

Industrial Property

Monthly Review of the United International Bureaux
for the Protection of Intellectual Property (BIRPI)
Geneva

8th Year

No. 7

July 1969

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

SPAIN

Ratification of the WIPO Convention

*Notification of the Director of BIRPI to the Governments
of the countries invited to the Stockholm Conference*

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of . . . and, in accordance with the provisions of the above Convention, has the honor to notify him that the Government of Spain deposited on June 6, 1969, its instrument of ratification dated May 12, 1969, of the Convention Establishing the World Intellectual Property Organization (WIPO).

Spain has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently ratifying the Stockholm

Act of the Berne Convention with the declaration provided for in Article 28(1)(b)(i) of the said Act to the effect that the ratification shall not apply to Articles 1 to 21 and to the Protocol Regarding Developing Countries.

A separate notification will be made of the entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO), when the required number of ratifications or accessions is reached.

Geneva, June 20, 1969.

WIPO Notification No. 11

INTERNATIONAL UNIONS

Madrid Union (Marks)

Declaration under Article 3^{bis} of the Nice Act

REPUBLIC OF SAN MARINO

According to a communication received from the Swiss Federal Political Department the following note was addressed by the Embassies of the Swiss Confederation in the countries of the Paris Union to the Ministries of Foreign Affairs of those countries:

“On October 15, 1968, the Republic of San Marino informed the Swiss Government that San Marino invokes the benefits of Article 3^{bis}, paragraph 1, of the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, revised at Nice on June 15, 1957, In conformity with that Article, the declaration of San Marino will take effect on August 14, 1969.”

LEGISLATION

ALGERIA

I

Decree

for the Implementation of Ordinance No. 66-54, of
March 3, 1966¹, Relating to Inventors' Certificates
and Patents for Inventions *

(No. 66-60 of March 19, 1966)

The Head of the Government, President of the Council of Ministers,

Upon the report of the Minister of Industry and Power,
Considering Ordinance No. 66-54 of March 3, 1966, relating to inventors' certificates and patents for inventions, and in particular Article 79 thereof;

Hereby decrees as follows:

CHAPTER I

Application for a Patent, Inventor's Certificate or Certificate of Addition

Article 1

(1) Applications for a patent, inventor's certificate or certificate of addition as provided for under Articles 16, 19, 26, 27, 28, 30 and 31 of Ordinance No. 66-54 referred to above shall be made on the forms issued by the competent authority.

(2) The application shall be submitted in five copies.

Article 2

(1) The application shall contain the following compulsory particulars:

(a) the name, first names, domicile and nationality of the applicant or, in the case of a juridical person, its business style and registered address. A military address or postal box number is not acceptable;

(b) the name and address of the agent, if any, empowered to file the application and likewise the date of the power of attorney referred to in Article 7 hereafter.

The applicant must elect his agent's address as his domicile for legal purposes;

(c) the title of the invention, that is to say the summary and precise designation thereof, to the exclusion of any fanciful appellation, name of any person or any denomination that could constitute a manufacturer's mark or be confused with a manufacturer's mark;

(d) if desired, following the title, the name of the inventor in the form: invention of x. . . ;

(e) where appropriate, indications relating to any claim of the priority of an earlier application, in accordance with the provisions of Article 4 below;

(f) the indications provided for in Article 25 below, for applications resulting from the division of an initial application;

(g) the amount of the application and publication fees.

(h) a list of the documents submitted, indicating the number of pages of the description and the number of sheets of drawings, as well as the priority documents attached thereto.

(2) The following shall be attached to the application:

(a) the receipt or payment voucher for the application and publication fees;

(b) a sealed package containing, in duplicate, a description of the invention and the drawings, and a descriptive summary thereof;

(c) the power of attorney of the agent, together with the priority documents referred to in Article 4 hereafter.

(3) The application must be dated and signed by the applicant or his agent. The signature must be preceded by an indication of the identity of the applicant or agent and, in the case of a juridical person, of the identity of the signatory.

Article 3

(1) Any application filed by a married woman or widow must indicate her maiden name and first names following the husband's name.

(2) In any case where the filing is made jointly by two or more persons, the indications provided for in Article 2 (a) above must be furnished in respect of each of them.

Article 4

In any case where the filing comprises a claim for priority of one or more earlier filings, a statement to this effect must be included in the application.

Article 5

In addition to the particulars stipulated in Article 2 above, any application for a certificate of addition must include the number and date of filing and the name of the owner of the principal patent or of the inventor's certificate.

Article 6

Where the applicant for a certificate of addition that has not yet been granted wishes to convert his application into an application for a patent or for an inventor's certificate, he must submit to the competent authorities or forward to them by registered post, with a request for acknowledgment of receipt, a written statement to that effect together with evidence of the payment, or a payment voucher, in respect of the appropriate fee.

The statement must indicate the date and number of filing and the title of the invention.

Article 7

(1) The power of attorney must indicate the name, first names and address of the applicant or, in the case of a juridical person, its business style and registered address.

It must be dated and signed by the applicant and, in the case of a juridical person, must indicate the identity of the signatory.

¹ See *Industrial Property*, 1966, p. 232.

* BIRPI translation.

In any case where the filing of an application comprises a claim for priority of one or more earlier filings, the power of attorney must contain the statement provided for in Article 4 above.

(2) A power of attorney given with a view to filing of an application is not valid authority to withdraw the application for a patent or inventor's certificate.

Article 8

The sealed package containing, in duplicate, the description, drawings and descriptive summary required to be attached to any application for a patent, inventor's certificate or certificate of addition, pursuant to Article 26 of the aforementioned Ordinance, must bear an indication of the applicant's name and address, the title of the invention, the claim of a right of priority and a list of the documents contained therein. It must be signed by the applicant or his agent.

CHAPTER II

Description

Article 9

The two copies of the description, one of which constitutes the original and the other the duplicate, must be typewritten, lithographed or printed in clearly legible form, in dark indelible ink, on white bond paper, to the exclusion of headed paper, of a format of 27 to 31 cm. in length and 20 to 22 cm. in width.

Article 10

The text of the description must be written or printed on one side of the paper only, leaving a margin of 3 to 4 cm. width on the left-hand side and a minimum space of approximately 8 cm. at the top of the first page and at the bottom of the last. A space equivalent to double-spacing in typewritten texts must be left between the lines. The lines must be numbered from 5 to 5 at the beginning of the line, the numbering being resumed at 5 opposite the fifth line of each page.

Article 11

In order to ensure authenticity, the various pages of the description, fastened together in such a way that they can be separated and re-assembled without any difficulty of reading resulting from the mode of assembly, must be numbered from beginning to end, in the upper right-hand corner, in Arabic numerals.

Article 12

The heading of the description, worded in accordance with the models annexed to this decree,² must indicate the name and first names or denomination of the applicant(s) and repeat the title of the invention as given in the application. Where appropriate, the title must be followed by the indication of the inventor's name, in the same form as in the application.

Article 13

(1) No drawings may be included in the text, nor in the margin of the description, with the exception of developed chemical or mathematical graphic formulae.

(2) The descriptions must refer only to the numbers of the drawings without mentioning the sheets.

(3) In the description, the reference letters or figures must be indicated, and the symbols of the drawings written, in their proper order.

(4) If mention is made in the description of earlier Algerian or foreign patents, these must be designated by their definitive number and country of origin. If the said patents have not yet been granted, they must be designated by their date of filing, and provisional serial number together with any indications accompanying that number, in particular the name of the patentee and the country of origin.

Article 14

Indications of weights and measures must be given according to the metric scale; indications of temperature in degrees Centigrade; the density of substances must be given to the exclusion of the specific weight; for electric units, the specifications accepted in the international system shall be used, and for chemical formulae, the symbols of elements, of atomic weights and of molecular formulae generally used.

Article 15

The description must not contain any changes or additions. Any marginal notes must be initialled, and likewise any deletions of words.

Article 16

Both copies of the description must be signed by the applicant or his agent; one copy shall be marked "original", the other "duplicate" certified as corresponding to the original.

CHAPTER III

Drawings

Article 17

The original of the drawings must be executed on white paper or on a sheet of transparent material which must be flexible, resistant and not glossy. The duplicate, exactly reproducing the original, must be executed on thick smooth white paper which must not be glossy. It may consist of a lithographed copy of good quality. If the original is reproduced by means of a printing process, the other copy may be printed from the same printing-block. Any reproduction or copy-making processes that are not of a sufficiently stable character are prohibited.

Article 18

The format of each sheet must be 27 to 31 cm. in length and 21 cm. or, in exceptional cases, 42 cm. in width. A margin of not less than 2 cm. width must be left on all four sides of the sheet.

The applicant may, if he wishes, sub-divide a diagram into several partial diagrams, each being drawn on a sheet of the above-mentioned dimensions. The fitting together of partial diagrams must be indicated by lines marked with reference letters or figures. If the applicant avails himself of this possibility, he must also furnish, on a sheet of standard size, an overall diagram of the subject of the invention, showing the lines for fitting together the partial diagrams.

² These annexes are not published herewith.

Article 19

Above each plate, outside the frame, the indication "Patent No. . . ." must be given on the left-hand side; in the center, the name of the applicant; on the right, the serial number of each plate and the number of plates in Arabic numerals, eg: Pl. IV, 5. If there is only one plate, it must be marked "Single plate".

Article 20

(1) The drawings must be executed in all respects according to the rules of linear drawing, in black lines, if possible indelible without shading or colors and without any erasure or correction. They must be suitable for clear reproduction without the use of a stereotype plate.

(2) Cut sections must be indicated by oblique regular hatching, sufficiently spaced, which must not prevent clear recognition of the reference indications.

Convex or concave surfaces may be shaded only by means of parallel and suitably spaced horizontal or vertical strokes.

(3) The various diagrams must be clearly separated from each other by a space of approximately 1 cm., arranged on the smallest possible number of plates, and numbered in series, from first to last, in Arabic numerals, clearly drawn and preceded by the abbreviations: "Fig. ".

Where a diagram is composed of several separate parts, these must be bracketed together.

(4) All figures, letters and reference signs in the drawings must be simple and clear, the letters and figures being of a height of not less than 0.32 cm. To the extent required for understanding of the description, the various parts of the diagrams must be marked everywhere by the same reference signs, corresponding to those in the description.

(5) The drawing must not contain any explanations, other than indications such as "water", "steam", "section AB", "open", "closed" and, in the case of plans of electrical installations or diagrams illustrating the various stages of a process, sufficient indications to make them understandable.

Article 21

The scale of drawings, determined by the degree of complication of the diagrams, must be such that all the details can be distinguished without difficulty on a photographic reproduction executed with a linear reduction of two-thirds; when shown on the drawing, the scale must be drawn and not described in writing.

Article 22

Each sheet of the two copies of the drawings must be signed on the reverse side by the applicant or by the agent, below the indication "original" or "duplicate" in such a way that the diagrams cannot be affected by transparency. The drawings must not bear any date.

Article 23

The drawings must be presented in such a way as to bear no fold or crease.

CHAPTER IV

Division of Complex Applications

Article 24

(1) In the event of division of an application for a patent, inventor's certificate or certificate of addition, each divisional application is deemed to be independent of the others and in respect of it the formalities prescribed for an ordinary application must be carried out within six months.

(2) Each divisional application must bear the indication that it concerns the division of an initial application, the latter being designated by its date of filing and serial number.

(3) The description and drawings of each divisional application may contain, in addition to the texts and diagrams extracted respectively from the description and drawings annexed to the initial application, only such references and explanatory notes as are necessary to clarify the presentation.

The initial application shall be put into proper form by the deletion of any material extraneous to the sole subject thereof, without any modifications or additions other than those resulting from the actual division or from stylistic requirements.

(4) The initial description and drawings must be conserved, and certified true copies thereof may be made at any time.

Article 25

A complex application may be divided if the applicant so requests, with appropriate substantiation, prior to the grant of the patent, inventor's certificate or certificate of addition.

CHAPTER V

Regularization of Applications

Article 26

(1) Descriptions and drawings that fail to satisfy the provisions of this decree shall be returned to the applicant with an invitation to submit new documents in the conditions prescribed in Article 34 of the above-mentioned Ordinance No. 66-54.

(2) A copy of the documents initially filed shall be conserved by the competent authority to permit verification of the concordance of documents furnished subsequently.

Article 27

Until such time as the patent or inventor's certificate is granted, the applicant may be authorized, at his request, to correct any material errors in the documents submitted, where he can show the corrections to be necessary. No other amendment of the documents shall be permitted.

If the requisite fees are not paid, or if corrections are not made within the prescribed period which may be extended if this is shown to be necessary, the patent or inventor's certificate shall be issued without amendment.

CHAPTER VI

Withdrawal

Article 28

(1) Any application for a patent, inventor's certificate or certificate of addition may be withdrawn by the applicant if

he so requests in writing, subject to the provisions of paragraphs 3 and 4 hereunder.

The request for withdrawal must contain the particulars provided for in Article 2(a), (b) and (c), above, and must indicate the date and serial number of the filing.

If the application for a patent, inventor's certificate or certificate of addition was filed in the name of two or more persons, withdrawal may only be effected at the request of all the applicants.

(2) Where the request for withdrawal is made by an agent, it must be accompanied by a special power of attorney signed by the applicant or applicants, as the case may be, with an indication "valid for withdrawal".

(3) If the application for a patent, inventor's certificate or certificate of addition has been the subject of a licence or of a mortgage recorded in the patent register, withdrawal may be effected only subject to written consent by the licensee or the pledgee.

(4) In the case of total or partial transfer inscribed in the patent register, withdrawal is authorized, at the request of the transferor or of the transferee, only subject to written consent by the other party.

(5) One copy of the description and the drawings filed shall be returned to the applicant, at his request, the second copy being retained by the competent authority.

CHAPTER VII

Grant of Patents, Inventors' Certificates and Certificates of Addition

Article 29

(1) The applicant or his agent shall be informed forthwith of signature of the decision provided for in Article 33 of the above-mentioned Ordinance No. 66-54. The notification shall indicate the date of the decision, the number of the patent and the title of the invention. The same procedure shall be followed with respect to inventors' certificates and certificates of addition.

(2) In the case of a transfer entered in the patent register prior to the grant, the patent or inventor's certificate shall be issued in the name of the transferee at the request of the latter with the transferor's concurrence. The name of the transferor shall be mentioned on the documents relating to the patent or inventor's certificate.

CHAPTER VIII

Patent Register

Article 30

The patent register shall indicate, in respect of each patent, the name, first names, domicile and nationality of the patentee and, where appropriate, of the agent, the title of the invention, the date of filing of the patent application, the date and number of grant of the patent, any certificates of addition relating to the patent with the relevant numbers and dates, the date of payment of the fees, and the decisions entered pursuant to Article 33 of the above-mentioned Ordinance No. 66-54.

Article 31

Requests for registration of the said decisions shall be submitted to the competent authority or shall be addressed thereto by registered mail with a request for acknowledgment of receipt. They shall indicate the name, first names or business style and domicile of the applicant, those of the agent having the authority to make the request, as well as the amount of the fees payable and the mode of payment.

They shall be accompanied by the documents mentioned in Articles 32 and 33 hereafter.

Article 32

(1) Any recording shall be effected after the filing of an original copy, duly registered, if it is a deed under private seal, of an authenticated copy or, in the case of transmission on death, of an attested affidavit or an inventory abstract.

(2) Entries relating to the mortgaging of patents shall be cancelled after the filing either of a duly authenticated original copy of the deed providing for cancellation of the mortgage, or of an authenticated copy of the legal decision.

Article 33

Any request for registration or cancellation shall be accompanied by three forms furnished by the competent authority, and containing the following particulars:

- (1) the name, first names, profession and domicile of the assignor and of the transferee or assignee, of the deceased person and of the heir, of the creditor and of the debtor;
- (2) the date and number of the record of filing of the application for a patent, the title of the invention and the number of the patent;
- (3) the nature and extent of the right transferred or assigned and its duration;
- (4) the date and nature of the deed providing for transfer of a right;
- (5) where appropriate, the amount of the claim provided for in the deed and the conditions relating to interest and to maturity of the claim.

The particulars shown on the forms shall be certified by the parties to be in conformity with those in the deed.

The copy of the deed shall be retained by the competent authority. One copy of the form shall be returned to the applicant after insertion of a record of registration.

Article 34

Any change in the address of the owners, transferees or assignees of patents shall be recorded in the register of patents.

Article 35

Any person may obtain, on request, either a certified copy of entries made in the register of patents, or a copy of any remaining entries relating to patents that have been mortgaged, or a certificate confirming that no such entries exist.

The competent authority shall also issue extracts relating to the address of the patentees, of the transferees or of the assignees of rights, or to the situation with respect to annuity payments.

Article 36

The Minister of Industry and Power shall be responsible for carrying out the present Decree which shall be published in the *Journal officiel* of the Democratic and Popular Republic of Algeria.

II

Decree

for the Implementation of Ordinance No. 66-57, of March 19, 1966¹, Relating to Trademarks *

(No. 66-63 of March 26, 1966)

The Head of the Government, President of the Council of Ministers,

Upon the report of the Minister of Industry and Power, Considering Ordinance No. 66-57 of March 19, 1966, relating to trademarks;

Hereby decrees as follows:

CHAPTER I

Application for Registration

Article 1

(1) The application provided for in Article 13, paragraph (1) of the above-mentioned Ordinance No. 66-57, for registration of a trademark, shall be made on the appropriate form furnished by the competent authority.

(2) The application shall be submitted in five copies, the first of which shall bear the indication "original".

Article 2

(1) The application for registration shall contain the following compulsory particulars:

(a) the name, first names, and domicile of the applicant or, in the case of a juridical person, its business style and registered address;

(b) the name and address of the agent, if any, empowered to file the application and likewise the date of the power of attorney;

(c) where appropriate, indications relating to any claim of priority of an earlier filing, in accordance with the provisions of Article 5 hereafter;

(d) in the case of an application for renewal of an earlier filing, the place, date and serial number of the previous registration;

(e) the combination or arrangement of colors, the characteristic shape or form of the product or its presentation, claimed by way of distinctive characteristics of the mark;

(f) an enumeration of the products to which the mark applies and the corresponding classes according to the classification provided for in Article 15 hereafter;

(g) the sum transferred to the competent authority by way of fees relating to the filing, the mode of transfer and the date and number of the payment voucher;

(h) indications relating to return of the printing-block, if appropriate, in accordance with the provisions of Article 7 hereafter.

(2) The following items shall be attached to the application:

(a) a printing-block of the mark;

(b) the power of attorney of the agent together with the priority documents referred to in Article 5 hereafter;

(c) evidence of payment of the fees.

(3) The application must be dated and signed by the applicant or by his agent; the signature must be preceded by an indication of the identity of the applicant.

Article 3

(1) Any application made by a married woman or widow must indicate her maiden name and first names following her husband's name.

(2) In any case where the filing is made jointly by two or more persons, the indications provided for in Article 2(1)(a) above must be furnished in respect of each of them.

If no agent has been appointed, any communications and official documents shall, except where indicated otherwise, be addressed to the first of the persons mentioned.

Article 4

The power of attorney of the agent must indicate the name, first names and address of the applicant and, in the case of a juridical person, its business style and registered address.

It must be dated and signed by the applicant. In the case of a juridical person, it must indicate the identity of the signatory.

In the case of filing of an application involving a priority claim in respect of an earlier filing, the power of attorney must contain the statement provided for in Article 5 hereunder.

Article 5

Any person wishing to claim the priority of an earlier filing must indicate the place, date and number of such filing in his application for registration or in a statement which must be presented to the competent authority in the conditions stipulated in Article 15 of the above-mentioned Ordinance No. 66-57.

In addition, he must furnish to the competent authority a copy of the earlier filing certified as true by the administration that received it, and must pay the fee attaching to any claim of a priority right.

If he is not the author of the earlier filing, he must attach to the above-mentioned documents a written statement by the holder or his assigns authorizing him to claim the priority right concerned.

CHAPTER II

Replica and Printing-Block

Article 6

The replica of the mark shall consist of a clearly discernible reproduction thereof, obtained by means of the printing-block accompanying the application.

¹ See *Industrial Property*, 1966, p. 240.

* BIRPI translation.

The replica shall be affixed on the form provided for in Article 1 above.

The applicant may, at his discretion, attach to the application four colored labels bearing the mark, where the colors constitute a characteristic of the mark.

Article 7

(1) The printing-block must be in conformity with the models customarily used in typographic printing; its dimensions must not be in excess of 15 × 90 mm., and its thickness 23 mm.

(2) The applicant must indicate his name and address on one side of the base of the printing-block.

(3) If the applicant so requests, the printing-block shall be returned to him, at his expense, after publication of the mark.

Any printing-block not claimed back by the end of one year following the said publication shall be destroyed.

CHAPTER III

Registration and Publication of Marks

Article 8

Where the mark is not inconsistent with the provisions of Article 4 of the above-mentioned Ordinance No. 66-57, the filing is properly effected and the appropriate fees have been paid, the competent authority shall proceed to register and publish the mark.

A registration number, the official stamp of the service and the signature of the director or of his representative shall be affixed to each copy of the application.

One copy of the declaration shall be addressed to the applicant or to his agent by way of certificate of registration.

Article 9

Any application that fails to comply with the stipulations of Article 2 above shall be rejected. In the case of some material irregularity or of failure to pay the fees, a time-limit of two months shall be set within which the applicant must regularize his application.

CHAPTER IV

Register of Marks

Article 10

The register of marks shall mention the statements, deeds and legal decisions mentioned in Articles 25 and 27 of the above-mentioned Ordinance No. 66-57.

It shall likewise mention any changes in the address of the owners, transferees or assignees of marks.

Article 11

Requests for the recording of such deeds shall be presented to the competent authority or forwarded to it by registered post, with a request for acknowledgment of receipt. They shall indicate the name, first names or business style, the domicile or registered address of the applicant, those of the

agent, if any, together with the amount of the fees payable to the said authority, the mode of payment, the date and number of the receipt. They shall be accompanied by the documents mentioned in Articles 12 and 13 hereafter.

Article 12

(1) Any recording of the above-mentioned deeds shall be effected after the filing of an original copy, duly registered, if it is a deed under private seal, of an authenticated copy or, in the case of transmission on death, of an attested affidavit or an inventory abstract.

(2) Entries relating to the mortgaging shall be cancelled after the filing either of a duly authenticated original copy of the deed providing for cancellation of the mortgage, or of an authenticated copy of the definitive legal decision.

Article 13

Any request for registration shall be accompanied by three forms established according to the models attached hereto in annexes I, II, III and IV.²

The particulars shown on the forms shall be certified by the parties to be in conformity with those in the deed.

The original copy of the deed in respect of which the request for registration is made shall be retained; one copy of the form shall be returned to the applicant after insertion of a record of registration.

Article 14

Any person may obtain on request, either a copy of entries made in the register of marks, or a statement of the remaining entries on marks that have been mortgaged, or a certificate confirming that no such entries exist.

The competent authority shall also issue extracts relating to the address of the owners of marks, of the transferees or of the assignees of rights or of certificates reproducing the indications given in the original copy of the replica of the mark.

CHAPTER V

Classification of Marks

Article 15

For the filing and registration of marks, products shall be grouped according to the international classification, attached to the present Decree in annex V.²

Article 16

The Minister of Industry and Power shall be responsible for carrying out the present Decree which shall be published in the *Journal officiel* of the Democratic and Popular Republic of Algeria.

² These annexes are not published herewith.

III

Decree

**for the Implementation of Ordinance No. 66-86,
of April 28, 1966¹, Relating to Designs***

(No. 66-87 of April 28, 1966)

The Head of the Government, President of the Council of Ministers,

Upon the report of the Minister of Industry and Power,
Considering Ordinance No. 66-86 of April 28, 1966, relating to designs;

Hereby decrees as follows:

CHAPTER I

Declaration of Filing

Article 1

The declaration provided for in Article 9 of the above-mentioned Ordinance shall be made on the form issued by the competent authority.

It shall be submitted in four copies.

Article 2

The filing declaration shall contain the following compulsory particulars:

(a) the name, first names, domicile and nationality of the applicant or, in the case of a juridical person, its business style and registered address;

(b) the name and address of the agent, if any, empowered to file the declaration and likewise the date of the power of attorney referred to in Article 4 hereafter;

(c) the number and nature of the designs and the serial number attributed to them;

(d) where appropriate, indications relating to any claim of the priority of an earlier filing;

(e) the numbers of the designs to which an explanatory note is attached;

(f) replicas of the seals affixed to the box containing the designs;

(g) the designs in respect of which the publication provided for in Article 1 of the above-mentioned Ordinance No. 66-86, whether or not with maintenance of the protection for a period of ten years, is required;

(h) the amount of the fees payable, the mode of payment and the date and number of the payment voucher;

(i) a list of the documents submitted in support of the declaration.

The filing declaration must be dated and signed by the applicant or by his agent; the signature must be preceded by an indication of the identity of the applicant.

The following shall be attached to the filing declaration:

- (1) the sealed box provided for in Article 9 of the above-mentioned Ordinance No. 66-86;
- (2) the power of attorney of the agent, together with the priority documents referred to in Article 10 of the above-

mentioned Ordinance No. 66-86;

(3) the request for publication, where appropriate;

(4) evidence of payment of the fees.

Article 3

Any declaration made by a married woman or widow must indicate her maiden name and first names following her husband's name.

In any case where the filing is made jointly by two or more persons, the indications provided for in Article 2(a) above must be furnished in respect of each of them.

Article 4

The power of attorney of the agent must indicate the name and first names of the applicant or, in the case of a juridical person, its business style and registered address.

It must be dated and signed by the applicant; in the case of a juridical person, it must indicate the identity of the signatory.

CHAPTER II

Sealed Package — Reproductions or Specimens of Designs

Article 5

The filing of a design may be carried out in the form either of a graphic or photographic reproduction, or of a specimen.

One and the same design may not be filed in both forms at the same time. Otherwise the applicant would be presumed to have given priority to the filing in the form of a specimen.

Article 6

Where the filing is made in the form of a representation of the object concerned, the applicant must choose, at his own risk, the means most suitable for avoiding any deterioration thereof and for permitting reproduction by means of photographic processes.

The dimensions of designs must be not less than eight cm. and not more than forty-eight cm.

Designs must be placed flat or rolled in a box containing them. They must be executed in black ink.

In case of need, any drawing may be subdivided into several parts that can be fitted together with the aid of reference lines and figures; the applicant must, however, furnish an overall diagram on a separate sheet.

On the reverse side of the drawing or photograph the applicant must affix his signature on the left side and indicate, in the upper right-hand corner, the number attributed by him to the object filed, in the case of a multiple filing.

An explanatory note relating to each or some of the designs may be annexed to the filing declaration, if the author deems it necessary. It must be written on a separate sheet bearing the same number as that written on the object, and must be signed by the applicant.

Article 7

The objects filed must be contained in a wooden or metal box the dimensions of which must not exceed 50 cm. in length, 50 cm. in width, and 25 cm. in height.

¹ See *Industrial Property*, 1966, p. 251.

* BIRPI translation.

The total weight of the box must not be in excess of 8 kilograms.

The box must be tied with a string crossing beneath and on the lid and secured by a seal affixed by the applicant.

CHAPTER III

Registration of Filing

Article 8

Where the filing has been properly effected and the necessary fees have been paid, the competent authority proceeds to register the filing.

The registration number, signature and official stamp of the competent authority shall be affixed to each copy of the declaration and to the sealed box.

A copy of the declaration shall be addressed to the applicant or to his agent by way of certificate of registration.

CHAPTER IV

Publication of Filing

Article 9

The request for publication provided for in Article 13 of the above-mentioned Ordinance No. 66-86 shall be made simultaneously with the declaration of filing, or alternatively during the first term of protection.

In the latter case, it shall be signed by the owner of the filing or his successor in title or by the agent and shall be forwarded in two copies to the competent authority, with a request for acknowledgment of receipt.

It shall not necessarily relate to all the designs included in the filing; objects in respect of which no publication is requested shall be replaced in the appropriate box which shall be closed and sealed by the competent authority.

The request for publication shall contain the following compulsory particulars:

- (a) the name, first names and domicile of the applicant or, in the case of a juridical person, its business style and registered address;
- (b) the name and address of the agent, if any, empowered to present the request;
- (c) the date and place of filing and, where appropriate, the registration number;
- (d) the number and serial number of the designs for which publication is requested with or without maintenance for ten years;
- (e) the amount of the fees payable, the mode of payment and the date and number of the payment voucher.

Where the request is submitted by a successor in title, it must be accompanied by legal justification of his status.

It must be accompanied by a payment voucher in respect of the fees payable.

Article 10

The request for publication shall be registered by the competent authority.

Article 11

The competent authority shall proceed to open the sealed box.

If when the box is opened an irregularity of filing is found to exist, a report shall be drawn up. The box shall be closed and placed under seal and held at the disposal of the signatory of the request for publication, who shall be advised thereof by registered letter.

Article 12

The reproductions of objects the publication of which has been requested shall be made available to the public by the competent authority, in accordance with Article 17 of the above-mentioned Ordinance No. 66-86; each copy shall bear the name, first names, profession and domicile of the applicant, the serial number of the filing, the date of publication and shall be accompanied by the explanatory note, if any.

Access to the registers of these reproductions shall take place under the supervision of an official of the competent authority.

The objects and copies may not be copied or reproduced in any way.

Article 13

Any requests for a copy, in accordance with Article 18 of the aforementioned Ordinance, must be addressed to the competent authority; they must be accompanied by a justification of the status of the applicant and by evidence of payment of the appropriate fees.

CHAPTER V

Maintenance of Protection

Article 14

A request for extension of protection to ten years, as provided for in Article 13 of the aforementioned Ordinance No. 66-86, may be made in the declaration of filing, with the request for publication, either before the end of the one-year period, or in the six months thereafter.

In both cases it must be signed by the applicant, by his successor in title or by his agent and be addressed in two copies to the competent authority, by registered post, with a request for acknowledgment of receipt.

It shall be drawn up in the same conditions as the declaration of filing and shall be registered by the competent authority.

Article 15

The competent authority shall proceed to the publication of designs in respect of which maintenance of protection is requested.

CHAPTER VI

Return of Objects Filed

Article 16

The applicant or his successors in title may request the total or partial return of a filing. When such request is made by a successor in title, it must be accompanied by justification of his entitlement to request such return in the place of the applicant.

Article 17

Designs shall be returned to their owners, at the latter's request, at the end of the term of protection.

If they are not claimed within one year following the end of the term of protection, they may be destroyed.

Article 18

The competent authority shall send back objects filed at the expense of the persons that filed them.

CHAPTER VII

Special Register of Designs

Article 19

The special register of designs shall include a record of any legal declarations, deeds and decisions.

Requests for the recording of such deeds shall be presented to the competent authority or forwarded to it by registered post, with a request for notification of receipt. They shall indicate the name, first names or business style, domicile or registered address of the applicant, those of the agent, if any, together with the amount of the fees payable, the mode of payment and the number of the receipt. They shall be accompanied by the documents mentioned in Articles 21 and 22 hereafter.

Article 20

Any recording of the above-mentioned deeds shall be effected after the filing of an original copy, duly registered, of the deed if it is a deed under private seal, of an authenticated copy or, in the case of transmission on death, of an attested affidavit or an inventory abstract.

Entries relating to the mortgaging of designs shall be cancelled after the filing either of a duly authenticated original copy of the deed providing for cancellation of the mortgage, or of an authenticated copy of the definitive legal decision.

Article 21

Any request for registration shall be accompanied by three forms furnished by the competent authority.

The particulars shown on the forms shall be certified by the parties to be in conformity with those in the deed.

The original copy of the deed in respect of which the request for registration is made shall be retained by the competent authority. One copy of the form shall be returned to the applicant after insertion of a record of registration.

Article 22

Any person may obtain on request, either a copy of entries made in the special register of designs, or a statement of the remaining entries on designs that have been mortgaged, or a certificate confirming that no such entries exist.

The competent authority shall also issue extracts relating to the address of the owners of designs, of the transferees or of the assignees of rights.

Article 23

The Minister of Industry and Power shall be responsible for carrying out the present Decree which shall be published in the *Journal officiel* of the Democratic and Popular Republic of Algeria.

ITALY

Decrees

Concerning the Temporary Protection of Industrial Property Rights at Two Exhibitions

(of May 3 and 27, 1969)¹

Single Article

Industrial inventions, utility models, designs and trademarks relating to objects appearing at the following exhibitions:

XXXIII^a *Fiera del Levante campionaria internazionale* (Bari, September 10 to 23, 1969);

EIMA — Esposizione delle industrie di macchine per l'agricoltura (Bologna, November 12 to 16, 1969)

shall enjoy the temporary protection provided by Laws No. 1127 of June 29, 1939², No. 1411 of August 25, 1940³, No. 929 of June 21, 1942⁴, and No. 514 of July 1, 1959⁵.

¹ Official communications from the Italian Administration.

² See *La Propriété industrielle*, 1939, p. 124; 1940, p. 84.

³ *Ibid.*, 1940, p. 196.

⁴ *Ibid.*, 1942, p. 168.

⁵ *Ibid.*, 1960, p. 23.

LETTERS FROM CORRESPONDENTS

Letter from France *

By Paul MATHÉLY, Barrister at the Paris Court of Appeal

Part II

Trademarks

Implementation of the New Law

It is perfectly clear that the new Law of December 31, 1964, and June 23, 1965, on marks is not an interpretation of the provisions of the previous Law of 1857 and has no retroactive effect.

Under the new system, it is registration that gives rise to rights in a mark. However, the effects of a mark filed under the previous Law and valid on August 1, 1965, when the new Law came into operation continue to date back to the earliest prior use of the mark, since this was the practice under the Law of 1857.

Article 35 of the new Law maintains this state of affairs where it already exists. Moreover, a party benefiting from it does not have to comply with any formalities. In particular, he does not have to make a declaration of prior use, for this formality is only required of users of a mark not yet filed at August 1, 1965.

This was pointed out in a judgment of the Paris Court of Appeal dated April 1, 1966 (*Ann. prop. ind.*, 1966, page 165), which held that a mark filed only in 1964 but already in use before 1963 prevailed over a similar mark filed in 1963.

Appeal Against a Ministerial Decision Rejecting a Mark Filed for Registration

Under Article 8 of the new Law on marks, the Minister responsible for industrial property is empowered to reject a mark filed for registration.

The fact that ministerial decisions pronouncing rejection may be appealed before the administrative courts has never been questioned, but there was a problem of *ratione loci* jurisdiction.

A decree of November 28, 1953, provides that such appeals should be heard by the *tribunal administratif* competent in the place where the headquarters of the authority having made the contested decision are located. There is, however, an exception to this rule: litigation in respect of commercial and industrial activities is to be dealt with by the *tribunal administratif* competent in the place where the business or exploitation giving rise to the litigation is carried on.

The question was therefore whether the filing of a mark could be considered an act that enters into the commercial and industrial activity of the party who effected the filing.

An affirmative answer was not necessary. Under French law, there is an established rule which says that a trademark is independent of the industrial or commercial concern in respect of which it is used and that the right to a mark is independent of the being and capacity of the owner.

This was the point of view of the Administration which argued that appeals from ministerial decisions rejecting marks filed for registration should be brought before the *Tribunal administratif* of Paris.

This *Tribunal* decided otherwise, however, in a judgment of December 20, 1967, delivered in full-court session (*Ann. prop. ind.*, 1968, page 113). The *Tribunal* felt that the filing of a mark came under the professional activities of the party who filed it.

In consequence, it is the *tribunal* of that party's domicile which has jurisdiction over an appeal brought from the rejection of a mark filed for registration.

Trademark Validity

1. Case law is consistent in the definition it gives to the conditions required for trademark validity:

- to be valid, the mark need not be original or new; the sole condition is that it must be distinctive with respect to the articles it identifies;
- and a mark only lacks distinctiveness in cases where its use, in identifying the article to which it is applied, is necessary, generic or common, or where it is no more than a straight description of the nature, material qualities or intended use of that article.

This definition was given, inter alia, by the Paris Court of Appeal on March 12, 1965, and February 12, 1966 (*Ann. prop. ind.*, 1966, pages 40 and 150). It is interesting to note the particularly apt manner in which the Paris Court of Appeal, in a decision of April 4, 1968 (*Ann. prop. ind.*, page 153), set forth the exact legal rule and applied it to a striking case. The Court held that a mark comprised of the English word *breakfast* was valid for bakery and pastry goods; this decision was based on the ground that protection can only be refused in respect of marks which, at the time they are filed, are composed of a word employed in France, through necessity or habit, to designate the product or to describe its shape, composition, essential qualities or the use for which it is normally intended.

2. For the appropriation of a mark to be valid, the sign of which it is composed must be available for appropriation. This question comes up when the mark is composed of a name that is the surname of a third party.

Formerly, it was considered that a surname gave rise to a true property right and that the person having that surname could therefore oppose any other party's use of it. Today, however, it is acknowledged that a surname is no longer the subject of a property right; it is no more than an element of a person's individuality and is protected on that ground, only.

As a result, no objection can be made to the use of a surname for commercial purposes unless the circumstances of its use are such that the business or product designated by that

* BIRPI translation.

name are attributed by the public to the person whose name is involved.

This will happen if the name is unusual or famous. If, however, it is commonplace and devoid of any special repute, risk of confusion is impossible, and the use of the name as a mark cannot be opposed.

This was the line of reasoning followed by the Supreme Court in its judgment of December 19, 1967, and by the Paris Court of Appeal in its judgment of June 4, 1968 (*Ann. prop. ind.*, 1968, page 187).

3. If the sign constituting the trademark was not available because it had already been appropriated as a mark, is the beneficiary of the earlier right the only one who may attack the more recent mark or may it also be attacked by a third party?

This question arises in cases of trademark infringement proceedings. Does the defendant in an infringement case have the right to attack the mark invoked against him by citing earlier marks in which he has no rights?

The Supreme Court, in a judgment of July 4, 1966, replied in the negative (*Ann. prop. ind.*, 1966, page 215).

Furthermore, the Paris Court of Appeal, ruling along the same lines, offered an explanation and rationale which merit our attention (judgment of November 12, 1965, and the note by P. Mathély, *Ann. prop. ind.*, 1966, page 218).

A person (the third party) accused of infringement by the owner of a mark (mark No. 2) can certainly not fight this charge by bringing in the existence of an older mark (mark No. 1) and contending that mark No. 2, invoked against him, is dominated by the older mark No. 1. The third party has no right to avail himself of rights in mark No. 1. In other words, the nullity of mark No. 2 with respect to mark No. 1 is relative and can be relied upon solely by the owner of mark No. 1.

The third party can only attack mark No. 2, invoked against him, on grounds of absolute nullity; for, if mark No. 2 is in fact null and void and this nullity is absolute, then the third party — like any other interested party — can rely on its nullity.

The question is thus whether the existence of mark No. 1, destroys the validity *per se* of mark No. 2.

Now, mark No. 2 cannot be null on the ground of lack of novelty in the light of the existence of mark No. 1, since novelty is not required for trademark validity. The sole condition for validity is distinctiveness.

It must be determined, therefore, whether the existence of an identical or similar older mark deprives the more recent mark of this required distinctiveness.

The Court, in the judgment mentioned, felt that this was not so.

The fact that there are two marks composed of the same sign does not necessarily mean that this sign has lost its distinctiveness. A sign loses its power to distinguish a product when it is used by everyone. Its use as a privative right requires that it must not become part of the public domain.

Admittedly, if the same mark is used to identify the goods of two different owners, there is no way to distinguish between the goods of the two enterprises. Still, this is a matter

which concerns the two owners. They may have come to an agreement. The first owner may have reasons for tolerating the second owner's use of the mark. If the first owner loses his right or relinquishes it, then the right of the second owner will no longer be open to attack.

No doubt the public could be misled by the coexistence of two trademarks if they are used in respect of goods of the same type but of different quality. But, is this any reason to allow a third mark to appear on the scene? The existence of a third trademark can only multiply the risks of confusion at the public's expense.

Thus, it can be seen that the judgment merits our approval.

The Article Identified by the Trademark

1. For a long time, there was debate over the question whether the title of a periodical could constitute a trademark. This question has now been settled by a judgment of the Supreme Court dated December 5, 1967 (*Ann. prop. ind.*, 1968, page 124).

The Court ruled that copies of a periodical are commercial goods which can be designated by a trademark and that the title of the publication is indeed a trademark within the meaning of the Law.

2. There is a basic rule according to which a mark is the subject of an appropriation not only in respect of the well-defined articles it identifies but also in respect of similar articles.

What should be understood by the expression "similar articles"? The difficulties that this question gives rise to are often extremely complicated.

In actual fact, it is not the articles themselves or their nature or intended use that must be considered, but the relation of the articles to trademark law.

This is why the Paris Court of Appeal's decision of March 5, 1966, is particularly well put (*Ann. prop. ind.*, 1966, page 154). The Court ruled that goods which should be considered similar are those which, owing to their nature or intended use, might be thought by the purchasers to have a common origin.

3. Can goods and services designated by the same mark be considered "similar articles"?

This is a question that has been posed by the entry into force of the new Law, which offers protection to service marks, too.

The question was settled for the first time by the Paris Court of Appeal in a judgment delivered on March 27, 1968 (*Ann. prop. ind.*, 1968, page 141, and the note by R. Dusolier).

The Court held that goods and services should be considered similar to the extent that they are interconnected or complementary and may therefore be thought to have the same origin.

Hence, the Court decided that the services of an advertising consultant should be deemed similar to goods consisting of periodicals and advertising items covered by the mark *Paris-Match*, since customers paying average attention would have reason to believe that such services were offered by the advertising organization of the periodical, or at least by an organization closely related to it.

Acquisition and Loss of Rights in a Mark

1. Under the former Law, the principle that the mark belonged to the first user was fundamental.

But, in accordance with the general principles of law, this first user must have acted in a proprietary capacity.

How can one know whether the mark has been used in a proprietary capacity?

The Paris Court of Appeal decided this question in connection with a case where circumstances made it particularly difficult to find a solution. Litigation had arisen in the relations between a manufacturer and a concessionaire. The concessionaire had been in charge of organizing and promoting sales. A trademark had been chosen for an article that the concessionaire had launched on the market during the time of the concession. Ownership of the trademark was being claimed by both the manufacturer and the concessionaire.

The judgment declared that the trademark belonged to the concessionaire. This decision was based on a ground that is deserving of attention, for it reflects perfectly the economic and legal nature of trademarks. The judgment stated that the mark belonged to the person "who was believed by the customers to be the supplier of the article so marked."

A trademark is, in fact, a sign of identification affixed to the goods by the person who puts them on the market. It may be the manufacturer's mark [*marque de fabrique*] or the seller's mark [*marque de commerce*], which means that it is not necessarily the manufacturer who puts the goods on the market.

2. The Supreme Court confirmed, in a judgment of March 11, 1966 (*Ann. prop. ind.*, 1966, page 141), that the right to a mark terminates if the mark is not renewed when it expires or proof of use is not submitted.

On the other hand, the Supreme Court referred, in a judgment of May 11, 1966 (*Ann. prop. ind.*, 1966, page 135), to the traditional rule in French law whereby rights in a mark are not lost through generalized use of the sign constituting the mark so long as the mark remains duly filed and is being used regularly.

3. It is known that under Article 11 of the new Law the owner's rights will be forfeited if he makes no use of his mark during the five-year period preceding the request for forfeiture.

In conformity with the traditional rule whereby a new law governs the future effects of legal situations that arose before the law came into existence but does not affect their past effects, Article 35 of the Law provides that rights acquired previously will be maintained and that marks filed prior to the date of entry into force of the new Law will, as from that date, be governed by the new Law. The result is that rights in such older marks are subject to forfeiture if the marks are not used.

In computing the five-year period of non-use, however, should inaction on the part of the owner prior to the entry into force of the new Law be taken into account?

The Paris Court of Appeal, in a corroborative judgment dated July 1, 1967 (*Ann. prop. ind.*, 1968, page 136), ruled

that the conditions of non-use prescribed by the new Law must be met in full during the time that the said Law has been operative.

A decision to the contrary would have resulted in making the Law of 1964 retroactive, for it would have inflicted the sanction of forfeiture in cases where an owner's inaction occurred before that Law came into operation, despite the fact that the previous Law had not required the owner to use his mark in order to conserve his right.

Trademarks filed under the former Law cannot, therefore, become liable to forfeiture unless they have remained unused for a period of five years and this period began on or after August 1, 1965, when the new Law entered into force.

4. Under the former Law, assignments or licenses in respect of trademarks could only be invoked against third parties if they were recorded in the special trademark register. The Supreme Court, in a judgment of March 4, 1968 (*Ann. prop. ind.*, 1968, page 128, and the note by M. Beau de Loménie), ruled that this requirement did not apply to a change of the trademark owner's name, as such a change did not constitute a transfer of property. Seemingly, this decision will still hold under the new Law, although Article 14 of the new Law is drafted in broader terms inasmuch as it relates to "any modification of the right attaching to a mark": a change in the owner's name does not appear to be a modification of the right attaching to the mark. Moreover, Article 26 of the implementary Decree of July 27, 1965, mentions entries of changes of name or address as being optional.

With respect to the effects of entries made in the register, the Nancy Court of Appeal held, in a judgment of November 30, 1966 (*Ann. prop. ind.*, 1967, page 75), that, where a single mark has been successively assigned by the same vendor to different vendees, disputes among the latter must be settled according to the dates recorded in the trademark register rather than according to the respective dates on which each vendee acquired the mark; this would only be otherwise if it was demonstrated that the second assignment was made as a result of fraudulent conspiring and scheming to deprive the first vendee of his acquisition.

5. The question whether a trademark registered internationally may be validly transferred to a national of a country not party to the Madrid Agreement is a very delicate one.

The Supreme Court, by rejecting an appeal for reversal, upheld a decision of the Paris Court of Appeal recognizing the validity of such a transfer (judgment of March 28, 1966, and the note by R. Dusolier, *Ann. prop. ind.*, 1966, page 212).

In point of fact, Article 9^{bis} of the Madrid Agreement, which still appears in the Nice Act, simply says that the transfer of a mark to a person not entitled to file an international mark cannot be recorded in the International Register. The text of the Agreement does not provide that the transfer is invalid, only that it cannot be published.

This is why the Supreme Court was able to say, in confirming the validity of the litigious mark's transfer, that so far as this validity was concerned it mattered little whether or not the transferee had the possibility of exploiting the transferred mark in such and such a country, since the mark was used in the trade and its transfer was not prohibited.

6. In a case involving litigation arising out of wartime measures, the Paris Court of Appeal delivered a judgment in which the rules of trademark law are applied in an interesting manner (judgment of December 21, 1964, *Ann. prop. ind.*, 1966, page 67).

Before the war, a German company had set up a subsidiary in France. The subsidiary bore the German company's name and sold articles bearing the German company's trademarks. After the war, the business assets of the French subsidiary were confiscated and turned over to a third party. This third party then claimed to have rights in France in the name and trademark of the German company.

The above-mentioned judgment rejected this claim.

First of all, the judgment pointed out that the sole fact of having an exclusive sales representation confers, to the beneficiary, no property rights in the marks carried by the goods he sells, since these goods are in his hands only on behalf of the manufacturer owning the marks. The judgment thus concluded that the party who had acquired the confiscated business assets of the subsidiary had not thereby acquired any rights in the marks which the subsidiary, as a simple sales agent, had never owned.

The judgment further declared that, although marks belonging to German nationals had been confiscated as a result of wartime measures, no confiscation measures had ever affected trade names. In consequence, the German company had conserved its right in France to its trade name and could ensure protection thereof under Article 8 of the Paris Convention.

Nor could it be claimed that the German company had abandoned its name to its French subsidiary which had then acquired ownership of that name and could have transferred it to the party who took over its business assets. There is, in fact, no basis for asserting that the German company had abandoned such an essential right as the right in its name; it had simply authorized its subsidiary to use that name when selling its goods, and this authorization no longer had any foundation once the subsidiary's successor in title started selling competing goods.

Infringement

1. The *Tribunal de grande instance* of Paris, in a judgment of December 21, 1967 (*Ann. prop. ind.*, 1968, page 120), settled a question posed by the implementation of the new Law.

The question was whether an infringement action based on a mark that has been filed but not yet registered is admissible.

The *Tribunal* noted that Article 8 of the Law empowers the Administration to examine and reject a mark before registering it: hence, it is indeed registration that gives rise to rights in the mark and, prior to registration, there can be no title to the mark that can be invoked against third parties. Infringement proceedings instituted on the basis of a mark filed but not yet registered are thus inadmissible, for they are founded on a title having no legal existence.

Moreover, the *Tribunal* pointed to the fact that Article 37 of the complementary Decree of July 27, 1965, expressly provides that a seizure order may be issued only upon presen-

tation of proof of the mark's registration. The *Tribunal* added that this requirement was simply the logical consequence of a legal system wherein rights are derived from registration. Accordingly, an order authorizing seizure on behalf of a party whose mark, although filed, has not yet been registered is null for having been issued irregularly, and any seizure effected under such an order is likewise null for not having been lawfully authorized.

2. An interesting judgment was handed down by the *Tribunal de grande instance* of the Seine on May 6, 1965, in connection with the famous *Tergal* trademark (*Ann. prop. ind.*, 1966, page 243).

The *Tribunal* found a printer guilty of infringement for making labels bearing the name *Tergal*. The judgment stated that the printer could not escape the charge by claiming that the labels were intended for goods having the right to bear the mark, since he had no authorization to manufacture such goods.

As a matter of fact, infringement of a mark occurs through the mere material reproduction of the sign of which it is composed. The offense of infringement is distinct from the offense of using an infringing mark. For the offense of infringement to exist, it suffices for the reproduced mark to be intended, in principle, for some use. There is no need to find out whether this use will actually take place or not and, if so, under what circumstances. Infringement is not effaced by the fact that the reproduced mark is intended for goods having the right to bear the mark. Even if the goods have the right to bear the mark, the apposition of an infringing mark to these goods constitutes an unlawful use.

3. Trademark infringement may be only partial. This is the case where the infringement is effected by reproducing one of the elements of the mark. But the element reproduced must possess its own individuality in the complexity of the whole mark. If the element is merely an undetachable part of the whole, there can be no infringement, only imitation.

This was the doctrine set forth in the Paris Court of Appeal's judgment of May 12, 1965 (*Ann. prop. ind.*, 1966, page 234).

4. It is well established that the addition of another element to the reproduced mark does not destroy the infringement. This could only be so if, in the general impression created by the reproduced mark and the additional elements, the reproduced mark had more or less disappeared, that is, if it had lost its individuality and its power of attraction.

It was therefore held that:

- the name *Moustache d'Anglais* was an infringement of the famous registered trademark *Moustache* (*Tribunal de grande instance* of the Seine, November 22, 1965, *Ann. prop. ind.*, 1966, page 249);
- that the title *Mademoiselle Age Tendre* infringed the registered trademark *Mademoiselle* for a periodical (Paris Court of Appeal, February 3, 1968, *Ann. prop. ind.*, 1968, page 126);
- and that the name *Corot Twenty International Shop* infringed the mark *Twenty* (Paris Court of Appeal, March 11, 1968, *Ann. prop. ind.*, 1968, page 127).

On the other hand, it was held that the *Jasprol* trademark is neither an infringement nor an unlawful imitation of the *Aspro* mark, for, although the *Aspro* mark is fully contained in *Jasprol*, the latter mark begins and ends with consonants that make the individuality and special distinguishing power of *Aspro* completely disappear (*Tribunal de grande instance of the Seine*, May 8, 1967, *Ann. prop. ind.*, 1968, page 168).

5. In a judgment of February 11, 1966 (*Ann. prop. ind.*, 1967, page 61, and the note by R. Dusolier), the Paris Court of Appeal ruled on an infringement involving the use of an "accompanying" mark, that is, a mark added to that of the finished article to designate the material of which the article is composed.

A mark was filed in respect of knitted goods. The same mark was filed in respect of yarns. The Court felt that the two marks were independent and valid, as knitted goods and yarns are not similar goods. The Court held that a seller of sweaters bearing a label showing the mark of the yarn was guilty of infringement on the ground that the mark of the yarn was used in such a way that the public might think that it was the mark of the knitwear manufacturer.

Trade Names and Business Styles

Mention should be made of two important judgments which condemned the use of a business style in a quite different field of activity (Lyons Court of Appeal, May 18, 1967, and Paris Court of Appeal, October 20, 1967, *Ann. prop. ind.*, 1968, pages 177 and 178).

A trade name designates the business itself. There is an established rule of law according to which a trade name may be appropriated only in respect of the economic sector in which it is used. Hence, usurpation exists only where the usurped trade name is used in an identical or similar trade.

A business style, on the other hand, does not designate the business carried on but the actual company, with regard to its identity and its individuality.

The two judgments mentioned declared that, under ordinary law [*droit commun*], a more recent company's use of the same business style as that of an older company may, even if a different sector of activity is concerned, involve the civil responsibility of the second user if this use constitutes a injurious fault.

Injury is suffered by the first bearer of the business style if the use of that style by the second company creates confusion as to the identity of the two legal entities concerned, or allows the second company to profit from the reputation of the first one, or else vulgarizes and thus degrades the latter's name. This is particularly true where the first company's name is famous.

It was for these reasons that the Lyons Court of Appeal, at the request of the well-known company Nobel Bozel, prohibited another company from using the name Technobel and that the Paris Court of Appeal, at the request of the firm Compagnie d'Assurances La France-Vie, prohibited a company from using the title *La France-Vie* for a publication giving employment information.

Letter from the United States

(Second Part)

Francis C. BROWNE

Recent United States Patent Office Practices and Procedures

The United States Patent Office periodically publishes a compilation of the more important notices and rules that have been published from time to time in the *Official Gazette*. The latest compilation of these notices and changes appears in the *Official Gazette* of January 7, 1969 (Vol. 858, pp. 3 to 27). Some of the procedures adopted by the Patent Office since July 1, 1964, as outlined in some detail in the notices contained in this last compilation, are likely to be of interest to attorneys and patent practitioners in other countries, as well. The salient features of these new procedures will be briefly outlined below.

The topics taken from this consolidated listing are as follows:

- (1) Requirements and Procedures for Effecting Accelerated Examination of Applications,
- (2) Policy with Regard to Patentability of Computer Programs,
- (3) Guidelines for Disclosures of Utility in Drug Patent Applications,
- (4) Defensive Publications,
- (5) Abstracts, and
- (6) Incorporation by Reference in Patent Applications.

(1) Requirements and Procedures for Effecting Accelerated Examination of Applications

Normally patent applications will not be advanced for examination out of turn, but the Patent Office has permitted certain categories of cases to be given priority for examination upon filing a "Petition to Make the Application Special." Previously the categories of cases which could be "made special" involved some type of hardship situation. Situations which exemplify such hardship are: (a) the commercial utilization of the invention being delayed until a prospective manufacturer, having the necessary capital and facilities, obtains assurance that a patent will be granted, (b) a showing of the existence of actual infringement of the invention, and (c) the advanced age or poor state of health of the applicant requiring acceleration of the prosecution of the application in order to ensure the availability of the applicant for assistance in the prosecution and to enable him to have the patent granted before death or prior to further deterioration of his health. In each of these situations, the petitioner was required to file a petition under oath, with corroborating affidavits, to show the existence of the unusual conditions which would warrant making the application special and advancing it for examination out of its normal turn.

These special circumstances no longer need exist for an application to be made special. An applicant may file with a new application, or submit in an application which has not yet been examined by the examiner, a request that the application be made special and advanced for examination out of turn provided that:

- (a) he submits a written petition to make the application special;
- (b) he agrees to limit the claims in the application to 10 at any one time;
- (c) he limits all claims to a single invention;
- (d) he makes a pre-examination search and submits a statement to that effect, specifying whether the search was by the inventor, an attorney, a professional searcher, etc., and lists the field of search;
- (e) he submits one copy of each of the most pertinent references;
- (f) he submits a detailed discussion of the references pointing out wherein the claimed subject matter is distinguishable over the references.

The examiner's search of an application in this special status will be restricted to the subject matter encompassed by the claims, and the examiner will issue a first Office Action. In that Action he will set a three-month period for responding in the event the claims are not allowed in the form originally submitted. The applicant is encouraged to arrange for an interview with the examiner during this three-month response period and is required to provide the examiner with a copy of a proposed response at least one day before the interview. The proposed response will not become a part of the official record but will form a basis for discussion at the interview. Following the interview (or in the event no interview was held within the three-month period set for response to the first Action), the applicant files his record response to the Office Action. This response must be restricted to the rejections, objections and requirements made by the examiner in the Office Action. Any amendment which would require the examiner to broaden his field of search would not be considered a proper response. Within one month of the date of the applicant's formal response to the first Office Action, the examiner makes a final disposition of the case either by issuing a notice of allowance or by issuing a final rejection setting a shortened period of three months for response or appeal. No further response will be made by the examiner beyond the second (final) Action except to allow the application (if it is placed in condition for allowance) or to submit an examiner's answer to the applicant's brief on appeal if the applicant appeals from the final rejection. No personal interview is permitted after the final rejection is issued, except when requested by the examiner.

(2) Policy with Regard to Patentability of Computer Programs

The Patent Office has issued guidelines indicating that computer programming *per se*, whether defined in the form of a process or apparatus, will not be considered patentable. The rationale followed is that mental processes are not patentable and that a patentable process must be performed on physical materials or produce some appreciable change in their character or condition. Since a computer programming process is considered to produce no more than a numerical, statistical or other informational result which could be performed mentally, it is not considered to be directed to patentable subject matter. An exception is indicated in the case

where the process involving a computer is combined in an unobvious manner with physical steps, such as in the knitting of a pattern or in the shaping of metal. Since the process steps of a computer program are not considered to be patentable by the Patent Office, as involving a series of steps which could be performed mentally, the Patent Office does not consider that merely reciting means for performing each of these steps in an apparatus claim would involve patentable subject matter. Again, an exception is indicated for apparatus claims in the event a programmed computer is combined with unobvious other elements to produce a physical result of the nature for which process claims would be considered patentable.

However, a decision by the Court of Customs and Patent Appeals delivered on November 20, 1968, in *re Prater and Wei*, 159 USPQ 583, reversed a decision by the Patent Office Board of Appeals rejecting method and apparatus claims involving a computer program. The Patent Office Board of Appeals, in following the indicated policy guidelines of the Patent Office, rejected the application, not upon the prior art, but on the basis that the claimed subject matter was outside the statutory classes of patentable subject matter.

In the rather detailed and comprehensive decision, the Court indicated that there was nothing in the law which would deny patent protection to a process merely because the steps could alternatively be performed mentally by a person using pencil and paper. With regard to the indicated requirement of the Patent Office that a patentable process must be performed on physical materials and produce some appreciable change in their character or condition, the Court noted that patentable processes had been upheld in which the process acted on energy rather than physical matter. The Court then reversed the Patent Office's decision and indicated that both method and apparatus claims directed to a computer program in the patent application were patentable subject matter and should be allowed.

The Patent Office apparently was not satisfied with the decision of the Court of Customs and Patent Appeals and therefore requested a rehearing and reconsideration of the decision. The judge who wrote the original majority opinion had died and one new judge had been added to the Court when the request for rehearing and reconsideration was decided. The request was granted and the case was reheard on March 3, 1969, but the decision of the Court has not yet been handed down. In the event the Patent Office has not been able to convince the Court that its previous decision should be withdrawn, the Patent Office will probably seek to have the case reviewed by the United States Supreme Court.

Due to the controversial nature of the question of patentability of computer programs and the significance of the computer programming industry to the economy of the country, the Patent Office has initiated independent studies of various types of protection which could be provided for computer programs. The study is intended to encompass all aspects of the question, including whether or not there is actually a need for some type of protection for computer programs and what types of protection would best satisfy the need for protection if there is one.

(3) Guidelines for Disclosures of Utility in Drug Patent Applications

In order for a patent application to be complete, the utility of the invention must be clearly established. This has been particularly troublesome in patent applications for drugs or pharmaceutical products and the guidelines of the Patent Office are intended as a criterion for utility statements in the patent applications for drugs.

In establishing the utility of a drug, the utility must be definite and in a currently available form, the utilization of the product for further investigation or research not being sufficient. The utility must be specific and general assertions that the item is a therapeutic agent, is useful for pharmaceutical purposes, can be used for biological activity, etc., are not sufficient statements of utility. If the asserted utility of the compound is believable on its face to normally skilled persons in the art in view of the current state of the art, such a statement alone would be sufficient. On the other hand, if the utility is not quite obvious on the basis of the current state of the art, proof of utility is required. This proof can be established by clinical or in vivo or in vitro data. If the utility is directed solely to the treatment of human beings, clinical evidence must be submitted to prove the utility except as to those compositions whose properties are generally predictable from a knowledge of their components, such as laxatives, antacids, etc. Although absolute safety is not necessary in meeting the utility requirement, it must be demonstrated that the drug is safe under the conditions of use for which it is said to be effective. If the examiner can advance reasons for indicating that the drug is unsafe, proof of safety will be required.

In addition to there having to be some clear evidence that the drug has a definite utility, the specification must describe the manner and process for making and using the drug such that one normally skilled in the art could use it. If the statement of utility connotes how to use the drug and the art recognizes the standard modes of using it, this is sufficient. However, if the art is unaware of any successful treatments with chemically analogous compounds, a complete statement of how to use the compound must be incorporated.

With respect to the adequacy of disclosure of a claimed genus, representative examples, together with a statement applicable to the genus as a whole, will ordinarily be sufficient if contemporary art indicates that the claimed genus would probably possess the asserted utility.

In the case of mixtures including a drug or method of treating a specific condition with a drug, whether old or new, a specific example is ordinarily required which should include the organism treated. However, when the example can be inferred from the disclosure in view of the known state of the art, such as in the case of a gargle, specific examples are not necessary. In the event the claim compounds are capable of several different utilities and one use only is adequately described, the additional utilities need only be described in detail if they are not believable on their faces to those normally skilled in the art in view of the contemporary knowledge of the art.

(4) Defensive Publications

The Patent Office has instituted a program of making available to the public the disclosures of certain applications in which the owner would prefer to publish the data in lieu of subjecting the application to a novelty examination and obtaining a patent. The "defensive publication," as it is called, is printed in the *Official Gazette* in the form of an abstract of the technical disclosure and is made a part of the Patent Office search files.

The program is open to any applicant having a patent application awaiting action by the Patent Office. He must file a written request no later than eight months after the effective filing date in the United States and must agree to the conditions of the program. This includes a waiver of his patent rights and authorization to open the complete application to inspection by the general public after publication of the abstract. He must expressly abandon the application, effective five years after the earliest effective United States filing date, unless interference proceedings have been instituted in the meantime. He must also waive his rights to a patent on any continuing application filed after the expiration of 30 months from the earliest effective United States filing date of the application. Until January 1, 1969, the program was open to any pending application awaiting the first Action by the Patent Office without regard to the filing date of the application, so that until January 1, 1969, any applicant did not have to file the request within eight months after the US effective filing date.

During the five-year period after the effective filing date of the defensive application, interferences could be declared between the defensive publication and other applications and patents. If an interference is declared or a decision mailed refusing to declare interference within the five-year period, abandonment of the defensive application will be stayed. Termination of any interference proceedings in favor of the owner of a defensive publication would render the express abandonment of the application ineffective but no enforceable patent would issue since the applicant must submit a disclaimer of the entire term of any patent which might otherwise issue as a result of the interference proceeding.

No special fees are required to obtain the benefits of this "defensive publication" program. The applicant would be permitted to provide an expanded abstract of the technical disclosure of up to 200 words. The abstracts would be printed in the *Official Gazette* in a separate section identifying them as being open to inspection by the general public. Following publication, the application is placed on file in the record section where it is available for inspection upon written request and copies may be obtained upon payment of a fee.

After the defensive publication has appeared in the *Official Gazette*, the abstract and drawings are to be treated in the same category as prior art printed publications. The entire application is available as evidence of prior knowledge of the subject matter as of the actual date of filing the application in the Patent Office.

(5) Abstracts

Abstracts have been required in patent applications since 1966. The abstract is an objective condensation of the disclosure rather than a statement of that part of the disclosure which is being claimed as an invention. In the chemical field, the abstract is required to include a statement of utility of the subject matter of the disclosure and particularly that which is related to the invention.

For the past year, the abstract of each patent has been printed in the *Official Gazette* in place of a claim, which had previously been printed.

(6) Incorporation by Reference in Patent Applications

Material which is essential to support the claims in a US patent application or is necessary to provide an adequate disclosure of the invention may be incorporated in US patent applications by reference to an issued United States patent or to an allowed United States patent application. However, material which is essential to a patent application may not be incorporated by reference to patents issued by countries other than the United States or by reference to non-patent publications. Further, material which is essential to a patent application may not be incorporated by reference to another patent or application which itself incorporates this essential material by reference to another patent or application.

If an application is filed that incorporates essential material by reference to a US patent or to a pending and commonly owned US application for which the issue fee has been paid, before the application is examined, the Patent Office will require a copy of the referenced material together with an affidavit executed by the applicant or his attorney or agent of record stating that the copy consists of the same material incorporated by reference in the referencing application.

In event an application is filed in which essential material is incorporated by reference to a pending and commonly owned application other than one on which the issue fee has already been paid, prior to examination of the application, the applicant will be required to submit an amendment adding to the application the material that was incorporated by reference. The amendment must be accompanied by an affidavit executed by the applicant or his attorney or agent of record stating that the amendatory material consists of the same material that was incorporated by reference in the referencing application.

In the event an application is filed with a complete disclosure and it is desired to incorporate certain of the essential material by reference, an amendment may be filed canceling this essential material and the same material substituted by reference to a patent or a pending and commonly owned allowed US patent application on which the issue fee has been paid. This amendment must be accompanied by an affidavit executed by the applicant or his attorney or agent of record stating that the material canceled from the application is the same material that has been incorporated by reference.

Even though material in a patent application is included by reference to a United States patent or an allowed United

States patent application, the referencing application must include at least:

- (1) an abstract,
- (2) a brief summary of the invention,
- (3) an identification of the referenced patent or patent application,
- (4) at least one view of a drawing in those applications admitting of a drawing, and
- (5) one or more claims.

The Patent Office notes that it would be advisable to direct particular attention to specific portions of the referenced patent or application in which the essential material is to be found.

These guidelines do not eliminate the prior practice of permitting the incorporation of non-essential subject matter by reference to United States patents or patents of any foreign country, prior filed, commonly owned United States patent applications and non-patent publications for the purposes of indicating the background of the invention or illustrating the state of the art.

BOOK REVIEWS

La protection des inventions en Union soviétique et dans les républiques populaires d'Europe [Protection of Inventions in the Soviet Union and in the People's Republics of Europe]. By *Martine Hiance* and *Yves Plasseraud*. Preface by *Paul Mathély*. Center of International Industrial Property Studies of the Faculty of Law and Economic and Political Sciences of Strasbourg. Librairies techniques, Paris, 1969. 446 pp.

This work by Miss Martine Hiance and Mr. Yves Plasseraud is a systematic examination of patent law in the Soviet Union and eight other socialist countries of Europe (Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Rumania and Yugoslavia).

In an introductory chapter, the authors describe the economic, political and sociological background of patent law in the socialist countries and explain its most noteworthy particularities. Each of the following chapters is then devoted to a study of invention law in a specific country.

One of the most commendable features of this book is the fact that the authors did more than make a simple study of texts; they also carried out a personal investigation among officials and practitioners in the various countries.

The detailed analysis of basic legal notions, administrative and judicial procedure, and the system of licenses of exploitation conforms to strict scientific standards and, at the same time, will be of great practical usefulness to anyone called upon to take an active part in the development of economic exchanges between East and West.

P. M.

Selection of New Publications

BERCOVITZ (Alberto). *Requisitos (Los) positivos de patentabilidad en el derecho alemán. Con una referencia final al derecho español*. Madrid, Alberto Bercovitz, 1969. - 645 p.

BRUNNE (Klaus). *Chemiepatente. Mit 19 Bildern und 17 Tabellen*. Leipzig, VEB Deutscher Verlag für Grundstoffindustrie, 1968. - 209 p.

CARTER (E. F.). *Dictionary of inventions and discoveries*. London, F. Muller, 1969. - 204 p.

- CONSEIL DE L'EUROPE. COMITÉ D'EXPERTS EN MATIÈRE DE BREVETS. *International classification of patents for invention under the European Convention of 19th December 1954*. London, Morgan-Grampian, 1968.
- CONSEIL DE L'EUROPE. COMITÉ D'EXPERTS EN MATIÈRE DE BREVETS. *Classification internationale des brevets d'invention sous les auspices de la Convention européenne du 19 décembre 1954*. London, Morgan-Grampian, 1968.
- DAVID (Eugène). *Droit usuel des marques de fabrique et de commerce comprenant toutes les indications utiles pour le choix d'une marque et son dépôt, ainsi qu'un index de classification et un abrégé de jurisprudence*. Paris, Pigier. - 164 p. Bibliothèque commerciale, industrielle et financière.
- DEUTSCHES PATENTAMT. *Taschenbuch des gewerblichen Rechtsschutzes*. Cologne and Munich, C. Heymanns, 1968. - 2nd edition.
- DICK (Oskar). *Bewertung und Verwertung von Erfindungen mit Patent- und Lizenzbeispielen. Leitfaden für Anmeldung und Auswertung mit Steuer- und Bewertungsrichtlinien für freie und Arbeitnehmererfindungen*. Hannover and Kirchrode, T. Oppermann, 1968. - 286 p. 2nd edition.
- GAZDA, KÖVESDI and VIDA. *Találmányok, Szabadalmak (Inventions and Patents)*. Mérnöki, Továbbképző intézet. Budapest, 1969. - 223 p. Third edition.
- GOSUDARSTVENNAIA PUBLICHNAIA NAUCHNOTEKHNICHESKAIA BIBLIOTEKA SSSR and GOSUDARSTVENNAIA PUBLICHNAIA BIBLIOTEKA IM. M. E. SALTUKOVA-SHCHEDRINA. *Sputnik rabochego-izobretatelia i racionalizatora. Bibliograficheskoe posobie*. Moscow, "Kniga", 1967. - 64 p.
- GRECO (Paolo) and VERCELLONE (Paolo). *Invenzioni (Le) e i modelli industriali*. Turin, Unione tipografico-editrice, 1968. - 424 p. Trattato di diritto civile italiano. Vol. 11. Tome 2.
- GROBE (Hans) and JETTER (Christoph). *Recht (Das) des unlauteren Wettbewerbs. Allgemeinverständliche Darstellung für die tägliche Wirtschaftspraxis mit zahlreichen Beispielen aus der Rechtsprechung und den wichtigsten Rechtsvorschriften*. Neuwied & Berlin, Luchterhand, 1968. - 168 p.
- HAMM (Ludwig) and BÜCKER (Joseph). *Gesetz über die Werbung auf dem Gebiete des Heilwesens (Heilmittelwerbegesetz). Kommentar*. Cologne, C. Heymanns, 1966. - 128 p.
- JEWKES (John), SAWERS (D.) and STILLERMAN (R.). *Invention (L') dans l'industrie de la recherche à l'exploitation. 60 exemples récents*. Paris, Les Editions d'organisation et Entreprise moderne d'édition, 1966. - 383 p. Pref. Pierre-Henri Giscard. Translation Anne Ciry: The sources of invention.
- KLEINMANN (Werner). *Warenzeichenrecht*. Neuwied & Berlin, Luchterhand, 1968. - 128 p.
- LIEDL (Gerhard). *Patentmeldungen in USA*. Munich, G. Liedl, 1968. - 60 p. 2nd edition.
- LIEDL (Gerhard) and HÄNZEL. *Vorabgesetz (Das). Erläuterung der Änderung des Patentgesetzes*. Munich, G. Liedl, 1968. - 86 p. 2nd ed.
- Patentgesetz - Gebrauchsmuster-gesetz - Warenzeichengesetz mit Arbeitnehmererfindungsgesetz, Patentanwaltsordnung und anderen Vorschriften des gewerblichen Rechtsschutzes, sowie dem Internationalen Recht und dem Recht der Deutschen Demokratischen Republik*. Munich, C. H. Beck, 1968. - 691 p. 7th edition.
- PEROT-MOREL (Marie-Angèle). *Principes (Les) de protection des dessins et modèles dans les pays du Marché Commun*. Paris and The Hague, Mouton, 1968. - 436 p. Preface: Henri Desbois. Publications de la Faculté de droit et des sciences économiques de Grenoble. Collection du Centre de recherche juridique. Série: Droit de la propriété industrielle. Vol. 1.
- STUMPF (Herbert). *Lizenzvertrag (Der)*. Francfort/M., Maschinenbau-Verlag, 1968. - 375 p. 4th edition.
- VALANCOGNE (François). *Invention (L'). Sa brevetabilité. L'étendue de sa protection*. Paris, Librairies techniques, 1968. - Tome I: 359 p. Préface de Albert Chavanne. Centre d'études internationales de la propriété industrielle. Faculté de droit et des sciences politiques et économiques de Strasbourg.
- VOSSIUS (Volker) and JUNG (Elisabeth). *Patent act, trade mark act, Gebrauchsmuster act of the Federal Republic of Germany. Complete texts of January 2, 1968 in accordance with the Act for amending the Patent act, Trade mark act and further acts of September 4, 1967 with a short commentary on the amendments*. Munich, Wila Verlag, 1968. - 142 p. 2nd edition.
- WADE (Worth). *Contre l'espionnage industriel*. Paris, Les éditions d'organisation, 1968. - 165 p. Traduit de l'américain et adapté par Bernadette Rouyrre avec la collaboration de Philippe Rouyrre.
- WOODCROFT (Bennet). *Alphabetical index of patentees of inventions with an introduction and appendix of additions and corrections compiled in the Patent office library*. London, Evelyn, Adams & Mackay, 1969. - 647 p. Preface: D. R. Jamieson.
- WÜGER (A.). *Schweizerisches Patentrecht*. Berne, "Neuheiten und Erfindungen". - 153 p. 2nd edition.

CALENDAR OF MEETINGS

BIRPI Meetings

August 29, 1969 (Geneva) — Information Meeting of International Non-Governmental Organizations

Object: To appoint observers to the International Copyright Joint Study Group — *Invitations:* Interested Organizations — *Note:* Meeting convened jointly with Unesco

September 17, 1969 (Geneva) — Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — Technical Coordination Committee (2nd Session)

September 18 and 19, 1969 (Geneva) — Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — First Ordinary Session

September 22 to 26, 1969 (Geneva) — Interunion Coordination Committee (7th Session)

Object: Program and Budget of BIRPI for 1970 — *Invitations:* Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Denmark, France, Germany (Fed. Rep.), Hungary, India, Iran, Italy, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America

September 22 to 26, 1969 (Geneva) — Executive Committee of the Conference of Representatives of the Paris Union (5th Session)

Object: Program and Budget (Paris Union) for 1970 — *Invitations:* Argentina, Australia, Austria, Cameroon, France, Germany (Fed. Rep.), Hungary, Iran, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America — *Observers:* All the other member States of the Paris Union; United Nations; International Patent Institute

September 22 to 26, 1969 (Geneva) — Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration (4th Session)

Object: Annual Meeting — *Invitations:* All member States of the Lisbon Union — *Observers:* All other member States of the Paris Union

September 29 to October 3, 1969 (Washington) — International Copyright Joint Study Group

Object: To examine all questions concerning international copyright relations — *Invitations:* Argentina, Australia, Brazil, Canada, Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), India, Italy, Ivory Coast, Japan, Kenya, Mexico, Netherlands, Nigeria, Peru, Philippines, Rumania, Senegal, Spain, Sweden, Tunisia, United Kingdom, United States of America, Yugoslavia — *Observers:* Organizations to be designated — *Note:* Meeting convened jointly with Unesco

September 30 to October 2, 1969 (Geneva) — Committee of Experts on the Establishment of a "Priority Fee" (Paris Convention)

Object: Implementation of the Recommendation adopted by the Stockholm Conference — *Invitations:* Algeria, Argentina, Austria, France, Germany (Fed. Rep.), Iran, Italy, Japan, Kenya, Netherlands, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia — *Observers:* Intergovernmental and international non-governmental Organizations concerned

October 6 to 10, 1969 (Vienna) — Expert Group Meeting on the Organization and Administration of Industrial Property Offices

Object: Discussion of various aspects of the organization and administration of Industrial Property Offices in developing countries — *Invitations:* To be announced later — *Note:* Meeting convened jointly with the United Nations Industrial Development Organization (UNIDO)

October 21 to 24, 1969 (Munich) — Joint ad hoc Committee on the International Classification of Patents (2nd Session)

Object: Practical application of the Classification — *Invitations:* Czechoslovakia, France, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Spain, Switzerland, United Kingdom, United States of America — *Observers:* International Patent Institute — *Note:* Meeting convened jointly with the Council of Europe

October 27 to 31, 1969 (Geneva) — Committee of Experts on a Model Law for Developing Countries on Industrial Designs

Object: To study a Draft Model Law — *Invitations:* Developing countries members of the United Nations — *Observers:* Intergovernmental and international non-governmental Organizations concerned

November 3 to 8, 1969 (Cairo) — Arah Seminar on Industrial Property

Object: Exchange of views on industrial property questions and on their importance for developing countries — *Invitations:* Algeria, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Republic of Yemen, Saudi Arabia, South Yemen People's Republic, Sudan, Syria, Tunisia, United Arab Republic; Sheikdoms of Abu Dhabi, Bahrain, Dubai, Qatar, and Sharjah — *Observers:* Intergovernmental and international non-governmental Organizations concerned

December 10 to 12, 1969 (Paris) — Intergovernmental Committee Rome Convention (Neighboring Rights), convened jointly by BIRPI, ILO and Unesco (2nd Session)

December 15 to 19, 1969 (Paris) — Permanent Committee of the Berne Union (14th Ordinary Session)

January 19 to 23, 1970 (Geneva) — Committee of Directors of National Industrial Property Offices of the Madrid Union (Marks)

Object: Administrative questions — *Invitations:* All member States of the Madrid Agreement (Marks)

January 26 to 30, 1970 (Geneva) — Committee of Experts for the Revision of the Madrid Agreement (Marks)

March 9 to 20, 1970 (Geneva) — Preparatory Study Group on PCT Regulations

Object: Study of Draft PCT Regulations — *Invitations:* All member States of the Paris Union — *Observers:* Intergovernmental and international non-governmental Organizations concerned

May 25 to June 19, 1970 — Diplomatic Conference for the adoption of the Patent Cooperation Treaty (PCT)

Invitations: All member States of the Paris Union — *Observers:* Other States; Intergovernmental and international non-governmental Organizations concerned — *Note:* The exact place of the Conference will be announced later

Meetings of Other International Organizations Concerned with Intellectual Property

September 8 to 12, 1969 (Nuremberg) — International Federation of Musicians (FIM) — 7th Ordinary Congress

October 14 to 17, 1969 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents — Working Group

November 12 to 14, 1969 (Strasbourg) — Committee of Experts on Patents of the Council of Europe

November 25 to 28, 1969 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents — Working Group

December 8 to 11, 1969 (The Hague) — International Association for the Protection of Industrial Property (IAPIP) — Council of Presidents

ANNOUNCEMENT OF A VACANCY FOR A POST IN BIRPI

COMPETITION No. 88

Legal Assistant in the Copyright Division

Category and grade: P.3

Principal Duties:

In general to assist in the implementation of BIRPI's copyright and neighbouring rights program.

The particular duties will include:

- (a) legal studies on questions concerning copyright and neighbouring rights;
- (b) drafting of working papers for, and reports on, international meetings;
- (c) participation in meetings of other international organizations concerning copyright and neighbouring rights;
- (d) maintaining up to date a complete collection of copyright and neighbouring rights legislation of all countries.

Qualifications:

- (a) University degree in law or equivalent qualification;
- (b) Experience in the field of copyright and neighbouring rights (preferably including their international aspects);
- (c) Excellent knowledge of one of the official languages (English and French) and at least a good working knowledge of the other.

Nationality:

Candidates must be nationals of one of the member States of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no national is on the staff of BIRPI.

Age limit:

Candidates must be less than 50 years of age at date of appointment.

Date of entry on duty:

As mutually agreed.

Application forms and full details regarding the conditions of employment may be obtained from the *Head of Personnel, BIRPI, 32, chemin des Colombettes, 1211 Geneva 20, Switzerland*. Application forms, duly completed, should reach BIRPI not later than *September 30, 1969*.

ANNOUNCEMENT OF A VACANCY FOR A POST

**Office of the International Union
for the Protection of New Varieties of Plants
(UPOV), to be established in Geneva,
Switzerland**

*Terms and Conditions of Appointment of
VICE SECRETARY-GENERAL*

Category and Grade

D.1 on the BIRPI/UN scale, with entry at a step to be determined having regard to the qualifications and experience of the person appointed.

Principal responsibilities and duties

Subject to the responsibilities of the Secretary-General, the incumbent will direct the Plant Varieties Department of the Bureau of UPOV which Department will be responsible for all questions concerning the substantive provisions of the Convention for the Protection of New Varieties of Plants and for all activities concerning international cooperation in the field of plant breeders' rights.

Subject to the general directives of the Council of UPOV and the overall responsibility of the Secretary-General, the duties of the incumbent will include in particular:

- i) study and preparation of measures to safeguard the interests and encourage the development of UPOV;
- ii) preparation and presentation of reports, working papers, meetings, programmes, plans and publications on plant breeders' rights and related matters;
- iii) execution of programmes approved by the Council of UPOV;
- iv) maintenance of contacts with and provision of advice and assistance to plant breeders' rights' offices of member and other States;
- v) contacts with international and other organizations, and participation in their meetings;
- vi) cooperation with the appropriate sections of BIRPI in relation to the preparation of budgets and generally in the use of BIRPI common services.

Qualifications and Experience

- (a) University degree in a relevant field of agricultural science, economics, administration or law, or an equivalent academic qualification;
- (b) Wide experience in the field of plant breeders' rights including its international aspects;
- (c) Excellent knowledge of one of the official languages (English, French and German) and preferably a good knowledge of the two others.

The incumbent must have the national and international standing and specialised experience necessary to carry out the duties successfully.

Nationality

Candidates must be nationals of one of the member States of UPOV, or of one of the States which have signed but have not yet ratified the Convention for the Protection of New Varieties of Plants.

Age limit

Normally, less than 55 years of age at date of appointment.

Date of entry on duty

As mutually agreed.

Conditions of employment

The conditions governing employment are substantially the same as those defined in the Staff Regulations and Rules of BIRPI. They follow generally those of the United Nations "common system."

- Duration of appointment: probationary period of two years, after satisfactory completion of which a permanent appointment will be offered.
- Medical examination: the appointment is subject to a satisfactory medical examination.
- Annual salary (present rates): from 69,440 Swiss francs (step 1) to 81,026 Swiss francs (highest step), by annual or biennial increments.
About 9% of the salary is deducted as a contribution to the pension scheme.
- Annual post adjustment (present rates): — with dependants: from 5,858 Swiss francs (amount corresponding to the starting salary) to 6,506 Swiss francs;
— without dependants: from 3,905 Swiss francs (amount corresponding to the starting salary) to 4,337 Swiss francs.
- Dependency allowances: 1,728 Swiss francs per year for dependent spouse;
1,296 Swiss francs per year for each dependent child.
- Education grant: 75% of the cost of attendance up to a maximum of 4,320 Swiss francs for each dependent child (under the age of twenty-one).
- Salary, post adjustment and allowances are tax free.
- Conditions also include: payment of travel and removal expenses (including installation grant); five-day week; annual leave of 30 working days; home leave; pension scheme and medical benefit scheme.

Applications

Persons wishing to apply should write to the Head, Administrative Division, BIRPI, 32, chemin des Colombettes, Geneva, Switzerland, for application forms. These forms, duly completed, should be returned, *not later than September 15, 1969*, to the Division of International Organisations of the Federal Political Department, 3000 Berne (the Swiss Federal Council being the supervisory authority of UPOV).