

Industrial Property

Published monthly
Annual subscription:
180 Swiss francs
Each monthly issue:
23 Swiss francs

33rd Year - No. 11
November 1994

Monthly Review of the
World Intellectual Property Organization

Contents

EDITOR'S NOTE

Announcement: Merger of WIPO Reviews, *Industrial Property* and *Copyright* 391

NOTIFICATIONS CONCERNING TREATIES ADMINISTERED BY WIPO IN THE FIELD OF INDUSTRIAL PROPERTY

WIPO Convention. Accession: Laos 392

Madrid Agreement (Marks). New Member of the Madrid Union: Latvia 392

Nice Agreement. New Member of the Nice Union: Latvia 392

Patent Cooperation Treaty (PCT). New Member of the PCT Union: Mexico 392

Budapest Treaty

I. New Member of the Budapest Union: Latvia 393

II. Extension of the List of Kinds of Microorganisms: Czech Collection of Microorganisms
(CCM) (Czech Republic) 393

Eurasian Patent Convention. Signatory States 393

NOTIFICATIONS CONCERNING THE UPOV CONVENTION

International Convention for the Protection of New Varieties of Plants (UPOV). New Member
of UPOV: Uruguay 394

GOVERNING BODIES OF WIPO

Governing Bodies of WIPO. Twenty-Fifth Series of Meetings (Geneva, September 26 to
October 4, 1994) 395

WIPO ARBITRATION CENTER 398

REGISTRATION SYSTEMS ADMINISTERED BY WIPO

Patent Cooperation Treaty (PCT) 399

ACTIVITIES OF WIPO IN THE FIELD OF INDUSTRIAL PROPERTY SPECIALLY DESIGNED FOR DEVELOPING COUNTRIES

Africa 400

Arab Countries 400

[Continued overleaf]

WIPO 1994

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review is authorized only with the prior consent of WIPO.

Asia and the Pacific	401
Summary of the Industrial Property Legislation of the Six ASEAN Countries – Memorandum prepared by the International Bureau of WIPO	402
Latin America and the Caribbean	414
Development Cooperation (in General)	414
WIPO Medals	414
 OTHER CONTACTS OF THE INTERNATIONAL BUREAU OF WIPO WITH GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS IN THE FIELD OF INDUSTRIAL PROPERTY	 415
 MISCELLANEOUS NEWS	 415
 CALENDAR OF MEETINGS	 416

**INDUSTRIAL PROPERTY LAWS AND TREATIES
(INSERT)**

Editor's Note

MONGOLIA

Patent Law (of June 25, 1993) Text 2-002

UNITED KINGDOM

Trade Marks Act 1994 (*This text replaces those previously published under code numbers 3-001 and 3-002*) Text 3-001

Editor's Note

ANNOUNCEMENT

Merger of WIPO Reviews, *Industrial Property* and *Copyright*

As of January 1, 1995, the monthly reviews of the World Intellectual Property Organization (WIPO), *Industrial Property* and *Copyright*, will be merged into a single monthly review under the title *Industrial Property and Copyright*.

Current subscribers to one or both of the existing two reviews will receive the new merged review provided they send to WIPO by December 31, 1994, the completed subscription form inserted in this issue.

The annual subscription rate for the merged review will be 210 Swiss francs for Europe and outside Europe by surface mail, and 300 Swiss francs outside Europe by airmail. All subscribers will then be receiving the equivalent of two reviews instead of one as from the beginning of 1995.

As far as the legislative texts inserted in the existing reviews are concerned, all subscribers to the merged review will receive both sets of industrial property and copyright and neighboring rights laws. It will no longer be possible to subscribe separately to the legislative texts only; the merged review and the legislative inserts relating to the two fields will only be available as a single subscription.

Notifications Concerning Treaties Administered by WIPO in the Field of Industrial Property

WIPO Convention

Accession

LAOS

The Government of Laos deposited, on October 17, 1994, its instrument of accession to the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967.

Laos will belong to Class *Ster* for the purpose of establishing its contribution towards the budget of the World Intellectual Property Organization.

The said Convention will enter into force, with respect to Laos, on January 17, 1995.

WIPO Notification No. 178, of October 18, 1994.

Madrid Agreement (Marks)

New Member of the Madrid Union

LATVIA

The Government of Latvia deposited, on September 29, 1994, its instrument of accession to the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, as revised at Stockholm on July 14, 1967, and as amended on September 28, 1979.

The said instrument contains also the following declaration:

“Pursuant to Article 3*bis*(1) of the Agreement, the Government of the Republic of Latvia declares that protection resulting from international registration shall extend to the Republic of Latvia only at the express request of the proprietor of the mark.”

The Madrid Agreement, as revised at Stockholm on July 14, 1967, and amended on September 28,

1979, will enter into force, with respect to Latvia, on January 1, 1995.

Madrid (Marks) Notification No. 64, of October 1, 1994.

Nice Agreement

New Member of the Nice Union

LATVIA

The Government of Latvia deposited, on September 29, 1994, its instrument of accession to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Stockholm on July 14, 1967, and at Geneva on May 13, 1977, and as amended on September 28, 1979.

The Nice Agreement, as revised and amended, will enter into force, with respect to Latvia, on January 1, 1995.

Nice Notification No. 81, of October 1, 1994.

Patent Cooperation Treaty (PCT)

New Member of the PCT Union

MEXICO

The Government of Mexico deposited, on October 1, 1994, its instrument of accession to the Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970.

The said Treaty will enter into force, with respect to Mexico, on January 1, 1995.

PCT Notification No. 97, of October 1, 1994.

Budapest Treaty

I. New Member of the Budapest Union

LATVIA

The Government of Latvia deposited, on September 29, 1994, its instrument of accession to 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, and amended on September 26, 1980.

The said Treaty, as amended on September 26, 1980, will enter into force, with respect to Latvia, on December 29, 1994.

Budapest Notification No. 131, of October 1, 1994.

II. Extension of the List of Kinds of Microorganisms

CZECH COLLECTION OF MICROORGANISMS (CCM)

(Czech Republic)

The following communication from the Government of the Czech Republic dated October 12, 1994, was received on October 17, 1994, by the Director General of WIPO under the Budapest Treaty:

The Permanent Mission of the Czech Republic to the United Nations Office and other International Organizations at Geneva presents its compliments to the World Intellectual Property Organization and has the honor to inform the latter that the Czech Collection of Microorganisms (CCM) performing the functions of an international depositary authority under the Budapest Treaty extends the list of microorganisms, as follows:

Microorganisms Accepted for Deposit with CCM

The bacteria (including actinomycetes), filamentous fungi, yeast-like microorganisms, yeasts, accepted are those capable of long-term preservation without any substantial change of their initial properties, plasmids in a host.

Notice:

- (a) The CCM accepts for deposit only those bacteria, filamentous fungi, yeast-like microorganisms and yeasts which, pursuant to *Laboratory Biosafety Manual* (World Health

Organization, Geneva 1983), belong to hazard group I or II.

- (b) Microorganisms having special requirements for cultivation which the CCM is not technically capable of carrying out, shall not be accepted.
- (c) Cultures without scientific description as well as cultures which cannot be identified shall not be accepted.
- (d) When depositing strains containing a plasmid, the CCM shall require information on the plasmid and its host strain in respect of their properties and classification (i.e., group P1, P2, P3 or P4). The CCM shall accept only plasmids belonging to group P1.

[End of text of the communication of the Government of the Czech Republic]

The said list of kinds of microorganisms will supplement the list of kinds of microorganisms accepted for deposit by CCM, published in the July/August 1992 issue of *Industrial Property*,¹ and the list as amended will take effect as from November 30, 1994, the date of publication of the said communication in the present issue of *Industrial Property*.

Budapest Communication No. 93 (this communication is the subject of Budapest Notification No. 132 of November 5, 1994).

¹ *Industrial Property*, 1992, pp. 211 *et seq.*

Eurasian Patent Convention

Signatory States

On September 9, 1994, the following 10 States signed the Eurasian Patent Convention:

Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Ukraine.

The original of the Convention is deposited with the Director General of WIPO in Geneva. It can be signed at any time at the headquarters of WIPO in Geneva. Any State member of the United Nations and party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty may become party to the Eurasian Patent Convention.

To become party to the Eurasian Patent Convention, a State must either sign the Convention and deposit an instrument of ratification or, if it has not signed the Convention, deposit an instrument of accession to the Convention.

Instruments of ratification or accession must be deposited with the Director General of WIPO in Geneva.

EAPC Notification No. 1, of October 14, 1994.

Notifications Concerning the UPOV Convention

International Convention for the Protection of New Varieties of Plants (UPOV)

New Member of UPOV

URUGUAY

The Government of Uruguay deposited, on October 13, 1994, its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised

at Geneva on November 10, 1972, and on October 23, 1978.

Uruguay has not heretofore been a member of the International Union for the Protection of New Varieties of Plants, founded by the said International Convention.

The said International Convention will enter into force, with respect to Uruguay, on November 13, 1994. On that date, Uruguay will become a member of UPOV.

For the purpose of determining its share in the total amount of the annual contributions to the budget of UPOV, one-fifth (0.2) of one contribution unit is applicable to Uruguay.

UPOV Notification No. 45, of October 14, 1994.

Governing Bodies of WIPO

Governing Bodies of WIPO

Twenty-Fifth Series of Meetings
(Geneva, September 26 to October 4, 1994)

General. From September 26 to October 4, 1994, the following Governing Bodies of WIPO held their twenty-fifth series of meetings in Geneva:

- (1) WIPO General Assembly, fifteenth session (4th extraordinary);
- (2) WIPO Coordination Committee, thirty-second session (25th extraordinary);
- (3) Paris Union Assembly, twenty-second session (11th extraordinary);
- (4) Paris Union Executive Committee, thirtieth session (30th ordinary);
- (5) Berne Union Assembly, sixteenth session (5th extraordinary);
- (6) Berne Union Executive Committee, thirty-sixth session (25th ordinary);
- (7) PCT [Patent Cooperation Treaty] Union Assembly, twenty-second session (13th extraordinary).

One hundred and twenty-two States, 17 intergovernmental organizations and 17 international non-governmental organizations were represented at the meetings.¹ They were: Algeria, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guinea, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Namibia, Netherlands, New Zealand,

Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Zambia, Zimbabwe; United Nations (UN), United Nations Development Programme (UNDP), International Labour Office (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Meteorological Organization (WMO), United Nations Industrial Development Organization (UNIDO), General Agreement on Tariffs and Trade (GATT), African Intellectual Property Organization (OAPI), African Regional Industrial Property Organization (ARIPO), Benelux Designs Office (BBDM), Benelux Trademark Office (BBM), European Patent Organisation (EPO), Commission of the European Communities (CEC), European Free Trade Association (EFTA), League of Arab States (LAS), Organization of African Unity (OAU), Interstate Council for the Protection of Industrial Property (ICPIP); European Broadcasting Union (EBU), European Communities Trade Mark Association (ECTA), European Federation of Audiovisual Filmmakers (FERA), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Industrial Property Attorneys (FICPI), International Federation of Inventors' Associations (IFIA), International Federation of Musicians (FIM), International Federa-

¹ A full list of participants may be obtained on request from the International Bureau.

tion of Reproduction Rights Organizations (IFRRO), International Organization for Standardization (ISO), International Publishers Association (IPA), Pacific Industrial Property Association (PIPA), Union of Industrial and Employers' Confederations of Europe (UNICE).

The main subjects considered by the Governing Bodies and the main decisions that they adopted are described below.

Activities of WIPO from July 1, 1993, to June 30, 1994. The delegations of practically all the Member States expressed their satisfaction, as far as the activities of the International Bureau during the last year and a half were concerned, with the great quantity and the excellent quality of those activities and the imagination and efficiency with which they were carried out and, as far as the report on the activities was concerned, with its all-embracing coverage, transparency and clarity. They were of the view that, as far as the International Bureau was responsible, the activities had attained the objectives expressed in the program and that the staff of the International Bureau had once again demonstrated their ability, under the dynamic leadership of the Director General, to respond with verve, flair and efficiency to the challenges brought about by the changing world situation and expectations of Member States.

Particular satisfaction was expressed with respect to the development cooperation activities. The delegations of the developing countries mentioned, in particular, the great importance of technical assistance in consolidating the contribution of intellectual property to their technological, economic, cultural and social development. They expressed the hope that WIPO's development cooperation program would continue, enhance and further broaden, particularly in the light of new developments in the international intellectual property scene and the desire to achieve sustainable development. A number of delegations of industrialized and other donor countries reaffirmed their willingness to continue giving support to WIPO and its development cooperation program, both in funds and in kind.

The development cooperation activities considered most useful by many delegations were, in particular, general and specialized training, including long-term fellowships, assistance in the drafting of legislation, rationalization of the administrative operations of industrial property offices and of societies for the collective administration of authors' and composers' rights, in particular through computerization, patent information services to the public by increasing use of CD-ROM technology, the teaching of intellectual property in universities, promotion of public awareness and information for judges and for enterprises. In this connection, the WIPO Academy was mentioned as a major innovation which responded to

a perceived need for middle to senior-level government officials to become familiar with the full policy ramifications of intellectual property issues.

A number of delegations made suggestions for the organization by WIPO of various development cooperation activities in the future.

Referring to the decline in extrabudgetary resources available to WIPO for its development cooperation activities, many delegations of developing countries requested an increased supply of funds, from the Organization's regular budget, for development cooperation activities in the 1996-97 biennium, in view of the growing demand for technical assistance from developing countries. The Group of Latin American countries requested that the Governing Bodies instruct the Budget Committee, in examining the draft budget for the 1996-97 biennium, to ensure higher allocations for such activities. A number of delegations emphasized the importance they attached to WIPO's activities in connection with the international registration systems, and they supported the pursuance of work on norm-setting and harmonization. They looked forward to the successful conclusion of the Diplomatic Conference for the Conclusion of the Trademark Law Treaty, the resumption of work, through compromise and accommodation as appropriate, on the proposed Patent Law Treaty, the proposed Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property and the continuation of the work on a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works and a possible instrument for the protection of the rights of performers and producers of phonograms. A number of delegations also welcomed the establishment of the WIPO Arbitration Center for the settlement of intellectual property disputes between private parties and viewed the new institution as a potentially important support for the private sector.

WIPO and the World Trade Organization (WTO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The WIPO General Assembly adopted the following Resolution:

"1. Having noted that the preamble of the Agreement on Trade-Related Aspects of Intellectual Property Rights states that the Members of the World Trade Organization desire to establish a mutually supportive relationship between the World Trade Organization and the World Intellectual Property Organization, the WIPO General Assembly hereby also expresses the desire to establish a mutually supportive relationship between the World Intellectual Property Organization and the World Trade Organization.

2. In accordance with its desire to establish a mutually supportive relationship between the

World Intellectual Property Organization and the World Trade Organization, the WIPO General Assembly decides to establish an *ad hoc* working group open to all Member States of WIPO:

(i) to advise and cooperate with the Director General of WIPO in his contacts with the competent organs of GATT/WTO;

(ii) to discuss matters concerning possible cooperation between WIPO and WTO;

(iii) to consider the establishment of an *ad hoc* informal WIPO/GATT-WTO Consultation Group on all matters concerning possible cooperation between WIPO and WTO.

3. The WIPO General Assembly decides that the International Bureau should be at the disposal of any State that expressly asks for advice on questions of compatibility of its existing or planned national intellectual property legislation not only with treaties administered by WIPO, but also with other international norms and trends, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, and that the International Bureau should prepare studies on the implications of the said Agreement on the treaties administered by WIPO."

It was noted that, as was the practice in WIPO, any such advice or studies would not constitute an official interpretation of any international agreement.

Patent Law Treaty (PLT). The Assembly of the Paris Union agreed that:

(a) a Consultative Meeting for the Further Preparation of the Diplomatic Conference for the Conclusion of the Patent Law Treaty should be convened by the Director General of WIPO in the first half of 1995 in order to try to recommend solutions to the principal issues involved so that, in due course, the Diplomatic Conference could be reconvened;

(b) the members of the Consultative Meeting should be States members of WIPO and/or the United Nations;

(c) in addition to the usual observer organizations, GATT/WTO should also be invited to the Consultative Meeting;

(d) the results of the Consultative Meeting should be considered by the 1995 sessions of the competent Governing Bodies of WIPO.

The discussions of the Consultative Meeting would not be limited to technical issues but would aim at recommending solutions in order to maintain the impetus toward the reconvening of the Diplomatic Conference. The proposed Treaty would no longer be referred to as a "Treaty Supplementing the Paris Convention as Far as Patents are Concerned" but as the "Patent Law Treaty," with a view to de-linking it from the Paris Convention for the Protection of Industrial Property, that is, lifting the obliga-

tion of being a party to the Paris Convention as a condition for being a party to the proposed Treaty. A similar de-linking from the Paris Convention should, in due course, occur also in respect of the existing "special agreements" under the Paris Convention, in particular, in respect of the Patent Cooperation Treaty (PCT), the Madrid Agreement Concerning the International Registration of Marks and the future Trademark Law Treaty. As mentioned above, the results of the Consultative Meeting would be presented for consideration at the 1995 sessions (ordinary or extraordinary) of the competent Governing Bodies of WIPO, that is, not only the Assembly of the Paris Union. WIPO would offer to finance the participation (air ticket and per diem) of one person of each State that is a developing country and expresses an interest in participating in the Consultative Meeting.

Matters Concerning a Possible Protocol to the Berne Convention and a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms. The Assembly of the Berne Union decided that the preparatory documents for the December 1994 sessions of the Committee of Experts on a Possible Protocol to the Berne Convention and the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms, respectively, should consist of the provisional documents prepared by the International Bureau, dated April 29, 1994 (with their annexes) and the written comments submitted by the Governments of Argentina, Japan, Lesotho, South Africa and the United States of America and by the CEC, appearing in documents B/A/XVI/1 and 1 Add. It also decided that paragraphs 11 to 23 (relating to the protection of computer programs) of the provisional document concerning the Berne Protocol should be omitted, on the understanding that all matters raised in the paragraphs concerned could be discussed fully by the Committee, including by express reference to the text of the same paragraphs. The Assembly also decided that the two Committees had the competence to set, during the sessions in December 1994, the approximate dates for their next sessions in consultation with the Director General.

Matters Concerning the Draft Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property. The WIPO General Assembly decided that the Committee of Experts on the Settlement of Intellectual Property Disputes Between States would meet again in 1995, before the September 1995 ordinary session of the WIPO General Assembly, and that the General Assembly, at that session, would decide on any further steps in that connection, including the question of whether to hold a Diplomatic Conference for the Conclusion of

a Treaty on the Settlement of Intellectual Property Disputes Between States and, if so, when.

Matters Concerning the PCT Union. The Assembly of the PCT Union decided that the proposal to increase the maximum number of designation fees payable under the PCT or an alternative proposal for a general fee increase could be considered by the Assembly in 1995 following consideration by the PCT Committee for Administrative and Legal Matters and/or the WIPO Budget Committee, as appropriate. The Assembly also noted the contents of paragraphs 1 to 21 of document PCT/A/XXII/1 concerning the cost of producing the *PCT Gazette* and *Gazette du PCT* and agreed that publication of the index of international publication numbers according to designated States should be discontinued, with the expected effect of reducing the volume of each regular Gazette in English and French by about 11%, and, consequently, of

providing savings in paper, printing and postage of about 110,000 Swiss francs a year.

Nomination to the Post of Director General. The WIPO Coordination Committee decided, by consensus, to submit the name of Dr. Arpad Bogsch, the present Director General, to the WIPO General Assembly with a view to his appointment for the continuation of his term of office at the head of WIPO, it being understood that the duration of the term of office starting on December 1, 1995, and any other conditions of the appointment would be fixed by the General Assembly.

Staff Matters. The WIPO Coordination Committee gave favorable advice on the intention of the Director General to promote Mr. Giovanni Tagnani, a national of Italy, to grade D.1, as Director, Buildings Division.

WIPO Arbitration Center

Commencement of Operations

The WIPO Arbitration Center became operational on October 1, 1994. The commencement of operations was preceded by various preparatory steps culminating in a meeting of a Group of Experts in August 1994 and the first meeting of the WIPO Arbitration Council in September 1994.

Final Preparations for Commencement of Operations

Group of Experts. Third Meeting (Geneva, August 24 and 25, 1994). The Group of Experts which had met in April and May 1994 to review the drafts of the WIPO Mediation, Arbitration and Expedited Arbitration Rules held a final meeting on August 24 and 25, 1994.

At that meeting, the four members of the Group of Experts once more reviewed and revised the drafts

of the WIPO Mediation, Arbitration and Expedited Arbitration Rules and revised draft model contract clauses for mediation, arbitration and expedited arbitration under those Rules. The draft Rules and model contract clauses had been circulated in July 1994 for observations to interested non-governmental organizations, enterprises and individuals and the observations received were reviewed by the Group of Experts.

WIPO Arbitration Council. First Meeting (Geneva, September 19, 1994). The WIPO Arbitration Council, comprising 10 persons, held its first meeting at the headquarters of WIPO on September 19, 1994.

The Council discussed and noted the WIPO Mediation, Arbitration and Expedited Arbitration Rules and the model WIPO contract clauses and submission agreements, which subsequently entered into force on October 1, 1994, as well as a draft general information brochure on the WIPO Arbitra-

tion Center entitled *The Services of the WIPO Arbitration Center—General Information Brochure*. It further considered the composition of the WIPO Arbitration Consultative Commission and the past and planned activities of the WIPO Arbitration Center.

WIPO Arbitration Consultative Commission

The WIPO Arbitration Consultative Commission was established by the Director General of WIPO.

The function of the Consultative Commission is to give opinions and advice to the WIPO Arbitration Center on non-routine issues in respect of which the Center is required to take a decision in the course of the administration of an arbitration, notably the challenge, release or replacement of an arbitrator and special questions concerning fees. For the purposes of receiving such opinions and advice, the Center will constitute, whenever required, *ad hoc* committees composed of three members of the Consultative Commission. The Commission had 34 members on October 1, 1994.

Registration Systems Administered by WIPO

Patent Cooperation Treaty (PCT)

Training and Promotion Meetings With PCT Users

Denmark. In late August and early September 1994, two WIPO officials conducted a seminar on the PCT for patent administrators organized by the Danish Patent Office in Copenhagen. The seminar was attended by 16 persons, including staff members of the Patent Office, attorneys, patent agents and other representatives from local law firms and industry.

United States of America. In August 1994, a government official had discussions with WIPO officials in Geneva on the possible organization of training sessions in the administrative procedures under the PCT for the staff of the United States Patent and Trademark Office (USPTO) in charge of PCT operations.

Centre for International Industrial Property Studies (CEIPI). In August 1994, two WIPO officials conducted a seminar on the PCT organized by WIPO in cooperation with CEIPI and a local industrial property firm in Copenhagen. The seminar was attended by 20 Danish patent agents preparing for the European patent examination.

Computerization Activities

European Patent Office (EPO). In August 1994, two EPO officials discussed with WIPO officials in Geneva questions relating to the PCT, in particular the handling of international preliminary examination in the framework of the EPO's BEST (*Bring Examination and Search Together*) project.

Activities of WIPO in the Field of Industrial Property Specially Designed for Developing Countries

Africa

Training Courses, Seminars and Meetings

WIPO African Introductory Course on Industrial Property (Botswana). From August 8 to 17, 1994, WIPO organized that Course in Gaborone in cooperation with the Government of Botswana. The Course was attended by 15 government officials from Cameroon, Ethiopia, the Gambia, Kenya, Lesotho, Liberia, Malawi, Mauritius, Namibia, Swaziland, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe and six local participants. Presentations were made by six WIPO consultants from Egypt, Lesotho, the Netherlands, Sweden, the African Regional Industrial Property Organization (ARIPO) and the European Patent Office (EPO) and by two WIPO officials.

Assistance With Training, Legislation and Modernization of Administration

Benin. In August 1994, a WIPO official undertook a mission to Cotonou to evaluate the computerization needs of the National Industrial Property Center (CENAPI).

Botswana. In August 1994, two WIPO officials held discussions in Gaborone with government officials and officials of the United Nations Development Programme (UNDP) on cooperation between Botswana and WIPO.

Cameroon. In August 1994, a WIPO official undertook a mission to Yaoundé to install a CD-ROM workstation donated by WIPO to the Service of Promotional Matters and Industrial Property. An initial practical training in various searching methods using CD-ROMs was also given to the staff. The Minister for Industrial and Commercial Development and several of his staff attended a demonstration of the operations of the CD-ROM workstation.

Côte d'Ivoire. In August 1994, a WIPO official undertook a mission to Abidjan to install a CD-ROM workstation donated by WIPO to the Directorate of Industrial Technology. An initial practical training in various searching methods using CD-ROMs was also given to the staff.

Niger. In late August and early September 1994, a WIPO official undertook a mission to Niamey to install a CD-ROM workstation donated by WIPO to the Directorate of Industrial Development. Initial practical training in various searching methods using CD-ROMs was also given to the staff concerned.

African Intellectual Property Organization (OAPI). In August 1994, Mr. Albert Makita-Mbama, *administrateur délégué* of OAPI, and another OAPI official visited WIPO and met the Director General and other WIPO officials. Measures aimed at revitalizing OAPI through cooperation with WIPO were discussed.

Arab Countries

Training Courses, Seminars and Meetings

WIPO Arab Regional Seminar on Industrial Property (Jordan). From August 27 to 29, 1994, WIPO organized that Seminar in Amman in cooperation with the Government of Jordan. In addition to some 50 local participants from the government and private sectors, 14 government officials from Algeria, Egypt, Lebanon, Sudan, Syria, Tunisia and the United Arab Emirates participated in the Seminar, which was opened by the Director General

of WIPO. Presentations were made by four WIPO consultants from Egypt, Jordan, Switzerland and Tunisia, a Jordanian expert and a WIPO official.

Assistance With Training, Legislation and Modernization of Administration

Jordan. In August 1994, the Director General, accompanied by two other WIPO officials, undertook

an official visit to Jordan at the invitation of the Prime Minister. He was received by H.M. King Hussein and also discussed with the Prime Minister,

other members of the Government and government officials matters relating to industrial property and copyright cooperation between Jordan and WIPO.

Asia and the Pacific

Assistance With Training, Legislation and Modernization of Administration

Brunei Darussalam. In August 1994, the International Bureau prepared and sent to the government authorities, at their request, a draft industrial property law with a commentary and the WIPO Model Law for Developing Countries on Appellations of Origin and Indications of Source.

Democratic People's Republic of Korea. From late July to late September 1994, four government officials undertook a study visit organized by WIPO to the Chinese Patent Office in Beijing and the German Patent Office in Munich. This visit was organized under the UNDP-financed country project.

India. In August and September 1994, a WIPO consultant from Australia undertook his third mission to the Trademarks Registry, Office of the Controller-General of Patents, Designs and Trade Marks, in Bombay, under the UNDP-financed country project entitled "Modernization of the Administration and More Effective Use of Trademarks in India." The purpose of the mission was to evaluate tenders for the selection of a contractor for phase two of the above project, and to assist in the negotiation of the detailed terms and conditions of the contract to be awarded to the tenderer selected.

In August 1994, a WIPO official undertook a mission to the Trademarks Registry, Office of the Controller-General of Patents, Designs and Trade Marks for the selection of a contractor for phase two of the same UNDP-financed country project. The WIPO official also examined the feasibility of developing a CD-ROM for Indian trademarks.

Indonesia. In August 1994, a WIPO official undertook a mission to the Directorate General of Copyrights, Patents and Trademarks in Tangerang on trademark computerization and the feasibility of developing a trademark CD-ROM for the Association of South East Asian Nations (ASEAN). The mission was financed under the European Commission (EC)-ASEAN Patents and Trademarks Program.

In August and September 1994, a WIPO consultant from Australia undertook a mission to the same

Directorate General to give on-the-job training on trademark search and examination. The mission was conducted under the UNDP-financed country project.

Also in August and September 1994, a WIPO consultant from the United States of America undertook a mission to Jakarta to assist in the development of curricula and teaching materials for the teaching of intellectual property in the law faculties of universities in Indonesia. The mission was carried out under the UNDP-financed country project.

Malaysia. In August 1994, a WIPO consultant from Australia started a six-month mission at the Intellectual Property Division in Kuala Lumpur to assist and advise on a wide range of issues, including legislation, training, accession to international treaties and public awareness of industrial property. The mission is being carried out under the UNDP-financed country project.

Also in August 1994, a WIPO official undertook a mission to the Intellectual Property Division on the feasibility of developing an ASEAN trademark CD-ROM. The mission was financed under the EC-ASEAN Patents and Trademarks Program.

Also in August 1994, a WIPO consultant from Finland participated as a speaker in the Asian Conference on Women Inventors which was organized in Kuala Lumpur by the Malaysian Inventions and Designs Society (MINDS) and its sister organization LADYMINDS.

Singapore. In August 1994, a WIPO official undertook a mission to the Registry of Trade Marks and Patents in Singapore to hold discussions on trademark computerization and the feasibility of developing an ASEAN trademark CD-ROM. The mission was financed under the EC-ASEAN Patents and Trademarks Program.

Thailand. In August 1994, a WIPO official undertook a mission to the Department of Intellectual Property in Bangkok to hold discussions on trademark computerization and the feasibility of developing an ASEAN trademark CD-ROM. The mission was financed under the EC-ASEAN Patents and Trademarks Program.

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SUMMARY OF THE INDUSTRIAL PROPERTY LEGISLATION
OF THE SIX ASEAN COUNTRIES

*Memorandum prepared by the
International Bureau of WIPO*

CONTENTS

1. Patents
 - 1.1 Rights Conferred
 - 1.2 Duration of Protection
 - 1.3 Patentability Criteria (in Particular, Novelty Standard Applied)
 - 1.4 Exclusions from Patent Protection
 - 1.5 Examination System
 - 1.6 Availability of Opposition Procedures
 - 1.7 Publication Requirements
 - 1.8 Compulsory Licenses and Other Measures
 - 1.9 Remedies for Infringement
2. Marks
 - 2.1 Protectability of Service Marks
 - 2.2 Duration of Protection (Initial Registration and Renewal)
 - 2.3 Examination System
 - 2.4 Single-Class or Multi-Class System
 - 2.5 Availability of Opposition Procedures
 - 2.6 Publication Requirements
 - 2.7 Register of Marks
 - 2.8 Use Requirements (and Measures Related Thereto)
 - 2.9 Remedies for Infringement
3. Industrial Designs
 - 3.1 Definition of Industrial Design
 - 3.2 Duration of Protection (Initial Registration and Renewal)
 - 3.3 Criteria of Protection (in Particular, Novelty)
 - 3.4 Examination System
 - 3.5 Number of Designs Included in Single Application
 - 3.6 Publication Requirements
 - 3.7 Remedies for Infringement

Preliminary Observations

1. This is a summary analysis of the industrial property legislation of the six ASEAN countries—Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, Thailand—based on the legislative texts available to the International Bureau of WIPO. The list of those texts appears in Annex I. Summary tables of the legislation appear in Annex II.

1. Patents

1.1 Rights Conferred

2. All of the ASEAN countries have specific legislation providing for the protection of inventions through the grant of industrial property titles. In Brunei Darussalam and Singapore, protection is granted by the issuance of a certificate of registration which is issued on the basis of a patent granted in a foreign country (in the United Kingdom, Malaysia or

Singapore, in the case of Brunei Darussalam; in the United Kingdom, in the case of Singapore). The other ASEAN countries, namely, Indonesia, Malaysia, the Philippines and Thailand, all have independent patent systems.¹

3. In all of the six ASEAN countries, provisions exist which confer on the patent owner the exclusive right to exploit the patented invention or to authorize others to do so. In Singapore, the respective provision states that the certificate of registration issued on the basis of a patent previously granted in the United Kingdom confers the same rights as those conferred by the United Kingdom patent.

4. In principle, the scope of the exclusive right is the same in all the ASEAN countries, except in two important respects: whether or not the right to import is encompassed by the exclusive right and what limitations are imposed on the exclusive right.

5. In Indonesia, importation is expressly excluded from the exclusive right conferred by the patent. The legislation is silent in this regard in Brunei Darussalam and the Philippines. On the other hand, importation is expressly included in the exclusive right in Malaysia and Thailand. It is implied in Singapore, as importation is encompassed by the exclusive right under the United Kingdom Patents Act.

6. Except in Brunei Darussalam, the exclusive right to exploit a patented invention is limited, that is, it cannot be exercised in certain particular circumstances:

- when the patented invention is used for experimentation, scientific research or educational purposes (in Malaysia, the Philippines and Thailand);
- when the patented product is used in vehicles in transit (in the Philippines and Singapore);
- when the patented product is put on the market by the patentee or with his consent (in Indonesia, Malaysia and the Philippines);
- when there has been *bona fide* prior manufacture or use, or preparations made for such manufacture or use of the patented invention (in Indonesia, Malaysia, the Philippines and Thailand); and
- when a patented medicine or drug is manufactured or imported for use in government hospitals (in Singapore).

¹ Indonesia and the Philippines also protect inventions through the grant of patents for utility models and Malaysia through the grant of utility innovation certificates.

1.2 *Duration of Protection*

7. In four of the ASEAN countries, the term of a patent is of a fixed duration. In two of these, the period commences on the date of grant: the Philippines (17 years) and Malaysia (15 years). In the other two, the period commences on the filing date: Indonesia (14 years) and Thailand (20 years). In Indonesia, the term of the patent can be extended for a period of two years, upon approval of the Patent Office, if the applicant proves that he has not recovered his research and development costs and has been working the invention sufficiently and continually in Indonesia. All four countries expressly require the payment of annual fees in order to maintain the patent in force.

8. In Brunei Darussalam and Singapore, where certificates of registration are issued on the basis of a foreign patent, the duration of the certificate is limited to the duration of the corresponding foreign patent.

1.3 *Patentability Criteria (in Particular, Novelty Standard Applied)*

9. The legislation of the four ASEAN countries which have an independent patent system (Indonesia, Malaysia, the Philippines and Thailand) expressly provides that an invention must be new, involve an inventive step and be industrially applicable in order to be patentable. In the two countries in which patent protection is obtained on the basis of a patent granted in a foreign country (Brunei Darussalam and Singapore), the same requirements are implied insofar as the original patent is subject to such conditions of patentability.

10. The four ASEAN countries which have an independent patent system do not, however, apply the same novelty standard. In Indonesia and Malaysia, the novelty of an invention is considered to be destroyed by any disclosure made in tangible form anywhere in the world or by a disclosure made in any other form (i.e., oral or by use) within the country, prior to the filing date or, where applicable, the priority date of the application claiming the invention (a so-called "mixed" novelty standard). In the Philippines, the novelty of an invention is considered to be destroyed if the invention was known or used by others in the Philippines before the invention thereof by the inventor named in the application; or if it was patented or described in any printed publication in the Philippines or any foreign country more than one year before the application for a patent therefor; or if it had been in public use or on sale in the Philippines for more than one year before the application for a patent therefor; or if it is

the subject matter of a validly issued patent in the Philippines granted on an application filed before the filing of the application for a patent therefor (a type of "mixed" novelty standard, combined with the first-to-invent principle). In Thailand, the novelty of the invention is considered destroyed by any prior disclosure made in any form, anywhere in the world (the so-called "universal" novelty standard).

11. As regards Brunei Darussalam and Singapore, it should be noted that any interested person can apply to the High Court for a declaration that the rights conferred by the certificate of registration which was issued on the basis of the foreign patent have not been acquired, not only on any of the grounds upon which the foreign patent could be revoked in the country in which it was granted but also on the grounds that the invention was manufactured, published, used or sold in Brunei Darussalam or Singapore, as the case may be, before the priority date of the foreign patent (a so-called "local" novelty standard which is expressly applied in addition to any other novelty standard which may be implied by linkage to the foreign patent).

12. The legislation of all the four ASEAN countries with an independent patent system expressly indicates certain specific circumstances under which a disclosure is not considered as destroying the novelty of the claimed invention. This exception is usually referred to as a "grace period" which is provided for under such circumstances. In Indonesia, a disclosure resulting from an act committed by the applicant or a disclosure made at an officially recognized exhibition or in a lecture will not destroy the novelty of the invention if the applicant files an application within six months after the disclosure. In Malaysia and Thailand, a disclosure resulting from an act of abuse against the right of the applicant will not destroy the novelty of the invention if the applicant files an application within one year of the disclosure. Moreover, in Malaysia and Thailand, a disclosure resulting from an act committed by the applicant will not destroy novelty if the applicant files an application within one year after the disclosure. In the Philippines, there is a general one-year grace period for any kind of disclosure (which can be claimed, of course, only if the applicant is the first inventor or his successor in title).

1.4 *Exclusions from Patent Protection*

13. Provisions on subject matter excluded from patent protection exist in the laws of Brunei Darussalam, Indonesia, Malaysia, the Philippines and Thailand.

14. The main categories of excluded subject matter are the following:

(a) inventions contrary to public order, health or morality: Brunei Darussalam, Indonesia, Malaysia, Philippines, Thailand;

(b) scientific discoveries, scientific theories and mathematical methods: Indonesia, Malaysia, Thailand;

(c) plant or animal varieties or essentially biological processes for their production: Indonesia, Malaysia, Thailand;

(d) processes of treatment of human beings, animals or plants: Indonesia, Malaysia, Thailand;

(e) schemes, rules and methods for doing business, performing purely mental acts or playing games: Malaysia;

(f) computer programs: Thailand.

1.5 Examination System

15. Applications are subject to an examination both as to form and as to substance in Indonesia, Malaysia, the Philippines and Thailand. The following variations exist in the procedure.

16. In Indonesia, Malaysia and Thailand, a deferred examination system exists under which substantive examination is carried out upon request being made therefor within a prescribed period. In Indonesia, the request for examination may be made by the applicant within three years from the filing date; however, the Patent Office may perform the examination, on its own initiative, if it deems it necessary. In Malaysia, a request for a preliminary examination and search may be made by the applicant within six months from the filing date and for a substantive examination within 18 months from the filing date. In Thailand, the request for examination may be made by the applicant within five years after the publication of the patent application or, where there has been an opposition, within one year of the final decision thereon, whichever period expires last.

17. In Thailand, the applicant is required to furnish information on corresponding foreign applications relating to the same invention, and the Department of Intellectual Property may request the substantive examination to be carried out by a government department or a foreign or international entity.

18. In Brunei Darussalam, applications are subject to an examination as to form and for a determination that the invention is not prejudicial to the public interest.

19. In Singapore, applications are subject to an examination as to formal requirements only. The application for the United Kingdom patent, on the basis of which the certificate of registration is issued

in Singapore, will have, of course, been subject to an examination both as to form and as to substance.

1.6 Availability of Opposition Procedures

20. The legislation of Indonesia and Thailand provides for the possibility of a third party to oppose the grant of a patent through an administrative procedure prior to grant.

1.7 Publication Requirements

21. Pre-grant publication of applications, for opposition purposes, is required in Indonesia (within six months from the filing date) and in Thailand.

22. Brunei Darussalam, Malaysia, the Philippines and Singapore provide for publication only after grant, in the form of a reference to the grant, except in the Philippines, where the patent is published in full.

1.8 Compulsory Licenses and Other Measures

23. The legislation of Indonesia, Malaysia, the Philippines, Singapore and Thailand provides for the grant of compulsory licenses for the exploitation of the patented invention or for the revocation of the patent on the grounds that the patented invention is not being worked locally to an adequate extent or that the patentee refuses to grant licenses on reasonable terms. The periods after which these measures may be applied vary from country to country: Indonesia (compulsory license: three years after grant; revocation: four years after grant); Malaysia (compulsory license: three years after grant); Philippines (compulsory license: two years after grant); Singapore (compulsory license: in respect of specified categories of inventions, three years after sealing of the corresponding United Kingdom patent; revocation: two years after grant of compulsory license); Thailand (compulsory license: three years after grant or four years after the filing date; revocation: two years after grant of compulsory license).

24. In Singapore, with regard to inventions relating to food and medicines or surgical or curative devices, compulsory licenses may be granted at any time after the sealing of the corresponding United Kingdom patent. In the Philippines, the fact that an invention relates to food or medicine or substances needed for public health or safety is a ground for the issuance of compulsory licenses.

25. In the Philippines, compulsory licenses may be granted for any reasons of public interest at any time after the issuance of a patent.

26. Moreover, Indonesia, Malaysia, the Philippines, Singapore and Thailand have provisions which allow the exploitation of patented inventions by the Government or by entities designated by the Government on the grounds of public interest.

27. In Brunei Darussalam, the patent may be declared to have ceased if the patent or the mode in which it is exercised is mischievous to the country or generally prejudicial to the public.

28. The grant of compulsory licenses to enable the local working of dependent patents is provided for in Malaysia, the Philippines and Thailand.

1.9 Remedies for Infringement²

29. The laws of the four ASEAN countries which have independent patent systems expressly provide for remedies and sanctions in cases of infringement (Indonesia, Malaysia, Philippines, Thailand).

30. Malaysia, the Philippines and Thailand provide for civil remedies in the form of an injunction to stop or prevent the infringing acts and in the form of recovery of damages incurred as a result of the infringement. In the Philippines, such damages can be calculated on the basis of the actual loss incurred or as a reasonable royalty; in particular cases, up to treble punitive damages may be levied. In Thailand, provision also exists for the confiscation and destruction of the infringing goods.

31. Indonesia and the Philippines also provide for criminal sanctions in the form of fines and imprisonment (in the Philippines, only in the case of repeated infringements).

2. Marks

2.1 Protectability of Service Marks

32. Service marks are expressly protected in the legislation of four countries: Indonesia, Philippines, Singapore, Thailand. The legislation of Brunei Darussalam and Malaysia is silent on this question.

2.2 Duration of Protection (Initial Registration and Renewal)

33. The duration of protection varies considerably, among the ASEAN countries, in terms of the period

of duration of the initial registration, the date from which it is calculated and the duration of the renewal period.

34. In Brunei Darussalam and Malaysia, the duration of the initial registration is seven years from the date of the application, with the possibility of renewing the registration for successive periods of 14 years.

35. In Indonesia and Thailand, the duration of the initial registration is 10 years from the date of registration, with the possibility of renewing the registration for successive periods of 10 years.

36. In Singapore, the duration of the initial registration is 10 years from the date of the application, with the possibility of renewing the registration for successive periods of 10 years.

37. In the Philippines, the duration of the initial registration is 20 years from the date of registration, with the possibility of renewing the registration for successive periods of 20 years. *

2.3 Examination System

38. All six of the ASEAN countries subject trademark applications to an examination both as to form and as to substance. In all six countries, the examination as to substance is carried out in order to determine whether both absolute and relative requirements of registrability are satisfied. By "absolute" requirements is meant requirements as to substance which can be verified generally on the face of the application, for example, whether the mark is distinctive, does not consist of immoral matter, etc. By "relative" requirements is meant requirements as to substance which can be determined only with respect to other marks or distinctive signs owned by persons other than the applicant, in particular, whether there is a conflict with a previously registered mark (or trademark application with an earlier filing or priority date) or other third-party rights.

2.4 Single-Class or Multi-Class System

39. In all the ASEAN countries, except the Philippines, the registration of a mark must be applied for with respect to goods or services in one class only. If the goods or services for which protection is sought fall within several classes, a separate application must be filed for each group of goods and/or services falling into one class, and separate registrations are effected.

40. In the Philippines, a single application for the registration of a mark may be filed for goods and services falling in more than one class. In that case,

²The remedies in case of infringement are generally governed not only by specific patent legislation but also by general civil, commercial and criminal law. It is therefore possible that the information herein is incomplete as it is necessarily based only on the patent legislation available at WIPO.

a fee is paid for each and every class covered by the application. Likewise, a single certificate of registration can be issued for a mark registered for a plurality of classes, upon payment of a fee equivalent to the total registration fees for each of the classes covered thereby.

2.5 Availability of Opposition Procedures

41. All the six ASEAN countries provide third parties with the opportunity to oppose the registration of a mark through an administrative procedure prior to the registration of the mark. Except for Indonesia, the registration of a mark may be opposed only after the application has been accepted subsequent to an examination as to form and as to substance. In Indonesia, the registration of a mark is opposable after the examination as to form, before the examination as to substance, and any objections filed in opposition to the registration of the mark are taken into account during the examination as to substance.

2.6 Publication Requirements

42. In all the six ASEAN countries, the application for the registration of the mark is published for opposition purposes. Except in Indonesia, the application is first examined as to form and as to substance and is published after its acceptance. In Indonesia, the application is published after the examination as to form only, within 14 days from the receipt of the application.

2.7 Register of Marks

43. Four of the ASEAN countries still divide their Registers into two parts, generally speaking, one reserved for "distinctive" marks and the other for marks used by the applicant and "capable of distinguishing" the goods of the applicant. These countries are Brunei Darussalam, Malaysia and Singapore, which call the two parts, "Part A" and "Part B" of the Register, and the Philippines, which maintains a "Principal Register" and a "Supplemental Register." The applicant must indicate in which part of the Register, or in which Register, he wants his mark recorded, and the requirements of registrability differ accordingly as indicated above.

2.8 Use Requirements (and Measures Related Thereto)

44. All the six ASEAN countries require that the mark be used as a condition for maintaining its registration. However, the use requirements differ from country to country, both as to the kind and

length of use and as to whether the cancellation for non-use can be made *ex officio* or upon application of a third party.

45. In Brunei Darussalam, Malaysia, Singapore and Thailand, the registration of a mark can be cancelled and the mark can be removed from the Register, upon petition of a third party, if it is proved that: (i) at the time of registration, the proprietor of the mark had no *bona fide* intention to use the mark in relation to the goods and/or services for which it was registered and in fact there had been no such *bona fide* use; or (ii) during a specified period of time, there has been no *bona fide* use of the mark in relation to the goods for which it was registered, unless the non-use was due to special justifiable circumstances. This specified period of time is five years in Brunei Darussalam and Singapore, and three years in Malaysia and Thailand.

46. In Indonesia, the registration of a mark can be cancelled, *ex officio* or upon application by a third party, if the mark is not used during a continuous period of three years.

47. In the Philippines, the mark must have been in use in commerce and services in the Philippines for not less than two months before the application for its registration was filed; moreover, the registration of the mark is cancelled, *ex officio*, if the owner fails, within one year after the fifth, tenth and fifteenth anniversaries of the issue of the certificate of registration, to file an affidavit showing that the mark is in use or that non-use is justified by special circumstances.

2.9 Remedies for Infringement³

48. The trademark legislation of five ASEAN countries, Brunei Darussalam being the exception, refers expressly to the remedies and sanctions available in cases of infringement.

49. Indonesia, the Philippines and Thailand provide for civil remedies in the form of an injunction to restrain the infringing acts and in the form of the recovery of damages incurred as a result of the infringement. In the Philippines, the damages can be calculated on the basis of the actual loss or unlawful profit or as a reasonable percentage of the proceeds from the unlawful sales; if intent to mislead or defraud can be proven, up to double the said amount can be levied as punitive damages. Moreover, in

³ The remedies in case of infringement are generally governed not only by specific trademark legislation but also by general civil, commercial and criminal law. It is therefore possible that the information herein is incomplete as it is necessarily based only on the trademark legislation available at WIPO.

Indonesia, the Philippines and Thailand, the goods bearing the infringing mark or any material related to the infringement may be confiscated and, in the Philippines, can also be destroyed.

50. Indonesia, Singapore and Thailand also provide for criminal sanctions in the form of imprisonment and fines (in Singapore, specifically in the case of counterfeiting, and in Thailand, in the case of counterfeiting or intentional infringement).

51. In Malaysia, the same remedies are available as those available with respect to any other "personal property."

52. It should be noted that, in Malaysia and Singapore, when there is an issue of a possible infringement of a mark registered in Part B of the Register, the defendant may claim as a defense that the alleged infringement does not actually mislead or cause confusion.

3. Industrial Designs

3.1 Definition of Industrial Design

53. Five of the ASEAN countries have specific legislation for the protection of industrial designs. Of these, the Philippines and Thailand provide for an independent system of protection, and it is only in their laws that an express definition of an industrial design is found. Under the legislation of Thailand, an industrial design is defined as "any configuration of a product or composition of lines or colors which gives a special appearance to a product and can serve as a pattern for a product of industry or handicraft." Under the legislation of the Philippines, an industrial design is defined as "any ... design for an article of manufacture."

54. In Malaysia (by separate Acts for West Malaysia, Sabah and Sarawak) and in Singapore, any industrial design registered in the United Kingdom under the Registered Designs Act, 1949 (by necessary implication, as last amended), is protected as if the Certificate of Registration in the United Kingdom had been issued with an extension to those countries. The definition of an industrial design under the law of the United Kingdom, therefore, applies by implication.⁴

⁴ Under the United Kingdom Registered Designs Act, 1949, as last amended in 1989, an industrial design consists of the features of shape, configuration, pattern or ornament applied to an article by any industrial process, being features which in the finished article appeal to and are judged by the eye. It does not include, among others, features which are dictated solely by the function of the article.

55. In Indonesia, the law provides that industrial designs are to be protected by Regulation, but no information is available at WIPO to determine whether such Regulations have been enacted.

56. Brunei Darussalam has no specific legislation for the protection of industrial designs.

3.2 Duration of Protection (Initial Registration and Renewal)

57. In the Philippines, the duration of the registration of an industrial design is five years from the date of grant, with the possibility of obtaining two additional five-year extensions, subject to filing an affidavit showing that the design is in use in the Philippines or giving satisfactory reasons for its non-use.

58. In Thailand, the duration of the registration of an industrial design is of 10 years from the filing date, apparently without any possibility of a further extension.

59. In Malaysia and Singapore, the industrial design is protected as long as its registration is in effect in the United Kingdom.⁵

3.3 Criteria of Protection (in Particular, Novelty)

60. The laws of the two ASEAN countries with an independent system of protection for industrial designs, the Philippines and Thailand, expressly require that the industrial design be new in order to be registrable. In the Philippines, the design must also be "original" and "ornamental."

61. As regards novelty, both countries apply a kind of (although different) "mixed" novelty standard. In the Philippines, the same novelty standard applied to inventions for purposes of determining patentability is applied to designs, except that, instead of the one-year period specified for patents, a six-month period applies for industrial designs (see paragraph 10, above). In Thailand, the design is considered new if it was not widely known or used in the country prior to the filing or priority date of the application for registration or if it had not been disclosed in a published document or in printed form anywhere in the world before that date.

62. In Malaysia and Singapore, a novelty standard is implied insofar as novelty is a requirement of regis-

⁵ In the United Kingdom, the duration of protection is five years from the date of registration, which is considered the same as the date of the application, with the possibility of an extension for four additional five-year terms.

trability in the United Kingdom. In this regard, it is noteworthy that, although the United Kingdom applies what, in effect, is only a "local" novelty standard, any person, in Singapore and in Malaysia, can apply to the Court for a declaration that a right in a design has not been acquired, upon the same grounds as those upon which the registration of the design could be cancelled in the United Kingdom. However, as regards Sabah and Sarawak, such grounds can also include the publication of the design in those territories prior to the date of registration of the design in the United Kingdom.

3.4 Examination System

63. In the two ASEAN countries which provide for an independent system of protection for industrial designs, the Philippines and Thailand, applications for the registration of an industrial design are subject to an examination as to form and as to substance, in principle, according to the same procedure as for patent applications, *mutatis mutandis*. In Thailand, this means, for example, that the applicant must furnish information on corresponding foreign applications and that third parties can oppose the registration of an industrial design through an administrative procedure prior to registration.

64. As regards Malaysia and Singapore, the industrial design registered in the United Kingdom will have been examined both as to form and as to substance by the United Kingdom Patent Office.

3.5 Number of Designs Included in Single Application

65. In both of the ASEAN countries which have an independent industrial design system (the Philippines and Thailand), each application for the registration of an industrial design can relate to only one design to be used with only one kind of product or article.

66. In Malaysia and Singapore, no application is filed, as the effect of United Kingdom registrations is extended to those countries automatically, without any need to re-register.

3.6 Publication Requirements

67. Of the two ASEAN countries with an independent industrial design system, pre-registration publication, for opposition purposes, is required in Thailand. The legislation of the Philippines provides for publication only after registration.

68. In Malaysia and Singapore, no publication is required, as the effect of United Kingdom registra-

tions is extended to those countries automatically, without any need to re-register.

3.7 Remedies for Infringement⁶

69. The legislation of the Philippines and Thailand expressly provides that the remedies available for infringement of an industrial design are the same as those available in patent infringement (see paragraphs 29 to 31, above).

70. The legislation of Malaysia and Singapore provides that an industrial design registered in the United Kingdom enjoys in those countries the like "privileges and rights" as though the Certificate of Registration had been issued with an extension to those countries. This suggests that the same remedies as are available in the United Kingdom may be available in those countries. Moreover, the legislation specifically indicates that civil remedies in the form of damages are available for infringement, since it provides that damages in such a case may not be recovered from a defendant who proves absence of notice of the registration of the design.

Annex I Industrial Property Legislation of the Six ASEAN Countries

Brunei Darussalam

1. Patents

Inventions Act of 1925, as revised up to 1959.

2. Marks

Trade Marks Act (No. 19) of 1953, as last amended in 1959.

Trade Marks Rules of 1957.

Trade Marks (Court) Rules of 1961.

Indonesia

1. Patents

Law of the Republic of Indonesia, No. 6 of 1989, Concerning Patents.

Procedure of the Application for Patent Rights, Government Regulation No. 34/1991, June 11, 1991.

⁶The remedies in case of infringement are generally governed not only by specific legislation for the protection of industrial designs but also by general civil, commercial and criminal law. It is therefore possible that the information herein is incomplete as it is necessarily based only on the industrial design legislation available at WIPO.

2. Marks

Law of the Republic of Indonesia, No. 19 of 1992, Concerning Trademarks (entered into force on April 1, 1993).

3. Industrial Designs

Law No. 5 Concerning Industry of June 29, 1984.

Malaysia

1. Patents

Patents Act 1983 (Act 291), as amended by Act A648, Patents (Amendment) Act 1986.

Patents Regulations 1984.

2. Marks

Trade Marks Act, 1976 (Act 175).

Trade Marks Regulations, 1983.

3. Industrial Designs

West Malaysia

United Kingdom Designs (Protection) Ordinance (No. 214) of 1949, as revised in 1978.

Sabah

United Kingdom Designs (Protection) Ordinance (No. 2) of 1940.

United Kingdom Designs (Protection) Ordinance (No. 39) of 1951.

Sarawak

United Kingdom Designs (Protection) Ordinance of 1936.

Philippines

1. Patents

Republic Act 165 of June 20, 1947, Creating a Patent Office, Prescribing Its Powers and Duties, Regulating the Issuance of Patents, and Appropriating Funds Therefor, as last amended by Presidential Decree No. 1520 of June 11, 1978.

Revised Rules of Practice before the Philippines Patent Office in Patent Cases, as amended up to 1980.

Letter of Instructions No. 678 of May 8, 1978, by the President of the Philippines, Ordering and Directing Measures for the Implementation of Presidential Decree No. 1263.

2. Marks

Republic Act 166 of June 20, 1947, Providing for the Registration and Protection of Trade Marks, Trade Names and Service Marks, Defining Unfair Competition and False Marking, as last amended by Republic Act 865 of June 16, 1953.

Revised Rules of Practice before the Philippines Patent Office in Trademark Cases, as amended up to 1980.

3. Industrial Designs

Same as for patents, above.

Singapore

1. Patents

Registration of United Kingdom Patents Ordinance, Chapter 181, 1937, as amended up to 1955.

Registration of United Kingdom Patents Regulations, No. 42 of May 28, 1937, as amended up to 1983.

Patents (Compulsory Licensing) Act (No. 12) of 1968.

2. Marks

Trade Marks Act, Chapter 332, of 1938, as last amended by Trade Marks (Amendment) Act (No. 7) of 1991.

3. Industrial Designs

United Kingdom Designs (Protection) Ordinance (No. 17) of 1938, as amended up to 1955.

Thailand

1. Patents

Patents Act B.E. 2522 (1979), as amended by Patents Act (No. 2) B.E. 2535 (1992).

Ministerial Regulations B.E. 2522, issued under the Patents Act B.E. 2522.

2. Marks

Trademarks Act B.E. 2534 (1991).

3. Industrial Designs

Same as for patents, above.

Annex II
Summary Tables of the Industrial Property Legislation of the Six ASEAN Countries
Patents

	BRUNEI DARUSSALAM	INDONESIA	MALAYSIA	PHILIPPINES	SINGAPORE	THAILAND
RIGHTS CONFERRED	Certificate of Registration issued on basis of foreign patent Exclusive rights: * importation excluded; * no limitations.	Independent patent system Exclusive rights: * importation expressly excluded; * specific limitations.	Independent patent system Exclusive rights: * importation expressly included; * specific limitations.	Independent patent system Exclusive rights: * importation excluded; * specific limitations.	Certificate of Registration issued on basis of foreign patent Exclusive rights: * importation Included implicitly; * specific limitations.	Independent patent system Exclusive rights: * importation expressly included; * specific limitations.
DURATION	linked to foreign patent	14 years from filing with 2-yr. extension possible (annual maintenance fees)	15 years from grant (annual maintenance fees)	17 years from grant (annual maintenance fees)	linked to foreign patent	20 years from filing (annual maintenance fees)
PATENTABILITY (NOVELTY) CRITERIA	local novelty with linkage to foreign patent	* mixed novelty * 6-mth. grace period	* mixed novelty * 1-yr. grace period	* mixed novelty * 1-yr. grace period	local novelty with linkage to foreign patent	* universal novelty * 1-yr. grace period
EXCLUSIONS FROM PATENTABILITY	* inventions contrary to public order, health/morality.	* inventions contrary to public order, health/morality; * scientific discoveries, theories, math. formulas; * plant/animal varieties/biological processes; * processes for treatment etc.	* inventions contrary to public order, health/morality; * scientific discoveries, theories, math. formulas; * plant/animal varieties/biological processes; * processes for treatment etc.; * schemes for doing business, mental acts etc.	* inventions contrary to public order, health/morality.	None	* inventions contrary to public order, health/morality; * scientific discoveries, theories, math. formulas; * plant/animal varieties/biological processes; * processes for treatment etc; * computer programs.
EXAMINATION SYSTEM	Limited substantive examination (public interest)	Substantive examination (deferred)	Substantive examination (deferred)	Substantive examination	Formal examination only	Substantive examination (deferred)

Patents (Cont' d)

	BRUNEI DARUSSALAM	INDONESIA	MALAYSIA	PHILIPPINES	SINGAPORE	THAILAND
OPPOSITION PROCEDURE	None	Opposition	None	None	None	Opposition
PUBLICATION	Upon grant	Publication for opposition purposes (6 mths. from filing)	Upon grant	Upon grant	Upon grant	Publication for opposition purposes
COMPULSORY LICENSES AND OTHER MEASURES	Revocation in public interest	* Compulsory license for non-working (specified period); * Revocation for non-working (specified period); * Government exploitation in public interest.	* Compulsory license for non-working (specified period) and dependent patents; * Government exploitation in public interest.	* Compulsory license for non-working (specified period), food and medicines, in public interest and dependent patents; * Government exploitation in public interest.	* Compulsory license for non-working (specified period) and food and medicines; * Revocation for non-working (specified period); * Government exploitation in public interest.	* Compulsory license for non-working (specified period) and dependent patents; * Revocation for non-working (specified period); * Government exploitation in public interest.
INFRINGEMENT REMEDIES	Law silent	Criminal: * fines; * imprisonment.	Civil: * injunction; * damages.	Civil: * injunction; * damages. Criminal: * fines; * imprisonment.	Law silent	Civil: * injunction; * damages; * confiscation and destruction.

Marks

	BRUNEI DARUSSALAM	INDONESIA	MALAYSIA	PHILIPPINES	SINGAPORE	THAILAND
SERVICE MARKS	Law silent	Protected	Law silent	Protected	Protected	Protected
DURATION OF REGISTRATION	* 7 years from application date; * renewal: 14 yrs.	* 10 years from registration; * renewal: 10 yrs.	* 7 years from application date; * renewal: 14 yrs.	* 20 years from registration; * renewal: 20 yrs.	* 10 years from application date; * renewal: 10 yrs.	* 10 years from registration; * renewal: 10 yrs.
EXAMINATION SYSTEM	Substantive examination	Substantive examination	Substantive examination	Substantive examination	Substantive examination	Substantive examination
SINGLE/MULTI-CLASS SYSTEM	One class	One class	One class	Multi-class	One class	One class
AVAILABILITY OF OPPOSITION	Opposition after substantive examination	Opposition after formal examination, before substantive examination	Opposition after substantive examination	Opposition after substantive examination	Opposition after substantive examination	Opposition after substantive examination
PUBLICATION	Publication for opposition purposes	Publication for opposition purposes after formal examination, 14 days from receipt of application	Publication for opposition purposes	Publication for opposition purposes	Publication for opposition purposes	Publication for opposition purposes
REGISTER	Part A & Part B of Register	Single Register	Part A & Part B of Register	Principal and Supplemental Registers	Part A & Part B of Register	Single Register
USE REQUIREMENTS (AND RELATED MEASURES)	* no bona fide intention to use and no bona fide use * removal upon 5 years of non-use	Cancellation upon 3 years of non-use	* no bona fide intention to use and no bona fide use * removal upon 3 years of non-use	Cancellation upon 5 years of non-use	* no bona fide intention to use and no bona fide use * removal upon 5 years of non-use	* no bona fide intention to use and no bona fide use * cancellation upon 3 years of non-use
INFRINGEMENT REMEDIES	Law silent	Civil: * injunction; * damages; * confiscation. Criminal: * fines; * imprisonment.	Same as with other personal property.	Civil: * injunction; * damages; * confiscation and destruction.	Criminal: * fines; * imprisonment.	Civil: * injunction; * damages; * confiscation. Criminal: * fines; * imprisonment.

Industrial Designs

	BRUNEI DARUSSALAM	INDONESIA	MALAYSIA	PHILIPPINES	SINGAPORE	THAILAND
DEFINITION	No specific legislation	No information	UK registered designs protected	Independent system (definition provided)	UK registered designs protected	Independent system (definition provided)
DURATION	---	---	Linked to U.K. registration	* 5 yrs. from registration; * renewal: two 5-yr. extensions	Linked to U.K. registration	* 10 yrs. from filing; * renewal: none
REGISTRABILITY (NOVELTY) CRITERIA	---	---	Linked to U.K. registration (with local novelty for Sabah and Sarawak)	Mixed novelty	Linked to U.K. registration	Mixed novelty
EXAMINATION SYSTEM	---	---	---	Substantive examination	---	Substantive examination (deferred) with opposition
NUMBER OF DESIGNS PER APPLICATION	---	---	---	One	---	One
PUBLICATION	---	---	---	Upon registration	---	Publication for opposition purposes
INFRINGEMENT REMEDIES	---	---	Civil (damages)	Civil: * injunction; * damages. Criminal: * fines; * Imprisonment.	Civil (damages)	Civil: * injunction; * damages; * confiscation and destruction.

Latin America and the Caribbean

Assistance With Training, Legislation and Modernization of Administration

Chile. In late August and early September 1994, a WIPO consultant from the EPO undertook a mission to the Industrial Property Department in Santiago to provide technical advice on substantive examination of patent applications in the mechanical field.

Costa Rica. In late July and early August 1994, a WIPO consultant from the EPO undertook a mission to the Intellectual Property Registry in San José to advise on the examination of patent applications in the field of chemistry. This mission was undertaken under the country project.

Mexico. In August 1994, the International Bureau prepared and sent to the government authorities, at their request, comments on the draft regulations under the Industrial Property Law.

Trinidad and Tobago. In August 1994, a government official had discussions in Geneva with WIPO

officials on cooperation between Trinidad and Tobago and WIPO in the field of industrial property, and particularly on the draft Patent Bill, the Trade Marks (Amendment) Bill and the draft industrial designs legislation.

Uruguay. In August 1994, a WIPO consultant from Chile undertook a mission to Montevideo to evaluate the development of the computerized systems and related software for figurative trademarks and jurisprudence developed by local firms. This mission was organized under the Inter-American Development Bank (IDB)-financed country project.

Venezuela. In late August and early September 1994, a WIPO consultant from Uruguay undertook a mission to the Industrial Property Registry in Caracas to give advice on the classification of the figurative elements of trademarks and the use of the Vienna International Classification of the Figurative Elements of Marks (Vienna Classification). The mission was organized under the UNDP-financed regional project.

Development Cooperation (in General)

Training Courses, Seminars and Meetings

WIPO Orientation Seminar on General Aspects of Industrial Property (Geneva). From August 31 to September 2, 1994, WIPO organized that Seminar in Geneva, which took place in Arabic, English, French and Spanish. It was the 14th such Seminar. The 109 participants came from Algeria, Argentina, Bangladesh, Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Egypt, El Salvador, Ethiopia, Fiji, Gabon, the Gambia, Ghana, Guatemala, Guinea, Guyana,

Honduras, India, Indonesia, Kenya, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mexico, Mongolia, Namibia, Nepal, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, the Philippines, the Republic of Korea, Singapore, Sri Lanka, Sudan, Thailand, Togo, Trinidad and Tobago, the United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Zambia, Zimbabwe, Hong Kong and the Board of the Cartagena Agreement (JUNAC); in addition, 29 officials of the Permanent Missions of 23 countries to the United Nations Office and other international organizations in Geneva attended the Seminar. Lectures were given by WIPO officials.

WIPO Medals

In August 1994, two WIPO medals were awarded at the National Science Fair of Ghana in Cape Coast, one to a student and the other to the inventor of the best invention presented.

Also in August 1994, WIPO medals were awarded to two inventors on the occasion of the annual Exhibition on Inventions ("MINDEX 94"), held in Kuala Lumpur.

Other Contacts of the International Bureau of WIPO with Governments and International Organizations in the Field of Industrial Property

National Contacts

Andorra. In August 1994, a counsellor to the Government in intellectual property matters had discussions with WIPO officials in Geneva on the drafting of a trademark law.

United Nations

United Nations Administrative Committee on Co-ordination (Organizational Committee) (ACC(OC)). In late August and early September 1994, a WIPO official attended, in New York, an OC meeting to prepare for the second regular session in 1994 of the ACC, to be held in New York in September 1994.

United Nations Consultative Committee on Administrative Questions (Financial and Budgetary Questions) (CCAQ(FB)). In late August and early September 1994, a WIPO official attended the 81st session of this Committee, which took place in New York.

Other Organizations

Confederation of Indian Industry (CII). In August 1994, the Director General of CII held discussions

with WIPO officials in Geneva on the strengthening of cooperation between WIPO and CII.

International Association of Young Lawyers (AIJA). In August 1994, a representative of AIJA had discussions with WIPO officials in Geneva on WIPO's and AIJA's activities in connection with the arbitration of intellectual property disputes.

Nordic Association of Industrial Property. In August 1994, a WIPO official spoke on WIPO's activities at the 22nd meeting of that Association, held in Borgholm, Sweden. The Association is composed of the national groups of Denmark, Finland, Iceland, Norway and Sweden of the International Association for the Protection of Industrial Property (AIPPI).

Toyama University (Japan). In August 1994, a professor from Toyama University had discussions with WIPO officials in Geneva on the arbitration of intellectual property disputes.

University of New York School of Continuing Education. In August 1994, a WIPO official briefed a group of 27 students from this University on WIPO and its activities. The group was visiting the United Nations system of organizations in Geneva.

Miscellaneous News

Regional News

European Union. On December 20, 1993, the Council of the European Union adopted Council Regulation (EC) No. 40/94 on the Community Trade Mark (*Official Journal of the European Communities*, January 14, 1994, L 11).

The Regulation establishes an Office for Harmonization in the Internal Market (trade marks and designs).

The representatives of the Governments of the Member States of the European Union, meeting at Head of State or Head of Government level on October 29, 1993, decided that the Office should

have its seat in Spain, in a city to be determined by the Spanish Government. The latter designated Alicante as the seat of the Office.

The task of the Office is to issue an industrial property title, the Community trade mark, which is acquired in a single proceeding, is afforded uniform protection and has effect throughout the territory of the Community. The rights in the Community trade mark are acquired by registration and are not substituted for the trademark rights granted by Member States.

The Council of the European Union appointed Mr. Jean-Claude Combaldieu President of the Office on June 16, 1994, on a proposal by the Administrative Board of the same Office. It also appointed Mr. Alexander von Mühlendahl and Mr. Alberto Casado Vice-Presidents of the Office on June 27, 1994.

The Office commenced operations on September 1, 1994.

The Commission of the European Communities (CEC), with the collaboration of the Office, is assisted by a Committee composed of representatives of the Member States with a view to the submission and adoption of the Implementing Regulation, the

fees regulations and the rules of procedure of the Office's Boards of Appeal.

Present forecasts indicate that it will be possible to file applications for Community trade marks with the Office as from January 1, 1996.

Interstate Council for the Protection of Industrial Property. On September 9, 1994, the Eurasian Patent Convention was signed in Moscow, on the occasion of a meeting of the Heads of Government of the countries of the Commonwealth of Independent States (CIS), on behalf of the Governments of the following 10 countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Ukraine.

The Convention was deposited with the International Bureau of WIPO and remains open for signature by any country and for ratification at WIPO. It will enter into force three months after the third ratification.

National News

United Kingdom. The Trade Marks Act 1994 entered into force on October 31, 1994.

Calendar of Meetings

WIPO Meetings

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

1994

December 5 to 9 (Geneva)

Committee of Experts on a Possible Protocol to the Berne Convention (Fourth Session)

The Committee will continue to examine the question of the preparation of a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works.

Invitations: States members of the Berne Union, the European Commission and, as observers, States members of WIPO not members of the Berne Union and certain organizations.

- December 9 (a.m.) (Geneva)** **Information Meeting for Non-Governmental Organizations on Intellectual Property**
Participants in this informal meeting will be informed about the recent activities and future plans of WIPO in the fields of industrial property and copyright and their comments on the same will be invited and heard.
Invitations: International non-governmental organizations having observer status with WIPO.
- December 12 to 16 (Geneva)** **Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms (Third Session)**
The Committee will continue to examine the question of the preparation of a possible new instrument (treaty) on the protection of the rights of performers and producers of phonograms.
Invitations: States members of WIPO, the European Commission and, as observers, certain organizations.
- 1995**
- April 5 and 6 (Melbourne, Australia)** **Symposium on the International Protection of Geographical Indications** (organized by WIPO in cooperation with the Government of Australia)
The Symposium will deal with the protection of geographical indications (appellations of origin and other geographical indications) both on the national and multilateral level and, in particular, with the coexistence of geographical indications and trademarks.
Invitations: Governments, selected intergovernmental and non-governmental organizations and any member of the public (against payment of the registration fee).
- May 8 to 12 (Geneva)** **Consultative Meeting for the Preparation of the Second Part of the Diplomatic Conference for the Conclusion of the Patent Law Treaty**
The meeting will discuss the preparation of the second part of the said Diplomatic Conference.
Invitations: States members of WIPO or the Paris Union and, as observers, certain organizations.
- May 29 to June 2 (Geneva)** **Committee of Experts on the Settlement of Intellectual Property Disputes Between States (Seventh Session)**
The Committee of Experts will continue the preparations for a possible treaty on the settlement of intellectual property disputes between States. In particular, the Committee of Experts will consider the question of the relationship between the dispute settlement system to be established by the proposed Treaty and other dispute settlement systems, including the dispute settlement system to be established as a result of the Uruguay Round of GATT.
Invitations: States members of WIPO or party to treaties administered by WIPO not members of WIPO and, as observers, certain organizations.
- September 25 to October 4 (Geneva)** **Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Sixth Series of Meetings)**
All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary sessions every two years in odd-numbered years.
In the sessions in 1995, the Governing Bodies will, *inter alia*, review and evaluate WIPO's activities undertaken since July 1994, and decide the program and budget of the International Bureau for the 1996-97 biennium.
Invitations: States members of WIPO and the Paris and Berne Unions and, as observers, other States members of the United Nations and certain organizations.

