

Industrial Property

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INTERNATIONAL UNION

African Seminar on Industrial Property

(Brazzaville, 12 - 14 August, 1963)

Report

I. Introduction

Implementing a Resolution adopted by the Permanent Bureau of the Consultative Committee of the International Union for the Protection of Industrial Property at its Meeting in Geneva in October, 1962, an African Seminar on Industrial Property was convened by the United International Bureaux for the Protection of Intellectual Property (BIRPI) and met, thanks to the generous hospitality of the Government of the Republic of Congo (Brazzaville) in the capital of that country on 12th August, 1963.

Its purpose was to assist the African States in defining the general principles applicable in their Territories to the protection of industrial property, especially with regard to patents for inventions, trade marks, appellations of origin, industrial designs or models and unfair competition.

In response to the invitations sent to them by the Director of BIRPI, 19 African countries appointed representatives to participate in the Meeting. Five non-African States, three Intergovernmental and four non-Governmental Organisations were represented by observers. A full list of participants follows the present Report. The assistance of two experts of international standing, Professor Stojan Pretnar, of the University of Ljubljana, Yugoslavia, and Mr. James Monkoko, Director of the African and Malgasy Industrial Property Office (Cameroun), was available to the Meeting, the Secretariat of which was provided by BIRPI.

The Seminar was opened on the 12th August by Mr. Victor Sathoud, Minister of Planning and Equipment, who welcomed the Delegates. The Opening Session was also addressed by Professor G. H. C. Bodenhause, Director of BIRPI, and Mr. Moukoko.

Mr. Paul Foundou (Congo - Brazzaville) was appointed President and Mr. Joseph Dodoo (Ghana) and Mr. Fodé Touré (Guinea) were appointed Vice-Presidents. Mr. Donald Macaulay (Sierra Leone) was appointed Rapporteur.

II. The Work of the Seminar

The Seminar had before it the following working papers:

1. What is Industrial Property?
2. Economic Aspects of Industrial Property.
3. Inventions.
4. Trade Marks and Service Marks.

5. Unfair competition; Indications of Source and Appellations of Origin; Trade Name.
6. Industrial Designs and Models.
7. International Relations.
8. African States and the Protection of Industrial Property.

In addition, the Delegates received a paper on a proposed scheme for trainees under which scheme trainees from less developed States could work for some time in a well-organised industrial property office of another State.

The method of working adopted was to be that each subject should be briefly introduced by either Professor Bodenhause, Professor Pretnar or Mr. Ross Woodley, Head of the Industrial Property Division (BIRPI). Each introduction was then to be developed by an open discussion in which most participants took an active part.

This method of working proved very satisfactory and the quality of the discussion was at a high level. It will be appreciated that in this type of debate it is impossible to reproduce the detailed discussions which ranged over a very wide field and brought to light many of the problems which were concerning the developing countries in Africa.

Unfortunately, by the end of the first day of the Seminar it was known that a general strike would take place in Brazzaville on the second day and it was not possible to hold any meetings on that day. As events proved, this strike developed into a violent operation which eventually led to a complete change of Government. It was accompanied by rioting and bloodshed and a full curfew during the whole of the third and last day of the Seminar.

However, largely owing to the diligence of the Delegates who had clearly devoted much time to the documents it was possible to arrange for personal conversations with many of the Delegates, which served to make up for some of the time that was lost. The impression remains that much has been gained by the International Bureau having put itself in personal contact with the Delegates of the countries represented and that those Delegates will reap every advantage from the personal contacts they have made with each other.

It would be wrong to conclude this short Report without noting the atmosphere of cooperation and intelligent enquiry which pervaded this Seminar. It seems sure that even a discussion so short as this will have done much to clarify the ideas of the States represented in their attitude towards the protection of industrial property, and to direct the attention of African States to the importance of an industrial property system for the encouragement of their future industrial and commercial progress.

The hope is expressed that many Governments among the African States will wish to avail themselves of the offer of technical assistance extended by BIRPI on legislative or administrative matters relating to industrial property.

List of participants

I. African Participants

Algeria

Mr. Brahim Bendris, Head of Mission, Ministry of Industrialisation and Energy.

Burundi

Mr. Jean-Baptiste Ntahokaja, Secretary-General for Catholic Education, President of the Burundi Academy.

Central African Republic

Mr. Philippe Kette, Chef de Cabinet and Secretary of the National Commission for Unesco.

Chad

Mr. Djimet Bernard Konombaye, Schoolteacher.

Congo (Brazzaville)

Mr. Paul Foundou, Secretary-General of the National Commission for Unesco.

Mr. Abel Samba, Pedagogical Documentation.

Mr. Prosper Samba, Director of Industrial Production.

Congo (Leopoldville)

Mr. Tharcisse Lombe, Agronomist, Departmental Head.

Ghana

Mr. Joseph Amoo Dodoo, Civil Servant.

Guinea

Mr. Fodé Lamine Touré, Director of Primary Education.

Liberia

Mr. Augustine D. Jallah, Director of Archives, Patents and Copyrights.

Malgasy Republic

Mr. Charles Alexis Rakotoarison, Attaché de Cabinet at the Ministry of Information.

Mali

Mr. Bakary Kamian, Lycée Director.

Mauritius

Mr. Auguste Toussaint, Director of Archives.

Morocco

Mr. Mahdi Bekkari, Regional Inspector of National Education.

Nigeria

Mr. Chukwuemeka Ezeji-Okoyé, Senior Industrial Officer, Federal Ministry of Commerce and Industry.

Sierra Leone

Mr. Donald Marius Allinson Macaulay, Barrister-at-Law, Senior Crown Counsel.

Somalia

Mr. Mohamed Ibrahim Scerif, Officer, Ministry of Commerce and Industry.

Sudan

Mr. Mohamed Mekki Kanani, Commercial Registrar, Ministry of Commerce, Industry and Supply.

Tanganyika

Mr. Desmond Dymond Phiri, Commercial Officer, Ministry of Commerce and Industry.

Togo

Mr. Lucien Olympio, Magistrate.

II. International Intergovernmental Organisation Acting as Sponsor

United International Bureaux for the Protection of Intellectual Property (BIRPI)

Professor G. H. C. Bodenhausen, Director.

Mr. Ross Woodley, Counsellor, Head of the Industrial Property Division.

Mr. Claude Masouyé, Counsellor, Head of the Copyright Division.

III. Experts

Mr. Stojan Pretnar, Professor of the University of Ljubljana (Yugoslavia).

Mr. James Moukoko, Director of the African and Malgasy Industrial Property Office (Cameroun).

IV. Observers

(i) International Intergovernmental Organisations

United Nations Educational, Scientific and Cultural Organisation (UNESCO)

Mr. Thomas Ilosvay, Programme Specialist, Copyright Division.

World Health Organisation (WHO)

Mr. Gino Levi, Press Attaché, Information Division.

Miss Yolande Loesch, Assistant Administrator.

International Patent Institute

Mr. Alfred Van Aubel, Vice-Director.

(ii) Non-African States

Czechoslovakia

Mr. Vojtech Strnad, Doctor of Law.

Italy

Mr. Pio Alberto Favero, Official, Ministry of Foreign Affairs.

Japan

Mr. Akira Kadowaki, First Secretary, Embassy of Japan at Leopoldville.

Mr. Hiroshi Enatsu, Second Secretary, Embassy of Japan at Lagos.

Sweden

Mr. Torwald Hesser, Judge at the Court of Appeal, Stockholm.

United States of America

Mr. Harvey J. Winter, Assistant Chief, International Business Practices Division.

(iii) *International Non-Governmental Organisations**International Association for the Protection of Industrial Property (IAPIP)*

Mr. Jean Monnet, Director of Trade Marks and Patents, "Rhône-Poulenc" (Paris).

International Chamber of Commerce (ICC)

Mr. L. A. Ellwood, President, Trade Marks, Patents and Designs Federation (London).

Mr. Jean Monnet, Director of Trade Marks and Patents, "Rhône-Poulenc" (Paris).

International Federation of Patent Agents

Mr. A. Vander Haeghen, Professor, University of Brussels.

European Union of Patent Agents

Mr. A. Vander Haeghen, Professor, University of Brussels.

V. Bureau of the Meeting

Chairman: Mr. Paul Foundou (Congo - Brazzaville).

Vice-Chairmen: Mr. Joseph Amoo Dadoo (Ghana);

Mr. Fodé Lamine Touré (Guinea).

Rapporteur: Mr. Donald Marius Allinson Macaulay (Sierra Leone).

VI. Secretariat

Mr. Ross Woodley (BIRPI);

Mr. Claude Masouyé (BIRPI);

Mrs. Bourgeois and Mrs. Flamen;

Miss Duval and Miss Nash.

CORRESPONDENCE**Letter from Great Britain**

By Frederick HONIG, Barrister-at-Law, London

*The Law of Industrial Property in 1962¹⁾***I. Legislation**

There has been no legislation of any importance during the year under review. The publication of two important reports²⁾ may, however, foreshadow some measure of law reform in the field of industrial property. Such law reform, if any, will not be concerned with patents or trade marks but with registered designs and certain aspects of the Merchandise Marks Acts.

(a) The Patents (Amendment) Rules, 1962³⁾, provide that any applicant for a patent must, if drawings are supplied, supply exact copies of any such drawings. With regard to fees, provision is made that a fee is payable not only on inspection of the Register but also on any extract supplied from the Register. On the other hand fees are no longer payable on inspection of Convention documents and original provisional specifications.

(b) The Designs (Amendment) Rules, 1962⁴⁾, provide for an increase in fees, as from February 7, 1963, on the following applications: registration, extension, enlargement of time for payment of fees for extension of copyright and cancellation of registration under section 11 (2) of the Registered Designs Act.

(c) Certain Orders have been made under powers conferred by section 2 of the Merchandise Marks Act, 1926. They provide that imported cigarette lighters must bear an indication of origin as from May 23, 1963⁵⁾, imported refrigerators for domestic and commercial use as from June 20, 1963⁶⁾, and imported spectacle frames also as from June 20, 1963⁷⁾.

(d) The Interim Report of the Committee on Consumer Protection resulted in the enactment of the Consumer Protection Act, 1961⁸⁾. The first Regulations under this Act have now been made⁹⁾. They are designed to reduce the risk of death or personal injury from the use of domestic space heaters burning kerosene. Accordingly, as from June 1, 1962, no person is permitted to sell, let on hire or hire purchase, or

¹⁾ In its wider context the term "law of industrial property" is to be understood, as in previous years, to include the law relating to restrictive trade practices.

²⁾ The Report of the Departmental Committee on Industrial Designs (Cmd. 1808) was published in August 1962. It has been considered at some length in an article published in *Copyright* 1963, at p. 73. The Final Report of the Committee on Consumer Protection (Cmd. 1781) was published in July 1962. In so far as its recommendations affect the law of industrial property, they will be considered later in this article.

³⁾ S. I. 1962, No. 2730.

⁴⁾ S. I. 1962, No. 2729.

⁵⁾ S. I. 1962, No. 1082.

⁶⁾ S. I. 1962, No. 2782.

⁷⁾ S. I. 1962, No. 2783.

⁸⁾ Cf. *Industrial Property*, 1962, p. 195.

⁹⁾ Cf. The Oil Heaters Regulations 1962; S. I. 1962, No. 884.

have in his possession for sale or letting, any oil heater which does not comply with the safety requirements of the Regulations.

(e) Iceland has now become a Convention country for the purposes of the Patents and Registered Designs Acts¹⁰).

2. Jurisprudence

(a) PATENTS

1. Application for Grant

Practice on post-dating of applications

A complete specification normally has to be filed within twelve months from the filing of an application for a patent accompanied by a provisional specification. This period may be extended to fifteen months if a request to that effect is made to the Comptroller¹¹). At the request of the applicant an application may be post-dated if an application to that effect is made "at any time . . . before acceptance of the complete specification"¹²).

In *Parker's Application* it was held that an application to post-date can be entertained only if the request for extension under section 3 is first made before the expiration of the period of fifteen months from the date of the original application accompanied by a provisional specification¹³). This means that the words "at any time", in section 6 (3), must be interpreted as meaning "at any time within which the complete specification could have been accepted", i. e. not later than fifteen months after the application for a patent.

Correction of clerical error in specification - Error resulting from literal translation of foreign specification containing original error

In *Maere's Application*¹⁴), in the course of opposition proceedings, an application was made to amend the specification by adding certain words to one of the claims, and it was sought to invoke for this purpose the procedure laid down in section 76 of the Patents Act which permits the "correction of clerical errors". The alleged error had arisen because the original Belgian specification in the French language had omitted the relevant words and the literal translation into English had done likewise. It was held that in these circumstances there was no "clerical error" which could be corrected because such error, if any, must be one made in the course of preparing the relevant document, and not one made before it was prepared. Here the error had occurred in the preparation of the Belgian specification, i. e. before the English specification was prepared.

2. Opposition to Grant

Locus standi in opposition proceedings

Section 14 (1) of the Patents Act enables "any person interested" to give notice of opposition to the grant of a

patent. For many years this has been interpreted as meaning that the interest of an opponent must be real, definite and substantial.

In *Badische Anilin- & Sodafabrik AG's Application* it has now been held that where the subsidiary of a holding company would have been entitled to oppose the grant of a patent, the holding company itself is equally entitled to do so¹⁵).

In *Continental Oil Company's Application* the meaning of the term "person interested" was extended still further so as to include a holding company whose subsidiary supplied raw materials related to the method of production which was the subject of the applicant's alleged invention¹⁶).

Prior claiming - One of two alternatives in one and the same claim not derivable from opponent's prior specification

In *Thornhill's Application*¹⁷) an application for the grant of a patent was opposed on the ground of prior claiming [section 14 (1) (c) of the Patents Act]. The claim which was relied upon by the opponents consisted of two alternatives. Only one of these could be derived from the opponents' specification. The opponents therefore sought to rely on it as constituting prior claiming. It was held that the opposition as a whole must fail because there was "no provision in the Act for the attribution of two different priority dates to different parts of one claim"¹⁸).

3. Extension of Term

Application for extension on grounds both of inadequate remuneration and war loss - Extension by more than five years in "exceptional cases"

In *De Directie van de Staatsmijnen in Limburg's Patent*¹⁹) the date of the applicants' patent in the Netherlands was July 21, 1942. By reason of the war their United Kingdom patent was dated May 22, 1945. The applicants applied for an extension on the ground of inadequate remuneration and simultaneously on the ground of war loss. It was clear that some extension was justified on the ground of war loss, and in these circumstances the Court could either determine the period of extension on the latter ground independently of the question of inadequate remuneration and then leave it to the applicants, after the expiration of the extended period on the ground of war loss, to make a fresh application on the ground of inadequate remuneration, or deal with both issues on the same application. The applicants elected to have both issues determined once and for all in the present proceedings, and the Court acceded to their request.

The Court took the view that the extension on the ground of war loss ought to be three years and seven months which, unless this was an "exceptional case" within the meaning of section 23 (2) of the Patents Act, would have allowed an extension of only one year and five months (i. e. the differ-

¹⁵) Hearing Officer, February 13, 1962; (1963) R.P.C. 19. It so happened that in this case the subsidiary company was wholly owned by the holding company, but it would have been sufficient if the latter's interest in its subsidiary had been "substantial".

¹⁶) Superintending Examiner, December 27, 1962; (1963) R.P.C. 32.

¹⁷) Patents Appeal Tribunal, undated; (1962) R.P.C. 199.

¹⁸) Cf. at p. 207.

¹⁹) Chancery Division, April 18, 1962; (1962) R.P.C. 129.

¹⁰) Cf. Patents, etc. (Iceland) (Convention) Order, 1962; S.I. 1962, No. 1083.

¹¹) Cf. section 3 (2) of the Patents Act.

¹²) Cf. section 6 (3) of the Act.

¹³) Assistant-Comptroller, December 12, 1961; (1962) R.P.C. 126.

¹⁴) Assistant-Comptroller, September 5, 1962; (1962) R.P.C. 182.

ence between the normal maximum period of five years and the period of three years and seven months) in respect of inadequate remuneration. In these circumstances the Court considered itself justified in regarding the case as "exceptional"²⁰⁾ and in granting an extension on both grounds for a total period of seven years and two months.

Application for extension on ground of war loss - Use of invention by Crown during the war

A refusal by the Patents Appeal Tribunal to grant an extension of the term of a patent on the ground of war loss is final, and no appeal may be lodged against it in the normal course of events²¹⁾. In *National Research Development Corporation's Patent (R. v. Patents Appeal Tribunal)*²²⁾ the patentees made an application for an extension, on the ground that they had been unable to use the invention during the war because it had been used by the Crown for purposes connected with the conduct of hostilities. The application was refused, and the Patents Appeal Tribunal laid down the following propositions:

(1) Manufacture under and use of a patented invention by the Crown does not cease to be exploitation of a monopoly right merely because the Crown is in any event entitled to use the invention (under section 46 of the Patents Act).

(2) It does not follow that because an invention has been used by the Crown for the purpose of prosecuting the war and accordingly not exploited commercially, there must needs be a "loss of opportunity of dealing in or developing the invention" (section 24 of the Patents Act). Such loss of opportunity must be established by evidence and not merely by inference.

The applicants contended that these propositions were inconsistent with the following rules and accordingly disclosed an "error on the face of the record":

- (1) that use by the Crown, even if (as in the present case) the latter was the beneficial owner of the patent during the war, was not an exploitation of the patent, i. e. was not an exercise of patent rights;
- (2) that a use by the Crown which was not gainful must be disregarded;
- (3) that as a matter of law loss of opportunity must be inferred where the Crown exercises exclusive rights during the war.

The Divisional Court refused to quash the decision of the Patents Appeal Tribunal and thus upheld the refusal of the latter to grant an extension of the term of the patent. It was held²³⁾ that the use of an invention by the Crown does not

negative the possibility of such use being an exercise of patent rights merely because in any event the Crown has power to use the invention by virtue of a special right conferred by law. Crown user does not in itself create any presumption either way. Moreover, in the present case, the patentee had been a servant of the Crown at the relevant time and accordingly held his rights as trustee for the Crown. It was further held that even if the exploitation of the invention could be said not to have been "gainful" exploitation, it did not follow that it ought to be disregarded. Lastly, loss of opportunity of dealing with the invention, with resulting loss by the patentee as such (section 24), cannot be presumed but must be proved.

4. Assignment

Jointly owned patents - Failure of one of several co-owners to execute assignment

*Floreys and Others' Patent*²⁴⁾ is believed to be the first case on record in which co-owners of a patent have made application under section 55 (1) of the Patents Act for directions concerning the sale of the patent which is opposed by one of their number. Section 55 (2) confers power on the Comptroller to direct any person to execute a deed of assignment in the name and on behalf of a co-owner who himself fails to do so. This power was exercised in the present case where one of seven co-owners of a patent refused to co-operate in the assignment of the patent to the National Research Development Corporation. In exercising the power the Assistant-Comptroller considered himself bound by section 54 (1) of the Act which provides that in the absence of any agreement to the contrary each co-owner, including the co-owner who refuses to co-operate, is entitled to an equal share in the profits accruing from the assignment.

5. Infringement

Amendment of specification in course of infringement proceedings

The Court may, in its discretion, allow the plaintiff in an infringement action to amend his complete specification, provided that the amendment is by way of disclaimer²⁵⁾. In *The Chrome-Alloying Co., Ltd. v. Metal Diffusions Ltd.* such an amendment was allowed, notwithstanding the fact that the patent was due to expire within a year²⁶⁾. The Court did not accept the defendants' contention that the plaintiffs knew, and had known for a long time, that their claim was wider than they might have been entitled to. In the exercise of its discretion the Court awarded to the defendants all costs of the motion for leave to amend and incidental to any consequential amendments of the pleadings.

Amendment of specification in course of infringement proceeding - Meaning of disclaimer

In *AMP Incorporated v. Hellerman Ltd.* it was held that plaintiffs in infringement proceedings applying for an amend-

²⁰⁾ Where a case is "exceptional", the maximum period of extension, under section 23 (1) of the Act, is ten years.

²¹⁾ The rule that no appeal lies to the High Court from a decision of the Patents Appeal Tribunal is of general application. However, although there is no right of appeal in the proper sense, this difficulty may be overcome if "an error appears on the face of the record" of the decision. In that case the applicant can proceed for an order of *certiorari* to quash the decision of the Patents Appeal Tribunal. This procedure is becoming increasingly popular, and the most recent example is *R. v. Patents Appeal Tribunal, ex parte Swift & Co.: Industrial Property*, 1962, at p. 195. The competent Court to determine such proceedings is the Divisional Court.

²²⁾ Divisional Court, October 24, 1961; (1962) R. P. C. 73.

²³⁾ *Loc. cit.*, p. 80 *et seq.*

²⁴⁾ Assistant-Comptroller, September 5, 1962; (1962) R. P. C. 186.

²⁵⁾ Cf. sections 30 and 31 of the Patents Act. The application is made by motion in accordance with Order 53a, rule 19, of the Rules of the Supreme Court.

²⁶⁾ Chancery Division, December 11, 1961; (1962) R. P. C. 33.

ment of one of the claims in the specification were within the ambit of section 31 of the Patents Act where they sought to lift from the specification an optional feature of a device therein disclosed and to incorporate that feature into the claim which was the subject of their motion for leave to amend²⁷). An amendment is within the ambit of section 31 if — as far as here material — it is by way of disclaimer and its effect is not such as would claim matter not in substance disclosed in the unamended specification.

Application for interim injunction to restrain infringement of recently granted patent - No evidence of validity or challenge to validity submitted by either party

On a motion by the owners of patents and registered designs, for an interim injunction to restrain the defendants from infringing the plaintiffs' rights, neither party filed any evidence to show validity or invalidity, as the case may be, of the owners' rights²⁸). The plaintiffs' patents were of comparatively recent date, and the plaintiffs contended that in all cases where a patentee, however recently he may have been granted his patent, seeks to restrain infringement, there is no duty on him to show that the patent is valid; and that it is for the defendant, if he wishes to challenge its validity, to submit evidence in support of his challenge. The defendants, on the other hand, contended that where a patent is comparatively new, it is sufficient for them to challenge its validity, without adducing any evidence in support of that challenge.

The Court of first instance refused to grant an interim injunction, on the ground that in the case of new patents validity should not be inferred from the mere existence of the grant, and that at least *prima facie* evidence of validity should be submitted. It further expressed the view that as the applicants had not submitted any such evidence, the defendants were justified in merely challenging validity, without supporting their challenge by any evidence.

The Court of Appeal did not, unfortunately, have to deal with this important question of principle because the defendants gave an undertaking which was accepted by the plaintiffs. Lord Evershed said, however, that "I am not to be taken to be expressing any views as to whether this practice suggested (of refusing an interim injunction in the case of new patents even if the defendant does not make out a *prima facie* case of invalidity) is one which ought to be given sanctity"²⁹).

Defence of obviousness - Mixed hot and cold water supplied from same outlet, physical contact between the two fluids not occurring until after emergence from apparatus

In *Barking Brassware Co., Ltd. v. Allied Ironfounders Ltd.*³⁰), in infringement action, the plaintiffs' patent covered a water tap (mainly, though not exclusively, for domestic use) in which hot and cold water supplies were led to a single

outlet. Mixing of the two did not take place until they had left the apparatus, which had the advantage that in the event of a failure of the cold water supply from the main (i. e. not from a tank, which might cause danger to health) hot water (which is supplied from a tank) could not be forced into the main. What in substance was claimed in the plaintiffs' specification was an "apparatus for mixing fluids", the main feature being "co-axial" outlet pipes.

The defendants achieved the same result by an asymmetrical arrangement of an inner tube. They contended that the plaintiffs' invention was obvious, and that in any event their arrangement was sufficiently different to negative infringement. Both contentions were rejected, and it was held that the defendants had infringed the plaintiffs' patent³¹).

6. Use of Invention for Services of Crown

Government authorisation to "make, use and exercise" patented invention - Whether authorisation includes "vending": Importing drugs for National Health Service

Section 46 of the Patents Act confers power on the Government to authorise any person to "make, use and exercise any patented invention for the services of the Crown". In *Pfizer Corporation v. Minister of Health*³²) the patentees, an American company, successfully challenged the right of the Minister of Health to authorise certain English companies to import a drug (tetracycline), the subject of the plaintiffs' letters patent, from abroad for the purpose of distribution to hospitals forming part of the National Health Service.

The plaintiffs contended that section 46 of the Patents Act only conferred power on the Minister of Health to authorise the "making, using and exercising" but not the "vending" of a patented invention, and that the authorisation of importation and subsequent sale of the drug to patients was therefore outside the scope of the Minister's powers. They further contended that the supply of drugs to National Health Service hospitals did not constitute use "for the services of the Crown". The Court was not satisfied that any "vending" was involved in the dispensation of drugs to patients, and it rejected the argument that this was not a service of the Crown. The plaintiffs, however, succeeded on the ground that the importers who had been authorised by the Minister to import and subsequently distribute the drug were not engaged in any manner of manufacture (making, using or exercising) in the United Kingdom, and that accordingly the authorisation was not covered by the terms of section 46 of the Act.

This case is of far-reaching importance, and the judgment of the Court of first instance is at present under appeal.

(b) DESIGNS

Validity — Design applied to part of article not sold separately

The validity of a design is not adversely affected by ambiguity merely because the novelty resides only in part of an

²⁷) House of Lords, February 13, 1962; (1962) R. P. C. 55. Two of the Law Lords dissented and held that on the facts the proposed amendment should not be allowed.

²⁸) Court of Appeal, December 12, 1961; *Newman and another v. British & International Proprietaries Ltd.*; (1962) R. P. C. 90.

²⁹) Cf. p. 96.

³⁰) Chancery Division, July 13, 1962; (1962) R. P. C. 210.

³¹) Lack of novelty was also alleged, but the prior specifications, except one, were concerned with mixing fuels, while the one which was concerned with mixing fluid required a mixing chamber.

³²) Chancery Division, December 21, 1962; (1963) 2 W. L. R. 1286.

article which is not sold separately³³). In *Portable Concrete Buildings Ltd. v. Bathcrete Ltd.*³⁴) it was held that where the novelty resided in the shape of upright members carrying a triangular pediment, the whole forming the entrance to a portable garage (the back of the garage being virtually a replica of the front), the design must be held to relate to the garage as an entity, with the result that the whole garage formed the subject-matter of a valid design. It was further held that a portable garage having substantially the same design, but applied only to the entrance, and not to the rear, did not constitute an infringement.

(c) TRADE MARKS

1. Registration

Registrability of geographical name: "Dan River"

In "*Dan River*" Trade Mark an application for registration in Part B of the Register of the words "Dan River" was refused³⁵). The applicants were an American company which manufactured textile goods at Danville, in the United States of America, a town on the banks of the Dan River. The Court took the view that the proposed mark was neither inherently nor in fact capable of distinguishing the applicants' goods (cf. section 10 of the Trade Marks Act). The fact that according to the evidence the words "Dan River" were entitled to protection as a brand name for the applicants' goods in the United States of America did not alter the fact that in the United Kingdom, in the absence of any evidence to the contrary, there was no indication of what these words might convey to the public³⁶).

Registrability of "Orange Grove" for non-alcoholic orange drinks (so-called "cordials")

In *Orange Grove Fruit Drinks Limited's Application*³⁷) an application for the registration in Part B of the Register of the trade mark "Orange Grove" in respect of non-alcoholic orange cordials was opposed by a company called "O. R. Groves Limited" who were manufacturers of soft drinks on a very large scale. The more important grounds of opposition may be summarised as follows:

(1) The opponents had a large trade in soft drinks, and in particular orange drinks, and their name was extensively known to the trade and the public.

(2) The trade mark "Orange Grove" was too descriptive to be capable of distinguishing the applicants' goods from those of other traders.

(3) The reputation of the opponents in the soft drink trade under their corporate name was such that any trade

mark including the word "Grove" was likely to deceive or cause confusion.

The opponents' contentions were rejected, and the application for registration of "Orange Grove" was allowed to proceed. The Court was not satisfied on the evidence that the corporate name of the opponents (O. R. Groves Limited) had been brought prominently before the public in connection with the sale of non-alcoholic drinks because in the majority of cases their goods had been distributed under their registered trade mark "Sunfresh". While it was true that "Orange Grove" was descriptive, it could not be said that it was incapable of distinguishing the applicants' goods from those of other traders, having regard to the fact that the applicants had used the brand name "Orange Grove" on their goods for about seven years prior to the date of application.

The Court referred to an unusual feature in the case, namely the fact that the deponents who made statutory declarations on behalf of the opponents as to their knowledge of the applicants' and opponents' goods respectively had been visited personally by the managing director of the opponents. The Court was not prepared, as had been urged on behalf of the applicants, to disregard these declarations merely because their content might have been influenced by the personal intervention of the opponents' managing director. It may well be that the probative value of such evidence may be less than where the normal procedure of a written approach to prospective deponents is used, but in the absence of any cross-examination of the deponents, for which an opportunity can always be given, there is no reason why the written declarations should not be taken at their face value.

Permissible entries in Register

The Court of Appeal has reversed the judgment of the Chancery Division in *Svenska Aktiebolaget Gasaccumulator's Trade Marks* where it was held that a memorandum in terms that "this registration is subject to the terms of an agreement dated . . . between [the applicants] of the one part [and another company] of the other part" was not capable of being entered in the Register³⁸). The Court of Appeal has now held, by a majority of two to one, that the discretionary power conferred on the Registrar by section 34 (1) (e) of the Trade Marks Act to "enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark" is not limited in subject-matter to the particulars which, under sections 1 and 3 of the Act, must be entered in the Register³⁹). It was pointed out in the majority judgment of the Court of Appeal that all that is required is that the memorandum shall "relate to" a trade mark. It was held that it did so in the present case where one of the purposes of the agreement between the parties to which the memorandum made reference was to avoid conflict and overlapping between the res-

³³) Section 1 (1) of the Registered Designs Act permits the registration of a design in respect of an "article" (or set of articles), and section 44 (1) defines an "article" as including "any part of an article if that part is made and sold separately".

³⁴) High Court of Justice (Lloyd-Jacob, J.), December 13, 1961; (1962) R. P. C. 49.

³⁵) Chancery Division, March 5, 1962; (1962) R. P. C. 157.

³⁶) The judge concluded by saying that "I do not mean to suggest that it may not be possible by the production of sufficient evidence of use to establish that this mark is not incapable of distinguishing these goods".

³⁷) Chancery Division, December 21, 1961; (1962) R. P. C. 83.

³⁸) Cf. *Industrial Property*, 1962, at p. 199. The judgment of the Court of Appeal, which is dated February 22, 1962, is reported in (1962) R. P. C. 106.

³⁹) These particulars are the usual particulars, such as the names, addresses and descriptions of proprietors and registered users, assignments, and classification of goods.

pective marks of the parties and another to preserve the rights of one or other party against third parties.

It is important to remember in the present context that the discretionary power which section 34 confers on the Registrar in cases of this kind remains unimpaired. All that has been decided is that the entry of a memorandum in the Register is not precluded by the provisions of the Act⁴⁰). Leave to appeal to the House of Lords was granted.

Registrar's discretion to refuse registration where proposed user contingent on future event

In "*Rawhide*" Trade Mark⁴¹) the Court confirmed the Registrar's refusal to register the word "*Rawhide*" in respect of games and playthings (class 28 of the Register) in the following circumstances: The applicants, who were manufacturers of toy playsuits, toy pistols and similar articles, made a habit of studying American publications concerned with television films shown in the United States. Whenever they thought that such films might be shown on television in the United Kingdom, they applied for registration of the name of a film or film series as a trade mark, in the expectation that the showing of the film might provide publicity which would then assist them in selling their goods under the previously registered trade marks. Some of the films were eventually shown in the United Kingdom. Others, on the other hand, were not shown, so that a subsequent user of the relevant trade mark did not arise in practice.

When, in accordance with the practice here described, the applicants applied for the registration of "*Rawhide*", their application was opposed by T. V. Network Merchandising Limited, an English company which had acquired the "merchandising rights" in the film series "*Rawhide*" produced by an American television company. The opponents contended that registration should be refused in the exercise of the Registrar's discretion⁴²).

The Court held that the Registrar had a general discretion to refuse to register a trade mark even though it may satisfy all the positive conditions laid down by the Act, and that in the exercise of this general discretion registration should be refused in the present case. The Court expressly disapproved of a statement in the leading textbook on Trade Marks, to the effect that "a refusal must be based on some consideration the nature of which is clear and can be justified as founded upon principles to be deduced from the Act"⁴³). The finding that a general discretion is vested in the Registrar finds support in the judgment of the Court of Appeal in *Garrett's Application*⁴⁴). The latter judgment is of considerable importance

⁴⁰) At one stage of the proceedings reference had been made to an alleged practice of the Registrar not to allow memoranda to be entered, but the Court of Appeal took the view that this was a matter of law. It may also be observed that several successful attempts have been made in recent years to question what was alleged to be a "practice" of long standing which ought not to be disturbed.

⁴¹) Chancery Division, March 14, 1962; (1962) R. P. C. 133. This case is also reported sub nom. *Cheryl Playthings Ltd.'s Application* (1962) 2 All E. R. 86.

⁴²) Certain other contentions were put forward by the opponents, but they were abandoned in the course of the argument.

⁴³) Cf. Kerly's *Law of Trade Marks and Trade Names*, 8th edition, 1960, by R. G. Lloyd, at p. 38.

⁴⁴) Court of Appeal, March 9, 1916; (1916) 1 Ch. 436.

but was probably not decisive in the present case because the Court seems to have taken the view that the applicants had failed to bring themselves within the purview of section 17 (1) of the Act which requires that the trade mark must be used or "proposed to be used" by the applicant. Here there was no "proposed user" because the applicants did not propose to use the mark unless and until a film of the "*Rawhide*" series was shown on television in the United Kingdom. The user in this country was therefore contingent on some event which might or might not happen⁴⁵).

2. Opposition to Registration

Appeal by opponents against Registrar's decision in favour of applicants for registration - Whether opponents allowed to adduce fresh evidence in appeal proceedings

In *George Thornhill and Company Limited's Application*⁴⁶) it was held that as a rule unsuccessful opponents to registration are not allowed to adduce fresh evidence on appeal, even though such evidence may tend to show that registration of the mark in question would be injurious to the public interest (as by allowing the registration of a representation of Dutch clogs which were alleged to be a "quasi-national" symbol or emblem of the Netherlands). The Court will certainly not allow such fresh evidence to be adduced if the Registrar states that such evidence, if it had been put before him, would not have caused him to arrive at a different decision⁴⁷).

3. Infringement

Bona fide use of trade name - "Knoll International"

The judgment of the House of Lords in *Parker-Knoll Limited v. Knoll International Limited*, to which reference was made last year⁴⁸), has since been reported in full⁴⁹). It was not known at the time that other proceedings were then pending between the same parties. These latter proceedings arose in the following circumstances: As a result of the earlier proceedings the plaintiffs (*Parker Knoll Ltd.*) were granted an injunction to restrain the defendants (*Knoll International Ltd.*) from:

- (1) infringing the plaintiffs' registered trade mark ("*Parker-Knoll*"), provided that this Order is not to interfere with any *bona fide* use by the defendants of their full name "*Knoll International*" with or without the word "*Limited* . . .", and
- (2) selling, offering for sale or advertising for sale furniture under the mark "*Knoll*" or "*Knoll International*" or any other mark which by reason of its similarity to the

⁴⁵) The Court also observed that the considerations which should guide the Registrar in the exercise of his discretion did not include a general feeling of distaste for the business methods of the applicants whose motive may well have been to take advantage of publicity for which they had not paid.

⁴⁶) Chancery Division, October 19, 1962; (1963) R. P. C. 13.

⁴⁷) In trade mark proceedings the Court follows the same procedure as the Court of Appeal in appeals from the Queen's Bench Division, i. e. fresh evidence is admitted only (i) if with reasonable diligence it could not have been obtained for use at the trial, (ii) if it would have had an important influence on the result of the case, and (iii) if it is credible.

⁴⁸) Cf. *Industrial Property*, 1962, at p. 200.

⁴⁹) Cf. (1962) R. P. C. 265.

trade mark of the plaintiffs . . . , i. e. "Parker-Knoll", is likely to cause confusion or deception and to lead to goods of the defendants . . . being passed off for the goods of the plaintiffs, without clearly distinguishing their goods from the goods of the plaintiffs.

The plaintiffs complained that the defendants were in breach of the injunction by reason of the following acts:

- (a) At a furniture exhibition the defendants displayed cards bearing the words: "Made by Knoll International Limited" (followed by the defendants' address).
- (b) Certain notices were published in specialised magazines referring to furniture "by Knoll International".
- (c) An advertisement appeared which had at the top a stylized letter "K" (at that time a registered trade mark of the defendants) and further down letterpress reading "Knoll International of Delaware and New York". There followed illustrations of chairs made by the defendants and the words "can be seen at Knoll International show-rooms" (the address being stated).
- (d) An article in a Sunday newspaper described furniture made by the defendants and added the words "Knoll International of U. S. A.". A similar article appeared in a magazine intended for householders.
- (e) Advertising and sales literature featured the stylized letters "KI", followed by the words "Knoll International Limited of U. S. A." and the defendants address.
- (f) Furniture dealers marked the defendants' products variously as "Knoll Inter", "Knoll", "Knoll International Chair" and "Knoll International".

The Court of Appeal held that all the acts complained of, with the exception of (f) above, constituted breaches of the terms of the injunction. As far as the action taken by furniture dealers was concerned, the Court left open the question whether it constituted a breach by the defendants.

The case illustrates the difficulties facing defendants whose honesty is not impugned and who have to devise means of "clearly distinguishing their goods from the goods" of others, so as to keep within the limits of an injunction. It may well be that the solution to the problem lies in obtaining from the Court clear guidance as to where the boundary of the injunction should be drawn. The Court of Appeal deprecated any such solution in the present case⁵⁰), but this still leaves open the question whether there should not be some simplified procedure enabling an unsuccessful defendant to go back to the Court to seek sanction for any particular method he has devised to evade a breach of an existing injunction.

The second point which arises is whether in a case such as the present, where the trade names of the parties include the same word (Knoll) which is the really striking feature of their respective trade names, the defendant is safe only if he adds the words "not to be confused with . . .", or similar words. This extreme method of distinguishing goods would probably make things worse and at the same time advertise the goods of an adversary as much as one's own.

Bona fide use of own name - "Rael Brook"

In *Rael-Brook Limited v. Head Shirts Limited*⁵¹) the plaintiff company moved for an interlocutory injunction to restrain the defendant company from using the name "Rael-Brook" in advertisements and sales correspondence. The directors of both companies, while associated together as directors of the plaintiff company, had adopted the name of "Rael-Brook". The director of the defendant company has subsequently left the plaintiff company and formed a new company under the name of "Head Shirts Limited". On behalf of the latter company he advertised that company's goods in the form of a personal message signed "Graham Rael-Brook" which in fact was his name. The Court refused to grant interim relief, but subsequently the motion was stood over by consent upon the defendant's undertaking not to use the name "Rael-Brook" except as part of its director's name, and making it clear that the defendant's director was no longer connected with the plaintiff's business.

Use of initials: "GEC" (or "G. E. C.") and "CEC"

In *The General Electric Co., Ltd. v. Consolidated Electrodynamics Corporation (U. K.) Ltd.* the plaintiffs, registered proprietors of the trade marks "G. E. C." (with full stops between each initial) and "GEC" (without full stops) were granted an interlocutory injunction restraining the defendants from using the initials "CEC"⁵²). Upon the defendants' showing that the injunction, if granted in full, viz. as also including use of "CEC" on their goods, would involve the defendants in excessive expense, the injunction was limited so as to apply only to sales literature and advertising material.

In regard to the plaintiffs' mark "G. E. C." the Register contained the limitation that "the registration of this mark shall not interfere with the *bona fide* use by any person of this own initials". The defendants' contention that in view of this limitation they were entitled to use "CEC" was rejected, on the ground that their initials were not "CEC" but "CEC (UK)".

4. Rectification

Application by registered proprietors of "Galvalloy" to expunge "Galvalloy" refused

In "*Galvalloy*" Trade Mark⁵³) the applicants for rectification were the registered proprietors of the trade mark "Galvalloy" in respect of anti-corrosive paints. They applied for the removal from the Register of the (later) mark "Galvalloy" which had been registered in respect of substances for preventing rust. It was held that there was no likelihood of deception or confusion between the two marks. The second contention of the applicants for rectification also failed, i. e. the contention that the respondents' mark "Galvalloy" offended against section 11 of the Trade Marks Act because the respondents' goods did not in fact contain alloy. It was held that while experts might differ on the definition of the word "alloy", the public concerned with the applicants' and the respondents' goods were not likely to make fine distinctions,

⁵¹) Chancery Division, February 16, 1962; (1963) R. P. C. 6.

⁵²) Chancery Division, July 31, 1962; (1963) R. P. C. 1.

⁵³) Assistant-Comptroller, September 13, 1962; (1963) R. P. C. 34.

⁵⁰) Cf. at pp. 260/261.

and to them (persons in the building trade) the two marks meant different goods from different manufacturers.

Application for rectification on ground of prior use
Prior use as indication of size: "Commando"

In "*Commando*" Trade Mark⁵⁴) an application for rectification of the Register by removal of the mark "Commando" was refused on the ground that the applicants who alleged prior user had used the word "Commando" to indicate the size of their product. Such use was held not to be use as a trade mark as the latter term is defined in section 68 (1) of the Trade Marks Act, i. e. "a mark used . . . in relation to goods for the purpose of indicating . . . a connection in the course of trade between the goods and some person having the right . . . to use the mark".

The Assistant-Comptroller took the view that, although the applicants for rectification had failed to prove use as a trade mark, it was nevertheless his duty to consider whether the trade mark which the applicants sought to have removed would have been open to objection under section 11 of the Act at the time when it was being applied for, i. e. whether at that time there was such substantial use by the applicants for rectification, albeit use only to indicate size, that there was a risk of confusion. On the facts it was found that the applicants had not at that time acquired a sufficient reputation in the word "Commando", and accordingly the application also failed on this ground⁵⁵).

5. Detention of Goods by Customs Authorities

Detention of imported goods by Commissioners of Customs and Excise on ground of suspected infringement of trade mark
Relief available to importer

Section 16 of the Merchandise Marks Acts, 1887-1953, confers power on the Commissioners of Customs and Excise to detain imported goods bearing any name or trade mark purporting to be that of a United Kingdom manufacturer unless such name or trade mark is accompanied by an indication of origin.

In *International General Electric Company of New York Limited and General Electric Company v. Commissioners of Customs and Excise*⁵⁶) the Commissioners of Customs and Excise (defendants herein) detained certain goods consigned to the first plaintiffs, an English company, which was a subsidiary of the second plaintiffs, an American company. It was alleged that a device mark "GE" on the goods infringed a mark owned by a rival English company, the General Electric Co., Ltd. The latter company was not concerned in the proceedings, and the issue as to whether there was any infringement of its mark was not considered.

⁵⁴) Assistant-Comptroller, September 13, 1962; (1963) R. P. C. 27.

⁵⁵) It is doubtful whether it was necessary in this case to consider the implications of section 11 of the Act because if, according to this section, it is not lawful to register as a trade mark . . . "any matter the use of which would, by reason of its being likely to deceive or cause confusion . . . be disentitled to protection . . .", it could be argued that in this section too "use" means use as a trade mark, and not use for the purpose of indicating the size of goods.

⁵⁶) Court of Appeal, April 11, 1962, and Chancery Division, May 1, 1962; (1962) R. P. C. 235.

The plaintiffs were concerned that the defendants should not disclose to the rival English company details of the goods concerned and should not inform that company or any of the plaintiffs' customers that there appeared to be or was an infringement of the mark of the rival English company. The proper remedy open to the plaintiffs, if the defendant had not been the Crown, would have been a motion for an interlocutory injunction to restrain the defendant from disclosing the matters here referred to. Section 21 of the Crown Proceedings Act, 1947, however, provides that injunctions may not be granted against the Crown, and that instead of granting an injunction the Court "may make an order declaratory of the rights of the parties". Accordingly the plaintiffs asked for an interlocutory declaration. The Court of Appeal held that in proceedings against the Crown any declaration which may be granted must be final, and that there was no power to grant an interlocutory declaration⁵⁷). The plaintiffs thereupon amended their motion and applied for final declarations that the defendants were not entitled to disclose to the rival English company details of the goods or inform the rival English company or the plaintiffs' customers that their device mark might constitute an infringement of the rival English company's trade mark.

The motion was refused, partly because there was not sufficient evidence before the Court to justify the making of a final order declaratory of the rights of the parties, and partly because the defendants had meanwhile made certain concessions which made such an order unnecessary.

(d) COMPULSORY INDICATION OF ORIGIN

Order for compulsory indication of origin under Merchandise Marks Act, 1926 — Order applicable to component parts of product: Whether Order also applies to product as a whole

Where an Order has been made under the Merchandise Marks Act, 1926, prohibiting the sale or exposure for sale of imported goods not bearing an indication of origin, and the article exposed for sale is made up of components some of which should bear an indication of origin, failure to indicate the origin of the article as a whole constitutes an offence. In *Littlewoods Mail Order Stores, Ltd. v. Storey*⁵⁸) the relevant Order⁵⁹) provided that "it shall not be lawful to sell or expose for sale in the United Kingdom any imported umbrella ribs, tubes or frames of iron or steel wire unless they bear an indication of origin". The appellants imported complete umbrellas from Hong Kong and exposed these for sale in one of their stores. Neither the umbrellas nor the parts of which they were made (i. e. ribs, tubes and frames) bore an indication of origin. The appellants appealed against their conviction and contended that where a complete article was imported, they were under no duty to indicate its origin because the Order applied only to the component parts of the article but not to the article itself. The appeal was dismissed, on the ground that the enabling Act (Merchandise Marks Act, 1926)

⁵⁷) Cf. *loc. cit.*, at p. 238. The Court of Appeal followed the judgment of the Chancery Division, of February 21, 1950, in *Underhill and another v. Ministry of Food* (1950) 1 All E. R. 591.

⁵⁸) Divisional Court, June 5, 1962; (1962) 2 All E. R. 865.

⁵⁹) Merchandise Marks (Imported Goods) No. 10 Order, 1933 (S. R. & O. 1933, No. 491), Article 1.

applied to "any goods of which any imported goods . . . form a distinguishable part, and that part is reasonably capable of having applied to it an indication of origin . . .". It was held that the tubes and ribs of the umbrellas were capable of being marked separately, and as neither they nor the complete umbrellas were marked the offence had been committed.

(c) UNFAIR COMPETITION

Use of know-how and confidential information in breach of contract

In *Ackroyds (London) Limited v. Islington Plastics Limited*⁶⁰ the plaintiffs had designed certain articles (not protected as registered designs) which for many years they had sold to the buying agents of a big shipping company for use on board the latter's ships. They were also the owners of a special tool used for the manufacture of these articles. By a contract between the plaintiffs and the defendants it was agreed that the special tool should be lent to the defendants to enable them to manufacture the articles to the plaintiffs' order. The defendants knew that ultimately the articles were to be supplied to the shipping company, and they also knew that it was a term of the contract that they should not use the manufacturing tool for their own purposes, i. e. for the purpose of manufacturing and subsequently selling the articles on their own account. The defendants, in breach of the agreement, not only used the tool to manufacture the articles on their own account but also to have another tool made from the design of the tool lent to them for the express and exclusive purpose of manufacturing the articles for the plaintiffs. They then offered the articles which they had manufactured on their own account to the plaintiffs' customers and in fact sold large quantities direct to the buying agents of the shipping company. It was held that the defendants were in breach of their contract not to use confidential information supplied to them for their own purposes and were liable in damages, and that in addition they should be restrained by injunction from manufacturing any further articles by means of the special tools or to use any articles manufactured in accordance with confidential information obtained from the plaintiffs for the purpose of manufacture.

The breach by the defendants of their contractual obligation was fairly flagrant in the present case, and it was obvious that in commissioning the manufacture of a tool similar to that supplied to them by the plaintiffs they had not gone to the trouble of doing any original work of their own but, on the contrary, had taken the benefit of the plaintiffs' previous efforts and expenditure. The case does not, therefore, answer the important general question as to the extent to which information obtained may be used in circumstances where the recipient does his own independent work and merely builds on the broad foundation of the information obtained. Know-how, if it is to be protected effectively, must be protected by elaborate and express contractual terms, and even then the borderline between improper use of know-how and permissible use of a person's own skill, albeit on the general basis of information received, will be extremely difficult to draw.

⁶⁰ Queen's Bench Division, March 23, 1962; (1962) R. P. C. 97.

Restraining a person from aiding and abetting the breach of an injunction by a third party

Where a third party has been restrained by an injunction in earlier proceedings from manufacturing or selling the plaintiff's products or products similar thereto based on the plaintiff's designs, and the defendant, being fully aware of that injunction, lends his assistance to a breach, he can be restrained from doing so. However, the injunction against the defendant must be precise and not in general terms, such as to restrain him from "making any use whatsoever of confidential information derived directly or indirectly from the plaintiffs . . ." ⁶¹).

Passing off — Use of similar name for business of similar character: "The Under Six Club" and "The Over-Six Club"

In *Deane v. Schofield*⁶² the business of both parties was that of looking after children. The plaintiff, who catered mainly, though not exclusively, for children under six years of age, did so under the name of "The Under Six Club". The defendant, who catered mainly, though not exclusively, for children between the ages of six and twelve, did so under the name of "The Over-Six Club". It was conceded that, although the defendant had previously been employed by the plaintiff, the adoption of her business name was in no way fraudulent. The plaintiff's motion for an interlocutory injunction was dismissed because there was hardly any evidence of confusion ⁶³). The Court also pointed out that where, as here, both names were descriptive of the type of business being carried on by the parties, the slight difference between them was sufficiently distinctive. It may be observed that in law it is perfectly possible for an action to succeed in such cases if, but only if, the plaintiff's name has acquired a secondary meaning.

Passing off — Use of similar name and script on shop front: "Dorothy Perkins" and "Polly Perkins"

In *Dorothy Perkins Ltd v. Polly Perkins of Piccadilly Limited*⁶⁴ the plaintiffs were retailers of ladies' garments which were sold through 175 shops owned by them in different parts of the country, including London. The defendants were also retailers in ladies' garments, mainly for young ladies, and owned seven shops in the north of England. The plaintiffs' shops bore the name "Dorothy Perkins" in distinctive script, and their shop fronts and advertising matter also included a decorative design of roses. The defendants opened a store in Manchester which they called "Polly Perkins of Piccadilly W. 1", the script on the front being similar to that of the plaintiffs and also including a rose design.

The plaintiffs' motion for an interlocutory injunction was refused, on the ground that the parties were trading in different towns, and on the further ground that as the defendants'

⁶¹ Chancery Division, February 9, 1962; *Electronic Applications (Commercial) Ltd. v. Toubkin and another* (1962) R. P. C. 225.

⁶² Chancery Division, March 27, 1962; (1962) R. P. C. 179.

⁶³ With regard to costs, the Court said that where (as here) the plaintiff had failed to write a letter before action, and the defendant, on being served with the proceedings, had immediately discontinued the use of the name of her business, costs should be awarded against the plaintiff, instead of the defendants costs being ordered to be costs in the cause, as is the normal practice.

⁶⁴ Chancery Division, April 6, 1962; (1962) R. P. C. 153.

goods were not inferior in quality to the plaintiffs' there was comparatively little danger that the plaintiffs' goodwill would suffer. Although the fact that the defendants had used a rose design (although for the purpose of interlocutory proceedings the Court was bound to accept the defendants' written evidence that this was done without any knowledge that the plaintiffs used a similar design) and the fact that they added the words "Piccadilly W.1" to their description, when in fact they had no establishment in London, gave rise to suspicion, this was not a case where interlocutory relief should be granted. On the other hand it was certainly a case where a speedy trial should be ordered.

Passing off — Use of title of beauty contest: "Miss Britain" (title chosen by defendants) and "Miss Great Britain" (title previously chosen by plaintiffs)

In *The Borough of Morecambe and Heysham v. Mecca Limited* the Court refused to grant an interim injunction to the plaintiffs, who had organised beauty contests for women at a bathing resort for the last seventeen years, latterly under the title "Miss Great Britain", to restrain the defendants from organising similar contests under the title "Miss Britain"⁶⁵). Where, as in the present case, the titles used by the parties consisted wholly of words of common parlance, some confusion was inevitable, and as the confusion which had arisen or was likely to arise did not exceed what was inevitable in the circumstances, interlocutory relief should not be granted.

Passing off — Use of similar title on periodical publication: "Courier incorporating Today" and "Today the new John Bull"

It is well settled that copyright cannot be claimed in the title of a newspaper or magazine and that an action to restrain a rival publisher from using the same or a similar title must be founded on passing off. In *Norman Kark Publications Ltd. v. Odhams Press Ltd.*⁶⁶) the plaintiffs were publishers of a magazine called "Courier" which on the inside frontispiece bore an inscription informing its readers that it incorporated "Today", a publication which the plaintiffs had published under the latter name until 1953. The defendants had for many years been publishers of "John Bull", a magazine selling at a much lower price than "Courier". In 1960 they adopted the title "Today the new John Bull". In the present action the plaintiffs claimed an injunction to restrain the defendants from passing off their, the defendants', magazine as the plaintiffs', by using the word "Today" as part of the title.

The claim was dismissed. As the defendants had ceased to use the title Today as long ago as 1953, it could no longer be said to be distinctive of their magazine, the more so as "Today" was an ordinary word which by the time the defendants began to use it as part of the title of their magazine had become *communis juris*. This was sufficient to dispose of the plaintiffs' claim, but the Court added that, quite apart from that, the parties' respective publications were so dissimilar in character and price (the plaintiffs' magazine selling

at 3/- and the defendants' at 5d.) that there was little likelihood of confusion.

Passing off — Use of similar name for different kind of business: Motor car traders and owners of driving school

In *The Premier Motor Co. (Birmingham) Ltd. v. Premier Driving School (Birmingham) Ltd.*⁶⁷) the plaintiffs, who were dealers in motor cars at Birmingham, applied for an interim injunction to restrain the defendants, who ran a driving school at Birmingham, from trading under their name (as above) or any other name including the word "Premier". The application was dismissed, on the ground that "Premier" was an ordinary English word in which the plaintiffs were not entitled to claim a monopoly, and on the further ground that the business of the defendants was different from and not in competition with that of the plaintiffs. The fact that occasional inconvenience might be caused to the plaintiffs by confusion among members of the public between the two names was not sufficient to justify interim relief.

Passing off — Publication of statement that action for passing off is pending or contemplated

In *Easipower Appliance Limited and another v. Gordon Moore (Electrical) Limited* it was held that a person who alleges that another may be attempting to pass off his goods by the use of a similar word or slogan is entitled to publish a statement in a trade journal, to the effect that he is intending to bring an action for passing off against the offending party⁶⁸). Such publication does not constitute contempt of Court because it does not tend to prejudice the trial of the intended action⁶⁹).

Slavish imitation by defendant of goods manufactured by plaintiff — Goods purchased by public by reason of their attractive appearance and not by reason of their association with any particular manufacturer

Where goods not protected by design registration are marketed by A and virtually identical goods are manufactured and marketed by B, A is not entitled to interlocutory relief to restrain B from offering such identical goods for sale. This was so held in *British American Glass Co., Ltd. v. Winton Products (Blackpool) Ltd.*⁷⁰), where the goods concerned were small ornamental trinkets in the shape of a dog which appealed to the eye and were bought by members of the public for that reason, and not because the public associated them with any particular manufacturer. This was not a case of passing off; it was neither a case of imitating the get-up of the plaintiffs' goods nor of inducing the public to believe that the plaintiffs' and the defendants' goods originated from the same source.

⁶⁷) Chancery Division, March 16, 1962; (1962) R. P. C. 222.

⁶⁸) Chancery Division, October 5, 1962; (1963) R. P. C. 8.

⁶⁹) It has sometimes been said — although there are dissenting views — that it is lawful to publish a warning that action is contemplated but unlawful to include in such publication a discussion of the merits or demerits of the case [cf. Chancery Division, January 27, 1894; *J. & P. Coats v. Chadwick* (1894) 1 Ch. 347]. The Court, in the present case, was prepared to adopt this view, but held on the facts that the respondents to the motion for contempt had done no more than merely state the fact that their goods under the name "Dreamland" were in no way connected with the applicants' goods under the name "Dreamtime".

⁷⁰) Chancery Division, July 20, 1962; (1962) R. P. C. 230.

⁶⁵) Chancery Division, May 22, 1962; (1962) R. P. C. 145.

⁶⁶) Chancery Division, February 1, 1962; (1962) R. P. C. 163.

(f) RESTRICTIVE TRADE PRACTICES

1. Agreements Liable to Registration

Agreement for allocation of order to individual manufacturers — Committee to determine recipient of allocation

In *Telephone Manufacturers' Application*⁷¹) eight manufacturers of telephone apparatus applied unsuccessfully for a declaration under section 13 of the Restrictive Trade Practices Act, 1956, that an agreement for a system of allocation between them of orders placed by the Postmaster General was not subject to registration.

The agreement between the manufacturers was subsidiary to an agreement between the Postmaster General of the one part and the eight manufacturers of the other part. By the latter agreement the Postmaster General undertook to notify the secretary of the manufacturers' committee of any orders he proposed to place, and the secretary of the committee was then to inform him of the individual manufacturer to whom the committee had allocated the order. That manufacturer would then supply the apparatus required by the Postmaster General. The Postmaster General was not concerned with the method whereby the committee selected the member who was to carry out any individual orders. This method of selection formed the subject-matter of the subsidiary agreement between the manufacturers. Under that agreement a unanimous decision of the manufacturers' committee was required to determine the allocation of an order to an individual manufacturer. If unanimity could not be achieved, the order would be allocated on the basis of the "quota standing" of members, so that — broadly speaking — each manufacturer would have an equal chance of filling orders received by the committee from the Postmaster General. Whichever method of allocation was chosen, it was the duty of the secretary of the committee to inform the Postmaster General of the name of the manufacturer to whom an order had been allocated.

It was common ground that the principal agreement between the Postmaster General and the manufacturers was not subject to registration because the Crown was not bound by the provisions of the Act. As far as the subsidiary agreement was concerned, however, it was contended on behalf of the Register of Restrictive Trading Agreements that it was liable to registration because under it restrictions were accepted in respect of "the quantities or descriptions of goods to be produced, supplied or acquired" [section 6 (1) (c) of the Act]. On behalf of the manufacturers it was contended that section 6 (1) (c) of the Act did not apply and that even if it did, a decision of the Court that the agreement was subject to registration would prejudice the interests of the Crown. The Court rejected both arguments, the first on the ground that restrictions within the purview of section 6 (1) (c) of the Act had been accepted, and the second on the ground that even if ultimately the Restrictive Practices Court were to declare the restriction void, the Crown would not be prejudiced because it was not concerned with the working of the manufacturers' committee and the avoidance of the quota system would not affect its interests in any way.

⁷¹) Chancery Division, April 3, 1962; (1962) L. R. 3 R. P. 98; (1962) 2 All E. R. 207.

Individual agreements in identical terms — "Conscious parallelism"

Section 13 (1) of the Restrictive Trade Practices Act provides that, on the application of any person aggrieved, the High Court may order the rectification of the register by the removal of an agreement entered on it, and section 13 (2) enables the High Court to declare whether or not an agreement is subject to registration.

In *British Basic Slag Ltd.'s Application*⁷²) the Court was concerned with an application, under section 13 of the Act, by nine steel manufacturers who had set up a company whose purpose was the acquisition from them and the subsequent sale of slag (a by-product of steel manufacture). Each of the manufacturers appointed a director to the board of the company. Each manufacturer then entered into an agreement with the company whereby the latter undertook to buy its slag exclusively from its contracting partners in equal quantities. Each of the nine individual agreements was in virtually identical terms, but it was not suggested that the making of each of the agreements was conditional upon the conclusion of any of the others.

It was held that by concluding the agreements the company had accepted restrictions within the meaning of section 6 of the Act and that the individual agreements constituted an "arrangement" which was subject to registration because the contracting parties had communicated their intention to each other and each of them had made his own individual agreement in the expectation that all the others would do likewise.

Accordingly, the application for rectification of the register was refused and an order made that the agreements were subject to registration.

2. Acceptance of Restrictions

In the year under review three important agreements escaped condemnation by the Restrictive Practices Court⁷³). This does not mean that the Court has become more lenient in its treatment of restrictive practices but is due to the fact that the agreements either contained special features the beneficial effects of which outweighed the adverse effects of the restrictions, or that the degree of competition in the particular fields with which the agreements were concerned was not significantly curtailed by their continued existence.

Agreement for common price system coupled with agreement for exchange of technical information and information on costing — Parties to agreement accounting for about 40% of total production

In *Standard Metal Window Group's Agreement*⁷⁴) the Court upheld restrictions contained in an agreement between six members of a group which accounted for about 42% of the total production of standard metal windows. There were two special factors which caused the Court to hold that the maintenance of the agreement still allowed for considerable

⁷²) Chancery Division, July 6, 1962; (1962) L. R. 3 R. P. 178; (1962) 3 All E. R. 247.

⁷³) See *infra*.

⁷⁴) Restrictive Practices Court, July 18, 1962; (1962) L. R. 3 R. P. 198.

competition in the window trade: The first was that windows made of wood accounted for about 50% of the total production of windows, and the second that the largest manufacturer of metal windows, whose production accounted for 43% of the total production of metal windows, was not a party to the agreement. The Court pointed out, however, that if at any time in the future price competition between that manufacturer and members of the group were to cease, it would be open to the Registrar to apply for a variation of the order under section 22 of the Act.

The most important features of the agreement between members of the group were the following: Information on the costs of manufacture was exchanged between members of the group, a schedule of prices then being fixed by taking the average costs of the two largest members and of any other member whose costs were within a margin of 10% of these. An overall target profit of 10% on sales was added to the costs so ascertained. On sales to merchants — accounting for about one third of all sales — there was no price restriction, but members of the group were under a duty to require merchants not to resell at prices below those set out in the group's schedule. As the predetermined level of activity of members of the group serving as a basis of pricing was considerably higher (by between 10 and 15%) than their actual level of activity, notional costs were lower than actual costs and the margin of profit therefore less than 10%.

The Court held that the agreement made for greater efficiency than would otherwise be the case, and that this fact, coupled with the existence of considerable outside competition, justified the continued existence of the restriction under section 21 (1) (b) of the Act, viz. the removal of the restrictions would deny to the public ... specific and substantial benefits ...

Fixing by publishers of net retail prices for sale of books to the public

In *Net Book Agreement, 1957*⁷⁵, the Court upheld, as not being contrary to the public interest, an agreement between book publishers whereby books designated as "net books" by individual publishers were not — subject to certain minor exceptions — to be sold to the public below the "net price" fixed by each publisher. Publishers remained free to determine whether any individual book was to be designated as a "net book" and what its "net price" was to be.

The Court found on the evidence that the book trade was highly competitive and more speculative than most other trades and that forecasts as to the number of copies which a publisher might expect to sell were extremely difficult to make. In these circumstances a publisher had to rely to a large extent on those of his customers who ordered a fixed number of copies. These customers were mainly so-called "stockholding" booksellers who, unless they could be assured that books held in stock by them would not be sold more cheaply by their competitors, would not order large quantities, with the result that publishers themselves would not be pre-

pared to publish as many titles or as many copies of each title as with the support of the agreement they felt able to do. If these results were to occur the public would be denied substantial benefits or advantages [section 21 (1) (b) of the Act].

The Court accordingly declared that the Net Book Agreement was not contrary to the public interest⁷⁶.

Minimum price scheme coupled with pooling of patents, exchange of know-how and co-operative research

In *Permanent Magnet Association's Agreement*⁷⁷ the Court upheld an agreement between twelve manufacturers of permanent magnets whose production accounted for 75% of the total production of permanent magnets in the United Kingdom. A minimum price scheme was coupled with an agreement providing for the pooling of patents between members of the association, for free exchange of know-how, co-operative research and standardisation. The degree of co-operation resulting from the interchange of knowledge and experience was such that the Court found it to be unique, by comparison with other industries. Its benefits to the public consisted of better, more varied and cheaper supplies. Nevertheless it was contended on behalf of the Registrar that this alone did not justify the conclusion that the removal of the price scheme would result in the loss of these benefits because, so it was argued, even if the Court were to declare the price scheme as being contrary to the public interest, the loss of the other benefits would not "result" from the removal of the price restriction but from the independent decision of members of the association to end the pooling of patents, the exchange of know-how and the other measures of co-operation.

The novel question to be determined by the Court therefore was whether the words "resulting therefrom" in section 21 (1) (b) referred only to physical causation or also included results brought about by an intervening act of the members' own volition⁷⁸. The Court held that the words "arrangements or operations" preceding the words "resulting therefrom" were wide enough to justify the Court in holding that if the natural and probable consequence of the termination of the price restriction was the (voluntary) termination of the beneficial arrangements between the parties — and this required the Court to forecast what was likely to happen in the future — the termination of the beneficial arrangements could properly be said to "result from" the termination of the price restriction. The Court accordingly declared that the price restrictions were not contrary to the public interest.

⁷⁶ It was also contended that the agreement should be upheld under section 21 (1) (f) of the Act, viz. on the ground that the removal of the restriction "would be likely to cause a reduction in the volume or earnings of the export business ...". The Court was not satisfied on the evidence that exports of books would be adversely affected by the removal of the restriction because even without the restriction books in the English language published in the United Kingdom would still be able to compete effectively with books in the English language published elsewhere.

⁷⁷ Restrictive Practices Court, June 7, 1962; (1962) L. R. 3 R. P. 119; (1962) 2 All E. R. 775.

⁷⁸ If a restriction is to be upheld, the Court must be satisfied, under section 21 (1) (b), that "the removal of the restriction would deny to the public ... benefits ... enjoyed ..., whether by virtue of the restriction itself or of any arrangements or operations resulting therefrom".

⁷⁵ Restrictive Practices Court, October 30, 1962; (1962) L. R. 3 R. P. 246; (1962) 3 All E. R. 751.

It may be added that only two ancillary restrictions were condemned: (1) an undertaking by members to grant an aggregated rebate to buyers who bought £50,000 worth of magnets from members in any one year, and (2) a restriction whereby members agreed to withhold new magnetic materials from the market.

In subsequent proceedings⁷⁹⁾ the Court made an order to the effect that if the Registrar at any time represented to the association that he had reason to suppose that there might have been a material change in the relevant circumstances, the association would supply him with such information relative to costs as was in the possession of its costing and prices committee, and such information as was in its possession or in the possession of its members or of their accountants as to the trading profit and return of capital employed derived from the production and sales of magnets by members⁸⁰⁾.

Agreement not to sell goods at prices other than prices ascertainable from association's current price list

In *Lead Sheet and Pipe Manufacturers' Federation's Agreement*⁸¹⁾ the agreement between members of the federation consisted of two undertakings: (1) not to sell at prices more favourable than those promulgated by the director of the federation, and (2) not to sell at prices other than prices ascertainable from the federation's current price list. The first restriction was abandoned voluntarily and an undertaking offered to the Court not to give effect to it, but as far as the second restriction was concerned, the federation contended that the price list was merely a communication to members and not itself a restriction. The Court rejected this contention and required an undertaking from the federation not to give effect to the second restriction any more than to the first.

Voluntary termination of agreement prior to reference to Court — Whether Court still entitled to exercise jurisdiction

In *Newspaper Proprietors' Agreement*⁸²⁾ the proprietors of six national newspapers, who had terminated a restrictive agreement after registration but before it had been referred to the Court by the Registrar, challenged the jurisdiction of the Court to adjudicate upon the agreement. The main contention was that section 6 of the Act required the registration of agreements "under which restrictions are accepted" and section 20 (1) enabled the Court to exercise jurisdiction so as to determine whether "any restrictions by virtue of which... this Act applies to the agreement... are contrary to the public interest". It was said that the restrictions could only be restrictions in a subsisting agreement because the language of section 20 (1) was in the present tense.

The Court of Appeal, affirming the Restrictive Practices Court, albeit with one dissenting judgment, rejected the con-

tention of the newspaper proprietors. It held that section 1 (2) of the Act required the Registrar to refer all agreements on the register to the Court, and that an agreement only ceased to be justiciable when it had been removed from the register, and that this could only be done by the Board of Trade under section 12 of the Act. Unless so removed, an agreement once registered remained a registered agreement and as such subject to the jurisdiction of the Court⁸³⁾.

3. Resale price maintenance

Meaning of "notice of condition" as to resale price

In *Kayser Bondor Ltd. v. Tesco Stores Ltd.*⁸⁴⁾ the plaintiffs applied for an interlocutory injunction to restrain the defendants from selling their, the plaintiffs', goods at prices lower than those prescribed by them for resale. The facts giving rise to the application were these: The defendant company was a subsidiary of another company. Another subsidiary (known as "L. M. D.") of the latter bought the relevant goods from the plaintiffs and then distributed them to the defendants. The terms on which they were so distributed were not known, but it was conceded that if L. M. D. was bound by a restriction to observe resale prices, then the defendants were equally bound. The Court therefore had to consider the terms on which L. M. D. had acquired the goods from the plaintiffs. The evidence showed that there had been a course of dealing between the plaintiffs and L. M. D. over a period of years. The plaintiffs adduced evidence that they had made it clear to L. M. D. from the beginning of such course of dealing that their goods were not to be sold below their list price. In addition they adduced evidence that after each individual contract of sale they sent an invoice to L. M. D. which stated that "The acceptance of this invoice is an undertaking that the goods entered therein will be offered for sale at the prices specified upon the company's price list".

The Court was not prepared to hold that the acceptance of the plaintiffs' invoice (which occurred when the contract between the plaintiffs and L. M. D. had already been concluded) and the subsequent acceptance of the goods constituted an acceptance of the conditions as to resale prices. On the other hand it took the view that where there has been a course of dealing between seller and buyer over a number of years the buyer must be assumed to be conversant with the conditions imposed by the seller and accordingly to have "notice of the condition" (as to resale prices) within the meaning of section 25 (1) of the Act.

The Court therefore granted the interlocutory injunction.

Retail sale at list price but with benefit of gift coupon

In *Bulpitt & Sons Ltd. v. S. Bellman & Sons Ltd.*⁸⁵⁾ the defendants, retailers of articles for domestic use, had given an undertaking that they would not resell articles of the plaintiffs' manufacture except at prices stated in the plaintiffs' price list. They kept within the strict terms of that undertaking but devised a scheme whereby purchasers of the

⁷⁹⁾ Cf. Restrictive Practices Court, November 21, 1962; in *Permanent Magnet Association's Agreement* (No. 2) (1962) L. R. 3 R. P. 392; *Times Newspaper*, November 22, 1962.

⁸⁰⁾ The form of order is based on the report in the *Times Newspaper* (see note hereabove).

⁸¹⁾ Restrictive Practices Court, May 4, 1962; (1962) L. R. 3 R. P. 71.

⁸²⁾ Court of Appeal, December 5, 1962; (1962) L. R. 3 R. P. 360. The judgment of the Restrictive Practices Court of March 5, 1962, is reported in (1962) L. R. 3 R. P. 81.

⁸³⁾ Leave to appeal to the House of Lords was granted.

⁸⁴⁾ Chancery Division, January 24, 1962; *Times Newspaper*, January 25, 1962.

⁸⁵⁾ Chancery Division, May 11, 1962; (1962) L. R. 3 R. P. 62.

price-restricted articles were able to secure extraneous advantages. Under the scheme every purchaser was given a number of gift coupons which he could exchange for other goods in the defendants' shops. Each coupon, however, was issued with an express provision that the defendants were under no legal obligation to honour it.

The plaintiffs moved for a writ of sequestration in respect of what they alleged to be a breach of the defendants' undertaking to observe their, the plaintiffs', list prices. They contended that as the goods had been sold by them to the defendants "subject to a condition as to the price at which those goods may be resold" [section 25 (1) of the Act], the defendants were not entitled to circumvent that condition by offering benefits in connection with a resale of the plaintiffs' goods which would have the effect of reducing their price below the list price. The Court upheld this contention and gave judgment for the plaintiffs, notwithstanding the fact that the exchange of the coupons did not constitute a legally binding undertaking of the defendants vis-à-vis their customers. The fact remained, as the Court pointed out, that the coupons were part of the consideration, in addition to the goods themselves, for the price paid by the defendants' customers.

(g) CONSUMER PROTECTION

The Final Report of the Committee of Consumer Protection⁸⁶) runs to more than 300 pages and is concerned with a variety of subjects, such as the labelling and testing of goods, the adequacy of the law governing the sale and hire-purchase of goods, advertising, and the Merchandise Marks Acts. In the present context only the recommendations of the Committee on the law relating to trade marks and merchandise marks need be considered. However, no more than a very short summary will be attempted.

The Committee was not concerned with the law of trade marks as such, and it therefore confined itself to those aspects of it which arose in the context of the problem of consumer protection. This meant in effect that only certification trade marks (section 37 of the Trade Marks Act) were considered in any detail. The Committee was satisfied that on the whole the law as presently in force and administered was sound and not in need of any fundamental revision. The more important recommendations are that certification trade marks should be more clearly distinguished from other trade marks, as by the description "Regd. C. M. T.", or some similar description, and that the existence of a certification trade mark on the register certifying the characteristics of certain goods should not be a bar to a subsequent registration in respect of similar characteristics, provided that the goods which are the subject of a later application are of a different quality.

As far as the law now contained in the Merchandise Marks Acts is concerned, it is suggested that the Acts should be consolidated and simplified⁸⁷). All these Acts deal with trade descriptions, and it is therefore felt that some title such as

"Trade Descriptions Act" would be more appropriate. The more important recommendations concerning substantive changes of the law may be summarised as follows:

(1) The defences open to a person charged with an offence under the Acts should be assimilated to those contained in comparable legislation, such as the Food and Drugs Act, 1955. It should accordingly be a good defence for an accused to prove:

- (a) that the offence was due to a mistake or an accident or some other cause beyond his control, and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of an offence... by himself or any person under his control.

Where the person concerned has not himself "applied" the description, i. e. is the seller of goods to which the description has been applied by someone else, it is to be sufficient for him to prove that he did not know, and could not with reasonable diligence have ascertained, that the trade description was applied to the goods, or that it was a false trade description.

(2) It is suggested that the term "trade description" [as at present defined by section 3 (1) of the Merchandise Marks Act, 1887, as amended by section 1 of the Merchandise Marks Act, 1953] should be re-defined, by adding a description or statement as to:

- (a) the size of goods (where it now refers to measure, weight, etc.);
- (b) goods being new (in the sense of being unused);
- (c) the date of manufacture;
- (d) goods being composed of a certain material *in whole or in part* (the words underlined being inserted);
- (e) the previous ownership or history of goods (so as to prevent goods being described as, for example, "bankruptcy stock" or "Army surplus", when in fact they are not);
- (f) the former or usual price of goods (so as to prevent goods from being described as "marked down" in price, when in fact they have not been marked down in so-called "sales");
- (g) the standard of quality; at present this standard is one referable to the classification commonly used or recognised in the trade, whereas it should be an indication commonly taken (i. e. by members of the public) to indicate a certain standard;
- (h) any other physical characteristic of goods (and not only, as now, the fitness for purpose, strength, performance, or behaviour of goods);
- (i) goods having been tested by any person or authority, or the results of any such test;
- (k) goods conforming to a standard specified by any person or authority⁸⁸).

It is believed that such a re-definition of "trade description" would add greatly to the protection of consumers and prevent their being deceived.

⁸⁶) Cf. *Cmnd.* 1781.

⁸⁷) There are no less than eight statutes on the statute book: The Merchandise Marks Act of 1887, 1891, 1911, 1926 and 1953, the Merchandise Marks (Prosecutions) Act of 1894 and the Anglo-Portuguese Commercial Treaty Acts of 1914 and 1916.

⁸⁸) The suggested changes of the existing law are fully set out in paragraphs 636-638 of the Report.

(3) The Committee felt that the definition of the word "applying" (a trade description to goods) contained in section 5 of the Merchandise Marks Act, 1887, does not go far enough. It is therefore suggested that a person shall be deemed to "apply" if he uses a trade description in advertisements, including broadcast and television advertisements, and if he delivers goods in pursuance of an order received from a prospective purchaser who has ordered the goods by reference to a trade description.

(4) Lastly it is suggested that the time limit for the initiation of summary prosecutions be increased from six to twelve months, and that local authorities be placed under a duty to prosecute offences against the Acts. It is generally agreed that at present the Acts are not being enforced with sufficient vigour.

It is too early to say whether any of the recommendations of the Committee will eventually be enacted as law, but it is certainly true to say that their acceptance would strengthen the position of the consumer and bring the law into line with modern trading conditions.

CONGRESSES AND MEETINGS

General Assembly of the European Alliance of Press Agencies

(St-Cergue, 6th July, 1963)

Resolution

The Assembly of the Alliance, which met in St-Cergue on 6th July, 1963,

- having examined the present state of procedure now in progress for the adoption of international legislation for the protection of news,
- having noted that Article 2 (b) of the 1959 Draft¹⁾ appears to be an obstacle to the adhesion of a number of States to this Draft Arrangement,

invites its members to urge their respective administrations to make a prompt adhesion to the general principle of the Draft, subject to the possible omission of the said paragraph.

¹⁾ See *La Propriété Industrielle*, 1959, p. 184, and *Le Droit d'Auteur*, 1961, p. 228.

BOOK REVIEWS

Algunos Aspectos de los Juicios de oposición y cancelación del Registro de Marcas (Some aspects of the procedure for opposition and cancellation of Trade Marks in the Register), by M. Manuel Pachon Muñoz. S. I. P. A. Bogota, 1962. One volume 24 × 16 cm., 183 pages.

In his useful and exhaustive study, M. Manuel Pachon Muñoz sets out systematically all the provisions which regulate the procedure for opposition and cancellation of trade or merchandise marks. He also examines the legal problems which have arisen in practice and often refers to case law in Colombia.

With reference to the system of protection in force in Colombia (Laws No. 31 of 1925 and No. 94 of 1931 which repealed Law No. 110 of 1914), the author points out that the only way to acquire ownership of a trade mark is to register it. However, the attributive system of law (a term used by the author) has been moderated by the preferential law of registration for those persons who have used a well-known mark publicly during a period of 3 years; to assert this right, they may, on the basis of such use, oppose the registration of an identical or similar mark or file a request for the cancellation of that mark if it is already registered. The author is of the opinion that there should be a distinction made between right of ownership in respect of a sign and the right to oppose or file a request for cancellation of other marks.

G. R.

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Las Marcas en el Derecho comparado y en el Derecho Venezolano (Trade Marks in comparative law and Venezuelan law), by C. E. Mascareñas. One volume 16 × 23 cm., 172 pages, Merida, 1963.

Professor C. E. Mascareñas, Dean of the Faculty of Law of Ponce (Puerto Rico), has made a new and valuable contribution to the study of industrial property law in Volume No. 10 in the collection "Justitia et Jus", published by the Faculty of Law of "Los Andes" University.

The study is both of a theoretical and practical nature and is destined for the use of jurists who are particularly interested in the protection of trade marks. It covers the system of protection in force in Venezuela and in the other countries.

The author, having defined the trade mark as being a sign used to distinguish, on the market, the goods and services of one enterprise from those of other enterprises, remarks that the different definitions given by various legislations are more formal than fundamental. He then surveys the state of national legislations with regard to device and word marks or a combination thereof, plastic or three-dimensional marks, colour marks, shapes of goods and wrappings, sound marks etc., which are registrable as trade marks. M. Mascareñas examines the legislation of Venezuela and of other countries in connection with the voluntary use and the obligatory use of a mark, the right to ownership of a mark, trade mark registration, territorial and temporal limits, fees, the rights and obligations of trade mark owners, expiration and nullity of trade mark registrations, collective marks and penal protection.

A detailed study of Unionist International Law, of American Law and the international trade mark registration system, as established by the Madrid Arrangement of 14th April, 1891, as last revised at Nice in 1957, completes this study of comparative law.

A number of quotations are contained in this work which is characterised by a style both clear and precise.

G. R.

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Recopilación de leyes y jurisprudencia en materia de propiedad industrial (Collection of laws and jurisprudence in the field of industrial property), by *Mariano Uzcatagui Urdaneta*. One volume 16 × 30 cm., 223 pages, Merida, 1963.

This is the second volume published in the collection "Justitia et Jus" by the Faculty of Law of "Los Andes" University and is divided into five parts. The first part covers the laws, regulations and treaties of Venezuela since 21st April, 1842. The second part contains a survey of Venezuelan case law, with particular reference to certain interesting patent and trade mark cases both from a scientific and practical point of view. The third part concerns administrative provisions and the fourth is an appendix containing the texts of the Convention of Paris for the Protection of Industrial Property of 1883, as revised at London in 1934, the Arrangement of Madrid for the Prevention of False Indications of Source on Goods of 14th April, 1891, as revised at London in 1934, the Arrangement of Madrid concerning the International Registration of Trade Marks of 14th April, 1891, and its Regulations, as revised at London in 1934, the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models, as revised at London in 1934; though it is pointed out in the preface, that this latter part is only of a purely academic interest, we would suggest that the next edition of this work of documentary value, should also contain the Lisbon texts of 1958 in addition to the London texts of 1934. The fifth part contains a list of terms which are considered generic by the World Health Organisation and, as such, are not registrable as trade marks in the sixth class of goods.

This volume, the consultation of which is facilitated by a detailed index, will prove to be a most useful instrument of work. G. R.

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The Law of Trade and Merchandise Marks, by Dr. S. Venkateswaran. One bound volume of CV-1042 pages, 24 × 17 cm. Published by the Eastern Law House Private Ltd., Calcutta. Price Rs. 50.—

Fully to appreciate the value of the recently published work of Dr. S. Venkateswaran, now Controller-General of Patents, Designs and Trade Marks in India, it should be mentioned here that the author first drew the attention of the Government authorities in India to the urgent necessity of enacting a statute for the registration of trade marks in 1935.

The suggestions made by the author in his book published in 1935 were accepted by the then Government authorities and eventually led to the enactment of the Trade Marks Act of 1940 (subsequently amended in 1941, 1943, 1946 and 1951). Then, following a Report submitted by a special Trade Marks Enquiry Committee and a Report by Shri Justice N. Rajagopala Ayyangar, the author, Dr. Venkateswaran, was given the task of drafting a new Trade and Merchandise Marks Bill, consolidating the provisions of the former Trade Marks Act (1940), the Indian Merchandise Marks Act of 1889, and provisions relating to trade marks in the Indian Penal Code, and implementing those recommendations contained in the above-mentioned Reports. The new Trade and Merchandise Act of 1958, came into force, with its Rules, on 25th November, 1959.

It is apparent therefore that it is largely owing to persistent work over a number of years by the author in this field, that India is now endowed with an up-to-date Trade Marks Law which, though inspired by British legislation, is fully adapted and tailored to meet the requirements of modern commercial India.

The new Act has in fact introduced a number of important changes in the trade mark registration procedure aimed at providing more effective protection and better facilities for registration at home and abroad. Such changes include, for instance, the establishment of a Part B in the Indian Registry (which greatly assists Indian traders in securing registration abroad), unified jurisdiction, administrative amalgamation of the Patent Office with the Trade Marks Registry, the establishment of local or zonal Registry Offices, etc. Thus Dr. Venkateswaran's book comes as a timely and welcome contribution as he has undertaken the considerable task of presenting and commenting on the provisions of the new Indian law relating to trade marks.

The first part of this work contains a table of cases and a number of well-known trade mark decisions. However, the greater part is devoted to a detailed study of each of the 136 Articles of the new Act. Following the text of each article, readers will find accurate details regarding corresponding enactments, clear indications as to the interpretation of definitions and explanations as to the true meaning of certain legal clauses. Such commentaries are further enriched by a host of practical examples and references to case-law in India, United Kingdom and elsewhere.

Trade mark owners, would-be applicants and practitioners will find invaluable information with regard to such notions as "distinctiveness", concurrent use, disclaimers etc., which are not always clear to the public.

In Appendix I, there will be found the complete text of the Trade Mark and Merchandise Rules of 1959, the schedule of fees applicable and the different forms (for application, opposition, restoration, etc.), now in use. Other useful appendices include a comparative table showing corresponding sections of the Indian, United Kingdom, Australian, and Canadian trade mark acts. An exhaustive Index of 60 pages is to be found at the end.

Dr. Venkateswaran's work is a legal text book of high quality and the long experience of the author in this particular field of law is revealed in his grasp of the subject matter. This is no ordinary work of compilation and should be regarded as a most valuable and unique contribution to the collection of text books on industrial property both for the benefit of Indians and other interested nationals. J. L.

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A védjegy és az ipari termékek értékesítése (The trade mark and the selling of industrial products), by Dr. Sándor Vida. Economic and Legal Publishing House, Budapest, 1962, 260 p. Price: 12,50 Ft.

The role and importance of trade marks are not limited to the market-economy: they retain their impact in a socialist economic order as well. Planners and administrators of socialist economies of the Soviet type are now using trade marks on a growing scale to indicate the origin of products, as quality marks and as means of advertising; i.e. for the same purposes as their opposite numbers in market-economies. A better understanding of the psychological, economic and legal implications of trade marks is therefore an essential prerequisite for up-to-date economic management. This is the thesis upon which the useful handbook of Dr. Vida, author of the "Letters from Hungary" in *Industrial Property* is based. Published in the series of pocketbooks for business management it is aimed to provide trade mark departments and administrators of industrial enterprises and cooperatives with a concise guide on trade marks. Written in a readable popular style, the handbook meets this end well.

Its scope is not limited to the existing domestic and international legal rules on trade marks. Indeed, the legal aspects are interwoven with the general presentation of trade marks as they are used in everyday business life.

A brief historical survey introduces the examination of trade marks in a "capitalist" and "socialist" economic system. The result of the comparison is indicated above already. Trade marks can help the fulfilling of both production plans and of export plans. There exists a certain limited amount of competition even in the socialist national economy, trade marks are an incentive to such competition. In the world market, moreover, competition can only be faced with the help of well designed and well established trade marks. The author gives detailed and practical advice, drawing from achievements of the psychology of trade marks as how to design trade marks to make them attractive, how to register them to obtain protection both home and abroad. There are well chosen examples, including colour pictures to illustrate the author's arguments. The handbook itself is a good example of the useful services which a specialist can render in his field by an accurate presentation of his topic in terms that the average reader can understand.

J. TÓTH, Geneva

Review of Soviet Literature

The book review on Soviet literature in the August 1962 issue of *Industrial Property* indicated a growing literary activity on the part of Soviet authors in the field of the law of inventions. The following three works are further evidence of this trend.

Patentnoe zakonodatelstvo kapitalisticheskikh stran (Patent Legislation of Capitalist States). E. A. Fleishits Ed. Publishing House for Foreign Literature, Moscow, 1959, 340 pages. Price: 1 rouble 22 kopeks.

Izobretatelstvo i ratsionalisatsia v SSSR (Inventions and technical improvements in the USSR). A. F. Garmashev Ed. Trade Union Publishing House, Moscow, 1962, 336 pages. Price: 78 kopeks.

RYASENTSEV, V. A.: *Sovetskoe izobretatelskoe pravo* (Soviet Law of Inventions). All-Union Institute for Legal Education, Moscow, 1961, 223 pages. Price: 87 kopeks.

The collection of foreign legislation on patents published under the editorship of Professor Ekaterina Fleishits indicate an awakening interest in foreign patent law. The introductory chapter by the editor gives a brief outline of recent developments in the Paris Union and in some national legislation. Attention is given to the fact that patent legislation has been reshaped after World War II in most industrialized countries. The following patent laws and rules were translated for this collection: the Patent Law of Belgium (1854, 1939), of Great Britain (1949), of the United States of America (1952), of the Federal Republic of Germany (1936 with amendments until 1953), of France (1844 with decrees from 1903, 1953, 1955), of Switzerland (1954). The aims of the new laws were, according to the editor, to improve international protection and to strengthen the position of the big corporations, of patent pools and of cartels.

The collective work of 5 co-authors under the editorship of A. G. Garmashev has been written both for specialist and for the general reader. It is intended for use as a short encyclopedia for inventors and rationalizers in the Soviet Union. This purpose has been achieved to a

great extent. "The maximal speeding up of scientific and technological progress" proclaimed in the new Party Programme of the 22nd Congress of the CPSU requires as an inevitable condition a thorough knowledge and understanding by the general populace not only of the rules of protection of inventions, but also of the working of the system of legal protection as a whole. For this purpose the book puts the problem of protection of inventions in its historical, economic, technical and administrative setting. The importance of inventions is outlined therefore from the first Venetian legislation until the current 20 year economic plan of the Soviet Union; the administrative organs dealing with inventions are dealt with; so are the basic features of the right of authors of inventions, discoveries and suggestions of rationalization. The procedure of application and registration of inventions is explained in detail to help those who desire to file an application or who have to decide on the correct form and content of such applications. The working of inventions, their application, their use in practice and the financial rewards granted for inventors receive a careful and lucid treatment, so does recourse to administrative organs or tribunals in settling disputes. The tasks of planning and financing in promoting the creative activity of inventors are outlined in the last chapters together with other organizational devices aimed at the furthering of creative activity. Relevant legislative texts and an alphabetical index complete the well-balanced and useful book.

V. A. Ryasentsev wrote a concise and didactic treatise on the Soviet Law of Inventions for use in popular legal courses. In his arguments the author makes good use of recent Soviet literature. The Soviet legal protection of discoveries, inventions and suggestions for rationalization are dealt with in 7 chapters and 175 pages. The 40 pages of Chapter 8 are devoted to describe what is called the "nature of patent law in the period of monopol-capitalism". This chapter dealing with some features of the patent laws of industrialized states, suffers from its polemical outlook. Soviet sources cited in support of the often distorted views of the book date mainly from an era hostile to everything foreign, now repudiated in the Soviet Union. Non-Soviet authors are quoted only as rare exceptions.

J. TÓTH, Geneva

OBITUARY

Plinio Bolla

(Translation)

A few weeks ago, in his country home at Morcote, looking out under the cloudless Tessin sky over the deep waters of Lake Lugano on to a countryside compounded, like his own nature, of radiance and harmony, there passed away one of those rare beings capable of winning the esteem of their peers and the respectful affection of all who come into contact with them in the many spheres in which they are equally at ease: Plinio Bolla.

He had the gifts of humanity and intuitive subtlety that mark the true magistrate — he adorned his country's Bench —, and the noble mission of the Judge called upon to interpret the Law and to promote the rule of harmony in social life through his impartial judgments was one which he discharged with the utmost confidence, applying, as he was wont to say, Virgil's maxim: *Foederis aequas dicamus leges*.

He was not yet thirty years old, though already occupying a Chair at the University of Pavia, when the Federal Chambers expressed their opinion of him by appointing him to the Federal Supreme Court at Lausanne, the highest Swiss tribunal, of which he was later to become President. There he delivered remarkable judgments in which subtlety of analysis was crowned by power of synthesis, in which the soundest of legal sense was matched by a Praetorian concern to mitigate the inflexibility of legal provisions and adapt them to the changing and varied situations to which they had to be applied. How can one refrain from mentioning in this Journal devoted to intellectual property the famous judgment based on his report, delivered by the Supreme Court on 29th November, 1949, in which the validity of trade marks and trade names registered in the name of Holding Societies was for the first time recognized — a validity which until that time had always been challenged because Swiss law requires the mark to be used by its owner? But, and credit is due to the Supreme Court as a whole which had the wisdom to make its Rapporteur's findings its own, the importance of the infinitely difficult role assigned to the Judge by modern society lies precisely in the fact that it is his task to make up the lag between legal provisions and the ever increasing tempo of economic development. It was this that appealed to the mind, at once cool and balanced and innovating, of Plinio Bolla, who, basing himself on the golden rule, always succeeded in striking a true balance between caution and boldness, that precious balance we call wisdom.

Neither is it at all surprising that The Hague Tribunal should have numbered him among its members, or that he should have been called upon to serve on many conciliation commissions. Among other appointments of the kind, he was President of the Franco-Italian Conciliation Commission for the Application of the Peace Treaty, and, in a number of disputes, of the corresponding Italo-American and Italo-British Commissions. As a member of the international courts

of arbitration between Italy and Ethiopia, in the matter of the frontier of Somalia, and between France and Spain concerning the source of the Garonne, he delivered memorable judgments. And the unanimous recognition of the impartiality of his awards is the best proof of the authority and ascendancy of the President who made them.

Plinio Bolla placed his brilliant talents unstintingly at the disposal of those international organizations which, like the United International Bureaux and Unesco, are working to promote and defend intellectual rights.

A member from 1947 of the Swiss delegation to the Diplomatic Conference of Neuchâtel, convened to adopt an arrangement on the conservation or restoration of industrial property rights affected by the Second World War, he was elected by acclamation President of these international meetings, where his feeling for diplomacy and his profound knowledge of men, like his outstanding ability, were much in evidence, enabling him to surmount in masterly fashion all the problems of a difficult process of negotiation, the success of which was largely due to him.

From that time on, there was not a single conference, not a single meeting, on intellectual rights from which his slightly stooping figure, crowned with his long, prematurely white hair, and his enlightened face with its understanding smile were missing.

In 1948, the Diplomatic Conference of Brussels met to revise the Berne Convention for the Protection of Literary and Artistic Works. Plinio Bolla, leader of the Swiss delegation and Vice-President of the Conference, found himself entrusted with the chairmanship of one of the sub-committees, set up to deal with the most sensitive issues: the sub-committee on broadcasting and mechanical reproduction; the light he was able to shed on these highly complex matters earned him a public tribute from the General Rapporteur, the lamented Marcel Plaisant (*Actes de Bruxelles*, p. 101).

A member from its inception of the Permanent Committee of the International Union for the Protection of Literary and Artistic Works set up by the Brussels Conference, he was one of its prime movers, serving as chairman of its executive committee for several years. Busy, up to the very moment when illness removed him from the scene, with all the Committee's meetings, several of which were held under his chairmanship, he was one of those who imparted to this body the impetus which made it a vital instrument of the International Union, and this at a time when he was taking an active part in the work of other committees which, under Unesco's auspices, were engaged in drafting the new Universal Copyright Convention. Without sharing the misgivings which some entertained about the possible effects on the Berne Convention of the new international treaty — and he liked in this connexion to quote Dante's line *È l'uno all'altro raggio non ongombra* (one ray of light does not obstruct the other) —, he found a special pleasure in perfecting the famous "saving clauses" of the Berne Convention, which were ultimately approved by the Geneva Diplomatic Conference when, after three weeks of frequently stormy discussions, it adopted, under Plinio Bolla's Presidency, the Universal Copyright Convention in 1952.

It was then, more than, perhaps, at any other conference, that Plinio Bolla revealed his astounding mastery of the art of chairmanship, forged from a profound knowledge of the substantive points at issue, inexhaustible patience, ever-wakeful attention, a courteous endeavour to understand every opinion, and above everything from a stubborn quest for agreed formulas with his sights fixed on future progress. No one can recall unmoved the ovation accorded to him when the Universal Convention was signed at the final night session of the Conference, or the words then addressed to him, on behalf of the Director-General of Unesco, by Professor Jean Thomas. After having expressed his deep appreciation of the work done by the anonymous body of delegates, Professor Thomas, turning to the Assembly, added:

"But there is one name that you would all surely have me mention. That name, Mr. President, is yours. I have had to attend many international gatherings. I cannot remember ever having seen the difficult functions of president discharged with greater competence, greater authority or greater impartiality. The new Geneva Convention will owe its life to you; and on the day, which we hope will not be far off, when the requisite number of ratifications, acceptances and accessions have given the Convention strength and vigour, we shall all remember that it was you who bore it in your arms" (Records of the Intergovernmental Copyright Conference, Geneva, 18th August-6th September, 1952, p. 270).

As soon as the Universal Convention came into force, Plinio Bolla was elected to the Intergovernmental Copyright Committee, set up in pursuance of the Convention, a body which replaced the Interim Committee on which he had also served. The views he expressed there were always heeded.

A few years later, Plinio Bolla again played a distinguished part in the work of the Diplomatic Conference of Lisbon, which met in 1958 to revise the Paris Convention for the Protection of Industrial Property. A member of the General Drafting Committee, he also took the chair at meetings of the Third Committee, whose task, extremely difficult but

brilliantly carried out, it was to harmonise the proposals put forward by various delegations with a view to reshaping the international statute of the trade mark and the trade name. This, in the words of the General Rapporteur of the closing plenary meeting, was one of the Conference's "capital" achievements. It was the skill of the chairman of the Third Committee that made this achievement possible.

Although the restrictions which the state of his health had already begun to impose made it impossible for him to attend the Rome Conference, at which, in October 1961, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations was adopted, the name of Plinio Bolla none the less deserves to be recalled in connexion with this new international agreement, so great and in many respects decisive was his contribution to the preparatory work for the Convention, which was for long the subject of discussion at a number of meetings devoted to so-called "neighbouring" rights, many of which took place under his chairmanship.

This man, who occupied so eminent a place on his country's Bench, in courts of arbitration and at international meetings, was also a jurist whose opinion was greatly sought after, a man of science who, by the lectures he delivered, especially at the Academy of International Law, and by his writings, all of which bear the imprint of the same constructive mind, stands out as a model of lucid and penetrating thought.

But above all, this man who had known so many high honours remained to the end of his days unpretentious, true to his friends and to his little Fatherland, the Tessin, where he sleeps today. In a world subject to the grim law of efficiency, let us be grateful to one who leaves behind him the memory of a great-hearted man.

Ch.-L. M.

NEWS ITEMS

Calendar of BIRPI Meetings*

Place	Date	Title	Object	Invitations to participate	Observers
Geneva	7-10 October 1963	Committee of Experts (Type Faces)	Preparation of a draft international agreement on the protection of Type Faces	Governmental experts nominated by Member States of the Paris Union	Interested international intergovernmental and non-governmental organisations
Geneva	21-23 October 1963	Committee of Experts (Industrially less developed countries and the protection of industrial property)	To study the problems of industrially less developed countries in the field of industrial property	Experts from: Algeria, Brazil, Ceylon, Colombia, Czechoslovakia, Guinea, Iran, Japan, Liberia, Nigeria, Sweden, Tanganyika, Thailand, United Arab Republic, United States of America and Venezuela	None
Geneva	12-14 November 1963	Committee of Experts. Nice Arrangement (Classification)	Examination and approval of texts to be published in <i>Classification internationale des produits et des services auxquels s'appliquent les marques de fabrique ou de commerce</i>	Representatives of Member countries of the Nice Arrangement (Classification)	Other signatory countries of the Arrangement, Members of the provisional Committee of Experts
Geneva	18-23 November 1963	Committee of Experts (Copyright)	Discussion of proposals for amendment of the Berne Convention	Governmental experts from: Belgium, Brazil, Canada, Czechoslovakia, France, Germany, India, Italy, Japan, Poland, Sweden, Switzerland and United Kingdom	Non-Member countries which participated in the Study Group on the International Protection of Cinematographic Works and interested international intergovernmental and non-governmental organisations
Geneva	25-29 November 1963	Conference of the Directors of National Industrial Property Offices of the Member States of the Madrid Union	Consideration of certain matters concerning the Madrid Union for the International Registration of Trade Marks	Directors of Industrial Property Offices of the countries members of the Madrid Union	Other Member States of the Paris Union
Geneva	25-26 November 1963	Conference of the Member States of the Hague Union	Consideration of financial questions concerning the Union for the International Registration of Industrial Designs	States Members of the Hague Union	Other Member States of the Paris Union
Geneva	27-29 November 1963	Interunion Coordinating Committee	Consideration of the programme and the budget of BIRPI	States Members of the Permanent Committee of the Berne Union and of the Permanent Bureau of the Paris Union	Other Member States of the Berne Union and Paris Union
New Delhi	2-7 December 1963	Eleventh Ordinary Session of the Permanent Committee of the Berne Union	Consideration of various questions concerning Copyright	The States Members of the Permanent Committee	States not Members of the Permanent Committee Interested international intergovernmental and non-governmental organisations
Geneva	27-30 January 1964	Study Group on Certificates of Authorship	Study of the problem of certificates of authorship in relation to the Paris Convention	Bulgaria, Czechoslovakia, Hungary, Israel, Netherlands, Poland, Roumania, United-Kingdom, United States of America, Yugoslavia	USSR

* Meetings for which dates have been definitely arranged