



**MODEL LAW
FOR DEVELOPING
COUNTRIES ON
INDUSTRIAL DESIGNS**



WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)
and the
UNITED INTERNATIONAL BUREAUX FOR
THE PROTECTION OF INTELLECTUAL PROPERTY
(BIRPI)

**MODEL LAW
FOR DEVELOPING COUNTRIES
ON INDUSTRIAL DESIGNS**

GENEVA
1970

WIPO PUBLICATION
No. 808 (E)
Price: 12 Swiss francs
or US \$ 3.00

Cover page designed by: R. Freiburghaus (Geneva, Switzerland)

As part of its program of legal-technical assistance for developing countries, the United International Bureaux for the Protection of Intellectual Property (BIRPI) has undertaken to draw up a series of model laws for developing countries in the various fields of industrial property. This task now devolves upon the World Intellectual Property Organization (WIPO). With the coming into force of the Convention establishing it in April 1970, WIPO has gradually been replacing BIRPI since April 1970, and will serve as the framework for the intensification of this legal-technical assistance.

Of the two earlier model laws, one deals with inventions and the other with marks, trade names and acts of unfair competition; the present Model Law is devoted to industrial designs.

Industrial designs are of great importance in the manufacture of numerous products. They give the products an aesthetic aspect and are thus a specific element in their value. The legal protection of such creations is in the interest of all countries, as it tends to encourage creativity and assists the establishment of industries.

Like its predecessors, the present Model Law was drawn up with the assistance of a Committee of Experts from developing countries, and with the special conditions and needs of these countries in mind. It is hoped that it will be of help to them in their progress towards industrialization and economic development.

G. H. C. BODENHAUSEN
Director of BIRPI

Geneva, May 1970

CONTENTS

	Page
HISTORY OF THE MODEL LAW	9
TEXT AND COMMENTARY OF THE MODEL LAW.	13
Guiding Principles of the Model Law	13
Structure of the Model Law	14
Chapter I: <i>General Provisions</i>	15
Section 1: Scope of This Law	15
Section 2: Definition of an Industrial Design	16
Section 3: Substantive Conditions for Protection	18
Section 4: Definition of Novelty	19
Section 5: Applicability of International Conventions	20
Section 6: Rights of Foreigners	22
Chapter II: <i>Right to Legal Protection</i>	22
Section 7: Right to Legal Protection	23
Section 8: Usurpation	24
Section 9: Industrial Designs Created Pursuant to a Commission or by an Employee	25
Section 10: Right of the Creator of an Industrial Design to be Mentioned as Such	26
Chapter III: <i>Procedure for Registration</i>	27
Section 11: Requirements of Application	29
Section 12: Right of Priority	31
Section 13: Payment of Fees	32
Section 14: Examination of Application	33
Section 15: Alternative A: Registration of Industrial Design without Examination of Application as to Substance	34
Alternative B: Registration of Industrial Design after Opportunity for Opposition	35
Alternative C: Registration of Industrial Design after Examination of Application as to Substance	37
Section 16: Contents of Register and Issuance of Certificate	38
Section 17: Alternative A: Publication of Registered Industrial Designs; Consultation of Register	39
Alternative B: Publication of Registered Industrial Designs; Consultation of Register	42
Section 18: Appeals	42

	Page
Chapter IV: Duration and Renewal of Registrations of Industrial Designs	44
Section 19: Duration of Registration	44
Section 20: Renewal	44
Chapter V: Rights Conferred by Registration of an Industrial Design	46
Section 21: Rights Conferred by Registration	46
Section 22: Limitation of Rights Conferred by Registration	47
Chapter VI: Assignment and Transfer of Applications and Registrations; Joint Ownership of Rights Conferred by Registration	48
Section 23: Assignment and Transfer of Applications and Registrations	48
Section 24: Joint Ownership of Rights Conferred by Registration	49
Chapter VII: License Contracts	50
Section 25: License Contracts	52
Section 26: Invalid Clauses in License Contracts	53
Section 27: Right of Licensor to Grant Further Licenses	54
Section 28: Rights of Licensee	55
Section 29: Non-Assignability of Licenses	56
Section 30: License Contracts Involving Payments Abroad	56
Section 31: Effects of Nullity of Registration on License Contract	56
Chapter VIII: Renunciation and Nullity	57
Section 32: Renunciation of Registration	57
Section 33: Nullity of Registration	58
Section 34: Effects of Declaration of Nullity	59
Chapter IX: Infringement of Rights Conferred by Registration of an Industrial Design	60
Section 35: Civil Sanctions	60
Section 36: Penal Sanctions	61
Section 37: Legal Proceedings by Licensee	61
Chapter X: Procedural Provisions and Rules	62
Section 38: Competence of Courts	62
Section 39: Rules	63
TEXT OF THE MODEL LAW	67
LIST OF PARTICIPANTS OF THE MODEL LAW COMMITTEE	85

HISTORY OF THE MODEL LAW

HISTORY OF THE MODEL LAW

In 1964, the United International Bureau for the Protection of Intellectual Property (BIRPI) prepared a draft model law on inventions for developing countries (patents and protection of technical know-how). After detailed discussions by a committee of experts from developing countries, the draft was revised and published in 1965 under the title *Model Law for Developing Countries on Inventions*. In 1966, BIRPI drew up a second model law on marks, trade names and acts of unfair competition, which was published in 1967 after detailed discussions by a committee of experts from developing countries.

From the exchange of views during the preparation of these model laws, it became apparent that developing countries were interested in modernizing their legislation, not only in the field of patents, marks, trade names and unfair competition, but also in that of industrial designs. Satisfaction was therefore expressed by the committees of experts referred to above at a proposal by BIRPI to prepare a model law on industrial designs. This proposal was again approved, in September 1968, by the Interunion Coordination Committee, which advises on BIRPI's activities.

BIRPI accordingly prepared, in 1969, the draft of a third model law for developing countries, this time on industrial designs. This draft Model Law, with a Commentary attached,¹ was sent for study and possible observations to the Governments of 84 countries which, on the criteria adopted by United Nations bodies, were considered as "developing countries" and which were presumed to be interested in such a model law².

The draft was also transmitted for observations to the Governments of the States members of the International (Paris) Union for the Protection of Industrial Property which were not mentioned in the list of 84 countries. It was also communicated to the United Nations and to a number of other intergovernmental and international non-governmental organizations.

The draft was then examined by a committee of experts, invited by BIRPI, which met at the BIRPI headquarters in Geneva, in October 1969. This committee, hereinafter referred to as "the Third Model Law Committee," in order to distinguish it from the committees which advised on the first and second model laws (the Model Law on Inventions and the Model Law on Marks, Trade Names and Acts of Unfair Competition) consisted of representatives from the following 20 countries, all of them "developing" according to United Nations criteria: Algeria, Bolivia, Ceylon, Chile, Colombia, Congo (Democratic Republic), Costa Rica, Ghana, India, Liberia, Mexico, Pakistan, Philippines, Sierra Leone, Sudan, Thailand, Tunisia, Uganda, United Arab Republic, Venezuela. The United Nations and other intergovernmental and international non-governmental organizations were invited to send observers to the meeting of the Third Model Law Committee and these observers took an active part in the discussions.

¹ Documents PJ/69/2 and 3.

² These countries were:

Asia : Afghanistan, Burma, Cambodia, Ceylon, China (Republic of), India, Indonesia, Iran, Iraq, Jordan, Korea, Kuwait, Laos, Lebanon, Malaysia, Maldives Islands, Mongolia, Nepal, Pakistan, Philippines, Qatar, Saudi Arabia, Singapore, South Yemen, Syrian Arab Republic, Thailand, Trucial Oman, Viet-Nam, Yemen.

Africa : Algeria, Botswana, Burundi, Congo (Democratic Republic), Equatorial Guinea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Malawi, Mali, Morocco, Nigeria, Rwanda, Sierra Leone, Swaziland, Sudan, Swaziland, Tanzania, Tunisia, Uganda, United Arab Republic, Zambia.

America : Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, Venezuela, West Indies.

Others : Cyprus, Malta, Western Samoa.

The States members of the African and Malagasy Industrial Property Office do not appear in this list of 84 countries, since they have already adapted a uniform law in respect of industrial designs. It is to that Office that the draft Model Law was submitted.

The list of participants appears on page 85.

The Third Model Law Committee examined the BIRPI draft, section by section, and recommended amendments to the text of the Model Law and to the accompanying commentaries.

Throughout the discussions, it was emphasized that the text was a *model* and *not* the draft of a *uniform* law. It was frequently stated that any country wishing to have a new law on industrial designs was entirely free to decide whether or not to follow the Model Law, and that it would be only natural for it to adapt some of the provisions to its own special needs, traditions and legal system.

At its final session, on October 29, 1969, the Third Model Law Committee adopted the following recommendation:

“The Committee of Experts on a Model Law for Developing Countries on Industrial Designs, convened by the United International Bureaux for the Protection of Intellectual Property (BIRPI) and composed exclusively of representatives of Governments of developing countries,

Having met at Geneva from October 27 to 29, 1969,

Having examined, together with the observers of intergovernmental and international non-governmental organizations, the draft model law and the commentary accompanying it (documents PJ/69/2 and 3), prepared by BIRPI,

Expresses the view that the draft as a whole reflects the special needs of developing countries and represents a useful model for legislation in these countries;

Recommends that the model law and the commentary, as revised on the basis of the discussions of the Committee, be transmitted to the Governments of developing countries, to the Governments of the States members of the International Union for the Protection of Industrial Property (if not already falling into the preceding category), to the Secretary-General of the United Nations, and to the other international organizations invited to the meeting;

Recommends further that BIRPI should continue to keep in touch with the Governments of developing countries and with all international organizations, conferences or other bodies which deal with the problems of developing countries, and to offer to them its assistance in connection with the adaptation or adoption of legislation in the field of industrial designs and, more generally, in the evaluation of the role that industrial property and its protection play in the fostering of commerce and industry in developing countries;

Notes with satisfaction that BIRPI plans to establish a draft model law for developing countries on the protection of appellations of origin and to submit such draft for advice and review to a committee of experts of developing countries;

And, in view of the important role which the Paris Convention for the Protection of Industrial Property, the Union established by it and its International Bureau (BIRPI) can play in the commercial development and industrialization of developing countries,

And further, in view of the desirability of aiming at greater uniformity in the laws relating to industrial property.

Recommends that the developing countries which are not yet party to the Paris Convention consider acceding thereto.”

BIRPI implemented the first recommendation.

It is fully prepared also to carry out the second recommendation, as it continues to be at the disposal of the Governments of developing countries, and of international organizations, for all the purposes mentioned in that recommendation.

As to the third recommendation, BIRPI hopes that it will be implemented by the countries to which it is addressed: BIRPI's relations with these countries will then become permanent and more fruitful.

**TEXT AND COMMENTARY
OF THE MODEL LAW**

TEXT AND COMMENTARY OF THE MODEL LAW FOR DEVELOPING COUNTRIES ON INDUSTRIAL DESIGNS

GUIDING PRINCIPLES OF THE MODEL LAW

Industrial designs, the subject of this Model Law, form a special branch of industrial property.

As distinct from patents, which cover creations of a technical character, industrial designs belong to the aesthetic field, but are at the same time intended to serve as patterns for the manufacture of products of industry or handicraft.

As aesthetic creations, industrial designs can, under certain conditions, enjoy the protection of copyright. But because of their particular function, many countries have made industrial designs subject to special legislation, which places them under the law of industrial property and, by the system of registration, provides for the special needs arising from their use in industry or handicraft.

Like these national legal systems, the Paris Convention for the Protection of Industrial Property, in Article 1, paragraph (2), regards industrial designs as falling within the field of industrial property. Moreover, Article 5quinquies of that Convention stipulates that the countries members of the Paris Union are under an obligation to protect industrial designs.

The protection of industrial designs is of special importance for developing countries, since the majority of these countries are extremely rich in traditional art and folklore, which stimulates creations of local craftsmanship.

Such creations are covered by the present Model Law, for the expression "industrial" must be understood, in a broad sense, to include industry and handicraft.

The legal protection of industrial designs thus tends to stimulate creative activity and encourages the establishment of industries.

In addition, the modernization of national laws on industrial designs could contribute to a certain unification of law, and interested countries would be in a position to consider merging their competent administrations. A merging of this kind would reduce the administrative costs borne by each State and would make it easier for creators of industrial designs to obtain legal protection.

The Model Law on Industrial Designs follows, to a large extent, the principles upon which the two earlier model laws were based, whilst paying due regard to the special characteristics of the subject. It can probably be anticipated that certain countries will wish to use all three model laws to modernize their legal systems. In that event, a large number of the provisions, especially those governing licensing, procedure before the Courts, and the sanctions for infringement of the various rights, will have to be the same, since they will often be simultaneously relevant to industrial designs, patents and marks.

Nevertheless, the Third Model Law Committee, which formulated its views independently, has, on some points—basically similar to those dealt with in the earlier model laws—recommended slightly different solutions, in the belief that they represent improvements. Countries wishing to adopt all three model laws or to adapt them to their needs will be able to recognize the extent of these differences.

Despite the differences, the three model laws follow parallel paths, for their essential objectives are the same: on the one hand, to establish adequate protection in the different fields of industrial property, a protection which is in the interest of the industrial and commercial development of the country, and, on the other, to safeguard the special interests of developing countries. In the Model Law on Industrial Designs, these special interests are taken into account mainly in the detailed provisions relating to license contracts. Among these rules must be mentioned, in particular, the rule which provides for the possibility of government control of all license contracts involving payment of royalties abroad; this may be necessary to protect the national interest against excessive foreign influence and at the same time to preserve the national balance of payments. The owner of an industrial design is also prohibited from imposing upon a licensee restrictions which do not derive from the exclusive rights conferred by the registration of the industrial design, or which are not necessary for the safeguarding of these rights.

As in the case of the other two model laws, the Model Law on Industrial Designs constitutes an integral whole. This means that the modification of one provision, during the adoption of the Model Law to the special conditions of a country, will in most cases also require the modification of other provisions. Moreover, it may be necessary, during the adoption, to add several complementary provisions, especially as regards entry into force and transitional rights.

The Model Law cannot, however, regulate the subject exhaustively; each State will have to establish complementary rules which will, among other things, prescribe the details of administrative formalities and fees.

Finally, attention must be drawn to the Hague Agreement of 1925 concerning the International Deposit of Industrial Designs.¹ The provisions of this Agreement do not coincide in all respects with those of the present Model Law. But countries wishing to adopt both the Model Law and the Agreement can easily take the necessary steps for harmonization.

STRUCTURE OF THE MODEL LAW

The Model Law contains ten Chapters, which deal with the following subjects:

Chapter I (Sections 1 to 6): general provisions containing certain definitions and laying down the conditions for protection, the principles of the application of international conventions and the rights of foreigners.

Chapter II (Sections 7 to 10): the right to legal protection, in other words, the question who is entitled to register the industrial design—particularly relevant in the case of industrial designs created in the course of employment.

Chapter III (Sections 11 to 18): procedure for registration.

Chapter IV (Sections 19 and 20): duration and renewal of registrations of industrial designs.

Chapter V (Sections 21 and 22): rights conferred by registration of an industrial design.

Chapter VI (Sections 23 and 24): assignment and transfer of applications and registrations; joint ownership or rights conferred by registration.

Chapter VII (Sections 25 to 31): license contracts.

Chapter VIII (Sections 32 to 34): renunciation and nullity.

Chapter IX (Sections 35 to 37): infringement of rights conferred by registration of an industrial design.

Chapter X (Sections 38 and 39): procedural provisions and rules.

¹ The Hague Agreement was revised at London in 1934. A revision effected in 1960 at The Hague is not yet in force. An Additional Act was signed at Monaco in 1961, and is in force. A Complementary Act was signed at Stockholm in 1967.

CHAPTER I: GENERAL PROVISIONS

The General Provisions of the Model Law deal with the scope of the Law, with certain definitions, the conditions for protection, the application of international conventions, and the rights of foreigners.

TEXT

COMMENTARY

Section 1: Scope of This Law

(1) Industrial designs are protected under this Law, subject to its conditions and formal requirements.

(2) Such protection does not exclude any other rights provided for in the law, in particular rights derived from the law of copyright.

This Section lays down two general principles of the Model Law.

Subsection (1) makes protection under the special Law on industrial designs dependent upon compliance with the conditions and formal requirements prescribed in the Law, especially the requirement for *registration*.

The Third Model Law Committee discussed whether Section 1 should define the persons who qualify for legal protection—namely the creator of an industrial design, his successor in title, a person who commissioned the work, and an employer. However, such a definition is not necessary in the context of the Section, for the question is regulated in Chapter II, dealing with the right to legal protection.

Subsection (2) establishes the principle of *cumulative protection*: an industrial design which is or has been protected under this Law may, nevertheless, be protected under a different branch of law, particularly the law of copyright. This principle, which was unanimously adopted by the Third Model Law Committee, is of considerable practical importance. Since industrial designs are creations of an aesthetic character, it can happen that objects qualifying for protection under the law of industrial designs might equally well receive protection from the law of copyright. In such an event, the special purpose of a design, that of serving as a pattern for the manufacture of a product of industry or handicraft, does not preclude the application of the law of copyright. In general, copyright protection is of longer duration. Thus, it is possible, after the expiration of protection under the law of industrial designs, for an industrial design to continue to be protected by the law of copyright.

In view of this cumulation of rights with those under copyright, one might question the practical advantage of having a special law on industrial designs.

The advantage is threefold:

(1) If the law of copyright is strictly interpreted, so as only to protect works of a certain artistic level, it will not cover all creations of an aesthetic order constituting industrial designs; some creations will only qualify for protection under the law of industrial designs.

(2) The registration provided by the law of industrial designs facilitates proof of novelty (Section 4) and creates a legal presumption as to the creator of the industrial design (Section 7(3)), thereby responding to the practical needs of industry and handicraft.

(3) The protection conferred by registration of an industrial design goes beyond that which is generally admitted in respect of copyright, in that it does not require knowledge of an imitated or infringed object.

In any event, it is important to note that the cumulation of protection does not affect the conditions of entitlement to the corresponding rights. This means that the rights arise and develop independently. For example, if the creator of an industrial design publishes his creation prior to filing an application, then, due to lack of novelty (Section 4(2)), he will no longer have any right to protection under the law of industrial designs; but he will not be precluded from protection under the law of copyright.

Section 2: Definition of an Industrial Design

(1) Any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors, is deemed to be an industrial design, provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft.

(2) The protection under this Law does not extend to anything in an industrial design which serves solely to obtain a technical result.

The definition of an industrial design in *subsection (1)* corresponds somewhat closely to that contained in Article 1 of the Algerian Ordinance No. 66-68 of April 28, 1966, relating to industrial designs.

It is to be noted that the Algerian law, like most laws in the French language, distinguishes between "designs" (*dessins*) and "models" (*modèles*) on the basis that designs are in two dimensions whereas "models" are in three dimensions. However, this distinction has no legal significance. The French words "*dessins et modèles*" are, as in the Paris Convention, translated in the Model Law by the single English word "design."

The definition must be understood in a broad sense: everything which gives rise, in the appearance of a product, to an aesthetic impression can constitute an industrial design. Thus, the definition also comprises *external effects* resulting from the employment of certain processes, such as oxi-

dation, singeing, enameling, light effects, transparency, etc., or where textile materials are concerned, effects suggesting stone-graining, marbling, water-marking, mottling, etc. A concrete aspect must always be involved; a manufacturing method or an idea relating to fashion is not protected.

The Third Model Law Committee discussed whether the definition ought to include a condition that only what can be *judged solely by the eye* may qualify as an industrial design. This condition is nevertheless already present in that the industrial design must give a special appearance to a product of industry or handicraft. The word "appearance" means that only the external aspect, capable of visual appreciation, can be protected. If, for example, a manufacturer of chocolate wishes to protect his products against imitation, the law on industrial designs covers only the external aspect of the chocolate (for example, chocolate in the shape of an animal), but not the contents or flavor.

An important element of the definition resides in the function of an industrial design: it must be capable of *serving as a pattern for the manufacture* of a product of industry or handicraft. This condition takes account of the fact that the law of industrial designs must respond to the special needs of industry and handicraft. Only creations that can be used for these purposes are thus eligible for protection under this law.

Subsection (2) excludes from protection elements in a design which, although within the definition of subsection (1), are indispensable to the obtaining of a *technical result*. Such elements are within the domain of patent law and are outside the protection under the law of industrial designs. In this context, the expression "technical result" is used in a broad sense and does not only cover objects which are patentable.

A situation of this kind can arise more frequently in the case of a three-dimensional rather than a two-dimensional industrial design. It must, however, be noted that the exception in subsection (2) is only applicable in so far as there is an inseverable link between the form claimed and the elements bringing about the technical result sought. If the form is not necessary for obtaining the technical result, there can be co-existence of an industrial design and a patent.

For example, a new form of shoe may have a specially reinforced heel. Here, the form of the whole shoe may be protected as an industrial design, and the method of reinforcement of the heel can be treated as irrelevant for this purpose, though it may be the subject of a patent. But if the special form of the shoe serves solely to reinforce the heel,

it will not be covered by the law of industrial designs.

The Third Model Law Committee considered whether the words "functional effect" should be used instead of "technical effect." This proposal was not adopted: the phrase "functional effect" is too broad, in that it can also include the aesthetic function, and, at the same time, too narrow in that it does not extend to technical effects falling outside the use of the object embodying the industrial design, but bearing upon its production—for example, where a certain form has been chosen solely for the purpose of facilitating manufacture.

Section 3: Substantive Conditions for Protection

(1) Only industrial designs that are new shall benefit from protection under this Law.

(2) Industrial designs that are contrary to public order or morality shall not be protected.

Subsection (1) provides that, in order to qualify for protection, an industrial design must be new. Section 4 defines the notion of novelty.

Subsection (2) provides that industrial designs contrary to morality (for example obscene pictures or forms) or to public order (the emblem of a public authority or of a prohibited political party) are excluded from protection. Industrial designs likely to offend against religious feelings may also belong to this category (for example, religious symbols, representations of the Divinity or of persons held sacred by a religion).

As distinct from the condition of novelty, which is examined prior to registration by the Industrial Designs Office only if the country adopts Alternative B (examination in case of opposition) or Alternative C (ex-officio examination) of Section 15, the Office, under Section 14, always checks to see that there are no grounds for exclusion under subsection (2) above, since industrial designs contrary to public order or morality must not be registered. If, nevertheless, such a design is registered, the registration will not be valid and a Court can declare it null and void.

There is no express provision in the Law requiring, as a constituent element, that an industrial design should be out of the commonplace and represent an aesthetic idea. Such a condition nevertheless emerges from the wording of Section 2, which requires the industrial design to give a special appearance to a product. It is, moreover, most improbable that a commonplace form will be novel.

Section 4: Definition of Novelty

(1) A regular application for registration of an industrial design shall raise a presumption that the design was new at the time of the application.

(2) An industrial design shall not be new if, before the date of application for registration or before the priority date validly claimed in respect thereof, it has been made available to the public, anywhere and at any time whatever, through description or use, or in any other way.

(3) An industrial design shall not be deemed to have been made available to the public solely by reason of the fact that, within the period of six months preceding the filing of an application for registration, it has appeared in an official or officially recognized international exhibition.

(4) An industrial design shall not be new solely by reason of the fact that it differs from earlier embodiments in minor respects or that it concerns a type of product different from the said embodiments.

In respect of novelty, *subsection (1)* establishes a presumption in favor of the applicant for registration of an industrial design, provided the application has been made in accordance with Sections 11 and 13. This presumption is important where the registered owner brings legal proceedings against a user of the same industrial design. It will be for the defendant to prove that the applicant's design was not new at the time of application. The presumption may also play a part in the event of opposition under Section 15, Alternative B, or of an appeal by the applicant, under Section 18, against a refusal of registration based upon lack of novelty (in the case of examination as to substance under Section 15, Alternative C).

Subsection (2) lays down the way in which the presumption of *subsection (1)* may be rebutted: the opponent of the registered owner must prove that the design was made available to the public before the date of application or before the validly-claimed date of priority.

The Third Model Law Committee decided in favor of *absolute novelty*, that is, without any limitation as to the time or place or as to the means by which a prior creation was made available to the public. It expressed the opinion, however, that other solutions could be equally envisaged. The principle of absolute novelty means that even prior creations made available in a distant country, or long before the application for registration of the industrial design, must be taken into consideration. To temper this principle, limitations as to time could be prescribed (50 years before the application, for example) and as to space (for example, the territory of a country), or as to the means by which the prior creation was made available to the public (for example, by only considering as disclosed, designs published as the result of an application in the country or enjoying *de facto* notoriety in the industrial or business circles of that country).

Or instead, the law might also allow an applicant to prove, as a defense against a prior creation, that he could not have been aware of the earlier disclosure. If this solution were adopted, a further provision giving any third person who had used the industrial design in good faith, before the date of application, the right to continue such use, would be desirable.

To constitute a prior creation referred to in *subsection (2)*, it is not necessary for an industrial design in its strict sense to be involved. The prior

creation can consist of a work of art or of a form found in nature or in the public domain, that is, forms which have become available to all.

Where an industrial design has been applied for but not published, a subsequent application for the same design will not be precluded for lack of novelty; but the first application will have a right of priority under Section 7 (1) and (3), and the ultimate registration of the later application may be refused or, if accepted, contested on the ground of nullity in accordance with Section 33.

The rule that an industrial design made available to the public is no longer protected under the law of industrial designs, is of course also applicable in the case where it is the actual person entitled to legal protection (see Chapter II) who has made it available prior to the application (except in the case of exhibitions provided for in subsection (3)). The person entitled to legal protection has therefore an interest in applying for registration of the industrial design as early as possible, in order not to lose the protection under the law of industrial designs. (Protection under the law of copyright is not however forfeited in these circumstances.)

Subsection (3) deals with the case of an industrial design exhibited at a public exhibition. The industrial design will not, for this reason alone, be deemed to have been made available to the public, provided that the exhibition was official or officially recognized and the industrial design was exhibited in the six months preceding the date of application.

Under *subsection (4)*, prior creations precluding novelty (see subsection (2)) are not restricted to those which are identical to the design or which concern only the same kind of products. Minor differences of appearance, or use for another kind of product, do not constitute a sufficient factor of novelty. However, the accent, in this context, is on the word "minor." Objects which are only similar in form should not be taken into account. Otherwise, it would be almost impossible to create anything new.

Section 5: Applicability of International Conventions

The relevant provisions of international bilateral or multilateral conventions to which [the country] is or will become a party, which regulate the rights of nationals of States parties to such conventions and of persons

This Section deals with the application of international conventions, in the country adopting the Model Law, to its own nationals and to persons assimilated to them, as well as to nationals of the other States parties to the conventions and to persons assimilated to such nationals.

assimilated to such nationals, shall be applicable by virtue of this Law.

As to the suitability of this Section for the various legal systems, countries may be divided into two groups.

Countries belonging to one of these groups have Constitutions or constitutional systems which permit their administrative and judicial authorities to apply to the interested parties the provisions of international conventions, drafted in a way which makes such direct application possible ("self-executing provisions"). In some countries, this system of direct applicability is provided for by the Constitution; in others, a convention is only directly applicable if a law expressly so provides.

Countries belonging to the other of these two groups do not have such a system of direct applicability. In these countries, the provisions of an international convention bind only the State and, in order to become applicable to private parties, they must be reproduced in a domestic law.

The Section under consideration, which is identical with Section 6 of the Model Law on Inventions and Section 2 of the Model Law on Marks, Trade Names and Acts of Unfair Competition, was inserted for the use of countries belonging to the first group.

The effect of the Section, in these countries, is that all provisions of international conventions dealing with industrial property to which the country is a party, whether these conventions be bilateral or multilateral—and, among the latter, particularly the 1883 Paris Convention for the Protection of Industrial Property—will become applicable in that country without the need for any additional measures. In respect of the Paris Convention, this means that persons eligible for protection under that Convention (see Articles 2 and 3) will have the right to invoke, within these countries, all provisions of the Convention which are directly applicable (self-executing) on the basis of Section 5 of the Model Law.

Another effect of Section 5, in respect of these countries, consists in the fact that even their own nationals, and persons assimilated to them, will be able to invoke the self-executing provisions of a convention, and especially those of the Paris Convention.

As far as the countries of the first group are concerned, whose Constitutions already provide for direct applicability of conventions also to their own nationals, adoption of the Section under consideration is unnecessary, since the effects referred to in the preceding paragraphs are already produced by the national Constitutions themselves.

On the other hand, for the countries in the second group, the Section under consideration is

without interest and can be omitted since their Constitutions exclude direct applicability of international conventions. These countries would have to reproduce the relevant provisions of the convention in the Law under consideration, or in an annex, and declare their applicability on the domestic level.

Section 6: Rights of Foreigners

Foreigners who do not fall within the scope of the preceding Section shall have the same rights as nationals, unless the Minister responsible for industrial property shall have, by order, suspended the application of this provision so far as it relates to the nationals of a country, and persons assimilated to them, on the ground that that country does not grant adequate reciprocity.

This Section, which is similar to Section 7 of the Model Law on Inventions, deals with the rights of foreigners not covered by international conventions.

As a rule, such foreigners may benefit from the provisions of the Law. However, this advantage may be suspended when sufficient reciprocity is lacking.

CHAPTER II: RIGHT TO LEGAL PROTECTION

Chapter II of the Model Law, which is to a large extent similar to the second chapter of the Model Law on Inventions, deals with the question of who has the right to legal protection for an industrial design—whether it is only the creator of the industrial design or whether, in some cases, another person (for example, an employer) has the right. The Law gives the following answer:

In principle, it is the creator, or his successor in title who has the right to legal protection (Section 7 (1) and (2)). However, the person who was the first to file an application for the registration of an industrial design (or who was the first validly to claim the earliest priority for his application) is—except in the cases referred to in Sections 8 and 9—deemed to be the creator or his successor in title even if, in fact, he is not (Section 7 (3)). The reasons for this provision are explained below.

In any case, the Model Law protects the “moral right” of the creator: he is always entitled to ask to be mentioned as such—as the creator—in the registration. (Section 10).

All these provisions apply also when there are several creators, successors in title or applicants.

The system adopted in the Model Law, which is particularly relevant in the second Chapter, is the system of exclusive rights: the registered owner is, on registration, entitled to preclude third parties from exploiting the industrial design.

Side by side with this system, a system of *authors' certificates* could be provided for, such as exists in the Soviet Union and in other socialist countries of Eastern Europe. The Third Model Law Committee felt that this possibility should be mentioned in the Commentary on the Model Law, as an alternative.

Countries interested would be able to adopt, side by side with the provisions of the present Model Law, a complementary provision under which the creator or his successor in title may, at his option, acquire for an industrial design complying with Sections 2, 3 and 4 of the Model Law either an exclusive right or an author's certificate. The owner of an author's certificate does not have the right to exploit the industrial design or to grant licenses to third parties: these rights belong to the State. The State is, however, under an obligation to exploit the industrial design, in so far as it is capable of economic exploitation, and to compensate the owner of the author's certificate.

The provisions of Sections 1 to 8, 10 to 12, 14 to 18, 23, 33, 34, 38 and 39 are applicable, by analogy, to the issuance of authors' certificates. The provisions relating to industrial designs created pursuant to a commission or by an employee (Section 9), the payment of fees (Section 13), the duration and renewal of registrations (Chapter IV), exclusive rights (Chapter V), joint ownership (Section 24), license contracts (Chapter VII), renunciation (Section 32) and the infringement of rights (Chapter IX) are not applicable.

This summary description is merely an outline upon which a system of authors' certificates could be built. In any case, although authors' certificates may in some countries, for economic reasons, be more advantageous to national creators than exclusive rights, they would rarely have much attraction for foreign creators. Since one of the objects of the law of industrial designs is industrialization, a country needs to attract industrial designs created by foreigners, as well as foreign investment. Moreover the option of acquiring exclusive rights should always be open even in countries which provide for authors' certificates.

Section 7: Right to Legal Protection

(1) Subject to Section 9, the right to legal protection shall belong to the creator of the industrial design or his successor in title.

(2) If two or more persons have jointly created an industrial design, the right to legal protection shall belong to them or their successors in title jointly; a person who has merely assisted in the creation of the industrial design and has made no contribution of a creative nature shall not, however, be deemed to be the creator or co-creator.

(3) Any person who is the first to file an application for the registration of an industrial design or is the first validly to claim the earliest priority for his application shall, subject to the provisions of Sections 8 and 9, be deemed to be the creator or the successor in title of the creator.

Subject to the sole exception provided for in Section 9, *subsection (1)* states the principle that the right to legal protection belongs to the creator of the industrial design, or to his successor in title.

Subsection (2) deals with the question as to ownership of a joint creation. The words "contribution of a creative nature" are to be understood to exclude mere technical assistance. The effects of joint ownership that arise after the date of application are regulated by Section 24.

Subject to two possible exceptions provided for in Sections 8 and 9, *subsection (3)* establishes an irrebuttable presumption as to the creator: the person who is the first to file an application for registration of an industrial design or who is the first validly to claim the earliest priority for his application is deemed to be the creator or his successor in title.

These are good reasons for establishing this presumption, which was approved by the Third Model Law Committee. One of them is that the presumption enables litigation to be avoided on the frequently very controversial question of who is the true creator. Another reason is that the presumption helps to promote one of the aims of all industrial property laws—namely, the earliest possible disclosure of creations to the public—by rewarding the person who is the most diligent, in causing, through his application, the disclosure of the creation.

The presumption does not necessarily work in favor of the first applicant in the country. If there is another applicant claiming a priority whose date precedes that of the filing of the first application in the country, this other applicant will be entitled to legal protection.

If several priorities are claimed, the earliest in date prevails over the others. Of course, the claim must be a valid one. The formal requirements of Section 12 must therefore be fulfilled. Further, according to the Paris Convention (which might be applicable in the country—see Section 5), priority may be claimed only on the basis of a "first" application, amounting to a regular national application, filed in one of the Contracting States (subject to the sole exception provided for in Article 4 C (4) of the Convention). If several applicants claim the same priority date, the person who filed his application first will be preferred.

The presumption means that no one may invoke against a first application (or against the application validly claiming the earliest priority) the fact that he is the creator or the co-creator, or that he is entitled to legal protection for other reasons. (See, however, the two possible exceptions provided for in Sections 8 and 9.)

Of course, it follows from Section 1 (2) of the Model Law that the presumption does not affect any *copyright* which may cover the same creation. It is a special rule of the law of industrial designs, which responds to the practical needs of industry and handicraft. The author, therefore, of an industrial design which is a copy of a work protected by copyright may proceed against the first applicant and prevent him from reproducing it. He may moreover exercise the right provided for in subsection (1) of this Section.

Section 8: Usurpation

(1) If the essential elements of an industrial design, the subject of an application, have been obtained from the creation of another person without the rightful owner having consented to the obtaining thereof and to the filing of an application, the rightful owner may demand that the application or the registration be transferred to him.

(2) The consent of the rightful owner may be given subsequent to the filing of the application; in that event, it shall be retroactive to the date of the application.

Subsection (1)—an exception to the rule provided for by Section 7 (3)—deals with the case where an industrial design applied for is a copy of a third person's creation. It empowers the rightful owner to claim ownership of the application or of the registration, if he proves that the essential elements of the industrial design have been obtained from his own creation. In this context, the "rightful owner" is either the creator of the industrial design who does not benefit from the presumption under Section 7 (3) (because he is not the first applicant or the applicant claiming the earliest priority) or the person who commissioned the work or an employer, where the design was created pursuant to a commission or in the course of employment (see Section 9). The word "obtained" means that the applicant or the person who has worked for him (an employee, for example) has simply copied or appropriated the third person's creation without the consent of the rightful owner

The Third Model Law Committee discussed the question as to who is competent to decide, in the event of usurpation, that the application or registration should be transferred to the victim of the usurpation. The answer varies according to whether the claim is made before or after registration. After registration, the Industrial Designs Office may, in principle, no longer make alterations to the Register (except those of a formal nature, such as the applicant's address, etc.); it is therefore for the Court to decide whether the registration should be transferred. Before registration, the victim of usurpation can, depending on the national system concerned, either apply to the Court or appeal to the Industrial Designs Office and later, if he is still not satisfied, to the Court under Section 18.

A particular example of where the Office will be competent to decide on the transfer of the application is the case where the law provides for an opposition procedure prior to registration. The Third Model Law Committee was in favor of such a system, and Section 15, Alternative B (5), takes account of this view.

The Committee further expressed the view that the victim of usurpation should have the right to request annulment of the application or registration, instead of the transfer. These possibilities are formulated in Section 15, Alternative B (5), and Section 33 (1).

The principles of this Section apply, *mutatis mutandis*, to joint creations. If one of the co-creators has, by himself, and without the consent of the others, applied for registration of the industrial design, the others may claim to be recognized as co-owners of the registration or request annulment of the application.

Subsection (2) provides that the rightful owner may consent to an application for registration of the industrial design by the third person after the application has been filed. Such consent will be of retroactive effect and the application for registration of the usurped design will be deemed to have been properly filed.

Section 9: Industrial Designs Created Pursuant to a Commission or by an Employee

(1) Subject to the legal provisions governing contracts for performing a certain work and employment contracts, and in the absence of contractual provisions to the contrary, the

This Section, which is largely similar to Section 10 of the Model Law on Inventions, provides a special régime (constituting an exception to Section 7 (3)) for industrial designs created pursuant to a commission or by an employee.

ownership of an industrial design made in execution of the contract shall belong to the person having commissioned the work or to the employer.

(2) The same provision shall apply when an employment contract does not require the employee to exercise any creative activity, but when the employee has created an industrial design using data or means that his employer has put at his disposal. In that event, he shall have a right to remuneration, taking into account his salary and the importance of the industrial design created. Such remuneration shall, in the absence of agreement between the parties, be fixed by the court.

In some countries, the provisions of the civil or administrative laws regulating such contracts may resolve the question of who should have the right to legal protection for an industrial design created in performance of such contracts, or in relation to them. Also, the stipulations of the contracts themselves may provide for the solution. It is for the cases in which neither the civil or administrative laws nor the contracts themselves provide for a solution that appropriate provision in the law of industrial designs is indicated.

Subsection (1) deals with the case of an industrial design created in the course of a commission or employment: the ownership of the creation belongs to the person who commissioned the work, or to the employer.

The industrial design, in the case of *subsection (2)*, was created by an employee who was not required to exercise creative activity, but who, during the course of his work, used data or means that his employer had put at his disposal. Here the same rule as in *subsection (1)* applies, in so far as ownership of the industrial design is concerned. The employer is, however, required to remunerate the employee, whose profitable initiative went beyond his contractual obligations. Such remuneration will be assessed in the light of the employee's salary and of the importance of the industrial design applied for by the employer.

Unlike the Model Law on Inventions, the Model Law on Industrial Designs makes no provision for remuneration in the case of an exceptional creation made by an employee in the performance of his contract. Such a provision is not necessary in respect of industrial designs, which can never acquire so great an importance as that of certain outstanding inventions.

Section 10: Right of the Creator of an Industrial Design to be Mentioned as Such

(1) The creator of the industrial design shall be entitled to be mentioned as such in the registration.

(2) The preceding provision shall not be modified by contract.

Subsection (1) provides that the creator of an industrial design must in all cases be mentioned as such in the registration. He may make such a request either to the Industrial Designs Office before registration, or to the competent Court after registration.

This provision is important in the case where the creator is not the applicant for registration of the industrial design—where, for example, the industrial design was created pursuant to a commission or by an employee. The Third Model Law Committee discussed the appropriateness of some additional qualification to the word "creator," for example, "true" or "original." However, the text

is clearer without any such qualification, because the term "creator" means, in all cases, the physical person who created the industrial design.

Subsection (3) makes this provision mandatory; it cannot therefore be waived by contract. This rule stems from the fact that a "moral right" of the creator is involved—a right which he cannot validly renounce.

CHAPTER III: PROCEDURE FOR REGISTRATION

This Chapter, dealing with the registration of industrial designs and related questions, consists of eight Sections (11 to 18). There are three alternatives for Section 15 (A, B and C); Section 17 has two alternatives (A and B), A being linked to A and C of Section 15, whilst Alternative B is linked to B of Section 15.

The provisions of this Chapter are, to a large extent, analogous to those of Chapter II of the Madrid Law on trademarks, except in relation to certain provisions which take account of the special nature of industrial designs.

Sections 11 to 13 set out the conditions governing applications for registration of industrial designs. Section 11 enumerates the particulars which the application must contain, Section 12 deals with the right of priority and Section 13 with the fees payable.

Section 14 deals with the examination of applications as *à form* by the Industrial Designs Office.

Section 15—the result of discussions in the Third Madrid Law Committee—distinguishes between three alternatives; the registration of the industrial design is effected either without examination as to substance (Alternative A), or after opposition procedure (Alternative B) or *ex officio* examination of the application as to substance (Alternative C).

Sections 16 and 17 deal with the contents of the Register, the issuance of the certificate, publication of industrial designs and consultation of the Register. In respect of publication, Section 17 contains an alternative, which stems from Alternative B of Section 15. Under this alternative, the second publication, which follows the first publication effected for the purpose of opening the opposition procedure, no longer includes all the items of the first publication.

Finally, Section 18 makes provision for appeal against the decisions of the Industrial Designs Office.

The question of the examination of applications—the subject of Sections 14 and 15—calls for certain preliminary observations. A position has to be taken on certain important points and, in particular, on one which is fundamental: should the Industrial Designs Office examine applications solely as to form? Or also as to substance?

An examination *as to form* means one to determine whether the application contains all the required particulars (Section 11), whether the prescribed fees have been paid (Section 13), and, when priority is claimed (Section 12), whether the relevant formalities have been carried out. The present Madrid Law includes in the examination as *à form* (Alternative A) verification of compliance with Section 3 (2), since industrial designs contrary to public order or morality should be neither registered nor published.

Examination *as to substance* means, essentially, examination to determine whether the subject of the application constitutes an industrial design within the meaning of Section 2, whether the industrial design was new at the time of the application (Sections 3 (1) and 4) and whether any earlier application, or an application benefiting from an earlier priority, was made in the country for the same industrial design.

An intermediate solution consists in the combination of the examination *as to form* with an *opposition procedure*; under such a system, the Office examines the question of novelty or possible conflict with earlier rights only if these matters have been invoked by an opponent.

In the view of the Third Madrid Law Committee, a procedure which allows opposition before registration of an industrial design, as well as examination *as to substance*, can sometimes offer

advantages. But it is only on the basis of each country's special circumstances that a choice can be made between this system and the system which does not entail examination as to substance. The Model Law accordingly provides Alternatives A, B, and C.

The advantages of an opposition procedure prior to registration reside in the fact that the number of registrations of industrial designs which are invalid for lack of novelty or incompatibility with earlier rights can, to a large extent, be reduced. Third parties, who normally resort to opposition procedures only out of self-interest, find themselves at the same time working in the public interest by causing invalid registrations to be refused. After such procedure, the Register gives a more exact picture of the legal position. The task of the Courts in the country is correspondingly lightened, since questions which would normally have to be dealt with in legal proceedings for infringement or nullity of registration can be decided immediately under the opposition procedure.

These advantages can be even greater if the Office undertakes, in all cases, an examination as to substance. Such examination also covering the conditions of Section 2 (with no need for action by a third party) would allow a still greater measure of certainty for registered owners, their competitors and the public in general. Such a system could work without an opposition procedure (as provided for by Alternative C) or in conjunction with one: the Office would first make an examination as to substance and then publish the application with a view to possible opposition (in this case, Alternatives B and C should be combined).

The Third Model Law Committee realized, on the other hand, that the system of opposition and the system of examination as to substance can also give rise to disadvantages. In the first place, a developing country is often not in a position to staff its Industrial Designs Office with the relatively numerous and highly qualified personnel that these systems require. A highly qualified personnel is, in fact, essential to the examination of an industrial design for compatibility with Sections 2, 3 (1) and 4, and with third-party rights. This argument, however, has more force in respect of the system of ex-officio examination as to substance than of the opposition system, since the latter entails less work for the Office.

But, even if the Office did have such a highly qualified personnel, it would encounter considerable difficulties if it was required to examine all applications on the criterion of absolute novelty specified in Section 4 (2). It is practically impossible for an examiner to be aware of all prior creations without any limitation as to time and space. This would involve the setting-up of a vast documentation, which would always be incomplete; and it seems doubtful whether the cost of such documentation would bear a reasonable relationship with the result sought. If a country adopts the absolute novelty principle, it would seem preferable for the Office not to examine for novelty, or to do so only in cases where it considers this useful, or upon opposition. The disadvantage of including in the Register designs that are not new is less burdensome than the obligation on the Office to examine all industrial designs for absolute novelty, including designs of no economic value which will probably never be used. Lack of novelty can always be invoked by a defendant sued for infringement of a design.

Alternative C, for this reason, does not provide for compulsory examination, but, in accordance with the opinion of the Third Model Law Committee, only for the right of the Office to carry out an examination as to substance. In other words, the Office has a discretion. Compulsory examination as to substance is only feasible in so far as the principle of absolute novelty is, for the purpose of the examination, tempered by limitations as to time and space.

On the other hand, the system of an examination limited to form would also present advantages. It is at the same time more simple and less onerous, and it enables decisions as to registration to be taken more quickly. However, it should be emphasized that, even with this system, it is necessary to have a competent and experienced staff—less numerous than in the case of examination as to substance—since examination as to form alone also involves difficult problems.

With these considerations in mind and according to its resources and preferences, each country must decide its own approach to examination of applications.

In conclusion, a further general remark should be made: the reference in the Law to the "Industrial Designs Office" does not mean that a special Office should be set up, side by side with the Patent Office or the Trademark Office. On the contrary, the functions that the Model Law gives to the Industrial Designs Office should preferably be discharged by a division of the Patent Office or the Industrial Property Office. Each country must make its decision on the basis of its own particular conditions.

Section 11: Requirements of Application

(1) The application for registration of an industrial design shall be made to the Industrial Designs Office and shall contain:

(a) a request for registration of the industrial design;

(b) the complete name and address of the applicant and, if the applicant's address is outside the country, an address for service within the country;

(c) a specimen of the article embodying the industrial design, or a photographic or graphic representation of the industrial design, in color where it is in color;

(d) an indication of the kind of products for which the industrial design is to be used and also, if the Rules make provision for classification, an indication of the class or classes in which such products are included.

(2) If appropriate, the application for registration shall be accompanied by a declaration, signed by the creator of the industrial design, requesting that he be mentioned as such in the registration and giving his name and address.

(3) If the application is filed through an agent, it shall be accompanied by a power of attorney signed by the applicant; legalization or certification of the signature shall not be necessary.

(4) Provided that the products indicated are of the same kind or kinds, or, if the Rules make provision for classification, that they are in the same class or classes, the application may comprise one to fifty industrial designs.

(5) The details of the above requirements with which the application for registration of an industrial design must comply shall be fixed by the Rules.

This Section governs the contents of an application for registration of an industrial design.

The application must, in the first instance, include a request for registration of the industrial design, stating the applicant's name and address.

Since it is important that communications addressed to the owner of an industrial design (for example, a request to amend or complete the application documents, or the communication provided for in Section 33 (1), or the notice referred to in Section 37 (2)) should be sure to reach him, an applicant residing outside the country is required to furnish an address for service within the country—see, in this respect, Section 16 and its commentary.

Paragraph (c) of *subsection (1)* lays down that the application must contain either a specimen of the article embodying the industrial design itself or a photograph or drawing.

Under Section 11 (5), detailed requirements of an application for registration are to be fixed by the Rules. This is particularly relevant in the case of subsection (1), paragraph (c). The Rules should, for example, fix limitations in the size and weight of industrial designs to be lodged, to prevent the deposit of objects that are too voluminous or heavy. If an object exceeds the limits fixed by the Rules, the applicant will no longer have the choice between submitting the industrial design itself or a reproduction: he will only be able to deposit a reproduction.

The Third Model Law Committee considered that the applicant might be obliged or entitled to include a means of reproducing the embodiment of the industrial design or the photographic or graphic representation (for example, a printing-block), which the Office could use to make the reproductions required by Section 15, Alternative B (3), Sections 16 (2) and 17, Alternative A (1). The Rules could equally well decide this question. A requirement of this kind might not be so appropriate in that applicants in developing countries are probably not always in a position to furnish a means of reproduction and in any event the Office would be better equipped for the preparation of such a means of reproduction. An applicant can always be given a right to include a means of reproduction, which would give him a guarantee that reproductions made under Sections 15, Alternative B (3), 16 (2) and 17, Alternative A (1) were to his satisfaction. Moreover, in such an event, he would

not have to make any payment to the Office for the preparation of the means of reproduction.

Subsection (1), paragraph (d), requires an indication of the kind or kinds of products for which the industrial design will be used and, if the Rules provide for classification, an indication of the class or classes in which these products are included. This indication is given only in the interest of the Administration, in order to facilitate the classification of applications; as regards the novelty of industrial designs and the extent of their protection, there is no limitation to a certain sector of products (see Section 4 (4) and Section 21 (2)).

Where the Rules provide for classification (for example, the international classification established by the Locarno Agreement of October 8, 1968), the applicant will be expected to indicate, apart from the kinds of products involved, the class or classes in which these products are included.

Section 11 (2) guarantees the application of Section 10, concerning the right of the creator to be mentioned as such.

Subsection (3) regulates the employment of an agent. Since it is sometimes difficult to file a power of attorney at the same time as the application for registration, countries might like to specify that the application must be accompanied by a power of attorney or followed by one within a fixed period. For such a period, three months would seem reasonable.

Subsection (4) concerns multiple applications. This provision simplifies the formalities in cases where a person intends to file an application on the same date for the registration of several industrial designs, intended for products of the same kind or kinds or the same class or classes, for example, a series of specimens of textile materials. In this event, it is sufficient to furnish the particulars prescribed in subsection (1), paragraphs (a), (b) and (d), once only. This involves only a single application and a single registration; the registration and the publication will, however, contain the reproductions of all the industrial designs involved. A multiple application may comprise one to fifty industrial designs. It is equally possible in such a case for photographs or drawings to be deposited, instead of the industrial designs themselves.

Subsection (5) takes account of the fact that the Law cannot, for practical reasons, prescribe all the formal conditions which applications in respect of industrial designs must satisfy (for example, size of paper, number of copies, language(s) to be used, etc.). The Law will be supplemented in this respect by the Rules.

Section 12: Right of Priority

The applicant for registration of an industrial design who wishes to avail himself of the priority of an earlier application filed in another country is required to append to his application a written declaration, indicating the date and number of the earlier application, the country in which he or his predecessor in title filed such application and the name of the applicant, and to furnish, within a period of three months from the date of the later application, a copy of the earlier application, certified as correct by the Industrial Property Office or the Industrial Designs Office of the country where it was filed.

This Section deals with the form in which an applicant, wishing to avail himself of the priority of an earlier application for the same industrial design filed abroad, must present his claim.

The Section has relevance only for countries bound by a multilateral or bilateral convention providing for the right of priority. As long as a country is not bound by any such convention, it may omit this Section altogether. Of course, it may also retain it in view of its possible adherence to a convention.

On the other hand, for certain countries the Section is incomplete and will have to be supplemented by more provisions. The Section deals only with the *form* in which priority may be claimed; it does not define either the right of priority or its legal consequences. This definition and the legal consequences usually appear in the conventions providing for a right of priority. In countries where conventions need no implementing domestic legislation (see the commentary on Section 5), the provisions of the conventions, together with Section 12, will suffice. But in countries where implementing legislation is a constitutional requirement, Section 12 will have to be completed by the relevant convention's provisions on the right of priority.

The most important of the conventions providing for a right of priority is the Paris Convention for the Protection of Industrial Property. Article 4 of this Convention regulates in detail the right of priority. It provides among other things that any person who has duly filed an application for the registration of an industrial design in one of the Contracting States, or his successor in title, shall enjoy, for the purpose of filing an application for the same industrial design in the other Contracting States, a right of priority during a period of six months from the date of the first application. No application filed during this period will be "invalidated" by any act accomplished in the interval, such as, for instance, another application, or use of the industrial design, and such acts cannot give rise to any third-party rights.

As already stated, the Section under consideration sets out the formal requirements to be fulfilled by the applicant wishing to claim priority. He has to do two things: (i) attach to his application a written declaration to the effect that he claims priority, providing certain details to enable identification of the earlier (foreign) application and

(ii) furnish, within three months from the date of the subsequent (domestic) application, a certified copy of the earlier (foreign) application.

Section 13: Payment of Fees

An application for registration of an industrial design shall not be entertained unless the fees prescribed by the Rules have been paid.

This Section deals with the payment of the fees required in respect of an application for registration of an industrial design. A consequence of this provision is that if the fees reach the Industrial Designs Office on a later date than the application, the effective date of application will be the date on which the fees reached the Office.

There should be a particular provision in the Rules for a basic fee in respect of the application for registration of an industrial design, and an additional fee in cases where the Office has to prepare a printing-block for the reproduction of the designs required by Section 16 (2) and Section 17, Alternative A (1).

In respect of the size and weight of articles embodying industrial designs intended for registration, the Rules might specify intermediate limits (within the maximum prescribed) beyond which an additional fee would be chargeable.

In the case of an application concerning more than one industrial design (Section 11 (4)), the Rules should provide for additional fees corresponding to the number of designs in such application; the maximum fee should be substantially lower than fifty times the basic fee.

The fee required at the time of application could be calculated so as to cover the cost of all the work to be done by the Office, including the registration, (the examination as to form, examination as to substance—if any, registration and publication) and for the first period of protection. If, however, the opposition procedure is adopted (Section 15, Alternative B), the fee required at the time of application should only cover the procedural phase which ends with examination as to form. The applicant would later have to pay a further fee (see Section 15, Alternative B (1)), in respect of the second phase of the administrative procedure (publication, registration and second publication) and also the first period of protection.

Under such a system, the question arises whether the Office should refund part of the fees received if the application does not result in registration. In view of the complication entailed by such refund, the Office could justifiably retain the full amount, even where registration is refused.

Section 14: Examination of Application

(1) The Industrial Designs Office shall examine the application as to its conformity with Sections 3(2), 11, 12 and 13.

(2) If the provisions of Sections 3 (2), 11 or 13 have not been complied with, the Office shall refuse registration of the industrial design; if the requirements of Section 12 have not been fulfilled, the Office shall not mention, in connection with the registration of the industrial design, the priority claimed.

(3) Before taking a decision under subsection (2), the Office shall notify the applicant of the defect in the application. The application may then be completed or amended in the three months following the notification. The application shall take effect only on the date upon which it becomes complete and regular.

This Section deals with examination as to form (but including the conditions in Section 3 (2)) of an application for registration of an industrial design by the Industrial Designs Office. Such examination must be made in all cases (whatever Alternative of Section 15 is adopted) before action can be taken under Section 15.

Subsection (1) enumerates the Sections which must be considered at the time of examination. These are Sections 3 (2), 11, 12 and 13. The application is therefore examined as to form and, partly, in so far as concerns public order and morality, as to substance.

Under Section 3 (2), the Office must examine whether the industrial design is contrary to public order or morality. On the other hand, no examination of novelty under Section 3 (1) is made at this stage.

Under Section 11, the Office must examine whether the application fulfils the conditions set forth in that Section (indication of name, address, etc., the filing of the industrial design or of a photographic or graphic representation and other conditions).

Under Section 12, the Office must examine whether the written declaration required in cases where priority is claimed contains all the particulars prescribed. The Office must also ensure that a certified true copy of the earlier application was filed in time.

Under Section 13, the Office must examine whether the relevant fees have been paid by the applicant.

Subsection (2) provides for the case where the Office finds that one of the requirements in subsection (1) has not been fulfilled. Apart from the case of Section 12, failure to fulfil the requirements will result in the refusal of registration.

Non-compliance with Section 12 will only mean that the priority claim will not be included in the registration. The Office will not, at this stage, examine questions of substance. In particular, it will not ascertain whether the earlier application invoked corresponds in all respects to the same industrial design in the later application, or whether the earlier application was the first application qualifying as a regular national application. These questions, if they are raised by third parties, will be settled by the Court.

Where the registration contains a reference to an unjustified claim for priority, the Court will declare the claim for priority null and void (which may also mean that the registration will itself be declared invalid by the Court); if, on the other hand, the Office wrongly omits from the registration a priority claim submitted in the form prescribed by Section 12, the Court will order such reference to be inserted (with the possible consequence that the registration will subsist despite proceedings for a declaration of nullity).

Subsection (3) takes account of the Third Model Law Committee's opinion that an applicant should have the right to regularize an application that is not complete or regular, within a certain period. The Office will accordingly be required to notify the applicant in such a case (if the industrial design is contrary to public order or morality, for instance) so that his application can be completed or amended in the three months following notification; (this period can be varied in accordance with each country's conditions). The applicant will not, however, keep the original date of his application, which will only take effect on the date upon which it became complete and regular.

This provision favors the applicant particularly as regards the payment of the fees. In the absence of such a provision, the Office would have immediately refused registration in accordance with Section 14 (2); the applicant's only course would then be to lodge a new application (this time in regular form) for the same industrial design, which would involve a fresh obligation to pay the fee.

Alternative A

Section 15: Registration of Industrial Design without Examination of Application as to Substance

(1) When the examination provided for in Section 14 shows that the application satisfies the requirements of Sections 3 (2), 11 and 13, the industrial design shall be registered, in accordance with the application, and without further preliminary examination, in particular, without examination as to whether the registration is or is not contrary to Section 3 (1).

(2) When the examination provided for in Section 14 shows that the requirements of Section 12 have been ful-

Alternative A of this Section corresponds to the system in which applications are examined solely as to form and as to the observance of Section 3 (2). Under this system, there is no other examination than that prescribed by Section 14 (1). If such examination shows that the conditions in Section 14 (1) have been properly observed, the Office will be under the obligations set out in Section 15. Alternative A is therefore the converse of Section 14 (2). As in the case of Section 14 (2), two different situations are recognized:

Subsection (1) concerns the case where the application satisfies the requirements of Sections 3 (2),

filled, the Office shall record, in connection with the registration, the priority claimed.

11 and 13. The Office will then be obliged to register the industrial design.

Subsection (2) concerns the case where, in addition to the requirements of Section 3 (2), 11 and 13, those of Section 12 are fulfilled. In this case, the Office will be obliged to record in the registration the priority claimed.

Since the pre-registration examination is restricted to formal requirements and one part only of the substantive conditions (public order and morality) and not the other conditions as to substance (such as novelty), it is obvious that such registration of an industrial design does not imply any guarantee as to its validity. The Courts can always refuse to recognize a registered industrial design as not satisfying the requirements of Section 3. This would also be the case, even where the Office has proceeded to the registration after opposition proceedings or after an ex-officio examination (see below, pages 36 and 37).

As regards the obligation on the Office to proceed to registration, it is in the interests of applicants for this administrative act to be effected as quickly as possible, since legal protection only begins with registration. The Third Model Law Committee stressed that this was a duty of the Office and not a discretion.

Alternative B

Section 15: Registration of Industrial Design offer Opportunity for Opposition

(1) When the examination provided for in Section 14 shows that the application satisfies the requirements of Sections 3 (2), 11 and 13, the Industrial Designs Office shall invite the applicant to pay, within a period of two months, the fee for publication of the application fixed by the Rules.

(2) If the fee for publication of the application is not paid within the prescribed period, registration of the industrial design shall be refused.

(3) If the publication fee is paid within the prescribed period, the Industrial Designs Office shall proceed to publish the application. Publication shall contain a reproduction of the industrial design and shall mention: the number and date of the application; the name and address of the applicant and, if his address is outside the

This Alternative provides the system under which there is first an examination as to form in accordance with Section 14 (1) and then, after publication of the application, third parties are given an opportunity to file opposition to the registration within a certain period.

Subsection (1) lays down the procedure to be followed where the formal examination made by the Office is favorable: the applicant is then invited to pay the publication fee on the application (see, in this respect, the commentary to Section 13). The Office will only proceed to publication if the fee is paid within the period prescribed (*subsections (2) and (3)*). After publication, which will contain more or less the same items as the publication under the system of Alternative A (Section 17, Alternative A (1)), third parties will be able to enter opposition within a period of three months, subject to payment of the opposition fee (*subsection (4)*).

In the case of usurpation (Section 8), *subsection (5)* allows the person entering opposition either to

country, an address for service in the country; if priority is claimed, an indication of that fact, and the number, date and country of the application on which the priority claim is based; the kinds as well as the classes of products within the meaning of Section 11 (1) (d); and the name and address of the creator, if he has asked to be mentioned in the registration.

(4) Any person who considers that registration of an industrial design is precluded on one or more of the grounds referred to in Sections 3, 4 and 7 (3) may give notice of opposition to such registration within a period of three months from the date of publication of the application, stating the grounds for opposition. Opposition shall not be deemed to have been lodged until the relevant fee fixed by the Rules has been paid.

(5) In the event of usurpation, the rightful owner may give notice of opposition, either to prevent the registration or to cause it to be effected in his own name.

(6) When no opposition has been lodged within the prescribed period, the industrial design shall be registered.

(7) In the event of opposition, the Industrial Designs Office shall communicate the grounds for opposition to the applicant and shall invite him to present his observations on these grounds within a period of three months. After that period, the Industrial Designs Office shall decide on the opposition as rapidly as possible, and shall register the industrial design or refuse registration.

(8) Registrations are granted without guarantee as to their validity.

(9) The Industrial Designs Office may, upon request, grant a reasonable extension of any of the periods referred to in this Section, particularly if the applicant is resident abroad.

(10) The details of the application of this Section shall be fixed by the Rules.

prevent registration or to cause it to be effected in his own name. The details of this procedure should be fixed by the Rules. Where the person concerned opts to have the registration effected in his own name, for example, the Rules might require him at the opposition stage to fulfil the formal requirements of Sections 11 to 13—with, however, the exception of 11 (1) (c) (the Office will already have a copy of the article embodying the industrial design). The Rules could also provide that such a person should be entitled to furnish a reproduction of the industrial design, and that the opposition fee under Section 15, Alternative B (4), should, where appropriate, be included in the application fee under Section 13.

In the absence of opposition, the industrial design will be registered (*subsection (6)*). *Subsection (7)* regulates the opposition procedure.

Subsection (8) recognizes that the Office cannot guarantee the validity of the registration, even where registration has been granted after third-party opposition. Legal proceedings for a declaration of nullity are always possible (Section 33).

Subsection (9), which enables the extension of time limits is relevant to those periods provided for by subsections (1), (4) and (7).

Subsection (10) takes account of the fact that the Rules must complete the provisions of Section 15 (Alternative B), particularly subsections (1), (3), (4), (5), (7) and (9).

Alternative C

Section 15: Registration of Industrial Design after Examination of Application as to Substance

(1) When the examination provided for in Section 14 shows that the application satisfies the requirements of Sections 3 (2), 11 and 13, the Industrial Designs Office shall proceed to the examination of the application as to its substance, in order to determine:

(a) whether the subject of the application is an industrial design within the meaning of Section 2;

(b) whether the industrial design was new at the time of application (Sections 3 (1) and 4);

(c) whether, for the same industrial design, no prior application, or application benefiting from an earlier priority, has been made in the country.

(2) When the Industrial Designs Office finds that the answer to at least one of the questions mentioned in the preceding paragraph is in the negative, it shall notify the applicant accordingly, stating the reasons for which the industrial design cannot be registered; the Office shall invite him to withdraw his application, or to present his observations on the reasons for refusal, within a period of two months following notification. If the applicant does not withdraw his application, and if he does not present any observations within the period mentioned, or if he has presented his observations within such period and the Industrial Designs Office nevertheless continues to consider that the industrial design is precluded from registration, registration shall be refused. If, however, the Industrial Designs Office considers that the industrial design may be registered, subsection (3) of the present Section shall apply.

(3) When, possibly after proceeding under subsection (2) of this Section, the Industrial Designs Office finds that the answers to questions (a), (b) and (c) of the preceding subsection

This Alternative provides for a system of "preliminary examination", that is, a system in which the Industrial Designs Office only grants registration if it is satisfied that the application not only meets the requirements as to form, but also those relating to substance.

Under this system, as in Alternative B, the first step is the examination as to form, in accordance with Section 14 (1). Then follows the examination as to substance, which, as the express words "may proceed" show, is not mandatory, but at the discretion of the Office. A mandatory examination as to substance would be feasible only if the principle of absolute novelty is tempered, for examination purposes, by limitations as to time and space (see above, page 19).

The points to be examined are set out in subparagraphs (a), (b) and (c) of this subsection. Each country is free to limit examination to one or two of these points only.

Under *subsection (2)*, an applicant must be enabled to submit his arguments where the Office feels that the registration should be refused.

Where the conditions of subsection (1) are fulfilled, *subsection (3)* requires the industrial design to be registered.

Subsection (4) recognizes that, even in a system of unlimited preliminary examination, no Industrial Designs Office is in a position to assure that such an examination is exhaustive. For this reason, no guarantee can be given as to the validity of registrations, and the possibility for declaring a registration null and void (Section 33) must remain open even after such unlimited preliminary examination.

Subsection (5) allows for the extension of the time limits prescribed, at the discretion of the Office.

Subsection (6) takes account of the fact that the Rules must complete Section 15 (Alternative C), particularly subsections (2), (3) and (5).

are in the affirmative, the industrial design shall be registered.

(4) Subsection (8) of Alternative B.

(5) The Industrial Designs Office may, on request, grant a reasonable extension of the period prescribed in subsection (2), particularly when the applicant is resident abroad.

(6) Subsection (10) of Alternative B.

Section 16: Contents of Register and Issuance of Certificate

(1) The Industrial Designs Office shall maintain a Register in which shall be registered industrial designs, numbered in the order of their registration, and in which shall be recorded, in respect of each industrial design, all transactions to be recorded by virtue of this Law.

(2) The registration of an industrial design shall include a reproduction of the industrial design and shall mention: its number; the name and address of the registered owner and, if the registered owner's address is outside the country, his address for service within the country; the dates of application and registration; if priority is claimed, an indication of that fact, and the number, date and country of the application on which the priority claim is based; the kinds and the classes of products within the meaning of Section 11 (1) (d), and the name and address of the creator of the industrial design, if he has asked to be mentioned in the registration.

(3) The Office shall establish and send by registered mail a certificate of the registration of the industrial design to the registered owner at his address or, if his address is outside the country, at his address for service.

(4) The Office shall record any change of address, or address for service, which shall be notified to it by the registered owner.

(5) In the absence of any provision to the contrary in this Law, communications to be made to the registered

This Section regulates the formalities to be observed by the Industrial Designs Office in the matter of registration.

Subsection (1) determines the contents of the Register of industrial designs. This provision is self-explanatory. The phrase "by virtue of this Law" also comprises the relevant provisions of the Rules.

Subsection (2) prescribes the contents of each registration, which largely correspond to the contents of the application (see Section 11). Reproduction will be made from the means of reproduction supplied by the applicant or, if none was supplied, from that prepared by the Office (see commentary on Section 11).

Subsection (3) specifies the way in which the Office is to send a certificate of registration to the owner of the industrial design.

Subsection (4) lays down that the Office is to record all changes of address, or address for service, which the owner of the industrial design is required to notify to the Office. This provision is important. Notifications may have to be made, for example, in the context of an action for nullity or if a licensee wishes to institute proceedings under Section 37.

Subsection (5), which is also important in the same context, regulates the procedure for dispatch of communications which has to be made to the registered owner of the industrial design, under the Law.

owner of an industrial design by virtue of this Law shall be sent to him at his last recorded address and, at the same time, at his last recorded address for service.

Alternative A

Section 17: Publication of Registered Industrial Designs; Consultation of Register

(1) The Industrial Designs Office shall publish, in the form and within the period fixed by the Rules, industrial designs registered, in the order of their registration, reproducing all the particulars recorded by virtue of Section 16 (2).

(2) Industrial designs registered at the Industrial Designs Office may be consulted free of charge at that Office, and any person may obtain copies thereof at his own expense. This provision shall also be applicable to transactions recorded in respect of any industrial design.

Alternative A of this Section corresponds to Alternatives A and C of Section 15.

Subsection (1) deals with the publication of registered industrial designs. Such publication is necessary, and it should be effected as soon as possible after registration, because registration confers upon its owner the right to preclude third parties from certain acts (Section 21). Third parties must therefore be made aware of this right in the shortest possible time. The form and the period in which the publication of registrations of industrial designs will have to be effected, must be regulated by the Rules, with due regard to the possibilities existing in the country concerned. Usually, publication is made in a special gazette published by the Industrial Designs Office. Failing this, publication may be made in any other gazette or publication issued by the Government.

The subsection under discussion lays down that industrial designs will be published in the order in which they were registered. Another possibility would be to effect the publication of designs in the order in which their registration was applied for, but this system could be misleading because it could not possibly take account of priority rights. It would also lead to complications in countries where applications are submitted to an examination as to substance, an examination which may, from case to case, take a very different time.

The subsection provides further that publication will include all the particulars referred to in Section 16 (2). This is necessary in order fully to inform third parties.

Subsection (2) of the Section under consideration, provides for access to all registered industrial designs, free of charge, by any member of the public, and allows any person to obtain copies at his own expense. Such access should be free of charge because it is in the public interest that registered industrial designs may be consulted as freely as possible. Only when copies are ordered is payment provided for. The same provisions apply to

all transactions recorded with regard to any industrial design, such as changes of address (Section 16 (4)), renewals (Section 20), assignments and transfers (Section 23), license contracts (Section 25), renunciations (Section 32) and declarations of nullity (Section 34).

In the context of publication, a further possibility might be mentioned—although it was rejected by a majority of the Third Model Law Committee: that provision might be made for *applications under sealed cover*. In such a case, an applicant would be able to ask for the subject of his application to be kept secret during a certain period, which could, for example, be limited to twelve months. The applicant could thus organize his production, unknown to possible competitors. He would not be able to take proceedings against anyone infringing the design during the period of secrecy, but he would retain priority over subsequent applications.

An applicant wishing to use this system would have to include with the particulars of the application for registration, referred to in Section 11 (1) (a), a request for the object to be kept secret for a certain time, within the limits of the maximum period prescribed by the Law. The applicant would forward the object embodying the design or the photograph or drawing to the Industrial Designs Office, under sealed cover. The words "under sealed cover" should be understood in a broad sense. In the case of a three-dimensional object, a closed box would be suitable. The Rules would fix the details of these formalities.

If a claim of priority is based on an application under sealed cover made abroad, the starting-point of the period of secrecy should be the same as the date of priority claimed.

The administrative procedure to be followed by the Office in the case of an application under sealed cover would be the following: the registration and publication prescribed by Section 17 would contain all the particulars specified in Section 16 (2), except the reproduction of the industrial design applied for. After the final opening of the sealed package, the examination procedure under Sections 14 and 15 (Alternatives A, B and C) would begin; if the examination was favorable, the reproduction would be added to the registration and published with a reference to the earlier publication.

The Office would open the sealed package twelve months after the date of application, unless the applicant had requested a shorter period. The package would be automatically opened even if the owner had renounced registration under Section 32 before the end of the period of secrecy. Every industrial design deposited at the Office must be made available to the public, and an identical cre-

ation would no longer be new, within the meaning of Section 4. Before the automatic opening, the applicant could, at any time, ask for the application under sealed cover to be converted into an open application. He might wish to do this in order to institute legal proceedings. Moreover, a provision should require the package to be opened on the order of a judicial authority in certain cases, for example when the priority of the application is of special importance to legal proceedings. The package would be opened solely for the purpose stated by the judicial authority and immediately resealed.

Before the final opening of the sealed package, the owner of the design under sealed cover would not be able to institute proceedings for infringement of his rights under the registration. But the application would nevertheless retain its priority.

The formal requirements of applications under sealed cover should be supplemented by the Rules. In particular, the Rules should prescribe the form of the sealed package, the manner in which the reproduction of the design should be registered and published after the opening of the sealed package, as well as the procedure for the opening itself, especially when this is done on a judicial order.

The majority of the Third Model Law Committee decided against the system of applications under sealed cover, since it would be a complicated procedure and could, moreover, lead to abuse. On the other hand, a minority of the Committee felt that the system could be advantageous to a person who lacked sufficient means to exploit his creation immediately.

It should be mentioned that provision for applications under sealed cover is made in the Hague Agreement concerning the International Deposit of Industrial Designs; the instrument currently in force provides that applications under sealed cover can be made for a period up to five years (the revised text of the Conference of The Hague of 1960, not yet in force, has reduced this period to one year). Countries wishing to adhere to the Agreement might consider incorporating the sealed package system in their domestic legislation, or giving international deposits effect in their territory.

Alternative B

Section 17: Publication of Registered Industrial Designs; Consultation of Register

(1) The Industrial Designs Office shall publish, in the form and within the period fixed by the Rules, the number and date of registration, mentioning the name of the applicant and the number of the application. It shall also publish other elements of any earlier publication which have since undergone changes.

(2) Subsection (2) of Alternative A.

In countries adopting Alternative B of Section 15, the application will be published, under subsection (3), with a view to the opposition procedure. Such publication will already contain all the particulars required by Section 17 (1), in conjunction with Section 16 (2), except the date and number of registration.

For this reason, the Third Model Law Committee felt that a repetition of all the particulars contained in the first publication would be superfluous. It would be more economical and more effective to refer as far as possible in the publication following registration to the particulars already mentioned in the first publication.

Alternative B of Section 17 takes account of this opinion and specifies that the second publication should only contain the name of the applicant, the application number and the date and number of registration. The applicant's name and the application number are enough to identify the application to which the registration relates. However, if elements of the earlier publication have since undergone modifications (for example, if the applicant has changed his address), these changes will be published. The applicant should therefore notify any changes to the Office (see also Section 16 (4)).

In addition to the publication of the registration, the Rules might also provide for publication in the case where an application is not registered as a result of opposition proceedings. Such information might be of interest to a country's industrial and business circles.

Section 18: Appeals

Any person showing a legitimate interest may appeal against a final decision of the Industrial Designs Office to the court of the place where that Office is located, under the conditions prescribed in Section 38.

The Industrial Designs Office has been given considerable powers when it is acting under the examination procedure.

In particular, it can refuse an application. In order to surround the examination procedure with every possible guarantee as to the correctness of its result, provision should be made for judicial control. Such provision is found in Section 18, which, furthermore, incorporates by reference Section 38 concerning the competence of the

courts. Such a reference means that all possibilities of appeal, annulment and revision are open.

Besides the examination procedure, there are other actions of the Office which should be subject to judicial control (for example, the recording of an assignment or transfer under Section 23 (3) and (4)). Section 18 is also applicable here.

The Third Model Law Committee, which discussed this provision at length, recommended that not everybody should have a right of appeal, but only a person having a certain interest. On this basis, Section 18 restricts the right of appeal to persons who can show a legitimate interest. This means that a person appealing to the court must have been prejudiced by the failure on the part of the Office to give him satisfaction. Such, for example, would be the case of an applicant who has been refused registration, or an opponent whose opposition has been rejected, or a licensee where the Office has refused to record the license contract in the Register.

The Third Model Law Committee, moreover, discussed the relationship between appeal under Section 18 and an annulment action under Section 33. The difference in the two remedies arises from the legal nature of each. An appeal under Section 18 is an appeal against an administrative decision, which must be lodged within a certain period prescribed by the law of each country. An annulment action is an action under the civil law: a legal position is in dispute—namely, who is the owner of an exclusive right? Such an action may be instituted during the entire period of registration.

The Committee also considered whether an applicant whose appeal has been successful may claim damages from the Office on account of the delay in registration. Such a question is not for a law of industrial property to decide: the relevant law is contained in the general rules relating to compensation for damage caused by negligence or wrongful acts in the public services.

The Committee expressed the opinion that the procedure set out in Section 18 is only one means of control over the actions of the Industrial Designs Office. Control could, for example, be exercised by an authority hierarchically superior to the Office (for example, the Ministry responsible), and an applicant might be required to appeal to such authority before he could apply to the court.

Each country should choose the procedure best suited to its special conditions.

CHAPTER IV: DURATION AND RENEWAL OF REGISTRATIONS OF INDUSTRIAL DESIGNS

This Chapter deals with the duration of registration of an industrial design (Section 19) and with the renewal of such registration (Section 20). Under these provisions, the duration of protection should never exceed fifteen years from the date of the application. This period is short compared with that of copyright, but it corresponds to the somewhat transitory character of creations only protected as industrial designs. Fifteen years is the average of periods adopted in domestic laws and is, in fact, the term provided for in the Hague Agreement.

Each country is obviously free to fix a different period.

Section 19: Duration of Registration

Subject to earlier termination as provided for in Sections 32 to 34, registration of an industrial design shall be for a period of five years from the date of application.

Once registered, the industrial design will be protected for five years from the date of application. Protection will, however, terminate prematurely in the event of renunciation of the registration (Section 32) or of a declaration of nullity (Sections 33 and 34).

The Third Model Law Committee discussed whether the period of registration should not run from the date of registration. The owner would thereby always enjoy protection for fifteen years.

But this idea was not supported by a majority of the Committee. In fact, countries today generally choose the moment of application as the beginning of the period, even though there may be no effective protection between application and registration. This is reasonable since priority starts from the date of application (see Section 7 (3)).

Section 20: Renewal

(1) Registration of an industrial design may be renewed for two further consecutive periods of five years merely by paying the fee for renewal fixed by the Rules.

(2) The renewal fee must be paid within the twelve months preceding the expiration of the period of registration. However, a period of grace of six months shall be granted for the payment of the fee after such expiration, upon payment of a surcharge fixed by the Rules.

(3) The Industrial Designs Office shall record in the Register and publish, in the form and within the period fixed by the Rules, renewals of registrations.

This Section provides the right to renew the registration for two further consecutive periods of five years.

The Model Law provides a system of automatic renewal merely on payment of the renewal fee (*subsection (1)*). This system, which has the advantage of simplicity, was approved by the Third Model Law Committee. To avoid confusion, it is clearly necessary for the owner to indicate the registration to which his payment relates (for example, by marking the registration number on the back of his order for payment). The details should be regulated by the Rules.

The Rules should, in particular, also fix the amount of the fees for the second and third periods. These fees might increase *progressively*, in the sense that the fee for the third period would

be greater than for the second, which would, in turn, be greater than the fee for the first (application fee, see commentary on Section 13).

The system of progressive fees, which is similar to the annual fees payable for patents, is based on the assumption that registrations of industrial designs kept in force for a longer time are usually of higher economic value to their owners and thus enable them to carry a heavier load in fees.

Subsection (2) prohibits the payment of the renewal fee at too early a date (that is to say, before the last twelve months of the period of registration), as this would cause needless complications for the Industrial Designs Office. Moreover, the reason for periods of renewal is to clear the Register of industrial designs that are no longer being used. The renewal fee is there to make the owner reflect before paying upon whether he is still interested in maintaining his registration. In the absence of a limitation on the moment of payment, an owner might make a very early payment of the renewal fees, thus maintaining the registration, even though he may become no longer interested in it, which would be against the public interest. In addition, if the renewal fees could be paid a long time before the expiration date, any intervening increase in fees would be partially ineffective.

In order to avoid an excessive penalty in the case where the owner of an industrial design has been overtaken by the expiration period, the payment of the renewal fee will still be accepted, on payment of an additional fee, during a six-month period of grace following expiration. This provision means that a registration cannot necessarily be considered abandoned at the date of expiration simply because the renewal fee has not been paid. If the renewal fee and the additional fee have been paid during the period of grace, the registration will be considered as renewed from the date of expiration. At the end of the period of grace, the registration is no longer renewable, and the protection will consequently terminate after the first five-year period.

The Third Model Law Committee discussed whether it was necessary to provide for the cancellation of an unrenewed registration. But such a provision would be superfluous as protection terminates automatically after five years if registration is not renewed.

Subsection (3) provides for entry in the register and publication of registration renewals. These are indispensable in order to keep the public informed.

CHAPTER V: RIGHTS CONFERRED BY REGISTRATION OF AN INDUSTRIAL DESIGN

By registration, an "exclusive right" is conferred upon the owner (see, however, general remarks concerning Chapter II, in relation to "authors' certificates"). Chapter V sets out the scope (Section 21) and the limitations (Section 22) of the rights conferred by registration.

Section 21: Rights Conferred by Registration

(1) Registration of an industrial design shall confer upon its registered owner the right to preclude third parties from the following acts:

(a) reproducing the industrial design in the manufacture of a product;

(b) importing, offering for sale and selling a product reproducing the protected industrial design;

(c) stocking of such a product for the purposes of offering it for sale or selling it.

(2) The acts referred to in subsection (1) are not rendered lawful solely by reason of the fact that the reproduction differs from the protected industrial design in minor respects or that it concerns a type of product different from the said industrial design.

This Section defines, in *subsection (1)*, the acts from which third parties can be precluded by the owner of a registered design. Such acts can be seen in two categories: first, the reproducing of the industrial design in the manufacture of a product (paragraph (a)); second, acts having as their object a product reproducing the protected design (paragraphs (b) and (c)). In respect of all these acts, the condition specified in Section 22 (1) must be satisfied: the acts must have been "done for industrial or commercial purposes."

The Third Model Law Committee discussed whether the registered owner's exclusive right should be formulated in positive language. Several countries have always expressed an owner's exclusive right, in the industrial property field, in positive terms. On the basis of this school of thought, Section 21 (1) might read:

"The registration of an industrial design confers upon its owner the exclusive right:

(a) to reproduce the industrial design in the manufacture of a product;

(b) to import, to offer for sale and to sell a product reproducing the industrial design protected;

(c) to hold such a product for the purposes of offering it for sale or selling it."

A formulation of this kind does not, of course, mean that the registered owner has, in all cases, the right to perform the acts mentioned in paragraphs (a), (b) and (c). Despite his exclusive right, he may be precluded by a third party in the case of a priority right, (for example), or by the authorities (for example, if exploitation infringes the law).

A reproduction (paragraph (a)) will only be subjected to the exclusive right of the registered owner if it arises "in the manufacture of a product." A mere sketch of an industrial design would not thus be precluded (see Section 22 (1)). The expression "reproduction" should not be understood here in the sense of "copy." The exclusive right can equally be exercised against identical or similar

industrial designs which have been created in ignorance of the earlier right.

In respect of acts having as their object a product reproducing the protected design (paragraphs (b) and (c)), there is a precondition that the reproduction should be such within the meaning of paragraph (a).

Paragraph (b), which—as distinct from paragraph (a) of Section 21 of the Model Law on Inventions—does not extend the exclusive right to the use of the product reproducing the protected design, was unanimously approved by the Third Model Law Committee. Opinions were, however, divided over paragraph (c). According to one view, this provision went too far, since it only concerned a preparatory act. On the other hand, it was emphasized that the provision was necessary, as the acts envisaged by paragraphs (a) and (b) were difficult to prove, and often an infringement of an exclusive right could only be established under paragraph (c).

Proof of intention (“for the purposes of offering it for sale or selling it”) would depend on the facts of each case. If, for instance, a trader has 200 copies of an article reproducing a protected design in his shop, it would be difficult to believe his contention that they were not intended to be offered for sale or to be sold; it would be different if he only had a single copy in a back room.

Subsection (2) determines the extent of protection of an industrial design which resembles one already protected, but is intended for another kind of product. This provision repeats the principle contained in Section (4) and should be interpreted in the same way. The Third Model Law Committee preferred the expression “differs from” to “is a modification of,” in order that it should be quite clear that the provision also covers unintentional copying.

Section 22: Limitation of Rights Conferred by Registration

(1) The rights conferred by the registration of an industrial design shall extend only to acts done for industrial or commercial purposes.

(2) The rights conferred by the registration of an industrial design shall not extend to acts in respect of a product embodying the protected industrial design after the product has been lawfully imported or sold in the country.

This Section is similar to Section 23 of the Model Law on Inventions and sets the limitations to the exclusive rights conferred by registration.

Under *subsection (1)*, the exclusive rights only extend to acts (manufacture, importation and sale, etc.) done for industrial or commercial purposes. The expression “industrial” should be understood in the broadest sense, and accordingly includes handicraft. The reproduction of an industrial design for other purposes—for example, for strictly personal or exclusively scientific purposes—is unaffected by the provision.

Under *subsection (2)*, any product reproducing an industrial design may, in general, be freely re-sold, etc., once it has been lawfully imported or sold in the country. The term "lawfully" means that the first sale or importation of the product in the country has been effected by the owner of the registration, or with his authorization, or that the first sale or importation in the country was effected before registration of the design.

CHAPTER VI: ASSIGNMENT AND TRANSFER OF APPLICATIONS AND REGISTRATIONS; JOINT OWNERSHIP OF RIGHTS CONFERRED BY REGISTRATION

This Chapter, which is largely similar to Chapter VI of the Model Law on Inventions, consists of two Sections: Section 23 deals with changes in the ownership of applications and registrations, whereas Section 24 is concerned with situations in which an industrial design is the property of two or more persons (joint ownership).

An effect of these provisions can be that the ownership of an industrial design and the copyright in the same creation, become separated so that each is vested in a different person. Obviously, such a situation should be avoided or regulated by contract.

Section 23: Assignment and Transfer of Applications and Registrations

(1) Applications for registration or registrations of industrial designs may be assigned or transferred by succession.

(2) The assignment of applications and registrations shall be made in writing and shall require the signatures of the contracting parties.

(3) Assignments or transfers by succession of registrations of industrial designs shall be recorded at the Industrial Designs Office on payment of a fee fixed by the Rules; assignments and transfers of applications shall, on payment of the same fee, be provisionally recorded and the industrial design, once registered, shall be registered in the name of the assignee or the transferee.

(4) Assignments and transfers shall have no effect against third parties until they have been recorded.

This Section is similar to Section 26 of the Model Law on Inventions and Section 21 of the Model Law on Trademarks.

Under *subsection (1)*, applications and registrations in respect of industrial designs may be assigned or transferred as a whole. As to changes in ownership in ways other than assignment or transfer, the Model Law contains no provision. In such cases, the general rules of law are applicable. Expropriation would be a case in point.

Subsection (2) deals with the formal requirements of assignment. They consist of a written document and signatures. They are designed to make proof easier.

Subsection (3) requires the registration in the Industrial Designs Office of assignments and transfers. The fee prescribed in this subsection should cover the costs of the administrative procedure. If such acts are to be done free of charge, the words "on payment of a fee fixed by the Rules" should be deleted.

By *subsection (4)*, lack of registration does not affect the validity of the transaction between assignor and assignee, or transferor and transferee, but does make the transaction ineffective against third parties. The lack of legal effects *vis-à-vis*

third parties of unregistered assignments and transfers means, among other things, that if the assignor assigns his registration to two different persons ("double assignment"; usually fraudulent), the registered assignee (or his registered assignee or licensee) may prevent the use of the design by the unregistered assignee (or his assignee or licensee), even if the assignment to the latter is earlier in date. More generally: only after registration of the assignment or transfer can the new owner of the registration sue infringers in his own name or have licenses registered in his name as licensor.

The Third Model Law Committee discussed the addition of the words "and published in the form prescribed by the Rules." This idea was not adopted; the procedure entailed would have been different from that in the earlier Model Laws.

Section 24: Joint Ownership of Rights Conferred by Registration

In the absence of any provision to the contrary between the parties, joint owners of an industrial design in respect of which registration has been applied for or granted may, separately, transfer their parts, use the industrial design and exercise the exclusive rights granted under Section 21, but may only jointly grant a license to a third party to exploit the industrial design.

This Section is similar to Section 27 of the Model Law on Inventions and serves the same purpose.

Joint ownership of an industrial design in respect of which registration has been applied for or granted may exist for various reasons. It will exist from the outset if several persons apply jointly for, and are granted, registration. Joint ownership will arise later where, for example, the design devolves upon several heirs or is assigned to several assignees, or where the owner assigns only part of his interest in the design (retaining the rest of the interest).

Subject to one exception, each of the co-owners may exercise the same rights as he would have if he were the sole owner. The exception is that the grant of licenses requires the joint and concurrent action of all the co-owners. If there were no such provision, the co-owner granting a license on too easy conditions would thereby frustrate all possibilities of exploitation to the benefit of the other co-owners.

As provided by the introductory words of this Section, the rules contained in the Section may be set aside by contract between the co-owners.

Countries whose general law on joint ownership covers also the joint ownership of industrial designs would have to modify this Section so as to bring it into harmony with the relevant law. They could of course also omit any reference to industrial designs in the general law or modify the law so as to bring it into conformity with this Section.

The Third Model Law Committee emphasized that the provisions of Section 24 were in many respects insufficient. In particular, provision should be made for the case where the co-owners are not unanimous as to whether or not a license should be granted. Decision by a majority might be the answer or decision of the court where a co-owner unreasonably refuses consent.

The question also arises as to whether a co-owner who does not exploit an industrial design is entitled to compensation from a co-owner who does. The answer depends upon variable questions of fact and should be settled by contract.

CHAPTER VII: LICENSE CONTRACTS

As indicated in the statement of guiding principles above, the Model Law provides detailed rules governing license contracts. Such regulation is in the interest of developing countries since, in the case of industrial designs, as in that of patents and trademarks, there are industrial and commercial enterprises which would never have been established or have developed without the support of license contracts. The Model Law on Industrial Designs largely incorporates the relevant provisions of the two other Model Laws. Such conformity is necessary, since some license contracts deal with patents, trademarks and industrial designs, all at the same time. They should therefore all be subject to the same legal regulation.

In the interest of developing countries, the Model Law provides for government control of license contracts involving payments abroad (Section 30), and for the invalidity of clauses imposing upon the licensee limitations not derived from the rights conferred by registration or not necessary for the safeguarding of these rights (Section 26). Like these provisions, the rest of Chapter VII is similar to the relevant provisions in the Model Law on Inventions: Section 25 defines license contracts and regulates their existence and effects; Section 27 and 28 lay down the rights of licensor and licensee where the contractual terms are incomplete; Section 31 fixes the conditions for assignment of licenses, and Section 32 governs the effects of invalidity of registration upon the license contract.

Unlike the Model Law on Inventions, the Model Law on Industrial Designs makes no provision for compulsory licenses. In the technical field, a single invention can be of outstanding importance to a country's economy; but the field of aesthetic creations has different characteristics: although these creations taken as a whole are very important to a country's economy, each individual creation could hardly attain so great an importance as to bring about a monopoly in the manufacture of a certain product—as can happen in the case of a patent.

Because of the nature of aesthetic creations, it should never be too difficult to find new industrial designs which do not encroach upon an existing exclusive right (see also in this context Article 5 B of the Paris Convention, which exempts unworked industrial designs from forfeiture).

Nevertheless, the Third Model Law Committee felt that countries might have some interest in providing for the grant of a compulsory license for insufficiency or lack of exploitation. By a compulsory license, a person other than the owner of the registration may be authorized to work on industrial design where the registered owner has not himself done so.

Countries wishing to make provision for such licenses could include in their law a special chapter (located after the chapter on license contracts), which would contain the following provisions, based on Chapter VIII of the Model Law on Inventions:

Section 31bis: *Compulsory License for Non-Working and Similar Reasons*

(1) *At any time after the expiration of a period of four years from the date of the filing of an application for an industrial design, or three years from the date of registration, whichever period last expires, any person interested may, in accordance with the conditions specified in Section 31decies, apply for the grant of a compulsory license upon one or more of the following grounds :*

- (a) that the industrial design, capable of being worked within the country, has not been so worked within the terms of subsection (3);
- (b) that the working of the industrial design within the country does not meet on reasonable terms the demand for the product;
- (c) that the working of the industrial design within the country is being prevented or hindered by the importation of the product embodying the industrial design;
- (d) that, by reason of the refusal of the registered owner of the industrial design to grant licenses on reasonable terms, the establishment or development of industrial or commercial activities in the country is unfairly and substantially prejudiced.

(2) In all the above cases, a compulsory license shall not be granted if the owner of the industrial design justifies himself by legitimate reasons. Importation shall not constitute a legitimate reason.

(3) Working of an industrial design under this Section means the manufacture of a product embodying an industrial design by an effective and serious establishment existing within the country, and on a scale which is adequate and reasonable in the circumstances.

(4) The compulsory license shall permit the licensee to perform some or all the acts referred to in Section 21 with the exception of importation.

Section 31ter: Refusal of Contractual License

Any person who applies for a compulsory license under Section 31bis, must furnish proof showing that he has previously approached the owner of the registration, by registered letter, requesting a contractual license, but has been unable to obtain such a license from him on reasonable terms and within a reasonable time.

Section 31quater: Guarantee Required from Applicant for a Compulsory License

A compulsory license shall be granted only to an applicant offering the necessary guarantees to work the industrial design sufficiently to remedy the deficiencies or to satisfy the requirements which gave rise to the application for the compulsory license.

Section 31quinquies: Scope of Compulsory License

(1) Compulsory licenses shall be non-exclusive.

(2) The terms of a compulsory license, fixed in accordance with Section 31decies, may contain obligations and restrictions both for the licensee and for the owner of the registration.

Section 31sexies: Compensation

A compulsory license shall only be granted subject to the payment of adequate royalties commensurate with the extent to which the industrial design is worked.

Section 31septies: Transfer of Compulsory License

(1) A compulsory license can only be transferred with the undertaking of the licensee or with that portion of his undertaking which uses the industrial design. Any such transfer shall, on pain of invalidity, require the authorization of the authority which granted the compulsory license; Sections 31octies and 31decies shall be applicable.

(2) The grantee of the compulsory license shall not be entitled to grant sublicenses.

Section 31octies: Registration of Compulsory License at Office of Industrial Designs

Every compulsory license shall, either at the request of the interested party or ex officio, be registered at the office of Industrial Designs without fee. The license shall have no effect as against third parties until such registration.

Section 31novies: Amendment and Cancellation of Compulsory License

(1) Upon request of the owner of the registration or of the licensee of the compulsory license, the terms of the license may be amended by the authority which granted it when new facts justify it, in particular when the owner of the registration grants contractual licenses on terms more favorable to the contractual licensees.

(2) At the request of the owner of the registration, the compulsory license may be cancelled if the licensee does not comply with the prescribed terms of the license or if the conditions which justified the grant of the compulsory license have ceased to exist; in the latter case, a reasonable time shall be given to the licensee to cease working the industrial design if an immediate stoppage would cause serious damage to him.

(3) Sections 31octies and 31decies shall be applicable to the amendment and cancellation of compulsory licenses.

Section 31decies: Procedure

(1) Any application for a compulsory license shall be made to the court.

(2) The Registrar of the court shall invite, by registered letter, the applicant for the license and the owner of the registration to appear or to be represented before the court within a reasonable time; the court shall hear the party or parties or their representatives who have appeared. Before granting a compulsory license, the court shall seek the advice of the Minister responsible for industrial property, who may delegate a representative to intervene at the hearing and to make any pertinent observations.

(3) The court shall first decide whether a compulsory license can be granted. If it finds that it can be granted, it will give the parties reasonable time to agree on the terms. If there is no agreement between the parties when the time limit expires, the court shall fix the terms, including the amount of royalties referred to in Section 31sexies. The terms of a compulsory license, including those relating to royalties, shall be considered to constitute a valid contract between the parties.

(4) The decision of the court granting a compulsory license shall be notified by the Registrar of the court to each of the parties involved and to the Office of Industrial Designs.

Apart from the possibility of compulsory licenses, the Third Model Law Committee felt that mention should also be made of the institution of "Crown use"—a legal license in favor of the Government or of a person authorized by the Government to work the industrial design in the interest of the State.

Section 25: License Contracts

(1) The registered owner of an industrial design may, by contract, grant to another person or enterprise a license to exploit the industrial design.

(2) The license contract must be in writing and shall require the signatures of the contracting parties.

(3) The license contract or an appropriate extract thereof shall be recorded in the Industrial Designs Office, on payment of a fee fixed by the Rules; the license shall have no effect against third parties until so recorded.

(4) The recording of a license shall be cancelled on request of the registered owner of the industrial design or the licensee, upon evidence of termination of the license.

Subsection (1) gives the registered owner power to grant licenses by contract.

Subsection (2) establishes the form of license contracts. These must be in writing and signed by the parties. The form is thus the same as for assignments (see Section 23).

Subsection (3) provides that all license contracts that are to be effective against third parties must be registered in the Industrial Designs Office. The consequences of registration include the following:

- (a) the license remains valid, even after the licensor has transferred the industrial design to another person;
- (b) the owner of the industrial design cannot validly surrender the industrial design without the consent of the licensee (Section 32 (4));
- (c) the licensee may, in certain cases, take proceedings in his own name against infringers of the rights conferred by registration (Section 37 (2)).

In relations between licensor and licensee, the license contract will be fully effective even before it is registered and even if it is never registered.

Subsection (4) provides for cancellation of the recording of a license after its expiration and upon presentation of proof of expiration. The license similarly expires at the same time as the registration of the industrial design; in the absence of registration, there are no rights over the industrial design and license is without purpose.

Section 26: Invalid Clauses in License Contracts

(1) Clauses in license contracts or relating to such contracts are null and void in so far as they impose upon the licensee, in the industrial or commercial field, restrictions not deriving from the rights conferred by registration of the industrial design or unnecessary for the safeguarding of these rights.

(2) The following in particular shall be deemed not to constitute such restrictions:

(a) limitations concerning the scope, extent, territory or duration of exploitation of the industrial design, or the quality or quantity of the products in connection with which the industrial design may be exploited;

(b) the obligation imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the registration of the industrial design.

The aim of this Section is to prevent the licensor from imposing upon the licensee restrictions, in the industrial or commercial field, not deriving from the rights conferred by registration.

The Third Model Law Committee devoted particular attention to this Section. It was observed, during the discussions of the Committee, that countries which have adequate anti-trust or other laws designed to prevent or strike down potentially harmful restrictions on free competition—including those which might have been included in license contracts or which might have been stipulated in connection with the licensing of industrial designs—would not need, in their industrial property law, provisions of the kind contained in the Section under consideration. Countries not in this situation, on the other hand, might be well advised to include this Section in their industrial property law, for the following reasons:

As already indicated in connection with Section 28, a licensor may in several respects set limits to any contractual license granted by him. The owner of a design is under no obligation—subject to certain exceptions not relevant here—to grant a license and, whenever he does, should therefore be able to limit it. This does not involve any unjustified restriction on competition because, without a license, no competition would be allowed at all within the limits of the registration.

At the same time, however, it is important that the licensor does not abuse his position by imposing, in the license contracts, additional limitations, in the industrial or commercial field, which are outside the scope of the grant of registration. Such unlawful restriction may consist, for example, of a stipulation requiring the licensee to purchase machines, or parts of machines, from the licensor. Another example may consist of a stipulation that the licensee will not export to certain foreign countries, when exportation is not already limited because of registrations existing in such countries. Still another example may consist of stipulating that the licensee will not sell competing products not infringing the right to which the license relates.

The Section under consideration contains only a general rule prohibiting certain restrictions. This is contained in *subsection (1)*. Examples of prohibitive restrictions have been given above.

Subsection (2), on the other hand, enumerates the principal restrictions which are lawful. These are the lawful restrictions which are most usual and are to be considered merely as examples. It

is to be noted that fixing of prices is not among these examples. In fact, pricing is outside the scope of the rights conferred by registration of an industrial design.

Subsection (1) provides that contractual clauses stipulating prohibited restrictions are null and void. They do not, as a rule, render null and void the other clauses of the contract. It may, however, be that the clauses to be declared null and void are so essential to the contract that, without them, the contract cannot stand. In this case, the whole contract may be declared null and void by the competent Court (see Section 38 (1)), on the basis of the general rules of the law of contracts. In any case, it is in the interest of the security of commercial relations of the country in which the license is exploited, to uphold the validity of license contracts wherever possible.

It should be noted that, in countries where license contracts involving payments abroad, would be subject to Government control under Section 30, the Government itself has, in these cases, an opportunity to take into consideration any restriction imposed on the licensee. It may disallow on policy grounds even clauses which under Section 26 (2) are not in themselves unlawful. If restrictions are contrary to the economic interests of the country, the Government will refuse to approve the contract, in which case the *whole contract* will be null and void. The power given by the Section under consideration to the Courts to declare null and void *certain contractual clauses* (see Section 38 (1)) is, in these cases, an additional safeguard which might be invoked by the licensee, even when the license contract received the approval referred to in Section 30.

Section 27: Right of Licensor to Grant Further Licenses

(1) In the absence of any provision to the contrary in the license contract, the grant of a license shall not prevent the licensor from granting further licenses to third persons for the exploitation of the same industrial design, or from exploiting the industrial design himself.

(2) The grant of an exclusive license shall prevent the licensor from granting further licenses to third persons for the exploitation of the same industrial design and, in the absence of any provision to the contrary in the license contract, from exploiting the industrial design himself.

Subsections (1) and (2) of this Section deal with non-exclusive and exclusive licenses respectively. The Section is similar to Section 29 of the Model Law on Inventions and Section 25 of the Model Law on Trademarks; the rules that it lays down are applicable unless the contract provides otherwise. The word "contract" comprises the original contract and all subsequent amendments.

Subsection (1) provides in effect that, unless the contract expressly stipulates otherwise, a license will be considered as non-exclusive, in which case it will not prevent the licensor from granting further licenses to third parties or from using the industrial design himself. The license contract may, for example, limit the number or scope of further licenses which the licensor may grant to

third parties or it may declare that the license is "exclusive."

This latter case is dealt with in *subsection (2)*, which provides that the grant of an exclusive license prevents the licensor from granting further licenses to third parties. If the exclusive license is recorded, it is effective against third parties (Section 25(3)) and further licenses will be null and void; if the exclusive license is not recorded, it has no effect against third parties (*ibidem*) and further licenses will be valid, but the exclusive licensee will have a claim against the licensor for breach of contract. In the case of an exclusive license, the licensor himself will be prevented from using the industrial design, unless the contract contains a provision to the contrary.

A license is said to be partially exclusive when it is exclusive only for part of the duration of the registration of the industrial design, for part of the national territory, or for a restricted number of products. In such cases, *subsection (2)* will apply to whatever is designated as exclusive in the contract, and *subsection (1)* will apply to the remainder.

The Third Model Law Committee discussed whether an exclusive licensee should lose his right by reason of non-exploitation. Such provision might be made in the law of industrial designs, unless there is adequate provision in the ordinary law.

Section 28: Rights of Licensee

In the absence of any provision to the contrary in the license contract, the licensee shall be entitled to perform all the acts referred to in Section 21 for the whole duration of the registration, including renewals, in the entire territory of the country, and in respect of all applications of the industrial design.

This Section, which is similar to Section 30 of the Model Law on Inventions, sets out the rights of the licensee where the contract does not stipulate otherwise. The expression "including renewals" means that the rights of the licensee continue after possible renewals of registration; the license contract should place the licensor under an obligation, vis-à-vis the licensee, to apply for renewals.

This Section means that, unless otherwise stipulated in the license contract, the license will be regarded as allowing exploitation without limitation as to time, territory, or method of exploitation, and as to the acts referred to in Section 21. The contract may provide for any of these limitations: it may limit the licensee's rights to part of the duration of registration, to part of the country's territory, or to less than all the acts (making, importation, sale, etc.) referred to in Section 21.

In the context of this Section, the Third Model Law Committee considered whether the licensee should have an automatic right to the know-how

relating to the exploitation of the industrial design. The Committee did not approve this idea, since know-how is outside the exclusive right conferred by registration.

Section 29: Non-Assignability of Licenses

(1) In the absence of any provision to the contrary in the license contract, a license shall not be assignable to third parties and the licensee shall not be entitled to grant sublicenses.

(2) If the licensee is entitled by contract to assign his license or to grant sublicenses, Sections 25 to 28 and 30 shall apply.

This Section deals with the question of whether, and in what circumstances, the licensee can assign his license to third parties. It lays down that, unless otherwise stipulated in the license contract, a licensee may neither assign the license nor grant licenses (the latter are called "sublicenses".) Of course, the contract may authorize the licensee to do either or both. Such authorization may include certain limitations, for example, those referred to in connection with Section 28, or the limitation that the license may be assigned only together with the enterprise of the licensee.

Section 30: License Contracts Involving Payments Abroad

The responsible Minister or other competent authority may, by order, provide that, on pain of invalidity, license contracts or certain categories of them, and amendments or renewals of such contracts, which involve the payment of royalties abroad, shall require the approval of [administrative authority], taking into account the needs of the country and its economic development.

This Section enables the Government of the country adopting the Model Law to provide for the compulsory control, and need for approval, by a government authority, of all license contracts which involve the payment of royalties abroad. The control is to be effected and approval to be given, taking into account the needs of the country and of its economic development. Thus, the authority concerned will be able to protect the national interest against excessive foreign influence, and to protect the country's balance of payments.

In some countries, this Section will be superfluous. This will be the case if the country's laws on investments or foreign exchange control already provide for a *general* control of all contracts and other legal transactions involving payments abroad, or if they provide for the control of the manufacture or importation of certain articles. Other countries, however, which do not have such general provisions, would probably be well advised, when adopting the Model Law, to include this Section.

Section 31: Effects of Nullity of Registration on License Contract

When the registration upon which the license is based is declared null and void by virtue of Sections 33 and 34, the nullity of the registration shall not entail the repayment of royalties

This Section deals with the effects on the license contract of a Court decision declaring the registration null and void. Section 34 gives such declaration retroactive effect. The effects of this retroactive nullity will be governed by the general rules

paid by the licensee unless he has not effectively profited from the license.

of law concerning nullity. Nevertheless, in special circumstances, this Section somewhat mitigates the consequences of retroactivity: where a license has existed during the apparent validity of the registration and royalties have been paid under such license, the licensee will have no right to claim the reimbursement of the payments he has made, where he has effectively benefited by his protected situation and the license.

This provision corresponds to Section 48 (1) of the Model Law on Inventions and Section 34 (2) of the Model Law on Trademarks. The Third Model Law Committee felt that this provision should be included in the chapter on licenses and that its content should be clarified by means of an amendment reversing the burden of proof as regards the condition that the licensee must have effectively profited from the license.

CHAPTER VIII: RENUNCIATION AND NULLITY

This Chapter, which corresponds to Chapter X of the Model Law on Inventions, consists of three Sections—Section 32 deals with the total or partial renunciation of registration by the owner of an industrial design. Sections 33 and 34 deal with the declaration of nullity of the whole registration or of part of it.

Section 32: Renunciation of Registration

(1) The registered owner of an industrial design may renounce the registration by a written declaration addressed to the Industrial Designs Office.

(2) Renunciation may be limited to one kind of product or, if the Rules make provision for classification, to one class of products or, if the application comprises several industrial designs (Section 11 (4)), to a part of those industrial designs.

(3) Renunciation shall be immediately recorded and published by the Industrial Designs Office. It shall be effective only after it has been recorded.

(4) If a license in respect of an industrial design is recorded at the Industrial Designs Office, renunciation of the registration shall be recorded only upon the submission of a declaration

This Section is largely similar to Section 46 of the Model Law on Inventions.

Subsection (1) lays down the form that renunciation is to take.

Subsection (2) provides for partial renunciation, restricted to a certain kind or class of products or to part only of the relevant industrial designs in the case of a multiple application (see Section 11 (4)).

Subsection (3) determines the coming into effect of a declaration of renunciation.

Subsection (4) recognizes that renunciation may be prejudicial to licensees, who may have made arrangements with a view to exploiting the design. For this reason, unless the contract stipulates otherwise, subsection (4) in principle requires the licensee's consent, recorded on the Register of industrial designs, before the renunciation will be valid.

by which the recorded licensee consents to the renunciation, unless the latter has expressly waived this right in the license contract.

Section 33: Nullity of Registration

(1) On the request of any person showing a legitimate interest, or of any competent authority, the court, after having given the registered owner an opportunity to be heard, shall declare the registration of an industrial design null and void if it ought not to have been registered by reason of Section 3 (2) of this Law, if it fails to satisfy the conditions for protection mentioned in Sections 2, 3 (1) and 4 of this Law, if the same industrial design has previously been registered following a prior application or an application benefiting from an earlier priority, or if the registered industrial design has been usurped (Section 8). As to the conditions of Section 3 (2), the court shall not take into account grounds that no longer exist at the time of its decision.

(2) In the case of an application covering several industrial designs (Section 11 (4)) and in which the grounds for nullity of registration apply only to a part thereof, nullity of registration shall be declared in respect only of such part.

This Section deals with the situation where an industrial design, registered by the Industrial Designs Office, does not fulfil the conditions set out in Sections 2, 3 and 4, or conflicts with a prior right. It is important that such registration be declared null and void—with the effect that it can no longer be the basis of a legal action.

The courts, of course, can and must withhold recognition from a registered design which does not satisfy the conditions of Sections 2, 3 and 4, even where such registration has followed opposition proceedings (Section 15, Alternative B), or examination (Section 15, Alternative C). But the court's lack of recognition will only be effective as between the parties to the proceedings, whereas a declaration of nullity of the registration is effective *erga omnes*.

Subsection (1) determines the circumstances in which nullity must be declared. An action may be instituted by any person showing a legitimate interest (for example, a competitor affected by an invalid registration) or by any appropriate authority (the Industrial Designs Office or the Public Prosecutor, for example).

The Third Model Law Committee discussed whether there should be a time limit for bringing an action for nullity (for example, five years from the date of registration). Such a time limit might be useful in the case of trademarks, but was not approved by the Committee. The duration of registration of an industrial design is fifteen years and enterprises in developing countries do not normally have a supervisory section, which would be indispensable if such a time limit were provided for.

The reasons for which registrations of industrial designs may be declared null and void are the following:

- (a) The article registered is not an industrial design within the meaning of Section 2—because, for instance, its form serves solely to obtain a technical result (Section 2 (2)).
- (b) The industrial design ought not to have been registered by reason of Section 3 (2). Here, an industrial design contrary to public order

or morality was not considered as such by the Industrial Designs Office at the time of examination under Section 14(1) and was consequently registered under Section 15.

- (c) The industrial design is not new within the meaning of Sections 3(1) and 4. Here, the presumption in Section 4 is relevant. It will be for the plaintiff in an annulment action to prove the anticipation constituting an impediment to novelty (Section 4(1)).
- (d) Registration has been granted for the same industrial design as the result of an earlier application, or of an application benefiting from an earlier priority. Here, registration conflicts with a prior right.
- (e) The essential elements of the industrial design have been obtained from the creation of a third party, without the consent of the rightful owner either to the obtaining or to the application (usurpation, see Section 8).

In the case referred to above under (b), the court must declare the registration null and void; but in reaching its decision, the court must treat as irrelevant circumstances no longer existing at the time of its decision. This means that, if the notions of public order and morality have changed between registration and judgment in the action for nullity, and an industrial design is no longer considered contrary to public order or morality, registration cannot be declared null and void. If, on the other hand, the rules of public order and morality have become stricter and an industrial design, which was properly registered, infringes the new concept of public order or morality, there is a conflict between an acquired right and the new morality or public order. Such conflict is to be resolved by the law which has embodied the new notions of public order and morality.

Subsection (2) of Section 33 deals with partial nullity. It is self-explanatory.

Section 34 : Effects of Declaration of Nullity

(1) When a decision declaring total or partial nullity of a registration becomes final, the registration shall be deemed, within the limits of the decision, to have been null and void from the date of such registration.

(2) When a declaration of nullity becomes final, the Registrar of the court shall notify the Industrial Designs Of-

This Section deals with the effects of a court decision declaring registration of an industrial design null and void.

Subsection (1) provides that such declaration has retroactive effect, since any registration contrary to law or to prior rights is deemed never to have taken place. The effects of this retroactive declaration of nullity are governed by each country's general law in respect of nullity.

file, which shall record the declaration in the Register and publish it as soon as possible.

Since third parties must be informed as soon as possible of any cancellation of registration of an industrial design before its normal expiration date, *subsection (2)* provides for the recording of the declaration of nullity in the Register, and for its publication.

CHAPTER IX: INFRINGEMENT OF RIGHTS CONFERRED BY REGISTRATION OF AN INDUSTRIAL DESIGN

This Chapter contains provisions dealing with infringements, threatened or committed, of the rights conferred upon the registered owner of an industrial design (Section 21).

The proposed rules are similar to those which appear in the two other Model Laws, as it is desirable, whenever infringements of industrial designs coincide with infringements of patents or trademarks, that they should all be dealt with in the same proceedings and that similar sanctions should be applicable.

The Chapter under consideration is divided into three Sections, the first concerning civil sanctions (Section 35), the second (Section 36) penal sanctions and the third (Section 37) the actions available to a licensee.

Section 35 : Civil Sanctions

(1) The registered owner of an industrial design whose rights under Section 21 are threatened with infringement, or are infringed, may institute legal proceedings designed to prevent the infringement or to prohibit its continuation.

(2) In case of infringement of those rights, the registered owner of the industrial design may also claim damages and the application of any other sanction provided for in the civil law.

The rights conferred upon the registered owner of an industrial design are defined in Section 21. Each of the acts described in that Section done by a person without the authorization of the registered owner—particularly without having obtained a license—and falling outside the limitations provided for in Section 22, constitutes an infringement of the rights in an industrial design.

Subsection (1) entitles the registered owner of an industrial design to institute civil legal proceedings not only when his rights have already been infringed, but also when they are threatened with infringement. The latter measure is designed to prevent infringement before it really gets under way and before it results in damage difficult or impossible to assess and repair. The Third Model Law Committee approved this provision, stressing that it is essential to effective protection.

Subsection (2) provides that, once infringement has been committed, the registered owner of the industrial design may also claim damages and the application of any other sanctions provided for in the general civil law of the country (for example, seizure of all products reproducing the protected design; publication of the decision condemning infringement at the expense of the infringer).

Civil proceedings may be instituted even where the infringement was unintentional or where the infringer, in good faith but without legal basis, has

claimed that he had a right to use the industrial design. The Third Model Law Committee thought that good faith could be considered as a mitigating circumstance, and damages accordingly reduced, if the general law of the country concerned so provides. The domestic law could also make liability depend upon negligence or wrongful act; an example of negligence would be the failure to inquire sufficiently into existing rights.

Section 36 : Penal Sanctions

(1) Any intentional infringement of the rights of the registered owner of an industrial design under Section 21 shall constitute an offense.

(2) Such offense shall be punishable by a fine not exceeding . . . or by imprisonment not exceeding . . . , or both.

(3) In the event of recidivism, the maximum penalties shall be doubled.

(4) Recidivism shall be deemed to have occurred when, in the course of the five preceding years, the offender has been convicted of another infringement of the rights conferred by Section 21.

When discussing this Section, the Third Model Law Committee raised the question whether the Law should provide any penal sanctions at all in the case of infringement of the rights in a registered industrial design.

The Committee answered this question in the affirmative: as a general rule, the exclusive rights in industrial property should be protected by penal as well as civil sanctions. However, it would be very rare for a penal sanction to take the form of imprisonment; the sentence would normally be a fine. The advantage of criminal proceedings is that they allow for a more complete investigation into the facts and enable the punishment of an infringer who is not in a position to repair the damage that he has caused. The desirability for penal sanctions will be for each country to decide on the basis of its own individual circumstances.

Section 37 : Legal Proceedings by Licensee

(1) Any licensee may, by registered mail, require the registered owner of the industrial design to introduce the legal actions necessary to obtain civil or penal sanctions in respect of any infringement of the rights under Section 21 reported by the licensee.

(2) In the absence of any provisions to the contrary in the license contract, the licensee under a recorded license may either, if the registered owner refuses or neglects to introduce the said legal actions within three months of the request, obtain damages from the registered owner if the court finds that the infringement of the rights under Section 21 was obvious or, after having given notice to the registered owner, introduce such actions in his

This Section is largely similar to Section 38 of the Model Law on trademarks.

Subsection (1) provides that, in any case, the licensee has the right to require the registered owner of an industrial design to take legal proceedings in respect of any infringement of the industrial design reported by the licensee. The Model Law provides that the licensee's invitation must be addressed by registered mail, but other means of legally valid communication may be provided by any country wishing to do so. Any such communication must be sent to the registered owner pursuant to the provisions of Section 16 (5).

Subsection (2) contains provisions for cases where the registered owner, notwithstanding the invitation to do so, refuses or neglects to take proceedings within a period of three months. In this case, unless the license contract otherwise provides, the licensee will have the option between claiming

own name, without prejudice to the right of the registered owner to intervene in those actions. The licensee shall be responsible to the registered owner for any damage which the latter may suffer by reason of unwarranted actions introduced by the former.

(3) The period of three months referred to in subsection (2) shall be reduced to two weeks if the licensee shows that immediate action is necessary to avoid substantial damage.

compensation from the registered owner for damages suffered through the inaction of the latter, or bringing an action in his own name, without prejudice to the right of the registered owner to intervene in such action. If the licensee chooses the first possibility, he will obtain damages from the registered owner only if the Court finds that the infringement of the industrial design by third persons was obvious. This is so because the registered owner cannot be obliged to act, or made responsible for damages in case of inaction if the alleged infringement is doubtful or less than obvious. If the licensee chooses the second possibility—that is, sues the infringer in his own name—he will have to prove in court that no action was introduced by the registered owner in spite of his request. He will also be liable to the registered owner for any damage caused to him by unwarranted actions.

Subsection (3) takes account of the opinion of the Third Model Law Committee by providing for a shorter period if immediate action is necessary to avoid substantial damage.

The system provided for in subsection (2) and (3) is more refined than that provided for in the corresponding provisions of the Model Law on Inventions (Section 52 (2)) and the Model Law on Trademarks (Section 38 (2)). Countries wishing to adopt these Model Laws will naturally consider which system suits them best.

CHAPTER X: PROCEDURAL PROVISIONS AND RULES

The final Chapter of the Model Law consists of two Sections, one concerning the competence of the courts (Section 38) and the other making provision for the establishment of Rules under the Law (Section 39). This Chapter is similar to the third Part of the Model Law on Inventions and to the fifth Part of the Model Law on Trademarks.

Section 38 : Competence of Courts

(1) The ordinary courts shall be competent to deal with all litigation concerning the application of this Law, particularly as regards appeals against decisions of the Industrial Design Office, the right to legal protec-

This Section deals with questions concerning the competence and jurisdiction of the courts. Since the judicial systems of countries differ widely, all that the Model Law can do is to indicate possible solutions in this respect which each country will have to adapt to its own system.

tian, the fixing of the remuneration of an employee-creator, license contracts, the nullity of registrations, and the infringement of the rights in respect of an industrial design.

(2) Subject to Section 18, the court of the domicile of the defendant, or, if he is domiciled abroad, the court of the place where the Industrial Designs Office is located, shall have jurisdiction.

(3) The decisions of the court shall be subject to appeal, annulment, or revision, according to the general rules of procedure.

Subsection (1) gives the ordinary courts of the country competence over all litigation concerning the application of the Law.

Subsection (2) deals with the territorial competence of these courts within the country. It does not interfere with the competence of foreign courts, which will be regulated by the legislation of the foreign country concerned. The basic rule of this subsection is that, if the defendant is domiciled within the country, the court of this domicile is competent. If he is domiciled abroad, the court of the place where the Industrial Designs Office is located will be the competent court. The indication of an address for service within the country according to Sections 11 (1) (b) and 16 (2) does not affect these rules, because such indication is prescribed only to facilitate communications (Section 16 (5)). As regards appeals against decisions of the Industrial Designs Office (Section 18), the court of the place where the Office is located will always be the only competent court. This court may thus acquire the maximum experience in these matters and a certain degree of specialization.

Subsection (3) contains a reminder that provisions with respect to appeal, annulment or revision of court decisions will apply, unless otherwise provided in the legislation of the country concerned.

Section 39 : Rules

The Rules shall prescribe the details of application of this Law, particularly in regard to Sections 11 (5)-13, 15 (1) *, (4) *, (6) ** and (10) *, 17 (1), 20, 23 (3) and 25 (3).

The Rules would contain provisions on certain details concerning the application of the Law, including in particular the form of the application (Section 11) and the amount of the fees payable to the Industrial Designs Office (Sections 13, 15, Alternative B (1), 20, 23 (3) and 25 (3)). If the system of an opposition procedure or of ex-officio examination as to substance (Alternatives B and C of Section 15) is adopted, the Rules will have to contain also provisions on the examination procedure (see the introductory observations to Chapter III).

The Rules should not, however, contain provisions as to substance (for example, relating to license contracts), since this falls within the ambit of the Law itself.

* In the case of Alternative B.

** In the case of Alternative C.

TEXT OF THE MODEL LAW

MODEL LAW FOR DEVELOPING COUNTRIES ON INDUSTRIAL DESIGNS

CHAPTER I: GENERAL PROVISIONS

Section 1: Scope of This Law

- (1) Industrial designs are protected under this Law, subject to its conditions and formal requirements.**
- (2) Such protection does not exclude any other rights provided for in the law, in particular rights derived from the law of copyright.**

Section 2: Definition of an Industrial Design

- (1) Any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors, is deemed to be an industrial design, provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft.**
- (2) The protection under this Law does not extend to anything in an industrial design which serves solely to obtain a technical result.**

Section 3: Substantive Conditions for Protection

- (1) Only industrial designs that are new shall benefit from protection under this Law.**
- (2) Industrial designs that are contrary to public order or morality shall not be protected.**

Section 4: Definition of Novelty

- (1) A regular application for registration of an industrial design shall raise a presumption that the design was new at the time of the application.**
- (2) An industrial design shall not be new if, before the date of application for registration or before the priority date validly**

claimed in respect thereof, it has been made available to the public, anywhere and at any time whatever, through description or use, or in any other way.

(3) An industrial design shall not be deemed to have been made available to the public solely by reason of the fact that, within the period of six months preceding the filing of an application for registration, it has appeared in an official or officially recognized international exhibition.

(4) An industrial design shall not be new solely by reason of the fact that it differs from earlier embodiments in minor respects or that it concerns a type of product different from the said embodiments.

Section 5: Applicability of International Conventions

The relevant provisions of international bilateral or multi-lateral conventions to which *[the country]* is or will become a party, which regulate the rights of nationals of States parties to such conventions and of persons assimilated to such nationals, shall be applicable by virtue of this Law.

Section 6: Rights of Foreigners

Foreigners who do not fall within the scope of the preceding Section shall have the same rights as nationals, unless the Minister responsible for industrial property shall have, by order, suspended the application of this provision so far as it relates to the nationals of a country, and persons assimilated to them, on the ground that that country does not grant adequate reciprocity.

CHAPTER II: RIGHT TO LEGAL PROTECTION

Section 7: Right to Legal Protection

(1) Subject to Section 9, the right to legal protection shall belong to the creator of the industrial design or his successor in title.

(2) If two or more persons have jointly created an industrial design, the right to legal protection shall belong to them or their successors in title jointly; a person who has merely assisted in the creation of the industrial design and has made no contribution of a creative nature shall not, however, be deemed to be the creator or co-creator.

(3) Any person who is the first to file an application for the registration of an industrial design or is the first validly to claim

the earliest priority for his application shall, subject to the provisions of Sections 8 and 9, be deemed to be the creator or the successor in title of the creator.

Section 8: Usurpation

(1) If the essential elements of an industrial design, the subject of an application, have been obtained from the creation of another person without the rightful owner having consented to the obtaining thereof and to the filing of an application, the rightful owner may demand that the application or the registration be transferred to him.

(2) The consent of the rightful owner may be given subsequent to the filing of the application; in that event, it shall be retroactive to the date of the application.

Section 9: Industrial Designs Created Pursuant to a Commission or by an Employee

(1) Subject to the legal provisions governing contracts for performing a certain work and employment contracts, and in the absence of contractual provisions to the contrary, the ownership of an industrial design made in execution of the contract shall belong to the person having commissioned the work or to the employer.

(2) The same provision shall apply when an employment contract does not require the employee to exercise any creative activity, but when the employee has created an industrial design using data or means that his employer has put at his disposal. In that event, he shall have a right to remuneration, taking into account his salary and the importance of the industrial design created. Such remuneration shall, in the absence of agreement between the parties, be fixed by the court.

Section 10: Right of the Creator of an Industrial Design to be Mentioned as Such

(1) The creator of the industrial design shall be entitled to be mentioned as such in the registration.

(2) The preceding provision shall not be modified by contract.

CHAPTER III: PROCEDURE FOR REGISTRATION

Section 11: Requirements of Application

(1) The application for registration of an industrial design shall be made to the Industrial Designs Office and shall contain :

- (a) a request for registration of the industrial design ;**
- (b) the complete name and address of the applicant and, if the applicant's address is outside the country, an address for service within the country ;**
- (c) a specimen of the article embodying the industrial design, or a photographic or graphic representation of the industrial design, in color where it is in color ;**
- (d) an indication of the kind of products for which the industrial design is to be used and also, if the Rules make provision for classification, an indication of the class or classes in which such products are included.**

(2) If appropriate, the application for registration shall be accompanied by a declaration, signed by the creator of the industrial design, requesting that he be mentioned as such in the registration and giving his name and address.

(3) If the application is filed through an agent, it shall be accompanied by a power of attorney signed by the applicant ; legalization or certification of the signature shall not be necessary.

(4) Provided that the products indicated are of the same kind or kinds, or, if the Rules make provision for classification, that they are in the same class or classes, the application may comprise one to fifty industrial designs.

(5) The details of the above requirements with which the application for registration of an industrial design must comply shall be fixed by the Rules.

Section 12: Right of Priority

The applicant for registration of an industrial design who wishes to avail himself of the priority of an earlier application filed in another country is required to append to his application a written declaration, indicating the date and number of the earlier application, the country in which he or his predecessor in title filed such application and the name of the applicant, and to furnish, within a period of three months from the date of the later application, a copy of the earlier application, certified as correct

by the Industrial Property Office or the Industrial Designs Office of the country where it was filed.

Section 13: Payment of Fees

An application for registration of an industrial design shall not be entertained unless the fees prescribed by the Rules have been paid.

Section 14: Examination of Application

(1) The Industrial Designs Office shall examine the application as to its conformity with Sections 3 (2), 11, 12 and 13.

(2) If the provisions of Sections 3 (2), 11 or 13 have not been complied with, the Office shall refuse registration of the industrial design; if the requirements of Section 12 have not been fulfilled, the Office shall not mention, in connection with the registration of the industrial design, the priority claimed.

(3) Before taking a decision under subsection (2), the Office shall notify the applicant of the defect in the application. The application may then be completed or amended in the three months following the notification. The application shall take effect only on the date upon which it becomes complete and regular.

Alternative A:

Section 15: Registration of Industrial Design without Examination of Application as to Substance

(1) When the examination provided for in Section 14 shows that the application satisfies the requirements of Sections 3 (2), 11 and 13, the industrial design shall be registered, in accordance with the application, and without further preliminary examination, in particular, without examination as to whether the registration is or is not contrary to Section 3 (1).

(2) When the examination provided for in Section 14 shows that the requirements of Section 12 have been fulfilled, the Office shall record, in connection with the registration, the priority claimed.

Alternative B:

Section 15: Registration of Industrial Design after Opportunity for Opposition

- (1) When the examination provided for in Section 14 shows that the application satisfies the requirements of Sections 3 (2), 11 and 13, the Industrial Designs Office shall invite the applicant to pay, within a period of two months, the fee for publication of the application fixed by the Rules.
- (2) If the fee for publication of the application is not paid within the prescribed period, registration of the industrial design shall be refused.
- (3) If the publication fee is paid within the prescribed period, the Industrial Designs Office shall proceed to publish the application. Publication shall contain a reproduction of the industrial design and shall mention: the number and date of the application; the name and address of the applicant and, if his address is outside the country, an address for service in the country; if priority is claimed, an indication of that fact, and the number, date and country of the application on which the priority claim is based; the kinds as well as the classes of products within the meaning of Section 11 (1) (d); and the name and address of the creator, if he has asked to be mentioned in the registration.
- (4) Any person who considers that registration of an industrial design is precluded on one or more of the grounds referred to in Sections 3, 4 and 7 (3) may give notice of opposition to such registration within a period of three months from the date of publication of the application, stating the grounds for opposition. Opposition shall not be deemed to have been lodged until the relevant fee fixed by the Rules has been paid.
- (5) In the event of usurpation, the rightful owner may give notice of opposition, either to prevent the registration or to cause it to be effected in his own name.
- (6) When no opposition has been lodged within the prescribed period, the industrial design shall be registered.
- (7) In the event of opposition, the Industrial Designs Office shall communicate the grounds for opposition to the applicant and shall invite him to present his observations on these grounds within a period of three months. After that period, the Industrial Designs Office shall decide on the opposition as rapidly as possible, and shall register the industrial design or refuse registration.

- (8) Registrations are granted without guarantee as to their validity.
- (9) The Industrial Designs Office may, upon request, grant a reasonable extension of any of the periods referred to in this Section, particularly if the applicant is resident abroad.
- (10) The details of the application of this Section shall be fixed by the Rules.

Alternative C:

Section 15: Registration of Industrial Design after Examination of Application as to Substance

- (1) When the examination provided for in Section 14 shows that the application satisfies the requirements of Sections 3 (2), 11 and 13, the Industrial Designs Office shall proceed to the examination of the application as to its substance, in order to determine :
 - (a) whether the subject of the application is an industrial design within the meaning of Section 2 ;
 - (b) whether the industrial design was new at the time of application (Sections 3 (1) and 4) ;
 - (c) whether, for the same industrial design, no prior application, or application benefiting from an earlier priority, has been made in the country.
- (2) When the Industrial Designs Office finds that the answer to at least one of the questions mentioned in the preceding paragraph is in the negative, it shall notify the applicant accordingly, stating the reasons for which the industrial design cannot be registered ; the Office shall invite him to withdraw his application, or to present his observations on the reasons for refusal, within a period of two months following notification. If the applicant does not withdraw his application, and if he does not present any observations within the period mentioned, or if he has presented his observations within such period and the Industrial Designs Office nevertheless continues to consider that the industrial design is precluded from registration, registration shall be refused. If, however, the Industrial Designs Office considers that the industrial design may be registered, subsection (3) of the present Section shall apply.
- (3) When, possibly after proceeding under subsection (2) of this Section, the Industrial Designs Office finds that the answers to questions (a), (b) and (c) of the preceding subsection are in the affirmative, the industrial design shall be registered.

- (4) Subsection (8) of Alternative B.
- (5) The Industrial Designs Office may, on request, grant a reasonable extension of the period prescribed in subsection (2), particularly when the applicant is resident abroad.
- (6) Subsection (10) of Alternative B.

Section 16: Contents of Register and Issuance of Certificate

- (1) The Industrial Designs Office shall maintain a Register in which shall be registered industrial designs, numbered in the order of their registration, and in which shall be recorded, in respect of each industrial design, all transactions to be recorded by virtue of this Law.
- (2) The registration of an industrial design shall include a reproduction of the industrial design and shall mention: its number; the name and address of the registered owner and, if the registered owner's address is outside the country, his address for service within the country; the dates of application and registration; if priority is claimed, an indication of that fact, and the number, date and country of the application on which the priority claim is based; the kinds and the classes of products within the meaning of Section 11 (1) (d), and the name and address of the creator of the industrial design, if he has asked to be mentioned in the registration.
- (3) The Office shall establish and send by registered mail a certificate of the registration of the industrial design to the registered owner at his address or, if his address is outside the country, at his address for service.
- (4) The Office shall record any change of address, or address for service, which shall be notified to it by the registered owner.
- (5) In the absence of any provision to the contrary in this Law, communications to be made to the registered owner of an industrial design by virtue of this Law shall be sent to him at his last recorded address and, at the same time, at his last recorded address for service.

Alternative A:

Section 17: Publication of Registered Industrial Designs; Consultation of Register

- (1) The Industrial Designs Office shall publish, in the form and within the period fixed by the Rules, industrial designs registered,

in the order of their registration, reproducing all the particulars recorded by virtue of Section 16 (2).

(2) Industrial designs registered at the Industrial Designs Office may be consulted free of charge at that Office, and any person may obtain copies thereof at his own expense. This provision shall also be applicable to transactions recorded in respect of any industrial design.

Alternative B:

Section 17: Publication of Registered Industrial Designs; Consultation of Register

(1) The Industrial Designs Office shall publish, in the form and within the period fixed by the Rules, the number and date of registration, mentioning the name of the applicant and the number of the application. It shall also publish other elements of any earlier publication which have since undergone changes.

(2) Subsection (2) of Alternative A.

Section 18: Appeals

Any person showing a legitimate interest may appeal against a final decision of the Industrial Designs Office to the court of the place where that Office is located, under the conditions prescribed in Section 38.

CHAPTER IV: DURATION AND RENEWAL OF REGISTRATIONS OF INDUSTRIAL DESIGNS

Section 19: Duration of Registration

Subject to earlier termination as provided for in Sections 32 to 34, registration of an industrial design shall be for a period of five years from the date of application.

Section 20: Renewal

(1) Registration of an industrial design may be renewed for two further consecutive periods of five years merely by paying the fee for renewal fixed by the Rules.

(2) The renewal fee must be paid within the twelve months preceding the expiration of the period of registration. However,

a period of grace of six months shall be granted for the payment of the fee after such expiration, upon payment of a surcharge fixed by the Rules.

(3) The Industrial Designs Office shall record in the Register and publish, in the form and within the period fixed by the Rules, renewals of registrations.

CHAPTER V: RIGHTS CONFERRED BY REGISTRATION OF AN INDUSTRIAL DESIGN

Section 21: Rights Conferred by Registration

(1) Registration of an industrial design shall confer upon its registered owner the right to preclude third parties from the following acts :

- (a) reproducing the industrial design in the manufacture of a product ;
- (b) imparting, offering for sale and selling a product reproducing the protected industrial design ;
- (c) stocking of such a product for the purposes of offering it for sale or selling it.

(2) The acts referred to in subsection (1) are not rendered lawful solely by reason of the fact that the reproduction differs from the protected industrial design in minor respects or that it concerns a type of product different from the said industrial design.

Section 22: Limitation of Rights Conferred by Registration

(1) The rights conferred by the registration of an industrial design shall extend only to acts done for industrial or commercial purposes.

(2) The rights conferred by the registration of an industrial design shall not extend to acts in respect of a product embodying the protected industrial design after the product has been lawfully imported or sold in the country.

CHAPTER VI: ASSIGNMENT AND TRANSFER OF APPLICATIONS AND REGISTRATIONS; JOINT OWNERSHIP OF RIGHTS CONFERRED BY REGISTRATION

Section 23: Assignment and Transfer of Applications and Registration

- (1) Applications for registration or registrations of industrial designs may be assigned or transferred by succession.**
- (2) The assignment of applications and registrations shall be made in writing and shall require the signatures of the contracting parties.**
- (3) Assignments or transfers by succession of registrations of industrial designs shall be recorded at the Industrial Designs Office on payment of a fee fixed by the Rules; assignments and transfers of applications shall, on payment of the same fee, be provisionally recorded and the industrial design, once registered, shall be registered in the name of the assignee or the transferee.**
- (4) Assignments and transfers shall have no effect against third parties until they have been recorded.**

Section 24: Joint Ownership of Rights Conferred by Registration

In the absence of any provision to the contrary between the parties, joint owners of an industrial design in respect of which registration has been applied for or granted may, separately, transfer their parts, use the industrial design and exercise the exclusive rights granted under Section 21, but may only jointly grant a license to a third party to exploit the industrial design.

CHAPTER VII: LICENSE CONTRACTS

Section 25: License Contracts

- (1) The registered owner of an industrial design may, by contract, grant to another person or enterprise a license to exploit the industrial design.**
- (2) The license contract must be in writing and shall require the signatures of the contracting parties.**

(3) The license contract or an appropriate extract thereof shall be recorded in the Industrial Designs Office, on payment of a fee fixed by the Rules; the license shall have no effect against third parties until so recorded.

(4) The recording of a license shall be cancelled on request of the registered owner of the industrial design or the licensee, upon evidence of termination of the license.

Section 26: Invalid Clauses in License Contracts

(1) Clauses in license contracts or relating to such contracts are null and void in so far as they impose upon the licensee, in the industrial or commercial field, restrictions not deriving from the rights conferred by registration of the industrial design or unnecessary for the safeguarding of these rights.

(2) The following in particular shall be deemed not to constitute such restrictions :

- (a) limitations concerning the scope, extent, territory or duration of exploitation of the industrial design, or the quality or quantity of the products in connection with which the industrial design may be exploited;
- (b) the obligation imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the registration of the industrial design.

Section 27: Right of Licensor to Grant Further Licenses

(1) In the absence of any provision to the contrary in the license contract, the grant of a license shall not prevent the licensor from granting further licenses to third persons for the exploitation of the same industrial design, or from exploiting the industrial design himself.

(2) The grant of an exclusive license shall prevent the licensor from granting further licenses to third persons for the exploitation of the same industrial design and, in the absence of any provision to the contrary in the license contract, from exploiting the industrial design himself.

Section 28: Rights of Licensee

In the absence of any provision to the contrary in the license contract, the licensee shall be entitled to perform all the acts referred to in Section 21 for the whole duration of the registra-

tion, including renewals, in the entire territory of the country, and in respect of all applications of the industrial design.

Section 29: Non-Assignability of Licenses

(1) In the absence of any provision to the contrary in the license contract, a license shall not be assignable to third parties and the licensee shall not be entitled to grant sublicenses.

(2) If the licensee is entitled by contract to assign his license or to grant sublicenses, Sections 25 to 28 and 30 shall apply.

Section 30: License Contracts Involving Payments Abroad

The responsible Minister or other competent authority may, by order, provide that, on pain of invalidity, license contracts or certain categories of them, and amendments or renewals of such contracts, which involve the payment of royalties abroad, shall require the approval of [administrative authority], taking into account the needs of the country and its economic development.

Section 31: Effects of Nullity of Registration on License Contract

When the registration upon which the license is based is declared null and void by virtue of Sections 33 and 34, the nullity of the registration shall not entail the repayment of royalties paid by the licensee unless he has not effectively profited from the license.

CHAPTER VIII: RENUNCIATION AND NULLITY

Section 32: Renunciation of Registration

(1) The registered owner of an industrial design may renounce the registration by a written declaration addressed to the Industrial Designs Office.

(2) Renunciation may be limited to one kind of product or, if the Rules make provision for classification, to one class of products or, if the application comprises several industrial designs (Section 11 (4)), to a part of those industrial designs.

(3) Renunciation shall be immediately recorded and published by the Industrial Designs Office. It shall be effective only after it has been recorded.

(4) If a license in respect of an industrial design is recorded at the Industrial Designs Office, renunciation of the registration shall be recorded only upon the submission of a declaration by which the recorded licensee consents to the renunciation, unless the latter has expressly waived this right in the license contract.

Section 33: Nullity of Registration

(1) On the request of any person showing a legitimate interest, or of any competent authority, the court, after having given the registered owner an opportunity to be heard, shall declare the registration of an industrial design null and void if it ought not to have been registered by reason of Section 3 (2) of this Law, if it fails to satisfy the conditions for protection mentioned in Sections 2, 3 (1) and 4 of this Law, if the same industrial design has previously been registered following a prior application or an application benefiting from an earlier priority, or if the registered industrial design has been usurped (Section 8). As to the conditions of Section 3 (2), the court shall not take into account grounds that no longer exist at the time of its decision.

(2) In the case of an application covering several industrial designs (Section 11 (4)) and in which the grounds for nullity of registration apply only to a part thereof, nullity of registration shall be declared in respect only of such part.

Section 34: Effects of Declaration of Nullity

(1) When a decision declaring total or partial nullity of a registration becomes final, the registration shall be deemed, within the limits of the decision, to have been null and void from the date of such registration.

(2) When a declaration of nullity becomes final, the Registrar of the court shall notify the Industrial Designs Office, which shall record the declaration in the Register and publish it as soon as possible.

CHAPTER IX: INFRINGEMENT OF RIGHTS CONFERRED BY REGISTRATION OF AN INDUSTRIAL DESIGN

Section 35: Civil Sanctions

(1) The registered owner of an industrial design whose rights under Section 21 are threatened with infringement, or are

infringed, may institute legal proceedings designed to prevent the infringement or to prohibit its continuation.

(2) In case of infringement of those rights, the registered owner of the industrial design may also claim damages and the application of any other sanction provided for in the civil law.

Section 36: Penal Sanctions

(1) Any intentional infringement of the rights of the registered owner of an industrial design under Section 21 shall constitute an offense.

(2) Such offense shall be punishable by a fine not exceeding ... or by imprisonment not exceeding ..., or both.

(3) In the event of recidivism, the maximum penalties shall be doubled.

(4) Recidivism shall be deemed to have occurred when, in the course of the five preceding years, the offender has been convicted of another infringement of the rights conferred by Section 21.

Section 37: Legal Proceedings by Licensee

(1) Any licensee may, by registered mail, require the registered owner of the industrial design to introduce the legal actions necessary to obtain civil or penal sanctions in respect of any infringement of the rights under Section 21 reported by the licensee.

(2) In the absence of any provisions to the contrary in the license contract, the licensee under a recorded license may either, if the registered owner refuses or neglects to introduce the said legal actions within three months of the request, obtain damages from the registered owner if the court finds that the infringement of the rights under Section 21 was obvious or, after having given notice to the registered owner, introduce such actions in his own name, without prejudice to the right of the registered owner to intervene in those actions. The licensee shall be responsible to the registered owner for any damage which the latter may suffer by reason of unwarranted actions introduced by the former.

(3) The period of three months referred to in subsection (2) shall be reduced to two weeks if the licensee shows that immediate action is necessary to avoid substantial damage.

CHAPTER X: PROCEDURAL PROVISIONS AND RULES

Section 38: Competence of Courts

- (1) The ordinary courts shall be competent to deal with all litigation concerning the application of this Law, particularly as regards appeals against decisions of the Industrial Designs Office, the right to legal protection, the fixing of the remuneration of an employee-creator, license contracts, the nullity of registrations, and the infringement of the rights in respect of an industrial design.**
- (2) Subject to Section 18, the court of the domicile of the defendant, or, if he is domiciled abroad, the court of the place where the Industrial Designs Office is located, shall have jurisdiction.**
- (3) The decisions of the court shall be subject to appeal, annulment, or revision, according to the general rules of procedure.**

Section 39: Rules

The Rules shall prescribe the details of application of this Law, particularly in regard to Sections 11 (5), 13, 15 (1)*, (4)*, (6) and (10)*, 17 (1), 20, 23 (3) and 25 (3).**

*** In the case of Alternative B.**

**** In the case of Alternative C.**

**LIST OF PARTICIPANTS
OF THE
MODEL LAW COMMITTEE**

LIST OF PARTICIPANTS OF THE MODEL LAW COMMITTEE

(Geneva, October 27 to 29, 1969)

I. STATES

ALGERIA

Mr. S. BOUZIDI, Head of Division, National Office of Industrial Property, Algiers
Mrs. F. AIT DJEBBARA, Head of Section, National Office of Industrial Property, Algiers

BOLIVIA

Mr. R. ASCARRUNZ, Director-General of Industrial Property, Ministry of National Economy,
La Paz

CEYLON

Mr. J. A. I. WIJEYEKOON, Proctor of the Supreme Court of Ceylon and Assistant Registrar of
Companies, functioning also as Assistant Registrar of Trade Marks, Industrial Designs and
Copyright, Department of the Registrar of Companies, Colombo

CHILE

Mr. G. CARRASCO, Counsellor, Deputy Permanent Representative, Permanent Delegation of
Chile, Geneva

COLOMBIA

Miss S. VILLEGAS, Head, Industrial Property Division, Superintendence of Industry and Commerce,
Bogota

CONGO (DEMOCRATIC REPUBLIC)

Mr. T. KIBILULU, Head, National Industrial Property Bureau, Ministry of National Economy and
Industry, Kinshasa

Mr. H. WAKU, Deputy Permanent Representative of the Democratic Republic of the Congo,
Geneva

COSTA RICA

Mr. A. MOYA, Lawyer, Ministry of Industry and Commerce, San José

GHANA

Mr. B. W. PRAH, Registrar-General, Registrar-General's Department, Accra

INDIA

Dr. S. VEDARAMAN, Controller-General of Patents, Designs and Trade Marks, Bombay

LIBERIA

Mr. H. B. PAASEWE, Archivist, Department of State, Monrovia

MEXICO

Mr. R. VALENZUELA, Minister Counsellor, Deputy Permanent Representative, Permanent Delegation of Mexico, Geneva

Mrs. M. LOPEZ-ORTEGA, Second Secretary of Embassy, Permanent Delegation of Mexico, Geneva

PAKISTAN

Mr. H. A. AKON, Regional Patent Office, Government of Pakistan, Dacca

PHILIPPINES

Mr. T. EVALLE, Director of Patents, Patent Office, Manila

SIERRA LEONE

Mr. D. E. M. WILLIAMS, Barrister-at-Law, Administrator and Registrar-General, Freetown

Mr. C. S. DAVIES, Law Officers Department, Freetown

SUDAN

Mr. K. ELRASHEED, Ministry of Justice, Khartoum

THAILAND

Mr. P. TALERNGSRI, Chief, Patent Examining Division, Department of Commercial Registration, Ministry of Economic Affairs, Bangkok

TUNISIA

Mr. H. BENALI, Deputy Director, Directorate of Commerce, Tunis

UGANDA

Mr. G. SERUNKUMA LULE, Administrator General, Administrator General's Department, Kampala

UNITED ARAB REPUBLIC

Mr. M. A. RIZK, Deputy Controller, Registry of Commerce, Cairo

VENEZUELA

Mrs. E. CRESPO VASQUEZ, Lawyer, Director of the Registry of Industrial Property, Ministry of Public Labor and Industry, Caracas

Mr. B. SANZO, Professor, Faculty of Law, Institute of Private Law, Central University, Caracas

II. OBSERVERS**(a) Intergovernmental Organizations****UNITED NATIONS**

Mr. M. GABAY, Chief, Investment Unit, Division of Public Finance and Financial Institutions, Department of Economic and Social Affairs, New York

PERMANENT SECRETARIAT OF THE GENERAL TREATY FOR CENTRAL-AMERICAN ECONOMIC INTEGRATION (SIECA)

Mr. G. FONSECA, Head, Legal Section, SIECA, Guatemala

Mr. C. CORDERO, Permanent Representative of SIECA in Europe, Geneva

(b) International Non-Governmental Organizations*INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (IAPIP)*

Mr. E. MARTIN-ACHARD, Professor, Geneva

INTERNATIONAL CHAMBER OF COMMERCE (ICC)

Mr. Y. SAINT-GAL, Chairman, Working Group on Designs, Models and Applied Art, ICC, Paris
Mr. H. von der HUDE, Patent Agent, Copenhagen

INTERNATIONAL FEDERATION OF PATENT AGENTS (FICPI)

Mr. G. DERIAZ, Patent Agent, Geneva
Mr. C. MASSALSKI, Counsellor of FICPI, Patent Agent, Paris

III. OFFICERS OF THE COMMITTEE

Chairman: Mr. B. W. PRAH (Ghana)
Vice-Chairman: Mrs. E. CRESPO VASQUEZ (Venezuela)
Vice-Chairman: Mr. T. EVALLE (Philippines)

IV. BIRPI

Professor G. H. C. BODENHAUSEN, Director
Mr. J. VOYAME, Second Deputy Director
Mr. K. PFANNER, Senior Counsellor, Head, Industrial Property Division
Mr. R. WIPF, Counsellor, Industrial Property Division
Mr. L. BAEUMER, Legal Assistant, Industrial Property Division

