

INTERNATIONAL UNION
FOR
THE PROTECTION OF INDUSTRIAL PROPERTY

CONFERENCE OF THE HAGUE

FOR THE REVISION OF THE ARRANGEMENT OF THE HAGUE
FOR THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS OR MODELS
OF 6th NOVEMBER 1925, AS REVISED AT LONDON ON 2^{an} JUNE 1934

PRELIMINARY DOCUMENTS

PROPOSALS
WITH EXPLANATORY NOTES



INTERNATIONAL BUREAU
FOR THE PROTECTION OF INDUSTRIAL PROPERTY
1960

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PRELIMINARY OBSERVATIONS

The Arrangement concerning the international deposit of industrial designs and models, signed on 6th November, 1925 at the Diplomatic Conference of The Hague, and which came into force on 1st June 1928, has been revised a first time at London on 2nd. June 1934.

Thirteen countries are at present members of this Arrangement. These are : Belgium, France, Germany, Indonesia, Morocco, Netherlands with Surinam, Dutch Antilles and Dutch New-Guinea, Principality of Liechtenstein, Principality of Monaco, Spain, Switzerland, Tunisia, United Arab Republic (Province of Egypt) and Viet Nam.

The Diplomatic Conference which met in Lisbon from 6th to 31st October 1958, was to examine new proposals for the revision of the Arrangement of The Hague, but decided that further studies should be made and adopted the following resolution :

“ The States party to the Arrangement of The Hague concerning the international deposit of industrial designs or models,

Considering that more drastic amendments than those at present contemplated are necessary to maintain the existing number of countries party to this Arrangement and to allow other States to adhere,

Considering that the proposals to this effect formulated by certain States at the present Conference make a fuller examination desirable particularly with regard to detailed methods of application,

Considering that such examination could usefully take place within the existing framework of industrial property and could profit from the studies to be undertaken by the Study group provided for in the resolution of the Permanent Committee of the International Union for the Protection of Literary and Artistic Works and by the Intergovernmental Committee on Copyright at their meetings at Geneva (18-23 August, 1958), without in any way delaying the study suggested in the preceding paragraph,

Decide to postpone the revision of the Arrangement of The Hague to a subsequent date, not later than 1960 ;

Welcome the invitation issued on behalf of the Netherlands Government for a Conference for that purpose to meet in its country. ”

In conformity with this resolution of the Lisbon Conference, the Netherlands Government, in agreement with the International Bureau, undertook to prepare a new Diplomatic Conference whose task will be to revise completely the Arrangement of The Hague.

At its invitation, an International Committee of Experts met in The Hague in October 1959 and established a new draft Arrangement, accompanied by a Protocol and an explanatory statement.

Following a recommendation of the International Committee of Experts, the drafting of Regulations for the execution of the Arrangement was entrusted to a Working Group which met in The Hague in January 1960 on the invitation of the Netherlands Government and in cooperation with the International Bureau.

The text of the draft Arrangement and the Protocol, the explanatory statement, the list of members of the International Committee of Experts and the text of the draft Regulations are reproduced in the first part of this volume.

In the second part, the London texts of the Arrangement of The Hague and its Regulations are reproduced.

It has not been possible to adopt the same presentation as on previous Conferences, i.e. reprinting face to face the present text in force and the proposals for amendments, because the International Committee of Experts has, in fact, suggested a complete re-drafting of the Arrangement and the Regulations.

Lastly, it has been thought opportune to publish in a third part of this volume a number of statistical tables in connection with the international deposit of designs and models.

The Netherlands Government has decided that the Conference will begin in The Hague on 14th November next and official invitations will be sent accordingly to the various interested Governments through diplomatic channels.

The Governments are requested to communicate, both to the Netherlands Government and to the International Bureau before the 15th July 1960, their observations on the proposals for the revision of the Arrangement of The Hague and the Regulations as contained in the present volume.

*International Bureau
for the Protection of Industrial Property.*

PART ONE

DRAFT ARRANGEMENT FOR THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS AND MODELS ¹

ARTICLE 1

1. The Contracting States constitute a Separate Union for the International Deposit of Designs.

2. States members of the International Union for the Protection of Industrial Property may become party to this Arrangement.

ARTICLE 2

Nationals of a Contracting State and persons who, without being nationals of a Contracting State, are domiciled or have a real and effective industrial or commercial establishment in a Contracting State, may deposit and apply for registration of their designs in the International Bureau for the Protection of Industrial Property.

ARTICLE 3

1. Applications for international registration may be filed with the International Bureau: *a*) directly, or *b*) through the intermediary of the national office of a Contracting State if the rules applicable in that State so permit.

2. The domestic law of any Contracting State may require that persons under its jurisdiction file their applications for international registration through the intermediary of its national office.

3. The application for registration shall be accompanied by one or more photographs or other graphic representations of the design. Within the limits established by the Regulations, the application may be accompanied by a description of the characteristics of the design. In addition to representations, the applicant may deposit, within the limits specified by the Regulations, copies or models of the article incorporating the design.

4. Under the conditions and within the limits established in the Regulations, a single application may include several designs.

5. If the applicant wishes to claim the priority provided for in Article 6, he shall do so in his application indicating the country, the date, and the number of the national deposit on which his claim is based. He may file supporting documents.

¹ This draft has been established by an International Conference of Experts convened by the Netherlands government in agreement with the International Bureau and which met in the Hague from 28th September to 8th October 1959 under the Presidency of Dr. C. J. de Haan, President of the Patent Office, The Hague.

ARTICLE 4

1. The International Bureau shall register in the International Design Register the depositor's application for registration.

2. The date of the international registration shall be the date on which the International Bureau receives the application in due form, the fee, and the photograph or photographs or other graphic representations of the design; and if the International Bureau receives them on different dates, the last of these dates.

3. The International Bureau shall publish all necessary information concerning the registrations as provided by the Regulations. Such information shall include reproductions of the design, and any description, and the country, the date and the number of the national deposit on which the priority claim, if any, is based. The reproductions will be printed in black and white, unless the applicant requests reproduction in colour.

4. On request of the applicant, the International Bureau shall defer publication for the period requested by the applicant, which period may not exceed six months from the date of the receipt of the application by the International Bureau. Any time during this six-month period, the applicant may withdraw his application or ask for publication.

5. Except during the period of deferred publication referred to in paragraph 4 above, the applications, the documents and objects that accompanied them, and the registers, shall be open to inspection by the public.

ARTICLE 5

1. Registration in the International Register shall have the same effect in each Contracting State as if deposit had been effected in, and, subject to paragraph 3 below, as if registration certificate or design patent had issued from, the competent national office of such State.

2. Any Contracting State may provide by its domestic law that international registration will have no effect in the territory of that State if the applicant is a national of, or is domiciled or has a real and effective industrial or commercial establishment in, that State, and the application originates in that State.

3. If, according to a law of a Contracting State, the issuance of a certificate of registration or of a design patent is preceded by an administrative examination, then the international registration will be effective in such State unless, within six months from the date of receipt by the national office of the information referred to in article 3, paragraph 2, such office shall have notified the International Bureau of its provisional or final decision according to which the design does not meet the requirements of the law. Any interested party may request that the date on which the national office received such information be made known to him.

4. In cases where the protection granted by a national law is available only if an article incorporating the design is offered to the public, the effects of international registration may be denied under such law if the offering to the public of the article did not take place within six months from the international registration. An article incorporating the design is offered to the public if, in any country, party or not to this Arrangement, the article is publicly exhibited, offered for sale or sold to the public, or when it is freely offered to the public.

ARTICLE 6

If the application for international registration was preceded within six months by an application or several applications in one or more Contracting States, and priority is claimed in the application for international registration, the priority date shall be that of the earliest national application.

ARTICLE 7

1. The international registration shall be valid for a first period of five years.
2. Any registration may be renewed for periods of five years each, by application filed during the last year of the period about to expire.

ARTICLE 8

The International Bureau shall, upon application by an interested party, register and publish changes affecting, in one or more countries, some or all the proprietary rights in a design.

ARTICLE 9

1. No Contracting State may, as a condition of recognition of the right to protection, require that the product incorporating the design bear an indication or mention of the deposit of the design.
2. If, according to the domestic law of a Contracting State, the availability of certain remedies is conditional upon the appearance of a notice on the article incorporating the design, then such State shall consider such condition fulfilled if all authorized copies of the article offered to the public, or a tag attached to such copies while they are in commerce, bear the international design notice.
3. The international design notice shall consist of the symbol D accompanied either *a* by the number of the year in which protection commenced and the name of the owner of the right or a sign by which he can be identified, or, *b* by the number under which the design was internationally registered.

ARTICLE 10

1. Each Contracting State shall, during the continuance of the international registration, grant the same term of protection to designs registered in the International Bureau as it does to designs deposited in that State.
2. Notwithstanding paragraph 1 above, any Contracting State may, by a provision of its domestic law, reduce the protection resulting from international registration under the present Arrangement to the minimum terms provided for in paragraph 3 below.
3. The term of protection granted by a Contracting State shall not be less than :
 - a*) ten years from the date of the international registration if, during the fifth year, renewal has been applied for in the International Bureau ;
 - b*) five years from the date of the international registration in the absence of renewal.

ARTICLE 11

1. There is hereby established an International Design Committee consisting of representatives of all Contracting States.

2. The Committee shall have the following duties and powers :

- a) to amend the Regulations by a majority of four fifths of such of its members who are present and do not abstain in the vote, and,
- b) to study and give advice on questions concerning the application, operation, and possible revision, of this Arrangement, and concerning any other question relating to the international protection of designs.

3. The Committee shall be called in conference by the Director of the International Bureau, with the agreement of the Swiss Government, or upon request of one third of the Contracting States.

ARTICLE 12

The Regulations shall govern the procedures concerning the implementation of this Arrangement and particularly :

- a) the data to be supplied in the application ;
- b) the amount and method of payment of the fees for registration, reproduction in colour, renewal, and of the fees that the Bureau shall collect for furnishing ordinary or certified copies and other information ; the amount and method of refund of fees in case of withdrawal of deposits before publication ;
- c) the number, size, and other characteristics of the photographs or other graphic representations of the design to be deposited ; the limits within which copies or models of the article incorporating the design are accepted for deposit ; the number of designs that may be included in the same application and other conditions and special fees for multiple deposits ;
- d) the procedure by which an applicant may send his applications through the intermediary of a national office ;
- e) the procedure by which supplementary fees will be collected for the examination referred to in article 5, paragraph 3 ;
- f) the methods of publication and distribution ; the number of copies of the publications which shall be given free of charge to the national offices, and the number of copies which shall be sold at a reduced price to such offices ;
- g) the disposal of material relative to registrations which have not been renewed.

ARTICLE 13

1. The Regulations may be amended either by the Committee as provided in Article 11, paragraph 2 *a*, or by a written procedure as provided in paragraph 2, below.

2. In case of written procedure, amendments will be proposed by the Director of the International Bureau in notes addressed by the Swiss Government to the government of each Contracting State, and they will be considered as adopted if, within a year from their communication, no Contracting State communicates an objection to the Swiss Government.

ARTICLE 14

The provisions of this Arrangement shall not prevent the claiming of the application of possible wider protection resulting from the domestic law of a Contracting State, nor do they affect in any way the protection which is granted to works of art or works of applied art by international copyright treaties or conventions.

ARTICLE 15

1. This Arrangement shall be deposited with the Government of and shall be open for signature by any State referred to in article 1, paragraph 2, for a period of six months after that date.

2. States referred to in article 1, paragraph 2, and which have not signed this Arrangement, may accede thereto.

3. Instruments of ratification and accession shall be deposited with the Government of

ARTICLE 16

1. Each Contracting State undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Arrangement.

2. At the time a Contracting State deposits its instrument of ratification or accession, it must be in a position under its domestic law to give effect to the terms of this Arrangement.

ARTICLE 17

1. This Arrangement shall enter into force three months after the date on which at least ten instruments of ratification or accession have been deposited, provided that at least three of these instruments were deposited by States not party to the Arrangement concerning the International Deposit of Industrial Designs and Models signed at The Hague on November 6, 1925, and revised at London on June 2, 1934.

2. Subsequent ratifications and accessions shall become effective three months after the date of the deposit of the instrument of ratification or accession.

ARTICLE 18

Any Contracting State may, at the time of deposit of its instrument of ratification or accession, or at any time thereafter, declare by notification addressed to the Government of that this Arrangement shall apply to all or any of the territories for the relations of which it is responsible ; and this Arrangement shall thereupon apply to the territories named in such a notification after the expiration of the term of three months from the receipt of the notification by the Government of

ARTICLE 19

1. Any Contracting State may denounce, by notification addressed to the Government of, this Arrangement in its own name or on behalf of

all or any of the territories as to which a notification has been given under article 18. Such notification shall take effect one year after its receipt by the Government of

2. Denunciation shall not relieve any Contracting State of its obligations under this Arrangement in respect to designs registered in the International Bureau before the effective date of the denunciation.

ARTICLE 20

1. This Arrangement shall be submitted to periodical revision with a view to the introduction of amendments designed to improve the system of the Separate Union.

2. For this purpose conferences shall be held successively in one of the Contracting States between the delegates of such States.

3. Conferences of revision shall be called on the request of the International Design Committee or of not less than half of the Contracting States.

ARTICLE 21

1. Two or more Contracting States may at any time notify the Swiss Government :

- a) that a common administration will be substituted for the national administration of each of them, or
- b) that the group of their respective territories shall be considered as a single country for the purposes of the application of this Arrangement in whole or in part.

2. This notification shall take effect six months after the date of the communication which shall be made by the Swiss Government to the other Contracting States.

ARTICLE 22

1. Signature and ratification of, or accession to, the present Arrangement by a State party to the Arrangement on the International Deposit of Industrial Designs and Models, signed at The Hague on November 6, 1925, and revised at London on June 2, 1934, shall be considered as including signature and ratification of, or accession to, the Protocol annexed to the present Arrangement, unless such State makes, at the time of signing or ratifying or acceding to this Arrangement, an express declaration to the contrary effect.

2. Any State party to the present Arrangement not party to the Arrangement on the International Deposit of Industrial Designs and Models, signed at The Hague on November 6, 1925, and revised at London on June 2, 1934, may at any time become party to the Protocol annexed to the present Arrangement. Such State may limit, by a declaration made at the time of signing or ratifying or acceding to the Protocol, its acceptance to paragraph 2 a, or to paragraph 2 b, of the Protocol. Articles 13, 14 (2), 15, and 16 of the present Arrangement shall apply by analogy.

PROTOCOL

States parties to this Protocol have agreed as follows :

1. The provisions of this Protocol apply to designs deposited with the International Bureau by nationals of States parties to this Protocol and persons who, without being nationals of such States, are domiciled in or have a real and effective industrial or commercial establishment in such States.

2. In respect to designs referred to in paragraph 1 above :

- a) The term of protection granted by States parties to this Protocol shall not be less than fifteen years from the date of the international registration if, during the fifth year, an application for renewal has been filed with the International Bureau.
- b) The availability of remedies shall in no case be made conditional upon the appearance of any notice on the articles incorporating the design or on a tag attached to such articles.

EXPLANATORY STATEMENT

INTRODUCTION

1. The attached draft treaty is the work of an international conference of experts which was convened by the Government of the Netherlands and held at The Hague from September 28 to October 8, 1959.

2. Experts from the following countries participated in the Conference : Austria, Belgium, Czechoslovakia, Denmark, France, the Federal Republic of Germany, the Holy See, Italy, Luxemburg, the Netherlands, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Representatives of international organizations participated in the discussions. A list of participants is attached to the present Statement.

3. The Conference was presided over by Mr. C. J. de Haan, President of the Netherlands Patent Office, Director of the Netherlands Office of Industrial Property, and Head of the Netherlands Delegation to the Conference.

4. The so called Hague Arrangement on the International Deposit of Industrial Designs and Models was concluded in 1925 and revised in 1934. Its present members are : Belgium, Egypt, France, the Federal Republic of Germany, Indonesia, Liechtenstein, Monaco, Morocco, the Netherlands, Spain, Switzerland, Tunisia and Viet Nam.

5. The revision of The Hague Arrangement was on the agenda of the last conference of revision of the International (Paris) Union for the Protection of Industrial Property held at Lisbon in 1958. However, that conference did not effectuate the revision of the said instrument. Several delegations at Lisbon expressed the view that it would be of the utmost importance to introduce fundamental modifications in the Arrangement (and no such modifications had been proposed by the International Bureau to the States members of the Paris Union), and that the revision of this instrument should be prepared with great care in order, on the one hand, to prevent its denunciation by some of the States now parties to it, and, on the other hand, to lead to a considerable increase in its membership which is rather limited at the present time. Consequently, the Lisbon Conference decided to postpone revision and assigned this task to a diplomatic conference which would be convened, for this purpose alone, not later than in 1960. The Netherlands Government accepted responsibility for acting as host to the diplomatic conference.

6. Pursuant to another decision of the Lisbon conference and to resolutions of the Intergovernmental Copyright Committee and the Permanent Committee of the International (Berne) Union for the Protection of Literary and Artistic

Works, a special Study Group on the International Protection of Works of Applied Art and Designs convened, at Paris in April 1959, under the sponsorship of the United International Bureaux of the Paris and Berne Unions, and of the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Study Group, attended by experts coming from 21 countries, discussed many questions relevant to the revision of The Hague Arrangement. The conclusions of the Paris meeting were published in XII UNESCO Copyright Bulletin 11, the May issue of *La Propriété Industrielle*, The June issue of *Le Droit d'Auteur*, and the July issue of the Industrial Property Quarterly, all of 1959.

7. The present Conference was convened in order to prepare the work of the diplomatic conference. The traditional procedure in the Paris and Berne Union revision conferences is that the host country and the International Bureau prepare jointly the draft text to be submitted to the governments. In the present case, a first draft was prepared by the Netherlands Government, assisted by the other governments of Benelux and the International Bureau, but, in view of the delicate nature of the subject matter and the importance of the amendments envisaged, the Netherlands Government considered it desirable to consult experts of several countries and it is to this end that it convened the present conference. The draft prepared by the Benelux countries and the International Bureau and the report of the Paris Group were communicated several months in advance to the participants who included experts coming not only from countries parties to the present Arrangement but also from countries which are not members but which show an interest in possibly adhering to an appropriately revised text.

8. The experts were of the opinion that a more effective protection of designs was more important than ever before ; that designs played a decisive part in the marketing of goods of all kinds ; that the international value of good design was constantly increasing ; and that the unauthorized copying or unlawful imitation of designs was equally detrimental to the designer, the industrialist, and the public which was frequently misled by imitations.

9. The main objective of the present Conference was to draw up a draft which would make the Arrangement acceptable to a substantially larger number of countries than at present. Consequently, the experts tried to simplify the text of the Arrangement, to make clearer the meaning of some of its provisions, and to make it more efficient so that it should satisfy the needs of our time.

COMMENTS ON CERTAIN PROVISIONS

10. The Draft provides that the Arrangement is open to members of the Paris Union (art. 1, par. 2). However, the Governments are invited to examine the possibility of permitting also adherence by countries non-members of the Paris Union as there may be countries prepared to protect designs without, at the same time, being prepared to accept the patent and trademark provisions of the General Convention of the Paris Union. Such opening of the Arrangement might increase the number of countries where protection could be obtained.

11. The Draft provides for the possibility of submitting applications for international registration through the intermediary of a national office (art. 3,

par. 1). This provision should make it easier for the applicant to avail himself of the possibility of international registration ¹.

12. The Draft provides that the pictures of the designs shall be published by the International Bureau (art. 4, par. 3) ². This provision was accepted subject to further clarification as to the costs of such publication. The Working Group which will prepare the Draft Regulations is invited not only to examine these costs and to recommend fees corresponding to these costs, but also to explore and report on the relative costs of a system under which the International Bureau would distribute copies of the applications and pictures to the national office of each Contracting Country.

13. Some experts suggested that an applicant should be able to name countries in which he does not desire that his international registration produce effects, but the proposal was rejected by the great majority of the Conference ³. However, the Working Group which will prepare the Draft Regulations was invited to examine whether the proposal may lead to the reduction of the international registration fees or the avoidance of supplementary fees, if any, in case of examination for novelty by national offices (see art. 5, par. 3 of the Draft) ⁴.

14. In connection with article 6 of the Draft, some experts expressed the opinion that the Article's effects may be too limited and that it should speak of applications made in any country or in any member country of the Paris Union rather than, as the present Draft does, of applications made in the States party to the Arrangement. Another opinion expressed in connection with this article was that, unlike the Convention of the Paris Union, it did not regulate in sufficient detail the various conditions of the right of priority.

15. The Draft provides that in the international design notice the symbol D may be accompanied either by a date and name, etc., or by the number of the international registration (art. 9, par. 3). It was understood that the choice between the two possibilities lie with the person who lawfully applies the notice on the article or the tag attached thereto.

16. The Draft provides for a minimum duration of five plus five years (art. 10, par. 2). This provision should be read together with the draft Protocol which provides for a minimum duration of five plus ten years ⁵.

17. Article 11 of the Draft provides for the establishment of a Committee of which all States parties to the Arrangement are members. The Governments are invited to examine the desirability of allowing that Committee to elect, from

¹ The Austrian experts asked that the following provision be inserted in the Arrangement :

" The Administration of the State of the applicant shall have the faculty to fix, as it likes, and to collect for itself from the applicant a fee for the transmittal of registration and renewal applications to the International Bureau. "

The other experts were of the opinion that this was true without saying.

² The Draft also provides for deferred publication (art. 4, par. 4). In this connection, the expert of Czechoslovakia stated that he opposed the principle of any kind of secret deposit and suggested that the possibility of deferred publication not be included in the revised Arrangement.

³ The expert of Czechoslovakia proposed that it be left to the applicant to specify, in his application, the countries in which he desired that his design be protected.

⁴ The Danish and Swedish experts expressed the opinion that " if small countries, like the Scandinavian ones, should be able to adhere to the proposed new Hague Arrangement, it seems indispensable that the fees, payable at the International Bureau, should cover also the costs of each national office in connection with the handling of the international applications, since in case of a national preexamination, these national costs might be considerable ".

⁵ The Italian expert requested that it be noted that he would prefer a minimum of five years, and the U. S. experts called attention to proposed legislation in their country which would provide for a duration of five years.

among its members, and with a periodical rotation of membership, a council of some 8 or 10 or 12 members, which would have the task of assisting the International Bureau in preparing the work of the full Committee.

18. The Draft contains an enumeration of the subjects to be governed by the Regulations (art. 12). This enumeration should be considered as merely tentative, a more precise enumeration being possible only after the Working Group for the drafting of the Regulations has submitted its draft.

19. The Draft provides for a mechanism for the amendment of the Regulations (art. 13)¹ but not for the establishment of the initial Regulations because the Conference was of the opinion that the initial text of the Regulations should be established by the same diplomatic conference which will adopt the text of the revised Arrangement itself.

20. The present Arrangement provides that, as a rule, it has a retroactive effect (art. 22, par. 2), although it allows countries to exclude such effect by an express declaration (art. 22, par. 3). The Draft does not contain a comparable provision and its silence should be interpreted as meaning that it has no retroactive effect.

21. The present text of the Arrangement provides that countries which ratified both the 1925 and the 1934 texts remain bound by the earlier text in their relations with countries having ratified only the earlier text (art. 23, par. 3). The question of whether a corresponding provision should appear in the revised text has been left open by the experts. The answer to this question depends on whether the revised text will be so different from the present text that a country could not simultaneously apply both texts (the old text in its relations to some countries, the new text in its relations to others). The proposed Protocol may have a bearing on this too. But since one shall have to know first exactly what the new text and Protocol will contain in their final form, it would have been premature to make any recommendation on this point.

CONCLUDING OBSERVATIONS

22. The Conference recognized the great practical importance of the fees payable for international registration. The fees must be as low as possible, because only if the fees are low, will the possibilities offered by the Arrangement be used in practice. The fees should be so calculated that, without producing any profit, the design registration service of the International Bureau should be self supporting. The Working Group on Regulations is invited to examine whether this calculation is possible with any degree of accuracy. The results of this examination may have some bearing also on the need of adopting a principle similar to that reflected by article 8 of the present Regulations.

23. The Conference was of the opinion that Governments will be able to make fully considered comments on the Draft Arrangement only if they have

¹ One of the proposed methods of amending the Regulations would be by a qualified majority of the Committee (art. 11, par. 2 a). The Austrian experts asked that their following reservation be noted:

"In view of the fact that the Regulations would contain provisions on the amount of the registration fees and other matters which, in Austria, can only be regulated by law, the proposed method might create constitutional difficulties in Austria. The Austrian experts reserve the right to come back on the question after careful study and consultation with their government services dealing with constitutional law."

before them an estimate of the fees and costs and a complete draft of the Regulations. It is therefore recommended that the Draft Arrangement be submitted to the Governments together with draft Regulations to be prepared by the Government of the Netherlands in co-operation with the Director of the International Bureau and a Working Group of experts to be named by the Chairman of the Conference.

24. It was understood throughout the discussions of the Conference that the experts did not necessarily express the final views of their Governments which will have an opportunity of officially communicating their comments when they receive, through official channels, the text of the Draft Arrangement and Draft Regulations.

25. This Statement as well as the Draft Arrangement were adopted by the Conference of experts on October 8, 1959.

**LIST OF MEMBERS
OF THE INTERNATIONAL CONFERENCE OF EXPERTS
AND OF ORGANIZATIONS REPRESENTED**

AUSTRIA

Mr. R. PSENICKA, President, Patent Office.
Mr. F. HOHENECKER, Division President, Supreme Court.
Mr. Th. LORENZ, Commissioner, Patent Office.
Mr. R. DITTRICH, Ministerial Secretary, Federal Ministry of Justice.
Mr. Dr. R. CHRISTIAN, Legal Advisor, Bundeskammer der gewerblichen
Wirtschaft.

BELGIUM

Mr. J. P. J. S. DE REUSE, Administrative Secretary, Industrial Property
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CZECHOSLOVAKIA

Mr. V. HRADEC, Secretary Legation of Czechoslovakia in the Hague.

DENMARK

Miss J. OLSEN, Section Head, Office of Industrial Property.

FEDERAL REPUBLIC OF GERMANY

Mr. E. ULMER, Professor, University of Munich.
Mr. K. HAERTEL, Ministerialrat, Federal Ministry of Justice.
Mr. G. SCHNEIDER, Regierungsdirektor, Federal Ministry of Justice.

FRANCE

Mr. G. M. FINNISS, Director, Industrial Property Office ; Inspector-General
of Industry and Commerce.
Mr. R. M. N. LABRY, First Secretary of Embassy, Ministry of Foreign
Affairs.
Mr. R. TILLIÉ, Vice-Director, Industrial Property Office.
Mr. M. BOUTET, Attorney, Court of Appeals of Paris ; Member of the
Supreme Council for Industrial Property.
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Mr. M. NORMAND, Attorney at Law.

BUREAUX INTERNATIONAUX RÉUNIS
POUR LA PROTECTION DE LA
PROPRIÉTÉ INTELLECTUELLE
BIBLIOTHÈQUE

ITALY

Mr. P. MARCHETTI, Director at the Patent Office.

LUXEMBURG

Mr. J. P. HOFFMANN, Head, Industrial Property Service.

NETHERLANDS

Mr. C. J. DE HAAN, President of the Patent Office, Director of the Office of Industrial Property.

Mr. W. L. HAARDT, Professor, University of Leyden.

Mr. W. M. J. C. PHAF, Director of the Legal Section, Ministry of Economic Affairs.

Mr. L. DE VRIES, Counsellor, Ministry of Justice.

Mr. E. VAN WEEL, Member of the Patent Council.

Mr. L. HAMMING, Attorney at Law.

SPAIN

Mr. A. F. MAZARAMBROZ, Head, Industrial Property Office.

Mr. J. DELICADO MONTERO RIOS, Head, Technical Section, Industrial Property Office.

SWITZERLAND

Mr. H. MORF, Director, Federal Office of Industrial Property.

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TURKEY

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Mr. W. WALLACE, Assistant Comptroller of the Industrial Property Department, Board of Trade.

Mr. W. E. R. RICHARDS, Principal Examiner, Patent Office.

SWEDEN

Mr. S. LJUNGMAN, Professor of Law, University of Stockholm.

Mr. C. UGGLA, Head of the International Section and the Trade Mark Section, Royal Patent Office.

UNITED STATES OF AMERICA

Mr. A. FISHER, Register of Copyrights, Copyright Office, Library of Congress.

Mr. P. J. FEDERICO, Examiner in Chief, Patent Office.

Mr. A. BOGSCH, Legal Advisor, Copyright Office.

Mr. W. DUNHAM, First Secretary, U. S. Embassy, The Hague.

Mr. R. V. LIBONATI, Member of U. S. Congress.

Mr. C. F. BRICKFIELD, Counsel, House Judiciary Committee, U. S. Congress.

BUREAU OF THE INTERNATIONAL UNION FOR THE PROTECTION
OF INDUSTRIAL PROPERTY

Mr. Ch.-L. MAGNIN, Vice-Director.
Mr. R. WOODLEY, Counsellor, Head of Industrial Property.
Mr. R. RONGA, Counsellor, Head of the Legal Section.

INTERNATIONAL ORGANIZATIONS REPRESENTED

I. Intergovernmental Organizations

United Nations Educational Scientific and Cultural Organization (UNESCO)

Mr. G. C. BOLLA, Assistant Head, Copyright Division.

European Economic Community

Mr. B. OLIVI, Office of Legislative Rapprochement.
Mr. F. FROSCHMAIER, Office of Legislative Rapprochement.

European Atomic Energy Community

Mr. B. OLIVI, Office of Legislative Rapprochement.

II. Non-governmental Organizations

International Association for the Protection of Industrial Property

Mr. G. H. C. BODENHAUSEN, Professor, University of Utrecht ; Attorney.
Mr. P. L. C. A. VAN REEPINGHEN, Legal Counsel, Federation of Industries.

International Literary and Artistic Association (ALAI)

Mr. Th. LIMPERG, Attorney at Law, Court of Amsterdam.
Mr. J. VILBOIS, Perpetual Secretary, ALAI.
Mr. J. DUCHEMIN, Secretary General, SPADEM.

International Chamber of Commerce (ICC)

Mr. L. A. ELLWOOD, Rapporteur general of the Commission for the International Protection of Industrial Property of the ICC.
Mr. F. HEPP, President of the Design Committee of the ICC.
Mr. P. J. POINTET, Vice-President of the Commission for the International Protection of Industrial Property of the ICC.

International Federation of Patent Agents

Mr. R. JOURDAIN, President of the Study and Steering Committee of the Federation.

Mr. C. M. R. DAVIDSON, Counsellor of the Federation.

International League Against Unfair Competition

Mr. R. DUSOLIER, Manufacturers' Association, Paris.

DRAFT REGULATIONS

IMPLEMENTING THE DRAFT ARRANGEMENT CONCERNING THE INTERNATIONAL DEPOSIT OF DESIGNS¹

RULE 1

(Applications for registration)

(See Draft arrangement, article 3, paragraphs 3 and 5 ; article 4, paragraph 4, and article 12 a.)

1. Applications for registration shall be written in English or French on forms distributed by the International Bureau and filed in two copies.

2. Applications for registration shall be signed by the applicant or his agent and shall contain the following data :

- a) the name and the address of the applicant ; if there is an agent, his name and address ; if several addresses are given, the address to which the International Bureau should send its communications ;
- b) the designation of the Contracting State of which the applicant is a national, or if he is not the national of any Contracting State, the designation of the Contracting State in which he is domiciled or has a real and effective industrial or commercial establishment ;
- c) the designation of the article or articles in which it is intended to incorporate the design ;
- d) the list of the documents, and of the copies or models, if any, attached to the application, and a statement of the amount of fees transmitted to the International Bureau.

3. Applications for registration shall also contain :

- a) if the applicant wishes to claim the priority referred to in Article 6 of the Arrangement, the designation of the Contracting State in which the deposit invoked in claiming such priority was made, and the date and number of the said deposit ;
- b) the designation of the Contracting State or States having a system of preliminary administrative examination for novelty² in which the applicant does not wish to claim protection conditional upon such examination³.

¹ The present Draft Regulations were drawn up by a Working Group constituted in accordance with the procedure laid down in point 23 of the Explanatory Statement attached to the Draft Arrangement. The Working Group met from January 25 to January 29, 1960, at The Hague, under the chairmanship of Mr. C. J. de Haan, President of the Netherlands Patent Office.

² The Working Group chose the expression "preliminary administrative examination for novelty" because it was of the opinion that, in the minds of the authors of the Draft Arrangement, article 5, par. 3 of that Draft is intended to deal only with examinations concerning the novelty of a design. (See point 13 of the Explanatory Statement attached to the Draft Arrangement.)

³ Savings that might result from the exercise of the faculties offered by this provision appeared to the Working Group important enough to justify its adoption. (See point 13 of the Explanatory Statement attached to the Draft Arrangement.)

4. Applications for registration may also contain :

- a) a description in not more than 100 words of the characteristics, including colours, of the design;
- b) a request for reproduction in colour ;
- c) a request for the deferment of the publication of the registration under article 4, paragraph 4, of the Arrangement.

RULE 2

(Multiple deposits)

(See Draft Arrangement, article 3, paragraph 4, and article 12 c)

The number of the designs that an applicant may include in a single application shall not exceed twenty. These designs must be intended for incorporation into articles of one and the same kind. If the applicant wishes to exercise one or more of the faculties offered by Rule 1, par. 3 b, 4 b, or 4 c, he must do so in respect to all the designs included in the application and for each in the same manner. Each design must be identified by a different number indicated both in the application and on the photographs or other graphic representations accompanying the application.

RULE 3

(Attachments to the application)

(See Draft Arrangement, article 3, paragraph 3, and article 12 c)

1. For publication in black and white, a photograph or other graphic representation of 9 by 12 centimetres (3 ½ by 5 inches)¹ shall be attached to each of the two copies of the application. For publication in colour, one positive transparency ("diapositive" film) and two colour prints thereof, these prints being 9 by 12 centimetres (3 ½ by 5 inches), shall be attached to the application. The same design may be photographed or graphically represented from several angles.

2. The copies or models mentioned in article 3, par. 3 of the Arrangement shall not exceed 30 centimetres (12 inches) in any dimension and they shall not weigh more than 2 kilograms (4 pounds and 7 ounces).

RULE 4

(Supporting documents)

(See Draft Arrangement, article 8)

1. When action is taken through an agent, it shall be necessary to file a power of attorney. Formal attestation of the power shall not be required.

2. Interested parties who, under article 8 of the Arrangement, request the registration of changes affecting proprietary rights in a design shall furnish to the International Bureau the necessary supporting documents. The same is required in the case of applications for the recording of changes in the name of a natural person or legal entity.

¹ These specifications of dimensions are tentative. The fixing of the definitive dimensions will depend on the technical requirements of printing.

RULE 5**(Applications for renewal)**

(See Draft Arrangement, article 7, par. 2)

Applications for renewal shall be filed in two copies on a form distributed by the International Bureau. The application shall contain the number and the date of the initial registration, and indications of the kind referred to in Rule 1, par. 2, (a, b, and d).

RULE 6**(Fees)**

(See Draft Arrangement, article 12 b)

1. Fees shall be paid in Swiss Francs.
2. The following fees shall be payable for the international registration of designs with publication¹ in black and white :
 - a) in case of an application concerning a single design :
 - i) with publication in a space of 6 by 9 centimetres (2 1/2 by 3 1/2 inches ; hereafter referred to as " standard space ") : 50 Swiss Francs ;²
 - ii) with publication in more standard spaces than one : a supplement of 25 Swiss Francs for each standard space in addition to the first ;
 - b) in case of an application concerning several designs : for two designs 40 Swiss Francs, for three designs 50 Swiss Francs, for four designs 55 Swiss Francs, and the last sum augmented by 2 Swiss Francs for each additional design between the fifth and the twentieth and, in addition, 25 Swiss Francs for each standard space used.
3. In the case of publication in colour, a supplement of 75 Swiss Francs shall be payable for each standard space used.
4. A standard space shall not include more than four reproductions ; they may be reproductions of the same object or objects viewed from different angles or reproductions of different designs.
5. When an application for registration is withdrawn in accordance with article 4, par. 4, of the Arrangement, the International Bureau shall refund the amount of 25 Swiss Francs to the applicant for each unused standard space.
6. In the following cases the following fees shall be payable :
 - a) 10 Swiss Francs for each description mentioned in Rule 1, par. 4 a, if it contains from forty one to one hundred words ;
 - b) 30 Swiss Francs per deposit for the registration of changes affecting, in one or more countries, some of or all the proprietary rights in a design ;
 - c) 5 Swiss Francs per deposit for the inscription of changes in the name of a natural person or a legal entity ;

¹ The Working Group also examined the costs of a system under which the International Bureau, instead of publishing the reproductions of the designs in a gazette, would distribute copies of the applications and pictures to the national office of each Contracting State (see point 12 of the Explanatory Statement attached to the Draft Arrangement). In view of the fact that, under such a system, a great number of reproductions would be necessary, that the costs of reproduction, mailing, administrative operations, and possible publication in the national gazettes, would be high, and that the complications and delays would be considerable, the Working Group expressed the opinion that the publication of photographs or other graphic representations in an international gazette was clearly preferable. The Working Group found an additional reason for this opinion in the estimates concerning printing costs which indicate that a high quality publication can be produced for a reasonable price.

² One Swiss Franc is worth approximately 23 cents in U. S. currency or 1 sh. 8 d. in U. K. currency.

- d) 50 Swiss Francs per design for the renewal of the registration ; a period of six months, computed from the date on which the current registration expires, is permitted for the payment of this fee against payment of a supplement of 10 Swiss Francs ;
- e) 15 Swiss Francs per page or fraction of a page for the furnishing of extracts of the Register or the file or of certificates ;
- f) 15 Swiss Francs per hour or fraction thereof required for the furnishing of information ;
- g) if the registrant presents to the International Bureau a photograph identical to the photographs attached to the application for registration and requests that its identity be certified : 10 Swiss Francs per certification ; the same fee shall be payable per certification when the certification of the identity of other graphic representations, copies or models is requested ¹.

RULE 7

(Register)

(See Draft Arrangement, article 4, paragraph 1 ;
article 5, paragraph 3 ; article 7, paragraph 2, and article 8)

1. Upon compliance with the formalities prescribed in article 4, par. 2, of the Arrangement, the date determined according to that provision and the registration number shall be indicated and the seal of the International Bureau shall be stamped on both copies of the application for registration. They shall be signed by the Director of the International Bureau or his representative designated by him for this purpose. One of the copies shall become part of the Register as the official act of registration ; the other shall be returned to the applicant as the certificate of registration.

2. The notifications referred to in article 5, par. 3, of the Arrangement, the changes affecting proprietary rights, the changes in the name of a natural person or legal entity, and renewals, shall be indicated on the official act of registration.

RULE 8

(Gazette)

(See Draft Arrangement, article 4, paragraph 3, and article 12 f)

1. The International Bureau shall publish a periodical entitled "Bulletin des dessins ou modèles internationaux—International Design Gazette", hereafter referred to as the Gazette.

2. The Gazette shall contain the reproductions of the registered design and all the necessary data concerning the registrations, the notifications mentioned in article 5, par. 3, of the Arrangement, the changes affecting proprietary rights, the changes in the name of natural persons or legal entities, and renewals. In addition, the Gazette may contain indexes, statistical data and general information. Data concerning particular registrations shall be published in French

¹ The Working Group was of the opinion that the earmarking, for the Pension Fund of the staff of the International Bureau, of a certain portion of the revenue resulting from the design registration fees was a matter to be regulated in the Arrangement itself rather than in the Regulations.

if the application was submitted in French, and in English if the application was submitted in English. General information shall be published in both languages.

3. The International Bureau shall send to the national office of each Contracting State one free copy of the Gazette. Furthermore, each national office shall, upon request, receive not more than five copies free of charge, and not more than ten copies for one third of the regular subscription fee.

RULE 9

(Domestic examination of novelty)

(See Draft Arrangement, article 5, paragraph 3, and article 12 e)

1. For the purposes of the preliminary administrative examination for novelty mentioned in article 5, par. 3, of the Arrangement, the International Bureau shall collect from the applicant, for each examining office, the fee fixed by that office. This fee, however, may exceed neither three-fourths of the fee provided for by the domestic law for the novelty examination of a design, nor 50 Swiss Francs per design.

2. Notifications provided for in article 5, par. 3, of the Arrangement shall be sent in three copies to the International Bureau and each notification shall deal with one design only. It shall indicate the reasons for which the design does not meet the requirements of the domestic law and the date on which the national office received the issue of the Gazette containing the publication of the registration of the design. The notification shall also indicate the time allowed for appeal and the authority to which the appeal may be addressed. If the notification was made within the term provided for in article 5, par. 3, of the Arrangement, it shall be communicated to the applicant and, if the application was transmitted by a national office, to such office if it so wishes. If the notification was sent after the expiration of the said term, the International Bureau shall call this fact to the attention of the national office.

RULE 10

(Archives)

(See Draft Arrangement, article 12 g)

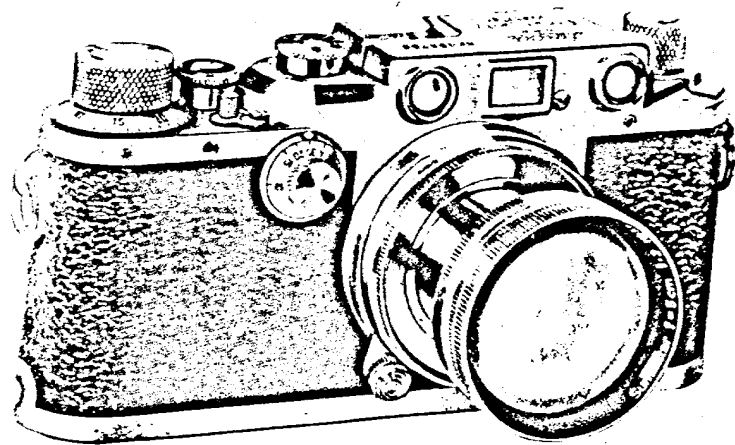
In the case of unrenewed registrations, the International Bureau may dispose of the copies and models referred to in article 3, par. 3, of the Arrangement, and may destroy the files, five years after the date on which the possibility of renewal ceases to exist.

RULE 11

(Entry into force)

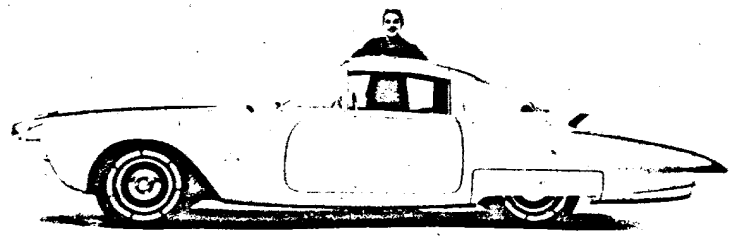
These Regulations shall enter into force simultaneously with the Arrangement.

Attached: tentative sample page of the Gazette.



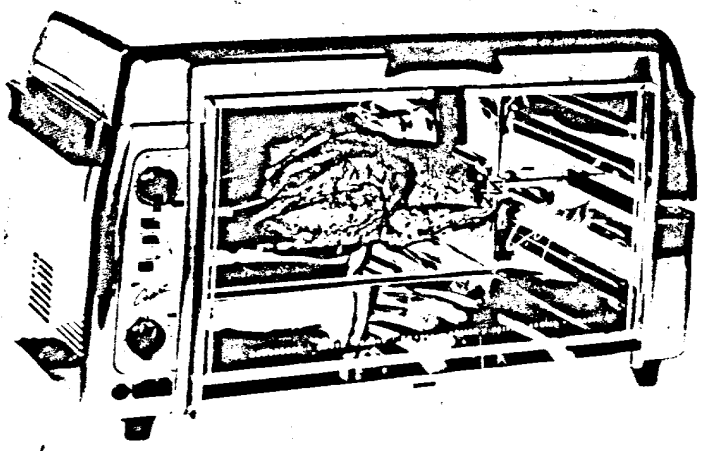
No. 4111
 Appareil photographique
 Ernst Leitz, Wetzlar, Allemagne
 Priorité : 6 oct. 1961, Allemagne, 5555

2 janvier 1962



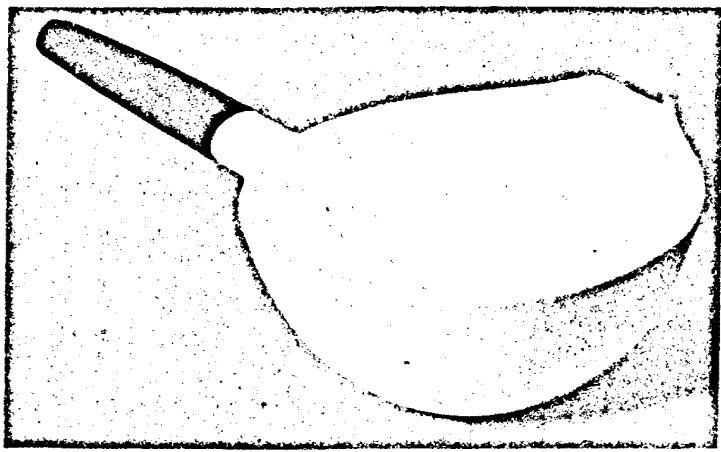
No. 4112
 Automobile
 General Motors, Detroit, Mich., USA
 Priority : Oct. 1, 1962, USA, 181 109

January 2, 1962



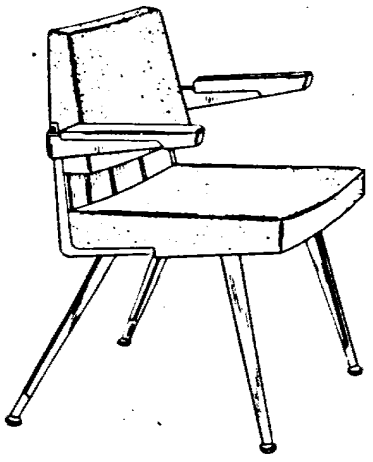
No. 4113
 Electric Roaster
 House Appliances Inc., London, U. K.

January 2, 1962



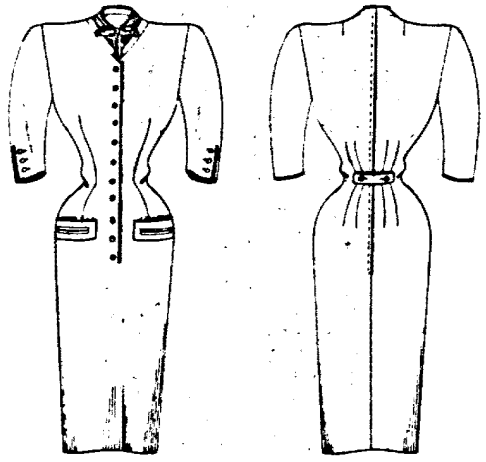
No. 4114
 Sauce Pan
 Ceramiche Italiane SA, Rome, Italy

January 2, 1962



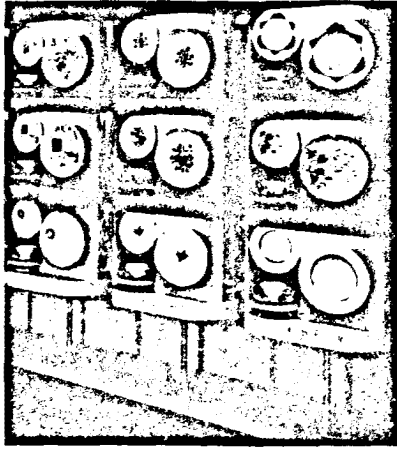
No. 4115
 Chair
 Allg. Möbel AG, Berne, Switzerland

January 2, 1962

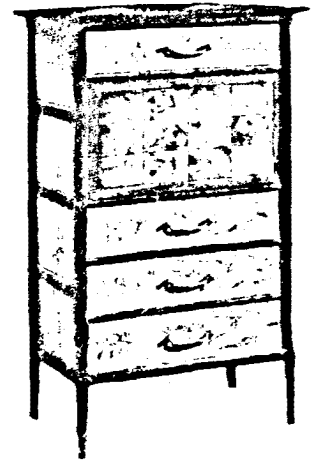


No. 4116
 Robe
 Christian Lelong, Paris, France

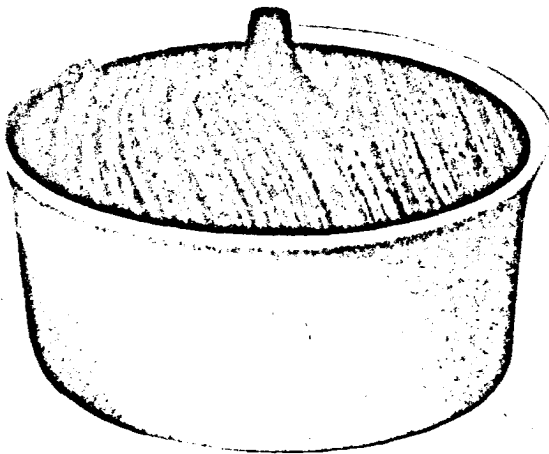
January 2, 1962



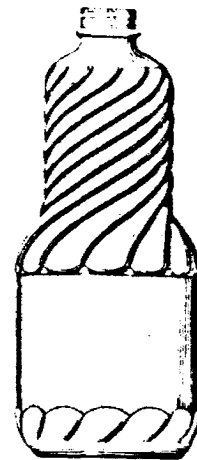
No. 5111
January 2, 1962
Display Cases
Braun & Co., Cologne, Germany
Priority: 6 october 1961, No. 5555



No. 5112
2 janvier 1962
Secrétaire
Neumobel, AG, Berne, Suisse
Priorité: 9 oct. 1962, Suisse, 333



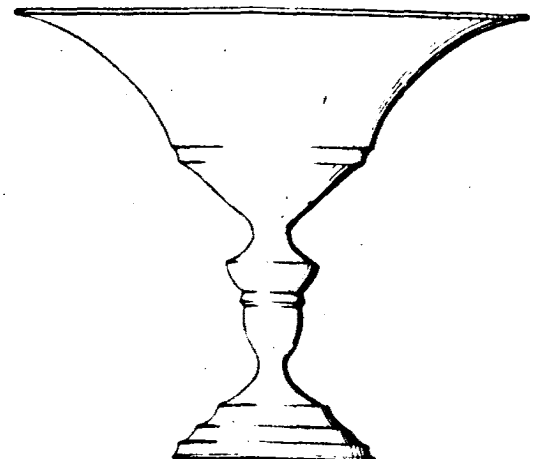
No. 5113
January 2, 1962
Bowl
House Appliances Inc., London, U. K.
See description page 99



No. 5114
January 2, 1962
Sauce Pan
Ceramiche Italiane SA, Rome, Italy



No. 5115
January 2, 1962
Lamp Base
Moderne Kunst AG, Köln, Germany



No. 5116
January 2, 1962
Vase
Christian Dupont, Paris, France

PART TWO

ARRANGEMENT OF THE HAGUE FOR THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS OR MODELS OF 6th NOVEMBER 1925, AS REVISED AT LONDON ON 2nd JUNE 1934

ARTICLE 1

Persons within the jurisdiction of each of the contracting countries, as well as persons who, upon the territory of the restricted Union, have satisfied the conditions of Article 3 of the General Convention, may secure in all the other contracting countries the protection of their industrial designs or models by means of an international deposit effected at the International Bureau for the Protection of Industrial Property, at Berne.

ARTICLE 2

1. The international deposit shall include designs or models, either in the form of the industrial product for which they are intended, or in the form of a drawing, of a photograph, or of any other graphic and sufficient representation of the said design or model.

2. The items submitted shall be accompanied by an application for international deposit, in duplicate, containing, in the French language, the particulars specified in the Regulations.

ARTICLE 3

1. As soon as the International Bureau receives an application to proceed to an international deposit it shall enter this application in a special register and shall publish it, sending free of charge to each Administration the desired number of copies of the periodical publication in which it publishes the entries.

2. The deposits shall be kept in the archives of the International Bureau.

ARTICLE 4

1. Any person who effects the international deposit of an industrial design or model shall, in the absence of proof to the contrary, be considered as the owner of the work.

2. The international deposit is purely declaratory. As regards the deposit, it shall produce in the contracting countries the same effect as if the designs or

models had been directly deposited there at the date of the international deposit, with the benefits of the special Rules established by the present Arrangement.

3. The publicity mentioned in the foregoing Article shall be considered in all the contracting countries as fully sufficient, and no further publicity may be required of the depositor, apart from any formalities to be complied with for the exercise of rights in accordance with domestic legislation.

4. The right of priority established by Article 4 of the General Convention shall be guaranteed to every design or model which has been the subject of an international deposit, without the obligation of any of the formalities specified in the said Article.

ARTICLE 5

The contracting countries agree not to require designs or models which have been the subject of an international deposit to bear any compulsory marking. They shall not cause the designs to lapse either for non-exploitation or for introduction of articles similar to those protected.

ARTICLE 6

1. The international deposit may consist of either a single design or model or of several ; the number shall be stated in the application.

2. It may be effected under open cover or under sealed cover. In particular, double envelopes having a perforated control number (Soleau system), or any other system appropriate for assuring identification, shall be accepted as a means of deposit under sealed cover.

3. The maximum dimensions of covers or packets eligible for deposit shall be fixed by the Regulations.

ARTICLE 7

The duration of international protection is fixed at 15 years, reckoned from the date of the deposit at the International Bureau ; this term is divided into two periods, namely one period of five years and one period of ten years.

ARTICLE 8

Deposits shall be admitted either under open cover or under sealed cover for the first period of protection ; they shall only be admitted under open cover for the second period of protection.

ARTICLE 9

During the course of the first period, deposits under sealed cover may be opened upon the request of the depositor or of a competent tribunal ; upon the expiration of the first period they shall, in view of their entry into the second period, be opened upon an application for prolongation.

ARTICLE 10

In the course of the first six months of the fifth year of the first period, the International Bureau shall give notice of lapse to the depositor of the design or model.

ARTICLE 11

1. When the depositor desires to obtain extension of the protection by passing to the second period he shall, before the expiration of the first period, send to the International Bureau an application for prolongation.

2. The International Bureau shall proceed to open the package, if sealed, and shall publish in its journal notice of the prolongation granted and shall notify it to all Administrations by sending them the desired number of copies of the journal.

ARTICLE 12

Designs or models forming the subject of deposits which have not been prolonged, as well as those in respect of which protection has expired, shall, upon the request of the proprietors and at their expense, be handed over to them as they stand. If unclaimed, they shall be destroyed at the end of two years.

ARTICLE 13

1. Depositors may, at any time, renounce their deposit, either wholly or in part, by means of a declaration addressed to the International Bureau; the Bureau shall give such declaration the publicity referred to in Article 3.

2. Renunciation involves the return of the deposit to the depositor, at his expense.

ARTICLE 14

When a tribunal or any other competent authority orders the communication to it of a secret design or model, the International Bureau, when regularly required, shall proceed to the opening of the deposited package, shall extract therefrom the design or model requested, and shall remit it to the authority requiring it. Similar communication shall also take place in the case of an unsealed design or model. The item thus communicated shall be returned in the shortest possible time and re-incorporated in the sealed package or in the envelope, as the case may be. These operations may be made subject to a tax, which shall be fixed by the Regulations.

ARTICLE 15

The fees for an international deposit and for its prolongation, which shall be paid before it can proceed to registration or prolongation, are as follows :

1. for a single design or model, and in respect of the first period of 5 years : 5 francs ;
2. for a single design or model, upon the expiration of the first period and in respect of the duration of the second period of 10 years : 10 francs ;
3. for a multiple deposit, and in respect of the first period of 5 years : 10 francs ;
4. for a multiple deposit, upon the expiration of the first period and in respect of the duration of the second period of 10 years : 50 francs.

ARTICLE 16

The net annual sum of fees shall be divided between the contracting countries by the International Bureau, in accordance with the procedure laid down in Article 8 of the Regulations, after deduction of the common expenses necessitated by the carrying out of the present Arrangement.

ARTICLE 17

1. The International Bureau shall enter in its registers all changes affecting the proprietorship of designs or models of which it receives notification on the part of interested parties ; it shall publish them in its journal and shall announce them to all Administrations by sending the desired number of copies of the journal.

2. These operations may be subject to a fee, which shall be fixed by the Regulations.

3. The proprietor of an international deposit may assign the rights for part only of the designs or models included in a multiple deposit or for one or several contracting countries only ; but in such an event, in the case of a deposit effected under sealed cover, the International Bureau shall, before entering the transfer in its registers, proceed to open the package.

ARTICLE 18

1. The International Bureau shall deliver to any person, upon application, and for the fee fixed by the Regulations, information from the Register in connection with any given design or model.

2. The information may, if the design or model lends itself thereto, be accompanied by a copy or a reproduction of the design or model which has been supplied to the International Bureau, and which the Bureau shall certify as being in conformity with the article deposited under open cover. If the Bureau is not in possession of like copies or reproductions, it shall, upon the request of interested parties and at their expense, cause copies to be made.

ARTICLE 19

The archives of the International Bureau, in so far as they contain open deposits, shall be accessible to the public. Any person may inspect them, in the presence of an official, or may obtain from the Bureau written information upon the contents of the Register, subject to the payment of fees to be fixed by the Regulations.

ARTICLE 20

The details of the application of the present Arrangement shall be determined by Regulations, the provisions of which may, at any time, be modified by the common accord of the Administrations of the contracting countries.

ARTICLE 21

The provisions of the present Arrangement only involve a minimum of protection ; they shall not prevent the claiming of the application of wider provisions which may be enacted by the domestic legislation of a contracting

country ; equally, they shall permit the application of the provisions of the Berne Convention revised in 1928 relating to the protection of artistic works and works of art applied to industry.

ARTICLE 22

1. Countries, members of the Union, who have not taken part in the present Arrangement shall be allowed to adhere thereto upon request and in the form prescribed by Articles 16 and 16 *bis* of the General Convention.

2. The notification of adhesion shall, of itself, assure upon the territory of the adhering country, the benefit of the above provisions to industrial designs or models which, at the moment of adhesion, benefit from international deposit.

3. However, every country, upon adhering to the present Arrangement, may declare that the application of this Act shall be limited to designs and models deposited from the date when the adhesion becomes effective.

4. In case of denunciation of the present Arrangement, Article 17 *bis* of the General Convention shall apply. International designs and models deposited up to the date upon which denunciation becomes effective shall, during the term of international protection, continue to enjoy in the denouncing country, as well as in all other countries of the restricted Union, the same protection as if they had been directly deposited in such countries.

ARTICLE 23

1. The present Arrangement shall be ratified and the ratifications shall be deposited at London not later than the 1st July, 1938.

2. It shall come into force between the countries which have ratified it, one month after this date, and shall have the same force and duration as the General Convention.

3. This Act shall, in the relations between the countries which have ratified it, replace the Arrangement of The Hague of 1925. However, the latter shall remain in force in the relations with countries which shall not have ratified the present Act.

REGULATIONS
OF 6th NOVEMBER 1925 FOR CARRYING OUT
THE ARRANGEMENT OF THE HAGUE FOR THE
INTERNATIONAL DEPOSIT OF DESIGNS OR MODELS
AS REVISED AT LONDON ON 2nd JUNE 1934

ARTICLE 1

1. The packets containing designs or industrial models admitted to international deposit by virtue of the Arrangement of The Hague of the 6th November, 1925, shall not exceed 32 cm. in each dimension, nor weigh more than 2 kg. The same deposit may include from one to two hundred designs or models, each of which must bear a special number.

2. The designs or models shall be deposited in two identical copies, either in the form of specimens (for tissues, papers, embroidery, etc.) or in the form of a graphic or photographic reproduction of any kind. This latter form of deposit is particularly recommended in the case of fragile models, but without thereby excluding the deposit of actual models of such a kind.

3. The sealed packets shall bear the inscription „*dépôt cacheté*”.

4. Every packet which does not fulfil the above conditions shall be refused and returned to the sender, who shall be notified accordingly.

ARTICLE 2

1. The application designed to obtain international deposit and to accompany the articles prepared for such deposit shall be drawn up in duplicate, in the French language, upon a form provided free of charge by the International Bureau to interested parties and to Administrations. It shall contain the following indications :

1. the name and address of the depositor ;
2. the summary designation of the title of the designs or models and of the kind of products to which they are to be applied ;
3. the nature of the deposit (open or sealed) ;
4. the number of designs or models deposited conjointly, with the serial order of each of them ;
5. the date of the first deposit in a country of the Union, when the right of priority is invoked in accordance with Article 4 of the Arrangement.

2. A similar form shall be used for applications for prolongation of the deposit.

ARTICLE 3

The amount of the international fee appropriate either to an international deposit or to a prolongation of the deposit shall accompany applications ; this amount shall be sent to the International Bureau by postal cheque, postal order or any other form of remittance payable in Berne, and shall indicate the name and address of the depositor.

ARTICLE 4

1. The Register kept by the International Bureau concerning the deposit shall contain, apart from the above indications which appear upon applications, the following particulars :

1. the serial number and the date of the international deposit ;
2. a reference to any modification of the deposit such as : prolongations, transfers, cancellations, renunciations, etc. ;
3. the date of opening of sealed packets ;
4. the date of extraction of designs or models from their packets, upon requisition, and the date of their restoration to the packets ;
5. the termination of protection in one of the contracting countries as a consequence of judicial decisions, etc., when such decisions are notified to the International Bureau.

2. Before making any entry in the Register, the International Bureau may, when appropriate, call for the production by the applicants for entry of any supporting documents which it may consider necessary.

ARTICLE 5

1. When registration has been effected, the International Bureau shall certify upon the two copies of the application that the deposit has been made, and shall apply the signature and stamp of the Bureau to these copies. One of the copies shall remain in the archives of the Bureau ; the other shall be sent to the interested party.

2. Additionally, the International Bureau shall publish all matter in its periodical publication, which it shall furnish with annual indexes and, by sending the desired number of copies of its periodical publication, it shall notify the Administrations of the fact of the deposit, together with the particulars enumerated in Article 2. Similar publication shall take place in respect of modifications affecting the proprietorship of designs or models during the term of protection.

ARTICLE 6

When an interested party requests a reproduction of an article for the purpose of the publicity required in certain contracting countries, the reproduction shall be furnished by the International Bureau under such conditions as may be fixed by joint agreement with the Administration of the country concerned.

ARTICLE 7

1. The fee in respect of changes affecting registration (Articles 13 and 17 of the Arrangement) and for information or extracts from the Register (Article 18) is fixed at 5 francs for the first deposit and 2 fr. 50 for each deposit in excess of the first included in the same application for the recording of changes or included upon the same sheet ; the fee for the opening and re-sealing of a sealed package (Articles 9 and 14) or for any other information furnished to the public (Article 19), is fixed at a maximum of 5 francs per deposit.

2. All the fees must be paid in Swiss currency.

ARTICLE 8

At the beginning of each year, the International Bureau shall draw up an account of the expenses incurred during the course of the preceding year in respect of the service of international deposit, including an initial deduction of 5 % of the gross receipts of the service, payable to the pensions fund established for the staff of the International Bureau, up to a maximum deduction of 30 000 Swiss francs ; the total expenses shall be deducted from the total receipts and the balance shall be divided in equal parts between all contracting countries or according to any method of distribution hereafter adopted.

ARTICLE 9

1. The present Regulations shall come into force at the same time as the Arrangement to which they relate, and shall have the same duration.

2. The Administration of contracting countries may, however, by common accord, and in accordance with the method or procedure laid down in the following Article, make such modifications in these Regulations as may appear necessary to them.

ARTICLE 10

Proposals for the modification of the present Regulations shall be transmitted to the International Bureau ; the Bureau shall communicate these proposals, together with any proposals of its own, to the Administrations, who shall communicate their observations to the Bureau within a period of six months. If, after this period, a proposal is adopted by the majority of the Administrations, and if it has not given rise to any opposition, it shall become operative following a notification made by the International Bureau.

PART THREE

STATISTICS

I. ANNUAL TOTAL OF DEPOSITS AND OBJECTS DEPOSITED AND DIVISION OF DEPOSITS BY CATEGORIES FROM 1928 TO 1959

Year	Registered deposits	Open deposits	Sealed deposits	Single deposits	Multiple deposits	Number of objects contained in the deposits	Deposits extended
1928 à 1944.	9 785	3 723	6 062	3 610	6 175	591 631	1 765
1945	476	124	352	197	279	14 997	86
1946	558	194	364	260	298	15 019	86
1947	564	206	358	300	264	14 452	110
1948	645	218	427	311	334	20 177	114
1949	752	298	454	389	363	25 127	112
1950	847	372	475	455	392	21 029	143
1951	788	300	488	390	398	22 395	158
1952	922	379	543	473	449	24 257	162
1953	1 196	480	716	600	596	26 753	202
1954	1 319	621	698	667	652	29 964	264
1955	1 257	565	692	618	639	29 317	261
1956	1 294	537	757	632	662	26 284	277
1957	1 392	681	711	704	688	25 540	316
1958	1 744	797	947	861	883	29 871	404
1959	1 959	987	972	912	1 047	33 653	486
Total	25 498	10 482	15 016	11 379	14 119	950 466	4 946

II. DIVISION OF DEPOSITS BY COUNTRIES PARTY TO THE ARRANGEMENT OF THE HAGUE FROM 1928 TO 1959

Country of origin	1928 to 1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	Total of deposits registered	Total of deposits extended
Germany	1 684	.	.	.	.	.	.	.	.	.	.	1 684	483
» Fed. Rep.	40	51	50	80	119	170	162	195	211	227	313	1 618	275
» Dem. Rep.	.	.	.	.	.	.	.	3	1	5	6	15	.
Belgium	571	48	52	55	61	70	65	68	80	87	104	1 261	306
Egypt (Province of — the United Arab Republic)	.	.	.	1	—	—	2	2	3	—	.	8	1
Spain	61	4	4	9	4	4	16	7	4	56	34	203	34
France	2 474	207	205	192	252	315	281	278	331	387	474	5 396	1 494
Indonesia .....	.	—	—	—	—	—	—	—	—	—	—	—	—
Liechtenstein	7	2	2	3	1	14	5	18	11	12	10	85	20
Morocco	11	3	4	5	2	6	8	10	8	8	10	75	20
Monaco .....	.	.	.	.	.	.	.	2	2	10	2	16	—
Netherlands	315	13	10	9	10	11	20	8	30	39	56	521	103
Switzerland	7 616	519	460	568	747	729	698	703	709	913	948	14 610	2 210
Tunisia	1	—	1	—	—	—	—	—	2	—	1	5	—
Viet Nam .....	.	.	.	.	.	.	.	—	—	—	1	1	—
Total	12 780	847	788	922	1196	1319	1257	1294	1392	1744	1959	25 498	4 946

**III. DIVISION OF MULTIPLE DEPOSITS ACCORDING TO THE NUMBER
OF OBJECTS DEPOSITED IN 1958 AND 1959**

1958	2 - 5 objects	6 - 10 objects	11 - 20 objects	21 - 50 objects	51 - 100 objects	101 - 200 objects	Total
January	26	13	8	4	4	5	60
February	25	8	7	4	7	9	60
March	43	9	7	7	8	8	82
April	41	16	15	9	5	8	94
May	26	11	9	10	6	10	72
June	23	14	12	7	2	6	64
July	30	6	10	9	6	7	68
August	16	14	8	5	11	11	65
September	39	19	8	9	5	7	87
October	31	10	12	10	4	13	80
November	35	8	7	8	3	15	76
December	38	9	10	7	7	4	75
Total 1958 ...	373	137	113	89	68	103	883
1959							
January	38	16	10	11	6	6	87
February	41	17	6	7	8	6	85
March	45	13	8	10	3	5	84
April	47	17	15	12	8	16	115
May	40	13	9	13	9	6	90
June	41	11	9	9	7	7	84
July	42	5	8	11	7	17	90
August	40	14	6	9	9	10	88
September	43	19	6	10	7	8	93
October	37	14	10	11	6	15	93
November	28	15	10	7	2	12	74
December	29	9	5	11	7	3	64
Total 1959 ...	471	163	102	121	79	111	1047

SECOND VOLUME

October 1960

INTERNATIONAL UNION
FOR
THE PROTECTION OF INDUSTRIAL PROPERTY

CONFERENCE OF THE HAGUE

FOR THE REVISION OF THE ARRANGEMENT OF THE HAGUE
FOR THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS OR MODELS
OF 6th NOVEMBER, 1925, AS REVISED AT LONDON ON 2nd JUNE, 1934

PRELIMINARY DOCUMENTS

PROPOSALS, COUNTER-PROPOSALS AND OBSERVATIONS
COMMUNICATED BY DIFFERENT UNIONIST STATES
AND INTERNATIONAL ORGANISATIONS

COLLATED AND COORDINATED
BY THE INTERNATIONAL BUREAU



INTERNATIONAL BUREAU
FOR THE PROTECTION OF INDUSTRIAL PROPERTY
1960

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PRELIMINARY OBSERVATIONS

In April 1960, the International Bureau addressed to the Governments and International Organizations concerned a First Volume containing the Draft proposals for the revision of the Arrangement of The Hague for the International Deposit of Industrial Designs or Models and its Regulations, proposals which will be submitted to the Diplomatic Conference at The Hague, convened by the Netherlands Government from 14th to 26th November, 1960.

The Governments and International Organizations were invited to communicate both to the Netherlands Government and to the International Bureau such observations as they thought fit to make on the proposals.

The replies received by the International Bureau up to the 15th September, 1960 were transmitted on the 16th September directly in the original language to the Directors of the Industrial Property Offices concerned with the Conference.

The present volume contains the same replies in analytical form including those of the Belgian Government. The observations relating to the different articles of the Arrangement and its Regulations have been classified under each separate article.

The replies which were not in English have been translated and such texts are indicated by the word "*translation*."

It should be noted that two countries, Czechoslovakia and Ireland, have notified the International Bureau that they have no observations to offer on the proposals.

26th September, 1960.

PART ONE

DRAFT FOR THE REVISION OF THE ARRANGEMENT OF THE HAGUE

FOR THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS
OR MODELS OF 6th NOVEMBER, 1925,
REVISED AT LONDON ON 2nd JUNE, 1934

AND PROTOCOL

I. GENERAL OBSERVATIONS

Denmark (*Translation*) : At present it is not yet certain whether Denmark will be in a position to approve the revised Arrangement of The Hague. The Nordic countries are currently cooperating in revising their legislation on models and it is important therefore that Denmark be present at the next Conference of revision in order to be able to accept, as far as possible and within the limits of Scandinavian cooperation, the main provisions to be inserted in the revised Arrangement, even if the question of Denmark's adhesion remains undecided.

If the new Nordic legislations on the protection of industrial designs or models are similar in form to the provisions of the Arrangement of The Hague, it would then be possible—should the occasion arise—to accept the Arrangement without making important amendments to the laws.

However it must be expected that the countries adhering to the Arrangement of The Hague will be flooded with a considerable number of registrations irrespective of whether the applicants have any real interest in claiming protection in all the countries of the Union. Such conditions represent a serious drawback, particularly for the smaller countries. An optional territorial limitation, similar to that provided by Article 3 *bis* of the Arrangement of Madrid for the International Registration of Trade Marks, is therefore recommended.

It is felt that with regard to the fees payable for an international deposit, these should be fixed at a sufficiently high rate in order to enable each country of the Union to cover the costs for implementing and carrying out the said Arrangement.

Lastly, it would be of considerable use if an international classification of designs and models be established, similar to that in respect of trade marks.

France (Translation) : In the main, these observations refer to the Draft Arrangement alone. No detailed examination has been made of the Draft Regulations prepared by the Working Group convened after the Conference of the Preparatory Committee ; such an examination would moreover have been premature. However certain provisions, possessing a fundamental character, of the latter Draft have been referred to in the present note, in connection with the corresponding articles in the Draft Arrangement.

The remarks that follow concern only the substance of the provisions examined. No remarks have been made as to their form, with the single exception of cases where a change in the wording seemed necessary in order to ensure the clarity of the text or to remove an apparent contradiction.

Finally, a certain number of new provisions have been suggested for insertion. These provisions appear in the commentary on the articles whose examination led to their proposal.

Before proceeding to these various remarks and proposals, the French Government considers it necessary to draw the attention of the Diplomatic Conference to certain financial aspects of the new arrangement.

It agrees entirely with the "final observations" expressed by the Preparatory Conference on this matter and reproduced after the text of its preliminary Draft, viz. "The fees must be as low as possible and so calculated that, without producing any profit, the design registration service of the International Bureau should be self-supporting."

However it feels that the Diplomatic Conference should consider in this connection the problem of the loans granted by the Union of Madrid to the Hague Union and the repayment of these loans.

The French Government reserves its right to propose, at the Conference of revision, certain alterations to the drafting of the final provisions (Articles 15 *et seq.*) in particular with regard to the statements concerning the territorial application of the Arrangement (Articles 18 and 19).

Germany (Fed. Rep.) (Translation) : The Federal Government considers that the revised text, drafted at The Hague between 28 September and 8 October, 1959, of the Arrangement of the Hague for Industrial Designs or Models is likely to induce more States to accede to the Arrangement and to reduce the risk of its denunciation by Contracting States. The Federal Government is pleased to see that a revised text of the Regulations implementing the Arrangement has also been drafted, since the matters dealt with therein, especially the provisions relating to the publication of designs or models and the expenses entailed thereby, are of vital importance for the application of the Arrangement itself (see also observations under Article 17).

Luxemburg (Translation) : Luxemburg is not yet a member of the Arrangement of The Hague. Nevertheless it is interested in the forthcoming revision since it expects there may be important changes made in the present provisions which might induce it to become a member. To show its interest, it has taken part in 1959, in the preparatory work of the Committee of Experts convened at The Hague by the Netherland's Government.

On the national level, Luxemburg has no special law with regard to the protection of designs or models. Doubtless that is one of the main reasons why it has not become a member of the Arrangement of The Hague. However, it

has decided to introduce a system of protection as soon as possible. The Benelux countries are currently drafting common legislation on the subject.

With regard to the Arrangement of The Hague, Luxemburg has already declared at the Lisbon Conference, that it desires above all, a system which ensures protection of the market, that is to say, current information on existing rights and on former rights with regard to designs or models. Consequently, it has insisted that :

1. the publication of registered models should take place as quickly as possible and be complete in detail ;

2. that the existing system which provides for a secret deposit for a term of five years, be abolished and replaced by a provision allowing for a delay in the publication not to exceed 6 months. A feeling of insecurity for rival firms might arise if publication were delayed too long.

The solutions proposed for the Conference of revision with regard to the two above mentioned points are entirely satisfactory.

Spain (Translation) : The Spanish Administration wishes to insist on the necessity of introducing the principle of optional territorial limitation in the Arrangement of The Hague for all the countries which desire it ; this is in accordance with the principle established at the Nice Conference for the Revision of the Madrid Arrangement concerning the International Registration of Trade Marks.

The reasons for urging such a measure are the same as for the Arrangement of Madrid. As our country is a receiving country in respect of foreign registrations, the acceptance of a system of international registration would imply, for Spain, the acceptance of a considerable number of applications bearing no relation to the number of Spanish registrations benefiting from the said system and furthermore, those registrations may not be exploited in Spain as exploitation will always be at the will of the owner, there being no principle of compulsory exploitation.

Furthermore, the principle of automatic registration in the Arrangement of The Hague for the International Deposit of Industrial Designs and Models would considerably increase the burden of work of the Spanish Industrial Property Office, particularly in view of the fact that Spanish industrial designs and models are only registered after a period in which third parties may lodge an opposition.

Notwithstanding, the Spanish Administration agrees with the proposal to revise the Arrangement of The Hague, subject of course to such amendments of detail which it may think fit to suggest during the discussions at the Diplomatic Conference.

Lastly, it should be noted that the Draft Regulations do not refer to any procedure by which an applicant may send his applications through the intermediary of a national office though the ruling for such cases should in fact be governed by the Regulations, in pursuance of paragraph *d* of Article 12 of the Draft Arrangement for the International Deposit of Industrial Designs and Models.

Sweden : The domestic legislation on designs is at present subject to an enquiry by a Government Committee with a view to effect a thorough revision and modernising. The Design Protection Act now in force affording protection

only for designs within the metal industries, one of the main purposes of the enquiry is to examine the question whether design protection should cover all industries or whether certain branches should be excluded. Another task of the Committee is to study the novelty requirement and advise as to the scope of the administrative novelty search.

Before the enquiry is concluded it is obvious that there are a number of important aspects of the future law on designs that are highly uncertain. In the circumstances it is difficult to express an opinion as to whether Sweden will accede to a revised Hague Arrangement. However, a certain positive interest in the Arrangement is understood to be felt in certain industrial circles. And provided reasonable guarantees in two important aspects can be given in the revised text, it is entirely possible that the adherence of Sweden may be given when the new law on designs comes into force. The two main conditions that must be fulfilled are the following :

1. The Arrangement must be such as to give sufficient safeguards against the contingency of an adherent country being overrun by a mass of claims to protection for designs that will not be used in that country. This is essential to the domestic industry which must be guaranteed a reasonable area of freedom within which it can exercise a legitimate creation of new designs. For this reason some kind of facultative territorial limitation seems imperative, and it is suggested that provisions similar to those of Article 3bis of the Madrid Arrangement on Trade Marks be embodied in the revised Hague Arrangement.

2. The various fees to be collected by the International Bureau should be set at a level sufficiently high to cover not only the costs of that Bureau for the handling of the applications and the publication of the different designs, but also the costs of the national patent offices for the work and service rendered by them consequent upon the international registration. These last named costs entail the cost of the novelty search in the countries where such a search is undertaken, and the costs necessary for classifying the registered designs and making them readily available to the public. It is emphasized that in Sweden it is a well settled principle that the costs of the protection of industrial property are borne by the persons seeking such protection : in the calculation of fees it is seen to that each branch of the industrial property protection carries its own costs. On the other hand the fees are not supposed to be set at such a level as to procure a profit for the Crown. Thus when insisting on adequate fees for the international protection of designs it should be quite clear that such a wish is not motivated by any desire to exploit financially the creators of industrial designs.

Moreover, it should be borne in mind that the designs worthy of international protection are those that are worked commercially in international trade. Even if the registration fees are high, they can only account for a very modest percentage of the accumulated costs of putting the product on the market. In cases where the mere costs of design protection cannot be borne by the estimated profits, the presumption must be that the product is not really worth putting on the market.

Quite apart from the above, however, it might seem worth while considering whether it might not be desirable to put up the fees, irrespective of the actual costs, in order to achieve a certain limitation of the number of designs for which protection is sought. Such a measure would be in harmony with the principle underlying the idea of a facultative territorial limitation.

Switzerland (*Translation*): While reserving the right to submit other remarks or proposals at the Conference, we confine ourselves for the moment to making the following observations:

Provisions concerning the covering of a deficit in the registration service.

The agreement at present in force contains no provision indicating how a deficit in the registration service is to be covered. At first, it was thought that the cost of running this service would be covered by the fees paid. But since the end of the second World War the receipts have been insufficient to cover the added cost occasioned mainly by the increases in salaries which have had to be granted as a result of the rise in the cost of living. The report the Swiss Government recently submitted to the States of the Union in Paris shows that this deficit amounts to approximately 300,000 francs. Up till now these deficits have always been covered by drawing from the surplus of the revenue obtained by the international marks service. But it is only to be expected that members of the Madrid Arrangement on Marks will demand the repayment of the amounts that have been taken from them and to which they are entitled, for the States belonging to the Madrid Arrangement on Marks differ to a certain extent from those that are members of the Arrangement of The Hague.

The first question that arises then is how to obtain the money to cover this deficit, if the members of the Union of Madrid demand the repayment of the sums that have been drawn from the marks service.

Provisions must also be made to cover the deficits which may possibly occur in the future in the designs and models service. The fees must be fixed on the basis of an estimate of the expenses and the volume of business. For a given volume of work the registration service requires a certain number of assistants. If, for some reason, the volume of business and with it the amount of receipts decrease considerably, this staff cannot immediately be dismissed to be taken on again as soon as business recovers. In such a case it is not the increase in fees, decided on by the administrative conference, that will give the necessary help. What is needed then is that member countries themselves should be prepared to cover the deficit resulting from this state of affairs. But for this to take place it is necessary for a conventional obligation to be imposed on them, otherwise the majority of governments will not be prepared to accept this extra financial burden.

For the moment we content ourselves with stressing the need to complete the drafts according to the above observations; we reserve the right to put forward concrete proposals at a later date.

United Kingdom: A Committee has been appointed by the President of the Board of Trade to hear evidence and to make recommendations as to the law on the protection of industrial designs in the United Kingdom. This Committee will not have completed its work for some months. Her Majesty's Government is not, therefore, in a position to offer positive comments on the substantive issues raised in the Draft Agreement and Regulations. It has, however, the following observations to offer on the more formal parts of the proposals:

1. *Preamble.*

We suggest that this be as follows:

The Contracting States (.), recognising the importance of a cheap and effective method for the international protection of rights in industrial designs;

considering it desirable to make certain modifications and additions to the Arrangement for the International Deposit of Industrial Designs or Models signed at The Hague on November 6th, 1925, as revised at London on June 2nd, 1934 ;

Have agreed as follows :

2. *Definition Article.*

It would be convenient as a matter of drafting to insert between Article 1 and 2 an Article defining certain expressions which are used in the Agreement such as " the International Bureau," " the International Designs Register " and " the Regulations. "

3. *Final Clauses.*

Finally we suggest a Testimonium in the following terms :

" In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed the present Agreement.

Done at the day of 1960 in the English and French languages, both texts being equally authoritative, in a single copy which shall be deposited in the archives of the Government of "

USA : Examination of the text of the Draft Arrangement and Regulations indicates that in general they appear to form a satisfactory basis for consideration by the Conference.

However it should be understood that if a Contracting State has more than one special statute providing for design protection, an applicant for international registration may elect to claim protection under any one of them if, and to the same extent as, an applicant before the national offices may so elect.

IAPIP (Translation) : The International Association for the Protection of Industrial Property (IAPIP) has examined the Draft prepared by the Committee of Experts, to revise the Arrangement of The Hague.

At the Congress of London (4th June, 1960), the IAPIP unanimously adopted the following observations, which it has the honour to submit to the Government of the Netherlands and to the International Bureau for the Protection of Industrial Property.

Territorial Limitation.

The Draft.

The draft of the Experts does not provide for the possibility of a territorial limitation of the scope of a deposit.

Remarks.

The IAPIP raised the question whether the possibility of operating a territorial limitation of the effects of the deposit should be introduced into the Arrangement under a provision similar to that introduced into the Arrangement of Madrid by the Conference of Nice.

Of course, the motives in favour of the territorial limitation in the field of trade-marks are not entirely valid in the field of models.

Nevertheless, the IAPIP voted, with a bare majority, in favour of the introduction of a territorial limitation.

Renunciation of the Deposit.

The Draft.

The Draft of the Experts did not adopt the provisions of Article 13 of the present Arrangement : this Article 13 allows a depositor to renounce his deposit at any time, either wholly or in part.

Remarks.

The IAPIP considers that the provisions of the former Article 13 should be repeated in the new text.

Definition of Designs or Models.

The Draft.

The Draft does not contain any definition of the designs or models to which protection shall be granted.

Remarks.

1. The IAPIP unanimously considers it both impossible and undesirable to establish a definition of designs or models.

2. The IAPIP considered whether it would not be suitable to add the qualifying word " industrial " to the expression " designs and models " used in the Draft.

This addition could be justified :

- by the desire to avoid a confusion of the designs or models, which are the subject of the international registration, and the " utility models " which are not referred to in the Arrangement ;
- by the fact that both in the general Convention (Article 1, paragraph 2) and in the present Arrangement of The Hague of 1925 the designs and models are qualified " industrial. "

The IAPIP thinks it preferable not to add the qualifying word " industrial, " in order to avoid any possible confusion with utility models.

But the IAPIP considers it desirable to specify that utility models are excluded from the provisions of the Arrangement, by means of a provision inserted in the text or, possibly, by a statement by way of an " Exposé des motifs. "

The International Literary and Artistic Association (*Translation*) : It appears to the International Literary and Artistic Association that the Draft submitted gives rise to a certain number of questions which relate more particularly to the field of Industrial Property since the Arrangement of The Hague comes within the framework of the Union Convention of Paris.

However the provisions which will be adopted may have certain repercussions on applied arts where the owners of such rights consider it useful to ensure their protection by means of such an Arrangement, independently of already existing national or international legislative measures which govern the protection of such arts as applied under the copyrights rules.

It is evident that the pre-eminent nature of the Arrangement of The Hague will come up against various different national conceptions with regard to the object of the Arrangement.

The International Literary and Artistic Association considers therefore that, within the above mentioned limitations, these different conceptions should find expression on the industrial property level, with the reserve that the materialisation of certain conceptions may, incidently, effect applied arts.

In order to illustrate this situation, the Executive Committee wishes to submit certain observations on those points which have been raised by certain National Groups (Belgium, France, Switzerland) ¹.

The International Chamber of Commerce ²: Having studied the Draft Revision of The Hague Arrangement concerning the international registration of designs drawn up by the Committee of Experts which met at The Hague from 28th September to 8th October, 1959, its Draft Protocol and the Draft Regulation concerning the application thereof;

Notes with satisfaction the efforts made by the Experts in order to bring about a practical compromise between the different national systems, including the solution proposed in connection with the question of applied arts referred to in Article 14 of the Draft Arrangement; in respect to the fees for international registration, the International Chamber of Commerce expresses the wish that they be fixed at a reasonable level so that interested industries should be able to take advantage to the greatest possible extent of this international protection;

Consequently, the International Chamber of Commerce approves the Draft texts referred to above and expresses the hope that their adoption by the Diplomatic Conference convened for the 14th November, 1960 at The Hague will allow adherence by a great number of States not yet members of the Separate Union created by the said Arrangement.

The International League for the Prevention of Unfair Competition (*Translation*): The International League for the Prevention of Unfair Competition, after having examined the texts established by the International Conference of Experts which met in The Hague from 28th September to 8th October, 1959 in view of the revision of the Arrangement of The Hague for the International Deposit of Designs and Models, is in agreement with the provisions suggested, subject to certain reservations ³.

II. PROPOSALS, COUNTER-PROPOSALS AND OBSERVATIONS

Title

Germany (Fed. Rep.) (*Translation*): According to its title, the (French version) Draft Arrangement relates to "designs or models." This is a departure from the definition used in the title of the text of the Arrangement

¹ These observations will be found under the appropriate articles (Editor's note).

² Resolution adopted by the Commission on the International Protection of Industrial Property at its meeting on 9th and 10th June, 1960, in Paris.

³ These observations will be found under the appropriate articles (Editor's note).

of The Hague currently in force, which speaks of " industrial designs or models. " In the Union Convention of Paris for the Protection of Industrial Property, the term " industrial designs or models " is similarly used in Articles 1, 4 and 5 and in the new Article 5 *quinques* introduced at Lisbon. It seems desirable that one and the same term should be used in both agreements, in order to avoid creating the erroneous impression, through the omission of the adjective " industrial, " that some extension of protection is contemplated. The Federal Government therefore proposes that the term hitherto employed—" industrial designs of models "—be retained¹.

United Kingdom : We suggest that the more usual word " Agreement " should be used instead of " Arrangement " to describe the new instrument.

IAPIP (Translation) :

The Draft.

As indicated in the title of the Arrangement, its object is " the international deposit of designs or models. "

Remarks.

The IAPIP approves the wording of the title, because it considers the Arrangement to be an instrument of formalities.

Article 1

Belgium (Translation) : Paragraph 2 of Article 1 entirely satisfies the Belgian Administration. It is a fact that serious legal problems arise in connection with the participation of Non-Unionist States in the new Arrangement. It may be asked whether Article 15 of the General Convention which provides that the countries reserve to themselves " the right to make separately, as between themselves, special agreements " can be interpreted to mean anything else but " as between countries of the Union. " Furthermore, it may be asked whether the Conference of The Hague is competent to interpret Article 15 of the Convention, without having the agreement of all the Unionist countries.

If however, the admission of non-member States to the Convention becomes possible from a legal point of view, it would then be necessary to insert in the text of the new Arrangement the provisions of the Union Convention of Paris which apply to designs and models.

Germany (Fed. Rep.) (Translation) : For the reasons given in the case of the title of the Draft Arrangement, it would be desirable to use the expression " industrial designs or models " in paragraph 1 of Article 1. The adjective " industrial " could then be dropped from the subsequent articles of the Arrangement, as the object of the protection would have been adequately defined by the title and by paragraph 1 of Article 1¹.

¹ The observations under this head relate to the *French text only*, as the English title includes the word " industrial " (Translator's note).

² There is a further discrepancy between the English and French texts of Article 1, paragraph 1: the former speaks simply of " designs "; the latter has " dessins ou modèles " (Translator's note).

United Kingdom : We suggest that the language of Article 1, paragraph 1, should follow that of the Industrial Property Convention. Article 1 should then read as follows :

“ 1. The Contracting States hereby constitute themselves into a union for the International Deposit of Designs.

2. Any state member of may become a party to the present Agreement. ”

IAPIP (Translation) :

The Draft.

Article 1 of the Draft provides for the constitution of a Separate Union, open only to those countries which are members of the Paris Union.

Remarks.

The IAPIP approves the provision stipulating that only members of the General Union may accede to the Separate Union :

- for fundamental reasons, because the Arrangement refers to general rules expressed in the Union Convention ;
- for reasons of expediency.

Article 2

IAPIP : The Draft of the Experts implies the institution of a deposit and of a registration of the designs or models effected at the International Bureau for the Protection of Industrial Property (Articles 1 and 2).

The Depositors.

The Draft.

A deposit may be effected by (Article 2) :

- persons within the jurisdiction of a contracting country ;
- persons without the jurisdiction of a contracting country, but having either their residence or a real and effective commercial establishment in such country.

Remarks.

The IAPIP does not offer any remarks on this item.

Article 3

Austria (Translation) :

Article 3, paragraphs 1 and 2.

In the opinion of Austria, it would be preferable if—as in the case of international trade marks (Article 1, paragraph 2, of the Madrid Arrangement on Trade Marks)-designs and models had to be registered in the country of origin first and could only then be transmitted to the International Bureau for inter-

national registration through the intermediary of the national office. This Arrangement has been found to be entirely satisfactory in the case of international trade marks. Action by the national office helps both the depositor and the International Bureau. The depositor may correspond with the national office in the language of the country and, where appropriate, he may have recourse to the services of his usual agent in the country. The work of the International Bureau would be facilitated by the uniformity of the applications for registration, the national office being in a position to deal with errors and omissions before forwarding applications.

The requirement of prior registration with the national office would also ensure that every member State itself provides for the registration of designs. It might be arranged that designs cease to depend on protection in the country of origin, as soon as they are internationally registered. If this basic principle is not generally approved at the Revision Conference, the retention of the powers conferred in Article 3, paragraph 2, and Article 5, paragraph 2, is regarded as absolutely indispensable.

Article 3, paragraph 3.

The application for registration is to be accompanied by graphic representations of the design or model. In addition, the article incorporating the design may itself be deposited. A description of the design or model may also be added.

The basic provision contained in Article 5, paragraph 1, will in any case result in a multiplicity of definitions of the scope of protection for designs or models in accordance with the domestic law of the Contracting States. The Draft further accentuates this differentiation based on the national laws by providing that in the various Contracting States one of the other criteria referred to above may be used to determine the scope of protection. In some countries the photograph or the article deposited will be the decisive factor in determining the scope of protection, in others the publication of the design or model. The binding character of the description itself, too, must be judged in accordance with Article 5, paragraph 1. It would be desirable, if the same criteria, such as, for example, the published photographs, were adopted to determine the scope of protection.

Denmark (Translation) : If the provision on "multiple deposits" is maintained, the number of models included in one deposit should be limited. According to the Regulations, a deposit should not include more than twenty objects. It is proposed that the number of objects should not exceed ten and that all the designs or models be of the same nature or that they represent parts of the same object.

France (Translation) : a) Paragraphs 1 and 3 require no observation.

b) Paragraph 2, on the other hand, "mentions a criterion, that of the "jurisdiction" under which persons or corporate bodies may come, which appears to be lacking in precision. Such a "jurisdiction" could possibly be claimed by several States with regard to the same corporate body or even person.

It would therefore seem to be preferable to keep the stricter criterion of the domicile or registered office, depending on whether it is a question of an indi-

vidual person or a corporate body; Article 3, paragraph 2, could then be expressed somewhat as follows :

“ Any Contracting State may require that applications for international registration filed by persons or corporate bodies domiciled or having their registered office on its territory be made through the intermediary of its national office. ”

The version thus proposed undoubtedly restricts the scope of the powers offered to States by Article 3, paragraph 2, since it does not apply to persons who, without being domiciled or having their registered office on the territory of a State, nevertheless do have a real and effective industrial or commercial establishment there. The notion of a real and effective industrial or commercial establishment has been omitted intentionally however, so as not to expose applicants possessing such establishments in several countries to contradictory obligations.

If however the Diplomatic Conference wished to see the powers afforded to the States under Article 3, paragraph 2 extended, the version proposed above could be modified and completed as follows :

“ Any Contracting State may require that applications for international registration filed by persons or corporate bodies domiciled or having their registered office or possessing a real and effective industrial or commercial establishment on its territory be made through its national office. ”

“ If for one and the same applicant, several Contracting States may lay equal claim to the powers offered by the previous paragraph, no obligation shall be imposed on the applicant. ”

c) The last sentence of paragraph 5 offers the applicant the possibility of enclosing supporting documents to further any claim for priority he may wish to make. Such an optional provision does not appear to have any great practical value. In fact it would seem rather as though the authors of the Draft intended to express an obligation in this respect and the provision under examination should, if this is the case, make clear, preferably in the form of a reference to the Regulations—and within the limits laid down in Article 4, letter D, 3, of the Convention of Paris—the type of documents required and the time limits for their submission to the International Bureau.

Luxemburg (Translation) : As regards Article 3 of the Draft, Luxemburg is in favour of the solution providing for the direct transmission of applications for registration to the International Bureau.

Sweden : Article 3, paragraph 4. In principle Sweden is opposed to the idea of multiple deposits. The main purpose of the multiplicity appears to be that of justifying a reduction of fees. Such a reduction, however, seems quite unwarranted in view of the fact that the costs of examining the designs and making them available to the public will not be appreciably diminished because several designs are included in one application. Indeed it is quite conceivable that in certain cases costs may actually increase as a consequence of their grouping in a joint deposit.

In case, however, a system of multiple deposits should be generally accepted, it is certainly most desirable that the permissible number should be kept as low as possible. The number of twenty mentioned in Rule 2 of the Draft Regu-

lations seems too high, ten being the highest number that could be accepted. The reduction of fees provided in Rule 6, paragraph 2 *b* in the case of multiple deposits appears to be unnecessarily liberal.

United Kingdom : Article 3, paragraph 1, should commence : “ Applications for international registration of a design may be filed with the International Bureau ”.

IAPIP (Translation) :

Application for Registration.

The Draft.

The application for registration is submitted to the International Bureau (Article 3).

1. It may be presented :
 - either directly,
 - or through the medium of a national Administration (the countries may require their nationals to present their application through the medium of a national Administration).
2. The application shall contain :
 - a*) compulsorily, a photographic or a graphic reproduction of the design or model ;
 - b*) optionally, and in addition :
 - a specimen or a mock-up of the object ;
 - a description of the characteristics of the deposited design or model.
3. The deposit may be a multiple one.
4. Where necessary, the application shall include a priority claim.

Remarks.

As far as the multiple deposit is concerned, the IAPIP makes a three-fold observation :

1. The institution of the multiple deposit must be approved because of the reduction of the expenses thus made possible.

2. The Draft of the Regulations imposes a two-fold condition for the multiple deposit to be regularly effected :

- a*) that the different models which are deposited together must be intended to be incorporated in objects of the same kind.

This condition must be approved ;

- b*) that the number of the models which form the subject of a multiple deposit does not exceed 20.

The IAPIP considers, in its majority, that this maximum number of 20 is too small.

3. A difficulty must be pointed out :

It is to be feared that certain countries, the national legislation of which does not allow the multiple deposit, do not recognize on their territory the validity of international multiple deposits effected by nationals of other adhering countries.

The IAPIP expresses the wish that the countries find a solution to this difficulty.

Article 4

Austria (*Translation*) :

Article 4, paragraph 2.

Reference is made to the " date of international registration. " This date is apparently a determining factor in fixing the beginning of protection and calculating the term of protection.

It must be recalled that under the Draft the direct deposit of a design with the International Bureau is permissible. The international registration of a design may therefore constitute a first registration—within the meaning of the Union Convention of Paris—from which a priority right may be derived in accordance with Article 4, paragraphs 1 and 2. The present Draft for the revision of The Hague Arrangement on Designs leaves the question open on which date a claim to priority may be based, if the application contains an error or omission *which can be remedied* (e. g. failure to pay the full fee). It is from this date, too, that the six-month period of deferred publication (under the provisions of the Union) is to run. The Draft permits the interpretation that the day of arrival at the International Bureau is decisive, provided that the application contains the most important criteria of registration (identification of the design, name of depositor, application for protection). The text of the Draft may, however, also be interpreted to provide that a claim to priority may be based only on an application for registration fulfilling all formal requirements in accordance with Article 4, paragraph 2.

This point should be clarified. It must be made clear which day is to be regarded as the *day of deposit* and hence as decisive for the claim to priority.

These arguments are valid also where the international deposit is a second application for which the priority of a previous national deposit is claimed. In this case, too, the present text of the Draft might give rise to doubts regarding the observance of the six-month time limit set by the Union, if formal errors and omissions in the registration are remedied only after this time limit has expired. This question should be settled in accordance with Article 4, paragraph 3, of the Union Convention, as revised at Lisbon.

Article 4, paragraph 3.

Article 3, paragraph 4 of the Madrid Arrangement on Trade Marks provides for the notification of the registration of international trade marks to the competent authorities by the International Bureau. This is done by the transmission of trade mark extracts, which correspond to a copy of the International Register. The Draft does not provide for any similar arrangement. Since, however, the period of preliminary examination provided for in Article 5, paragraph 3, begins to run as soon as the National Administrations have received

the information, Article 4, paragraph 3, of the Draft should stipulate that the transmission of the Gazette to the Contracting States shall be regarded as the official notification of the International Office concerning registration of a design.

Article 4, paragraph 4.

Under this paragraph, publication of the design may be deferred for a period of six months. This provision is at variance with Article 5, paragraph 4. If under the law of a member country, a design has to be offered to the public before it can be registered, this design or model must be made available to the public within the six-month period. The period during which the design can be kept secret is thus shortened in practice.

Belgium (Translation) : With regard to paragraph 2 of Article 4, it seems advisable to recognise that, when an application for an international registration is presented through the intermediary of the National Administration of a contracting State, that international registration should bear the date on which it was received by the National Administration, provided that the application is transmitted to the International Bureau within a period of two months from that date. This system, which puts all applicants on an equal footing, has been incorporated in Article 3, paragraph 4, of the Madrid Arrangement as revised at Nice in 1957.

France (Translation) : With regard to this article, the French Government wishes to make a reservation as to its substance as well as certain remarks regarding the form. Finally, it considers that the provisions it contains should be completed on one point.

a) The reservation as to its substance concerns the publication of international registrations, referred to in paragraphs 3 and 4. These provisions introduce two innovations into the present text of the Arrangement : a systematic publication of all designs and models registered and a considerable reduction in the time during which international registrations are withheld from public inspection. In this form they cannot meet with the agreement of the French Government. Without it being necessary to go over the reasons, often mentioned before, for this attitude, it should be stressed that from the point of view of a very large category of creators of designs and models, the appropriation of a new trend in style is just as harmful as the actual copying of a creation, so that those concerned will prefer to forego protection rather than facilitate the more or less direct imitation of their work by having it systematically and rapidly published. The question ought therefore to be re-examined. At any rate the period of 6 months laid down in paragraph 4 appears quite insufficient.

b) With regard to form, the provisions of article 4 do not seem to express as clearly as they might the economic side of the system of registration and publicity advocated by the authors of the Draft.

Under the terms of Article 7 of the Draft Regulations the applications are not in fact "registered," but "become part of" the International Register : the word "registration" would therefore appear to be incorrect. Then again—and this objection is more serious—the notion of "registration" is ambiguous : from paragraph 2 of Article 4 it would seem that "registration" occurs as soon as the documents have been filed, so that the "registration" of the application in the Register or rather the act of "becoming part" of the Register,

constitutes a later and quite distinct operation, which is certainly confusing, the notion of registration thus assuming a double sense, in substance and form. Finally, paragraph 5 lays down that "the applications and the registers" shall be open to inspection by the public, whereas, to judge by Article 7 of the Draft Regulations, they tend to become one and the same thing, at least partially.

To achieve a more precise and more coherent version, paragraph 1 could be drafted as follows :

"The International Bureau keeps an International Register of models or designs, under the conditions laid down in the Regulations. The public is free to inspect this Register as well as the documents and objects accompanying the applications for registration."

Paragraphs 2 and 3 need not be altered (except, naturally, for the above remarks concerning substance).

Paragraph 4 could be completed by the following provision :

"During the period of deferred publication, the application shall not appear in the Register provided for in paragraph 1 of the present article and the public shall not be allowed to inspect either this application or the documents and objects accompanying it."

Paragraph 5 would then be done away with.

c) It would be advisable to include in the new Arrangement provisions similar to those of Article 14 of the text at present in force concerning the communication of registered designs and models to competent national authorities.

These provisions, which could be inserted in the article under examination or form the subject of a separate article, could be expressed as follows :

"When a tribunal or any other competent authority of a member State orders the communication to it of a design or model, the International Bureau, when regularly required, shall send the design or model requested to the authority requiring it. The item thus communicated shall be returned in the shortest time possible. These operations may be made subject to a tax, which shall be fixed by the Regulations."

Germany (Fed. Rep.) (*Translation*) : Paragraph 2 of Article 4 fixes the date of the international *registration* of designs or models. Later provisions of the Draft Arrangement (Articles 5, 7 and 10) also speak of international *registration*. The Federal Government proposes that the term "international registration" be everywhere replaced by the term "international deposit," used in the text of the Arrangement of The Hague at present in force. *Deposit* with the International Bureau of designs or models in the prescribed form should suffice to produce the effects provided for in the Arrangement. Subsequent registration in the International Register is a pure formality that confers no rights.

Paragraph 4 of Article 4 of the Draft Arrangement authorizes the International Bureau to defer publication of designs or models for a period not exceeding six months. Some German industrial circles consider this period to be too short. It is therefore suggested that the period for which publication may be deferred be extended to twelve months.

According to paragraph 5 of Article 4, applications for registration, the documents and objects accompanying them and the registers themselves shall not be accessible to the public during any period of deferred publication. It should also be stipulated that, where there is no final publication owing to the applicant's withdrawing his application, the public shall not be entitled to inspect these documents even after expiry of the period of deferment.

Luxemburg : See observations on page 8.

Sweden : In order that members of the public, when inspecting the Register, may find the designs they are looking for it would appear desirable to establish a classification to be used by the Bureau and such member countries as intend to make facilities for a corresponding public inspection of their domestic registers of designs. Such a classification need have no legal significance, i. e. it need not prejudice the question of whether a design in one class would constitute an infringement or an anticipation in relation to a design falling into another class. Like the usual classifications of goods for trade mark registration purposes it should be merely an administrative aid.

United Kingdom : Article 4, paragraph 1, should read : " The International Bureau shall keep the International Designs Register and shall register therein the depositor's application for registration. " The Register should be referred to as " the International Designs Register " throughout.

IAPIP (Translation) :

Registration.

The Draft.

Article 4 of the Draft provides that :

Paragraph 1 : the International Bureau shall enter the application presented in the International Register.

Paragraph 2 : the date of the international registration is the day on which the last of the following formalities has been complied with : receipt of the application—receipt of the fee—receipt of the photographic or of the graphic reproduction of the design or model.

Remarks.

1. The IAPIP is of the opinion that the Draft of the Experts concerns two operations and that these two operations are confused.

a) The two operations referred to in the Draft are as follows :

- first, the receipt of the application for registration ;
- second, the entering of that application in the Register.

b) These two operations must be distinguished, because a certain period of time may elapse between the carrying out of the one and the other.

However, this distinction is not clearly established and the result is a most regrettable confusion. In fact :

- Article 4, paragraph 2, provides that the date of the international registration is the day of the receipt of the application ;

— but Article 5, paragraph 1, states that the protection shall come into effect from the entering of “the registration in the International Register”; and Articles 7 and 10, for the calculation of the duration of protection, seem also to consider the registration itself.

2. In order to overcome this confusion, the IAPIP makes the two following suggestions :

a) In fact, the only date to be considered is the day of the receipt of the application, i. e. *the date of the deposit*.

It is, indeed, the deposit (or the receipt of the application) which starts the term of priority and confers the right of protection.

Thus, it seems advisable not to take into account the second operation which consists in the registration proper, i. e. the entering of the application in the register.

Only the date of the deposit should be considered, i. e. the date on which the application is received.

It must be observed that the deposit is sufficient, if it meets the provisions of Article 4 A, paragraph 3, of the General Convention, as revised in Lisbon.

b) However, if the carrying out of the two operations is maintained, it will be necessary to revise the wording, in order to specify clearly :

- the distinction between the two operations ;
- the regulation according to which the first operation (receipt of the application or deposit) starts the term of priority and confers the right of protection.

Publication.

The Draft.

1. The International Bureau proceeds to the publication of the registered designs or models (Article 4, paragraph 3).

2. The depositor may apply for a delay in publication of six months (Article 4, paragraph 4).

3. The deposits are placed at the disposal of the public, excepted during the period of secrecy (Article 4, paragraph 5).

Remarks.

1. The publication of the designs or models has been thoroughly discussed in the preparatory stages :

- according to some, publication is necessary to inform third parties of creations for which protection is claimed ;
- according to others, publication is prejudicial because thus the creation is divulged and imitation encouraged.

The IAPIP, having taken this preliminary discussion into account, approves the compromise set out in the Draft, by which publicity shall be provided for, with the option of reserving a period of secrecy of six months.

2. Article 4, paragraph 4, provides that during the period of secrecy the depositor may withdraw his deposit.

The IAPIP considers that it would be of benefit to specify that in this case the entry in the Register be cancelled.

The International League for the Prevention of Unfair Competition (*Translation*) : The provision allowing for the option to defer publication appears to be necessary and the period of 6 months should constitute a minimum.

The International Literary and Artistic Association (*Translation*) : If deposits are to be published, the system to be adopted should offer sufficient guarantees against the possibility of copying and counterfeiting.

Article 5

Austria (*Translation*) :

Article 5, paragraph 2.

Reference is made to the observations relating to Article 3, paragraph 3.

Article 5, paragraph 3.

1. In deference to the principle of the certainty of the law (*Rechtssicherheit*), the right of countries to make a preliminary examination is limited to a six-month period. Within this period, the country concerned must notify the applicant of any obstacles impeding the grant of protection. The wording according to which the six-month period begins to run on the date on which the national office has *received* the issue of the Gazette containing the publication of the design or model (see Rule 9 of the Draft Regulations implementing the Draft Arrangement) appears to vitiate the principle of the safe legal basis. As in some cases a great deal of time may elapse (perhaps owing to delays in the mail service) between the despatch of the Gazette and its receipt by the national office, it would be desirable in the interests of the certainty of the law, if for this purpose an unambiguously defined maximum period starting with the date of registration or the date of publication of the Gazette, were provided.

2. Having regard to Article 5, paragraph 1, the provision of paragraph 3 should be interpreted to mean that the protection of designs begins on the day of registration. In countries providing for a preliminary examination, a degree of uncertainty prevails during the six-month period ; this may delay, but cannot prevent the preferring of claims on the basis of a design. If, for example, during this period a complaint of infringement of rights is lodged, it could not be dismissed ; proceedings could merely be suspended until the expiry of the six-month period. If protection of the design is refused on the basis of an opposing claim which has been made in time, such protection will have to be regarded retroactively as not having been granted, which should lead to the rejection of the complaint. If, however, it is found after the expiry of the six-month period that no previous decision has been made against the design, the suspended proceedings for infringement should be continued and concluded

in favour of the owner of the design, provided the other necessary conditions are fulfilled. In view of the position adopted by the United States delegation at the Conference of Experts at The Hague, this point should be clarified.

3. The reference to Article 3, paragraph 2, is apparently an error. Reference might be made to Article 4, paragraph 3, which would have to be suitably amplified.

4. The last sentence concedes to "any interested party" the right to be informed of the date on which the national office received notification of international registration. This provision is important because only on the basis of this date is it possible to know whether a decision against registration of a design can still be issued. The term "interested party" is also used in Article 8 of the Draft, where, however, it apparently refers to a much narrower group of persons. In order to avoid difficulties in interpretation, it is proposed to Draft the last sentence of Article 3 as follows :

"Anyone may request that the date.....may be made known to him."

Belgium (Translation) : General remarks on Article 5.

1. It seems advisable to insert in the Arrangement a clause providing, on the one hand, that the owner of an international design or model shall have, in each State, the same right to remedies against the decision of the National Administration referred to in paragraph 3 of Article 5, as are granted to nationals of that State, and, on the other hand, that the decision be notified within a period of time which permits the owner to avail himself of those remedies.

In this respect, the Conference might take into consideration paragraphs 3 and 6 of Article 5 of the Arrangement of Madrid (as revised at Nice) concerning the International Registration of Trade Marks (see also the observations relating to Rule 9 of the Draft Regulations).

2. The Arrangement does not provide that the International Bureau should officially notify international registrations to the Administrations of the contracting countries. This notification is nevertheless necessary because this notification will constitute the legal basis for protection in the different contracting countries. It should normally be accompanied by all the documents deposited in support of the application for international registration.

Article 5, paragraph 1.

The Belgian Administration fully believes in the merits of the proposals aimed at allowing the applicant, in general, to designate those countries in which he does not wish international registration to be effective. The principle of optional territorial limitation, as adopted by the Nice Conference in respect of the Madrid Arrangement concerning the International Registration of Trade Marks, is a solution to some of the basic objections voiced against the system of "automatism." Among the basic disadvantages of this system, is the fact that the national registers become cluttered up with thousands of designs and models which are never used in the country. The text of Article 3 *bis* of the Madrid Arrangement, as revised at Nice, could well serve as a basis for discussion at the Conference of The Hague for designs and models.

Article 5, paragraph 3.

The reference to Article 3, paragraph 2, appears to be a mistake. The correct reference should be : Article 4, paragraph 3.

Denmark (Translation) : It is felt that the period of six months fixed by Article 5, paragraph 3, for notifying a provisional or final decision is too short for those countries which make a preliminary examination. As in the case of the Arrangement of Madrid for the International Registration of Trade Marks, it is proposed that the period be fixed at one year.

France (Translation) : 1. The remark concerning the form made with reference to article 4 also applies to paragraph 1 of Article 5 : the substitution of the words " International Registration " for the words " Registration in the International Register " would make it possible to remove any possible ambiguity in the text.

2. Paragraph 2 refers to applications that " originate " in one of the Contracting States. This notion, although apparently clear, may lead to differences of interpretation, the " originating " in question being liable to interpretation either in a material or a legal sense. It would therefore undoubtedly be preferable, as in connection with Article 1, paragraph 2, to resort to the less hazy criterion of domicile or registered office, the paragraph in question being rewritten as follows :

" Any Contracting State may provide by its domestic law that international registration of applications filed by persons or corporate bodies domiciled or having their registered office on the territory of that State shall have no effect on the aforesaid territory. "

3. Paragraph 3, together with the corresponding provisions of the Draft Regulations, calls for more drastic revision.

a) Article 9 of the Draft Regulations refers expressly both in its title and in the text of its first paragraph, to the " domestic examination of novelty. " In a footnote it is made clear that " the Working Group chose (this expression) because it was of the opinion that, in the minds of the authors of the Draft Arrangement, Article 5, paragraph 3 of that Draft is intended to deal only with examinations concerning the novelty of a design. "

It may be wondered whether this restrictive interpretation really represents the intentions of the authors of the Draft Arrangement ; in any case it remains inadequate. The provision of Article 5, paragraph 3, of this Draft, which shows the same interest for any preliminary administrative examination, whatever the object, ought not in fact to be limited merely to an examination as to novelty. The contents of this provision should therefore remain unchanged in this respect.

b) In any case, the French Government considers it extremely desirable to remove from the new Arrangement the provisions concerning the charging of a special extra fee for the benefit of States carrying out preliminary examinations for novelty as well as the correlative faculty of territorial limitation. It is of the opinion that these provisions would in no way serve to extend the scope of the Arrangement and in this matter it wishes for the widest possible understanding on the part of the States concerned. It expresses the same wish

with regard to the " offering " of designs and models " to the public " (Article 5, paragraph 4) and the inclusion of a reservation concerning them, which in its opinion is not absolutely necessary.

The faculty of territorial limitation—the reservation being based on this principle—should moreover, in view of its fundamental character, be laid down by the Arrangement itself and not by the Regulations alone (Article 2, paragraph 3 b).

c) A last remark appears to be called for regarding Article 5. It would be a good idea to insert in the Arrangement, with respect to the possibility of appeal against the decision of national authorities, provisions similar to those of Article 5, paragraphs 3 *in fine*, and 6 of the Arrangement of Madrid concerning the international registration of trade marks. The first of these provisions (paragraph 3, last sentence) appears necessary so as to ensure the benefit of appeal to those concerned, it being possible in this instance to waive the application of the rule of assimilation raised by Article 2 of the Convention of Paris; the second (paragraph 6) would have the effect of guaranteeing depositors an effective protection of their rights.

Germany (Fed. Rep.) (Translation) : For the reasons adduced in respect of paragraph 2 of Article 4, it is proposed that the phrase " Registration in the International Register " be replaced by the words " International deposit (Article 4, paragraph 2) ".

Paragraph 3 b of Rule 1 of the Regulations implementing the Draft Arrangement provides that an applicant for international deposit shall be entitled to limit protection to those Contracting States which do not have a system of preliminary administrative examination for novelty. This option ought not only to be mentioned in the Regulations, but also to be expressly laid down in the Arrangement itself—in paragraph 1 of Article 5. It would also be desirable to establish in the Arrangement the principle that—with the foregoing exception—there shall be no territorial limitation of protection.

Special provision is made in paragraph 3 of Article 5 for the case where a Contracting State makes issuance of a certificate of registration or that of a design patent subject to preliminary administrative examination. This provision should be amplified, in the applicant's favour, in two respects :

In the first place, there should be an explicit guarantee that the applicant shall enjoy in the State in question the same means of recourse as if he had directly deposited the design or model there. A rule to this effect is to be found in paragraph 3 of Article 5 of the Nice text of the Arrangement of Madrid concerning the International Registration of Trade Marks. Article 2 of the Union Convention of Paris is not sufficient to protect the applicant, for, although it provides that nationals of members of the Union shall enjoy in all the other countries of the Union the same treatment as is accorded to nationals of the latter countries, provisions relating to judicial procedure are expressly excluded by paragraph 3 of the same Article.

It should be further provided that the authorities of a State which subjects the protection of a design or model to administrative examination may not finally refuse to grant protection without affording the applicant an opportunity of establishing his rights in due time. A provision to this effect is to be found in paragraph 6 of Article 5 of the Nice text of the Arrangement of Madrid concerning the International Registration of Trade Marks.

Luxemburg (Translation) : Article 5, paragraph 3 of the Draft states that the countries which make a preliminary examination have the option of refusing the protection resulting from the International Registration of the design or model in cases where the design or model does not meet with the requirements of the national law. The forms of refusal of protection and the availability of appeals recognised to the parties concerned, being of considerable importance, it is felt that they should be inserted, not in the Regulations but rather in the Arrangement itself, as is the case with the Arrangement of Madrid.

Sweden : *Article 5, paragraph 3.* The reference to Article 3, paragraph 2 appears to be erroneous. It is understood that the correct reference is intended to be to Article 4, paragraph 3. Apart from that, however, the time within which a national office exercising a novelty search should notify the Bureau of its decision to reject a certain application appears to be somewhat short. The corresponding time limit set in the Madrid Arrangement on Trade Marks (Article 5) is one year. It is suggested that a corresponding time limit should be set in The Hague Arrangement.

In this connection it should be made clear that an administrative examination as to general registrability and novelty is not intended to preclude the possibility of the validity of the protection granted being tested by the courts, for instance in a subsequent case of infringement.

United Kingdom : Article 5, paragraph 3. Reference in this paragraph to "Article 3, paragraph 2" is not understood. The reference should presumably be to Article 4, paragraph 3.

USA : In connection with Article 5, paragraph 3, of the Draft Arrangement, it should be provided that if protection is sought under a law requiring preliminary examination for novelty, the national office administering such a law may require the filing of a declaration of authorship or inventorship in the form prescribed by such law.

IAPIP (Translation) :

The Effects of the International Registration or the Protection Granted.

The Draft.

The protection granted through the international registration is referred to in Articles 5, paragraph 1, 10 and 16 :

Article 5, paragraph 1, specifies that the international registration shall produce the same effects as a deposit or the delivery of a certificate in each one of the contracting countries.

Article 10 specifies that the contracting countries shall grant to internationally registered designs or models a protection, the duration of which shall be the same as that granted to designs or models in the countries concerned.

Finally, Article 16 requires each country to adopt, before ratification of the Arrangement, the measures necessary for assuring its application.

Remarks.

1. The IAPIP recalls that there are two possible systems for determining the protection granted through the international registration :

a) The first system consists in providing that the protection arises from the international registration.

In this case, a provision of supra-national right must be inserted in the Arrangement, specifying that "registered models be protected in all the contracting countries".

b) The second system consists in providing that the protection arises from the national law.

In that case, the Arrangement is merely a technical instrument which sets up the formality of the international registration and leaves it to the national legislation to determine the protection granted.

2. The IAPIP notes that the Draft Arrangement deliberately adopts the second system.

The IAPIP approves it for the following reasons :

- most countries would not accept a system by which the protection be granted to all registered models without distinction ;
- because of their constitution most of the countries cannot apply directly an international treaty as a national law.

3. However, the IAPIP considers it desirable to retain in the Arrangement the provision of Article 5, paragraph 5, of the General Convention adopted at Lisbon, that is :

" Designs and models shall be protected in all countries of the Union. "

In fact :

a) this rule is not contrary to a system of protection that derives from national law, because it only makes it binding upon the countries to organize the protection on their territory ;

b) it would be useful to insert this rule in the Arrangement as there may be countries which adhere to it before having ratified the Lisbon text.

The Reservations of the National Legislations.

The Draft.

Articles 5 and 9 provide for the items upon which the national legislations may impose restrictions.

1. The countries may provide that the international registration shall have no effect on their territory (Article 5, paragraph 2) with respect to its own nationals.

2. Countries which practice the preliminary examination are allowed, within a term of six months, to refuse protection to internationally registered designs or models which are not in conformity with their domestic laws (Article 5, paragraph 3).

3. Countries, the domestic laws of which require the offering to the public of the design or model as a condition for protection, are allowed to refuse protection of the international registration if this offering did not occur within a term of six months.

Offering to the public takes place when the object in which the design or model is incorporated, is exhibited, sold or gratuitously offered to the public in any country whatsoever (Article 5, paragraph 4).

4. Marking cannot be required for the recognition of a right.

If the domestic laws require marking for the exercise of certain remedies, this requirement shall be fulfilled by the affixing on the objects or on their label of the symbol (D), followed by certain particulars (Article 9).

The Protocol annexed provides for the renunciation of this requirement for the countries signing it.

Remarks.

1. The reservations contained in the Draft have been the subject of two kinds of observations :

a) For some, they are unnecessary because protection flows from the national legislation.

However, attention must be drawn to the fact :

- that these reservations are claimed by certain countries and that this claim must be satisfied ;
- that these reservations limit the restrictions imposed by the domestic laws, and thus are favourable to the protection.

b) For others, the restrictions are most regrettable because they limit protection excessively

However, it must be noted that these regrets are vain because protection proceeds from domestic law which is sovereign in this respect.

2. In conclusion, the compromise set forth in the Draft is approved by the IAPIP.

The International Literary and Artistic Association (*Translation*) : The system of preliminary examination and the obligation to make a deposit available to the public within a short period is subject to important reservations.

Article 6

Belgium (*Translation*) : The Draft Arrangement does not regulate the case of first deposits made in a Unionist State, not a member of the Arrangement. Article 6 should be completed by a provision to the effect that, in such cases, the date of priority shall be that of the first deposit in a Unionist country.

Germany (Fed. Rep.) (*Translation*) : According to Article 6, only applications deposited in a Contracting State can be invoked for claiming priority in international registration. The Federal Government proposes that this provision be further considered, to ascertain whether it ought not to be expanded in such a way as to ensure that the deposit of industrial designs or models should establish priority where effected in States which, although not Parties to the Arrangement of The Hague, have acceded to the Union Convention of Paris. Naturally, even in this case only nationals of States Members of the Arrangement of The Hague would be able to claim priority. But such a provision would have the advantage of allowing a national of a Contracting State domiciled, not in his country of origin, but in a member State of the Union which has

not acceded to the Arrangement of The Hague, to claim priority in respect of applications made by him in such State of domicile for the international deposit of his designs or models.

IAPIP (Translation) :

Priority.

The Draft.

Article 6 specifies that if the international registration is effected within the six months of a first application, it shall benefit from the priority.

Remarks.

The IAPIP points out that Article 6 involves only the possibility of claiming the priority of a first application deposited in one of the contracting countries.

It would be advisable to specify that the depositors may claim the priority of a first application deposited in a unionist country, even if this country is not an adherent to the Arrangement.

Article 7

IAPIP (Translation) :

Duration of Protection.

The Draft.

1. The international registration is valid for five years.

It is renewable for periods of five years upon application made within the last year of the current period (Article 7).

2. The minimum duration of protection granted by the countries is (Article 10, paragraph 3) :

- of ten years, reckoned from the date of the international registration ;
- of five years, in case the international registration is not renewed.

This minimum duration is fixed at fifteen years for the countries, signatories of the Protocol annexed.

3. In principle, the duration of protection in the countries is that of the national legislation, provided that the minimum duration referred to above is complied with (Article 10, paragraph 1).

However, the countries may provide for a shorter period, provided they do not go below the minimum duration (Article 10, paragraph 2).

Remarks.

The IAPIP is in favour of the compromise as proposed in the Draft.

It points out, however, the two following remarks of minor importance :

1. It would be desirable to retain the provisions of Article 10 of the present Arrangement, according to which the International Bureau shall give an unofficial notice of lapse of the deposit.

2. It would be desirable to specify in Article 7 that the renewal of the deposit shall be effected directly with the International Bureau.

The International Literary and Artistic Association (*Translation*) :

a) International registration should cover a sufficiently long period of protection including a first period and a second period for renewal.

Failing a sufficiently long period, the countries should have the possibility of adopting reciprocal measures.

b) The interest in maintaining a system by which secret deposits are effective for a sufficient period, if the depositor so desires, is underlined.

Article 8

Germany (Fed. Rep.) (*Translation*) : Article 8 corresponds to Article 17 of the text of the Arrangement of The Hague at present in force, but does not include the provisions of paragraph 3 of the latter, relating to the assignment of the rights of the proprietor of an international deposit. The current rule has the advantage of making the assignment, in part or in whole, of the rights of the proprietor of an international deposit admissible in international law, whereas in the absence of such a provision the admissibility, form, content and effect of such assignment would be governed solely by the municipal law in force in the different Contracting States. The same consideration applies equally in the case of the renunciation of an international deposit, regulated by Article 13 of the current text of the Arrangement of The Hague. If the content and form of such renunciation were regulated internationally, legal relations between the States concerned would undoubtedly be facilitated. The Federal Government therefore suggests that the provisions of Articles 13 and 17 of the current text of the Arrangement of The Hague be reinstated in the revised Draft Arrangement.

IAPIP :

Change in Proprietorship.

The Draft.

Article 8 specifies that the International Bureau registers and publishes all changes that affect the proprietorship of the designs or models.

Remarks.

The IAPIP has no remarks to make on this item.

Article 9

Austria (*Translation*) : *Paragraph 1* in the main repeats the provision contained in Article 5 D of the Union Convention and relating to all industrial rights to protection under which the indication or mention of deposit on the article must not be a condition for the recognition of the right.

The exemption from this rule contained in *paragraph 2* appears to be very dangerous because it is so wide in scope. Since it is not clearly stated *for which* remedies the notice of deposit may be required, the entire exercise of the right may thus be affected. This would vitiate the provision contained in *paragraph 1* of the Union Convention, as a right which cannot be exercised is quite worthless.

In addition, such a rule, if it is regarded as compatible with the provisions of the Union Convention, could not but affect other industrial rights to protection, such as patents and trade marks. Every party to the Convention could argue that a similar practice in the case of patents and trade marks cannot be at variance with the Convention, if it is declared to be permissible and compatible with the Union Convention in an arrangement concluded under that instrument. The retention of paragraph 2 in its present form therefore appears to be at variance with the obligations arising out of the Union Convention.

In connection with *paragraph 3* mention should also be made of the fact that the provision of an indication of deposit will raise practical difficulties in the case of small articles (ornaments, etc.). Permission might have to be given for tags indicating deposit to be attached to such articles.

Denmark (Translation) : It is proposed that the provisions of Article 9, paragraphs 2 and 3 be suppressed.

France : See page 28, first three lines.

Sweden : It is doubtful whether the provisions authorizing the use of a special marking as a condition for certain remedies is in good harmony with Article 5, section D of the Paris Convention. It would be preferable if paragraphs 2 and 3 of the present article could be deleted.

United Kingdom : Article 9, paragraph 1, should read : " No Contracting State may, as a condition of recognition of the right to protection of a design under this Agreement, require that, etc. "

IAPIP : See observations under Article 5.

The International League for the Prevention of Unfair Competition (Translation) : The availability of remedies should not be conditional upon the affixing of an international design notice on the article or tag attached to such article.

On the other hand, such a provision could be envisaged for claiming damages.

The International Literary and Artistic Association (Translation) : The affixing of a restrictive design notice as an additional application formality is not considered necessary as the deposit should only be optional and its only aim should be to assist in proving the depositor's rights.

Article 10

France (Translation) : With regard to the substance, the French Government considers it desirable to lay down a maximum period of protection exceeding 10 years.

From the point of view of form, the wording of the first paragraph of Article 10 may appear ambiguous. It would undoubtedly be preferable to speak not of the " continuance " but of the " continuance of the effect " of the international registration.

Germany (Fed. Rep.) (Translation) : Consequentially to the observations made on paragraph 2 of Article 4, it is proposed that in Article 10 the word

“registered” be replaced by the word “deposited,” and the word “registration” by the word “deposit,” *passim*.

It is also suggested that, for the sake of clarity, the words “continuance” and “term” should be replaced by the word “validity.”¹

USA : It should be understood that if in a Contracting State full protection does not commence until a date later than the date of the international registration, the minimum terms specified in Article 10, paragraph 3, of the Arrangement shall not be curtailed.

IAPIP : See observations under Article 7.

Article 11

Luxemburg (Translation) : Articles 11 and 13 refer to amendments to be made to the Regulations. Whereas, in pursuance of Article 11, the International Committee may alter the Regulations by a majority of 4/5th, Article 13, on the other hand, providing that amendments shall be made following a written procedure, demands unanimity. Are there any special reasons for not adopting the same procedure in both cases?

As for the text of Article 11, paragraph 2 *b*, it would seem more appropriate to draft it as follows :

“*b*) to study and give advice on questions concerning the application and possible revision of this Arrangement, on the operation by the International Bureau, and concerning any.....”

United Kingdom : We suggest that this Article be redrafted as follows :

“1. There is hereby established an International Designs Committee consisting of representatives of all Contracting States.

2. The Committee shall have the following duties and powers :

a) to add to or amend the Regulations by a majority of four-fifths of its members present and voting ;

b) to study and give advice on questions concerning the application, operation and possible revision of this Agreement ;

c) to give general directions to the Bureau on the exercise of its functions under the Agreement ; and

d) to advise on any other question relating to the international protection of designs.

3. *a*) The Committee shall approve the budget of the Union.

b) If and so far as the expenses of the Union are not met by fees, the Committee shall apportion them among the Contracting States in accordance with a scale to be fixed by it.

¹ The word “*durée*” occurs four times in the French text of Article 10, twice in paragraph 1, once in paragraph 2 and once in the main clause in paragraph 3. In the first case it is rendered in English by “continuance,” in the second and fourth cases by “term,” while in the third case—in paragraph 2—an ellipsis results in its absence from the English text. It is therefore rather difficult to say exactly how the suggestion of the Federal German Government is to be applied to the English text (Translator’s note).

c) Decisions of the Committee under sub-paragraph *a* or *b* of this paragraph shall be taken by a two-thirds majority of its members present and voting.

4. The Committee shall lay down its own rules of procedures.

5. Except as otherwise provided in this Agreement or in the Rules of Procedure, the decisions of the Committee shall be by a majority of its members present and voting. Abstentions shall not count as votes.

6. The Committee shall be convened by the Director of the International Bureau with the agreement of the Swiss Government or at the request of one-third of the Contracting States."

Article 12

France (Translation) : A detailed commentary on this article would doubtless be premature : its contents depend on those of the Regulations. Nevertheless it should be pointed out that no provision of the latter text deals with the procedure referred to in letter *d*. The provision of letter *e*, on the other hand, calls for the remarks already made with regard to the extra fee for examination and territorial limitation.

United Kingdom : If the Regulations are drawn up by the diplomatic Conference and annexed to the Agreement, it might be better simply to state their general purpose and not to specify in detail the matters with which they are intended to deal.

IAPIP (Translation) :

Fees.

The Draft.

1. Article 12 *b* provides that the registration shall be subject to the payment of a fee, the amount of which is fixed by the Regulations.

2. Article 6 of the Draft Regulations provides for several fees (for example : 50 fr. s. for the registration of one model, with publication in black and white in one standard space).

Remarks.

The Vice-Director of the International Bureau observed that the future fees should not be compared to the present ones which are quite insufficient and should in any case be raised to 25 or 30 fr. s.

The IAPIP recognizes the necessity to fix the fees at a sufficiently high level.

The International Literary and Artistic Association (Translation) : It is stressed that the fees to be paid by the depositors should be strictly limited.

Article 13

Luxemburg : See observations on page 35.

Article 14

Luxemburg (Translation) : It is proposed to amend the wording of Article 14 as follows :

“ The present Arrangement shall not prevent the claiming of the application of possible wider provisions ”. It would appear preferable to replace (in the French text, edit.) the word “ prescriptions ” by “ dispositions. ”

IAPIP (Translation) :

Cumulative Protection.

The Draft.

Article 14 specifies :

- that wider provisions of the national laws may be claimed ;
- that the regime of the Arrangement does not affect the protection of artistic works and works of applied art granted by International Conventions on Copyright.

Remarks.

The IAPIP approves the provisions of Article 14, which it considers to be very wise.

Article 16

Austria (Translation) : This provision is based on Article 17 of the Paris Union Convention as revised at Lisbon and imposes the obligation on Contracting States to adapt their national law to the Arrangement even before ratification or accession. The Draft Revision does not, however, expressly commit the Contracting States to protect designs or models. It is therefore proposed to include a provision corresponding in substance to Article 5 *quinquies* of the Paris Union Convention as revised at Lisbon in The Hague Arrangement on Designs.

IAPIP : See observations under Article 5.

Article 17

Belgium (Translation) : It would appear preferable that the coming into force of the Arrangement be subject to the ratification or adhesion of eight States, two of which should not be members of the present Arrangement.

France (Translation) : Although the French Government agrees with the total number of instruments of ratification or accession required for the new Arrangement to enter into force, it considers that the number of ratifications or accessions deposited by States not party to the present Arrangement should be raised from 3 to 5.

Germany (Fed. Rep.) (Translation) :

The Draft Arrangement does not settle the question of the status of the new text in relation to that adopted at London, which is the only one in force at the moment. In paragraph 3 of Article 23 of the London text it is provided that, in the relations between the countries which have ratified it, the Arrangement shall replace the Arrangement of The Hague of 1925, but that the latter shall remain in force in relations with countries which have not ratified the London text. Corresponding provisions are to be found in Article 18 of the Union Convention of Paris and in Article 27 of the Convention of Berne concerning the Protection of Literary and Artistic Works. The absence of such a provision from the Draft Arrangement means that no link is established between the text at present in force and the future text of the Arrangement of The Hague. In other words, the Draft Arrangement, the object of which, according to the title, is to revise the Agreement of The Hague, will in practice result, not in a revision of the current text, but in the drafting of a new one. The two texts would exist collaterally, completely distinct and separate from one another. But this would be contrary to the principle applicable to the Union Convention of Paris and to the Berne Convention according to which the States Parties to this Arrangement (*sic*) form a single union and are mutually bound even if they have not acceded to the same text of the respective Convention. In the case of the Convention of Berne, the International Bureau has given its opinion that the Philippines and Turkey, which have acceded to the Brussels text of the Convention, but not to the earlier texts, are bound by the latter vis-à-vis those members of the Union which have not ratified the Brussels text (*cf. Droit de l'Auteur*, p. 98, 1950, and p. 134, 1951). The Federal Government therefore considers it desirable that a genuine revision of the Arrangement of The Hague be made, and that a formal link between the two texts be established by a special clause similar to paragraph 3 of Article 23 of the London text. It is true that the new text proposed for the Arrangement departs so far in content from the existing text that both States adhering to the Arrangement of The Hague for the first time and the present Contracting States should be given an opportunity of declaring, when ratifying or acceding to the new text, that they do not wish, or no longer wish, to be bound by the earlier texts. A corresponding provision is to be found in paragraph 4 of Article 12 of the Nice text of the Arrangement of Madrid concerning the International Registration of Trade Marks. The Federal Government therefore suggests that such a provision be included in the new text of the Arrangement of The Hague, even though, given its views on the Nice text of the Arrangement of Madrid on Trade Marks, it has no intention of itself invoking such provision.

United Kingdom : It is noted that no provision is made regarding the effect of the Agreement in respect of designs registered in the International Designs Register prior to the Agreement's entry into force, although the experts intended that it should not have a retrospective effect as regards new participants in the arrangements. We feel that the Agreement should contain a provision (either as a separate article or as part of Article 17) on the following lines :

“ A Contracting State, which was not a party to the Arrangement for the International Deposit of Industrial Designs or Models signed at The Hague on November 6, 1925, as revised at London on June 2, 1934, shall only be bound by the provisions of this Agreement in respect of designs registered after the date on which the Agreement enters into force for that State. ”

Parties to the existing Arrangement of The Hague will also presumably wish to include in the new Agreement suitable transitional provisions.

IAPIP (Translation) :

Adhesion to the Union.

Coming into force of the Arrangement.

The Draft.

1. The adhesion to the Arrangement or its denunciation are provided for by Articles 15, 18, 19 and 21 of the Draft.

2. The application of the Arrangement is provided for by Article 17 : it shall come into force upon the ratification by ten countries, three of which shall not be adherents to the Arrangement of The Hague now in force.

Remarks.

The IAPIP stresses that the object in view is the adhesion of the greatest number possible of new countries.

The International Literary and Artistic Association (Translation) : There should be a sufficient number of new adhesions and even the adhesion of certain nominal countries should be made conditional for bringing the Arrangement into force.

Article 18

United Kingdom : Article 18, fourth line, insert before "relations" the word "international."

Article 20

The International Literary and Artistic Association (Translation) : Strict provisions should be made with a view to possible revisions.

Article 22

United Kingdom : Article 22, paragraph 2, third line, should read " may at any time, by notification addressed to the Government of, declare its acceptance of the Protocol annexed to the present Agreement." The references in the last sentence should be checked.

Furthermore provision should be made for the depository power to inform other States of the date of entry into force of the Agreement, and other formal matters. This provision might well constitute a new article and might read as follows :

"The Government of shall inform all signatory and acceding States
a) of the date of entry into force of the Agreement ;

b) of the deposit of instruments of ratification or accession and of the effective dates thereof ;

c) of notifications regarding territorial application in accordance with Article 18 ;

d) of notifications of denunciation in accordance with Article 19 ; and

e) of any declaration made in accordance with paragraph 1 or paragraph 2 of Article 22. ”

Protocol

Austria (Translation) : The wording of paragraph 2 a suggests that to obtain a fifteen-year period of protection all that is required is renewal of the design in the fifth year of protection. It cannot be construed to provide for a further renewal in the tenth year of the period of protection.

On the other hand, it must be concluded from Article 7 and Article 10 that registration has to be kept in being, if the design is to enjoy continued protection. As registration can be renewed only for a period of five years at a time, two renewals would seem to be required under the Protocol for a fifteen-year period of protection.

This point should be cleared up by an appropriate amendment of the Protocol.

Belgium (Translation) : The Belgian Administration declares itself in favour of signing the Protocol as drafted by the Committee of Experts.

Luxemburg (Translation) : Whereas, according to Article 7, paragraph 2, the renewal of International registrations should be applied for in respect of each period of five years, *the Protocol* to be signed by those countries prepared to grant a minimum period of protection of 15 years, only provides for one single renewal at the end of the first period of five years. Would it not be advisable to establish the same procedure for both cases?

IAPIP (Translation) :

Protocol.

The Draft.

1. A Draft of the Protocol, thereto annexed, contains a number of complementary provisions.

2. Article 22 of the Draft provides :

- that the countries which had adhered to the Arrangement of The Hague of 1925, be considered as adhering to the Protocol, unless otherwise stated by them ;
- that the new members may ratify the Protocol.

Remarks.

The IAPIP approves the Draft on this item.

PART TWO

DRAFT FOR THE REVISION OF THE REGULATIONS IMPLEMENTING THE DRAFT ARRANGEMENT CONCERNING THE INTERNATIONAL DEPOSIT ON INDUSTRIAL DESIGNS OR MODELS

I. PROPOSALS, COUNTER-PROPOSALS AND OBSERVATIONS

Rule 1

(Applications for registration)

(See Draft Arrangement, Article 3, paragraphs 3 and 5 ; Article 4, paragraph 4, and Article 12a)

Belgium (Translation) : Rule 1, paragraph 3 b.

This provision (which, incidently, could be, in the opinion of the Belgian Administration, extended to all countries, whether they make a preliminary examination for novelty or not) is a provision of substantive law which should be incorporated in the text of the Arrangement itself. It could be inserted between paragraphs 2 and 3 of the proposed Article 5.

Spain (Translation) : Paragraph 1 of Rule 1 of the Draft Regulations stipulates that the application for registration shall be written in English or French. From a technical point of view, this rule is likely to give rise to insuperable difficulties—though the French language was accepted by Spain in the case of the Madrid Arrangement concerning the International Registration of Trade Marks—both for those who manufacture the products to which the designs or models apply and for the Spanish owners of industrial designs or models in view of the system of industrial property protection in force in Spain.

This system provides for a period of time in which third parties may lodge an opposition ; however if the applications are written in English or French, the above mentioned Spanish owners of deposits will be obliged to know either English or French in order to be in a position to lodge an opposition in respect of foreign applications claiming protection under Spanish law.

If these oppositions are not lodged, the Spanish Industrial Property Office would have to accept the applications with consequential prejudice to the industrial circles concerned or to the owners of Spanish deposits who, not having lodged an opposition, would have to appeal to the courts for cancellation of such registrations.

Furthermore, in view of the fact that there is no system which provides for a preliminary administrative examination of industrial designs and models, the Spanish Administration would be unable to act for Spanish depositors by undertaking this examination on its own account as it does in the case of international registration of trade marks. Spanish legislation provides that trade marks can only be granted after a preliminary examination; consequently the absence of any opposition on behalf of Spanish trade mark owners is compensated for by this examination.

For these reasons—which only add to the necessity of establishing the principle of optional territorial limitation because the same difficulties may well arise in other countries—the Spanish Administration proposes that applicants should include in their applications for registration, in cases where they wish to claim protection in Spain, a Spanish translation of the description with a view to its publication either in the *International Design Gazette* of the Union or in the Spanish Bulletin, subject to appropriate fees.

Sweden : In the general observations above it is proposed that the principle of facultative territorial limitation should be embodied in the Arrangement itself and drafted on the lines of Article 3 *bis* of the revised Madrid Arrangement on Trade Marks. The drafting in the present rule should be correspondingly amended.

USA : The principle according to which an applicant for international registration may declare that he does not wish to claim protection conditional upon a preliminary examination for novelty (see Rule 1, paragraph 3 *b*, of the Regulations)—with the consequence that if he makes such a declaration he is exempt from the corresponding national fee (Rule 9)—should be stated in the Arrangement itself rather than the Regulations implementing the Arrangement.

Rule 2

(Multiple deposits)

(See Draft Arrangement, Article 3, paragraph 4, and Article 12 *c*)

Austria (*Translation*) : 1. The provision that the number of multiple deposits must not exceed twenty is unacceptable to Austrian industrialists. It is proposed that the number be increased.

2. It is suggested that only designs or models intended for incorporation into articles of *one and the same kind* may be deposited jointly. There is a danger that national offices may interpret the term “of one and the same kind” differently in relation to the articles in question. It would therefore be desirable if it were expressly laid down (perhaps in the Arrangement itself) that the decision of the International Bureau regarding the admissibility of multiple

deposits is binding for the Contracting Parties. In any case a provision should be included to the effect that a post factum decision to declare the joint deposit of designs or models as inadmissible because they are not of one and the same kind may in no case result in such designs being rejected. (At most the depositor may be requested to pay the difference in fees between single and multiple deposit.)

Germany (Fed. Rep.) (*Translation*): Whereas, under the Regulations for carrying out the current Arrangement of The Hague, up to 200 designs or models may be included in a single application, Rule 2 of the new Draft Regulations imposes a maximum of twenty. This makes the procedure appreciably more burdensome for applicants, who are used to depositing large numbers of designs or models simultaneously. German industrial circles have therefore suggested that Rule 2 be amended to allow for the inclusion in a single application a maximum of 50 designs or models. Such a rule would also lighten to some extent the administrative burden on the International Bureau, for it is easier to deal with one application covering 50 designs or models than with three, two of which cover 20 designs or models each, and the third 10. Moreover, such a procedure would mean a saving of 94 Swiss francs for depositors.

Switzerland (*Translation*): (*Limitation of the number of items contained in a deposit to 20 designs or models.*)

This limitation is much too severe for industries that wish to deposit creations dependent on fashion. These industries (textiles, embroidery, footwear, etc.) are obliged to deposit large numbers of designs or models at the same time, very often several hundred at a time, knowing that only a small number of these will meet with success, but without being able to say beforehand which ones. The limitation to 20 items per deposit would therefore require a large number of deposits, each of which, under the new rates, would amount to a high price, especially if the fee for an examination as to novelty were added to this figure. Under these circumstances, the protection of designs and models would become prohibitively expensive. An increase in the number of items permitted in a deposit, to at least 50 for example, would appear indicated. Perhaps it would be possible to envisage applying such an increase at least to certain branches of industry only, i. e. those specially concerned and in particular those indicated above.

The International League for the Prevention of Unfair Competition (*Translation*): It is suggested that the maximum number of designs or models which may be included in the same multiple deposit could be raised to 30.

Sweden: Reference is made to the observations relating to Article 3, paragraph 4, of the Draft Arrangement. The permitted maximum number of multiple deposits should on no account exceed ten.

Rule 3

(Attachments to the application)

(See Draft Arrangement, Article 3, paragraph 3, and Article 12 c)

Belgium (Translation) : *Rule 3, paragraph 2.* It is necessary to prohibit the deposit of copies or models made of perishable material.

USA : The Regulations should provide that the photographs or other graphic representations accompanying the application must be filed in three (instead of two) copies ; and that the International Bureau will lend one of the copies to national offices which so request.

Rule 6

(Fees)

(See Draft Arrangement, Article 12 b)

Austria (Translation) : Austria agrees to the principle that the fees should be high enough to cover the administrative expenses of the International Bureau and the cost of publication. Since, however, Austrian industrialists consider the fees proposed in the Draft to be unacceptably high, it is proposed that the amounts should again be very carefully examined.

Austria does not agree to the proposal that those Contracting States which do not investigate the novelty of designs should not receive any share of the fees to cover their national administrative expenses. Even if the Drafts themselves do not contain any legal obligation to undertake national administrative work, such work is, in Austria's opinion, in principle inevitable.

A basic reason which has so far prevented Austria from acceding to the Arrangement of The Hague is the fact that designs and models are at present exhibited only at the International Bureau. In case Austria should accede to the Arrangement, the publication of designs or models in the Design Gazette will in no case be regarded as an adequate indication showing which proprietary rights are protected in Austria. The proposed publication contains the designs in chronological order. The changes occurring in these rights are published in the same order. It would seem to be indispensable that publications should be arranged under different heads, such as the name of the owner, the type of article incorporating the design, etc. and that changes should be summarized under the designs concerned, so that a clear picture of the valid proprietary rights may be obtained. The Contracting States should receive a share of the registration fees to cover the administrative expenses thus incurred.

Belgium (Translation) : The question might be raised whether it is not advisable to insert the provisions relating to fees in the Arrangement itself, as is the case of the Madrid Arrangement, as revised at Nice. Though it is appreciated that the Regulations can more easily be amended and adapted to changing conditions, in certain countries, however, amendments to the provisions relating to fees are, in any case, subject to parliamentary ratification as is the case with the Arrangement itself.

Germany (Fed. Rep.) (Translation) : The fees for international registration proposed in Rule 6 of the Draft Regulations for implementing the Arrangement seem very high compared with current fees. The Federal Government is well aware that the latter do not cover the administrative expenses of the International Bureau and that they ought accordingly to be raised in any event ; but it would be pleased if the new fees proposed in the Draft Regulations could be kept lower.

Luxemburg (Translation) : Rule 6 enumerates the different fees to be paid to the International Bureau and fixes their amount. The interested parties in Luxemburg, while ready to accept the amounts anticipated, have, nevertheless, expressed the desire that every possibility should be examined, with a view to lessening the fees in respect of international registrations.

As regards Rule 6, paragraph 2 *b*, which deals with the fees to be paid for multiple deposits, the question might be raised whether it is clear from the proposed text, what fees must actually be paid.

On the other hand, Rule 6, paragraph 6 *d*, provides that a fee of 50 francs shall be paid for renewals. Considering that, in the case of a renewal, publication ought to be limited, so to speak, to the date of renewal and to the number of the model, the amount of 50 francs is considered as being somewhat excessive.

Sweden : The Reduction of fees in cases of multiple deposits appears to be unnecessarily liberal. See observations relating to Article 3 paragraph 4 of The Draft Arrangement.

Paragraph 4 of the present Rule is understood to mean that a "standard space" may include the reproductions of four different designs. This is a provision that will make for practical difficulties, and it is proposed that the provision be amended so as to allow no more than one design in each "standard space".

Switzerland (Translation) : (Size of the standard space) :

We are of the opinion that the size of the standard space could be reduced without adversely affecting the intelligibility of the figures, for example, from 6×9 cm. to 4.5×6 cm. The number of standard spaces per page would thus be doubled, and the publication fees could therefore be considerably reduced, which is an essential aim.

The International League for the Prevention of Unfair Competition (Translation) : The fees should be limited to a strict minimum in order that the benefits of the Arrangement be available to as large a public as possible.

Rule 8

(Gazette)

(See Draft Arrangement, Article 4, paragraph 3, and Article 12 *f*)

Austria (Translation) : It is proposed that Contracting Parties should, on request, be entitled to receive copies of the Design Gazette printed on one side only. As no provision has been made to produce anything corresponding to

the international trade mark extract (Madrid Arrangement on Trade Marks) an issue of the Design Gazette printed on one side only is indispensable as a basis for the establishment of national card indexes.

Rule 9

(Domestic examination of novelty)

(See Draft Arrangement, Article 5, paragraph 3, and Article 12 e)

Austria (Translation) : Rule 9, paragraph 1.

1. It is not entirely clear whether the national preliminary examination fee to be collected by the International Bureau represents a requirement for registration within the meaning of Article 4, paragraph 2 of the Arrangement. This point should be cleared up, possibly in Article 4, paragraph 2.

2. Rule 1, paragraph 3 provides that the depositor may decide to forego protection in countries which have a system of preliminary administrative examination. This provision, however, serves a purpose only if in that case the relevant national fee does not have to be paid. The Draft, however, makes no express provision for that. The insertion of such a provision is therefore proposed.

Rule 9, paragraph 2.

Rule 6, paragraph 3 of the regulations implementing the Madrid Arrangement on Trade Marks provides that provisional decisions rejecting an international trade mark must contain an extract of the main statutory provisions of the country concerned. The decision must also indicate within what period and from what authority a remedy may be sought.

It is proposed that Rule 9 of the present Draft should contain a similar provision. Inasmuch as the announcement of rejection is in any case made on a printed form, the owner of a design will find it helpful to have, on the back of the form, brief instructions informing him of the remedies available against the preliminary decision. This arrangement entails no additional cost and has been found very useful in the case of international trade marks. Presumably the law of most countries already provides that an official decision must contain the necessary instructions regarding the remedies available.

Belgium (Translation) : Rule 9, paragraph 1.

The reference to Article 5, paragraph 3, should be suppressed. In fact, the extra fee can only be collected if the preliminary examination relates to novelty.

The following Draft is suggested : " For the purposes of the preliminary examination, so far as it relates to novelty, the International Bureau "

Rule 9, paragraph 2.

The second and third sentences of paragraph 2 of Rule 9 are provisions of substantive law and should, therefore, be inserted in the text of the Arrangement itself.

Denmark (Translation) : It is proposed that Rule 9, paragraph 1, according to which the fee for examining an international deposit of a model should not exceed three quarters of the national examination fee, be suppressed.

Germany (Fed. Rep.) (Translation) : The text of paragraph 1 of Rule 9 may give the erroneous impression that the preliminary examination provided for in paragraph 3 of Article 5 of the Draft Agreement relates only to the novelty of the design or model. It should therefore be made clear, both in the title and in the text of Rule 9, that this provision relates equally to all preliminary examinations by the authorities of the Contracting State, but that the fee prescribed in paragraph 1 shall be charged only where such preliminary examination concerns the novelty of the design or model.

Spain (Translation) : Paragraph 1 of Rule 9 provides that the International Bureau shall collect for each preliminary examining office the fee for an administrative examination, as fixed by that office.

In this respect, the Spanish Administration proposes that the collecting of such fees be extended to those countries which have a system permitting an opposition to be lodged prior to the registration of industrial designs or models. In view of the fact that, according to this system, the percentage of oppositions is relatively high and though such oppositions do not in fact constitute a true preliminary examination, they nevertheless imply such an examination in cases where oppositions have been lodged, the motives for which are so numerous that they nearly all represent, in practice, cases involving cancellation of novelty.

In any event, the above mentioned fee should be established in cases of opposition and it should be required to be paid by the depositor prior to the decision being given on the merits of the opposition.

Sweden : Reference is made to the General Observations. Under the present provision the fee to be collected for a national novelty search may not exceed three quarters of the corresponding fee provided by the domestic law. If the international fee is lower than the domestic fee, this has the consequence either that the international registrations are not carrying their own costs, or that the domestic registration fees will have to be raised above the level set by the principle of cost coverage. For that reason the maximation of the fee to three quarters of the national fee is unacceptable.

Switzerland (Translation) : *(Additional fees for countries practising a preliminary examination for novelty in respect of designs and models).*

We should like to say that we are convinced that in all probability the cost of the examination for novelty will be quite out of proportion with the results achieved. First of all, no administration possesses an even remotely complete collection of the designs and models on the market at a given moment ; furthermore, in this field, any decision certifying or denying the novelty of a design or model will for the most part rest on subjective appreciations : therefore there is nothing to guarantee that a judge would arrive at the same result as the examiner attached to the administrative department dealing with deposits. Second, in order to achieve a result which by the nature of things cannot avoid

being highly unreliable, it would be necessary to build up a very bulky stock of documents, as well as a comparatively large staff of examiners and an appeal organization. But if the depositor is made to help cover the expenses of such a system by charging him up to 50 francs per object, he will find the fees prohibitive.

USA : The following changes are suggested in Rule 9, paragraph 2, of the Regulations :

a) In the first sentence, the word " design " should be replaced by the word " application. "

b) In the third sentence, the words " response or " should precede the word " appeal " in both cases where this word appears.

c) It should be provided that correspondence after the first notification could be held directly between the applicant and the national office but that the final decision would also be communicated to the International Bureau.

Rule 10

(Archives)

(See Draft Arrangement, Article 12 g)

Luxemburg (Translation) : According to Rule 10, the International Bureau may dispose of copies and sketches of models and designs after a certain period of time. Would it not be possible to arrange for the models and designs to be returned to the applicants provided the latter were to cover the costs involved?

WAL
TROISIÈME FASCICULE

Octobre 1960

UNION INTERNATIONALE
POUR
LA PROTECTION DE LA PROPRIÉTÉ INDUSTRIELLE

CONFÉRENCE DE LA HAYE

POUR LA REVISION DE L'ARRANGEMENT DE LA HAYE
CONCERNANT
LE DÉPÔT INTERNATIONAL DES DESSINS OU MODÈLES INDUSTRIELS
DU 6 NOVEMBRE 1925, REVISÉ A LONDRES LE 2 JUIN 1934

DOCUMENTS PRÉLIMINAIRES

RÉPONSE DE LA FINLANDE
ET
PROPOSITION COMPLÉMENTAIRE DE LA SUISSE



BUREAU INTERNATIONAL
POUR LA PROTECTION DE LA PROPRIÉTÉ INDUSTRIELLE
1960

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AVIS PRÉLIMINAIRE

Le présent fascicule contient, en langues anglaise et française, les observations de la Finlande, ainsi qu'une proposition complémentaire de la Suisse tendant à introduire dans l'Arrangement révisé un article concernant la constitution d'un fonds de réserve, la répartition du produit net annuel des textes et, éventuellement, la prise en charge par les pays membres des excédents de dépenses.

La Conférence diplomatique de La Haye qui doit s'ouvrir le 14 novembre 1960 aura à se prononcer sur cette dernière proposition.

Genève, le 15 octobre 1960.

OBSERVATIONS DE LA FINLANDE

Finlande (*Traduction*) :

Observations d'ordre général.

Il n'y a pas en Finlande de dispositions légales concernant les dessins ou modèles industriels autres que celles de la loi sur le droit d'auteur qui protègent les œuvres des arts appliqués pour autant qu'elles aient un caractère artistique. Les œuvres qui n'ont pas ce caractère, comme les dessins ou modèles industriels, ne sont pas protégés d'une façon générale, quoique dans certains cas, il puisse être fait recours aux dispositions concernant la concurrence déloyale qui sont parfois très restrictives.

Toutefois, un Comité gouvernemental étudie actuellement la question de la protection des dessins ou modèles dans le cadre d'une analyse générale de tous les problèmes concernant les dessins ou modèles industriels. Ce Comité agit en étroite coopération avec les Comités des dessins et modèles des autres pays scandinaves.

Comme la Finlande ne possède pas encore de législation sur les dessins ou modèles, elle n'a *a fortiori* aucune expérience en la matière. Ainsi, la question de savoir s'il conviendrait d'instaurer un régime d'examen préalable de la nouveauté avant l'enregistrement est très sérieusement débattue. Ainsi donc, tant que l'enquête en cours ne sera pas terminée, la manière dont certains points très importants seront réglementés par la future loi sur les dessins ou modèles est encore très incertaine. Il est par conséquent très difficile de savoir si la Finlande accédera ou non à l'Arrangement de La Haye révisé. Étant donné que les modèles finnois sont fort connus dans le monde, il est probable que leurs exportateurs manifesteront un certain intérêt à l'Arrangement. Toutefois, celui-ci devra donner des garanties suffisantes pour éviter qu'un pays membre — comme la Finlande — ne soit submergé de demandes concernant la protec-

PRELIMINARY NOTE

The present volume contains in English and in French, the observations of Finland and a supplementary proposal by Switzerland aimed at introducing in the revised Arrangement an article with regard to the establishment of a reserve fund, the sharing of the net annual income from fees, and possibly, the covering by the States Members of excess expenses.

The Diplomatic Conference of The Hague which is due to begin on 14th November 1960 will be called upon to declare itself on this last proposition.

Geneva, 15th October 1960.

FINNISH OBSERVATIONS

Finland :

General Observations.

There are in Finland no statutory provisions regarding industrial designs or models, except those in the Copyright Act which gives protection to articles of applied art. But in this case the articles must amount to an artistic degree. Patterns of lower degree such as industrial designs or models are not protected in general, but in some cases the rules regarding unfair competition may be applicable, a few cases in the matter being very restrictive.

The question of protection of designs, however, is at present subject to an enquiry by a Government Committee, with the task to study all questions regarding industrial designs or models. In this task the Committee acts in close cooperation with the Designs Committees in the other Scandinavian Countries.

As Finland has not so far had any domestic legislation on designs or models, there is in Finland no experience in the matter. The question for instance, whether there should be a novelty search before registration or not, is to be taken under due consideration. Thus, before the enquiry is concluded it is obvious that there will be a number of important aspects of the future Designs Act that are highly uncertain. It is therefore difficult to express an opinion as to whether Finland will accede to a revised Hague Arrangement. Finnish design being well known all over the world, the exporters of articles of Finnish design will apparently have some interest in the Arrangement. However, the Arrangement must be such as to give sufficient safeguards against the contingency of an adherent country—as for instance Finland—being overrun by a mass of claims to protection for designs that will not be used in that country.

tion de modèles qui ne seront finalement pas utilisés dans ce pays. Il est donc à prévoir que la Finlande ne pourra adhérer audit Arrangement que si des garanties raisonnables sont données en vue d'éviter de trop nombreuses demandes de protection de modèles qui ne répondent à aucun intérêt réel dans ce pays.

Certaines conditions essentielles doivent être remplies en vue de répondre aux considérations qui précèdent :

1. Une sorte de limitation territoriale facultative est nécessaire en vue d'éviter que de nombreuses demandes d'enregistrement ne soient déposées pour des dessins ou modèles qui ne seront pas utilisés dans le pays considéré. Des dispositions semblables à celles de l'article 3 *bis* de l'Arrangement de Madrid sur les marques de fabrique de commerce, devraient donc être incorporées dans l'Arrangement révisé de La Haye.

2. Un pays devrait être autorisé à empêcher cet afflux de demandes par le moyen de sa législation domestique ; il devrait en particulier pouvoir décider que le dessin doit être utilisé effectivement sur son territoire dans un délai raisonnable, par exemple une année après le dépôt. A ce sujet les dispositions envisagées à l'article 5, alinéa 4 de l'Arrangement révisé de La Haye sont insuffisantes.

3. Les taxes du Bureau international devraient être fixées à un montant suffisamment élevé pour couvrir non seulement les frais occasionnés audit Bureau par l'administration des dessins ou modèles internationaux, mais également les frais des offices nationaux pour le travail et les charges supplémentaires découlant de l'enregistrement international, tels que le coût de l'examen préalable de nouveauté dans les pays où de tels examens ont lieu, ou encore de la classification des dessins ou modèles enregistrés et de leur communication au public. A ce sujet, il est évident que le poids de ces charges est plus grand pour un petit pays lorsqu'il adhère à l'Arrangement que lorsqu'il n'a à s'occuper que de la protection domestique. En outre, le coût de l'enregistrement international devrait être suffisamment élevé pour éviter que la protection ne soit réclamée pour des dessins ou modèles qui ne sont destinés au commerce international. Les taxes proposées ne semblent pas distinguer suffisamment entre les diverses situations et paraissent insuffisantes.

Enfin, la Finlande ne se considère pas comme définitivement liée par les observations qui précèdent et si d'autres pays présentaient des propositions susceptibles de l'intéresser, il est possible qu'elle s'y rallie. Cette remarque ne concerne pas seulement les observations d'ordre général, mais également les observations détaillées ci-après.

Projet d'Arrangement.

Article 3, alinéa 4.

En principe, la Finlande n'est pas favorable aux dépôts multiples. Au cas, toutefois, où un système de dépôts multiples recevait une approbation générale, il serait souhaitable que leur nombre en demeurât aussi limité que possible. Le chiffre de 20 mentionné à l'article 2 du Règlement proposé n'est pas acceptable : un même dépôt ne devrait pas comprendre plus de 5 dessins ou modèles. Quant à la réduction des taxes envisagées à l'article 6, alinéa 2 *b* en faveur des dépôts multiples, elle semble être inutilement libérale et aller à l'encontre des observations d'ordre général qui précèdent.

Therefore it seems possible for Finland to adhere to the Arrangement only provided that there are reasonable guarantees safeguarding against an unreasonable mass of foreign claims to protection for designs without any real interest in that particular country.

Thus, some main conditions must be fulfilled as to reach the above mentioned purpose. The conditions are the following :

1. Some kind of facultative territorial limitation is necessary to prevent overrunning by a mass of claims to protection for designs that will not be used in one country. It is suggested that provisions similar to those of Article 3 *bis* of the Madrid Arrangement on Trade Marks be embodied in the revised Hague Arrangement.

2. An adherent country must be given the faculty to prevent such an overrunning by means of domestic legislation, especially by a protective provision that the design must really be used in that particular country within a reasonable period, for instance one year after the deposit. In this respect the provisions in the proposed Article 5, paragraph 4 of the revised Hague Arrangement are not sufficient.

3. The various fees to be collected by the International Bureau should be set on a level sufficiently high to cover not only the costs of the Bureau in handling the international deposit of designs, but also the costs of the national patent offices for the work and services rendered by them consequent upon the international registration, for instance the costs of the novelty search in the countries where such a search is undertaken, and the costs necessary for classifying the registered designs and making them readily available to the public. As to this point, it is understood that the burden of costs for a small country in adhering the Arrangement are much higher than if there were a domestic protection only. Furthermore, the costs of international registration should be of such a high level as to prevent claiming protection for designs without any connection to international trade. In that respect the proposed fees seem to be neither sufficiently distinguished to several situations nor high enough.

Finally, Finland will not bind herself to or by the observations above, and if from the side of other countries suggestions are made in which Finland can have an interest, it is possible that Finland will adhere to them. This is said not only in accordance to the general observations mentioned above, but also to the observations below.

The Draft Arrangement.

Article 3, paragraph 4.

In principle Finland is opposed to the idea of multiple deposits. In case, however, a system of multiple deposits should be generally accepted, it is desirable that the permissible number should be kept as low as possible. The number of twenty mentioned in Rule 2 of the Draft Regulations is too high. It is suggested that the number of designs in the same deposit should not exceed five. The reduction of fees provided in Rule 6, paragraph 2 *b* in the case of multiple deposits appears to be unnecessarily liberal and against the purpose in the general observations above.

Article 4, alinéa 5.

Il serait désirable d'établir une sorte de classification des dessins ou modèles, classification que le Bureau international et les pays membres puissent utiliser pour leurs registres dans l'intérêt du public. Une telle classification constituerait une aide pour l'administration des enregistrements internationaux, mais ne devrait avoir aucune conséquence juridique quant aux violations des droits découlant de l'enregistrement.

Article 7.

Une durée de protection de cinq années est trop longue pour certaines industries. Nous proposons que la première période soit fixée à trois années en vue de permettre la radiation des dessins ou modèles dont une protection plus longue n'est pas envisagée. La seconde période pourrait alors être fixée à six années. Une taxe d'un montant plus élevé permettrait d'éviter des renouvellements inutiles.

Les dispositions des articles 7 et 10 concernant la durée de protection ne semblent pas très faciles à comprendre. Elles devraient être rédigées d'une manière plus claire.

Article 9.

Il semble douteux que les dispositions concernant le signe à apposer sur l'objet soient en harmonie avec les dispositions de l'article 5, lettre D, de la Convention de Paris.

Il serait préférable que les alinéas 2 et 3 de l'article 9 soient abrogés.

*Projet de Règlement.**Article 1^{er}, alinéa 3 b.*

Il est suggéré, aux observations d'ordre général qui précèdent, que le principe de la limitation territoriale facultative soit incorporé dans l'Arrangement dans le sens des dispositions de l'article 3 *bis* de l'Arrangement de Madrid révisé sur les marques de fabrique ou de commerce. La rédaction de cet alinéa devrait donc être modifiée dans ce sens.

Article 2.

Cet article se réfère à l'article 3, alinéa 4 du projet d'Arrangement. En réalité, les règles concernant les dépôts multiples devraient être incorporées dans l'Arrangement proprement dit. Le nombre maximum de ces dépôts devrait être limité à 5.

Article 6.

Voir les observations d'ordre général qui précèdent et les observations concernant l'article 3, alinéa 4 du projet d'Arrangement.

Article 4, paragraph 5.

It would apparently be desirable to establish some sort of classification of designs or designed articles to be used by the Bureau and member countries in establishing registers of designs in the interest of the public. Such a classification should be an administrative aid in handling the international registration, but it should have no legal consequences as to infringement or anticipation.

Article 7.

A period of protection of five years is in some industrial branches too long. It is suggested that the first period should be three years in order to let those designs fall out of the Register which are not of interest to uphold any longer. The second period could then be six years. A higher fee would prevent from unnecessary renewal.

The provisions regarding the period of protection in Articles 7 and 10 do not seem to be very easy to understand. It is therefore suggested that they be rearranged in a more precise manner.

Article 9.

It is doubtful whether the provisions authorizing the use of a special marking as a condition for certain remedies are in good harmony with Article 5, section D of the Paris Convention. It would be preferable if paragraphs 2 and 3 of the present Article could be deleted.

*The Draft Regulations.**Rule 1, paragraph 3 b.*

In the general observations above it is suggested that the principle of facultative territorial limitation be embodied in the Arrangement itself and drafted on the lines of Article 3 *bis* of the revised Madrid Arrangement on Trade Marks. The drafting in the present rule should be correspondingly amended.

Rule 2.

Reference is made to the observations relating to Article 3, paragraph 4 of the Draft Arrangement. It is suggested that the conditions for multiple deposits should be embodied in the Arrangement itself. The permitted maximum number of multiple deposits should not exceed five.

Rule 6.

See general observations above and observations relating to Article 3, paragraph 4 of the Draft Arrangement.

PROPOSITION COMPLÉMENTAIRE DE LA SUISSE

Article à insérer entre les articles 13 et 14 du projet d'Arrangement.

1. Le produit net annuel des taxes, après déduction des frais communs nécessités par l'exécution du présent Arrangement, sera placé dans un fonds de réserve. Lorsque ce fonds aura atteint le plafond de Fr. 200 000.— il ne sera plus alimenté et ledit produit net sera réparti entre les États contractants par parts égales.

2. Si à la fin d'une année un excédent de dépenses ne peut être couvert au moyen du fonds de réserve, les États contractants en supporteront la charge proportionnellement au nombre des dépôts faits pendant cette année par leurs ressortissants respectifs.

Motifs : Voir les « Observations suisses au sujet du projet de revision », page 12 du deuxième fascicule.

Berne, le 13 octobre 1960.

SUPPLEMENTARY PROPOSAL BY SWITZERLAND

Article to be inserted between Article 13 and 14 of the Draft Arrangement.

1. The net annual income from fees, after deducting the common charges necessitated by implementing the present Arrangement, shall be placed in a reserve fund. When this fund shall have reached a ceiling of Fr. 200,000.— no further payments shall be made to it and the said net income shall be shared between the Contracting States in equal parts.

2. If at the end of any year, the excess of expenses cannot be covered by the reserve fund, the Contracting States shall pay such expenses in proportion to the number of deposits made during that year by their respective nationals.

Reasons : See the observations by Switzerland on the subject of the revision on page 11 of the Second Volume.

Geneva, 13th October, 1960.

INTERNATIONAL UNION
FOR THE PROTECTION OF INDUSTRIAL PROPERTY

AGREEMENT OF THE HAGUE
concerning the International Deposit
of Industrial Designs

of 6th November, 1925,
as revised at London on 2nd June, 1934,
and at The Hague on 28th November, 1960



International Bureau for the Protection of Industrial Property
GENEVA 1961

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International Bureau for the Protection of Industrial Property
GENEVA 1961

AGREEMENT OF THE HAGUE

concerning

the International Deposit of Industrial Designs

of 6th November, 1925,

as revised at London on 2nd June, 1934,

and at The Hague on 28th November, 1960

The Contracting States,

Moved by the desire to provide the creators of industrial designs with an opportunity of obtaining by a international deposit an effective protection in a larger number of States;

Considering it desirable to that end to revise the Agreement for the International Deposit of Industrial Designs signed at The Hague on 6th November, 1925, and revised at London on 2nd June, 1934,

Have agreed as follows:

Article 1

(1) The Contracting States constitute a Separate Union for the International Deposit of Industrial Designs.

(2) Only States members of the International Union for the Protection of Industrial Property may become parties to this Agreement.

Article 2

For the purposes of this Agreement the following expressions shall have the meanings attributed to them hercbelow:

- “ Agreement of 1925 ”, Agreement of The Hague for the International Deposit of Industrial Designs of 6th November, 1925;
- “ Agreement of 1934 ”, Agreement of The Hague for the International Deposit of Industrial Designs of 6th November, 1925, as revised at London on 2nd June, 1934;
- “ this Agreement ” or “ the present Agreement ”, the Agreement of The Hague for the International Deposit of Industrial Designs as established by the present instrument;
- “ Regulations ”, Regulations for the execution of the present Agreement;
- “ International Bureau ”, Bureau of the International Union for the Protection of Industrial Property;
- “ International deposit ”, a deposit made in the International Bureau;
- “ national deposit ”, a deposit made in the national office of a Contracting State;
- “ multiple deposit ”, a deposit including several designs;
- “ State of origin of an international deposit ”, the Contracting State in which the applicant has a real and effective industrial or commercial establishment or, if the applicant has such establishments in several Contracting States, the Contracting State which he has indicated in his application; if the applicant does not have such an establishment in any Contracting State, the Contracting State in which he is domiciled; if he has no domicile in a Contracting State, the Contracting State of which he is a national;
- “ State having a novelty examination ”, a Contracting State the national law of which provides for a system which involves a preliminary *ex officio* search and examination by its national office as to the novelty of each deposited design.

Article 3

Nationals of a Contracting State and persons who, without being nationals of a Contracting State, are domiciled or have a real and effective industrial or commercial establishment in a Contracting State, may deposit designs in the International Bureau.

Article 4

(1) International deposit may be made in the International Bureau:

1. directly, or
2. through the intermediary of the national office of a Contracting State if the law of that State so permits.

(2) The national law of any Contracting State may require that international deposits of which it is the State of origin shall be made through its national office. Non-compliance with this requirement shall not affect the effects of the international deposit in the other Contracting States.

Article 5

(1) The international deposit shall consist of an application, one or more photographs or other graphic representations of the design, and payment of the fees prescribed by the Regulations.

(2) The application shall contain:

1. an enumeration of the Contracting States in which the applicant requests the international deposit to be effective;
2. the designation of the article or articles in which it is intended to incorporate the design;
3. if the applicant wishes to claim the priority provided for in Article 9, a statement of the date, the State, and the number of the deposit which gives rise to the right of priority;
4. such other particulars as the Regulations prescribe.

(3) (a) In addition, the application may contain:

1. a short description of characteristic features of the design;
2. a statement as to who is the true creator of the design;
3. a request for deferment of publication as provided for in Article 6 (4).

(b) The application may be accompanied also by samples or models of the article or articles incorporating the design.

(4) A multiple deposit may include several designs intended to be incorporated in articles included in the same class of the

International Design Classification referred to in Article 21 (2), item 4.

Article 6

(1) The International Bureau shall maintain the International Design Register and shall register the international deposits therein.

(2) The international deposit shall be deemed to have been made on the date on which the International Bureau received the application in due form, the fees payable with the application, and the photograph or photographs or other graphic representations of the design, or, if the International Bureau received them on different dates, the last of these dates. The registration shall bear the same date.

(3) (a) For each international deposit, the International Bureau shall publish in a periodical bulletin:

1. reproductions in black and white or, at the request of the applicant, in colour, of the deposited photographs or other graphic representations;
2. the date of the international deposit;
3. the particulars prescribed in the Regulations.

(b) The International Bureau shall send the periodical bulletin to the national offices as soon as possible.

(4) (a) At the request of the applicant, the publication referred to in paragraph (3) (a) shall be deferred for such period as he may request. This period may not exceed twelve months computed from the date of the international deposit. However, if priority is claimed, the starting date of this period shall be the priority date.

(b) At any time during the period referred to in subparagraph (a) the applicant may request immediate publication or may withdraw his deposit. The withdrawal of the deposit may be limited to one or more Contracting States and, in the case of a multiple deposit, to only some of the designs included therein.

(c) If the applicant fails to pay in time the fees payable before the expiration of the period referred to in subparagraph (a),

the International Bureau shall cancel the deposit and shall not effect the publication referred to in paragraph (3) (a).

(d) Until the expiration of the period referred to in subparagraph (a) the International Bureau shall keep in confidence the registration of deposits made subject to deferred publication, and the public shall have no access to any documents or objects concerning such deposits. These provisions apply without limitation in time if the applicant has withdrawn the deposit before the expiration of the said period.

(5) Except as provided in paragraph (4), the Register and all documents and objects filed with the International Bureau shall be open to inspection by the public.

Article 7

(1) (a) A deposit registered in the International Bureau shall have the same effect in each of the Contracting States designated by the applicant in his application as if all the formalities required by the national law for the grant of protection had been complied with by the applicant and as if all administrative acts required to this end had been accomplished by the Administration of such State.

(b) Subject to the provisions of Article 11, the protection of designs the deposit of which has been registered in the International Bureau is governed in each Contracting State by those provisions of the national law which are applicable in that State to designs the protection of which has been claimed on the basis of a national deposit and concerning which all formalities and acts have been complied with and accomplished.

(2) An international deposit shall have no effect in its State of origin if the national law of that State so provides.

Article 8

(1) Notwithstanding the provisions of Article 7, the national office of a Contracting State the national law of which provides that the national office may, on the basis of an administrative ex

officio examination or pursuant to an opposition by a third party, refuse protection, shall, in case of refusal, notify the International Bureau within six months that the design does not meet the requirements of its national law other than the formalities and administrative acts referred to in Article 7 (1). If no such refusal is notified within a period of six months, the effects of the international deposit shall commence in that State as from the date of that deposit. However, in a Contracting State having a novelty examination, the effects of the international deposit, while retaining its priority, shall, if no refusal is notified within six months, commence at the expiration of the six-months period unless the national law provides for an earlier date for deposits made with its national office.

(2) The period of six months referred to in paragraph (1) shall be computed from the date on which the national office receives the issue of the periodical bulletin in which the registration of the international deposit has been published. The national office shall communicate this date to third parties at their request.

(3) The applicant shall have the same means of recourse against the refusal of the national office referred to in paragraph (1) as if he had deposited his design in that national office; in any case, the refusal shall be subject to a request for reexamination or appeal. The notification of such refusal shall indicate:

1. the reasons for which it is found that the design does not meet the requirements of the domestic law;
2. the date referred to in paragraph (2);
3. the time allowed for a request for re-examination or appeal;
4. the authority to which the request or appeal may be addressed.

(4) (a) The national office of a Contracting State the domestic law of which contains provisions of the kind referred to in paragraph (1) and which requires a statement as to who is the true creator of the design or a description of the design, may provide that, upon request and within a period not less than sixty days from the sending of such a request by the said office, the applicant shall file in the language of the application filed with the International Bureau:

1. a statement as to who is the true creator of the design;
2. a short description emphasizing the essential characteristic features of the design as shown by the photographs or other graphic representations.

(b) No fees shall be charged by a national office in connection with the filing of such statements or descriptions or for their possible publication by the national office.

(5) *(a)* Any Contracting State the domestic law of which contains provisions of the kind referred to in paragraph (1) shall notify the International Bureau accordingly.

(b) If a Contracting State has several systems for the protection of designs one of which provides for novelty examination, the provisions of this Agreement concerning States having a novelty examination shall apply only to the said system.

Article 9

If the international deposit of a design is made within six months of the first deposit of the same design in a State member of the International Union for the Protection of Industrial Property, and if priority is claimed for the international deposit, the priority date shall be that of the first deposit.

Article 10

(1) An international deposit may be renewed every five years by paying, during the last year of each period of five years, the renewal fees prescribed by the Regulations.

(2) Subject to the payment of a surtax fixed by the Regulations, a period of grace of six months is granted for the renewal of the international deposit.

(3) At the time of paying the renewal fees, the international deposit number and, if the renewal is not to be effected for all the Contracting States for which the deposit is about to expire, the Contracting States for which the renewal is to be effected, must be indicated.

(4) Renewal may be limited to less than all the designs included in a multiple deposit.

(5) The International Bureau shall record and publish the renewals.

Article 11

(1) (a) The term of protection granted by a Contracting State to a design for which an international deposit has been made shall not be less than:

1. ten years from the date of the international deposit if the deposit was renewed;
2. five years from the date of the international deposit in the absence of renewal.

(b) However, if, according to the provisions of the national law of a Contracting State having a novelty examination, protection starts at a date later than that of the international deposit, the minimum terms provided in subparagraph (a) shall be computed from the date at which protection starts in that State. The fact that the international deposit is not renewed or is renewed only once does not affect the minimum terms of protection thus defined.

(2) If the national law of a Contracting State provides for designs for which a national deposit has been made a protection the duration of which, with or without renewal, is longer than ten years, protection of the same duration shall, on the basis of the international deposit and its renewals, be granted in that State to designs for which an international deposit has been made.

(3) A Contracting State may, by its national law, limit the minimum term of protection of designs for which an international deposit has been made to the terms provided for in paragraph (1).

(4) Subject to the provisions of paragraph (1) (b), the protection in a Contracting State shall terminate at the date of expiration of the international deposit, unless the national law of that State provides that the protection shall continue after the date of expiration of the international deposit.

Article 12

(1) The International Bureau shall record and publish changes affecting the ownership of a design concerning which an international deposit is in effect. It is understood that the transfer of the ownership may be limited to the rights arising out of the international deposit in less than all the Contracting States and, in the case of a multiple deposit, to less than all the designs included therein.

(2) The recording referred to in paragraph (1) shall have the same effect as if it had been made in the national offices of the Contracting States.

Article 13


(1) The owner of an international deposit may, by means of a declaration addressed to the International Bureau, renounce his rights for all or only some of the Contracting States and, in the case of a multiple deposit, for all or some of the designs included therein.

(2) The International Bureau shall record and publish such declarations.

Article 14

(1) No Contracting State may, as a condition of recognition of the right to protection, require that the article incorporating the design bear an indication or mention of the deposit of the design.

(2) If the domestic law of a Contracting State provides for a notice on the article for any other purpose, then such State shall consider such requirements fulfilled if all the articles offered to the public under the authorization of the owner of the rights in the design, or a tag attached to such articles, bear the international design notice.

(3) The international design notice shall consist of the symbol  (a capital D in a circle) accompanied by:

1. the year of the international deposit and the name, or usual abbreviation of the name, of the depositor, or
2. the number of the international deposit.

(4) The mere appearance of the international design notice on the articles or the tags shall in no case be interpreted as implying a waiver of protection by virtue of copyright or otherwise whenever, in the absence of such notice, a claim to such protection can be made.

Article 15

(1) The fees prescribed by the Regulations shall consist of:

1. fees for the International Bureau;
2. fees for the Contracting States designated by the applicant, namely:
 - (a) a fee for each Contracting State;
 - (b) a fee for each Contracting State having a novelty examination and which requires the payment of a fee for such an examination.

(2) Any fees paid for the same deposit for a Contracting State under paragraph (1), item 2. (a), shall be deducted from the amount of the fee referred to in paragraph (1), item 2. (b), if the latter fee becomes payable for the same State.

Article 16

(1) The fees for Contracting States referred to in Article 15 (1), item 2, shall be collected by the International Bureau and paid over annually to the Contracting States designated by the applicant.

(2) (a) Any Contracting State may notify the International Bureau that it waives its right to the supplementary fees referred to in Article 15 (1), item 2. (a), in respect of international deposits of which any other Contracting State making a similar waiver is the State of origin.

(b) It may also make a waiver in respect of international deposits of which it is itself the State of origin.

Article 17

The Regulations shall govern the details concerning the implementation of this Agreement and particularly:

1. the languages and the number of the copies in which the application for deposit must be filed and the data to be supplied in the application;
2. the amount due, date and method of the payment of the fees for the International Bureau and for the States, including the limits of the fee for Contracting States having a novelty examination;
3. the number, size, and other characteristics of the photographs or other graphic representations of each design deposited;
4. the length of the description of characteristic features of the design;
5. the limits of and conditions under which samples or models of the articles incorporating the design may accompany the application;
6. the number of the designs that may be included in a multiple deposit and other conditions governing multiple deposits;
7. all matters relating to the publication and distribution of the periodical bulletin referred to in Article 6 (3) (a), including the number of copies of the bulletin which shall be given free of charge to the national offices, and the number of copies which shall be sold at a reduced price to such offices;
8. the methods of notifying by the Contracting States of any refusal made under Article 8 (1), and the methods of communicating and publishing of such refusals by the International Bureau;
9. the conditions of recording and publication by the International Bureau of changes affecting the ownership of a design referred to in Article 12 (1) and of renunciations referred to in Article 13;
10. the disposal of documents and articles concerning deposits for which the possibility of renewal ceases to exist.

Article 18

The provisions of this Agreement shall not prevent the claiming of the application of possible wider protection resulting from

the national law of a Contracting State, nor shall they affect in any way the protection which is granted to works of art or works of applied art by international copyright treaties or conventions.

Article 19

The fees of the International Bureau for the services provided by the present Agreement shall be fixed in such a manner:

- (a) that their yield covers all the expenses of the International Design Service and all those necessitated by the preparation for and holding of meetings of the International Designs Committee or conferences of revision of the present Agreement;
- (b) that they allow for the maintenance of the reserve fund referred to in Article 20.

Article 20

(1) There is hereby established a reserve fund of two hundred and fifty thousand Swiss Francs. The amount of the reserve fund may be modified by the International Designs Committee referred to in Article 21.

(2) The surplus receipts of the International Design Service shall be credited to the reserve fund.

(3) (a) However, at the time of the coming into force of this Agreement, the reserve fund shall be constituted by each Contracting State paying a sole contribution computed in proportion to the number of units corresponding to the class to which it belongs by virtue of Article 13 (8) of the Paris Convention for the Protection of Industrial Property.

(b) States which become party to the present Agreement after its coming into force shall also pay a sole contribution. This shall be computed according to the principles referred to in the preceding subparagraph in such a manner that all States, whatever the date of their becoming party to the Agreement, pay the same contribution for each unit.

(4) When the amount of the reserve fund exceeds the established ceiling, the surplus shall be periodically distributed among the Contracting States in proportion to the sole contribution of each until the amount of each contribution is reached.

(5) When the sole contributions shall have been fully reimbursed, the International Designs Committee may decide that States subsequently becoming party to the Agreement are not required to pay the sole contribution.

Article 21

(1) There is hereby established an International Designs Committee consisting of representatives of all the Contracting States.

(2) The Committee shall have the following duties and powers:

1. to establish its own rules of procedure;
2. to amend the Regulations;
3. to modify the ceiling of the reserve fund referred to in Article 20;
4. to establish the International Design Classification;
5. to study matters concerning the application and possible revision of the present Agreement;
6. to study all other matters concerning the international protection of designs;
7. to comment on the yearly administrative reports of the International Bureau and to give general directives to the International Bureau concerning the discharge of the duties entrusted to it by virtue of this Agreement;
8. to draw up a statement on the foreseeable expenditure of the International Bureau for each three-year period to come.

(3) The decisions of the Committee shall be taken by a majority of four fifths of its members present or represented and voting in the case of paragraph (2), items 1, 2, 3 and 4, and by a simple majority in all other cases. Abstentions shall not be considered as votes.

(4) The Committee shall be convened by the Director of the International Bureau:

1. at least once every three years;
2. at any time on request of one third of the Contracting States, or, if deemed necessary, at the initiative of the Director of the International Bureau or the Government of the Swiss Confederation.

(5) The travel expenses and subsistence allowances of the members of the Committee shall be borne by their respective Governments.

Article 22

(1) The Regulations may be amended either by the Committee as provided for in Article 21 (2), item 2, or by a written procedure as provided in paragraph (2) below.

(2) In case of written procedure, amendments will be proposed by the Director of the International Bureau in a circular letter addressed to the Government of each Contracting State. The amendments will be considered as adopted if, within one year from their communication, no Contracting State has communicated an objection.

Article 23

(1) This Agreement shall remain open for signature until 31st December, 1961.

(2) It shall be ratified and the instruments of ratification shall be deposited with the Government of the Netherlands.

Article 24

(1) States members of the International Union for the Protection of Industrial Property which do not sign this Agreement may accede thereto.

(2) Such accessions shall be notified through diplomatic channels to the Government of the Swiss Confederation, and by it to the Governments of all Contracting States.

Article 25

(1) Each Contracting State undertakes to provide for the protection of designs and to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Agreement.

(2) At the time a Contracting State deposits its instrument of ratification or accession, it must be in a position under its national law to give effect to the terms of this Agreement.

Article 26

(1) This Agreement shall enter into force one month after the date on which the Government of the Swiss Confederation shall have dispatched a notification to the Contracting States of the deposit of ten instruments of ratification or accession at least four of which being those of States which, at the date of the present Agreement, are not party to the Agreement of 1925 or the Agreement of 1934.

(2) Thereafter, the deposit of the instruments of ratifications and accessions shall be notified to the Contracting States by the Government of the Swiss Confederation. Such ratifications and accessions shall become effective one month after the date of the dispatch of such notification unless, in the case of accession, a later date is indicated in the instrument of accession.

Article 27

Any Contracting State may at any time notify the Government of the Swiss Confederation that this Agreement shall apply also to all or any of the Territories for the international relations of which it is responsible. Thereupon the Government of the Swiss Confederation shall communicate this notification to the Contracting States and the Agreement shall apply to the said Territories at the expiration of one month after the dispatch of the communication by the Government of the Swiss Confederation to the Contracting States unless a later date is indicated in the notification.

Article 28

(1) Any Contracting State may, by notification addressed to the Government of the Swiss Confederation, denounce this Agreement in its own name or on behalf of all or any of the Territories as to which a notification has been given under Article 27. Such notification shall take effect one year after its receipt by the Government of the Swiss Confederation.

(2) Denunciation shall not relieve any Contracting State of its obligations under this Agreement in respect of designs deposited in the International Bureau before the effective date of the denunciation.

Article 29

(1) This Agreement shall be submitted to periodical revision with a view to the improvement of the protection resulting from the international deposit of designs.

(2) Revision conferences shall be called at the request of the International Designs Committee or of not less than half of the Contracting States.

Article 30

(1) Two or more Contracting States may at any time notify the Government of the Swiss Confederation that, subject to the conditions indicated in the notification:

1. a common office has been substituted for their several national offices;
2. they are to be considered as a single State for the purposes of Articles 2 to 17.

(2) This notification shall take effect six months after the date of dispatch of the communication of this notification which shall be made by the Government of the Swiss Confederation to the Contracting States.

Article 31

(1) Only the present Agreement shall be applicable in the mutual relations of States parties to both the present Agreement and the Agreement of 1925, or the Agreement of 1934. However,

such States shall in their mutual relations apply the Agreement of 1925 or the Agreement of 1934, whichever is the case, to designs which were deposited in the International Bureau prior to the date at which the present Agreement became applicable in their mutual relations.

(2) (a) Any State party to both the present Agreement and the Agreement of 1925 shall continue to apply the Agreement of 1925 in its relations to States parties only to the Agreement of 1925, unless it denounced the Agreement of 1925.

(b) Any State party to both the present Agreement and the Agreement of 1934 shall continue to apply the Agreement of 1934 in its relations to States parties only to the Agreement of 1934, unless it denounced the Agreement of 1934.

(3) States parties to the present Agreement only shall not be bound to States which, without being party to the present Agreement, are party to the Agreement of 1934 or the Agreement of 1925.

Article 32

(1) Signature and ratification of, or accession to, the present Agreement by a State party, at the date of this Agreement, to the Agreement of 1925 or the Agreement of 1934, shall be considered as including signature and ratification of, or accession to, the Protocol annexed to the present Agreement, unless such State makes at the time of signing or depositing the instrument of accession an express declaration to the contrary effect.

(2) Any Contracting State having made the declaration referred to in paragraph (1), or any other Contracting State not party to the Agreement of 1925 or the Agreement of 1934, may sign or accede to the Protocol annexed to this Agreement. At the time of signing or depositing its instrument of accession it may declare that it does not consider itself bound by paragraph (2) (a) or (2) (b) of the Protocol; in this case, the other States parties to the Protocol shall be under no obligation to apply the excluded provision in their relations to that State. The provisions of Articles 23 to 28 inclusive, shall apply by analogy.

Article 33

The present Act shall be signed in a single copy which shall be deposited in the archives of the Government of the Netherlands. A certified copy shall be forwarded by the latter to the Government of each State which will have signed the present Agreement or which will have adhered thereto.

In witness whereof the undersigned Plenipotentiaries, having presented their duly recognized full powers, have affixed their signature.

Done at The Hague, the 28th November, 1960.

Protocol

States parties to this Protocol have agreed as follows:

(1) The provisions of this Protocol shall apply to designs which have been deposited internationally and for which one of the States parties to this Protocol is deemed to be the State of origin.

(2) In respect of designs referred to in paragraph (1) above:

- (a) the term of protection granted by States parties to this Protocol to designs referred to in paragraph (1) shall not be less than 15 years from the date provided for in Article 11, paragraph (1) (a) or (b), as the case may be;
- (b) the appearance of a notice on the articles incorporating the designs or on the tags attached thereto shall in no case be required by the States parties to the present Protocol, either for the exercise of rights in their territories arising from the international deposit, or for any other purpose.

In witness whereof, the undersigned duly authorized Plenipotentiaries, have signed the present Protocol.

Done at The Hague, the 28th November, 1960.

Regulations of the Agreement of The Hague concerning the International Deposit of Industrial Designs

of 6th November, 1925,
as revised at London on 2nd June, 1934,
and at The Hague on 28th November, 1960

Rule 1

(1) The application referred to in Article 5 of the Agreement shall be written in English or French on forms distributed by the International Bureau, and it shall be filed in three copies.

(2) The application shall contain:

- (a) the name or the trade name and the address of the applicant; if there is an agent, his name and address; if several addresses are given, the address to which the International Bureau must send its communications;
- (b) the designation of the Contracting State in which the applicant has a real and effective industrial or commercial establishment or, if the applicant has such establishments in several Contracting States, the Contracting State which he indicates as the State of origin of the international deposit; if the applicant does not have such an establishment in any Contracting State, the Contracting State in which he is domiciled; if he has no domicile in a Contracting State, the Contracting State of which he is a national;
- (c) the designation of the article or articles in which it is intended to incorporate the design;
- (d) the list of the documents, and of the samples or models, if any, accompanying the application, and a statement of the amount of fees transmitted to the International Bureau;
- (e) the list of the Contracting States in which the applicant requests the international deposit to be effective;
- (f) if the applicant wishes to claim the priority provided for in Article 9 of the Agreement, a statement of the date, the State,

and the number of the deposit which gives rise to the right of priority;

(g) the signature of the applicant or his agent.

(3) In addition, the application may contain:

(a) a short description of characteristic features of the design, including colours; this description cannot exceed one hundred words;

(b) a statement as to who is the true creator of the design;

(c) a request for publication in colour;

(d) a request for the deferment of the publication under Article 6 (4) (a) of the Agreement.

(4) The application may be accompanied by:

(a) documents supporting the priority claim;

(b) samples or models of the article incorporating the design; such samples or models shall not exceed 30 centimeters (12 inches) in any dimension; articles made from perishable or dangerous materials are not acceptable.

Rule 2

(1) (a) The number of the designs an applicant may include in a multiple deposit shall not exceed:

1. twenty, if he does not request deferment of publication;

2. one hundred, if he requests that publication be deferred according to Article 6 (4) (a) of the Agreement.

(b) Multiple deposits including not more than twenty designs shall hereinafter be referred to as "ordinary multiple deposits", and multiple deposits including more than twenty designs shall hereinafter be referred to as "special multiple deposits".

(2) All designs included in a multiple deposit must be intended to be incorporated in articles included in the same class of the International Design Classification.

(3) Each design included in a multiple deposit must be identified by a different number indicated both in the application and on the photographs or other graphic representations accompanying the application.

(4) The list of the Contracting States in which the applicant requests the international deposit to be effective must be the same for each design included in a multiple deposit.

(5) If the applicant wishes to request the deferment of the publication under Article 6 (4) (a) of the Agreement, he must ask for the same period of deferment in respect of all the designs included in a multiple deposit.

Rule 3

(1) (a) If the applicant wishes that the publication of the registration in the *International Design Gazette* be deferred, he must indicate in his application the period for which he requests such deferment.

(b) The period of deferment may not exceed twelve months computed from the date of the international deposit or, if priority is claimed, from the priority date.

(c) If the applicant does not indicate the period, the International Bureau shall treat the request as if it indicated the maximum permissible period.

(2) At any time during the period of the deferment of the publication, the applicant may, by letter addressed to the International Bureau, request immediate publication. Such request may be limited to one or more Contracting States and, in the case of a multiple deposit, to only some of the designs included therein.

(3) At any time during the period of the deferment of the publication, the applicant may, by letter addressed to the International Bureau, withdraw his deposit. Withdrawal may be limited to one or more Contracting States and, in the case of a multiple deposit, to only some of the designs included therein.

(4) (a) If, before the expiration of the period of deferment, the applicant pays all the required fees referred to in Rule 7, the International Bureau shall proceed to the publication in the *International Design Gazette* immediately after the expiration of the period of deferment.

(b) If the applicant fails to pay the fees provided for in Rule 7 (3), item (b), the International Bureau shall not proceed to the publication and shall cancel the deposit.

Rule 4

(1) For publication in black and white, a photograph or other graphic representation of 9 by 12 centimeters (3½ by 5 inches) shall be attached to each of the three copies of the application.

(2) For publication in colour, one positive transparency ("diapositive" film) and three colour prints thereof, these prints being 9 by 12 centimeters (3½ by 5 inches), shall be attached to the application.

(3) The same design may be photographed or graphically represented from several angles.

Rule 5

(1) When action is taken through an agent, it shall be necessary to file a power of attorney. Formal attestation of the power shall not be required.

(2) Interested parties who, under Article 12 (1) of the Agreement, request the registration of changes affecting the ownership of a design shall furnish to the International Bureau the necessary supporting documents.

Rule 6

(1) Six months before the starting date of each possible renewal period of an international deposit, the International Bureau shall send a reminder to the owner of the deposit, or, if he has an agent whose name appears in the Register, to such agent. Failure to send such notification shall have no legal consequences.

(2) (a) Renewal is effected by the payment, during the last year of the five-year period about to expire, of the international and State renewal fees.

(b) If renewal was not effected during the period prescribed by subparagraph (a), the applicant may, during the period of grace referred to in Article 10 (2) of the Agreement, effect renewal if, in addition to the international and State renewal fees he pays the surtax provided for this purpose. The renewal fees and the surtax must be paid at the same time.

(c) At the time of paying the international and State renewal fees, the international deposit number and, if the renewal is not to be effected for all the Contracting States for which the deposit is about to expire, the Contracting States for which the renewal is to be effected, must be indicated.

Rule 7

(1) The nature and the amounts of the fees are set forth in the schedule of fees attached to the present Regulations and forming part thereof.

(2) For a deposit made without a request for deferred publication, the applicant shall pay at the time of filing:

1. the international basic fee;
2. the international supplemental fee if the deposit is an ordinary multiple deposit; if he makes two, three, four or five ordinary multiple deposits on the same day, he shall pay the international supplemental fee provided for special multiple deposits;
3. the international publication fee;
4. the ordinary State fees;
5. the State novelty examination fees; the ordinary State fee, paid for a State shall be deducted from the novelty examination fee required by the same State.

(3) For a deposit made subject to a request for deferred publication, the applicant shall pay:

(a) at the time of filing:

1. the international basic fee;
2. the ordinary State fees;

(b) before the expiration of the period of the deferment of the publication:

1. the international supplemental fee, in case of a multiple deposit;
2. the international publication fee;
3. the supplemental ordinary State fees, in case of a special multiple deposit;
4. the State novelty examination fees; the ordinary State fee paid for a State shall be deducted from the State novelty examination fee required by the same State.

(4) All fees shall be payable in Swiss Francs.

Rule 8

(1) As soon as the International Bureau has received the application in due form, the fees payable with the application, and the photograph or photographs or other graphic representations of the design, the date of the international deposit and the deposit number shall be written and the seal of the International Bureau shall be stamped on each of the three copies of the application and on each of the photographs or other graphic representations. Each copy of the application shall be signed by the Director of the International Bureau or his representative designated by him for this purpose. One of the copies shall become part of the Register as the official act of registration; another copy shall be returned to the applicant as the certificate of deposit; the third copy shall be loaned by the International Bureau to any national office which may request it.

(2) Refusals referred to in Article 8 of the Agreement, renewals, changes affecting the ownership of a design, changes in the name or address of the owner of the deposit or his agent, declarations of renunciations, withdrawals by virtue of Article 6 (4) (b) of the Agreement, and cancellations by virtue of Article 6 (4) (c) of the Agreement, shall be recorded and published by the International Bureau.

Rule 9

(1) The International Bureau shall publish a periodical entitled "*Bulletin international des dessins ou modèles: International Design Gazette*".

(2) The *Gazette* shall contain, for each registered deposit: reproductions of the deposited photographs or other graphic representations; indication of the date of the international deposit and of the international deposit number; the name or the trade name and the address of the applicant; the designation of the State of origin of the deposit; the designation of the article or articles in which it is intended to incorporate the design; the list of the Contracting States in which the applicant requests the international deposit be effective; indication of the date, the State, and the number of the deposit invoked for the priority right, if such right is claimed; the description of characteristic features of the design if such is contained in the application; the statement as to who is the true creator of the design if such statement is contained in the application; any other necessary data.

(3) Furthermore, the *Gazette* shall contain full information as to the records referred to in Rule 8 (2).

(4) The *Gazette* may contain indexes, statistical data and other general information.

(5) Data concerning particular deposits shall be published in the language in which the application accompanying the deposit was made. General information shall be published in both English and French.

(6) The International Bureau shall, as soon as possible, send to the national office of each Contracting State one free copy of the *Gazette*. Furthermore, each national office shall, upon request, receive not more than five copies free of charge, and not more than ten copies at one third of the regular subscription fee.

Rule 10

Notifications of refusal by national offices referred to in Article 8 (1) of the Agreement shall be sent in three copies to the International Bureau. If the notification was made within the

term provided for in Article 8 (1) and (2) of the Agreement, it shall be communicated to the person shown by the International Register as the owner of the deposit and, if the deposit has been made through the intermediary of a national office, to such office if it so wishes. The fact of such notification, and the later reversal, if any, of the refusal, shall be published in the International Design Gazette. If the notification of refusal was sent after the expiration of the said term, the International Bureau shall call this fact to the attention of the national office which sent said notification.

Rule 11

The International Bureau may dispose of the samples and models referred to in Article 5 (3) (b) of the Agreement, and may destroy the files, five years after the date on which the possibility of renewal ceases to exist or on which the deposit was withdrawn or cancelled, unless the person shown by the International Design Register as the last owner of the deposit has requested that they be returned to him at his expense.

Rule 12

These Regulations shall enter into force simultaneously with the Agreement.

Schedule of Fees

International basic fee:

25 Francs per deposit whether single, ordinary multiple, or special multiple

International supplemental fee:

— in case of ordinary multiple deposit, if deferred publication is not requested:

15 Francs for the second design

10 Francs for the third design

5 Francs for the fourth design

2 Francs per design for the 5th to the 20th design

— in case of an ordinary multiple deposit, if deferred publication is requested:

25 Francs for the first design

15 Francs for the second design

10 Francs for the third design

5 Francs for the fourth design

2 Francs per design for the 5th to the 20th design

— in case of special multiple deposit (which is always with deferred publication):

25 Francs for the first design

15 Francs for the second design

10 Francs for the third design

5 Francs for the fourth design

2 Francs per design for the 5th to the 100th design

International publication fee:

— for publication in black and white:

25 Francs per standard space

— for publication in colour:

100 Francs per standard space

A standard space is a space of 6 by 9 centimeters (2½ by 3½ inches).

A standard space shall not include more than four figures; the figures may show the same design viewed from different angles, or they may relate to different designs.

Ordinary State fee:

— for a single deposit:

5 Francs per designated State

— for an ordinary multiple deposit:

5 Francs per designated State

— for the first 20 designs in a special multiple deposit:

5 Francs per designated State

Supplemental ordinary State fee in case of a special multiple deposit:

2,50 Francs per designated State for each group of 20 designs or fraction thereof, except the first 20 designs

State novelty examination fee:

a fee the amount of which is fixed by the national office of the State having a novelty examination. This fee may exceed neither three fourths of the fee for designs deposited with the national office, nor 50 Francs:

— per group of five designs each in a multiple deposit if the designs within the group (1) are variations of the same design or (2) are the same design applied to different articles;

— per design in all other cases.

If, in the course of the examination, the national office finds that the groups referred to above do not satisfy the said conditions, it shall notify the applicant and shall allow him at least 60 days for the payment of the resulting difference in the fee. On the other hand, if the applicant, after payment of the fee, discovers that he did not take full advantage of the possibility of the grouping referred to above, he may request the national office to reimburse the resulting difference in fees.

International renewal fee:

for a deposit containing one design	50 Francs
for the first design in an ordinary multiple deposit	50 Francs
for each additional design in an ordinary multiple deposit	10 Francs
surtax referred to in Rule 6 (2) (b), per deposit	10 Francs

For the sole purpose of computing the renewal fee, the special multiple deposit shall be divided in deposits containing not more than twenty designs each.

State renewal fee:

for a deposit containing one design:
10 Francs per designated State

— for an ordinary multiple deposit:
10 Francs per designated State

For the sole purpose of computing the renewal fee, the special multiple deposit shall be divided in deposits containing not more than twenty designs each.

For the filing and publication of the description referred to in Rule 1 (3) (a) if it contains from 41 to 100 words 10 Francs

For the recording and publication of changes affecting the ownership of a design, in one or more States, in respect of one design, or more designs contained in the same multiple deposit 25 Francs

For the recording and publication of changes in names or addresses in respect of one design, or more designs contained in the same multiple deposit 5 Francs

For furnishing extracts from the Register or from the file:
15 Francs per page or fraction thereof

For furnishing a copy of the certificate of deposit: 15 Francs

For the furnishing of information concerning the contents of the Register: 15 Francs per hour or fraction thereof required for the furnishing of the information

For a certificate certifying the identity of a photograph, graphic representation, sample or model, furnished by the person requesting the certificate: 10 Francs

Resolution

concerning the constitution of a provisional Committee
in charge of the preparatory work

for establishing the International Design Classification

(1) A Committee of Experts is hereby constituted with the International Bureau. This Committee shall include a representative of each State which signs the Agreement of The Hague con-

cerning the International Deposit of Designs. A representative of any other State member of the International Union for the Protection of Industrial Property may participate in the work of the Committee as observer.

(2) This Committee is charged with the preparation of a proposed International Design Classification.

(3) The International Bureau is charged with the preparatory work for the Committee and with convening it.

(4) The travelling and per diem expenses of the members of the Committee shall be borne by their respective Governments.

(5) On the coming into force of the Agreement, the International Designs Committee provided for in Article 21 of the Agreement shall decide upon the proposals referred to in paragraph (2) above.

Vœu

The Diplomatic Conference for the revision of the Agreement of The Hague for the International Deposit of Industrial Designs meeting at The Hague in November 1960,

Having noted the report of the Committee of Experts on the International Protection of Type Faces which met at Geneva from 18th to 21st July, 1960, and which concluded that the provisions of the draft prepared in 1959 for the revision of the Agreement for the international deposit of industrial designs do not meet the particular requirements of an international protection for typographical designs,

Without expressing any opinion on the merits,

Expresses the wish that the Bureau of the International Union for the Protection of Industrial Property request the Governments of the States members of the Union to comment on the aforementioned report in order that it may be in a position, on the basis of the comments received, to form an opinion as to the possible measures to be taken in consequence of the studies already made.