

# Industrial Property

Published monthly  
Annual subscription:  
Sw.fr. 95.—  
Each monthly issue:  
Sw.fr. 10.—

15th year - No. 10  
October 1976

Monthly Review of the  
World Intellectual Property Organization

---

## Contents

### WORLD INTELLECTUAL PROPERTY ORGANIZATION

— **WIPO Convention.** Accession. Bahamas ..... 238

### INTERNATIONAL UNIONS

— **Paris Convention.** Declaration of Succession to the Paris Union. Bahamas ..... 239

— **Strasbourg Agreement.** Accession. German Democratic Republic ..... 239

### GENERAL STUDIES

— Anticipation Searching under the Uniform Benelux Trademark Law (L. J. M. van Bauwel) 240

### EXHIBITIONS

— **Italy.** Decrees Concerning Temporary Protection at Exhibitions ..... 244

### NEWS ITEMS

— Canada, India ..... 245

BOOK REVIEWS ..... 245

CALENDAR OF MEETINGS ..... 247

### INDUSTRIAL PROPERTY LAWS AND TREATIES

— *Editor's Note*

— **Australia** — Trade Marks Act 1955-1973 ..... Text 3-001

— **Bilateral Treaties.** Exchange of Notes of October 12, 1974, between Australia  
and the People's Republic of China Concerning the Registration of Trade Marks Text 3-001

---

© WIPO 1976

Any reproduction of official notes or reports, articles and translations of laws or agreements, published in this review, is authorized only with the prior consent of WIPO.

---

# World Intellectual Property Organization

## WIPO Convention

### Accession

#### BAHAMAS

The Government of the Bahamas deposited on October 4, 1976, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Bahamas have fulfilled the condition set forth in Article 14(2) of the said Convention by concurrently acceding to the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works, as provided for in Article 29*bis* of the said Act and with the declaration provided for in Article 28(1)(*b*) to the effect that the accession shall not apply to Articles 1 to 21 and to the Appendix.

Pursuant to Article 15(2) the WIPO Convention will enter into force for the Bahamas on January 4, 1977.

WIPO Notification No. 92, of October 8, 1976.

## International Unions

### Paris Convention

#### Declaration of Succession to the Paris Union

##### BAHAMAS\*

By letter of July 5, 1976, received by the Government of Switzerland on July 27, 1976, the Minister of Foreign Affairs of the Government of the Bahamas declared that his Government considered itself bound by the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Lisbon on October 31, 1958. This communication is based on a declaration of application previously formulated by the Government of the United Kingdom in conformity with Article 16*bis*(1) of the Convention. The Bahamas are therefore considered to be a party to the said Convention as from July 10, 1973, the date of their accession to independence. (*Translation*)

Notification by the Government of Switzerland to the Member Countries of the Paris Union, of August 31, 1976.

### Strasbourg Agreement

#### Accession

##### GERMAN DEMOCRATIC REPUBLIC

The Government of the German Democratic Republic deposited on August 20, 1976, in accordance with the provisions of Article 16(5), its instrument of accession to the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971.

Furthermore, this instrument of accession contains the following declaration:

“In its position on Article 12, paragraph (3) of the Agreement which says that the provisions of Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement as far as such application concerns colonial areas and other dependent territories, the German Democratic Republic is guided by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (Res. 1514 (XV) of December 14, 1960) which proclaim the necessity to bring to a speedy and unconditional end colonialism in all its forms and manifestations.” (*Translation by the German Democratic Republic*).

Pursuant to the provisions of Article 13(1)(b), the Strasbourg Agreement will enter into force with respect to the German Democratic Republic on August 24, 1977.

Strasbourg Notification No. 28, of August 24, 1976.

---

\* The Government of the Bahamas has not yet fulfilled the condition set forth in Article 13(9) of the Lisbon Act (1958) of the Paris Convention (choice of class of contribution).

## General Studies

### Anticipation Searching under the Uniform Benelux Trademark Law

L.J.M. VAN BAUWEL \*

#### Statutory Texts

1. Articles 9 and 6B of the Uniform Benelux Trademark Law<sup>1</sup> institute, respectively, an *optional* anticipatory search and a possible *compulsory* examination.

Article 9 reads as follows:

"At the request of persons filing marks or of third parties, the Benelux Office shall, for a consideration, undertake any examination of prior registrations of marks in the Benelux register.

If required, the Office shall likewise undertake the examinations provided for in Article 6B and Article 7B of prior registrations of marks in the Benelux register.

It shall transmit the results of the examination to the party having made the request without any statement of reasons or conclusions whatever.

With a view to examination thereof, registered marks shall be classified according to a system established by the Benelux Office."

Article 6B provides that:

"B. Admissibility of the filing of a mark may, by Rule, be made conditional upon performance of one of the following acts, at the option of the person effecting the filing:

1. either the production of a document attesting to the fact that an examination of prior registrations was carried out by the Benelux Office within the three months preceding the filing of the mark, in accordance with the provisions laid down in the Rules;
2. or the submission, at the time of filing and through the intermediary of the authorities entrusted with receiving the filing, of a request for examination.

In the latter case the instrument of filing shall be provisional. It shall have legal effect only in the event that the person effecting the filing, or his agent,

upon receipt of the results of the examination of prior registrations and within a time limit to be prescribed by the Rules, announces his wish to maintain the filing. If and when the instrument of filing acquires legal force, it shall retain its original date."

2. The requirement of anticipation searching may also be extended to international filings under the terms of Article 7B which stipulates:

"B. However, if any Rule should make the admissibility of Benelux filings subject to the conditions mentioned in Article 6B, then it may likewise provide that international filings shall be subjected *ex officio* to an examination for anticipation."

3. The institution of a compulsory anticipation search, as provided for by the Uniform Benelux Trademark Law, was concretized in the Executive Rules of July 31, 1970<sup>2</sup> (amended by the Protocol of November 21, 1974),<sup>3</sup> not only as regards Benelux trademark filings but also international registrations. The physical introduction of anticipation searching had, however, to be delayed for practical reasons. The relevant Articles of the Executive Rules read as follows:

#### Article 2

"The application shall be accompanied by the following documents:

(a) a request for an examination for anticipation or, alternatively, a certificate from the Benelux Trademark Office attesting to the fact that an examination for anticipation was carried out or requested within the three months preceding the filing of the mark;"

#### Article 15

"International filings in respect of which the applicants have asked for the effects to extend to Benelux territory shall *ex officio* be subject to an examination for anticipation. The results of such examination shall be communicated to the proprietor of the mark in question."

\* Doctor of Laws, Director of the Benelux Trademark Office and of the Benelux Designs Office.

<sup>1</sup> See *Industrial Property*, 1969, p. 307.

<sup>2</sup> See *Industrial Property*, 1970, p. 369.

<sup>3</sup> See *Industrial Property*, 1975, p. 260.

### Article 35

"1. These Rules, with the exception of Articles 2 (a) and 15, shall enter into force on the date of entry into force of the Uniform Law.

2. The Executive Board of the Benelux Office shall determine the date of entry into force of Articles 2 (a) and 15.

Such date may be no later than five years in the case of Article 2 (a), and ten years in the case of Article 15, from the date of entry into force of these Rules."

4. At its meetings of November 13, 1975, the Executive Board of the Benelux Trademark Office decided, under the above-mentioned Article 35.2 of the Executive Rules, that all Benelux trademark filings would be subjected to a compulsory anticipation search as from January 1, 1976.<sup>4</sup>

Under the same Article (35.2), the Executive Board of the Benelux Trademark Office decided at its meeting of April 2, 1976, that *international filings* (dated October 1, 1976, or later) would also be subjected *ex officio* to anticipation searching, *as of October 1, 1976*.<sup>5</sup>

### Optional or Compulsory Anticipation Searching

5. The *optional* anticipation search is that carried out by the Benelux Office at the request of any interested person without a mark being filed.

The Benelux Office carries out a search restricted to identical marks (so-called "identical search") on a request from any interested person. However, this type of restricted search does not satisfy the requirements of the Uniform Benelux Law that anticipation searches should cover both identical marks and similar or analogous marks which might conflict with the mark being searched.

6. The *compulsory* anticipation search is that carried out by the Benelux Office as from January 1, 1976. It can take place before filing or be requested at the same time as filing. In the case of international filings for which the *ex officio* anticipation search will apply as from October 1, 1976, the search cannot, of course, take place before such filings are recorded in the international register. It is only once the International Bureau has notified the international registrations that the Benelux Office can put in hand its anticipation search.

### Purpose of the Anticipation Search

7. As expressed in the wording of Articles 6C and 9 of the Uniform Benelux Law, the anticipation search is basically of a documentary nature. Article 6C stipulates, *inter alia*:

"C. the filing of a mark cannot give rise to any examination whatever as to substance the results of which might be invoked by the Benelux Office against the person having effected the filing."

The Benelux Office is thus obliged to forward the results of its search to the interested party without stating reasons or conclusions.

The unavoidable result is that the compulsory anticipation search can have no legal effects. In this context, the explanatory notes to the Uniform Benelux Law also add:

"The sole aim of the compulsory anticipation search is to oblige the applicant to obtain information as to the likelihood of his right being valid. Thus informed of the position in respect of anticipation, the final decision on the filing rests with the applicant. The part played by the Office remains limited to that of a purely objective provider of information."

This explains why Article 6B of the Uniform Benelux Law requires that, where the search is requested at the same time as the filing, the applicant or his agent must give written confirmation to the Benelux Office that he wishes to maintain his filing. In such a case, the filing is recorded provisionally. The period of time within which the applicant may confirm his wish to maintain the filing is set in Article 6 at four months starting from the date the results of the anticipation search are dispatched (Article 7 (1) of the Executive Rules). When it becomes definitive, the filing keeps its initial date.

8. The situation is different in respect of international registrations. As pointed out in paragraph 6, above, international filings which are valid on Benelux territory and are dated October 1, 1976, or later, are subject to an *ex officio* anticipation search after entry in the international register. The results of the search, together with the most pertinent anticipations, are communicated by the Benelux Office directly to the proprietor of the mark. Naturally, the search enables the proprietor to establish the true extent of the exclusive right he is claiming without, however, forcing him to react to the results of the search, i.e. he can remain passive. He is quite at liberty of course, to take action if he wishes, for example by requesting that his registration be deleted from the Benelux countries or by limiting the list of product headings.

It should be mentioned in this connection that any request for an amendment to an international registra-

<sup>4</sup> See *Industrial Property*, 1975, p. 365.

<sup>5</sup> See *Industrial Property*, 1976, p. 223.

tion has to be forwarded to the International Bureau by the national office of the applicant's or proprietor's country.

#### Formalities for Requesting an Anticipation Search

9. A distinction is made between a request for an anticipation search without the mark being filed (optional search) and a search made at the same time as the filing (compulsory search).

10. A request for an anticipation search submitted separately from the filing must contain the following particulars (Article 19 of the Executive Rules; use of the special form drawn up by the Benelux Office is recommended):

- (a) the applicant's name and address;
- (b) a reproduction of the mark, and where applicable, mention of the color or colors thereof and of the fact that the mark represents, in whole or in part, the shape of the article or of its packaging;
- (c) a precise list of goods;
- (d) where applicable, mention that the mark is a collective mark.

If the request relates to a mark already registered, the name and address of the applicant and the number of the registration should be given.

11. A Benelux filing made on or after January 1, 1976, is only acceptable if accompanied by either a request for an anticipation search or a certificate from the Benelux Office stating that an anticipation search has been carried out or requested during the three months prior to filing.

The letter (or a photocopy thereof) from the Benelux Office acknowledging receipt of the search request (see paragraph 10 above), or the letter communicating the search results, are proofs that the search has been either requested or carried out.

12. Thus, where a request is made for an anticipation search without a contemporaneous filing, that search can nevertheless be used to satisfy the statutory requirement for a compulsory search insofar as a request for filing of the searched mark is made within three months of the date that the results of the anticipation search are dispatched by the Benelux Office. Naturally, the mark itself may not be changed and the list of goods may not be extended. On the other hand, however, the applicant may request, free of charge, that the list of goods be restricted after he has received the results of the search and as long as the filing instrument remains provisional. In this case again, the filing date of the mark is the date on which the application for filing was made.

13. As already pointed out in paragraph 7 above, where the request for anticipation searching is submitted at the same time as the filing, the applicant (or his agent) is required to confirm in writing to the Benelux Office that he maintains his filing as it stands or wishes to restrict the list of goods. This confirmation must be given within four months of dispatch of the search results by the Benelux Office.

14. Logically, if the applicant does not confirm his filing or fails to do so within the prescribed time limits, the Benelux Office will consider the filing to have been relinquished. In such case, the basic fees for filing the mark are returned after deduction of an amount laid down in the Executive Rules (currently FB 735.— or f. 50.—; Article 7 (2) of the Rules). Fees paid for the anticipation search are, of course, never reimbursed.

#### The Anticipation Search Proper

15. The anticipation search for purely *word* marks is carried out at the Benelux Office on a computer. The Benelux Office then forwards the complete list produced by the computer to the applicant (or his agent) and marks—with a red arrow—those the Office feels to be the most pertinent. As mentioned above (paragraph 7), this information is purely documentary. It is therefore for the applicant (or his agent) to assess the value and real extent of his right to the mark and to decide on that basis whether he wishes to maintain his filing, either wholly or partially, or to relinquish it.

The printout of the search results contains the following data:

- the mark itself; its registration number (Benelux or international); the classes of goods; and the date of publication (in the *Recueil des marques Benelux* or *Les Marques internationales*).

Thus, the Benelux Office does not forward the names of the proprietors of the marks referred to, the reproduction of those marks, the detailed list of goods or the modifications made to the situation of the marks (such as changes of name and/or address, restrictions, recording of licenses, etc.) after their registration. This information (and/or copies) can be obtained from the Benelux Office on payment of the relevant fees laid down in Article 28 of the Executive Rules. The Benelux register may also be consulted free of charge at the Benelux Office in The Hague; copies of the register are kept by the Belgian authorities in Brussels and the Luxembourg authorities in Luxembourg.

In the case of compulsory searches of international registrations (see paragraph 8 above), the results of the search are sent directly to the proprietor of the mark, but requests for the recording of modifications

to the registrations must, on the other hand, be forwarded to the International Bureau through the national office.

16. The documentation used by the Benelux Office for anticipation searching may be divided up into:

- (a) filings (Benelux and international) already registered and contained in the computer's data bank;
- (b) filings (Benelux and international) already registered but not as yet contained in the data bank which has to be regularly up-dated;
- (c) Benelux filings not yet registered.

The documentation referred to in (a) is searched by means of the computer. That referred to in (b) and (c) is manually searched by the Benelux Office's examiners using the card indexes compiled for that purpose.

The pertinent anticipations discovered in the manual search are added to the foot of the computer list. In this context, it should be mentioned that the marks for which an optional (i.e. without simultaneous filing) search is requested are not entered in the card index by the Benelux Office.

17. The anticipation search for *figurative* marks is carried out by the Benelux Office examiners using a manual system. The relevant documentation is composed of punch cards (two to three per mark on average). The Benelux Office classifies these cards according to the International Classification of the Figurative Elements of Marks (set up by the Vienna Agreement of June 12, 1973).

The so-called composite marks, i.e. those including both words and figurative elements, require a double search (computer and manual).

18. When examining the search results forwarded by the Benelux Office, the special attention of the applicant (or his agent) should be drawn to the following points:

- (a) for *individual* marks, the search provides data on identical or similar and individual or collective marks registered for the same class or classes of goods as the mark being searched; identical marks are also given for all other classes of goods;
- (b) for *collective* marks, the search covers all identical or similar and individual or collective marks in all classes of goods;
- (c) since the Uniform Benelux Law does not give protection to *service marks*, international filings of

such marks—even those where the applicant has requested that they have effect for Benelux territory—are not entered in the Benelux register and such filings will therefore never be cited as anticipations;

(d) the same applies to various other categories of signs, including for example:

- (i) State emblems, official hallmarks and emblems of intergovernmental organizations protected by Article 6ter of the Paris Convention;
- (ii) appellations of origin and other indications of source;
- (iii) the non-proprietary names recommended by the World Health Organization;
- (iv) names and styles of firms, trade names.

19. As already mentioned, the compulsory anticipation search applies to new filings only. Thus, renewals of Benelux filings and—as from October 1, 1976,—renewals of international registrations do not require a compulsory search.

20. Under Article 20 of the Executive Rules, the results of anticipation searches (compulsory or optional) may not be made available to the public. This means that the Benelux Office can forward such results to the applicant or his agent but not to any other person or body.

In the case of legal proceedings, however, it seems probable that a court dealing with a case of similarity of marks would request the parties to produce the results of the novelty search done by the Benelux Office to enable it to judge whether the filing concerned had not been made in bad faith.

#### Fees

21. The following fees are required in advance for anticipation searching (compulsory or optional) of any new Benelux filing (current tariff):

- (a) Basic fee of FB 1,470.— or f. 100.—;
- (b) Additional fee of FB 147.— or f. 10.— for each class of goods in excess of the third class of the international classification in which the goods are classified;
- (c) Additional fee of FB 294.— or f. 20.— for a collective mark.

For international filings valid for the Benelux territory which are, as of October 1, 1976, subject to a compulsory anticipation search, the Benelux Office will carry out the search free of any charge whatsoever.

## Exhibitions

### ITALY

#### Decrees Concerning Temporary Protection of Industrial Property Rights at Exhibitions

##### Sole Section

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

- XXXVII*" Fiera di Messina — *Campionaria internazionale* (Messina, August 7 to 22, 1976);
- Salone internazionale della chincaglieria, bigiotteria, cartoleria ed articoli da regalo* (Milan, September 3 to 7, 1976);
- VIII*" *Dimostrazione di macchine, impianti e sistemi per la raccolta, lavorazione e conservazione del mais* (Dominio di Bagnoli (Padua), September 9, 1976);
- XVI*" *Dimostrazione di macchine impianti ed attrezzature per la raccolta, lavorazione e conservazione di foraggi* (Dominio di Bagnoli (Padua), September 9, 1976);
- VI*" *Mostra internazionale di coniglicoltura* (Erba (Como), September 10 to 13, 1976);
- Mostra del marmo e macchine per la lavorazione del marmo* (S. Ambrogio di Valpolicella (Verona), September 11 to 19, 1976);
- XXIX*" *Fiera di Bolzano — campionaria internazionale* (Bolzano, September 11 to 20, 1976);
- IP*" *IPHARMEX '76 — Esposizione farmaceutica internazionale* (Genoa, September 16 to 19, 1976);
- Salone internazionale del mobile e dell'illuminazione* (Milan, September 18 to 23, 1976);
- Mostra navale italiana* (Genoa, September 20 to 26, 1976);
- X*" *Salone delle attività vitivinicole — VINITALY* (Verona, September 22 to 26, 1976);
- Salone mercato internazionale dell'abbigliamento* (Turin, September 24 to 27, 1976);
- V*" *INTERSAN — Mostra mercato internazionale dell'ortopedia tecnica e sanitaria, sanitari, strumenti chirurgici, attrezzature ospedaliere, apparecchi fisioelettromedicali, corsetteria, articoli sanitari per la prima infanzia* (Milan, October 2 to 4, 1976);
- X*" *BI.MU. biennale della macchina utensile* (Milan, October 2 to 9, 1976);
- XIV*" *Mostra internazionale trasporti interni, magazzino containerizzazione e manutenzione — TRAMAG '76* (Padua, October 6 to 10, 1976);
- XII*" *SAIE — Salone internazionale dell'industrializzazione edilizia* (Bologna, October 9 to 17, 1976);
- XVI*" *Salone nautico internazionale and VI*" *SIAS — Salone internazionale delle attrezzature subacquee* (Genoa, October 15 to 25, 1976);
- VIII*" *Salone internazionale delle tecnologie per la lavorazione, conservazione e distribuzione della carni EUROCARNE* (Verona, October 23 to 27, 1976);
- XI*" *Esposizione internazionale delle attrezzature per il commercio ed il turismo EXPO CT '76* (Milan, October 24 to November 1, 1976);
- VI*" *MIPAN — Salone internazionale delle macchine impianti e prodotti per la panificazione e la pasticceria* (Milan, October 24 to November 1, 1976);
- VI*" *TUR-IN '76 — Salone del turismo invernale e dei problemi della montagna* (Pordenone, October 28 to November 2, 1976);
- LVI*" *Salone internazionale dell'automobile* (Turin, November 3 to 14, 1976);
- EIMA — Esposizione internazionale delle industrie di macchine per l'agricoltura* (Bologna, November 10 to 14, 1976);
- XIV*" *BIAS — Convegno mostra biennale internazionale dell'automazione e strumentazione* (Milan, November 23 to 27, 1976);
- MAV '76 — XV*" *Mostra internazionale dell'avicoltura pregiata da carne ed ornamentale, dell'avifauna e della coniglicoltura — attrezzature e prodotti relativi* (Padua, December 5 to 8, 1976)

shall enjoy the temporary protection established by the decrees mentioned in the preamble.<sup>1</sup>

<sup>1</sup> Royal Decrees No. 1127 of June 29, 1939, No. 1411 of August 25, 1940, No. 929 of June 21, 1942 and Law No. 514 of July 1, 1959. (See *La Propriété industrielle*, 1939, p. 124; 1940, pp. 84 and 196; 1942, p. 168; 1960, p. 23).



## News Items

### CANADA

#### *Working Paper on Patent Law Revision*

On June 2, 1976, the Minister of Consumer and Corporate Affairs released a document entitled *Working Paper on Patent Law Revision*.

The *Working Paper* makes proposals for the revision of the Patent Act. These proposals do not necessarily represent the view of the department. The *Working Paper* is published only as a basis for discussion with interested members of the public.

Copies of the *Working Paper* together with the accompanying proposed Patent Law are available in Canada from Printing and Publishing, Supply and Services Canada, Ottawa, Canada K1A 0S9, at a cost of \$7.50 (\$9 to other countries).

The Minister has invited interested persons or organizations to make submissions concerning the proposals in the *Working Paper* or concerning other matters relevant to possible amendments to the Patent Act, the Patent Rules, or the practices of the Patent Office. Comments should be made in writing and addressed to the Assistant Deputy Minister, 1 Place du Portage, Hull, Quebec, K1A 0E1.

### INDIA

#### *Industrial Property Law Reporter*

The Trade Marks Owners Association of India recently began publishing a series of law reports, entitled *Industrial Property Law Reporter*, whose aim is to report important judgments on the law of patents, industrial designs, trademarks and copyright rendered by the Supreme Court of India, High Courts of the various states of India and hearing officers of the Patent Office and the Trade Marks Registry. The *Reporter* also publishes abstracts or entire texts of the judgments of foreign courts which treat important questions of industrial property. In addition to printing the text of the judgment, each reported case is digested and the points of decision are noted. The texts are taken from certified copies of the judgments, which are received from the authorities themselves and, therefore, the accuracy of the report is guaranteed.

This publication is of singular importance to practitioners in India, as well as to foreign businessmen and lawyers who have to advise their clients on questions relating to Indian industrial property law.

## Book Reviews

**Brevets et sous-développement** (Patents and Underdevelopment) by Martine Hiance and Yves Plasseraud, preface by Daniel Bastian, Librairies techniques, Paris, 1972.

It is not common practice to review a book four years after its publication. Hiance and Plasseraud's work is an exception; as time goes by, it gains both in value and in relevance. The domination of technology—whose legal form of protection, the patent, is central to present-day overall social and economic policy—has become a focal point in international relations. The crisis in the distribution of wealth between the industrialized regions and countries and the underdeveloped parts of the world finds its expression in this question. The ever-increasing speed of technical progress demonstrates more and more clearly that the riches of this world cannot be counted in land and capital alone, and makes it easier to accept the claims of contemporary economic theory that the prime category of productive factors, after nature and work, has become that of "technical progress" (cf. J. Fourastié, *Le grand espoir du XX<sup>e</sup> siècle*, Paris, 1963, p. 28).

Since the adoption by the United Nations of Resolution 1713 (XVI) on "The role of patents in the transfer of technology to under-developed countries," the key question of technology in the relations between the two groups of States has never been absent from the international scene; on the contrary, it has become increasingly the concern of the UN, its specialized agencies, the OECD and other bodies. It is therefore no surprise that all aspects of the relations between the two groups of countries should be the

subject of an abundant body of writing. Within this doctrine, the work by Hiance and Plasseraud occupies a privileged place.

The two authors are not unknown in the field of intellectual property. Their work on *La protection des inventions en Union soviétique et dans les Républiques populaires d'Europe* (Paris, 1969), already demonstrated the qualities to be found in the book reviewed here: clarity of style; clear thinking; mastery of the comparative method; knowledge; and discerning use of source material. However, whereas that work dealt with the substantive law of countries with a well-defined economic system and without fundamental differences between them, examining the system of patents with respect to the relationships existing among all the countries of the World placed before them the difficult task of taking into account the many and varied factors which influence the whole infrastructure on which technology policy depends. In fulfilling this task, they have neglected no official source, whether national or international, nor any theoretical or textual work, from which they have drawn reasoned and convincing conclusions.

To begin with, the very title of the book is worthy of our attention. Its authors return to the concept of "underdevelopment" which seems more appropriate than that of "developing countries" since it is, in fact, the technically advanced countries which are "developing" whereas the Third World is characterized by its lack of development in relation to the dynamism of the industrialized countries.

Before entering into specific problems, the authors examine the gulf separating the rich countries from the remainder. They

identify its origin in the economic laws governing the growth of wealth since the industrial revolution, which have inevitably led to the present-day imbalance. As they themselves note, "At the beginning of the industrial revolution in Europe... no wide technological gulf separated as yet that continent from its neighbors Africa and Asia."

The World's economic and social trends are thus dominated by innovation. The great differences in the degree of underdevelopment have caused the authors to make a distinction between two categories of Third World countries: those where underdevelopment is "fundamental" and those where it is "economic." The second category includes countries such as Brazil, Mexico and Israel, which the authors feel are "on the way to development," whereas the regions placed in the first category lack even the relevant infrastructure.

The last of this book's starting points is the interdependence of all countries resulting from the influence exerted by technology as the primary category of the contemporary economy.

These remarks facilitate the understanding of the book's substance. After the introduction and a preliminary chapter, the work is divided into three main parts.

Part One, headed "The Question of Patents and Development in the Third World," deals firstly (Title I) with the patent as a stimulus to innovation but also as a "brake and obstacle to the burgeoning of indigenous inventions." There the authors observe that the mere transfer of technology is in no way capable of solving the problem of underdevelopment and that an independent infrastructure would have to be set up to continuously promote and stimulate innovation.

Title II of this first Part ("Cost of Patents for Underdeveloped Countries") reiterates the well-known criticisms levelled at the "negative effects ascribed to patents," including the calling into question of the Paris Convention.

The third and final Title constitutes an "Attempt at an Analysis." In the case of the "economically" underdeveloped countries, the authors consider that "the need for legislation on inventions is just as indisputable as for the industrialized countries," but that for the "fundamentally" underdeveloped countries "this right is not simply ill-adapted but totally 'out of phase' with the problems to be solved," it being understood, however, that both groups "have the need to provide for appropriate protection for the creations of national technology." The authors stress in this connection the fact that the countries in question lack experience in the efficient use of technological documentation—including that on patents not protected in those countries—and that it is not always in the interests of the industrialized countries to file patents in the underdeveloped world (confirmed by the statistics quoted).

Part Two, headed "Patent Law and Development Problems," is devoted to this question within the framework of substantive law. Its first Title describes "Substantive Law and its Origins," in which are included the international conventions. Title II deals with "The Patent Law in Question" by setting out firstly the doctrines in favor of an adjusted status quo, followed by those hostile to patents and, finally, those advocating a complete recasting. In this context, the authors describe the basic content of the international projects, the initiatives taken by the Third World and national reforms carried out during the ten years from 1961 to 1971.

Part Three ("Towards New Legal and Institutional Orientations") looks for future solutions in which the underdeveloped countries would rely upon their own potential but would receive assistance from the developed countries. The tasks to be undertaken emerge from the three Titles in this Part: "Stimulating Inventive Activity and Innovation;" "Limiting the Risk of Abuse by Holders of Patents;" and "Integrating Patent Law into a Context More Favorable to the Interests of Underdeveloped Countries." Two basic ideas are contained in this Part: the need for infrastructure; and the need for protection of a whole series of types of innovation, ranging from scientific discoveries to technical improvements. Such prospects assume that future progress will be planned for and that the development of technology will be integrated therein.

As regards the prospects for an international solution to the problem of underdevelopment, the authors direct their attention to the forthcoming revision of the Paris Convention and the trends emerging in that context. These include the limitation and prevention of the monopolistic function of patents, the obligation to work the invention locally and the effective monitoring of the measures adopted for these purposes. The authors feel that international cooperation cannot be restricted to the texts of the conventions

alone, and that institutions, such as regional technology centers, operational documentation centers and invention banks, must also be promoted which will help the countries concerned to develop.

This work by Hiance and Plisseraud represents one of the most important contributions to understanding the crisis brought about by underdevelopment and to the elaboration of the means for resolving that crisis.

Professor S. Pretnar

**Das schweizerische Patentrecht** (Commentary on the Swiss Patent Law), by *Rudolf E. Blum* and *Mario M. Pedrazzini*. Verlag Stämpfli & Cie AG., Berne, 1975 enlarged edition. Three volumes totalling more than 2,000 pages.

This work constitutes the second edition of the Commentary on the Swiss Patent Law, the three volumes of the first edition being published in 1957, 1959 and 1961. This is an updated version which takes account of the intervening developments during the fifteen years which separate the two editions.

The work is presented in the form of an article-by-article commentary on the Federal Law of June 25, 1954. The reflections of the authors, who are among the most renowned Swiss specialists on the subject, are extremely detailed and thorough and are always followed by valuable bibliographic and legal references. The system employed by the authors for the presentation of the second edition is simple and practical: the text of the first edition is reprinted without charge and the additions are grouped at the end of the commentary on each article. The reader can therefore easily distinguish the recent evolution of the Swiss Patent Law. It should be added that the frequent tables of contents—one is provided for each article of the Law—permit the most hurried of readers to rapidly find the information that they need.

Thus, the updated work of Messrs Blum and Pedrazzini remains an irreplaceable reference for the practitioner as well as for anyone else interested in Swiss Patent Law.

FC

**Applications and Limitations of the Patent System**, edited by *Basil Bard*. IPC Science and Technology Press, Guildford, Surrey, 1975. — 70 pages.

This work consists of the proceedings of a conference organized by the British Science Policy Foundation in collaboration with the Licensing Executives Society which took place in London in November 1974. Its purpose is to provide an impartial and comprehensive look at the British patent system and its implications for industry, inventors, licensors, licensees and the public. To this end, the topics discussed include the defects and limitations of the present system, the current state of play, and the licensing and engineering viewpoints. In analyzing these issues, comparisons are made with the European and American systems, and the potential impact of the Patent Cooperation Treaty and the European Patent Convention is carefully scrutinized. The work is especially interesting in that it realistically examines the current criticism of the patent system and, while concluding that the system continues to play an essential and beneficial role, nevertheless seeks improvements which, in the words of the Director of the Science Policy Foundation, will produce "less fuss, better protection for industrial technology, and fewer costs overall."

JAE

**An Intellectual Property Law Primer**, by *Earl W. Kintner* and *Jack L. Lahr*. Macmillan Publishing Co., New York, 1975. — 539 pages.

The US commerce of making and selling products and services to the public, like that of all developed countries, carries with it a wide range of legal rights, duties, powers and obligations. Product liability and quality laws, antitrust laws, tax and trade regulation laws and the Uniform Commercial Code are but examples of the myriad regulations affecting distribution and competition.

This work deals with products and services in a nonconventional and novel way. It is directed toward the nonspecialist and its approach is to provide him with an appreciation of the way in which intellectual property rights work in the framework of US commerce—what they are and are not, how they are gained and lost, and what can and cannot be done with them. The authors survey the fields of patent law, trade secret law, trademark law, copyright law, rights of

publicity and privacy and other related subjects in order to construct a solid foundation in the area of intellectual property. By reading this primer, therefore, general legal practitioners, business executives, technical administrators and students will gain a basic understanding of intellectual property, as it exists in the USA, which may not be available elsewhere in so concise and readable a form.

JAE

**Die Unionspriorität im Patentrecht** (The Priority Established by the Paris Union in Patent Law), by *Reinhard Wieczorek*, Carl Heymann, Cologne (etc.), 1973. — 291 pages.

This work, which was prepared as a doctoral thesis for presentation at the Ludwig Maximilian University of Munich, examines in great detail the system of priority established by Article 4 of the Paris Convention. It is divided into five large chapters: the first chapter analyzes the Convention; the second reviews the necessary basis for the creation of the right of priority, i.e. the first deposit; the third concerns the conditions for the establishment of the right, i.e. the subsequent deposit; the fourth looks at the effects of the right, especially in the various national systems; and the fifth, which also constitutes the conclusion, treats, in turn, the substantive questions of organization with regard to the priority (fees, documentation centers, etc.) and the value of the priority in the present-day evolution of the patent right.

This very elaborate work is based on a rich doctrine and on an extremely well-researched analysis of the legislation and case law of a great number of countries.

GRW

**Scienza delle invenzioni** (The Science of Inventions), by *Mario di Cerbo*. M. Ragno, Rome 1974. — 191 pages.

This work sets forth the means for the protection and the distribution of inventions that are at the disposal of inventors. The author begins with a definition of an invention and its criteria. He then devotes himself, on the one hand, to an analysis of the various methods of existing protection, such as patents, which he analyzes from an inventor's point of view, the institutions concerning patents and the problems of documentation, etc., and, on the other hand, to an examination of the means of possible distribution, such as

licenses, transfer of know-how and trademarks. The final chapters deal with a problem not often considered, namely that of creativity (the psychology of creative research, methods of stimulation of the inventive capacity, etc.) and even tackle the question of the relationship between inventions and ecology. This work thus serves as a useful reflection on the role of the inventive capacity in the development of society.

GRW

**L'Exploitation des brevets d'invention et l'intérêt général d'ordre économique** (The Working of Patents of Invention and the General Interest of Economic Order) by *Marc Sabatier*, preface by *Professor André Françon*. Librairies techniques, Paris, 1976. — 315 pages.

As one knows, the regulation of patents is organized with a view to satisfying the general interest and, more particularly, the general interest of economic order. As the author points out, even the "exclusive right to work the patent does not sacrifice the societal interest." In fact, and as Professor Françon very correctly states, "In granting advantages to the inventor, the goal is to stimulate research while ensuring that the holder of the title does not abuse the dominant position so conferred upon him".

The author of this work analyzes the solutions which, in the new French legislation of 1968, strive to cause the patent system to serve even more fervently the general interest of economic order. To this end, the work is divided into two parts. The first part treats the problem of the exclusive right to work a patent and of the obligation to do so, and is specifically devoted to an analysis of the limitations placed on that exclusive right (interests of third parties, public health, national defense), and to an analysis of the obligation and the sanctions brought about by the failure to comply therewith (revocation and expropriation of the patent, legal licenses). The second part concerns what the author calls imposed licenses, i.e. "judicial" licenses (compulsory licenses, dependent licenses or licenses "of improvement") and "administrative" licenses (licenses of right in the interest of the public health, the national defense, and the economy).

The author convincingly concludes his work by demonstrating that, despite the double aspect of patents (the interest of the inventor and the general interest), the public interest is more than ever at the foundation of the patent system. This is a fact which the critics of the system too often tend to forget.

GRW

## Calendar

### WIPO Meetings

#### 1976

November 1 to 8 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees

November 8 to 19 (Stockholm) — International Patent Classification (IPC) — Working Group IV

November 23 to 30 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on the Revision of the Paris Convention

November 29 to December 3 (Geneva) — Permanent Legal-Technical Program — Working Group on the Model Law for Developing Countries on Inventions and Know-How

November 29 to December 10 (Rijswijk) — International Patent Classification (IPC) — Working Group I

December 6 to 9 (Lusaka) — Diplomatic Conference for the Adoption of an Agreement on the Creation of an Industrial Property Organisation for English-Speaking Africa

December 8 to 17 (Lusaka) — Conference on Industrial Property Laws of English-Speaking Africa, and of its Committee for Patent Matters and its Committee for Trademark and Industrial Design Matters

December 8 to 17 (Paris) — Berne Union — Committee of Governmental Experts on the Double Taxation of Copyright Royalties

Note: Meeting convened jointly with Unesco

#### 1977

January 17 to 21 (Geneva) — International Patent Classification (IPC) — Steering Committee

January 25 to 28 (Geneva) — Trademark Registration Treaty (TRT) — Interim Committee

- January 25 to 28 (Bangkok) — Asian Seminar on the Rights of Performers, Producers of Phonograms and Broadcasting Organizations**  
*Note: Meeting convened jointly with ILO and Unesco*
- February 7 to 9 (Geneva) - ICIREPAT Plenary Committee**
- February 16 to 18 (Colombo) — Permanent Legal-Technical Program — Regional Seminar on Industrial Property**
- February 21 to 24 (Colombo) — Permanent Legal-Technical Program — World Symposium on the Importance of the Patent System to Developing Countries**
- February 21 to 25 (Geneva) — Berne Union — Working Group on Videocassettes**  
*Note: Meeting convened jointly with Unesco*
- March 7 to 11 (Geneva) — Permanent Legal-Technical Program — Working Group on Technological Information derived from Patent Documentation**
- March 14 to 18 (Geneva) — Permanent Legal-Technical Program — Permanent Committee concerning Cooperation for Development relating to Industrial Property (4th session)**
- March 28 to April 1 (Paris) — Berne Union — Working Group on Cable Television**  
*Note: Meeting convened jointly with Unesco*
- April 18 to 22 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services**
- April 25 to 29 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)**
- May 2 to 6 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)**
- May 12 to 14 (Geneva) — Paris Union — Ad hoc Coordinating Committee for Technical Activities**
- May 23 to 27 (Rabat) — Permanent Legal-Technical Program — Arabic Copyright Seminar**  
*Note: Meeting convened jointly with Unesco*
- May 23 to 27 (Geneva) — International Patent Classification (IPC) — Working Group V**
- June 6 to 10 (Geneva) — Permanent Legal-Technical Program — Working Group on the Model Law for Developing Countries on Inventions and Know-How**
- June 27 to July 1 (Geneva) — Paris Union — Committee of Experts on Computer Software**
- June 27 to July 1 (Geneva) — Nice Union — Preparatory Working Group on the Systematic Review of the Classification**
- September 26 to October 4 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions; Assemblies of the Madrid and Hague Unions; Committee of Directors of the Madrid Union; Conference of Representatives of the Hague Union**
- November 2 to 18 (Paris) — Berne Union — Diplomatic Conference (or Committee of Governmental Experts) on Double Taxation of Copyright Royalties**  
*Note: Meeting convened jointly with Unesco*
- November 28 to December 5 (Paris) — Berne Union — Executive Committee — Extraordinary Session**
- December 6 to 8 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (organized jointly with ILO and Unesco)**
- December 9 (Geneva) — Berne Union — Working Group on the Rationalization of the Publication of Laws and Treaties in the Fields of Copyright and Neighboring Rights**

## 1978

- September 25 to October 2 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions**

## UPOV Meetings in 1976

**Technical Steering Committee:** November 17 to 19

**Committee of Experts on International Cooperation in Examination:** November 16

*Note: All these meetings will take place in Geneva at the headquarters of UPOV*

## Meetings of Other International Organizations Concerned with Intellectual Property

### 1976

**November 9 to 11 (Hakone) — Pacific Industrial Property Association — International Congress**

### 1977

**January 14 (Paris) — International Literary and Artistic Association — Executive Committee and General Assembly**

**January 17 to 21 (Strasbourg) — Council of Europe — Legal Committee on Broadcasting and Television**

**May 1 to 4 (Amsterdam) — Union of European Patent Attorneys — Congress and General Assembly**

**May 23 to 27 (Rio de Janeiro) — Inter-American Association of Industrial Property — Congress**

**September 15 to 17 (Helsinki) — Finnish Group of AIPPI — Symposium on Employees' Inventions.**

**November 28 to December 5 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Intergovernmental Copyright Committee established by the Universal Copyright Convention (as revised at Paris in 1971)**