

ACTION: Notice of meeting and opportunity for collaboration.

SUMMARY: The Office of Information Technologies in the U.S. Department of Commerce's International Trade Administration will conduct a public meeting on Wednesday, November 8, 2000 at 9 a.m., in room 3407, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230. The purpose of the meeting is to introduce to U.S. information technology (IT) suppliers the IT Management Planning Tool, a new product for developing IT markets overseas, and to explore ways to collaborate in disseminating this product to potential users. Seating is limited. Those planning on attending the meeting should inform the Office of Information Technologies by October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Tu-Trang Phan or Raymond Cho in the Office of Information Technologies at 202-482-0571 (phone), 202-482-3002 (fax), or by e-mail at ExportIT@ita.doc.gov.

SUPPLEMENTARY INFORMATION: The Office of Information Technologies in the U.S. Department of Commerce's International Trade Administration will conduct a public meeting on Wednesday, November 8, 2000 at 9 a.m., in room 3407, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230. The purpose of the meeting is to introduce to U.S. information technology (IT) suppliers a new approach to IT market development overseas and explore ways to collaborate in this effort. There will be a demonstration and discussion of the IT Management Planning Tool, which was created to serve as a market stimulator for U.S. suppliers to generate demand for their IT products and services overseas. The IT Tool is a software application which helps management of businesses and government agencies assess their current IT usage and plan for future IT investments that can improve their operations. Because the IT Tool is intended for overseas audiences, the contents of the Tool will be localized and translated into several languages, including Spanish, Portuguese, Russian, Simplified Chinese, and Traditional Chinese. U.S. information technology suppliers and service providers interested in partnering with the U.S. Department of Commerce in this unique overseas market development effort should attend the meeting.

The meeting is open to the public, however, seating in room 3407 is

limited and is available on a first come, first served basis. Those planning on attending the meeting should inform the Office of Information Technologies by October 27, 2000. To request further information concerning the meeting or to request a copy of the Information Technology Planning Tool, contact Tu-Trang Phan or Raymond Cho in the Office of Information Technologies at 202-482-0571 by phone, 202-482-3002 by fax, or by e-mail at ExportIT@ita.doc.gov.

Dated: October 12, 2000.

John E. McPhee,

Director, Office of Information Technologies.

[FR Doc. 00-26659 Filed 10-16-00; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091400A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of photography permit no. 986-1592-00.

SUMMARY: Pandion Enterprises, P.O. Box 545, Summerland, California 93067, [Permit Holder: Bruce Reitherman], has been issued a permit to take by Level B harassment one species, elephant seal (*Mirounga angustirostris*), of non-threatened, non-endangered marine mammals for purposes of commercial photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Long Beach, California 90802-4213, (562/980-4000).

SUPPLEMENTARY INFORMATION: On August 9, 2000, notice was published in the **Federal Register** (65 FR 48679) that the above-named applicant had submitted a request for a permit to take one species of marine mammals by Level B harassment during the course of commercial photographic activities in Piedras Blancas and Ano Nuevo, California. The requested permit has been issued, under the authority of §104(c)(6) of the Marine Mammal

Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: October 5, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00-26655 Filed 10-16-00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

RIN 0651-AB25

Request for Comments on Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The Hague Conference on Private International Law is negotiating a convention designed to create common jurisdiction rules for international civil and commercial cases and to provide for international recognition and enforcement of judgments issued under these rules. A Diplomatic Conference to conclude these negotiations is scheduled to begin in June 2001, with a final session sometime in early 2002. The United States Patent and Trademark Office (USPTO) is seeking views of the public on this effort and the consequent potential changes to United States law and practice.

DATES: Comments should be submitted on or before December 1, 2000.

ADDRESSES: Persons wishing to offer written comments should address those comments to Director of the United States Patent and Trademark Office, Box 4, United States Patent and Trademark Office, Washington, DC 20231, marked to the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305-7575 or by electronic mail through the Internet to elizabeth.shaw2@uspto.gov. All comments will be maintained for public inspection in Room 902 of Crystal Park II, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jennifer Lucas by telephone at (703) 305-9300; by facsimile at (703) 305-8885; by electronic mail to jennifer.lucas@uspto.gov; or by mail marked to the attention of Jennifer Lucas, Attorney-Advisor, addressed to Director of the United States Patent and

Trademark Office, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Background

The Hague Conference on Private International Law is in the process of negotiating a new convention on jurisdiction and the recognition and enforcement of foreign judgments in civil and commercial matters. The draft convention would create jurisdictional rules governing international lawsuits and provide for recognition and enforcement of judgments by the courts of Member States. Member States would be required to recognize and enforce judgments covered by the Convention if the jurisdiction in the court rendering the judgment were founded on one of the bases of jurisdiction required by the Convention.

Discussions began in 1992, at the request of the United States. The impetus behind the request was to gain recognition and enforcement of U.S. judgments in other countries. While U.S. courts generally recognize and enforce judgments from other countries, U.S. judgments do not always receive the same treatment abroad.

The Hague Conference is planning a two-part Diplomatic Conference to finalize the draft convention. The first session would take place in June 2001, followed by a second session in late 2001 or early 2002.

The text of the proposed convention and other documents relating to the proposal are available via the Hague Conference's web site at <http://www.hcch.net/e/workprog/jdgm.html>.

Brief Summary of Draft Convention

The draft convention would create three categories of jurisdiction: (1) required bases for jurisdiction (generally Articles 3–16); (2) prohibited bases for jurisdiction (Article 18); and (3) everything else not covered by (1) or (2) (Article 17).

Articles 3–16 set out jurisdictional rules for specific types of actions that the courts in Contracting States must provide, and from which any resulting judgment may gain the benefits of the recognition and enforcement provisions of the Convention.

Article 12 creates exclusive jurisdiction for certain actions that “have as their object” the registration, validity, nullity, and possibly revocation or infringement of patents, trademarks, or other similar rights required to be deposited or registered, in the courts of the country in which the deposit or registration has been applied for or has occurred. Copyrights are excluded from the exclusive jurisdiction

rule; however, actions concerning copyrights could fall under the other non-exclusive required jurisdictional provisions.

Specifically, Article 12 provides:

“4. In proceedings which have as their object the registration, validity, [or] nullity [, or revocation or infringement] of patents, trade marks, designs or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or, under the terms of an international convention, is deemed to have taken place, have exclusive jurisdiction. This shall not apply to copyright or any neighboring rights, even though registration or deposit of such rights is possible.

[5. In relation to proceedings which have as their object the infringement of patents, the preceding paragraph does not exclude the jurisdiction of any other court under the Convention or under the national law of a Contracting State.]

[6. The previous paragraphs shall not apply when the matters referred to therein arise as incidental questions.]”

The brackets identify potential language alternatives to be considered and discussed in detail during the Diplomatic Conference.

Article 4 provides that parties may enter into agreements designating a choice of court; however, such agreements shall be without effect if they conflict with the provisions of Article 12. In addition, Article 5, which confers jurisdiction on a court when the defendant proceeds on the merits without contesting jurisdiction, is subject to Article 12 as well.

Article 10 defines jurisdictional rules for tort actions. This provision would cover copyright infringement proceedings. It also could apply to patent and trademark infringement proceedings if the bracketed language in Article 12(4) is not approved. Article 10 provides for jurisdiction either in the State in which the act or omission causing injury occurred, or the State in which the injury arose so long as the injury in that State was reasonably foreseeable. Article 10(4) would limit available damages, where jurisdiction is founded on the place of injury, to the damage suffered in the place the suit is filed unless that is also the plaintiff's habitual residence.

Article 18 defines grounds of jurisdiction that are prohibited in Contracting States. Article 18(1) would place a general limitation on the exercise of jurisdiction based on the absence of a “substantial connection between that State and the dispute.” Article 18(2)(e) is of particular interest to U.S. litigants because it states that jurisdiction cannot be based solely on the fact that the defendant carries on

commercial or other activities in that State, except where the dispute is directly related to those activities. This provision would prohibit the exercise of general “doing business” jurisdiction as currently recognized under U.S. law. Article 18(2) also would prohibit the exercise of “tag” jurisdiction in a court based on service upon the defendant in the State.

Everything that does not fall under either of these categories is included in the “gray area” as defined in Article 17. With some exceptions, countries can continue to act as they normally do under their national law; however, judgments resulting from actions covered by this provision will not get the benefits of recognition and enforcement under the Convention.

Chapter III provides rules for the recognition and enforcement of judgments based on a ground of jurisdiction provided for in Articles 3–16.

Current U.S. Jurisdictional Law

U.S. courts must have both personal jurisdiction over the parties and subject matter jurisdiction over the case before a court can act on a dispute.

I. Personal Jurisdiction

Generally, in order to exercise personal jurisdiction over a nonresident defendant, district courts interpret the long-arm statute of the state in which they reside, as restricted by the limitations imposed by the due process clause of the U.S. Constitution.

Courts first apply the state long-arm statute, which defines what types of conduct would bring a nonresident defendant within the boundaries of the court's reach. Activities that can create jurisdiction under most long-arm statutes include transacting business, committing a tortious act within the forum, or committing a tortious act outside the forum that has an effect within the forum.

Once the court finds that the exercise of jurisdiction over the nonresident defendant is consistent with the relevant long-arm statute, the court then must determine whether the due process requirements are satisfied. The due process rule of the U.S. Constitution requires that a nonresident defendant have “minimum contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). In evaluating whether minimum contacts have been established in a given case, the courts ask if a

nonresident defendant, through his conduct and connection with the forum, "purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

A court must establish that it has either general or specific jurisdiction over a defendant before it can proceed with an action against the defendant. General jurisdiction is personal jurisdiction exercised over a defendant when the cause of action is unrelated to the defendant's contacts, but the defendant has sufficient contacts with the forum. Specific jurisdiction arises out of, or is related to, the defendant's contacts with the forum. See *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984).

General jurisdiction has been found where the defendant was engaging in "continuous and systematic [though unrelated to the cause of action] business." *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 438 (1952). To assert specific jurisdiction, a court is required to find that the defendant purposefully directed activities at residents in the forum, the claim arose out of those activities, and the assertion of personal jurisdiction is fair and reasonable. See *Burger King*, 471 U.S. at 471-76.

Courts are cautious in exercise of jurisdiction over foreign defendants. See *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 114 (1987) (holding "unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders."). Considered critical to due process analysis is whether the foreseeability exhibited by defendant's conduct and its connections with the forum State demonstrate that the defendant would reasonably anticipate being brought into the forum court. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-298 (1980).

With respect to Internet-related cases, the law of personal jurisdiction is in flux. The traditional minimum contacts approach has been used to determine whether a court has jurisdiction over a non-resident defendant in Internet-related intellectual property disputes. In such cases, the courts have looked to a variety of factors, including but not limited to the level of interactivity of the Web site; whether the tortious act was committed in state or out-of-state with impact in the state; the number of hits

on the Web site; or the foreseeability of use by forum residents. See, e.g., *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414 (9th Cir. 1997); *Zippo Mfg. Co. v. Zippo Dot Com*, 952 F. Supp. 1119 (W.D. Pa. 1997); *Eskofot A/S v. E.I. Du Pont De Nemours & Co.*, 872 F. Supp. 81 (S.D.N.Y. 1995).

II. Subject Matter Jurisdiction

Federal district courts have jurisdiction over civil actions involving patents, trademarks and copyrights pursuant to 28 U.S.C. 1338(a), which provides: "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, * * * copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent * * * and copyright cases."

A. Patents

As mentioned above, federal courts have exclusive jurisdiction over all suits "arising under any Act of Congress relating to patents." This includes all patent validity and infringement actions. Jurisdiction under this section extends "only to those cases in which a well-pleaded complaint establishes either that federal patent law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal patent law." *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 809 (1988).

B. Trademarks

Actions involving trademark infringement under the Lanham Act can be heard in either state or federal courts in the United States. However, most trademark actions arising out of the Lanham Act take place in federal court. Federal district courts have subject matter jurisdiction over all actions arising under the Lanham Act pursuant to § 39 of that Act, 15 U.S.C. 1121, as well as 28 U.S.C. 1338(a).

Section 14 of the Lanham Act creates an administrative proceeding within the USPTO where a party can petition to cancel a registered trademark. 15 U.S.C. 1064. Federal courts have concurrent jurisdiction with the USPTO to hear proceedings to cancel a mark, so long as the challenge arises from an existing trademark-related proceeding, as a result of § 37 of the Lanham Act. 15 U.S.C. 1119. Section 37 provides that a court may order the cancellation of a trademark registration "[i]n any action involving a registered trademark." This section, however, does not create an independent ground for exercising jurisdiction over an action—the court must have subject matter jurisdiction

based on another ground before considering cancellation of a registered trademark. See 5 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 30:110, pp. 30-186-88 (4th ed. 2000).

C. Copyrights

Federal courts have exclusive jurisdiction over actions based on the Copyright Act, including copyright infringement proceedings. 28 U.S.C. 1338(a).

Issues for Public Comment

The USPTO is interested in assessing support for or opposition to the effort to negotiate a convention on jurisdiction and enforcement of judgments and in obtaining comments on the proposed convention as it relates to intellectual property. Interested members of the public are invited to present written comments on any issues they believe to be relevant to protection of intellectual property or any aspect of the proposed convention as it relates to intellectual property. Comments also are welcome on the following specific issues:

1. What are your experiences in having judgments involving intellectual property from one jurisdiction recognized in a foreign court?
2. Have you had different experiences in having those judgments recognized in U.S. courts?
3. Are uniform rules for international enforcement of judgments desirable?
4. Do you support or oppose the United States becoming party to a jurisdiction/enforcement of judgments convention?
5. What would be the benefits or drawbacks of the United States becoming a party to the proposed Hague convention?
6. Would the elimination of tag or general "doing business" jurisdiction have any impact on intellectual property owners' ability to protect their rights either domestically or internationally?
7. What other changes to U.S. law would be needed to implement the proposed convention? Please identify any drawbacks and/or advantages to such changes.
8. What effect, if any, could this Convention have on other international intellectual property obligations, including, but not limited to, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Paris Convention, and the Berne Convention?
9. What effect, if any, could this Convention have on the enforcement of intellectual property with respect to the Internet?

10. Would application of Article 10 change existing jurisdictional principles as applied to intellectual property infringement actions? If yes, please describe any changes in detail and provide any relevant legal authority.

11. Would the limitation of worldwide damages in Article 10(4) have any significant impact in cases involving worldwide infringement of trademark or other intellectual property rights?

12. With respect to Article 12(4), under what circumstances would application of this subsection change existing jurisdictional principles, with and without the bracketed language included? Please describe any changes in detail and provide any relevant legal authority.

13. What effect, if any, would Article 12(4) have on trademark owners seeking to litigate rights related to registered versus common law marks?

14. Is exclusive jurisdiction needed for infringement and/or validity actions involving patents, trademarks, and/or copyrights?

15. What changes, if any, should be made to the proposed Convention? Please describe any changes in detail and provide any relevant legal authorities that support such suggestions.

16. Please identify any other potential concerns or advantages raised by the proposed convention.

In your response, please include the following: (1) clearly identify the matter being addressed; (2) provide examples, where appropriate, of the matter being addressed; (3) identify any relevant legal authorities applicable to the matter being addressed; and (4) provide suggestions regarding how the matter should be addressed by the United States.

Dated: October 11, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00-26634 Filed 10-16-00; 8:45 am]

BILLING CODE 3510-16-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

October 11, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota reopenings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bahrain and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I 237, 239pt. ¹ , 331-336, 338, 339, 340-342, 345, 347, 348, 350- 352, 359pt. ² , 431, 433- 436, 438, 440, 442- 448, 459pt. ³ , 631, 633- 636, 638, 639, 640- 647, 648, 649, 650- 652, 659pt. ⁴ , 831, 833- 836, 838, 840, 842- 847, 850- 852, 858 and 859pt. ⁵ , as a group.	56,846,705 square meters equivalent.
Sublevels in Group I 338/339	789,896 dozen.
340/640	378,978 dozen of which not more than 284,233 dozen shall be in Categories 340-Y/640-Y ⁶ .

¹ Category 239pt.: only HTS number 6209.20.5040 (diapers).

² Category 359pt.: all HTS numbers except 6406.99.1550.

³ Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

⁴ Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

⁵ Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

⁶ Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.