

**REVISION OF THE HAGUE AGREEMENT ON INTERNATIONAL DEPOSIT
OF INDUSTRIAL DESIGNS**

UNICE COMMENTS

1. GENERAL REMARKS

UNICE has taken note of the draft new WIPO proposals on the above subject (draft Act H/DC/3 Prov. and draft Regulations H/DC/6) and would like to offer the following comments.

First and foremost, UNICE would like to reiterate its fundamental view that the planned revision should be adopted as rapidly as possible and, apart from a few details in its present form. In that context, as the process continues, and more especially at the forthcoming concluding diplomatic conference, no more modifications should be made that would be detrimental to the textile industry. This applies in particular for the following points, which we regard as essential and indispensable:

- the possibility to deposit several designs within the same application (multiple application);
- the possibility for deferment of publication of thirty months;
- in the case of deposit with deferment of publication, the applicant must have the possibility to lapse the application at the end of the deferment period;
- in the case of deposit with deferment of publication the admissibility to deposit two-dimensional designs in original through specimens instead of reproduction;
- secrecy of designs in the case of deferred publication;
- a reasonable and user-friendly tariff structure which takes suitable account of deposit with deferment of publication and more specially of the rules of Article 25.2 TRIPs concerning the protection of textile designs, in particular regarding costs;
- limitation of bureaucratic elements/requirements for international registration to a scale which is manageable for all companies, and in particular SMEs;
- same effect of international deposit as with national deposit;
- consideration of the consequences arising from the WTO TRIPs agreement.

UNICE's comments on individual points in the documents are as follows, in order of importance.

2. COMMENTS ON SPECIFIC PROVISIONS

2.1. DRAFT NEW ACT

Article 10.6 (a) and (b)

It is not clear from either article 10.6, the notes to article 10, rule 15 or the notes to rule 15 whether the formulation "...the international registration shall be cancelled..." is geared to an *ex-nunc* or an *ex-tunc* effect. UNICE assumes that only an *ex-nunc* effect can be intended.

Article 10.2 (ii)

When several contracting states are named for a deposit with deferment of publication, and the national law of those states allows deferment but with different deferment periods, publication by WIPO should take place at the time when the shortest of these deferment periods under national law expires. If the depositing party fails to meet these obligations, according to our interpretation of article 10.6 (a) and (b), the entire application would lapse at the end of the deferment period of the contracting state in which publication is first due.

UNICE considers this arrangement as inappropriate and too harsh for applicants. In such cases, it would be an obvious solution to point out the situation to the depositing party by sending a timely reminder and, only if he still fails to meet the conditions for publication the international registration will be cancelled *ex nunc*

2.2. DRAFT REGULATIONS (RULES)

Rule 12 – Fees Concerning the International Application

In the case of deposit with deferment of publication as a consequence to the proposed rule 12 the following problem arises: if the full fee has to be paid on deposit and the "second publication phase" is not completed, i.e. the registration is allowed to lapse at the end of the deferment period, an excessively high fee is paid. Fees are geared to the "normal" protection period of five years, against the protection in the case in point which could end after (at most) two and a half years.

For that reason, UNICE suggests that the International Bureau return to its previous proposal that only a prescribed portion of the international registration fee shall be paid at the time of filing the application. Such a fee structure will encourage applicants to file their designs and avoid excessive costs, certainly for those industries with many designs.

UNICE regrets to note that it is nowhere stated explicitly who will authorise the amount of fees, and on what conditions and according to what principles

It is essential to ensure that this important principle approved unanimously by the seventh meeting of experts is not changed or watered down. Thus, rule 12.1 should be complemented with a subparagraph (v) as follows:

"If the international application contains a request for deferment of publication, only a given portion of the international registration fee shall be paid on submission of the application."

Rule 9.3 (b) and Rule 30 (1)

The list of rule 30 (I) should be complemented as follows:

Rule 9 (3) (b)

The number of reproductions of a design which a Contracting Party may require shall be limited to one reproduction (two-dimensional) or (x) reproductions (three-dimensional).

The reason is that the more reproductions are to be submitted, the more complicated and expensive the application. For that reason, the number of reproductions should be kept as small as possible. It is therefore important that the maximum number of reproductions which a contracting state may request can only be changed by unanimous resolution.

3. CONCLUDING REMARKS

UNICE has time and again stressed how important it is for European industry, and in particular for SMEs which are often not organised to manage complex and expensive international registration procedures, to have a simple and cost-effective international registration system to which as many countries as possible would adhere.

UNICE believes that rapid adoption of the latest WIPO proposals taken in tandem with current developments at EU level, where creation of a Community design is looming, are positive steps in the direction of Design Law harmonisation. These developments might constitute a way towards a Design Law Treaty, which UNICE would welcome in principle.
