AIPLA

AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION
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May 28, 2007

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on Foreign Relations
United States Senate
Dirksen Senate Office Building
Washington, DC 20510-6225

Dear Mr. Chairman:

The American Intellectual Property Law Association (AIPLA) is pleased to present its views on the Singapore Treaty on the Law of Trademarks adopted on March 27, 2007 by the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty.

AIPLA is a national bar association of more than 16,000 members engaged in private and corporate practice, in government service, and in the academic community. AIPLA represents a diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.

The Singapore Treaty builds on the Trademark Law Treaty of 1994, but it has a wider scope of application and addresses new developments in the field of communication technology. The Singapore Treaty is applicable to all types of marks registrable under the law of a given Contracting Party and allows Contracting Parties the freedom to choose the means of communication with their Offices. The Singapore Treaty introduces relief measures for missed time limits as well as provisions on the recording of trademark licenses. Other provisions of the Singapore Treaty closely follow the Trademark Law Treaty. By agreeing to common standards, Contracting Parties create a level playing field for all economic operators that invest in branded goods. Moreover, the Singapore Treaty creates a dynamic regulatory framework for brand rights and, unlike the Trademark Law Treaty, establishes an Assembly of the Contracting Parties which can review administrative details, a feature of great practical importance for brand owners.

Trademark Licenses. The Singapore Treaty addresses the burdensome license recordal requirements in some countries that make it difficult for trademark licensors and licensees to enforce trademark rights against third parties. In many cases, mere failure to record a license can result in invalidation of the trademark registration. The Singapore Treaty's license recordal provisions reduce the formalities that trademark owners must face when doing business in a Contracting Party that requires recordal, and reduce the damaging effects that can result from failure to record a license in those jurisdictions.

Communications. Unlike the Trademark Law Treaty, the Singapore Treaty allows Contracting Parties the freedom to choose the form and means of transmittal of communications and whether they accept communications on paper, communications in electronic form or any other form of communication. This allows national trademark offices to move to entirely electronic systems for receiving and processing trademark applications, permitting national trademark offices to take advantage of electronic communication systems as an efficient and cost saving alternative to paper communications. The Singapore Treaty also maintains a very important provision of the Trademark Law Treaty, namely that the authentication, certification or attestation of any signature on paper communications cannot be required. However, Contracting Parties are free to determine whether and how they wish to implement a system of authentication of electronic communications.

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

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

The Singapore Treaty was forwarded to the Senate on May 3, 2007, and referred to the Senate Committee on Foreign Relations (Treaty Document 110-2). As outlined above, the ratification of this treaty by the United States and other nations will significantly benefit U.S. trademark owners conducting business on a global scale. We urge the Committee to approve ratification of the Singapore Treaty at the earliest possible time in order that the United States can lead by example in the effort to get other nations to ratify it so that its benefits can be fully enjoyed by American companies and trademark owners.

Thank you for your consideration of our views on this important treaty.

Sincerely,



Michael K. Kirk
Executive Director
AIPLA

cc: Senator Richard G. Lugar