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October 31, 2003

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Intellectual Property Law Update

A Publication of the Intellectual Property Group of Holme Roberts & Owen LLP

ONE TRADEMARK FILING – PROTECTION IN OVER 60 COUNTRIES

International trademark filing is about to become a more streamlined and economical process for U.S. trademark owners. On November 2, 2003, the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the "Protocol") will become effective in the United States, giving U.S. trademark owners access to a centralized international trademark filing system.

Under the Protocol, a trademark applicant or registrant may request, by a single application, protection of the trademark in over 60 other countries that are signatories to the Protocol. The Protocol eliminates the need to file separate applications in each country. The single application will often significantly reduce the fees involved in filing for trademark protection in a number of countries. In addition, the trademark office of each participating country must adhere to the examining timelines outlined in the Protocol, which should expedite the historically slow international examining process.

The single filing is accomplished through the trademark office in a Protocol country where the trademark owner is a national or has "a real and effective industrial or commercial establishment." That trademark office will forward the application to the International Bureau (the "IB") of the World Intellectual Property Organization, which will determine if the filing requirements are met and the goods and services are correctly classified. The IB will forward the application to each country in which the applicant seeks protection, and such countries will have 18 months to determine whether to accept or reject the mark.

Under the Protocol, U.S. trademark owners may apply for international protection by filing an international application electronically with the United States Patent and Trademark Office ("USPTO") either: (a) simultaneously with filing a trademark application with the USPTO; or (b) in a separate filing based on the owner's application or registration previously filed with the USPTO.

For the first 5 years, the international registration is dependent on the originating domestic application. If the application of origin is refused, cancelled, abandoned or limited, the international registration is similarly refused, cancelled, abandoned or limited. The applicant, however, may transform any rights that fail by converting the international registration into corresponding national filings in each country where the applicant requested protection.

HRO attorneys regularly assist clients with the prosecution of trademarks both in the United States and internationally, and are well versed in the procedural requirements of the Protocol. Please contact one of the HRO attorneys listed on this HRO Client Update for more information on this topic, or for information related to your other intellectual property needs.

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