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World Intellectual Property Organization

Dr. Arpad Bogsch Re-Elected Director General of WIPO

At its ordinary session of September/October 1985, the General Assembly of the World Intellectual Property Organization (WIPO) re-elected Dr. Arpad Bogsch as Director General of WIPO. The election, which was unanimous and by acclamation, took place in a joint meeting with the Assemblies of the Paris Union for the Protection of Industrial Property and the Berne Union for the Protection of Literary and Artistic Works. Constitutionally, the agreement of the Assemblies of those two Unions is also necessary for the appointment of the Director General.

Dr. Bogsch was first appointed Director General in 1973 for a term of six years. In 1979, he was re-elected for a second term of six years. And in 1985, he was re-elected for a third term of six years, which expires on December 1, 1991.

Dr. Bogsch was born in Hungary in 1919 and, since 1959, has been a citizen of the United States of America. He has law degrees from universities in Budapest, Paris and Washington.

He delivered the following speech to the Governing Bodies following his re-election on September 23, 1985:

"Mr. Chairman Jean-Louis Comte,

Thank you for the good news and for having conveyed it to me with warmth and eloquence.

Honorable Delegates,

I am grateful to you for your decision to re-elect me to the post of Director General of the World Intellectual Property Organization.

Since this decision is based on a decision of the WIPO Coordination Committee that was made last year on the proposal of the delegation of my country, the United States of America, I wish to repeat my heartfelt thanks to the delegation of that country, to the members of the Coordination Committee and to the then Chairman of that Committee, Minister Carlos Fernández Ballesteros.

Today, naturally, my thanks go to all the countries and all the delegations, the more so as, to my great pleasure, their decision was unanimous.

As Director General of an intergovernmental worldwide organization, I wish to continue to serve with equal attention all the member countries. The fact that you have unanimously decided to place me in that position is a sign of confidence and, therefore, a source of encouragement for which I am particularly grateful to you.

With this confidence manifested by you, and with this encouragement coming from you, I shall continue to serve this Organization as much as I can in achieving the goals for which it was founded and for which it exists.

Naturally, the efficiency of an intergovernmental organization depends mainly on the attitudes and decisions, including decisions on program and budget, of the

governments of its member States. But it is the secretariat of an intergovernmental organization that is to a large extent responsible for creating the conditions propitious to the making of good decisions. Those conditions include, in particular, an atmosphere of mutual respect between delegations, a completely open and equal attitude by the secretariat vis-à-vis all member countries, a judicious planning of meetings among representatives of member countries and good preparation and good servicing of those meetings. By good preparation, I mean documents that are clear, as short as possible, objective and correct. By good servicing, I mean efforts to bring about the maximum extent of agreement among delegations.

As I said in the Coordination Committee last year, in connection with its proposal that I be elected this year, I shall try to deploy and develop the services of the International Bureau or secretariat of WIPO mainly in three fields. Those intentions, by the way, also underlie my proposals contained in the draft budget for 1986 and 1987, and the draft medium-term plan for the four years following 1987 and ending with 1991, proposals that are before the present sessions of the Governing Bodies.

The three fields in question are: development cooperation with developing countries, extension or consolidation of intellectual property protection in new fields, and simplification of the international protection of intellectual property rights.

Development cooperation: our goal is that intellectual property should accelerate the development of developing countries. Naturally, each developing country's government sets its own economic goals. It is in the service of those goals that intellectual property should play a significant and realistic role. Such service requires

trained persons, well-equipped and well-functioning industrial property offices and adequate legislation. My objective is that in every case where a developing country asks for advice and training, WIPO should be in a position to furnish it.

The second main objective is the consolidation of existing protection and the extension of intellectual property to new fields. Such new fields include, for example, biotechnology, computer software, integrated circuit designs, television broadcast satellites, cable television and videocassettes. One has to act positively and fast enough in all those and other fields, both nationally and internationally. Otherwise, intellectual property will lose much of its *raison d'être*. "Consolidation" also means our efforts to harmonize certain provisions of intellectual property legislation. And it also means our efforts to harmonize patent documentation in order to promote patent information. The latter is the backbone of any legal system for protecting inventions.

The third main objective is the simplification of the obtaining of protection for inventions, trademarks and industrial designs where the owner needs and wishes protection in several countries. Such "international" protection should cost less and should be obtainable in a simpler way than today. Our means of action are, or should be, the Patent Cooperation Treaty, a new worldwide system for the registration of marks, and an extension of the Hague Agreement Concerning the International Deposit of Industrial Designs.

Results in all these fields come from interaction between the member States with WIPO as catalyzer and organizer.

* * *

The staff of WIPO is eager to give good service to the member States.

I wish to thank the staff of WIPO, once again, publicly, addressing myself to the representatives of our member States. It is their hard work, their enthusiasm for the objectives of the Organization, their imagination and their patience that I wish to praise and thank them for. It would take too much time to name all the staff members. But let me name the three Deputy Directors General, Klaus Pfanner, Marino Porzio and Lev Kostikov. Their devotion and skill are exemplary. I shall propose that they be continued in their present position. And I also mention those of my colleagues who are, or shortly should become, directors, namely, Claude Masouyé, Shahid Alikhan, Ludwig Baeuner, Paul Claus, François Curchod, Mihály Ficsor, Kamil Idris, Roger Harben, Lakshmanathan Kadirgamar, Thomas Keefer, Gust Ledakis, Enrique Pareja and Ibrahima Thiam.

Through my colleagues mentioned by name, I wish to thank all the staff and ask those mentioned by name to convey these thanks to those working directly with them.

Mr. Chairman, Honorable Delegates,

It is with these resolves towards the member States, and these feelings towards the staff, that I express my deep gratitude for your decision to re-elect me.

Thank you."

Notifications

Budapest Treaty

Ratification

NORWAY

The Government of Norway deposited, on October 1, 1985, its instrument of ratification of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977.

The said Treaty will enter into force, with respect to Norway, on January 1, 1986.

Budapest Notification No. 49, of October 3, 1985.

WIPO Meetings

WIPO Permanent Committee on Patent Information (PCPI)

Working Group on Patent Information for Developing Countries

Sixth Session
(Geneva, September 11 to 13, 1985)

NOTE*

The Working Group on Patent Information for Developing Countries (hereinafter referred to as "the Working Group") of the WIPO Permanent Committee on Patent Information (PCPI) held its sixth session in Geneva from September 11 to 13, 1985.¹

The following 18 members of the Working Group were represented at the session: Algeria, Austria, Brazil, Canada, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Japan, Senegal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, and the European Patent Office (EPO). The Arab Industrial Development Organization (AIDO), the International Federation for Documentation (FID) and the International Patent Documentation Center (INPADOC) were represented by observers. The list of participants follows this Note.

The Working Group noted with approval the oral report of the International Bureau on the follow-up to various decisions taken by the PCPI in 1984. In particular, it was noted that an updated inventory of computerized search systems was to be published shortly in the WIPO Handbook on Patent Information and Documentation and that discussions had been started, with encouraging preliminary results, between the International Bureau and various data base brokers and vendors on steps to be taken to assist developing countries in their access to and use of computerized data bases.

Furthermore, the Working Group discussed in detail the present situation under the WIPO Program of Free-of-Charge Patent Information Services, and noted with approval that the scope of contributions to this program had been further broadened, to cope with the increasing

demand from the side of users in developing countries.

The Working Group also noted analytical surveys prepared by the International Bureau on the replies received to the various questions put forward in the evaluation questionnaires distributed together with the search reports, and requested the International Bureau to continue analyzing the technological, economic and legal impact of those reports.

The Working Group noted a bibliographic survey compiled by the International Bureau of technical monographs based on patent documents published so far by various industrial property offices and other institutions, and requested the International Bureau to ensure the regular updating and compilation of the said survey and its publication in an appropriate way.

The Working Group also approved a Methodology for the Elaboration of Technical Monographs Based on Patent Documents and recommended it to the PCPI for adoption and subsequent inclusion in the *WIPO Handbook on Patent Information and Documentation*.

The Working Group discussed proposals for a revision of WIPO's "Guidelines for the Planning and Organization of a Patent Information and Documentation Center in a Developing Country."

Finally, the Working Group formulated proposals to the PCPI concerning the tasks to be allotted to the Working Group for the biennium 1986/1987.

LIST OF PARTICIPANTS*

I. Member States

Algeria: H. Touati. Austria: H. Marchart. Brazil: P.R. Franca. Canada: P. Trépanier. Egypt: W.Z. Kamil. Finland: R.K. Laukarinen. France: M. Verderosa; A. de Pastors. German Democratic Republic: H. Konrad; K.P. Wittig. Germany (Federal Republic of): M. Voegtel. Japan: Y. Masuda. Senegal: S.C. Konate. Soviet Union: B. Rozov. Spain: R. Vazquez de Parga. Sweden: U. Jansson. Switzerland: E. Caussignac. United Kingdom: G.K. Lindsey. United States of America: W.S. Lawson; T. Lomont.

II. Member Organization

European Patent Office (EPO): J. Atkins.

* Prepared by the International Bureau.

¹ For a note on the fifth session, see *Industrial Property*, 1985, p. 69.

* A list containing the titles and functions of the participants may be obtained from the International Bureau.

III. Observer Organizations

Arab Industrial Development Organization (AIDO): A. el M.M. Mahmoud. International Federation for Documentation (IFD): F.J. Leloux. International Patent Documentation Center (INPADOC): G. Quarda.

IV. Officers

Chairman: H. Marchart (Austria). *Vice Chairmen:* B. Rozov (Soviet Union); W.Z. Kamil (Egypt). *Secretary:* R. Blumstengel (WIPO).

V. International Bureau of WIPO

L.E. Kostikov (*Deputy Director General*); P.A. Higham (*Head, Patent Information Section*); R. Blumstengel (*Head, Developing Countries Section (Patent Information)*); R. Andary (*Senior Program Officer, Developing Countries Section (Patent Information)*); N. Yoshikuni (*Program Officer, Developing Countries Section (Patent Information)*).

General Studies

Recent Developments in Industrial Property in Argentina

E. ARACAMA ZORRAQUIN*

I. Legislation

1. With the exception of Law No. 22,802, known as the Law on "Business Loyalty," which was passed and promulgated on May 5, 1983, no industrial property law worthy of mention has been enacted in Argentina since my last contribution to *Industrial Property*.¹

The explanatory memorandum to the above Law explains that it has been called the Law on Business Loyalty because, by combining in a single legal text all the provisions in force on the identification of merchandise and the advertising of movable and immovable goods and services, it sets out to protect the consumer at the same time as it affords the trader knowledge of the legislation with which he has to comply.

The Law consists of six chapters which deal with the following subjects:

A. Identification of Merchandise

This Chapter lays down the information that has to be given on fruit and other goods packed within the country; that information consists in effect of four things:

- (a) the name;
- (b) the name of the country in which they were produced or manufactured;
- (c) their quality, purity or blend;
- (d) the net amounts of their contents.

Section 4 requires the information to be written in the national language, with the exception of foreign word forms in widespread use in trade, registered marks and other signs which, while not registered as marks, are used as such and possess trademark properties.

Section 5 prohibits the use in the presentation and on packaging, labels or wrappers of words, phrases, descriptions, marks or any other sign that might mislead, deceive or cause confusion regarding the nature, origin, quality, purity, blend or quantity of the fruit or other goods, or their characteristic properties, uses, the methods of marketing them or techniques for producing them.

Producers, manufacturers, packers, etc., are made liable for any falsehoods that are committed, and wholesalers and retailers are prohibited from marketing fruit or other products that do not bear the information required by the Law. They are also made responsible for the accuracy of the information given on labels where no documentation is supplied that affords reliable identification of those genuinely responsible for manufacture, processing, import or marketing.

B. Appellations of Origin

Section 7 of the Law reads as follows:

"A national or foreign appellation of origin may not be used to identify a fruit or other product when it does not come from the area concerned, except where it has been registered as a mark prior to the entry into force of this Law. For those purposes appellation of origin means the geographical name of a country, region or locality which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment."

A surprising feature of the above text, and one that should give cause for concern, is the fact that the appellation of origin registered as a mark prior to the entry into force of the Law that we are considering here is exempted from the prohibition, as this conflicts with the provisions of Trademark Law No. 22,362,² Section 3(c) of which prohibits the registration of appellations of origin as marks.

C. Advertising and Prohibition of Prizes to Promote Sales

Two sets of circumstances are provided for:

(i) Under Section 9:

"It is prohibited to engage in any kind of presentation, advertising or propaganda which, on account of inaccuracies or concealment, may mislead, deceive or cause confusion regarding the characteristics or property, nature, origin, quality, purity, blend, quantity, use, price, marketing conditions or production techniques of movable or immovable goods or services."

(ii) Under Section 10:

* Attorney at law; Professor at the Argentine Catholic University and the University of Buenos Aires; Honorary President of the Inter-American Association of Industrial Property (ASIPI) and Past President of the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP).

¹ "New Legislation in Argentina: The Law on Trademarks and Designations and the Law on the Transfer of Technology," *Industrial Property*, 1982, p. 88.

² See *Industrial Property Laws and Treaties, ARGENTINA* — Text 3-001.

"It shall be prohibited:

"(a) to offer or hand over prizes or gifts as a direct or indirect result of the purchase of merchandise or commissioning of services where the winning of such prizes or gifts involves an *element of chance*;

"(b) to promote or organize competitions, competitive games or lotteries of any kind in which participation is entirely or partly dependent on the acquisition of a product or commissioning of a service;

"(c) to grant money or goods for the recovery of containers, packaging or integral parts thereof or of the product sold, where the amount granted exceeds the current value of the objects recovered or their value to the person who recovers them."

D. The Implementing Authorities and Their Powers

In this the Law conforms to the Federal system introduced by the National Constitution. Consequently, the Secretariat of Commerce or the body that replaces it will be the one responsible for the implementation of the Law within the national context. By the same token, the governments of the provinces, the National Territory of Tierra del Fuego, the Antarctic and the Islands of the South Atlantic will be the local implementing authorities.

Sections 12 to 14 specify the powers of the authorities concerned.

E. Procedure

This Chapter lays down the procedure that the implementing authority has to conform to, which the explanatory memorandum describes as "practical, efficient and economical."

F. Infringements, Sanctions and Appeals

Any infringer of the provisions of the Law or of its regulatory provisions and resolutions will be punished with a fine, the amount of which, given the persistent inflation facing the country, is linked, so that it does not lose effect with time, to the wholesale price index at the general level published by the National Statistics and Census Institute.

The Law is regulated by Secretariat of Commerce Resolution No. 100 of May 10, 1983.

2. As we know, the erosion of a trademark owner's rights—an endemic condition in developing countries—has Protean properties.

In our country, the Ministry of Health and Social Action laid down, in Resolution No. 1,705 of September 21, 1984, that every label, box, brochure and any printed matter referring to the marketing and/or promotion of medicines should name the active principles, using their international non-proprietary names, and their concentration, in type of the same size or larger, near the registered name and wherever that name appears, with the exception of the official stamp.

In the case of medicines consisting of up to three active principles, the size of the type used for each of them may be reduced to half.

In the case of medicines consisting of more than three active principles, they are not covered by the Resolution concerned.

The period of 90 days from the publication of the Resolution, which was mandatory for compliance with the requirements laid down by it, was extended to May 31, 1985, by Resolution No. 55 of January 15, 1985.

The clarity of the provisions obviates any comment on the legal enormity that they represent for the owners of the marks concerned.

3. While no other laws have been enacted during the period under consideration, national deputies Arnaldo González, Jorge O. Ghiano and Félix Riquez submitted to their Chamber the draft of a new patent law, which is innovative compared with its predecessor in that it:

(a) legislates on employee inventions;

(b) legislates on joint ownership of patents;

(c) makes it clear that, when a new industrial product is obtained by a new process, it will qualify for both a product and a process patent;

(d) recognizes the principle according to which, in the absence of proof to the contrary, all substantially identical products are presumed to have been obtained by the patented process;

(e) sets the term of validity of patents at 13 years;

(f) considers the following patentable:

(i) applications of scientific principles insofar as they produce immediate industrial results;

(ii) artificially-obtained varieties of plant species, the protection being limited to the exclusive right to propagate them by asexual means, that is, by graft, bud, cutting or shoot, by division or by any similar means, but not by seed or tuber;

(g) recognizes, by not expressly denying it as the present Law does, the patentability of new pharmaceutical products and processes, subject to the prior authorization of the Ministry concerned, which has the option of denying patentability when the subject matter is a potential health risk to consumers;

(h) expressly recognizes actions claiming ownership of a patent, which hitherto were recognized by the expedient of praetorian law;

(i) recognizes divisional patents;

(j) introduces the payment of fees to keep main patents and certificates of addition in force;

(k) confirms the working requirement for patents, but adopts the compulsory license system for cases where, after three years following its grant, the patent has not been worked in the Republic to the extent required to meet the needs of the national economy;

(l) does not regard lack of financial resources, or the fact of having offered the working of the invention to the public (known as nominal working), as affording exemption from the working requirement;

(m) recognizes as grounds for revocation of the patent lack of inventive step, novelty or industrial applicability, and subject matter contrary to the law and morality;

(n) provides for lapse on expiry of the period for which the patent is granted, for failure to pay renewal fees and for failure to work in terms of the Law;

(o) increases the number of patent offenses by including among them, in addition to the traditional ones: appropriation or disclosure of a hitherto unpatented invention by a person who takes advantage of his status as associate, agent, employee or workman of the inventor or his successors in title; revelation of the invention through corruption of the associate, agent, counsellor, employee or workman of the inventor or his successors in title; patenting abroad by a resident of the Republic, without the authorization of the Ministry of Defense, or where appropriate the Secretariat of Fuels and Power, of an invention that has a bearing on the military defense of the country or concerns the working of oil reserves, or appropriation of the authorship of an invention.

4. It is well known that Argentina has pursued an erratic policy in the matter of technology transfer. Since 1971, five laws have been enacted on the subject, each depending on the political complexion of the Government in office at the time.

Since the introduction of constitutional government, deputies Alberto J. Melón and Héctor A. Basualdo have tabled a draft law on technology transfer which:

(a) provides that acts have to be evidenced in writing;

(b) has as its main or secondary purpose technology transfer and/or licenses for the use (or assignments) of industrial property rights.

The following acts in particular are regarded as being within the purview of the Law:

(a) the assignment of rights or grant of licenses for the working of industrial property rights (industrial trademarks, trade names, patents and industrial designs);

(b) transfer of the technical know-how necessary for the manufacture of products or provision of services, irrespective of the medium used for the communication of that information;

(c) the provision of technical assistance or advisory services in connection with the planning and the execution of industrial plant or major infrastructural work (feasibility studies, basic and detailed engineering, execution or supervision of the construction of installations, and maintenance or operation thereof);

(d) the execution or supervision of the assembly of machinery or installations or the repair or modification thereof (technical services);

(e) the rendering of services associated with business management or the marketing of goods or services, such

as the conduct of market surveys, the management of purchases, advertising, etc.;

(f) the purchase and sale or hiring of computer programs;

The following acts are exempted:

(a) those mentioned under (c), (d), (e) and (f), above, when both contracting parties are domiciled in Argentina;

(b) those in the armed forces or security forces or bodies associated with national defense, when such acts, in accordance with a decree of the Executive Power, are considered to be military secrets.

Mandatory clauses are laid down that have to be included in the application file, with the possibility of registration being refused when the file contains clauses prohibited by the Law, namely, the following:

(a) those that entail mandatory retrocession of improvements made by the licensee;

(b) those that impose the principle whereby the licensee does not question the validity of the licensor's rights;

(c) those that restrict the free marketing of the licensed goods or services, by the specification of particular selling prices or sales methods, or territories for sale, or maximum quantities, etc.; such restrictions are accepted only in the case of commissioned works where the necessary technology is provided by the licensor, who is also the commissioner of the work;

(d) those that impose obligations concerning the acceptance of input, by-products, tools or capital goods, or the recruitment of staff, from a specific source or enterprise;

(e) those that prohibit the technology transferred from being adapted to local circumstances;

(f) those that require the acquisition of licenses for industrial property rights or for future improvements, or restrict the possibility of choosing other sources of technology in the future;

(g) those that regulate the amount set aside for advertising by the licensee, or impose minimum amounts to be spent thereon;

(h) those that impose compensation for a duration that goes beyond the expiry of the licensed industrial property rights;

(i) those that impose compensation for or restrictions on the use of the technology after the expiry or termination of the agreement;

(j) those that impose restrictions on production capacity or on the use of quality control, or prescribe specific trade or service marks or trade names;

(k) those that require the licensee to make specific capital investments, or to assign part of the stock, as a condition for the acquisition of the technology;

(l) those that impose net amounts of Argentine tax, for the payment of compensation, which in the country of residence of the recipient of the funds are regarded as payment on account of taxes of the foreign country;

(m) those that exempt the supplier from his responsibility towards the recipient or possible groups of third parties for anomalies or defects inherent in the services of the supplier in connection with the act concerned. Such responsibility shall include not only that resulting from the possible violation of the industrial property rights of third parties, but also that which applies, subject to the applicable general provisions, as a result of prejudice sustained by the recipient or third parties either directly or indirectly as a result of proper use of the technology transferred or of use according to any instructions that may have been given by the supplier.

On the one hand, the draft governs the import of technology and, on the other, its marketing within the country. Moreover, it sets a maximum of 5% for the royalties payable under some headings, and 2% under others.

The draft law, the restrictiveness of which appears indisputable, imposes the obligation to adapt to its own provisions contracts already approved under previous laws.

With regard to contracts concluded between non-associated enterprises, which under the provisions of the law in force were registered for information purposes and without prior examination, they will have to be evaluated, that is, analyzed by the implementing authority in accordance with the provisions of the draft.

A draft law on technology is also circulating in certain government circles; that text, which would appear to have originated in the Secretariat for Industry, is more restrictive than the previous one and apparently takes into account the research carried out on the subject by the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Industrial Development Organization (UNIDO), and also the provisions of the International Code of Conduct on Transfer of Technology.

One of the novel features of this draft seems to be that it would regulate the operation or licensing of computer programs. In addition, it apparently would lay down obligations and guarantees that are understood to be implicitly embodied in the contract when they prove to be appropriate, and would restrict the term of contracts to the period of time necessary for the absorption of the technology.

It would forbid the inclusion in contracts of clauses considered prohibitive.

It would reduce the tax benefits in relation to royalty payments, with the object of increasing the flow of high-level technology at reasonable prices, and would restrict the issue of foreign currency for unnecessary or low-level technology.

Payments made between associated enterprises would be treated as profits for all purposes.

Measures are envisaged for the adaptation of existing contracts to the provisions of the new law, and the competent authority would be empowered to verify

newly concluded contracts by being authorized to carry out audits, inspections or expert examinations of books, prospectuses, correspondence or any other element serving as proof of the procedures involved. In a word, the proposed system would not seem likely to cause a flood of technology into the country.

II. Case Law

5. Patents

The rulings handed down in this subject area during the last two years have not been many, and not all of them have been of importance.

The following are nevertheless worthy of a mention:

(a) *International Business Machines v. the Argentine Nation*: refusal of the National Directorate of Industrial Property to grant a patent. In this ruling of June 21, 1984, Chamber 1 of the Federal Court of Buenos Aires reversed the decision by the National Directorate of Industrial Property to refuse the patent, and ordered the grant of a patent for a method of improving data transfers.

The grounds on which the National Directorate of Industrial Property refused the grant, which were shared by the court, were that such a method lacked industrial applicability.

The Federal Court arrived at its conclusion that the decision of the administrative authority lacked foundation in that, where the transfer of data from a transmitter to a receiver over a transmission link contains frequency impediments, improvement of the transfer has industrial applicability.

(b) *Reydy, Roberto Gabriel v. Kuschmiroff, Isidoro*: lapse of patent. This judgment states that in principle, and taking due account of the provisions of Section 50 of the Patent Law and Section 377 of the Code of Procedure, the burden of proof rests with the person who seeks the lapse of the patent. However, as in this case the defendant stated that he was effectively working it, it was he who had to prove his statement. As he did not do so, the patent was declared invalid.

(c) *Sánchez, Perfecto v. Gogenola, Gustavo and Another*: a case of indemnification. This case, ruled upon by the Federal Court of the Capital, Chamber 2, on October 20, 1981, which established the approach to be adopted in the case of joint ownership of patents.

As we know, Law No. 111 does not provide for the institution of joint ownership of patents. In the aforementioned case, the Federal Court decided to apply by analogy the provisions of the Civil Code on joint ownership of property, "without there being any impediment in the fact that industrial property rights are not, by their nature, entirely capable of being assimilated to real or personal property rights, since the solution to which such application by analogy leads is compatible with the spirit of the special Law." Briefly, the Court ruled as follows:

- (i) that there should not be any separate exploitation by one of the joint owners without obtaining the consent of the others, as the opposite situation would presuppose an undue sacrifice of the latter's rights for the sake of the social interest of working;
- (ii) that, nevertheless, the shared privilege should not necessarily presuppose joint or collective working, as otherwise the opposition of one owner would be sufficient to frustrate the social interest referred to, which is also deserving of protection;
- (iii) that consequently working could be carried out by any of the owners without any requirement apart from adequate economic compensation of the other joint owners for the use of a patent, which does not belong to him exclusively.

6. Trademarks

It is customary in Argentina for most trademark litigation to be settled by the Federal Court of Buenos Aires.

Within the limits of this article, decisions have been selected that appear to be of greater interest to readers, concentrating on those that interpret the new Law, No. 22,362 of 1981, which replaced Law No. 3,975 of 1900.

(a) Advertising Phrases or Slogans

As one knows, the registration of slogans as marks has for years been a controversial subject.

The present Law allows them to be registered provided that, in addition to meeting the substantive conditions of validity to qualify as trademarks, they also possess "originality."

In *Philips Argentina S.A. v. National Directorate of Industrial Property*, Chamber 2 of the Federal Court of the Capital, of February 26, 1982, it was held that the requirement of "originality" was relative in character; that decision meant that the set of words or the phrase had to constitute, in one way or another, either by its actual appearance or alternatively by its novel application, a "creation." Inasmuch as the expression "best for..." did not constitute a creation, it was held that it also did not constitute a trademark.

(b) Section 3 of the new Law provides that a trademark identical to one previously registered or applied for to distinguish the same goods or services may not be registered.

As Law No. 3,975 spoke of identical goods, there arose the problem of the interpretation that had to be placed upon the word "identical," which somewhat unfortunately was adopted for the new Law.

In *Cheeseborough Pond's, Inc. v. Warner Lambert Company*, Chamber 1 of the Federal Court of Buenos Aires, decided on March 11, 1983, it was held that the word "identical" should be understood in the sense of goods "capable of being directly or indirectly confused,"

as "judicial interpretation in trademark matters should not be characterized by literal adherence to the law without regard to the outcome" (Supreme Court, Decisions: 249-37); neither were formal arguments decisive for the correct application of the law (Supreme Court, Decisions: 250-467; 283-239), for, "over and above what the laws appear to say literally, it is a feature of interpretation to investigate what they say in legal terms," and "in this investigation the actual letter of the law should not be departed from, but at the same time not strictly adhered to, when reasonable and systematic interpretation requires" (Supreme Court, Decisions: 283-239, item 8).

(c) Section 4 of the Trademark Law provides that:

"The ownership of a trademark and the exclusive right to use it shall be acquired through registration. In order to become the registered owner of a trademark, or to exercise the right to oppose the registration or use thereof, it shall be essential that the applicant or opponent have a legitimate interest."

Now the problem has arisen of determining what should be understood by "legitimate interest":

In *Mexport International S.A. v. Centro de la Industria Lechera*, Chamber 1 of the Federal Court of Buenos Aires, decided on April 13, 1982, the court determined that the legitimate interest required by Section 4 of Law No. 22,362 includes any usefulness in the lifetime of the applicant or opponent and encompasses both advantages of an economic nature and also others which, going beyond the purely economic context, have an effect on the individual sphere. The definition of interest written into the legal order therefore excludes only the hypothesis of the absence of the usefulness referred to.

(d) There has also been discussion, in the course of the interpretation of the new Law, on whether the grounds for opposition are only those written into its Sections 2 and 3.

The solution has been quite different. For instance:

- (i) It has been decided (*Coqueña SACIFI and de M. v. Panamericana de Plásticos*, Federal Court of Buenos Aires, Chamber 2, of May 4, 1982) that it is possible to base opposition to an application for registration of a trademark on an industrial design.
- (ii) In *La Casa del Café S.A. v. D.C. Comics* (decision of October 3, 1983, Supreme Court of the Nation), an action was allowed opposing an application for registration of a trademark based on the previous existence of copyright duly protected in the country of origin.
- (iii) In *Gruner & Johr AG and Co. v. Ladefa SACIFEPA* (decision dated December 17, 1982, Chamber 2 of the Federal Court of Buenos Aires), an opposition was allowed based on a *de facto* mark, in other words, an unregistered mark, thereby confirming a consistent jurisprudential trend arising out of Law No. 3,975.

(e) Section 5 of the current Trademark Law provides that the term of validity of a registered trademark is 10

years. It may be renewed indefinitely provided that it has been used, within five years preceding each expiry date, in the marketing of a product, in the performance of a service or as part of the designation of an activity.

In addition, Section 20 requires that:

"Where application is made for renewal of a registration, the procedure established in Section 10 shall be followed and, in addition, a sworn declaration shall be filed stating whether the trademark has been used within the term fixed in Section 5, in at least one class, or whether it was used as a trade name, also indicating the product, service or activity, as the case may be.

"Once a decision has been rendered granting registration or renewal, the corresponding certificate shall be issued to the applicant."

Very often it is not possible to comply with this requirement for the simple reason that the mark has not been used within the legally prescribed periods. In that case, it is customary to allow the registration to expire and, on the date following expiry, to file a new application "for renewal" as if a mark was being registered for the first time. That gives interested parties the opportunity to oppose the grant, whereupon the application ultimately may not be granted.

That was what happened in *Van Den Berghs and Jurgens Limited v. Sevel and Co. S.A.*, a case of opposition to the registration of a mark, decided by Chamber 2 of the Federal Court of Buenos Aires on August 31, 1984.

The plaintiff was seeking registration in international classes 29 and 30 of the mark "Nucoa." The application was opposed by the other firm, which alleged liability to confusion with its own mark "Zucoa" registered in class 22 of the old 1912 classification, which included articles featuring in classes 29 and 30 of the International Classification.

The lower court rejected the action and declared the opposition valid. Van den Berghs appealed against the ruling, contending that the marks had coexisted in the register—not in use—for more than 50 years without any interference having occurred.

The Federal Court took the following position in this case:

- (i) that coexistence in the register was of less importance because, *ipso facto*, the marks did not reach the consuming public;
- (ii) that the marks were subject to direct confusion;
- (iii) that their coexistence could mislead the consumer in such a way as to violate one of the essential purposes of trademark legislation.

Consequently, it upheld the ruling of the lower court, and did not allow registration of the mark "Nucoa," on the additional ground of the widespread use that had been made of the mark "Zucoa."

(f) One subject of interest is that of the application of Law No. 22,362 to the renewal of marks registered according to the provisions of the previous Law, No. 3,975.

In *Dos Muñecos SACI and F. v. National Directorate of Industrial Property*, the Federal judge who heard the case decided, in a ruling dated February 22, 1985, that

the National Directorate of Industrial Property could not demand a declaration of use of a mark, for the purposes of renewal, until five years had elapsed following the entry into force of Law No. 22,362, that is, until February 1, 1986.

In the case of *Matarazzo SAIC v. National Directorate of Industrial Property*, Chamber 3 of the Federal Court of Buenos Aires, dated December 21, 1984, it was declared that the use requirements for the renewal of a mark specified in Law No. 22,362, which entered into force on February 1, 1981, could not be validly enforced in relation to marks granted prior to that date and according to the provisions of Law No. 3,975. In other words, the Chamber held that, until February 1, 1991, trademark registrations could be renewed independently of their use, that is, regardless of whether or not they had been used.

In spite of that decision, and because the Supreme Court of the Nation has yet to provide the final interpretation, the National Directorate of Industrial Property continues to demand compliance with the requirements of Law No. 22,362.

(g) Argentina is wrongly spoken of as being the trademark pirates' paradise. This author has already dealt with the groundlessness of such an allegation in this review.³ In a recent decision handed down in *Fiorucci S.A. v. Fiorucci S.p.A.* (Chamber 2 of the Federal Court of Buenos Aires, of September 11, 1984), a case of unwarranted opposition, the court took the opportunity of stating that the slavish copying of a foreign mark or name was not liable to be vindicated by the passage of time because it was contrary to the provisions of Section 953 of the Civil Code.

(h) Unlike what happened under the provisions of Law No. 3,975, which did not expressly prohibit the registration of marks that could cause confusion in the minds of consumers, the present Law prohibits it expressly in Section 3(d). In the case of *Alejandro Llauro e Hijos SAIC v. Ubyco SAIC* concerning groundless opposition to trademark registration, Chamber 1 of the Federal Court of Buenos Aires, in a decision dated February 1, 1985, took the opportunity to state that fair business practice required situations to be avoided where the consumer was misled as to the origin of the goods that he acquired (Supreme Court, 272-290; 279-150; 295-581; 301-62), to which it should be added that—as the Court said—it is not possible to allow the coexistence of similar marks to distinguish goods known to be related to each other with respect to function, application and purpose (case no. 1,700, dated March 11, 1983).

(i) An important case dealing with the proof of a mark's notoriety was decided on October 9, 1984, by Chamber 1 of the Federal Court of Buenos Aires in *Mack Trucks, Inc. v. Aira Gerardo Julio*, which

³"Trademark Piracy in Argentine Law," *Industrial Property*, 1982, p. 305.

concerned an action for unwarranted opposition to the registration of a mark.

It was ruled that it was not sufficient, to demonstrate the notoriety of a mark, to submit certificates of registration of that mark abroad, and also that the principle of territoriality, which was emphatically stated in Section 41 of Law No. 3,975, still operated (Supreme Court, Decisions: 140-397; 150-394; 240-393).

It is also not sufficient to submit either photocopies of publications, if no proof is given of their authenticity or extent of distribution, or an expert accountant's report consisting in a simple attestation of the use of the mark. It is necessary to show that the mark is well known in its country of origin or in other countries, to the public as a whole, whether consumers or not, as identifying a particular product (cf. Federal Court of Buenos Aires, Chamber 1, in *Skil Corporation v. Fabianos J.M.*, dated June 26, 1979).

7. Trade Names (Designations)

The second paragraph of Section 29 of Law No. 22,362 reads as follows:

"Such action shall be statute-barréd one year from the time when the third party commenced public and manifest use thereof, or from the date on which the plaintiff became aware of the use thereof."

And the second paragraph of Section 3,986 of the Civil Code adds in its turn that:

"Statute-barring shall be suspended, once, by an attestation of delay on the part of the debtor, executed in authentic form. Such suspension shall only be effective for one year, or for such shorter period as may correspond to the statute-barring of the action."

In *Casa Mady SRL v. Casa Madia*, seeking cessation of the use of a trade designation, decided by Chamber 2 of the Federal Court of Buenos Aires on June 21, 1983, the scope of the above-quoted Civil Code provision was clearly stated.

It emerges from the holding that the defendant had begun trading in March or April 1978, and that on September 13 of the same year it had been formally called upon by the plaintiff to discontinue its use of the designation.

The Chamber concluded that the one-year period for statute-barring had not expired, in view of the fact that the formal notice had suspended the passage of time towards such expiry for a year (Civil Code, text according to Law No. 17,940, Section 3986, second paragraph), and the action had been brought on October 17, 1979.

It will thus be noted that, adding up the periods elapsed between March or April and September 1978, and between the same month in 1979 and the bringing of the action, one does not arrive at the full year provided for in the Law.

8. Industrial Designs

Of the few judgments handed down on this subject, the only one that could be selected for the purposes of this article is the one rendered in *Zicero e Hijos SA and Others v. Trevani Ricardo Ernesto* by Chamber 1 of the Federal Court of Buenos Aires on December 10, 1984.

The aspect of that decision that deserves to be mentioned is the following:

(a) With regard to the interest that a party has to have when applying for the invalidation of an industrial design, industrialists engaged in business in the same areas, sufficient justification of such status being provided by the intention to engage in the same industrial activity, are treated as having such an interest. A person who is already making use of the design and whose freedom of action is hampered by the owner of the right also has such an interest.

(b) The system of restrictive interpretation to which invalidations are subject is not applicable to industrial designs in view of the fact that the client, under Law No. 6,673/63, accepted the deposit system without prior examination. Consequently, no special protection may be derived from the mere fact of deposit, in that it had been secured as a result of the mere intention of the party concerned to secure it (cf. Supreme Court, Decisions: 276-122, and ruling based thereon by that Court; earlier settlement dated September 28, 1971).

The New Law on Distinctive Signs for Goods of the German Democratic Republic

J. HEMMERLING*

The new Law on Distinctive Signs for Goods of November 30, 1984, of the German Democratic Republic entered into force on April 1, 1985.¹ This Law governs the obligation of enterprises to distinguish their goods by marks, indications of source or by their own names. Furthermore, it regulates the requirements, the subject matter and the guarantee of legal protection for marks and indications of source, the legal protection of which has been newly established by this Law, as well as regulating the protection of the names of enterprises insofar as they are used for distinguishing purposes.

The new Law corresponds to the advanced level of social development in the German Democratic Republic. It takes account of the experience that has been gained in the implementation of the former Trademark Law of February 17, 1954, as well as, on the international level, in the use of the Paris Convention for the Protection of Industrial Property and the Madrid Agreement Concerning the International Registration of Marks.

The new Law is based on the principle that the Government bodies and enterprises of the German Democratic Republic give due attention to the marking of goods. Thus, the enterprises of the German Democratic Republic are responsible for ensuring that their goods become popular on the market, by using distinctive signs as symbols of high-quality workmanship.

In accordance with other regulations in force in the German Democratic Republic, the basic provisions of the new Law on Distinctive Signs for Goods are intended, in the interests of both consumers and users, to ensure goods and services of a consistent high quality. They oblige enterprises to exercise their activities with respect to distinctive signs in such a manner as to stimulate the workers' sense of responsibility for the high quality and good reputation of the goods produced by them.

The new Law contains proven provisions concerning the obligation of enterprises to distinguish their goods. According to those provisions, enterprises must mark their goods in such a way that the manufacturing enterprise may be identified, if possible also during the utilization of those goods. This may be done by using a

distinctive sign (for example, a trademark or indication of source). In addition, goods intended for export must bear the indication "*Hergestellt in der Deutschen Demokratischen Republik*" ("Made in the German Democratic Republic"), "*Hergestellt in der DDR*" ("Made in the GDR") or "*DDR*" ("GDR").

The combines, enterprises and associations using collective marks of the German Democratic Republic already make use of a large number of distinctive signs at home and abroad. They can decide, when creating a new product, whether to use one of the distinctive signs for products already on the market or, in individual cases, to create a new sign and make it popular. The Office for Inventions and Patents will assist enterprises, on request, in designing new marks with good advertising appeal. Enterprises may submit a proposed mark to a committee of experts specially established for this purpose by the Office. The committee evaluates the mark, and makes proposals, if necessary, for its improvement.

* * *

A new element introduced by the Law is the legal protection of indications of source. These are indications of the origin of specified goods from a country, region or locality and may be intended to distinguish goods of a single enterprise or several enterprises insofar as those goods originate in the indicated territory (Section 19 of the Law). Consequently, the concept of "appellation of origin," used in international practice, is also comprised in this notion. Thus, such well-known indications of source as "*Meissner Porzellan*" (Meissen porcelain), "*Jenaer Glas*" (Jena glass), "*Plauener Spitze*" (lace from Plauen), "*Erzgebirgische Spielwaren*" (toys from the Erz mountains), "*Dresdner Stollen*" (cake-type loaf from Dresden), "*Suhler Jagdwaffen*" (hunting weapons from Suhl), "*Klingenthaler Musikinstrumente*" (musical instruments from Klingenthal) and "*Halberstädter Würstchen*" (sausages from Halberstadt), as well as numerous new indications of source that have been developed during recent years for products which have become well-known from localities and regions of this country, may now also benefit from legal protection.

The extension of legal protection has led to a change in the meaning of existing terms. The new Law has introduced the term "distinctive signs" (*Warenkennzeichen*) to cover both marks and indications of source. The term "mark" now covers registered trademarks and service marks, get-up (*Ausstattungen*) and packaging, the protection of which has also been established by the new Law. The expression "in particular" used in Section 9 for explaining the term "mark" implies that this term may also cover other types of marks that have not been expressly mentioned in the Law. By introducing the term "mark," the new Law is in accordance with the relevant international treaties.

* * *

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¹ *Gesetzblatt der Deutschen Demokratischen Republik (GBl.)*, 1984 I, No. 33, p. 397. See this month's *Industrial Property Laws and Treaties*, GERMAN DEMOCRATIC REPUBLIC — Text 3-001.

Proven provisions concerning the filing of applications for registration with the Office for Inventions and Patents, inscription in the Register and the rights resulting from such registration, as well as procedural provisions, have been retained in the new Law. Certain provisions have been modified as a result of experience gained or in order to adapt them better to the relevant international treaties. In accordance with the corresponding provisions of the Paris Convention for the Protection of Industrial Property, Section 12 of the new Law provides that domestic and foreign armorial bearings, flags and other State emblems, official signs and hallmarks indicating control and quality, as well as distinctive signs or names of international intergovernmental organizations must be excluded from registration as distinctive signs for goods. The same applies to the Olympic symbol, emblems or denominations.

A new provision has been introduced which provides that the Office for Inventions and Patents shall exclude a mark from being registered "if the same or a deceptively similar distinctive sign has already been applied for by a third party for the same or similar goods or services and entered in the Register of Marks or the Register of Indications of Source" (Section 13). Thus the German Democratic Republic ranks among those countries that *ex officio* carry out an examination for the existence of "prior rights." This is likely to assure protection with greater legal security to the owners of registered marks.

The Law also provides for the protection of the name of a manufacturing enterprise where such name is used to distinguish the goods or services of that enterprise. Since the protection of trade names is regulated by other legal provisions, no special legal protection had to be established, except for providing for protection against unlawful use with respect to distinguishing goods or services (Sections 28 and 30).

By introducing a provision in the new Law (Section 17) regulating the transfer of a mark and the authorization to use a mark, the principle of dependence of a mark on the commercial enterprise has been abandoned. Marks may be transferred to another enterprise

if there is no danger of the new proprietor misleading the consumer or user of the goods.

The authorization to use a sign (licensing)—not linked to a change of proprietors—is of increasing importance due to economic, scientific and technological cooperation between enterprises in the German Democratic Republic and partners in other countries. Thus, it might be useful if a contracting party taking a license were to receive not only technological information, patents and know how, but also the mark for identifying the product to be manufactured under that license.

* * *

Section 25 of the new Law provides that the procedural provisions of the Patent Law are applicable in proceedings before the Office for Inventions and Patents.² All specific requirements for filing an application for the registration of a mark or indication of source have, for the first time, been provided for by a special Ordinance.³

Associations of enterprises using the same mark, State organs or international economic organizations may apply for the registration of collective marks or collective indications of source. Such associations have, in the past, proved their usefulness as communities for the joint use of distinctive signs by several enterprises. This is the reason why they have again been expressly mentioned in the new Law as "[a]ssociations for marking goods" (Section 7). The details concerning the foundation and activities of such associations are regulated in the First Implementing Regulation of the new Law on Distinctive Signs for Goods.⁴

² Decree on Proceedings Before the Office for Inventions and Patents of the GDR for Ensuring Legal Protection of Inventions of November 10, 1983.

³ Decree Concerning the Conditions to be Fulfilled When Making an Application for the Registration of Distinctive Signs for Goods, of January 10, 1985, *GBl.*, Special Issue No. 1194.

⁴ First Implementing Regulation of the Law on Distinctive Signs for Goods, of December 3, 1984, *GBl.* I, No. 33, p. 411.

Calendar of Meetings

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1985

- November 25 to December 6 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
 December 2 to 6 (Paris) — Committee of Governmental Experts on Model Provisions for National Laws on Publishing Contracts for Literary Works (convened jointly with Unesco)
 December 3 to 6 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property
 December 11 to 13 (Geneva) — Committee of Experts on the International Registration of Marks
 December 16 (Geneva) — Informal Meeting with International Non-Governmental Organizations Essentially Concerned with Industrial Property

1986

- January 20 to 24 (Geneva) — International Patent Classification (IPC) Union: Committee of Experts
 January 27 to 31 (Geneva) — Group of Experts on Model Provisions for National Laws on Employed Authors (convened jointly with Unesco)
 January 29 to 31 (Geneva) — Madrid Union: Working Group on Links Between the Madrid Agreement and the Proposed (European) Community Trade Mark
 February 3 to 7 (Geneva) — Paris Union: Committee of Experts on Biotechnological Inventions and Industrial Property
 April 8 to 11 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property
 April 14 to 18 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on General Information
 April 28 to May 2 (Paris?) — Committee of Governmental Experts on Audiovisual Works and Phonograms (convened jointly with Unesco)
 May 5 to 7 (Geneva) — Paris Union: Committee of Experts on Protection Against Counterfeiting
 May 12 to 14 (Geneva) — WIPO Worldwide Forum on Collective Administration of Authors' Rights
 May 26 to 30 (Geneva) — Paris Union: Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions
 May 26 to June 6 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
 June 4 to 6 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Patent Information for Developing Countries
 June 9 to 13 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning
 September 1 to 5 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)
 September 8 to 10 (Geneva) — Patent Information Fair
 September 9 to 12 (Geneva) — Governing Bodies (WIPO Coordination Committee, Executive Committees of the Paris and Berne Unions, Assembly of the Berne Union)
 October 13 to 17 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on General Information
 November 24 to December 5 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
 December 8 to 12 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning

UPOV Meetings

1986

- April 15 and 16 (Geneva) — Administrative and Legal Committee
 April 17 (Geneva) — Consultative Committee
 May 21 to 23 (Hanover) — Technical Working Party on Automation and Computer Programs
 May 26 to 29 (Pontecagnano-Salerno) — Technical Working Party for Vegetables, and Subgroup
 June 3 to 6 (Dublin) — Technical Working Party for Agricultural Crops, and Subgroup
 July 15 to 18 (Wageningen) — Technical Working Party for Ornamental Plants and Forest Trees, and Subgroup
 September 15 to 19 (Wädenswil) — Technical Working Party for Fruit Crops, and Subgroup

November 18 and 19 (Geneva) — Administrative and Legal Committee

November 20 and 21 (Geneva) — Technical Committee

December 1 (Paris) — Consultative Committee

December 2 and 3 (Paris) — Council

Other Meetings Concerned with Industrial Property

1986

January 14 to 17 (Munich) — European Patent Organisation: Administrative Council

March 14 (London) — Pharmaceutical Trade Marks Group: 32nd General Assembly

June 1 to 4 (San Diego) — The United States Trademark Association: Annual Meeting

June 8 to 13 (London) — International Association for the Protection of Industrial Property: XXXIII Congress

