RECORDS
OF THE DIPLOMATIC CONFERENCE
FOR THE CONCLUSION OF A TREATY
ON THE PROTECTION OF INTELLECTUAL PROPERTY
IN RESPECT OF INTEGRATED CIRCUITS

Washington, 1989

WORLD INTELLECTUAL PROPERTY ORGANIZATION

(WIPO)

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EDITOR'S NOTE

The Records of the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits held in Washington, from May 8 to 26, 1989, contain the documents described below relating to that Conference which were issued before, during and after the Conference, as well as indexes to those documents.

Treaty

In this part of the Records, the final text--that is the text as adopted and signed--of the Treaty appears on the right-hand (odd number) pages of the first part of this volume (up to page 47). On the opposite, left-hand (even number) pages (up to page 46) appears the text of the draft of the said Treaty as presented to the Diplomatic Conference. In order to facilitate the comparison of the draft with the final text, those pages do not contain in full the text of the draft where the texts are identical.

Page 49 contains the list of States that signed the Treaty by the date until which it was open for signature (that is, May 25, 1990).

Final Act

Page 53 contains the text of the Final Act adopted and signed by the Diplomatic Conference and the list of signatories of the Final Act on May 26, 1989.

Conference Documents

This part (pages 57 to 169) contains three series of documents distributed before and during the Diplomatic Conference: "IPIC/DC" (47 documents), "IPIC/DC/WG/DEF" (3 documents) and "IPIC/DC/INF" (3 documents).

Summary Minutes

This part (pages 173 to 368) contains the summary minutes of the Plenary and the Main Committee of the Diplomatic Conference. Those minutes were written in their provisional form by the International Bureau on the basis of transcripts of the tape recordings which were made of all interventions. The transcripts are preserved in the archives of the International Bureau. The provisional minutes were then made available to the speakers with the invitation to make suggestions for changes where desired. The final minutes, published in this volume, take such suggestions into account.

Participants

This part lists the individuals who represented member delegations (pages 371 to 392), an observer delegation (page 393), intergovernmental organizations, other than the World Intellectual Property Organization (page 393), international non-governmental organizations (pages 393 to 395) and the World Intellectual Property Organization (page 396). (The report of the Credentials Committee appears on pages 160 to 162.) This part also lists the officers of the Diplomatic Conference and the officers and members of the committees of the Diplomatic Conference (pages 397 to 399).

Indexes

Finally, the Records contain six different indexes (pages 403 to 467).

The first two indexes (contained in pages 403 to 425) relate to the subject matter of the Treaty. The first of those two indexes lists by number each Article of the Treaty and indicates, under each of them, the number which the Article had in the draft presented to the Conference, the pages where the text of the draft and the final text of the Article appear in these Records, and, finally, the numbers of those paragraphs of the summary minutes which reflect the discussion on and adoption of the Article. The second index is a catchword index, which lists alphabetically the main subjects dealt with in the Treaty. After each catchword, the number of the Article in which the particular subject is dealt with is indicated. By consulting the first index under the Article thus indicated, the reader will find the references to the pages where that provision appears and to the paragraph numbers of the minutes where it is treated.

The third index (pages 427 to 436) is an alphabetical list of States and of the Intergovernmental Organization having the status of a member delegation showing, under the name of each such member delegation, where to find the names of the members of its delegation, as well as the interventions made on behalf of that member delegation and referring to the signature of the Treaty and the Final Act on behalf of that State or Intergovernmental Organization where such a signature took place.

The fourth index (page 437) is an index of the observer delegations showing, under the name of the State, where to find the name of the observer representing it, as well as the interventions made on its behalf.

The fifth index (pages 439 to 441) is an alphabetical list of the Organizations showing, under the name of each Organization, where to find the names of the observers representing it, as well as the interventions made on its behalf.

The sixth index (pages 443 to 467) is an alphabetical list of the participants indicating, under the name of each individual, the State or Organization which he represented, as well as the place in these Records where his name appears together with that of the State or Organization represented by him, as an officer of the Conference or as an officer or a member of a Committee, as a speaker in the Plenary or Main Committee or as a plenipotentiary signing the Treaty or the Final Act of the Diplomatic Conference.

Geneva, 1992

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PREAMBLE

The Contracting Parties

Convinced that assuring international protection for the intellectual property rights of the creators of layout-designs (topographies) of microchips not only is equitable but also promotes technological and economic progress and the acquisition of foreign technology,

Desirous to serve equity, technological and economic progress and the international exchange of technological achievements, and to establish, at the international level, a system of protection that serves the public interest through a proper balance among all the private interests involved,

With a view to laying the groundwork for the promotion of broader dissemination of microchip products and the transfer of technology towards developing countries in particular,

Have concluded the following Treaty:

[There is no Preamble in the Final Text]

Article 1
Establishment of a Union

The Contracting Parties constitute a Union for the protection of layout-designs (topographies) of microchips.

Article 2
Definitions

For the purposes of this Treaty:

(i) "microchip" means a product capable of performing an electronic function in which the active element or elements, some or all of the interconnections and any passive elements are integrally formed in and/or on a piece of material,

(ii) "layout-design (topography)" means the three-dimensional disposition of the active element or elements, interconnections and any passive elements of a microchip,

(iii) [Same as in the Final Text]

(iv) [Same as in the Final Text]

(v) "Contracting Party" means a State or Intergovernmental Organization party to this Treaty,

(vi) "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an Intergovernmental Organization, the territories of the States members of that Intergovernmental Organization,

(vii) [Same as in the Final Text]

(viii) [Same as in the Final Text]

(ix) [Same as in the Final Text]

[The Draft Treaty did not contain an item (x)]

Article 1
Establishment of a Union

The Contracting Parties constitute themselves into a Union for the purposes of this Treaty.

Article 2
Definitions

For the purposes of this Treaty:

(i) "integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function,

(ii) "layout-design (topography)" means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture,

(iii) "holder of the right" means the natural person who, or the legal entity which, according to the applicable law, is to be regarded as the beneficiary of the protection referred to in Article 6,

(iv) "protected layout-design (topography)" means a layout-design (topography) in respect of which the conditions of protection referred to in this Treaty are fulfilled,

(v) "Contracting Party" means a State, or an Intergovernmental Organization meeting the requirements of item (x), party to this Treaty,

(vi) "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an Intergovernmental Organization, the territory in which the constituting treaty of that Intergovernmental Organization applies,

(vii) "Union" means the Union referred to in Article 1,

(viii) "Assembly" means the Assembly referred to in Article 9,

(ix) "Director General" means the Director General of the World Intellectual Property Organization,

(x) "Intergovernmental Organization" means an organization constituted by, and composed of, States of any region of the world, which has competence in respect of matters governed by this Treaty, has its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and binding on all its member States, and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Treaty.

Article 3
The Subject Matter of the Treaty

(1) [Obligation to Protect Layout-Designs (Topographies)] Each Contracting Party shall have the obligation to secure, throughout its territory, intellectual property protection in respect of layout-designs (topographies) in accordance with this Treaty. It shall, in particular, adopt adequate measures to ensure the prevention of acts considered unlawful under Article 6 and appropriate legal remedies where such acts have been committed.

(2) [Requirement of Originality] (a) The obligation referred to in paragraph (1) shall apply to layout-designs (topographies) that are original in the sense that they are the result of their creators' own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of microchips at the time of their creation.

(b) A layout-design (topography) that consists of a combination of elements or interconnections that are commonplace shall be protected only if the combination, taken as a whole, fulfils the conditions referred to in subparagraph (a).

Article 4
The Legal Form of the Protection

[Same as in the Final Text]

Article 3
The Subject Matter of the Treaty

(1) [Obligation to Protect Layout-Designs (Topographies)] (a) Each Contracting Party shall have the obligation to secure, throughout its territory, intellectual property protection in respect of layout-designs (topographies) in accordance with this Treaty. It shall, in particular, secure adequate measures to ensure the prevention of acts considered unlawful under Article 6 and appropriate legal remedies where such acts have been committed.

(b) The right of the holder of the right in respect of an integrated circuit applies whether or not the integrated circuit is incorporated in an article.

(c) Notwithstanding Article 2(i), any Contracting Party whose law limits the protection of layout-designs (topographies) to layout-designs (topographies) of semiconductor integrated circuits shall be free to apply that limitation as long as its law contains such limitation.

(2) [Requirement of Originality] (a) The obligation referred to in paragraph (1)(a) shall apply to layout-designs (topographies) that are original in the sense that they are the result of their creators' own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of integrated circuits at the time of their creation.

(b) A layout-design (topography) that consists of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, fulfills the conditions referred to in subparagraph (a).

Article 4
The Legal Form of the Protection

Each Contracting Party shall be free to implement its obligations under this Treaty through a special law on layout-designs (topographies) or its law on copyright, patents, utility models, industrial designs, unfair competition or any other law or a combination of any of those laws.

Article 5
National Treatment

(1) [National Treatment] Each Contracting Party shall, in respect of the intellectual property protection of layout-designs (topographies), accord

(i) [Same as in the Final Text]

(ii) to legal entities which or natural persons who have a real and effective industrial [or commercial] establishment in the territory of any of the other Contracting Parties,

the same treatment that it accords to its own nationals, without prejudice to the protection provided in this Treaty.

(2) [Court Proceedings, Etc.] Notwithstanding paragraph (1), any Contracting Party is free not to apply national treatment as far as any obligations to appoint an agent or to designate an address for service are concerned or as far as the special rules applicable to foreigners in court proceedings are concerned.

(3) [Same as in the Final Text]

Article 6
The Scope of the Protection

(1) [Acts Requiring the Proprietor's Authorization] Any Contracting Party shall consider unlawful at least the following acts if performed without the authorization of the holder of the right:

(i) the act of reproducing a protected layout-design (topography) [in its entirety or a substantial part thereof],

(ii) the act of incorporating a protected layout-design (topography) [or a substantial part thereof] in a microchip,

(iii) the act of importing, selling or otherwise distributing, for commercial purposes, a protected layout-design (topography) or a microchip in which a protected layout-design (topography) is incorporated, irrespective of whether the microchip is imported, sold or otherwise distributed as part of some other article or separately.

Article 5
National Treatment

(1) [National Treatment] Subject to compliance with its obligation referred to in Article 3(1)(a), each Contracting Party shall, in respect of the intellectual property protection of layout-designs (topographies), accord, within its territory,

(i) to natural persons who are nationals of, or are domiciled in the territory of, any of the other Contracting Parties, and

(ii) to legal entities which or natural persons who, in the territory of any of the other Contracting Parties, have a real and effective establishment for the creation of layout-designs (topographies) or the production of integrated circuits,

the same treatment that it accords to its own nationals.

(2) [Agents, Addresses for Service, Court Proceedings] Notwithstanding paragraph (1), any Contracting Party is free not to apply national treatment as far as any obligations to appoint an agent or to designate an address for service are concerned or as far as the special rules applicable to foreigners in court proceedings are concerned.

(3) [Application of Paragraphs (1) and (2) to Intergovernmental Organizations] Where the Contracting Party is an Intergovernmental Organization, "nationals" in paragraph (1) means nationals of any of the States members of that Organization.

Article 6
The Scope of the Protection

(1) [Acts Requiring the Authorization of the Holder of the Right] (a) Any Contracting Party shall consider unlawful the following acts if performed without the authorization of the holder of the right:

(i) the act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout-design (topography) in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in Article 3(2),

(ii) the act of importing, selling or otherwise distributing for commercial purposes a protected layout-design (topography) or an integrated circuit in which a protected layout-design (topography) is incorporated.

(b) Any Contracting Party shall be free to consider unlawful also acts other than those specified in subparagraph (a) if performed without the authorization of the holder of the right.

(2) [Acts Not Requiring the Proprietor's Authorization] (a) Notwithstanding paragraph (1), no Contracting Party shall consider unlawful the performance, without the authorization of the holder of the right, of any act referred to in paragraph (1)(i) or (ii) where the act is performed by a third party for private or non-commercial use, or for the sole purpose of evaluation, analysis [, research] or teaching.

(b) Where the third party referred to in subparagraph (a), on the basis of evaluation or analysis of the protected layout-design (topography) ("the first layout-design (topography)"), creates a layout-design (topography) complying with the requirement of originality referred to in Article 3(2) ("the second layout-design (topography)"), that third party may incorporate the second layout-design (topography) in a microchip or perform any of the other acts referred to in paragraph (1) in respect of the second layout-design (topography) without being regarded as infringing the rights of the holder of the right in the first layout-design (topography).

(3) [Non-Voluntary Licenses; Antitrust Measures] (a) Notwithstanding paragraph (1), any Contracting Party may, in its legislation, provide for the possibility of its executive or judicial authority

(i) granting a non-exclusive license for the performance of any of the acts referred to in paragraph (1) by a third party without the authorization of the holder of the right [after serious and unsuccessful efforts to obtain such authorization] ("non-voluntary license") where the granting of the non-voluntary license is found, by the granting authority, to be necessary [Alternative A: in the public interest] [Alternative B: to prevent any abuse, by the holder of the right, of his rights, or to safeguard public health or public safety]; the non-voluntary license shall be subject to the payment of an equitable remuneration by the third party to the holder of the right, which remuneration shall, in the absence of agreement between the third party and the holder of the right, be fixed by the granting authority;

(2) [Acts Not Requiring the Authorization of the Holder of the Right] (a) Notwithstanding paragraph (1), no Contracting Party shall consider unlawful the performance, without the authorization of the holder of the right, of the act of reproduction referred to in paragraph (1)(a)(i) where that act is performed by a third party for private purposes or for the sole purpose of evaluation, analysis, research or teaching.

(b) Where the third party referred to in subparagraph (a), on the basis of evaluation or analysis of the protected layout-design (topography) ("the first layout-design (topography)"), creates a layout-design (topography) complying with the requirement of originality referred to in Article 3(2) ("the second layout-design (topography)"), that third party may incorporate the second layout-design (topography) in an integrated circuit or perform any of the acts referred to in paragraph (1) in respect of the second layout-design (topography) without being regarded as infringing the rights of the holder of the right in the first layout-design (topography).

(c) The holder of the right may not exercise his right in respect of an identical original layout-design (topography) that was independently created by a third party.

(3) [Measures Concerning Use Without the Consent of the Holder of the Right] (a) Notwithstanding paragraph (1), any Contracting Party may, in its legislation, provide for the possibility of its executive or judicial authority granting a non-exclusive license, in circumstances that are not ordinary, for the performance of any of the acts referred to in paragraph (1) by a third party without the authorization of the holder of the right ("non-voluntary license"), after unsuccessful efforts, made by the said third party in line with normal commercial practices, to obtain such authorization, where the granting of the non-voluntary license is found, by the granting authority, to be necessary to safeguard a national purpose deemed to be vital by that authority; the non-voluntary license shall be available for exploitation only in the territory of that country and shall be subject to the payment of an equitable remuneration by the third party to the holder of the right.

(ii) deciding any measure limiting any of the rights of the holder of the right on the ground that the latter has violated legislation designed to secure free competition and to prevent abuses of dominant market position.

(b) The granting of any non-voluntary license, and the deciding of any measure, referred to in subparagraph (a) shall be subject to judicial review. Any such license or measure shall [Alternative C: cease to have effect] [Alternative D: be revoked] when the facts that justify it cease to exist.

(4) [Sale and Distribution of Infringing Microchips After Notice But Acquired Innocently Before Notice] Notwithstanding paragraph (1)(iii), no Contracting Party shall be obliged to consider unlawful the importing, selling or otherwise distributing, for commercial purposes, of a microchip in which a protected layout-design (topography) was incorporated without the authorization of the holder of the right, irrespective of whether the microchip is imported, sold or otherwise distributed as part of some other article or separately, where the person performing or ordering such acts did not know or had no reasonable ground to know, when acquiring such microchip or such article, that the reproducing of the protected layout-design (topography) or its incorporation had been done without the authorization of the holder of the right [Alternative E: .] [Alternative F: ; however, the said person shall be obliged to pay the holder of the right an equitable remuneration in respect of each microchip imported, sold or otherwise distributed, as part of some other article or separately, for commercial purposes, after actual notice has been given to the said person by the holder of the right that the reproducing or incorporation had been done without his authorization, the amount of such remuneration to be fixed, failing agreement between the parties, by a court or an other impartial authority designated by legislation.]

(b) The provisions of this Treaty shall not affect the freedom of any Contracting Party to apply measures, including the granting, after a formal proceeding by its executive or judicial authority, of a non-voluntary license, in application of its laws in order to secure free competition and to prevent abuses by the holder of the right.

(c) The granting of any non-voluntary license referred to in subparagraph (a) or subparagraph (b) shall be subject to judicial review. Any non-voluntary license referred to in subparagraph (a) shall be revoked when the conditions referred to in that subparagraph cease to exist.

(4) [Sale and Distribution of Infringing Integrated Circuits Acquired Innocently] Notwithstanding paragraph (1)(a)(ii), no Contracting Party shall be obliged to consider unlawful the performance of any of the acts referred to in that paragraph in respect of an integrated circuit incorporating an unlawfully reproduced layout-design (topography) where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the said integrated circuit, that it incorporates an unlawfully reproduced layout-design (topography).

(5) [Articles Temporarily or Accidentally Entering the Territory of a Contracting Party] Notwithstanding paragraph (1)(iii), where a microchip is part of a vehicle, vessel, aircraft or space craft entering, temporarily or accidentally, the territory of a Contracting Party, the said Contracting Party shall not consider such entering as an importation in the sense of that provision. For the purposes of the preceding sentence, "territory" also means territorial waters and airspace.

(6) [Exhaustion of Rights] Notwithstanding paragraph (1)(iii), any Contracting Party may consider lawful the performance, without the authorization of the holder of the right, of any of the acts referred to in that provision where the act is performed in respect of a protected layout-design (topography), or in respect of a microchip in which such a layout-design (topography) is incorporated, that has been put on the market by, or with the consent of, the holder of the right.

[There is no provision in the Final Text corresponding to Article 6(5) in the Draft Treaty]

(5) [Exhaustion of Rights] Notwithstanding paragraph (1)(a)(ii), any Contracting Party may consider lawful the performance, without the authorization of the holder of the right, of any of the acts referred to in that paragraph where the act is performed in respect of a protected layout-design (topography), or in respect of an integrated circuit in which such a layout-design (topography) is incorporated, that has been put on the market by, or with the consent of, the holder of the right.

Article 7
Exploitation; Registration

Any Contracting Party shall be free not to protect a layout-design (topography) until the layout-design (topography)

(i) has been commercially exploited somewhere in the world, or

(ii) has been the subject of an application for registration, filed in due form with the competent public authority, or of a registration with that authority; it may be required that the application be accompanied by the filing of [Alternative A: material allowing the identification of the layout-design (topography)] [Alternative B: a copy or drawing of the layout-design (topography)].

Article 7
Exploitation; Registration, Disclosure

(1) [Faculty to Require Exploitation] Any Contracting Party shall be free not to protect a layout-design (topography) until it has been ordinarily commercially exploited, separately or as incorporated in an integrated circuit, somewhere in the world.

(2) [Faculty to Require Registration; Disclosure] (a) Any Contracting Party shall be free not to protect a layout-design (topography) until the layout-design (topography) has been the subject of an application for registration, filed in due form with the competent public authority, or of a registration with that authority; it may be required that the application be accompanied by the filing of a copy or drawing of the layout-design (topography) and, where the integrated circuit has been commercially exploited, of a sample of that integrated circuit, along with information defining the electronic function which the integrated circuit is intended to perform; however, the applicant may exclude such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout-design (topography).

(b) Where the filing of an application for registration according to subparagraph (a) is required, the Contracting Party may require that such filing be effected within a certain period of time from the date on which the holder of the right first exploits ordinarily commercially anywhere in the world the layout-design (topography) of an integrated circuit; such period shall not be less than two years counted from the said date.

(c) Registration under subparagraph (a) may be subject to the payment of a fee.

Article 8
The Duration of the Protection

(1) [Minimum Duration Where Commercial Exploitation and Registration Not Required] Where the faculty provided for in Article 7 has not been made use of, protection shall last at least 15 years from the creation of the layout-design (topography).

[Alternative M:

(2) [Minimum Duration Where Exploitation or Registration Required] Where the faculty provided for in Article 7 has been made use of, protection shall last at least ten years

(i) from the date of the starting of the commercial exploitation, where Article 7(1)(i) applies,

(ii) from the date of the filing of the application for registration, where Article 7(ii) applies, or

(iii) from the earlier of the two dates specified in (i) and (ii), above, where both Article 7(i) and Article 7(ii) apply.]

[Alternative N:

(2) [Minimum Duration Where Exploitation or Registration Required] (a) Where the faculty provided for in Article 7 has been made use of, protection shall last at least five years

(i) from the date of the starting of the commercial exploitation, where Article 7(1)(i) applies,

(ii) from the date of the filing of the application for registration, where Article 7(ii) applies, or

(iii) from the earlier of the two dates specified in (i) and (ii), above, where both Article 7(i) and Article 7(ii) apply.

(b) Where, at the expiration of the five-year period referred to in subparagraph (a), the layout-design (topography) has a commercial value, the competent authority of the Contracting Party shall, on the request of the holder of the right, grant an extension of the duration of the protection; such extension shall not be less than [Alternative N1: 30 months] [Alternative N2: five years].]

Article 8
The Duration of the Protection

Protection shall last at least eight years.

Article 9
Assembly

(1) [Same as in the Final Text]

(2) [Tasks] (a) [Same as in the Final Text]

(b) [Same as in the Final Text]

[(c) The Assembly may establish the details of the procedures provided for in Article 13bis, including the financing of such procedures.]

(3) [Voting] (a) Each Contracting Party shall have one vote and shall, subject to subparagraph (b), vote only in its own name.

(b) Contracting Parties present at the time of voting that are member States of a Contracting Party that is an Intergovernmental Organization may delegate the exercise of their right to vote to that Organization.

(4) [Same as in the Final Text]

(5) [Same as in the Final Text, except that the Draft Treaty did not include the words ", subject to the provisions of this Treaty,"]

Article 9
Assembly

(1) [Composition] (a) The Union shall have an Assembly consisting of the Contracting Parties.

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

(c) Subject to subparagraph (d), the expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation.

(d) The Assembly may ask the World Intellectual Property Organization to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations.

(2) [Functions] (a) The Assembly shall deal with matters concerning the maintenance and development of the Union and the application and operation of this Treaty.

(b) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General for the preparation of such diplomatic conference.

(c) The Assembly shall perform the functions allocated to it under Article 14 and shall establish the details of the procedures provided for in that Article, including the financing of such procedures.

(3) [Voting] (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an Intergovernmental Organization shall exercise its right to vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Treaty and which are present at the time the vote is taken. No such Intergovernmental Organization shall exercise its right to vote if any of its member States participates in the vote.

(4) [Ordinary Sessions] The Assembly shall meet in ordinary session once every two years upon convocation by the Director General.

(5) [Rules of Procedure] The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 10
International Bureau

(1) [International Bureau] The International Bureau of the World Intellectual Property Organization shall:

(i) [Same as in the Final Text]

(ii) [Same as in the Final Text, except the words "States and are" which were not included in the Draft Treaty]

[There was no provision in the Draft Treaty corresponding to Article 10(1)(b) in the Final Text]

(2) [Same as in the Final Text]

Article 11
Amendment of Certain Provisions of the Treaty

(1) [Assembly May Amend Certain Provisions] The Assembly may amend the definitions contained in Article 2(i) and (ii), Article 9(1)(c) and (d), (3)(b) and (4) and Article 10(1) [and Article 13bis].

(2) [Initiation and Notice of Proposals for Amendment] (a) [Same as in the Final Text]

(b) [Same as in the Final Text]

[There was no provision in the Draft Treaty corresponding to Article 11(2)(c) in the Final Text]

(3) [Required Majorities] Adoption by the Assembly of any amendment to Article 2(i) and (ii) and to Article 9(1)(c) and (d), (3)(b) and (4) shall require four-fifths of the votes cast; adoption by the Assembly of any amendment to Article 10(1) [and Article 13bis] shall require three-fourths of the votes cast.

Article 10
International Bureau

(1) [International Bureau] (a) The International Bureau of the World Intellectual Property Organization shall:

(i) perform the administrative tasks concerning the Union, as well as any tasks specially assigned to it by the Assembly;

(ii) subject to the availability of funds, provide technical assistance, on request, to the Governments of Contracting Parties that are States and are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations.

(b) No Contracting Party shall have any financial obligations; in particular, no Contracting Party shall be required to pay any contributions to the International Bureau on account of its membership in the Union.

(2) [Director General] The Director General shall be the chief executive of the Union and shall represent the Union.

Article 11
Amendment of Certain Provisions of the Treaty

(1) [Amending of Certain Provisions by the Assembly] The Assembly may amend the definitions contained in Article 2(i) and (ii), as well as Articles 3(1)(c), 9(1)(c) and (d), 9(4), 10(1)(a) and 14.

(2) [Initiation and Notice of Proposals for Amendment] (a) Proposals under this Article for amendment of the provisions of this Treaty referred to in paragraph (1) may be initiated by any Contracting Party or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(c) No such proposal shall be made before the expiration of five years from the date of entry into force of this Treaty under Article 16(1).

(3) [Required Majority] Adoption by the Assembly of any amendment under paragraph (1) shall require four-fifths of the votes cast.

(4) [Entry Into Force] Any amendment to the provisions of this Treaty referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties members of the Assembly at the time the Assembly adopted the amendment. Any amendment to the said provisions thus accepted shall bind all States and Intergovernmental Organizations that are Contracting Parties at the time the amendment was adopted by the Assembly or that become Contracting Parties thereafter.

Article 12
Safeguard of Paris and Berne Conventions

[Same as in the Final Text]

Article 13
[No] Reservations

No Contracting Party may make reservations to this Treaty [except ...].

(4) [Entry Into Force] (a) Any amendment to the provisions of this Treaty referred to in paragraph (1) shall enter into force three months after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties members of the Assembly at the time the Assembly adopted the amendment. Any amendment to the said provisions thus accepted shall bind all States and Intergovernmental Organizations that were Contracting Parties at the time the amendment was adopted by the Assembly or that become Contracting Parties thereafter, except Contracting Parties which have notified their denunciation of this Treaty in accordance with Article 17 before the entry into force of the amendment.

(b) In establishing the required three-fourths referred to in subparagraph (a), a notification made by an Intergovernmental Organization shall only be taken into account if no notification has been made by any of its member States.

Article 12
Safeguard of Paris and Berne Conventions

This Treaty shall not affect the obligations that any Contracting Party may have under the Paris Convention for the Protection of Industrial Property or the Berne Convention for the Protection of Literary and Artistic Works.

Article 13
Reservations

No reservations to this Treaty shall be made.

[Article 13bis
Consultations; Disputes[; Enforcement]]

(1) [Consultations] (a) If any Contracting Party considers that the legislation or the practice of another Contracting Party is inconsistent with the provisions of this Treaty, it may bring the matter to the attention of the latter Contracting Party and request the latter to enter into consultations with it.

(b) [Same as in Article 14(1)(b) in the Final Text]

(c) The Contracting Parties engaged in consultations shall attempt to conclude such consultations satisfactorily for both of them within a short period of time.

(2) [Disputes] (a) If the consultations referred to in the preceding paragraph do not lead to a mutually satisfactory result, the Director General, at the request of either Contracting Party, shall convene a panel, whose members shall be selected from a list of designated experts established by the Assembly, to examine the matter, giving full opportunity to both of them to present their views to the panel.

(b) The Assembly shall establish general rules for the selection of the panel members.

(c) Unless the parties at dispute agree among themselves prior to the panel's concluding its deliberations, the panel shall promptly prepare a written report and transmit it to the Assembly. The report shall contain the facts and the recommendations which, if followed, would resolve the dispute.

Article 14
Settlement of Disputes

(1) [Consultations] (a) Where any dispute arises concerning the interpretation or implementation of this Treaty, a Contracting Party may bring the matter to the attention of another Contracting Party and request the latter to enter into consultations with it.

(b) The Contracting Party so requested shall provide promptly an adequate opportunity for the requested consultations.

(c) The Contracting Parties engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution of the dispute.

(2) [Other Means of Settlement] If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in paragraph (1), the parties to the dispute may agree to resort to other means designed to lead to an amicable settlement of their dispute, such as good offices, conciliation, mediation and arbitration.

(3) [Panel] (a) If the dispute is not satisfactorily settled through the consultations referred to in paragraph (1), or if the means referred to in paragraph (2) are not resorted to, or do not lead to an amicable settlement within a reasonable period of time, the Assembly, at the written request of either of the parties to the dispute, shall convene a panel of three members to examine the matter. The members of the panel shall not, unless the parties to the dispute agree otherwise, be from either party to the dispute. They shall be selected from a list of designated governmental experts established by the Assembly. The terms of reference for the panel shall be agreed upon by the parties to the dispute. If such agreement is not achieved within three months, the Assembly shall set the terms of reference for the panel after having consulted the parties to the dispute and the members of the panel. The panel shall give full opportunity to the parties to the dispute and any other interested Contracting Parties to present to it their views. If both parties to the dispute so request, the panel shall stop its proceedings.

(b) The Assembly shall adopt rules for the establishment of the said list of experts, and the manner of selecting the members of the panel, who shall be governmental experts of the Contracting Parties, and for the conduct of the panel proceedings, including provisions to safeguard the confidentiality of the proceedings and of any material designated as confidential by any participant in the proceedings.

(c) Unless the parties to the dispute reach an agreement between themselves prior to the panel's concluding its proceedings, the panel shall promptly prepare a written report and provide it to the parties to the dispute for their review. The parties to the dispute shall have a reasonable period of time, whose length will be fixed by the panel, to submit any comments on the report to the panel, unless they agree to a longer time in their attempts to reach a mutually satisfactory resolution to their dispute. The panel shall take into account the comments and shall promptly transmit its report to the Assembly. The report shall contain the facts and recommendations for the resolution of the dispute, and shall be accompanied by the written comments, if any, of the parties to the dispute.

[(3) [Enforcement] (a) The Assembly shall give the report of the panel prompt consideration and may make recommendations to the Contracting Party whose legislation or practice was the subject matter of the dispute.

(b) If the Assembly's recommendations are not followed, within the time limit set by the Assembly, by the said Contracting Party, the Assembly may authorize the Contracting Party which has alleged the violation of this Treaty by the other Contracting Party to suspend, in whole or in part, for a time that the Assembly deems necessary, the application of this Treaty to any holder of the right who or which is a national of, is domiciled in, or has a real and effective industrial [or commercial] establishment in the territory of the latter Contracting Party.]]

(4) [Recommendation by the Assembly] The Assembly shall give the report of the panel prompt consideration. The Assembly shall, by consensus, make recommendations to the parties to the dispute, based upon its interpretation of this Treaty and the report of the panel.

Article 14
Becoming Party to the Treaty

(1) [Eligibility] (a) [Same as in Article 15(1)(a) in the Final Text]

(b) Furthermore, any Intergovernmental Organization having its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and applicable in the territory of all its member States may become party to this Treaty.

(2) [Adherence] A State or Intergovernmental Organization shall become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, acceptance, approval or formal confirmation, or

(ii) the deposit of an instrument of accession.

(3) [Same as in Article 15(3) in the Final Text]

Article 15
Becoming Party to the Treaty

(1) [Eligibility] (a) Any State member of the World Intellectual Property Organization or of the United Nations may become party to this Treaty.

(b) Any Intergovernmental Organization which meets the requirements of Article 2(x) may become party to this Treaty. The Organization shall inform the Director General of its competence, and any subsequent changes in its competence, with respect to the matters governed by this Treaty. The Organization and its member States may, without, however, any derogation from the obligations under this Treaty, decide on their respective responsibilities for the performance of their obligations under this Treaty.

(2) [Adherence] A State or Intergovernmental Organization shall become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, acceptance or approval, or

(ii) the deposit of an instrument of accession.

(3) [Deposit of Instruments] The instruments referred to in paragraph (2) shall be deposited with the Director General.

Article 15
Entry Into Force of the Treaty

(1) [Initial Entry Into Force] This Treaty shall enter into force, with respect to the first ... States or Intergovernmental Organizations which have deposited their instruments of ratification, acceptance, approval, formal confirmation or accession, three months after the date on which the ... instrument of ratification, acceptance, approval, formal confirmation or accession has been deposited.

(2) [States and Intergovernmental Organizations Not Covered by the Initial Entry Into Force] This Treaty shall enter into force with respect to any State or Intergovernmental Organization not covered by paragraph (1) three months after the date on which that State or Intergovernmental Organization has deposited its instrument of ratification, acceptance, approval, formal confirmation or accession unless a later date has been indicated in the instrument of ratification, acceptance, approval, formal confirmation or accession. In the latter case, this Treaty shall enter into force with respect to the said State or Intergovernmental Organization on the date thus indicated.

(3) [Same as Article 16(3) in the Final Text]

Article 16
Denunciation of the Treaty

(1) [Same as in Article 17(1) in the Final Text]

(2) [Effective Date] Denunciation shall take effect one year after the day on which the Director General has received the notification.

Article 16
Entry Into Force of the Treaty

(1) [Initial Entry Into Force] This Treaty shall enter into force, with respect to each of the first five States or Intergovernmental Organizations which have deposited their instruments of ratification, acceptance, approval or accession, three months after the date on which the fifth instrument of ratification, acceptance, approval or accession has been deposited.

(2) [States and Intergovernmental Organizations Not Covered by the Initial Entry Into Force] This Treaty shall enter into force with respect to any State or Intergovernmental Organization not covered by paragraph (1) three months after the date on which that State or Intergovernmental Organization has deposited its instrument of ratification, acceptance, approval or accession unless a later date has been indicated in the instrument; in the latter case, this Treaty shall enter into force with respect to the said State or Intergovernmental Organization on the date thus indicated.

(3) [Protection of Layout-Designs (Topographies) Existing at Time of Entry Into Force] Any Contracting Party shall have the right not to apply this Treaty to any layout-design (topography) that exists at the time this Treaty enters into force in respect of that Contracting Party, provided that this provision does not affect any protection that such layout-design (topography) may, at that time, enjoy in the territory of that Contracting Party by virtue of international obligations other than those resulting from this Treaty or the legislation of the said Contracting Party.

Article 17
Denunciation of the Treaty

(1) [Notification] Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

(2) [Effective Date] Denunciation shall take effect one year after the day on which the Director General has received the notification of denunciation.

Article 17
Languages of the Treaty; Signature

(1) [Original Texts; Official Texts] (a) [Same as in Article 18(1) in the Final Text]

(b) [Same as in Article 18(2) in the Final Text]

(2) [Time Limit for Signature] The original of this Treaty shall remain open for signature at Washington until December 31, 1989. [Corresponds to Article 20 in the Final Text]

Article 18
Depositary Functions

(1) [Deposit of the Original] The original of this Treaty shall be deposited with the Director General.

(2) [Certified Copies] The Director General shall transmit two copies, certified by him, of this Treaty to all States and Intergovernmental Organizations eligible to become party to the Treaty.

(3) [Registration of the Treaty] The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) [Amendments] The Director General shall transmit two copies, certified by him, of any amendment to this Treaty to the Contracting Parties and, on request, to any other State or Intergovernmental Organization.

Article 18
Texts of the Treaty

(1) [Original Texts] This Treaty is established in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(2) [Official Texts] Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

Article 19
Depositary

The Director General shall be the depositary of this Treaty.

Article 19
Notifications

The Director General shall notify the Contracting Parties and any other State or Intergovernmental Organization which is eligible to become party to this Treaty of any of the events referred to in Articles 11, [13,] 14, 15 and 16.

[Article 17(2) in the Draft Treaty corresponds to Article 20 in the Final Text]

[There is no Article in the Final Text corresponding to Article 19 in the Draft Treaty]

Article 20
Signature

This Treaty shall be open for signature between May 26, 1989, and August 25, 1989, with the Government of the United States of America, and between August 26, 1989, and May 25, 1990, at the headquarters of WIPO.

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IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Treaty.

DONE AT WASHINGTON, this twenty-sixth day of May one thousand nine hundred and eighty-nine.

SIGNATORIES OF THE TREATY*

Ghana, Liberia, Yugoslavia, Zambia, Guatemala (May 31, 1989), Egypt (December 5, 1989), China (May 1, 1990), and India (May 25, 1990).

* Editor's Note: All signatures were affixed on May 26, 1989, unless otherwise indicated.

FINAL ACT

OF THE DIPLOMATIC CONFERENCE

FINAL ACT

OF THE

DIPLOMATIC CONFERENCE FOR THE CONCLUSION

OF A TREATY ON THE PROTECTION OF INTELLECTUAL PROPERTY

IN RESPECT OF INTEGRATED CIRCUITS

In accordance with the decisions made by the General Assembly of the World Intellectual Property Organization (WIPO) at its ninth session and by the Assembly of the International (Paris) Union for the Protection of Industrial Property at its twelfth session (1987), and following preparations by member States and by the International Bureau of WIPO, the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits was held from May 8 to 26, 1989, at Washington.

The Diplomatic Conference adopted the Treaty on Intellectual Property in Respect of Integrated Circuits, which was opened for signature on May 26, 1989.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this final Act.

Angola, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Holy See, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Lesotho, Liberia, Libya, Liechtenstein, Mexico, Netherlands, New Zealand, Nigeria, Peru, Portugal, Senegal, Soviet Union, Spain, Sweden, Switzerland, Syria, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Yemen Arab Republic, Yugoslavia, Zambia, European Communities (53).

CONFERENCE DOCUMENTS

CONFERENCE DOCUMENTS "IPIC/DC," "IPIC/DC/WG/DEF," and "IPIC/DC/INF" SERIES

Document Number	Source	Subject
IPIC/DC/1	The Preparatory Meeting for the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits	Draft Agenda
IPIC/DC/2	The Preparatory Meeting for the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits	Draft Rules of Procedure
IPIC/DC/2 Corr.	The International Bureau	Corrigendum to Document IPIC/DC/2
IPIC/DC/3	The Director General of WIPO	Draft Treaty
IPIC/DC/3 Corr.	The International Bureau	Corrigendum to Document IPIC/DC/3
IPIC/DC/4	The Delegation of the United States of America	Further Explanation of the Consultation, Dispute Settlement and Enforcement Procedures
IPIC/DC/5	Commission of the European Communities	Status of the European Economic Community and Division of Competence Between the Community and its Member States in Relation to the Proposed Treaty
IPIC/DC/6	The Delegation of Spain in the name of the member States of the European Communities	Rule 33 of the Draft Rules of Procedure of the Diplomatic Conference
IPIC/DC/7	The Plenary of the Diplomatic Conference	Rules of Procedure of the Diplomatic Conference
IPIC/DC/8	The Delegation of Japan	Draft Articles 2 and 5
IPIC/DC/9	The Delegation of China	Draft Article 2
IPIC/DC/10	The Delegation of India	Draft Article 6

Document Number	Source	Subject
IPIC/DC/11	The Delegation of the United States of America	Draft Article 6
IPIC/DC/12	The Credentials Committee	Interim Report
IPIC/DC/13	The Delegation of the European Communities	Draft Article 6
IPIC/DC/14	The Delegation of Switzerland	Draft Article 6
IPIC/DC/15	The Delegation of the Soviet Union	Draft Article 6
IPIC/DC/16	The Delegation of Spain in the name of the member States of the European Communities	Draft Article 6
IPIC/DC/17	The Delegation of the European Communities	Draft Article 6(4) and (5)
IPIC/DC/18	The Delegation of Australia	Draft Article 6(4)
IPIC/DC/19	The Delegation of India in the name of the Countries Members of the Group of 77	Draft Article 6
IPIC/DC/20	The Director General of WIPO	Draft Article 6(1)
IPIC/DC/21	The Delegation of Australia	Draft Article 6(3)(i)
IPIC/DC/22	The Delegation of Brazil	Draft Article 6(3) and (4)
IPIC/DC/23	The Delegation of Brazil	Draft Article 5(1)
IPIC/DC/24	The Delegation of China	Draft Article 7
IPIC/DC/25 Rev.	The Delegation of Bulgaria	Draft Article 6(3)
IPIC/DC/26	The Delegation of Bulgaria	Draft Preamble
IPIC/DC/27	The Delegation of Bulgaria	Draft Article 18
IPIC/DC/28	The Delegation of Bulgaria	Draft Article 19
IPIC/DC/29	The Delegation of Bulgaria	Draft Article 17
IPIC/DC/30	The Delegation of Japan	Draft Articles 8(2), 9(5) and 11(1) and (4)
IPIC/DC/31	The Delegation of the European Communities	Draft Articles 7 and 8

Document Number	Source	Subject
IPIC/DC/32	The Delegation of the European Communities	Draft Articles 2(vi), 9(3) and 14(1)(b)
IPIC/DC/33	The Delegation of the European Communities	Draft Article 11(1) and (3)
IPIC/DC/34	The Delegation of Japan	Draft Article 13*bis*(3)(b)
IPIC/DC/35	The Delegation of Australia	Draft Article 11(4)
IPIC/DC/36	The Delegation of Australia	Draft Article 8
IPIC/DC/37	The Delegation of the United States of America	Draft Article 13*bis*
IPIC/DC/38	The Delegation of India in the name of the Countries Members of the Group of 77	Draft Article 7
IPIC/DC/39	The Delegation of the United States of America	Draft Articles 2, 5(3), 9(3), 11(4) and (5), 14(1) and (2), 15(1) and (2), 18(2) and (4) and 19
IPIC/DC/40	The Delegation of India in the name of the Countries Members of the Group of 77	Draft Article 8
IPIC/DC/41	The Delegation of China	Intergovernmental Organizations to be a Contracting Party to the Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits
IPIC/DC/42	The Credentials Committee	Interim Report of Credentials Committee (Second Meeting)
IPIC/DC/43	The Drafting Committee	Treaty on Intellectual Property in Respect of Integrated Circuits (Suggested Draft)
IPIC/DC/43 Corr.	The Drafting Committee	Corrigendum to Document IPIC/DC/43
IPIC/DC/44	The Credentials Committee	Report of Credentials Committee

Document Number	Source	Subject
IPIC/DC/45	The Plenary of the Diplomatic Conference	Final Act adopted by the Diplomatic Conference
IPIC/DC/46	The Drafting Committee	Treaty on Intellectual Property in Respect of Integrated Circuits
IPIC/DC/47	The International Bureau	Signatures
IPIC/DC/WG/DEF/1 Prov.	Working Group on Definitions	Draft Report
IPIC/DC/WG/DEF/1	Working Group on Definitions	Report adopted by the Working Group on Definitions
IPIC/DC/WG/DEF/2 Prov.	Working Group on Definitions	Draft Report of Second Meeting
IPIC/DC/WG/DEF/2	Working Group on Definitions	Report of Second Meeting adopted by the Working Group on Definitions
IPIC/DC/WG/DEF/3 Prov.	Working Group on Definitions	Draft Report of Third Meeting
IPIC/DC/WG/DEF/3	Working Group on Definitions	Report of Third Meeting adopted by the Working Group on Definitions
IPIC/DC/INF/1 Prov. 1	The Secretariat of the Conference	First provisional list of participants
IPIC/DC/INF/1 Prov. 2	The Secretariat of the Conference	Second provisional list of participants
IPIC/DC/INF/1 Prov. 3	The Secretariat of the Conference	Third provisional list of participants
IPIC/DC/INF/1 Prov. 4	The Secretariat of the Conference	Fourth provisional list of participants
IPIC/DC/INF/1	The Secretariat of the Conference	List of participants
IPIC/DC/INF/2	The Secretariat of the Conference	List of documents of the Diplomatic Conference
IPIC/DC/INF/3	The Secretariat of the Conference	Officers and Committees

[End]

IPIC/DC/1

December 5, 1988 (Original: English)

Source: THE PREPARATORY MEETING

Draft Agenda of the Diplomatic Conference established by the Preparatory Meeting for the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

1. Opening of the Conference by the Director General of WIPO
2. Address by the Representative of the Government of the United States of America
3. Consideration and adoption of the Rules of Procedure
4. Election of the President of the Conference
5. Consideration and adoption of the agenda
6. Election of the Vice-Presidents of the Conference
7. Election of the members of the Credentials Committee
8. Election of the members of the Drafting Committee
9. Consideration of the first report of the Credentials Committee
10. Opening declarations
11. Consideration of the texts proposed by the Main Committee
12. Consideration of the second report of the Credentials Committee
13. Adoption of the Treaty
14. Adoption of any recommendation, resolution, agreed statement or final act
15. Closing declarations
16. Closing of the Conference by the President*

[End]

* Immediately after the closing of the Conference, the Treaty will be open for signature.

IPIC/DC/2

December 5, 1988 (Original: English)

Source: THE PREPARATORY MEETING

Draft Rules of Procedure* of the Diplomatic Conference established by the Preparatory Meeting for the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

Contents

* These draft Rules of Procedure will apply as provisional Rules of Procedure until the Diplomatic Conference adopts its Rules of Procedure under the relevant item of the agenda. According to Rule 34(1), such adoption requires a majority of two-thirds.

[IPIC/DC/2, continued]

[IPIC/DC/2, continued]

CHAPTER I: OBJECTIVE, COMPETENCE, COMPOSITION, SECRETARIAT

Rule 1: Objective and Competence

(1) The objective of the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as "the Conference") is to negotiate and adopt, on the basis of the draft (hereinafter referred to as "the basic proposal") prepared by the Director General of the World Intellectual Property Organization (WIPO) and any substantive or other amendments thereto, a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as "the Treaty").

(2) The Conference, meeting in Plenary, shall be competent to:

(i) adopt these Rules of Procedure (hereinafter referred to as "these Rules") and to make any amendments thereto;

(ii) decide on credentials, full powers, letters or other documents presented in accordance with Rules 6, 7 and 8 of these Rules;

(iii) establish such committees and working groups as are provided for in these Rules;

(iv) adopt the Treaty;

(v) adopt any recommendation or resolution whose subject matter is germane to the Treaty;

(vi) adopt any agreed statements to be included in the Records of the Conference;

(vii) adopt any final act of the Conference;

(viii) deal with all other matters referred to it by these Rules or appearing on its agenda.

Rule 2: Composition

(1) The Conference shall consist of:

(i) delegations of the States members of the International (Paris) Union for the Protection of Industrial Property (hereinafter referred to as "the Paris Union"), the States members of the International (Berne) Union for the Protection of Literary and Artistic Works (hereinafter referred to as "the Berne Union"), the States members of WIPO not members of the Paris Union or of the Berne Union and, subject to the decision by the Conference, meeting in Plenary, the European Communities,

(ii) delegations of the States members of the United Nations other than those referred to in item (i),

(iii) representatives of intergovernmental and non-governmental organizations invited to the Conference.

[IPIC/DC/2, continued]

(2) Hereinafter, delegations referred to in paragraph (1)(i) are called "Member Delegations," delegations referred to in paragraph (1)(ii) are called "Observer Delegations," and representatives of organizations referred to in paragraph (1)(iii) are called "representatives of Observer Organizations." The term "Delegations," as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations and Observer Delegations. The term "Delegations" does not include the representatives of Observer Organizations.

(3) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

Rule 3: Secretariat

(1) The Conference shall have a Secretariat provided by the International Bureau of WIPO (hereinafter referred to as "the International Bureau").

(2) The Director General of WIPO and any official of the International Bureau designated by the Director General of WIPO may participate in the discussions of the Conference, meeting in Plenary, as well as in any committee or working group thereof and may make oral or written statements, observations or suggestions to the Conference, meeting in Plenary, and any committee or working group thereof concerning any question under consideration.

(3) The Director General of WIPO shall, from among the staff of the International Bureau, designate the Secretary of the Conference and a Secretary for each committee and for each working group.

(4) The Secretary of the Conference shall direct the staff required by the Conference.

(5) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents; the interpretation of oral interventions; and the performance of all other secretarial work required for the Conference.

(6) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference. The International Bureau shall distribute the final documents of the Conference after the Conference.

CHAPTER II: REPRESENTATION

Rule 4: Composition of Delegations

Each Delegation shall consist of one or more delegates and may include alternate delegates and advisors. Each Delegation shall have a Head of Delegation and may have an Alternate or Deputy Head of Delegation.

Rule 5: Representatives of Observer Organizations

An Observer Organization may be represented by one or more representatives.

[IPIC/DC/2, continued]

Rule 6: Credentials and Full Powers

(1) Each Delegation shall present credentials.

(2) Official full powers shall be required for signing the Treaty. Such powers may be included in the credentials.

Rule 7: Letters of Appointment

The representatives of Observer Organizations shall present a letter or other document appointing them.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 shall be presented to the Secretary of the Conference, if possible not later than twenty-four hours after the opening of the Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee referred to in Rule 11 shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7, respectively, and shall report to the Conference, meeting in Plenary.

(2) The final decision on the said credentials, full powers, letters or other documents shall be within the competence of the Conference, meeting in Plenary. Such decision shall be made as soon as possible and in any case before the adoption of the Treaty.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and representatives of Observer Organizations shall be entitled to participate provisionally in the deliberations of the Conference as provided in these Rules.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

(1) The Conference shall have a Credentials Committee.

(2) The Credentials Committee shall consist of eleven members elected by the Conference, meeting in Plenary, from among the Member Delegations.

[IPIC/DC/2, continued]

Rule 12: Main Committee and Working Groups

(1) The Conference shall have a Main Committee. The Main Committee shall consist of all the Member Delegations. It shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the Treaty and any recommendation, resolution or agreed statement referred to in Rule 1(2)(v) and (vi).

(2) The Main Committee may establish such working groups as it deems useful. In establishing them, it shall define their tasks. The number of the members of any working group shall be decided by the Main Committee, which shall elect them from among the Member Delegations.

Rule 13: Drafting Committee

(1) The Conference shall have a Drafting Committee.

(2) The Drafting Committee shall consist of eight members elected by the Conference, meeting in Plenary, from among the Member Delegations, as well as, ex officio, the Chairman of the Main Committee.

(3) The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Main Committee. The Drafting Committee shall not alter the substance of texts submitted to it, but shall coordinate and review the drafting of all texts approved by the Main Committee, and shall submit the texts so reviewed for final approval to the Main Committee.

Rule 14: Steering Committee

(1) The Steering Committee of the Conference shall consist of the President and the Vice-Presidents of the Conference, the Chairman of the Credentials Committee, the Chairman of the Main Committee and the Chairman of the Drafting Committee. Its meetings shall be chaired by the President of the Conference and, in his absence, by the Chairman of the Main Committee.

(2) The Steering Committee shall meet from time to time to review the progress of the Conference and to make decisions for furthering such progress, including, in particular, decisions on the coordinating of the meetings of the Plenary, the committees and the working groups.

(3) The Steering Committee shall propose for adoption by the Conference, meeting in Plenary, the text of any final act of the Conference.

CHAPTER IV: OFFICERS

Rule 15: Officers

(1) The Conference, meeting in Plenary and presided over by the Director General of WIPO, shall elect its President, and, presided over by its President, shall elect six Vice-Presidents.

[IPIC/DC/2, continued]

(2) The Credentials Committee, the Main Committee and the Drafting Committee shall each have a Chairman and two Vice-Chairmen.

(3) Each of the bodies mentioned in paragraphs (1) and (2) shall elect its officers from among the delegates of States whose Delegations are its members. The Main Committee shall elect the officers of any working group.

(4) Precedence among the Vice-Presidents and Vice-Chairmen of a given body shall depend on the place occupied by the name of the State of each of them in the list of Member Delegations established in the French alphabetical order, beginning with the name of the State drawn by lot by the President of the Conference.

Rule 16: Acting President or Acting Chairman

(1) If the President of the Conference or any Chairman is absent from any meeting of the body (the Conference, meeting in Plenary, the committee or working group) to be chaired by him, such meeting shall be presided over, as Acting President or Acting Chairman, by that Vice-President or Vice-Chairman of that body who, among the Vice-Presidents or Vice-Chairmen present, has precedence over the others.

(2) If all the officers of a body are absent from any meeting of that body (Conference, meeting in Plenary, committee or working group), an Acting President or Acting Chairman, as the case may be, shall be elected by that body.

Rule 17: Replacement of President or Chairman

If, for the rest of the duration of the Conference, the President or any Chairman is unable to perform his functions, a new President or Chairman shall be elected.

Rule 18: Vote by Presiding Officer

(1) No President or Chairman, whether elected as such or Acting (hereinafter referred to as "the Presiding Officer"), shall vote. Another member of his Delegation may vote in the name of his Delegation.

(2) Where the Presiding Officer is the only member of his Delegation, he may vote, but only after all other Delegations have voted.

CHAPTER V: CONDUCT OF BUSINESS

Rule 19: Quorum

(1) A quorum shall be required in the Conference, meeting in Plenary, and shall be constituted by one-half of the Member Delegations participating in the Conference.

[IPIC/DC/2, continued]

(2) A quorum shall be required in the meetings of any committee or working group and shall be constituted by one-half of the members of that committee or working group.

Rule 20: General Powers of the Presiding Officer

(1) In addition to exercising the powers conferred upon him elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. He shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat.

(2) The Presiding Officer may propose to the meeting the limiting of time to be allowed to speakers, the limitation of the number of times each Delegation may speak on any question, the closure of the list of speakers, or the closure of the debate. He may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion. Such proposals of the Presiding Officer shall be considered as adopted unless immediately rejected.

Rule 21: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 22 and 23, the Presiding Officer shall call upon speakers in the order in which they signify their desire to speak.

(2) The Presiding Officer may call a speaker to order if his remarks are not relevant to the subject under discussion.

Rule 22: Precedence

(1) Member Delegations asking for the floor shall be accorded precedence over Observer Delegations asking for the floor, and either shall be accorded precedence over representatives of Observer Organizations.

(2) The Chairman of a committee or working group may be accorded precedence during discussions relating to the work of his committee or working group.

(3) The Director General of WIPO or his representative may be accorded precedence for making statements, observations or suggestions.

(4) Nevertheless, the Presiding Officer may, under the powers that he has by virtue of Rule 20, decide on precedence different from that provided for in paragraphs (1) to (3).

[IPIC/DC/2, continued]

Rule 23: Points of Order

(1) During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless the appeal is approved.

(2) A Member Delegation which under paragraph (1) rises to a point of order may not speak on the substance of the matter under discussion.

Rule 24: Limit on Speeches

In any meeting, it may be decided to limit the time to be allowed to each speaker and the number of times each Delegation or representative of an Observer Organization may speak on any question. When the debate is limited and a Delegation or a representative of an Observer Organization has used up its allotted time, the Presiding Officer shall call it to order without delay.

Rule 25: Closing of List of Speakers

(1) During the discussion of any given question, the Presiding Officer may announce the list of participants who have signified their wish to speak and decide to close the list as to that question. The Presiding Officer may nevertheless accord the right of reply to any speaker if a speech, delivered after he has decided to close the list of speakers, makes it desirable.

(2) Any decision made by the Presiding Officer under paragraph (1) may be the subject of an appeal according to the provisions of Rule 23.

Rule 26: Adjournment or Closure of Debate

Any Member Delegation may at any time move the adjournment or closure of the debate on the question under discussion, whether or not any other participant has signified his wish to speak. In addition to the proposer of the motion to adjourn or close the debate, permission to speak on that motion shall be accorded to one Member Delegation supporting and two Member Delegations opposing it, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time allowed to speakers under this Rule.

Rule 27: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.

[IPIC/DC/2, continued]

Rule 28: Order of Procedural Motions; Content of Interventions on Such Motions

(1) Subject to Rule 23, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

(i) to suspend the meeting,
(ii) to adjourn the meeting,
(iii) to adjourn the debate on the question under discussion,
(iv) to close the debate on the question under discussion.

(2) Any Member Delegation which has been given the floor on a procedural motion may only speak on that motion and may not speak on the substance of the matter under discussion.

Rule 29: Basic Proposal and Proposals for Amendment

(1) The basic proposal shall constitute the basis of the discussions in the Conference.

(2) Any Member Delegation may propose substantive or any other amendments to the basic proposal.

(3) Proposals for amendment shall, as a rule, be submitted in writing and handed to the Secretary of the competent body (the Conference, meeting in Plenary, the committee or working group). The Secretariat shall distribute copies to the Delegations and the representatives of Observer Organizations represented in the body concerned. As a general rule, a proposal for amendment shall be considered and discussed or put to the vote in any meeting only if copies of it have been distributed at least three hours before it is called up for consideration. The Presiding Officer may, however, permit the consideration and discussion of a proposal for amendment even though copies have not been distributed or have been distributed less than three hours before it is called up for consideration.

Rule 30: Decisions on Competence

(1) If any Member Delegation moves that a proposal, duly seconded, should not be considered by the Conference because it is outside the competence of the Conference, such a motion shall be decided by the Conference, meeting in Plenary, and shall be put to the vote before the proposal is called up for discussion.

(2) If the motion referred to in paragraph (1) is made in a body other than the Conference, meeting in Plenary, it shall be referred for decision to the Conference, meeting in Plenary.

Rule 31: Withdrawal of Procedural Motions and Proposals for Amendment

Any procedural motion and any proposal for amendment may be withdrawn by the Member Delegation which has made it, at any time before voting on it has commenced, provided that no amendment to that motion or proposal has been proposed by another Member Delegation. Any motion or proposal which has thus been withdrawn may be reintroduced by any other Member Delegation.

[IPIC/DC/2, continued]

Rule 32: Reconsideration of Matters Decided

When any matter has been decided by a body (the Conference, meeting in Plenary, a committee or working group), it may not be reconsidered by that body, unless so decided by the majority applicable under Rule 34(1)(v). In addition to the proposer of the motion to reconsider, permission to speak on that motion shall be accorded only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote.

CHAPTER VI: VOTING

Rule 33: Right to Vote

Each Delegation of a State member of the Paris Union, the Berne Union or WIPO shall have the right to vote. Each such Delegation shall have one vote and shall represent and vote only in the name of its State.*

Rule 34: Required Majorities

(1) All decisions of all bodies (the Conference, meeting in Plenary, the committees and working groups) shall be made as far as possible by consensus. If it is not possible to attain consensus, the following decisions shall require a majority of two-thirds:

(i) choice by the Conference, meeting in Plenary, of a basic proposal,

(ii) adoption by the Conference, meeting in Plenary, of these Rules,

(iii) adoption by the Conference, meeting in Plenary, of any amendments to these Rules,

(iv) adoption by any of the bodies of any proposal for amendment to the basic proposal as well as choice by any of the bodies among any alternatives contained in the basic proposal,

(v) decision by any of the bodies to reconsider, under Rule 32, a matter decided,

(vi) adoption by the Conference, meeting in Plenary, of the Treaty,**

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* The Diplomatic Conference may decide to examine the possibility of the European Communities voting in the place of their member States.

** Some delegations in the Preparatory Meeting for the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits, however, felt that for the adoption of the Treaty by the Conference, meeting in Plenary, a majority of three-fourths may be preferable.

[IPIC/DC/2, continued]

whereas the adoption by the Conference, meeting in Plenary, of the Treaty shall require a majority of seven-tenths and all other decisions of all bodies shall require a simple majority.

(2) In determining whether the required majority has been attained, only affirmative and negative votes shall be counted, and express abstentions, non-voting or absence during the vote shall not be counted.

Rule 35: Requirement of Seconding; Method of Voting

(1) Any proposal for amendment made by a Member Delegation shall be put to a vote only if it is seconded by at least one other Member Delegation.

(2) Voting on any question shall be by show of hands unless any Member Delegation, supported by at least one other Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the French alphabetical order of the names of the States, beginning with the State whose name is drawn by lot by the Presiding Officer.

Rule 36: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit any Member Delegation to explain its vote or abstention either before or after the voting.

Rule 37: Division of Proposals

Any Member Delegation may move that parts of the basic proposal or of any proposal for amendment be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. In addition to the proposer of the motion for division, permission to speak on that motion shall be given only to one Member Delegation in favor and two Member Delegations against. If the motion for division is carried, all parts separately approved shall again be put to the vote, together, as a whole. If all operative parts of the basic proposal or of a proposal for amendment have been rejected, the basic proposal or the proposal for amendment shall be considered to have been rejected as a whole.

Rule 38: Voting on Proposals for Amendment

Any proposal for amendment shall be voted upon before voting upon the text to which it relates. Proposals for amendment relating to the same text shall be put to a vote in the order in which their substance is removed from the said text, the furthest removed being put to a vote first and the least removed being put to a vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such other proposal or the original text

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shall not be put to the vote. If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to a vote. Any proposal to add to, or delete from, a text shall be considered a proposal for amendment.

Rule 39: Voting on Proposals on the Same Question

Subject to Rule 38, where two or more proposals relate to the same question, the body (the Conference, meeting in Plenary, the committee or working group) concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 40: Equally Divided Votes

(1) If a vote is equally divided on matters that require adoption by simple majority other than elections of officers, the proposal shall be regarded as rejected.

(2) If a vote is equally divided on a proposal for electing a given person as an officer, the vote shall be repeated if the nomination is maintained until either that nomination is adopted or rejected or another person is elected for the position in question.

CHAPTER VII: LANGUAGES AND MINUTES

Rule 41: Languages of Oral Interventions

(1) Subject to paragraph (2), oral interventions made in the meetings of any body (the Conference, meeting in Plenary, the committee or working group) shall be in Arabic, English, French, Russian or Spanish, and interpretation shall be provided by the Secretariat into the other four languages.

(2) Any Delegation may make oral interventions in another language, provided its own interpreter simultaneously interprets the intervention into Arabic, English, French, Russian or Spanish. Interpretation into the other of the said languages by the interpreters of the Secretariat may be based on the interpretation given in one of the said languages.

(3) Any committee or working group may, if none of its members objects, decide to waive interpretation or to limit it to fewer languages than those referred to in paragraphs (1) and (2).

Rule 42: Summary Minutes

(1) Provisional summary minutes of the Plenary meetings of the Conference and of the meetings of the Main Committee shall be drawn up by the International Bureau and shall be made available as soon as possible after the closing of the Conference to all speakers, who shall, within two months after the making available of such minutes, inform the International Bureau of any suggestions for changes in the minutes of their own interventions.

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(2) The final summary minutes shall be published in due course by the International Bureau.

Rule 43: Languages of Documents and Summary Minutes

(1) Any written proposal shall be presented to the Secretariat in Arabic, English, French, Russian or Spanish. Such proposal shall be distributed by the Secretariat in Arabic, English, French, Russian and Spanish.

(2) Reports of the committees and working groups shall be distributed in Arabic, English, French, Russian and Spanish. Information documents of the Secretariat shall be distributed in English and French.

(3)(a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English or French; if the speaker has used another language, his intervention shall be rendered in English or French as may be decided by the International Bureau.

(b) The final summary minutes shall be made available in English and French.

(c) The text of the Treaty and of any recommendation or resolution, agreed statement or final act adopted by the Conference shall be made available in the languages in which it is adopted.

CHAPTER VIII: OPEN AND CLOSED MEETINGS

Rule 44: Meetings of the Conference and of the Main Committee

The Plenary meetings of the Conference and the meetings of the Main Committee shall be open to the public unless the Conference, meeting in Plenary, or the Main Committee, as the case may be, decides otherwise.

Rule 45: Meetings of Other Committees and of Working Groups

The meetings of any committee other than the Main Committee and the meetings of any working group shall be open only to the members of the committee or working group concerned and the Secretariat.

CHAPTER IX: OBSERVERS

Rule 46: Observers

(1) Observer Delegations and representatives of Observer Organizations may attend the Plenary meetings of the Conference and the meetings of the Main Committee.

(2) Representatives of any Observer Organization may, upon the invitation of the Presiding Officer, make oral statements in the Conference, meeting in Plenary, and in meetings of the Main Committee, on questions within the scope of their activities.

[IPIC/DC/2, continued]

(3) Written statements submitted by Observer Delegations or by representatives of Observer Organizations on subjects for which they have a special competence and which are related to the work of the Conference shall be distributed by the Secretariat to the participants in the quantities and in the languages in which such statements are made available.

CHAPTER X: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 47: Amendments to the Rules of Procedure

With the exception of the present Rule, these Rules may be amended.

CHAPTER XI: FINAL ACT

Rule 48: Final Act

If a final act is adopted, it shall be open for signature by any Member Delegation.

[End]

IPIC/DC/2 Corr. January 31, 1989 (Original: English)

Source: THE INTERNATIONAL BUREAU OF WIPO

Corrigendum to document IPIC/DC/2 (Draft Rules of Procedure of the Diplomatic Conference)

1. On page 4 of document IPIC/DC/2, Rule 1(1) should read as follows:

> "(1) The objective of the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as "the Conference") is to negotiate and adopt, on the basis of the draft prepared by the Director General of the World Intellectual Property Organization (WIPO) and any substantive or other amendments thereto, a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as "the Treaty")."

2. This Corrigendum affects only the Arabic and English versions of document IPIC/DC/2.

[End]

IPIC/DC/3

January 31, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Draft Treaty prepared, under Rule 1(1) of the Draft Rules of Procedure

Editor's Note: Document IPIC/DC/3 contains the text of the draft Treaty and the Notes referring to it. In the following, only the Notes to the draft Treaty are reproduced, including the first part of the Notes entitled "Preamble" that describes the preparatory work leading to the Diplomatic Conference. The text of the draft Treaty is reproduced in this volume on pages 10 to 46 (even numbers).

Preamble

1. Rule 1(1) of the Draft Rules of Procedure of the Diplomatic Conference--which apply as Provisional Rules of Procedure until the Diplomatic Conference adopts them (with possible changes)--defines the objective of the Diplomatic Conference to be held in Washington, from May 8 to 26, 1989, as follows:

> "(1) The objective of the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as 'the Conference') is to negotiate and adopt, on the basis of the draft prepared by the Director General of the World Intellectual Property Organization (WIPO) and any substantive or other amendments thereto, a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as 'the Treaty')." (Document IPIC/DC/2 Corr.)

2. The present document contains the draft referred to in the above-quoted Rule. Each provision of the draft is accompanied by explanatory notes.

3. Previous versions of the draft Treaty have been considered at four sessions of a Committee of Experts, held respectively in November 1985, June 1986, April 1987 and November 1988. In addition to the four sessions of the Committee of Experts, previous versions of the draft Treaty, as well as general and technical questions relating to the protection of intellectual property in respect of integrated circuits, have been considered in a series of consultations with experts held in February 1986, January 1988 and May 1988.

4. The text of the draft Treaty contained in the present document takes into account the discussions of the four sessions of the Committee of Experts and the consultations with experts, most notably the discussions of, and proposals made during, the fourth session of the Committee of Experts, held from November 7 to 22, 1988.

5. While all of the proposals made during previous meetings, particularly those presented during the fourth session of the Committee of Experts, have

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been studied, not all of those proposals are reflected by way of alternatives in the draft Treaty. In several places, in preparing the draft Treaty, an attempt has been made to reconcile proposals through the presentation of a new text that it is believed may be conducive to compromise. In cases where such a new text has been introduced into the draft Treaty, the alternative proposals on which the compromise text is based have been set out in the explanatory notes. In addition, where a proposal was made at the fourth session of the Committee of Experts that received considerable support in that session but which is not fully covered in the draft contained in this document, it is generally covered in the explanatory notes.

6. The text of the draft Treaty is contained on the right-hand pages of the present document, with the corresponding explanatory notes set out on the left-hand pages. The purpose of the explanatory notes is threefold:

(a) to provide, where necessary, a brief explanation of the corresponding provisions of the draft Treaty;

(b) to explain the historical evolution of the present text of the draft Treaty, in particular by setting out the text of alternative proposals presented during the fourth session of the Committee of Experts that relate to the corresponding part of the present text; and

(c) to facilitate the reading of the draft Treaty by providing, where a provision refers to other provisions of the draft Treaty, brief information on the cross-reference so as to avoid the necessity for the reader to refer back to the other provisions.

7. Alternatives have been designated as such in the text of the draft Treaty with the use of capital letters, except where the alternative consists simply in the retention or omission of a word or certain words. In this latter case, the word or words in question have been placed between square brackets.

Notes on the Title of the draft Treaty

8. The title of the draft Treaty differs from that used in previous versions considered by the Committee of Experts (the former title being "Draft Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits"). The change is a necessary consequence of the transition from the use of three terms in the definition of the subject-matter of protection in previous versions to the use of two terms in the definition of that subject-matter in the present text of the draft Treaty.

9. The three terms used in previous versions of the draft Treaty (see Article 1 of the draft Treaty in document IPIC/CE/IV/2) were "integrated circuit," "layout-design" and "microchip." The three terms were intended to distinguish the design ("layout-design"), integration of the design in or on a piece of material ("integrated circuit") and manufacture of an integrated circuit ("microchip").

10. The definitional structure adopted in the present text of the draft Treaty omits reference to the intermediate stage of integration without manufacture, and refers only to design ("layout-design (topography)," defined

in Article 2(ii)) and manufacture ("microchip," defined in Article 2(i)). The new definitional structure accords with the approach adopted in existing legislative instruments and with the view that integration of a circuit in or on a piece of material necessarily involves some form of manufacture, even if that manufacture consists only of the making of a prototype, as well as with the view expressed by many delegations of developing countries during the fourth session of the Committee of Experts that protection should not be extended to hypothetical designs but only to those layout-designs actually incorporated in a microchip.

11. Since, in the fourth session of the Committee of Experts, there was no clear preference for either "layout-design" or "topography," the draft Treaty uses the dual terminology of "layout-design (topography)" that was preferred by delegations. This terminology is repeated throughout the text of the draft Treaty, but, for the sake of simplicity, the term "layout-design" alone has generally been used throughout the explanatory notes without the addition of "topography" in parenthesis.

Notes on the Preamble

12. The Preamble is a new text aimed at seeking a compromise between the text of the Introduction in the last version of the draft Treaty (document IPIC/CE/IV/2) and the proposal for an alternative wording for the Introduction, which was made by the Delegation of Argentina during the fourth session of the Committee of Experts in the following terms:

> "Convinced that protection against the unauthorized copying of layout-designs (topographies) of integrated circuits and against the marketing of microchips incorporating layout-designs copied without the authorization of the creator of such layout-designs is an incentive for the creation of new devices serving technological and economic progress;
>
> Desiring to introduce a protection system that balances public interests and those of the creators of layout-designs of integrated circuits;
>
> With a view to laying the groundwork for the promotion of broader dissemination of semiconductor products and the transfer of technology towards developing countries in particular,
>
> Have concluded the following Treaty:"

13. The Preamble is designed to indicate the reasons for which international protection for the intellectual property rights of the creators of layout-designs (topographies) of microchips should be granted (the first paragraph), the aims that the Treaty pursues (the second paragraph) and the envisaged effects that it is expected will be achieved through the conclusion of the Treaty (the third paragraph).

14. Ad first paragraph: The reasons, set out in the first paragraph of the Preamble, are social and economic. The social reason consists in a long-standing historical practice--which is to be found in many different

[IPIC/DC/3, continued]

societies and in different eras, and which lies at the foundation of intellectual property--namely, the recognition of the interests of creators in a just reward for the contribution made by them through their creativity.

15. Two economic reasons lie behind the assurance of international protection. One is the incentive for creation. The other is the promotion of the acquisition of foreign technology.

16. The incentive for creation arises from the exclusive rights which protection accords to the creator. These exclusive rights enable the creator to prevent unlawful reproduction or commercial dealing, thereby enabling him to obtain a position in the market that would not be available if others, who have not incurred the substantial investment of human, financial and technological resources in creation, were permitted to copy the fruits of his creation. The possibility of obtaining this market position and the monetary reward that results from protection encourage the investment of further resources in creative activity.

17. The promotion of the acquisition of foreign technology resides in the fact that if the creator of the technology can be reasonably sure that the creation will not be "stolen" but would, on the contrary, be protected, by law and treaty, he is more ready to part with his creation by allowing its copying or other use against payment and will generally be content with remuneration that is less than it would be if the risks of "stealing" were higher.

18. One may ask, at this point, whether, if the creator's rights are not recognized at all, foreign technology could not be acquired free of charge, a situation that would mean that the copier or other user would have to pay nothing and the copiers' or other users' countries would not have to allow the outflow of money from the country. The reply--not to speak of the considerations of equity mentioned above--is that experience shows that transfer of technology is faster and more secure if the copying, incorporation, manufacture, etc., are done with the cooperation of the creator than if they are done without such cooperation. Copying, etc., without such cooperation requires an effort to understand what the object to be copied really is and experiment with methods to copy it. Such an effort requires money whose amount may well exceed the amount that would be payable for an authorization. But such an effort also takes time and frequently means that, by the time the unauthorized copy is marketable, the product is obsolete.

19. Ad second paragraph: The aims of the Treaty are set out in the second paragraph of the Preamble.

20. The first aim is to serve equity. This corresponds to the reason mentioned in paragraph 14, above.

21. The second aim is to serve technological and economic progress, which corresponds to the reason mentioned in paragraph 16, above, and which would be promoted by the provision of an incentive for creation.

22. The third aim is to promote the international exchange of technological achievements, which would occur, in particular, through the acquisition of foreign technology, the other economic reason for assuring international protection, as mentioned in paragraph 17, above.

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23. The fourth aim is the establishment, on the international level, of a system of protection that would seek to serve the public interest through a proper balance between all the private interests involved. As in other areas of intellectual property, when properly considered, the public interest is not antithetic to the private interests involved, but is rather promoted through a proper balance of those private interests. This is apparent, in the first place, from the reasons for assuring protection, which encompass not only a just reward for the creator, but also the function of providing an incentive for creation, which in turn may be expected to encourage an adequate level of investment of human, financial and technological resources in order to produce new technological solutions and original products for the benefit of the consuming public, the advancement of technological progress and the dissemination of that progress through the acquisition of foreign technology.

24. The first main private interest that must be brought into the proper balance in order to serve the public interest is the interest of the creator of the layout-design, who invests time and money in order to make the creation. The cost of such investment can be recuperated only through the sale of microchips incorporating the layout-design and products containing such microchips. Therefore, in order to encourage creation, it is not sufficient to establish a right that enables the holder of the right to require the obtaining of his authorization for any reproduction of the layout-design. What is important is that such a right comprises also the distribution of microchips incorporating the layout-design and products containing such microchips. If the creator could only prohibit unauthorized copying but not unauthorized distribution of microchips with copied layout-designs, such microchips could be manufactured in a country where, for example, for reasons of the applicable domestic legislation, the creator does not have any rights, and microchips incorporating the layout-design in question could be freely manufactured and distributed. The creator would not have any reward for his investments and efforts, since the right to prohibit unauthorized copying would not cover this case. The same considerations apply where the creator grants a license in respect of the layout-design. The manufacturer of microchips has to make investments for the manufacture and to pay the license fee. The exclusive right is only meaningful if it is not limited to manufacturing but comprises also the distribution of microchips incorporating the layout-design and of products containing such microchips.

25. On the other hand, there is the interest of other enterprises that wish to use the layout-design for manufacturing microchips or that wish to trade in microchips incorporating the layout-design, even if such use or incorporation has been effected without the authorization of the creator. The interest here is, firstly, that a technological achievement be made available, as quickly as possible, to potential competitors so that they can use it and, secondly, that trade in products incorporating technical achievements be subject to a minimum of restriction.

26. In search of a proper balance, a choice of one or more alternatives is offered in respect of a number of provisions in the present text of the draft Treaty. Altogether, there are 12 main substantive provisions of the draft Treaty for which alternative approaches are given, namely, those contained in Articles 5(1)(ii), 6(1), 6(2), 6(3)(a)(i), 6(3)(b), 6(4), 7(ii), 8(2), 8(2)(b), 13, 13*bis*, and 13*bis*(3). The decision to prefer one particular alternative in each case in which a choice is offered will determine the way in which the balance of the different interests of creators of, and

[IPIC/DC/3, continued]

enterprises using, microchip technology, outlined in the two preceding paragraphs, will be struck. For example, the interest of creators is recognized in the obligation placed on Contracting Parties to consider unlawful the acts designated in paragraph (1) of Article 6, if performed without the authorization of the holder of the right. The remaining provisions of Article 6, however, either permit or require Contracting Parties, in the interest of enterprises using microchip technology, to consider lawful certain acts that would otherwise be considered unlawful under paragraph (1) of Article 6 or to provide for measures restricting the rights of the holder of the right. A choice of alternatives is offered in respect of certain of those acts or measures. Thus, there are alternatives in paragraph (3)(a)(i) of Article 6 on the question of non-voluntary licenses. Similarly, alternatives are offered in paragraph (4) of Article 6 in respect of the sale and distribution of infringing articles by a bona fide acquirer of such articles in the case where those articles have been acquired before notice by the proprietor.

27. Ad third paragraph: The envisaged effects that it is expected will be achieved through the conclusion of the Treaty are set out in the third paragraph of the Preamble. The first of these effects is the provision of a framework for the promotion of the broader dissemination of microchip products. This effect is expected to result from the greater confidence in the repression of unlawful copying that the creators of layout-designs would have as a consequence of the assurance of international protection. This confidence, in turn, will lead to a greater readiness on the part of creators to sell their products on an international basis.

28. The second effect expected from the conclusion of the Treaty is the provision of a framework for the transfer of technology towards developing countries in particular. Given that the assurance of international protection is likely to lead to a greater willingness on the part of creators to sell products on an international basis, the layout-designs incorporated in microchip products will be available to a broader international consuming and using public. Since it is envisaged that "reverse engineering" will be permitted under the Treaty (see Article 6(2)), enterprises in places where a microchip product becomes available will have the opportunity to evaluate and analyze, and thereby acquire a knowledge of, the layout-design incorporated in such a product and the techniques by which the layout-design has been created. Similarly, the assurance of international protection is expected to provide an appropriate institutional environment for the encouragement of voluntary licensing, and thus for the transfer of technology through licensing.

29. It may be noted here also that the Preamble is prefaced by the expression "Contracting Parties," which represents a change from the expression "Contracting States" used in previous versions of the draft Treaty. The change is a necessary consequence of the provision in Article 14(1)(b) of the draft Treaty that would allow any Intergovernmental Organization having its own legislation providing for intellectual property protection in respect of layout-designs and applicable in the territory of all its member States to become party to the Treaty. The expression "Contracting Parties" is used throughout the draft Treaty.

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Notes on Article 1

30. Article 1, which provides that the Contracting Parties shall constitute a Union, is a new provision.

31. In previous versions of the draft Treaty an Assembly of the Contracting Parties was envisaged, but no provision was made for the constitution of a Union. Various proposals made during the fourth session of the Committee of Experts, which are reflected in the present text of the draft Treaty, would, however, have the effect of increasing the tasks of the Assembly. These proposals relate to the possibility of the Assembly asking WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are developing countries (Article 9(1)(d)), the possibility of the provision of technical assistance, on request, by the International Bureau of WIPO to Governments of Contracting Parties that are developing countries (Article 10(1)) (which technical assistance would be carried out under the direction of the Assembly) and the possible inclusion of a dispute-settlement mechanism (Article 13bis), which would require the participation of the Assembly in various procedures, such as the selection of panel members and the consideration of panel reports. These new proposals now seem to make it desirable to provide in the draft Treaty for a constitutional structure consisting of a Union, in conformity with the usual practice in treaties administered by WIPO.

Notes on Article 2

32. Article 2 contains definitions of the principal terms used in the draft Treaty.

33. It has already been noted above, in the explanatory notes on the title of the draft Treaty, that the definitional structure adopted for the subject-matter of protection now includes only two terms--"microchip" (item (i)) and "layout-design (topography)" (item (ii)).

34. Ad(i): The term "microchip" is defined in such a way as to mean essentially a layout-design (topography) which has been integrally formed in and/or on a piece of material and which, being capable of performing an electronic function, constitutes a product in itself.

35. Although some delegations during the fourth session of the Committee of Experts favored the limitation of the definition of microchips to those produced by semiconductor technology, such a limitation has not been included in the definition of "microchip," in order not to render the technical scope of the Treaty too narrow, and to allow for future technological developments.

36. It is believed that what is meant by "active element or elements" (examples being transistors, diodes and thyristors) and "passive elements" (examples being capacitors, resistors and inductors) and other technical expressions is sufficiently understood to avoid the need for sub-definitions.

37. Ad(ii): As explained in paragraph 11, above, the dual terminology of "layout-design (topography)" has been retained throughout the draft Treaty in

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the absence of a clear preference on the part of the delegations during the fourth session of the Committee of Experts for either the term "layout-design" or the term "topography."

38. The use of the expression "three-dimensional" in this definition is not to be understood as excluding the possibility that the disposition of all the active elements is two-dimensional. Likewise, the disposition of the interconnections or the passive elements could be two-dimensional. All that is needed for the purposes of this definition is that the disposition of the active elements, the interconnections and any passive elements is three-dimensional.

39. Ad(iii): The expression "proprietor," used in previous versions of the draft Treaty, has been replaced in the present text by "holder of the right," in accordance with the views expressed by many delegations during the fourth session of the Committee of Experts.

40. The definition is flexible enough to allow any national law to vest the right in the employer if the layout-design of the integrated circuit is the creation of an employee. It covers also the direct or indirect successor in title (assignee, heir, etc.) of the first owner of the rights.

41. Ad(iv): The term "protected layout-design (topography)" has been inserted in the draft Treaty in order to clarify that the obligation of Contracting Parties to consider unlawful the acts enumerated in Article 6(1) applies only to layout-designs which satisfy the conditions pursuant to which intellectual property protection is extended under the applicable legislation and the Treaty, and does not encompass, for example, the prohibition of the performance of those acts in respect of layout-designs which are not original or whose term of protection has expired.

42. Ad(v): As explained above, Article 14(1)(b) of the draft Treaty envisages that any Intergovernmental Organization having its own legislation providing for intellectual property protection in respect of layout-designs and applicable in the territory of all its member States may become party to the Treaty. In consequence, the term "Contracting Party" has been used instead of the term "Contracting State," and is used to mean a State or Intergovernmental Organization party to the Treaty.

43. Ad(vi): The expression "territory of a Contracting Party" has been defined in order to make it clear that, where the Contracting Party is an intergovernmental organization, its territory is coterminous with the territories of its member States. The expression is relevant to the obligation of each Contracting Party to secure intellectual property protection in respect of layout-designs contained in Article 3(1), to the application of the principle of national treatment contained in Article 5, and to the exception to infringement contained in Article 6(5) in respect of articles temporarily or accidentally entering the territory of a Contracting Party.

44. Ad(vii) to (ix): These definitions are self-explanatory and have been inserted in consequence of the more elaborate administrative provisions contained in Articles 9 and 10 that were requested during the fourth session of the Committee of Experts.

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Notes on Article 3

45. Article 3 is an expanded and re-designed version of the provision contained in Article 3 of the text of the draft Treaty presented to the fourth session of the Committee of Experts (document IPIC/CE/IV/2).

46. Ad paragraph (1): This paragraph, which makes explicit that which was implicit in Article 3 of the previous version of the draft Treaty, enshrines the fundamental obligation of Contracting Parties, namely, to secure intellectual property protection in respect of layout-designs in accordance with the Treaty and, in particular, to adopt adequate measures and appropriate legal remedies to this end.

47. Typical measures to ensure the "prevention" of acts considered unlawful under Article 6 would be seizure and injunction. Typical "legal remedies" where such acts have been committed would be civil remedies (in particular, damages) and penal sanctions. It may be noted that none of the measures or legal remedies is specified. The Treaty would leave it to each Contracting Party to choose the measures and remedies that correspond to its legal system and tradition. What is required is that the measures should be adequate "to ensure" the prevention of the acts in question, and that the legal remedies available when such acts have been committed should be appropriate.

48. Ad subparagraph (2)(a): Subparagraph (2)(a) clarifies the characteristics of those layout-designs in respect of which the obligation to secure intellectual property protection established by paragraph (1) applies. Such layout-designs must be original. In accordance with views expressed during the fourth session of the Committee of Experts that favored the clarification of the meaning of "original," subparagraph (2)(a) specifies that two conditions must be fulfilled in order to satisfy the requirement of originality, namely, that the layout-designs must be the result of the creators' own intellectual effort, and that they must not be commonplace among creators of layout-designs and manufacturers of microchips at the time of their creation.

49. Ad subparagraph (2)(b): This subparagraph deals with the situation in which a layout-design consists of a combination of elements that are commonplace. In such circumstances, the subparagraph provides that protection shall be accorded to such a layout-design only if the combination, taken as a whole, satisfies the requirement of originality as elaborated in subparagraph (2)(a).

Notes on Article 4

50. This Article makes it clear that no Contracting Party is obliged to have a sui generis ("special") law regulating the intellectual property rights in layout-designs, but that the regulation of those rights may be part of any of its laws, for example, the laws on copyright, patents, utility models, industrial designs or unfair competition, or may result from a combination of various laws.

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51. During the fourth session of the Committee of Experts the Delegation of Argentina, supported by various delegations, proposed the following text for the provision now contained in Article 4:

> "Each Contracting State shall be free to protect integrated circuits through a special law on integrated circuits or through its law on copyright, patents, utility models, industrial designs, unfair competition, or any other law or any combination of those laws, provided that the resulting protection is compatible with this Treaty."

The text of Article 4 is similar to the proposal of the Delegation of Argentina.

52. The freedom accorded by this Article is, as far as countries party to the Paris or Berne Conventions are concerned, subject to their obligations under those Conventions (see Article 12).

Notes on Article 5

53. Ad paragraph (1): This paragraph provides for the so-called national treatment principle. According to that principle, each Contracting Party is obliged to accord to natural persons who are nationals of, or are domiciled in the territory of, any of the other Contracting Parties, and to legal entities which or natural persons who have a real and effective industrial [or commercial] establishment in the territory of any of the other Contracting Parties, the same protection that it accords to its own nationals.

54. "Protection" includes not only the recognition of the rights of the foreign holder of the right but also offering him, in the case of any violation of his rights, the same legal remedies as those that are available to domestic holders of the right.

55. During the fourth session of the Committee of Experts, reservations were expressed by some delegations concerning the extension of national treatment to natural persons who were neither nationals of, nor domiciled in, a Contracting Party, but who had only a real and effective industrial or commercial establishment in a Contracting Party. The text of Article 5(1) continues to provide for the extension of national treatment in such circumstances. The failure to extend national treatment in such circumstances would represent a departure from the scope of the principle of national treatment usually included in treaties administered by WIPO (see, for example, Article 3 of the Paris Convention for the Protection of Industrial Property).

56. In accordance with the views expressed by several delegations during the fourth session of the Committee of Experts that national treatment should not be extended to legal entities or natural persons having only a real and effective commercial establishment in a Contracting Party, the words "or commercial" in subparagraph 5(1)(ii) have been placed in square brackets. The deletion of these words would mean that a Contracting Party would not be obliged to extend national treatment to legal entities which, or natural persons (not being nationals of a Contracting Party) who, do not have industrial operations in the territory of another Contracting Party. In effect, the deletion of the words in question would require the legal entities

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and natural persons of a non-Contracting Party to establish industrial operations in the territory of a Contracting Party in order to be assured of the benefits of protection under the Treaty by virtue of the principle of national treatment. Such a result would effectively work to the prejudice of the legal entities and natural persons of non-Contracting Parties.

57. The words "without prejudice to the protection provided in this Treaty" are inserted out of an abundance of caution to make it clear that national treatment cannot be used as a basis for extending to foreigners a level of protection which is less than that required by the provisions of the Treaty. Thus, and for example, if the law of a Contracting Party did not, as far as its own nationals are concerned, grant the rights provided for in Article 6 (possibly subject to the same limitations that are permitted by that Article), or provided for a term of protection shorter than the term provided for in Article 8, a national of another Contracting Party who invoked the Treaty would nevertheless be entitled to the said rights and the said term of protection. The example is, however, largely hypothetical, since it is unlikely that any Contracting Party would grant less rights, or a protection for a lesser duration, to its own nationals than to foreigners.

58. It is clear from the wording of paragraph (1) that the application of the principle of national treatment would require a Contracting Party that provided its own nationals with more extensive protection than the minimum protection required by the Treaty to make available the same, more extensive, treatment to eligible foreign natural persons and legal entities.

59. Ad paragraph (2): This paragraph allows any Contracting Party to treat foreigners differently from nationals in certain circumstances, thereby allowing exceptions to national treatment. Three such possible exceptions are provided for: one is that a foreigner may be requested to appoint a local agent, for example, when he files an application for registration (even if nationals can act without a local agent), another one is that a foreigner may be required to designate a local address for the purpose of service, for example, of notifications of the registration authority (even if nationals can use the address of their residence as address for service), and the third one is that a foreigner may be required to comply with any special rule applicable to foreigners in court proceedings, for example, the posting of bond (even if nationals need not post such bond). The exceptions are similar to those referred to in Article 2(3) of the Paris Convention.

60. Ad paragraph (3): This paragraph clarifies the meaning of the term "nationals" in the context of Contracting Parties that are Intergovernmental Organizations. In such a situation, "nationals" means nationals of any of the States members of the Intergovernmental Organization.

Notes on Article 6

61. Ad the Article as a whole: This Article deals with the scope of the protection which, by virtue of Article 3, each Contracting Party is obliged to secure in respect of layout-designs. It obliges Contracting Parties to consider unlawful "at least" the acts enumerated in paragraph (1) when committed without the authorization of the holder of the right. This is the rule, but the Treaty provides also for exceptions.

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62. Some of the exceptions are obligatory, that is, each Contracting Party is obliged to consider certain acts as not unlawful, even if committed without the authorization of the holder of the right. Other exceptions are facultative, that is, each Contracting Party has the right to decide, as it wishes, whether certain acts, when committed without the authorization of the holder of the right, are unlawful or not unlawful.

63. The rule is--roughly stated (the details are to be found in the draft text and later passages of these comments)--that the authorization of the holder of the right is required for the following acts:

(1) reproducing a protected layout-design (subparagraph (1)(i));

(2) incorporating a protected layout-design in a microchip (paragraph (1)(ii));

(3) importing, selling or otherwise distributing, for commercial purposes,

- a protected layout-design, and

- a microchip in which a protected layout-design is incorporated, regardless of whether the microchip is imported, sold or otherwise distributed as part of some other article or separately (paragraph (1)(iii)).

64. The obligatory exceptions allow the performance of otherwise prohibited acts:

(1) for private or non-commercial use (subparagraph (2)(a)),

(2) for the sole purpose of evaluation, analysis [, research] or teaching (subparagraph (2)(a)),

(3) in respect of the use of the fruits of "reverse engineering" (subparagraph (2)(b); it is to be noted that the expression "reverse engineering" is not used in the draft Treaty),

(4) if occasioned by the temporary or accidental passage in the territory of a Contracting Party of vehicles, etc., using microchips (paragraph (5)).

65. The optional exceptions concern:

(1) non-voluntary licenses and antitrust measures (paragraph (3)),

(2) the situation of a bona fide acquirer of infringing objects after actual notice (paragraph (4)),

(3) exhaustion of rights, (paragraph (6)).

66. Ad paragraph (1): This paragraph enumerates the acts concerning protected layout-designs that can be lawfully performed only with the authorization of the holder of the right. That the rights are exclusive

follows from the fact that their performance requires the authorization of the holder of the right (stated in the introductory words of the paragraph). There are, however, certain exceptions, and there may be others, as indicated in paragraphs 64 and 65, above.

67. The first such act (item (i)) is "reproducing a protected layout-design." This act would be committed when a protected layout-design is reproduced on, for example, a "mask" (that is, a graphic representation of the layers of the layout-design for the purpose of manufacturing a microchip) or on a computer tape. While intended to deal with the reproduction of a protected layout-design by a means other than incorporation of the layout-design in a microchip, the wording of item (i) would also extend to the reproduction of a protected layout-design by the manufacture of a microchip incorporating such a layout-design.

68. The question of whether the Treaty should make explicit the extent of reproduction that is prohibited, or whether this matter should be left to national law to decide, is addressed by the alternative proposed in the form of additional words contained in square brackets in item (i). If the words in square brackets were deleted, the extent of reproduction which would constitute an infringement of a protected layout-design would be determined by national law. If those words were, however, retained, Contracting Parties would be obliged to consider unlawful not only the reproduction of a protected layout-design in its entirety, but also the reproduction of a substantial part of such a layout-design. A part could be considered "substantial" if it contained the essential features of the layout-design and if the omitted part represented merely a non-essential portion of the whole layout-design.

69. The second act that Contracting Parties are obliged to consider unlawful, if performed without the authorization of the holder of the right, is "the act of incorporating a protected layout-design ... in a microchip" (item (ii)). This provision would prohibit the unauthorized manufacture of a microchip incorporating the protected layout-design.

70. The question of whether the Treaty should make explicit the extent of the incorporation of a protected layout-design that is to be prohibited is addressed by the alternative text in square brackets in item (ii). The considerations here are similar to those which relate to the alternative text in item (i) (see paragraph 68, above).

71. Item (iii) of paragraph (1) requires Contracting Parties to consider unlawful the act of "importing, selling or otherwise distributing" a protected layout-design or a microchip in which a protected layout-design is incorporated. It is to be noted, however, that these activities require the authorization of the holder of the right only if they are carried out for "commercial purposes." This means, for example, that a person who imports a watch containing a microchip that incorporates, without the authorization of the holder of the right, a protected layout-design does not require the authorization of the holder of the right if the said person intends to use the watch himself or to give it as a gift to a third person (as opposed to selling it).

72. Disagreement has existed throughout the previous meetings on the draft Treaty on the question whether the draft Treaty should require Contracting Parties to prohibit the importation, sale or other distribution of articles

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containing a microchip that incorporates a protected layout-design (examples of such articles being computers, automobiles, radio and television receivers, watches and cameras). Those views expressed against the inclusion of such a requirement have suggested that the requirement would give to the draft Treaty a trade-regulation character, and would extend the ambit of the Treaty beyond the concerns of intellectual property. They have similarly voiced concern over the effect which such a requirement might have on enterprises in the country of importation that rely on an external source of microchips, as well as over the difficulty of detecting infringing microchips on the part of a purchasing enterprise in the country of importation.

73. The opposing view has emphasized that the prohibition of the importation, sale or other distribution of articles containing microchips that incorporate a protected layout-design would correspond to standard practice in intellectual property, recognized in the majority of countries, as evidenced by Article 5ter of the Paris Convention, which exempts from infringement the use of devices forming the subject of a patent in the machinery or accessories of vessels, aircraft or land vehicles, in temporary or accidental passage, and which thereby recognizes that importation of an article containing a patented invention would otherwise constitute infringement. According to this view also, if the importation, sale or other distribution of an article containing a microchip that incorporates a protected layout-design were not prohibited, the protection accorded to layout-designs would be useless, since the destination of a layout-design is incorporation in a microchip that can perform a function in another article. Furthermore, it is argued that principle and detection are two different matters, and that problems of detection are not unique to intellectual property rights in layout-designs, but pervade the whole area of intellectual property, as evidenced, for example, in the unauthorized use of process inventions in the patent field.

74. The new wording of item (iii) makes it clear that the emphasis of the draft Treaty is on intellectual property, and not the regulation of trade, by requiring Contracting Parties to consider unlawful the unauthorized act of importing, selling, or otherwise distributing microchips in which a protected layout-design is incorporated, "irrespective of whether the microchip is imported, sold or otherwise distributed as part of some other article or separately." At the same time, it prefers the view that adequate protection would not exist if Contracting Parties were not required to consider unlawful the unauthorized importation, sale or other distribution of microchips that incorporate a protected layout-design and that are contained in another article.

75. Related to the question discussed in the three preceding paragraphs is the issue of creating an exception in favor of the "bona fide acquirer." This issue has, more logically, now been placed wholly in paragraph (5) of Article (6), which deals with exceptions to the minimum protection required by paragraph (1) of Article 6.

76. Ad paragraph (2): Subparagraph (a) obliges Contracting Parties to make an exception to the provisions of items (i) and (ii) of paragraph (1). According to the exception, the authorization of the holder of the right would not be required for performing any act, otherwise to be prohibited under items (i) and (ii) of paragraph (1), where the act is performed for private or non-commercial use or solely for the purpose of evaluation, analysis [, research] or teaching. These are activities which should remain free in all Contracting Parties; in fact, this exception corresponds to common practice.

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77. An alternative is given in subparagraph (a) as to whether to include express reference to the legitimacy of performing an act mentioned in items (i) and (ii) of paragraph (1) for "research," or whether such a reference is implicit in the words "evaluation" and "analysis."

78. Subparagraph (b) establishes an exception to the rights of the holder of the right in respect of the practice of so-called "reverse engineering." This is the case where a person other than the holder of the right not only evaluates and analyzes a protected layout-design, but in addition creates a new layout-design (which may contain the whole or part of the protected layout-design). This exception is granted only where the new layout-design complies with the requirement of originality laid down in Article 3(2). Therefore, if the layout-design created on the basis of evaluation and analysis is not original in the sense elaborated in Article 3(2), the reproduction of the protected layout-design for the purposes of reverse engineering and the incorporation of such a layout-design in a microchip, and any distribution for commercial purposes of such a layout-design or of a microchip in which the layout-design is incorporated, would not be permitted. It is to be noted that the exception in favor of "reverse engineering" limits the protection conferred to layout-designs of integrated circuits to a large extent. However, such a provision is considered to be justified in order to encourage the improvement of existing layout-designs. It is also to be noted that the "reverse engineer" does not have to pay any remuneration to the holder of the right, for that same reason. This is an important difference between protection of layout-designs and protection of inventions because the inventor of an invention which depends on an existing invention requires the authorization of the owner of the existing invention or, where a compulsory license is available in favor of the owner of the dependent invention, at least has to pay a license fee.

79. Ad subparagraph (3)(a): This subparagraph deals with the question of non-voluntary licenses and similar measures, which has been, throughout the discussions in the previous meetings on the draft Treaty, an area of disagreement among the delegations.

80. Many proposals have been made in previous meetings on the way of dealing with the question of non-voluntary licenses, ranging from the prohibition of such licenses altogether to their allowance on general grounds that might be considered to be generous to the interests of competitors of the holder of the right in a layout-design.

81. In the fourth session of the Committee of Experts, no delegation proposed that there should be a provision prohibiting non-voluntary licenses.

82. During the fourth session of the Committee of Experts, two main proposals on non-voluntary licenses were presented. The first main proposal was by the Delegation of Bulgaria, which proposed that the corresponding provision to paragraph (3) of Article 6 should read as follows:

> "In order to prevent abuse which might result from the exercise of the exclusive right provided for in paragraph (1), or to preserve public interests, any Contracting State may provide for non-voluntary licenses and other measures, subject to the payment, by the beneficiary of a non-voluntary license, of an equitable remuneration to the proprietor." (Document IPIC/CE/IV/9)

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83. The second main proposal was presented by the Delegation of the United States of America, which proposed that the corresponding provision to paragraph (3) of Article 6 should read as follows:

> "[Non-Voluntary Licenses] No Contracting State may, in its national law, provide for non-voluntary licenses or other measures which would restrict or terminate, before the end of the term of protection, the exclusive right provided for in paragraph (1), except that a non-voluntary license may be given to address, only during its existence, a declared national health or public safety emergency, or to remedy an adjudicated violation of antitrust laws, or to allow use non-exclusively by a government for governmental purposes, and provided that, in the case of a license to address a national emergency or for use by a government, the owner of the rights to the layout-design must receive compensation commensurate with the market value of the license. A non-voluntary license must be non-exclusive. All decisions to grant non-voluntary licenses as well as the compensation to be paid shall be subject to judicial review under national law.
>
> "A license to a government for use for governmental purposes shall be applicable only in the Contracting State where it is issued, and shall include only the right to make or have made microchips and/or industrial articles including such microchips for governmental consumption; and shall not include the right to import, license or sublicense, either by a government or any agency thereof, including any government-run or contracted industry, or to make or have made microchips or industrial articles containing such microchips for export or sale on the open market." (Document IPIC/CE/IV/10)

84. In view of the many and competing proposals in this area, the text of the draft Treaty seeks to reduce the many possible alternatives to essentially two, in order to facilitate the negotiations. These two alternatives for the definition of the grounds pursuant to which non-voluntary licenses may be allowed are set out in item (i) of paragraph (3). Pursuant to Alternative A, non-voluntary licenses could be allowed where necessary "in the public interest." Such a provision would, for example, permit a non-voluntary license for defense purposes. It would find its justification in the theory that the public interest must always prevail. The main difficulty with Alternative A would lie in the interpretation, in any concrete case, of the notion of public interest, and the consequent possibility of lack of uniformity in the application of the Treaty throughout the Contracting Parties.

85. Alternative B of item (i) of paragraph (3) would allow non-voluntary licenses to be granted where necessary "to prevent any abuse, by the holder of the right, of his rights, or to safeguard public health or public safety." The grounds specified in Alternative B are more specific and more objective than the general and often subjective criterion of the public interest contained in Alternative A. Pursuant to Alternative B, in order to obtain a non-voluntary license, it would have to be shown that such a license was necessary to prevent an abuse of the rights by the holder of the right, an example of such an abuse being the manipulation by the holder of the right of a market in which, as a consequence of his right, he holds a dominant position, or that such a license was necessary to safeguard public health or public safety.

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86. If agreement on one of either Alternative A or Alternative B, or some other formula, proves to be impossible, a possible compromise might lie in a provision which would permit Alternative A to be used, by way of reservation, by any developing country.

87. Several other features of the provision contained in item (i) of paragraph (3) may be noted. First, the provision would require that any non-voluntary license that is granted should be a non-exclusive license. Secondly, an alternative is given in lines 3 and 4 of the provision as to whether the grant of the non-voluntary license should be possible only if serious and unsuccessful efforts have been made to obtain the authorization of the holder of the right to perform any otherwise prohibited act. Thirdly, the non-voluntary license must be granted subject to the payment of an equitable remuneration by the third party to the holder of the right, which remuneration must, in the absence of agreement between the third party and the holder of the right, be fixed by the granting authority.

88. Item (ii) of paragraph (3) permits other derogations from the exclusive rights of the holder of the right secured by paragraph (1) of Article 6 on the ground that the holder of the right has violated legislation designed to secure free competition and to prevent abuses of dominant market position, that is, characteristically, that he has violated antitrust legislation. This provision contemplates that measures other than a non-voluntary license might be awarded in certain circumstances. Such other measures might be, for example, the order of a court allowing the use of an otherwise protected layout-design, or the revocation of the right.

89. Ad subparagraph (3)(b): In conformity with the proposal made by the Delegation of Ghana during the fourth session of the Committee of Experts, subparagraph (3)(b) requires that any derogation from the exclusive rights of the holder of the right effected by virtue of the permitted exceptions in subparagraph (3)(a) must be subject to judicial review in the interests of the assurance of due process to the holder of the right, whose rights will have been effected by the non-voluntary license or other measures. In line with the same proposal, subparagraph (3)(b) also requires that any non-voluntary license or other measure shall either cease to have effect (Alternative C), or be revoked (Alternative D), when the facts that justify it cease to exist. This latter provision is consistent with the theory that the derogation from the exclusive rights of the holder of the right, effected by the grant of a non-voluntary license or other measure, is justified only insofar as, and for as long as, the motivating reason for the derogation exists.

90. Ad paragraph (4): Differing views were expressed during the fourth session of the Committee of Experts concerning the nature and content of an exception allowable in favor of a bona fide acquirer of microchips in which a protected layout-design is incorporated.

91. Some delegations favored making the exception mandatory. This approach has not been adopted in paragraph (4), which remains an optional exception to liability that may be adopted by Contracting Parties.

92. The proposal, favored by a number of delegations during the fourth session of the Committee of Experts, of dealing with the situation of the bona fide acquirer in one provision (as opposed to the two provisions on the situation that were contained in the previous version of the draft Treaty), has, as mentioned above, been adopted in paragraph (4).

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93. Paragraph (4) uses to a large extent, while at the same time containing more extensive provisions, the proposal of the Delegation of India during the fourth session of the Committee of Experts, which advocated that the corresponding provision to paragraph (4) should read as follows:

> "No Contracting State shall consider unlawful the importing, selling or otherwise distributing, for commercial purposes, of microchips in which the protected layout-design is incorporated, where and as long as the person performing or ordering such acts did not know, or had no reasonable grounds to know, that the reproduction or incorporating was done without the authorization of the holder, provided that such microchips were acquired by him before he was given actual notice by the proprietor."

94. The text of paragraph (4) has the following four main features:

(a) First, paragraph (4) allows, and does not require, Contracting Parties to create an exception in favor of the bona fide acquirer.

(b) Secondly, in consequence of the approach adopted in item (iii) of paragraph (1) of Article 6 to the question of articles containing microchips that incorporate protected layout-designs (see paragraphs 72 to 74, above), the exception allowed in paragraph (4) may be applied whether the microchip that is innocently acquired is imported, sold or otherwise distributed independently or as part of some other article.

(c) Thirdly, the use of the notion "bona fide" has been removed from the text of the draft Treaty. In its place, the principle guiding the possible application of the exception is lack of knowledge, or lack of reasonable grounds for such knowledge, at the time of acquiring a microchip or an article containing a microchip, that the microchip incorporates a protected layout-design without the authorization of the holder of the right in the protected layout-design ("where the person performing or ordering such acts did not know or had no reasonable ground to know, when acquiring such microchip or such article, that the reproducing of the protected layout-design (topography) or its incorporation had been done without the authorization of the holder of the right").

(d) Finally, paragraph (4) contains an alternative. Under Alternative E, it would be left to national law to decide whether the person in whose favor the exception was applied would be required to pay the holder of the right an equitable remuneration in respect of microchips imported, sold or otherwise distributed after notice of the infringing status of such microchips. Under Alternative F, Contracting Parties that applied the exception allowed in paragraph (4) would be required to ensure that the said person will pay the holder of the right an equitable remuneration in respect of microchips imported, sold or otherwise distributed after notice.

95. Ad paragraph (5): This paragraph corresponds to Article 5ter of the Paris Convention. It is a reasonable exception that should apply not only to patents (to which Article 5ter of the Paris Convention applies), but also to protected layout-designs. The wording of paragraph (5) makes it clear that the mandatory exception contained in the provision applies to microchips built into, rather than carried by, vehicles.

[IPIC/DC/3, continued]

96. Ad paragraph (6): In conformity with the unanimous view expressed during the fourth session of the Committee of Experts, paragraph (6) allows Contracting Parties to provide for the "exhaustion of rights" in respect of protected layout-designs, or microchips incorporating such layout-designs, that have been put on the market by, or with the consent of, the holder of the right.

97. It follows from the drafting of the provision in paragraph (6) that Contracting Parties would be free to provide for national exhaustion (where rights are exhausted only when the first authorized sale occurs on the territory of the Contracting Party), regional exhaustion (where rights are exhausted when the first authorized sale occurs on the territory of a region to which the Contracting Party belongs), or international exhaustion (where rights are exhausted following a sale anywhere in the world).

98. The suggestion made during the fourth session of the Committee of Experts that, as far as importation and subsequent sale or distribution are concerned, exhaustion should be made a mandatory rule under the Treaty (so that in each Contracting Party the proprietor could not prohibit "parallel importation"), has not been adopted.

Notes on Article 7

99. Article 7 makes it clear that, despite the obligation established by Article 3 for Contracting Parties to secure intellectual property protection in respect of layout-designs that are original in a sense elaborated in Article 3(2), Contracting Parties are nevertheless free to withhold such protection until either of two conditions have been satisfied, namely, commercial exploitation (item (i)) or application for registration of a layout-design or registration of such a layout-design (item (ii)). These conditions are optional, so that a Contracting Party that did not invoke them would be required, in consequence of Article 3, to protect original layout-designs from their creation.

100. Item (i) permits Contracting Parties to withhold protection from a layout-design until the layout-design has been commercially exploited somewhere in the world. The purpose of this provision is to recognize and to sanction the approach adopted in some existing legislative instruments whereby protection is considered to be necessary, and is only extended, once commercial exploitation of the layout-design has occurred. Once such commercial exploitation has taken place, the layout-design is both available for the benefit of the consuming public and apparent to competitors, so that the creator may be considered to have both the right to and the need for protection.

101. The commercial exploitation of a layout-design may be understood as meaning any distribution of copies of the layout-design or microchips incorporating the layout-design, whether independently or as part of some other article, for commercial, as opposed to private, purposes.

102. The proposal, favored by some delegations during the fourth session of the Committee of Experts, that "commercial" exploitation should be replaced by "industrial" exploitation has not been adopted. The adoption of that proposal

[IPIC/DC/3, continued]

would penalize, by withholding protection from, those enterprises that specialize in design, as opposed to manufacture, or that perform design services on contract for a manufacturing enterprise. The exclusion of such enterprises from protection would seem to be contrary to the aim of the draft Treaty in providing an incentive to creation, as well as the aim of rewarding creators for the contribution made by their creative activity.

103. Item (ii) allows Contracting Parties to require that an application for registration be filed in due form, or that a layout-design be registered, before protection is extended to a layout-design.

104. In conformity with suggestions made during the fourth session of the Committee of Experts, the application for registration or the registration may be required to be effected with the "competent public authority." Such an authority could be national, regional or worldwide (for example, an international register administered by WIPO). A regional or international register might become desirable if all or most countries required registration since, then, the creator would have to go to the expense and risks of fulfilling possibly differing formalities in numerous countries where protection is sought. Since Contracting Parties are not required, but merely allowed, by Article 7 to have a registration procedure, Contracting Parties could not be obliged by the Treaty to accept a worldwide registration in lieu of national or regional registrations. Nor would Article 7 require the establishment of an international register. It would merely allow such a register by virtue of the words "competent public authority," so that, should one be established after the Treaty entered into force, the Treaty would not have to be modified in order to permit the use of such a register.

105. The provisions in the present text of Article 7 are shorter than those in previous versions of the corresponding Article. Article 7 no longer deals in detail with the formalities that may be permitted in respect of a registration procedure. Only one such formality is dealt with in item (ii), namely, the materials that a Contracting Party may require to be filed with an application for registration for the purpose of identifying or disclosing a layout-design. In this respect, an alternative is offered. Pursuant to Alternative A, a Contracting Party could not require more than the material that allows the identification of the layout-design. If this Alternative (that is, Alternative A) were adopted, information on trade secrets not necessary for identification of a layout-design could be withheld. This position corresponds to the practice adopted in a number of existing legislative instruments, to the view that the purpose of a registration procedure is to establish proof of ownership, and to the view that the possibility of withholding trade secrets encourages a greater number of applications for registration and a lesser number of secret users. According to Alternative B, a Contracting Party could require a copy or drawing of the layout-design to be filed. In consequence, even the portions of the layout-design that are considered to be trade secrets would be required to be included in the application. This position corresponds to the view that the purpose of a registration system is to achieve full disclosure of layout-designs in return for the grant of protection.

106. As a result of the treatment of the question of formalities in the present text of Article 7, the other formalities which might be required pursuant to a registration procedure are now left by the Treaty to national law. In consequence, certain proposals made during the fourth session of the

Committee of Experts have not been adopted in the text of Article 7. Included in the proposals that have not been adopted are those made by the Delegation of Greece, in the name of the member States of the European Communities, that sought:

- the inclusion of a provision clarifying that no formalities other than the filing of identifying material, a statement, where appropriate, concerning the date of first commercial exploitation, notification of changes concerning data registered, and the payment of a fee, should be permitted;

- a form of provisional protection in respect of the time between creation and the later start of protection; and

- the inclusion of an obligation requiring Contracting Parties to provide for the cancellation of invalid registrations.

Notes on Article 8

107. Ad paragraph (1): As mentioned above, a Contracting Party that did not require either commercial exploitation, or an application for registration or registration of a layout-design, would be required, by virtue of Article 3, to grant protection to original layout-designs from their creation. Paragraph (1) provides that, in such circumstances, a Contracting Party shall be obliged to provide protection for a period of at least 15 years from the creation of the layout-design. Protection for such a period is a minimum requirement. Thus, a Contracting Party would be free to provide protection for a longer period.

108. Ad paragraph (2): Alternative versions of paragraph (2) are provided in Article 8. According to Alternative M, Contracting Parties that required either commercial exploitation or registration would be obliged to grant a minimum term of protection of at least 10 years. According to Alternative N, Contracting Parties that required either exploitation or registration would be obliged to provide a minimum term of protection of at least five years, as well as a possible extension of the term for a further period of either 30 months (Alternative N1) or five years (Alternative N2), where the layout-design retains a commercial value at the expiration of the initial term of five years.

109. The Alternatives mentioned in the preceding paragraph reflect the differing views expressed during previous meetings on the draft Treaty, according to which either a minimum term of 10 years was strongly favored, or a shorter term of varying duration was strongly advocated.

110. Under Alternative M, the minimum term must last at least 10 years from the date of first commercial exploitation, the filing date of an application, or the earlier of the date of first commercial exploitation or the filing date, depending on the requirements in respect of commercial exploitation or registration laid down in the applicable law of a Contracting Party.

111. Under Alternative N, the minimum term under subparagraph (2)(a) must last at least five years from any of the dates mentioned in the preceding paragraph.

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112. It is to be noted that, under Alternative N, Contracting Parties would be obliged to grant an extension, under subparagraph (2)(b), of the minimum term of five years on the request of the holder of the right, provided that the layout-design in question had a commercial value at the expiration of the minimum term of five years.

113. It may also be noted that, since both Alternative M and Alternative N establish obligations in respect of the minimum duration of protection, a Contracting Party would be free to grant a longer term of protection than that contemplated under either of the Alternatives.

Notes on Article 9

114. Article 9 provides that the Union, established under Article 1, shall have an Assembly consisting of the Contracting Parties, which would constitute the forum in which the Contracting Parties could meet to discuss matters relating to the maintenance and development of the Union and the application and operation of the Treaty.

115. Article 9 contains, following the suggestion made during the fourth session of the Committee of Experts, more detailed provisions than those that were contained in its counterpart in previous versions of the draft Treaty. In addition, separate Articles have now been inserted to deal with matters relating to the International Bureau (Article 10) and the amendment of certain provisions of the Treaty by the Assembly (Article 11), both of which matters were formerly dealt with in the counterpart to Article 9 in previous versions of the draft Treaty.

116. No separate provision has, however, been made in respect of finances, and it is not proposed that Contracting Parties should pay contributions to the International Bureau of WIPO. The provisions of the Treaty are similar, in this respect, to those of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, which also establishes a Union with an Assembly without financial provisions. Certain functions of the Assembly and the International Bureau envisaged in the ensuing Articles, however, might, if implemented, require financing. These functions have been indicated in appropriate places in the notes on the ensuing Articles.

117. Ad paragraph (1): The provisions of this paragraph, which deal with the composition of the Assembly, seem to be self-explanatory. Subparagraph (1)(d) has been inserted, as suggested during the fourth session of the Committee of Experts, to provide the facility for the Assembly to ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are developing countries.

118. Ad paragraph (2): The tasks specified in paragraph (2) for the Assembly are threefold: to deal with matters concerning the maintenance and development of the Union and the application and operation of the Treaty; to decide the convocation of revision conferences and to give necessary instructions to the Director General in this regard; and, if a consultation and dispute-settlement mechanism similar to the one provided as an alternative in Article 13bis were adopted, to establish the details of the procedures of such a mechanism, including the financing of such procedures.

[IPIC/DC/3, continued]

119. Ad paragraph (3): Paragraph (3) deals with three questions concerning voting: first, which Contracting Parties have the right to vote; second, how many votes each Contracting Party that has the right to vote has; third, whether a Contracting Party can delegate the exercise of its right to vote.

120. As to the first question, subparagraph (a) provides that each Contracting Party has the right to vote. This applies irrespective of whether it is a State or an Intergovernmental Organization. As to the second question, subparagraph (a) provides that the number of votes that each Contracting Party has is one. Consequently, even if the Contracting Party is an Intergovernmental Organization with several States as its members, it will have only one vote. As to the third question, the rule contained in subparagraph (a) is that each Contracting Party may vote only in its own name, which means that no Contracting Party may delegate the exercise of its right to vote to another Contracting Party. This rule, however, is subject to an exception. That exception is provided for in subparagraph (b): the exercise of the right to vote may be delegated by a member State of an Intergovernmental Organization to that Organization, both being Contracting Parties.

121. It is to be noted that the Treaty does not attempt to resolve the question in which circumstances the said delegation of the exercise of the right to vote can, should or should not occur. This is a question that the Organization and its members will have to resolve internally, that is, among themselves, in each case where there is a vote. It is to be presumed that they will resolve it according to the nature of the question to be voted upon. If the question is one that falls in the jurisdiction of the individual States, they will probably not delegate the exercise of their right to vote to the Organization. If the question is one that falls in the jurisdiction of the Organization, they will probably delegate the exercise of their right to vote to the Organization. There may be circumstances where it is difficult to decide in whose jurisdiction the question falls. The decision will have to be made internally. The other members of the Assembly should not be put into a position in which they would have to make the decision or exercise a control over the correctness of the internal decision. This is why the Treaty is silent on the question of whether, in any given case, the exercise of the right to vote is to be delegated or not.

122. It is also to be noted that, since subparagraph (3)(a) provides, without any qualification, that each Contracting Party shall have one vote, an Intergovernmental Organization that is party to the Treaty will have a vote irrespective of the number of its member States that are party to the Treaty. If, for example, an Intergovernmental Organization that is party to the Treaty has 12 member States and all of them are also party to the Treaty, the number of votes available to the combination of both the Organization and its member States will be 13. Or, if an Intergovernmental Organization that is party to the Treaty has 12 member States but only four of them are party to the Treaty, the total number of votes at their disposal will be five. Finally, one can even envisage a situation--for example, if the Intergovernmental Organization has the sole jurisdiction (rather than a concurrent or parallel jurisdiction)--where only the Organization adheres and none of its member States adheres. In such a case, the number of votes available will be one. All this seems to be a logical consequence of enabling an Intergovernmental Organization to become a Contracting Party.

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123. Ad paragraphs (4) and (5): These provisions are self-explanatory.

Notes on Article 10

124. The provisions of this Article seem to be self-explanatory. It may be noted that, in conformity with the suggestion made during the fourth session of the Committee of Experts, a provision has been added in item (ii) of paragraph (1) to provide that the International Bureau shall, subject to the availability of funds, provide technical assistance, on request, to the Governments of Contracting Parties that are developing countries. The provision of such technical assistance would require a source of finance.

Notes on Article 11

125. Article 11 empowers the Assembly to amend certain provisions of the draft Treaty, thereby avoiding the need for a revision conference, and establishes the procedure pursuant to which amendment proposals shall be initiated and notified to the Contracting Parties, the majorities required to effect such amendments, and the procedure for the entry into force of amendments.

126. Ad paragraph (1): This paragraph enumerates the provisions of the draft Treaty which may be amended by the Assembly. Those provisions, and the reasons for empowering the Assembly to amend them, are as follows:

(a) The definitions of "microchip" and "layout-design (topography)" in items (i) and (ii), respectively, of Article 2. These definitions are of a technical nature. Since integrated-circuit technology is in rapid evolution, it would seem desirable to enable the Assembly to adapt the definitions of the technical subject-matter of protection to such evolution.

(b) Certain provisions concerning the Assembly in Article 9. Here, it would seem appropriate that the Assembly should have the power to make amendments to the provisions of the Treaty that affect the costs of participation of delegates, the delegation of voting rights and the periodicity of ordinary sessions, these being provisions that are of relatively secondary importance and that, in the light of experience, may require changes.

(c) The provisions concerning the International Bureau of WIPO. Again, it would seem desirable that the Assembly should have the power to make amendments to those provisions which govern the tasks of the International Bureau and the relationship of the International Bureau to the Assembly.

(d) As an alternative, which depends upon the adoption of a consultation and dispute-settlement mechanism, it is also provided that the Assembly may amend the provisions proposed as an alternative in Article 13bis concerning consultations and dispute resolution. Experience with consultation and dispute-resolution mechanisms in other bodies indicates that such mechanisms need to be adapted in response to the experience which Contracting Parties have in the use of the mechanisms. This experience is likely to highlight those areas in which additional provisions are required or in which deficiencies of short-comings become apparent.

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127. Ad paragraph (2): Subparagraph (2)(a) permits amendment proposals to be initiated by either a Contracting Party or the Director General. In accordance with subparagraph (2)(b), amendment proposals must be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

128. Ad paragraph (3): This paragraph establishes two different majorities required for amendment, according to the provision of the Treaty which is to be amended. In the case of amendments to the definitions of "microchip" and "layout-design (topography)" (Article 2(i) and (ii)) and to the provisions relating to the Assembly (Article 9(1)(c) and (d), (3)(b) and (4)), a majority of four-fifths of the votes cast is required for adoption. In the case of amendments to the provisions relating to the International Bureau (Article 10(1)) and, if the corresponding alternative is adopted, consultation and dispute resolution (Article 13bis), a majority of three-fourths of the votes cast is required for adoption.

129. Ad paragraph (4): This paragraph establishes the requirements for the entry into force of amendments adopted by the Assembly. It provides that such amendments shall enter into force one month after written notifications of acceptance have been received from three-fourths of the Contracting Parties members of the Assembly at the time of the adoption of the amendment by the Assembly. Such amendments shall bind all Contracting Parties at the time of the adoption of the amendment by the Assembly and all States and Intergovernmental Organizations that thereafter become Contracting Parties.

Notes on Article 12

130. Since, under Article 4, Contracting Parties shall be free to implement their obligations under the Treaty through a special law, any other intellectual property law, or through any combination of other laws, the possibility might arise that, in the implementation of the Treaty, a Contracting Party might create exceptions to rules which it is already obliged to follow by virtue of being party to the Paris Convention for the Protection of Industrial Property or the Berne Convention for the Protection of Literary and Artistic Works. Article 12 makes it clear that the obligations of a Contracting Party under the Paris or Berne Conventions, where that Contracting Party is or may become party to those Conventions, shall not be affected by the present Treaty.

131. Although, during the fourth session of the Committee of Experts, some delegations were of the opinion that it was not necessary to deal with any possible conflict between the new Treaty and other treaties, it is believed that it is prudent, at least as far as the Paris Convention and the Berne Convention are concerned, to provide expressly that the obligations that any Contracting Party may have under the Paris Convention or the Berne Convention shall not be affected by the Treaty. This seems to be prudent because it may be expected that most countries that will adhere to the Treaty will be party to one or both of the said Conventions and their obligations under those Conventions cannot be put aside by any new treaty (in this case, by the Treaty under consideration) as far as such countries' relations to all the other countries party to the Paris Convention or the Berne Convention are concerned. This follows from Article 19 of the Paris Convention and Article 20 of the Berne Convention.

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132. The effect of Article 12 is that, if a Contracting Party chose to implement its obligations under the Treaty through a law made, totally or partly, on the basis that layout-designs are works under the copyright law or are a subject matter of industrial property law, and that Contracting Party is a party not only to the proposed Treaty but also to the Berne Convention or the Paris Convention, the said law must be compatible not only with the proposed Treaty but also with that or those Conventions. For example, if a Contracting Party considered layout-designs to be works under its copyright law and was a party to both the proposed Treaty and the Berne Convention, layout-designs would have to be protected without formalities (even though the proposed Treaty admits formalities) and for 50 years after the death of the author (even though the proposed Treaty admits a shorter period of protection). Or, if the Contracting Party is party to both the proposed Treaty and the Paris Convention and protects layout-designs by patents for inventions or utility models, layout-designs would require the grant of a patent or other official certificate (even though the proposed Treaty admits protection without any procedure before a government authority).

Notes on Article 13

133. Article 13 provides alternative ways of dealing with the question of reservations to the Treaty. Either no reservations would be allowed, or reservations would be permitted in respect of provisions to be specified.

134. Opinions were divided during the fourth session of the Committee of Experts on the question of reservations. On the one hand, some delegations wished to allow for reservations. Other delegations, however, opposed the possibility of reservations on the basis that such a possibility would reduce the incentive to find a uniform consensus solution to all of the provisions of the Treaty. Moreover, an unlimited possibility of reservations might have the effect of enabling a Contracting Party to reduce its obligations under the Treaty to nothing.

Notes on Article 13bis

135. Article 13bis has been inserted as an alternative in the draft Treaty following the interest expressed by the majority of delegations at the fourth session of the Committee of Experts in further studying and considering at the Diplomatic Conference the proposal made by the Delegation of the United States of America for a draft Article dealing with consultation procedures (see document IPIC/CE/IV/6). Article 13bis represents a modified version of the proposal made by the Delegation of the United States of America.

136. Not only is Article 13bis presented as an alternative in itself, but there is also an alternative presented within its provisions. This latter alternative relates to the provisions contained in paragraph (3) on enforcement.

137. The basic argument in favor of the inclusion of a consultation and dispute-resolution mechanism is the provision of a facility whereby disputes

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between Contracting Parties concerning the subject-matter of the Treaty could be resolved within the multilateral framework provided by the Treaty for regulating intellectual property rights and obligations in respect of layout-designs.

138. Article 13bis follows a structure which is similar to that of the proposal made during the fourth session of the Committee of Experts by the Delegation of the United States of America (document IPIC/CE/IV/6), namely, a procedure which envisages three main features, relating to consultations, dispute-settlement and, by way of alternative, enforcement.

139. Ad paragraph (1): Subparagraph (1)(a) offers to Contracting Parties the facility of bringing to the attention of another Contracting Party legislation or a practice of that other Contracting Party which it considers is inconsistent with the provisions of the Treaty. Pursuant to subparagraph (1)(b) that other Contracting Party is required to provide promptly an adequate opportunity for consultations concerning the matter brought to its attention. Subparagraph (1)(c) obliges the Contracting Parties engaged in consultations to attempt to conclude the consultation satisfactorily for both of them within a short period of time.

140. The mechanism of consultations envisaged by paragraph (1), therefore, consists essentially of informal talks which, instead of taking place on a bilateral basis, are introduced into the context of the multilateral framework established by the Treaty.

141. Ad paragraph (2): This paragraph establishes the procedure for the examination of a matter in dispute between Contracting Parties by an independent panel in circumstances where that matter cannot be satisfactorily resolved by the parties themselves. It contemplates, therefore, an independent investigation and, ultimately, report, on the matter in dispute.

142. A panel would be convened, pursuant to subparagraph (2)(a), by the Director General, at the request of either of the Contracting Parties to the dispute. The panel would compose members selected from a list of designated experts established by the Assembly, and would be required to accord due process to the parties to the dispute by giving each of them a full opportunity to present their views to the panel.

143. Since subparagraph (2)(a) contains only a general requirement of due process, and does not set out in detail all of the procedures to be followed by a panel, subparagraph (2)(b) empowers the Assembly to establish general rules for the selection of panel members, and the Assembly, by virtue of the alternative provided in Article 9(2)(c), would also have the power to establish the details of the procedures to be followed by a panel, including the financing of such procedures.

144. Subparagraph (1)(c) contemplates the possibility of a resolution of a dispute by the parties themselves prior to the conclusion of the panel hearing. Should such a resolution not occur, the panel is required to prepare and transmit to the Assembly a written report containing the facts and recommendations which, if followed, would resolve the dispute.

145. Ad paragraph (3): This paragraph is proposed as a possible alternative.

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Should it not be included, the dispute-resolution procedure would terminate following the presentation of the panel report to the Assembly and the noting of that report by the Assembly.

146. If paragraph (3) were included, the Assembly would make recommendations to the Contracting Party whose legislation or practice was the subject matter of the dispute. If those recommendations were not followed with a time specified by the Assembly, the Assembly would be empowered, under subparagraph (3)(b), to suspend, in whole or in part, for such time as it deemed necessary, the application of the Treaty to any holder of the right who or which is a national of, or is domiciled in, or has a real and effective industrial [or commercial] establishment in the territory of the Contracting Party to which the recommendations are addressed.

Notes on Article 14

147. Ad paragraph (1): Subparagraph (1)(a) is similar to the corresponding provisions in previous versions of the draft Treaty. Since the Treaty would permit, under Article 4, any Contracting Party to choose the legal form of protection that it desired and, consequently, would not require (although it would permit) an industrial property or copyright form of protection, there is no reason to contemplate that only those countries that are party to the Paris Convention or the Berne Convention should be able to become parties to the Treaty. Consequently, subparagraph (1)(a) allows, for all practical purposes, any country to adhere.

148. Subparagraph (1)(b) would allow any Intergovernmental Organization having its own legislation providing for intellectual property protection in respect of layout-designs and applicable in the territory of all its member States to become party to the Treaty. The only such Intergovernmental Organization that, at the date of this document, has such legislation and that has expessed interest in becoming party to the Treaty is the European Communities.

149. The possibility of the European Communities becoming party to the Treaty was discussed at length, inter alia, during the fourth session of the Committee of Experts, following proposals made by the Delegation of Greece, in the name of the member States of the European Communities (see document IPIC/CE/IV/4). On that occasion, many delegations expressed their support in principle for the proposal that the European Communities should be able to become party to the Treaty, while, at the same time, raising certain questions concerning the matter on which it sought clarification from the Commission of the European Communities.

150. Ad paragraph (2): This paragraph sets out the modes of becoming party to the Treaty. In addition to becoming a party by signature followed by the deposit of an instrument of ratification, or by the deposit of an instrument of accession, paragraph (2) specifies signature followed by the deposit of an instrument of "accession, approval or formal confirmation" as a mode of becoming party to the Treaty. This last mode is intended to cover an Intergovernmental Organization.

151. During the fourth session of the Committee of Experts a number of delegations suggested that, in respect of the division of competence between

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the European Communities and its member States with respect to the subject-matter of the Treaty, a procedure similar to that used in connection with the Treaty on the Law of the Sea could be used, namely, a binding declaration on the part of the European Communities and its member States as to the division of competence to be deposited at the time of becoming party to the Treaty. This suggestion has not been followed in the text of the draft Treaty.

152. Ad paragraph (3): It is usual, for treaties negotiated under the aegis of WIPO to entrust the depositary functions to the Director General of WIPO.

Notes on Article 15

153. Ad paragraph (1): The Diplomatic Conference will decide the number of instruments whose deposit would cause the entry into force of the Treaty.

154. Ad paragraph (2): This is a provision of the usual kind and seems to be self-explanatory.

155. Ad paragraph (3): This paragraph allows (but does not oblige) any Contracting Party not to apply the Treaty retroactively to layout-designs that have been created before the Treaty enters into force with respect to that Contracting Party. But the protection of such layout-designs by virtue of legal texts other than the present Treaty is expressly preserved.

Notes on Article 16

156. This is an Article of the usual kind. In order to allow those relying on the adherence to the Treaty by a Contracting Party to adjust their affairs in the event that such a Contracting Party should denounce the Treaty, a period of one year is provided in paragraph (2) before a denunciation takes effect.

Notes on Article 17

157. This is an Article of the usual kind except that, as far as WIPO is concerned (but not as far as the United Nations or most other specialized agencies are concerned), Arabic and Chinese would, for the first time, be "equally authentic" languages. This seems to be justified because of the development of WIPO's membership in recent years.

Notes on Article 18

158. The provisions of Article 18, which relate to the deposit of the original of the Treaty (paragraph (1)), the transmission of certified copies of the Treaty to States and Intergovernmental Organizations eligible to become party to the Treaty (paragraph (2)), the registration of the Treaty with the Secretariat of the United Nations (paragraph (3)) and the transmission of

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copies of any amendments to the Treaty to the Contracting Parties and, on request, to any other State or Intergovernmental Organization (paragraph (4)), are self-explanatory.

[End]

IPIC/DC/3 Corr.

February 10, 1989 (Original: English)

Source: THE INTERNATIONAL BUREAU OF WIPO

Corrigendum to document IPIC/DC/3 (Draft Treaty)

The corrections set out below should be made in the English version of document IPIC/DC/3 ("DRAFT TREATY"). With the possible exception of the correction indicated in (c), below, they are of a purely formal nature.

CORRECTIONS IN THE TEXT OF THE DRAFT TREATY:

(a) On page 31, the subtitle of Article 6(1) should read: "[Acts Requiring the Authorization of the Holder of the Right]."

(b) On page 35, the subtitle of Article 6(2) should read: "[Acts Not Requiring the Authorization of the Holder of the Right]."

(c) On page 35, in Article 6(2)(a), fifth line, the word "use" should be replaced by the word "purposes."

(d) On page 43, in Article 6(4), ninth line, the word "or" should be replaced by the word "and."

(e) On page 53, in Alternative M of Article 8(2)(i), the second line should read: "where Article 7(i) applies."

(f) On page 55, in Alternative N of Article 8(2)(i), the second line should read: "where Article 7(i) applies."

(g) On page 65, in Article 11(4), seventh line, the word "are" should be replaced by the word "were."

CORRECTIONS IN THE NOTES ACCOMPANYING THE TEXT OF THE DRAFT TREATY:

(h) On page 2, the title should read "Introduction."

(i) On page 10, in paragraph 26, last line, the word "proprietor" should be replaced by "holder of the right."

(j) On page 16, in paragraph 40, second line, the words "the integrated circuit" should be replaced by the words "a microchip."

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(k) On page 34, in paragraph 76, sixth line, the word "use" should be replaced by the word "purposes."

(l) On page 34, in paragraph 78, 15th line, the words "of integrated circuits" should be deleted.

(m) On page 38, in paragraphs 84 (fifth line), 85 (first line), 87 (second line) and 88 (first line), the expression "paragraph (3)" should be replaced by "paragraph (3)(a)."

(n) On page 40, in paragraph 89, seventh line, the word "effected" should be replaced by the word "affected."

(o) On page 42, in paragraph 94(c), third line, the word "or" should be replaced by the word "and."

(p) On page 44, in paragraph 98, fourth line, the word "proprietor" should be replaced by the words "holder of the right."

(q) On page 62, in paragraph 126(d), last line, the word "of" should be replaced by the word "or."

(r) On page 74, in paragraph 149, penultimate line, the word "it" should be replaced by the word "they."

(s) On page 74, in paragraph 150, fifth line, the word "accession" should be replaced by the word "acceptance."

[End]

IPIC/DC/4

February 28, 1989 (Original: English)

Source: THE DELEGATION OF THE UNITED STATES OF AMERICA

Further Explanation of the Consultation, Dispute Settlement and Enforcement Procedures as Proposed by the United States of America

This document reproduces a text submitted by the United States of America to provide further explanation of the proposal for a draft Article on consultation procedures made by the Delegation of the United States of America during the fourth session of the Committee of Experts on Intellectual Property in Respect of Integrated Circuits, held in Geneva from November 7 to 22, 1988 (see document IPIC/CE/IV/15, paragraph 171(a)).

Introduction

The United States proposes that the treaty to protect the layout design of semiconductor integrated circuits should include detailed consultation procedures as well as dispute settlement and enforcement procedures. Our proposal is, of course, premised on achieving an agreement that provides adequate and effective standards and procedures for the protection of layout

[IPIC/DC/4, continued]

designs of integrated circuits. In our view, the inclusion of detailed consultation procedures, coupled with adequate and effective standards will foster international cooperation and promote uniformity in the levels of protection provided by signatories to the agreement.

The absence of formal consultation procedures in other intellectual property treaties has been a source of frustration and dissatisfaction. We have in the Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits an opportunity to help remedy this deficiency and begin to explore the feasibility of dispute settlement in the context of the World Intellectual Property Organization.

Consultation Procedures Restricted to Governmental Disputes

Only Parties to the treaty could invoke the consultation procedures, and then only for matters pertaining to a Party's obligations under the treaty. The consultation procedures would not apply to individual private cases. Private parties would have to seek redress under the various national laws.

Summary Description of the Consultation Procedure

A Party with a complaint about what it sees as another Party's failure to fulfill its obligations under the treaty would be entitled to initiate consultations under the agreement. If consultations fail, then the Party would ask the Director General of the WIPO to convene a Panel of Experts to review the matter and present a report. The United States expects that the findings of the Panel of Experts would, in most cases, end the matter, once the Assembly by consensus confirms or rejects the findings of the Panel. As a last resort, the Assembly may authorize the Party that initiated the request to suspend application of the treaty to nationals of the Party that declines to accept the Assembly's recommendations.

Our proposal for consultation and dispute settlement procedures draws upon experience in the General Agreement on Tariffs and Trade and is crafted to deal with intellectual property issues. Parties to the Treaty should have prompt access to a streamlined procedure that could be used in instances in which a Party believes that another Party is not meeting its obligations under the Treaty.

The United States believes that this Treaty presents a significant opportunity for discussion and development of consultation and dispute settlement mechanisms in the context of an intellectual property agreement and in the WIPO. Reaching agreement on adequate and effective standards for the protection of layout-designs of integrated circuits is a step that should be joined with a procedure to ensure that the Parties provide an adequate level of protection.

Reasons for Consultation and Dispute Settlement Procedures

Introduction of consultation and dispute settlement procedures into the Integrated Circuits Treaty provides an improved means for Parties to reach consistent interpretations of the obligations assumed under the Treaty and an incentive to meet those obligations. The state of the law dealt with in this Treaty indicates that interpretations of obligations may be necessary. Unlike other intellectual property treaties, the Integrated Circuits Treaty lacks a

[IPIC/DC/4, continued]

body of existing practical and legal experience at the national level that could give governments guidance in establishing rules and resolving disputes. Without this body of precedent, and considering that the Treaty is drafted in general terms, we may see divergences in national laws and in levels of protection accorded and enforced.

If no effective multilateral means exist to discuss and reconcile these divergences, Parties will not reap the full benefits of the Treaty and there may be resort to unilateral or bilateral action. Developing effective consultation and dispute settlement mechanisms to determine if Parties are providing the levels of protection and enforcement of rights provided for in the Treaty will diminish the need for governments to rely on unilateral action and provide a means for reaching a multilateral consensus on Treaty obligations.

Including specific provisions for consultation and dispute settlement in a Treaty administered by WIPO may strengthen that organization by fostering the development of multilateral consensus without the extended debate and process involved in formally revising a Treaty. Agreed interpretations could accomplish clarifications of points promptly without being tied to the debate on contentious or significant revisions.

Reliance on the International Court of Justice (ICJ) as the primary international forum for the resolution of disputes over the obligations of international treaties dealing with intellectual property rights is simply not practicable and ignores other potential fora. The ICJ's procedures are slow and unwieldy. Moreover, a number of countries do not submit to the jurisdiction of the International Court of Justice. To date, no government has brought an intellectual property case arising under existing treaties to the ICJ. This has led some to say that the possibility of bringing a dispute to the attention of the ICJ is illusory and an ineffective deterrent against the failure of some treaty signatories to observe their obligations.

Other international organizations such as the General Agreement on Tariffs and Trade have well established and recognized mechanisms for consultation and dispute resolution. These mechanisms have strengthened the operation of the trading system as a whole and the GATT as an organization. The same benefits could accrue to intellectual property and WIPO.

Cost of the Consultation Procedure

It is impossible at this point to allocate costs precisely for the consultation procedures since the financing of the International Bureau with respect to the Treaty remains unclear. The United States believes that most disputes will be settled in the early stages through diplomacy, thereby eliminating significant expenditures. If, under the procedure, the Director General convenes the Panel of Experts, the United States concludes that the most equitable approach would be to finance the procedure through the WIPO budget. This would ensure that all Parties will have equal access to the consultation-dispute settlement procedures. The details of cost allocation can be determined easily once a clearer picture emerges concerning the general sources of financing for the International Bureau with respect to its activities under the Treaty.

[IPIC/DC/4, continued]

Relationship to GATT Procedures

The U.S. proposal incorporates our experience in GATT and is consistent with current practice and our proposals in that forum. The GATT consultation and dispute settlement process has addressed intellectual property matters as they relate to trade and current proposals for a GATT agreement on trade-related aspects of intellectual property include consultation and dispute settlement provisions.

The U.S. proposal for including consultation and dispute settlement provisions in the Integrated Circuits Treaty will complement the GATT process rather than duplicate it. If the standards agreed to in this Treaty are adequate, we anticipate that the GATT agreement would take them into account. Not all WIPO members will be parties to the Treaty. Moreover, the sanctions available under each agreement could differ since the GATT is trade-based as opposed to being solely an intellectual property-based agreement. We anticipate that interpretations of the standards will be consistent.

In summary, the United States has proposed a consultation and dispute settlement procedure that could provide consistency in interpretation of Treaty obligations and provide an effective and expeditious means of resolving disputes. It should strengthen the multilateral system and diminish the need to resort to unilateral action.

[End]

IPIC/DC/5 April 11, 1989 (Original: English/French)

Source: THE COMMISSION OF THE EUROPEAN COMMUNITIES

Status of the European Economic Community and Division of Competence Between the Community and its Member States in relation to the Proposed Treaty

This document reproduces a text received on April 11, 1989, by the International Bureau of WIPO from the Commission of the European Communities. The text deals with the status of the European Economic Community and the division of competence between the Community and its Member States in relation to the proposed treaty, as requested during the fourth session of the Committee of Experts on Intellectual Property in Respect of Integrated Circuits, held in Geneva from November 7 to 22, 1988 (see document IPIC/CE/IV/15, paragraph 198).

"Semiconductor Topography Protection
Diplomatic Conference WIPO
(May 8-26, 1989)

During the fourth meeting of the Committee of Experts held in Geneva in November 1988 within the framework of WIPO a number of questions concerning

[IPIC/DC/5, continued]

the proposal made by Greece on behalf of the Member States of the European Communities to permit the European Economic Community (EEC) to become party to the future WIPO treaty on integrated circuits were put forward. [1)]

The present paper aims at answering in more detail the questions which were raised during this meeting of the Committee of Experts and to explain the consequences for other States of a situation in which both the EEC and its Member States should become party to the treaty.

The questions as recorded in the WIPO Report[2)]

Question (a)

"The proposals of the Delegation of Greece contained no objective basis on which other contracting parties could ascertain whether it was the European Communities or its Member States which had conpetence in relation to a particular provision of the treaty. It was suggested that this would render more difficult the dealings of contracting parties with each other under the treaty."

Question (b)

"While the division of competence might be an internal matter to the European Communities, its counterpart, namely, the responsibility or liability of a contracting party, was of concern to other contracting parties. How were other contracting parties to determine, when necessary, whether it would be the European Communities or a Member State which would assume responsibility for any given matter such as, for example, the resolution of the dispute."

Answer

The European Economic Community (EEC) and the Member States must be in a position to become party to the treaty alongside each other because of the internal obligations undertaken by the Member States of the EEC under the Treaty establishing the European Economic Community (Treaty of Rome). Under these obligations, the Member States have transferred to the EEC competence in numerous fields and in particular fields where the Community has adopted common rules.

Concerning the legal protection of topographies of semiconductor products, as a general proposition, EEC competence flows from the Directive adopted by the Council of Ministers of the Communities,[3)] the text of which is reproduced in Annex 1. It follows from this approximation of the provisions of Member States' national laws on the protection of semiconductors, that to the extent to which such Community rules are promulgated, the Member States cannot, by virtue of Community law, assume obligations which might affect those rules or alter their scope.

The subject-matter of the draft WIPO treaty lies to a large extent within the field of application of Directive 87/54/EDD. In consequence, the competence to negotiate and conclude a future treaty for the subject-matter falling withing the scope of this Directive belongs to the Community. Referring to

[IPIC/DC/5, continued]

the particular rules of the Draft Treaty prepared by the Director General of WIPO, the following questions illustrate, by way of examples, the competences of the Community, as they currently exist under Community Law.

- definitions (c.f. Article 1 of the Directive),
- subject-matter of the protection (c.f. Article 2 of the Directive),
- scope of protection (c.f. Article 5 of the Directive).

On the other hand, to the extent that the Directive does not cover a topic of the future treaty, as for example with the question of non-voluntary licences, the Member States have retained their competence.

As to the question of to whom a contracting party to the future treaty should address itself in the case of matters concerning the treaty, it should be noted that it follows from the nature of the EEC that a contracting party to the future treaty will always obtain a response whether it addresses itself to a Member State or to the EEC.

The legal security legitimately claimed by other States which may become party to the future treaty resides in the fact that the participation of the Community in the treaty alongside its Member States is the means of guaranteeing to the other parties that the evolutionary process of transfer of competences from the Member States to the EEC will not affect the future obligations arising out of the treaty. Accordingly, participation in the future treaty by the European Economic Community and its Member States, far from reducing legal security, reinforces it for the adherents to the future treaty.

Question (c)

"The division of competence also would affect the right to vote in the Assembly proposed to be established under the draft Treaty. The present wording of Article C of the proposals of the Delegation of Greece referred to the right of intergovernmental organisations to vote 'in cases of votes on matters within their competence'."

Answer

As regards the right to vote as proposed in Article C of the amendments submitted by Greece on behalf of the Member States of the European Communities, it is to be noted that this attaches to the status of a contracting party. The fact that both the EEC and its Member States need to be parties to the treaty has to be taken into account. The question as to who will vote should follow the division of powers in the EEC. This solution guarantees to all other contracting parties to the future treaty that there will in no case be a vote in addition to the number of votes attributed to the Member States of the EEC party to the future treaty.

Similarly, the transfer of competence by Member States to the EEC should have no effect on the number or weight of votes. Otherwise, an imbalance would exist between the votes cast by the Community and those cast by its Member States.

[IPIC/DC/5, continued]

This principle has been applied in numerous agreements[4)] and has so far not given rise to any problems. As to the practical question of who will vote on a given subject, it is clear that the Community and its Member States will communicate the appropriate information at the time of voting."

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1) See doc. IPIC/CE/IV/4.

2) Report adopted by the Committee of Experts, document IPIC/CE/IV/15, November 22, 1988, paragraphs 188-198, pages 31-34.

3) Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products, O.J. L 24, January 1987, p. 36.

4) Editor's Note: While the number "4)" appeared in the text of document IPIC/DC/5, as indicated above, the document did not contain a corresponding text as a footnote.

[Annexes follow]

[IPIC/DC/5, continued]

ANNEX 1

No L 24/36 Official Journal of the European Communities 27. 1. 87

COUNCIL DIRECTIVE

of 16 December 1986

on the legal protection of topographies of semiconductor products

(87/54/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 100 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas semiconductor products are playing an increasingly important role in a broad range of industries and semiconductor technology can accordingly be considered as being of fundamental importance for the Community's industrial development;

Whereas the functions of semiconductor products depend in large part on the topographies of such products and whereas the development of such topographies requires the investment of considerable resources, human, technical and financial, while topographies of such products can be copied at a fraction of the cost needed to develop them independently;

Whereas topographies of semiconductor products are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

Whereas certain existing differences in the legal protection of semiconductor products offered by the laws of the Member States have direct and negative effects on the functioning of the common market as regards semiconductor products and such differences could well become greater as Member States introduce new legislation on this subject;

Whereas existing differences having such effects need to be removed and new ones having a negative effect on the common market prevented from arising;

Whereas, in relation to extension of protection to persons outside the Community, Member States should be free to act on their own behalf in so far as Community decisions have not been taken within a limited period of time;

Whereas the Community's legal framework on the protection of topographies of semiconductor products can, in the first instance, be limited to certain basic principles by provisions specifying whom and what should be protected, the exclusive rights on which protected persons should be able to rely to authorize or prohibit certain acts, exceptions to these rights and for how long the protection should last;

Whereas other matters can for the time being be decided in accordance with national law, in particular, whether registration or deposit is required as a condition for protection and, subject to an exclusion of licences granted for the sole reason that a certain period of time has elapsed, whether and on what conditions non-voluntary licences may be granted in respect of protected topographies;

Whereas protection of topographies of semiconductor products in accordance with this Directive should be without prejudice to the application of some other forms of protection;

Whereas further measures concerning the legal protection of topographies of semiconductor products in the Community can be considered at a later stage, if necessary, while the application of common basic principles by all Member States in accordance with the provisions of this Directive is an urgent necessity,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

Definitions

Article 1

1. For the purposes of this Directive:

(a) a 'semiconductor product' shall mean the final or an intermediate form of any product:

(i) consisting of a body of material which includes a layer of semiconducting material; and

(ii) having one or more other layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a predetermined three-dimensional pattern; and

(iii) intended to perform, exclusively or together with other functions, an electronic function;

(1) OJ No C 360, 31. 12. 1985, p. 14.
(2) OJ No C 255, 13. 10. 1986, p. 249.
(3) OJ No C 189, 28. 7. 1986, p. 5.

(b) the 'topography' of a semiconductor product shall mean a series of related images, however fixed or encoded;

(i) representing the three-dimensional pattern of the layers of which a semiconductor product is composed; and

(ii) in which series, each image has the pattern or part of the pattern of a surface of the semiconductor product at any stage of its manufacture;

(c) 'commercial exploitation' means the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes. However, for the purposes of Articles 3 (4), 4 (1), 7 (1), (3) and (4) 'commercial exploitation' shall not include exploitation under conditions of confidentiality to the extent that no further distribution to third parties occurs, except where exploitation of a topography takes place under conditions of confidentiality required by a measure taken in conformity with Article 223 (1) (b) of the Treaty.

2. The Council acting by qualified majority on a proposal from the Commission, may amend paragraph 1 (a) (i) and (ii) in order to adapt these provisions in the light of technical progress.

CHAPTER 2

Protection of topographies of semiconductor products

Article 2

1. Member States shall protect the topographies of semiconductor products by adopting legislative provisions conferring exclusive rights in accordance with the provisions of the Directive.

2. The topography of a semiconductor product shall be protected in so far as it satisfies the conditions that it is the result of its creator's own intellectual effort and is not commonplace in the semiconductor industry. Where the topography of a semiconductor product consists of elements that are commonplace in the semiconductor industry, it shall be protected only to the extent that the combination of such elements, taken as a whole, fulfils the abovementioned conditions.

Article 3

1. Subject to paragraphs 2 to 5, the right to protection shall apply in favour of persons who are the creators of the topographies of semiconductor products.

2. Member States may provide that,

(a) where a topography is created in the course of the creator's employment, the right to protection shall apply in favour of the creator's employer unless the terms of employment provide to the contrary;

(b) where a topography is created under a contract other than a contract of employment, the right to protection shall apply in favour of a party to the contract by whom the topography has been commissioned, unless the contract provides to the contrary.

3. (a) As regards the persons referred to in paragraph 1, the right to protection shall apply in favour of natural persons who are nationals of a Member State or who have their habitual residence on the territory of a Member State.

(b) Where Member States make provision in accordance with paragraph 2, the right to protection shall apply in favour of:

(i) natural persons who are nationals of a Member State or who have their habitual residence on the territory of a Member State;

(ii) companies or other legal persons which have a real and effective industrial or commercial establishment on the territory of a Member State.

4. Where no right to protection exists in accordance with other provisions of this Article, the right to protection shall also apply in favour of the persons referred to in paragraph 3 (b) (i) and (ii) who:

(a) first commercially exploit within a Member State a topography which has not yet been exploited commercially anywhere in the world; and

(b) have been exclusively authorized to exploit commercially the topography throughout the Community by the person entitled to dispose of it.

5. The right to protection shall also apply in favour of the successors in title of the persons mentioned in paragraphs 1 to 4.

6. Subject to paragraph 7, Member States may negotiate and conclude agreements or understandings with third States and multilateral Conventions concerning the legal protection of topographies of semiconductor products whilst respecting Community law and in particular the rules laid down in this Directive.

7. Member States may enter into negotiations which third States with a view to extending the right to protection to persons who do not benefit from the right to protection according to the provisions of this Directive. Member States who enter into such negotiations shall inform the Commission thereof.

When a Member State wishes to extend protection to persons who otherwise do not benefit from the right to protection according to the provisions of this Directive or to conclude an agreement or understanding on the extension of protection with a non-Member State it shall notify the Commission. The Commission shall inform the other Member States thereof.

[IPIC/DC/5, continued]

The Member State shall hold the extension of protection or the conclusion of the agreement or understanding in abeyance for one month from the date on which it notifies the Commission. However, if within that period the Commission notifies the Member State concerned of its intention to submit a proposal to the Council for all Member States to extend protection in respect of the persons or non-Member State concerned, the Member State shall hold the extension of protection or the conclusion of the agreement or undestanding in abeyance for a period of two months from the date of the notification by the Member State.

Where, before the end of this two-month period, the Commission submits such a proposal to the Council, the Member State shall hold the extension of protection or the conclusion of the agreement or understanding in abeyance for a further period of four months from the date on which the proposal was submitted.

In the absence of a Commission notification or proposal or a Council decision within the time limits prescribed above, the Member State may extend protection or conclude the agreement or understanding.

A proposal by the Commission to extend protection, whether or not it is made following a notification by a Member State in accordance with the preceding paragraphs shall be adopted by the Council acting by qualified majority.

A Decision of the Council on the basis of a Commission proposal shall not prevent a Member State from extending protection to persons, in addition to those to benefit from protection in all Member States, who were included in the envisaged extension, agreement or understanding as notified, unless the Council acting by qualified majority has decided otherwise.

8. Commission proposals and Council decisions pursuant to paragraph 7 shall be published for information in the *Official Journal of the European Communities.*

Article 4

1. Member States may provide that the exclusive rights conferred in conformity with Article 2 shall not come into existence or shall no longer apply to the topography of a semiconductor product unless an application for registration in due form has been filed with a public authority within two years of its first commercial exploitation. Member States may require in addition to such registration that material identifying or exemplifying the topography or any combination thereof has been deposited with a public authority, as well as a statement as to the date of first commercial exploitation of the topography where it precedes the date of the applciation for registration.

2. Member States shall ensure that material deposited in conformity with paragraph 1 is not made available to the public where it is a trade secret. This provision shall be without prejudice to the disclosure of such material pursuant to an order of a court or other competent authority to persons involved in litigation concerning the validity or infringement of the excusive rights referred to in Article 2.

3. Member States may require that transfers of rights in protected topographies be registered.

4. Member States may subject registration and deposit in accordance with paragraphs 1 and 3 to the payment of fees not exceeding their administrative costs.

5. Conditions prescribing the fulfilment of additional formalities for obtaining or maintaining protection shall not be admitted.

6. Member States which require registration shall provide for legal remedies in favour of a person having the right to protection in accordance with the provisions of this Directive who can prove that another person has applied for or obtained the registration of a topography without his authorization.

Article 5

1. The exclusive rights referred to in Article 2 shall include the rights to authorize or prohibit any of the following acts :

(a) reproduction of a topography in so far as it is protected under Article 2 (2);

(b) commercial exploitation or the importation for that purpose of a topography or of a semiconductor product manufactured by using the topography.

2. Notwithstanding paragraph 1, a Member State pay permit the reproduction of a topography privately for non commercial aims.

3. The exclusive rights referred to in paragraph 1 (a) shall not apply to reproduction for the purpose of analyzing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.

4. The exclusive rights referred to in paragraph 1 shall not extend to any such act in relation to a topography meeting the requirements of Article 2 (2) and created on the basis of an analysis and evaluation of another topography, carried out in conformity with paragraph 3.

5. The exclusive rights to authorize or prohibit the acts specified in paragraph 1 (b) shall not apply to any such act committed after the topography or the semiconductor product has been put on the market in a Member State by the person entitled to authorize its marketing or with his consent.

6. A person who, when he acquires a semiconductor product, does not know, or has no reasonable grounds to believe, that the product is protected by an exclusive right conferred by a Member State in conformity with this Directive shall not be prevented from commercially exploiting that product.

However, for acts committed after that person knows, or has reasonable grounds to believe, that the semiconductor product is so protected, Member States shall ensure that on the demand of the rightholder a tribunal may require, in accordance with the provisions of the national law applicable, the payment of adequate remuneration.

7. The provisions of paragraph 6 shall apply to the successors in title of the person referred to in the first sentence of that paragraph.

Article 6

ember States shall not subject the exclusive rights referred to in Article 2 to licences granted, for the sole reason that a certain period of time has elapsed, automatically, and by operation of law.

Article 7

1. Member States shall provide that the exclusive rights referred to in Article 2 shall come into existence :

(a) where registration is the condition for the coming into existence of the exclusive rights in accordance with Article 4, on the earlier of the following dates :

(i) the date when the topography is first commercially exploited anywhere in the world ;

(ii) the date when an application or registration has been filed in due form ; or

(b) when the topography is first commercially exploited anywhere in the world ; or

(c) when the topography is first fixed or encoded.

2. Where the exclusive rights come into existence in accordance with paragraph 1 (a) or (b), the Member States shall provide, for the period prior to those rights coming into existence, legal remedies in favour of a person having the right to protection in accordance with the provisions of this Directive who can prove that another person has fraudulently reproduced or commercially exploited or imported for that purpose a topography. This paragraph shall be without prejudice to legal remedies made available to enforce the exclusive rights conferred in conformity with Article 2.

3. The exclusive rights shall come to an end 10 years from the end of the calendar year in which the topography is first commercially exploited anywhere in the world or, where registration is a condition for the coming into existence or continuing application of the exclusive rights, 10 years from the earlier of the following dates :

(a) the end of the calendar year in which the topography is first commercially exploited anywhere in the world ;

(b) the end of the calendar year in which the application for registration has been filed in due form.

4. Where a topography has not been commercially exploited anywhere in the world within a period of 15 years from its first fixation or encoding, any exclusive rights in existence pursuant to paragraph 1 shall come to an end and no new exclusive rights shall come into existence unless an application for registration in due form has been filed within that period in those Member States where registration is a condition for the coming into existence or continuing application of the exclusive rights.

Article 8

The protection granted to the topographies of semiconductor products in accordance with Article 2 shall not extend to any concept, process, system, technique or encoded information embodied in the topography other than the topography itself.

Article 9

Where the legislation of Member States provides that semiconductor products manufactured using protected topographies may carry an indication, the indication to be used shall be a capital T as follows : T, 'T', [T], Ⓣ, T* or 🅃.

CHAPTER 3

Continued application of other legal provisions

Article 10

1. The provisions of this Directive shall be without prejudice to legal provisions concerning patent and utility model rights.

2. The provisions of this Directive shall be without prejudice :

(a) to rights conferred by the Member States in fulfilment of their obligations under international agreements, including provisions extending such rights to nationals of, or residents in, the territory of the Member State concerned ;

(b) to the law of copyright in Member States, restricting the reproduction of drawing or other artistic representations of topographies by copying them in two dimensions.

3. Protection granted by national law to topographies of semiconductor products fixed or encoded before the entry into force of the national provisions enacting the Directive, but no later than the date set out in Article 11 (1), shall not be affected by the provisions of this Directive.

[IPIC/DC/5, continued]

CHAPTER 4

Final provisions

Article 11

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive by 7 November 1987.

2. Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 12

This Directive is addressed to the Member States.

Done at Brussels, 16 December 1986.

For the Council

The President

G. HOWE

[Annex 2 follows]

[IPIC/DC/5, continued]

ANNEX 2

Examples of multilateral agreements to which the European Economic Community is a contracting party

1. Convention for the Prevention of Marine Pollution from Land-Based Resources (Paris Convention), done on 4.6.1974 at Paris (OJ L 194, 25.7.1975, p.6). Signed by Belgium, Denmark, European Communities, France, Federal Republic of Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom.

2. Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention), done on 16.2.1976 at Barcelona (OJ L 240, 19.9.1977, p.3). Signed by Algeria, Cyprus, Egypt, European Communities, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Spain, Syria, Tunisia, Turkey, Yugoslavia.

3. Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), done on 26.3.1979 at Bonn (OJ L 210, 19.7.1982, p 11). Signed by Benin, Cameroon, Central African Republic, Chad, Chile, Denmark, Egypt, European Communities, France, Federal Republic of Germany, Greece, Hungary, India, Ireland, Israel, Italy, Ivory Coast, Jamaica, Luxembourg, Madagascar, Morocco, Netherlands, Niger, Norway, Paraguay, Philippines, Portugal, Somalia, Spain, Sri Lanka, Sweden, Togo, Uganda, United Kingdom.

4. Convention on the Conservation of European Wildlife and Natural Habitats (Berne Convention), done on 19.9.1979 at Berne (OJ L 38,10.2.1982, p.3). Signed by Austria, Belgium, Cyprus, Denmark, European Communities, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Senegal, Spain, Sweden, Switzerland, Turkey, United Kingdom.

5. International Natural Rubber Agreement 1979, done on 6.10.1979 at Geneva (OJ L 111, 24.4.1982, p. 22). Signed by Australia, Belgium, Brazil, Canada, China, Czechoslovakia, Denmark, European Communities, Finland, France, Federal Republic of Germany, Greece, Indonesia, Ireland, Italy, Ivory Coast, Japan, Liberia, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Norway, Papua New Guinea, Peru, Philippines, Sri Lanka, Sweden, Switzerland, Thailand, United Kingdom, USA, USSR.

[IPIC/DC/5, continued]

6. Convention on long-range transboundary air pollution 1979, done on 13.11.1979 at Geneva (OJ L 171, 27.6.1981, p.11). Signed by Austria, Belgium, Bulgaria, Byelorussia, Canada, Czechoslovakia, Denmark, European Communities, Finland, France, German Democratic Republic, Federal Republic of Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, Ukrainia, United Kingdom, USA, USSR, Vatican, Yugoslavia.

7. International Coffee Agreement, 1983 adopted by the International Coffee Council on 16.9.1982 at London (OJ L 308, 9.11.1983, p.1). Signed by Angola, Australia, Austria, Belgium, Benin, Bolivia, Brazil, Burundi, Cameroon, Canada, Central African Republic, Cyprus, Colombia, Congo, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Ethiopia, European Communities, Fiji, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, India, Indonesia, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kenya, Liberia, Luxembourg, Madagascar, Malawi, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Rwanda, Sierra Leone, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Tanzania, Thailand, Togo, Trinidad and Tobago, Uganda, United Kingdom, USA, Venezuela, Yugoslavia, Zaire, Zambia, Zimbabwe.

8. International Convention on the Harmonization of Frontier Controls of Goods, done on 21.10.1982 at Geneva (OJ L 126, 12.5.1984, p.3). Signed by Austria, Belgium, Denmark, European Communities, France, Finland, German Democratic Republic, Federal Republic of Germany, Greece, Hungary, Ireland, Italy, Lesotho, Luxembourg, Netherlands, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, United Kingdom, USSR, Yugoslavia.

9. Convention for the protection of the ozone layer, done on 22.3.1985 at Vienna (OJ L 297, 31.10.1988, p.10). Signed by Argentina, Australia, Austria, Belgium, Burkina Faso, Byelorussia, Canada, Chile, Denmark, Egypt, Equat. Guinea, European Communities, Finland, France, Federal Republic of Germany, Greece, Guatemala, Hungary, Ireland, Italy, Japan, Kenya, Luxembourg, Maldives, Malta, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Peru, Portugal, Spain, Sweden, Switzerland, Uganda, Ukrainia, United Kingdom, USA, USSR, Venezuela.

[End]

IPIC/DC/6

May 8, 1989 (Original: English)

Source: THE DELEGATION OF SPAIN IN THE NAME OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

Rule 33 of the Draft Rules of Procedure of the Diplomatic Conference

It is proposed that the following sentence be added at the end of Rule 33 of the Draft Rules of Procedure of the Diplomatic Conference:

> "However, the Delegations of States which are members of the European Communities may, for any given vote, not exercise their right to vote in order to enable the Delegation of the European Communities to vote with a number of votes equal to the number of the member States of the European Communities participating in the Diplomatic Conference."

Comments

1. The European Communities have adopted legislation on the protection of microchips, as a consequence of which a large number of aspects of such protection fall within the competence of the European Communities. On the other aspects of such protection, the individual member States of the European Communities have freedom to legislate.

2. In view of that situation, a meaningful negotiation in the Diplomatic Conference requires that both the representatives of the European Communities and the Delegations of the member States of the European Communities participate (by making proposals and by speaking in the debates).

3. The proposed addition to Rule 33 would give a right to the representatives of the European Communities to vote instead of the individual member States of the European Communities.

4. Consequently, the number of votes that the European Communities could cast would be the same as the number of those member States that are duly represented in the Diplomatic Conference. That means a maximum of 12, and in no case would it be 13.

[End]

IPIC/DC/7

May 11, 1989 (Original: English)

Source: PLENARY OF THE DIPLOMATIC CONFERENCE

The Rules of Procedure

Editor's Note: The Rules of Procedure adopted by the Diplomatic Conference are those set forth in document IPIC/DC/2 (see page 62 of these Records) with the following changes:

[IPIC/DC/7, continued]

1. Rule 2(1)(i), before "the European Communities", the phrase "subject to the decision by the Conference, meeting in Plenary" was deleted.

2. Rule 15(1), it was decided that seven, rather than six, vice-presidents would be elected.

3. Rule 33, in the third line, after "its State," the following footnote was deleted:

> "The Diplomatic Conference may decide to examine the possibility of the European Communities voting in the place of their member States."

Also in the third line, following "its State", the following passage was added:

> "However, the Delegations of States which are members of the European Communities may, for any given vote, not exercise their right to vote in order to enable the Delegation of the European Communities to vote with a number of votes equal to the number of member States of the European Communities participating in the Diplomatic Conference."

4. Rule 34(1)(vi), including footnote, was deleted.

[End]

IPIC/DC/8

May 12, 1989 (Original: English)

Source: THE DELEGATION OF JAPAN

Draft Articles 2 and 5

1. Article 2(i) should be amended to read as follows:

> "Microchip" means a product capable of performing an electronic function in which the active element or elements, some or all of the interconnections and any passive elements are, as an integrated circuit, formed in and/or on a piece of material.

2. The term "national" should be inserted between "applicable" and "law" in the second line of Article 2(iii).

3. The expression "Regional Economic Integration Organization" should be used instead of "Intergovernmental Organization" in Articles 2(v), 2(vi) and 5(3).

[End]

IPIC/DC/9

May 12, 1989 (Original: English)

Source: THE DELEGATION OF CHINA

Draft Article 2

1. Article 2(i) should be amended to read as follows:

> (i) "Integrated circuit" means a product in which the active elements, some or all of the interconnections and any passive elements are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.

2. Article 2(ii) should be amended to read as follows:

> (ii) "layout design (topography)" means the three-dimensional disposition of the active elements, interconnections and any passive elements of an integrated circuit, provided that the layout design has been incorporated in his final form or an intermediate form of the integrated circuit.

[End]

IPIC/DC/10

May 15, 1989 (Original: English)

Source: THE DELEGATION OF INDIA

Draft Article 6

1. Article 6 forms the substantive core of the Treaty and on this it was felt that there should be no compromise with regard to maintaining our position. The following amendments are suggested vis-à-vis the proposed draft Treaty:

"Acts Requiring the Proprietor's Authorization"

2. In paragraph 6(1), it is proposed to delete the words "at least" in order to circumscribe what should be considered unlawful in the proposed Treaty.

3. It is also suggested that in paragraph 6(1)(i) and (ii), the words in the square brackets "in its entirety or a substantial part thereof" should also be deleted so that protection is only given to complete designs and not parts thereof.

[IPIC/DC/10, continued]

4. In Article 6(1)(iii), it is suggested that the following be deleted from the draft text in order to limit the scope of this article: "irrespective of whether the microchip is imported, sold or otherwise distributed as part of some other article or separately."

Article 6(2): Acts Not Requiring the Proprietor's Authorization

5. The above paragraph constitutes the well-known reverse engineering provision and here it was felt that the word "research" should be retained in consonance with other intellectual property laws in our country.

Article 6(3): Non-Voluntary Licenses; Antitrust Measures

6. The above provision is a key one for the developing countries. In paragraph (a) of this provision in the draft Treaty, it is suggested that the words "the possibility of" be deleted. Similarly, the words "after serious and unsuccessful efforts to obtain such authorization" should also be deleted.

7. Alternative A proposed in the draft Treaty is clearly superior and, therefore, to be preferred. Further, Article 6(3)(ii) of the draft Treaty is to be welcomed. In terms of Article 6(3)(b), Alternative D was clearly to be preferred over Alternative C.

8. In Article 6(4) relating to the Sale and Distribution of Infringing Microchips After Notice But Acquired Innocently Before Notice, only Alternative E was acceptable.

9. The last clause of this Article 6(6), relating to the Exhaustion of Rights, was to be welcomed.

[End]

IPIC/DC/11

May 15, 1989 (Original: English)

Source: THE DELEGATION OF THE UNITED STATES OF AMERICA

Draft Article 6

Amend Article 6(3) by deleting subparagraph (ii) and changing currently numbered subparagraph (i) as follows:

1. Delete Alternative A and B as currently drafted and substitute the following language:

> "to address, only during its existence, a declared national health or public safety emergency, or to remedy an adjudicated violation of antitrust or other law designed to secure fair competition and to prevent abuses of dominant market position, or to allow use exclusively for governmental purposes."

[IPIC/DC/11, continued]

2. Insert, following "payment of an equitable remuneration," the following language:

"commensurate with the market value of the license."

[End]

IPIC/DC/12

May 15, 1989 (Original: English)

Source: SECRETARIAT OF THE CREDENTIALS COMMITTEE

Interim Report

1. The Credentials Committee (hereinafter referred to as "the Committee"), the members of which were elected by the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as "the Conference"), met on May 15, 1989.

2. The delegations of the following States members of the Committee attended the meeting: Australia, Czechoslovakia, German Democratic Republic, Ghana, Italy, Norway, Philippines, Senegal, Syria, Uruguay.

Officers

3. The Committee unanimously elected Mr. Marco G. Fortini (Italy) as Chairman and Mr. Franz Jonkisch (German Democratic Republic) and Mr. Ibra Deguène Ka (Senegal) as Vice-Chairmen.

Examination of Credentials, etc.

4. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on May 9, 1989 (hereinafter referred to as "the Rules of Procedure"), the Committee examined at its meeting the credentials, full powers, letters or other documents of appointment presented for the purposes of Rules 6 and 7 of the said Rules of Procedure by delegations of States members of the International (Paris) Union for the Protection of Industrial Property, States members of the International (Berne) Union for the Protection of Literary and Artistic Works and States members of the World Intellectual Property Organization (WIPO) not members of the Paris Union or the Berne Union, and by the Delegation of the European Communities, participating in the Conference in accordance with Rule 2(1)(i) of the Rules of Procedure (hereinafter referred to as "Member Delegations"), delegations of States members of the United Nations other than those members of WIPO, the Paris Union or the Berne Union, participating in the Conference in accordance with Rule 2(1)(ii) of the Rules of Procedure (hereinafter referred to as "Observer

[IPIC/DC/12, continued]

Delegations"), and the representatives of intergovernmental and non-governmental organizations, participating in the Conference in accordance with Rule 2(1)(iii) of the Rules of Procedure (hereinafter referred to as "representatives of Observer Organizations").

Delegations

5. The Committee found that credentials and full powers, in due form in accordance with Rule 6 of the Rules of Procedure, were presented by the following Member Delegations: Angola, Chile, Cuba, Denmark, Ghana, Guatemala, India, Israel, Italy, Liechtenstein, Madagascar, Portugal, Senegal, Spain, Switzerland, United Kingdom, Yugoslavia, Zambia (18).

6. (a) The Committee found that credentials, in due form in accordance with Rule 6 of the Rules of Procedure, were presented by the following Member Delegations: Australia, Austria, Bulgaria, Burundi, Cameroon, Canada, China, Czechoslovakia, Finland, German Democratic Republic, Germany (Federal Republic of), Holy See, Japan, Jordan, Libya, Mexico, Netherlands, Norway, Sri Lanka, Sweden, Trinidad and Tobago, United Republic of Tanzania, the European Communities (23).

(b) The Committee noted that, in accordance with established practices, a designation of representation implied, in principle, in the absence of any express reservation, the right of signature, and that it should be left to each delegation to interpret the scope of its credentials.

7. The Committee noted that a communication, in telex form, containing credentials and full powers had been received from the Government of Luxembourg, that a communication, in the form of a telegram, containing credentials had been received from the Government of Syria, and that communications, in telex form, containing credentials had been received from the Governments of Brazil, Central African Republic and Uruguay. The Committee was of the view that such communications could be accepted, as credentials and full powers or as credentials, as the case may be, on the understanding that the originals thereof would be received in due course.

Representatives of Observer Organizations

8. The Committee found that the letters or documents of appointment presented by the representatives of the following Observer Organizations were in due form in accordance with Rule 7 of the Rules of Procedure: (a) Latin American Economic System (SELA) and Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA) (2); (b) American Bar Association (ABA); American Intellectual Property Law Association (AIPLA); Arab Society for the Protection of Industrial Property (ASPIP); Associaçao Brasileira de Propriedade Industrial (ABPI); Committee of National Institutes of Patent Agents (CNIPA); Computer and Business Equipment Manufacturers Association (CBEMA); Computer Law Association, United States of America (CLA); Electronics Industry Association of Korea (EIAK); Intellectual Property Committee, United States of America (IPC); Intellectual Property Owners, United States of America (IPO); Inter-American Association of Industrial Property (ASIPI); International Association for the Advancement of

[IPIC/DC/12, continued]

Teaching and Research in Intellectual Property (ATRIP); International Association for the Protection of Industrial Property (AIPPI); International Copyright Society (INTERGU); International Federation of Industrial Property Attorneys (FICPI); International Intellectual Property Alliance (IIPA); International Literary and Artistic Association (ALAI); International Patent and Trademark Association, United States of America (IPTA); Istituto Nazionale per la Difesa, Identificazione e Certificazione dei Marchi Autentici, Italy (INDICAM); (The) Korea Patent Attorneys Association, Republic of Korea (KPAA); Korean Intellectual Property Research Society, Republic of Korea (KIPS); Patent and Trademark Institute of Canada (PTIC); Semiconductor Industry Association, United States of America (SIA); Union of European Practitioners in Industrial Property (UEPIP) (24).

Further Procedure

9. The Committee expressed the wish that the Secretariat should bring Rules 6 ("Credentials and Full Powers"), 7 ("Letters of Appointment") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of Member or Observer Delegations not having presented credentials or full powers and of the representatives of Observer Organizations not having presented letters or other documents of appointment.

10. The Committee decided that a report on its first meeting should be prepared by the Secretariat and issued as an interim report.

[End]

IPIC/DC/13

May 15, 1989 (Original: English)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Draft Article 6

Paragraphs (1) and (2) of Article 6 should be amended to read as follows:

(1) [Acts Requiring the Proprietor's Authorization] Any Contracting Party shall consider unlawful at least the following acts if performed without the authorization of the holder of the right:

(i) the act of reproducing a protected layout-design (topography) in its entirety or a substantial part thereof,

(ii) the act of incorporating a protected layout-design (topography) or a substantial party thereof in an integrated circuit,

[IPIC/DC/13, continued]

(iii) the act of importing, selling or otherwise distributing, for commercial purposes, a protected layout-design (topography) or a substantial part thereof or an integrated circuit in which a protected layout-design (topography) or a substantial part thereof is incorporated, irrespective of whether the integrated circuit is imported, sold or otherwise distributed as part of some other article or separately.

(2) [Acts Not Requiring the Proprietor's Authorization]

(a) Notwithstanding paragraph (1), no Contracting Party shall consider unlawful the performance, without the authorization of the holder of the right, of any act referred to in paragraph (1)(i) where the act is performed for the sole purpose of evaluation, analysis or teaching of the concepts, processes, systems or techniques embodied in the layout-design (topography) or the layout-design (topography) itself.

(b) No Contracting Party shall consider unlawful the performance of the acts referred to in paragraph (1) in relation to a layout-design (topography) created on the basis of an analysis or evaluation of another layout-design (topography) carried out in accordance with subparagraph (a) provided that the layout-design (topography) so created fulfils the conditions of Article 3(2).

(c) Notwitstanding paragraph (1), any Contracting Party may consider lawful the performance without the authorization of the holder of the right of the act referred to in paragraph (1)(i) where the act is performed privately for non-commercial aims.

[End]

IPIC/DC/14

May 16, 1989 (Original: French)

Source: THE DELEGATION OF SWITZERLAND

Draft Article 6

Paragraph (1) of Article 6 should be amended as follows:

1. Delete the passage between square brackets in subparagraph (i) and replace it with the following:

"in its entirety or such part thereof as meets the conditions set forth in Article 3(2)."

2. Delete the passage between square brackets in subparagraph (ii) and replace it with the following:

[IPIC/DC/14, continued]

"or such part thereof as meets the conditions set forth in Article 3(2)."

3. Delete the square brackets in subparagraphs (i) and (ii).

[End]

IPIC/DC/15

May 16, 1989 (Original: Russian)

Source: THE DELEGATION OF THE SOVIET UNION

Draft Article 6

1. Paragraph (2) of Article 6 should be completed with a subparagraph (c) worded as follows:

"(c) The rights of the proprietor of a layout-design (topography) shall not extend to an identical layout-design (topography) created independently by a third party provided that the said third party did not know, and did not have sufficient reason to know, that the layout-design (topography) in question was already protected."

2. The title of paragraph (3) of the same Article should be amended to read as follows:

"(3) [Measures concerning the non-voluntary use of protected integrated circuits]."

[End]

IPIC/DC/16

May 16, 1989 (Original: English)

Source: THE DELEGATION OF SPAIN IN THE NAME OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

Draft Article 6

1. Paragraph (3) of Article 6 should be amended to read as follows:

"(3) [Non-Voluntary Licenses] (a) Notwithstanding paragraph (1), any Contracting Party may, in its legislation, provide for the possibility of its executive or judicial authority granting a non-exclusive license for the performance of any of the acts referred to in paragraph (1) by a third party without the authorization of the holder of the right after serious and unsuccessful efforts to obtain such authorization ("non-voluntary license")

[IPIC/DC/16, continued]

where the granting of the non-voluntary license is found, by the granting authority, to be necessary for the safeguard of a vital public interest, i.e. defense or public health; the non-voluntary license shall be subject to the payment of an equitable remuneration by the third party to the holder of the right, which remuneration shall, in the absence of agreement between the third party and the holder of the right, be fixed by the granting authority.*

"(b) The granting of any non-voluntary license, and fixing of equitable remuneration, referred to in subparagraph (a) shall be subject to judicial review. Any such license shall be revoked when the facts that justify it cease to exist.

"(c) A non-voluntary license granted under this paragraph shall not be assignable."

2. Further declaratory note on Article 6(3):

"For the purposes of the application of Article 6(6), a non-voluntary license cannot be regarded as replacing the consent of the holder of the right."

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* Item (ii) to be deleted. The following declaratory note should be inserted in the records of the Conference:

"The provisions of this Treaty are without prejudice to any measures taken under the legislation of the Contracting Parties intended to secure free competition."

[End]

IPIC/DC/17

May 16, 1989 (Original: English)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Draft Article 6(4) and (5)

1. Paragraph (4) of Article 6 should be amended to read as follows:

"(4) [Sale and Distribution of Infringing Integrated Circuits After Notice But Acquired Innocently Before Notice] Nothwithstanding paragraph (1)(iii), no Contracting Party shall consider unlawful the importing, selling or otherwise distributing, for commercial purposes, of an integrated circuit in which a protected layout-design (topography) was incorporated without the authorization of the holder of the right, irrespective of whether the integrated circuit is imported, sold or otherwise distributed as part of some other article or separately, where the person performing or ordering such acts did not know and had no

[IPIC/DC/17, continued]

reasonable ground to know, when acquiring such integrated circuit or such article, that the reproducing of the protected layout-design (topography) or its incorporation had been done without the authorization of the holder of the right; however, the said person shall on demand of the holder of the right be obliged to pay him an adequate remuneration for all acts requiring authorization in accordance with paragraph (1)(iii) performed after the person knew or had reasonable grounds to believe that the integrated circuit is protected, the amount of such remuneration to be fixed, failing agreement between the parties, by a court or another impartial authority designated by legislation."

2. Paragraph (5) of Article 6 should be amended by deleting the last sentence.

[End]

IPIC/DC/18

May 16, 1989 (Original: English)

Source: THE DELEGATION OF AUSTRALIA

Draft Article 6(4)

1. Delete paragraph (4) up to [Alternative E:] as currently provided, and insert in place:

"(4) [Sale and Distribution of Protected Layout-Designs (Topographies) and Integrated Circuits After Notice But Acquired Innocently Before Notice] Notwithstanding paragraph (1)(iii), no Contracting Party shall be obliged to consider unlawful the importing, selling or otherwise distributing, for commercial purposes, of a protected layout-design (topography) or of an integrated circuit in which a protected layout-design (topography) is incorporated, irrespective of whether the integrated circuit is imported, sold or otherwise distributed as part of some other article or separately, where the person performing or ordering such acts did not know and had no reasonable ground to know when acquiring such layout-design (topography) or such integrated circuit that the layout design (topography) was protected;"

Notes to Proposal

1. Paragraph (4), as provided in IPIC/DC/3, allows a Contracting Party to permit an importer, purchaser or distributor who innocently acquires an integrated circuit in which a layout-design (topography) has been incorporated without the authorization of the holder of the right (i.e. a pirate chip) to "on-sell" that integrated circuit, but does not allow a Contracting Party

[IPIC/DC/18, continued]

to permit an importer, purchaser or distributor who innocently acquires a legitimate layout-design (topography) or a legitimate integrated circuit, which has been commercialized without the authorization of the holder of the right (subject to exhaustion of that right, as contemplated by Article 6(6)), to "on-sell" that layout-design or integrated circuit.

2. In contrast with paragraph (4) in IPIC/DC/3, the commercialization right in Article (6)(1)(iii) is not limited to integrated circuits in which the layout-design (topography) has been incorporated without the authorization of the holder of the right.

3. The proposed paragraph (4) is intended to be consistent with Article 6(1)(iii).

[End]

IPIC/DC/19

May 16, 1989 (Original: English)

Source: THE DELEGATION OF INDIA IN THE NAME OF THE COUNTRIES MEMBERS OF THE GROUP OF 77

Draft Article 6

The following amendments to draft Article 6 are suggested:

1. In Article 6(1), delete the words "at least." Add the words "for commercial purposes" after the words "the following acts if performed."

2. Delete Article 6(1)(i).

3. In Article 6(1)(ii), the words in the square brackets "or a substantial part thereof" should be deleted.

4. Delete the words "for commercial purposes" from Article 6(1)(iii).

5. In Article 6(1)(iii), delete: "irrespective of whether the microchip is imported, sold or otherwise distributed as part of some other article or separately."

6. In Article 6(3)(a), the words "the possibility of" to be deleted. In Article 6(3)(a)(i) the words "after serious and unsuccessful efforts to obtain such authorization" also to be deleted. In Article 6(3)(a)(i) Alternative A is preferred. In Article 6(3)(b), Alternative D is preferred.

7. In Article 6(4) relating to the Sale and Distribution of Infringing Microchips After Notice But Acquired Innocently Before Notice, only Alternative E is acceptable.

[End]

IPIC/DC/20 May 16, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Draft Article 6(1)

1. In Article 6(1) the words "at least" should be deleted.

2. The following subparagraph should be added in paragraph (1) of Article 6:

"(b) Subject to paragraph (5), any Contracting Party shall be free to consider unlawful also acts other than those specified in subparagraph (a) if performed without the authorization of the holder of the right."

3. Consequently, what constituted paragraph (1) of Article 6 becomes subparagraph (a) of paragraph (1).

[End]

IPIC/DC/21 May 18, 1989 (Original: English)

Source: THE DELEGATION OF AUSTRALIA

Draft Article 6(3)(i)

Delete the words "the granting" last appearing in Article 6(3)(i), and insert in their place "such an executive or judicial."

[End]

IPIC/DC/22 May 18, 1989 (Original: English)

Source: THE DELEGATION OF BRAZIL

Draft Article 6(3) and (4)

1. Article 6(3)(a)(ii) should read as follows:

"(ii) deciding any measure limiting any of the rights of the holder of the right on the ground that the latter has violated legislation designed to control or prevent restrictive business practices."

[IPIC/DC/22, continued]

2. Article 6(4) should read as follows:

"(4) [Sale and Distribution of Microchips After Notice of Infringement"] Notwithstanding paragraph (1)(iii), no Contracting Party shall be obliged to consider unlawful the importing, selling or otherwise distributing, for commercial purposes, of a microchip in which a protected layout-design (topography) was incorporated without the authorization of the holder of the right, where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring such microchip, that the reproducing of the protected layout-design (topography) had been done without the authorization of the holder of the right."

[End]

IPIC/DC/23

May 18, 1989 (Original: English)

Source: THE DELEGATION OF BRAZIL

Draft Article 5(1)

Paragraph (1) of Article 5 should be amended to read as follows:

"(1) [National Treatment] Each Contracting Party shall, in respect of the intellectual property protection of layout-design (topographies), accord within its territory,

(i) to nationals of the other Contracting Parties or to persons domiciled therein, and

(ii) to legal entities which or natural persons who have a real and effective industrial establishment in the territory of the other Contracting Parties

the same treatment that it accords to its own nationals."

[End]

IPIC/DC/24

May 18, 1989 (Original: English)

Source: THE DELEGATION OF CHINA

Draft Article 7

Article 7(ii) should be amended to read as follows:

[IPIC/DC/24, continued]

"(ii) has been the subject of an application for registration, filed in due form with the competent public authority, or of a registration with that authority, which should be accompanied by the filing of a copy or drawing of the layout-design (topography) and the stating of the part (or parts) which is (are) original."

[End]

IPIC/DC/25 Rev. May 18, 1989 (Original: Russian)

Source: THE DELEGATION OF BULGARIA

Draft Article 6(3)

Paragraph (3) of Article 6 should be amended to read as follows:

"(3) [Measures Concerning the Non-Voluntary Use of Protected Integrated Circuits] (a) Notwithstanding paragraph (1), any Contracting Party may, in its legislation, provide for the possibility of its executive or judicial authority granting a non-exclusive license for the performance of any of the acts referred to in paragraph (1) by a third party without the authorization of the holder of the right where the said third party has endeavored to obtain such authorization ("non-voluntary license") and where the granting of the non-voluntary license is found, by the granting authority, to be necessary to prevent any abuse by the holder of his rights or for the safeguard of a public interest, such as defense or public health; the non-voluntary license shall be subject to the payment of an equitable remuneration by the third party to the holder of the right, which remuneration shall, in the absence of agreement between the third party and the holder of the right, be fixed by the granting authority.

"(b) The granting of any non-voluntary license, and fixing of equitable remuneration, referred to in subparagraph (a) shall be subject to judicial review. Any such license shall be revoked when the facts that justify it cease to exist.

"(c) A non-voluntary license granted under this paragraph shall not be assignable."

[End]

IPIC/DC/26

May 18, 1989 (Original: Russian)

Source: THE DELEGATION OF BULGARIA

Draft Preamble

1. The text of the Preamble should be completed with a new paragraph worded as follows:

> "Being aware of the role of prime importance that is incumbent on WIPO in the establishment of universal legal protection for intellectual property in respect of integrated circuits and in the development of broad international cooperation in that field,"

2. The above paragraph should be inserted immediately before the main clause "Have concluded the following Treaty:"

[End]

IPIC/DC/27

May 18, 1989 (Original: Russian)

Source: THE DELEGATION OF BULGARIA

Draft Article 18

1. The title of Article 18 should be amended to read as follows:

"Depositary"

2. The text of Article 18 should be replaced with the following:

"The Director General shall be the depositary of this Treaty."

Notes on the Proposal

3. The notes on the original Article 18 (paragraph 158) rightly mention that the text in question is self-explanatory. The Delegation of Bulgaria considers that the proposed new text is also self-explanatory, in view of the fact that depositary functions are traditional functions and that they are recognized both by ordinary international law and by the Vienna Convention on the Law of Treaties. That is why it seems unnecessary to list those functions in the actual text of Article 18.

4. Under those circumstances it would be advisable to provide a fuller list of depositary functions (based on Article 77 of the Vienna Convention on the Law of Treaties) in the notes on Article 18.

[End]

IPIC/DC/28

May 18, 1989 (Original: Russian)

Source: THE DELEGATION OF BULGARIA

Draft Article 19

1. The whole of Article 19, "Notifications," should be deleted.

Notes on the Proposal

2. The proposed removal of the whole of this Article from the text of the Treaty is explained by the fact that its susbtance is dealt with in Article 18 ("Depositary"). The various notifications provided for in the Treaty form part of the depositary's functions. It would therefore be advisable to add the relevant details in the notes on Article 18.

[End]

IPIC/DC/29

May 18, 1989 (Original: Russian)

Source: THE DELEGATION OF BULGARIA

Draft Article 17

1. Article 17, entitled "Languages of the Treaty, Signature," should be divided into two separate articles, corresponding to paragraphs (1) and (2).

2. The first of those articles ("Signature") should be worded as follows:

> "This Treaty shall be open for signature at Washington from May 26 to August 25, 1989, and thereafter at the International Bureau of WIPO, in Geneva, until May 25, 1990."

That article should be inserted between Articles 14 and 15 of the Draft Treaty.

3. The second article ("Authentic and Official Texts") should be worded as follows:

> "(1) The English, Arabic, Chinese, French, Russian and Spanish texts shall be equally authentic."

Paragraph (2) of that article should be formulated in a similar manner, as in the draft Article 17 (paragraph (1)(b)).

That article is to be the last of the Treaty.

[IPIC/DC/29, continued]

The text of the second article should be followed by the formal conclusion to the Treaty, worded as follows:

"IN WITNESS WHEREOF, the undersigned representatives, being duly authorized thereto, have signed this Treaty."

"DONE AT WASHINGTON, May twenty-sixth, nineteen eighty-nine."

[End]

IPIC/DC/30

May 19, 1989 (Original: English)

Source: THE DELEGATION OF JAPAN

Draft Articles 8(2), 9(5) and 11(1) and (4)

1. Article 8(2)(ii) should be amended to read as follows:

"(ii) from either the date of the filing of the application for registration, or the date of registration, where Article 7(ii) applies, or"

2. Article 9(5) may be amended to read as follows:

"(5) [Rules of Procedure] (a) One-half of the Contracting Parties shall constitute a quorum.

"(b) The decisions of the Assembly shall require two-thirds of the votes cast, unless otherwise provided in this Treaty.

"(c) Abstentions shall not be considered as votes."

3. In paragraph (1) of Article 11, the words "the definitions contained in Article 2(i) and (ii)" should be deleted.

4. In paragraph (4) of Article 11, the words "one month" should be replaced by "three months."

[End]

IPIC/DC/31

May 19, 1989 (Original: English)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Draft Articles 7 and 8

Article 7

The following words should be added at the end of Article 7(ii):

"Material containing trade secrets may be disclosed only to parties in litigation concerning the rights conferred under this Treaty, following an order of an executive or judicial authority of a Contracting Party."

Article 8

1. Article 8(1) of the draft Treaty should be replaced by the following wording:

"(1) Where the faculty provided for in Article 7 has not been made use of, protection shall last for at least 10 years from the first commercial exploitation anywhere in the world of the layout-design (topography), subject to paragraph (3) of this Article."

2. Article 8(2) should be based on Alternative M and should read as follows:

"(2) Subject to paragraph (3) of this Article, where the faculty provided for in Article 7 has been made use of, protection shall last at least 10 years

"[(i) unchanged]

"(ii) from the date of the filing of the application for registration in due form or of registration, as the case may be, where Article 7(ii) applies, or

"(iii) [unchanged except for the deletion of the word "two" in the first line]."

3. A new paragraph (3) should be added, as follows:

"(3) If a layout-design

" (i) has not been commercially exploited anywhere in the world, or

"(ii) has not been the subject of an application for registration filed in accordance with Article 7(ii),

"within a period of 15 years from its creation, any Contracting Party shall be free not to protect that layout-design (topography)."

[End]

IPIC/DC/32

May 19, 1989 (Original: English)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Draft Articles 2(vi), 9(3) and 14(1)(b)

Article 2

In Article 2(vi) the words after "Intergovernmental Organization" should be replaced by the following:

"(vi)... the territory in which its Constituting Treaty applies, on the terms and conditions laid down in that Treaty."

Article 9

Article 9(3) should be replaced by the following text:

"(3)(a) Each Contracting Party shall have one vote and shall vote only in its own name.

"(b) Notwithstanding subparagraph (a) above, Contracting Parties which are Intergovernmental Organizations may vote with a number of votes equal to the number of their member States which are party to this Treaty. Such Organizations shall not exercise their right to vote if their member States vote and vice versa."

Article 14

Article 14(1)(b) should be amended to read as follows:

"(1)(b) Furthermore, any Intergovernmental Organization constituted by States to which its member States have transferred competence over matters governed by this Treaty including the competence to enter into treaties in respect of those matters may become party to this Treaty."

[End]

IPIC/DC/33

May 19, 1989 (Original: English)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Draft Article 11(1) and (3)

Article 11(1) and (3) should be amended to read as follows:

"(1) The Assembly may amend the definitions contained in Article 2(i) and (ii) and may delete Article 3(1)(b).

[IPIC/DC/33, continued]

"(3) Adoption by the Assembly of any amendment or decision under paragraph (1) shall require four-fifths of the votes cast."

[End]

IPIC/DC/34

May 19, 1989 (Original: English)

Source: THE DELEGATION OF JAPAN

Draft Article 13bis(3)(b)

Paragraph (3)(b) of Article 13bis should be amended to read as follows:

"(b) If the Assembly's recommendations are not followed, within the time limit set by the Assembly, by the said Contracting Party, such Contracting Party shall be deprived of the right to be represented in the Assembly until the problem giving rise to the dispute is resolved."

[End]

IPIC/DC/35

May 19, 1989 (Original: English)

Source: THE DELEGATION OF AUSTRALIA

Draft Article 11(4)

Paragraph (4) of Article 11 should be amended as follows:

(a) Replace the word "one" in the first sentence with the word "three."

(b) Delete all the words in the second sentence after the word "Assembly" and insert in place: "except for the Parties which have notified their denunciation of the Treaty in accordance with Article 16 before the entry into force of the amendment. It shall also bind all States and Intergovernmental Organizations which become Contracting Parties after the amendment was adopted by the Assembly."

[End]

IPIC/DC/36

May 19, 1989 (Original: English)

Source: THE DELEGATION OF AUSTRALIA

Draft Article 8

Add a new paragraph (3), as follows:

"(3) If a layout-design

" (i) has not been commercially exploited anywhere in the world, or

" (ii) has not been the subject of an application for registration filed in accordance with Article 7(ii),

"within a period of 10 years from its creation, any Contracting Party shall be free not to protect that layout-design (topography)."

[End]

IPIC/DC/37

May 19, 1989 (Original: English)

Source: THE DELEGATION OF THE UNITED STATES OF AMERICA

Draft Article 13bis

Article 13bis should be amended to read as follows:

"Consultations; Disputes; Enforcement

(1) Consultations (a) If any Contracting Party considers that the legislation or the practice or policy of another Contracting Party is inconsistent with the provisions of this Treaty, it may bring the matter to the attention of the latter Contracting Party and request the latter to enter into consultations with it.

(b) The Contracting Party so requested shall provide promptly an adequate opportunity for the requested consultations, otherwise the requesting Party may request the Director General to convene a panel in accordance with paragraph (2).

(c) The Contracting Parties engaged in consultations shall attempt to conclude such consultations satisfactorily for both of them within a short period of time.

(2) Disputes (a) If the consultations referred to in the preceding paragraph do not lead to a mutually satisfactory result, the Director General, at the written request of either Contracting Party shall convene a panel of 3 members who shall not be from either of the complaining Contracting Parties, unless they otherwise agree and such panel members shall be selected from a

[IPIC/DC/37, continued]

list of designated governmental experts established by the Assembly, to examine the matter, giving full opportunity to both Contracting Parties involved in the dispute and any other interested Contracting Parties (parties to the dispute) to present their views to the panel. The Director General shall set the terms of reference for the panel subject to the approval of the parties to the dispute. At any time that the parties to the dispute conclude a mutually satisfactory resolution to the dispute, the panel shall terminate its deliberations.

(b) The Assembly shall establish rules for the selection of the panel members from among governmental experts of the Contracting Parties and the conduct of the panel proceedings including provisions to safeguard the confidentiality of the proceedings as well as any material designated by a Party to be confidential.

(c) Unless the parties to the dispute reach an agreement among themselves prior to the panel's concluding its deliberations, the panel shall promptly prepare a written report and provide it to the parties to the dispute for their review. The parties to the dispute shall have one month to submit any comments on the report to the panel, unless they agree to a longer time in their attempts to reach a mutually satisfactory resolution to their dispute. The panel shall promptly take into account the comments and transmit the report to the Assembly. The report shall contain the facts, any necessary interpretations of the Treaty and its recommendations for resolution of the dispute.

(3) Enforcement (a) The Assembly shall give the report of the panel prompt consideration. The Assembly shall make recommendations to the Contracting Party whose legislation, practice or policy was the subject matter of the dispute based upon its interpretation of the Treaty and the report of the panel. Parties should comply with the Assembly's recommendations within a reasonable time.

(b) If the Assembly's recommendations are not followed, within the time limit set by the Assembly, by the said Contracting Party, the Assembly, at the request of the Contracting Party which has alleged the violation of this Treaty by the other Contracting Party may authorize that Party or other parties to the dispute to suspend, in whole or in part, the application of this Treaty with respect to the other Contracting Party until such time as the problem giving rise to the dispute is resolved."

[End]

IPIC/DC/38

May 19, 1989 (Original: English)

Source: THE DELEGATION OF INDIA IN THE NAME OF THE COUNTRIES MEMBERS OF THE GROUP OF 77

Draft Article 7

Article 7 should be amended to read as follows:

[IPIC/DC/38, continued]

"Exploitation, Registration, Disclosure

"(1) [Exploitation] Any Contracting Party shall be free not to protect a layout-design (topography) until it has been publicly commercially exploited separately or incorporated in an integrated circuit somewhere in the world.

"(2) [Registration, Disclosure] (a) Any Contracting Party shall be free not to protect a layout-design (topography) until the layout-design (topography) has been the subject of an application for registration, filed in due form with the competent public authority, or of a registration with that authority; it may be required that the application be accompanied by the filing of material allowing the full identification of the layout-design (topography) including a copy or drawing of the integrated circuit that incorporates the said layout-design (topography) along with the functional specifications.

"(b) Where a filing as referred to in subparagraph (a) is required, any Contracting Party may require that it be effected within six months from the date on which the holder of the right first exploits commercially anywhere in the world the layout-design (topography) of an integrated circuit.

"(c) Registration under subparagraph (a) may be subject to the payment of a fee."

[End]

IPIC/DC/39

May 19, 1989 (Original: English)

Source: THE DELEGATION OF THE UNITED STATES OF AMERICA

Draft Articles 2, 5(3), 9(3), 11(4) and (5), 14(1) and (2), 15(1) and (2), 18(2) and (4) and 19

Art. 2(v)	Insert "[Appropriate generic name to be further considered]" for "Intergovernmental Organization."
(vi)	Insert "[Appropriate generic name to be further considered]" for "Intergovernmental Organization."
(x)	"[Appropriate generic name to be further considered]" means an organization constituted by, and composed of, sovereign States which has competence in respect of matters governed by this Convention, has its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and applicable in the territory of all its member States, and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the Treaty.
Art. 5(3)	Insert "[Appropriate generic name to be further considered]" for "Intergovernmental Organization."
Art. 9(3)(b)	Delete and substitute: "[Appropriate generic name to be further considered]", in matters within their competence,

[IPIC/DC/39, continued]

shall exercise their right to vote with a number of votes equal to the number of their member States which are parties to this Treaty. Such organizations shall not exercise their right to vote if any of their member States exercise their right to vote."

Art. 11(4) Insert "[Appropriate generic name to be further considered]" for "Intergovernmental Organization."

Art. 11(5) New - For the purpose of paragraph (4), an instrument deposited by an "[Appropriate generic name to be further considered]" shall only be counted insofar as it is not additional to those deposited by member States of that organization.

Art. 14(1)(b) Delete and substitute: Any organization defined to in Art. 2(x) may become a Party to this Treaty. Any such organization which becomes a Party to this Treaty without any of its member States being a Party shall be bound by all the obligations under the Treaty. In the case of such organizations, one or more of whose member States is a Party to the Treaty, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Treaty, provided that this shall not result in any derogation from the obligations under the Treaty. In such cases, the organization and the member States shall not be entitled to exercise rights under the Treaty concurrently.

In their instruments of ratification, acceptance, approval, or formal confirmation, such organizations shall declare the extent of their competence with respect to the matters governed by the Treaty. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

Art. 14(2) Insert "[Appropriate generic name to be further considered]" for "Intergovernmental Organization."

Art. 14(2)(ii) Add - In their instruments of accession, the organizations referred to in paragraph (1)(b) above shall declare the extent of their competence with respect to the matters governed by the Treaty. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

Art. 15(1) & (2) Insert "[Appropriate generic name to be further considered]" for "Intergovernmental Organization."

Art. 15(1) Add - An instrument deposited by an "[Appropriate generic name to be further considered]" shall only be counted insofar as it is not additional to those deposited by member States of that organization.

Art. 18(2) & (4) Insert "[Appropriate generic name to be further considered]" for "Intergovernmental Organization."

[IPIC/DC/39, continued]

Art. 19 Insert "[Appropriate generic name to be further considered]" for "Intergovernmental Organization."

[End]

IPIC/DC/40 May 19, 1989 (Original: English)

Source: THE DELEGATION OF INDIA IN THE NAME OF THE COUNTRIES MEMBERS OF THE GROUP OF 77

Draft Article 8

1. Delete Article 8(1).

2. Article 8(2)(a) should be amended to read as follows:

"(2) [Minimum Duration Where Exploitation or Registration is Required] (a) Where the faculties provided for in Article 7 have been made use of, protection shall last at least five years starting from the date of filing of the application for registration or the date of first commercial exploitation, whichever is earlier."

3. Article 8(2)(b) should be amended as follows:

(a) In the third line replace the word "shall" by the word "may."

(b) The fifth and sixth lines should read as follows: "such extension shall not exceed five years."

[End]

IPIC/DC/41 May 19, 1989 (Original: English)

Source: THE DELEGATION OF CHINA

Intergovernmental Organizations to be a Contracting Party to the Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

The issue for an intergovernmental organization to become a Contracting Party of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits is a complicated one, comprising the following four problems:

[IPIC/DC/41, continued]

1. Concerning the rights and obligations to be shared between the intergovernmental organization and its member States; this problem should be solved by signing of an agreement between the intergovernmental organization and its member States, following a formal conformation on the matter.

2. Concerning the qualifications of the intergovernmental organization to become a member of the union of integrated circuits to be set up in accordance with the Treaty, e.g. should there be special legislation on integrated circuits and whether the existing legislation is in conformity with the Treaty?

3. Should the intergovernmental organization become a Contracting Party and a member of the union could this organization become a member of WIPO as well? At present, WIPO is a specialized agency of the United Nations with only State members. This may give rise to the problem of amending WIPO's constitution.

4. A special procedure should be set up concerning an intergovernmental organization to be a Contracting Party and a member to the union; e.g., a procedure to examine the legislations on the protection of integrated circuits of the organization; to determine the qualifications of being a member of the union, that is the said organization may join the union only after a fixed number of States have already joined the union, etc.

We feel serious consideration should be given to the above-mentioned problems, but the draft proposal has not provided relevant provisions as the basis of discussion. So we suggest either the Secretary General will, with reference to the UN Convention on the Law of the Sea, prepare a draft proposal as to the basis of discussion at this Conference; or, if failed to do so, this Conference will concentrate discussions on the draft Treaty of integrated circuits with States as the Contracting Parties. The Conference could adopt a resolution on the issue concerning the intergovernmental organization to be a Contracting Party can be left for future consideration and a protocol can be signed when necessary.

[End]

IPIC/DC/42

May 22, 1989 (Original: English)

Source: THE CREDENTIALS COMMITTEE

Interim Report (Second Meeting) (prepared by the Secretariat of the Conference)

1. The Credentials Committee (hereinafter referred to as "the Committee"), the members of which were elected by the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as "the Conference"), held its second meeting on May 19, 1989.

[IPIC/DC/42, continued]

2. The report of the Committee on its first meeting, held on May 15, 1989, is set forth in document IPIC/DC/12.

3. The Delegations of the following States members of the Committee attended the second meeting: Australia, Czechoslovakia, German Democratic Republic, Ghana, Italy, Norway, Philippines, Senegal, Syria, Uruguay.

4. At its second meeting, in accordance with Rule 9(1) of the Rules of Procedure, the Committee examined the credentials and full powers that had been presented, for the purposes of Rules 6 and 7 of the Rules of Procedure, since its first meeting on May 15, 1989.

(a) The Committee found that credentials and full powers, in due form had been presented, in accordance with Rule 6 of the Rules of Procedure, by the following Member Delegations: France, Germany (Federal Republic of), Greece, Guinea, Hungary, Liberia, Philippines, Soviet Union, Yemen Arab Republic (9).

(b) The Committee found that credentials in due form had been presented, in accordance with Rule 6 of the Rules of Procedure, by the following Member Delegations: Argentina, Colombia, Czechoslovakia, Dominican Republic, Egypt, Indonesia, Ireland, Kenya, Republic of Korea, Thailand (10).

5. The Committee noted that communications containing credentials had been received in telex form from the Governments of Argentina and Peru. The Committee was of the view that such communications could be accepted as credentials on the understanding that the originals thereof would be received in due course.

6. The Delegation of Syria, speaking on behalf of the Arab States members of the League of Arab States participating in the Conference, stated that their Governments expressed reservations concerning the credentials and full powers of the Delegation of Israel, referred to in the report on the first meeting of the Committee (document IPIC/DC/12, paragraph 5), and reiterated that Israel continued to violate the Charter of the United Nations and principles of international law, and moreover refused to implement resolutions of the United Nations relating to the situation in the Middle East, the inalienable rights of the Palestinian people and the withdrawal of Israel from the territories occupied by Israel since 1967, including the Syrian Golan and Jerusalem. With regard to the status of Jerusalem in particular, the Delegation of Syria stated that, by issuing credentials and full powers in the City of Jerusalem, Israel had flouted United Nations General Assembly resolutions declaring null and void any measures and actions taken by Israel that altered or purported to alter the character and status of the Holy City of Jerusalem.

7. The Committee reiterated its wish that the Secretariat bring Rules 6 ("Credentials and Full Powers") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of Member or Observer Delegations that had not presented credentials or full powers and of the representatives of Observer Organizations that had not presented letters or other documents of appointment.

8. The Committee decided that a report on its second meeting should be prepared by the Secretariat and issued as an interim report.

[End]

IPIC/DC/43

May 25, 1989 (Original: English)

Source: THE DRAFTING COMMITTEE

Treaty on Intellectual Property in Respect of Integrated Circuits (Suggested Draft)

CONTENTS

Article 1
Establishment of a Union

The Contracting Parties constitute themselves into a Union for the purposes of this Treaty.

Article 2
Definitions

For the purposes of this Treaty:

(i) "integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function,

[IPIC/DC/43, continued]

(ii) "layout-design (topography)" means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture,

(iii) "holder of the right" means the natural person who, or the legal entity which, according to the applicable law, is to be regarded as the beneficiary of the protection referred to in Article 6,

(iv) "protected layout-design (topography)" means a layout-design (topography) in respect of which the conditions of protection referred to in this Treaty are fulfilled,

(v) "Contracting Party" means a State, or an Intergovernmental Organization meeting the requirements of item (x), party to this Treaty,

(vi) "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an Intergovernmental Organization, the territory in which the constituting treaty of that Intergovernmental Organization applies,

(vii) "Union" means the Union referred to in Article 1,

(viii) "Assembly" means the Assembly referred to in Article 9,

(ix) "Director General" means the Director General of the World Intellectual Property Organization,

(x) "Intergovernmental Organization" means an organization constituted by, and composed of, States of any region of the world, which has competence in respect of matters governed by this Treaty, has its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and binding on all its member States, and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Treaty.

Article 3
The Subject Matter of the Treaty

(1) [Obligation to Protect Layout-Designs (Topographies)] (a) Each Contracting Party shall have the obligation to secure, throughout its territory, intellectual property protection in respect of layout-designs (topographies) in accordance with this Treaty. It shall, in particular, secure adequate measures to ensure the prevention of acts considered unlawful under Article 6 and appropriate legal remedies where such acts have been committed. The right of the holder of the right in respect of an integrated circuit applies whether or not the integrated circuit is incorporated in an article.

(b) Notwithstanding Article 2(i), any Contracting Party whose law limits the protection of layout-designs (topographies) to layout-designs (topographies) of semiconductor integrated circuits shall be free to apply that limitation as long as its law contains such limitation.

[IPIC/DC/43, continued]

(2) [Requirement of Originality] (a) The obligation referred to in paragraph (1)(a) shall apply to layout-designs (topographies) that are original in the sense that they are the result of their creators' own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of integrated circuits at the time of their creation.

(b) A layout-design (topography) that consists of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, fulfills the conditions referred to in subparagraph (a).

Article 4
The Legal Form of the Protection

Each Contracting Party shall be free to implement its obligations under this Treaty through a special law on layout-designs (topographies) or its law on copyright, patents, utility models, industrial designs, unfair competition or any other law or a combination of any of those laws.

Article 5
National Treatment

(1) [National Treatment] Subject to compliance with its obligation referred to in Article 3(1)(a), each Contracting Party shall, in respect of the intellectual property protection of layout-designs (topographies), accord, within its territory,

(i) to natural persons who are nationals of, or are domiciled in the territory of, any of the other Contracting Parties, and

(ii) to legal entities which or natural persons who, in the territory of any of the other Contracting Parties, have a real and effective establishment for the creation of layout-designs (topographies) or the production of integrated circuits,

the same treatment that it accords to its own nationals.

(2) [Agents, Addresses for Service, Court Proceedings] Notwithstanding paragraph (1), any Contracting Party is free not to apply national treatment as far as any obligations to appoint an agent or to designate an address for service are concerned or as far as the special rules applicable to foreigners in court proceedings are concerned.

(3) [Application of Paragraphs (1) and (2) to Intergovernmental Organizations] Where the Contracting Party is an Intergovernmental Organization, "nationals" in paragraph (1) means nationals of any of the States members of that Organization.

[IPIC/DC/43, continued]

Article 6
The Scope of the Protection

(1) [Acts Requiring the Authorization of the Holder of the Right] (a) Any Contracting Party shall consider unlawful the following acts if performed without the authorization of the holder of the right:

(i) the act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout-design (topography) in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in Article 3(2),

(ii) the act of importing, selling or otherwise distributing for commercial purposes a protected layout-design (topography) or an integrated circuit in which a protected layout-design (topography) is incorporated.

(b) Any Contracting Party shall be free to consider unlawful also acts other than those specified in subparagraph (a) if performed without the authorization of the holder of the right.

(2) [Acts Not Requiring the Authorization of the Holder of the Right] (a) Notwithstanding paragraph (1), no Contracting Party shall consider unlawful the performance, without the authorization of the holder of the right, of the act of reproduction referred to in paragraph (1)(a)(i) where that act is performed by a third party for private purposes or for the sole purpose of evaluation, analysis, research or teaching.

(b) Where the third party referred to in subparagraph (a), on the basis of evaluation or analysis of the protected layout-design (topography) ("the first layout-design (topography)"), creates a layout-design (topography) complying with the requirement of originality referred to in Article 3(2) ("the second layout-design (topography)"), that third party may incorporate the second layout-design (topography) in an integrated circuit or perform any of the acts referred to in paragraph (1) in respect of the second layout-design (topography) without being regarded as infringing the rights of the holder of the right in the first layout-design (topography).

(c) The holder of the right may not exercise his right in respect of an identical original layout-design (topography) that was independently created by a third party.

(3) [Measures Concerning Use Without the Consent of the Holder of the Right] (a) Notwithstanding paragraph (1), any Contracting Party may, in its legislation, provide for the possibility of its executive or judicial authority granting a non-exclusive license, in circumstances that are not ordinary, for the performance of any of the acts referred to in paragraph (1) by a third party without the authorization of the holder of the right ("non-voluntary license"), after unsuccessful efforts, made by the said third party in line with normal commercial practices, to obtain such authorization, where the granting of the non-voluntary license is found, by the granting authority, to be necessary to safeguard a national purpose deemed to be vital by that authority; the non-voluntary license shall be available for exploitation only in the territory of that country and shall be subject to the payment of an equitable remuneration by the third party to the holder of the right.

[IPIC/DC/43, continued]

(b) The provisions of this Treaty shall not affect the freedom of any Contracting Party to apply measures, including the granting, after a formal proceeding by its executive or judicial authority, of a non-voluntary license, in application of its laws in order to secure free competition and to prevent abuses by the holder of the right.

(c) The granting of any non-voluntary license referred to in subparagraph (a) or subparagraph (b) shall be subject to judicial review. Any non-voluntary license referred to in subparagraph (a) shall be revoked when the conditions referred to in that subparagraph cease to exist.

(4) [Sale and Distribution of Infringing Integrated Circuits Acquired Innocently] Notwithstanding paragraph (1)(a)(ii), no Contracting Party shall be obliged to consider unlawful the performance of any of the acts referred to in that paragraph in respect of an integrated circuit incorporating an unlawfully reproduced layout-design (topography) where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the said integrated circuit, that it incorporates an unlawfully reproduced layout-design (topography).

(5) [Exhaustion of Rights] Notwithstanding paragraph (1)(a)(ii), any Contracting Party may consider lawful the performance, without the authorization of the holder of the right, of any of the acts referred to in that paragraph where the act is performed in respect of a protected layout-design (topography), or in respect of an integrated circuit in which such a layout-design (topography) is incorporated, that has been put on the market by, or with the consent of, the holder of the right.

Article 7
Exploitation; Registration, Disclosure

(1) [Faculty to Require Exploitation] Any Contracting Party shall be free not to protect a layout-design (topography) until it has been ordinarily commercially exploited, separately or as incorporated in an integrated circuit, somewhere in the world.

(2) [Faculty to Require Registration; Disclosure] (a) Any Contracting Party shall be free not to protect a layout-design (topography) until the layout-design (topography) has been the subject of an application for registration, filed in due form with the competent public authority, or of a registration with that authority; it may be required that the application be accompanied by the filing of a copy or drawing of the layout-design (topography) and, where the integrated circuit has been commercially exploited, of a sample of that integrated circuit, along with information defining the electronic function which the integrated circuit is intended to perform; however, the applicant may exclude such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout-design (topography).

(b) Where the filing of an application for registration according to subparagraph (a) is required, the Contracting Party may require that such filing be effected within a certain period of time from the date on which the

[IPIC/DC/43, continued]

holder of the right first exploits ordinarily commercially anywhere in the world the layout-design (topography) of an integrated circuit; such period shall not be less than two years counted from the said date.

(c) Registration under subparagraph (a) may be subject to the payment of a fee.

Article 8
The Duration of the Protection

Protection shall last at least eight years.

Article 9
Assembly

(1) [Composition] (a) The Union shall have an Assembly consisting of the Contracting Parties.

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

(c) Subject to subparagraph (d), the expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation.

(d) The Assembly may ask the World Intellectual Property Organization to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations.

(2) [Functions] (a) The Assembly shall deal with matters concerning the maintenance and development of the Union and the application and operation of this Treaty.

(b) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General for the preparation of such diplomatic conference.

(c) The Assembly shall perform the functions allocated to it under Article 14 and shall establish the details of the procedures provided for in that Article, including the financing of such procedures.

(3) [Voting] (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an Intergovernmental Organization shall exercise its right to vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Treaty and which are present at the time the vote is taken. No such Intergovernmental Organization shall exercise its right to vote if any of its member States participates in the vote.

(4) [Ordinary Sessions] The Assembly shall meet in ordinary session once every two years upon convocation by the Director General.

[IPIC/DC/43, continued]

(5) [Rules of Procedure] The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 10
International Bureau

(1) [International Bureau] (a) The International Bureau of the World Intellectual Property Organization shall:

(i) perform the administrative tasks concerning the Union, as well as any tasks specially assigned to it by the Assembly;

(ii) subject to the availability of funds, provide technical assistance, on request, to the Governments of Contracting Parties that are States and are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations.

(b) No Contracting Party shall have any financial obligations; in particular, no Contracting Party shall be required to pay any contributions to the International Bureau on account of its membership in the Union.

(2) [Director General] The Director General shall be the chief executive of the Union and shall represent the Union.

Article 11
Amendment of Certain Provisions of the Treaty

(1) [Amending of Certain Provisions by the Assembly] The Assembly may amend the definitions contained in Article 2(i) and (ii), as well as Articles 3(1)(b), 9(1)(c) and (d), 9(4), 10(1)(a) and 14.

(2) [Initiation and Notice of Proposals for Amendment] (a) Proposals under this Article for amendment of the provisions of this Treaty referred to in paragraph (1) may be initiated by any Contracting Party or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(c) No such proposal shall be made before the expiration of five years from the date of entry into force of this Treaty under Article 16(1).

(3) [Required Majority] Adoption by the Assembly of any amendment under paragraph (1) shall require four-fifths of the votes cast.

(4) [Entry into Force] (a) Any amendment to the provisions of this Treaty referred to in paragraph (1) shall enter into force three months after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties members of the Assembly at the time the Assembly adopted the amendment. Any amendment to the said provisions thus accepted shall bind all States and Intergovernmental

[IPIC/DC/43, continued]

Organizations that were Contracting Parties at the time the amendment was adopted by the Assembly or that become Contracting Parties thereafter, except Contracting Parties which have notified their denunciation of this Treaty in accordance with Article 17 before the entry into force of the amendment.

(b) In establishing the required three-fourths referred to in subparagraph (a), a notification made by an Intergovernmental Organization shall only be taken into account if no notification has been made by any of its member States.

Article 12
Safeguard of Paris and Berne Conventions

This Treaty shall not affect the obligations that any Contracting Party may have under the Paris Convention for the Protection of Industrial Property or the Berne Convention for the Protection of Literary and Artistic Works.

Article 13
Reservations

No reservations to this Treaty shall be made.

Article 14
Settlement of Disputes

(1) [Consultations] (a) Where any dispute arises concerning the interpretation or implementation of this Treaty, a Contracting Party may bring the matter to the attention of another Contracting Party and request the latter to enter into consultations with it.

(b) The Contracting Party so requested shall provide promptly an adequate opportunity for the requested consultations.

(c) The Contracting Parties engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution of the dispute.

(2) [Other Means of Settlement] If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in paragraph (1), the parties to the dispute may agree to resort to other means designed to lead to an amicable settlement of their dispute, such as good offices, conciliation, mediation and arbitration.

(3) [Panel] (a) If the dispute is not satisfactorily settled through the consultations referred to in paragraph (1), or if the means referred to in paragraph (2) are not resorted to, or do not lead to an amicable settlement within a reasonable period of time, the Assembly, at the written request of either of the parties to the dispute, shall convene a panel of three members to examine the matter. The members of the panel shall not, unless the parties to the dispute agree otherwise, be from either party to the dispute. They shall be selected from a list of designated governmental experts established by the Assembly. The terms of reference for the panel shall be agreed upon by the parties to the dispute. If such agreement is not achieved within three

[IPIC/DC/43, continued]

months, the Assembly shall set the terms of reference for the panel after having consulted the parties to the dispute and the members of the panel. The panel shall give full opportunity to the parties to the dispute and any other interested Contracting Parties to present to it their views. If both parties to the dispute so request, the panel shall stop its proceedings.

(b) The Assembly shall adopt rules for the establishment of the said list of experts, and the manner of selecting the members of the panel, who shall be governmental experts of the Contracting Parties, and for the conduct of the panel proceedings, including provisions to safeguard the confidentiality of the proceedings and of any material designated as confidential by any participant in the proceedings.

(c) Unless the parties to the dispute reach an agreement between themselves prior to the panel's concluding its proceedings, the panel shall promptly prepare a written report and provide it to the parties to the dispute for their review. The parties to the dispute shall have a reasonable period of time, whose length will be fixed by the panel, to submit any comments on the report to the panel, unless they agree to a longer time in their attempts to reach a mutually satisfactory resolution to their dispute. The panel shall take into account the comments and shall promptly transmit its report to the Assembly. The report shall contain the facts and recommendations for the resolution of the dispute, and shall be accompanied by the written comments, if any, of the parties to the dispute.

(4) [Recommendation by the Assembly] The Assembly shall give the report of the panel prompt consideration. The Assembly shall, by consensus, make recommendations to the parties to the dispute, based upon its interpretation of this Treaty and the report of the panel.

Article 15
Becoming Party to the Treaty

(1) [Eligibility] (a) Any State member of the World Intellectual Property Organization or of the United Nations may become party to this Treaty.

(b) Any Intergovernmental Organization which meets the requirements of Article 2(x) may become party to this Treaty. The Organization shall inform the Director General of its competence, and any subsequent changes in its competence, with respect to the matters governed by this Treaty. The Organization and its member States may, without, however, any derogation from the obligations under this Treaty, decide on their respective responsibilities for the performance of their obligations under this Treaty.

(2) [Adherence] A State or Intergovernmental Organization shall become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, acceptance or approval, or

(ii) the deposit of an instrument of accession.

(3) [Deposit of Instruments] The instruments referred to in paragraph (2) shall be deposited with the Director General.

[IPIC/DC/43, continued]

Article 16
Entry Into Force of the Treaty

(1) [Initial Entry Into Force] This Treaty shall enter into force, with respect to each of the first five States or Intergovernmental Organizations which have deposited their instruments of ratification, acceptance, approval or accession, three months after the date on which the fifth instrument of ratification, acceptance, approval or accession has been deposited.

(2) [States and Intergovernmental Organizations Not Covered by the Initial Entry Into Force] This Treaty shall enter into force with respect to any State or Intergovernmental Organization not covered by paragraph (1) three months after the date on which that State or Intergovernmental Organization has deposited its instrument of ratification, acceptance, approval or accession unless a later date has been indicated in the instrument; in the latter case, this Treaty shall enter into force with respect to the said State or Intergovernmental Organization on the date thus indicated.

(3) [Protection of Layout-Designs (Topographies) Existing at Time of Entry Into Force] Any Contracting Party shall have the right not to apply this Treaty to any layout-design (topography) that exists at the time this Treaty enters into force in respect of that Contracting Party, provided that this provision does not affect any protection that such layout-design (topography) may, at that time, enjoy in the territory of that Contracting Party by virtue of international obligations other than those resulting from this Treaty or the legislation of the said Contracting Party.

Article 17
Denunciation of the Treaty

(1) [Notification] Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

(2) [Effective Date] Denunciation shall take effect one year after the day on which the Director General has received the notification of denunciation.

Article 18
Texts of the Treaty

(1) [Original Texts] This Treaty is established in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(2) [Official Texts] Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

Article 19
Depositary

The Director General shall be the depositary of this Treaty.

[IPIC/DC/43, continued]

Article 20
Signature

This Treaty shall be open for signature between May 26, 1989, and August 25, 1989, with the Government of the United States of America, and between August 26, 1989, and May 25, 1990, at the headquarters of WIPO.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Treaty.

DONE AT WASHINGTON, this twenty-sixth day of May one thousand nine hundred and eighty-nine.

[End]

IPIC/DC/43 Corr. May 25, 1989 (Original: English)

Source: THE DRAFTING COMMITTEE

Corrigendum to document IPIC/DC/43

Articles 6, 7, and 11

1. Article 6: the corrigendum only affects the Spanish version.

2. In Article 7(2)(a), ninth line, the word "describing" is to be replaced by the word "defining."

3. In Article 11(1), the reference to Article 10(1) is to be replaced by a reference to Article 10(1)(a).

[End]

IPIC/DC/44 May 25, 1989 (Original: English)

Source: THE CREDENTIALS COMMITTEE

Report (prepared by the Secretariat of the Conference)

1. The Credentials Committee (hereinafter referred to as "the Committee"), the members of which were elected by the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as "the Conference"), met on May 15, 1989, May 19, 1989, and May 25, 1989.

[IPIC/DC/44, continued]

2. The Delegations of the following States members of the Committee attended the meetings: Australia, Czechoslovakia, German Democratic Republic, Ghana, Italy, Norway, Philippines, Senegal, Syria, Uruguay.

3. The interim reports of the Committee on its first and second meetings are contained in documents IPIC/DC/12 and 42. The present report includes an account of the work of the Committee in those meetings, as reflected in those two interim reports, and of its work in its third meeting.

4. The Committee unanimously elected Mr. Marco G. Fortini (Italy) as Chairman and Mr. Franz Jonkisch (German Democratic Republic) and Mr. Ibra Deguène Ka (Senegal) as Vice-Chairmen.

5. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on May 9, 1989 (hereinafter referred to as "the Rules of Procedure"), the Committee examined at its meetings the credentials, full powers, letters or other documents of appointment presented for the purposes of Rules 6 and 7 of the said Rules of Procedure by delegations of States members of the International (Paris) Union for the Protection of Industrial Property, States members of the International (Berne) Union for the Protection of Literary and Artistic Works and States members of the World Intellectual Property Organization (WIPO) not members of the Paris Union or the Berne Union, and by the Delegation of the European Communities, participating in the Conference in accordance with Rule 2(1)(i) of the Rules of Procedure (hereinafter referred to as "Member Delegations"), delegations of States members of the United Nations other than those members of WIPO, the Paris Union or the Berne Union, participating in the Conference in accordance with Rule 2(1)(ii) of the Rules of Procedure (hereinafter referred to as "Observer Delegations"), and the representatives of intergovernmental and non-governmental organizations, participating in the Conference in accordance with Rule 2(1)(iii) of the Rules of Procedure (hereinafter referred to as "representatives of Observer Organizations").

6. The Committee found that credentials and full powers, in due form in accordance with Rule 6 of the Rules of Procedure, were presented by the following Member Delegations: Angola, Chile, Cuba, Denmark, France, Germany (Federal Republic of), Ghana, Greece, Guatemala, Guinea, Hungary, India, Israel, Italy, Liberia, Liechtenstein, Madagascar, Philippines, Portugal, Senegal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, Yemen Arab Republic, Yugoslavia, Zambia (29).

7. (a) The Committee found that credentials, in due form in accordance with Rule 6 of the Rules of Procedure, were presented by the following Member Delegations: Australia, Austria, Belgium, Bulgaria, Burundi, Cameroon, Canada, China, Colombia, Czechoslovakia, Egypt, Finland, German Democratic Republic, Holy See, Ireland, Japan, Jordan, Kenya, Libya, Mexico, Netherlands, Norway, Republic of Korea, Sri Lanka, Thailand, Trinidad and Tobago, United Republic of Tanzania, European Communities (28).

(b) The Committee noted that, in accordance with established practices, a designation of representation implied, in principle, in the absence of any express reservation, the right of signature, and that it should be left to each delegation to interpret the scope of its credentials.

8. The Committee noted that a communication, in telex form, containing credentials and full powers had been received from the Government of Luxembourg, that a communication, in the form of a facsimile, containing credentials had been received from the Government of New Zealand, and that

[IPIC/DC/44, continued]

communications, in telex form, containing credentials had been received from the Governments of Argentina, Brazil, the Central African Republic, the Dominican Republic, Indonesia, Lesotho, Peru, Syria and Uruguay (11). The Committee was of the view that such communications could be accepted, as credentials and full powers or as credentials, as the case may be, on the understanding that the originals thereof would be received in due course.

9. The Committee found that the letters or documents of appointment presented by the representatives of the following Observer Organizations were in due form in accordance with Rule 7 of the Rules of Procedure: (a) Latin American Economic System (SELA) and Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA) (2); (b) American Bar Association (ABA); American Intellectual Property Law Association (AIPLA); Arab Society for the Protection of Industrial Property (ASPIP); Associaçao Brasileira de Propriedade Industrial (ABPI); Committee of National Institutes of Patent Agents (CNIPA); Computer and Business Equipment Manufacturers Association (CBEMA); Computer Law Association, United States of America (CLA); Electronics Industry Association of Korea (EIAK); Intellectual Property Committee, United States of America (IPC); Intellectual Property Owners, United States of America (IPO); Inter-American Association of Industrial Property (ASIPI); International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP); International Association for the Protection of Industrial Property (AIPPI); International Copyright Society (INTERGU); International Federation of Industrial Property Attorneys (FICPI); International Intellectual Property Alliance (IIPA); International Literary and Artistic Association (ALAI); International Patent and Trademark Association, United States of America (IPTA); Istituto Nazionale per la Difesa, Identificazione e Certificazione dei Marchi Autentici, Italy (INDICAM); (The) Korea Patent Attorneys Association, Republic of Korea (KPAA); Korean Intellectual Property Research Society, Republic of Korea (KIPS); Patent and Trademark Institute of Canada (PTIC); Semiconductor Industry Association, United States of America (SIA); Union of European Practitioners in Industrial Property (UEPIP) (24).

10. The Delegation of Syria, speaking on behalf of the Arab States members of the League of Arab States participating in the Conference, stated that their Governments expressed reservations concerning the credentials and full powers of the Delegation of Israel, referred to in the report on the first meeting of the Committee (document IPIC/DC/12, paragraph 5), and reiterated that Israel continued to violate the Charter of the United Nations and principles of international law, and moreover refused to implement resolutions of the United Nations relating to the situation in the Middle East, the inalienable rights of the Palestinian people and the withdrawal of Israel from the territories occupied by Israel since 1967, including the Syrian Golan and Jerusalem. With regard to the status of Jerusalem in particular, the Delegation of Syria stated that, by issuing credentials and full powers in the City of Jerusalem, Israel had flouted United Nations General Assembly resolutions declaring null and void any measures and actions taken by Israel that altered or purported to alter the character and status of the Holy City of Jerusalem.

11. The Committee expressed the wish that the Secretariat should bring Rules 6 ("Credentials and Full Powers"), 7 ("Letters of Appointment") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of Member or Observer Delegations not having presented credentials or full powers and of the representatives of Observer Organizations not having presented letters or other documents of appointment.

[IPIC/DC/44, continued]

12. The Committee authorized the Secretariat to prepare the report of the Committee for submission by its Chairman to the Conference, and authorized the Chairman to examine and to report to the Conference upon any further credentials, full powers and letters or other documents of appointment which might be presented by Delegations and representatives of Observer Organizations after the close of its meeting and during the remainder of the Conference.

[End]

IPIC/DC/45 May 26, 1989 (Original: English)

Source: THE PLENARY OF THE DIPLOMATIC CONFERENCE

Final Act

Editor's Note: This document contains the Final Act of the Diplomatic Conference. It is not reproduced here, but may be found at page 53 of these Records.

[End]

IPIC/DC/46 May 26, 1989 (Original: English)

Source: THE DRAFTING COMMITTEE

Treaty on Intellectual Property in Respect of Integrated Circuits

Editor's Note: This document contains the final text of the Treaty on Intellectual Property in Respect of Integrated Circuits as adopted by the Diplomatic Conference. It is not reproduced here, but may be found at odd-number pages from 11 to 47 of these Records.

[End]

IPIC/DC/47 May 26, 1989 (Original: English)

Source: THE SECRETARIAT

Signatures

The following Member Delegations signed, on May 26, 1989, the following instruments adopted at the Diplomatic Conference:

[IPIC/DC/47, continued]

1. TREATY ON INTELLECTUAL PROPERTY IN RESPECT OF INTEGRATED CIRCUITS

Ghana, Liberia, Yugoslavia, Zambia (4).

2. FINAL ACT

Angola, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Holy See, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Lesotho, Liberia, Libya, Liechtenstein, Mexico, Netherlands, New Zealand, Nigeria, Peru, Portugal, Senegal, Soviet Union, Spain, Sweden, Switzerland, Syria, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Yemen Arab Republic, Yugoslavia, Zambia, European Communities (53).

[End]

IPIC/DC/WG/DEF/1 Prov. May 15, 1989 (Original: English)

Source: WORKING GROUP ON DEFINITIONS

Draft Report

Editor's Note: Document IPIC/DC/WG/DEF/1 Prov. is the same as document IPIC/DC/WG/DEF/1 reproduced below.

[End]

IPIC/DC/WG/DEF/1 May 15, 1989 (Original: English)

Source: WORKING GROUP ON DEFINITIONS

Report adopted by the Working Group

I. INTRODUCTION

1. In accordance with a decision of the Main Committee, the Working Group on Definitions met on May 12 and 15, under the Chairmanship of Mr. J.-L. Comte (Switzerland), in order to consider the definitions contained in Article 2(i) and(ii) of the draft Treaty.

[IPIC/DC/WG/DEF/1, continued]

II. RECOMMENDATION

2. It is recommended that the following text be adopted as Article 2(i) and (ii):

" (i) "integrated circuit" means a product, in its final form or an intermediate form, in which the active [element or] elements, some or all of the interconnections and any passive elements are integrally formed in and/or on a piece of material and which is intended to perform an electronic function,

"(ii) "layout-design (topography)" means the three-dimensional disposition, however expressed, of the active [element or] elements, interconnections and any passive elements of an integrated circuit."

Notes

3. It will have to be decided whether the words ("element or") in square brackets should be retained. Without those words, the Treaty would limit the obligation of Contracting Parties to the protection of layout-designs of products which have several active elements. If those words were retained, the obligation would also include products which have only one active element (so-called "discretes").

4. The definition of "integrated circuit" does not refer to "semiconductor" products on the understanding that a Contracting Party that protected only the layout-designs (topographies) of semiconductor products would comply with its obligations under the Treaty. If a Contracting Party extended protection to products made of material other than semiconductor material, it would also be required to grant national treatment with respect to the layout-designs (topographies) of those products.

5. This Report was unanimously adopted by the Working Group on May 15, 1989.

[End]

IPIC/DC/WG/DEF/2 Prov. May 16, 1989 (Original: English)

Source: WORKING GROUP ON DEFINITIONS

Draft Report of Second Meeting

Editor's Note: Document IPIC/DC/WG/DEF/2 Prov. is the same as document IPIC/DC/WG/DEF/2 reproduced below, with the exception of paragraph 3 which read as follows:

3. It is recommended that Article 3(1) be labelled as Article 3(1)(a) and that the following provision be added as Article 3(1)(b):

[IPIC/DC/WG/DEF/2 Prov., continued]

"(b) Notwithstanding Article 2(i), any Contracting Party whose law, at the time it becomes a party to this Treaty, limits the protection of layout-designs (topographies) to layout-designs (topographies) of semiconductor integrated circuits shall be free to apply this limitation as long as its law contains such limitation."

It was understood that Article 11(1) should apply to Article 3(1)(b).

[End]

IPIC/DC/WG/DEF/2

May 16, 1989 (Original: English)

Source: WORKING GROUP ON DEFINITIONS

Report of Second Meeting adopted by the Working Group

I. INTRODUCTION

1. In accordance with a decision of the Main Committee, the Working Group on Definitions met again on May 16, under the Chairmanship of Mr. J.-L. Comte (Switzerland), in order to consider the definitions contained in Article 2(i) and (ii) of the draft Treaty.

II. RECOMMENDATION

2. It is recommended that the following text be adopted as Article 2(i) and (ii):

"(i) "integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function,

"(ii) "layout-design (topography)" means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit."

3. It is recommended that Article 3(1) be labelled as Article 3(1)(a) and that the following provision be added as Article 3(1)(b):

(b) Notwithstanding Article 2(i), any Contracting Party whose law limits the protection of layout-designs (topographies) to layout-designs (topographies) of semiconductor integrated circuits shall be free to apply this limitation as long as its law contains such limitation."

[IPIC/DC/WG/DEF/2, continued]

It was recommended that Article 11(1) should be amended to apply to Article 3(1)(b).

4. This report was unanimously adopted by the Working Group on May 16, 1989

[End]

IPIC/DC/WG/DEF/3 Prov. May 17, 1989 (Original: English)

Source: WORKING GROUP ON DEFINITIONS

Draft Report of Third Meeting

I. INTRODUCTION

1. In accordance with a decision of the Main Committee, the Working Group on Definitions met again on May 17, under the Chairmanship of Mr. J.-L. Comte (Switzerland), in order to consider proposals concerning the words in square brackets in Article 6(1)(i) and (ii) of the draft Treaty.

II. RECOMMENDATION

2. It is recommended that the following text be adopted as Article 6(1)(i) and (ii):

Alternative A:

"(i) the act of reproducing a protected layout-design (topography) in its entirety or any part thereof complying with the requirement of originality referred to in Article 3(2), which part can be used separately from the remainder of the layout-design (topography),

"(ii) the act of incorporating in an integrated circuit a protected layout-design (topography) in its entirety or any part thereof complying with the requirement of originality referred to in Article 3(2), which part can be used separately from the remainder of the layout-design (topography)."

Alternative B:

"(i) the act of reproducing a protected layout-design (topography) except any part thereof that is not original,

"(ii) the act of incorporating in an integrated circuit a protected layout-design (topography) except any part thereof that is not original."

[End]

IPIC/DC/WG/DEF/3 May 17, 1989 (Original: English)

Source: WORKING GROUP ON DEFINITIONS

Report of Third Meeting adopted by the Working Group

I. INTRODUCTION

1. In accordance with a decision of the Main Committee, the Working Group met again on May 17, under the Chairmanship of Mr. J.-L. Comte (Switzerland), in order to consider proposals concerning the words in square brackets in Article 6(1)(i) of the draft Treaty.

II. RECOMMENDATION

2. It is recommended that the following text be adopted as Article 6(1)(i):

"(i) the act of reproducing a protected layout-design (topography) in its entirety or any part thereof, except any part that is not original,"

3. This report was unanimously adopted by the Working Group on May 17, 1989

[End]

IPIC/DC/INF/1 Prov. 1 May 8, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

First Provisional List of Participants

Editor's Note: This document contains the first provisional list of participants. It is not reproduced here but the final list of participants may be found at pages 371 to 396 of these Records.

[End]

IPIC/DC/INF/1 Prov. 2 May 10, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

Second Provisional List of Participants

Editor's Note: This document contains the second provisional list of participants. It is not reproduced here but the final list of participants may be found at pages 371 to 396 of these Records.

[End]

IPIC/DC/INF/1 Prov. 3 May 12, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

Third Provisional List of Participants

Editor's Note: This document contains the third provisional list of participants. It is not reproduced here but the final list of participants may be found at pages 371 to 396 of these Records.

[End]

IPIC/DC/INF/1 Prov. 4 May 22, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

Fourth Provisional List of Participants

Editor's Note: This document contains the fourth provisional list of participants. It is not reproduced here but the final list of participants may be found at pages 371 to 396 of these Records.

[End]

IPIC/DC/INF/1 May 26, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

List of Participants

Editor's Note: This document contains the final list of participants. It is not reproduced here, but may be found at pages 371 to 396 of these Records.

[End]

IPIC/DC/INF/2 May 26, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

List of Documents of the Diplomatic Conference

Editor's Note: This document contains the list of documents of the Diplomatic Conference. It is not reproduced here, but may be found at pages 57 to 60 of these Records.

[End]

IPIC/DC/INF/3 May 15, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

Officers and Committees

Editor's Note: This document contains a list of officers and members of the Plenary, the Main Committee, the Credentials Committee, the Drafting Committee, and the Steering Committee. For the full list of officers of the Conference, see pages 397 to 399 of these Records.

[End]

SUMMARY MINUTES

PLENARY OF THE DIPLOMATIC CONFERENCE

President: Mr. R. Oman (United States of America)

Vice-Presidents: Mr. Gao Lulin (China)
Mr. M.Y. Saada (Egypt)
Mr. A. Krieger (Federal Republic of Germany)
Mr. N. Akao (Japan)
Mr. R. Villarreal Gonda (Mexico)
Mr. L.E. Komarov (Soviet Union)
Mr. V. Tarnofsky (United Kingdom)

Secretary: Mr. L. Baeumer (WIPO)

First Meeting
Monday, May 8, 1989
Morning

Opening of the Conference

1. Mr. BOGSCH (Director General of WIPO) opened the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits. In the name of the World Intellectual Property Organization, he welcomed the delegates from States, representatives of intergovernmental organizations, as well as the representatives of non-governmental organizations. Referring to the document IPIC/DC/1, containing the draft Agenda, he gave the floor to the Representative of the Government of the United States of America.

2.1 Mr. McALLISTER (Assistant Secretary of State, United States of America) said that the United States was pleased to be able to host the Conference and that the Treaty to be negotiated concerned something essential to the modern world. Rapidly shrinking in size while growing even more quickly in capacity, integrated circuits had become even more critical to technological development; in the course of just a few years they had become a vital building block of modern technology. A great deal of sophisticated equipment depended on the chips and the products incorporating them were increasingly a part of daily life. He indicated that throughout the world, governments increasingly appreciated the contributions of intellectual property protection to build dynamic and prosperous societies. At the same time they were increasingly recognizing the serious trade and other economic losses that resulted from the lack of intellectual property rights protection.

He emphasized that that had caused his Government to reassess its domestic intellectual property laws and international agreements. During the previous year the United States had gone through the complex legislative process that permitted its adherence to the Berne Convention. Negotiations to extend intellectual property protection to new areas were going on internationally as well. He noted with pleasure that the World Intellectual Property Organization under the far-sighted leadership of its Director General was in the vanguard of that movement.

2.2 Mr. McAllister further stated that, under most countries' current laws, the owner of a particular semiconductor design was not protected from unauthorized duplication of the finished useful article represented by the design. To remedy that problem the United States had adopted special legislation, namely, the Semiconductor Chip Protection Act of 1984. He considered that existing multilateral treaties could not be the only means of providing the protection needed to encourage and buttress invention and innovation in all countries. Therefore, the United States Government had supported a treaty, such as the one to be negotiated at the Conference. He noted that the deliberative process which had preceded the Conference had been lengthy and profound. Four meetings of the Committee of Experts and various consultations with other experts, especially from the developing countries, had been held between 1985 and 1988. He believed that the resulting draft Treaty could provide a good basis for the negotiations. He expressed hope that common concerns and appreciation of the value of intellectual property protection would override any differences that might arise concerning detail of approach at the Conference. He urged the delegates to exercise their goodwill and effort necessary to conclude a treaty that would be of mutual benefit. Finally, he expressed the Department of State's and Secretary Baker's welcome to Washington and wished everybody a very productive and pleasant stay.

3. Mr. BOGSCH (Director General of WIPO) thanked the previous speaker for his address and the Government of the United States of America for hosting the Conference. He then proposed that the Plenary be recessed for 20 minutes.

[Suspension]

Discussion of the Agenda

4. Mr. BOGSCH (Director General of WIPO) resumed the meeting and turned to the draft Agenda (document IPIC/DC/1).

5. Mr. SABOIA (Brazil) proposed the first item of the business of the Conference to be the election of the President. He indicated that the consideration and adoption of the Rules of Procedure was an important question that might generate discussions and it was important to engage in that consideration with the President already in the Chair. He referred to the Preparatory Committee for the Diplomatic Conference for the International Registration of Trademarks to be held in June in Madrid which had considered that question and had decided to follow the usual international practice.

6. Mr. BOGSCH (Director General of WIPO) indicated that the draft Agenda had been established at the Preparatory Meeting for the Conference by the States that were invited to the Diplomatic Conference and that were present. He also mentioned that there had recently been a diplomatic conference organized by WIPO in which the same order had been followed.

7. Mr. KRIEGER (Federal Republic of Germany) noted that the draft Agenda had been discussed and accepted in the Preparatory Meeting. He also indicated that the draft Agenda was in line with the general practice followed by WIPO for many years. He proposed following the draft Agenda (document IPIC/DC/1).

8. Mr. OMAN (United States of America) supported the proposal of the Delegation of the Federal Republic of Germany.

9. Mr. LUKACS (Netherlands) also spoke in favor of the proposal of the Federal Republic of Germany.

10. Mr. SONI (India) supported the proposal of the Delegation of Brazil.

11. Mr. FORTINI (Italy) supported the proposal to follow the established draft Agenda of the Conference.

12. Mr. TARNOFSKY (United Kingdom) also supported the order of Items 3 and 4 of the Agenda, as stated in document IPIC/DC/1.

13. Mr. ISHAQUE (Pakistan) also supported the order of Items 3 and 4 of the Agenda, as stated in document IPIC/DC/1.

14. Mr. SABOIA (Brazil) stated that the intention of the Delegation of Brazil was to raise the question of principle. Since it seemed that it was the general preference to keep the order of business as it was contained in the draft Agenda, the Delegation of Brazil would not insist on its proposal.

15. Mr. SONI (India) also agreed not to pursue the proposal made by the Delegation of Brazil.

Adoption of the Rules of Procedure

16.1 Mr. BOGSCH (Director General of WIPO) proposed to proceed to Item 3 of the draft Agenda "Consideration and adoption of the Rules of Procedure." He drew attention to the corrections which affected the English and the other texts of document IPIC/DC/2. In particular, he referred to Rule 1 where the words in the fourth line "hereinafter referred to as the basic proposal" should be cancelled.

16.2 He moved to Rule 1 and read it out. He noted that there was no opposition to it and declared it adopted.

16.3 He moved to Rule 2 and turned to paragraph (1), which provided that there were two kinds of delegations, as described in subparagraphs (i) and (ii): full delegations of member States and observer delegations. He pointed out that subparagraph (i) in particular concerned the European Communities and indicated that, in the Preparatory Meeting, no agreement had been reached on their status at the Conference. He explained that the decision could be taken at present or it could be taken in connection with the Rule on voting.

17. Mr. CASADO CERVIÑO (Spain) expressed his Delegation's gratitude to the authorities of the United States of America for hosting the Diplomatic Conference, and requested the Chairman's permission to allow Mr. Rujas of the Delegation of Spain to make a statement on behalf of the member States of the European Communities.

18. Mr. RUJAS MORA-REY (Spain), speaking on behalf of the member States of the European Communities, stated that the Council of the European Communities adopted, in December 1986, a Council Directive on the legal protection of topographies of semiconductor products. That Directive was based on Article 100 of the Treaty of Rome, which referred to the harmonization of laws having a direct effect on the Common Market, and it established a sui generis system of protection for the topographies of integrated circuits. By virtue of that Directive, the member States of the European Communities had transferred a part of their competence in that matter to the Community with which its member States shared competence in respect of that matter. The European Communities should therefore be allowed to negotiate at the Diplomatic Conference and become a Contracting Party of the Treaty alongside its member States.

19.1 Mr. BOGSCH (Director General of WIPO) noted that the Delegate of Spain had no objection that a decision should be taken in connection with the Rule concerning voting. He concluded that the words "subject to the decision by the Conference" would be maintained for the moment and, noting no objections, declared paragraph (1) adopted. He moved to paragraphs (2) and (3) and, noting no objections, declared them adopted. He then moved to Rule 3 and, noting no objections, declared it adopted.

19.2 He then turned to Chapter II entitled "Representation." He then moved to Rules 4, 5, 6 and 7 and, noting no objections, declared them adopted. He then moved to Rule 8 entitled "Presentation of Credentials" and indicated that the credentials had to be presented to the Secretary of the Conference if possible not later than 24 hours after the opening of the Conference.

20. Mr. SAADA (Egypt) asked for prolongation of the 24-hour period.

21.1 Mr. BOGSCH (Director General of WIPO) indicated that the Rule meant that credentials could be presented at any time during the course of the Conference but should be done so as soon as possible. Noting no objections thereto, he declared Rule 8 adopted.

21.2 He then moved to Rules 9 and 10 which, in the absence of objections, were declared adopted. He then turned to Chapter III entitled "Committees and Working Groups" and moved to Rules 11, 12 and 13 which, in the absence of objections, were declared adopted. He then moved to Rule 14 entitled "Steering Committee" and indicated that the composition of that Committee was given in paragraph (1).

22. Mr. SABOIA (Brazil) suggested that the Vice-Presidents should be included in paragraph (1) of Rule 14. He believed that the presence of the six Vice-Presidents in the Steering Committee would provide it with a better geographical distribution.

23. Mr. BOGSCH (Director General of WIPO) clarified that the proposal of the Delegate of Brazil meant that paragraph (1) should read, in its pertinent part, as follows: "the Steering Committee of the Conference shall consist of the President and the Vice-Presidents of the Conference ..."

24. Mr. KRIEGER (Federal Republic of Germany) wondered whether, if the proposal of the Delegation of Brazil was accepted, the Steering Committee would not have too many members. In his opinion, in order to safeguard the possibility that that Committee would deal with various questions, it should be as small as possible.

25. Mr. SABOIA (Brazil) agreed with the Delegation of the Federal Republic of Germany that the composition of the Committee should be small, but emphasized that it should be composed of an adequate number of members so as to ensure the representation of different geographic regions and different views about the subject matter of the Conference and its conduct. He did not consider that 10 members was too big a number for a Conference which was composed of many delegations. In his opinion, it was usual to have the Vice-Presidents included in such a Committee, which was in charge not only of the organization but also of making proposals for adoption by the Conference, meeting in Plenary Session, and adopting the final Act of the Conference.

26. Mr. SAADA (Egypt) supported the proposal of the Delegation of Brazil.

27. Mr. MILLS (Ghana) also supported the views expressed by the Delegation of Brazil.

28. Mr. GAO (China) also supported the proposal of the Delegation of Brazil.

29. Mr. TARNOFSKY (United Kingdom) shared the doubts expressed by the Delegation of the Federal Republic of Germany and proposed the adoption of the text of the Rule as contained in the draft Rules.

30. Mr. KOMAROV (Soviet Union) shared the doubts expressed by the Delegations of the Federal Republic of Germany and the United Kingdom. He agreed that, the lesser the number of members of the Committee, the greater was the effectiveness of its work but he also believed that such effectiveness, due to absence in the Committee of Vice-Presidents, would lead tc lesser effectiveness of work at meetings of the Plenary and other bodies. The more complete was the manner in which all nuances of opinions were reflected, the better were the chances to reach the most acceptable solutions in the Main Committee. In view of the above, he supported the proposal of the Delegation of Brazil as more expedient from the point of view of the effectiveness of the work of the Conference as a whole.

31. Mr. ISHAQUE (Pakistan) supported the proposal made by the Delegation of Brazil.

32. Mr. SONI (India) supported the proposal of the Delegation of Brazil.

33. Mr. FORTINI (Italy) wondered whether it was not possible to reduce the number of Vice-Presidents to three, thus preserving the possibility of having broad geographic representation in the Committee, but limiting the number of its members to seven persons.

34. Mr. SATELER ALONSO (Chile) expressed his Delegation's support for the proposal made by the Delegation of Brazil, for the same reasons as those indicated by that Delegation.

35. Mr. SUEDI (United Republic of Tanzania) indicated that the documents under consideration were of a provisional nature and that it was up to the Conference to make the final decision on each and every item or issue at the Conference. He further noted that he did not share the opinion that the efficiency of the Steering Committee would be determined by its size. He further said that the suggestion of the Delegation of Italy to reduce the number of Vice-Presidents in the Committee to three did not make things easier since one would be faced with the problem of how to determine the three. Finally, he expressed himself in favor of the proposal made by the Delegation of Brazil.

36.1 Mr. BOGSCH (Director General of WIPO) summed up the discussions, indicating that nine delegations expressed themselves in favor of the proposal by the Delegation of Brazil. Meanwhile, two other delegations were of a different opinion and one delegation tried to make a compromise proposal which did not meet acceptance. He observed that the majority seemed to be in favor of the proposal by the Delegation of Brazil and that Rule 14, subject to the proposal by the Delegation of Brazil noted at paragraph 25, was adopted.

36.2 He then turned to Chapter IV entitled "Officers" and moved to Rule 15. He presented paragraphs (1) to (4) of Rule 15.

37. Mr. FORTINI (Italy) again referred to the problem of the number of Vice-Presidents and suggested that the last line of paragraph (1) be modified tc say "shall elect three Vice-Presidents" and not "six." He emphasized that he did not see the necessity of having six Vice-Presidents and recalled that at many conferences the Vice-Presidents did not have a chance to preside. He observed that the conferences gathered for plenary meetings only during the first and the last days and, in between, it was the Main Committees which did all the work.

38. Mr. BOGSCH (Director General of WIPO) indicated that, when the Preparatory Committee proposed six Vice-Presidents it considered that number to be a minimum because it was extremely difficult to make an equitable distribution among the various regions or groups of States, if one did not have at least six Vice-Presidents.

39. Mr. SAADA (Egypt) proposed keeping the number of the Vice-Presidents at six and to designate each Vice-President to preside over one of the preparatory committees or one of the subsidiary committees. He suggested that the function of a Vice-President should be changed from the single function of replacing the President if the latter was not available, to doing something useful in the Diplomatic Conference.

40.1 Mr. BOGSCH (Director General of WIPO) considered that it was premature to state that there would be preparatory groups or subsidiary bodies and that it would be very difficult to implement the principle of designating, a priori, the Vice-Presidents to preside over such bodies. He further noted that, for the moment, an amendment proposed by the Delegation of Italy did not receive support. He observed that, in the absence of objections, Rule 15 was adopted.

40.2 He then moved to Rules 16, 17 and 18, which, in the absence of objections, were adopted. He then turned to Chapter V entitled "Conduct of Business" and moved to Rules 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31. He observed that there was no opposition to these Rules and that they were, therefore, adopted.

40.3 He then moved to Rule 32 and clarified that the reference in that Rule to Rule 34(1)(iii) meant a majority of two-thirds.

41. Mr. REBAGLIATI (Argentina) requested clarification as to the reference in Rule 32, whether it was intended to be to Rule 34(1)(iii) or to Rule 34(1)(v).

42.1 Mr. BOGSCH (Director General of WIPO) agreed that the reference in Rule 32 should be made to Rule 34(1)(v) and observed that, with that amendment, Rule 32 was adopted.

42.2 He then turned to Chapter VI entitled "Voting" and moved to Rule 33.

43. Mr. CASADO CERVIÑO (Spain), on behalf of the Member States of the European Communities, stated that the member States of the European Communities wished to present an addition to the text of Rule 33 of the Draft Rules of Procedure of the Diplomatic Conference. That new text would constitute a new paragraph in Rule 33 with the following wording: "Notwithstanding the foregoing, any Delegation of a State that is member of the European Communities may for any vote exercise its right of vote through the intermediary of the Delegation of the European Communities."

44. Mr. BOGSCH (Director General of WIPO) observed that the proposal of the Delegation of Spain, speaking in the name of the Member States of the European Communities, meant that the European Communities, as such, would not ask for its own right to vote but might vote in the name of the Member States which were represented at the Conference and had credentials. Such delegation of the exercise of the vote did not cumulate votes. Therefore, if, in any given case, all the 12 members which had credentials and were participating delegated the right to vote to the European Communities, that vote would have the value of 12 votes and not 13 votes. So it simply created the possibility of delegation of voting by proxy. He further noted that, if that proposal was adopted, it was going to be an internal matter between the representative of the European Communities and the representatives of the member States. When the European Communities wished to exercise its right to vote, in the name of the member States, then the representatives of the European Communities would announce that in the forthcoming vote it would vote in the name of certain member countries.

45. Mr. CASADO CERVIÑO (Spain) indicated to the Chairman that his explanation was correct.

46. Mr. HARADA (Japan) wondered whether the European Communities were entitled by its members to participate in the Conference and to conclude the Treaty. He was interested in receiving an indication what were the areas of responsibility that belonged to the European Communities in fulfilling its obligations under the Treaty and what were the other obligations or areas of responsibility that fell upon each member State of the European Communities.

47. Mr. BOGSCH (Director General of WIPO) indicated that the division of competence between the European Communities and its member States could be treated as a matter internal to the Communities.

48. Mr. SATELER ALONSO (Chile) stated that the distribution of competence within the European Communities was something which interested not only the member States of the European Communities but also all those who were to become party to the Treaty. Parties to the Treaty wanted to be clear as to their rights and obligations under the Treaty and as to who their contracting "partners" would be under the Treaty. He therefore wished to raise two questions in connection with the amendment proposed by the Delegation of Spain on behalf of the European Communities. The first question concerned the situation in which only some of the member States of the European Communities chose to exercise their right to vote through the intermediary of the Delegation of the European Communities and whether, therefore, a situation could arise where, for example, six member States delegated their right to vote to the Community and the other six member States reserved their right to vote directly. The second question concerned whether there was precedent within the European Communities of a treaty in which competence had been delegated to the Communities by the member States.

49. Mr. REBAGLIATI (Argentina) stated that it would seem necessary to further develop the new Rule that was being put forth on behalf of the European Communities and that it should be made clear what competence would be exercised individually by the member States and which would be delegated to the European Communities, both with regard to the substantive provisions of the Treaty and to the exercise of the responsibilities which might be imposed by the application or interpretation of the future Treaty. A further explanation from the European Communities seemed desirable irrespective of the manner in which the right to vote was delegated by the member countries. In that respect, the Delegation associated itself with some of the questions raised by the Delegation of Chile.

50. Mr. FORTINI (Italy) stated that he understood the concern that States that were not members of the European Communities might have in connection with the delegation of voting rights within the European Communities and, in general, with participation of the European Communities in the Treaty. He further noted that the legal situation and the mechanism of functioning of the European Communities had been repeatedly explained at various fora. Similarly, the wish of the member States not to establish a final and exhaustive list of Community and national competence was well-known, since they preferred to be in a position to allow the competence to evolve to meet future developments. He stated that the intervention of the European Communities, as such, in a particular issue was never spontaneous or accidental but was always governed by a determination of whether the issue fell within the domain of the European Communities' competence rather than within the competence of its member States. The issue of microchips represented a proper example of the European Communities' competence; therefore its Delegation should be accorded all rights enabling it to duly participate in the Conference and to eventually sign the Treaty. Finally, he stated that the solution proposed by the Delegation of Spain, in the name of 12 member States of the European Communities, was very clear and served the interests of all countries represented at the Conference.

51. Mr. CASADO CERVIÑO (Spain), on behalf of the member States of the European Communities, stated that the interest that the member States of the European Communities had in being able to delegate their right of vote emanated from the Treaty of Rome which established the European Economic Community. That Treaty gave rise to commitments and obligations of a legal and political nature, and from them arose a principle of solidarity. Therefore, both the European Communities and its member States were responsible for treaty obligations. In that respect, a vote exercised by the member States of the European Communities, whether individually or through the Community organs, would be totally guaranteed by both the member States and the Communities. The obligations deriving from such commitment would be assumed by the Communities or its organizations or by the member States concerned, depending on the internal distribution of competence within the Communities. An example of such an internal distribution of competence was given by the Community Directive on the Protection of the Topographies of Integrated Circuits issued by the Community in 1986. That Directive implied a transfer of competence from the member States to the European Communities. Such transfer of competence was one of the reasons for which the member States of the European Communities needed the possibility of exercising their right to vote through the intermediary of the Communities. Another recent example of transfer of responsibilities was given by the new treaty on the ozone layer, in respect of which the European Communities was a contracting party in its own right, having undertaken obligations under that treaty together with other contracting parties. Because of the dynamic character of the European Communities, it was not possible at present to anticipate in a more explicit manner what the internal situation would be in the future with regard to the distribution of competences between the Communities and its member States.

52. Mr. SUEDI (United Republic of Tanzania) stated that the first question to be decided was not the question about the voting of the European Communities, but the question whether the European Communities would be admitted to the Conference as a member delegation or observer delegation. He further noted that at no point in time did the Delegation of the United Republic of Tanzania reject the idea that the European Communities should participate as a full member in the vote. Similarly, he was of the opinion that the time and manner of surrendering the right to negotiate or the right to vote was a completely internal matter of the European Communities. He further pointed out that his Delegation had certain doubts in respect of the proposal made by the Delegation of Spain, on behalf of the European Communities, that any member of the European Communities could decide to call on the European Communities to exercise the vote on its behalf. He could have accepted a clear proposition saying that, when it came to the question of voting, all 12 member States would surrender their right to the European Communities to vote on their behalf. He saw the idea proposed by the Delegation of Spain as being vague.

53. Mr. BOGSCH (Director General of WIPO) suggested that the Delegation of Spain, acting in the name of the European Communities, should prepare a brief document explaining the situation and replying to the questions which had been raised by the Delegations who had taken the floor.

54. Mr. CASADO CERVIÑO (Spain) indicated that a letter, dated April 6, 1989, had been sent by the Commission of the European Communities to the International Bureau of WIPO that answered many of the questions that had been put to it.

55. Mr. BOGSCH (Director General of WIPO) closed the meeting until the afternoon.

Second Meeting
Monday, May 8, 1989
Afternoon

56. Mr. BOGSCH (Director General of WIPO) reconvened the meeting. The discussion of Rule 33 continued. He referred to a text distributed by the Delegation of Spain which reads as follows:

> "Rule 33: Right to Vote
>
> Each Delegation of a State member of the Paris Union, the Berne Union or WIPO shall have the right to vote. Each such Delegation shall have one vote and shall represent and vote only in the name of its State. However, any Delegation of a State that is a member of the European Community may, in any vote, exercise its right to vote through the Delegation of the European Communities."

57. Mr. COMTE (Switzerland) expressed his support for the proposal of the Delegation of Spain and stressed that it referred exclusively to the right to vote, which was a procedural question.

58. Mr. GOVEY (Australia) supported, in principle, the proposal for the European Communities to vote on behalf of its members. He shared the anxiety of a number of delegations about the competence and responsibilities of the European Communities in various contexts. In his opinion, the questions of competence arose in the context of substantive provisions of the Treaty and not in the context of the Rules of Procedure.

59. Mr. EL HUNI (Libya) considered that it was not necessary to cite specifically, in Rule 33, the European Communities as an intergovernmental organization since there were other regional and intergovernmental organizations such as the League of Arab Countries, the Organization of the Islamic Conference and the Organization of African Unity which, in future, would have to play the same role in the Treaty as the European Communities. He further suggested that the text proposed by the Delegation of Spain should be drafted in such a way as to enable a delegation of any State or regional or intergovernmental organization, eligible to vote at the Conference, to excercise that right.

60. Mr. BOGSCH (Director General of WIPO) stated that any other organization besides the European Communities, might be considered for participation in the Treaty but only if it had legislated in the field of microchips. He further indicated that, so far, no other such organization had been mentioned during the preparatory meetings.

61. Mr. MILLS (Ghana) supported the proposal of the Delegation of Libya to the extent that the text should mention, without any exception and specification, all intergovernmental organizations.

62. Mr. KHREISAT (Jordan) stated that the citation, by the Delegation of Libya, of the League of Arab Countries was aimed at assuring equal treatment of various international groups, which might, in future, be able to subsume the voting rights of their member States. Therefore, he considered that the text should refer generally to all eventual groups of countries without exception and distinction.

63. Mr. BOGSCH (Director General of WIPO) invited the Delegations of Libya and Jordan to present their proposal in writing.

64. Mr. HALVORSEN (Sweden) supported the proposal made by the Delegation of Spain on behalf of the member countries of the European Communities.

65. Mr. SAADA (Egypt) supported the proposal of the Delegation of Libya. He also emphasized that his Delegation was not against adherence to the Treaty by the European Communities.

66. Mr. BOGSCH (Director General of WIPO) emphasized that the discussions did not relate to the question of which countries or organizations could become party to the Treaty; that question was going to come up in connection with Article 14 of the Treaty. Article 14 did not speak of the European Communities, expressis verbis, but of any international organization. The subject of the present discussions was the role of certain intergovernmental organizations in the present Diplomatic Conference. The oral proposal by the Delegation of Libya, supported by the Delegations of Jordan and Egypt, was aimed at modifying the sentence which had been proposed by the Delegation of Spain so as, instead of mentioning the European Communities, to speak of intergovernmental organizations in general. In addition, it would mention that any delegation of a State which was a member of an intergovernmental organization might for any given vote delegate its right to vote to the intergovernmental organization it chose for that purpose.

67. Mrs. CHAALAN (Syria) supported the proposal made by the Delegation of Libya.

68. Mr. OMAN (United States of America) supported the proposal of the Delegation of Spain to amend Rule 33 to recognize the competence of the European Communities in respect of that Treaty. He stated that the European Communities should be entitled to speak and vote on behalf of its 12 member States to the extent that those States had transferred competence to the Community. Thus, the European Communities would either vote on behalf of all 12 of its members or would not vote at all. He considered that that would respond to much of the criticism as to the vagueness of the EEC proposal. He further pointed out that the European Communities were an intergovernmental organization with competence in the subject matter of the Conference and that he did not know any other organization which had such competence and could, thus, exercise such voting rights at the Conference.

69. Mr. AL-NASHAD (Yemen Arab Republic) also supported the proposal of the Delegation of Libya.

70. Mr. WATTERS (Canada) supported the proposal of the Delegation of Spain, acting on behalf of the European Communities, and the clarification made by the Delegation of the United States of America.

71. Mr. MANSOUR (Kuwait) said that he did not oppose the participation of the European Communities in the Conference and in the Treaty but indicated that that participation raised a number of questions of a legal nature. Therefore, he preferred that each delegation of the member States vote in the name of its State in case the proposal of the Delegation of Spain was going to be incorporated into Rule 33. He wished to receive explanations on several points. First, he asked whether there was not a contradiction between the text of the draft Rule 33 and the proposal of the Delegation of Spain. Second, he did not understand in what name a delegation of the member State would vote when it exercised its right to vote through the Delegation of the European Communities. Third, he wondered whether, once a delegation of power to exercise the vote was made, it referred to all the questions.

72. Mr. BOGSCH (Director General of WIPO) replied to the questions of the Delegation of Kuwait. In respect of the first question, he said that there was, properly, a contradiction between the existing text of draft Rule 33 and the amendment proposed by the Delegate of Spain because the amendment presented an exception to the rule and, therefore, it started with the word "however." Replying to the second question, he further underlined that the question of who was going to be entitled to sign the Treaty and become party to the Treaty was a question which was not under discussion, since it was going to be discussed in connection with Article 14 of the draft Treaty. Replying to the third question, he indicated that, according to the proposal of the Delegation of Spain, the situation described might occur in some cases. For example, the European Communities would exercise the right to vote in the name of the member States whereas, in other cases, the individual States would exercise their right to vote, but the Communities and the member States could not, both, vote on the same question. As to the issue raised by the Delegation of Libya, namely, that the European Communities should not be the only organization to which member States could delegate their votes but that also other regional organizations should be put in the same position, he stated that it should be addressed and a decision taken.

73. Mr. ISHAQUE (Pakistan) supported the proposal made by the Delegation of Libya.

74. Mr. MILLS (Ghana) stated that he was originally prepared to accept that the European Communities, as a legal entity, might become a party to the Treaty. In the light of the proposal of the Delegation of Spain that the European Communities itself would not vote as such even on matters which fell within its competence but that it would vote only as directed by the various members, he did not quite understand the goal pursued by the European Communities. He further pointed out that, in his opinion, where the subject matter of the Treaty fell within the competence of the European Communities, as such, then the European Communities should vote in their own name, even though they voted on behalf of their members; where the subject matter fell within the competence of the members, the members should vote individually.

75. Mr. LIEDES (Finland) shared the view put forward by the Delegation of Switzerland that the discussions concerned two different problems: the question of voting under the Rules of Procedure and the question of being party to the Treaty. As to the question of voting and the proposed amendment to the Rules of Procedure, he considered that the question had already been analyzed in detail. He considered the question of powers to vote to be regarded an internal matter between the organization and the respective States. Finally, he expressed himself in favor of the proposal of the Delegation of Spain.

76. Mr. KOMAROV (Soviet Union) stated that during the preparatory meetings the question had been raised whether the relevant provisions of the Treaty and of the Rules of Procedure should deal with European Communities; they should rather deal with any association of States which were entitled to assign their powers to a central body. With that in view, the respective general provisions had been introduced and the respective rules had been modified, in particular as far as the parties to the Treaty were concerned. He further indicated that the discussions quite logically followed the trend of further universalization of those provisions. He did not object to the proposal of the Delegation of Spain but also did not see any obstacles in making that provision a universal one. He acknowledged that the European Communities might be quite ready to become a party to the Treaty even at present. He wondered why it was not proper to make a general provision which, on one hand, enabled the member countries of the European Communities to delegate their voting powers and, on the other hand, made the same possible in the near future for other groups of countries.

77. Mr. SUEDI (United Republic of Tanzania) noted that he considered the question of right to vote to be a secondary problem, since the main problem was connected to Rule 2 of the draft Rules of Procedure and concerned the possibility of the European Communities becoming party to the Treaty. He further supported the idea expressed by the Delegation of the United States of America and supported the Delegation of Canada. Finally, he suggested that Rule 2 should be dealt with first so that the question of the eventual participation of the European Communities as a member Delegation could be addressed. After that one could address the question of right to vote.

78. Mr. MOTA MAIA (Portugal) noted that the participation of the European Communities should be considered as the participation of an intergovernmental organization that sought complete economic, political and social integration of its member States. Within the scope of such an integration policy, the European Communities had adopted a directive in respect of the protection of topographies of integrated circuits which comprised not only the stimulation of adoption of national legislations and their harmonization, but also the establishment of a legal basis that would permit the transfer of certain competences from the member States to the European Community. That mechanism of transfer of competence provided the possibility of the delegation of voting rights which was the subject of the discussions at present. With the voting rights being delegated to the European Communities, the latter could never have more than 12 votes. He further stated that, while acknowledging the arguments and the philosophy expressed by some delegations, he was against expanding the provisions of Rule 33 to any intergovernmental organization not having any legal competence in the field of integrated circuits.

79. Mr. HARADA (Japan) noted that he did not intend to oppose the possibility of the European Communities becoming a contracting party, as long as it was made clear that the European Communities had competence and legal authority to be a contracting party to the Treaty and had the competence to conclude the Treaty. He further supported the proposal made by the Delegation of Spain in respect of voting, in particular, as explained by the Delegations of the United States of America and Canada.

80. Mr. BOGSCH (Director General of WIPO) observed that there seemed to be no opposition to granting to the members of the European Communities the right to delegate their right to vote for certain votes to the Delegation of the European Communities. There also existed a proposal by the Delegation of Libya, supported by five other countries, which wished to extend that system of voting by, or through the intermediary of, an intergovernmental organization to intergovernmental organizations other than the European Communities. In that respect, several delegations noted that there was an important difference between the European Communities, on the one hand, and the other regional intergovernmental organizations, on the other hand, because the European Communities had promulgated legislation in the field of microchips, whereas there were no other regional organizations which had legislated in the field of microchips. The general principle was embodied in draft Article 14 of the draft Treaty, which provided that any organization providing for intellectual property protection in respect of layout-designs by its own legislation might become party to the Treaty. Thus, the equality of all intergovernmental organizations was secured in the draft.

81. Mr. SABOIA (Brazil) considered the problem at issue to be a complicated problem of international law, since it affected the matter of representation of States and other organizations in a prospective treaty and since it might create precedents for other treaties or conferences. He viewed the problem not as the question of voting, but as a question of representation. He further said that the European Communities, because of the legal nature of their constitutive Treaty and other instruments, had acquired certain capacities and competences that belonged to States, and it was in that respect

that one might be willing to accept that the European Communities would exercise on behalf of those States, in certain matters, the right to become a party to treaties and the right to vote. It was still unclear in certain respects whether, for instance, it would also do that on behalf of all members of the Communities or whether it would, in certain circumstances, do that only in respect to a few or some members. That created some complexities for the interrelations of obligations and rights assumed in the draft Treaty. In respect of any other intergovernmental organization, consideration should be given to whether those organizations had the same legal nature and whether there were precedents for them to acquire international duties similar to those contained in the draft Treaty.

82. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Spain whether it had already prepared a written statement on behalf of the European Communities and whether that statement would clarify the question of the Delegation of Brazil, namely, that, if delegation of a right to vote to the European Communities was made, whether it was made, necessarily, for all the member States of the Community or whether it could be made only for the delegations of the member States of the Community which were represented at the Conference.

83. Mr. CASADO CERVIÑO (Spain), speaking on behalf of the member States of the European Communities, introduced a document (document IPIC/DC/6), amending the second part of Rule 33 of the draft Rules of Procedure, intended to allow the European Economic Community to exercise the right of vote on behalf of its 12 member States. That amendment would make it clear that, when the European Communities exercised its vote it would do so on behalf of the totality of the member States present at the Diplomatic Conference, so that the Communities would vote in lieu of its 12 member States if there were 12 member States represented at the Conference. The European Communities would not have an additional vote in its own right, but only a number of votes equivalent to that of its member States represented at the Conference.

84. Mr. FORTINI (Italy) stated that he shared the idea of universalization expressed by the Delegation of the Soviet Union since it represented the conviction of the member States of the European Communities that any organization of States which had obtained proper authorization of its members could participate in the Treaty. He also noted that the only aspect that bothered him was the necessity for the States that were members of several international organizations to be consistent in delegation to those organizations of their rights to be represented and to vote at various fora.

85. Mr. KHREISAT (Jordan) indicated that the regional organizations regulated themselves with regard to the above questions and that it was up to their member States to determine the legal status of such organizations. He further stated that a sovereign State had a right to vote which could be delegated to any organization of which it was a member. Such delegation should be clear and precise, for example, if eight States members of the European Communities transferred to the European Communities the right to vote in their names, then the European Communities would have eight votes. He asked whether, if eight States approved of any proposal and four other States opposed it, that meant that the European Communities would still have 12 votes.

86. Mr. PRETNAR (Yugoslavia) stated that he did not oppose the proposal of the European Communities but that there existed other proposals to make the proposal of Spain more universal. Therefore, he proposed to supplement the proposal made by the Delegation of Spain with the provision that the same principle as proposed for the European Communities' voting might be applied to other intergovernmental organizations if member countries of such organizations so decided.

87. Mr. VRBA (Czechoslovakia) stated that he did not have any specific objections to the participation of the Delegation of the European Communities. He further stated that he did not have any objections as to voting by the Delegation of the European Communities in those cases where a separate delegation of a member State did not vote about the same question. On the other hand, concerning the case where some of the delegations of the member States voted separately, he was of the opinion that the Delegation of the European Communities could not vote.

88. Mr. CASADO CERVIÑO (Spain) indicated that the European Communities voted as a block and that in its system it was not possible for one part of the European Communities to vote against a position taken by the European Communities.

89. Mr. GUERRINI (France) expressed the opinion that, from the point of view of international public law, the European Communities represented a unique organization in human history which, without being a federal State, took away part of the sovereignty from its member States. This conferred to the Communities the ability to legislate in its own name, under the so-called "derivative right." He further stated that, except for the Communities, no other organization at present had similar legislative power or had legislated in the field of integrated circuits. He called for a realistic and reasonable approach to the participation of the Communities in the Treaty.

90. Mr. MANSOUR (Kuwait) wondered whether, in case the proposal was adopted, the 12 member countries of the European Communities would constitute a sole delegation or whether the delegations of the member countries would be in a position to speak in their own names.

91. Mr. BOGSCH (Director General of WIPO) indicated that the proposal of the Delegation of Spain, acting in the name of the European Communities, had been distributed in all languages (document IPIC/DC/6) and proposed that a break be taken to afford the Delegates an opportunity to study it.

[Suspension]

92. Mr. BOGSCH (Director General of WIPO) reconvened the meeting. The discussion of the status of the European Communities in the context of the Treaty continued.

93. Mr. SAADA (Egypt) wondered whether, if the European Communities would have 12 votes, Pakistan, presently heading the Islamic countries, would have 47 votes. He considered that, once accepted and put into practice, the proposal of the Delegation of Libya would lead to the creation of various blocks of countries, a result for which he did not have much sympathy.

94. Mr. APAM KWASSI (Togo) stated that it was necessary to distinguish the general provisions governing various WIPO meetings and the particular procedural rules of the present Diplomatic Conference dealing with protection of integrated circuits. He further indicated that Rule 33 provided that all delegations of the member States of the Paris Union, Berne Union or WIPO had only one vote and could represent only their countries. If it was necessary to provide for the possibility of the member countries to vote through the European Communities as an intergovernmental organization then one should not put the European Communities into an exclusive position, since this would have the effect of blocking the debate. He proposed allowing other organizations to be in a position to vote in the name of their member States, provided they fulfilled the same conditions as the European Communities.

95. Mr. MANSOUR (Kuwait) indicated that the document proposed by the Delegation of Spain raised a number of questions, in particular, whether only one delegation would speak in the name of the European Communities and whether any other delegation taking the floor would be considered as speaking in the name of the European Communities as well. He also wondered why certain advantages were given only to the European Communities.

96. Mr. BOGSCH (Director General of WIPO) summarized the discussions. Replying to the question of the Delegation of Kuwait, he clarified that the question of what delegation might speak or sign the Treaty was not under discussion, since those matters would be discussed separately under Rule 2 and Article 14, respectively. He further stated that there was no real opposition to the proposal contained in document IPIC/DC/6 but that there existed a proposal by a number of countries, originally proposed by the Delegation of Libya, and supported by several others, to the effect that organizations other than the European Community should have similar rights as far as delegation of voting was concerned. That proposal had been questioned by a number of delegations arguing that the European Community at present was in a situation that differed from the situation of the other intergovernmental organizations which had been mentioned during the debate because the European Communities had legislated in the field of microchips protection and the other organizations had not. The present discussions concerned a rule for the present Diplomatic Conference, a rule which would apply until the Treaty was adopted or the Diplomatic Conference failed. As far as the question of putting other international organizations, for example the Arab League, on the same footing as the European Communities in order to allow them to sign the Treaty or, without signing the Treaty, to become party to the Treaty, was not

a question of the Rules of Procedure. It was a question related to a provision of the Treaty itself, namely, Article 14. In its present draft, Article 14 did not mention the European Communities by name; it opened the Treaty for international organizations which met certain requirements, in particular, that they had legislated in the field of microchips. He proposed that Rule 33 of the draft Rules of Procedure, as proposed in document IPIC/DC/6, be considered as adopted. The question of which organizations, if any, would be able to sign or become a member of the Treaty was reserved and was to be discussed in connection with the consideration of Article 14 of the draft Treaty.

97. Mr. EL HUNI (Libya) asked for a clarification as to the status of the proposal made by his Delegation.

98. Mr. KHREISAT (Jordan) suggested, in support of the proposal of the Delegation of Libya, that all intergovernmental organizations which complied with the same conditions as the European Communities would be given the same treatment as accorded to the European Communities.

99. Mr. BOGSCH (Director General of WIPO) replied to the Delegation of Libya that nothing had been decided so far and that a decision was under consideration. Replying further to the Delegation of Jordan, he indicated that, if any of the countries or organizations would assert in the present meeting that they had legislated in the field of microchips, there was no doubt that it would be admitted, but to his knowledge there was no such organization at present.

100. Mr. SABOIA (Brazil) considered that the term "legislation" was rather vague and could lead to a misunderstanding with regard to the meaning of the word. He proposed to add some additional words to make it quite clear that the international organization had the competence to enact legislation which was binding for the State members in the same nature of law passed by the State itself.

101. Mr. BOGSCH (Director General of WIPO) explained that the word "legislation" would appear only in Article 14 and not in the Rule in question. In the Preparatory Meeting, "legislation" had been considered to mean "rules in the field of microchips, binding on all the member States of the given organization." He further proposed to close the debate after giving the floor to the Delegation of Pakistan and asked whether Rule 33, as amended in document IPIC/DC/6, could be adopted by consensus, taking into account all the explanations. Two delegations were opposed to the adoption of the Rule but no delegation was against the decision to close the debate.

102. Mr. ISHAQUE (Pakistan) pointed out that the original draft of Rule 33 did not contain any reference to the European Communities and the proposal made by the Delegation of Spain did not mention the existence of any legislation.

Simultaneously, the Delegation of Libya proposed that other organizations should have the same status and only after that the question arose that, in order to qualify for the participation in the Treaty, an intergovernmental organization should have a legislation in the field. He further indicated that along with document IPIC/DC/6 there should be another document issued containing the proposal of the Delegation of Libya.

103.1 Mr. BOGSCH (Director General of WIPO) said that the matter of legislation played no role at the present moment since it would appear only in Article 14. He asked whether a consensus existed or one should have to go to a vote. Since there was no objection, he declared Rule 33 adopted with the amendment proposed in document IPIC/DC/6, and with the explanations he had given.

103.2 He then moved to Rule 34 and presented paragraphs (1) and (2) of the Rule, drawing attention, in particular, to the footnote to subparagraph (vi) of paragraph (1), which said that some delegations in the Preparatory Meetings for the Diplomatic Conference felt that, for the adoption of the Treaty by the Conference meeting in Plenary, a majority of three-fourths might be preferable.

104. Mr. SONI (India) underlined the importance of the footnote to Rule 34 and reminded the Conference that, at the Preparatory Meeting for the Diplomatic Conference, a fairly large number of delegations had expressed themselves in favor of a majority of three-fourths for adoption of the Treaty by the Conference meeting in Plenary.

105. Mr. FERNANDEZ FINALE (Cuba) joined the Delegation of India in underlining the importance of the footnote to paragraph (vi).

106. Mr. SABOIA (Brazil) also supported the proposal of the Delegation of India.

107. Mr. SONI (India) emphasized that a decision should be taken in respect of two-thirds majority or three-fourths majority for adopting the Treaty.

108. Mr. BOGSCH (Director General of WIPO) recalled that, in the Preparatory Meeting the majority had been in favor of two-thirds; therefore, the draft Rule contained the two-thirds condition. If one wanted to change it to some other majority, a proposal should be made, seconded and, if there is no consensus, be put to the vote.

109. Mr. SONI (India) asked whether a written proposal should be submitted for the possibility of a three-fourths majority to be considered and eventually put to a vote.

110. Mr. BOGSCH (Director General of WIPO) indicated that he did not ask for a written submission of a proposal, since the question was very simple and consisted of replacing two-thirds by three-fourths. He further stated that he considered the intervention of the Delegation of India as a proposal to replace two-thirds by three-fourths.

111. Mr. FERNANDEZ FINALE (Cuba) declared his formal support to the proposal of the Delegation of India.

112. Mr. SABOIA (Brazil) also supported the proposal of the Delegation of India.

113. Mr. BERNAL (Mexico) also supported the proposal of the Delegation of India.

114. Mr. TARNOFSKY (United Kingdom) declared that he was opposing the proposal of the Delegation of India, as he had done during the Preparatory Meeting, since he was uncertain as to the object of the proposal--in practice it would mean that the adoption of the final Treaty by the Conference would be made a little more difficult. Assuming that some 72 countries were present at the Conference, it would mean that a majority of 48 countries in favor of the Treaty, that is two-thirds of 72, would not be enough for its adoption; it would require another six countries.

115. Mr. KRIEGER (Federal Republic of Germany) also opposed the proposal of the Delegation of India. He was of the opinion that a three-fourths majority, which was rather rare in international practice, would increase the risk for the Conference not to reach a positive result. He did not see any reason for such an increase in the risk to the Conference. With that in view, he thought one should not make the situation more difficult than was absolutely necessary, and he did not see any reason for changing the required majority from two-thirds to three-quarters. Finally, he expressed himself in favor of the Basic Proposal of a two-thirds majority.

116. Mr. SATELER ALONSO (Chile), referring to the proposal submitted by the Delegation of India, pointed out that the Diplomatic Conference was convened under the overall umbrella of the United Nations, an Organization dedicated to the principle of universality and in which agreements normally had to be attained by the rule of consensus. His Delegation, therefore, genuinely wished that the Treaty be adopted by consensus, and not by a vote requiring a two-thirds or a three-quarters majority. It was recognized, however, that the rule of consensus could, in practice, imply a right of veto by one delegation, and therefore prevent the adoption of the Treaty. The rule of consensus could therefore be replaced by a more flexible rule, and he believed that a three-quarters majority rule would be adequate being both flexible and preventing a right of veto. He noted that, although he preferred a three-quarters majority rule, he would not, however, oppose a two-thirds majority rule.

117. Mr. OMAN (United States of America) declared that his Delegation favored the two-thirds vote for adoption of the Treaty, since that represented the normal majority that had historically been applied in other diplomatic conferences. He also expressed himself in favor of consensus and universality, but stated that adoption of the Treaty would further the goal of universality much better than failure to do so would.

118. Mr. HALVORSEN (Sweden) supported the majority of two-thirds and referred, in particular, to the Vienna Convention on the Law on Treaties, Article 9, paragraph (2) of which reads as follows: "the adoption of a text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting unless by the same majority they shall decide to apply a different rule."

119. Mr. SONI (India) pointed out that the objective of Rule 34 was expressed in the first sentence by saying that all decisions should be made, as far as possible, by consensus. Failing a consensus, he considered that there should be at least a three-fourths majority since it clearly tended towards a consensus. He expressed himself in favor of the principle of universality. He considered that, if one was not going to develop a multilateral draft treaty as a new instrument altogether, one should have a three-fourths majority. He stated that, in connection with the revision conferences of the Paris Convention, the rule had been that not more than three or four States could exercise a negative vote without making the revision a failure.

120. Mr. BOGSCH (Director General of WIPO) adjourned the meeting until the next morning.

Third Meeting
Tuesday, May 9, 1989
Morning

121. Mr. BOGSCH (Director General of WIPO) reconvened the meeting for discussion of Rule 34. He recalled that the question was whether the adoption, by the Conference meeting in Plenary, of the Treaty should be by a majority of two-thirds as in document IPIC/DC/2 or by a majority of three-fourths which had been proposed and supported by a number of delegations.

122. Mr. LUKACS (Netherlands) agreed with the arguments which had been put forward by the Delegations of the United Kingdom and the United States of America and expressed himself in favor of a two-thirds majority.

123. Mr. HARADA (Japan), referring to the same reasons as those that had been mentioned by the Delegations of the United States of America and the United Kingdom, expressed himself in favor of a majority of two-thirds.

124. Ms. FERNANDEZ (Argentina) referred to the arguments expressed by the Delegation of Chile and expressed herself in favor of a majority of three-fourths.

125. Mrs. MAYER-DOLLINER (Austria) referred to the Vienna Convention on the Law of Treaties, according to which the rule of majorities was a basic one, and expressed herself in favor of a majority of two-thirds.

126. Mrs. CHAALAN (Syria) supported the declarations made by the Delegations of India and Chile.

127. Mr. BOGSCH (Director General of WIPO) announced that, so far, seven delegations were in favor of a three-quarters majority and seven in favor of two-thirds majority.

128. Mr. GONZALEZ ARENAS (Uruguay) expressed support for the observations made by the Delegation of Chile and stated that the principle of consensus should be recognized with the possibility of adopting the Treaty by a three-quarters majority if consensus were not possible.

129. Mr. FORTINI (Italy) expressed himself in favor of a majority of two-thirds. He stated that everybody always wanted the treaties to be approved by all the States participating in the conferences, but that was not always possible. He urged a realistic approach: if one wished to obtain a treaty on the microchips, it would be unreasonable to heighten the level of majority necessary for adoption of the text of the Treaty.

130. Mr. SAADA (Egypt) stated that the question of the protection of integrated circuits represented a very delicate and important issue. Taking into account the needs of the developing countries, he expressed himself in favor of the majority of three-fourths.

131. Mr. KEON (Canada) recalled that at every Preparatory Meeting Canada had supported the proposal requiring a two-thirds majority. He supported the arguments put forward by the Delegation of Italy and expressed himself in favor of a two-thirds majority.

132. Mr. LIEDES (Finland) stated that he shared the arguments put forward in favor of a two-thirds majority. He further indicated that a two-thirds majority represented both a clear majority and the general rule of qualified majority used in most international instruments.

133. Mr. KHREISAT (Jordan) supported the declaration made by the Delegation of Egypt to the extent that it was necessary to take into account the interests of the developing countries. He felt sure that, if a majority of two-thirds

was adopted, solely the interests of the developed countries would be protected. He expressed himself in favor of the majority of three-fourths proposed by the Delegation of India.

134. Mr. MILLS (Ghana) supported a two-thirds majority in the absence of achieving a consensus.

135. Mr. EL HUNI (Libya) shared the views expressed by the Delegation of India and by other delegations which supported a majority of three-quarters.

136. Mr. AL-NASHAD (Yemen Arab Republic) declared that he hoped that the Treaty would be concluded by consensus, in order to satisfy the interests of all the countries. Therefore, he supported a majority of three-quarters as proposed by the Delegation of India.

137. Mr. PARK (Republic of Korea) expressed himself in favor of a two-thirds majority.

138. Mr. GOVEY (Australia) expressed himself in favor of a two-thirds majority.

139. Mr. MOTA MAIA (Portugal) referred to the existing precedents and to the rules of the Vienna Convention on the Law of Treaties and expressed himself in favor of a two-thirds majority.

140. Mrs. PEDERSEN (Denmark) supported the arguments put forward by the Delegation of Finland and expressed herself in favor of a two-thirds majority.

141. Mr. LONG (Ireland) referred to the reasons given by the Delegation of Portugal and expressed himself in favor of a two-thirds majority.

142. Mr. GUERRINI (France) referred to the reasons given by the Delegation of Italy and expressed himself in favor of a two-thirds majority.

143. Mr. KOMAROV (Soviet Union) stated that his Delegation favored adoption of the Treaty by a maximum number of the delegations; therefore he saw consensus as an ideal to be aspired to and indicated his preference for a three-fourths majority. He further stressed that on that point he was not very categoric, since one of the eventual compromises might not be a solution to the question between a three-quarters or two-thirds majority, but rather a solution to the question which would enable the majority of delegations to accept the basic Articles of the Treaty. If the majority of the delegations reached a common opinion on the basic Articles of the Treaty and if a compromise was reached, the nature of the majority would not be so important.

144. Mr. BOGSCH (Director General of WIPO) wondered whether he could make a summary of the discussions.

145. Mr. SAADA (Egypt) asked the position of the developing countries to be considered to the extent that a majority of them preferred a three-fourths majority.

146. Mr. SONI (India) also urged that the position of the developing countries on the problem ought to be taken into consideration when a decision was to be taken.

147. Mr. GAO (China) stressed the importance of taking decisions, as far as possible, by consensus. To obtain consensus one needed goodwill to make the Conference a successful one, as well as cooperation, consultation, coordination and concession to each other's interests. He further stated that a consensus could not be obtained on whether there should be a majority of two-thirds or a majority of three-fourths. He considered that a majority of two-thirds would be acceptable, if one could add some words at the end of subparagraph (vi). He said that the idea might be taken from the Charter of the United Nations and the Statute of the International Court of Justice, which on page 9 reads: "decisions of a General Assembly on important questions shall be made by a two-third majority of the members present in the voting." He proposed to supplement subparagraph (vi) with the words "provided that such a majority has exceeded half of the member delegations participating in the Conference."

148. Mr. MILLS (Ghana), seeking a compromise, proposed to add the words "two-thirds majority but with the countries not in favor not exceeding 15."

149. Mr. BOGSCH (Director General of WIPO) made a summary of the discussions indicating that the delegations which had spoken in favor of two-thirds, and those which had spoken in favor of three-quarters, were very close to each other in numbers. He suggested, as an eventual compromise, to adopt a mid-way solution, i.e. a 70% or seven-tenths majority. He said that an eventual vote might be inconclusive because one would need a vote of two-thirds for the adoption of the Rules of Procedure. It was clear that there was no two-thirds majority for either of the proposals; thus a compromise was highly desirable. He expressed the view that two compromise proposals, i.e. those of the Delegation of China and of the Delegation of Ghana, had no support.

150. Mr. FERNANDEZ FINALE (Cuba) proposed that the Delegation of China put its proposal in writing to afford the other delegations an opportunity to consider it more carefully.

151. Mr. SAADA (Egypt) declared that 70% was a justified figure which took into account the interests of the developing countries. Therefore, he supported the proposal of the Director General of WIPO.

152. Mr. BOGSCH (Director General of WIPO) noted that, once the idea of 70% was supported by a delegation of a State, it became the official proposal from that delegation.

153. Mr. MANSOUR (Kuwait) expressed the view that neither of the percentages of the majority contributed to the interests of the developing countries. He further stated that he considered the majority of two-thirds to be the most acceptable for adoption in the wording as proposed in Rule 34.

154. Mr. CASADO CERVIÑO (Spain) speaking on behalf of the member States of the European Communities, requested a brief adjournment to discuss the proposals relative to Rule 34.

155. Mr. VRBA (Czechoslovakia) expressed himself in favor of the seven-tenths majority proposal.

156. Mr. SATELER ALONSO (Chile) accepted the proposition made by the Chairman.

157. Mr. BOGSCH (Director General of WIPO) said that it was a little early to ask whether there was any objection to a seven-tenths majority provision, since the countries that had intervened on that matter did not represent two-thirds of the Diplomatic Conference. If all delegations maintained their position, it would not be possible to have a rule adopted on that because the Conference had already adopted the Rule that the Rules of Procedure had to be adopted by a two-thirds majority. He urged all sides to consider a compromise and suspended the meeting.

[Suspension]

158. Mr. BOGSCH (Director General of WIPO) reconvened the meeting to continue the debate on Rule 34.

159. Mr. OMAN (United States of America) said that the Delegation of China had made a useful proposal that would help move towards consensus on that issue, as well as on the text of the Treaty for the case of the final vote. He proposed a minor variation to the Chinese proposal, namely, that Rule 34(1)(vi) would read as follows: "in the case of those participating in the vote on the adoption of the Treaty at least one half of the members participating in the Conference shall be present for the two-thirds vote to be valid." He further expressed hope that that would protect the interests of all parties, would help move towards consensus, and would avoid the break in precedent that so many of the delegations expressed concern about, in terms of increasing the majority required for the adoption of the Treaty from two-thirds to three-quarters.

160. Mr. ILIEV (Bulgaria) considered the proposal of the Delegation of the United States of America, in connection with the intervention of the Chinese Delegation, to be quite reasonable. He, in principle, was ready to support such a system of voting but, in case the proposal was not accepted, he wished to express agreement with the idea of the Director General of adopting a 70% majority.

161. Mr. SONI (India) asked for a clarification from the Delegation of the United States of America in connection with its proposal. He recalled, in particular, that the Delegation of China had suggested the words "present and voting." He wished to know what "present" meant; whether it meant that 50% of those present would have actually to cast their votes or would they only have to be present during the voting. He saw this as having repercussions with respect to paragraph (2) of Rule 34. He wondered whether the proposal of the Delegation of the United States of America was identical to what the Delegation of China had suggested.

162. Mr. GOVEY (Australia) also asked for a clarification from the Delegation of the United States in relation to their proposal. He was, in particular, interested in learning how the proposal of the Delegation of the United States of America related to Rule 19 of the Rules of Procedure concerning the quorum which was required for the work of the Conference. In his opinion, Rule 19 would have required there to be 50% of the Member Delegates present in order to have a vote taken in the first place, and, if that was correct, it would follow that all the decisions to be taken under Rule 34 would require a 50% majority of the delegations to be present. Additionally, he sought a clarification whether the proposal of the United States of America was in addition to the proposal which had been made in respect of the 70% majority rule, or whether it was intended to be by way of substitution for that Rule.

163. Mr. BOGSCH (Director General of WIPO) replied that it had been clearly stated that that was in addition to the existing text of subparagraph (vi).

164. Mr. CASADO CERVIÑO (Spain) requested a brief adjournment on behalf of the member States of the European Communities to discuss the proposal that had been submitted by the Delegation of the United States of America.

165. Mr. OMAN (United States of America) said that the United States would be very pleased to modify its proposal in a spirit of compromise, along the lines suggested by the Delegation of India, to include the language "shall be present and voting" in order for the two-thirds vote to be valid. He further assured the Delegation of Australia that there was nothing in the proposal of the United States of America inconsistent with Rule 19. Finally, he stated that the proposal of the United States of America was suggested in lieu of the proposal for a seven-tenths majority.

166. Mr. SABOIA (Brazil) was uncertain as to the meaning of the proposal of the Delegation of the United States of America because he did not consider it as a redrafted version of the compromise Chinese proposal, but as a significantly different proposal. In particular, it was not clear in the proposal of the United States of America whether there should be a majority of affirmative votes. He further stated that there existed a qualitative difference between the proposals of the Delegations of the United States of America and China.

167. Mr. GAO (China) once again presented his proposal for subparagraph (1)(vi) of Rule 34, which should read "adoption by the Conference meeting in Plenary of the Treaty, whereas all other decisions of all bodies shall acquire a simple majority, provided that such majority has exceeded half of Member Delegations participating in the Conference."

168. Mr. BOGSCH (Director General of WIPO) drew attention to the fact that the proposal of the Delegation of China modified not only subparagraph (1)(vi) but everything else in Rule 34 which already had been adopted.

169. Mr. CASADO CERVIÑO (Spain), speaking on behalf of the member States of the European Communities, indicated that it was necessary to study the proposals that had been submitted in such a brief period of time and consider their consequences. Consequently, he requested a brief adjournment.

170. Mr. BOGSCH (Director General of WIPO) declared that the meeting was adjourned for half an hour.

[Suspension]

171. Mr. CASADO CERVIÑO (Spain), speaking on behalf of the member States of the European Communities, reiterated support for a two-thirds majority; he expressed the view that each of the new ideas involved a complication.

172. Mr. SAADA (Egypt) considered the proposal in respect of 70% to be a good one, taking into account the requirement of a quorum contained in Rule 19.

173. Mr. BOBROVSZKY (Hungary) supported the proposal according to which a 70% majority should be required for the adoption of the Treaty. He further indicated that Rule 34 should consequently be redrafted because in subparagraphs (i) - (v) a two-thirds majority should be waived.

174. Mr. DIENG (Senegal) speaking in the name of the group of the African Countries, stated that the Group approved, as a compromise, the proposal providing for a seven-tenths majority.

175. Mr. APAM KWASSI (Togo) joined the previous speaker in support for the seven-tenths majority proposal.

176. Mr. MILLS (Ghana) also supported the proposal in respect of a seven-tenths majority.

177. Mr. BOGSCH (Director General of WIPO) summarized the situation noting that there existed a number of proposals in respect of Rule 34, namely: the proposal of the Delegation of Spain in the name of the European Communities, the proposal of the Delegation of Egypt supported by several African Delegations, the proposal of the Delegation of China and the proposal of the Delegation of the United States of America. He further invited the delegations to clarify their positions in respect of the above proposals.

178. Mr. GAO (China) declared that, in order to reach a compromise, the Delegation of China could accept the seven-tenths majority.

179. Mr. SONI (India) regretted that the proposal of China had not been made in writing and wondered whether that proposal might be considered withdrawn.

180. Mr. BOGSCH (Director General of WIPO) clarified that the Delegation of China did not insist on its proposal if the seven-tenths proposal was carried, but wished to maintain its proposal if the two-thirds proposal were to be considered instead of seven-tenths.

181. Mr. KHREISAT (Jordan) supported the proposal of the Delegation of Egypt.

182. Mr. BOGSCH (Director General of WIPO) asked for the opinions of the delegations in respect of the two remaining proposals, namely, the Basic Proposal and the compromise proposal of the Delegation of Egypt and of the African countries, also supported by Jordan.

183. Mr. OMAN (United States of America) withdrew his proposal which represented a modification of the proposal of China and stated that the United States continued to think that important international principles were at stake. He further stated that he continued to support the proposal as embodied in the initial draft, i.e. that the two-thirds majority should prevail.

184. Mr. FERNANDEZ FINALE (Cuba) inquired as to the texts of the propositions that were being put to a vote.

185. Mr. GUERRINI (France) stated that his Delegation always took into account the preoccupations of the developing countries, in particular in respect of the treaty-adoption procedure. However, he expressed the view that the Treaty did not represent, in international relations, an issue which was important enough to change the unanimously followed voting and adoption procedure. A two-thirds majority was quite democratic in terms of reaching a decision, and

a 33% minority was free not to ratify or adhere to the Treaty. He further stated that the figure of 66% (or two-thirds) might be challenged as arbitrary but it was based on international practice. He did not see any valid reason to change that practice in the present case of the Treaty.

186. Mr. HARADA (Japan) joined the previous speaker in supporting a two-thirds majority.

187. Mr. SUEDI (United Republic of Tanzania) wondered which proposals were actually under consideration, since the proposal of the Delegation of Egypt, supported by the African Delegations, represented a compromise between the two-thirds and three-fourths majority requirements and, on the other hand, the latter had not yet been removed from the discussions. He further indicated that the position of some African members of the Conference, including his Delegation, was that they could go along with the 70% majority, because that represented a compromise between the two extremes. He wondered what was left on the table if the proposal of the three-fourths majority was rejected.

188. Mr. KOMAROV (Soviet Union) stated that he understood the fears and considerations which were connected with the breach of certain traditions but, by keeping to those traditions, advancement was not possible. He realized that a 70% majority represented not a voluntary decision but that it was a reflection of the real situation. He further indicated that there existed no exceptional circumstances which would either force a break in the traditions and rules in respect of the two-thirds majority or require that those traditions and rules be maintained. He repeated that the question of two-thirds or three-quarters majorities was not a matter of principle, since if agreement could not be reached on the majority of the basic articles, the above question would become of secondary importance. He finally expressed himself in favor of the 70% majority proposal, which represented a grounded and reasonable compromise.

189. Mr. BOGSCH (Director General of WIPO) stated that, in case the proposal for a seven-tenths majority was adopted by consensus, then all the delegations that had reservations because of the departure from the traditional majorities or for any other reasons, once a decision was taken, would be given the floor, so that they could state for the record that, had it been put to a vote, they would have voted against such a proposal. He further indicated that that was an accepted practice which had happened in many international meetings. Finally, he asked whether there was any objection to the seven-tenths proposal on that understanding.

190. Mr. OMAN (United States of America) asked to delay the ultimate decision on that matter until after the lunch break.

191. Mr. HARADA (Japan) supported the proposal of the previous speaker.

192. Mr. BOGSCH (Director General of WIPO) suspended the adoption of the decision until after the lunch break.

Fourth Meeting
Tuesday, May 9, 1989
Afternoon

193. Mr. BOGSCH (Director General of WIPO) reconvened the meeting. The discussion of Rule 34 continued.

194. Mr. SONI (India) asked for clarification as to which proposals were under consideration and referred, in particular, to the three proposals, one being made by his Delegation with a reference to a three-fourths majority, another being the draft Rule, as contained in document IPIC/DC/2, and the third being a compromise proposal made by the Delegation of Egypt and supported by the African Delegations. He further wondered which proposal was going to go to a vote.

195. Mr. BOGSCH (Director General of WIPO) stated that his intention was to try to secure adoption of the proposal of the Delegation of Egypt without opposition and without voting.

196. Mr. SUEDI (United Republic of Tanzania) stressed that the Conference could not address itself to the consideration of the seven-tenths and the two-thirds proposals since that was not the proper context of the whole question, but that the Conference should consider separately the proposal of the Delegation of Egypt supported by the African Delegations in respect of a seven-tenths majority. He further stated that, once that particular proposal was rejected, then one had to address the original proposals on the table, i.e. the position of two-thirds and the position of three-fourths.

197. Mr. BOGSCH (Director General of WIPO) clarified that, if the seven-tenths was not approved without opposition--that meant without a vote--then the issue before the Conference would be three-quarters or two-thirds, or a vote on the seven-tenths proposal.

198. Mr. SABOIA (Brazil) agreed with the previous speakers that the proposal of seven-tenths was an attempt to reach a compromise and that, if there was no consensus on that attempt of compromise, then, according to the Rules of Procedure, one should have to consider and vote first on the amendment concerning a three-quarters majority.

199. Mr. BOGSCH (Director General of WIPO) asked whether there was any opposition to the proposal of a seven-tenths majority.

200. Mr. OMAN (United States of America) confirmed the preference of his Delegation for the provision for a two-thirds majority in Rule 34, it being a sound provision based upon long-standing practice in many international conferences. He further stated that, since he did not hear compelling reasons to change that standard of behavior, the issue should be put to a vote to allow those who favored the well-established rule of a two-thirds majority to voice their opposition.

201. Mr. BOGSCH (Director General of WIPO) declared that, since there was opposition in respect of the 70% majority proposal, voting was going to take place. He further explained the sequence of proposals to be put to voting. The first to be voted would be the proposal on a three-quarters majority. If it was carried, then the voting procedure would be finished. If it was not carried, then the proposal of the Delegation of Egypt on a seven-tenths majority would be voted. If it was carried, then the voting procedure would be finished; if not, then the proposal of a two-thirds majority would be voted. If it was not carried, the whole voting procedure would start again. He further drew attention to the fact that only the member States present would have the right to vote and not the observer States or the non-governmental organizations. Everybody who had registered had the right to vote because the credentials had not been verified.

202. Mr. BOGSCH (Director General of WIPO) put to vote the proposal of a three-quarters majority. After voting he announced the results: 19 votes for, 26 votes against--the total of the two being 45, two-thirds of which was 30. He declared the proposal rejected.

203. Mr. BOGSCH (Director General of WIPO) then put to vote the proposal of a seven-tenths majority. After voting he announced the results: 38 votes for, five against. The total of the two being 43, the required majority was 29. He declared the proposal carried and declared that Rule 34(1), requiring a seven-tenths majority for the adoption by the Conference, meeting in Plenary, of the Treaty, was adopted.

204. Mr. BOGSCH (Director General of WIPO) moved then to paragraph (2) of Rule 34 which, seeing no objection, he declared adopted.

205. Mr. BOGSCH (Director General of WIPO) moved to Rules 35, 36, 37, 38, 39, and 40 which, seeing no objection, he declared adopted.

206. Mr. BOGSCH (Director General of WIPO) then turned to Chapter VII entitled "Languages and Minutes." He moved to Rules 41, 42 and 43 and, seeing no objection, declared them adopted.

207. Mr. BOGSCH (Director General of WIPO) then turned to Chapter VIII entitled "Open and Closed Meetings." He moved to Rules 44 and 45 and, seeing no objection, declared them adopted.

208. Mr. BOGSCH (Director General of WIPO) then turned to Chapter IX entitled "Observers." He moved to Rule 46 and, seeing no objection, declared it adopted.

209. Mr. BOGSCH (Director General of WIPO) then turned to Chapter X entitled "Amendments to the Rules of Procedure." He moved to Rule 47 and, seeing no objection, declared it adopted.

210. Mr. BOGSCH (Director General of WIPO) then turned to Chapter XI entitled "Final Act." He moved to Rule 48 and, seeing no objection, declared it adopted with the clarification that the final act would be signed in six languages, namely: English, Arabic, Chinese, French, Russian and Spanish.

211. Mr. BOGSCH (Director General of WIPO) then returned to Rule 2 which had been put aside initially. He explained that granting the European Communities the status of a member delegation was subject to the Rules already adopted, namely, that the European Communities had a special status as far as voting was concerned. They had no vote of their own and they could vote in place of the member States. Further, the Representatives of the European Communities would not be eligible to be officers of the Conference, the Credentials Committee, the Main Committee and the Drafting Committee. He further explained that the main consequence of adopting Rule 2 in respect of the European Communities was that, if the European Communities became a member Delegation, they could make oral and written proposals. Noting no objection, he declared Rule 2 adopted.

212. The Rules of Procedure were adopted.

Election of the President of the Conference

213. Mr. BOGSCH (Director General of WIPO) proposed to move to the next item of the draft agenda of the Conference, namely, the election of the President of the Conference. He further addressed the whole issue of electing the officers of the Conference and indicated that there were going to be some 34 posts for which one had to make elections. In particular, there were the six Vice-Presidents of the Conference, the 10 members of the Credentials Committee and the three officers of the Credentials Committee, the three officers of the Main Committee and the eight members of the Drafting Committee and the three officers of the Drafting Committee. He further proposed that, like in previous conferences, an informal Nominations Committee be constituted. He noted that, although the officers of the Main Committee were elected by the Main Committee and the officers of the Credentials Committee were elected by the Credentials Committee and the officers of the Drafting Committee were elected by the members of the Drafting Committee, it was customary to have a tentative view of what those elections might be--since that was the only way to see whether there was a fair geographical distribution of all the 34 elected positions. He suggested the number of persons to be elected to the Nominations Committee to be between eight and 12.

214. Mr. SABOIA (Brazil) supported the proposal to form an informal Nominations Committee and suggested that the Committee be composed of 10 members with the following distribution of the membership: four representatives from Group B countries, four representatives from the Group of Developing Countries, and one representative from the countries of Group D and China.

215. Mr. SONI (India) supported the proposal of the Delegation of Brazil.

216. Mr. BOGSCH (Director General of WIPO) declared that, in view of the absence of opposition to the proposal of the Delegation of Brazil, the proposal was adopted and asked the Groups to communicate to the Secretariat the names of the members delegated to the Nominations Committee. The Nominations Committee would further meet to make its proposal. He finally declared the meeting adjourned until the next morning.

Fifth Meeting
Wednesday, May 10, 1989
Morning

217. Mr. BOGSCH (Director General of WIPO) reconvened the meeting and informed the delegations that the informal Nominations Committee had met and that the results of its deliberations would be presented by its Chairman, Mr. Suedi (United Republic of Tanzania). He further asked that paragraph (1) of Rule 15 be reconsidered, in order to change the number of Vice-Presidents of the Plenary of the Conference from six to seven. Seeing no opposition he declared that the amendment to Rule 15 had been adopted.

218. Mr. SUEDI (United Republic of Tanzania), acting as the Chairman of the informal Nominations Committee, stated that, as a result of lengthy deliberations during two days, the Committee was able to make some recommendations which were submitted to the delegations. He further stated that the Nominations Committee unanimously agreed that the Presidency of the Conference should go to the host country, the United States of America, and hence the Nominations Committee recommended to the delegations Mr. Oman of the United States of America for the Presidency of the Conference.

219. Mr. OMAN (United States of America) stated that he was aware of the opinion that, since a delegate of the United States of America was going to be President of the Conference, justice required that a representative of the Group of Developing Countries be elected the Chairman of the Main Committee. He further stated that, under those circumstances, the United States of America would be pleased to defer the position of President of the Conference to Mr. Soni (India) but, in such an eventuality, that someone other than Mr. Soni should be elected the Chairman of the Main Committee.

220. Mr. BOGSCH (Director General of WIPO) suggested that the Plenary meeting be suspended to enable the Nominations Committee to reconvene and to examine the new situation.

Sixth Meeting
Thursday, May 11, 1989
Morning

221. Mr. BOGSCH (Director General of WIPO) invited the Chairman of the informal Nominations Committee to nominate the President of the Conference.

222. Mr. SUEDI (United Republic of Tanzania), acting as the Chairman of the informal Nominations Committee declared that, in accordance with Rule 15 of the Rules of Procedure, the Conference meeting in Plenary presided by the Director General of WIPO should proceed to elect the President of the Conference. On behalf of the Nominations Committee he presented to the Plenary of the Conference the nomination of Mr. Oman, Head of the Delegation of the United States of America.

223. Mr. BOGSCH (Director General of WIPO) asked for any observations of the delegations. As there was no objection, he declared that Mr. Ralph Oman, Head of the Delegation of the United States of America, was unanimously elected as President of the Diplomatic Conference.

224. Mr. OMAN (United States of America), in his capacity of President of the Conference, declared that he was greatly honored by the confidence and trust that was extended to him in electing him as President of the Diplomatic Conference. He joined with the Honorable Eugene McAllister, the Assistant Secretary for Economic and Business Affairs in welcoming officially to Washington and in saluting Dr. Arpad Bogsch, the Director General of WIPO. He also extended a formal welcome to the many State delegations from around the world and specialized institutions of the United Nations; he also welcomed the intergovernmental and non-governmental organizations. He recalled that almost 20 years before, in 1970, there had been, in that very room, a diplomatic conference to adopt the Patent Cooperation Treaty. After four years of discussions and some struggle, but always with the spirit of forward progress, the adoption of the microchip treaty was within grasp. He stressed that a great deal of difficult work lay ahead which required every bit of collective expertise, perseverance, goodwill and cooperation. He looked forward to working closely with everybody in the weeks ahead.

Amendment of Rules of Procedure

225. The PRESIDENT then proposed to amend paragraph (2) of Rule 1 in order to increase the number of members of the Credentials Committee from 10 to 11. Seeing no objection, he declared Rule 11(2) so amended.

Report of the Nominations Committee

226. Mr. SUEDI (United Republic of Tanzania) acting as the Chairman of the informal Nominations Committee reported that the informal Nominations Committee proposed that the seats of the seven Vice-Presidents should be given to the following countries: China, Egypt, the Federal Republic of Germany, Japan, Mexico, the Soviet Union and the United Kingdom. The 11 members of the Credentials Committee should be nationals of the following States: Australia, Czechoslovakia, the German Democratic Republic, Ghana, India, Italy, Norway, Philippines, Senegal, Syria, and Uruguay. The Credentials Committee should comprise a national of Italy as the Chairman of that Committee, and nationals of the German Democratic Republic and Senegal as the two Vice-Chairmen. The Chairman of the Main Committee should be Mr. Suedi of the United Republic of Tanzania and the two Vice-Chairmen should be Mr. Comte of Switzerland and Mr. Iliev of Bulgaria. The Drafting Committee should be composed of nationals of Argentina, China, France, Hungary, Jordan, the Soviet Union, Spain and the United Kingdom, and the Chairman of the Main Committee would be a member ex officio, and the Office Bearers of the Drafting Committee should be a national of Hungary as the Chairman and nationals of Jordan and Spain as the two Vice-Chairmen.

227. The PRESIDENT asked for any observations on the proposed nominations as submitted by the Nominations Committee. In the absence of observations, he declared that the nominations by the Nominations Committee were adopted.

Adoption of the Agenda

228. The PRESIDENT then moved to the consideration of the Agenda. Seeing no objections, he declared the Agenda, as contained in document IPIC/DC/1, adopted.

Election of the Vice-Presidents

229. The PRESIDENT then moved to the election of the Vice-Presidents of the Conference. He noted that the nomination and election of the Vice-Presidents had occurred upon adoption of the report of the Nominations Committee.

Postponement of the first report of the Credentials Committee

230. The PRESIDENT then moved to the next item of the agenda, namely, the consideration of the first report of the Credentials Committee, and stated that the Credentials Committe had not yet had a chance to meet. (In respect of the report of the Credentials Committee, see paragraph 289.)

Opening Declarations

231. The PRESIDENT then moved to Item 10 of the Agenda and invited delegations to make opening declarations.

232. Mr. CASADO CERVIÑO (Spain), speaking on behalf of the member States of the European Communities, expressed the satisfaction of the member States of the European Communities on the decision adopted by the Conference in respect of the participation of the Communities in the proceedings of the Conference.

233.1 Mr. SABOIA (Brazil) stated that, before the consideration of the draft Treaty, the Brazilian Delegation would like to convey to the Conference its position regarding the very concept of a sui generis approach for the elaboration of a treaty on the protection of integrated circuits. In order to do so and to ensure a clear record of the Brazilian position in that matter, in that new diplomatic phase of negotiations, it was necessary to recollect some of the most important aspects of the Brazilian position as expressed since the beginning of the work on this matter.

233.2 He recalled that the first Committee of Experts had been convened under the auspices of WIPO in 1985. It was well known that the Brazilian Government was firmly convinced that the whole question of the protection of intellectual property rights had to be dealt with in strict respect for the existing international principles and legal framework, within which the international standard for protection of those rights had been based. With regard to the specific question of protection of integrated circuits, Brazil had taken a solid stand to the effect that that protection could and should be provided for within the general context of the industrial property system, that is, within the scope of the Paris Convention for the Protection of Industrial Property. The specific principles and reasoning behind the Brazilian position had been repeatedly and extensively stated in all the meetings of a technical level, such as those of the Committee of Experts and the consultative meetings of April and June 1987 and had been reproduced in the final reports and other pertinent documents of those meetings. He regretted to note, however, that the Brazilian positions and concerns, as well as those expressed by some other countries, were not taken into account in the Basic Proposal prepared by WIPO and presented to the Diplomatic Conference.

233.3 He considered that the view supported by WIPO and by some countries that there should be a sui generis approach to the protection of integrated circuits was a risky departure from principles that were essential to the functioning of the industrial property system. It was the view of the Brazilian Government that the intended sui generis protection had many legal shortcomings, that it had a strong bias in favor of the countries with dominant market positions and technological leads and that it raised some very controversial issues as to its impact on the technological and scientific innovative process. As to the latter aspect, he noted with great concern that the sui generis approach implied the abandonment of a feature of the utmost importance for the industrial property system, which was the intended effect of increasing the rate of scientific and technological innovation with a view to favoring its industrial exploitation in different countries and for the benefit of society and mankind at large. Since it disregarded that fundamental principle of the industrial property system, the sui generis approach had as its only rationale the wish noted by some countries to protect investments from the natural risks of a very competitive market. On the other hand, should the sui generis approach fail to yield the desired result or prove itself not as viable as imagined by some, he wondered whether there would still be a way back to traditional forms of protection in what concerned the integrated circuit industrial segment.

233.4 He stated that the express opposition of the main producing countries and WIPO to the traditional forms of protection, reflected in arguments throughout the preparatory documents, risked to undermine the protection of integrated circuits by means of such standard titles and forms of protection as patents, utility models and copyrights. He further indicated that from the present it would be difficult to blame any particular country for refusing to grant standard protection for integrated circuits if that country chose to invoke some of the arguments used in the WIPO meetings. Brazil repeatedly warned against the risks involved in this a-prioristic rejection of traditional forms of protection. Brazil considered that to be a precipitate move which would have the undesired consequence of leaving one of the most important segments of the new informatics technology exclusively at the mercy of an uncertain and doubtful new sui generis regime. The consideration of a sui generis approach from the beginning had been a major deterrent to the discussions of other alternative forms of protection based on industrial property as had been formally proposed by some countries, among them Brazil.

233.5 He stated that his Government deeply regretted that there had been no serious attempt on the part of the International Bureau to elaborate alternative draft treaties for consideration by the Committee of Experts and the present Diplomatic Conference. The elaboration of parallel draft treaties based on industrial property and on copyright, for instance, as suggested by a developing country, would have certainly given much wider legal basis to the work under WIPO. Instead of following such a common sense approach, however, and for reasons still not fully grasped by the Brazilian Government, WIPO chose to take certain national laws, which lacked a firm legal tradition, as the sole basis for the elaboration of a multilateral treaty. He thought that the prompt and unquestioned acceptance by WIPO of untried pieces of national legislation, of which the only proven traits was conceptual incompatibility, was coherent with the existing international legal framework. He also mentioned, in that respect, that the first case ever to be brought to trial under the heading of a so-called sui generis legislation, the Group Three Corporation v. Advanced Microdevices case, had only very recently taken place and apparently produced the most unexpected interpretations of law. Most important of all was that it seemingly failed to make the case for such new concepts as legal protection of trade secrets, allegedly an integral aspect of the sui generis approach. To the concern of all present he additionally noted that the Semiconductor Chip Protection Act of 1984 of the United States of America seemed to have been of little guidance in the decision-making process undertaken by the Court in that particular case. He considered that the matter was certainly worth further and more profound analysis.

233.6 He declared that the Brazilian Delegation intended to take part in the present Diplomatic Conference with the view to enriching the debate of such substantive matters regarding the Basic Proposal for the draft Treaty by considering it through the perspective of its traditional position. He stated that the Brazilian Delegation would follow what it considered as the equivalent to the EEC Directive--the Paris Convention itself. He wanted to make it clear that the presentation of certain positions, the raising of certain questions or doubts regarding particular aspects of the Basic Proposal was in no way to be interpreted as an indication of change in the Brazilian position.

233.7 He stated, as a preliminary comment on the Basic Proposal for a draft Treaty put forth to the Conference by the Director General of WIPO, that the inclusion at the eve of the Diplomatic Conference of a certain number of new substantive elements in the text had come as a surprise to the Government of Brazil. That was particularly the case in regard to the inclusions of certain clauses related to the creation of a dispute-settlement mechanism and a proposal for a radically new concept for national treatment. He expressed hope that all those aspects would be fully addressed and clarified in the course of the Conference and noted that such unexpected changes in relation to the previous drafts brought in a great margin of unpredictability as to the degree of general acceptance that the new draft could achieve among countries participating in the Diplomatic Conference.

234. Mr. LIEDES (Finland) expressed his gratitude to the Government of the United States of America for hosting the Diplomatic Conference. He gave a brief outline on the general policy of the Finnish Government in the field of microchips. Finland strongly favored a new multilateral treaty for the protection of integrated circuits under the auspices of WIPO. International protection encouraged innovation, facilitated international trade and transfer of technology, and a sufficient level of protection was necessary to create a balance between the different interested parties: creators, manufacturers, distributors, and others. He expressed appreciation for the excellent preparatory work of the International Bureau of WIPO. The basic documents represented an immense amount of intellectual effort. The draft Treaty provided a sound basis for further deliberations, and it was already a compromise on many points. He indicated that the Finnish Delegation had certain preferences on the various alternatives and certain ideas on how an optimal protection of integrated circuits should be designed. Given that background, he felt that the time was ripe at present for the conclusion of the Treaty.

235. Mr. KOMAROV (Soviet Union) stated that the text prepared by WIPO could serve as a basis for discussions at the Conference in order to elaborate the final text of the Treaty. He noted that the existence of the large quantity of alternatives on important articles demonstrated that the work was not going to be easy. In his opinion, there existed certain positive prerequisites for the success of the work. In respect of the draft Treaty, he valued highly the Notes to the Articles and recalled the compromise which had been reached at the beginning of the Diplomatic Conference when adopting the Rules of Procedure. He noted with satisfaction the statement of the Delegation of India in respect of the alternative draft of the Treaty. He assured all the delegations that the Delegation of the Soviet Union was ready to contribute to the success of the work of the Conference, in the hope that the principles proclaimed in the Preamble of the Treaty would be duly implemented in the text of the Treaty, taking into account both the interests of the creators of integrated circuits as well as of the inventors and consumers. Finally, he made a remark in respect of the Notes to the Treaty, stating that the interests of the consumers were not as deeply and fully developed in the Notes as the interests of inventors and owners. He expressed hope that, as a result of the work, a mutually acceptable version of the Treaty would be developed and that it would contribute, in particular, to the elimination of various restrictions in the field of microchips.

236. Mr. SONI (India) stated that he looked forward towards a fair balance in terms of the interests of the creators and of the users and that the spirit of compromise would be extremely important. His Delegation was going to contribute in a constructive manner to the deliberations. He further indicated that his Delegation had several substantive suggestions to make when the respective matters would come up for discussion.

237.1 Mr. GOVEY (Australia) expressed the appreciation of Australia to the United States of America for their role in hosting the Conference and to WIPO for its work in preparing for the Conference, in particular, the most recent version of the draft Treaty. He underlined that the importance of the topic of intellectual property protection for integrated circuits was well recognized by the Australian Government. In Australia, work had commenced some time before on draft legislation, taking into account the on-going work at WIPO and consultations with the relevant industry. Recently, the draft legislation had been passed by the Australian Parliament.

237.2 He stated that there were two other related aspects of the work of the Conference which made it essential that the Conference succeed in its endeavors. Firstly, it would demonstrate support for a multilateral system of intellectual property protection. He further indicated that a recent resurgence of activity to provide protection on a bilateral basis demonstrated, however understandable the reasons for that approach might be, that the dangers of a lack of uniformity were very clear. There were also dangers for smaller, less powerful countries in being effectively excluded from bilateral arrangements. Secondly, the Conference might demonstrate strong support for WIPO and both its role in the field and more generally as the preeminent intergovernmental organization with a responsibility for intellectual property. He further noted that there existed a close link between intellectual property and trade, but the first step in the field of integrated circuits was to put in place a widely accepted international legal instrument. In view of the above, the Australian Delegation considered it vital that the Conference should adopt an effective and worthwhile treaty which was acceptable, if at all possible, to every country.

237.3 He confirmed the determination of the Delegation of Australia to play a constructive role in seeking to achieve a successful outcome. Subject to certain areas of the Treaty which needed further improvements (i.e., the duration provision, the compulsory licensing provision and certain aspects of the final clauses), the draft Treaty represented an extremely good starting point for the work.

238. Mr. GONZALES ARENAS (Uruguay) recalled that the negotiation process which had started in 1985 and led to the present Diplomatic Conference had been marked by diametrically opposed viewpoints put forth by the developing countries and the developed countries. That was true not only in respect of certain Articles of the draft Treaty, but also in respect of the very foundations of a sui generis system of protection which was proposed in the Treaty. While being in full agreement with the principle that the creations of human intellectual effort should be adequately recognized and protected, the Treaty under consideration was not merely an implementation of those universally recognized principles applied to a particular technology, since

the draft Treaty seemed to disregard many of those principles. Concern was expressed that such a Treaty would create a precedent which would later be applied to other fields of intellectual property, particularly in respect of the protection of new technologies. It was believed that an excessive or inadequate protection of intellectual property rights without a corresponding quid pro quo for the society granting such protection, or a protection that put the proprietors of technology in a privileged position vis-à-vis the public interest or the interests of competitors and users, would result, at least for developing countries, in a situation which was even more dangerous than the absence of protection. It was for that reason that a request had been made that the Treaty balance the different interests and exclude any possibility of abusive dominance of one set of interests over any other. The needs and interests of developing countries should be adequately considered in the Treaty. In that respect, differential or preferential treatment for developing countries should be contemplated.

239.1 Mr. BRAUN (European Communities) expressed his appreciation to the Director General and the International Bureau of WIPO for their considerable efforts during several years which had made it possible to convene the Conference. He stated that the Communities had constantly supported the idea of effective protection of topographies of semiconductor products. The best way to ensure such protection on an international level was the conclusion of a multilateral treaty embracing also those countries which had not yet developed their own protection in that field. The protection under the Treaty should establish a fair balance between the interests of manufacturers and users of topographies, but it was evident that without manufacturers no new technology could be developed. He further noted that the Communities had once more confirmed the significance it attached to the protection of intellectual property in respect of topographies of semiconductor products by adopting its respective legislation. The Communities were glad to participate in the Conference and to eventually become party to the Treaty, which would serve to the benefit of all participants since the Communities comprised both "manufacturing" and "using" countries, and reasonably combined the interests of both.

239.2 He also indicated that the Treaty pursued the noble goal of protection of the results of creative activity and was aimed at prevention of undue expropriation of the work of others. Thus it could encourage, as other treaties had done in the past, the process of research and development in the field of topographies of semiconductor products.

240. Mr. GAO (China) stated that protection of intellectual property in respect of integrated circuits was a very important issue for promoting and developing modern technology and economies. The integrated circuits industry was developing very rapidly and integrated circuits were used almost in every area. One could see that the level of development of integrated circuits was an indicator of development of modern technology and of technological innovation. Therefore, intellectual property protection of integrated circuits was of great significance. He further stated that the Chinese Government paid great attention to the improvement of intellectual property protection. China already had its trademark law and patent law. In addition, copyright law was under active consideration, and protection of software was

going to be included in copyright law. Finally, he declared that the Chinese Delegation would try to do its best, in the spirit of cooperation and compromise, to make the Diplomatic Conference a success. He expressed his sincere appreciation to WIPO and its Director General for the excellent preparation of the Diplomatic Conference during the last four years.

241. Mr. COMTE (Switzerland) expressed the thanks of his Government to the Government of the United States of America for hosting the Conference and their hospitality. He also expressed appreciation to the Director General and the staff of WIPO for the preparation of the excellent draft Treaty. He further stated that his Delegation had actively participated in the preparatory work. Therefore, it had deeply considered all aspects of the sui generis protection proposed in the Treaty. He expressed the view that one of the advantages of the Treaty was the existence of propitious areas for compromise solutions in order to take into consideration the interests of both the industrialized and the developing countries. Because of that, the draft could hardly satisfy everybody. He expressed hope that the desire to establish a worldwide instrument of protection would facilitate the adoption of solutions by consensus. He considered the draft Treaty to represent an equilibrium between the existing interests. He finally stated that his Delegation had come to Washington with the firm hope of being in a position to sign the Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits. He wished the Conference success.

242. The PRESIDENT declared the meeting adjourned until after lunch.

Seventh Meeting
Thursday, May 11, 1989
Afternoon

243. The PRESIDENT reconvened the meeting to consider opening statements.

244.1 Mr. JONKISCH (German Democratic Republic) stated that his Delegation considered the Conference to be of principal importance for further development of the cooperation between the member States of WIPO, stressing that this meant not only the legal and economic aspects of the legal protection of integrated circuits but also the possibility of developing cooperation in the field of modern technology and in the field of corresponding protection of industry. The Conference was expected to adopt the decisions which would reflect all existing various interests of different countries.

244.2 He indicated that the German Democratic Republic, being one of the countries which had its own electronic industry, welcomed the goal of the international Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits. He believed that the Treaty would contribute to the

development of scientific, technical and economic cooperation between States in that particular field, as well as to the development of international trade and to the elimination of all existing obstacles. He noted that that goal could be reached if the legal protection of the Treaty in preparation was in conformity with certain important principles. The legal protection should take into account the interests of the creators, manufacturers and users of the microchips, as well as the interests of society. He considered that the draft made it possible to realize those goals and principles. In particular, he welcomed the intention of the Treaty to give more freedom to national legislation.

245.1 Mr. KEON (Canada) declared that the Government of Canada gave considerable importance to promoting multilateralism in the field of intellectual property and to an approach that met the needs of both developed and developing countries. Therefore he very much looked forward to the successful conclusion of the Treaty at the end of the Diplomatic Conference. The Treaty of the type proposed by WIPO would not only help to ensure the effective transfer of technology and to promote trade in integrated circuits and products containing integrated circuits, but it would also recognize the basic justice and fairness of protecting the investment and creative efforts of the designers of such products.

245.2 He indicated that the Government of Canada was in the final stages of developing domestic legislation for the protection of intellectual property in integrated circuits. Throughout the process of developing such legislation, Canada had benefited greatly from the meetings of the Committee of Experts hosted by WIPO and the various drafts of the Treaty prepared by WIPO. The draft Treaty under consideration represented an important initiative to provide effective protection for an important new form of technology. He extended his congratulations to WIPO for having taken that initiative and for moving it forward in an expeditious manner while at the same time ensuring full discussion among all sectors of the international community.

245.3 He stated that the Conference had in front of it a good basic text but that much remained to be done in the coming days. The draft Treaty contained a large number of alternatives which, in some instances, reflected very different approaches to the protection of integrated circuits. He expressed confidence that, with the goodwill of all delegations, the Conference could resolve those differences over the coming days. He underlined, however, that in resolving those differences and in finalizing the proposals in the Treaty, one had to ensure that the Treaty provided reasonable and adequate minimum standards of protection for layout-designs. Without such reasonable and adequate standards of protection, the value of any treaty text would be very much diminished. He also stressed the importance of creating fairness and of promoting trade in the international microelectronics industry. The coming negotiations were seen as important as an indication of the ability to work together in the forum of WIPO to find solutions to important international intellectual property issues and that the outcome of the work in Washington during the three weeks would have a significant influence on other important intellectual property negotiations. He saw the setting of a positive example as very important. For all of those reasons, the Government of Canada was most eager to see that the Conference was successful and the Canadian Delegation would be cooperating fully to see that that occurred.

246.1 Mrs. MAYER-DOLLINER (Austria) expressed her sincere gratitude to the Government of the United States of America for hosting the very important Diplomatic Conference, as well as to the Director General of WIPO, Dr. Bogsch, and his staff, for the preparation of the Conference in an excellent manner. She referred, in particular, to document IPIC/DC/3, containing the draft Treaty which was based on the results of three years' work within the Committee of Experts in which Austria also had taken an active part.

246.2 She stated that Austria recognized the great significance of integrated circuits for modern life and a necessity of their legal protection on national, regional and worldwide levels. Such legal protection was considered necessary in order to promote transfers of technology and worldwide economic development on the basis of the most recent technological advances and through an adequate well-balanced protection system, taking into account both the interests of developing and developed countries and the interests of creators and users. She stated that, whereas copyright principles could be successfully applied to computer software, integrated circuits layout-designs (topographies) did not lend themselves to protection under traditional principles of the patent and copyright systems. Therefore, an international treaty setting out principles specifically designed for integrated circuits layout-designs (topographies) would be the best solution for giving an appropriate framework of protection which worked most sufficiently and efficiently. A proper level of protection and streamlined procedures would be of advantage with particular regard to small- or medium-sized enterprises which were of special interest to Austria. Inadequate protection or lack of uniform rules, however, would raise difficulties in international trade and business. She said that, in that respect, the draft Treaty prepared by WIPO was an excellent basis for discussions in finding solutions acceptable for everybody. She recalled that Austria was one of the first European countries which had adopted a law in that field, taking into account international standards. She expressed hope that the Conference would be successful, filling a gap in the intellectual property rights protection system. She noted the presence of a spirit of compromise and of the willingness and readiness to reach the established goal and assured that Austria would contribute its utmost to that.

247.1 Mr. VRBA (Czechoslovakia) expressed his gratitude to the Government of the United States of America for the organization of the Diplomatic Conference and for creating favorable conditions in Washington. He also extended his thanks to the Director General of WIPO for the excellent preparatory work that had been done. He further stated that the Diplomatic Conference was to be seen as part of an effort of the whole international community to bring about a solution to the question of the protection of intellectual property in respect of integrated circuits.

247.2 His Delegation welcomed the proposal for a new form of international cooperation in the field of integrated circuits. In his view, the Treaty would represent a great stimulation of technological progress and would further encourage the authors of layout-designs. He noted that, in the proposed text of the Treaty, a certain number of important questions remained problematic. It was necessary to find compromise solutions on many essential points, such as the scope and duration of the protection, and resolution of disputes. He considered that the final text had to reconcile all the

interests, those of creators of integrated circuits and those of the general public. He saw the goal of the Conference in working out a well-balanced treaty which would secure wide participation. He expressed hope that the deliberations of the Conference would be so fruitful and so profitable that the great expectations of all participants would be fulfilled.

248.1 Mr. HALVORSEN (Sweden) expressed his gratitude to the Government of the United States of America for hosting the Conference and expressed his congratulations to WIPO for the excellent preparation of the draft Treaty.

248.2 He recalled that the Swedish Government had since long taken a great interest in the protection of integrated circuits. That interest resulted in the enactment of sui generis legislation that had been in force for two years. The Swedish Delegation had also taken an active part in the expert meetings before the present Diplomatic Conference. The Swedish Government found it very important that an international treaty be concluded and hoped to have as an outcome of the Conference a treaty which everybody could accept. He stated that Sweden had entered into a system of bilateral agreements which, apart from other drawbacks, was a bit difficult to administer. He mentioned that from June 1 of the current year, Sweden had extended protection to the member States of the European Free Trade Association and the member States of the European Economic Community, without the requirement of reciprocity. The extension was based on the assumption that those countries that would benefit from the extension would offer the same protection for Swedish products as soon as they had the possibility to do so. Finally, he expressed his strong support to the creation of a multilateral treaty under the auspices of WIPO. Such a treaty would facilitate the promotion of a worldwide protection of the highly important intellectual creations.

249. Mr. BING (Norway) thanked the Government of the United States of America for hosting the present important Conference and also the International Bureau of WIPO for the preparatory work. He further stated that the Norwegian Government placed a great deal of importance in the Conference and looked forward to seeing a positive outcome thereof. He stated that his Government had prepared national legislation, which was currently pending introduction to the Parliament and which, among other things, would take into account the outcome of the Conference. He indicated that Norway benefited greatly from the work within WIPO in respect of integrated circuits. He stated that it was very important to conclude an international treaty in order to facilitate trade and international exchanges within the area of information technology.

250.1 Mr. VILLARREAL GONDA (Mexico) thanked the Government of the United States of America for its hospitality. The interest of the Government of Mexico in the Diplomatic Conference stemmed from the fact that the Mexican economy had been opened to the rest of the world and a process of national rennovation and modernization had been initiated by the Government, as well as from the need to modernize the international legal framework to keep pace with the demands of the integrated-circuit technology. Mexico had an important electronics industry that had undergone fast development over the previous years. At present, there were important international enterprises established

in Mexico applying manufacturing processes using microelectronic technology to supply the national market. Such products had also started to be exported and integrated-circuit research and design centers were being established.

250.2 He stated that Mexico did not yet have a legal instrument specifically protecting the design of integrated circuits. It was the Government's intention to derive from its participation in the Diplomatic Conference a strategy to deal with that matter according to its best interests.

250.3 The Delegation of Mexico believed that the negotiations at the Diplomatic Conference should be inspired by four general principles. The first principle, of an economic nature, was based on the notion that intellectual property should receive adequate protection with the view that it functioned as an active element for industrial and technological development. Such protection should not, however, be seen as a means to grant persons powers that might interfere or block the free operation of markets. In that respect it was of concern that a sui generis system of protection should be established that might extend protection not only to the design and production of integrated circuits but also to products which were the object of domestic or international trade. The second principle, of a political nature, was the recognition that any system of protection derived from the State's power to accord such protection. Every State should, therefore, establish such protection in a manner consistent with its own development needs and its legal framework and national sovereignty and independence. The third principle of an institutional nature should recognize that intellectual property was, in any State, within the competence of specialized government departments, both in the fields of industrial property and copyright. On the international level, the Government of Mexico recognized that the institution competent par excellence to deal with intellectual property matters was the World Intellectual Property Organization. The last principle concerned the distinction which should be made between producing countries, producing and exporting countries, producing and importing countries and merely importing countries, with a view to establishing a balance between the obligations and rights of each of those countries in a multilateral context.

251.1 Mr. PUSZTAI (Hungary) expressed the thanks of the Hungarian Delegation to the Government of the United States of America for the high quality of the organizational work involved in arranging the Conference and for the cordial hospitality.

251.2 He stated that his Delegation came to Washington with the intention to take part actively in the elaboration of the Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits and to sign the Treaty if an opportunity was provided to do so. In Hungary, legal protection of integrated circuits was essentially ensured by existing forms of protection such as patent law, copyright law, and the law against unfair competition. Nevertheless, there existed no legislation which expressly provided protection for the layout-designs of microchips. He expressed the opinion that the rapid development of microelectronics and general use of its achievements in the world gave rise to requirements of legal protection of microchip layout-design. Effective protection of microchips promoted the creation of advanced technology in the field of microelectronics and supported the transfer of that technology among the States. He expressed the view that the

Treaty should be a balanced one, duly taking into consideration the interests of authors, manufacturers, and users. He supported the proposal that the Contracting Parties would constitute a union for microchip protection in conformity with the usual practice in treaties, such as the Paris Convention and the Berne Convention, administered by WIPO. He agreed with laying down the principle of national treatment in the Treaty which would exclude discrimination towards foreigners and prevent the contracting parties from providing preferential treatment to anyone. Finally, he expressed the thanks of the Hungarian Delegation to WIPO and to the Director General for the enormous work which had been involved in convening the Conference and creating the preconditions of its successful completion.

252.1 Mr. ILIEV (Bulgaria) stated that the creation of integrated circuits represented the height of human creativity. Their manufacturing required the most sophisticated technological processes and their application gave way to the electronic products with outstanding operational qualities. All that explained the significant interest of the creators and manufacturers of integrated circuits in their protection as an intellectual property object. He considered the protection of intellectual property in respect of integrated circuits to be an instrument for harmonizing the interests of the creators, manufacturers, and users of those products.

252.2 He recalled that the Bulgarian Delegation had actively participated in the work of the Committee of Experts and that, due to the constructive approach of a number of delegations, including the Bulgarian Delegation, the Committee of Experts had managed to overcome a lot of difficulties and contradictions, always with valuable assistance from the Secretariat of WIPO and, personally, its Director General. The draft Treaty presented to the Conference would serve as a good basis for discussions. He warned that the process of finalizing the text of the Treaty might be a complicated and difficult one, since it did not only contain a number of alternative texts on the essential provisions of the Treaty, but it also included for the first time texts which had not been agreed before. He expressed hope that the participants at the Conference would reach a positive final solution and that certain limitations still existing in the Treaty in respect of the users of the integrated circuits would be deleted. Finally, he stressed the intention of the Bulgarian Delegation to actively participate in the work of the Conference and to seek acceptable compromise solutions of all controversial issues. He expressed the gratitude of his Delegation to the Government of the United States of America for its hospitable invitation to conduct the Diplomatic Conference in the beautiful city of Washington.

253.1 Mr. PARK (Republic of Korea) expressed his appreciation to the Government of the United States of America for the hosting of the Conference and for all the facilities provided for the meeting. He also extended his thanks to the Secretariat of WIPO for the excellent documents and preparation for the Conference.

253.2 He stated that the Republic of Korea, in its economic policy, had consistently attributed a major role to the development of advanced technology and to the protection of intellectual property as a major means in achieving that goal. The Republic of Korea welcomed the opportunity to participate in

the formulation and the conclusion of a multilateral treaty which sought to make industrial property responsive to the special circumstances and conditions of the most important advanced technology, namely, integrated circuits and the semiconductor technology. He declared that the Republic of Korea was convinced that a suitable multilateral framework should be established in order to ensure that an adequate reward was granted for the creative effort involved in the design of microchips. He further considered that, in order to be truly multilateral, such a framework should ensure that the reward for creative designers would be provided in terms which would facilitate the participation of countries with different levels of economic development. Therefore, the protection accorded to the creators should not be such as to exclude the entry into the world market of new enterprises, both in countries which were already producers and in countries which had not yet achieved the status of a producer. Similar to other fields of intellectual property protection, protection of microchips should only be accorded in return for making available the technology through a full and adequate disclosure of that technology. Similarly, those operating in good faith in the world market for electrical and electronic goods should not be excessively restricted because of the over-zealous application of a one-sided policy of protecting creative efforts. He further declared that the Republic of Korea considered the Diplomatic Conference to be of major importance for the adaptation of intellectual property to a new advanced technology. The process of adaptation should proceed in such a way as to take into account all the interests in the multilateral community, including the creators, manufacturers, and consumers.

254.1 Mr. HARADA (Japan) thanked the Government of the United States of America for hosting the Diplomatic Conference and for the hospitality and the kindness in providing wonderful facilities in order to work together on coming to an agreement on the draft Treaty. He also appreciated the efforts taken by WIPO in preparation for the Conference and indicated that Japan had been actively participating at numerous stages.

254.2 He called for consensus-building at the Conference in order to facilitate its work and reach the desired goal. He stated that his Government attached great importance to the protection of layout-designs of integrated circuits.

254.3 He recalled that, in 1986, Japan had adopted special legislation to protect the rights to layout-designs of integrated circuits holders. He expressed the hope that Japan's experience might be useful to contribute to the Conference. He further considered the draft Treaty prepared by WIPO to be a good basis for work and expressed hope that a fruitful adequate and effective draft would be reached at the end of the Conference.

255. Bishop HURLEY (Holy See) expressed the thanks of his Delegation to the United States of America for its hospitality. He further stated that he was sent to the Conference by the Vatican to underscore the importance and the esteem that the Vatican held for WIPO and its distinguished Director General who had labored tirelessly to foster cooperation, to secure consensus, and to promote harmony among the various nations and the diverse peoples of the world. Such cooperation and consensus as well as striving for harmony had a

direct relationship to world justice, to world order, and to world peace. He suggested that the ultimate purpose of the Diplomatic Conference should be the promotion of peace in the world. Peace was like a large complex mosaic, a work of consummate artistry put together bit by bit and piece by piece. Peace was the fruit of justice and there was no peace without justice between nations and peoples, between creators and consumers, between the so-called developed and developing countries, among all brothers and sisters under the fathership of the ultimate creator. Consequently, the projected Treaty should be a model of justice. He further mentioned that a treaty which spoke of contracts, laws and juridical norms still resolved itself into a moral question, a question of goodwill. Nations had to trust each other, had to exercise good faith towards each other, had to look beyond justice strictly conceived to a broader equity, especially as between richer and poorer nations. He indicated that the Vatican neither had any microchips, nor manufactured any semiconductors. Similarly, it had no prospects in that respect but it did have a worldwide voice and with that voice the Vatican Delegation wished to affirm the work and the intentions of WIPO and of the Diplomatic Conference.

256.1 Mr. MILLS (Ghana) expressed the warmest appreciation of his Delegation to the Government of the United States of America for hosting the Conference and for providing excellent facilities in that regard.

256.2 He indicated that it had been a long way since 1985, when the work had started on the possibility of concluding a treaty on the protection of intellectual property in respect of integrated circuits. Since then, various meetings had taken place, characterized by the diligent work of the Director General of WIPO and his staff, who had demonstrated relentless efforts in time and energy and sheer intellectual exercise. He further expressed his sincerest gratitude and appreciation to the Director General and his team. He indicated that his Delegation strongly supported the international Treaty for the Protection of Intellectual Property in Respect of Integrated Circuits.

256.3 In his opinion, the existing forms for the protection of intellectual property did not exactly provide the necessary protection with regard to integrated circuits. Something had to be done to one or other of the existing forms to fit it into the protection of the subject matter of the proposed treaty. He did not consider it important how one called the necessary adaptation, whether sui generis or not, but he indicated that an adaptation would be necessary. Therefore he supported the sui generis approach, in general. He considered it to be fair to achieve, in the Treaty, a proper balance between the industrialized countries and the developing countries. That would be obviously necessary if the Treaty should command universal acceptance. He expressed the willingness of his Delegation to do all it could in a spirit of compromise to work towards the success of the Conference.

257. Mr. BARREDA DELGADO (Peru) congratulated the President and Vice-Presidents upon their selection. He recalled the work that had been accomplished in the preparatory meetings and stated his opinion that a just equilibrium could be reached to the satisfaction of all interested parties. That depended upon the establishment of an adequate system of information and documentation to disseminate knowledge gained in the area of integrated circuits.

258.1 Mr. KUNKUTA (Zambia) expressed the appreciation of the Zambian Delegation to the Government of the United States of America for offering to host the Conference and for the wonderful facilities put at the disposal of the Conference. He also paid tribute to the Director General and staff of WIPO for the effort put into the convening of the Conference.

258.2 He declared that his Government was committed to the protection of industrial property and believed that the interests of both consumers and producers of microchips could best be achieved through the conclusion of a microchip treaty. His Delegation favored the microchip treaty under the auspices of WIPO and considered the draft Treaty prepared by the Director General of WIPO to be a very well-balanced basis for negotiations.

259.1 Mr. SAADA (Egypt) expressed thanks to the Government of the United States of America for hosting the Conference and to WIPO for preparing the draft Treaty.

259.2 He stated that, in preparing the Treaty, WIPO had constantly taken into consideration the interests of the developing countries, in particular by having arranged two special meetings for them and having subsequently reflected their wishes in the draft Treaty. He considered that the draft Treaty would serve the interests of creators of integrated circuits, manufacturers, distributors and users. Therefore, it was important to take into account the situation in developing countries where creators of integrated circuits were often salaried inventors. He suggested to supplement the draft Treaty with a new Article to protect the interests of salaried inventors. He indicated that the Treaty should not hamper the transfer of technology in the field of integrated circuits.

260.1 Mr. DIENG (Senegal) expressed appreciation to the International Bureau of WIPO for the preparatory work and to the Government of the United States of America for hosting the Conference.

260.2 He stated that his Delegation had actively participated in preparatory meetings and was prepared to consider the draft Treaty in order to establish an equilibrium between the interests of creators, distributors and users, and between the industrialized and developing countries. He further indicated that, despite the presence of certain controversial issues in the draft Treaty, it was necessary to find a compromise in order to reach the final text. His Delegation was going to contribute to that goal.

261.1 Mr. JEGEDE (Nigeria) thanked the Director General of WIPO and his team for the excellent work done in preparation of the documents for the Diplomatic Conference and also the Government of the United States of America for hosting the important Conference and for providing good facilities for it.

261.2 He noted that most of the misgivings he had had on the concept of the Treaty were gone. In particular, he recalled his earlier feeling that the Treaty was designed to promote monopoly and to give little protection to intellectual property rights in microchips. In his opinion, the present draft was not entirely designed for that purpose but equally benefited the developed

and the developing nations in their technological development. He drew attention particularly to the provision of reverse engineering as proposed in the Treaty and stated that any developing nation that was endowed with capable manpower and infrastructure for technological development could take advantage of that provision to develop its technology.

262.1 Mr. PRETNAR (Yugoslavia) indicated that his country was undergoing far-reaching economic changes which, inevitably, included amendments and introduction of missing chapters in legislation in the field of protection of intellectual property. In that context, he favored the adoption of an international legal instrument on a multilateral basis concerning the protection of layout-designs of integrated circuits provided, however, that such an instrument offered a fair balance of the interests between developing and industrialized countries. He expressed the view that the draft Treaty represented a suitable basis for the discussion for three main reasons: firstly, the principle of national treatment was preserved in the Treaty; secondly, the choice of national legislation through which the obligations under the Treaty were to be implemented was left to the Contracting Parties; and thirdly, the proposed protection related to the rights of the creators of layout-designs.

262.2 He stated that it was known that the layout-designs served as an input into the actual production of integrated circuits. He further mentioned that his country had already developed conditions for the creation of indigenous layout-designs. He further indicated that Yugoslavia did not have sufficient facilities for the production of integrated circuits. It was interested in having the protection of its own layout-designs because then the actual production of the corresponding integrated circuits might be carried out anywhere without the fear that Yugoslavian layout-designs could be eventually exploited, contrary to the interests of their creators. His Delegation was committed to giving its full support and constructive contribution to the work of the Conference with the hope that it would lead to the successful conclusion of the Treaty. He finally indicated that his hope was additionally strengthened by the fact that WIPO had done excellent work by preparing the basic documents.

263. Mr. KHREISAT (Jordan) thanked the Government of the United States of America for its hospitality and the Director General of WIPO and his staff for the excellent preparatory work. He stated that many countries wished to have a treaty in the field of integrated circuits and, therefore, were ready to revise their national legislation or to adopt one. The treaty was supposed to ensure fairly the interests of inventors, producers and users, and to take into account the problems of the transfer of technology to the developing countries and the existence of the respective bilateral agreements in that field.

264. Mr. APAM KWASSI (Togo) thanked WIPO for the large volume of high-quality preparatory work for the Conference, and the Government of the United States of America for hosting the Conference and providing excellent working conditions. He expressed hope that the Conference would work in a spirit of constructive compromise, always seeking consensus. His Delegation was going to contribute to that goal.

265. The PRESIDENT announced that the meeting was suspended for 15 minutes.

[Suspension]

266. The PRESIDENT reconvened the meeting.

267. Ms. FERNANDEZ (Argentina) stated that Argentina recognized and respected the principle that intellectual creations should be protected adequately in recognition of the contributions which such creations make towards the improvement of society as a whole. Such protection, however, required a system of broad dissemination of the objects of protection as well as a clear definition of such objects. To the extent that her Delegation could not support a position denying the legitimate rights of creators, it could not support positions which departed from the necessary recognition that a protected creation should serve the broad interests of the users, progress, and the development of every country. The Delegation was not yet convinced that there was a need for a sui generis approach to the protection of integrated circuits, and was rather concerned that a proliferation of ad hoc agreements would be harmful to the system of protection established by the Paris and the Berne Conventions.

268. Mr. KANSIL (Indonesia) expressed the gratitude of his Delegation to the Government of the United States of America for its hospitality, as well as for the excellent facilities provided for the Conference. He declared that the Government of Indonesia attached great importance to the protection of intellectual property as it proceeded with its economic development in general, and with industrial development in particular. Among the recent measures taken by the Government of Indonesia in the field of intellectual property was the amendment of the copyright law. A patent bill had been submitted to Parliament and trademark legislation was under consideration. Finally, he stated that his Delegation intended to participate constructively in the successful conclusion of the Conference.

269. Mr. TIGBO (Cameroon) thanked the Government of the United States of America for hosting the Conference in the beautiful and hospitable city of Washington, and the International Bureau of WIPO for its efforts in preparing the draft Treaty. He further stated that, in the field of integrated circuits, the member States of OAPI acted primarily as users but hoped to start production one day. The Treaty could contribute to the promotion of transfer of the necessary technology, as well as to take into account both the interests of producers and of users. He expressed the view that the Treaty, with its universal nature, would contribute to stimulation of technological progress in the world. He called for a climate of confidence and a spirit of compromise to govern the Conference.

270. Mr. FERNANDEZ FINALE (Cuba) joined the other delegations in congratulating the President and officers on their election. He pointed out that there were still in the draft text of the Treaty some divergencies which

had to be solved in order for the Treaty to be universally accepted and useful to all the countries. In this respect, the position of Cuba had been sufficiently expressed in previous meetings, and it was therefore sufficient to refer to the reports of those meetings.

271. Mrs. SILVA (Angola) stated that the intellectual property system in Angola was new but that the Government of Angola was interested in all questions concerning the protection of intellectual property. She thanked the Director General of WIPO for the invitation to the Conference and for the high quality of the preparatory documents. Finally, she expressed her gratitude to the Government of the United States of America for the warm welcome and the good conditions created for the Conference.

272. Mr. SUCHAI JAOVISIDHA (Thailand) expressed the sincere thanks of his Government to the Government of the United States of America for hosting the Conference and for the excellent facilities provided. He also noted that WIPO had done an excellent work without which it would have been impossible to hold that Conference. He emphasized that the outcome of the Conference would have a direct bearing on the viability of the infant microchip industries in a number of developing countries; the Treaty might have the effect of promoting the viability of such industries. He indicated that, in the view of his Government, intellectual property protection should be related to the needs of national economic development. Due to the fact that public interest in one country might differ from that in another country, he anticipated different views at the Conference. Finally, he expressed hope that the spirit of compromise would prevail and would enable, at the end of the Conference, the conclusion of a treaty acceptable to most countries.

273. Mr. VEGA JARAMILLO (Colombia) thanked the Government of the United States of America for permitting its presence at the Conference. He thanked the World Intellectual Property Organization for the work done in the development of the draft Treaty. He supported the considerations expressed by the Delegation of Uruguay, in that they summarized the concerns and expectations his Government had at the beginning of the Conference.

274. Mr. DUKA (Philippines) expressed his thanks to the Government of the United States of America for hosting the Diplomatic Conference. He also commended the Director General of WIPO on his handling of the deliberations on the draft Rules and thanked WIPO for inviting the Philippines to the Conference. He indicated that, although the Philippines had had over 41 years of experience in the protection and administration of intellectual and industrial property, it had very limited experience in integrated circuits. He stated that his Delegation would endeavor to extend its fullest cooperation to help the Conference achieve a successful conclusion.

275. Mr. EL HUNI (Libya) expressed his thanks to the Government of the United States of America for hosting the Conference, as well as to the Director General of WIPO for all his efforts to ensure its success. He further stated that Libya attributed great importance to the protection of intellectual property. Its legislation provided for the protection of

patents, authors' rights, and other forms of intellectual property. In his opinion, the Conference should take into account the interests of all persons concerned, that is, of consumers, manufacturers and creators. He finally expressed the hope that the Conference would facilitate the transfer of the technology of semiconductor products to the developing countries and would establish a system of legal protection, providing for equilibrium between the interests of all the countries.

276. Mr. SATELER ALONSO (Chile) joined other delegations in thanking the Government of the United States of America for hosting the Diplomatic Conference. He pointed out that the success of this Conference would depend fundamentally on obtaining a balance in the protection of the legitimate rights of the creators with the interests of the users, and in that respect he could support what had been said by the Delegations of Uruguay, Mexico, Yugoslavia and Colombia. It should be added, however, that the negotiations in the Diplomatic Conference should be taken as an opportunity to reinforce the multilateral approach to international economic relations which had, in recent times, been weakened by unilateral action which not only produced harm to international economic relations but also transcended to other spheres.

277. Mr. VELONTRASINA (Madagascar) expressed his thanks to the Government of the United States of America as well as to WIPO, and noted that his Government had participated in the preparatory work through its Permanent Mission in Geneva. He considered integrated circuits to be of great importance for the modern economy and stated that his Delegation was going to actively participate in the Conference.

278. The PRESIDENT declared that all delegations that had requested the opportunity to make a general declaration had now spoken. He invited observer delegations to make declarations.

279. Mr. HACHED (Organization of African Unity) expressed his appreciation of the excellent preparation and high-quality organization of the present Conference. He also thanked the Government of the United States of America for hosting the Conference. He further stated that, during the 25 years of its existence, the Organization of African Unity had deepened its involvement in the development of economic, social and cultural life of the African continent. With the adoption in Lagos of the program of the economic revival in Africa and the adoption of the common position towards the African external debt, as well as with gradual restructuring of the Organization, it might be quite reasonably considered as a Pan-African organization where its 50 member States might discuss the various questions of common interest in economic, social and cultural areas. He also stated that the Organization of African Unity watched with attention all issues related to intellectual property and, in particular, the process of conclusion of a treaty on intellectual property in respect of integrated circuits.

280. The PRESIDENT, observing that there were no other intergovernmental organizations wishing to take the floor, invited international non-governmental organizations to make declarations.

281.1 Mr. BERNHARD (International Chamber of Commerce (ICC)) thanked the Government of the United States of America for hosting the Conference and expressed his recognition of the excellent work carried out by WIPO.

281.2 He stated that the draft Treaty constituted the combination of some years of work within the WIPO Committee of Experts, where the ICC had been represented and had taken an active part. The ICC had given its support to the conclusion of the Treaty, since it considered that the legal protection of integrated circuit layout-designs was necessary to promote transfers of technology and to foster a worldwide economic development based on the latest technological advances. He expressed the opinion that adequate protection favored the long-term interests of international business in developed and developing countries alike.

281.3 He pointed out that, unlike computer software, to which copyright principles had been applied successfully, integrated circuit layout-designs did not lend themselves to protection by adaptation of the traditional principles of the patent and copyright systems. He expressed the opinion that an international treaty based on principles specifically designed for integrated circuit layout-designs would be the best way of providing an appropriate framework of protection. Protection founded on the Treaty would function in the most efficient way through the application of internationally accepted rules which were as simplified, uniform and harmonized as possible. In his opinion, a system providing an appropriate level of protection and streamlined procedures would be particularly advantageous for small and medium-sized companies. Similarly, cumbersome implementation procedures, inadequate protection or lack of uniform rules would create difficulties, in particular for such companies.

281.4 He noted that the WIPO draft Treaty provisions contained numerous alternatives for protection of the various aspects of integrated circuit layout-designs. He further gave an outline of certain aspects and principles which should be covered by the Treaty. He indicated, in particular, that the protection of integrated circuit layout-designs should be founded on the principle of national treatment. To avoid impaired interpretations of principles applicable to other intellectual property systems, such as patents or copyright, specific national laws were recommended as the best way of implementing the Treaty. In order for the protection to be effective, it had to be available at an early point before an integrated circuit layout-design was fixed in a microchip. Protection had to apply to the design as such and not be conditional upon the introduction of the design on a microchip. He declared the opposition of the ICC to compulsory licensing. It could accept a very limited exception to that principle in certain well-defined cases, such as national health emergency. He underlined that the ICC could not accept a more sweeping exception such as public interest. Speaking on the scope of protection, he indicated that it should be unlawful to reproduce or incorporate the protected layout-design in a microchip in whole or in part. He stated that the treatment given to reverse engineering in the draft Treaty needed further elaboration to ensure that protection was adequate. Exhaustion of rights should be left to determination by each nation. The Treaty should make clear that it would be up to the Contracting Parties of the Treaty to decide on national, regional or international exhaustion. Speaking on formalities, he expressed the opinion that only materials allowing identification of a layout-design and not a copy or drawing of it should be

required in any application for registration. The Treaty should contain a provision clarifying that no other formalities would be required. He considered that the appropriate duration of protection should be a maximum of 15 years from the creation of the integrated circuit layout-design, or 10 years from the first commercial exploitation, or 10 years from registration. He declared that the ICC recognized the interest of effective treaty enforcement procedures and would support examination by WIPO of possibilities of an international treaty to cover intellectual property rights in general. The ICC also supported the insertion of a provision for a consultation mechanism in the present Treaty, but he doubted that that question should become the determining factor in the adoption of the Treaty. He considered that it was extremely important to make every effort at the Diplomatic Conference to reach an agreement on the above principles, which might provide a basis for an adequate level of protection for integrated circuit layout-designs and for the conclusion of the Treaty.

282. Mr. JENNINGS (FICPI) congratulated WIPO and the Director General on their monumental efforts in the development of the draft Treaty. He expressed hope to be able to make a meaningful contribution to the deliberations as they progressed.

283. Mr. LAURIE (AIPPI) stated that the significance of the present Diplomatic Conference and of the preliminary sessions of the Committee of Experts extended well beyond the very important subject matter of integrated circuits, since they represented the most extensive dialogue between experts in technology and in law from around the world which had ever taken place. All that effort provided an important precedent for the effective adaptation of the world's intellectual property systems to the needs of new and rapidly evolving technologies, which were beyond one's capacity to imagine. That adaptation of a law to new technology might take the form of a sui generis treaty as in the case of integrated circuits. It might also take the form of the development of model laws for national enactment within the framework of existing multilateral conventions. Finally, it might take the form of providing an international forum for the development of the relevant legal issues for further discussion at a national level. He expressed the hope that, regardless of the question which of these avenues was most appropriate in any particular context, WIPO would continue to serve in its role of leadership.

284. The PRESIDENT announced that the Plenary session was adjourned until the next morning.

Eighth Meeting
Friday, May 12, 1989
Morning

285.1 The PRESIDENT, speaking in his role as a representative of the Government of the United States of America, stated that the Government of the United States of America pledged to work for a satisfactory multinational consensus for protecting the layout-designs of microchips. Semiconductor chips formed an essential element in much of the world's technology and no one would question their importance to the advancement of science and the improvement of the quality of life everywhere. The United States of America saluted the creators of those products and encouraged the greatest possible use of that technology. Given the importance of chips and their widespread use, it felt a responsibility to extend protection to the creators of those tiny marvels.

285.2 The United States of America was part of a fairly widespread system of reciprocal protection at the current time but it recognized the need for a multinational treaty, one that afforded an adequate level of protection and brought within its umbrella a large community of nations. To that end, the WIPO draft sketched out what the United States of America saw as a coherent system of international protection. The draft reflected the discussions of the four meetings of experts and it embodied many compromises to accommodate different perspectives. He expressed the appreciation of the Government of the United States of America for the efforts of the preparatory committees that had labored heroically to shape a viable draft Treaty. He indicated that the United States of America had concerns about certain provisions in the draft and might propose alternatives or amendments, but the Basic Proposal was a good starting point and one that had the makings of a fair compromise.

285.3 He considered that the present draft did not try to jam a sui generis approach down anyone's throat. Contracting States would have great flexibility in implementing their obligations. The layout-designs of microchips could be protected under any designated law or combination of laws, patents, copyrights, unfair competition, just as long as the standards met the Treaty minimum. Whatever form of protection a country chose, the appropriate standard of protection should be originality. No higher standard, such as novelty, should be read into the Conference document.

285.4 During the preparatory work, the Government of the United States of America had opposed any provision that would explicitly authorize compulsory licensing. Unlike other more pervasive systems of intellectual property protection, the proposed protection for layout-designs was relatively modest. The draft Treaty permitted private use by a third party for evaluation, analysis or teaching, as well as the use of the fruits of that knowledge for reverse engineering another chip. Protection of layout-designs did not hamper the transfer of technology since reverse engineering permitted, and even encouraged, the development of science and technology. Additionally, reverse engineering would be permitted under the Treaty without payment, in contrast to a non-voluntary license that would require payment to the holder of the right. With respect to limitations on exclusive rights, he indicated that the

United States of America could consider a compromise along the lines it had proposed at the fourth meeting of the Committee of Experts, i.e., a compulsory license based on "a declared national health or public safety emergency or to remedy an adjudicated violation of antitrust laws or to allow use non-exclusively by a government for governmental purposes."

285.5 He stated that the United States of America supported the 10-year period for protection. He considered that the protection of layout-designs involved a balancing of interests and, if the term was too short, the incentive to create and register was reduced. The 10-year term was reasonable given that other intellectual property treaties granted protection for far longer terms. He indicated that, in respect of registration, the United States of America sought only to establish proof of ownership. The protection of trade secrets was so crucial to the marketing of microchips that the United States of America strongly favored the deposit of only identifying material for purposes of registration. The possibility of withholding trade secrets encouraged a greater number of applications for registration.

285.6 He considered a dispute-settlement mechanism to be a crucial element of the Treaty. The draft Treaty contained a dispute-settlement provision as an alternative provision (Article 13bis). The United States of America strongly supported the inclusion of an adequate and effective enforcement provision along those lines, but drafted in specific detail to permit a realistic assessment of its effectiveness. He noted that the absence of formal consultation, dispute-settlement and enforcement provisions in other intellectual property treaties had been, and continued to be, a source of some frustration. It was also a source of dissatisfaction and some international friction. He believed that the Treaty provided with the opportunity to make a step toward a remedy for that deficiency and to begin to explore the practicality of dispute settlement within the umbrella of WIPO.

286. The PRESIDENT then called upon Mr. Kastenmeier, member of the United States House of Representatives and Chairman, Subcommittee on Courts, Intellectual Property, and the Administration of Justice, to comment on the draft Treaty as a member of the Delegation of the United States of America.

287.1 Mr. KASTENMEIER (United States of America) stated that the debate in the United States of America over the protectability of the layout-designs of semiconductor chips had started more than 10 years before. At the outset of the debate, proponents of protection had favored a simple amendment to the copyright law of the United States of America to address the concerns of the industry regarding piracy without disturbing a healthy and competitive environment. As the debate had progressed however, it had become apparent that a copyright approach presented difficult problems or would require radical adjustment to basic copyright principles. Under copyright, protection would have been far broader than that which was necessary to achieve the public policy goals. Then, in order to adopt a fair balanced approach, a sui generis legislation had been drafted which was separate from other intellectual property statutes. After being enacted, the United States Semiconductor Chip Protection Act marked the first time in over 100 years that the United States had established a new form of intellectual property protection. He further expressed the view that the purpose of the

Semiconductor Chip Protection Act was not primarily to enrich the creators but rather to benefit the public through fostering the creation of new innovative semiconductor chip products. To ensure that innovation would not be stifled, the US law established a minimum level of protection for the semiconductor industry to remain healthy. The idea to enact excessive protection recommended by some segments of the industry had been rejected.

287.2 Many provisions of the United States Semiconductor Chip Act established severe limitations on the rights of creators. In no case did protection extend to any idea, procedure, process, system, method of operation, concept, principle or discovery. Duration of protection was established for the relatively short period of 10 years. The principle of reverse engineering and the first sale doctrine established important limitations on the exclusive rights of creators. A special provision protected innocent purchasers of infringing semiconductor products from unwarranted liabilities.

287.3 He indicated that the Delegates of the Conference would inevitably re-visit many of the issues faced by the Congress of the United States of America five or 10 years before when dealing with the Semiconductor Chip Act. He mentioned that the balancing of the interests of proprietors with that of consumers and other economic competitors had already been done by nations that had legislatively addressed the issues relating to layout-design protection. He pointed out that those laws established a minimum level of protection and emphasized that, if the standards of protection under the Treaty under discussion were to fall subtantially short of that minimum level standard, it was questionable whether any meaningful protection would be established at all, and he doubted whether the Senate of the United States of America would ratify such a Treaty.

287.4 He expressed the hope that the world community represented at the Conference would be in a position to proceed towards its goal on a consensus approach. He highly appreciated the efforts of WIPO and its Director General at the preliminary stages of the Treaty drafting process. He noted that WIPO was the proper and the only forum for such a process to occur in. Speaking from his congressional perspective, he indicated that he would oppose setting minimum standards for intellectual property protection in other settings such as GATT. He stated that a firm basis in international intellectual property law was necessary before minimum standards could be identified in the trade context. A maximum number of countries should participate in that process and the issues should be considered individually rather than bargained one or the other. He stated that the Semiconductor Chip Protection Act, in its international transitional provisions, paved the way for bilateral relations between the United States of America and those countries which had made satisfactory progress towards enacting laws on their own and, ultimately, for a multilateral treaty. He further drew the attention of the participants to the fact that the transitional features of the United States' law were of an interim nature only, and he did not expect those transitional provisions to be continued indefinitely and to be an alternative to a treaty. Finally, he wished the delegates well in forging common agreement covering the protection of microchips and indicated that success in the Diplomatic Conference would eliminate barriers to the flow of technology across national boundaries. He declared in conclusion that multilateralism was always better than bilateral arrangements.

288. The PRESIDENT declared that the Plenary Meeting was adjourned and that the next item of business on the Agenda would be the convening of the Main Committee.

Ninth Meeting
Friday, May 26, 1989
Afternoon

Consideration of the Report of the Credentials Committee

289. The PRESIDENT stated that the next item of the Agenda was the consideration of the Report of the Credentials Committee and gave the floor to its Chairman, Mr. Fortini.

290. Mr. FORTINI (Italy), speaking as Chairman of the Credentials Committee, presented to the Conference the report of the Credentials Committee contained in document IPIC/DC/44. The Committee was composed of the representatives of Australia, Czechoslovakia, the German Democratic Republic, Ghana, Italy, Norway, the Philippines, Senegal, Syria and Uruguay. Mr. Fortini stated that the Credentials Committee had examined the documents presented by the national delegations and by the delegations of intergovernmental and non-governmental organizations. The list of countries which had presented credentials and full powers was given in paragraph 6 of the report. The list of countries which had presented credentials was given in paragraph 7. The list of observer organizations was given in paragraph 9. He further indicated that in paragraph 11 the Credentials Committee had expressed the wish that the Secretariat should bring Rules 6, 7 and 10 of the Rules of Procedure to the attention of Member or Observer Delegations not having presented credentials or full powers and of the representatives of Observer Organizations not having presented letters or other documents of appointment. Finally, in paragraph 12, the Credentials Committee had authorized the Secretariat to prepare the report for submission to the Conference and the Chairman to examine credentials, full powers and letters or other documents of appointment which might be presented after the close of the Committee's meeting and report to the Conference on this subject. He noted that no such documents had been presented.

291. Mrs. CHALAAN (Syria), speaking in the name of her Delegation, as well as in the name of the Delegations of the Arab States members of the League of Arab Countries participating in the Conference, expressed reservations on the basis of the reasons given in paragraph 10 of document IPIC/DC/44 in respect of the credentials and full powers of the Delegation of Israel. She stated that the Delegations of the Arab States wished to stress that the participation of the Arab States in the Conference, as well as signing of the Final Act and of the Treaty, or of any present or future amendments thereto, in no case meant recognition of Israel in any form. She finally stated that it was the request of the Arab States to have the above reservations included in the documents of the Conference.

292. Mr. GABAY (Israel) expressed surprise that, at the present stage and juncture of major international efforts for peace in the Middle East and conciliatory spirit in international relations, the Delegation of Syria found it appropriate to go back to those tactics which had never helped the process of peace. He further indicated that he would not like to exasperate the good spirit of cooperation which finally prevailed and brought about an agreement.

293. The PRESIDENT asked the delegations whether it was possible to proceed to the adoption of the Report of the Credentials Committee.

294. Mr. TIGBO (Cameroon) asked for clarification in respect of the difference between credentials and full powers.

295. Mr. FORTINI (Italy), speaking as Chairman of the Credentials Committee, stated that credentials meant the documents issued by the competent authorities, where the members of the delegations or a delegate were designated, i.e. those documents which permitted a delegation to participate in a meeting, for example, in the present Conference. Full powers, on the contrary, represented the document which gave power to the head of the delegation, or to other members of a delegation, to sign an eventual treaty resulting from the sessions of the Conference. Consequently, delegations who only had credentials had the right to make declarations and to participate in all the activities of the Conference, but could not sign the Treaty. Delegations who had full power could sign the Treaty.

296. Mr. TIGBO (Cameroon) explained that his question arose because of the situation whereby certain delegations which had brought with them documents entitled "Full Powers" later found themselves listed in the group of delegations with credentials.

297. Mr. FORTINI (Italy), speaking as Chairman of the Credentials Committee, confirmed that the above situation had occurred and explained that certain delegations had presented documents entitled "Full Powers," while in practice their content had explicitly provided only for the credentials of certain persons to be present at the Conference as delegates of those States. He further stated that the above situation had been discovered by the Credentials Committee but that it was not seen as creating a problem for the Committee.

298. The PRESIDENT then moved to the adoption of the Report of the Credentials Committee and, in view of absence of any objections, declared that the Report of the Credentials Committee was adopted.

299. The Report of the Credentials Committee was adopted.

Adoption of the Treaty

300. The PRESIDENT moved to the question of the adoption of the Treaty.

301. Ms. SCHRADER (United States of America) requested a roll-call vote on the question of the adoption of the Treaty.

302. Mr. SAEKI (Japan) stated that his Delegation supported the proposal by the Delegation of the United States of America.

303. Mr. ILIEV (Bulgaria) stated that his Delegation did not support the proposal of the Delegation of the United States of America.

304. Mr. COMBALDIEU (France) stated that his Delegation did not agree with the proposal of the Delegation of the United States of America to have a roll-call vote on the adoption of the Treaty. He considered that all delegations had had every opportunity to express their positions in respect of the Treaty during the sessions of the Main Committee and that they could also do so in the Plenary of the Conference. He further expressed the view that the roll-call vote would damage the spirit of cooperation and consensus until then having existed within WIPO. Therefore, he asked for a vote on the question whether to have a roll-call vote on the adoption of the Treaty.

305. Mr. CASTRO NEVES (Brazil) stated that his Delegation supported the arguments presented by the Delegation of France.

306. Mr. MALHOTRA (India) stated that until present many efforts had been made to adopt the Treaty by consensus. That aim had been successfully put through to the Main Committee. He further indicated that consensus might not necessarily mean unanimity and that he was aware of at least two Delegations who were not in favor of the Treaty in its present form. He expressed the view that, in the interests of having a consensus, it might have been preferable that those Delegations could have recorded their displeasure in respect of the Treaty, indicating that, if there had been a vote, then they would have voted against the adoption of the Treaty. This had not been done. Therefore, he supported the proposal of the Delegation of France to have a vote on the necessity of the vote on the question of the adoption of the Treaty.

307. Ms. SCHRADER (United States of America) repeated the request of her Delegation for a roll-call vote on the adoption of the Treaty and referred to Rule 35, stating that if there was a request for a roll-call vote and the request was seconded, then the vote should take place.

308. Mr. KOMAROV (Soviet Union) expressed the view that a situation would be created which did not correspond to the spirit of cooperation and compromise.

309. Mr. WATTERS (Canada) supported the proposal for a roll-call vote, which had been made by the Delegation of the United States of America and seconded by the Delegation of Japan.

310. Mr. GABAY (Israel) also supported the proposal of the Delegation of the United States of America.

311. Mr. FERNANDEZ FINALE (Cuba) stated his Delegation's wish to join the proposals submitted by the Delegations of Bulgaria, France, India and others that had preceded his Delegation on the floor and made a further appeal to try to obtain consensus in the adoption of the Treaty.

312. Mr. COMBALDIEU (France) stated that the Plenary Meeting was equal to the Assembly Meeting and possessed sovereignty in respect of its decisions. So it could change its internal procedure according to its wishes. He further indicated that it was quite democratic to decide by vote the question of the necessity to have a vote.

313. Mr. BOGSCH (Director General of WIPO) suggested that recourse might be had to Rule 36(2), which provided that "the Presiding Officer may permit any Member Delegation to explain its vote or abstention either before or after the voting." He indicated that the voting might be effected by show of hands and those who voted against the adoption of the Treaty could then ask for the floor and explain their vote, which explanation might start with the phrase: "I was one of the delegations which voted against." The records of the Conference then would show the identity of those who voted against and would not show the identity of those who voted for or who abstained unless the latter took the floor to announce how they voted. He recalled that the purpose of raising the question of roll-call vote was to make it quite clear in the Conference documents and perhaps in the press that certain countries voted against the adoption of the Treaty.

314. Ms. SCHRADER (United States of America) stated that her Delegation invoked the right which existed in all ordinary parliamentary proceedings and which was in clear conformity with the Rules of Procedure of the Conference. She strongly believed that it did not require any amendment of the Rules of Procedure and requested a ruling from the Chair that the proposal to amend the Rules of Procedure was out of order.

315. The PRESIDENT stated that there was a proposal on the floor by the Delegation of the United States of America and seconded by the Delegation of Japan. Thus, under the Rules of Procedure, another motion was out of order.

316. Mr. MALHOTRA (India) stated that the Delegation of France and some other delegations had made a proposal to put to vote the question whether to have a roll-call vote or not. He expressed the view that an amendment should be voted first. He asked for clarification from the Secretariat of the Conference.

317. Mr. BOGSCH (Director General of WIPO) stated that one could refuse a roll-call vote only through an amendment of the Rules of Procedure. He further called on the delegations not to attempt to change the Rules of Procedure, but to try to obtain the result in another way. He indicated that he was not interpreting the Rules but appealing primarily to the delegations which wished to have a roll-call vote.

318. Ms. SCHRADER (United States of America) stated that, in the interest of moving the Plenary Session to its conclusion, her Delegation would accept the proposal of the Director General of WIPO to vote by show of hands, in which the negative votes would be shown and the delegations would have the right to make a statement as part of that vote.

319. Mr. JEGEDE (Nigeria) drew attention to document IPIC/DC/44 and stated that the name of Nigeria did not appear in any of the paragraphs contained in that document; this would put Nigeria in a difficult position as to how to vote and what to do in the circumstances. He indicated that his Delegation had handed over to the Secretariat the document which, in his opinion, fitted squarely and conformed to paragraph 8 of document IPIC/DC/44; but still the name of Nigeria did not appear.

320. Mr. FORTINI (Italy), speaking as Chairman of the Credentials Committee, stated that, if the name of a country did not appear on the list of those countries which had presented their credentials, or full powers, that meant that that country had not presented credentials or full powers. In other words, that meant that the Committee had not received the particular credentials. If a delegation informed that it had sent the credentials and they had been lost, that was another question. He noted that the Delegation of Nigeria had not put it in such a way.

321. Mr. JEGEDE (Nigeria) stated that he meant that his Delegation had presented the credentials that day to the Secretariat. Therefore, he expected that the name of Nigeria would appear in document IPIC/DC/44.

322. Mr. FORTINI (Italy), speaking as the Chairman of the Credentials Committee, stated that the Report of the Credentials Committee had been approved by all the Members of the Committee. He recalled that, when presenting the Report to the Conference, he had indicated that the Credentials Committee had authorized him to take into account all the documents which could have been transmitted between the time of the preparation of the Report, at the last session of the Credentials Committee, and the Plenary Session. No documents had been so far transmitted. Therefore, at present, he was not in a position to take into account a document which he had never seen. The Delegation of Nigeria had informed the Credentials Committee that it had submitted a document to the Secretariat. That document represented a letter signed by the Ambassador. He further stated that such a signature was not sufficient for the credentials since the Regulations approved long before the beginning of the Conference had provided that the credentials should be signed by the Minister for Foreign Affairs, by the Prime Minister or by the Head of the State. The letter signed by the Ambassador did not, therefore, appear to represent the credentials.

323. Mr. JEGEDE (Nigeria) stated that he realized that the letter did not represent credentials but raised the question why the letter was being treated differently from the similar documents indicated in paragraph 8 of the Report of the Credentials Committee.

324. Mr. FORTINI (Italy), speaking as Chairman of the Credentials Committee, stated that the Credentials Committee had worked on the basis of the document which had been given to it and which provided that the credentials and full powers should be signed either by the Head of the State, or by the Head of the Government, or by the Minister for Foreign Affairs. That common understanding was shared by both the Credentials Committee and the Secretariat of the Conference. The Secretariat had transmitted to the Credentials Committee the credentials and full powers for examination, and all of those documents had been signed by the Minister for Foreign Affairs, by the Prime Minister or by the Head of the State. He recalled that this was a common practice at all diplomatic conferences. He stated that, since the Credentials Committee had been established to verify the credentials and full powers on the basis of certain regulations, he, as the Chairman of the Credentials Committee, was obliged to comply with those regulations. Consequently, he could do nothing in connection with the question raised by the Delegation of Nigeria. He drew attention to the fact that the Final Report of the Credentials Committee had been adopted by the Conference.

325. Mr. BOGSCH (Director General of WIPO) confirmed that the Secretariat had just received a Note Verbale from the Embassy of Nigeria and suggested that the Conference meeting in plenary might solve this question by simply giving the right to vote to Nigeria.

326. Mr. FORTINI (Italy), speaking as Chairman of the Credentials Committee, stated that he doubted whether it was worthwhile first to create the Credentials Committee which worked a great deal with the Secretariat of the Conference, and then to put aside all that work because of the case of Nigeria. He indicated that there might be other delegations, as well, which had not presented their credentials.

327. Mr. KHREISAT (Jordan) expressed the view that an ambassador might represent the government of his country and sign in the name of the government. He considered that the Delegation of Nigeria had the right to vote in case the signature of the Ambassador was valid.

328. Mr. OLIVERI LOPEZ (Argentina) stated his Delegation's agreement with the Delegation of France in the sense that the Diplomatic Conference had the right to determine its own rules of procedure. It could, therefore, in this case, recognize that the Delegation of Nigeria may participate in the vote. On the other hand, he also recognized that the Ambassador of Italy, as Chairman of the Credentials Committee, had discharged his duties in accordance with the applicable rules. He submitted, as a possible solution, that, in this type of situation, a delegation that had not been able to participate in a vote could be allowed to declare afterwards that, had it been present at the vote, it would have voted in a certain way. This would allow that country to put on record its political will for future reference.

329. Mr. MALHOTRA (India) acknowledged that the correct method to deal with credentials was to pass them through the Credentials Committee. But since, unfortunately, the Committee had already had its session, at present it did not make sense to have another session of the Committee. He further proposed to take into account that the Delegation of Nigeria had submitted credentials which, while not corresponding to the Rules of Procedure of the Conference, were still regular in the sense that they had been submitted in the form of a Note Verbale from the Ambassador. Therefore, he proposed as a very special case to give to the Delegation of Nigeria the right to vote without putting that question to a vote by the Conference.

330. The PRESIDENT asked whether any delegation objected to allowing the Delegation of Nigeria to vote and, in absence thereof, declared that the right to vote was granted.

331. Mr. SAEKI (Japan) expressed the view that his Delegation had still the right to request a roll-call vote despite the statement made by the Delegation of the United States of America, since the position of the Delegation of Japan was unchanged.

332. Mr. CASADO CERVIÑO (Spain), speaking on behalf of the member States of the European Communities, stated that, if there was to be a vote, the 12 member States of the European Communities would not exercise their vote but the Delegation of the European Communities would vote on behalf of all their member States.

333. Mr. GABAY (Israel) seconded the proposal made by the Delegation of Japan.

334. Mr. BOGSCH (Director General of WIPO) stated that the Rules of Procedure allowed two delegations to ask for a roll-call, but the original proponent of that proposal had withdrawn its proposal. It had then been proposed to have, instead, a vote by show of hands and to give thereafter an opportunity to any delegation--particularly those which voted against--to explain their reasons for doing so.

335. Mr. OLIVERI LOPEZ (Argentina) said that what had been proposed was that, in a spirit of compromise, the adoption of the Treaty not be subjected to a roll-call and appealed to the Delegation of Japan to accept, as the United States of America had already done, that the vote take place by a show of hands with the possibility for delegations to justify their vote after casting it.

336. The PRESIDENT, referring to Rule 35, proposed that the roll-call be taken in the French alphabetical order of the names of States, beginning with the State whose name was drawn by lot by the presiding officer.

337. Mr. COMBALDIEU (France) stated that his Delegation had made a proposal of a procedural nature. Therefore, it should also be put to a vote. He further indicated, however, that he preferred the compromise proposal by the Director General of WIPO.

338. Mr. FERNANDEZ FINALE (Cuba) expressed support for the proposal of the Delegation of France and requested, that, in accordance with the sovereign will of the majority of the Conference, a vote be taken following the proposal of the distinguished Delegation of France.

339. The PRESIDENT declared that he sought a ruling on the point of order raised by the Delegation of France. He further declared the Meeting of the Plenary suspended for five minutes.

[Suspension]

340. Mr. SAEKI (Japan) stated that his Delegation withdrew the proposal which it had made in respect of the roll-call vote.

341. Mr. GABAY (Israel) stated that his Delegation withdrew its secondment for the proposal of the Delegation of Japan. He further stated that his Delegation supported the proposals made by the Director General of WIPO.

342. The PRESIDENT proposed to proceed as the Director General of WIPO had suggested, and to have a vote by show of hands. He further explained that the affirmative vote should be indicated by a raising of country flags, while the negative votes should be indicated with specific recognition from the Chair.

343. Mr. BOGSCH (Director General of WIPO) added that after the vote any delegation which wished to explain its vote would be in a position to do so. He further raised the question of the mode of voting of the European Communities.

344. Mr. CASADO CERVIÑO (Spain) stated that the Delegation of the European Communities would vote for all 12 member States of the Communities.

345. The PRESIDENT stated that the proceedings were clear and asked the delegations to start the voting procedure. He called for all delegations in favor of the Treaty to raise their country flags. Then he asked who was voting in the negative and identified the Delegations of the United States of America and Japan. Finally, he asked who abstained from the vote. He announced the result: 49 delegations voted in favor, two voted against and five abstained.

346. The Treaty was thus adopted.

347. The PRESIDENT asked whether any delegation wished to take the floor.

348. Ms. SCHRADER (United States of America) stated that her Delegation would like the records of the Conference to show that the United States voted against the Treaty. She further stated that her Delegation would like to explain its vote and turned the proceedings back to the President in his role as the Head of the Delegation of the United States of America.

349.1 Mr. OMAN (speaking in the name of the Delegation of the United States of America) stated that for the past four years the United States of America had worked hard with other countries and with WIPO trying to reach a consensus on a treaty for the protection of integrated circuits. The United States of America wanted a treaty that would strike a balance between producers and users of chips. He recalled that the United States of America was both a producer and a consumer of chips. He expressed the view that an appropriate balance of those interests would serve the interests of the entire international community, particularly the developing world.

349.2 He stated that the results of the present Conference confirmed that among those nations that had already legislated on chip protection one could see emerging a broad consensus on the appropriate standards of protection. Those standards were essentially sui generis, tailored to the peculiar circumstances of the industry. Those standards carefully balanced national and private interests reflected in existing national laws. He noted with regret that the Treaty did not reflect the emerging consensus in important respects and that the desired balance had been lost.

349.3 He recalled that, at the beginning of the Conference, Representative Kastenmeier had spoken in favor of that balance and in favor of a consensus. He indicated that the Conference had come very close to that consensus and cited, as an example, the term of protection where the Conference could not agree on the widely accepted 10-year term of protection. The Delegation of the United States of America had proposed a compromise, namely, that it could accept an eight-year term of protection if it could be made clear that that term ran from first commercial exploitation or registration. He stated that no agreement could be reached on that simple point. He further stated that an important progress had been made in respect of the consultation and dispute-settlement provisions in Article 14. He stated that from the start of the negotiation process his Delegation had sought to incorporate for the first time into a treaty made under the auspices of WIPO an effective and workable mechanism to ensure quick and amicable resolution of disputes under the Treaty. He regretted that last-minute changes made the whole mechanism unworkable.

349.4 He mentioned Article 6, which dealt with the scope of protection. He expressed hope that all delegations recognized that the Delegation of the United States of America made a major concession in agreeing to include a provision on non-voluntary licensing, just as long as that provision was tightly drawn and consistent with international practice. He stressed that concession since his Delegation was not intellectually convinced that a non-voluntary license was necessary since the term of protection was ensured and reverse engineering was available. He indicated that it was recognized in

many countries that a non-voluntary license had no relevance in the context of integrated circuits. He expressed the view that the final text established a dangerous precedent which would actually discourage creativity and scare foreign investment away from any country that would invoke it. He expressed concern that what seemed to be the objective of that provision had nothing to do with the Treaty, but rather it was included in the Treaty to satisfy other political objectives. He referred to a well-known position of the United States of America that could not accept non-voluntary licensing provisions that were not appropriately limited to the extraordinary circumstances.

349.5 He stated that Article 6 raised still other problems. It failed to deal effectively with the problems of importing, selling or otherwise distributing the semiconductor chip products and the products which included the infringing chips. He further stated that the innocent infringement provision was simply another severe limitation on the already very limited rights provided in the Treaty. His Delegation shared the concern of the Delegation of Japan that the Treaty imposed no obligation for the innocent infringer to pay a royalty after notice. He stated that his Delegation wanted a Treaty that protected the legitimate rights of creators and users and stressed that his Delegation still sought adequate and effective international standards for the protection of layout-designs of integrated circuits and that it would continue to work towards that goal. He declared that his country would continue to work with WIPO to improve the standards of protection and it would continue to strive for that objective in WIPO and by other bilateral and multilateral means.

350. Mr. GORANSSON (Sweden) explained the position of his Delegation in abstaining from voting. He appreciated the huge work done in pursuing the common goal of achieving a successful outcome of the Conference. He expressed regret that his Delegation found itself in a situation not being able to vote in favor of the Treaty because of a number of difficulties which it had in respect of the provisions of the Treaty. He recognized the very satisfactory situation where the Treaty had been adopted with overwhelming support from all groups represented at the Conference. He further considered the outcome of the Conference to be a great achievement for WIPO, which demonstrated once more that it played an important role in that field of law. He assured the Conference that his Delegation, against this background, never had considered voting against the Treaty. Finally, he stated that, upon returning home, his Delegation would continue to carefully study the Treaty in the same positive spirit of cooperation which had characterized the Conference itself, in order to see if it were possible to overcome the existing difficulties and to be able to adopt the same positive attitude towards the Treaty as was shown by other delegations. He expressed hope to finally be able to adhere to the Treaty.

351. Mr. APAM KWASSI (Togo) stated that his Delegation had been constantly trying to make its contribution to the negotiation process in respect of the Treaty. He further indicated that his Delegation approved, in general, the resulting text of the Treaty, which represented a compromise reached by consensus. He noted that his Delegation had not participated in voting because of procedural difficulties in respect of credentials and full powers.

352.1 Mr. WATTERS (Canada) stated that, since the Government of Canada attached a great importance to the promotion of multilateralism in the field of intellectual property and to a multilateral approach which met the needs of both developed and developing countries, his Delegation looked very much forward at the end of the Conference to a successful conclusion of a satisfactory treaty. By "satisfactory" his Delegation meant a treaty that would not only have helped the effective transfer of technology and the promotion of trade in integrated circuits and products containing integrated circuits, but it would also have recognized the basic justice and fairness of protecting the investments and creative efforts of the designers of such products. He noted that a result that was not supported by the world's two largest producers of layout-designs looked unusual to his Delegation. In particular, he referred to the proposals on dispute settlement and expressed the view that the proposed procedures were structured in a manner that might not permit the process to be effective.

352.2 He also expressed doubts whether Article 6(3) dealing with non-voluntary licenses had captured the right balance between the interests of the creators of layout-designs and the users of layout-designs. He stated that in the field of intellectual property the nature of the protection given to layout-designs was unique. It was a much weaker protection than the one universally recognized for other forms of intellectual property, such as copyright or patents. He further indicated that the short term of protection, the ability to reproduce for private purposes, the ability to reproduce for evaluation, analysis, research and teaching, the ability to import, sell or distribute for non-commercial purposes and the reverse engineering provisions represented significant limitations of the rights of the owner of intellectual property. He finally stated that he failed to see why such a broad non-voluntary license was needed for such unique technology as contained in layout-designs. He expressed the view that his comments explained the position his Delegation had taken in abstaining from voting.

Adoption of the Final Act

353. The PRESIDENT moved to the adoption of the Final Act and gave the floor to the Director General of WIPO.

354. Mr. BOGSCH (Director General of WIPO) stated that the text of the Final Act was contained in document IPIC/DC/45. The text of the Act was intended to confirm that the Conference had taken place. All delegations that had credentials could sign the Final Act. The Final Act was just a memory book and implied no obligation whatsoever in connection with integrated circuits or otherwise. He asked whether there were any objections against the adoption of the Final Act and, in absence thereof, proposed the Final Act be adopted.

355. It was so decided.

Closing Declarations

356. Mr. KOMAROV (Soviet Union) stated that the Conference had done substantial work during three weeks. He indicated that at certain moments the situation had been rather tense but finally the Treaty had been adopted, it being acceptable in principle by the majority of the delegations. He expressed regret that the Treaty could not be accepted either by such major producers of integrated circuits as the United States of America and Japan, nor by two other countries. He further stated that, nevertheless, his Delegation looked to the future with optimism and hoped that appropriate measures could be taken in order to rectify the situation. The Treaty had been substantially changed as a result of the discussions at the Conference. He further stated that his Delegation saw its task in incorporating the provisions of the Treaty into the national legislation under preparation in the Soviet Union. His Delegation intended to conduct all the necessary work within the shortest possible period in order to sign the Treaty and to become its practical participant. Finally, he thanked everybody for cooperation.

357. Mr. TARNOFSKY (United Kingdom) stated that the conclusion of the Treaty in the field of integrated circuits showed the great importance of that technology as well as the importance of international protection of intellectual property in respect of layout-designs of integrated circuits. He stated that the Treaty demonstrated the importance of WIPO when it came to the creation of new multilateral arrangements. He expressed hope that the conclusion of the Treaty would lead to a general improvement of the international protection of intellectual property. He expressed the view that the difficult work during the Conference had been considerably eased by the friendly attitude of all the delegations at the Conference. He indicated that it had been a great honor for him and his country to have been entrusted with the spokesmanship of Group B. In that respect he paid tribute to his Group that had been unfailingly helpful and cooperative. He also thanked the other spokesmen with whom he had established good working relationships. Finally, he expressed his gratitude to the organizers of the Conference, the host Government, the State Department and the Copyright Office of the United States of America, and also to all persons responsible for the very enjoyable social program. He thanked the President of the Conference, as well as the other chairmen, for guiding the Conference in its work. He also thanked Dr. Arpad Bogsch, Director General of WIPO, the International Bureau of WIPO, the interpreters and everyone else, who had contributed to the work.

358. Mr. VILLARREAL GONDA (Mexico) expressed his Delegation's satisfaction at the outcome of this Diplomatic Conference and for the spirit of negotiation and conciliation of interests that had prevailed at the Conference. He also expressed his Delegation's gratitude to the World Intellectual Property Organization for the support given for the holding of the Conference and all the other parties involved in this effort.

359. Mr. MALHOTRA (India) noted that almost three weeks of complex negotiations had happily ended in the conclusion of the Treaty on Intellectual Property in Respect of Integrated Circuits. On behalf of the Group of the Developing Countries, he thanked the other

groups--Group B and Group D--and China for the spirit of compromise and conciliation which they had shown. As a result, a consensus had been reached that possibly might not be entirely satisfactory for all States, but that reflected the international will of all participants at the Conference to legislate on the protection of intellectual property in respect of integrated circuits. In particular, he expressed thanks to the two delegations which did not press their point during the voting process. He further expressed thanks from the Group of the Developing Countries to the host country for the excellent facilities arranged for the Conference and for the enjoyable social programs. Finally, he wished Mr. Bogsch and the International Bureau of WIPO every success in WIPO's important activities of further strengthening international arrangements and protecting intellectual property. He expressed the appreciation of his Group to all the participants and all the supporting staff, the interpreters and everyone who had taken part in making the Conference a success.

360. Mr. AMIDU (Ghana) stated that his Government wished to express to the Government of the United States of America its gratitude for hosting the Conference, the outcome of which could be considered as positive for the microelectronics industry. He indicated that his Delegation had come to Washington to negotiate and, if possible, to adopt and sign the Treaty. He further stated that he was not disappointed, although his Delegation would have been happier if the whole international community had agreed by consensus on the outcome of the three-week Conference. He expressed the view that a joint step forward had been made towards a new universal system for the protection of intellectual property rights in the area of frontier technologies. He expressed his support for the efforts and contributions of WIPO in that area and stated that WIPO was the principal international organization responsible for the development of new agreements in the area of intellectual property rights. He expressed hope that WIPO would continue to collaborate with other international organizations with a mandate in that field. Finally, he thanked the delegations that had contributed to the success of the Conference and the interpreters whose contribution had created the atmosphere for understanding.

361. Mr. KLEIN (European Communities), on behalf of the European Community and all its member States, expressed thanks and congratulations to the President of the Conference, as well as to the Government and people of the United States of America, for their hospitality and warm welcome that had been extended. He further expressed thanks and congratulations to the Chairman of the Main Committee, Mr. Suedi, as well as to the spokesmen of the various regional groups. Finally, he expressed his appreciation to the Director General of WIPO and to the Secretariat. He stated that the European Community appreciated very much the ability to participate as a member delegation in the Conference. That had enabled his Delegation to contribute to the creation of the important new Treaty. He acknowledged that the issue of the Community's participation in the Treaty had occupied a great deal of time at the Conference, and he understood the concerns expressed by several delegations on that matter. He expressed the view that all the problems had been dealt with adequately. He appreciated the fact that for the first time in the intellectual property field the Community would be able to participate fully in a multilateral treaty. He stated that his Delegation supported the

adoption of the text of the Treaty and it was its intention to take that Treaty back to the authorities in Europe for more careful consideration. The fact that his Delegation expressed itself in favor of the Treaty reflected the importance it attached to the furtherance of multilateralism within the framework of WIPO. That goal explained considerable sacrifices made by the Delegation of the European Communities with respect to the standards which, in its opinion, should prevail in that area. He finally stressed that the work done during the three weeks was not an end in itself but another major step in the continuous adaptation within the framework of WIPO of intellectual property protection.

362. Mr. DA CONEICAO E SILVA (Angola) expressed his Delegation's gratitude for the hospitality received from the Government of the United States of America during the Conference and also thanked the organizers for the opportunity which had been given to Angola to be represented at the meeting. Although the Delegation would have preferred that the Treaty be adopted by consensus, it was still satisfied with the fact that a new Treaty had ultimately been established. The Angolan Delegation wished to avail itself of the occasion to deliver to the distinguished Delegation of the United States of America and to the distinguished Representative of the European Economic Community a small souvenir in recognition of the efforts displayed by them in these negotiations with the other countries, in particular with the Group of Developing Countries, during which a high degree of understanding had been shown.

363. Mr. GAO (China) on behalf of his Delegation expressed sincere thanks to all other delegations and organizations for their support and their cooperation at the Conference. He indicated that China had a short history in respect of intellectual property protection. Therefore, it was willing to learn from every country in order to continue the process of improvement of industrial property and copyright systems, as well as of the protection of integrated circuits. He extended his appreciation to WIPO and its Director General for their patient and tireless work. Finally, he thanked the translators for their work and the Government of the United States of America for its hospitality.

364. Ms. FERNANDEZ (Argentina) recalled that her Delegation had come to Washington with a constructive spirit despite the fact that the Basic Proposal for the Treaty presented obstacles which seemed insurmountable. The Argentine Delegation had participated seriously in the negotiating exercise with the intention of arriving at a text which would best represent a balance between the interests in play in connection with the use of integrated circuits as an indispensible tool for the development process of developing countries. Although the text adopted by the Conference contained many provisions which did not satisfy her Delegation, the progress made towards achieving that balance of interests had made the Delegation decide to vote in favor of the Treaty, the implications of which transcended its specific subject matter and touched, in particular, on the role and competence of the World Intellectual Property Organization in the international protection of intellectual property. The successful outcome of the Conference was due, to a large extent, to the indefatigable work of WIPO's Director General, Dr. Bogsch,

and was a demonstration of WIPO's ability to produce agreements on the international level in respect of the protection of intellectual property in new fields, including an effective system for the settlement of disputes. That should be seen as a useful precedent for other negotiating exercises which were under way in the international community. The Delegation also congratulated and expressed its gratitude to Mr. Suedi as Chairman of the Main Committee, to Mr. Soni as Spokesman of the Group of Developing Countries and to all the people who worked in the Secretariat of the Diplomatic Conference for their cooperation towards the successful conclusion of the Conference.

365. Mr. LIEDES (Finland) stated that the goals and purposes of the protection of integrated circuits could only be achieved by an adequate level of protection and by balancing all interests involved. He indicated that the results of the Conference were not satisfactory for his Delegation in all substantive aspects. He also regretted that consensus could not be reached. However, in order to obtain a multilateral solution and to support the valuable work of WIPO, his Delegation had given its support to the Treaty that represented a compromise solution. He noted that Finland in a positive spirit would study the outcome of the Conference and the possibility of bringing the Treaty into force. He extended his warmest thanks to the President for good cooperation and thanked all the officers and delegates of the Conference. Finally, he paid special tribute to the Director General of WIPO and to the International Bureau for their work at the Conference. He also thanked the Government of the United States of America for having invited the Conference to the beautiful city of Washington.

366. Mr. JEGEDE (Nigeria) stated that his Delegation joined the other delegations in congratulating the Director General of WIPO, the staff of the International Bureau and all the delegations attending that historic Conference for the successful conclusion of the multilateral treaty on integrated circuits. He appreciated the spirit of understanding and compromise in which the Treaty was concluded. He recalled that intellectual property which had been virtually unrecognized, particularly in the developing countries a few years before, had become a global issue in his country. He indicated that every nation at present realized that its status in the world depended on its technological development. Finally, he stated that his Government realized that the adopted Treaty was a step forward towards a free flow of technology in the world among all the participants.

367. Bishop HURLEY (Holy See) associated himself with all the thanks that had been offered. He further indicated that the adopted Treaty was a new beginning in the field which should be developed further. He recalled that the Paris Convention had been concluded in 1883 and had been revised seven times in order to be kept up-to-date. The Berne Convention which had been founded in 1886 had also been revised seven times. He expressed the view that the Treaty should be considered as an opportunity to move further and see how it worked and then to improve its conditions and provisions. He further expressed the opinion that the Treaty should have a preamble which set a mood or a philosophy and he regretted that the Treaty as it stood did not do that. He believed that a preamble to the Treaty being a non-binding part would spell out the spirit of friendship, cooperation and mutual trust which had been

present at the Conference. He supported the view that had been expressed by several delegations that one should consider the Treaty beyond any economic benefits but look at it from the point of view of exchange of technology among the nations. One should look for the stimulation of research and invention and, ultimately, for the mutual advantage to all members of the human race. Finally, he noted that microchips, integrated circuits and semiconductors represented simple tools in the hands and in the minds of the human race and that they really had some relationship to the dispelling of poverty around the world, the protection of environment and the fostering of disarmament and, even more importantly, to the promotion under the auspices of WIPO of a sense of friendship since true friendship around the world was the major step towards peace.

368. Mr. GBARWOU (Liberia) acknowledged the important roles that the various delegations, the President of the Conference and other officials, as well as the spokesmen of the various regional groups, had played in making the Conference a success, particularly in arriving at a position to adopt the Treaty. He expressed his satisfaction that most of the present delegations had supported the Treaty and saw that as representing a clear manifestation of the desire of the international community to cooperate. He further commended WIPO, its Director General and its staff for the good work done at the Conference and extended thanks and appreciation to the Government of the United States of America for its crucial role in organizing the Conference. He expressed the view that the United States of America when it came to the protection of intellectual property worldwide had a very important role to play. It had a role not only on the national level but also on the bilateral and multilateral levels. Finally, he expressed hope that, in the near future, parties to the Treaty would reach the point where, in a spirit of cooperation and understanding, they would be able to improve the Treaty for the benefit of mankind.

369. The PRESIDENT, on behalf of the Government of the United States of America, thanked all the delegates for having come to Washington. He expressed regret that the United States of America could not sign the resulting Treaty. Nonetheless, he assured the Director General of WIPO that the support of the United States of America for WIPO remained strong. In that regard, he recognized the extensive knowledge, skill and vigor that the Director General and his staff had brought to bear, both in the preparations for, and the activities in, the Conference. He further indicated that the interpreters had had a particularly difficult task in translating the most difficult and complex subject. He thanked them for having done a truly magnificent job.

370. Mr. KOMAROV (Soviet Union) sincerely thanked Mr. Oman for his work as President of the Conference. He indicated that his self-control and patience had contributed to the success of the Conference.

371. The PRESIDENT announced that the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits was closed.

MAIN COMMITTEE

Chairman: Mr. K.J. Suedi (United Republic of Tanzania)

Vice-Chairmen: Mr. K. Iliev (Bulgaria)
Mr. J.-L. Comte (Switzerland)

Secretary: Mr. F. Curchod (WIPO)

First Meeting
Monday, May 12, 1989
Morning

372. The CHAIRMAN (Mr. Suedi) stated that the task before the Main Committee was not an easy one, since it had to negotiate a treaty composed of different elements in respect of which different positions existed. Therefore the task of the Main Committee was to put all those presently disconnected elements into a harmonious package. He proposed proceeding straight ahead to the discussion of the matter that was before the Conference. He indicated that there existed only the Basic Proposal for the moment and suggested that delegations should proceed to consider that proposal. He proposed that the Main Committee should take up the provisions of the draft Treaty, Article by Article, and invited the Director General of WIPO to make preliminary introductory comments on Article 1.

373. Mr. SONI (India) raised the question as to whether the Preamble was going to be discussed as well.

374. The CHAIRMAN indicated that he deliberately avoided starting with the Preamble, and that once the Main Committee had gone through the Articles it would return to the Preamble in order to reflect in it what had been agreed in the main Articles.

375. Mr. YU (China) drew the attention of the Main Committee to the title of the Treaty. He indicated that the title of the draft Treaty appearing in document IPIC/DC/3 had been changed to the "Treaty on the Protection of Layout-Designs (Topgraphies) of Microchips." Originally, the name of the Treaty had been: "Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits" and it was reflected in the title of the Diplomatic Conference which had been adopted by the Governing Bodies of WIPO at meetings in 1988. It had been also approved once again by the present Diplomatic Conference when unanimously adopting Rule 1 of the Rules of Procedure. He said that to the best of his knowledge no opposition had been raised against the title of the Diplomatic Conference, nor the name of the Treaty during the preparatory meetings. He considered it necessary to keep the title of the Treaty consistent with the title of the Diplomatic Conference and proposed to correct the name of the Treaty to be the "Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits."

376. The CHAIRMAN proposed that both the question of the title and the question of the Preamble to the Treaty could be put aside for the time being, so that the Committee could proceed to the Articles of the Treaty. After it considered the Articles of the Treaty themselves, it would discuss the title of the Treaty and the Preamble.

377. Mr. BOGSCH (Director General of WIPO) indicated that the words "integrated circuit" did not appear in the draft anymore. It could nonetheless appear in the title but it would be easier to resolve that problem once at least the first six or seven substantive Articles were agreed upon. Finally, he indicated that the re-insertion of the words "intellectual property" in the title of the Treaty was probably necessary.

378. Mr. SAADA (Egypt) indicated that the problem of the title of the Treaty should be dealt with as soon as possible.

Article 1: Establishment of a Union

379. The CHAIRMAN proposed proceeding to the consideration of Article 1.

380. It was so decided.

381. Mr. BOGSCH (Director General of WIPO) stated that Article 1 consisted of one short sentence, saying that the Contracting Parties constituted a Union for the protection of layout-designs (topographies) of microchips. The essential part was the establishment of a Union, that is, of a permanent association of the countries or other Contracting Parties that would become party to the Treaty. It was needed because in the final clauses there was a proposal to create, as usual, an Assembly of the Contracting Parties. He put aside for the moment the problem of which entities would fall under the definition of "Contracting Party" and indicated that the draft Treaty provided that certain international organizations, not only the European Communities, which had legislative power in the field of intellectual property, could become contracting parties. He indicated that one should reserve the words "parties" or "States," in the first sentence of the Article, for a subsequent decision on that question. The same related to the words "topographies" and "microchips." Finally, he stated that the only question to be decided in Article 1 was that of constituting a Union.

382. Mr. BARREDA DELGADO (Peru) suggested completing Article 1 with the following addition: "The Contracting Parties constitute a Union for the protection of the creators of microchips and of the industries, scientific community, and users of all countries."

383. Mr. KOMAROV (Soviet Union) expressed the view that, before introducing any modifications into the Article, it would be expedient, despite the existence of the Notes proposed by the International Bureau, to receive more detailed information in respect of the conditions of functioning of the Union, its financing, as well as in respect of the character of technical assistance to the developing countries or, as it was indicated in the Notes, to their Governments. Such information might facilitate the discussion of the wording.

384. Mr. BOGSCH (Director General of WIPO) replied that the Union in question would be of the type administered by WIPO to which the Contracting Parties would pay no contributions, so there were no financial obligations to WIPO, and the assistance to the developing countries would have to come from the budget of WIPO, as such.

385. Mr. YU (China) stated that the name of the Union should follow the name of the Treaty.

386. Mr. KASTENMEIER (United States of America), commenting on the suggestion of the Delegation of Peru, stated that the protection provided for in the Treaty was not designed for States, entities, creators, or persons, but rather for property itself. Therefore, he supported the proposed text of the draft Article.

387. The CHAIRMAN agreed with the Delegation of China that the name of the Union should reflect the name of the Treaty and, in the absence of the latter, proposed to put aside Article 1.

388. Mr. BOGSCH (Director General of WIPO) once again suggested that only the idea of the creation of a Union, which entailed no financial burden to any of the Contracting Parties, should be decided in Article 1 at present.

389. The CHAIRMAN put before the Committee the question whether it accepted the idea of the establishment of a Union.

390. Mr. BRAUN (European Communities) supported the idea of creating a Union.

391. Mr. SONI (India) supported the idea of creating a Union and suggested that the Article should only state that the Contracting Parties would constitute a Union.

392. The CHAIRMAN asked whether there were any objections to the proposal of the Delegation of India. He noted that there were none and declared that the Article was adopted.

393. Article 1 was adopted, subject to the amendment proposed by the Delegation of India noted in paragraph 391.

Article 2: Definitions

394. The CHAIRMAN opened discussion on Article 2, paragraph (i), the definition of "microchip."

395. Mr. BOGSCH (Director General of WIPO) introduced Article 2(i) referring, in particular, to the Notes prepared by the International Bureau.

396. Mr. SONI (India) drew attention to paragraphs 35 and 36 of the Notes, which related to the definition of "microchip" and recalled that, during the fourth session of the Committee of Experts, several delegations, including the Delegation of India, had favored the limitations of the definition of microchips to those produced by utilizing semiconductor technology. He further referred to paragraph 36, which gave the examples of active elements (transistors, diodes and thyristors) and passive elements (capacitors, resistors and inductors) and indicated that the idea not to keep the scope of the Treaty too narrow was purely hypothetical since one did not know of any other material which was being used for manufacturing microchips. He expressed the view that the scope of the Treaty should be restricted to microchips based on semiconductor products and not be extended and open-ended. He stated that, in any case, at a later point in time, one could always amend the Treaty if it was affected by certain technological developments. He proposed to amend the definition in Article 2(i), by adding the word "semiconductor" when referring to the product.

397. Mr. HARADA (Japan) made three observations. Firstly, he proposed to slightly modify the definition of microchips so that microchip meant a product capable of performing an electric function in which the active element or elements, the interconnections, and any passive elements constituted an integrated circuit formed in or on a piece of material. Secondly, he noted the changes made in the second line of paragraph (i) and wondered why one needed to protect the microchip which had only one active element. Thirdly, he indicated that the report of the third session of the Committee of Experts had already contained an observation that there might be no passive elements at all.

398. Mr. VILLARREAL GONDA (Mexico) asked if it would be possible to return to a discussion of technical issues, in particular in relation to Article 2, or delay their discussion until Monday to afford members of his Delegation with technical expertise an opportunity to study them.

399. Mr. SAADA (Egypt) stated that the Treaty was going to protect intellectual property in respect of layout-designs or integrated circuits and not microchips themselves as industrial products. If one considered a microchip as an industrial product, he might very well find himself facing in

a few years completely different types of microchips, for example, biological chips. That meant that each time one would have to amend the Treaty accordingly. He proposed retaining the original terminology in respect of microchips developed during a long period by experts from developing and developed countries.

400. Mr. YU (China) explained why he was against using the term "microchip." While the term was widely used in industry and commerce, its meaning was ambiguous and unclear. There existed different understandings of its meaning. In various sectors "microchip" might mean an integrated circuit or something else, i.e. a microcircuit for system designers. It could also mean a semiconductor chip or a package integrated circuit for integrated circuit manufacturers. He supported the suggestion made by the Delegation of Egypt to the extent that the term "integrated circuit" should be used instead of "microchip."

401. Mr. BRAUN (European Communities) stated that the European Communities would not be opposed to a discussion on integrated circuits or to the introduction of that notion in the definition, as long as it could sufficiently cover the subject matter of the Treaty and if it could meet unanimous approval. He further referred to the existing definition of microchip and proposed that it include that a microchip meant a product in its final or intermediate form, intended to perform an electronic function. He expressed the view that the definition of microchip should contain a reference to the final or intermediate forms to ensure that modules and semi-customized chips were also clearly protected. The present definition in the Draft did not contain any reference to semiconducting material. He expressed the view that a more open definition seemed reasonable in order to prevent the Treaty of becoming rapidly obsolete due to technological progress. He admitted that it was always risky to protect something that was not yet known, but in the present field it did not seem highly probable that a change of material and of production processes would influence the legal considerations. The proposed broad definition could therefore be accepted on the understanding that the protection of semiconductor products under the EEC Directive was considered to comply with the obligations under the Treaty.

402. Mr. BOGSCH (Director General of WIPO) stated that Article 2 did not deal with the subject matter of the protection, but, rather, with definitions. The object of protection was defined in Article 3 as a layout-design that meets certain conditions. He stated that Article 2(ii) could be referred to for a definition of layout-design (topography).

403. Ms. FERNANDEZ (Argentina) supported the proposal of the Delegation of Mexico, indicating that she reserved the right to make an intervention at a later time on that issue.

404. The CHAIRMAN invited the delegations to express themselves in respect of the proposal of the Delegation of Mexico.

405. Mr. SAADA (Egypt) stated that he asked for a point of order, since he disagreed with the inference that there were no technical experts presently at the Conference. He reserved the right, however, to return to the issues being discussed at a later time.

406. Mr. VILLARREAL GONDA (Mexico) clarified that his Delegation's proposal was not directed to unnecessarily deferring the work of the Conference, since time was limited. He proposed rather that there should be a possibility of reverting to some of the points under discussion for the purpose of improving them or making them consistent in the light of other provisions in the Treaty.

407. Mr. KOMAROV (Soviet Union) proposed the creation of a working group to examine the wording of paragraph (i) of Article 2.

408. Mr. SONI (India) supported the proposal of the Delegation of the Soviet Union.

409. Mr. OMAN (United States of America) stated that the United States favored the present wording of the definitions since they gave precision to the scope of the Treaty but also allowed certain useful flexibility. He was ready to adopt those definitions with the understanding that those countries that limited protection to semiconductor or integrated circuit technology complied with the Treaty obligations and that those countries which might prefer to protect a broader technology might do so under the Treaty as currently drafted. He further stated that, if there was consensus to postpone the discussion on that issue until a working group had a chance to clarify the point, the United States of America would be pleased to defer to the sense of the majority.

410. Mr. MILLS (Ghana) associated himself with the views expressed by the Delegation of Egypt. He said that he did not oppose the proposal made by the Delegation of the Soviet Union and was ready to participate in such a working group.

411. Mr. SAADA (Egypt) indicated that, in his opinion, Article 3 did not contradict Article 2. He disagreed with the Delegation of the European Communities that microchips represented final products. He indicated that a microchip was always supposed to be put in another product, for example a washing machine or a TV set. Finally, he stated that, because of the eventual changes in microchips, they might not fit any strict definition in the future. Therefore, he doubted the necessity to have such a strict definition in the Treaty.

412. Mr. YU (China) supported the suggestion made by the Delegation of the Soviet Union in respect of the creation of a working group.

413. Mr. BRAUN (European Communities) expressed the view that the working group should be created only after all proposals in respect of Article 2 were made available to the Committee.

414. Mr. KOMAROV (Soviet Union) commented on his proposal, indicating that he did not have any objections, in principle, against the definitions, in particular against the definition of integrated circuit in Article 2(i), but expressed the view that a working group might accelerate the whole process of consideration of the definitions.

415. Mr. CHOI (Republic of Korea) supported the idea of creating a working group and expressed the desire to participate in it.

416. The CHAIRMAN proposed to open a general discussion on the entire Article 2 and to create afterwards a working group that could take into account the prevailing views.

417. Mr. BOGSCH (Director General of WIPO) quoted paragraphs 9 and 10 of the Notes and indicated that, in Article 2, the intention was to simplify the terminology used in the Treaty, to avoid confusion which had been often present at the preparatory meetings when discussing the subject matter of the Treaty.

418. The CHAIRMAN suspended the meeting for a coffee break.

[Suspension]

419. The CHAIRMAN reconvened the meeting and suggested that the working group on Article 2, once created, should work in parallel with the Main Committee.

420. Mr. LIEDES (Finland) stated that he did not object to the reinsertion of the definition of integrated circuits into the Treaty. He further indicated that he was ready to accept the Treaty without the express qualification of integrated circuits or microchips by the word "semiconductor." He would be satisfied if there would be an express mention in the explanatory Notes or in the Report of the Conference that those countries that, in their national legislation, granted protection to semiconductors only fulfilled the requirements of the Treaty. Finally, he supported the proposal of the European Communities to add the words "in final or intermediary form" in paragraph (i) after the word "product."

421. Mr. BRAUN (European Communities) stated that, since the definition of "microchip" had been chosen as a compromise formula during the preparatory meetings, his Delegation could have accepted that definition but it certainly preferred the definition of "integrated circuit" to be present in the Treaty instead of "microchip."

422. Mr. KANSIL (Indonesia) supported the idea of creating the working group on definitions and expressed his intention to participate in it.

423. The CHAIRMAN moved to paragraph (iii) of Article 2, the definition of "holder of the right."

424. Mr. BOGSCH (Director General of WIPO) indicated that the previous draft had contained the notion of the "proprietor." On the suggestion of various delegations, that term had been changed to "holder of the right." He pointed out that explanations were given in paragraphs 39 and 40 of the Notes.

425. Mr. HARADA (Japan) proposed to insert the word "national" between the words "applicable" and "law," in the second line.

426. Mr. BOGSCH (Director General of WIPO) stated that because of the existence of the directives of the European Communities, there should be either a reference to the adjectives "national or regional" or no adjectives at all.

427. The CHAIRMAN moved to paragraph (iv) of Article 2, the definition of "protected layout-design (topography)."

428. Mr. BOGSCH (Director General of WIPO) drew attention to the word "protected," which was inserted in order to clarify that the obligation of a Contracting Party to consider unlawful the acts mentioned, in particular, in draft Article 6, applied only to layout-designs which satisfied the conditions of protection. Thus, for example, layout-designs which were not original or whose term of protection had already expired, were not covered by that definition.

429. The CHAIRMAN noted the absence of any remarks in respect of paragraph (iv) and moved to paragraph (v) of Article 2, the definition of "Contracting Party."

430. Mr. BOGSCH (Director General of WIPO) stated that paragraph (v) should be reserved until the question of the participation in the Treaty of intergovernmental organizations, which had legislation on integrated circuits, was solved.

431. Mr. HARADA (Japan) drew attention to the proposal by the Delegation of Japan contained in document IPIC/DC/8 and, in particular, to paragraph 3 of the document where the expression "regional economic integration organization" was used instead of "intergovernmental organization." He further clarified that the expression was taken from the Vienna Conference on the protection of the ozone layer.

432. Mr. BOGSCH (Director General of WIPO) pointed out that draft Article 14(1)(b) of the Treaty provided for a definition of an intergovernmental organization as having its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and applicable in the territory of all its member States. He further indicated that that definition should be kept in mind when reading paragraph (v) of Article 2.

433. Mr. HARADA (Japan) agreed with the arguments proposed by the Director General of WIPO and suggested to revert to the matter when discussing Article 14(1)(b).

434. Mr. SATELER ALONSO (Chile) stated that the subject under discussion involved complex issues related to the responsibility of States under international public law, and they should be analyzed at the time of examining Article 14. The same applied to paragraph (vi). Therefore, paragraphs (v) and (vi) could be left pending and be discussed in conjunction with Article 14.

435. The CHAIRMAN moved to paragraph (vi) of Article 2, the definition of "territory of a Contracting Party."

436. Mr. BOGSCH (Director General of WIPO) indicated that it was not the territory of a Contracting State which might represent a controversial subject, but, rather, the territory of a Contracting Party, such as the territory of an intergovernmental organization. If the principle was admitted, then the territory would cover the territories of all member States of that intergovernmental organization irrespective of whether the individual States would become members of the Treaty. Finally, he emphasized that the working group should have the mandate to deal with paragraphs (i), (ii) and, possibly, (iv), but not the others which were reserved for discussion in the Committee itself.

437. Mr. BRAUN (European Communities) proposed modifying the second part of paragraph (vi) to read ..." where the Contracting Party is an intergovernmental organization, the territory in which its constituing treaty applies on the terms and conditions laid down in that treaty."

438. Mr. BOGSCH (Director General of WIPO) noted that is was rather unusual to make reference to one treaty in another.

439. Mr. SATELER ALONSO (Chile) noted that a proposal, such as that put forth by the Commission of the European Economic Community, would affect Article 3 of the draft Treaty which referred to the fundamental principle of the obligation to give protection. He therefore suggested that discussion on all those paragraphs and provisions of the Treaty which bore relation to the status of intergovernmental organizations be postponed until all the implications for the Treaty became apparent and the issue might be discussed and decided upon integrally.

440. The CHAIRMAN invited comments on paragraphs (vii), (viii) and (ix) of Article 2, the definitions of "Union," "Assembly," and "Director General," respectively.

441. Mr. MILLS (Ghana) stated that once the title of the Treaty was agreed upon, it should be reflected in the definitions. (Continued at paragraph 638.)

Article 3: The Subject Matter of the Treaty

442. The CHAIRMAN asked the Director General of WIPO to introduce Article 3, paragraph (1) [Obligation to Protect Layout-Designs (Topographies)].

443. Mr. BOGSCH (Director General of WIPO) stated that paragraph (1) consisted of two sentences. The first sentence had been inserted on the recommendation of many delegations in the preparatory meetings, since it was believed that there should be an express statement of what the obligations were. Therefore, it said that "[e]ach Contracting Party shall have the obligation to secure, throughout its territory, intellectual property protection in respect of layout-designs (topographies) in accordance with this Treaty." It made clear that the subject matter of protection was a layout-design and not a microchip or an integrated circuit. Paragraph (1) also obliged Contracting Parties to adopt adequate measures and appropriate legal remedies to achieve protection. He said that the typical measures to ensure the prevention of acts considered unlawful under Article 6 would be seizure and injunction. Typical legal remedies, where such acts had been committed, would be civil remedies, in particular indemnities and penal sanctions. He noted that none of the measures or legal remedies were specified in the Treaty, since the Treaty left it to each Contracting Party to choose the measures and remedies that corresponded to its legal system and tradition. What was required, however, was that the measures should be adequate to ensure the prevention of the acts in question and that the legal remedies available, when such acts had been committed, be appropriate.

444. Mr. SONI (India) asked for a clarification in respect of the words "intellectual property." He further stated that that expression appeared in the Article for the first time and that the term "intellectual property" had not been used previously in any of the Articles in the drafts which had been submitted to the four sessions of the Committee of Experts.

445. Mr. BOGSCH (Director General of WIPO) said that, during the preparatory meetings, certain Latin American delegations stated that the nature of the protection should be indicated in the Treaty, since the Treaty was intended to protect not integrated circuits or their parts, but intellectual property in integrated circuits.

446. Mr. SONI (India) considered that, since the Diplomatic Conference was held for the conclusion of the Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits, it was not illogical to use the term "intellectual property." He also assumed that the title would use the words "intellectual property."

447. Mr. BOGSCH (Director General of WIPO) agreed with the Delegation of India that the title of the Treaty should clearly mention "intellectual property."

448. Mrs. LANGER (European Communities) suggested that the main idea of paragraph (1) of Article 3 and the main idea of Article 4 should be combined since both ideas--the nature of protection and the legal form--were related. She proposed to merge those two paragraphs in order to clearly identify the exact goal of the Treaty which was the intellectual property protection of integrated circuits. She further proposed supplementing the second sentence of paragraph (1) in the sense that adequate measures should be both adopted and available.

449. Mr. JEGEDE (Nigeria) supported in principle paragraph (1) of Article 3 and proposed inserting the word "provide" in the last line of paragraph (1) between the words "and" and "appropriate."

450. Mr. BOGSCH (Director General of WIPO), replying to the Delegation of the European Communities, stated that he would regret very much if Articles 3 and 4 were merged because of the high political significance of Article 4. He further indicated that it was one of the achievements of the long debate in the preparatory meetings that the Treaty did not force any country to give protection by a certain kind of law. He felt that such freedom seemed to be such an important political consideration that it deserved emphasis, that is, a separate Article.

451. Mr. SATELER ALONSO (Chile) stated, in connection with the possibility of combining Articles 3 and 4, that Article 6 of the draft Treaty stipulated the acts which each Contracting Party would be obliged to consider unlawful under its Treaty obligations. Article 3, instead, contained a different type of obligation, namely, that of seeing that the unlawful acts under Article 6 did not occur. Articles 3 and 6 established obligations with a similar objective but by different means, and it was, therefore, useful to retain both provisions. He also wondered whether it was really necessary to maintain the words "in its territory" in the first sentence of paragraph (1) of Article 3, since under general principles of international law all States party to the Treaty were responsible for implementing their Treaty obligations within the whole of their territory. The elimination of the words "in its territory" would facilitate, in due time, the adjustment of the Treaty to membership by international organizations.

452. Mr. BOGSCH (Director General of WIPO) supported the proposal of the Delegation of Nigeria to add the word "provide" in the last line of paragraph (1) of Article 3 between the words "and" and "appropriate." He further stated that the reference to the "territory," in paragraph (1), should be understood, in case of a Contracting Party being an intergovernmental organization, as the territory of all countries members of that intergovernmental organization. Finally, he stated that it should be made crystal clear that any intergovernmental organization party to the Treaty would have the obligation that the Treaty be respected in the territory of all its member States. Taking the example of the European Communities, he stated that whether that obligation was fulfilled by the Community legislation or by national legislation was an internal matter for that intergovernmental organization.

453. Mr. SONI (India) supported the Director General of WIPO in that that Article 4 should be preserved as a separate Article. He further wondered in which international conventions the term "intellectual property" was used.

454. Mr. BOGSCH (Director General of WIPO) replied that the term "intellectual property" was not used in other international conventions, but that the words "copyright" or "industrial property" were used. Both those terms could be qualified as "intellectual property."

455. Mr. BING (Norway) supported the proposal of the Delegation of Nigeria to introduce the word "provide" in the last line of paragraph (1) of Article 3, and proposed to use the same word also in the beginning of the second sentence of paragraph (1) so that paragraph (1) should read as follows: "It shall, in particular, provide adequate measures to assure the prevention of acts considered unlawful in Article 6 and provide appropriate legal remedies where such acts have been committed."

456. The CHAIRMAN clarified that the introduction of the word "provide" in the beginning of the second sentence of paragraph (1) should mean the deletion of the word "adopt." He further noted the absence of an objection to the proposal of the Delegation of Norway and therefore considered it to be accepted by the Committee.

457. The CHAIRMAN suggested that the Working Group, in respect of the definitions in Article 2, should start its work in the afternoon and proposed to appoint as the Chairman of the Group a member of the Delegation of the Soviet Union.

458. Mr. KOMAROV (Soviet Union) expressed the view that the Chairman should be a member of those delegations which raised important questions and proposed modifications in respect of Article 2, and that his proposal did not result from his disagreement on the proposed text but was aimed at making the work of the Committee more effective.

459. Mr. MOTA MAIA (Portugal) suggested that the chairman of the Working Group should be one of the vice-chairmen of the Main Committee and expressed himself in favor of the nomination of Mr. Comte (Switzerland) to the chair.

460. The CHAIRMAN noted the absence of any objections to the last proposal and suggested it be adopted and the meeting adjourned until after lunch.

461. It was so decided.

Second Meeting
Friday, May 12, 1989
Afternoon

462. The CHAIRMAN invited the delegations to give their comments on Article 3, paragraph (2) [Requirement of Originality].

463. Mr. VILLARREAL GONDA (Mexico) requested, before proceeding to Article 3(2), clarification as to the proposed change to Article 3(1).

464. The CHAIRMAN reminded the delegations that according to the adopted Rules proposed amendments should be submitted in writing three hours before they were discussed. This was done in order to ensure their timely circulation among the delegations and to facilitate the work of the Conference.

465. Mr. BOGSCH (Director General of WIPO) stated that, according to his notes, the only change which had been proposed in respect of paragraph (1) of Article 3 was in the second sentence, where the word "adopt" was replaced by the word "provide."

466. Mr. SONI (India) raised the procedural question of whether an amendment should be submitted in writing three hours before the expected discussion on the issue in question, or whether it could be submitted in the process of discussion.

467. The CHAIRMAN replied that the delegations should generally try to follow the three-hours time-period rule, but that in exceptional situations he could not exclude deviations from that rule. He then invited the Director General of WIPO to introduce paragraph (2) of Article 3.

468. Mr. BOGSCH (Director General of WIPO) noted that the question of how to define "originality" had given rise to detailed discussions in the preparatory meetings. Taking into account the suggestions made there, the proposed text provided that "[t]he obligation referred to in paragraph (1) shall apply to layout-designs (topographies) that are original in the sense

that they are the result of their creators' own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of microchips at the time of their creation." He further indicated that the third part of the paragraph was very straightforward when it said that "layout-designs are the result of their creators' own intellectual effort," in other words, that they were not copied. The second part defined how commonplace should be understood since everything, sooner or later, becomes commonplace. Therefore, it was commonplace in respect of certain persons, namely, creators of layout-designs and manufacturers of microchips, that is, the specialized circles.

469. Mr. SONI (India) stated that he would like to exclude from the requirement of originality not only designs that were commonplace among creators of layout-designs and manufacturers of microchips at the time of their creation, but also layout-designs that were exclusively dictated by the functions of the integrated circuit to which they applied. He indicated that such a definition existed in the law of the United States of America, as well as in the proposal of the United States of America in the GATT negotiations. Finally, he stated that he was ready to submit his proposal in writing for consideration by the Committee.

470. Mr. ILIEV (Bulgaria) proposed to delete in paragraph (2) the words "creators' own intellectual effort" and to include instead the reference to the absence of simple copying. The text of paragraph (2)(a) would read as follows: "The obligation referred to in paragraph (1) shall apply to layout-designs that are original in the sense that they are not simple copies and are not commonplace among creators of layout-designs and manufacturers of integrated circuits."

471. Ms. FERNANDEZ (Argentina) supported that which had been stated by the Delegation of India and reiterated the position that the protection of layout-designs was predicated upon the requirement of fixation.

472. Mr. HARADA (Japan) stated that he would like to have further clarification in respect of the criterion "commonplace among creators of layout-designs."

473. Mrs. MAYER DOLLINER (Austria) supported the proposed draft paragraph (2) of Article 3.

474. Mr. GOVONI (Switzerland) stated that, since the protection of microchips was more closely related to industrial property protection than to copyright protection, intellectual efforts should not be necessarily linked to certain creators because, thus, microchips created with the help of a computer did not fall under protection. He proposed the following text of paragraph (2): "The obligation referred to in paragraph (1) shall apply to

layout-designs (topographies) that are original in the sense that they are the result of intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of microchips at the time of their creation."

475. Mr. GONZALEZ ARENAS (Uruguay) supported the suggestion put forward by the Delegation of India that layout-designs not be protected to the extent that they were dictated exclusively by the functions of the integrated circuit to which they applied. He also expressed support for the proposal of the Delegation of Bulgaria with regard to the need that, as a condition for its protection, a layout-design not be merely the result of simple copying, and that requirement also be reflected in the text.

476. Mr. BOGSCH (Director General of WIPO) stated that the idea proposed by the Delegation of India that, if the layout-design was solely dictated by its function it did not deserve protection, had been widely discussed in the preparatory meetings and yet no uniform opinion had been reached. That was the reason why it was not introduced in the draft under consideration. He then touched the problem of copying and indicated that, since a layout-design was the result of the creators' own intellectual effort, it could not have been copied since one excluded the other. Finally, he drew attention to the French text where there was a mistake in respect of the word "creators," which in the French text was in singular, and expressed hope that this correction would solve the problem raised by the Delegation of Switzerland.

477. Mr. FERNANDEZ FINALE (Cuba) expressed his Delegation's support for the proposal made by the Delegation of India and underlined the importance that a single concept of originality be agreed upon and be clearly defined in order that it might be used to determine the cases in which protection and exclusive rights were to be granted. Justification for protection should be based on strictly technical criteria and not merely on the basis of commercial interests. Parameters determining the required degree of originality as a condition for protection should also be established since the very objective of the Treaty was the protection of the interests of the true creators of integrated circuits.

478. Mrs. LANGER (European Communities) supported the proposed draft paragraph (2) of Article 3. As to the question whether, if a layout-design was solely dictated by function it should be exempted from protection, she stated that the Treaty was aimed at prohibiting reproduction of layout-designs and that only a serious analysis could find out whether a particular design was dictated by function. She turned to subparagraph (b) of paragraph (2) and wondered why the interconnections were specifically mentioned in that subparagraph.

479. Mr. KOMAROV (Soviet Union) expressed his general support to the draft paragraph (2) of Article 3. He indicated that he could accept the idea to exclude, in that paragraph, the topographies whose application was determined by their ordinary functions, but he called for more prudence in introducing drastic changes to a text which had been so thoroughly elaborated before.

480. Mr. CHOI (Republic of Korea) raised the question of the territorial effect of the notion "commonplace," in particular whether it was commonplace among the creators of layout-designs and manufacturers in a particular country, or commonplace worldwide. He expressed himself in favor of the latter meaning.

481. Mr. KEON (Canada) expressed himself generally in favor of the proposed draft paragraph (2) of Article 3 and supported the reasoning of the Director General of WIPO in respect of the "creators' own intellectual effort." He stated that he definitely opposed allowing mere copying to rise to the level of originality and indicated that Canadian industry would like to see the words "not copied" expressly present in the Treaty. Speaking on the proposal of the Delegation of India in respect of a layout-design not being dictated solely by its function, he stated that it was very difficult to put it into practice and that it might lead to a confusion. He was ready to consider the precise wording of the proposal of the Delegation of India but for the time being he found the current draft acceptable.

482. Mr. HARADA (Japan) stated that basically his Delegation favored the proposed draft paragraph (2) of Article 3, but he still would like to receive clarification in respect of the notion "commonplace among creators of layout-designs."

483. Mr. HALVORSEN (Sweden) supported the proposed draft paragraph (2) of Article 3.

484. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Japan to elaborate on its question.

485. Mr. HARADA (Japan) stated that his concern derived from the fact that paragraph (2) in effect contained two criteria of originality: first, that layout-designs should be the result of their creators' own intellectual effort and, second, that they should not be commonplace among creators of layout-designs and manufacturers of microchips. He wondered whether the second criterion was not supplementary or complementary to the first one, that is, whether the presence of creators' own intellectual effort was the major criterion.

486. Mr. BOGSCH (Director General of WIPO) explained that a person might produce a layout-design by his own intellectual effort without copying it from somebody else's design and yet the result of his independent thinking would be something that was already well known--that is, commonplace--in the specialized circles. Thus, there could be a situation in which one of the criteria (creation of a layout-design by his own intellectual effort) would be present but the other criterion (the layout-design not being commonplace) was missing. He indicated that both conditions had to be met.

487. Mr. KOMAROV (Soviet Union) suggested that the word "commonplace" should be replaced by the words "not known among the creators of the topography."

488. Mr. VRBA (Czechoslovakia) supported the basic proposal of paragraph (2) of Article 3.

489. Mr. PRETNAR (Yugoslavia) supported the basic proposal of paragraph (2) of Article 3.

490. Mr. MOTA MAIA (Portugal) agreed with the meaning of the word "original" as being the result of an intellectual effort, and also proposed trying to find an alternate expression for the word "commonplace." He proposed, as an example, the phrase "not known among the creators of layout-designs," in order to make the requirement less subjective.

491. Mr. BOGSCH (Director General of WIPO) indicated that the expression "commonplace," at least in the English language, was very clear and widely used, whereas the expression "not known among creators of layout-designs" represented a new issue and raised a number of difficult questions, for example, whether it was known because it appeared in a document published on a certain date.

492. The CHAIRMAN requested the Committee to focus on the two proposals made in respect of paragraph (2) of Article 3 by, respectively, the Delegations of India and of the Soviet Union.

493. Mr. BOBROVSZKY (Hungary) shared the views expressed by the Delegation of Japan that the meaning of the word "commonplace" was not clear. One could imagine that it was homologous to the expression of inventive step or non-obviousness in the field of patent law. He drew attention to the fact that, in the case of a layout-design, the protection covered a particular solution and not an idea which was covered by patent protection.

494. The CHAIRMAN indicated that, in respect of the word "commonplace," there existed a proposal of the Delegation of the Soviet Union and the views expressed by the Director General of WIPO.

495. Mr. SUCHAI JAOVISIDHA (Thailand) expressed himself in favor of keeping the word "commonplace."

496. Mr. MOTA MAIA (Portugal) suggested that these questions under consideration should be passed to the working group dealing with the definitions under draft Article 2.

497. Ms. SCHRADER (United States of America) supported the text of the draft paragraph (2) of Article 3 as it stood. With respect to the suggestion that the word "commonplace" be replaced by the word "known," she indicated that it introduced more of an element of subjectivity into the question of the level of protection. She considered that the word "commonplace" had a concrete meaning in reference to a general understanding within the industry. The term "known" was not a proper substitute. She further indicated that she did not see any contradiction between the concept of protecting original designs, not copied from some other source, and the related concept of protecting only those designs which were also not commonplace in the industry. Finally, she expressed the view that the proposed definition did not lead to a standard of protection which required invention or any type of novelty.

498. Mrs. CHAALAN (Syria) supported the proposed text of draft paragraph (2) of Article 3.

499. Mr. TARNOFSKY (United Kingdom) supported the proposed text of draft paragraph (2) of Article 3, and indicated that, if one replaced the word "commonplace" by the word "known," it would mean the replacement of the copyright approach by a patent approach, and that would lead to the necessity of having a search done. That would also lead to the necessity to have proceedings, perhaps continuing through the life of the protection in case a revocation case needed to be brought. He concluded that it introduced a whole new and wholly different approach and expressed the view that the limited copyright approach was the correct one to use.

500. Mr. KRIEGER (Federal Republic of Germany) agreed with the explanations given by the Director General of WIPO, as well as by the Delegations of the United Kingdom and of the United States of America, and recalled that the term "commonplace" appeared not only in the United States' Semiconductor Chip Protection Act, but in the Directive of the European Community as well.

501. Mr. HARADA (Japan) stated that he supported the proposed text of draft paragraph (2) of Article 3, including the word "commonplace."

502. The CHAIRMAN stated that the withdrawal by the Delegation of Japan of its objections in respect of the word "commonplace" left unsolved the proposal of the Delegation of India in respect of the requirement that layout-designs, to be susceptible to protection, should not be completely dictated by their functions.

503. Mr. SONI (India) asked the Delegation of the United States of America to clarify that question since, in his view, it appeared in the its legislation.

504. Ms. SCHRADER (United States of America) stated that the question under discussion did not constitute an express provision in the Semiconductor Chip Protection Act, but it had appeared in the Legislative Committee Report which

referred to the fact that, as part of the concept of originality, one would not protect a particular mask work if it were the only way in which to carry out a particular electronic function, that was primarily a matter of theory. She further indicated that if there was such a mask work or a semiconductor chip design that represented the only way to carry out a particular function, it would not be protected under the Semiconductor Chip Protection Act. It might well be protected under the patent law if it met the standards of patentability.

505. Mr. SONI (India) in view of the explanations received did not insist on his proposal.

505. The CHAIRMAN suggested turning to subparagraph (b) of paragraph (2).

507. Mr. BOGSCH (Director General of WIPO) replied to the question of the Delegation of the European Communities why the word "interconnection" was specifically mentioned in subparagraph (b). He said that it represented a consequence of the definition of a layout-design which meant the three-dimensional disposition of active elements, interconnections and passive elements. He indicted that in subparagraph (b) the word "element" was used for other purposes than "interconnection" which certainly also was, in a sense, an element on a more narrow level of definition.

508. Mr. TARNOFSKY (United Kingdom) stated that he was puzzled by subparagraph (b). If read quite literally, it referred to a layout-design that consisted of a combination of elements or interconnections that included in its scope a combination of interconnections with no elements at all. He suggested that redrafting should be undertaken in that subparagraph to obviate that anomaly.

509. Mr. BOGSCH (Director General of WIPO) agreed that that was a drafting question which would be resolved by the Drafting Committee.

Article 4: The Legal Form of the Protection

510. The CHAIRMAN then moved to Article 4 and asked the Director General of WIPO to introduce it.

511. Mr. BOGSCH (Director General of WIPO) stated that Article 4 was a very important Article in the eyes of most delegations, because it preserved their right to implement the obligations that they would contract under the Treaty by whatever law they wished. That meant that there was no imposition that it would be copyright law, patent law or any other law.

512. Mr. KOMAROV (Soviet Union) stated that, in general, he could accept the proposed wording of Article 4 but suggested that the enumeration of laws and combination of laws should be excluded from the Article since, along with all enumerated laws, any other laws were also admitted.

513. Mr. BOGSCH (Director General of WIPO) stated that the main reason why the proposed text of Article 4 had been drafted in such a way was not to give the impression that there was a preference for a sui generis law. The intention was to put all the laws strictly on the same footing, and such an equality could only be expressed by enumerating the laws.

514. Mrs. LANGER (European Communities) stated that since the Treaty dealt with intellectual property protection, that term might be used in conjunction with the term "law," thus any preference for a sui generis protection was excluded. She also proposed re-introducing in the text the idea, which had been discussed in the preparatory meetings, that the result in national legislation should be consistent with the obligations under the Treaty.

515. Mr. BOGSCH (Director General of WIPO) emphasized that the proposed text gave absolute security for any country eventually becoming party to the Treaty to retain the freedom to regulate the questions of protection of layout-designs under the law of their choice.

516. Mr. ISHAQUE (Pakistan) stated that the choice of manner fulfilling the obligations under the Treaty should be left to the member States. Therefore, the text of Article 4 might be reworded in the following manner: "Each Contracting Party shall be free to implement its obligations under this Treaty through an appropriate law already existing or through a new legislation."

517. Mr. SONI (India) supported the arguments expressed by the Director General of WIPO.

518. Ms. FERNANDEZ (Argentina) felt that the modification proposed by the Delegation of Pakistan substantially changed the scope of the Article and preferred the proposal made by her Delegation at the fourth meeting of the Committee of Experts which called for listing in the Article all the forms of protection that were available.

519. Mr. GOVEY (Australia) supported the arguments expressed by the Delegation of the Soviet Union in respect of Article 4, as well as the proposal by the Delegation of the European Communities.

520. The CHAIRMAN noted that, in his understanding, the Delegation of the Soviet Union, after having heard the reply by the Director General of WIPO, withdrew its observation in respect of Article 4.

521. Mr. KOMAROV (Soviet Union) stated that, although he considered his wording more elegant and logical, having heard the arguments expressed by the Director General of WIPO, he could accept the proposed text of the draft Article 4.

522. Mrs. CHAALAN (Syria) supported the proposed text of draft Article 4 and the arguments expressed by the Director General of WIPO.

523. Mr. PRETNAR (Yugoslavia) supported the proposed text of draft Article 4.

524. Mr. ABDULLAH (Ghana) supported the proposed text of draft Article 4.

525. Ms. SCHRADER (United States of America) supported the proposed text of draft Article 4.

526. Mr. DIENG (Senegal) supported the proposed text of draft Article 4.

527. The CHAIRMAN summarized the discussion on Article 4 noting that, apart from the observation of the Delegation of the European Communities to see if Article 4 could be drafted more elegantly, the Main Committee was generally in favor of adopting Article 4 in the form proposed in the Basic Proposal.

528. Article 4 was adopted, subject to drafting changes made by the Drafting Committee.

Article 5: National Treatment

529. The CHAIRMAN then moved to Article 5 and gave the floor to the Director General of WIPO to introduce Article 5, paragraph (1) [National Treatment].

530. Mr. BOGSCH (Director General of WIPO) presented draft Article 5, indicating that it was very similar to the corresponding provision of the Paris Convention. He further stated that Article 5, entitled "National Treatment," provided that each Contracting Party would, in respect of the intellectual property protection of layout-designs (topographies), accord the same treatment that it accorded to its own nationals, without prejudice to the protection provided in the Treaty to two kinds of foreigners, namely, to natural persons who were nationals of or were domiciled in the territory of any of the other Contracting Parties, and to legal entities or natural persons which had a real and effective industrial or commercial establishment in the territory of any of the other Contracting Parties.

531. The CHAIRMAN suspended the meeting.

[Suspension]

532. Mr. VRBA (Czechoslovakia) stated that his Delegation was in favor of mentioning both industrial and commercial establishments in subparagraph (ii) of paragraph (1).

533. Mr. LIEDES (Finland) supported the proposed text of draft paragraph (1) of Article 5 and expressed himself in favor of having the words "or commercial," presently appearing in square brackets, in the Treaty.

534. Mr. KOMAROV (Soviet Union) stated that, while being generally in agreement with the proposed text of draft paragraph (1) of Article 5, he proposed to delete the words "or commercial" from the Treaty.

535. Mr. GOVONI (Switzerland) supported the proposals made by the delegations of Finland and the Soviet Union.

536. Mr. BING (Norway) supported the suggestion from Finland to remove the square brackets. He asked for clarification as to whether an industrial establishment included the design stage of an integrated circuit. He gave as an example a facility which was only concerned with the design of integrated circuits but which arranged for products incorporating the designs to be produced outside its own territory. He then asked whether this was to be considered part of an industrial establishment or a commercial establishment.

537. Mr. JEGEDE (Nigeria) said that his delegation supported the removal of the square brackets and the inclusion of "or commercial" in Article 5(1)(ii).

538. Mr. SONI (India) said that his Delegation would like the words "or commercial," contained in square brackets in Article 5(1)(ii), removed.

539. Mrs. MAYER-DOLLINER (Austria) indicated that her Delegation supported the approach to national treatment as contained in the draft of Article 5 and supported the retention of the phrase "or commercial."

540. Mr. HALVORSEN (Sweden) shared the view expressed by the Delegation of Finland and supported the need for clarification on the point raised by the Delegation of Norway.

541. Mr. ISHAQUE (Pakistan) supported the proposal made by the Delegation of India for the removal of the term "or commercial" contained in the brackets.

542. Mr. MILLS (Ghana) associated himself with the Delegations of India and Pakistan with regard to the removal of the words "or commercial."

543. Mrs. LANGER (European Communities) supported the proposal made by the Delegation of Finland to delete the square brackets and to keep the phrase "or commercial" in Article 5(1)(ii). She stated, as regards the notion of domicile contained in the first subparagraph, that the European Communities would prefer the notion of habitual residence to domicile because she considered that it would be easier for a court to define whether a person was an habitual resident than if he was domiciled in a certain country. She asked whether a natural person who had no civilian residence, but had a real and effective industrial or commercial establishment, was covered by the terms of the Basic Proposal. She asked for a further explanation of the last part of the sentence referring to the principle that this teatment was without prejudice to the protection provided for in the Treaty.

544. Mr. BOBROVSZKY (Hungary) supported the proposals of the Delegations of the Soviet Union and Finland.

545. Mr. CHOI (Republic of Korea) supported the proposal made by the Delegation of India to delete the phrase "or commercial" from Article 5(1)(ii).

546. Mr. VEJJAJIVA (Thailand) supported the position of the Delegations of India, Pakistan, and the Republic of Korea to delete from Article 5(1)(ii) the words "or commercial" in the brackets.

547. Ms. SCHRADER (United States of America) supported the text of Article 5, as drafted, and agreed with the Delegations of Finland, the USSR, and Switzerland to remove the square brackets so that the phrase "or commercial" would be retained in the text.

548. The CHAIRMAN clarified that there were two pending proposals regarding Article 5(1)(ii), one for the removal of the brackets, thus retaining the phrase "or commercial," and the other for the removal of the phrase "or commercial."

549. Mrs. CHAALAN (Syria) supported the proposal made by the Delegation of India for the removal of the phrase "or commercial."

550. Mr. RAMLY (Indonesia) supported the position taken by the Delegation of India.

551. Mr. HARADA (Japan) supported the position taken by the Delegation of the United States of America.

552. Mr. EL HUNI (Libya) supported the position taken by the Delegation of India for the removal of the phrase "or commercial."

553. Mr. RAFFNSØE (FICPI) expressed his support for the deletion of the square brackets in order to retain the words "or commercial" in the text. He expressed the view that the last sentence in paragraph 56 of the Notes on the draft Treaty, reading that deletion of the words "or commercial" "would effectively work to the prejudice of the legal entities and natural persons of non-Contracting Parties," should perhaps be extended to indicate that it could even work to the prejudice of some entities in Contracting Parties.

554. The CHAIRMAN observed that there were two views on the floor; one that the phrase "or commercial" should be retained in Article 5(1)(ii) and one that the phrase should be deleted.

555.1 Mr. BOGSCH (Director General of WIPO) stated that it was justified to consider the problem without having reference to the Paris Convention, which deals both with industrial activity and commercial activity. Specifically, the Paris Convention dealt with patents which were part of an industrial activity and trademarks which were part of a commercial activity. He stated that the practical effect of deleting the phrase in square brackets would be relatively small.

555.2 The Director General of WIPO offered as an example a legal entity in India which sought protection in Brazil. He stated that, if the words "or commercial" were removed from the Article, protection would be assured only if the legal entity in India had an industrial establishment. He further gave the example that there was a national of a country that was not a Contracting Party and that person had no industrial establishment but only a commercial establishment in India. The said person would not obtain protection in Brazil because he had only a commercial establishment, but not an industrial establishment, in India.

555.3 The Director General of WIPO, in reply to the question posed by the Delegation of the European Communities, stated that as far as natural persons were concerned, Article 5(1)(i) and (ii) was not redundant because subparagraph (i) gave a right on the basis of domicile, whereas subparagraph (ii) gave a right on the basis of having an industrial or commercial establishment. One could have an establishment without being domiciled and vice versa. As to the second question posed by the Delegation of the European Communities, namely, whether national treatment would have to be extended to a national person having a real and effective industrial or commercial establishment, but not a domicile, in the Contracting Party, he stated that national treatment would have to be applied. In relation to the final words in Article 5(1), which stated that the provisions on national treatment were without prejudice to the protection provided in the Treaty, the Director General stated that, as in the case of the Berne Convention, the Paris Convention and other conventions, one could not enact a national law at variance with treaty obligations.

556. Mr. CRUZ FILHO (Brazil) expressed concern that the provisions in Article 5 dealing with national treatment were not specifically tied to the protection of integrated circuits. He observed that none of the delegations involved in the negotiations of the revision of the Paris Convention had suggested amending the provisions in that Convention dealing with national treatment. This indicated to him that those delegations were satisfied with the manner in which national treatment was dealt with in the Paris Convention. He also expressed misgivings about the extraterritoriality effect of Article 5 of the draft Treaty, stating that Article 5(1) appeared to make reference to regional rather than national treatment.

557. Mr. RAFFNSØE (FICPI) said that it was necessary to refer to an international agreement other than the Paris Convention, and gave as an example The Hague Agreement on the International Deposit of Industrial Designs, which had a more limited scope with respect to national treatment. He stated that such limited scope allowed enterprises having only a commercial establishment to acquire international design protection. He then sought clarification as to whether the wording in Article 5(1)(ii) could confer protection on legal entities such as public, or otherwise non-profit, institutions like universities.

558. Mr. BOGSCH (Director General of WIPO) said that the definition of the legal entities entitled to protection was left to national law.

559. The CHAIRMAN observed that the Delegation of Brazil seemed to reject Article 5(1)(ii). He further observed that the focus of most of the statements by delegations on Article 5(1)(ii) had been on whether the brackets surrounding the phrase "or commercial" should be stricken, to thus retain the phrase, or whether the entire phrase should be stricken. He restated the explanation given by the Director General in this regard to the effect that if the phrase were stricken it would have no great effect.

560. Mr. BOGSCH (Director General of WIPO) stated that there was no reason to become overly concerned about the deletion or retention of the phrase "or commercial" in Article 5(1)(ii) because normally legal entities in a member State would seek international protection if they had an industrial establishment in that State. This situation was to be distinguished from the situation of a legal entity that had only a commercial establishment. He stated that, while it was an important question from a theoretical view point, that is, whether the Treaty dealt with the protection also of trade or only with the protection of industry, usually the two went together. He then referred to the possibility that the matter could be decided by a vote.

561. Mr. SONI (India) stated that his Delegation felt quite strongly with regard to the deletion of the words "or commercial" from Article 5(1)(ii) and sought an adjournment so that the issue could be discussed at greater depth.

562. Ms. SCHRADER (United States of America) stated that, while her Delegation had expressed a preference for inclusion of the phrase "or commercial," she would agree with the remarks of the Director General that it did not matter a great deal which of the two formulations was adopted. She was prepared, in the interest of forming a consensus, to accept the text with the words "or commercial" removed.

563. Mr. GOVEY (Australia) sought further clarification from the Director General as to his comments to the effect that this was not a matter of some major significance. He stated that from the point of view of a smaller country like Australia it was more likely to have legal entities that are designers of integrated circuits rather than manufacturers. Thus, he saw the question as how such designers go about obtaining protection and, in this regard, envisaged a situation of a small company involved in designing layouts that arranged for the manufacture of a product incorporating the design in another country. He stated that on the basis of the explanation given, and a reading of the text, he could see no way in which that designer could obtain protection if the words "or commercial" were deleted from Article (5)(1)(ii).

564. Mr. BOGSCH (Director General of WIPO) stated that use of the word "designer" implied a natural person that is an Australian citizen or a person domiciled in Australia.

565. Mr. GAO (China) stated that his Delegation supported the opinion to delete the words "or commercial" in Article 5 (1)(ii).

566. The CHAIRMAN observed that there was a consensus that the phrase "or commercial" in Article 5(1)(ii) could be deleted.

567. Mr. LIEDES (Finland) accepted the view put forward by the Delegation of the United States of America and also the original proposal of the Delegation of India to delete the words "or commercial," predicated on the explanation that the word "industrial" would be given a broad interpretation so that it includes designing activities entailed in the business of designing integrated circuits.

568. Mr. GOVEY (Australia) returned to the example he gave previously stating that a person who is employed by a corporation to undertake design work will find that the ownership of the intellectual property in the design would vest, from the outset, with the corporation. He stated that this result would present a problem. He then expressed sympathy with the suggestion made by the Delegation of Finland.

569. Mrs. LANGER (European Communities) urged caution in taking a hasty decision and, for the time being, wished to maintain its position to retain the phrase "or commercial" in the text of Article 5(1)(ii). Consequently, she requested time to consider all of the arguments put forward on this point.

570. Mr. HARADA (Japan) stated that his Delegation would like to consider the possibility of removing "or commercial" and indicated that it shared the concern expressed by the Delegation of Finland.

571. Mr. PRETNAR (Yugoslavia) expressed support for the proposal made by India and sought an opportunity to clarify the implications of the proposal within the Group of Developing Countries.

572. Mr. GOVONI (Switzerland) stated that his Delegation was amenable to a compromise solution but that a contradiction arose in Article 3, which defined the object of the protection, if one struck out the words "or commercial" from Article 5(1)(ii). In particular, he saw that, according to the definition, a small enterprise, where there were design specialists without manufacturing, may be excluded from protection. He expressed sympathy with the solution outlined by the Delegation of Finland but did not see it as offering a concrete solution to the problem.

573. Mr. BOGSCH (Director General of WIPO) stated that during the preparatory meetings similar considerations arose and that the removal of the phrase "or commercial" was linked to the idea that the mere trade in topographies should not be accorded protection under the Convention. He stressed the importance of protecting the small firms that include only designers of topographies and considered such firms as being part of an industry, but that others may not. In this regard, he observed that industry did not necessarily entail exclusively the manufacture of machines. He concluded by stating that the immediate problem could be solved if there was agreement on what was desired to be excluded by the deletion of the phrase "or commercial."

574. The CHAIRMAN, considering the comments made by Delegation of the European Communities and the Delegation of Norway, proposed the adoption of Article 5(1)(ii) without the phrase "or commercial" with the understanding that the Delegation of the European Communities will be afforded additional time to consider the arguments put forward on this issue.

575. Mrs. LANGER (European Communities) stated that she would like time to reflect on the arguments put forward on this issue to see whether a compromise proposal could be found and requested that debate remain open on the issue.

576. The CHAIRMAN observed that the differing opinions on the issue were quite clear and expressed reluctance to continue the debate. He suggested giving time over the weekend to delegations in the hope of their deciding on the acceptance or rejection of the phrase "or commercial" and then putting the issue to a vote.

577. Mr. GOVONI (Switzerland) suggested a compromise approach by stating that only establishments that bring together creators in the sense of Article 3 are entitled to protection. It is to them, therefore, that one should accord national treatment.

578. Mr. FERNANDEZ FINALE (Cuba) was of the opinion that a consensus had been reached on Article 5(1)(ii), except with respect to the retention or deletion of the words "or commercial" in the square brackets. It was his understanding that the member States of the European Communities were going to engage in consultations on this point but he was disinclined to be presented with a new proposition for Article 5(1)(ii) as a result of those consultations.

579. The CHAIRMAN clarified that a decision had not yet been taken on whether to continue debate on Article 5(1)(ii). He expressed the hope of adopting a preliminary position while giving time to the Delegation of the European Communities to consider their position further.

580. Mr. BING (Norway) reiterated that his Delegation originally sought clarification on the implications of including the term "industrial" in Article 5(1)(ii). He was inclined to agree with the deletion of the words in brackets but desired an amplification of the term "industrial" along the lines suggested by the Delegation of Switzerland. He suggested as wording for Article 5(1)(ii): "legal entities which are natural persons who have a real and effective industrial design or production establishment in the territory of one or the other Contracting Parties." He emphasized that his proposed amendment to Article 5(1)(ii) relied upon the interpretation of the term "industrial" which the Director General of WIPO indicated applied to the present text of the draft Treaty.

581. Mr. VILLARREAL GONDA (Mexico) stated that he was worried about the inclusion of the phrase "or commercial" if a distribution establishment was to be within its ambit. He agreed with the position taken by the Director General of WIPO that the adjective "industrial" had a sufficiently wide scope. In the spirit of the interventions by the Delegations of Switzerland and Norway, he indicated that he could accept the inclusion of the phrase "industrial or professional services that are real and effective" in the draft Treaty. He added that it could, perhaps, be made explicit that the term "industrial" was understood in a wide sense.

582. Mr. SONI (India) stated that the proposal made by the Delegation of Norway to replace "effective industrial or commercial" with "design or production establishment" was acceptable to his Delegation.

583. Mr. BOGSCH (Director General of WIPO) expressed a desire to make the same proposal as the Delegation of India with a modification to the wording.

584. Mr. SONI (India) clarified his proposal by stating that the wording suggested by the Delegation of Norway could be rephrased to refer to industrial design or production establishments.

585. Mr. BOGSCH (Director General of WIPO) felt that the proposal was not entirely clear as to what was being designed or produced. Consequently, he suggested the text be amended to read: "legal entities which have a real and effective establishment for the creation of layout design or the production of microchips in the territory of any of the other Contracting Parties."

586. Mr. CRUZ FILHO (Brazil) expressed the belief that the question of the inclusion of industrial or commercial establishments in the Article was not the only issue. In this regard, he stated that the Delegation of Brazil was concerned with the extension of non-Brazilian laws to Brazilian territory. He stated that, if such an extension was the result, the Article should not be entitled "National Treatment" but, rather, "The principle of Reciprocity." He was of the opinion that the principle of national treatment as contained in the Paris Convention was distinct from the principle of reciprocity.

587. Mr. YU (CHINA) proposed amending the wording suggested by the Director General to apply to legal entities which have a real and effective "industrial" establishment.

588. Mr. BOGSCH (Director General of WIPO) asked whether it was necessary to insert the word "industrial" before the word "establishment."

589. Mr. YU (China) stated the position of his Delegation that the term "industrial establishment" may only be susceptible of a narrow interpretation.

590. Mr. BOGSCH (Director General of WIPO) stated that, in many countries, if engineers established a firm solely to design layouts for integrated circuits, such an entity may not be considered to be part of an industry. He then asked the Delegation of China as to whether it desired to exclude such a class of entities from protection under the Treaty and, if not, what it desired to exclude by inserting the word "industrial" in the proposed text.

591. Mr. YU (China) agreed that there was no effective difference between his proposal and the one made by the Director General.

592. The CHAIRMAN asked the Delegation of China if it would agree with the proposal made by the Director General.

593. Mr. YU (China) requested this matter to be held over for further discussion.

594. Mr. KRIEGER (Federal Republic of Germany) offered the opinion that the proposals made by the Director General and the Delegation of China would include, for example, institutions like universities. He saw this as having advantages with regard to the remainder of the text in Article 5.

595. The CHAIRMAN interpreted the statement of the Delegation of Germany to be an acceptance of the proposal of the Director General.

596. Mr. YU (China) asked whether the pendency of a decision by the European Communities held debate on Article 5 open.

597. The CHAIRMAN stated that there were two issues being considered. First, there was the proposal of the Director General, which was seen as not having the immediate support of the European Community nor the Delegation of China. Secondly, there was a proposal made by the Delegation of Brazil to change the title of Article 5 from national treatment to reciprocity.

598. Mr. CRUZ FILHO (Brazil) clarified the position of the Delegation of Brazil that it had not made a proposal to change the title of the Article. Rather, his intervention was to underscore doubts he had concerning the extraterritoriality of the application of national legislation. He suggested that these doubts could be the basis for reflection by all delegations and further debate.

599. The CHAIRMAN stated that any specific proposal either on the entire Article or any part of the Article was to be submitted for consideration. He further stated that a great deal of time has been spent debating Article 5 and saw the proposal made by the Director General as a compromise solution.

600. Mr. BOGSCH (Director General of WIPO) said that the proposal being considered was not his, but was the proposal made by the Delegation of India, to which he merely added two words.

601. The CHAIRMAN then adjourned the meeting.

Third Meeting
Monday, May 15, 1989
Morning

602. The CHAIRMAN reconvened the meeting and reviewed the status of the debate prior to the adjournment. He indicated that Article 5(1)(ii) was under discussion and that there was a proposal by the Delegation of India that seemed to have been supported by substantial majority of delegations, with the exception of the European Communities which desired to have some consultations during the adjournment to assess their position. In addition, he recalled that the Delegation of China had made some comments with regard to this Article. He then opened the floor to debate on Article 5(1)(ii).

603. Mr. KLEIN (European Communities) indicated that the European Communities had had an extensive exchange of views on the merits of the proposals which were being debated and indicated that it was in a position to accept the formula which had been suggested. At the same time it expressed the desire to retain a number of explanatory declarations which had been suggested, and referred specifically to the one made by the Delegation of Finland.

604. Mr. SABOIA (Brazil) stated that his Delegation had raised a series of points with regard to the whole conceptual basis of the basic proposal of Article 5 regarding national treatment. He emphasized, however, that the main concern he had with regard to Article 5 was that it went beyond the conceptual framework and traditional basis on which national treatment had been dealt with in the field of intellectual property. Moreover, he believed that the questions he raised had not been sufficiently examined in the Conference nor in the preceeding stages that led to the draft Treaty. He stated that, although he did not have any concrete proposals, he wanted to have the concerns as to the legal implications of the way national treatment was presented in the draft Treaty examined more thoroughly. He then requested a consultation meeting of the Group of Developing Countries to explain to other developing countries the concerns and the dangers he saw in the draft Treaty in this regard.

605. Mr. SONI (India) sought, on behalf of the Group of Developing Countries, a suspension to consider the question of national treatment in the draft Treaty.

606. Mr. BARREDA DELGADO (Peru) supported the positions of the Delegations of Brazil and India.

607. Mr. BOGSCH (Director General of WIPO) recalled that it was only the European Communities which asked for time for reflection. He stated that the question of national treatment was not an internal matter for developing countries only, and requested the Delegation of Brazil to explain to the Committee why, in the opinion of the Brazilian Delegation, Article 5 in the draft Treaty went beyond the traditional principles of national treatment. He said it would be useful to receive concrete proposals for an amendment to the draft Treaty rather than to have an exchange of views on its basic philosophy.

608. Mr. SABOIA (Brazil) sympathized with the concern of the Director General with the need to proceed with substantive considerations of the draft proposals. He reiterated his preference to have the opportunity to discuss his concerns within the Group of Developing Countries and try to reach some common understanding there, and then consider the possibility of presenting a proposal to the Main Committee.

609. The CHAIRMAN stated that there was a proposal on the floor made by the Delegation of India on behalf of the Group of Developing Countries that they desired a suspension. Not seeing any objection, the Chairman suspended the meeting to enable the Group of Developing Countries to meet.

[Suspension]

610. The CHAIRMAN reconvened the meeting and called upon the Delegation of India to report on the outcome of the consultations of the Group of Developing Countries regarding Article 5.

611. Mr. SONI (India) stated that the concerns of the Delegation of Brazil were discussed at length at the meeting of the Group of Developing Countries and reported that the Delegation of Brazil wanted an explanation as to the difference in substance between Article 5 of the draft Treaty and Articles 2 and 3 of the Paris Convention.

612.1 Mr. ARRUDA (Brazil) clarified his views on Article 5 by stating that, despite the fact that it was called the national treatment clause, it did not reflect the traditional concept of national treatment. He indicated that national treatment clauses existed in various treaties, and referred to Articles 2 and 3 of the Paris Convention in this regard. He expressed concern that there had not been a clear or definite indication that what was contained in Article 5 of the draft Treaty meant the same thing as national treatment in the Paris Convention. He was of the opinion that Article 5 of the draft Treaty had no territorial reference to it, so each Contracting Party would have to accord protection to natural persons who were nationals of, or were domiciled in, the territory of any of the other Contracting Parties. He stated the opinion that the traditional national treatment clause was a means of avoiding discrimination between foreigners and nationals in a given country and that was traditionally done by applying to such a national, in one's own territory, the same treatment one applied to its own nationals. He stated that in traditional national treatment clauses, there was a territorial reference, and that the application of national treatment to a foreigner in a foreign country was not done.

612.2 The Delegation of Brazil stated that there was another means provided in Article 3 of the draft Treaty for not discriminating between foreigners and nationals in a given country, and that was the establishment of a minimum international standard. He submitted that Article 3 stated that each Contracting Party had to apply the obligations which it contracted to in the Treaty in the same way, so it was a universal application of the obligations of the Treaty in each of the territories of each Contracting Party. He interpreted this to mean that, once a State had signed the Treaty, it was obliged to apply its obligations under the Treaty, but it does not state how national legislation and the judiciary was to treat foreigners; this was done in Article 5 under the principle of national treatment. He stated that he had great doubts that this was so, because, according to Article 5, as it was drafted, he understood that if a Contracting Party's national legislation was below the minimum standard, then the mimimum standard was applied, but if

national legislation had a higher level of protection than the level established in the Treaty, then, if the country was supposed to apply to a foreigner its own national law, the reference was to that higher level of protection. He characterized it as being a system of reciprocity in an extraterritorial fashion.

612.3 Mr. Arruda clarified his position by giving an example of an integrated circuit sold in France, where France was a Treaty member, the layout-design belonging to a rights holder in the United States of America, the United States of America also being a Treaty member. He asked then if the person infringing the rights in France could be accused by a citizen of the United States of America, on the basis of the law of the United States of America. He further queried whether, if the law of the United States of America was of a higher standard than the Treaty, the authorities of the United States of America had to apply national law of that country to a foreigner in a foreign country. He stated that he believed that it could not apply a different law, such as the Trade Act, but that it would have to apply its national legislation relating to semiconductors.

613.1 Mr. BOGSCH (Director General of WIPO) stated that, although the wording of draft Article 5, approved in previous discussions by most countries, was not word for word the same as in the Paris Convention, its effect was the same. He said that the Paris Convention need not be the model for discussions by the Committee because the Conference need not necessarily imitate the Paris Convention. Rather, the Conference had to choose the best wording it could. He gave, as an example of a departure from the Paris Convention in the area of national treatment, the discussion on the question whether the terms industrial or commercial establishment were appropriate; those terms could be misunderstood as far as microchips were concerned; therefore, the Conference was in the process of adopting different language then the language of the Paris Convention. He stated that national treatment was not compatible with the principle of reciprocity and that there was nothing in the text of the draft Treaty which would allow reciprocity, just as there was nothing in the Paris Convention that would allow reciprocity. He made it clear that there was no extraterritorial effect, either in the Paris Convention or in the draft Treaty.

613.2 The Director General of WIPO took the example given by the Delegation of Brazil and stated that the law of the United States of America would not apply in France and the French law would not apply in the United States of America. He interpreted the text of the draft Treaty as saying that each Contracting State had to apply its own national law and not another State's national law and that no Contracting State was obliged to follow another State's national law. He observed that it was a well-accepted principle that national treatment applied even where it resulted in a protection of a higher degree than what was required as a minimum treaty obligation. With regard to the sui generis aspect of protection under the draft Treaty, he said that Article 4 stated that any type of protection under national law--such as copyright or patent protection--may be used. The draft Treaty did not, therefore, obligate parties to it to provide a sui generis title of protection for layout-designs (topographies).

614. Mr. ARRUDA (Brazil) clarified that he did not say that one given country could apply another country's national law. Rather, he stated that a given country could apply its own national law to a foreigner in a foreign country as long as that given country's national law provided for a higher standard of protection than that which was provided for in the draft Treaty.

615. Mr. BOGSCH (Director General of WIPO) reaffirmed that the choice of law to apply rested with the national courts and they would apply their own national law.

616. Mr. ARRUDA (Brazil) agreed that every country applied its own law, but expressed concern that a given country could apply its own law in a particular case in a foreign country if its own law required a higher standard than that provided for under the draft Treaty and the foreign country was a Contracting Party to the Treaty.

617. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Brazil for an example of a situation in which a nation could apply its own law outside its own territory. He observed that a country's sovereignty is territorially limited. He stated that if an allusion was being made to the U.S. Trade Act there was nothing in the draft Treaty which provided a basis for provisions similar to those found in that Act.

618. The CHAIRMAN stated that, while dialogue was essential to coming to a common understanding, it was necessary to make concrete proposals in the form of alternate texts in order to promote the debate.

619. Mr. SABOIA (Brazil) thanked the Director General for the explanation and the points he presented and stated that the Brazilian Delegation would present a proposal to make its point of view on the question of the application or scope of Article 5 more explicit. He suggested that other aspects of Article 5, not previously dealt with, be discussed with a return to the discussion of national treatment when a specific proposal had been prepared by his Delegation.

620. The CHAIRMAN observed that there appeared to be a consensus in the Committee as far as the wording of Article 5(1)(ii) is concerned and that the Committee may adopt it on the basis of the amendments made and the consultations which have taken place thus far. He stated that there was almost complete understanding that the proposals made by the Delegation of India were acceptable to most of the delegations in the Committee. On that basis, he suggested the adoption of tentative language of Article 5, allowing due consideration of concrete proposals by the Delegation of Brazil, when made.

621. Article 5(1)(ii) was adopted subject to possible further proposals, as mentioned in the preceding paragraph, and subject to changes made in conformity with suggested amendments proposed by the Delegation of India and the Director General of WIPO at paragraphs 584 and 585, respectively.

622. Mr. GUERRINI (France) had the impression that the intervention of the Delegation of Brazil mixed two distinct issues--that of national treatment and that of conflict of laws. He stated that the Treaty establishes conditions of protection and that the rules applicable to nationals of other parties of the Union were the same as applied to nationals. For example, if the legislation of the United States of America required registration of a design, a national of France seeking protection in the United States of America should proceed with registration. In return, if an American court should interpret a license contract executed in France, it would apply conflict of law rules to determine the applicable law.

623. Mr. WANG (China) expressed a desire to explain his view of using the term "integrated circuit" instead of using the term "microchips" in the draft Treaty.

624. The CHAIRMAN stated that the matter was to be considered when the report of the Working Group by the Vice-Chairman was considered.

625. Ms. FERNANDEZ (Argentina) expressed the opinion that all of the Articles of the draft Treaty were interrelated and reserved taking a position on the Article under discussion pending decisions taken regarding the Article on definitions.

626. The CHAIRMAN stated that Article 5 could be adopted only on the report of the Chairman of the Working Group.

627. Ms. FERNANDEZ (Argentina) desired clarification as to the point that a decision in respect of Article 5(1)(ii) had not yet been taken and that it was pending later considerations.

628. The CHAIRMAN clarified that there were various proposals that had been considered relating to Article 5(1)(ii) and that he put a proposal before the Conference that the Article be adopted and that when the Delegation of Brazil had proposals to make they would be given the floor and the proposals would be considered. He then suggested turning to discussion of Article 5(2).

629. Ms. FERNANDEZ (Argentina) stated that a decision had not yet been taken within the Group of Developing Countries in respect of Article 5(1)(ii) and that only questions presented by the Delegation of Brazil had been considered.

630. The CHAIRMAN stated that the representative of the Group of Developing Countries had explained that it had considered the question of Article 5(1)(ii) and that it had been determined by the Main Committee that the Delegation of Brazil would make a statement on behalf of the Group of Developing Countries and that the Director General would be given the floor to make a clarification. He observed that the agreed-upon procedure was followed and that there were no other questions submitted by any other delegation within the Group of Developing Countries.

631. Mr. SABOIA (Brazil) addressed the question raised by the Delegation of Argentina that Article 5(1)(ii) was considered by the Group of Developing Countries but that perhaps it was not made clear that this matter was still under discussion within the Group. He further indicated acceptance of the proposal of having provisional adoption of Article 5(1)(ii) with due allowance for late presentation of a concrete proposal by his Delegation.

632. Mr. SONI (India) reiterated the position taken by the Delegation of Argentina that there was an interlinkage between Articles 2, 5, 7 and 8.

633. Mr. BOGSCH (Director General of WIPO) affirmed that the Delegation of Argentina was correct in observing that all questions were interlinked, but stated that there was a limit as to the number of questions that could be considered at one time so that it was necessary to proceed in a step-by-step fashion. In this regard, he stated that there were three ways in which the Main Committee could deal with the problem of avoiding conflicting decisions. First, if a later decision was incompatible with a decision already taken, the Committee could return to, and alter, the original decision. Secondly, according to the Rules of Procedure, any question that had been decided could be reopened and, if it was reopened, the decision may be subject to confirmation of one or more earlier decisions. Thirdly, everything that the Main Committee did went to the Plenary, and the Plenary had the right to make any changes it deemed necessary. He emphasized that, while there was a practical necessity to make decisions in a step-by-step fashion, all decisions were open to review.

634. Ms. FERNANDEZ (Argentina) wished to emphasize that her Delegation had no problem with reexamining a matter at a later time, but that she was not disposed to the provisional adoption of an Article that was being examined within the Group of Developing Countries. She suggested concluding the debate within the Group of Developing Countries so that then she could take a position for or against the proposed Article.

635. The CHAIRMAN inquired of the Delegation of India if further consultations were necessary among the Group of Developing Countries.

636. Mr. SONI (India) suggested that a further meeting of the Group of Developing Countries would be appropriate.

637. The CHAIRMAN provided time for the Group of Developing Countries to meet and thereafter adjourned the meeting.

Fourth Meeting
Monday, May 15, 1989
Afternoon

Article 2: Definitions (Continued from paragraph 441)

638. The CHAIRMAN reconvened the meeting and observed that, before the suspension, some delegations expressed the view that there was an interconnection between Article 5(1)(ii) and the definitions contained in Article 2. He then gave the floor to the Chairman of the Working Group for a report on the outcome of the work on Article 2, paragraphs (i) and (ii), the definitions of "microchip" and "layout-design (topography)," respectively.

639. Mr. COMTE (Chairman of the Working Group) introduced document IPIC/DC/WG/DEF/1 which contained the report of the Working Group on Article 2(i) and (ii). He indicated that it was proposed to substitute the term "integrated circuit" for "microchip." He observed that that definition of "integrated circuit" encompassed a product either in its intermediate or final form. He stated that the definitions contained an alternative for resolution by the Main Committee, that is, whether an "integrated circuit" was to include a plurality of active elements or whether it should also include a single one. He stated, according to Article 2(ii), that all layout-designs (topographies) should contemplate, however expressed, that which could be expressed, for example, graphically, numerically, or digitally.

640. Mr. SONI (India) stated, on behalf of the Group of Developing Countries, that there was a desire to delete the words in brackets "element or" from the definition.

641. Mr. GAO (China) stated that the words "element or" should be deleted.

642. Mrs. LANGER (European Communities) asked whether only the question of singular or plural elements was being discussed at present or whether it was appropriate to discuss other matters in relation to the Article dealing with definitions.

643. The CHAIRMAN indicated that it was appropriate to consider the entire text of the definitions Article, Article 2.

644. Mrs. LANGER (European Communities) emphasized that the words in square brackets ("element or") should stay in the text. She stated that she believed that circuits containing a plurality of active elements were not materially different from a circuit that had only one element. Turning to the second

part of Article 2(i), she suggested adding, after the words "passive elements," the words "of or for an integrated circuit," to make it clear that protection extended also to the configuration of the layout-design on a computer tape and on a mask work. Thirdly, she stated that it was her understanding that it was not in the mandate of the Working Group to decide whether the Treaty should cover all integrated circuits, whether or not they use semiconducting materials. Related to this, she stated that it would not be correct to allow member States to decide whether they are obligated only to protect integrated circuits made of a semiconducting material or not.

645. Mr. SONI (India) stated that, within the Group of Developing Countries, there was a feeling that issues brought out in paragraph 10, on page 4, of document IPIC/DC/3, should be discussed. He quoted from that document saying that "the new definitional structure accords with the approach adopted in existing legislative instruments and with the view that integration of a circuit in or on a piece of material necessarily involves some form of manufacture, even if that manufacture consists only of the making of a prototype, as well as with the view expressed by many delegations of developing countries during the fourth session of the Committee of Experts that protection should not be extended to hypothetical designs but only to those layout-designs actually incorporated in a microchip." He stated that there was a proposal within the Group of Developing Countries to discuss how the foregoing was to be accomplished but this aspect has not been brought out explicitly in the existing definitions in Article 2.

646. Mr. HALVORSEN (Sweden) supported the proposal by the Delegation of the European Communities and stated his intention to make the same proposal for an amendment, that is, to insert the words "or for" before the words "integrated circuit" in Article 2(ii).

647. The CHAIRMAN observed that the Committee had before it the report of the Chairman of the Working Group and the different views that had arisen in response to that report. He observed that the Group of Developing Countries suggested that the words "element or" in the brackets should be deleted and that the Delegation of China took a position consistent with this. He further observed that the Delegation of the European Communities suggested that only the brackets should be removed but the words should be retained.

648. Mr. BOGSCH (Director General of WIPO) asked whether there was further support for the position taken by the Delegation of the European Communities in an effort to determine if there was a consensus among Group B countries in this regard, in contrast to the view taken by the Group of Developing Countries and the Delegation of China.

649. Mr. TARNOFSKY (United Kingdom) stated that Group B, as such, did not have a position on this question. He then inquired as to how the distinction was drawn in intellectual terms between a circuit having one element and a circuit having more than one element. He stated that if it was given that in both cases some intellectual creativity was needed to produce the circuit, then a circuit with a single element in it should be protected to the same

extent as one with a number of elements in it. It was on this basis that he supported the position put forward by the Delegation of the European Communities.

650. Mr. KEPLINGER (United States of America) indicated his agreement with the position taken by the Delegation of the United Kingdom stating that the focus of the protection was upon the design, which must, itself, be original.

651. Mr. BOGSCH (Director General of WIPO) asked whether any of the scientifically trained participants could provide the Committee with a percentage of integrated circuits that consisted of a single element.

652. Mr. ABDULLAH (Ghana) rephrased the question submitted by the Director General as "whether one could obtain an integrated circuit with one active element which functions as an integrated circuit."

653. Ms. HONCOPE (Australia) indicated that the Delegation of Australia supported the deletion of the square brackets around the word "element or" as appearing in the definition of integrated circuit. She also associated the Delegation of Australia with the comments of the Delegation of the European Communities concerning the duty cast upon Contracting Parties to the Treaty by the definition of integrated circuit. She stated that that duty was not perfectly stated in paragraph 4 of the Draft Report of the Working Group on Definitions (document IPIC/DC/WG/DEF/1 Prov.). Specifically, she stated that, if there was a duty only to protect semiconductor integrated circuits, then paragraph 4 should have so indicated that, rather than leaving Contracting States free to choose whether they had such a duty or not. She associated the Delegation of Australia with the comments of the Delegations of the European Communities and Sweden with a preference for the insertion of the words "or for" after the word "of" in the last line of the definition of layout-design (topography) contained in Article 2(ii).

654. Mr. BOGSCH (Director General of WIPO) observed that there was one view that an integrated circuit necessarily must have more than one element and another view that an integrated circuit need not have more than one element, the resolution of which was not a legal question, but a technical one. He ventured that one could measure the importance of this difference of opinion in the light of estimates of how many integrated circuits consisted of a single element.

655. Mr. SONI (India) interpreted the interventions by the Delegations of the European Communities, the United Kingdom and Australia as indicating that they wanted to include discrete devices, which were not integrated circuits, within the purview of protection in this Treaty. He observed that their justification was that as long as there was a layout-design which was original, it should be protected whether it contained a single element or a multiplicity of elements.

656. Mr. KEPLINGER (United States of America) stated that he had consulted with technical experts and was not prepared to say what percentage of the integrated circuit industry consisted of the production of products that included only one active element. He did say, however, that it was a significant part of that industry. He saw the intervention of the Delegation of India as focusing the question properly that if there was an original layout-design, it should be eligible for protection if it met the criterion of originality, since the functional aspects of the circuit were not protected. He stated that the object of the protection was the design itself and that it mattered little whether a design included only one or many active elements.

657. Mr. SONI (India) stated that he understood the position of the United States of America and the Group B countries. His position was that if one presumed that an integrated circuit could contain a single active element, it would expand the scope of the Treaty because they were not integrated circuits, even though they may be original.

658. Mr. CORREA (Argentina) stated, with respect to Article 2(i), that it appeared contradictory to include only one element in the definition when the definition referred to "some or all of the interconnections."

659. Mr. TARNOFSKY (United Kingdom) stated, in response to the point made by the Delegation of India, that he was concerned with the protection of discrete elements but disagreed that the object of protection was integrated circuits. He stated that the object of protection in the Treaty was the layout-designs, not the circuits or the products themselves. He stated that he had not heard any convincing argument that there was a distinction to be drawn between designs based on one active element and designs based on a number of elements, assuming that these designs had some originality in them.

660. Mr. BOGSCH (Director General of WIPO) stated that, if the assertion of the Delegation of the United Kingdom was accepted as correct, it had the curious result that one would have to strike the last three words in Article 2(ii). He submitted that it was a scientific question whether a discrete element fell within the accepted definition of an integrated circuit. He reiterated that the draft Treaty was indeed designed to provide protection for the layout-design of an integrated circuit.

661. Mr. TARNOFSKY (United Kingdom) recalled that one of the proposals of the European Communities, which he supported, was to insert the phrase "or for" in the last line of Article 2(ii). He stated that, in this way, the definition would relate to a layout-design of or for an integrated circuit. He reiterated that if effort was expended in creating a design having a single active element, and it was original, then he could see no argument against protecting that.

662. Mr. WANG (China) stated that an integrated circuit contained at least two elements, but, perhaps, only one active element. He observed that the object of the Conference was to conclude a Treaty to protect integrated circuits and layout-designs and that if one conceived of a new idea, new material, or a new technology, patent protection should be pursued.

663. The CHAIRMAN observed that the question that was discussed was a technical, not political one.

664. Mr. CASADO CERVIÑO (Spain) shared the position taken by the Delegation of the United Kingdom, stating that one could consider an integrated circuit to contain one active element and a number of passive elements.

665. Mr. ABDULLAH (Ghana) offered the opinion that no problem existed with the substance of a definition, but, rather, there was confusion in its wording. He stated that what was most important in satisfying the definition of an integrated circuit was whether one had one or more elements and that the elements should be in and/or on the body of the material.

666. The CHAIRMAN suggested reconvening the Working Group on Definitions to reexamine the definitions in Article 2 in light of the observations made on document IPIC/DC/WG/DEF/1 Prov.

667. Mr. BOGSCH (Director General of WIPO) supported the proposal made by the Chairman and suggested two considerations to the Working Group: the registrations of microchips in the United States Copyright Office should be considered to determine how many registrations concerned a single element and it should be reexamined whether it was only semiconductors that were protectable under the Treaty. With respect to the last point, he said that the Treaty could be modest and only cover semiconductors and nothing else or it could go a step further and say it would cover more than semiconductors. He expanded on this by saying that, if a country's national legislation gave protection to other kinds of integrated circuits, then, of course, as a consequence of national treatment, it would apply also to foreigners, but that there would be no absolute requirement for the other countries to protect integrated circuits which are not semiconductors. He stated that the proposal of the European Communities to insert the words "or for" in the definition appeared unnecessary because, in his view, such a concept was already contained in the definition.

668. Mr. KOMAROV (Soviet Union) supported the proposal of the Chairman to resume the work of the Working Group.

669. Mr. SONI (India) supported the suggestion made by the Delegatation of the Soviet Union.

670. Mr. KITAGAWA (Japan) stated that the question of whether the subject matter of the Treaty was design protection or the protection of an integrated circuit was a legal question, not a technical one. He stated that a decision had to be made whether to change the subject matter of protection or not, thus expanding the scope of protection beyond integrated circuits to design protection or to remain, as before, in protecting integrated circuits. He stated that he supported the wording drafted by the Working Group in that one active element may contain many transistors.

671. Mr. JONKISCH (German Democratic Republic) stated that the only precondition as to when a circuit could be considered as an integrated circuit was whether the elements comported with the definition of "integrated circuit" in Article 2(i), and not the number of the active elements. He shared the view, therefore, that the brackets could be deleted.

672. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Japan whether its intervention would be properly characterized by saying that an integrated circuit may consist of one or several kinds of active elements.

673. Mr. KITAGAWA (Japan) stated that there existed an integrated circuit if one active element contains or may contain many transistors, but that a problem arose if there was one active element that contained only one transistor. He indicated that such an integrated circuit would not be protected because it may be commonplace.

674. Mr. LIEDES (Finland) stated that he was ready to accept the text for the Treaty as proposed by the Working Group, with the square brackets eliminated and the proposal to add the words "or for" to Article 2(ii). He further indicated that the possibility of extending the protection under the Treaty to integrated circuits other than semiconductors was acceptable to him and proposed putting this possibility expressly to the Conference.

675. Mr. SONI (India) was of the opinion that the point raised by the Delegation of Japan was correct and pertinent, that one could have a single active element with many transistors. As an example, he referred to transistor logic, including a multi-emitter structure where one had several transistors effectively utilizing one active element. He expressed concern about extending protection to such a layout-design.

676. The CHAIRMAN observed that there was agreement that the Working Group should reconvene and take into considerations the views expressed on the definitions in Article 2(i) and (ii). He then returned to the discussion of Article 5.

677. It was agreed to resubmit Article 2, paragraphs (i) and (ii) to the Working Group, taking into consideration the views expressed with respect to the report of the Working Group (document IPIC/DC/WG/DEF/1). (Continued at paragraph 703.)

Article 5: National Treatment (continued from paragraph 637)

678. The CHAIRMAN returned the discussion to Article 5, paragraph (1), [National Treatment].

679. Mr. SONI (India) stated that the problem in Article 5(1)(ii) was that, unless the definitions were clear, it was difficult to decide on the precise formulation of the Article in question. He suggested returning to Article 5(1)(ii) after the problems with the definitions were resolved within the Working Group.

680. Mr. SAADA (Egypt) expressed the desire for a meeting of the Steering Committee to review the work of the different committees and urge forward the overall work on the Treaty.

681. The CHAIRMAN indicated that the request for a meeting of the Steering Committee would be kept in mind and then turned discussion to Article 5, paragraph (2) [Court Proceedings, Etc.].

682. Mr. BOGSCH (Director General of WIPO) summarized the text of paragraph (2) of Article 5, saying that, notwithstanding paragraph (1), complete equal treatment need not be given to foreigners and nationals of any Contracting Parties as far as the following three matters were concerned: first, in respect of the appointment of an agent, secondly, concerning the designation of an address for service, and thirdly, as far as court proceedings are concerned. He stated that Note 59 to the draft Treaty expressed that it was quite customary that a foreigner had to appoint a local agent in a given country because the authorities of the country were more readily able to communicate with that person. With respect to the designation of an address for service, if an applicant was a foreigner, then notifications need not be sent to his foreign address but he had to choose an address in the country to which the notifications can be sent. He indicated that special laws applicable to foreigners in court proceedings could also be applied when administering the principle of national treatment and gave as an example the situation of a foreign plaintiff that was required to post a bond.

683. Mr. DA CONCEICAO E SILVA (Angola) asked for clarification as to what was intended by the word "etc." in the title of Article 5(2).

684. Mr. BOGSCH (Director General of WIPO) observed that the word "etc." was in the title in order not to make the title too long. He suggested that the title could be changed to make a complete list of the subject matter included, namely, appointment of agents, designation of address for service, and court proceedings.

685. Mr. DA CONCEICAO E SILVA (Angola) expressed satisfaction with the suggestion and explanation given by the Director General of WIPO.

686. Mr. JEGEDE (Nigeria) indicated that he was in agreement with the principle of Article 5(2) as explained by the Director General and stated that these principles were in accord with the provisions of his own law, particularly those dealing with court procedure. He observed that the statement in paragraph 59 of document IPIC/DC/3 that "any Contracting Party shall be free not to apply national law" should be worded "any Contracting Party shall be free to apply national law."

687. Mr. GUERRINI (France) urged the Drafting Committee to provide more elegant wording for the Article under discussion without changing the scope of its application.

688. The CHAIRMAN observed that there was no disagreement on the substance of the paragraph under discussion and offered to leave the selection of terms or wording to the Drafting Committee.

689. Article 5(2) was adopted as it appeared in the Basic Proposal, pending any changes by the Drafting Committee, as indicated in the previous paragraph.

690. The CHAIRMAN then turned the discussion to Article 5, paragraph (3) [Application of Paragraphs (1) and (2) to Intergovernmental Organizations].

691. Mr. BOGSCH (Director General of WIPO) stated that Article 5(3) was subject to a later decision which was to be made pertaining to international organizations of a certain kind that may become Contracting Parties and that only if that decision was made in a positive way would the paragraph be necessary. He explained that Article 5(3) provided that nationals of any of the States that were members of the intergovernmental organization were to be considered as nationals for the purpose of the Treaty.

692. The CHAIRMAN observed that the Committee was in agreement with the explanation offered by the Director General.

693. Article 5(3) was adopted, subject to a decision being taken to allow international organizations of a certain kind to become Contracting Parties.

Article 6: The Scope of the Protection

694. The CHAIRMAN opened discussion on Article 6 and asked the Director General to introduce it.

695.1 Mr. BOGSCH (Director General of WIPO) stated that Article 6, paragraph (1), entitled "Acts Requiring the Authorization of the Holder of the Right" distinguished between three different rights: (i) the act of reproducing a protected layout-design (topography); (ii) the act of incorporating the protected layout design (topography) in a microchip; and (iii) the act of importing, selling or otherwise distributing, for commercial purposes, a protected layout-design (topography) or a microchip incorporating such a protected layout-design (topography). Turning to paragraph (2), he characterized it as, among other things, regulating the question of reverse engineering. He stated that paragraph (3) dealt with non-voluntary licenses and antitrust measures. He then turned to paragraph (4), entitled "Sale and Distribution of Infringing Microchips After Notice But Acquired Innocently Before Notice" and indicated that it dealt with the question of so-called "innocent infringers." Turning to paragraph (5), entitled "Articles Temporarily or Accidentally Entering the Territory of a Contracting Party," he stated that it paralleled a similar provision in the Paris Convention which dealt, for example, with the situation of an airplane, in which there was an

infringing microchip, which lands in a country. By virtue of paragraph (5), such an act was not to be considered as an infringing importation. He indicated that the last paragraph, paragraph (6), entitled "Exhaustion of Rights," had been discussed extensively in the preparatory meetings and stated that it gave Contracting Parties the ability to apply the principle of the exhaustion of rights if they so desired.

695.2 The Director General of WIPO stated that the Secretariat would give substantive comments on each paragraph as they were called for discussion. He stated that the Secretariat has received written proposals in relation to Article 6, from the Delegations of India, the European Communities, and the United States of America all of which would be made available to the Conference. He then called upon other countries that wished to put forwardwritten proposals to do so in a timely fashion so that they could be considered in the discussions to follow.

696. The CHAIRMAN thereupon adjourned the meeting.

Fifth Meeting
Tuesday, May 16, 1989
Morning

697. The VICE-CHAIRMAN (Mr. Iliev) opened the meeting. He recalled that the Working Group was asked to consider the questions on which the Main Committee did not reach agreement, and gave the floor to the Chairman of the Working Group to inform the Committee of the results of the Working Group.

698. Mr. COMTE (Chairman of the Working Group) indicated that the Working Group had met in the morning but required a further meeting and that it would issue a report in the afternoon.

699. Mr. MALHOTRA (India) requested, on behalf of the Group of Developing Countries, for time to be set aside for a meeting of the Group of Developing Countries in order to consider Article 6 and amendments proposed to that Article.

700. Mr. BOGSCH (Director General of WIPO) then requested all delegations, except those of the Group of Developing Countries, to leave the room to afford the Group of Developing Countries an opportunity to meet.

701. Mr. TARNOFSKY (United Kingdom) suggested that the Group B countries meet immediately.

702. The VICE-CHAIRMAN (Mr. Iliev) indicated that the Group of Developing Countries and the Group B countries would have respective meetings, beginning immediately. He thereupon adjourned the meeting.

Sixth Meeting
Tuesday, May 16, 1989
Afternoon

Article 2: Definitions (Continued from paragraph 677)

703. The CHAIRMAN reconvened the meeting and indicated that Article 2 would be considered. He then called upon the Chairman of the Working Group to introduce the report of the Working Group on Article 2, paragraphs (i) and (ii), the definitions of "microchip" and "layout-design (topography)," respectively.

704. Mr. COMTE (Chairman of the Working Group) introduced the report by the Working Group contained in document IPIC/DC/WG/DEF/2. He observed that the definition of an "integrated circuit" contained in that document called for the inclusion of elements of which at least one is an active element and that the elements and all or part of the interconnections are integrally formed in and/or on a piece of material. He stated that the definition of a "layout-design (topography)" contained in Article 2(ii) had been adapted to the afore-mentioned considerations. He observed that the definitions were not limited to semiconductors, but the Working Group proposed the addition of a new Article 3(1)(b) to provide that Contracting Parties that do limit protection to layout-designs (topographies) of semiconductor integrated circuits may continue to do so. He also stated that it was recommended in the report to amend Article 11 to apply also to Article 3(1)(b) so that as technologies related to materials used to make integrated circuits evolve, Article 3(1)(b) could be amended accordingly by a qualified majority of the Assembly.

705. Mr. CORREA (Argentina) proposed amending Article 2(i) to replace "intermediate" with "semi-finished" and, in the fourth line to replace "intended" with "able." He proposed amending Article 2(ii) so that the last line continues "as long as the layout-design has been incorporated in a semiconductor chip." He stated that the design of an integrated circuit was protected during the period from the moment of its creation to its incorporation in a microchip by, for example, the law of unfair competition. He stressed, therefore, that he was not advocating witholding protection from creators during that period but that the protection being discussed by the Committee should apply only when a number of conditions that would justify such protection are met.

706. Mr. KOMAROV (Soviet Union) stated that the report issued by the Working Group represented a serious step forward.

707. Mrs. LANGER (European Communities) indicated agreement with the proposed text of Article 2(i) and Article 3(1)(b). As regards the proposed text of Article 2(ii), she stated that the fixation of a design in a semiconductor product should not be a prerequisite for protection. Thus, she stated that Article 2(ii) should make it clear that a layout-design (topography) should be protectable without a particular condition as to its fixation. She indicated, in this regard, that she could not accept the amendment proposed by the Delegation of Argentina.

708. The CHAIRMAN observed that the proposal by the Delegation of Argentina called for replacement of the word "intermediate" in Article 2(i) by the word "semi-finished."

709. Mr. COMTE (Switzerland), speaking as Chairman of the Working Group, stated that, in his opinion, it was a question of wording and recommended submitting it to the Drafting Committee.

710. The CHAIRMAN observed that the proposal made by the Delegation of Argentina replaced, in the fourth line of Article 2(i), the word "intended" with the word "able."

711. Mr. COMTE (Switzerland) speaking as Chairman of the Working Group, indicated that in its first report (document IPIC/DC/WG/DEF/1) the Working Group had recommended replacing "capable of" for "intended to" to address the problem of integrated circuits that were in a semi-finished state and not then capable of performing an electronic function but, because of their design, were intended to so perform.

712. The CHAIRMAN concluded that the word "intended" would be retained as proposed by the Working Group. He further clarified the proposal by the Delegation of Argentina, with regard to Article 2(ii), as proposing that, at the end of the paragraph, the sentence should read "as long as the layout design has been incorporated in a semi-conductor chip." He observed that this proposal had been rejected by the Representative of the European Communities.

713. Mr. SONI (India) agreed with the Delegation of Argentina, saying that its intervention did not call for the denial of protection for layout-designs independent of their being incorporated in a microchip, but, rather, called for some other mechanism of protection. He expressed sympathy for the position taken by the Delegation of the European Communities that there could be a division between the design phase of a layout-design (topography) and the fabrication phase of an integrated circuit. He saw the concern of the Delegation of Argentina as being the proliferation of protected designs which may not be incorporated into microchips leading to an undesirable extension of the scope of the Treaty.

714. Mr. TARNOFSKY (United Kingdom) supported the statement by the Delegation of the European Communities, saying that he felt that it should be made clear in the definition of Article 2(ii) that the design itself, irrespective of its incorporation in a product, should be protected. He suggested that this could be done by putting the words "or for" near the end of the definition in Article 2(ii). In this regard, he expressed his support for the notion that the designs which were the sole output of design establishments need to be protected because the result of their work is the design. He suggested that other means for protection, giving as an example trade secret law, were not workable. He disagreed with the argument made by the Delegation of India that it was undesirable to have a proliferation of protected designs.

715. Mr. OMAN (United States of America) associated himself with the remarks made by the Delegation of the European Communities and with most of the remarks made by the Delegation of the United Kingdom. He indicated that one justification given for supporting the requirement of fixation was the example of the United States Semiconductor Chip Protection Act where there was a requirement of fixation. He placed that requirement in the context of the federal system of government in the United States of America by stating that the Semiconductor Chip Protection Act applied only to federal or national protection and that before fixation, creators could get protection under the laws of the individual States of the United States of America under trade secret, unfair competition and contract laws, among others.

716. Mr. BING (Norway) associated himself with the Delegations of the European Communities, the United Kingdom, and the United States of America. He echoed the point made by the Delegation of the United Kingdom that it is of special interest to small countries to have the protection extended to designs in order to afford protection of designs exported for production abroad. In this regard, he stated that it might not be sufficient to have national protection in the areas of trade secret or unfair competition, for example, as suggested by the Delegation of Argentina. He specifically supported the suggestion and proposal made by the Delegation of the United Kingdom.

717. Mr. BARREDA DELGADO (Peru) stated that a technological investigation began with an idea that had only theoretical value and proceeded to a trial stage where its effectiveness could be demonstrated. He expressed concern about protecting a theory without any guarantee of operation and observed that in Peru one cannot protect anything that had not evolved from basic engineering to a stage where operation was assured.

718. Mr. GOVEY (Australia) joined with the proposal by the Delegation of the European Communities to ensure that protection under the Treaty extended to designs for integrated circuits without the need for them to be first incorporated in an integrated circuit. He echoed the sentiment that such protection was a matter of importance to smaller countries which hoped to increase their involvement in the design aspects of the industry. He stated that the need to protect designs and designers of integrated circuits was the reason that he supported an amendment to the national treatment provisions in Article 5(ii), so that Article 5 would ensure that the Treaty protected an

establishment for the design as well as for the production of integrated circuits. He observed that a restriction in protection to a layout-design in chip form only provided protection to those already in the industry and that, thus, there was an advantage gained for newcomers in the field in accepting the proposal put forward by the Delegation of the European Communities.

719. Mr. GONZALEZ ARENAS (Uruguay) expressed concern that the views of developing countries were not expressed in Article 2(ii). In particular, he cited Note 10 of the draft Treaty (document IPIC/DC/3) concerning the protection of layout-designs only when incorporated in a chip and in this regard, he expressed sympathy with the position taken by the Delegation of Argentina.

720. Mr. HALVORSEN (Sweden) affirmed his support for the Delegation of the European Communities to the insertion of the proposed wording in Article 2(ii).

721. Mr. VILLARREAL GONDA (Mexico) indicated his desire to protect designs made in Mexico and desired wording that would accomplish this without the necessity of incorporating the design in an integrated circuit.

722. Mr. KITAGAWA (Japan) associated himself with the proposal made by the Delegation of the European Communities and stated that he was satisfied with the definition given by the Working Group. He stated that his national law protected a layout-design only when fixed, but that the definition of the layout-design did not require the fixation or incorporation of a layout-design into a chip, thus providing protection for layout-designs, per se.

723. Mr. PRETNAR (Yugoslavia) offered his support to the work done by the Working Group. He stated, as to the problem raised by the Delegation of Argentina, that the concerns raised could have been dealt with elsewhere in the draft Treaty, suggesting Articles 7 or 8.

724. Mrs. MAYER-DOLLINER (Austria) stated, echoing the sentiments of the Delegations of Norway, Sweden, and Australia, that, as a small country, Austria too was in favor of the protection of designs, even if they were not fixed in a microchip.

725. Mr. SONI (India) interpreted the interventions of the Delegations of the United States of America and Japan as indicating that, in their legal systems, fixation (the incorporation of a design into an integrated circuit) was essential to obtaining protection. He supported a statement by the Delegation of Argentina that, if protection was accorded to a design before it is incorporated in a microchip, then that must be reflected in the term of protection. In this regard, he indicated that preference for a linkage between the term of protection and the time of creation of a design.

726. Mr. GAO (China) indicated his support for the work done by the Working Group. He further indicated his support for the requirement of fixation of a layout-design in an integrated circuit before it could be accorded protection.

727. Mr. ABDULLAH (Ghana) expressed his support for the recommendations made by the Working Group, as amended by the Delegation of the European Communities. He expressed the view that developing countries were at a stage of being able to create layout-designs, but they had not yet acquired the manufacturing technology. He stated that, accordingly, the protection of layout-designs per se was in the interests of developing countries and that he was in favor of it. He raised the point that if a company designed an integrated circuit and another manufactured it there may be some question as to who was actually the holder of the right.

728. Mr. LIEDES (Finland) stated that, for the reasons given by the Delegations of Norway and Australia, and referring to what was stated by the Delegation of Ghana, he was in favor of the amendment proposed by the Delegation of the European Communities to the recommendation of the Working Group. He indicated that, subject to the amendment, he was ready to adopt the recommendation of the Working Group for incorporation into the Treaty.

729. Mr. WATTERS (Canada) stated that the structure of Canadian industry was one in which there were both design houses and also manufacturing capability of semiconductor chips and that he very much wanted to ensure that the creation that goes into those designs was protected. He supported the views put forward by the Delegation of the European Communitites to include the words "or for an integrated circuit" in Article 2(ii). He further supported the argument put forward by the Delegation of Ghana. He noted that some drafting changes could have been made to Article 2(ii) in relation to the possibility that only so many interconnections would be covered by the layout-design.

730. Mr. SUCHAI JAOVISIDHA (Thailand) stated his support for the view expressed by the Delegation of Ghana. He further expressed his support for the proposal submitted by the Working Group, as amended by the Delegation of the European Communities.

731. Mr. CORREA (Argentina) expressed concern that extending protection to layout-designs per se without requiring fixation would not adequately inform the public as to the scope of protection. He directed an inquiry to the Delegations of the United States of America and Japan as to whether their national laws would require modification if protection were extended to layout-designs per se.

732. Mr. CHOI (Republic of Korea) stated that he was in agreement with the proposal made by the Working Group. He indicated that, in his country, a design could be protected under copyright law. He stated that if the definition in Article 2(ii) had implications for the scope of protection he could support the requirement of fixation of layout-design in an integrated circuit.

733. Mr. BOGSCH (Director General of WIPO) suggested to have the last words of Article 2(ii) read "the interconnections of or for an integrated circuit intended for manufacture."

734. Mr. CORREA (Argentina) suggested that the concept of fixation, as dealt with in Article 2(ii), had relevance to other Articles in the Treaty, such as Article 7. He suggested holding the discussion of Article 2(ii) open until adequate consideration was given to other such related Articles.

735. Mr. OMAN (United States of America) stated that if the Treaty was adopted with the language suggested by the Working Group, the United States of America would not have to amend its law; it would provide protection by State law for those creations before there was fixation and, after fixation, protection would be provided under the federal law. He indicated that he could accept the proposal made by the Director General.

736. Mrs. LANGER (European Communities) requested an adjournment to consider the proposals concerning Article 2(ii). She also laid stress on a remark made by the Delegation of India that the provision in the Treaty regarding the duration of protection or the start of protection was pertinent to the present discussions.

737. The CHAIRMAN then suspended the meeting.

[Suspension]

738. The CHAIRMAN reconvened the meeting and recommenced debate on Article 2(ii).

739. Mr. CORREA (Argentina) submitted that the criterion of fixation was not connected exclusively with Article 2 but that it also had relevance to other Articles, in particular Article 7. He suggested, therefore, that the discussion of Article 2(ii) be held open until other clauses, in particular Article 7, were discussed.

740. Mr. SONI (India) supported the proposal by the Delegation of Argentina.

741. Mr. GOVONI (Switzerland) asked whether the compromise proposition by the Director General of WIPO was again in discussion and indicated that, if this was the case, he supported that position along with the Delegation of the United States of America.

742. Mrs. LANGER (European Communities) stated that the proposal submitted by the Director General represented a good compromise which she submitted as a formal proposal in the name of the European Communities.

743. Mr. VRBA (Czechoslovakia) expressed his support for the solution adopted and presented by the Working Group.

744. The CHAIRMAN characterized the proposal by the Delegation of Argentina as being a proposal to temporarily set aside the recommendations of the Working Group and return to them when Article 7 was examined. He observed that the proposal was supported by the Delegation of India and suggested that the Committee should address this proposal first before proceeding.

745. Mr. ABDULLAH (Ghana) indicated that he did not accept the proposal made by the Delegation of Argentina and supported the suggestion that was made by the Director General.

746. Mr. CHOI (Republic of Korea) supported the suggestion made by the Delegation of Argentina.

747. The CHAIRMAN found that the Committee accepted the recommendations of the Working Group, as modified by the Director General. He stated that when discussion on Article 7 is reached, the Delegation of Argentina may make an appropriate proposal in connection therewith.

748. Mr. KOMAROV (Soviet Union) stated that he had no objections against such a proposal since it was sufficiently flexible and reflected the desired result. He asked the Director General to comment on his proposal.

749. Mr. BOGSCH (Director General of WIPO) indicated that it was his understanding that the proposal was adopted and was uncertain as to whether the discussion was reopening on it or not.

750. Mr. KOMAROV (Soviet Union) stated that it was not his intention to reopen discussion, only to receive comments and that he could accept the proposal, with the modification of the Director General.

751. The CHAIRMAN indicated that, in the absence of objection, the recommendations of the Working Group had been accepted, save for the concerns of the Delegation of Argentina.

752. Mr. CORREA (Argentina) was of the opinion that the proposal by the Director General of WIPO could be accepted, but that more time was required to consider the implications of the proposals extent on Article 2(ii). He requested confirmation that discussion of the concept of "fixation" would be examined when Article 7 was discussed and that that results of such discussions may provide a basis for reopening discussion of Article 2(ii).

753. The CHAIRMAN expressed the view that the proposal of the Working Group had been accepted on the understanding that when Article 7 was discussed, problems concerning the question of fixation could be raised. He recalled that there were three proposed amendments to the proposal submitted by the Working Group: one put forward by the Director General, a second put forward by the Delegation of the European Communities to add the two words "or for," and a third proposed by the Delegation of Argentina.

754. Mr. ABDULLAH (Ghana) observed that it had been decided that the Director General's suggestion was widely acceptable and suggested proceeding to consider other aspects of the draft Treaty. With regard to Article 2(ii) he said that layout-designs per se should be protected and that the change to the language recommended by the Director General was apt because a layout-design was always intended for manufacture.

755. Mrs. LANGER (European Communities) indicated her belief that the proposal of the Director General was adopted and proposed having the Director General read out the proposal again. She also indicated that it was her understanding that the Delegations of the Soviet Union and Argentina did not question the ruling by the Chairman that the proposal of the Director General had been accepted, but, rather, were reserving positions and questions for possible later consideration.

756. The CHAIRMAN asked whether the Committee could accept the recommendations of the Working Group, as modified by the Director General, with the understanding that when Article 7 was debated concerns related to the issue of fixation could be raised.

757. Mr. CORREA (Argentina) stated his agreement with the observation made by the Delegation of the European Communities and hoped that it would not be necessary to return to a discussion of the definitions of Article 2 but that it depended on the work on Article 7.

758. The CHAIRMAN then indicated that the recommendations and the amendments made by the Director General would be accepted.

759. Article 2(ii) was adopted, accepting the recommendations of the Working Group in document IPIC/DC/WG/DEF/2, as modified by the recommendation of the Director General of WIPO at paragraph 733 and subject to later discussions when Article 7 was considered.

Article 6: The Scope of the Protection (Continued from paragraph 696)

760. The CHAIRMAN then turned the discussion to Article 6 and called upon the Director General to introduce it and the various proposals made in respect of it.

761. Mr. BOGSCH (Director General of WIPO) identified the following proposals for the amendment of Article 6: to paragraph (1), proposals from the Delegation of India in document IPIC/DC/10, the Delegation of the European Communities in document IPIC/DC/13, the Delegation of Switzerland in document IPIC/DC/14, and, in the name of the Group of Developing Countries, a proposal in document IPIC/DC/19; to paragraph (2), proposals from the Delegation of the European Communities in document IPIC/DC/13 and the Delegation of the Soviet Union in document IPIC/DC/15; to paragraph (3), proposals from the Delegation of the United States of America in document IPIC/DC/11, from the Delegation of the Soviet Union in document IPIC/DC/15, from the Delegation of Spain, in the name of the European Communities, in document IPIC/DC/16, and by the Delegation of India, in the name of the Group of Developing Countries, in document IPIC/DC/19; to paragraph (4), proposals by the Delegation of Australia in document IPIC/DC/18, by the Delegation of the European Communities in document IPIC/DC/17 and by the Delegation of India, in the name of the Group of Developing Countries, in document IPIC/DC/19; to paragraph (5), a proposal by the Delegation of the European Communities in document IPIC/DC/17.

762. The CHAIRMAN called upon the Delegations that submitted amendments to Article 6(1) to introduce their respective amendments.

763. Mr. SONI (India) stated that document IPIC/DC/19, with some modifications he would give orally, contained a proposal by the Delegation of India, in the name of the Group of Developing Countries, to delete the words "at least " from Article 6(1) and add the words "for commercial purposes" after the words "the following acts if performed." He suggested amending Article 6(1)(i) by deleting the words in square brackets - "in its entirety or a substantial part thereof" - and deleting Article 6(1)(ii) in its entirety. With respect to Article 6(1)(iii), he suggested deleting the words "for commercial purposes" and deleting the words "irrespective of whether the microchip is imported, sold or otherwise distributed as part of some other article or separately."

764. Mrs. LANGER (European Communities) stated that, in document IPIC/DC/13, the first line should have read: "Acts requiring the authorization of the holder of the right." She then stated that her Delegation's proposal was to delete the square brackets in Article 6(1)(i) and (ii) so as to retain the text contained in the brackets. She further proposed that Article 6(1)(iii) should read as follows:

> "the act of importing, selling or otherwise distributing for commercial purposes, a protected layout-design (topography) or a substantial part thereof or an integrated circuit in which a protected layout-design (topography) or a substantial part thereof is incorporated, irrespective of whether the integrated circuit is imported, sold or otherwise distributed as part of some other article or separately."

She stated that the foregoing wording of Article 6(1)(iii) was necessary to provide protection for a substantial part of a design. She stated, with respect to the proposal submitted by the Delegation of India, on behalf of the

Group of Developing Countries, that she believed that restriction of protection in the way suggested there would make the Treaty very vulnerable to circumvention and would reduce its importance.

765. Mr. COMTE (Switzerland) introduced the proposal of his Delegation contained in document IPIC/DC/14. He stated that the proposal was directed to replacing the phrase in brackets in Article 6(1)(i) and (ii). He expressed doubts about the term "substantial part" in that he believed that it could take on quantitative significance, such as ascribing a certain percentage of the design copied to find infringement. Accordingly, he proposed the qualitative criterion that a party who meets the condition of originality in Article 3(2) will merit protection.

766. The CHAIRMAN then opened the floor to discussion of Article 6, paragraph (1) [Acts Requiring the Authorization of the Holder of the Right].

767. Mr. TARNOFSKY (United Kingdom) stated that the suggestion by the Delegation of India, on behalf of the Group of Developing Countries, to delete the words "at least," which appear in the second line of Article 6(1), seemed to imply that the Treaty should establish the maximum protection that should be accorded to the holders of the rights and that, if a country wanted to give further protection, it would be prohibited from doing so. He observed that it was normal in treaties to establish a minimum standard and that, if countries wanted to provide further protection, then this was up to them. He stated, therefore, that he was against the proposal to delete the words "at least."

768. Mr. LUKACS (Netherlands) shared the opinion of the Delegation of the United Kingdom and indicated that he was not in favor of the proposal.

769. Mr. OMAN (United States of America) supported the statement of the Delegation of the United Kingdom, saying that the words "at least" were true to the objective of the Treaty which was to establish certain minimum standards beyond which countries could go, if they so chose.

770. Mr. SONI (India) agreed that the purpose of the Treaty was to establish common standards and that the intention was to circumscribe the minimum standards but that different countries may have different standards and could protect more. He asked, assuming the scope of protection was to be circumscribed by the three commissions set forth in Article 6(1), why it was necessary to qualify it by saying "at least."

771. Mr. BOGSCH (Director General of WIPO) stated that minimum rights would be guaranteed by the Treaty, but if a country gave stronger protection than that provided for in the Treaty, that country would, because of the principle of national treatment and the complete absence of reciprocity, be obliged to grant such stronger protection to foreign nationals. He further stated that no party would be hurt if a country chose to give more protection to foreign nationals.

772. Mr. SAADA (Egypt) stated that, if there was a minimum and a maximum of protection, it was important to define them, debate them and, come to a compromise. He stated that if there was a maximum of protection, the term "at least" should be removed from the text.

773. Mr. BOGSCH (Director General of WIPO) indicated that the concept could be expressed differently, stating that a paragraph or a sentence could be added to Article 6 to the effect that any Contracting State was free to grant a higher level of protection rather than including the phrase "at least" in the Article.

774. Mr. MALHOTRA (India) expressed the feeling that the objection raised by his Delegation to Article 6 was not one of substance. Rather, his objection related to the manner in which Article 6(1) was drafted because he felt that the obligation that was put on a Contracting Party should be a precise one but the phrase "at least" made the Article uncertain as to what was considered unlawful.

775. Mrs. LANGER (European Communities) was of the impression that the difficulties expressed with respect to Article 6(1) might be a problem for the Drafting Committee and not a problem that needed to be discussed by the Main Committee. She considered the intervention by the Delegation of India as an attempt to obviate the feeling that there might be other obligations hidden in the Treaty. In this regard, she stated that it was her understanding of the phrase "at least" that it made clear that there was freedom accorded to Contracting Parties to grant a higher level of protection.

776. Mr. BOGSCH (Director General of WIPO) expressed agreement with the statement by the Delegation of the European Communities. He observed that the Delegation of India and the Group of Developing Countries wanted to emphasize that, if a country which was a Contracting Party gave protection against acts enumerated in Article 6, its obligations under the Treaty had been met. He suggested formulating a proposal to the text that made both sides completely clear.

777. Mr. KHREISAT (Jordan) concluded from the statements of the Delegation of India that the phrase "at least" is equivocal. He proposed, therefore, to replace that phrase with the word "exclusively."

778. Mr. SAADA (Egypt) stated that the question concerning the expression "at least" was not a question of language or wording but was a question of substance. He suggested, therefore, that the question was properly one for the Main Committee rather than the Drafting Committee.

779. Mr. CORREA (Argentina) stated that the proposition made by the Director General was worthy of study and that it probably provided a basis for a solution to the problems expressed by the Group of Developing Countries.

780. Mr. KITAGAWA (Japan) supported the minimum standard of protection set forth in the draft Treaty. He stated that Japanese law did not contain any provision prohibiting the act of reproducing a protected layout-design, but that it did prohibit the reproduction, transfer or import for businesspurposes of objects, such as devices and machines, to be used for the imitation of a registered layout-design. He indicated that it was his understanding that this prohibition in Japanese law functionally corresponds to the prohibition of the act of reproduction and thus conformed with the Treaty.

781. Mr. SATELER ALONSO (Chile) supported the position taken by the Delegation of India on behalf of the Group of Developing Countries to delete the words "at least" from Article 6(1). He was of the opinion that the deletion of the words "at least" would not restrict the freedom of Contracting States to prohibit acts other than those enumerated in Article 6(1).

782. The CHAIRMAN requested the Director General to provide the Committee with a written text of Article 6 for its consideration.

783. Mr. BOGSCH (Director General of WIPO) indicated his agreement to prepare a text of Article 6, taking into consideration comments made on the draft of Article 6. He commented, in connection with the intervention by the Delegation of Japan, that the Treaty did not require any Contracting Party to use the actual words of the Treaty in drafting its national laws, but that its law must conform with the Treaty.

784. The CHAIRMAN thereupon adjourned the meeting.

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785. The CHAIRMAN called the meeting to order and reported that the Steering Committee found that the Main Committee was proceeding slowly and observed a need to speed up the pace of work. He then returned discussion to Article 6 of the draft Treaty and, in particular, to document IPIC/DC/20 which included the proposal that the Director General had been requested to prepare concerning that Article.

786. Mr. BOGSCH (Director General of WIPO) stated that the proposal contained in IPIC/DC/20, and specifically in a new subparagraph (b) to Article 6(1), was to make clear that any country was free to consider acts in addition to those enumerated in Article 6(1) as being unlawful. He indicated that the proposal called for the deletion of the words "at least" from Article 6(1), as suggested by the Delegation of India. He explained that the

reference in the proposed paragraph (b) to paragraph (5) was to clarify that vessels and aircraft which come into a country temporarily would not be subject to seizure if they contain infringing microchips.

787. Mr. SONI (India) indicated that he found the new proposal made by the Director General to be acceptable. He reiterated the proposal he made, on behalf of the Group of Developing Countries, to add the words "for commercial purposes" after the words "if performed" in the draft Article 6(1) in the Basic Proposal.

788. Mr. TARNOFSKY (United Kingdom) expressed his support for the proposal made by the Director General in document IPIC/DC/20.

789. Mr. KRIEGER (Federal Republic of Germany) supported the proposal of the Director General.

790. The CHAIRMAN observed that there was a proposed amendment by the Delegation of India, on behalf of the Group of Developing Countries, to add the word "for commercial purposes" after the words "if performed" in the second line of Article 6(1).

791. Mrs. LANGER (European Communities) stated that the words "for commercial purposes" were already in the draft Treaty, in the proper place, at paragraph (iii) of Article 6(1).

792. The CHAIRMAN recalled that the proposal by the Delegation of India, on behalf of the Group of Developing Countries, was that the phrase "for commercial purposes," as they appear in Article 6(1)(iii), should be moved to Article 6(1) and observed that the proposal by the European Communities was that the phrase should remain where it is.

793. Mr. HALVORSEN (Sweden) supported the views expressed by the Delegation of the European Communities to retain the words "for commercial purposes" in paragraph 6(1)(iii) as in the Basic Proposal.

794. Mr. WISZCZOR (Czechoslovakia) supported the proposal of the Director General that the words "at least" should be excluded from Article 6(1).

795. Mr. JONKISCH (German Democratic Republic) stated that he supported the proposal made by the Delegation of India.

796. Mr. KITAGAWA (Japan) supported the proposal made by the Delegation of India.

797. Mr. BOGSCH (Director General of WIPO) stated that there was little difference between the proposal of the Delegation of India and the Basic Proposal. Specifically, he stated that, according to Article 6(2)(a) of the Basic Proposal, there was no obligation to provide protection against acts done for private and non-commercial purposes, while the proposal by the Delegation of India, on behalf of the Group of Developing Countries, to insert "for commercial purposes" in Article 6(1), would yield the same result. He characterized the difference in the two proposals as being one of emphasis in choosing to put the proposition at the beginning or later.

798. Mrs. LANGER (European Communities) submitted that the proposal she made concerning the following paragraph together with the proposals concerning the paragraph under discussion should be discussed together because they were linked. She expressed her understanding that acceptance of the current proposal would result in a deletion of subparagraph (c) proposed by the European Communities.

799. Mr. KITAGAWA (Japan) supported the comment made by the Delegation of the European Communities. He commented that Article 6(1) and (2) should be discussed together as they were interrelated.

800. Mr. SATELER ALONSO (Chile) supported the statement made by the Delegation of Japan. He stated that, if the second paragraph of the Basic Proposal was approved, the proposal of the Group of Developing Countries would be a question of editing or, at most, produce a result as discussed by the Director General. If the suggestion of the Delegation of the European Communities was added to paragraph (2), then the proposition by the Group of Developing Countries would be substantive.

801. Mr. GUERRINI (France) indicated that there was an error in the French text of the proposal by the European Communities in document IPIC/DC/13 at the last line where the phrase "à titre privé" should be substituted for "en privé."

802. The CHAIRMAN stated that the necessary correction would be made. He observed that there was a proposal, which had received the support of a number of delegations, to consider together Article 6(1), which contained the amendment proposed by the Delegation of India, on behalf of the Group of Developing Countries, in document IPIC/DC/19 and Article 6(2)(c), as proposed by the Delegation of the European Communities in document IPIC/DC/13.

803. Mrs. LANGER (European Communities) stated that the text proposed by the Director General, which restricted the acts of importing, selling and otherwise distributing for commercial purposes, was wise. With respect to the two other restricted acts in Article 6(1), namely, reproduction and incorporation, she stated that only a very narrow exception was necessary and thus proposed, in Article 6(2)(c), a non-mandatory private use exception. She

explained that it was a small exception because she felt that normally reproduction and incorporation of a layout-design would require the authorization of the holder of the right and only very small exceptions were needed.

804. Mr. WATTERS (Canada) indicated his agreement with the conclusion and the reasons that were put forward by the Delegation of the European Communities. He stated, however, that the term "commercial purposes" was not clear in terms of its scope and requested clarification of this matter.

805. Mr. BOGSCH (Director General of WIPO) stated that it was left to each Contracting Party to interpret the words "for commercial purposes" in a reasonable manner.

806. Mr. WATTERS (Canada) queried whether a member State could permit its government to import a large number of computers containing infringing chips for educational purposes without the permission of the holder of the right.

807. Mr. BOGSCH (Director General of WIPO) indicated that this would not be a reasonable interpretation, stating, by way of example, that it was not permitted to import infringing cars or blackboards free of charge for educational purposes. He stated that one should trust that the Contracting Parties would interpret the exception for educational use in a reasonable way.

808. Mr. CORREA (Argentina) solicited the views of the Director General as to the reasons motivating the utilization of the phrase "private or non-commercial purposes" in the Basic Proposal. In particular, he wished to examine the situation in which a university made a copy of a design for an integrated circuit for educational purposes. He indicated that there could be a situation where a copy was made that did not have a commercial purpose but was not private.

809. Mr. KITAGAWA (Japan) stated that the resolution of such issues was a matter for national law but was of the opinion that most countries would interpret the importation of computers containing infringing chips for educational purposes to be for a commercial purpose.

810. The CHAIRMAN stated that the Main Committee would have to decide between the amendment put forth by the Delegation of India, on behalf of the Group of Developing Countries, or the amendment proposed by the Delegation of the European Communities.

811. Mr. MAKEDONSKI (Bulgaria) stated his support for the proposal of the Delegation of India and that, based on the statement of the Director General, Article 6(2)(a) could be deleted.

812. The CHAIRMAN then asked the Delegation of the European Communities if, in light of the explanations made, it was willing to accept the amendment proposed by the Delegation of India.

813. Mrs. LANGER (European Communities) indicated that she was still not convinced, from the overall construction of the Article, that there was a problem in adopting her Delegation's proposal. She also indicated some difficulties with proceeding to discuss a problem which was related to several paragraphs and suggested discussing the following paragraph first and taking an overall decision once the whole text of Article 6 had been discussed.

814. The CHAIRMAN felt that there were a number of delegations which supported the proposal put forward by the Delegation of India and that he had heard no indication that the proposal should be left pending. He suggested taking a decision on this issue, allowing for the possibility of a delegation to come back with a proposal on any Article or paragraph of an Article.

815. Mr. GOVONI (Switzerland) spoke for the maintenance of Article 6(2)(a) as it appeared in the Basic Proposal.

816. Mr. BOGSCH (Director General of WIPO) stated that the proposal of the Delegation of the European Communities maintained the language "for commercial purposes" in Article 6(1)(iii) and observed that no other Delegation said that this should be changed. He then stated that the intervention by the Delegation of India changed that paragraph for the reason that, if the cited language was put in the introduction of Article 6(1), it was not necessary in Article 6(1)(iii). He observed that there was no amendment proposed to change the commercial purpose limitation for the acts of importation, selling or otherwise distributing. He further observed that, with the amendment proposed by the Delegation of India, reproduction must be for a commercial purpose but that in a later paragraph it was provided that acts performed for private purposes are excused from requiring the authorization of the holder of the right. With respect to the phrase "commercial purposes" he stated that it was difficult to define every instance in which the phrase would apply and that it was necessary that the Treaty afford some latitude to the Contracting Parties and trust that they interpret the Treaty with common sense.

817. Mr. GAO (China) indicated his support for the proposal by the Delegation of India to add the phrase "for commercial purposes" in Article 6(1).

818. The CHAIRMAN recalled that there were three amendments pending with respect to Article 6(1)(ii): first, a proposed amendment by the Delegation of the European Communities that the brackets should be removed to retain the sentence in its totality, second, a proposed amendment by the Delegation of India, on behalf of the Group of Developing Countries, calling for the deletion of the words "or a substantial part thereof," and, third, a proposed amendment by the Delegation of Switzerland contained in IPIC/DC/14.

819. Mr. SONI (India) pointed out that his proposal, contained in document IPIC/DC/19, stated that the text in the square brackets ("in its entirety or a substantial part thereof") should be deleted.

820. Mr. JONKISCH (German Democratic Republic) supported the proposal of the Delegation of India but indicated a readiness to discuss compromise proposals, in particular, the proposal of the Delegation of the European Communities.

821. Mr. BING (Norway) indicated some difficulty in understanding the result of deleting the phrase in brackets. He expressed an understanding that the definition of a layout-design encompassed layout-designs with a number of elements or simple designs with fewer elements and that such a protected simple design may become part of a more complex layout-design. In such a case, it appeared to him that, if the phrase within square brackets was deleted, a problem would arise, while if the phrase within brackets remains, that situation was addressed.

822. Mr. KITAGAWA (Japan) supported the insertion of the words "a substantial part thereof" in subparagraphs (i) and (ii) of paragraph (1) of Article 6 and proposed sending the proposals made by the Delegations of Switzerland and the European Communities to the Drafting Committee.

823. Mr. WISZCZOR (Czechoslovakia) agreed with the proposal to exclude the words in square brackets. He further indicated support for the text proposed by the Delegation of Switzerland, if the majority supported it.

824. Mr. TARNOFSKY (United Kingdom) expressed his opposition to the deletion of the words in square brackets. In particular, he expressed concern with the possibility of leaving out a small inessential part of a design so as to allow one to reproduce the design without the authority of the owner of the rights.

825. Mrs. LANGER (European Communities) stated that she did not consider the proposal by the Delegation of Switzerland to be in conflict with the proposal by the European Communities and indicated her support for the proposal by the Delegation of Switzerland. She further indicated her support for the proposal by the Delegation of Japan to submit the wording of the amendment to the Drafting Committee.

826. Mr. CORREA (Argentina) expressed his Delegation's concern about the inclusion of the phrase "or a substantial part thereof" in the Article 6(1)(ii). In particular, he was concerned that the pertinent authorities responsible for interpreting such a provision, such as judicial authorities, may not be able to do so properly due to its ambiguity. He was of the opinion that the proposal made by the Delegation of Switzerland (in document IPIC/DC/14) evidenced the ambiguity that existed in this provision. He agreed with the statement by the Director General that the Treaty should establish minimum norms, which norms would be left to pertinent authorities to interpret.

827. Mrs. MAYER-DOLLINER (Austria) supported the proposal of the Delegation of the European Communities. She suggested interpreting the scope of protection as providing that the owner of the right may prohibit others, for commercial purposes, from reproducing the topography or its independently exploitable portion. In this context, she would interpret "substantial part" in the sense that it was independently exploitable.

828. Mr. LIEDES (Finland) supported the proposal to delete the square brackets. He indicated concern, however, with the term "substantial part" as being a quantitative qualification stating that the parts which could be copied could be smaller parts of integrated circuits that are original and worthy of protection. He stated that parts which are not original should not be protected and favored the proposal by the Delegation of Switzerland in this regard that those parts which fulfill the requirements for protection are protectable. He accepted, therefore, the proposal by the Delegation of Switzerland, according to the analysis of the Delegations of Norway, theUnited Kingdom, and the European Communities. He indicated, as a compromise, that he could accept the proposal by the Delegation of the European Communities that the square brackets be deleted from the Basic Proposal.

829. Mr. OMAN (United States of America) indicated his support for the proposal by the Delegation of the European Communities as well as support for a merger of the proposals of the Delegation of the European Communities and the Delegation of Switzerland. He proposed language addressed to the objection as to the qualitative aspects of the word "substantial" raised by the Delegation of Finland as follows: "in its entirety or any original part thereof."

830. Mr. CASADO CERVIÑO (Spain) indicated his support for the removal of the square brackets found in Article 6(1)(i) of the Basic Proposal. He stressed the need to make it clear to national courts what the scope of protection was under the Treaty. As to the proposals made by the Delegations of Switzerland and the European Communities, he expressed a preference for the proposal of the European Communities.

831. Mr. GAO (China) stated that the phrase "substantial part" did not have a clear and precise meaning and requested further definition of the phrase.

832. Mr. HALVORSEN (Sweden) supported the reasoning of the Delegation of Norway in retaining the text within square brackets. He also supported the general ideas of the proposals of the Delegations of the European Communities and Switzerland but suggested that they should be merged and that such work could be undertaken either by a Working Group or by the Drafting Committee.

833. Mr. KRIEGER (Federal Republic of Germany) felt, taking into account the statements of the Delegations of Argentina, Finland and China that there was a general consensus on the basis of the proposal by the Delegation of Switzerland. He asked, therefore, whether it would be possible to identify if there was such a consensus and then put the proposal to the Drafting Committee in order to consider the wording.

834. Mr. SONI (India) indicated he was against the proposal submitted by the Delegation of Switzerland.

835. Mr. MOTA MAIA (Portugal) supported the proposal made by the Delegation of the European Communities.

836. The CHAIRMAN asked the Delegation of India whether they indicated that they were opposed to the proposal by the Delegation of Switzerland but willing to accept the proposal made by the Director General.

837. Mr. SONI (India) indicated that he could accept the proposal made by the Delegation of the United States of America with the further addition explained by the Delegation of Austria. He suggested adding the language "in its entirety or any original part thereof which is independently exploitable."

838. Mr. KOMAROV (Soviet Union) felt that a common understanding could be reached taking into account the proposal of the Delegation of Switzerland and its interpretation by the Delegations of Austria and the United States of America. He indicated readiness to discuss possible changes to the text of that proposal, and, in particular proposed deleting the word "substantial" and specifying the notion of "a part" in line with the proposals by the Delegations of Switzerland, Austria and the United States of America.

839. The CHAIRMAN requested delegates to address themselves to the proposal on the floor ("(i) the Act of reproducing a protected layout design in its entirety or any original part thereof which is independently exploitable") in order to determine if there was a generally agreed consensus on it.

840. Mr. KITAGAWA (Japan) suggested following the proposal by the Delegation of Switzerland.

841. Mr. CORREA (Argentina) was in agreement with the comments made by the Delegations of Austria and India.

842. Mr. MILLS (Ghana) stated that he supported the proposal made by the Delegation of India.

843. Mr. COMTE (Switzerland) focused on the word "substantial" and reiterated that this could be interpreted subjectively and that he wished to replace it with an objective criterion. Specifically, he proposed that the integrated circuit be protected to the extent it is original.

844. Mr. TARNOFSKY (United Kingdom) observed that the proposal by the Delegation of the United States of America to say "in its entirety or any original part thereof" was similar, if not identical, to the proposal of the

Delegation of Switzerland and indicated that he supported this approach. He stated that the suggested phrase of "independently exploitable" was not clear to him. He sympathized with delegations having difficulties in understanding what was meant by "substantial part" but stated that, if the phrase "independently exploitable" was added, it would compound the difficulty of the definition.

845. Mr. MAKEDONSKI (Bulgaria) considered the phrase "a substantial part" as well as the phrase "original part" as proposed by the Delegation of the United States of America to be, to a large extent, subjective. He stated that, if the text in square brackets was left, it would diminish the opportunity to reverse engineer. In this connection, he suggested leaving the question of the limits of prohibition to reproduce the protected topography to national legislation and not solve it in the Treaty. He supported the proposal of the Delegation of India to exclude the text in square brackets and agreed with the compromise proposal made by the Delegation of Switzerland. He further supported the proposal to submit the issue to the Working Group.

846. Mr. FERNANDEZ FINALE (Cuba) expressed his support for the complete formulation made by the Delegation of India.

847. Mr. GAO (China) proposed the following language for Article 6(1)(i) for consideration: "(i) The act of reproducing a protected layout-design (topography) in its entirety or in part, the changed part representing a non-essential portion of the whole layout-design." He explained that the phrase "the changed part" referred to a part that had not changed the essential portion of the whole layout-design.

848. The CHAIRMAN indicated that a new proposal was on the floor combining the proposals of the Delegations of Austria, the United States of America, and India and asked the Delegation of China whether it was opposed to that proposal.

849. Mr. GAO (China) stated that his Delegation's proposal was a new one since it was difficult to define "original" or "the substantial part." He therefore wished to put the question in another way so that, if the changed part was not essential it would constitute infringement.

850. Mr. CHOI (Republic of Korea) supported the proposal made by the Delegation of India, which he saw as emerging from suggestions made by the Delegations of the United States of America and Austria.

851. Mrs. LANGER (European Communities) observed that there was a nucleus for a consensus, to which she allied herself, on the phrase "in its entirety or any original part thereof," adding, perhaps, "which is independently exploitable." She expressed doubt whether the latter qualification would give a more precise sense to the definition but stated that it was the originality

which was essentially qualifying the part. She further stated that she could accept that compromise because it accomplished the goal of the Treaty, the protection of original parts.

852. Mr. GOVEY (Australia) supported the suggestion, which was first made by the Delegation of the Federal Republic of Germany, that the matter should be sent to the Drafting Committee asking them to commence their work with a view to obtaining a suitable form of wording.

853. The CHAIRMAN asked the Committee to accept the proposal made by the Delegations of Austria, the United States of America, and India and proceed to another paragraph.

854. Mr. KOMAROV (Soviet Union) stated that he did not have any objections to the proposal of the Delegation of India, which he saw as representing a consolidated version. He saw the main idea of the proposals of the Delegations of the United States of America and Austria as requiring that the part concerned of an integrated circuit should meet the requirements of originality and applicability. He asked whether the proposal of the Delegation of Switzerland was a consolidated version of both these proposals. He stated that if a part, substantial or non-substantial, met the requirement of Article 2 of this Treaty, then it was entitled to protection under the Treaty and the proposal for subparagraph (i) to include such a reference to Article 2 was a consolidation of the proposals expressed by the Delegations of the United States of America, Austria and India.

855. Mr. OMAN (United States of America) did not object to the proposal for technical reasons, but stated that there was a question as to the substantive implications of the proposal of the Delegation of India that modified the proposal that was on the floor. He then asked the Delegation of India to provide an explanation of the way in which its proposed language would add or detract from the proposal that was on the floor.

856. Mr. GUERRINI (France) supported the positions taken by the Delegations of the European Communities and Switzerland.

857. Mr. LUKACS (Netherlands) stated that he was in favor of the original proposal of the European Communities but was of the opinion that the best compromise proposal was the one submitted by the Delegation of Switzerland. He stated that it was improved by the proposal of the Delegation of the United States of America in the addition of the phrase "any other original part thereof." He expressed doubts about the proposal by the Delegation of Austria, in particular the expression "independently exploitable," thinking that it did not have any relevance to the criterion of originality.

858. The CHAIRMAN suggested closing discussion on the matter, observing that there were two main proposals, one incorporating the proposals of the

Delegations of Austria, the United States of America and India and the second being the proposal of the Delegation of Switzerland. He stated that the two proposals should go to the Working Group.

859. Mr. YU (China) supported the idea of submitting the various views to the Working Group. He expressed some concern about the proposal to protect a layout-design in its entirety or original part thereof. Specifically, he felt that the requirement of originality and the original part were two different concepts, thus raising a question as to what a registration of a layout-design included. Accordingly, he suggested excluding from the act of reproduction the reproduction of a layout-design where the part changed represented an essential portion of the whole layout-design.

860. The CHAIRMAN then indicated that the proposals would be submitted to the Working Group and that the work of the Main Committee would continue in parallel with their work.

861. It was decided to submit the proposals made by Austria, the United States of America and India, and Switzerland regarding Article 6(1)(i) to the Working Group.

862. The CHAIRMAN thereupon adjourned the meeting.

Eighth Meeting
Wednesday, May 17, 1989
Afternoon

863. The CHAIRMAN called the meeting to order and gave the floor to the President of the Conference to report on decisions of the Steering Committee.

864. Mr. OMAN (President of the Conference) stated that the Steering Committee had met and had made five decisions designed to expedite the work of the Diplomatic Conference. First, written proposals for changes in the draft Treaty should be submitted in writing by 10.00 on the following day. Second, the Main Committee would set specific hours and adhere to them strictly: from 9.30 to 13.00 and 15.00 to 19.00. Third, group meetings would be held at times that did not conflict with established meeting times. Fourth, working groups would meet, as appropriate and as appointed by the Chairman of the Main Committee, and those working groups would work simultaneously while the Main Committee continued its deliberations. Fifth, night sessions would commence beginning at either 20.30 or 21.00, at the discretion of the Chairman.

865. The CHAIRMAN invited the delegations to turn to Article 6(1)(ii) and reminded the delegations that there were two proposals on the floor, one by the Delegation of the European Communitites that the square brackets should be removed and another by the Delegation of India, on behalf of the Group of Developing Countries, that Article 6(1)(ii) should be deleted.

866. Mr. SAADA (Egypt) suggested putting the two proposals to a vote.

867. The CHAIRMAN stated that he had sympathy for that approach but that he was hesitant to put the matter to a vote.

868. Mr. MALHOTRA (India) explained the background to the proposal contained in document IPIC/DC/19 made by his Delegation on behalf of the Group of Developing Countries. He proposed deleting Article 6(1)(ii) since he saw a link between it and Article 7 where the Group of Developing Countries proposed adding that "any Contracting Party shall be free not to protect a layout-design (topography) until the layout-design (topography) has been incorporated in an integrated circuit and commercially exploited somewhere in the world." He stated that, if the amendment to Article 7 was accepted, then Article 6(1)(ii) would be redundant but that, if the amendment to Article 7 was not accepted, Article 6(1)(ii) should remain. In the case of the latter eventuality, he stated that it would be left to discussion as to whether to delete or accept the portion in brackets. He then suggested, due to the linkage, that action on Article 6(1)(ii) be deferred until the discussion of Article 7 took place.

869. The CHAIRMAN observed that it was accepted by the Committee that discussion of Article 6(1)(ii) should be held open, pending further discussion when Article 7 is considered.

870. It was agreed that discussion of Article 6(1)(ii) should be held open, pending further discussion on Article 7.

871. The CHAIRMAN then directed discussion to Article 6(1)(iii) and indicated that there were two proposals: one by the Delegation of the European Communities, which appeared in document IPIC/DC/13, and a second one by the Delegation of India, on behalf of the Group of Developing Countries, contained in document IPIC/DC/19, that the phrase in the first line of the paragraph, starting with "irrespective of whether," up to the end of the sentence should be deleted.

872. Mrs. LANGER (European Communities) stated that the modification she suggested was an extension of what had been discussed under (i) and (ii). It was her intention to be sure that an original part, which conformed to the requirements of Article 3(2) would, under all circumstances, whether it involved reproduction, incorporation, or commercial exploitation, be protected by the Treaty.

873. Mr. MALHOTRA (India) observed that the proposal by the Delegation of the European Communities introduced the concept of "a substantial part thereof" and stated that, since the concept was being discussed by the Working Group, any decision on it should be deferred. As regards the phrase "irrespective of whether the microchip is imported, sold or otherwise distributed as part of some other article or separately," he stated that the Group of Developing Countries felt that it was not important as it added nothing to the matter under discussion and should be deleted.

874. Mr. GOVONI (Switzerland) stated that he was of the opinion that the last part of the sentence should remain as it was in the Basic Proposal.

875. Mr. BOGSCH (Director General of WIPO) observed that the phrase the Delegation of India suggested to be deleted was a clarification and, therefore, could be omitted without thereby changing the meaning of the subparagraph. On this understanding, he suggested that the Delegations of the European Communities and Switzerland could accept the deletion of the phrase.

876. Mrs. LANGER (European Communities) stated that what was desired by inclusion of the phrase was clarity of an important part of the Treaty. Consequently, she looked for agreement that the phrase, if not harmful, would remain intact in light of the fact that some delegations attached great importance to it.

877. Mr. GUERRINI (France) indicated his agreement with the statement by the Delegation of the European Communities. He observed that the Delegation of the European Communities felt that the phrase was not superfluous and that he believed that the inclusion of the phrase did no harm.

878. Mr. WATTERS (Canada) found that the clarity that the phrase brought to the subsection was quite important and preferred to have it retained.

879. Mr. FERNANDEZ FINALE (Cuba) considered that the phrase was not necessary and recalled that within the Group of Developing Countries it was decided that it should be deleted.

880. Mr. TARNOFSKY (United Kingdom) observed that no delegation disagreed with the sense of the phrase and that, to avoid doubt, therefore, he saw no harm in leaving it in the text.

881. Mr. MALHOTRA (India) indicated that, within the Group of Developing Countries, the matter was carefully looked at and the consensus view was for deletion of the phrase, particularly since it was felt that the scope of this Article should be limited, as indicated in subparagraph (1)(iii).

882. Mr. GUERRINI (France) raised a procedural question. He proposed that, in the case of a vote, one should first determine which of the delegations were in favor of deleting the portion of the sentence in question, which were opposed, and which abstained.

883. Mr. FERNANDEZ FINALE (Cuba) indicated that there were other procedural questions for consideration. In particular, he expressed concern that the results of the work undertaken by the Credentials Committee had not been reported in plenary session. He expressed the desire to know which delegations had been accredited by the Credentials Committee prior to submitting various points to a vote.

884. Mr. FORTINI (Italy), speaking as Chairman of the Credentials Committee, saw no obstacle to voting. He indicated that it was his understanding of the Rules of Procedure that delegations were provisionally empowered to vote up until the decision on the verification of powers taken by the Plenary Session.

885. Mr. BOGSCH (Director General of WIPO) observed that Rule 10 of the Rules of Procedure said that, pending a decision upon their credentials, the delegations and representatives were entitled to participate in the deliberations of the Conference and that, therefore, they could vote even if their credentials had not yet been accepted. He stated his agreement with the Delegation of France that an amendment could be put to a vote and that it required a majority of two-thirds to carry the amendment.

886. Mr. FERNANDEZ FINALE (Cuba) expressed concern that the taking of provisional votes, rather than definitive ones, afforded delegates an opportunity to present texts at a later time, thus unduly prolonging the work of the Committee.

887. Mr. BOGSCH (Director General of WIPO) stated that every vote in the Committee was provisional because the Committee had no right to decide in the name of the Conference, the final decision being taken in Plenary Session.

888. The CHAIRMAN suggested suspending debate on Article 6(1)(iii) with the understanding that there were proposed amendments to it and that it would be returned to when reviewing the report of the Working Group.

889. It was decided to suspend debate on Article 6(1)(iii) until the report of the Working Group had been prepared.

890. The CHAIRMAN then turned the discussion to Article 6, paragraph (2), [Acts Not Requiring the Authorization of the Holder of the Right] and noted that there was a proposal by the Delegations of the Soviet Union, contained in document IPIC/DC/15, and the European Communities, contained in document IPIC/DC/13.

891. Mrs. LANGER (European Communities), referring to document IPIC/DC/13, explained that the differences between the draft Treaty and her Delegation's proposal were three-fold. First, the reference to the act referred to in the

first paragraph was limited in her proposal to paragraph (1)(i) and not to paragraph (1)(ii). The second difference related to whether "non-commercial purposes" was to be in the text or not. Third, she desired to clarify the nature of the evaluation, analysis or teaching with which this paragraph was concerned.

892. Mr. CORREA (Argentina) requested an explanation from the Delegation of the European Communities as to why the text it proposed for Article 6(2)(a) included a reference to only Article 6(1)(i) and not Article 6(1)(ii) and why it modified the Basic Proposal to eliminate reference to non-commercial purposes.

893. Mr. KITAGAWA (Japan) stated that he would like to delete the term "research" because, in his view, testing or evaluation encompassed research activities. Secondly, he expressed his support for the original draft Treaty with regard to the incorporation of layout-designs in an integrated circuit.

894. Mr. OMAN (United States of America) stated his support for the proposal presented by the Delegation of the European Communities and suggested the elimination of the words within the square brackets in Article 6(2)(a).

895. Mrs. LANGER (European Communities), in explaining the proposed modifications to Article 6(2), stated that she thought that the exception should only deal with reproduction because if one was analyzing and evaluating and teaching one needed only reproduce, not manufacture, integrated circuits. She explained that the second proposed modification was occasioned by her Delegation's proposal of a separate paragraph (c) for reproduction for private purposes. She indicated that the third modification was to clarify that the purposes of evaluation, analysis and teaching were concerned with the topography and not analysis as such.

896. Mr. SONI (India) indicated that he preferred to retain the wording as it was in the Basic Proposal and receive guidance from the Director General, on behalf of the Secretariat, as regards the content and implication of including the words "research" in Article 6(2)(a).

897. Mr. CHOI (Republic of Korea) stated, with regard to the deletion of reference to subparagraph (1)(ii) from Article 6(2)(a), that the Treaty would protect not only the layout-design itself but also the incorporation of a layout-design in an integrated circuit. He observed that the proposal by the Delegation of the European Communities was to to delete reference to subparagraph (1)(ii) of Article 6(2)(a) but, to his understanding, reverse engineering should cover not only the production of a layout-design itself but also the incorporation of a layout-design in an integrated circuit. With regard to the question of evaluation, analysis, and teaching exceptions, he supported the Basic Proposal.

898. Mr. BOGSCH (Director General of WIPO) pointed to Note 77 at page 34 in the Basic Proposal (document IPIC/DC/3), which gave an alternative for subparagraph (a) as to whether to include express reference to the legitimacy of performing an act mentioned in subparagraphs (i) and (ii) for "research," or whether such a reference was implicit in the words "evaluation" and "analysis." He indicated that it was his view that, whichever route was chosen, the result would be the same.

899. Mr. HALVORSEN (Sweden) stated that he could accept the Basic Proposal on this point with the deletion of the word "research" but would prefer the proposal made by the Delegation of the European Communities as being more clear.

900. Mr. CORREA (Argentina) indicated his reliance on the text of Article 6(2) of the Basic Proposal because it excluded acts performed for private or non-commercial purposes in a mandatory fashion, rather than in a facultative fashion as proposed by the Delegation of the European Communities. Alluding to the explanation given by the Director General, he stated that it was convenient to explicitly mention research to avoid ambiguities.

901. Mr. GOVEY (Australia) supported the proposal by the Delegation of the European Communities to delete the reference to subparagraph 1(ii) from Article 6(2)(a).

902. Mr. MILLS (Ghana) said that his Delegation supported the wording of the Basic Proposal presented by the Secretariat. He indicated that, if the Director General of WIPO had explained that the retention of "research" in the wording did not do any harm, then he wanted to see the word "research" retained.

903. Mr. KITAGAWA (Japan) reiterated his support for the wording in the Basic Proposal. Further, he clarified the state of the law in this area in his country saying that it did not provide for protection against the reproduction of a layout-design itself and that protection started with the incorporation of a layout-design in a chip. He further indicated that the relevant legislation in his country provided for an exception from infringement for the incorporation of a layout-design into a chip for private or non-commercial purposes.

904. Mr. BOGSCH (Director General of WIPO) observed that the proposal made by the Delegation of the European Communities was new and would be difficult to appreciate on short notice. He further observed that there had been some support expressed for the Basic Proposal. He asked, therefore, whether or not a consensus could be found based on the Basic Proposal. He noted, with reference to Article 6(1)(ii), that any action to be taken was in jeopardy since a final decision had been reserved by the Chairman until after discussion of Article 7.

905. Mrs. LANGER (European Communities) offered, as a compromise solution, that in her Delegation's proposal the question of the deletion of Article 6(1)(ii) should be placed in square brackets. She emphasized that the question of manufacture was dealt with in Article 6(2)(b) and not in Article 6(2)(a). She suggested that the evaluation and analysis be specified as being done concerning the topography itself and observed that that was the explanation given by the Director General as being reflected in the text.

906. Mr. SONI (India) stated that the Director General's suggestion was acceptable to the Group of Developing Countries. He indicated a preference for seeing the Basic Proposal retained for the reason given by the Director General - that the proposal by the Delegation of the European Communities was difficult to appreciate on short notice. He observed that the Delegation of the European Communities appeared willing to retain the draft wording as regarded the reference to subparagraph (1)(ii). Moreover, he expressed a desire, on behalf of the Group of Developing Countries, to retain the word "research."

907. Mr. GAO (China) supported the Basic Proposal and the proposal by the Director General.

908. The CHAIRMAN observed that the Basic Proposal had been accepted, taking into account its explanation.

909. Article 6(2)(a) was adopted, taking into consideration observations made with respect thereto and subject to reexamination following debate of Article 7.

910. The CHAIRMAN then turned the discussion to Article 6(2)(b) and directed attention to a proposal from the Delegation of the European Communities.

911. Mr. TARNOFSKY (United Kingdom) requested clarification concerning conclusions drawn on the issue of evaluation, analysis and research in square brackets at the end of Article (6)(2)(a).

912. The CHAIRMAN indicated that it had been accepted that Article 6(2)(a) should remain as is, including the square brackets, to be reexamined upon reaching debate on Article 7.

913. Mrs. LANGER (European Communities) stated that the proposed amendment in (a) and (b) had to be viewed together. She indicated that she could, in principle, base her Delegation's proposal on Article 6(2) of the Basic Proposal and returned to the question as to whether the reference to paragraph (1)(ii) and to the reference to "research" should be deleted. She observed that, if the answer was in the affirmative, the amendment proposed by the Delegation of the European Communities was no longer necessary and that the Basic Proposal was acceptable.

914. The CHAIRMAN clarified that the Delegation of the European Communities was withdrawing its proposed Article 6(2)(b) and had expressed a willingness to accept the Basic Proposal.

915. Mr. BOGSCH (Director General of WIPO) asked whether, on the same reasoning, subparagraph (c) had also become superfluous because the subject matter covered by it was now covered by subparagraphs (a) and (b).

916. Mrs. LANGER (European Communities) asked whether a final decision had been taken with respect to whether "commercial" should be referred to in the first line of Article 6(1) and in Article 6(2) as well.

917. The CHAIRMAN stated that, with respect to Article 6(1), the proposals by the Delegations of the European Communities and India, on behalf of the Group of Developing Countries, were to be considered in the Working Group.

918. Mrs. LANGER (European Communities) recalled that it had been decided, with respect to Article 6(2)(a), to keep the wording "for private or non-commercial purposes." She asked, given that background, how that was to be seen in the light of what was discussed earlier on Article 6(1). She indicated that, if the text remained unchanged in Article 6(2), her Delegation's proposal could be withdrawn, but that it turned on whether the earlier decision had been confirmed.

919. The CHAIRMAN indicated that the earlier decision regarding Article 6(1) was confirmed.

920. Mr. BOGSCH (Director General of WIPO) stated that it had been decided, upon the proposal by the Delegation of India, that "for commercial purposes" should be included in the heading. He indicated that if some consequential change was necessary it would be discussed when the fate of Article 6(1)(ii) was decided.

921. Mr. KOMAROV (Soviet Union) requested comments from the International Bureau of WIPO whether the term "research" referred to the integrated circuit itself or also covered the application of the design in a research activity.

922. The CHAIRMAN requested the Delegation of the Soviet Union to introduce its proposed new subparagraph (c) to Article 6(2).

923. Mr. KOMAROV (Soviet Union) stated that the new subparagraph (c) was similar to prior-user clauses in patent laws. He stated that, if subparagraph (b) were accepted and one was permitted to create on the basis of a protected topography, the owner of the independent topography should be permitted to use it. He indicated that time limits might be different in subparagraphs (b) and (c).

924. Mr. BOGSCH (Director General of WIPO) asked whether the proposal of the Delegation of the Soviet Union contained in document IPIC/DC/15 to add a new subparagraph (c) was necessary. He observed that it was provided in the Treaty that, in order to be protected, a layout-design needed to be original; thus copying was prohibited.

925. Mr. SONI (India) stated that the proposal made by the Delegation of the Soviet Union to add subparagraph (c) to Article 6(2) had been examined in some detail by the Group of Developing Countries and that there was widespread support for it among the Group of Developing Countries. He understood the point made by the Director General of WIPO that the criterion of originality could be included to clarify the provision but there was also a view amongst some members of the Group of Developing Countries that the place for such a provision might be Article 6(4).

926. Mr. CORREA (Argentina) thanked the Delegation of the Soviet Union for its proposal of adding subparagraph (c) to Article 6(2). He stated that the only requirement for securing protection was that intellectual effort be expended in the sense that there was an independent development. He saw the proposed clause as adding to this requirement and did not favor its inclusion. He expressed the concern that one would not have reason to know of the existence of protection for another integrated circuit, not even of the same design. Accordingly, he saw the proposed clause as limiting the possibility of independent development of an integrated circuit.

927. Mr. JONKISCH (German Democratic Republic) supported the proposal of the Delegation of the Soviet Union.

928. Mr. BOGSCH (Director General of WIPO) agreed with the analysis of the Delegation of Argentina that this put an additional condition which restricted the possibility of independent creation because it was not enough to be an independent creator, but it was also necessary to go to the registry and see whether there was anything similar to assure he had a basis to seek protection. He reiterated that he held the position that, if somebody independently created a layout-design without copying, then a charge of infringement could be avoided. To do as proposed would, as observed by the Delegation of the Soviet Union, put a patent-like requirement on the protection.

929. Mr. BARREDA DELGADO (Peru) expressed his support for the proposition of the Delegation of the Soviet Union.

930. Mr. TARNOFSKY (United Kingdom) observed that the concept of originality in Article 3 determined who may own the rights in a design and allowed for the possibility of more than one person owning rights in identical designs. He then stated that he found nothing in the proposed texts which identified the action that could be taken by a person who owned rights in a design against another person who owned rights in a similar or the same design

that was independently created. He saw the text as allowing such a right of action and that, therefore, he thought that the proposal by the Delegation of the Soviet Union had merit and supported it.

931. Mr. OMAN (United States of America) observed that there had been a great deal of debate on the substance of the concept of originality and expressed agreement with the explanation of the Director General of WIPO. He was of the opinion that the proposal by the Delegation of the Soviet Union could introduce uncertainty into the determination. He agreed with much of what was said by the Delegation of Argentina and suggested that the objective sought by the Delegation of the Soviet Union could be addressed in subsequent Articles, as suggested by the Delegation of India, such as those dealing with innocent infringement.

932. Mr. KOMAROV (Soviet Union) stated that there were a great number of creators of integrated circuits in his country and that it was possible that the interests of the owner who officially registered his microchip would conflict with the interests of a person who did not register his microchip, but who still conducted all the necessary research work. He was of the opinion that the unregistered creator would have no recourse against a claim brought by the registered creator and that such a situation should be addressed in the Treaty.

933. The CHAIRMAN thereupon suspended the meeting.

[Suspension]

934. The CHAIRMAN reconvened the meeting and recalled that the Delegation of the Soviet Union had introduced a new subparagraph (c) to Article 6(2).

935. Mr. MAKEDONSKI (Bulgaria) supported the proposal of the Delegation of the Soviet Union. He recalled that the question had been discussed at the Fourth session of the Committee of Experts and received approval by the majority of delegations.

936. Mr. KRIEGER (Federal Republic of Germany) associated himself with the position taken by the Delegation of the United Kingdom that the proposal of the Delegation of the Soviet Union had merit, at least insofar as it pointed out the rights of the proprietor of the layout-design should not extend to an identical layout-design created independently by a third party. He was of the opinion, taking into account the explanation of the Director General of WIPO, that there was no contradiction with the requirements of originality stated in Article 3(2). He expressed concern with the proposal, however, and asked whether it was advisable to retain the words "provided that the third party did not know, and did not have sufficient reason to know, that the layout-design (topography) in question was already protected" found in the proposed subparagraph (c) of Article 6(2). In particular, he considered that this was a second condition and such a second condition limited the first half of the proposal.

937. Mr. LUKACS (Netherlands) agreed with the Delegation of the Federal Republic of Germany. He stated that in the Netherlands, if a second person independently created an identical design that merited protection, it would be protected. Thus he stated that, if the proposal of the Soviet Union was accepted, the consequence would be that the second person who independently created an original layout-design would not obtain a right because he had sufficient reason to know that a layout-design was already protected, such as by going to the registration office. He thus opposed the proposal by the Delegation of the Soviet Union.

938. Mr. WISZCZOR (Czechoslovakia) expressed agreement with the proposal made by the Delegation of the Soviet Union.

939. Mr. SUCHAI JAOVISIDHA (Thailand) expressed his support for the proposal of the Delegation of the Soviet Union.

940. Mr. CASADO CERVIÑO (Spain) indicated his support for the proposal of the Delegation of the Soviet Union contained in document IPIC/DC/15, but wished to have a clarification about the last portion of Article 6(2)(c) contained in that proposal beginning with the words "provided that."

941. Mr. KOMAROV (Soviet Union) stated that, following consultations with the Delegations of the United States of America and Canada, a new proposal had been developed that addressed concerns raised by a number of delegations, including that of the Federal Republic of Germany.

942. Mr. GUERRINI (France) expressed his desire to intervene in the same sense as the Delegations of the Federal Republic of Germany and the Netherlands. He asked for clarification on two points: first, the meaning of "sufficient reasons to know" that a layout-design was protected and, second, whether the protection accorded to third persons would go beyond simply a protection for personal exploitation.

943. Mr. WATTERS (Canada) stated that the wording worked out in consultation with the Delegations of the Soviet Union and the United States of America, as a substitute for the proposal from the Delegation of the Soviet Union read as follows: "the rights of the holder of the right of a protected layout-design (topography) shall not extend to a layout-design (topography) independently created by a third party which satisfies the conditions of Article 3(2)."

944. Mr. BOGSCH (Director General of WIPO) asked whether the words "shall extend" could be changed, expressing specifically a concern as to the meaning of the word "extend."

945. Mr. LUKACS (Netherlands) stated that he was content with the solution and expressed the belief that the problem he raised in his previous intervention would thereby be solved.

946. Mr. CASADO CERVIÑO (Spain) agreed with the position taken by the Delegation of the Netherlands and stated that the proposed text was acceptable.

947. Mr. CORREA (Argentina) stated that the proposed text said that the rights of the title holder did not extend to a second design satisfying the criterion of originality. In a contrary sense, one could interpret it that, if the last design did not satisfy the requirement of originality, the rights of the original title holder extended to it. He suggested retaining a reference to an identical design as included in the proposal of the Delegation of the Soviet Union in document IPIC/DC/15.

948. Mr. KRIEGER (Federal Republic of Germany) stated that he was in a position to support the fundamental idea of the proposal created in cooperation between the Delegations of the Soviet Union, the United States of America and Canada. He expressed the desire to insert the word "identical" in the original version of the proposal of the Delegation of the Soviet Union which would eliminate any objections he had to the proposal, bearing in mind the additional drafting proposal of the Director General as far as the term "extend" was concerned.

949. Mr. KOMAROV (Soviet Union) observed that the rights of the owner of a protected topography did not extend to an identical topography created independently by a third party which met the conditions of Article 3(2).

950. The CHAIRMAN asked the Delegation of the Soviet Union to read a formulation of its proposal including the word "identical."

951. Mr. KOMAROV (Soviet Union) stated that the gist of his proposal suggested that he spoke of the identical topography.

952. Mr. COMTE (Switzerland) supported the last proposal made by the Delegation of the Soviet Union. He saw the sole question remaining as the one raised by the Director General regarding the verb "to extend."

953. Mr. CORREA (Argentina) stated that he agreed with the proposition read by the Delegation of the Soviet Union.

954. The CHAIRMAN then indicated that Article 6(2)(c) had been adopted.

955. Article 6(2)(c), as proposed by the Delegation of the Soviet Union in document IPIC/DC/15, and modified by the joint proposal of the Delegations of the Soviet Union, the United States and Canada in paragraphs 943 and 949, was adopted subject to drafting changes.

956. The CHAIRMAN then turned the discussion to Article 6, paragraph (3) [Non-Voluntary Licenses; Antitrust Measures].

957.1 Mr. BOGSCH (Director General of WIPO) said that Article 6(3) dealt with non-voluntary licenses and that subparagraph (a) of the Basic Proposal contained two alternatives. Alternative A provided that a compulsory license could be granted in the public interest whereas Alternative B required that the compulsory license could only be granted "to prevent any abuse, by the holder of the right, of his rights, or to safeguard public health or public safety." He stated that subparagraph (b), dealing with judicial review of the granting of a non-voluntary license, contained two alternatives. Alternative C provided that such a license would "cease to have effect," whereas Alternative D provided that such a license would "be revoked" when the facts that justify it ceased to exist. He identified four proposals directed to Article 6(3), from the Delegations of the United States of America (document IPIC/DC/11), the Soviet Union (document IPIC/DC/15), Spain, in the name of the member States of the European Communities (document IPIC/DC/16), and India, on behalf of the Group of Developing Countries (document IPIC/DC/19).

957.2 The Director General of WIPO explained that the most important difference between the proposals related to the reasons that would permit the grant of a non-voluntary license--whether simply in the public interest or in specified cases of the public interest.

958. Mr. CASADO CERVIÑO (Spain), speaking on behalf of the 12 member States of the European Communities, and referring to document IPIC/DC/16, stated that, with respect to Article 6(3), they had drafted a proposal that was a mixture of Alternatives A and B in the Basic Proposal. He saw the granting of a non-voluntary licence as depending upon "the safeguard of a vital public interest" and that a "vital public interest" could arise in two specific sectors: the defense sector or the public health sector. He observed that the proposal in document IPIC/DC/16 also called for the deletion of Article 6(3)(a)(ii) and the insertion of the following explanatory note: "The provisions of this Treaty are without prejudice to any measures taken under the legislation of the Contracting Parties intended to secure free competition." He explained that the note was intended to clarify that the inclusion of the two distinct sectors within which non-voluntary licences might be granted did not prejudge the applicability of anti-monopoly provisions. The proposal in document IPIC/DC/16 also contained the following declaratory note: "For the purposes of the application of Article 6(6), a non-voluntary license cannot be regarded as replacing the consent of the holder of the right."

959. Mr. KOMAROV (Soviet Union) proposed, in document IPIC/DC/15, a new heading for Article 6(3) as follows: "Measures Concerning the Non-Voluntary Use of Protected Integrated Circuits." He stated that he had no objections to the wording prepared by the International Bureau and indicated a preference for Alternative A as being reflective of the situations under which non-voluntary licenses could be granted. He had no objections to the consolidation of Alternatives A and B.

960. The CHAIRMAN observed that there was a proposal by the Delegation of the Soviet Union relating to the heading of the paragraph and that such a proposal seemed to be acceptable.

961. Mr. CASADO CERVIÑO (Spain) expressed sympathy for the need to close the debate on Article 6(3) but desired time to reflect more on the proposals that had been made and to then give a definitive answer.

962. Mr. BOGSCH (Director General of WIPO) spoke in favor of the proposal by the Delegation of the Soviet Union regarding the change of the title.

963. Mr. SONI (India) expressed agreement with the Director General of WIPO and supported the proposal of the Delegation of the Soviet Union.

964. Mr. GUERRINI (France) stated that the Delegation of the European Communities had spoken on behalf of France but that he wanted to draw attention to an ambiguity in the title proposed by the Delegation of the Soviet Union. He asked whether, when speaking of non-voluntary licences for integrated circuits, this referred to the forced utilization of an integrated circuit or a license that would be granted non-voluntarily.

965. Mr. MOTA MAIA (Portugal) supported the intervention made by the Delegation of France. He further indicated that he was in a position to support the proposal made by the Delegation of the Soviet Union if that proposal was modified to address the ambiguity in the title as discussed by the Delegation of France.

966. Mr. FORTINI (Italy) expressed concern that there was some ambiguity as to what was meant by the term "non-voluntary" in connection with this Article.

967. The CHAIRMAN stated that the ambiguity would be taken into consideration in the Drafting Committee. He then invited attention to the proposals that were on the floor regarding Article 6(3)(i).

968. Mr. SONI (India) raised a point of order indicating that, on behalf of the Group of Developing Countries, he had a proposal beginning with the preamble of Article 6(3).

969. The CHAIRMAN then stated that he had overlooked the proposal to delete the phrase "the possibility of" from Article 6(3)(a).

970. Mr. BOGSCH (Director General of WIPO) suggested concentrating on the difficult and core question of how a compulsory license should be defined prior to turning attention to the ancillary, albeit important, questions.

971. The CHAIRMAN asked whether the Delegation of India was insisting on the deletion or whether they were amenable to the text as proposed by the International Bureau.

972. Mr. SONI (India) turned to the explanatory Notes prepared by the International Bureau of WIPO concerning the fourth session of the Committee of Experts, where, in paragraphs 82 and 83 of the Notes, on page 36 of document IPIC/DC/3, two proposals had been referred to--one by the Delegation of Bulgaria and the second one by the Delegation of the United States of America. He indicated that it was his understanding that both of these had been taken into account by the International Bureau in formulating the Basic Proposal. In particular, he referred to paragraph 86 where it said that "If agreement on one of either Alternative A or Alternative B, or some other formula, proves to be impossible, a possible compromise might lie in a provision which would permit Alternative A to be used, by way of reservation, by any developing country." He further stated that he desired, in Article 6(3)(a)(i), that the words "after serious and unsuccessful efforts to obtain such authorization" be deleted. He expressed preference for Alternative A, which provided for a grant of a non-voluntary license "in the public interest," noting that the developing countries wanted a broader provision as far as non-voluntary licensing is concerned and not a restrictive provision as suggested by other delegations. As to Article 6(3)(b), he indicated a preference for Alternative D.

973. The CHAIRMAN observed that, with respect to Article 6(3)(a), there was a proposal by the Delegation of India to delete the words "the possibility of" and opened debate on the proposal.

974. Mr. FORTINI (Italy) pointed to some discrepancies between the English and French versions of document IPIC/DC/19.

975. The CHAIRMAN clarified that what was proposed by the Delegation of India, on behalf of the Group of Developing Countries, in document IPIC/DC/19 was the deletion of the words "the possibility of."

976. Mr. FORTINI (Italy) stated that, with that explanation, he felt that the French version of document IPIC/DC/19 said something else.

977. Mr. BOGSCH (Director General of WIPO) observed that the French translation of the Basic Proposal contains the word "may," in French "peut," before the passage that was proposed being modified and that, therefore, there was no fundamental difference between the French and English versions of the proposal contained in document IPIC/DC/19.

978. Mr. FORTINI (Italy) maintained that there was a difference between the French version of document IPIC/DC/19 and the English version of the same document. He maintained also that document IPIC/DC/19 tended to change Article 6(3).

979. Mr. CORREA (Argentina) requested an explanation from the Delegation of India about the proposed deletion of the phrase "the possibility of" from Article 6(3)(a).

980. Mr. GUERRINI (France) agreed that there was a difference in the proposal by the Delegation of India in IPIC/DC/19 between the French and English texts, but that he did not see the difference as being a substantial one. Moreover, he agreed with the Director General of WIPO that the proposed amendment did not change the sense of the text. He suggested submitting the matter to the Drafting Committee to arrive at the most appropriate wording.

981. The CHAIRMAN stated that it was the general consensus that the text would be submitted to the Drafting Committee appropriate wording. He indicated that, with respect to subparagraph (i), there were several proposed amendments, in particular, the alternative formulations in the Basic Proposal, as indicated by the phrases in brackets, and a proposal by the Delegation of India, on behalf of the Group of Developing Countries, to delete the phrase "after serious and unsuccessful efforts to obtain such authorization."

982. Mr. CASADO CERVIÑO (Spain) pointed out that his Delegation's proposal, made in the name of the member States of the European Communities and contained in document IPIC/DC/16, called for the elimination of the brackets in Article 6(3)(a) so as to retain the phrase "after serious and unsuccessful efforts to obtain such authorization" in the text.

983. Mr. OMAN (United States of America) suggested as a compromise the retaining of the words within the brackets but eliminating the word "serious" so that the phrase would read "after unsuccessful efforts to obtain such authorization."

984. Mr. JEGEDE (Nigeria) supported the principle embodied in paragraph (3)(a)(i) with the removal of the phrase "after serious and unsuccessful efforts to obtain such authorization."

985. Mr. MOTA MAIA (Portugal) supported the proposal made by the Delegation of Spain in the name of the member States of the European Communities. He urged delegations not to concentrate too much on the phrase under discussion because tentative negotiations naturally occur prior to granting a license, followed by the pursuit of a non-voluntary license, if necessary.

986. The CHAIRMAN observed that there was a proposal by the Delegation of India, on behalf of the Group of Developing Countries, that the words in brackets should be deleted and a proposal by the Delegation of the United States of America to retain all the words except the word "serious." He then asked the Delegation of India for its reaction to the proposal by the Delegation of the United States of America.

987. Mr. SONI (India) indicated that he would have to refer back to the Group of Developing Countries on that issue.

988. Mr. HALVORSEN (Sweden) supported retention of the phrase within the square brackets and supported the reasons given in this regard by the Delegation of Portugal.

989. Mr. SATELER ALONSO (Chile) shared the opinion of the Delegation of India and saw the proposal by the Delegation of the United States of America as being a step toward a compromise solution. He saw a relationship between the language in the brackets and making a choice between Alternative A or B in Article 6(3)(i).

990. Mr. KITAGAWA (Japan) supported retention of the words in brackets and the suggestion made by the Delegation of the United States of America.

991. The CHAIRMAN thereupon adjourned the meeting.

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992. The CHAIRMAN called the meeting to order and requested the Committee to consider Article 6(1)(i), which had been reverted to by the Working Group. He thereupon gave the floor to the Chairman of the Working Group to introduce the report of the Working Group.

993. Mr. COMTE (Chairman of the Working Group) presented to the Main Committee a text for Article 6(1)(i) contained in document IPIC/DC/WG/DEF/3 which read as follows: "the act of reproducing a protected layout-design

(topography) in its entirety or any part thereof, except any part that is not original." He saw this proposed text as having an advantage over others proposed being founded on the notion of originality, which was both a well-known concept and defined in the Treaty.

994. Mr. TARNOFSKY (United Kingdom) stated, on behalf of the countries of Group B, that he accepted the recommendation submitted by the Working Group.

995. Mr. SONI (India), speaking on behalf of the Group of Developing Countries, stated that the recommendation of the Working Group had been discussed within the Group of Developing Countries and that an amendment thereto had been suggested as follows: "the act of reproducing a protected layout-design in its entirety or any part thereof except any part that does not satisfy the requirements of originality" instead of "except any part that is not original."

996. Mr. KITAGAWA (Japan) supported the amendment proposed by the Delegation of India.

997. Mr. TARNOFSKY (United Kingdom) stated that the amendment proposed by the Delegation of India was, perhaps, an issue for the Drafting Committee to deal with.

998. The CHAIRMAN queried the Delegation of India as to whether it agreed with the statement made by the Delegation of the United Kingdom, on behalf of Group B countries.

999. Mr. SONI (India) stated that the issue could be looked at by the Drafting Committee, but suggested returning to Article 6(3) on non-voluntary licensing, and reverting to the issue then under discussion at a later time, if necessary.

1000. The CHAIRMAN stated that the Article under discussion was linked with Article 7 and, thus, suggested submitting it to the Drafting Committee, and suggested returning to it later, if necessary, during the discussion on Article 6, paragraph (3) [Non-Voluntary Licenses: Antitrust Measures].

1001. Mr. YU (China) accepted that the amendment made by the Delegation of India formed a basis for recommendations to the Working Group. He indicated that he was in favor of the proposal if the phrase "which part or parts are original" were added to Article 7.

1002. The CHAIRMAN agreed with the Delegation of the United Kingdom that the outstanding issues to be resolved were ones of drafting because there was no difference in substance. He indicated, with that understanding, that it was accepted.

1003. Article 6(1)(i) was adopted, subject to the possible amendment by the Drafting Committee consistent with the suggestion by the Delegation of India (see paragraph 995).

1004. The CHAIRMAN then turned discussion to Article 6, paragraph (3) [Non-Voluntary Licenses: Antitrust Measures].

1005. Mr. SATELER ALONSO (Chile) indicated that the Spanish text did not mention the word "protegido."

1006. The CHAIRMAN indicated that this was noted and would be reflected in the Spanish text. He then returned to Article 6(3) and recalled that there was a proposal by the Delegation of the United States of America, which had the support of various delegations, but no conclusion had been reached. Specifically, he stated that the Delegation of the United States of America proposed that the two words "serious" and "and" should be deleted. He further recalled that the Delegation of India, on behalf of the Group of Developing Countries, with some changes, was willing to accept Alternative A and that the Delegation of Spain, on behalf of the European Communities, offered an amendment to qualify what public interest would be. He further observed that there was a proposed amendment by the Delegation of the United States of America to delete the two alternatives. He observed that there was a proposed amendment by the Delegation of Australia to the sentence ending with the phrase "be fixed by the granting authority" that the word "granting" should be replaced by "the executive or judiciary." He further observed that the Delegation of the European Communities had a proposal to delete subparagraph (a)(ii), which was also contained in the proposal of the Delegation of the United States of America. With respect to subparagraph (b), he saw that what was proposed by the Delegation of India, on behalf of the Group of Developing Countries, was the retention of Alternative D.

1007. Mr. WISZCZOR (Czechoslovakia) stated with respect to Article 6(3)(a) that his Delegation, in principle, supported the Basic Proposal. He stated, in respect of subparagraph (3)(a)(i), that he supported retaining the words in brackets, as proposed by the Delegation of the United States of America. As to Alternatives A and B, he indicated a preference for Alternative A which provided a possibility to obtain non-voluntary licenses in the public interest. He was of the opinion that this alternative was broader and that more detailed conditions may be left to national law. He indicated a willingness to accept, as a compromise, a combination of Alternative A with the words "to prevent any abuse by the holder of the right" from Alternative B.

1008. Mr. ARRUDA (Brazil) called attention to the fact that the Delegation of Brazil had presented proposals in document IPIC/DC/22 directed to modifications to Article 6(3)(ii) and (4), which was being circulated.

1009.1 Mr. OMAN (United States of America) maintained that the level of protection in the proposed Treaty was extremely modest. It had only a short term of protection, and "reverse engineering" was available. Under those

conditions he was of the opinion that compulsory licenses were not necessary. He stated that, in the interest of achieving a consensus and in light of representations that there was a need for non-voluntary licenses, he had submitted a proposal addressed to some of these concerns. He stated that, as a result of discussions held in this regard, and in the interest of simplifying the debate and moving discussions forward, he should withdraw the first paragraph of his proposal on the subject of non-voluntary licenses and, instead, support the proposal of the Delegation of the European Communities. He stated that this could be done provided that there was a change made in the draft as proposed by the Delegation of the European Communities. He wished specifically to make a change in line 8 in the first paragraph of document IPIC/DC/16 relating to non-voluntary licenses. He proposed changing that sentence to read: "to be necessary for the safeguard of a vital defense or public health interest." He stated that the proposal was intended to clearly define the instances where non-voluntary licenses were possible rather than relying on broad categories of exceptions such as "the public interest" which would, in his opinion, render illusory the protection granted by the Treaty.

1009.2 Mr. Oman stated, regarding the second aspect of the proposal by his Delegation, which was not withdrawn in deference to the proposal of the Delegation of the European Communities, that paragraph (b), which dealt with the requirement of payment of equitable remuneration, should be amended to include, following "equitable remuneration," the phrase "commensurate with the market value of the license."

1010. The CHAIRMAN observed that the Delegation of the United States of America had withdrawn the first paragraph of its proposal, subject to amendments being made to the text proposed by the Delegation of Spain, on behalf of the European Communities. He observed that the Delegation of Brazil had proposed amending Article 6(3)(a)(ii) in document IPIC/DC/22.

1011. Mr. ILIEV (Bulgaria) agreed that it was necessary to consider subparagraph (3) of Article 6 as a whole. He stated that he was of the opinion that the issue of non-voluntary licenses should be dealt with in the Treaty, provided that a balance was struck between the interests of society and the owner of the rights. Accordingly, he felt that a non-voluntary license should be non-exclusive, that it be granted only after attempts to obtain it on a voluntary basis, that one must pay a just remuneration for a non-voluntary license the amount of which should be appealable to a court, and that a non-voluntary license should not be transferable. He indicated that the grounds for granting a non-voluntary license should comprise the protection of public interest, including the prevention of any abuse by the holder of the right. He stated that, in his opinion, the draft paragraph (3) of Article 6 proposed by the Delegation of Spain met the requirements he outlined. He indicated that he would like to supplement the proposal made by the Delegation of Spain with his understanding of the public interest. Accordingly, in subparagraph (a), after the words "necessary for," he suggested adding the phrase "necessary to prevent any abuse by the holder of the right or to safeguard the public interest, for example, national defense or public health."

1012. Mr. SONI (India) supported the amendment to subparagraph (ii) of Article 6(3), proposed by the Delegation of Brazil.

1013. Mr. JONKISCH (German Democratic Republic) shared the opinion of the Delegation of Czechoslovakia, but indicated a willingness to discuss compromise proposals. In this connection, he stated that the proposal by the Delegation of Bulgaria merited additional consideration.

1014. Mr. TARNOFSKY (United Kingdom), speaking on behalf of the Group B, supported the proposal of the Delegation of Spain, as modified by the Delegation of the United States of America.

1015. Mr. CASADO CERVIÑO (Spain) speaking on behalf of the member States of the European Communities, stated that he had reviewed all the proposals on the non-voluntary licensing provisions of Article 6. He expressed doubts about the necessity of including a provision on non-voluntary licenses in a treaty on integrated circuits. He indicated that the proposal in document IPIC/DC/16 was offered in the spirit of compromise. He saw the proposal by the Delegation of India, in the name of the Group of Developing Countries, as being acceptable to the extent that it incorporated the basic text as an alternative. He also expressed support for the compromise position of the Delegation of the United States of America to delete the word "serious" and also its position regarding the basis of a non-voluntary license being to safeguard defense or health. He also found the second part of the proposal by the Delegation of the United States of America to be acceptable, namely, substituting the phrase "commensurate with the market value of the license" with "payment of equitable remuneration."

1016. Mr. CORREA (Argentina) disagreed with the proposal by the Delegation of Spain, on behalf of the European Communities, in particular in that it identified the vital public interests as being defense or public health. He saw this as being unnecessarily limiting because what was meant by vital public interest varied from country to country. As to the declaratory note proposed by the Delegation of Spain regarding free competition, he raised the concern that many countries did not have laws pertaining to free competition and saw the note as being unnecessary. As to the second declaratory note in document IPIC/DC/16 regarding the clarification that "a non-voluntary license cannot be regarded as replacing the consent of the holder of the right" he saw it as being confusing, since it would establish a semi-voluntary license. He expressed concern about the practice of including declaratory notes to dictate how a treaty should be interpreted rather than according that privilege to the Contracting Parties. He expressed concern that neither the Treaty provisions on non-voluntary licenses, nor the discussion of these provisions, made reference to technology transfer. He recalled that the Spanish law on the protection of integrated circuits, enacted only a year ago, authorized the granting of non-voluntary licenses "for reasons of public interest." He saw the provision of the Spanish law as being broader and preferable to that proposed by the Delegation of Spain on behalf of the member States of the European Communities. Referring to the proposal by the Delegation of the

United States of America to value remuneration of a compulsory license on the fair market value of the license, he wondered how such a value would be arrived at if few, if any, such licenses had been granted. He supported the proposal of the Delegation of Brazil with respect to Article 6(3)(a)(ii).

1017.1 Mr. MALHOTRA (India) indicated that the unanimous view of the Group of Developing Countries was that Article 6(3) had to be seen in its totality and that it was felt that the proposal by the Delegation of the United States of America to retain the language in the brackets and to delete the words "serious" was acceptable with the understanding that Alternative A was retained and Alternative B be deleted. With respect to Alternative A, he stated that what constituted public interest was undefinable and had to be interpreted for each case. He noted that national legislation, not only in developing countries but in many developed countries, commonly used the term public interest without defining it and suggested that this was because it was undefinable. He stated that the concept of "public interest" was not illusory and saw no advantage in a restrictive definition.

1017.2 The Delegate of India indicated that it was unanimously held by the developing countries that the draft as proposed by the International Bureau should be the basic document to work from, not other alternatives. He stated that it was further held that Alternative D be retained in preference to Alternative C. As regards Article 6(3)(ii) he stated that the view of the developing countries was to support the Brazilian proposal. As regards Alternative D of Article 6(3)(b), he pointed out that it had been established that the executive or judicial authority was competent to grant a non-voluntary license, which could only be reversed by a similar act taken by the same authority; therefore the wording "be revoked" was preferable.

1018. Mr. CASADO CERVIÑO (Spain), speaking on behalf of the member States of the European Communities and referring to the declaratory note at the end of document IPIC/DC/16, indicated that it was intended to clarify that a country could take what action it deemed necessary to protect its interests in securing free competition. Referring to the declaratory note in the same document regarding non-voluntary licenses, he indicated that it was not intended to introduce a new type of non-voluntary license, but rather, to clarify that the grant of a non-volontary license was not to replace the consent of the rights holder. He also indicated that the preamble applied to the Treaty as a whole in calling for the international exchange of technological achievements and it was not just Article 6 that was to effect that goal.

1019. Mr. TARNOFSKY (United Kingdom) indicated that the Group B countries, as a whole, were in support of document IPIC/DC/16 and stated that it had been modified by the Government of the United States of America in that the expression "public interest" no longer appeared because it was considered a vague concept that required clarification. He observed that the Delegation of India had underlined this point, having indicated, as he recalled, that the term was indefinite and vague. Accordingly, he proposed that the phrase "public interest" be deleted and provision be made for two instances, defense and public health, where the considerations involved must override private

rights. He indicated that the Group B countries could think of no other examples where this situation should apply and that was why the two areas were specifically listed. He clarified that the proposed declaratory note in document IPIC/DC/16 was designed to allow great latitude to the legislation of Contracting Parties to secure free competition. In this respect he noted that the proposal in document IPIC/DC/22 by the Delegation of Brazil seemed to him to provide a similar formula and suggested that a compromise between the two approaches would be an appropriate matter for the Drafting Committee. He observed that a question had been raised concerning paragraph 2 of document IPIC/DC/16 relating to the exhaustion of rights provision which appeared in Article 6(6). He stated that the motivation for the proposal was that a circuit which was produced under a non-voluntary license was produced because of conditions in that particular Contracting Party and that he felt it unfair that such a product could be in parallel imported into other Contracting Parties where the situation that provided a basis for the granting of the non-voluntary license did not exist.

1020. Mr. KRIEGER (Federal Republic of Germany) pointed out that the starting point of the considerations in the protection of layout-designs of integrated circuits was to have no provisions at all for compulsory or non-voluntary licenses. He recalled that the draft Treaty was directed to the prohibition of the imitation of an independently created layout-design of an integrated circuit and that the Treaty did not provide for the absolute protection for a layout-design of an integrated circuit. He contrasted that philosophy of protection with the philosophy of the protection of integrated circuits by patents and stated that, in his view, there was no reason for a compulsory license in the Treaty. He observed that the Directive of the European Community in respect of layout-designs, which was in force for the 12 member States of the European Communities, had no provision for non-voluntary licenses. He sought, in order to meet the special interests of the developing countries, a compromise solution which had been explained by the Delegation of Spain, on behalf of the European Communities, and had been accepted, as explained by the Delegation of the United Kingdom, by the member States of the B Group.

1021. The CHAIRMAN saw the debate as evolving and stated that the Basic Proposal was still on the table.

1022. Mr. MILLS (Ghana) associated himself with the statement made by the Delegation of India.

1023. Mr. DIENG (Senegal) stated that he supported the proposal put forward by the Delegation of India with respect to Article 6(3).

1024. Mr. SATELER ALONSO (Chile) indicated his support for the proposal of the Delegation of India, and emphasized that the concept of "public interest" should not be narrowly defined in the Treaty as it was subject to change from country to country and over time. He indicated that a balance could be struck between the public interest and the interest of the rights holder if an equitable remuneration was paid to the rights holder should a non-voluntary

license be granted. In this regard he did not understand the suggestion of the Delegation of the United States of America to require the remuneration to be the fair market value of a license as he understood that equitable remuneration to call for fair market value.

1025. Mr. YU (China) stated, with respect to Article 6(3)(i), that he preferred Alternative A. Moreover, he was of the opinion that the public interest should be interpreted widely and, in that connection, expressed a willingness to consider the proposal made by the Delegation of Bulgaria.

1026. Mr. MALHOTRA (India) pointed out that the basis for the Main Committee's discussion was the Basic Proposal prepared by the International Bureau of WIPO and, in his opinion, the proposal by the Delegation of the European Communities did not constitute a compromise proposal based upon the draft Treaty but was, rather, a new proposal. He was of the opinion that the term "public interest" was undefinable when an attempt was made to do so in a narrow sense, stating that the concept changed with the passage of time and events. He stated, therefore, that he preferred a broad reference to public interest. In his opinion, the term "public interest" was accepted in legislation under Anglo-Saxon and Spanish law. He stated that what constituted "public interest" was determined by the administrator or the judge on the basis of objective criteria, not on the basis of subjective criteria, and that a government could not determine what constituted "public interest" in an arbitrary manner. Such rulings, he stated, whether judicial or administrative, were subject to review.

1027. Mr. FERNANDEZ FINALE (Cuba) expressed his support for the position taken by the Delegation of India.

1028. Mr. SAADA (Egypt) stated that, following the deliberations of the Group of Developing Countries, he supported the proposal made by the Delegation of India. He stated that the public interest was his primary concern and, as indicated by the Delegation of Cuba, was perhaps explained according the prevailing circumstances in developing countries.

1029. Mr. JONKISCH (German Democratic Republic) expressed his support for the proposal of the Delegation of Bulgaria.

1030. Mr. JAYASINGHE (Sri Lanka) expressed his support for the proposal of the Delegation of India on Article 6(3).

1031. Mr. KITAGAWA (Japan) recalled that there were four proposals expressing the concept of the "public interest," namely, firstly Alternative A which said simply "public interest"; the second one was the expression used in the proposal submitted by the Delegation of Bulgaria which said "public interest, such as defense or public health"; the third one, Alternative B, which said "public health or public safety"; and the fourth one was the expression used in the proposal by the Delegation of the European Communities,

as amended by the proposal by the Delegation of the United States of America, which said "defense or public health interest." He was of the opinion that the differences between the four expressions were minor, being alternative expressions for the same thing, but that in the Main Committee, large differences of opinion had been stated, particularly between Alternative A and the proposal made by the Delegation of the European Communities. He expressed a desire to identify typical situations which would fall under the general concept of public interest and observed that defense or public health were two such typical situations. He was concerned, in particular, that absent the identification of such typical situations, a court would be left with insufficient guidance as to the meaning of the term "public interest." In this regard, he stated that his Delegation could undertake to develop a system to identify types of "public interest" that could be accepted by the entire Committee.

1032. Mr. CORREA (Argentina) requested the Delegation of the European Communities to identify the Articles of the Treaty that, according to their opinion, promoted technology transfer. He requested clarification of the Delegation of the Federal Republic of Germany on the scope of Article 6 of the Directive of the European Communities and, in particular, its effect on non-voluntary licenses.

1033. Mr. TARNOFSKY (United Kingdom) stated that the intervention by the Delegation of India underlined the fact that the expression "public interest" was vague and uncertain. He also expressed uncertainty as to how one could objectively assess whether something was in the public interest or not, especially given his opinion that the term was vague. He felt that the Treaty as a whole would promote the transfer of technology by ensuring that Contracting Parties to the Treaty provided an adequate minimum level of protection and it was desirable, therefore, to avoid the inclusion of disincentives to the transfer of technology, the provision of liberal non-voluntary licenses being such a disincentive. He thought that it would be worthwhile to submit the question of the meaning of public interest to the Working Group.

1034. Mr. VELONTRASINA (Madagascar) supported the proposal made by the Delegation of India. He emphasized that the definition of "public interest" should be left to national legislation or judicial construction so as to reflect the historical and geographical context in which the provision was interpreted in each country.

1035. Mrs. CHAALAN (Syria) supported the proposal made by the Delegation of India. She stated that the notion of "public interest" varied from country to country, citing as an example food security, which was a first priority of some countries, but not of others. She inquired as to whether an international list of the priorities of the "public interest" was contemplated.

1036. Mr. ARRUDA (Brazil) reiterated his support for the proposal by the Delegations of India, Argentina and Chile. He observed that there were conceptual differences on the matter under discussion and, therefore, it was

too early to refer the matter to the Drafting Committee. He recalled a proposal by his Delegation, contained in document IPIC/DC/22 which introduced, at the end of Article 6(3)(ii), the provision "to control or prevent restrictive business practices." He clarified that this formulation had been taken from a resolution, adopted by the General Assembly of the United Nations by consensus and with the support of the Group B countries and the Group of Developing Countries, on the control of restrictive business practices.

1037. Mr. BARREDA DELGADO (Peru) supported the position taken by the Delegation of India in the name of the Group of Developing Countries.

1038. The CHAIRMAN thereupon adjourned the meeting.

Tenth Meeting
Thursday, May 18, 1989
Afternoon

1039. The CHAIRMAN reconvened the meeting to further consider Article 6(3).

1040. Mr. SUCHAI JAOVISIDHA (Thailand) expressed his Delegation's support for the proposal by the Delegation of India. He expressed the opinion that the meaning of "public interest" differed in different countries. With respect to the proposal by the Delegation of the European Communities, he stated that it was more restrictive than the Basic Proposal and did not view it as a compromise solution.

1041. Mr. APAM KWASSI (Togo) supported the selection of Alternative A in Article 6(3)(a)(i), as proposed by the Delegation of India in document IPIC/DC/19. He stated that each Contracting State should give its own construction to "public interest" in light of its objectives and priorities at its stage of development.

1042. Mr. KOMAROV (Soviet Union) recalled that he had expressed himself in favor of Article 6(3)(i) in the Basic Proposal, with preference for Alternative A but also with the possibility, as a compromise, to consolidate it with Alternative B. He suggested that a compromise could be found in the issue of the content of "public interest" by either giving a general definition and linking it to certain vital interests or by providing a list of examples considered within the public interest.

1043. Mr. KITAGAWA (Japan) clarified that, by his previous intervention, he did not intend to reduce the number of proposals but, rather, to introduce a modified procedure which might include the introduction of a working group with a much smaller size having representatives of each group of countries.

1044. Mr. AL-NASHAD (Yemen Arab Republic) expressed his support for the proposal put forward by the Delegation of Japan and stated that it is nearly impossible to define the public interest.

1045. Mr. DA CONCEICAO E SILVA (Angola) supported the proposal of the Delegation of India, on behalf of the Group of Developing Countries, to remove the words in brackets in Article 6(3)(a)(i) and elect Alternative A. He indicated his acceptance of Alternative D in Article 6(3)(b) with the addition of the word "immediately" between "be" and "revoked."

1046. Mr. BERNAL (Mexico) expressed his support for the position taken by the Delegations of India, on behalf of the Group of Developing Countries, and Angola. He further supported the modification proposed by the Delegation of Brazil to Alternative A in Article 6(3)(i). He saw the need to make the language in the Treaty broad to accommodate the diverse needs of the countries that accede to the Treaty.

1047. Mr. KHREISAT (Jordan) stated that the concept of "public interest" changed from one country to the next as a result of different priorities and economic conditions. Thus, he saw it as unwise to define the "public interest" in an international treaty.

1048. Bishop HURLEY (Holy See) expressed concern about translation into different languages of the phrase "public interest" and suggested substituting the phrase "public order." As to the limitations of the right, he suggested the limitations in respect of public order, public peace and public morality.

1049. Mr. SAADA (Egypt) stated his approval for Alternative A, but suggested an alternative by way of a combination of Alternatives A and B to yield the following proposal: "in the public interest, to be decided by the corresponding authorities in each country, such as health."

1050. Mr. DUKA (Philippines) was of the view, after listening to the interventions, that the term "public interest" did not need any definition but it seemed that everybody knew what it meant. He defined it as a recognition of the sovereign right or prerogative of a State to protect itself and promote mutual interest. With that understanding of the term, he offered his support for the proposal by the Delegation of India to adopt Alternative A.

1051. Mr. BARREDA DELGADO (Peru) echoed the observation made by the Delegation of the Philippines that it was the sovereign right of each country to define what is in the "public interest" and that its definition in the Treaty should be left general. He was of the opinion that one should define with precision only the interests of the contracting parties and dispute-resolution provisions.

1052. The CHAIRMAN suggested referring the outstanding issues on Article 6(3) to the coordinators of the various groups. The Chairman noted that this suggestion met with the approval of the Main Committee.

1053. It was so decided.

1054. The CHAIRMAN then turned discussion to Article 6, paragraph (4) [Sale and Distribution of Infringing Microchips After Notice But Acquired Innocently Before Notice].

1055. Mr. BOGSCH (Director General of WIPO) stated that paragraph (4) of Article 6 was entitled "Sale and Distribution of Infringing Microchips After Notice But Acquired Innocently Before Notice" and recalled that the expression microchip was subject to the former decisions that had been concerning it. He noted that four proposals had been made on this matter: first, a proposal by the Delegation of the European Communities in document IPIC/DC/17, second, a proposal by the Delegation of Australia in document IPIC/DC/18, third, a proposal by the Delegation of India in document IPIC/DC/19, in the name of the Group of Developing Countries, and fourth, a proposal by the Delegation of Brazil in document IPIC/DC/22.

1056. Mrs. LANGER (European Communities) stated that the proposal in document IPIC/DC/17 had three aims with respect to Article 6(4): firstly, to make the provision mandatory; secondly, to amend Alternative F; and thirdly, to delete the language "without the authorization of the holder of the right." She posed a question to the Director General of WIPO as to what happened to a person, in a chain of persons who acquire the product innocently, that came to know that the product was protected.

1057. Mr. GOVEY (Australia) stated that the essential aim of the Australian proposal was to broaden the exemption in the paragraph to apply to a layout-design not yet incorporated in an integrated circuit and to an integrated circuit which has been placed on the market without the authorization of the holder of the right even though it has been made with his authorization.

1058. Mr. SONI (India) requested that the proposal submitted by the Delegation of India, on behalf of the Group of Developing Countries, be substituted for by the proposal made by the Delegation of Brazil.

1059. Mr. GRAÇA ARANHA (Brazil) seconded the proposal by the Delegation of India.

1060. Mr. BOGSCH (Director General of WIPO) responded to the Delegation of the European Communities by saying that the intention of the language in

the draft Treaty was that each person in the chain of persons who may perform or order the act has to be judged separately whether he was innocent or had knowledge or should have had knowledge.

1061. Mrs. LANGER (European Communities) clarified that it was not the judgment about the innocence which caused problems, but rather it was the fact that there might be a chain of people who have to pay remuneration. She saw the justification for provisions on innocent infringement as being that it was difficult to tell whether a chip was infringing or not by a simple examination of it. Thus, she stated that, if the proposal by the Delegation of Brazil with respect to Article 6(1) was adopted, the justification for innocent-infringer provisions would be lost.

1052. Mr. BOGSCH (Director General of WIPO) stated that there was no clear answer to the question in the Basic Proposal, and that it would be difficult to make one. He thought that there were two possibilities contemplated: first, that the remuneration would be fixed by agreement, in which case the said circumstances would be taken into account; second, if there was no agreement, the court would make an equitable decision.

1063. Mr. HALVORSEN (Sweden) remarked that the heading did not seem consistent with the text of the paragraph as it was drafted. He stressed that the character of the paragraph as non-mandatory was very essential.

1064. Mr. ARRUDA (Brazil) stated, in reply to a concern raised by the Delegation of the European Communities, that the inquiry should be limited to a microchip itself and whether it was incorporated in a product was irrelevant. He saw the problem of incorporation of an infringing microchip into a product as being amenable to solution in national laws.

1065. Mr. BOGSCH (Director General of WIPO) said that the provision, with or without the sentence in question, prohibited the selling of infringing, unauthorized microchips either alone or combined with other parts.

1066. Mrs. LANGER (European Communities) stated that, if there was no difference in substance between the Article with or without the sentence under discussion, then the sentence should remain for the sake of clarity.

1067. Mr. BOGSCH (Director General of WIPO) wondered whether the provision should be mandatory or permissive.

1068. Mr. WATTERS (Canada) supported the approach of the Delegation of the European Communities because it would make the provision mandatory. He felt that the amendment was designed to reduce the possibility of excessive protection in relation to Article 6(1)(iii) and, therefore, supported the mandatory approach that was suggested.

1069. Mr. BING (Norway) associated himself with the Delegation of Sweden and supported the Basic Proposal.

1070. Mr. BOGSCH (Director General of WIPO) asked the Delegation of the European Communities whether they could not reconsider their position since the Basic Proposal and the proposals by the Delegations of Brazil and India were drafted in a facultative form. He saw it as a question where one should leave the freedom to the Contracting States to legislate according to their desires. In practice he thought it unlikely that there would be excessive protection due to pressure on legislators to protect innocent infringers.

1071. Mr. GOVONI (Switzerland) indicated his preference for the Basic Proposal and opted for Alternative F in Article 6(4).

1072. Mrs. LANGER (European Communities) stated that, if there was a general feeling that a facultative provision could be accepted, her Delegation would not insist on it being mandatory, on the understanding that it would be confirmed that, on the substance of these ideas concerning innocent infringement, there was a consensus.

1073. Mr. KITAGAWA (Japan) supported the wording as drafted in the present draft Treaty and, as to Alternative E or Alternative F, supported Alternative F.

1074. Mrs. MAYER-DOLLINER (Austria) joined the opinion expressed by the Delegations of Sweden, Norway and Switzerland and, with regard to the two alternatives, stated that she was in favor of Alternative F.

1075. Mr. LIEDES (Finland) stated that he was in favor of the Basic Proposal as a facultative provision and as to the alternatives was in favor of Alternative F. He further endorsed the position taken by the Delegation of Australia.

1076. Mr. WISZCZOR (Czechoslovakia) stated, with respect to Article 6(4), that Alternative E was more acceptable.

1077. Mrs. LANGER (European Communities) stated that, if the provision was facultative, the text as proposed by Australia was acceptable, on the understanding that Alternative F be adopted. She stated that her Delegation continued its proposal as to the substantive amendment of Alternative F.

1078. The CHAIRMAN observed that the Delegation of the European Communities accepted the proposal of the Delegation of Australia and indicated a preference for Alternative F.

1079. Mr. BOGSCH (Director General of WIPO) observed that there were three problems outstanding. First, whether the following phrase should be deleted: "irrespective of whether the microchip is imported, sold or otherwise distributed as part of some other article or separately." He was of the opinion that the sense of Article 6(4) was the same with or without the phrase, and that on that understanding the phrase could be removed. Second, he saw an emerging consensus for a facultative rather than an obligatory provision. Third, there was the question of whether Article 6(4) should discuss remuneration at all and if so, on what terms. He then questioned as to whether these matters should be put to a vote.

1080. Mr. GRAÇA ARANHA (Brazil) indicated that his Delegation maintained its position contained in document IPIC/DC/22.

1081. Mrs. LANGER (European Communities) maintained her Delegation's position that the phrase contained in Article 6(4) relating to the incorporation of a microchip in an article should be retained for the sake of clarity.

1082. Mr. GOVEY (Australia) proposed reserving the question of protection for layout-designs prior to their incorporation until it was decided as to whether the Treaty was to extend to such designs.

1083. The CHAIRMAN suggested submitting the questions outstanding on Article 6(4) to the coordinators in an effort to bridge existing differences.

1084. It was decided to submit Article 6(4) to the coordinators to attempt to resolve outstanding differences.

1085. Mr. SAADA (Egypt) asked whether the coordinators were going to sign the Treaty on behalf of the delegations.

1086. The CHAIRMAN answered in the negative. He then suggested opening debate on Article 6, paragraph (5) [Articles Temporarily or Accidentally Entering the Territory of a Contracting Party].

1087. Mr. BOGSCH (Director General of WIPO) said that Article 6(5) was directed to preventing the seizure of a vehicle that temporarily or accidentally enters the territory of a Contracting Party by virtue of its carrying an infringing microchip. He stated that the last sentence of Article 6(5) had been added to ensure that the concept of "territory" was given a wide construction.

1088. The CHAIRMAN asked the Delegation of the European Communities, after hearing the remarks of the Director General of WIPO, if they continued to insist on the deletion of the last sentence of Article 6(5).

1089. Mrs. LANGER (European Communities) saw the last sentence of Article 6(5) as being unnecessary and, therefore, suggested its deletion.

1090. Mr. SATELER ALONSO (Chile) indicated that he had supported the proposal made by the Delegation of the European Communities.

1091. Mr. BOGSCH (Director General of WIPO) said that it would be appropriate to delete the last sentence of Article 6(5).

1092. The CHAIRMAN found that the withdrawal of the last sentence of Article 6(5) in the Basic Proposal was adopted.

1093. Article 6(5) as it appeared in the Basic Proposal was adopted with the deletion of the last sentence.

1094. The CHAIRMAN thereupon adjourned the meeting for a dinner break.

Eleventh Meeting
Thursday, May 18, 1989
Evening

1095. The CHAIRMAN called the meeting to order.

1096. Mr. BERNAL (Mexico) stated his belief that articles entering a country in a temporary manner would be exempt from the application of protection but not from the obligation that they comply with the object of protection. He asked whether this principle applied also in a situation where a country confines an article in its territory.

1097. The CHAIRMAN then turned debate to Article 6, paragraph (6) [Exhaustion of Rights].

1098. Mr. BOGSCH (Director General of WIPO) stated that Article 6(6) dealt with exhaustion of rights whereby a Contracting Party may consider acts performed with respect to a layout-design, or a microchip in which a layout-design is incorporated, to be lawful by virtue of having been placed on the market by the holder of the right. He indicated that Article 6(6) was drafted in such a way that exhaustion applied nationally, regionally, or worldwide.

1099. The CHAIRMAN observed that Article 6(6) was acceptable to the Committee.

1100. Article 6(6) was adopted as it appeared in the Basic Proposal.

Article 7: Exploitation; Registration (in the text as signed, Article 7: Exploitation; Registration, Disclosure)

1101. The CHAIRMAN then turned the debate to Article 7 and called upon the Director General of WIPO to introduce it.

1102. Mr. BOGSCH (Director General of WIPO) indicated that the purpose of Article 7 was to make it clear that, as far as the obligation established by Article 3 to secure intellectual property protection in respect of layout-designs that were original, Contracting Parties were free to withold such protection until either of two conditions had been satisfied: commercial exploitation or an application for registration. He indicated that Article 7 was separate from the provision on duration, contained in Article 8. He indicated that there was a proposal from the Delegation of China contained in document IPIC/DC/24 dealing with Article 7(ii).

1103. Mr. YU (China) stated that his Delegation had made a proposal on Article 7 contained in document IPIC/DC/24 to elect Alternative B and add: "stating of the part (or parts) which is (are) original." He indicated his willingness to accept the recommendation made by Working Group if there was added in Article 7 "the part (or parts) which is (are) original."

1104. Mr. BOGSCH (Director General of WIPO) said that the proposal of the Delegation of China put a difficult task on the right holder, namely, to dissect into two parts his layout-design and say which were the parts that were original and which were the parts that were not original. He saw it as being like a patent application which had to state that which was already in the public domain and then to state what was new. He did not consider that there was a link with the decision taken by the Working Group that anyone was free to copy the parts that were not original.

1105. Mr. SONI (India) saw merit in the proposal by the Delegation of China in that what was original would be made known and, thus also, what was considered original by the applicant.

1106. Mr. BOGSCH (Director General of WIPO) reiterated that it would be difficult, in practice, to apply the standard proposed by the Delegation of China.

1107. Mrs. LANGER (European Communities) indicated her preference for the basic text and elected Alternative A with respect to Article 7(ii). She suggested adding language to Article 7(ii) to the effect that material containing trade secrets would only be disclosed following an order of an executive or judicial authority of a contracting party in the case of litigation and only to the parties of that litigation.

1108. Mr. SONI (India) indicated that he would be tabling a modified Article 7 before the Committee.

1109. Mr. COMTE (Switzerland) agreed with the Director General of WIPO that there was not an obligatory link between the proposal made by the Delegation of China and the definition adopted earlier by the Main Committee. He observed that Article 7 was not obligatory. He agreed with the Director General of WIPO that the proposal by the Delegation of China had taken the subject matter of the treaty into the domain of patents, but that a judge was not bound by a distinction made between the part that was known and the new part.

1110. Mr. YU (China) indicated that his proposal was connected to Article 6(1)(i) because the act of reproducing a protected layout-design in its entirety or any part thereof, except any part that is not original, had been adopted in Article 6(1)(i).

1111. The CHAIRMAN reminded the Committee that the report of the Working Group had not been adopted. He then proposed suspending debate on Article 7 until all written proposals for its amendment had been submitted.

1112. Mr. KOMAROV (Soviet Union) was of the opinion that the proposal that a part is original would create difficulties. He stated that if it was desired to protect a part of the topography by the Treaty, then that should meet the requirements of originality and intellectual effort.

1113. Mr. GAO (China) made two points: first, for integrated circuits the element that was original could be distinguished from that which was not and second, he indicated that in previous texts of the draft Treaty prepared by WIPO there had been a requirement of the original, substantial, or essential part. On the latter point, he saw his present proposal as linked with those that had been made in the past.

1114. Mr. HAMMER (German Democratic Republic) indicated his preference for Alternative B. He felt that the proposal by the Delegation of China had merit as it considered the protection of the substantial part of the layout-design.

1115. Mr. KITAGAWA (Japan) supported Alternative A because a layout-design may be identified by filing material other than a copy or drawing and also because the filing of a copy or drawing of the layout-design in Alternative B

would impose an undue burden on businesses in respect of their trade secrets. On the proposal by the Delegation of China he raised three points. First, he understood that it was intended that the competent public authority accept for registration a layout-design, whether original or not. Second, he asked how the proposal would deal with the registration of two identical, independently created layout-designs. Third, he felt that the requirement of originality should be reviewed by a court, not the competent public authority.

1116. Mr. ABDULLAH (Ghana) commented on Article 7(ii) stating that Alternative A was preferable to Alternative B, subject to the amendments proposed by the Delegation of the European Communities. He questioned the propriety of including a requirement directed to "originality" in Article 7(ii).

1117. Mr. OMAN (United States of America) indicated a preference for Alternative A. He indicated that the experience in his country with registration systems was that appropriate deposit provisions affected the volume and kinds of registrations and that, if the disclosure of material that was not protected under the Treaty was required, rights holders would refuse to register, which would defeat the underlying purpose of the Treaty.

1118. Mr. MALHOTRA (India) commented on the discussion related to the proposal of the Delegation of China that, if the applicant could not indicate the original portion, it would be more difficult for a court to do so. He indicated that he understood a registration system did not require an applicant to either know or indicate the portion of his layout-design he considered original, but that he thought the proposal had merit and should be considered. He further indicated that the proposal by the Delegation of the Soviet Union had merit regarding the definitions.

1119. Mr. GAO (China) stated that his proposal contemplated the filing of a registration with the competent public authority followed by the filing of a statement that identified the original part. He further stated that the applicant should have the burden of stating what is the original part of his layout-design.

1120. Mr. CHOI (Republic of Korea) stated that he was more concerned about the registration of layout-designs, as provided for in subparagraph (ii), than about commercial exploitation somewhere in the world. He indicated, therefore, that the protection of layout-designs and the registration of layout-designs should meet two requirements, namely, the disclosure of the layout-design and the establishment of proof of ownership. Consequently, he preferred Alternative B.

1121. Mr. BOGSCH (Director General of WIPO) raised the question of the legal consequences of the Treaty providing that an applicant had to state the parts which were original if the applicant turned out to be mistaken.

1122. Mr. ABDULLAH (Ghana) stated that the answer to the question raised by the Director General of WIPO was rather simple since there were no legal consequences, but the errors made in registration of designs often led to discovery of infringements of layout-designs incorporating microchips.

1123. The CHAIRMAN proposed that the discussion of Article 7 be suspended until the proposals from the Group of Developing Countries and from the European Communities had been distributed (continued at paragraph 1211).

Article 8: The Duration of the Protection

1124. The CHAIRMAN turned to Article 8, paragraph (1) [Minimum Duration Where Commercial Exploitation and Registration Not Required] and paragraph (2) [Minimum Duration Where Exploitation or Registration Required].

1125.1 Mr. BOGSCH (Director General of WIPO) stated that the first paragraph of Article 8 dealt with the possibility of national laws, which required neither commercial exploitation nor registration, to protect layout-designs from the moment of their creation, and the duration would be 15 years. He further indicated that he did not know whether there were any countries which had such a system or any countries planning to have such a system.

1125.2 The Director General of WIPO stated that paragraph (2) had two alternatives (Alternative M and Alternative N) and dealt with the countries whose legislation provided, as a condition of protection, either a commercial exploitation or the filing of an application for registration, or both, and provided that the minimum term of protection would be counted from exploitation or from registration or, if both were required, from the earlier of the two dates, and would last 10 years. The main difference in Alternative N was that it provided for a minimum of five years and added in subparagraph (b) according to which "where, at the expiration of the five-year period referred to in subparagraph (a), the layout-design (topography) has a commercial value, the competent authority of the Contracting Party shall, on the request of the holder of the right, grant an extension of the duration of the protection; such extension shall not be less than ... ." Here again, there were two alternatives--either two-and-a-half years (30 months), or five years. Both alternatives had a long history and had been extensively discussed in the preparatory meetings. He further indicated that the expression "has a commercial value" in Alternative N, paragraph (2)(b), was not always easy to determine, but that this was a condition which was desired by some delegations in order to contemplate the possibility of extending the five-year protection for a longer period. It meant that they would not extend it automatically but only if they found that it had a commercial value. There was a division of opinion on what was the ideal duration--was 10 years too much? Was five years too little?--and since there had been no agreement, both alternatives were put into the Basic Proposal by the International Bureau.

1126. Mr. SONI (India) stated that the Group of Developing Countries was also considering submitting a proposal on Article 8. In the meantime, based on the explanation provided by the Director General of WIPO, he wished to know how the figure of 15 years had been arrived at in Article 8(1).

1127. Mr. BOGSCH (Director General of WIPO) replied that the 15-year term would be counted from creation of a layout-design. He indicated that an analogy could be found in copyright, where the protection automatically started at the moment when a work was created.

1128. Mr. KOMAROV (Soviet Union) stated that, where the court decided that it was necessary to establish the date of the creation of a layout-design, it would take into account all the stages of creation of a topography, i.e. the preparation of drawings and any subsequent stages of the creation of the integrated circuit, or of the creation of the prototype, or its testing. A court could also base its decision upon other dates, in case the circuit was further developed or modified. He saw the problem that court decisions might differ significantly. The second problem concerned the term of protection in respect of the topographies of the integrated circuits, which were subject to registration since, for such topographies, the term of protection was considerably less than for topographies which did not involve registration or use. He considered that the situation was not logical and asked for an explanation.

1129. Mr. BOGSCH (Director General of WIPO) stated that paragraph (1) and paragraph (2) represented alternatives for countries to choose between. They could never apply in parallel in the same country. He further indicated that more countries would be likely to choose, as the basis for protection, the registration or the commercial exploitation, but there was nothing in the Treaty which obliged countries to count the duration from registration, just as there was no obligation in the Treaty to have a registration system. Therefore, each country might decide that it required neither registration nor commercial exploitation, and then it might appear that, in such a country, the duration would be eternal if one did not put a limit to it. The proposal to establish a minimum duration of 15 years had the goal to fill that theoretical gap.

1130. Mrs. LANGER (European Communities) indicated that her Delegation was planning to submit a proposal in respect of Article 8, which would tend to eliminate the problems raised by the proposed text of Article 8. She further stated that the proposal intended to establish a term of protection where no registration and no other formalities were required, and the protection started normally with creation. She expressed the view that the Treaty should establish the obligations only to give protection for 10 years from first commercial exploitation anywhere in the world. She further pointed out that, in order to avoid the eventual problem of eternal protection, the proposal would include a special provision which would allow the Contracting Parties to protect a layout-design, which was neither commercially exploited nor registered, within a 15-year period from its creation, thus giving the Contracting Parties the possibility to end protection.

1131. Mr. HAMMER (German Democratic Republic) expressed himself in favor of Alternative N, including Alternative N2. He further indicated that, while in principle supporting the 10-year protection period, he considered that it should be left to the Contracting Parties to provide for conditions according to which an extension of the duration of protection for another five years should be granted on the expiration of the first five-year period.

1132. Mr. ABDULLAH (Ghana) proposed deleting paragraph (1). He indicated that if a layout-design had been produced by somebody, but not used in the sense of Article 7, it made no difference to any other creator of new layout-designs which had been used and there was no need giving any term of protection, be it 15 years or 100 years, to that unused layout-design. He further recalled the expression used by a representative of a major chip manufacturing company in the United States of America, that the peak of one success in the chip industry to a next peak lasted only 35 minutes. He expressed the view that it made no sense to add years and years of protection in that particular industry, since the longer the term the more meaningless the protection was to those who required it. Finally, he stated that what really bothered and mattered to the people in the chip-manufacturing industry was Article 6 and the scope of protection. It was Article 6 where one really needed to create a balance between the interests of the consumers and manufacturers.

1133. Mr. HALVORSEN (Sweden) stated that his country had chosen a system without registration and had let the protection come into existence on the creation of the layout-design, but the term of protection ran from the first commercial exploitation. So it seemed that Sweden fell under the scope of paragraph (1) in Article 8. That would mean that Sweden would have to give a protection for at least 15 years from the creation, and that created problems. He indicated that Sweden preferred to be able to keep its present system, i.e. starting protection from the first commercial exploitation and extending for the period of 10 years. Finally, he expressed hope that the proposal of the Delegation of the European Communities would help Sweden to solve that problem.

1134. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Sweden whether in the Swedish system, if there was no commercial exploitation, the protection was perpetual.

1135. Mr. HALVORSEN (Sweden) replied in the affirmative and added that he found that nearly a theoretical question.

1136. Mr. BING (Norway) associated himself with the interventions of the Delegation of the European Communities and the Delegation of Sweden. He drew attention to the fact that in Norway national legislation in the field of microchips was pending, and that it was to be decided in the same way as in Sweden in respect of extending protection from the creation of the layout-design, but counting the term of protection from the first commercial exploitation. He pointed out that there were also certain technical advantages in calculating the term of protection from the first commercial exploitation, even if that was not a requirement for triggering the protection itself, and therefore, it would be advantageous also for technical reasons to keep that possibility. He repeated the arguments of the Swedish Delegation that one would be required to protect the layout-design according to the Basic Proposal for a longer period than if commercial exploitation was made a requirement for triggering the protection itself. That situation seemed inappropriate to him. He also expected the proposal of the Delegation of the European Communities to help answer the question of whether there was a perpetual protection if no commercial exploitation was taking place.

1137. Mr. GOVONI (Switzerland) stated that the Swiss Delegation was fully satisfied with the proposed text of Article 8 and expressed himself in favor of Alternative M, which provided for a 10-year period of protection.

1138. Mr. TARNOFSKY (United Kingdom) stated that in the United Kingdom the system of protection of a layout-design was rather similar to the one described by the Delegation of Sweden. Therefore, the proposed text of draft paragraph (1) would also create certain problems. He expressed hope that the proposal of the European Communities would solve that problem. He further indicated that there was no registration system in the United Kingdom, so paragraph (1) would obviously apply. Protection was granted from creation, but lasted only 10 years from the first commercial exploitation of the design. So, there was no perpetual protection. The first commercial exploitation should occur within 15 years of creation and that might lead to a situation where commercial exploitation took place at the time of creation. Then, the total protection would be 10 years, which was less than the proposed 15-year period. He further indicated that, on the other hand, if the first commercial exploitation occurred within 15 years--which was the maximum--then the total protection would be 25 years in the system of the United Kingdom.

1139. Mr. KITAGAWA (Japan) supported Alternative M and proposed to modify subparagraph (ii) of paragraph (2) as follows: "from either the date of the filing of the application for registration, or the date of registration." He explained that the proposed Treaty should take into account already existing and functioning rules of national laws, unless there existed justifiable reasons for not doing so. The starting point of protection in Japanese law was the date of registration. That date was reasonable in respect of protecting third parties' interests in doing business with their designs, as well as developing new products because the record of registration was officially publicized.

1140. Ms. SCHRADER (United States of America) stated that the United States of America continued to believe that the term provided by the Basic Proposal of Alternative M of 10 years was the appropriate term to protect semiconductor chip products. She pointed out that the United States initially had given considerable thought to providing protection under copyright law which, under the law of the United States of America, would have effectively given protection for 75 years. Clearly, the 10-year term was a significant compromise for the industry and, in terms of the length of protection ordinarily accorded in the field of intellectual property, that term seemed to be quite a modest period of protection. The products under consideration were obviously increasingly important to the economy and the amount of investment involved in developing them was considerable. She further stated that the term of protection, as well as the volume of rights, should be sufficient to encourage innovation. She also indicated that it was always better to err on the side of giving slightly more protection than might be necessary since, towards the end of such period of protection, the products were essentially obsolete and of no use. That meant that there was essentially no harm to the public interests in any event. She finally stated that, if a period of protection was too short, innovation might be stifled in that extremely important field.

1141. Mr. VRBA (Czechoslovakia) expressed his preference for Alternative M and, in addition, Alternative N2, in subparagraph (b), with the possibility of extension of the term of protection for five years.

1142. Mrs. LANGER (European Communities) indicated that her Delegation was clearly in favor of Alternative M, since she believed that a 10-year term of protection was a fair compromise. She recalled that, when adopting the Directive of the European Communities, there were long discussions about the term and, finally, it was found that 10 years represented the best balance that one could find.

1143. Mr. KOMAROV (Soviet Union) expressed himself in favor of Alternative N, i.e. for five years with possible prolongation. He stated that he believed that the object of protection in question would lose its commercial value in most cases within a five-year period.

1144. Mr. HALVORSEN (Sweden) supported Alternative M.

1145. Mr. GAO (China) stated that it seemed that no delegation at the Conference was in favor of 15 years. He proposed to delete paragraph (1). He further expressed himself in favor of Alternative M.

1146. The CHAIRMAN noted that the exchange of views that took place was very useful since a number of delegations expressed preferences for one or the other alternative. He further stated that, in order to continue the discussion on Article 8, it was necessary to wait for the written proposals and positions of the various groups.

Article 9: Assembly

1147. The CHAIRMAN opened debate on Article 9, paragraph (1) [Composition], paragraph (2) [Tasks], paragraph (3) [Voting], paragraph (4) [Ordinary Sessions], and paragraph (5) [Rules of Procedure].

1148. Mr. BOGSCH (Director General of WIPO) stated that Article 9 started the second part of the Treaty where the structure of the Union and membership in the Union was considered. He further stated that Article 9 dealt with the Assembly and that recently a proposal had been submitted by the Delegation of Japan (document IPIC/DC/30) in respect of that Article.

1149. Mr. KITAGAWA (Japan) sought additional clarifications in respect of subparagraph (d) of paragraph (1), where the notion of "developing countries" was mentioned. He further proposed to modify paragraph (5) of Article 9, which provided that the Assembly would establish rules in respect of a quorum and the required majority for various kinds of decisions. He recommended setting forth such rules in the Treaty itself, as in Article 55(5) of the Patent Cooperation Treaty.

1150. Mr. BOGSCH (Director General of WIPO) stated that several of the WIPO treaties used the same expression and mentioned the "developing countries," defined according to the established practice of the General Assembly of the United Nations. The list of the "developing countries" was not based on one single decision of the General Assembly, but on the practice of the United Nations. He further stated that the list was being changed; it might increase or even decrease, so one could not establish in the Treaty itself the list of the "developing countries," but one had to rely on the practice of the United Nations. He further indicated that, to his knowledge, there was never any controversy as to which of the countries were to be regarded as "developing countries." In respect of the proposal of the Delegation of Japan on paragraph (5), he stated that there were precedents in both directions and that he had absolutely no objection to imitate in that paragraph the Patent Cooperation Treaty (PCT). If the Delegation of Japan wished to establish some basics of the Rules of Procedure in the Treaty itself, rather than to delegate that to the Assembly, that was also a possibility. Finally, he stated that the proposed formula was chosen because it was more flexible and it was more easily changed if necessary, but that it could be replaced by the formula proposed by the Delegation of Japan.

1151. Mr. HAMMER (German Democratic Republic) commented on Article 9(3), stating that he agreed to the proposal according to which intergovernmental organizations, as specified in Article 14(1)(b), might become party to the Treaty, but he was of the opinion that those intergovernmental organizations should not be entitled to vote in addition to their member countries which were also party to the future Treaty, as it was foreseen in paragraph (3) of Article 9.

1152. Mr. SONI (India) raised the question in connection with Article 9(3)(b), which provided that "Contracting Parties present at the time of voting that are member States of a Contracting Party that is an Intergovernmental Organization may delegate the exercise of their right to vote to that Organization." He wondered whether it meant that those Contracting Parties should have a proxy and, in case they obtained a proxy, whether it meant that in case those Contracting Parties delegated their right to vote, their presence was required.

1153. Mrs. LANGER (European Communities) stated that the proposal of the European Communities would provide that there was no additional voting right in case intergovernmental organizations became party to the Treaty. The proposal of the European Communities was based on a formula, which had been successfully used in several international conventions to which the European Communities were party. She further stated that it was necessary to redraft the proposed text of paragraph (3), in order to make sure that it was not interpreted as giving a supplementary vote over and above the number of the votes of the member States which were party to the Treaty. She further noted that the Delegation of the European Communities had repeatedly stated that they had no desire for any supplementary vote. It had nothing to do with the proxy, since it was a problem of transfer of competence. The proposal of the European Communities would make sure that there was a guarantee that under no circumstances would the Communities and the member States vote concurrently on any given issue.

1154. Mr. BOGSCH (Director General of WIPO), replying to the question of the Delegation of India, stated that the proposed text of paragraph (3) did not say whether the member States of an international organization, in whose name a vote would be made by the international organization, would have to be present or not. That question might be solved either in the internal regulations of the international organization or it could be decided in the Treaty itself.

1155. Mr. ABDULLAH (Ghana) proposed in paragraph (2) to replace the word "tasks" by the word "functions."

1156. Mr. BOGSCH (Director General of WIPO) said that, in his opinion, the proposal of the Delegation of Ghana should be accepted.

Article 10: International Bureau

1157. The CHAIRMAN then turned the discussion to Article 10, paragraph (1) [International Bureau] and paragraph (2) [Director General].

1158. Mr. BOGSCH (Director General of WIPO) stated that Article 10 dealt with the International Bureau and it was very similar to corresponding Articles in other treaties. He informed the delegations that the Secretariat had received no written proposals in respect of that Article.

1159. Mr. SONI (India) stated that there was no explanatory note in respect of paragraph (2), and asked for clarification.

1160. Mr. BOGSCH (Director General of WIPO) stated that that provision again was in all treaties or Unions administered by WIPO and it meant that, in the hierarchy of the staff of the International Bureau, the Director General was the Chief Executive. This meant that in dealing with outside authorities, the signature of the Director General was the one which was given in the name of the International Bureau.

1161. Mr. SAADA (Egypt) proposed to put Article 1, entitled "Establishment of a Union," immediately before Article 10, instead of having it at the beginning of the Treaty.

1162. Mr. BOGSCH (Director General of WIPO) stated that the proposal of the Delegation of Egypt would preclude use of the word "Union" before Article 10.

1163. The CHAIRMAN adjourned the meeting.

Twelfth Meeting
Friday, May 19, 1989
Afternoon

1164. The CHAIRMAN gave the floor to the President of the Steering Committee.

1165. Mr. OMAN (President of the Steering Committee) outlined the program of further work as decided by the Steering Committee and indicated that it would be better to proceed with the remaining Articles in the draft Treaty and go through them until it was clear where the problems were and what issues caused major concerns. He further suggested that once the above work was completed, the Spokesmen of the Group of Developing Countries, Group D, Group B and the Representative of China should meet to begin their deliberations. Then, the delegations were expected to meet in the Main Committee in the afternoon, on Saturday, May 20, in order to break up into group meetings.

Article 11: Amendment of Certain Provisions of the Treaty

1166. The CHAIRMAN moved on to Article 11 of the Basic Proposal and asked the Director General of WIPO to comment on it.

1167. Mr. BOGSCH (Director General of WIPO) indicated that, on Article 11, there were proposals from the Delegations of Japan and of the European Communities, respectively, in relation to paragraph (1). The proposal of the Delegation of Japan contained in document IPIC/DC/30 provided for deletion of the words "the definitions contained in Article 2(i) and (ii)." The proposal of the Delegation of the European Communities contained in document IPIC/DC/33 provided for the new text of paragraph (1) which read "The Assembly may amend the definitions contained in Article 2(i) and (ii) and may delete Article 3(1)(b)." That meant that other references in paragraph (1) would not be so amendable. He stated that the Delegation of the European Communities also proposed the new wording of paragraph (3) which read "Adoption by the Assembly of any amendment or decision under paragraph (1) shall require four-fifths of the votes cast." He further stated that the Delegation of Japan proposed that the period of one month indicated in paragraph (4), should be replaced by three months. The same proposal, contained in document IPIC/DC/35, was made by the Delegation of Australia which also proposed deleting the words in the second sentence of paragraph (4), after the word "Assembly" and to insert in place the words "except for the Parties which have notified their denunciation of the Treaty in accordance with Article 16 before the entry into force of the amendment. It shall also bind all States and Intergovernmental Organizations which become Contracting Parties after the amendment was adopted by the Assembly." He finally indicated that there was a proposal of the Delegation of the United States of America contained in document IPIC/DC/39 which was still to be distributed.

1168. Mr. KOMAROV (Soviet Union) stated that he had no serious objections, in principle, to Article 11 and that his Delegation was ready to accept the Article as contained in the Basic Proposal. His Delegation was also ready to discuss any eventual modifications.

Article 12: Safeguard of Paris and Berne Conventions

1169. The CHAIRMAN proposed turning discussion to Article 12 and asked the Director General of WIPO to introduce it.

1170. Mr. BOGSCH (Director General of WIPO) stated that no proposals for amendment of Article 12, entitled "Safeguard of Paris and Berne Conventions," as appearing in the Basic Proposal had been received.

Article 13: [No] Reservations (in the text as signed, Article 13: Reservations)

1171. The CHAIRMAN proposed turning discussion to Article 13 and asked the Director General of WIPO to introduce it.

1172. Mr. BOGSCH (Director General of WIPO) stated that Article 13 dealt with admissibility of reservations to the Treaty and that, so far, no exception had been decided or even recommended, and there was no request for any change in Article 13. He pointed out that Article 13 would remain pending until a decision would be made whether there would be any reservations.

1173. Mr. KOMAROV (Soviet Union) proposed to discuss Article 13 after completion of the discussion of other Articles. He believed that the Committee should not decide a priori whether there would be any reservations, until the discussions had been finished.

Article 13bis: Consultations; Disputes[; Enforcement] (in the text as signed, Article 14: Settlement of Disputes)

1174. The CHAIRMAN then moved to Article 13bis and asked the Director General of WIPO to introduce the Article.

1175.1 Mr. BOGSCH (Director General of WIPO) stated that the Basic Proposal contained Article 13bis in square brackets because it would have to be preceded by a decision in principle whether there should be such an Article on consultations, disputes and, possibly, enforcement in the Treaty. The proposed Article contained three paragraphs: the first, entitled "Consultations"; the second, entitled "Disputes," and the third, entitled

"Enforcement." He further noted that the third paragraph, entitled "Enforcement," was placed between square brackets. That meant that there was a sub-question whether the Article should be limited to consultations and disputes, or should also deal with enforcement.

1175.2 He further drew attention to three documents pertaining to Article 13bis. The first one was document IPIC/DC/4, containing a proposal by the Delegation of the United States of America and entitled "Further Explanation of the Consultation, Dispute Settlement and Enforcement Procedures as Proposed by the United States of America." There also existed two proposals for amending Article 13bis contained, respectively, in document IPIC/DC/34, proposed by the Delegation of Japan, and in document IPIC/DC/37, proposed by the Delegation of the United States of America. The proposal by the Delegation of Japan provided for a new kind of sanction, namely, that, if the Contracting Party would not respect the recommendations of the Assembly, it would be deprived of its right to be represented in the Assembly until the dispute was resolved. The proposal by the Delegation of the United States of America represented a completely new version of Article 13bis. He expressed the view that the most important substantive difference from the Basic Proposal was expressed in paragraph (3)(b) which read: "If the Assembly's recommendations are not followed, within the time limit set by the Assembly, by the said Contracting Party, the Assembly, at the request of the Contracting Party which has alleged the violation of this Treaty by the other Contracting Party may authorize that Party or other parties to the dispute to suspend, in whole or in part, the application of this Treaty with respect to the other Contracting Party until such time as the problem giving rise to the dispute is resolved." Another innovation was contained in paragraph (2)(a) of the proposal, where the penultimate sentence said: "The Director General shall set the terms of reference for the panel subject to the approval of the parties to the dispute." He wondered whether, if there was no approval by the interested parties, this would mean the end of the dispute-settlement procedure.

1176. Mr. JONKISCH (German Democratic Republic) stated that his Delegation could not accept Article 13bis, primarily due to the constitutional problems.

1177.1 Mr. OMAN (United States of America) stated that, in the view of the Delegation of the United States of America, the Treaty required an appropriate and detailed consultation procedure, as well as a procedure for resolving disputes and for providing for enforcement of the decisions that were taken under the dispute-settlement mechanism. The inclusion of adequate and effective standards within the Treaty coupled with the detailed consultation, dispute-settlement and enforcement procedures, would foster international cooperation and promote uniformity in the level of protection in the countries that adhered to the Treaty in their national legislation. He expressed the view that the absence of a formal consultation, dispute-settlement and enforcement provision would be a source of continuing frustration and dissatisfaction.

1177.2 He further indicated that his Delegation would be able to accept more general terms in the remainder of the Treaty as a whole knowing that there would be an expert group available to adjudicate differences that arose under the Treaty. Replying to the question of the Director General of WIPO, he

indicated that the parties would be undertaking their responsabilities with a sense of goodwill and cooperation and that they would not in fact refuse at the outset the terms set by the Director General of WIPO. Absent such an approach, the dispute-resolution procedure would be terminated.

1178. Mr. KITAGAWA (Japan) stated that the Delegation of Japan basically supported the proposed dispute-settlement mechanism concerning matters of intellectual property. He also indicated that the enforcement provision set out in Article 13bis(3)(b) would be an effective and desirable sanction against a Contracting Party that breached its obligations. However, he expressed the view that, at present, it would not be advisable that the sanction reach beyond the violating Contracting Party to the individual holder of the right of that Contracting Party in cases where the authorized Contracting Party had suspended the application of the Treaty with regard to those individual holders. Finally, he suggested that the sanction of suspending such violating Contracting Party's right should be decided at the Assembly.

1179. Mr. VRBA (Czechoslovakia) supported the proposal of the Delegation of the German Democratic Republic and proposed the deletion of Article 13bis.

1180. Mr. KOMAROV (Soviet Union) stated that at an early stage his Delegation had noted that the procedure contained in Article 13bis needed more consideration, in particular in comparison with judicial methods of dispute settlement. He was not convinced that such a procedure had apparent advantages. He indicated that the method of consultations, including in the industrial property area, represented established international practice. In case the parties were unable to come to an agreement on the basis of consultations, a court procedure was resorted to, including the submission to an international court. He considered it unusual that the functions of a court were given to such a body as the Assembly of the Union. That had no precedent and was not consistent with the spirit of international cooperation, and the Assembly was not the proper place and the proper body to deal with sanctions. Finally, in the spirit of compromise, he expressed readiness to consider the problem of consultation procedure within the present Treaty but he underlined that, in any event, any sanctions should be excluded.

1181. Mr. GOVEY (Australia) expressed his support for the inclusion in the Treaty of the dispute-resolution procedure along the lines of the new proposal by the Delegation of the United States of America. He emphasized that the Article dealt with dispute resolution at a governmental level and did not deal with the resolution of private commercial disputes between individual parties. He further stated that there existed clear dissatisfaction with the existing procedures and that a number of important countries were looking in other directions to find a way of satisfactorily dealing with that kind of international dispute. He considered that the provisions along the lines of Article 13bis would encourage a multilateral approach to dispute resolution which, in his view, was far more preferable to a bilateral approach that operated very often to the disadvantage of smaller countries. Another advantage of a multilateral approach was that it would give WIPO an opportunity to play a role in dispute resolution. He indicated that WIPO had

established its competence and responsibility in the field of microchips. So, it was appropriate and advantageous to put everything under the umbrella of WIPO, rather than to have such disputes inevitably being dealt with in another forum with a different perspective.

1182. Mr. LIEDES (Finland) associated himself with the position of the Delegation of Australia in respect of the "government to government" level of dispute-settlement, as well as of the role and position of WIPO in that respect. He further expressed his preference for the proposal of the Delegation of the United States of America which, in comparison to the proposed draft Article 13bis, was more complete. He finally stated that, if it would be possible to find a consensus in the Treaty on an adequate level of protection, he was ready to consider consultation, dispute-settlement, and enforcement provisions in the Treaty as a part of the package.

1183. Mr. GRAÇA ARANHA (Brazil) stated that his Delegation had difficulties with the entire Article 13bis, in particular difficulties of a constitutional nature, since it created an entirely new procedure in international relations. He described the position of his Delegation as very similar to the position of the Delegation of the Soviet Union. He also agreed with the comments of the Delegation of the German Democratic Republic.

1184. Mr. SATELER ALONSO (Chile) said that his Delegation had certain difficulty in understanding the need to establish in the Treaty a system for the settlement of disputes which rather seemed to belong in a framework of negotiations requiring reciprocal concessions to be agreed upon, on legal grounds somewhat different to the obligations which would result from the Treaty produced at this Diplomatic Conference. His country, as a small country, obviously preferred a multilateral approach to the solution of economic problems. In his understanding, negotiating and adopting a multilateral regime for the settlement of disputes would imply discarding in particular a bilateral approach to the solution of controversies. The strengthening of the Treaty with a provision on the settlement of disputes had to be accompanied by an explicit commitment in the sense that such multilateral procedure would be the only system to which the parties would resort to settle their disputes. In this connection the World Intellectual Property Organization would be the appropriate forum for the negotiation and the settlement of any differences arising from the obligations under the Treaty.

1185. Mr. HALVORSEN (Sweden) expressed himself in favor of Article 13bis in the Basic Proposal.

1186. Mr. GABAY (Israel) supported the general idea of dispute-settlement procedures and enforcement to be included in the present Treaty and expressed himself in favor of draft Article 13bis in the Basic Proposal, as well as the proposed amendments by the Delegation of the United States of America. He further supported the arguments expressed by the Delegations of Australia, Finland and Sweden and stressed that unless there was a very effective dispute-resolution procedure the Treaty would have a major shortcoming.

1187. Mr. FERNANDEZ FINALE (Cuba) said that his Delegation had been surprised at finding an Article on the settlement of disputes included in the draft Treaty since none had been agreed upon at the last meeting of the Committee of Experts which had taken place in November 1988. His Delegation therefore supported the statement of the German Democratic Republic in the sense that the draft Article could not for the time being be accepted as presented in the draft text.

1188. Ms. SUTTON (New Zealand) endorsed the comments made by the Delegation of Australia in terms of favoring a multilateral solution to a problem rather than a bilateral one, and supported the introduction within WIPO of a dispute-settlement system.

1189. The CHAIRMAN summarized the discussion of Article 13bis by saying that the Main Committee should decide on two main issues. One was the question of the principle itself, i.e. whether the principle was acceptable to have a mechanism in the Treaty related to dispute-settlement procedures. The second issue concerned the details of such a mechanism. He suggested that the whole matter should be discussed first at group meetings, so the discussions on Article 13bis could be continued at a later stage when the groups decided on their standing in that matter.

1190. Mr. SONI (India) asked for clarification from the Delegation of the United States of America on how closely its proposal on Article 13bis matched the dispute-settlement mechanism followed under GATT, especially as far as the notion of consensus was concerned.

1191. Mr. OMAN (United States of America) replied that the dispute-settlement mechanism proposed by his Delegation in Article 13bis would be fully consistent with the provisions within the GATT, i.e. that all proceedings were based on consensus.

1192. The CHAIRMAN indicated that the discussions on Article 13bis would be resumed after group meetings.

Article 14: Becoming Party to the Treaty (in the text as signed, Article 15: Becoming Party to the Treaty)

1193. The CHAIRMAN turned to Article 14 and asked the Director General of WIPO to introduce it.

1194. Mr. BOGSCH (Director General of WIPO) stated that Article 14 dealt with becoming party to the Treaty. The only new element appearing in that Article was that an intergovernmental organization having certain characteristics could become party to the Treaty. The characteristics were contained in subparagraph (b) of draft paragraph (1) and provided that the intergovernmental organizations had to have their own legislation providing

for intellectual property protection in respect of layout-designs and that legislation had to be applicable into the territory of all member States. He further indicated that the Article should be read in conjunction with document IPIC/DC/5 dealing with the status of the European Economic Community in the Treaty. Alternative texts of certain paragraphs of Article 14 were contained in document IPIC/DC/32, proposed by the Delegation of the European Communities, and in document IPIC/DC/39, proposed by the Delegation of the United States of America.

1195. The CHAIRMAN stated that, taking into account several amendments in respect of Article 14, the discussions should further be conducted at a group level with subsequent general debate in the Committee.

Article 15: Entry Into Force of the Treaty (in the text as signed, Article 16: Entry Into Force of the Treaty)

1196. The CHAIRMAN turned to Article 15 and asked the Director General of WIPO to introduce it.

1197. Mr. BOGSCH (Director General of WIPO) stated that Article 15 dealt with the entry into force of the Treaty and that one of the questions to be decided by the Committee was how many instruments of ratification were needed for the Treaty to enter into force.

1198. The CHAIRMAN, noted the absence of any comments in respect of Article 15.

Article 16: Denunciation of the Treaty (in the text as signed, Article 17: Denunciation of the Treaty)

1199. The CHAIRMAN turned to Article 16 and asked the Director General of WIPO to introduce it.

1200. Mr. BOGSCH (Director General of WIPO) indicated that Article 16 dealt with the denunciation of the Treaty. He further stated that no written amendments had been proposed so far.

1201. Bishop HURLEY (Holy See) suggested to look for a better word than the word "denunciation" in the English version.

Article 17: Languages of the Treaty; Signature (in the text as signed, Article 18: Texts of the Treaty and Article 20: Signature)

1202. The CHAIRMAN turned to Article 17 and asked the Director General of WIPO to introduce it.

1203. Mr. BOGSCH (Director General of WIPO) pointed out that Article 17 entitled "Languages of the Treaty; Signature" contained an innovation in the field of languages as far as WIPO was concerned because Arabic and Chinese would appear for the first time as equally authentic official texts of the Treaty. He further drew attention to document IPIC/DC/29 proposed by the Delegation of Bulgaria which contained several amendments to the Article. The amendments were grouped in three categories, the first one being that the Article should be divided into two separate Articles corresponding to paragraphs (1) and (2), respectively, of the draft Article. The first of those Articles would be entitled "Signature" and would provide that the Treaty would be open for signature at Washington, from May 26 to August 25, 1989, thereafter at the International Bureau in Geneva, until May 25, 1990; and the second Article would be entitled "Authentic and Official Texts" and would provide that the English, Arabic, Chinese, French, Russian and Spanish texts would be equally authentic. He expressed the view that, in substance, the proposal of the Delegation of Bulgaria did not differ from the text in the Basic Proposal. It was simply a question of a different position to be assigned to the Articles.

1204. Mr. GENOV (Bulgaria) expressed the general view that the Treaty under preparation should be drafted in such a way as to be in conformity with the norms of international law. Therefore, his Delegation proposed to divide Article 17 into two independent Articles based on paragraph (1) and paragraph (2) of the text in the Basic Proposal. In respect of the first Article dealing with signing, he indicated that in nearly all international treaties such Articles were not placed at the end. So, he considered the best place for that Article to be between Articles 14 and 15. He also suggested to follow international practice in respect of signing the treaties. Usually a treaty was signed within 12 months, and after that a different procedure of accession was used. He also noted that it was customary that within the first two or three months the Treaty was signed in the location of the Diplomatic Conference. After the expiry of that period it was logical to transfer the process and place of signing to the International Bureau of WIPO in Geneva.

Article 18: Depositary Functions (in the text as signed, Article 19: Depositary)

1205. The CHAIRMAN turned to Article 18 and asked the Director General of WIPO to introduce it.

1206. Mr. BOGSCH (Director General of WIPO) stated that Article 18 dealt with depositary functions and was of standard character. He further indicated that the Delegation of Bulgaria proposed in document IPIC/DC/27 to simplify the Article by replacing it with a new one entitled: "Depositary" and which read: "The Director General shall be the depositary of this Treaty." He finally mentioned also some consequential changes in the document to be

submitted by the Delegation of the United States of America, which related to intergovernmental organizations.

1207. The CHAIRMAN noted there were no comments on Article 18.

Article 19: Notifications (in the text as signed there is no separate Article relating to notifications)

1208. The CHAIRMAN turned to Article 19 and asked the Director General of WIPO to introduce it.

1209. Mr. BOGSCH (Director General of WIPO) stated that Article 19 dealt with notifications and that the Delegation of Bulgaria in document IPIC/DC/28 proposed to delete the Article. He also mentioned some consequential modifications in respect of intergovernmental organizations contained in a document to be submitted by the Delegation of the United States of America.

1210. The CHAIRMAN noted there were no comments on Article 19.

Article 7: Exploitation; Registration (continued from paragraph 1123)

1211. The CHAIRMAN invited the Spokesman of the Group of Developing Countries to introduce his Group's proposal in respect of Article 7.

1212. Mr. SONI (India) stated that the proposal of his Delegation, in the name of the Group of Developing Countries, with respect to Article 7 was contained in document IPIC/DC/38. The heading of the Article had been amended to read: "Exploitation, Registration, Disclosure." Paragraph (1) said: "Any Contracting State shall be free not to protect a layout-design (topography) until it has been publicly commercially exploited separately or incorporated in an integrated circuit somewhere in the world." Paragraph (2) of the proposal followed Alternative B in subparagraph (ii) but with some alterations. He further indicated that the proposal on paragraph (2) represented a combination of both Alternative A and Alternative B in the Basic Proposal, and it provided in the second part of paragraph (2) "filing of material allowing the full identification of the layout-design (topography) including a copy or drawing of the integrated circuit that incorporates the said layout-design (topography) along with the functional specifications." He finally indicated that paragraph (2) in the new proposal was divided into three parts. His previous comments related to subparagraph (a), while subparagraphs (b) and (c) represented new issues. He saw proposed subparagraph (b) as being more of a consequential nature because it said that any Contracting Party might require that a filing, where required, be effected within six months from the date on which the holder of the right first exploited commercially the layout-design (topography) of an integrated circuit anywhere in the world.

1213. Mrs. LANGER (European Communities) stated that her Delegation intended to introduce an amendment to Article 7, which had two aims: first, to allow those member States which did not want to start protection at creation, but which did not require commercial exploitation as a condition for protection, to be accommodated in the Treaty and to provide them with obligations in respect of the term of protection which were identical to the other member States. Secondly, to ensure that where protection started early, it would end after a given time, so that third persons would be sure that the layout-designs which had a certain age and which had not been commercially exploited were free of protection.

1214. Mr. GAO (China) commented on the proposal of his Delegation in respect of Article 7, contained in document IPIC/DC/24. He indicated that the proposal should be understood in conjunction with the recommendation of the Working Group, which said that the act of reproducing a protected layout-design (topography) related to the entirety of that design or any part thereof, except any part that was not original. He understood that the above recommendation was approved by the Committee and stressed that his Delegation considered the words "any part that is not original" to be very clearly stated, logical and necessary. In this regard, he recalled that the subject matter of the Treaty was to protect layout-designs which were original.

1215. The CHAIRMAN summarized the situation indicating that the main Articles of the Basic Proposal had been already discussed and that most of the amendments concerning the Basic Proposal had been already distributed. He pointed out that the Conference was running out of time and invited the delegations to have group meetings in order to establish common positions in respect of major controversial issues. He further outlined five basic areas where the major differences existed: the area of non-voluntary licensing, the area of registration and accompanying issues of full or partial disclosure and retaining trade secrets, the area of the protection of layout-designs per se or only on incorporation in an integrated circuit, the dispute-settlement mechanism in Article 13bis and the question of the eligibility of intergovernmental organizations to become party to the Treaty.

1216. Mr. BOGSCH (Director General of WIPO) invited the spokesmen of the groups to advise the meeting of the group meetings time schedule.

1217. Mr. TARNOFSKY (United Kingdom) stated that the meeting of Group B would start at 7:00 p.m.

1218. Mr. SONI (India) stated that the meeting of the Group of Developing Countries would start at 5:00 p.m.

1219. Mr. KOMAROV (Soviet Union) stated that, since his Group still had serious difficulties, most of all in respect of Articles 8 and 14, it would require a lot of internal work within the Group.

1220. The CHAIRMAN adjourned the meeting.

Thirteenth Meeting
Friday, May 26, 1989
Morning

1221. The CHAIRMAN reconvened the meeting and informed the delegations that, after a very long process of negotiations, the coordinators of the groups had been able to agree on a package contained in document IPIC/DC/43 and its Corrigendum. He raised the question that once the delegations confirmed the understanding that the proposed package could be accepted, then the session of the Main Committee would be suspended in order to enable the Drafting Committee to start immediately considering the text.

1222. Mr. SONI (India) confirmed that the Group of Developing Countries accepted the proposed package.

1223. Mr. TARNOFSKY (United Kingdom) confirmed that Group B accepted the proposed package.

1224. Mr. KOMAROV (Soviet Union) confirmed that Group D accepted the proposed package.

1225. Mr. GAO (China) stated that his Delegation accepted the proposed package.

1226. Mr. OMAN (United States of America) commented on the compromise that had been reached. He indicated that throughout the entire negotiation process, the United States of America had strongly sought balance in a Treaty that would be fair to all sides and that would accommodate the legitimate interests of other nations. Therefore, the Delegation of the United States of America had tried on several occasions and almost on a continuous basis to reach a mutually satisfactory package. He further indicated that his Delegation was extremely disappointed at the result. His Delegation still had major problems with some of the Articles in the Treaty; in particular, Article 14 had become effectively unworkable, Article 6 contained major problems and the term of protection was almost too short to justify the effort. He concluded that on balance his Delegation would not be able to vote in favor of the Treaty. That put his Delegation, as that of the host country, in an especially difficult situation.

1227. Mr. SAEKI (Japan) stated that Japan still had serious difficulties in accepting the proposed package, particularly Article 6. Therefore, his Delegation was not in a position to support the proposed package.

1228. The CHAIRMAN summarized the situation, stating that the proposed package was generally acceptable, except to the Delegations of the United States of America and Japan. He further suggested that the Drafting Committee should proceed and start its work with the text immediately. He finally gave the floor to the Director General of WIPO for information on future procedure.

1229. The Proposal as contained in document IPIC/DC/43 was adopted, subject to any amendments proposed by the Drafting Committee.

1230.1 Mr. BOGSCH (Director General of WIPO) said that it was customary in diplomatic conferences to present for signature not only the Treaty but also the final Act. The proposed text of the Final Act read as follows: "In accordance with the decisions made by the General Assembly of the World Intellectual Property Organization (WIPO) at its ninth session and by the Assembly of the International (Paris) Union for the Protection of Industrial Property at its twelfth Session (1987), and following preparations by member States and by the International Bureau of WIPO, the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits was held from May 8 to 26, 1989, at Washington. The Diplomatic Conference adopted the Treaty on Intellectual Property in Respect of Integrated Circuits, which was opened for signature on May 26, 1989. In witness whereof, the undersigned, being duly authorized thereto, have signed this final Act."

1230.2 He suggested that, once the meeting of the Main Committee was adjourned, the Drafting Committee should meet in order to bring the non-English texts into conformity with the English text. He estimated that by 5:00 p.m. the final text would be ready for consideration by the Main Committee, and the same text would also serve as the basis for the Plenary Session of the Conference. The Plenary would be able to meet soon after 5:00 p.m. to consider the final Report of the Credentials Committee and to proceed to the adoption of the Treaty and of the final Act. After that, the delegations would have an opportunity to make closing declarations. Then, the President would close the Conference and, immediately thereafter, the text of the Treaty and the text of the final Act would be put on the table and the delegations would be invited to sign them.

1231. The CHAIRMAN adjourned the meeting.

Fourteenth Meeting
Friday, May 26, 1989
Evening

1232. The CHAIRMAN reconvened the meeting and drew attention of the delegations to document IPIC/DC/46, prepared by the Drafting Committee and containing the text of the Treaty. He recalled that it had been agreed before that the text of the Treaty would be adopted by consensus. He asked whether

any delegation objected to that. In view of absence of any objections, he declared the text of the Treaty to be adopted by consensus in the Main Committee.

1233. The text of the Treaty, contained in document IPIC/DC/46, was adopted.

1234. The CHAIRMAN thanked the delegations for the work done. He also thanked the interpreters, the Secretariat of WIPO and the host country. On behalf of the Main Committee he expressed thanks to the Director General of WIPO, Dr. Bogsch. Finally, he expressed words of thanks to the spokesmen of the various groups: Mr. Tarnofsky, Mr. Komarov, Mr. Gao Lulin and Mr. Soni. He highly appreciated the efforts of the President of the Conference, Mr. Oman, who chaired several meetings of the Steering Committee, and invited him to the chair to transform the session of the Main Committee into a Plenary of the Conference.

1235. Mr. TARNOFSKY (United Kingdom), speaking in the name of the countries of Group B, expressed his thanks to the Chairman, Mr. Suedi, for the way he had handled the chairmanship of the Main Committee.

1236. Mr. KOMAROV (Soviet Union), speaking in the name of the countries of Group D, also thanked the Chairman, Mr. Suedi, for the work done.

1237. Mr. SONI (India), speaking in the name of the Group of Developing Countries, also thanked the Chairman, Mr. Suedi, for the work done.

1238. Mr. GAO (China) expressed his thanks to the Chairman, Mr. Suedi, for the work done.

1239. The CHAIRMAN closed the last meeting of the Main Committee.

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The Chairman of the Main Committee

K. Juma Suedi	(United Republic of Tanzania)

The Chairman of the Drafting Committee

Gyula Pusztai	(Hungary)

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NOTE CONCERNING THE USE OF THE INDEXES

These Records contain six indexes. The first two refer to the contents of the Treaty: the first under the number and title of each of the Articles of the Treaty, and the second under catchwords.

The last four refer to the participants in the Diplomatic Conference: one to the member delegations that were represented in the Conference, one to the observer delegation, one to the organizations that were represented in the Conference, and the last to the individuals who represented the said delegations and organizations.

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CATCHWORD INDEX

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