

# Industrial Property

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# INTERNATIONAL UNION

## United International Bureaux for the Protection of Industrial, Literary and Artistic Property

### Change in the Post of Director

By a decision of the Swiss Federal Council, of the 7<sup>th</sup> December, 1962, Mr. G. H. C. Bodenhausen, Professor of the University of Utrecht and Advocate at The Hague, has been appointed Director of the United International Bureaux.

Professor Bodenhausen will take up his appointment on the 16<sup>th</sup> January, 1963.

Professor Jacques Secretan, the present Director, having reached the age limit, will retire on the 15<sup>th</sup> January, 1963.

We shall later publish a note on the career of Professor Secretan.

## CONVENTIONS AND TREATIES

### Convention of Paris for the Protection of New Varieties of Plants

Signature by Denmark, Great Britain and Switzerland

The following communication, dated 1<sup>st</sup> December, 1962, has been received from the French Ministry of Foreign Affairs:

*(Translation)*

“ I have the honour to inform you that the International Convention for the Protection of New Varieties of Plants (of 2<sup>nd</sup> December, 1961) was signed in Paris on 26<sup>th</sup> November, 1962, by the Plenipotentiaries of Denmark and the United Kingdom of Great Britain and Northern Ireland and, on 30<sup>th</sup> November, 1962<sup>1)</sup>, by the Plenipotentiary of Switzerland.

The signature of the Danish Plenipotentiary was preceded by the following declaration: ‘ On signing the present Convention, I declare that my signature does not hind Greenland or the Faroe Islands’ . ”

<sup>1)</sup> The Convention was open for signature until 2<sup>nd</sup> December, 1962, by States represented at the Paris Conference (Art. 31 [1] of the Convention). Only the three above mentioned States have taken advantage of this power. (*Ed.*)

## LEGISLATION

POLAND

*(Translation)*

**Inventions Act**  
(of 31<sup>st</sup> May, 1962)

PART I

General Regulations

SECTION I

*Introductory Provisions*

Article 1

(1) The Inventions Act shall coordinate the conditions governing inventions, registered designs and proposals for higher efficiency.

(2) The term “ Inventor’s claims ” employed in the subsequent provisions of the present Act shall signify inventions, registered designs and proposals for higher efficiency.

Article 2

The provisions of the present Act shall not apply to:

1. scientific principles and scientific discoveries;
2. new botanical and zoological varieties and species;
3. methods of curing diseases in the field of medicine and veterinary science and in plant protection;
4. improvements in the sphere of administrative organisation.

Article 3

The provisions of the present Act shall not contravene the regulations contained in the international agreements.

## Article 4

Subjects of foreign States shall enjoy the rights relating to inventions based on international agreements to which the People's Republic of Poland is a signatory, or on a basis of reciprocity.

## SECTION II

*Organisation of matters affecting inventions*

## Article 5

(1) As an expression of creative work and as an essential element in technical progress and in the development of the national economy inventions shall enjoy the special support of the State.

(2) State agencies shall afford help to nationals in their work concerning inventors' claims within the field determined by the acts. Assistance shall also be given by co-operative, auto-administrative and other social organisations in the economic sphere.

(3) Trade federations, technical associations, clubs for the promotion of technique and higher efficiency and other social organisations whose activities include assistance in regard to inventions shall furnish help to authors of inventors' claims in accordance with their statutes and regulations and with the provisions of the present Act.

## Article 6

(1) The task of organizing and co-ordinating matters affecting inventions and of directing such matters according to their competence shall be the responsibility of: the Technical Affairs Committee and other main organs of the national administration, the Patent Office of the People's Republic of Poland and other central offices, provincial bodies and other agencies of national organisation, State enterprises and the agencies controlling them and co-operative, vocational and other social organisations.

(2) In consultation with the Central Council of Trade Federations, and after obtaining the opinion of the Technical Head Organisation and of other competent technical organisations, the Council of Ministers shall determine the principles on which to organize, direct and co-ordinate matters affecting inventions by means of State organizing agencies and their co-operation in that field with trade federations, technical associations and other social organisations.

## Article 7

(1) Where good reason exists, agencies of the national economy may entrust the solution of particular problems affecting inventions to efficiency teams or to individuals.

(2) In consultation with the Central Council of Trade Federations, and after obtaining the opinion of the Technical Head Organisation and of other competent technical organisations, the Council of Ministers shall determine the principles on which to set up efficiency teams through State agencies, their activity and methods of entrusting to them tasks concerned with inventions.

(3) In consultation with the Central Council of Trade Federations, and after obtaining the opinion of the Technical

Head Organisation and of other competent technical organisations, the Council of Ministers shall determine the principles on which to conclude agreements with individuals in regard to activities affecting inventions.

## Article 8

In consultation with the Central Council of Trade Federations, and after obtaining the opinion of the Technical Head Organisation and of other competent technical organisations, the Council of Ministers shall determine the principles and methods by which to finance the development and putting into effect of inventions in the national economy.

## SECTION III

*Duties and Rights of Authors of Inventors' Claims*

## Article 9

The author of an inventor's claim shall have the right and, where necessary, also the duty, to take part in work connected with the assessing of the value of his claim, testing it and applying it to the particular section of the national economy.

## Article 10

If the author of the inventor's claim is not occupied in the section of the national economy which is applying the claim, he shall have the right to ask to conclude with the section an agreement for participation in the work referred to in Article 9. Further, he shall be entitled to unpaid leave of absence from his place of work for the duration of this agreement and shall continue to enjoy all additional concessions to which he is entitled at his place of work. The period of unpaid leave shall count against his period of service at his regular place of employment in respect of rights which are conditional on the number of years of service or on the uninterrupted continuance of the employment in the particular vocation or service, or on any special conditions on which the obtaining of such rights may depend. The author shall also retain continuance of his employment as regards entitlement to leave and to family insurance benefits in the section applying the inventor's claim.

## Article 11

(1) Under the terms of the present Act, the author of the inventor's claim shall be entitled to receive a patent and certificates of protection, authorship or higher efficiency; he shall also have the right to claim remuneration.

(2) The author of the inventor's claim shall be entitled to have his name mentioned in the descriptions, registers and other documents and publications as the author of the claim.

## Article 12

In consultation with the Central Council of Trade Federations, and after obtaining the opinion of the Technical Head Organisation and of other competent technical organisations, the Council of Ministers shall issue regulations concerning duties and rights of authors of inventor's claims, the giving of assistance to clubs for promotion of technique and higher efficiency and regarding the exercise of the regulations covered by Articles 9-11.

## PART II

## Inventions

## SECTION I

*Patent, Certificate of Authorship*

## Article 13

The term "invention" shall be held to include any new solution to a technical problem which is suitable for application to the national economy or in the field of national defence, or which may be suitable for application when the appropriate conditions have been created.

## Article 14

(1) Authorship of an invention shall belong by right to its author or its joint authors.

(2) The term "joint author" shall not be deemed to include a person who merely assists in the execution of the invention without changing the basic nature of the inventor's claim.

(3) Authorship of an invention shall be attested by the issue to the author or joint authors of a certificate of authorship.

(4) If the invention has previously been patented or registered abroad, the certificate of authorship shall be issued only at the request of the notifier.

## Article 15

The ownership of the invention and the exclusive right to its use shall be attested by the grant of the patent.

## Article 16

(1) The competent authority for the issue of certificates of authorship and deeds of patent shall be the Patent Office of the People's Republic of Poland, hereinafter referred to as the "Patent Office".

(2) Patents and certificates of authorship for inventions shall be entered in the Patent Register.

## Article 17

(1) The patent and the certificate of authorship may validly be obtained only for a new invention.

(2) An invention shall not be deemed to be new if it has been made common knowledge in Poland or a foreign country before the date according to which priority for obtaining the patent is specified, or if it has been officially used in Poland or put on public exhibition in a way which would disclose to an expert sufficient details to enable this invention to be applied.

(3) The regulation covered by paragraph (2) shall not apply if the disclosure of the invention took place within a period of six months prior to its notification to the Patent Office, following a notification of this invention to an agency of the national economy.

## Article 18

(1) Patents shall not be granted and certificates of authorship shall not be issued for:

1. inventions the application of which would be contrary to existing law or to the Social Code;
2. foodstuffs, pharmaceutical products and products obtained by a chemical process.

(2) The regulation under item 2 of paragraph (1) shall not limit the possibility of the grant of a patent or the issue of a certificate of authorship for processes of manufacturing foodstuffs and pharmaceutical products or products obtained by a chemical process. A mixture of known ingredients shall not be deemed to be such a process for manufacturing foodstuffs and pharmaceutical products.

## Article 19

(1) The obtaining of a patent shall secure the right to the exclusive use of the invention for gainful or vocational purposes.

(2) The right to the exclusive use of the invention shall cover the entire territory of the State and shall extend for 15 years from the date on which the invention was registered at the Patent Office.

(3) The exclusivity deriving from a patent for an invention which concerns a manufacturing process shall also comprise the products and benefits obtained directly from this process.

(4) The exclusive right deriving from the patenting shall not include means of transport, or parts or equipment thereof, which are temporarily in the territory of the State or objects which are in transit through this territory.

## Article 20

(1) Any person possessing a patent for an invention may obtain a supplementary patent for improving or perfecting such an invention, if such improvements or additions have the characteristics of an invention and cannot be used independently. A supplementary patent may also be obtained for an existing supplementary patent.

(2) The supplementary patent shall lapse together with the main patent. If, however, the main patent lapses for a reason which does not affect the invention covered by the supplementary patent, the first supplementary patent shall then become independent and retain validity for the period for which the main patent was granted.

(3) The provisions of paragraphs (1) and (2) shall similarly apply to certificates of authorship.

## Article 21

(1) An invention the application of which would encroach on the exclusive rights deriving from a patent granted with earlier priority (older patent) may be the subject of a dependent patent.

(2) The dependent patent shall become independent if the earlier patent expires.

(3) The provisions of paragraphs (1) and (2) shall apply similarly to a patent for an invention the exercise of which would encroach on the exclusive rights deriving from the registration of a registered design with earlier priority.

## Article 22

Any person who has a legal interest in the matter may ask the Patent Office to establish that a specified manufacture is not covered by a particular patent.

## SECTION II

*Right to obtain a patent and a certificate of authorship*

## Article 23

(1) An invention which has been made as a result of an order or with the help of a section of the national economy or by an employee of such a section in its sphere of activity and in connection with his occupation in that section shall be an employee's invention, which shall be the property of the State, irrespective of whether the employee is the author or a joint author of the invention.

(2) The right to obtain for the benefit of the State a patent for an employee's invention shall be open to the competent Minister or to the section of the national economy in which the invention was registered, or whichever is to be the first to use the invention.

(3) For the purpose of reserving prior right to the obtaining of a patent, the organs mentioned in paragraph (2) shall be responsible for notifying to the Patent Office claims which have the characteristics of an invention.

## Article 24

(1) If the Minister of the section of the national economy has not notified an employee's invention to the Patent Office, in order to reserve prior right or to obtain a patent in favour of the State, and the author considers that the claim shows the characteristics of an invention, he may notify the invention to the Patent Office.

(2) For an employee's invention notified by the author, the patent shall be granted in favour of the State, unless the author enjoys the right to obtain a patent in his own favour (Art. 97).

## Article 25

(1) An invention made under conditions other than those mentioned in Article 23, paragraph (1), shall be a non-employee invention, which shall be the property of the inventor or his legal successor.

(2) The right to obtain in his own favour a patent for a non-employee invention shall be open to the inventor or his legal successor, and if the invention has been made by several persons, this right shall be open to them jointly.

(3) If an undertaking which is not a section of the national economy has concluded an agreement in regard to inventions in its field of activity, it shall be open to such undertaking to obtain the patent for the invention made.

(4) If, in the cases mentioned in paragraph (3), the remuneration specified in the agreement is objectionably low in relation to the benefits acquired by the undertaking from the invention, the employee may claim a corresponding increase in the remuneration.

## Article 26

Subject to the exceptions referred to in Articles 27 and 28, priority for the grant of a patent and of a certificate of authorship for an invention shall be determined according to the date on which it was notified to the Patent Office.

## Article 27

The priority for the grant of the patent and certificate of authorship for an invention publicly exhibited in Poland or abroad shall be determined on the basis of principles to be decided by the President of the Council of Ministers by means of an ordinance, according to the date of the exhibition, provided the invention is notified to the Patent Office within six months of this date.

## Article 28

Subjects of foreign States which are members of the International Union for the Protection of Industrial Property, and subjects of other States provided they are domiciled or conduct an actual and considerable industrial or commercial undertaking in one of the member States of the Union, shall, in accordance with the principles established in the international agreements, enjoy priority for the purpose of obtaining a patent in Poland according to the date of the first lawfully made patent notification lodged in one of these States, provided they lodge their notification with the Patent Office within 12 months of this date.

## SECTION III

*Notification of the invention to the Patent Office*

## Article 29

(1) An invention shall be notified for patenting purposes by submitting an application to the Patent Office.

(2) The notification shall be deemed to have been made at the time when the application was delivered to the Patent Office or was handed in at a Polish post or telegraph office.

(3) If an invention which had been notified together with another invention has, at the request of the Patent Office, subsequently been notified in a separate application within the time specified by that office, such notification shall be deemed to have been made on the date of the first notification, provided the basic nature of the invention has not been altered.

## Article 30

(1) If the notifier of an invention is not its author, he must name the inventor in the application and state the basis of his right to notify the patent.

(2) The application shall be accompanied by a description of the invention, which must also contain a statement of the basic nature of the invention to which the notifier claims exclusive right.

(3) The President of the Patent Office shall determine by means of an ordinance to what special conditions the application covering the notification of the invention, the description of the invention and other enclosures must conform.

## Article 31

In the application, or within two months of the notification, the notifier may make a declaration that he wishes to exercise the priority right deriving from a public exhibition or from a notification abroad (Art. 27 and 28).

## Article 32

(1) During the examination of the application covering the patent notification the Patent Office may issue directions to the notifier to complete by a given date the technical description and other enclosures to the application, or to remove by a given date any defects or major deficiencies. Right of appeal exists against such directions. The lodging of an appeal shall delay the operation of the dates fixed in the directions.

(2) Failure to observe the directions mentioned in paragraph (1) by the specified date shall cause the application to be deemed non-existent.

## Article 33

Up to time of publication of the notification of the invention (Art. 36) the notifier may make additions and improvements in the technical description and enclosures to the application, provided these do not alter the basic nature of the invention or give reason to change the priority for obtaining the patent.

## Article 34

(1) In his application the notifier may request that his claim be examined as a registered design, if it should prove that it cannot be patented as an invention.

(2) During the process of examination, but before the announcement of the decision, the notifier may alter the application and request that the claim be entered as a registered design.

## SECTION IV

*Procedure for dealing with notification*

## Article 35

During the procedure preceding the announcement regarding the notification of the invention (Art. 36), the papers or documents concerning the invention may not, without the notifier's consent, be disclosed or made available to unauthorized persons.

## Article 36

(1) After preliminary examination of the application, the Patent Office shall establish that there are no objections to the granting of a patent and shall effect the announcement, stating the name and surname or the designation of the notifier and the inventor, giving a short description of the basic nature of the invention, and indicating that within three months of the date of the announcement any person may peruse the technical description and drawings of the invention, make copies thereof and lodge reservations or objections to the invention or to its patenting.

(2) Should the notifier of the invention have made no comment on the principal reservations and objections raised by the date fixed by the Patent Office, it shall be assumed that he has withdrawn the application.

## Article 37

As from the date of announcement of its notification the invention shall for the time being enjoy the same protection as is enjoyed by patented inventions. Should, however, notification of the invention be withdrawn or should the grant of a patent be refused, the consequences of such protection shall be deemed not to have existed.

## Article 38

(1) The grant of a patent shall be published in the Patent Office journal *Wiadomości Urzedu Patentowego*; on the other hand, the description of the invention together with the drawings (patent description) shall be issued in typescript.

(2) The notifier of the invention shall be responsible for payment of the cost of printing the patent description.

(3) The President of the Patent Office shall determine by what method and by what dates payment of the cost of printing the patent description shall be made.

## Article 39

(1) The grant of a patent shall be confirmed by the issue of the patent certificate.

(2) With the exception of the cases mentioned in Article 14, paragraph (4), the certificate of authorship shall be issued at the same time as the patent certificate.

(3) The patent description shall form an integral part of the patent certificate and certificate of authorship.

## Article 40

(1) The patent description may be corrected if it does not properly represent the basic nature of the patented invention.

(2) The Patent Office shall decide whether and to what extent the patent description is to be reprinted, and whether and to what extent the patent owner is responsible for payment of the costs of reprinting the patent description.

## Article 41

(1) If, after the grant of a patent for an invention, an identical invention with earlier priority is notified, the patent owner must, by the date fixed by the Patent Office, make a declaration regarding the validity of such notification.

(2) Should the patent owner complain that the notification is not valid, the matter shall be submitted for decision by a tribunal.

(3) Should the patent owner make no declaration regarding the validity of the notification, the decision to grant a patent shall be annulled.

## Article 42

The grant of a patent for an invention and of a certificate of authorship, and also, if, during examination of the patent notification this has been published (Art. 36), the refusal of the patent grant, the withdrawal of notification of the invention, the annulment of the decision to grant a patent and references to any corrections and additions made to the patent description shall be published in the journal *Wiadomości Urzedu Patentowego*.

## SECTION V

*Rights and duties arising from the patent*

## Article 43

(1) It shall be the duty of the patent owner, within three years of obtaining the patent, to commence to exercise the use of the invention in Poland on a scale appropriate to the needs of the national economy, and to exercise the use of the invention thoroughly until the patent expires. Exercise of the use of the invention shall be deemed to include also the exercise of its use by other persons on a licensed basis. In the case of inventions the use of which can be exercised only after the creation of the necessary conditions, the three-year period shall run as from the coming into existence of such conditions. The existence of the latter shall be established by the Patent Office in consultation with the Technical Affairs Committee.

(2) The Patent Office may request both the patent owner and the licensee to prove whether, in what way and to what extent they exercise the use of the invention in Poland, and, if necessary, the reasons for the insufficient exercise of its use.

(3) The extent of and the method by which the tasks mentioned in paragraph (2) shall be fulfilled by the Patent Office shall be decided by the President of the Council of Ministers by means of an ordinance.

## Article 44

(1) Any person who, at the date determining the priority for obtaining a permit, has used the invention in Poland in good faith may continue to use it in his business free of payment to the same extent to which he has used the invention up to then. This right shall also be open to a person who at the same date has already made all material arrangements necessary for the use of the invention.

(2) The right mentioned in paragraph (1) shall, at the request of the interested party, be subject to registration in the Patent Register.

## Article 45

(1) The right to a non-employee invention and the rights arising from the patent for such an invention may become, in whole or in part, the subject of a sale or a legacy.

(2) The agreement on the transfer of rights shall require observance of the written form, with officially attested signatures.

(3) Transfer of patent rights shall be subject to registration in the Patent Register.

## Article 46

Unless otherwise specified in the agreement on joint authorship of the rights arising from the patent, the joint owner of the invention may:

1. without the consent of the other joint owners himself use the invention and proceed against any person who is guilty of contravening the exclusive right arising from the patent;
2. with the consent of all the joint owners transfer his rights to the invention to another person or grant permis-

sion for the use of the invention, in whole or in part, by another person.

## Article 47

(1) The patent owner may by an agreement authorize another person to exercise the use of his invention (licensing agreement).

(2) The licensing agreement must be concluded in writing, with officially attested signatures.

(3) The licence shall, at the request of the interested party, be subject to registration in the Patent Register.

(4) Unless otherwise stated in the licensing agreement, the grant of a licence shall not exclude the possibility of granting a further licence to exercise the use of the invention and the simultaneous exercise of its use by its owner.

(5) The licence shall authorize the use of the whole of the invention, unless the licensing agreement provides for only partial exercise of its use.

## Article 48

(1) A person authorized under a licence to exercise the use of an invention may grant a sub-licence only with the consent of the owner of the invention. The granting of a further sub-licence is, however, not permissible.

(2) In the case of a sub-licence, the provisions of Article 47 shall apply similarly.

## Article 49

(1) The Patent Office may grant permission (compulsory licence) to exercise the use of an invention which is the property of another person if:

1. the exercise of the use of the invention is necessary for the carrying out of the tasks included in the Economic Plans and the patent owner is not willing to conclude a licensing agreement (Art. 47);
2. it has been established that the use of the invention is not being thoroughly exercised (Art. 43);
3. the owner of a dependent patent requests a compulsory licence in his favour in order to exercise the use of an earlier patent (Art. 21).

(2) In the case mentioned in paragraph (1), item 2, the Patent Office shall decide that application may be made for a compulsory licence and shall publish this in the journal *Wiadomości Urzedu Patentowego*.

(3) The person exercising the use of the invention under a compulsory licence shall be responsible for making appropriate payments in favour of the beneficiary (royalties).

(4) The decision regarding grant of a compulsory licence shall indicate, in particular, the scope and duration of the licence, the detailed conditions for the exercise of its use, the amount of the royalty and the method of payment.

(5) Compulsory licences shall be subject to the provisions of Article 47, paragraph (5), and Article 48.

## Article 50

In the cases mentioned in Article 49, paragraph (1), a compulsory licence may also be granted in respect of the

rights arising from the licence agreements (compulsory sub-licence).

#### Article 51

As regards the decision concerning the grant of a compulsory licence or sub-licence, the part of it which affects the contents of the licence or sub-licence, or the amount of the royalty (sub-licence) may be modified after two years, at the request of the interested party or by the Patent Office, if this should prove necessary for reasons of equity, owing to substantial changes in the circumstances.

#### Article 52

The compulsory licence may not confer on the person who has obtained the licence the exclusive right to exercise the use of the invention.

#### Article 53

(1) The acquisition by a foreigner of the right arising from a patent obtained in Poland shall be carried out through the intermediary of an undertaking so authorized by the Minister for Foreign Trade.

(2) The Council of Ministers shall, by means of an ordinance, indicate the conditions under which the principle adopted in paragraph (1) may be waived, and shall specify the terms and procedure to be adopted in the matters referred to in this paragraph.

#### Article 54

Should an invention be notified or a patent and certificate of authorship be obtained by an unauthorized person, the person who is the rightful owner of the invention may demand that the notification be refused or that the patent and certificate of authorship issued be declared invalid. He may also demand that the patent and certificate of authorship be granted to himself and that the patent already issued be transferred to him, against reimbursement of the cost of notification of the invention or the obtaining of the patent and certificate of authorship.

#### Article 55

It shall be the responsibility of any person who, without due authorization, has notified an invention or has obtained a patent and certificate of authorship, to surrender to the lawful beneficiary, on general principles, the unlawfully obtained profits and to make restitution for the injury caused. Further, at the request of the lawful beneficiary, he must make amends by publishing in the press an appropriate declaration or the legal judgment and, if he has acted wittingly, by paying a suitable sum for the moral injury caused.

#### Article 56

(1) A person whose right to the exclusive use of the invention has been injured may demand cessation of the injury, removal of its consequences, surrender of the profits obtained as well as compensation for damages.

(2) In addition, it shall be the responsibility of the person guilty of contravening the right of exclusivity to publish in the press a declaration to that effect or the text of the court

judgment, and further, if he has acted wittingly, to give satisfaction for the moral injury by payment of an appropriate sum.

(3) If the patent covers a process for manufacturing a new product, it shall be assumed that the product which can be obtained by the use of the patented process was produced by that process.

(4) In awarding its decision on the question of contravention of exclusive right, at the request of the lawful beneficiary, the Court shall also give its opinion on the unlawfully produced articles and the means employed in their manufacture.

#### Article 57

Claims in respect of contravention of exclusive rights to an invention shall be subject to statutory limitation after 3 years. The limitation shall date from the time when each claim is due, for each contravention separately. The limitation shall be subject to suspension for the period between the notification to the Patent Office and the grant of the patent.

### SECTION VI

#### *Secret Inventions*

#### Article 58

(1) An invention made by a Polish national shall be deemed to be a secret invention if it concerns national defence or if it demands secrecy in the interests of the State.

(2) The sphere of national defence shall include inventions concerning, in particular, new categories of weapons, army equipment, methods of combat or other strictly military problems.

(3) The Minister for National Defence may specify in detail what kinds of invention fall within the sphere of national defence.

(4) A secret invention shall constitute a State secret.

(5) Secrecy of inventions in the field of national defence shall be determined by the Minister of National Defence, and in other cases by the Minister competent for the subject covered by the invention.

#### Article 59

(1) Any work concerning a secret invention, its patent notification and the examination procedure may be undertaken only with due regard to secrecy.

(2) Responsibility for secrecy of an invention rests with the inventor and the persons employed on the invention, as well as with the head of the section of the national economy conducting the work on the secret invention.

#### Article 60

The author of an invention possessing characteristics of secrecy for national defence shall be responsible for immediately notifying the Minister of National Defence of the invention when reporting the invention to the Patent Office. As regards employee inventions, this responsibility shall rest with the heads of the competent sections of the national economy.



## Article 61

(1) The Patent Office shall send to the Ministry of National Defence lists of the inventions notified to this office and, when so requested by the Ministry, descriptions and drawings of the inventions notified to the Office which fall within the field of national defence.

(2) The records of the notification of the secret invention, together with the description and drawings, may be made available by the competent Minister (Art. 58, para. 5) to authorized agencies for perusal.

## Article 62

(1) The notification of a secret invention for patent purposes shall not be published.

(2) The competent Minister (Art. 58, para. 5) may demand postponement for a given period of publication of notification of the invention if the supposition exists that it shows characteristics of a secret invention.

## Article 63

(1) The right to a patent for a secret invention which concerns matters in the sphere of national defence shall pass to the State.

(2) The principles and the procedure governing the determination of payment to the author of the secret invention mentioned in paragraph (1) shall be decided by the Council of Ministers by means of an ordinance.

## Article 64

(1) The patent description of a secret invention shall not be published.

(2) Secret inventions shall be subject to inclusion in the secret part of the patent register.

(3) The disclosure of a secret invention or its notification for patent purposes abroad and the making available or sale to aliens of such an invention without the previous consent of the competent Minister (Art. 58, para. 5) shall not be permitted. The granting of approval for notification abroad or for the sale of the invention abroad shall require the agreement of the Minister for Foreign Trade.

## Article 65

In accordance with the procedure specified in Article 58, paragraph (5), a secret invention may be deprived of the characteristics of a secret invention.

## Article 66

The procedure in matters of claims for secret inventions shall be determined by the detailed regulations issued by the Minister for National Defence and the Minister for the Interior.

## SECTION VII

*Annulment and expiry of the Patent*

## Article 67

(1) The patent may be declared null and void in whole or in part, by application on the part of any person having a lawful interest therein, by the Patent Office:

1. if the necessary statutory conditions for the grant of a patent were lacking;
2. if for other reasons the patent has not been granted to a person not entitled to obtain a patent.

(2) In the public interest the Solicitor-General of the People's Republic of Poland may apply for the patent to be declared null and void or become a party to the action brought in this connection.

(3) The provision contained in paragraph (1) shall apply similarly to certificates of authorship.

## Article 68

(1) A person who has in good faith obtained or acquired a patent, which has subsequently been declared null and void for the reason mentioned in Article 67, paragraph (1), item 2, or has obtained the licence arising from such a patent and has used the invention for at least a year prior to the commencement of the action concerning the patent's being declared null and void, or during this period has prepared all the necessary material arrangements may exercise the use of this invention in his undertaking to the same extent to which he used it up to the time of the beginning of the action, subject to the obligation on his part to make a corresponding payment to the patent owner. In the absence of any agreement, the amount of the payment shall be determined by recourse to court procedure.

(2) The rights to exercise the use of the invention mentioned in paragraph (1) shall be subject to registration in the Patent Register at the request of the interested party. These rights may be transferred to another person only together with the undertaking.

## Article 69

In the cases mentioned in Article 49 the Patent Office shall make the decision regarding expiry of the patent if:

1. after a lapse of two years from the grant of the first temporary licence the invention was no longer properly exercised;
2. the compulsory licence has not been granted within a year of notification of the possibility of applying for the licence.

## Article 70

(1) The Patent Office shall make the decision regarding expiry of the patent if:

1. the beneficiary, with the consent of persons who enjoy material rights to the patent, renounces the patent by notification to the Patent Office;
2. if the royalty (Art. 127) is more than 6 months in arrears.

(2) The Patent Office shall rescind the decision announcing the expiry of the patent for the reason mentioned in paragraph (1), item 2, if the date for payment of the unpaid royalty has been re-established.

## Article 71

The decision whether to declare the patent null and void and regarding its expiry shall be officially recorded in the

Patent Register and published in the journal *Wiadomości Urzedu Patentowego*.

#### Article 72

Any person who has begun to apply the invention or made the necessary preparations to apply the invention the patent for which, owing to non-payment of the royalty (Art. 70, para. 1, item 2) has expired, shall be entitled to exercise the use of the invention even if the decision regarding the expiry of the patent has been rescinded (Art. 70, para. 2), with the proviso that he pay the patent owner an appropriate indemnity as from the date of the rescinding. Such matters shall be decided by the Patent Office by recourse to court procedure.

#### Article 73

(1) The rights arising from a patent in respect of an invention which does not constitute property of the State may, in appropriate cases, be expropriated in favour of the State for the purpose of national defence or in order to fulfil tasks specified in the economic plans.

(2) Expropriation of rights arising from a patent shall be subject to payment of compensation.

(3) The person expropriated may request that the expropriation shall also cover his rights arising from supplementary patents.

(4) By means of an ordinance the Council of Ministers shall specify the principles governing the expropriation of rights arising from the patent, the fixing of the amount payable and the payment of compensation and state which are the competent agencies and what is the procedure in these matters.

#### SECTION VIII

##### *Exercise abroad of rights arising from a patent*

#### Article 74

An invention may be notified for patenting abroad only after it has been notified to the Patent Office.

#### Article 75

(1) The notification for patenting abroad, as also the conclusion of an agreement for the exercise of the rights arising from the patent obtained abroad, shall be effected through the intermediary of an undertaking so authorized by the Minister for Foreign Trade.

(2) The Council of Ministers shall, by way of an ordinance, specify the conditions under which the principle adopted in paragraph (1) may be waived and shall determine the conditions and the procedure to be adopted in the matters referred to in paragraph (1).

## GENERAL STUDIES

### Contemporary Problems of the Rights of the Authors of Scientific Discoveries

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(Part Two) \*

(Translation)

These answers finally brought to nought the League of Nations' sincere, well-meant and worthy efforts. The League itself never took up the subject again before its demise. As we have already mentioned, in the introduction to this article, this thankless task fell to UNESCO after the Second World War; but UNESCO was from the outset sceptical and cautious<sup>27)</sup>. Its efforts too, even though based on the Universal Declaration of Human Rights, were doomed to failure in advance, because UNESCO, despite its careful and accurate analysis of the earlier attempts, committed the same cardinal error by seeking the solution to the problem, even under contemporary conditions, within the framework of the relationship between the author of the scientific discovery and the "industrialists" engaged in its commercial application. This same framework appears also in the questionnaire drawn up by UNESCO with the object of eliciting the views of States, although the questionnaire was never in fact transmitted to governments<sup>28)</sup>. The special committee of experts completed its work by adopting a laconic resolution, and wound itself up<sup>29)</sup>.

The UNESCO Copyright Committee itself categorically declined to take up the problem, on the ground that it did not fall within the field of copyright as the latter stands at present<sup>30)</sup>. Thus, UNESCO's activity came to an end before it had rightly begun.

Despite the fact that the problem thus ran into a blind alley, it is still open and still awaits a solution. The links between scientific research and scientific discoveries on the one hand and the development of the means of production on the other are too strong and too close for the question to be shelved for any length of time. Naturally, the solution cannot be sought by blindly following the course along which all earlier attempts have foundered. Even in the capitalist world of today, the problem can only be solved if the State, which has the most direct interest in the development of scientific research, agrees to take upon itself responsibility for rewarding new technological discoveries. All the more so, since the precarious situation of the scientific worker, which in 1921 provided the direct incentive for the steps taken at that time, is a thing of the past — at least, in the highly developed countries. In the contemporary world setting of two

\*) See *Industrial Property*, 1962, p. 264.

27) Cf. UNESCO, *Copyright Bulletin*, Vol. VI, No. 2, 1953, pp. 4, 8, 13-20: "Scientists' Rights". This Bulletin, which is referred to herein after as "Bull.", is published in English and in French.

28) *Bull.*, pp. 22-25.

29) UNESCO *Copyright Bulletin*, Vol. VII, No. 2, 1954, p. 10.

30) *Ibid.*, pp. 15-16. See also the discussion on this matter as reported on page 44 and especially on pages 52 and 53.

economic and social systems, the question of development is no longer simply a matter of encouraging discoverers; it has become one, in equal measure, of stimulating scientific workers generally. It is precisely for this reason that the solutions devised by the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics through their substantive legislation on the subject deserve the most careful attention. In effect, this legislation marks the beginning of the third stage in the development of the protection of the authors of scientific discoveries. By the same token, we are no longer dealing with historical development, but with an acknowledged right, which we shall attempt to describe, with its characteristic features, later in this study.

In concluding this historical survey, it is worth while emphasizing that all the great theorists of intellectual rights have evinced exceptional interest in the problems involved; but they have approached the subject mainly from the doctrinaire, philosophical or politico-legal angles. Only exceptionally have fleeting attempts been made to go into the social aspects of the problem, which alone are capable of rightly explaining the past failures and of pointing to the path to be followed in the future.

### III. The Theory of the Right to Scientific Discoveries

#### 1. The concept of the scientific discovery and its place in the legal system

In everyday language, the concept of the "scientific discovery" is very broad, embracing every branch of science and every new discovery, regardless of whether it is made in the social sciences, in the natural sciences, in medicine, in geology, in the technical disciplines or in any other science<sup>31</sup>. We have already shown in the preceding section how, in relation to our field too, the idea of the scientific discovery runs the full gamut, from medical discoveries through the decyphering of hieroglyphics to discoveries in the physical sciences. But, as we have seen, this concept had necessarily to be progressively narrowed, until finally the Paris Draft whittled it down to those scientific discoveries which lend themselves to material utilization which can be directly applied to the production of goods intended for the market.

In this way, all other branches of science and all discoveries pertaining thereto were excluded from the scope of our problem; in other words, those responsible for the Paris Draft were obliged, in respect of all the idealistic rights they sought to create, to bow to the laws of a market economy and to the social relationships deriving therefrom. These social relationships were all the more strongly stressed inasmuch as in the formulation adopted for the Paris Draft the substance of the right to be created resided in a claim to an appropriate share of the economic revenue. Thus it becomes a matter of subjecting to legal regulation specific social relationships: that between the author of a scientific discovery and the industrialist exploiting it.

As a legal concept, however, the scientific discovery *per se* arises for the first time not in connexion with the problem with which we are dealing, but very much earlier in connexion with patent law, although admittedly only through the progressive exclusion of scientific discoveries from the protection afforded to patents. The first French Patent Act, enacted in 1791, went so far as to mention discovery alongside invention: "Every discovery or new invention . . . is the property of its author". This formula was repeated in the second French Patent Act of 1844, which, however, in Article 30, paragraph 3, expressly shuts out discoveries from patent law, providing that a patent shall be null and void "if the specifications relate to principles, methods, systems or discoveries . . . that are purely scientific and of which the industrial applications have not been indicated".

Hence only a discovery which can be directly applied in industry as an invention can be the subject of a patent. But it is not without interest that we learn that during the drafting process preceding the adoption of the French Patent Act of 1844 strong arguments were adduced in favour of protecting scientific discoveries, without, of course — as we have seen — finding their way into the Act itself<sup>32</sup>).

All modern legislation without exception expressly lays down the principle that the scientific discovery *per se* is not entitled to protection; and scientific discoveries are similarly treated in patentlaw literature. Thus, for example, Reimer emphasizes that the subject of patent protection is ". . . only an invention and not a discovery . . . Discovery is the establishment of something that exists but has hitherto been unknown or has vanished again from man's ken . . . Discovery lacks technical application, i. e., it has no effect on nature (whether animate or inanimate) through technology"<sup>33</sup>).

Admittedly, this does not mean that there is no connexion between a discovery and an invention. On the contrary, there is a very strong causal relationship between them. For example, the scientific discoveries relating to the constituents of coal-tar made possible the creation and development of the German dyestuffs, chemical and related industries. Thousands of patents have been based on these discoveries alone<sup>34</sup>. The definition of a scientific discovery which we have just quoted from Reimer tallies in principle with definitions drafted by other authors; UNESCO too understands scientific discoveries in this sense<sup>35</sup>). However, as we have already seen, the new right to be established is restricted solely to those scientific discoveries in the sphere of the natural sciences on the basis of which the means of production can be developed and promoted, or, if we wish to bring them into relationship

<sup>32</sup> A. Casalonga, *Traité technique et pratique des brevets d'invention* (Technical and practical handbook of invention patents), Vol. 1, p. 74; P. Roubier, *op. cit.*, pp. 55 *et seq.*

<sup>33</sup> Ed. Reimer, *Patentgesetz und Gesetz betreffend den Schutz von Gebrauchsmustern* (Patent Law and the Law relating to the Protection of Industrial Designs), Commentary, Vol. 1, 1949, Annotation to paragraph 1, pp. 41 and 42.

<sup>34</sup> See Kambli-Mannhart also on the discovery-invention relationship (*op. cit.*, note 1); also Blum-Pedrazzini, *Das Schweizerische Patentrecht* (Swiss Patent Law), Commentary, Vol. 1, pp. 80-82, and other sources quoted there.

<sup>35</sup> *Bull.*, p. 12: "A scientific discovery may be defined *grosso modo* as the observation, in the sphere of the natural sciences, of material relationships, not hitherto observed, between two orders of phenomena whose links with one another were previously unperceived".

<sup>31</sup> A. Osterrieth, *Wissenschaftliches Eigentum* (Scientific Property), 1925, pp. 12 and 13; Kambli-Mannhart, "Erfindung und Entdeckung im Patentrecht" (Invention and Discovery in Patent Law), *Schweizerische Mitteilungen über der gewerblichen Rechtsschutz und Urheberrecht*, 1957, Vol. 1, pp. 62-70.

with inventions, in those spheres where they enable new, patentable inventions to be made. As a legal category; the concept of the scientific discovery is necessarily limited to the natural sciences, and it is solely within this framework that the matter has been regulated in the municipal law of the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics.

The Czechoslovak Inventions, Discoveries and Technical Improvements Act of 5<sup>th</sup> July, 1957, defines "discovery" in the following way (para. 26):

- "(1) By discovery is understood the establishment of hitherto unknown objective laws, properties or phenomena of the material world.  
 (2) . . . . .  
 (3) Diplomas shall not be issued for geographical or geological discoveries"<sup>36</sup>).

The definition of discovery in Article 3 of the USSR Decree relating to Discoveries, Inventions and Rationalization Proposals of 24<sup>th</sup> April, 1959, is identical with that in the Czechoslovak Act, except that it also expressly excludes from protection archeological and palaeontological discoveries and all discoveries in the field of social sciences<sup>37</sup>).

The two laws just quoted, enacted in two scientifically and technologically highly developed States of the contemporary Socialist world, were certainly not inspired by the Paris Draft; it is therefore more than significant that they both define "scientific discovery" in virtually the same way as the Paris text. This means that the legal protection of the development of the means of production was the decisive legal-political factor in all three cases.

One can properly speak of the position of the scientific discovery in the legal system only in those countries which have brought such discoveries and their protection within the framework of their legal system by appropriate substantive legislation. And after all that we have said so far in this article, it is small wonder that the protection of scientific discoveries should inevitably be regulated in conjunction with that of inventions and suggestions for improving technological processes. In all other countries, the protection of scientific discoveries still finds no place in the legal system, or rather within the narrower field of the right to works and creations of the intellect.

Moreover, it has been repeatedly emphasized that works of the intellect *per se* nowhere represent the object of the protection of rights. In other words, the protective rights attaching to them are regulated only in so far as this is provided for in substantive law. For the protection of such rights *numerus clausus* prevails, now as in the past, the idea in itself not being protectable<sup>38</sup>). This is a problem which from the time of Mirabeau to the present day has caused concern

<sup>36</sup>) Unofficial translation based on source quoted in footnote 37 below.

<sup>37</sup>) Based on translation given in "Soviet Patent and Trade Mark Law", HMSO, London, 1960, pp. 8-24.

<sup>38</sup>) Alois Troller, "Ist der immaterialgüterrechtliche 'numerus clausus' der Rechtsobjekte gerecht?" (Should "numerus clausus" govern the objects of law in the case of immaterial possessions?). Congratulatory article to mark the 70<sup>th</sup> birthday of Max Gutzwiler, *Jus et Lex*, 1959, pp. 769-786.

to all those who defend the thesis that the thought or idea as such must be protected<sup>39</sup>). Thus, today even the most zealous champions of the idealistic conception of the problem have been obliged to admit that the idea alone cannot constitute an object of law<sup>40</sup>).

## 2. The relation of the scientific discovery to patent law and copyright

We have already emphasized the fundamental difference between rights to scientific discoveries and those to inventions and to original works; but it is necessary to go into their relationship more closely. By taking out a patent, an exclusive monopoly of production and marketing is protected for a specific period; here we are dealing with a creative idea, the application of which to production is directly possible. But the scientific discovery merely establishes something that already exists; Alexander Fleming's discovery of the therapeutic properties of moulds gave no idea of how penicillin could be manufactured industrially and thus transformed into a marketable commodity. The essence of patent law is new production possibilities; and this is also the dominant legal factor in the development of all patent legislation<sup>41</sup>), having as its precise object the denial to scientific discoveries of the protection granted to patents.

On the other hand, the right to scientific discoveries differs from copyright in that the latter extends the umbrella of protection to the form in which the copyrighted work is expressed. It follows that hardly anyone dares to reprint a paper in which a scientific discovery is disclosed in all its details, whereas anyone is free to use the discovery in any other form whatever, and in particular to exploit it for new production possibilities. The connexion between the scientific discovery and production is admittedly very close; as a rule there is a common element — the invention. In the first place, it is the invention that transforms the scientific discovery into production possibilities. At first sight, therefore, it would be more appropriate to establish the right to scientific discoveries in such a way that the authors have a direct claim against the inventor who is actually the first and direct beneficiary of the discovery, and not against the individual industrialist, or against industry as a whole (Gariel's thesis), who has first translated the discovery into the realm of production through the intermediary of the invention<sup>42</sup>).

<sup>39</sup>) Mirabeau defended the natural-rights concept of thought as property in the French Revolutionary Assembly in February 1791; Boufflers, in the motivation of the first French Patent Act, and Le Chapelier, in the establishment of copyright, both did likewise (Roubier I, p. 92; Marcel Plaisant, *op. cit.*, p. 283).

<sup>40</sup>) Heinrich Hubmann, *Das Recht des schöpferischen Geistes* (The Rights of the Creative Spirit), Berlin, 1954, p. 3: "Thus the subjective idea does not appear as an object of protection in current legislation in force" (unofficial translation). For further enlightenment on the problem of the protection of ideas, see also Remo Franceschelli: "Le idee come oggetto dei rapporti giuridici" (Ideas as the object of legal relationships), *Rivista di diritto industriale*, Milano 1961, pp. 28 *et seq.*, and the abundant literature quoted there.

<sup>41</sup>) Article 11 of the Yugoslav Law on Patents and Technical Improvements; paragraph 1 of the Swiss Patent Law; Article 6 of the German Patent Law; Article 2585 of the Italian Civil Code etc. See also Kambli-Mannhart, *op. cit.*, footnote 31.

<sup>42</sup>) *Bull.*, p. 20, where this point is stressed by the statement that "an undeniable causal link" can be shown between the author of the discovery and the inventor.

This view, logical enough in itself, was put forward during the discussions in 1927. But it was hotly refuted at once, and never came up again<sup>43</sup>). The reasons for its rejection carried a great deal of weight: such a relationship would have led to complete uncertainty about inventors' rights, capable of undermining the entire established system of patent law. This certainly provided highly significant grounds for throwing out the idea in question; but in the present writer's opinion a second reason, of an economic nature, carried even more weight.

In the prevailing market economy, which is the valid economic law both in the capitalist and in the socialist socio-economic systems, it is regarded as self-evident that it is the economic organization (enterprise or the industrialist himself), and not the inventor, which has to run the risks involved in the development of the means of production. For, if the inventor had to carry that risk, including, possibly, the assumption of financial liability *vis-à-vis* the authors of scientific discoveries, this would greatly discourage inventors as a class. The direct consequence of such a disincentive would be to retard scientific and technological development. Only those inventors could run such a risk who themselves put up the capital to exploit their own inventions — needless to say, in their capacity as industrialists, not inventors. But in the socialist social order this possibility is ruled out in advance.

This axiom was certainly in the forefront of the minds of all those who were in any way concerned with the establishment of the new scientific discovery rights. Hence, it is also understandable, in the light of these circumstances, that the rights to be created could be formulated only by establishing a direct link between the scientific discoverer and the industrialist, and so by-passing the inventor.

In this way, the discussion eliminated yet another link between scientific discoveries and inventions, a link that introduced new difficulties into an already complicated problem. As can be seen from the definition of a scientific discovery, we are dealing here with the establishment of specific natural laws; the invention, on the other hand, represents a practical proposal for new production possibilities. Moreover, the general legal principle prevails that the invention enjoys protection only when this is expressly demanded and is granted by the prescribed procedures.

But everyone knows that many inventions are not patented at all, and that the majority are patented in a single country only. Inventions not protected by patents belong to the public domain; that is to say, anyone can work them industrially without being under any kind of obligation to the inventor. All large undertakings in the capitalist world know how to take systematic advantage of this circumstance with great success, just as elsewhere the Committee for Discoveries and Inventions of the USSR Council of Ministers has taken advantage of patent literature from all over the world to find suitable discoveries of which they could make use in their economic development.

If, then, it is accepted that a discovery is simply an observation, whereas an invention is a practical suggestion re-

lating to production, it clearly follows that the latter is much more significant economically than the former. On what grounds, therefore, should the author of a scientific discovery enjoy the right to claim compensation from all those who have exploited his discovery, when an inventor who has not taken steps to protect his invention has no such right?

Were we to pursue this argument to its logical conclusion, we might well reach very dangerous conclusions, the translation of which into the existing legal system would certainly be capable of shaking to its foundations the widespread current system of protecting the means of production.

The protagonists of the rights of authors of scientific discoveries have not had the courage to navigate safely between this Scylla and Charybdis, but have preferred to formulate the new rights in the customary way. Hence they were inevitably obliged to deny to the authors the exclusivity of their rights (Art. 5 of Ruffini's Draft; Art. 8 of the Paris Draft).

### 3. Past doctrine on scientists' rights

The theoretical argument for and against the new proposals was also conducted within the framework just described. Stated briefly, those who advocated the introduction of the new rights based their case on the following three fundamental ideas:

- (a) The introduction of the rights met the requirements of the principle of equity<sup>44</sup>). This principle is at once the starting point and the last bastion of the defence against all counter arguments.
- (b) The stimulative nature of the protection demanded. Such protection would encourage the development of science and technology even more strongly, and ought accordingly to be introduced in the public interest<sup>45</sup>).
- (c) The principle of the protection of personality.

Thus all three foundation stones of the new rights rely on the theory of natural rights; it is therefore plain at first glance that the theoretical starting point for the introduction of the new rights is very poorly placed. The weakness of the juridical construction of the new rights to be established was also, oddly enough, exposed by the Faculty of Law of the University of Ljubljana, which begins the conclusions of its expert opinion with the statement that "whether or not there are fundamental or legal, or even ethical, prejudices against the introduction of protection for scientific property, the fact remains that the scientist needs the introduction of these rights"<sup>46</sup>).

All the advocates of the new rights were, however, unfortunately far too strongly steeped in the psychology of the

<sup>44</sup>) Among many other spokesmen for the new idea, Mme. Curie must be specially mentioned. As Rapporteur for the Academy of Medicine in Paris, she advocated the assimilation of therapeutic discoveries to scientific discoveries in so far as the establishment of new rights was concerned (Statement by Marcel Plaisant, *op. cit.*, p. 290). In the very recent past, the Secretary-General of UNESCO, Luther Evans, has also emphasised that the principle of equity provides the starting point for UNESCO's efforts in this field. See *UNESCO Copyright Bulletin*, Vol. No. 1, 1954, pp. 8-9.

<sup>45</sup>) Mme. Curie, on the same occasion; also Barthélémy, Ruffini and all the others. Ruffini considered that the protection should embrace medical discoveries, as Mme. Curie had argued. Luther Evans advanced both arguments in similar fashion (see footnote 44).

<sup>46</sup>) See footnote 10 in section II above.

<sup>43</sup>) *Bull.*, p. 20.

civil-rights conception of the new right for them to be able to take as the starting point for their efforts the much more appropriate theoretical argument based on the objective part played by the scientist in modern society. They could not escape from the magic circle of the civil-rights concept. The social role could make no impression on the legal ideas of the champions of the new rights, with the possible exception of Gariel, who had asserted at the beginning of the campaign that claims for compensation against individual industrialists were impracticable.

We repeat this critical observation in order to emphasize that after the Second World War, when UNESCO took up the challenge, it ought to have chosen a different starting point from any of those which had led the attempts of the preceding thirty years to disaster. Another reason for emphasizing this point is to bring out the fact that, precisely because of this weakness, the opponents of the introduction of the new rights had an easy task. Many of them, indeed, frankly admitted that on ethical grounds the proposals for the introduction of the new rights were fully justified. Nor were there any objections to the moral rights, on the model of copyright and inventors' rights. The target of the combined opposition forces was purely and simply the pecuniary rights. From the legal and economic standpoints, the theoretical argument of the opponents of the introduction of the new rights was completely logical, and, in the prevailing social and economic conditions, justified into the bargain. The following objections were raised to the new protective rights<sup>47</sup>):

(a) Legal uncertainty. No individual industrialist would ever know precisely to which author of a scientific discovery he was under an obligation, or how much he owed him; and this uncertainty would be seriously aggravated where the application of a number of functionally connected discoveries, or of collective scientific discoveries, was involved.

(b) The scope of a scientific discovery can never be precisely established, as it can, for instance, in the case of an application of a number of functionally connected discoveries quite ignorant of what exactly has been discovered, i. e. how far the consequences of a scientific discovery extend. Legal uncertainty also derives from doubts about the prospects of utilizing the discovery. To take only one example, the recent scientific discoveries in nuclear physics, it is obvious that the discoverers themselves not only do not know, but can hardly even imagine, to what limits the practical usefulness of their scientific results may extend.

(c) Why should protection be introduced only for discoveries in the field of the natural sciences, and not for those in other fields, such as medicine, or even in the speculative sciences (e. g. in the field of mathematics or in respect of the discovery of a new system of shorthand) and finally in the social sciences? This boils down to an objection on the ground of discrimination between the various branches of science<sup>48</sup>).

<sup>47</sup> *Bull.*, pp. 61-68 and 77-82. It is true that the passages quoted report the observations of governments; but the observations themselves were drafted by the most distinguished legal experts; cf. also R. Weiss, *op. cit.*, footnote 2 to Chapter I, pp. 15-19.

<sup>48</sup> This standpoint was taken by the Yugoslav Government in its observations on the Paris Draft. See *Bull.*, p. 78.

(d) By contrast, others objected that Ruffini's draft sought to extend protection to all scientific discoveries, no matter in what branch they were made.

(e) Introduction of protection would act as a disincentive for the development of science, and therefore, in the last analysis, would not benefit the authors themselves.

(f) Discoveries intrinsically can never be the object of protection.

(g) There can be no affinity to patent rights or copyright, since the right to be created makes no provision for exclusivity.

(h) The duration of protection on the analogy of copyright is far too long; in this regard, the comparison with copyright is not sound.

(i) There would be a risk, in international competition, of a heavy burden falling on the industrialists of any State which introduced the new protection, which would increase the incidence of their industrial production costs, *vis-à-vis* other industrialists whose countries imposed no such liability on them<sup>49</sup>).

Despite the failure of all the really great and serious exertions put forth to bring the new right into being, even its opponents felt that the problem nevertheless required solution; they therefore put forward the counter-proposal that this should be done through a system of national and international prizes<sup>50</sup>). As we have already stressed, however, this solution would confer no rights on the authors of scientific discoveries, because the award of the prizes would be decided by jury in every specific case. Others proposed, without going into practical details, that the State ought itself to assume responsibility for the problem<sup>51</sup>).

Although, after the first efforts made by UNESCO, the problem was shelved for the second time in the short space of the last few decades, this does not mean that it does not require solution. On the contrary, it is as pressing today as it ever was; many writers have therefore recently turned to the subject again, devoting their attention also to analysing the reasons for past failures. Thus, Professor A. Troller, among others, has taken up the problem; but in doing so he has reached the by no means correct conclusion that the protection requested has been a long time coming because "no one has pressed hard enough for it", whereas all indications go to show the opposite<sup>52</sup>).

#### 4. The socio-economic principles underlying rights to intellectual works

Thus, analyses of past failures, too, lead to somewhat sceptical conclusions. It is the present writer's belief, however, that this scepticism is intrinsically unjustified, if only one

<sup>49</sup> It is interesting in this connection to recall that this argument had been adduced a few years earlier in regard to international liability for the protection of employees' patents. But this view is now out of fashion.

<sup>50</sup> Especially Heymann, in his preface to the Works of Ermann, p. XII, quoted in footnote 34 in section II above.

<sup>51</sup> Among many others, Ž. Perić too advocated this course; *op. cit.*, p. 31.

<sup>52</sup> *Op. cit.*, p. 774.



makes the attempt to assess past mistakes correctly and to draw from them the proper inferences: that the old ways must be abandoned and new solutions sought.

Paul Roubier is certainly right, when, in support of his theory of custom, he makes the following statement:

"In vain were attempts made to put scientific property on the same footing as literary and artistic property, and to claim for scientists the rights granted to artists. The privative rights of exploitation are essentially based on the supposition that there exists a *work of the intellect*, the reproduction of which is capable of *attracting custom*"<sup>53</sup>).

We can get to the heart of the problem only by considering its economic and social aspects together. The legal aspects are not sufficient for the purpose. It is precisely for this reason that Gariel was right when he observed, in defining the difference between a discovery and an invention, that: "One discovers what already exists, and therefore the discovery merely adds to our knowledge. Invention presupposes a creative act in pursuit of a specific end. The inventor seeks a means of satisfying a human need"<sup>54</sup>).

In quoting this passage from Gariel's article, Louis Le Grand says truly that "inventions are part of the political economy; scientific discoveries, on the other hand, are not"<sup>55</sup>). Contrary to all advocates of scientists' rights, therefore, we must draw attention to the fundamental economic difference that separates the two categories and from which all the legal difficulties flow. It emerges from this economic difference that in a social order based on a market economy the introduction of scientific discovery rights on the analogy of copyright and patent rights is theoretically and practically impossible.

In order to bring out this difference more sharply, we must first attempt to establish the economic and social basis of inventors' rights and copyright. As the present writer sees matters, this basis is to be found in the production of goods and in the structure of social relationships resting on such a market economy.

We must repeat in this new connection a statement made earlier: that even in the western countries of private enterprise the problem of the status of scientists is no longer what it was in the years immediately following the First World War, when their precarious situation provided the direct stimulus for the attempts made to secure the introduction of the new rights. The importance of science, and hence of scientists, has grown to such an extent that it is today recognized by all States. Scientific work is now highly esteemed and correspondingly rewarded. Indeed, it has made such enormous strides that it is now an ingredient of State policy. For example, the importance of scientific development in the nuclear-power field has led all States to assume direct responsibility for its promotion, a commitment that at the same time transcends national frontiers and finds expression in international

co-operation also<sup>56</sup>). The States concerned undertake to make available direct assistance and abundant financial resources for financing scientific efforts aimed at new discoveries; in this way, the international exchange of the scientific results obtained is also regulated.

Nevertheless, despite these changed conditions, no solution to the problem with which we are dealing has yet been devised in any country of the Western World.

To revert to the theoretical basis for the new rights, it must first be mentioned that both inventors' rights and those of the authors of literary and artistic works were alike established on the basis of natural rights, in contrast to the corresponding *privileges* granted before the French Revolution. Natural rights also provided the theoretical starting point for the creation of rights to scientific discoveries. Among distinguished lawyers, Marcel Plaisant, the author of the Paris Draft, defended the natural rights view with outstanding logic and lucidity, basing his position on Mirabeau, Boufflers and others who had taken part in drafting the French revolutionary legislation which produced the first patent and copyright laws in history<sup>57</sup>). The natural rights doctrine of intellectual rights in all their variants, as formulated by the most eminent lawyers in the nineteenth and twentieth centuries, seeks the basis for these rights in man's personality. Hence, all these theories could be described as subjective; but, *grosso modo*, they have been discarded in modern doctrine. The majority of modern writers seek the justification for these rights in economics, especially in the market economy and competition<sup>58</sup>). Their theories, therefore, can properly be described as objective.

In this connection, it is interesting to note that the draftsmen of the patent and copyright legislation enacted in the nineteenth century, unlike the academic theorists, took their stand on the solid ground of economic reality, whether they were drafting the texts of laws in one or other field of rights. A glance at any patent law selected at random shows immediately wherein the essence of patent protection resides: in an exclusive right to manufacture the goods and market them — in other words, in a manufacturing and marketing monopoly (Art. 1 of the French Act of 1844; Art. 2584 of the Italian Civil Code; para. 6 of the German Patent Law; Art. 8 of the Swiss Patent Law; Art. 5 of the new Yugoslav Law on Patents and Technical Improvements). Exactly the same is true of copyright, although in many copyright laws the moral rights are rather more apparent than is the case in patent laws.

<sup>56</sup>) Thus the Euratom Treaty of 25<sup>th</sup> May, 1947, concluded between the States Members of the European Economic Community, was intended to solve the problem precisely in the manner described. The Treaty does not use the term "scientific discovery", but relies on the broader expression "technical achievements". See, in this connection, the Monograph by H. Suenner and K. Pfanner: *Der gewerbliche Rechtsschutz im Euratom Vertrag* (The protection of industrial property in the Euratom Treaty), 1958, pp. 37-39.

<sup>57</sup>) Marcel Plaisant, *op. cit.*, p. 3: "All creations or inventions become objects of law" (unofficial translation).

<sup>58</sup>) Roubier, pp. 104 *et seq.*: "*Droits de clientèle*" (customers' rights). Similarly, Ripert: *Traité élémentaire de droit commercial* (Elementary treatise on commercial law), Vol. I, 1959, pp. 231 *et seq.*; Remo Franceschelli, *Trattato di diritto industriale* (Text book of industrial law), Vol. I, pp. VI *et seq.*: "*Theorie der Konkurrenz*" (Theory of competition). See also in this work the comprehensive criticisms of the theory of immaterial possessions (Chapter 44, pp. 575-619), Vol. II.

<sup>53</sup>) *Op. cit.*, p. 16.

<sup>54</sup>) "*Etat actuel de la question de la propriété scientifique*" (Present state of the problem of scientific property), *La Propriété industrielle*, 1925, pp. 209 and 210.

<sup>55</sup>) Louis Le Grand, *Etude économique de la propriété industrielle* (Economic Study of industrial property), Paris, 1937, pp. 73, 75.

Thus both categories of rights were governed by goods and by the economic laws of the latter's production and sale. Damme and Lutter have shown that the protection of inventions was introduced into the first patent law in history, the English Monopolies Act of 1623, to promote the manufacture of goods intended for trade<sup>59</sup>).

So far as the origin of copyright is concerned, it is an equally undisputed fact that its initiators were first the printers, and later the publishers, who both acted in their own interests<sup>60</sup>). In the course of the last few decades, new authors' rights — the so-called "neighbouring" rights — have emerged, which have come into existence not because of enhanced or more extensive personal rights of the authors, but rather, and solely, as a result of the development of new categories of goods (films, gramophone records etc.) in the twentieth century. It is true that the objection could be raised that this theoretical conception is valid only for those forms of copyright which relate to specific forms of marketable goods — e. g. books, photographs, films and the like — and that the argument is far from true in the case of theatrical performing rights, for example. Such an objection would naturally be intrinsically sound; but we are dealing with the general character of economic and social conditions that in the world of today are determined by our market economy, the laws of which prevail equally in fields of activity which have nothing to do with the production of goods for the market in the narrow sense. Similarly, services also are governed by the same laws, regardless of whether they are cultural or purely economic services, notwithstanding the fact that at the present time even a theatre can be the object of capital investment.

Capital is the foundation of the economy in the capitalist world, while in modern socialism the basic assets of economic organizations perform the same function. In the highest stage of its development, capital has penetrated even those fields which do not intrinsically belong to the social division of industrial labour. Today, limited liability companies can have as the object of their capital investment theatres or football clubs. Hence the principle that financial houses, regardless of the nature of the business in which they are engaged, are to be regarded as merchants within the meaning of commercial law. The integration of copyright and patent law into the contemporary economy reflects the fact that copyright works and patents intrinsically constitute capital or, in the modern socialist system, basic assets. In all modern company law, the form of the balance sheet is prescribed, with the mandatory requirement that the value of patents, licences and concessions be shown therein as assets (Art. 131 of the German Companies Act of 1937, Art. 2424 of the Italian Civil Code and so on)<sup>61</sup>).

However, if a copyright or patent right is to constitute capital (or a basic asset of, for example, a Yugoslav economic enterprise), it must necessarily be based upon two essential legal ingredients: in the first place, on exclusivity, i. e., in an at least temporary monopoly of the exploitation of the invention or the copyright work; and secondly, on the assignability of the right. Only after the French Revolution had for the first time created the juridical possibility of assigning an inventor's patent to a capitalist entrepreneur could the patent take its place in history in the discharge of its full social and economic function. Only through this revolutionary legislation was the legal link between the inventor and the possessor of the capital forged. The same is true of copyright, which through similar assignment of the copyright to a publisher or film producer makes possible the economic exploitation of the copyright work: hence the indissoluble connection between the law of copyright and publishing law.

Taking into consideration all that has been said so far, we believe the following statement to be true:

"Whether we are dealing with . . . political economy or with property rights, we are faced with the same problem: that of the material nature of things"<sup>62</sup>).

Hence, we are dealing here too with goods.

The final goal and function of all these rights is the production of goods or, less often, services. This "market theory" of patent rights and copyright finds, in the present writer's opinion, full justification both in the science of political economy and in jurisprudence.

As everyone knows, Karl Marx built up his entire theory on an analysis of goods. His life-work *Das Kapital* begins with an investigation of goods and all their economic ingredients. As a result of his investigations, Marx reached the conclusion that not every movable object constitutes goods, but only those which are intended for the market. He goes on to say: "A thing can be useful and the product of man's labour without being 'goods'. He who satisfies his own need by his own output creates use-value, it is true, but not goods. To produce goods, he must not merely produce use-value, he must produce *use-value for others* . . .". At this point, Engels adds the following clarification: "To become goods, the product must be transferred through an exchange to another person who intends to make use of it in trade"<sup>63</sup>).

Here we have a description of "goods" which is not peculiar to Marxist political economy. In *Grosse Brockhaus*, Vol. XII, 1957 edition, we find on page 332 a description according to which "material possessions which as objects of economic activity serve to satisfy man's needs" (*unofficial translation*) are to be regarded as goods in the narrow sense. This definition of goods is also generally accepted in the theory of commercial law. For example, Martin Wolff writes: "All saleable movable objects are goods. In commercial

phical sense (resolution No. 54 of 3<sup>rd</sup> May, 1957, published on page 138 of ICC brochure No. 193). In this connection, it is interesting to recall that in his *Das Kapital* (Vol. II, "Kultura", Zagreb, p. 89), Marx himself reaches the conclusion that: "The capitalist is obliged to build up capital in order to expand his output and to introduce new technical improvements in his enterprise" (*unofficial translation*).

<sup>62</sup>) Louis Le Grand, *op. cit.*, p. 65 (*unofficial translation*).

<sup>63</sup>) Karl Marx, *Das Kapital*, Croatian edition, "Kultura", Zagreb, Vol. I, p. 7 (*unofficial translation*).

<sup>59</sup>) Damme and Lutter, *Das deutsche Patentrecht, ein Handbuch für Praxis und Studium* (German Patent Law, a practical and theoretical handbook), Berlin, pp. 10 and 11.

<sup>60</sup>) Cf. Eugen Ulmer, *Urheber- und Verlagsrecht* (Copyright and Publishing Law), second edition, 1960, pp. 50-54; A. Troller, *op. cit.*, p. 771; Robert Plaisant, "Propriété littéraire et artistique" (Literary and Artistic Property), *extrait du Jurisclasseur civil*, 1954, Fascicule 2, p. 4.

<sup>61</sup>) P. Roubier, *op. cit.*, I, pp. 133-137, devotes an entire chapter to this question. Hence, when the International Chamber of Commerce describes industrial property rights as "company capital", it does so in no meta-



transactions the definition is usually phrased more restrictively; there, only those regularly exchangeable things that are intended to be sold, and which are normally offered for sale in trade, are treated as goods, and then only for so long as they continue to be offered for sale . . . "64).

If we compare the passages just quoted with the provisions of patent-right and copyright legislation we are compelled to admit that there is astounding agreement between them. Specific patent rights and copyright are in their material aspects protected only in respect of their industrial economic exploitation.

Whoever works someone else's patented invention for himself alone, or whoever copies by hand, or photographs, a copyright work purely for his personal cultural enjoyment, infringes neither the patent nor the copyright. This argument can also be stated in converse terms: in the protection of patents the rule is that, in accordance with the legislative, practical and theoretical principles concerned, only an invention that is new and *can be worked industrially* can be patented<sup>65</sup>).

For all these rights to fulfil their function in the market economy, or as capital, they must be precisely established substantively, and, as already mentioned, exclusive and assignable. If they lack exclusivity, they cannot form assets. A long time before the discussions on rights to scientific discoveries had even begun, an inventor could say (in 1875) that capital fights shy of the unprotected discovery<sup>66</sup>).

Le Grand, too, was undoubtedly right to our way of thinking when he stated that industrial-property rights had their economic basis in "exchange value, established by the usefulness and scarcity of things"<sup>67</sup>). Scientific discoveries lack all these economic features and the legal characteristics deriving from them: they are not exclusive; they are not assignable; and, most important of all, they create no direct industrial-production potential.

Hence, in the socio-economic conditions prevailing in a market economy, it was a fatal mistake to attempt to extend the right of protection to scientific discoveries by bringing them within the framework of patent rights and copyright as a third category of intellectual rights. The idealistic conception and justification of these rights inevitably attracted its own penalty. Although the natural-rights conception provided, before and during the French Revolution, — being a vague and incorrect theory — an unsound basis for the per-

manent establishment of industrial-property rights and copyright, these none the less took their place in history and in scientific development, despite their erroneous theoretical conception, because they were objectively justified both economically and socially. The idealistic natural-rights conception of the rights deriving from scientific discoveries was on the other hand doomed to disaster, since the prevailing social conditions did not allow these rights to be brought into being along the lines proposed.

All these intensive efforts, especially those made during the last two world wars, were not however in vain. They have all, early or late, left behind them a valuable theoretical, but predominantly social, legacy. They have helped to bring the vitally important social significance of scientific work and hence of the authors of scientific discoveries into the limelight, even though this significance has found no adequate expression in the form of civil-law claims. The fundamental weakness, responsible for the false start of all attempts, was that the spokesmen of the new rights could not escape from the straight-jacket of their own cast of juridical thought. The whole fatal dilemma and especially the later failures provide us with costly proof that contemporary problems cannot be solved within the framework of earlier legal categories<sup>68</sup>).

Given the economic laws governing our market economy, the problem cannot be solved by rewarding scientific discoveries direct from the revenues of individual economic organizations, even in the modern socialist State. For example, Yugoslav law recognises such direct claims only in respect of patented inventions; for this reason, too, in addition to plant, machinery and similar fixed assets, only "patents" and "licences" can constitute "basic assets" under the Yugoslav law on the Assets of Economic Organizations (Art. 28).

After the many unsuccessful attempts of the past, it is now certainly impossible for us to reach our goal by blindly following the old paths. The relationship scientific discoverer — industrial undertaking can be replaced only by the relationship scientific discoverer — Society. This vital requirement is today recognized by everybody; Professor Troller himself comes to a similar conclusion when he says: "Thus we get the surprising result that there is today only one possible way of closing the gap, roundly condemned by the majority, in the system of rights representing immaterial possessions, namely: by the State, other communities and private institutions honouring the scientist and rewarding him. It is, however, essential that the legal claim to this should be recognized and made known. The public must face up to its responsibilities" (*unofficial translation*)<sup>69</sup>).

The Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics were the first to resolve the problem in this way, as we shall show in the next section of this study.

<sup>68</sup>) Professor A. Troller states (*op. cit.*, p. 772) in this connection that one cannot really see why rules of human behaviour should not attract legal protection so soon as they are used industrially by others. And later in the same work (p. 781) he asks whether it is conceivable that it should be impossible to change an unjust situation simply because jurisprudence and legislation fail to allow for the possibility.

<sup>69</sup>) *Op. cit.*, p. 784.

<sup>64</sup>) Dr. Victor Ehrenbergs *Handbuch des gesamten Handelsrechtes* (Handbook of Commercial Law), Vol. IV, Leipzig, 1917, p. 8. In footnote 11 to his commentary Martin Wolff mentions that this essential feature of goods was specially stressed in the preparation of the *Allgemeines deutsches Handelsgesetzbuch (ADHGB)* (Comprehensive German Commercial Code). It is also extraordinarily interesting to note that these preparations were being carried out at the very time when Marx was engaged in writing *Das Kapital* (*ADHGB* was first published in 1861; the first volume of *Das Kapital* appeared in 1867).

<sup>65</sup>) Articles 11 and 99 of the latest Yugoslav Law on Patents and Technical Improvements too are concluded in these general terms. From the commentaries and standard works we would quote in this connection: A. Casalonga, *op. cit.*; Ed. Reimer, *op. cit.*, note 19, paragraph 1; Blum-Pedrazzini, *op. cit.*, p. 136.

<sup>66</sup>) Damme and Lutter, *op. cit.*, p. 46.

<sup>67</sup>) *Op. cit.*, p. 75. The author of this work based his politico-economic conclusions throughout on the economic theory of Leon Walras.

#### IV. Substantive Law of the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics

The legal regulation of scientific discoveries and of the rights deriving from them introduced recently in two modern, highly developed Socialist States speaks for itself. Not only does it reflect the very close link between scientific research and technological development; it at the same time constitutes formal recognition of the scientist by society<sup>70</sup>).

Thus, for the first time in history, a gap has been filled in the system of protection built up to ensure the development of the means of production; a gap that is still keenly felt all over the rest of the world. In particular, the way in which scientific discoveries and the rights of their authors have been brought within the compass of the protection granted to inventions and technical improvements seems to us to be logical.

We stress this point, because we are in no wise dealing here with a mere technical legislative solution; its logic is in fact firmly rooted in the development of the means of production, the special feature of which is that new technical advances spring directly from scientific discoveries.

Judging by the way in which legislation generally has hitherto developed in other People's Democracies on the pattern of that enacted in the Soviet Union, it is almost certain that, in the course of the closer and closer political and economic integration of this group of States, similar protection for scientific discoveries will be introduced in others among them. This should at the same time lead to the integration of collective scientific research and to its adaptation to the needs of production. It would therefore be wrong to consider the legal regulation of scientific-discovery rights in the two States mentioned above simply as an interesting facet of their legal systems. On the contrary, we are here in the presence of the initial stages of the methodical development of the rights in question, in other words, with a new qualitative category in the system of the so-called intellectual rights.

That this is not a mere inference drawn from the substantive provisions of the laws of the two States, but is equally a matter of highly practical steps in the desired direction, is made abundantly clear by the Decree relating to Scientific Discoveries, promulgated by the Czechoslovak Socialist Republic at the same time as the Law of 15<sup>th</sup> August, 1957. Article 13 of this Decree makes it mandatory upon all economic planning bodies and all enterprises, when planning technological development, to take full account of all scientific discoveries published and entered on the State register.

It is also worth while, in order to bring out the full scope of this obligation, to take a look at the duties of the Committee for Inventions and Discoveries of the Council of Ministers of the USSR.

These duties are<sup>71</sup>):

1. General control of development in the field of inventions and their application in the national economy.

2. Supervision of the work of Ministries and Government Departments in introducing and applying discoveries and inventions in the national economy.

3. Submission of proposals relating to the application in the national economy of the most important inventions and discoveries.

4. Supervision of the implementation of the targets fixed in the plans for the introduction of discoveries and inventions in production.

5. The systematic dissemination to Ministries and Government Departments of information about inventions and discoveries, both national and foreign, and the maintenance of the necessary exchanges of technical experience in this field between the various branches of industry.

6. Receipt of applications relating to discoveries and inventions.

7. Maintenance of the official registers of inventions and discoveries, issue of authors' certificates or patents of invention and of diplomas to the authors of discoveries.

8. Registration — to safeguard the priority of the State and of the authors — of scientific work and research, of construction projects and operations and of experimental work carried out by scientific research stations, by institutes of the USSR Academy of Sciences and of the Academies of Sciences of the Republics of the Union, by universities, by planning offices and by the laboratories and technical services of industrial, constructional and building, transport, agricultural and forestry and medical institutions and undertakings, submitted for such registration by the responsible Ministries and other Government Departments.

9. Hearing of appeals against decisions of Ministries or Government Departments in matters relating to the practical application of inventions and discoveries and the payment of awards to their authors.

10. To bring to the notice of Ministries and Government Departments inventions and discoveries which have been declared suitable for promoting production and for application in industry.

11. To call upon experts from Ministries and Government Departments to assess, in agreement with the latter, the usefulness and novelty of inventions and discoveries, or, as required, to give expert advice on inventors' claims.

12. Where necessary, to call upon eminent specialists for their expert advice on inventions or discoveries of special economic importance.

Nothing could demonstrate more effectively the very close ties that link discoveries and production than the duties, rights and obligations of this vital central Soviet body, which we have just enumerated. On the other hand, it is obvious that scientific discoveries constitute a special legal category which cannot be protected by simply assimilating them to the objects of patent law. This can be convincingly shown by comparing patents with the inventors' certificates issued in the Soviet

<sup>70</sup>) Konstantin Katzarov, *Gewerblicher Rechtsschutz und Urheberrecht der UdSSR und der Volksdemokratien Europas* (The protection of industrial property and copyright in the USSR and the People's Democracies of Europe), Weinheim-Bergstrasse, 1960, pp. 57-59. On page 58, the author mentions that other People's Democracies have introduced similar protection; but this statement is not borne out by the enumeration of legislation given by the author himself on pages 43-45.

<sup>71</sup>) Katzarov, *op. cit.*, pp. 96 and 97.

Union<sup>72</sup>). The outstanding legal feature of the inventor's certificate is that, once it has been issued, the State becomes the owner of the invention and enjoys the sole right to work it industrially. At the same time, the State assumes responsibility for ensuring that the invention is exploited usefully. We have just seen, through our enumeration of the duties of the USSR Committee for Inventions and Discoveries, what organizational steps must be taken to ensure that such exploitation ensues at the earliest possible moment. Where an inventor's certificate is issued, all State undertakings, organizations and economic collectives (laboratories, hospitals, universities, schools, etc.) are entitled to use the invention within the limits of their specialized terms of reference. Apart from the moral rights conferred upon him, the inventor to whom a certificate is issued is entitled, by law, to a pecuniary reward, in accordance with detailed principles and procedures prescribed in advance by legislation, and specifying in particular the ways in which the reward is to be calculated and payment made<sup>73</sup>).

At first sight, it might be concluded that the right to a scientific discovery could more easily be integrated into the system of inventors' certificates than into one of protective patents in the form of a "principle" patent. But it has been found, both in the Soviet Union and in the Czechoslovak Socialist Republic, that legal differences are ineluctable, since they flow from the intrinsic diversity of things. If, on the other hand, we compare Soviet patent legislation with classical patent law, we are bound to admit that the discovery, as a subject of protection, shows the same features in both systems<sup>74</sup>), even though the scope of the protection afforded by an inventor's certificate goes farther than that provided by a patent, inasmuch as it extends to biotechnical and zoö-technical inventions, as well as to new medical and therapeutic methods, all of which are denied protection in classical patent law.

The identity of the invention as an object of protection in the two social and legal systems is not merely a simple theoretical assertion; it is rooted in substantive legislation. In the Soviet Union, as in those States among the People's Democracies which, following the Soviet example, have introduced the system of inventors' certificates, the inventor can in principle opt either for a certificate or for a patent (Art. 4 of the USSR Decree of 1959; Art. 9 of the earlier Yugoslav Law on Inventions and Technical Improvements of 1948); however, for certain inventions protection is limited to the issue of a certificate (Art. 49 of the Soviet Decree; Art. 15 of the Yugoslav Law of 1948).

In dealing with the integration of scientific discoveries, as the object of protection, with the protection of intellectual rights, some writers in both the Czechoslovak Socialist Republic and the USSR have specially stressed the great social,

<sup>72</sup>) S. Pretnar, "Wesensmerkmale des Erfinder- und Warenzeichenschutzes der Sozialistischen Staaten" (Essential features of the protection of inventors and trade marks in the socialist States), *Osteuropa-Recht*, May, 1959, pp. 1-6.

<sup>73</sup>) For the theory of the inventor's certificate, see Agarkov, Bratus, Genkin, Serebrovsky and Shkundin, *Sovjetsko gradjansko pravo* (Soviet Civil Law), Belgrade, Vol. II, pp. 334-336; also Katzarov, *op. cit.*, pp. 79-84.

<sup>74</sup>) Katzarov, *op. cit.*, p. 79.

scientific and legal-political value of the new object of protection<sup>75</sup>), though without venturing to embark upon an analysis of the underlying legal theory, except for the eminent Soviet legal authority, V. I. Serebrovsky. Serebrovsky has made a profound study of the scientific discovery as an object of law<sup>76</sup>). In his exposition, he enumerates four essential features of the concept of "discovery" in Soviet law, namely:

1. A discovery is an act of cognition, consisting in the establishment and proof (theoretical or practical) of laws, phenomena or properties of the material world.
2. A discovery must possess true novelty, residing in the solution of a cognitive problem — a solution which prior to the moment of discovery has been completely unknown to scientists either in the Soviet Union or elsewhere.
3. A discovery must be the outcome of creative activity.
4. A discovery must be expressed in an objective form which makes it accessible to the minds of other men.

As in the case of other categories of intellectual works, the moral and pecuniary rights of the authors of scientific discoveries are recognized by law. The moral rights include recognition of authorship of the discovery and hence of its temporal priority; such priority is the essential pre-requisite for protection. Other moral rights, such as the high reputation and esteem enjoyed by scientists in these States, are not expressly mentioned in legislation. The equality of precedence with workers in scientific institutes conferred under Article 76 of the USSR Decree can similarly be regarded both as a moral right and as a pecuniary reward. As to purely material rights, that to pecuniary reward is limited to a maximum of 50,000 crowns in the Czechoslovak Socialist Republic, but may rise as high as 50,000 roubles in the Soviet Union. The rights of authors of scientific discoveries are formally recognized, inasmuch as they are conditional upon and confirmed by the issue of a certificate. In the Czechoslovak Socialist Republic, the certificate is issued by the State Patent and Standardization Office, on the basis of expert advice given by the Academy of Sciences or by the Agricultural Academy, as appropriate. The certificates are entered on special public registers. In the Soviet Union, the body responsible for issuing certificates is the Committee for Discoveries and Inventions; here, too, the issue of every certificate is preceded by consultations with the highest State scientific institutions, usually the Academy of Sciences. In the Soviet Union, again, the certificate is registered and a description of the discovery published; it is interesting to note that in this country a certificate can also be issued in the name of a scientific organization (Art. 10

<sup>75</sup>) Aleksej Čepička, "Deux lois sur la technique moderne" (Two laws relating to modern technology), *Bulletin de droit tchécoslovaque*, 1958. A. Garmasev, Chairman of the Committee for Discoveries and Inventions of the Council of Ministers of the USSR, "Die Sowjetische Gesetzgebung über Erfindewesen im Dienste der technischen Entdeckungen bzw. Entwicklungen" (Soviet legislation relating to inventions in the service of technological discoveries and developments), *Sovetskoe gosudarstvo i pravo*, 1959, No. 8, pp. 27-35.

<sup>76</sup>) V. I. Serebrovsky, "Die Entdeckung als Rechtsobjekt" (The discovery as an object of law), *Sovetskoe gosudarstvo i pravo*, 1959, No. 3. This author has also dealt with the subject in other works summarized in *La Propriété industrielle*, 1961, p. 227. In his exposition, Serebrovsky defines four essential features of discoveries that he has isolated from Soviet legislation; these are the elements mentioned by Katzarov, *op. cit.*, p. 57.

of the 1959 Decree); in other words, it need not necessarily be in the name of an individual. In such cases the monetary award goes to the organization, which divides it up in the form of bonuses among those of its staff mainly responsible for the scientific achievement attracting the award. In this way, adequate stress is placed on the importance of collective scientific endeavour; this procedure is also similar to the recognition of so-called "institutional inventions" provided for in Article 16 of the new Yugoslav Law on Patents and Technical Improvements.

Lastly, the formal kinship with patent law is revealed by the fact that the novelty of the scientific discovery is investigated just as is that of an invention; and in the absence of novelty, a discovery cannot be protected any more than can a patent. Thus, there is in each of the two States an assurance that a recognized and protected scientific discovery really does represent a new and significant contribution to science and to technological development on the world scale.

The right to pecuniary reward calls for one theoretically important observation. The reward cannot be calculated directly from the economic results obtained through the application of the discovery, as it can in the case of inventions and technical improvements. In this sense, it is just as much out of the question to claim a pecuniary reward for a scientific discovery in the modern socialist world as it was in the capitalist world during the lively discussions that raged during the 1920s around Ruffini's draft convention and the Paris Draft. The claim springs directly from society's recognition of the authorship of the discovery. The USSR Regulations for Rewarding Discoveries, Inventions and Rationalization Proposals of 24<sup>th</sup> April, 1959<sup>77</sup>), state explicitly that a reward is paid to the authors of scientific discoveries as a mark of recognition. By contrast, inventors and the authors of rationalization proposals will be rewarded on the basis of the application of their inventions or proposals; in other words, their rewards are to be calculated in direct proportion to the economic advantages gained. The same provision is found in the Czechoslovak Directives for Rewarding Discoveries inasmuch as these lay down that the reward is to be fixed according to the social importance of the discovery, its significance for the development of science or its technological and scientific value.

If, to conclude, we attempt to integrate into the framework of the general theory of this new category of intellectual-property rights the legislative provisions adopted in the two States we have been discussing in the matter of the protection of such rights, we reach the following conclusions:

1. The social significance and public character of the scientific discovery do not simply provide the theoretical basis justifying the introduction of legal protection; they are also recognized as the practical means of regulating the problem through substantive legislation.

2. In both States, the protection granted to scientific discoveries is largely based on the "goods" concept, even though this idea is abandoned in certain respects. Protection is no longer related to the "goods" theory, inasmuch as the

reward is not bound up with the direct utilization of the discovery for the purposes of production, and is not dependent thereupon; it is rather the direct expression of public recognition. On the other hand, the "goods" concept is retained inasmuch as protection is enjoyed only by those discoveries which provide a direct incentive for production or which promote the development of production potential generally. It is for this reason that not only geological, geographical, archaeological and palaeontological discoveries, but discoveries from all other branches of pure science, and especially those in the field of the social sciences, are excluded from protection.

As an epilogue to all that has been said above, medical discoveries, to which we could not give detailed attention, ought to be mentioned. A new method of medical treatment can hardly be described as an invention within the meaning of patent law. It is more in the nature of a discovery. But it is interesting to note that a number of modern socialist States have brought medical discoveries within the scope of protection. Their significance is reflected in the fact that in the Soviet Union they can be protected only through an inventor's certificate, never by means of a patent (Art. 4 and 5 of the 1959 Decree); similarly in the Czechoslovak Socialist Republic, where discoveries are in principle protected by the grant of a patent, medical discoveries can be covered only through a certificate, patents being ruled out in this case (section 1, paragraph 4, of the Law of 1957).

Medical discoveries are naturally not directly applicable to production. The connexion is quite indirect: new medical achievements simply protect the health of the public and thus safeguard production potential. In any event, the question of medical discoveries deserves special attention as well as separate treatment. Although the post-war socialist States were the first to bring such discoveries, and new methods of treatment, within the scope of protection, even there the problem is far from complete solution.

No matter how extensive the protection so far granted by certain States to scientific discoveries may be, we are only at the beginning of these developments; the solutions adopted are still far indeed from a complete and definitive regulation of a problem which is of such outstanding importance today.

## V. Conclusions

Our endeavours to deal with scientists' rights, at some length and in considerable detail, were not prompted solely by the interest aroused by the problem, great though this may be.

The problem calls for a solution; and as a first step each individual State must devise this for itself within the framework of its domestic legislation. But, like the fateful problem of co-existence in the contemporary world, our problem is also universal. Therefore, fresh efforts must be made to regulate it as soon as possible, both nationally and internationally. It is obvious that national regulation must come before international regulation. And it would be unrealistic to imagine that even international measures could ensure from the outset uniform and complete regulation of the status of scien-

<sup>77</sup>) See *La Propriété industrielle*, 1960, No. 1.

tific discoveries and the rights they confer on their authors. However, the Soviet Union Decree of 1949 already provides a starting point for international regulation, inasmuch as Article 14 thereof grants to aliens, on a basis of reciprocity, the same rights as are accorded to nationals.

The proposals for solving the problem internationally put forward during the 1920s came to grief mainly because they aimed too high; any new proposals to the same end should therefore, in the beginning, have more modest objectives. In the writer's opinion, a start could be made by embodying the following three principles in an international agreement:

1. A uniform definition of "scientific discovery" and recognition in principle of the rights accruing to the author.
2. Recognition of the principle of the extension to aliens of the treatment granted to nationals under domestic legislation, on the model of Article 2 of the Union Convention of Paris or Article 4 of the Berne Copyright Convention.
3. The establishment of an international register of scientific discoveries, to be maintained by an international organization, such as UNESCO.

If the will to solve this problem exists — and the writings of many authors encourage us to believe that it does — we come at last to our final question, which is at the same time the first that has to be answered if an international solution is to be achieved: who should take the first step? In the writer's view, this is still a matter for UNESCO; but UNESCO should act in concert with the Geneva Bureaux. On the one hand, the terms of reference of this international secretariat are to implement measures of protection for all industrial property rights and copyright; on the other hand, scientific-discovery rights are very closely bound up, historically, economically and functionally, with other rights pertaining to intellectual works. Again, the development of production potential has long since broken out of the framework of the protection provided by invention patents: first, through the protection granted to "minor patents"; second, because by no means all technological innovations are the fruit of new inventions. The combinations and subtleties of modern technology, particularly in the shape of "know-how", cry out more and more urgently for appropriate legal regulation. The terms of reference of the Geneva Bureaux should, in the writer's opinion, be broadened to take in all new categories of rights relating to technological and economic development, precisely because of the oneness of all such rights. Our aim in this study has been to show that the protection of scientific-discovery rights deserves particular attention within this general scheme.

## CONGRESSES AND MEETINGS

### Third Meeting of the Committee of Experts on the International Protection of Type Faces

(Geneva, 19<sup>th</sup> to 23<sup>rd</sup> November, 1962)

The Committee of Experts appointed to examine a draft Arrangement for the international protection of type faces and a draft Additional Protocol to the Arrangement of The Hague concerning the International Deposit of Designs or Models of 6<sup>th</sup> November, 1925, as revised at The Hague on 28<sup>th</sup> November, 1960, held its third meeting from the 19<sup>th</sup> to 23<sup>rd</sup> November, 1962, under the Chairmanship of M. J.-N. de Bavinchove (France) in the Conference Hall of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property.

This meeting continued the studies of the second meeting of the Committee of Experts which met in Geneva from 26<sup>th</sup> February to 2<sup>nd</sup> March, 1962<sup>1)</sup>.

Experts and observers appointed by the following countries attended the meeting: Austria, France, Germany (Fed. Rep.), Greece, Italy, Luxemburg, Mexico, Netherlands, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland and United States of America, as well as observers from several International Organisations.

We shall consider the possibility of publishing at a later date the texts adopted by the Committee of Experts and their Report.

## OBITUARY

### Dr Herbert Kühnemann †

We announce with great regret the sudden death at Munich on the 12<sup>th</sup> December, 1962, of Dr. Herbert Kühnemann, President of the Patent Office of the Federal Republic of Germany. An obituary of this eminent lawyer will be published later.

<sup>1)</sup> See *Industrial Property*, 1962, pp. 80 *et seq.*

## GENERAL STATISTICS OF INDUSTRIAL PROPERTY FOR THE YEAR 1961

## I. Patents of Invention and Utility Models

Countries	Patents applied for			Patents granted		
	Principal	Additional	Total	Principal	Additional	Total
Australia . . . . .	12,642	256	12,898	—	—	4,940
Austria . . . . .	—	—	9,892	5,966	214	6,180
Belgium . . . . .	12,954	489	13,443	12,869	489	13,358
Brazil <sup>1)</sup> , patents . . . . .	—	—	—	—	—	—
utility models . . . . .	—	—	—	—	—	—
Bulgaria . . . . .	545	2	547	214	2	216
Canada . . . . .	—	—	25,447	—	—	21,659
Ceylon . . . . .	153	1	154	76	—	76
Cuba <sup>1)</sup> . . . . .	—	—	—	—	—	—
Czechoslovakia . . . . .	—	—	7,742	—	—	3,809
Denmark . . . . .	5,198	97	5,295	2,235	40	2,275
Dominican Republic . . . . .	45	7	52	45	7	52
Finland . . . . .	2,254	58	2,312	697	9	706
France . . . . .	35,202	2,233	37,435	30,600	2,550	33,150
Special patents for medicines . . . . .	—	—	875	—	—	976
Germany (Dem. Rep.), patents . . . . .	—	—	6,091	—	—	1,916
»    »    utility models . . . . .	—	—	3,607	—	—	2,076
Germany (Fed. Rep.), patents . . . . .	—	—	58,188	19,154	1,396	20,550
»    »    utility models . . . . .	—	—	44,145	—	—	19,972
Great Britain and Northern Ireland . . . . .	45,639	1,172	46,811	27,999	872	28,871
Tanganyika . . . . .	70	3	73	68	2	70
Trinidad and Tobago . . . . .	—	—	117	—	—	114
Greece <sup>1)</sup> . . . . .	—	—	—	—	—	—
Haiti <sup>1)</sup> . . . . .	—	—	—	—	—	—
Hungary . . . . .	2,440	72	2,512	1,181	44	1,225
Iceland <sup>1)</sup> . . . . .	—	—	—	—	—	—
Indonesia . . . . .	—	—	173	—	—	—
Iran . . . . .	374	16	390	345	20	365
Ireland . . . . .	1,040	15	1,055	373	10	383
Israel (State of —) . . . . .	1,663	33	1,696	972	11	983
Italy, patents . . . . .	—	—	23,606	—	—	16,800
»    utility models . . . . .	—	—	6,295	—	—	3,500
Japan <sup>1)</sup> , patents . . . . .	—	—	—	—	—	—
»    utility models . . . . .	—	—	—	—	—	—
Lebanon . . . . .	—	—	133	—	—	133
Liechtenstein (Princip.), patents <sup>3)</sup> . . . . .	—	—	0	—	—	0
»    »    utility models . . . . .	—	—	1	—	—	1
Luxemburg . . . . .	1,374	52	1,426	1,267	46	1,313
Mexico . . . . .	—	—	4,477	—	—	591
Monaco, patents . . . . .	79	13	92	75	6	81
»    utility models . . . . .	—	—	0	—	—	0
Morocco . . . . .	353	19	372	376	19	395
Tangiers (Amalat) <sup>1)</sup> . . . . .	—	—	—	—	—	—
Netherlands . . . . .	13,104	357	13,461	3,478	79	3,557
Surinam <sup>2)</sup> . . . . .	—	—	—	—	—	—
Netherlands Antilles <sup>1)</sup> . . . . .	—	—	—	—	—	—
Dutch New Guinea <sup>1)</sup> . . . . .	—	—	—	—	—	—
New Zealand . . . . .	2,828	65	2,893	1,534	40	1,574
Western Samoa <sup>1)</sup> . . . . .	—	—	—	—	—	—
Norway . . . . .	3,981	68	4,049	1,916	44	1,960
Poland, patents . . . . .	2,524	—	2,524	1,235	36	1,271
»    utility models . . . . .	—	—	1,168	—	—	751
Portugal, patents . . . . .	1,180	34	1,214	1,017	26	1,043
»    utility models . . . . .	—	—	146	—	—	70
Rhodesia and Nyasaland (Federation of —) . . . . .	638	14	652	593	12	605
Romania . . . . .	931	30	961	189	6	195
San Marino <sup>1)</sup> . . . . .	—	—	—	—	—	—
South Africa (Republic of —) . . . . .	5,205	107	5,312	4,394	110	4,504
Spain, patents . . . . .	9,052	600	9,652	7,550	540	8,090
»    utility models . . . . .	—	—	5,703	—	—	4,230
Sweden . . . . .	—	—	13,186	3,778	107	3,885
Switzerland . . . . .	14,259	916	15,175	7,808	371	8,173
Syrian Arab Republic . . . . .	153	5	158	153	5	158
Tunisia <sup>1)</sup> . . . . .	—	—	—	—	—	—
Turkey <sup>1)</sup> . . . . .	—	—	—	—	—	—
United Arab Republic . . . . .	1,365	18	1,383	241	4	245
United States of America . . . . .	—	—	83,396	—	—	48,530
Vatican <sup>4)</sup> . . . . .	—	—	—	—	—	—
Viet Nam . . . . .	135	6	141	135	6	141
Yugoslavia . . . . .	1,825	9	1,834	601	16	617
Grand total of patents applied for . . . . .			419,283	of patents registered . . . . .		245,647
»    »    utility models applied for . . . . .			61,077	of utility models registered . . . . .		30,688

General remarks. — We publish here general statistics for the year 1961. Those countries which have not yet supplied the information requested are left in blank.

1) Figures for this country have not yet been supplied. (Cuba does not establish statistics for industrial property.)

2) Patents granted in the Netherlands are valid here.

3) Swiss patents are valid in the Principality.

4) Italian laws for the protection of industrial property are applicable in this State.



## GENERAL STATISTICS FOR 1961 (continued)

## II. Industrial Designs and Models

Countries	Designs or Models					
	Deposited			Registered		
	Designs	Models	Total	Designs	Models	Total
Australia . . . . .	—	—	1,413	—	—	1,522
Austria . . . . .	—	—	6,619	—	—	6,619
Belgium . . . . .	343	1,561	1,904	343	1,561	1,904
Brazil <sup>1)</sup> . . . . .	—	—	—	—	—	—
Bulgaria . . . . .	—	—	0	—	—	0
Canada . . . . .	—	—	750	—	—	684
Ceylon . . . . .	22	—	22	5	—	5
Cuba <sup>1)</sup> . . . . .	—	—	—	—	—	—
Czechoslovakia . . . . .	—	—	123	—	—	171
Denmark . . . . .	—	—	688	—	—	639
Dominican Republic . . . . .	—	—	0	—	—	0
Finland . . . . .	—	—	0	—	—	0
France . . . . .	—	—	7,955	—	—	—
Germany (Dem. Rep.) . . . . .	—	—	390	—	—	390
Great Britain and Northern Ireland . . . . .	—	—	—	—	—	54,907
Germany (Fed. Rep.) . . . . .	—	—	9,427	—	—	8,361
Trinidad and Tobago . . . . .	18	—	18	18	—	18
Hungary . . . . .	248	—	248	239	—	239
Indonesia . . . . .	—	—	0	—	—	0
Iran . . . . .	—	—	0	—	—	0
Ireland . . . . .	90	—	90	—	—	95
Israel (State of —) . . . . .	—	—	319	—	—	339
Italy . . . . .	—	—	6,295	—	—	3,500
Japan <sup>1)</sup> . . . . .	—	—	—	—	—	—
Lebanon . . . . .	—	—	42	—	—	42
Liechtenstein (Principality of —) . . . . .	—	—	0	—	—	0
Luxemburg . . . . .	—	—	0	—	—	0
Mexico . . . . .	—	331	331	—	19	19
Monaco . . . . .	—	—	0	—	—	26
Morocco . . . . .	—	—	42	—	—	42
Tangiers (Amalat) <sup>1)</sup> . . . . .	—	—	—	—	—	—
New Zealand . . . . .	346	—	346	253	—	253
Norway . . . . .	—	—	964	—	—	893
Poland . . . . .	110	—	110	75	—	75
Portugal . . . . .	67	201	268	62	104	166
Rhodesia and Nyasaland (Federation of -) . . . . .	56	—	56	51	—	51
San Marino <sup>1)</sup> . . . . .	—	—	—	—	—	—
South Africa (Republic of —) . . . . .	—	—	0	—	—	0
Spain . . . . .	365	3,584	3,949	265	2,150	2,415
Sweden . . . . .	245	—	245	162	—	162
Switzerland . . . . .	12,614	2,459	15,073	12,608	2,377	14,985
Syrian Arab Republic . . . . .	155	17	172	155	17	172
Tunisia <sup>1)</sup> . . . . .	—	—	—	—	—	—
United Arab Republic . . . . .	29	148	177	26	146	172
United States of America <sup>2)</sup> . . . . .	4,714	—	4,714	2,487	—	2,487
Viet Nam . . . . .	—	5	5	—	5	5
Yugoslavia . . . . .	2	116	118	—	64	64
			Grand total		Grand total	
			62,873		101,422	

<sup>1)</sup> Figures for this country have not yet been supplied. (Cuba does not establish statistics for industrial property.)

<sup>2)</sup> There are no models in the United States of America.

## GENERAL STATISTICS FOR 1961 (end). — III. Trade Marks

Countries	Trade Marks					
	Deposited			Registered		
	National	Foreign	Total	National	Foreign	Total
Australia . . . . .	—	—	6,209	—	—	4,592
Austria <sup>1)</sup> . . . . .	1,855	997	2,852	1,472	829	2,301
Belgium . . . . .	2,178	1,320	3,498	2,178	1,320	3,498
Brazil <sup>2)</sup> . . . . .	—	—	—	—	—	—
Bulgaria . . . . .	51	267	318	50	260	310
Canada . . . . .	3,514	2,767	6,281	2,112	2,192	4,304
Ceylon . . . . .	510	582	1,092	113	244	357
Cuba <sup>2)</sup> . . . . .	—	—	—	—	—	—
Czechoslovakia <sup>1)</sup> . . . . .	824	390	1,214	782	335	1,117
Denmark . . . . .	—	—	4,196	988	1,153	2,141
Dominican Republic . . . . .	63	313	376	61	310	371
Finland . . . . .	998	1,452	2,450	514	1,020	1,534
France <sup>1)</sup> . . . . .	18,042	2,726	20,768	17,616	2,646	20,262
Germany (Dem. Rep.) <sup>1)</sup> . . . . .	889	426	1,315	1,010	450	1,460
Germany (Fed. Rep.) <sup>1)</sup> . . . . .	20,386	2,563	22,949	16,596	1,157	11,753
Great Britain and Northern Ireland . . . . .	—	—	13,997	—	—	10,841
Tanganyika . . . . .	35	431	466	—	33	33
Trinidad and Tobago . . . . .	28	373	401	14	236	240
Greece <sup>2)</sup> . . . . .	—	—	—	—	—	—
Haiti <sup>2)</sup> . . . . .	—	—	—	—	—	—
Hungary <sup>1)</sup> . . . . .	188	208	396	178	191	369
Iceland <sup>2)</sup> . . . . .	—	—	—	—	—	—
Indonesia . . . . .	3,683	656	4,339	2,343	591	2,934
Iran . . . . .	905	949	1,854	433	965	1,398
Ireland . . . . .	316	1,145	1,461	137	540	677
Israel (State of —) . . . . .	446	680	1,126	113	525	638
Italy <sup>1)</sup> . . . . .	—	—	8,803	—	—	4,697
Japan <sup>2)</sup> . . . . .	—	—	—	—	—	—
Lebanon . . . . .	138	897	1,035	138	897	1,035
Liechtenstein (Principality of —) <sup>1)</sup> . . . . .	—	—	—	118	28	146
Luxemburg <sup>1)</sup> . . . . .	147	704	851	147	702	849
Mexico . . . . .	2,964	2,499	5,463	1,937	1,801	3,738
Monaco <sup>1)</sup> . . . . .	—	—	—	74	57	131
Morocco <sup>1)</sup> . . . . .	—	—	536	—	—	536
Tangiers (Amalat) <sup>2)</sup> . . . . .	—	—	—	—	—	—
Netherlands <sup>1)</sup> . . . . .	3,446	1,859	5,305	—	—	3,273
Surinam <sup>2)</sup> . . . . .	—	—	—	—	—	—
Netherlands Antilles <sup>2)</sup> . . . . .	—	—	—	—	—	—
Dutch New Guinea <sup>2)</sup> . . . . .	—	—	—	—	—	—
New Zealand . . . . .	747	1,611	2,358	591	1,282	1,873
Norway . . . . .	1,258	2,018	3,276	504	1,218	1,722
Poland . . . . .	267	388	655	175	348	523
Portugal <sup>1)</sup> . . . . .	1,740	728	2,468	1,739	730	2,469
Rhodesia and Nyasaland (Federation of -) . . . . .	524	1,233	1,757	462	1,301	1,763
Roumania <sup>2)</sup> . . . . .	—	—	—	—	—	—
San Marino <sup>2)</sup> . . . . .	—	—	—	—	—	—
South Africa (Republic of —) . . . . .	2,475	1,651	4,126	2,281	1,547	3,828
Spain <sup>1)</sup> . . . . .	18,244	1,950	20,194	11,225	1,150	12,375
Sweden . . . . .	2,338	2,454	4,792	926	882	1,808
Switzerland <sup>1)</sup> . . . . .	4,091	1,567	5,658	3,931	1,459	5,390
Syrian Arab Republic . . . . .	114	819	933	114	819	933
Tunisia <sup>2)</sup> . . . . .	—	—	—	—	—	—
Turkey <sup>2)</sup> . . . . .	—	—	—	—	—	—
United Arab Republic <sup>1)</sup> . . . . .	527	575	1,102	299	572	871
United States of America <sup>3)</sup> . . . . .	—	—	23,782	—	—	16,599
Viet Nam . . . . .	965	190	1,155	965	190	1,155
Yugoslavia <sup>1)</sup> . . . . .	160	228	388	193	164	357
Grand total			192,168			137,201

<sup>1)</sup> The figures indicated for this country do not include those foreign marks protected as a result of international registration; 12,079 of which were registered in 1961.

<sup>2)</sup> The figures for this country have not yet been received. (Cuba does not establish statistics for industrial property.)

<sup>3)</sup> Not including renewals.