

in pursuance of the application, in the complete specification, and in the register of patents:

Provided that the mention of any person as inventor under this section shall not confer or derogate from any rights under the patent.

(2) For the purposes of this section the actual deviser of an invention or a part of an invention shall be deemed to be the inventor, notwithstanding that any other person is for any of the other purposes of this Act treated as the true and first inventor, and no person shall be deemed to be the inventor of an invention or a part of an invention by reason only that it was imported by him into the State.

(3) A request that any person shall be mentioned as aforesaid may be made in the prescribed manner by the applicant for the patent or (where the person alleged to be the inventor is not the applicant or one of the applicants) by the applicant and that person.

(4) If any person (other than a person in respect of whom a request in relation to the application in question has been made under the last foregoing subsection) desires to be mentioned as aforesaid, he may make a claim in the prescribed manner in that behalf.

(5) A request or claim under the foregoing provisions of this section must be made not later than two months after the date of the publication of the complete specification, or within such further period (not exceeding one month) as the Controller may, on an application made to him in that behalf before the expiration of the said period of two months and subject to payment of the prescribed fee, allow.

(6) No request or claim under the foregoing provisions of this section shall be entertained if it appears to the Controller that the request or claim is based upon facts which, if proved in the case of an opposition under the provisions of paragraph (a) of subsection (1) of section 19 of this Act by the person in respect of or by whom the request or claim is made, would have entitled him to relief under that section.

(7) Subject to the provisions of the last foregoing subsection, where a claim is made under subsection (4) of this section, the Controller shall give notice of the claim to every applicant for the patent (not being the claimant) and to any other person whom the Controller may consider to be interested, and before deciding upon any request or claim made under subsection (3) or subsection (4) of this section, the Controller shall, if required, hear the person in respect of or by whom the request or claim is made, and in the case of a claim under the said subsection (4), any person to whom notice of the claim has been given as aforesaid.

(8) Where any person has been mentioned as inventor in pursuance of this section, any other person who alleges that he ought not to have been so mentioned may at any time apply to the Controller for a certificate to that effect, and the Controller may, after hearing, if required, any person whom he may consider to be interested, issue such a certificate, and if he does so, he shall rectify the specification and the register accordingly.

(9) An appeal shall lie from any decision of the Controller under this section.

(To be continued)

GENERAL STUDIES

Committee of National Institutes of Patent Agents (CNIPA)

Report on the Draft Convention relating to a European Patent Law

In July 1963 CNIPA made a report (published in *Industrial Property*, November 1963) on the Draft Convention relating to a European Patent Law. Since then there has been an important development in international agreements on patents, namely the signature at Strasbourg on November 27, 1963, of a Convention on the Unification of certain points of substantive law on patents for invention. In addition CNIPA has had the opportunity of considering reports by other interested bodies and further proposals that have been suggested. CNIPA thinks it opportune in these circumstances to make a further brief report.

The ultimate objective of the original concept is the grant of a single patent effective throughout the territories of all the Contracting States, and the abolition of national patent systems. This objective cannot be realized in any foreseeable period of time. It is far better to start modestly, and to have regard to immediate practical considerations. One of these is the fact that the obtaining of an international patent will be very expensive.

Now in all countries there are many people who ask for protection of their ideas in their own countries only at a reasonable cost and by a simple procedure. It is unthinkable that any Government will deprive these people of what they want. It follows that national Patent Offices must be maintained to receive national applications, at any rate for many years to come.

This inevitable conclusion simplifies the problem of accessibility. If national Patent Offices remain to grant national patents, there is no necessity to render an international or European patent, which would ensure protection identical to that to be derived from national patents, accessible to all. Instead a most useful start can be made by a Convention under which residents of the Contracting States can obtain not a single patent but, by means of a single application, prosecution and grant, patents effective in all the Contracting States, or in other words a bundle of patents all in the same form. The matter ceases to be one of principle, raising the question whether the system is contrary to the Paris Convention; it becomes one of mechanism for obtaining patents, but nevertheless something from which much more might grow.

Clearly a single Patent Office cannot grant patents effective in different countries under their national laws unless there is substantial harmony among those laws. It is here that the Unification Convention of Strasbourg is valuable.

¹ Previous reports by CNIPA on the same subject were published in *Industrial Property*, 1962, pp. 18 and 130; 1963, p. 247.

Those countries which ratify it must bring their national laws into agreement with it. If, therefore, the proposed Convention is confined to such countries, or to countries in which the patent law is in agreement with the requirements of the Unification Convention, the grant by the international (or European) Patent Office of what would in effect be national patents would be practical.

Adherence to the proposed Convention should be confined to those countries prepared to accept the European patent as effective in their own territories.

But provision might still be made for association by any other country to allow residents of it to apply to the European Patent Office and so to facilitate the procedure of obtaining patents in a number of countries, with benefits in many ways. It would then be desirable to apply the procedure of association in such manner to ensure that the patent laws of the associating countries contained the provisions required by the Unification Convention. This might very well be useful in bringing about harmonization of the patent laws of the world, which is a most desirable object in itself.

With these proposals it would be possible, as CNIPA suggested in its report of July 1963, for any group of countries that has a common economic system to conclude a special arrangement fostering the aims of this system.

CORRESPONDENCE

(Translation)

Letter from Switzerland

By Edouard PETITPIERRE, Advocate, Lausanne

The last "Letter from Switzerland" was in August, 1960¹⁾.

Since then the general revision of the law relating to trademarks has now entered upon a decisive phase, the Federal Bureau having been officially instructed to prepare a draft Bill.

Further, we cannot refer to the Federal Bureau without mentioning, for the benefit of those persons who might be unaware of the fact, that the Bureau happily achieved its seventy-fifth anniversary on September 20, 1963.

As will be seen, our jurisprudence has not undergone any great changes since the last report was made upon it. The limited space now at our disposal compels us to be selective; but we hope that our report will not be regarded as too incomplete.

Patents

1. — As regards the notion of technical progress in the assessment of novelty, technical progress and inventive step, the Federal Court, on the basis of the Law of 1907, has laid down certain considerations to be taken into account.

In order to determine whether a new invention exists, the Court has declared that it is necessary first to ascertain the state of the art at the date of deposit of the application for the patent at issue.

An anticipation can consist in an earlier realisation or publication which has been ignored or completely forgotten by technicians. Thus, the Law introduces, as regards novelty, a notion of the state of the art which is pure fiction.

This is not the case in the field of technical progress and inventive step. Here, the state of the art is assessed according to the effective knowledge of persons skilled in the art. Account should not be taken of an earlier invention unless it has actually exercised influence upon the development of the art. Consequently if a publication has not been disclosed or has been forgotten, it cannot be taken into account in determining whether the application for a patent at issue constitutes an invention (*Fabrique des montres Vulcain and Studio S. A. v. Enicar S. A.*, November 14, 1961; ATF 87 II 269).

On the question of technical progress, the Federal Court has further ruled as follows:

The success of a new product demonstrates, in general, the existence of sufficient technical progress. On the other hand, it is of small account that certain of its effects have only manifested themselves after the deposit of the application for a patent (*Istituto De Angeli S. p. A., Unipharma S. A. and Dissan S. A. v. J. R. Geigy S. A.*, January 29, 1963; ATF 89 II 156).

As regards inventive step, in particular, our High Court has confirmed its earlier jurisprudence.

An invention implies a creative idea which goes beyond what was within the reach of a well-informed person skilled in the art. In order to assess the existence of an inventive step, the Court has declared that it is necessary to take account of the state of the art, considered in its entirety, as it existed at the time of the first application. Account should be taken of all partial solutions and of all special work which, taken together, constitute the state of the art, and whether a well-informed person, skilled in the art, could, under these conditions, arrive at the invention without undue effort (*Krebs v. Gerätebau Ing. Wagner and Roth & Co. AG*, January 14, 1963; ATF 89 II 108).

2. — It is known that a patent cannot be asserted against a person who, in good faith, and at the moment of deposit of the application, was making professional use of the invention in Switzerland, or who had made special preparations to this end.

For the right of concurrent exploitation to exist, the Federal Court has declared that it is first of all necessary for there to be a "perfected" invention (*fertige Erfindung*). Only a person having all necessary knowledge for carrying out the invention can claim such a right. It is not sufficient to have made trials designed to find a solution to the problem at issue.

The "special preparations" are not only those which have been specially undertaken for the purpose of carrying out the invention. The right of concurrent exploitation can

¹⁾ See *La Propriété industrielle*, 1960, p. 154.