
- The standardized Model International Forms that have to be accepted by the offices of all Contracting Parties were established.

- A number of procedures before patent offices were simplified, which contributes to a reduction in costs for applicants as well as for offices. Examples of such procedures are exceptions from mandatory representation, the restriction on requiring evidence on a systematic basis, the requirement that offices accept a single communication covering more than one application or patent in certain cases (e.g., a single power of attorney) or the restriction on the requirement to submit a copy of an earlier application and a translation thereof.
- The PLT provides procedures for avoiding the unintentional loss of substantive rights resulting from failure to comply with formality requirements or time limits. These include the obligation that offices notify the applicant or other concerned person, extensions of time limits, continued processing, reinstatement of rights, and restrictions on revocation/invalidation of a patent for formal defects, where they were not noticed by the office during the application stage.
- The implementation of electronic filing is facilitated, while ensuring the co-existence of both paper and electronic communications. The PLT provides that Contracting Parties were allowed to exclude paper communications and to fully switch to electronic communications as of June 2, 2005. However, even after that date, they have to accept paper communications for the purpose of obtaining a filing date and for meeting a time limit. In this connection, the Agreed Statement stipulates that industrialized countries will continue to furnish support to developing countries and countries in transition for the introduction of electronic filing.

The PLT was concluded on June 1, 2000, and entered into force on April 28, 2005.

The PLT (the full text of which is available at www.wipo.int/treaties) is open to States members of WIPO and/or States party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series). It is also open to certain intergovernmental organizations. Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE SINGAPORE TREATY ON THE LAW OF TRADEMARKS (2006)

The objective of the Singapore Treaty is to create a modern and dynamic international framework for the harmonization of administrative trademark registration procedures. Building on the Trademark Law Treaty of 1994 (TLT), the Singapore Treaty has a wider scope of application and addresses new developments in the field of communication technologies. The Singapore Treaty is applicable to all types of marks registrable under the law of a given Contracting Party. Contracting Parties are free to choose the means of communication with their offices (including communications in electronic form or by electronic means of transmittal). Relief measures in respect of time limits as well as provisions on the recording of trademark licenses are introduced, and an Assembly of the Contracting Parties is established. However, other provisions of the Singapore Treaty (such as the requirements to provide for multiclass applications and registrations and the use of the International (“Nice”) Classification) closely follow the TLT. The two treaties are separate, and may be ratified or adhered to independently.

Unlike the TLT, the Singapore Treaty applies generally to all marks that can be registered under the law of a Contracting Party. Most significantly, it is the first time that non-traditional marks are explicitly recognized in an international instrument dealing with trademark law. The Treaty is applicable to all types of marks, including non-traditional visible marks, such as holograms, three-dimensional marks, color, position and movement marks, as well as non-visible marks such as sound, olfactory or taste and feel marks. The Regulations provide for the mode of representation of these marks in applications, which may include non-graphic or photographic reproductions.

The Singapore Treaty leaves Contracting Parties the freedom to choose the form and means of transmittal of communications and whether to accept communications on paper, in electronic form or in another form. This has consequences on formal requirements for applications and requests, such as the signature on communications with the office. The Treaty maintains a very important provision of the TLT, namely that the authentication, certification or attestation of any signature on paper communications cannot be required. However, Contracting Parties are free to determine whether and how they wish to implement a system of authentication of electronic communications.

The Treaty provides for relief measures when an applicant or holder has missed a time limit in an action for a procedure before an office. Contracting Parties must make available, at their choice, at least one of the following relief measures: extension of the time limit; or continued processing and reinstatement of rights, if the failure to meet the time limit was unintentional or occurred in spite of due care required by the circumstances.

The Singapore Treaty includes provisions on the recording of trademark licenses, and establishes maximum requirements for requests for recordal, amendment or cancellation of the recordal of a license.

The creation of an Assembly of the Contracting Parties introduced a degree of flexibility in defining the details of administrative procedures to be implemented by national trademark offices, where it is anticipated that future developments in trademark registration procedures and practices will warrant amendments to those details. The Assembly is endowed with powers to modify the Regulations and the Model International Forms, where necessary, and can also address – at a preliminary level – questions relating to the future development of the Treaty.

Furthermore, the Diplomatic Conference adopted a Resolution Supplementary to the Singapore Treaty on the Law of Trademarks and the Regulations Thereunder, with a view to declaring an understanding by the Contracting Parties on several areas covered by the Treaty, namely: that the Treaty does not impose any obligations on Contracting Parties to (i) register new types of marks, or (ii) implement electronic filing systems or other automation systems. Special provisions are made to provide developing and least developed countries with additional technical assistance and technological support to enable them to take full advantage of the provisions of the Treaty. It was recognized that LDCs shall be the primary and main beneficiaries of technical assistance by Contracting Parties. The Assembly monitors and evaluates, at every ordinary session, the progress of the assistance granted. Any dispute arising in relation to the interpretation or application of the Treaty is to be settled amicably through consultation and mediation under the auspices of the Director General of WIPO.

The Singapore Treaty was concluded on March 27, 2006, and entered into force on March 16, 2009.

The Treaty (the full text of which is available at www.wipo.int/treaties) is open to states Members of WIPO and certain intergovernmental organizations. Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE STRASBOURG AGREEMENT CONCERNING THE INTERNATIONAL PATENT CLASSIFICATION (1971)

The Agreement establishes the International Patent Classification (IPC) which divides technology into eight sections with approximately 70,000 subdivisions. Each subdivision is denoted by a symbol consisting of Arabic numerals and letters of the Latin alphabet.

The appropriate IPC symbols are indicated on patent documents (published patent applications and granted patents), of which over 1,000,000 are issued each year. The appropriate symbols are allotted by the national or regional industrial property office that publishes the patent document.

Classification is indispensable for the retrieval of patent documents in the search for “prior art.” Such retrieval is needed by patent-issuing authorities, potential inventors, research and development units and others concerned with the application or development of technology.

Although only 61 States are party to the Agreement, the IPC is used by the patent offices of more than 100 States, four regional offices and the Secretariat of WIPO in administering the Patent Cooperation Treaty (PCT) (1970) (see the relevant **Summary** in this series).

In order to keep the IPC up to date, it is continuously revised and a new edition is published each year on January 1.

Revision work is carried out by a Committee of Experts set up under the Agreement. All States party to the Agreement are members of the Committee of Experts.

The Strasbourg Agreement created a Union. The Union has an Assembly. Every State member of the Union is a member of the Assembly. Among the most important tasks of the Assembly is the adoption of the biennial program and budget of the Union.

The Agreement – commonly referred to as the IPC Agreement – was concluded in 1971 and amended in 1979 (the full text is available at www.wipo.int/treaties). It is open to States party to the Paris Convention for Protection of Industrial Property (1883) (see the relevant **Summary** in this series). Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE TRADEMARK LAW TREATY (TLT) (1994)

The aim of the TLT is to standardize and streamline national and regional trademark registration procedures. This is achieved through the simplification and harmonization of certain features of those procedures, thus making trademark applications and the administration of trademark registrations in multiple jurisdictions less complex and more predictable.

The great majority of the provisions of the TLT concern the procedure before a trademark office which can be divided into three main phases: application for registration; changes after registration; and renewal. The rules concerning each phase are constructed so as to clearly define the requirements for an application or a specific request.

As to the first phase – application for registration – the Contracting Parties to the TLT may require, as a maximum, the following indications: a request, the name and address and other indications concerning the applicant and the representative; various indications concerning the mark, including a certain number of representations of the mark; the goods and services for which registration is sought classified in the relevant class of the International Classification (established under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957) (see the relevant **Summary** in this series)); and, where applicable, a declaration of intention to use the mark. Each Contracting Party must also allow that an application can relate to goods and/or services belonging to several classes of the International Classification. As the list of permissible requirements is exhaustive, a Contracting Party cannot require, for example, that the applicant produce an extract from a register of commerce, an indication of a certain commercial activity, or evidence to the effect that the mark has been registered in the trademark register of another country.

The second phase of the trademark procedure covered by the TLT concerns changes in names or addresses and changes in the ownership of the registration. Here too, the applicable formal requirements are exhaustively listed. A single request is sufficient even where the change relates to more than one – possibly hundreds – of trademark applications or registrations, provided that the change to be recorded pertains to all registrations or applications concerned.

As to the third phase, renewal, the TLT standardizes the duration of the initial period of registration and the duration of each renewal to 10 years each.

Furthermore, the TLT provides that a power of attorney may relate to several applications or registrations by the same person or entity.

It also provides that, if requests are made on forms corresponding to the forms attached to the TLT, they must be accepted, subject to their being completed in a language accepted by the office, and that no further formalities may be required.

Most notably, the TLT does not allow a requirement as to the attestation, notarization, authentication, legalization or certification of any signature, except in the case of the surrender of a registration.

The TLT (the full text of which is available at www.wipo.int/treaties) was concluded in 1994 and is open to States members of WIPO and to certain intergovernmental organizations. Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE VIENNA AGREEMENT ESTABLISHING AN INTERNATIONAL CLASSIFICATION OF THE FIGURATIVE ELEMENTS OF MARKS (1973)

The Vienna Agreement establishes a classification for marks that consist of, or contain, figurative elements (the Vienna Classification). The competent offices of Contracting States must indicate in official documents and publications relating to registrations and renewals of marks the numbers of the categories, divisions and sections of the Classification to which the figurative elements of those marks belong.

A Committee of Experts, in which all Contracting States are represented, set up under the Agreement, is entrusted with the task of periodically revising the Classification. The current (sixth) edition has been in force since January 1, 2008.

The Classification consists of 29 categories, 144 divisions and some 1,667 sections in which the figurative elements of marks are classified.

Although only 29 States are party to the Vienna Agreement, the Classification is used by the industrial property offices of at least 30 States, as well as by the International Bureau of WIPO, the African Intellectual Property Organization (OAPI), the Benelux Organisation for Intellectual Property (BOIP) and the European Union Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM).

The Vienna Agreement created a Union, which has an Assembly. Every State member of the Union is a member of the Assembly. Among the most important tasks of the Assembly is the adoption of the biennial program and budget of the Union.

The Vienna Agreement, concluded in 1973, was amended in 1985.

The Agreement (the full text of which is available at www.wipo.int/treaties) is open to States party to the Paris Convention for the Protection of Industrial Property (1883) (see the relevant **Summary** in this series). Instruments of ratification or accession must be deposited with the Director General of WIPO.





PART III:
COPYRIGHT TREATIES

SUMMARY OF THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (1886)

The Convention rests on **three basic principles** and contains a series of provisions determining the **minimum protection** to be granted as well as special provisions available to **developing countries** which want to make use of them.

(1) The **three basic principles** are the following:

(a) Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works that were first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals (principle of “national treatment”).¹

(b) Such protection must not be conditional upon compliance with any formality (principle of “automatic” protection).²

(c) Such protection is independent of the existence of protection in the country of origin of the work (principle of “independence” of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.³

(2) The **minimum standards** of protection relate to the works and rights to be protected, and to the duration of protection:

(a) As to works, protection must include “every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression” (Article 2(1) of the Convention).

(b) Subject to certain allowed reservations, limitations or exceptions, the following are among the **rights** which must be recognized as exclusive rights of authorization:

- **the right to translate,**
- **the right to make adaptations and arrangements** of the work,
- **the right to perform in public** dramatic, dramatico-musical and musical works,

1. Under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the principles of national treatment, automatic protection and independence of protection also bind those World Trade Organization (WTO) Members which are not party to the Berne Convention. In addition, the TRIPS Agreement imposes an obligation of “most-favored-nation treatment,” under which advantages accorded by a WTO Member to the nationals of any other country must also be accorded to the nationals of all WTO Members. It is to be noted that the possibility of delayed application of the TRIPS Agreement does not apply to national treatment and most-favored-obligations.
2.,3. Idem.

- **the right to recite** literary works in public,
- **the right to communicate to the public** the performance of such works,
- **the right to broadcast** (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization),
- **the right to make reproductions** in any manner or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration),
- **the right to use the work as a basis for an audiovisual work**, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work.⁴

The Convention also provides for “**moral rights**,” that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author’s honor or reputation.

(c) As to the **duration** of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author’s death. There are, however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author’s identity or if the author discloses his or her identity during that period; in the latter case, the general rule applies. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public (“release”) or – failing such an event – from the creation of the work. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work.⁵

(3) The Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as “free uses” of protected works, and are set forth in Articles 9(2) (reproduction in certain special cases), 10 (quotations and use of works by way of illustration for teaching purposes), 10*bis* (reproduction of newspaper or similar articles and use of works for the purpose of reporting current events) and 11*bis*(3) (ephemeral recordings for broadcasting purposes).

4. Under the TRIPS Agreement, an exclusive right of rental must be recognized in respect of computer programs and, under certain conditions, audiovisual works.

5. Under the TRIPS Agreement, any term of protection that is calculated on a basis other than the life of a natural person must be at least 50 years from the first authorized publication of the work, or – failing such an event – 50 years from the making of the work. However, this rule does not apply to photographic works, or to works of applied art.

(4) The Appendix to the Paris Act of the Convention also permits developing countries to implement non-voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law.

The Berne Union has an Assembly and an Executive Committee. Every country member of the Union which has adhered to at least the administrative and final provisions of the Stockholm Act is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member *ex officio*.

The establishment of the biennial program and budget of the WIPO Secretariat – as far as the Berne Union is concerned – is the task of its Assembly.

The Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979.

The Convention (the full text of which is available at www.wipo.int/treaties) is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO.^{6,7}

6. It is to be noted that WTO Members, even those not party to the Berne Convention, must comply with the substantive law provisions of the Berne Convention, except that WTO Members not party to the Convention are not bound by the moral rights provisions of the Convention.

7. It is to be noted that LDCs may, until July 1, 2013, delay the application of most of the obligations provided for in the TRIPS Agreement (Article 65). Naturally, States party to the Berne Convention cannot delay application of their obligations under the Berne Convention.

SUMMARY OF THE BRUSSELS CONVENTION RELATING TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE (1974)

The Convention provides for the obligation of each Contracting State to take adequate measures to prevent the unauthorized distribution on or from its territory of any programme-carrying signal transmitted by satellite. A distribution is considered unauthorized if it has not been authorized by the organization – typically a broadcasting organization – that decided on the programme’s content. The obligation exists in respect of organizations that are nationals of a Contracting State.

The Convention permits certain limitations on protection. The distribution of programme-carrying signals by non-authorized persons is permitted if the signals carry short excerpts containing reports of current events or, as quotations, short excerpts of the programme carried by the emitted signals or, in the case of developing countries, if the programme carried by the emitted signals is distributed solely for the purposes of teaching, including adult teaching or scientific research. The Convention does not establish a term of protection, leaving the matter to domestic legislation.

The provisions of this Convention are not applicable, however, where the distribution of signals is made from a direct broadcasting satellite.

The Convention (the full text of which is available at www.wipo.int/treaties) does not provide for the institution of a Union, governing body or budget.

It is open to any State member of the United Nations or of any of the agencies belonging to the United Nations system of organizations. Instruments of ratification, acceptance or accession must be deposited with the Secretary-General of the United Nations.

SUMMARY OF THE GENEVA CONVENTION FOR THE PROTECTION OF PRODUCERS OF PHONOGRAMS AGAINST UNAUTHORIZED DUPLICATION OF THEIR PHONOGRAMS (1971)

The Convention provides for the obligation of each Contracting State to protect a producer of phonograms who is a national of another Contracting State against the **making of duplicates** without the consent of that producer; against the importation of such duplicates, where the making or **importation** is for the purpose of distribution to the public; and against the **distribution** of such duplicates to the public. "Phonogram" means an exclusively aural fixation (that is, it does not comprise, for example, the sound tracks of films or videocassettes), whatever its form (disc, tape, etc.). Protection may be provided under copyright law, *sui generis* (related rights) law, unfair competition law or penal law. Protection must last for at least 20 years from the first fixation or the first publication of the phonogram. (However, national laws increasingly provide for a 50-year term of protection.) The Convention permits the same limitations as those provided in relation to the protection of authors. It allows non-voluntary licenses if reproduction is intended exclusively for teaching or scientific research, limited to the territory of the State whose authorities give the license, and if equitable remuneration is provided (Article 6).

WIPO is responsible, jointly with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), for the administration of this Convention.

The Convention does not provide for the institution of a Union, governing body or budget.

The Convention (the full text of which is available at www.wipo.int/treaties) is open to any State member of the United Nations or of any of the agencies belonging to the United Nations system of organizations. Instruments of ratification, acceptance or accession must be deposited with the Secretary-General of the United Nations.

SUMMARY OF THE ROME CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANISATIONS (1961)

The Convention secures protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organizations.

(1) Performers (actors, singers, musicians, dancers and those who perform literary or artistic works) are protected against certain acts to which they have not consented. Such acts are: the broadcasting and communication to the public of a live performance; the fixation of the live performance; the reproduction of the fixation if the original fixation was made without the performer's consent or if the reproduction was made for purposes different from those for which consent was given.

(2) Producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms. In the Rome Convention, "phonograms" means any exclusively aural fixation of sounds of a performance or of other sounds. Where a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, to the producers of the phonograms, or to both. Contracting States are free, however, not to apply this rule or to limit its application.

(3) Broadcasting organizations have the right to authorize or prohibit certain acts, namely: the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The Rome Convention allows for exceptions and limitations to the above-mentioned rights in national laws as regards private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other cases where national law provides exceptions to copyright in literary and artistic works. Furthermore, once a performer has consented to the incorporation of a performance in a visual or audiovisual fixation, the provisions on performers' rights have no further application.

Protection must last at least until the end of a 20-year period computed from the end of the year in which **(a)** the fixation was made, for phonograms and for performances incorporated therein; **(b)** the performance took place, for performances not incorporated in phonograms;

(c) the broadcast took place. However, national laws increasingly provide for a 50-year term of protection, at least for phonograms and performances.

WIPO is responsible, jointly with the ILO and UNESCO, for the administration of the Rome Convention. These three organizations constitute the Secretariat of the Intergovernmental Committee set up under the Convention consisting of the representatives of 12 Contracting States.

The Convention does not provide for the institution of a Union or budget. It establishes an Intergovernmental Committee composed of Contracting States that considers questions concerning the Convention.*

This Convention (the full text of which is available at www.wipo.int/treaties) is open to States party to the Berne Convention for the Protection of Literary and Artistic Works (1886) (see the relevant **Summary** in this series) or to the Universal Copyright Convention. Instruments of ratification or accession must be deposited with the Secretary-General of the United Nations. States may make reservations with regard to the application of certain provisions.

* The TRIPS Agreement of the WTO also contains provisions on the protection of related rights. These provisions are different, in several respects, from those contained in the Rome Convention and in the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971) (see the relevant **Summary** in this series).

SUMMARY OF THE WIPO COPYRIGHT TREATY (WCT) (1996)

The WCT is a special agreement under the Berne Convention. Any Contracting Party (even if it is not bound by the Berne Convention) must comply with the substantive provisions of the 1971 (Paris) Act of the Berne Convention for the Protection of Literary and Artistic Works (1886) (see the relevant **Summary** in this series). Furthermore, the Treaty mentions two **subject matters** to be protected by copyright: **(i)** computer programs, whatever the mode or form of their expression; and **(ii)** compilations of data or other material (“databases”), in any form, which, by reason of the selection or arrangement of their contents, constitute intellectual creations. (Where a database does not constitute such a creation, it is outside the scope of this Treaty.)

As to the **rights of authors**, the Treaty deals with three rights: **(i)** the right of distribution; **(ii)** the right of rental; and **(iii)** the right of communication to the public. Each of them is an exclusive right, subject to certain limitations and exceptions. Not all of the limitations or exceptions are mentioned in the following:

- **The right of distribution** is the right to authorize the making available to the public of the original and copies of a work through sale or other transfer of ownership.
- **The right of rental** is the right to authorize commercial rental to the public of the original and copies of three kinds of works: **(i)** computer programs (except where the computer program itself is not the essential object of the rental); **(ii)** cinematographic works (but only in cases where commercial rental has led to widespread copying of such works, materially impairing the exclusive right of reproduction); and **(iii)** works embodied in phonograms as determined in the national law of Contracting Parties (except for countries which, since April 15, 1994, have a system in force for equitable remuneration of such rental).
- **The right of communication to the public** is the right to authorize **any** communication to the public, by wire or wireless means, including “the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them.” The quoted expression covers, in particular, on-demand, interactive communication through the Internet.

Article 10 of the WCT incorporates the so-called “three-step” test to determine limitations and exceptions, as provided for in Article 9(2) of the Berne Convention, extending its application

to all rights. The Agreed Statement accompanying the WCT provides that such limitations and exceptions, as established in national law in compliance with the Berne Convention, may be extended to the digital environment. Contracting States may devise new exceptions and limitations appropriate to the digital environment. The extension of existing or the creation of new limitations and exceptions is allowed if it meets the conditions of the “three-step” test.

The Treaty obliges Contracting Parties to provide legal remedies against the circumvention of technological measures (e.g., encryption) used by authors in connection with the exercise of their rights, and against the removal or altering of information, such as certain data that identify works or their authors, necessary for the management (e.g., licensing, collecting and distribution of royalties) of their rights (“rights management information”).

The Treaty obliges each Contracting Party to adopt, in accordance with its legal system, the measures necessary to ensure the application of the Treaty. In particular, each Contracting Party must ensure that enforcement procedures are available under its law so as to permit effective action against any act of infringement of rights covered by the Treaty. Such action must include expeditious remedies to prevent infringement as well as remedies that constitute a deterrent to further infringement.

The Treaty establishes an Assembly of the Contracting Parties whose main task is to address matters concerning the maintenance and development of the Treaty. It entrusts to the Secretariat of WIPO the administrative tasks concerning the Treaty.

The Treaty was concluded in 1996 and entered into force on March 6, 2002.

The Treaty (the full text of which is available at www.wipo.int/treaties) is open to States members of WIPO and to the European Community. The Assembly constituted by the Treaty may decide to admit other intergovernmental organizations to become party to the Treaty. Instruments of ratification or accession must be deposited with the Director General of WIPO.

SUMMARY OF THE WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT) (1996)

The Treaty deals with the intellectual property rights of two kinds of beneficiaries: **(i)** performers (actors, singers, musicians, etc.); and **(ii)** producers of phonograms (persons or legal entities which take the initiative and have the responsibility for the fixation of sounds). These rights are addressed in the same instrument, because most of the rights granted by the Treaty to performers are rights connected to their fixed, purely aural performances (which are the subject matter of phonograms).

As far as **performers** are concerned, the Treaty grants performers four kinds of **economic rights** in their performances **fixed in phonograms** (not in audiovisual fixations, such as motion pictures): **(i)** the right of reproduction; **(ii)** the right of distribution; **(iii)** the right of rental; and **(iv)** the right of making available. Each of them is an exclusive right, subject to certain limitations and exceptions. Not all of those limitations and exceptions are mentioned in the following:

- **The right of reproduction** is the right to authorize direct or indirect reproduction of the phonogram in any manner or form.
- **The right of distribution** is the right to authorize the making available to the public of the original and copies of the phonogram through sale or other transfer of ownership.
- **The right of rental** is the right to authorize the commercial rental to the public of the original and copies of the phonogram as determined in the national law of the Contracting Parties (except for countries that, since April 15, 1994, have a system in force for equitable remuneration of such rental).
- **The right of making available** is the right to authorize the making available to the public, by wire or wireless means, of any performance fixed in a phonogram, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them. This right covers, in particular, on-demand, interactive making available through the Internet.

The Treaty grants three kinds of economic rights to performers in respect of their unfixed (live) performances: **(i)** the right of broadcasting (except in the case of rebroadcasting); **(ii)** the right of communication to the public (except where the performance is a broadcast performance); and **(iii)** the right of fixation.

The Treaty also grants performers **moral rights**: the right to claim to be identified as the performer and the right to object to any distortion, mutilation or other modification that would be prejudicial to the performer's reputation.

As far as producers of **phonograms** are concerned, the Treaty grants them four kinds of rights (all economic) in their phonograms: **(i)** the right of reproduction; **(ii)** the right of distribution; **(iii)** the right of rental; and **(iv)** the right of making available. Each of them is an exclusive right, subject to certain limitations and exceptions. Not all of those limitations and exceptions are mentioned in the following:

- **The right of reproduction** is the right to authorize direct or indirect reproduction of the phonogram in any manner or form.
- **The right of distribution** is the right to authorize the making available to the public of the original and copies of the phonogram through sale or other transfer of ownership.
- **The right of rental** is the right to authorize the commercial rental to the public of the original and copies of the phonogram as determined in the national law of the Contracting Parties (except for countries that, since April 15, 1994, have a system in force for equitable remuneration of such rental).
- **The right of making available** is the right to authorize making available to the public, by wire or wireless means, a phonogram in such a way that members of the public may access the phonogram from a place and at a time individually chosen by them. This right covers, in particular, on-demand, interactive making available through the Internet.

As far as **both performers and phonogram producers** are concerned, the Treaty obliges – subject to various exceptions and limitations not mentioned here – each Contracting Party to accord to nationals of other Contracting Parties, with regard to the rights specifically granted in the Treaty, the treatment it accords to its own nationals (“national treatment”).

Furthermore, the Treaty provides that performers and producers of phonograms have the right to a single equitable remuneration for the direct or indirect use of phonograms, published for commercial purposes, broadcasting or communication to the public. However, any Contracting Party may restrict or – provided that it makes a reservation to the Treaty – deny this right. In the case and to the extent of a reservation by a Contracting Party, the other Contracting Parties are permitted to deny, *vis-à-vis* the reserving Contracting Party, national treatment (“reciprocity”).

Article 16 of the WPPT incorporates the so-called “three-step” test to determine limitations and exceptions, as provided for in Article 9(2) of the Berne Convention, extending its application to all rights. The accompanying Agreed Statement provides that such limitations and exceptions, as established in national law in compliance with the Berne Convention, may be extended to the digital environment. Contracting States may devise new exceptions and limitations appropriate to the digital environment. The extension of existing or the creation of new limitations and exceptions is allowed if it meets the conditions of the “three-step” test.

The term of protection must be at least 50 years.

The enjoyment and exercise of the rights provided in the Treaty cannot be subject to any formality.

The Treaty obliges Contracting Parties to provide legal remedies against the circumvention of technological measures (e.g., encryption) used by performers or phonogram producers in connection with the exercise of their rights, and against the removal or altering of information – such as the indication of certain data that identify the performer, performance, producer of the phonogram and the phonogram – necessary for the management (e.g., licensing, collecting and distribution of royalties) of the said rights (“rights management information”).

The Treaty obliges each Contracting Party to adopt, in accordance with its legal system, the measures necessary to ensure the application of the Treaty. In particular, each Contracting Party must ensure that enforcement procedures are available under its law so as to permit effective action against any act of infringement of rights covered by the Treaty. Such action must include expeditious remedies to prevent infringement as well as remedies that constitute a deterrent to further infringement.

The Treaty establishes an Assembly of the Contracting Parties whose main task is to address matters concerning the maintenance and development of the Treaty. It entrusts to the Secretariat of WIPO the administrative tasks concerning the Treaty.

The Treaty was concluded in 1996 and entered into force on May 20, 2002.

The Treaty (the full text of which is available at www.wipo.int/treaties) is open to States members of WIPO and to the European Community. The Assembly constituted by the Treaty may decide to admit other intergovernmental organizations to become party to the Treaty. Instruments of ratification or accession must be deposited with the Director General of WIPO.



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