

# Industrial Property

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for the Protection of Intellectual Property (BIRPI)  
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## WORLD INTELLECTUAL PROPERTY ORGANIZATION

CUBA

### Notification

by the Director of the United International Bureaux for the Protection of Intellectual Property relating to the Notification from the Republic of Cuba concerning the application of the provisional clauses of the Convention establishing the World Intellectual Property Organization (WIPO) and the Paris Convention for the Protection of Industrial Property

WIPO Notification No. 2<sup>1)</sup>

Paris Notification No. 2<sup>1)</sup>

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of . . . . and, in accordance with the provisions of the above international instruments, adopted at Stockholm, has the honor to notify him of the notification deposited by the Government of the Republic of Cuba in which that Government indicates its desire to avail itself of the provisions of Article 21(2)(a) of the WIPO Convention and of Article 30(2) of the Paris Convention.

This notification entered into force on the date of its receipt, that is, on January 15, 1968.

In pursuance of the Articles mentioned, that State, which is a member of the Paris Union but has not yet become party to the WIPO Convention, may, for five years from the date of entry into force of the said Convention, exercise the same rights as if it had become party and may, for five years from such date of entry into force, exercise the rights provided for in Articles 13 to 17 of the Stockholm Act of the Paris Convention, as if it were bound by those Articles.

Geneva, January 30, 1968.

<sup>1)</sup> WIPO Notification No. 1 and Paris Notification No. 1 concern the list of Signatory Countries of the texts adopted by the Stockholm Conference (see *Industrial Property*, 1968, p. 33).

## INTERNATIONAL UNIONS

### Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration

#### Second Session

(Geneva, December 20 and 21, 1967)

#### Report <sup>1)</sup>

#### Composition of the Session; Officers

The Council established by the Lisbon Agreement (herein after designated as "the Council") held its second<sup>2)</sup> ordinary session on December 20 and 21, 1967, in Geneva.

Of the eight countries which, at that date, were party to the Lisbon Agreement, five were represented, namely: Czechoslovakia, France, Hungary, Israel and Portugal. The countries not represented were Cuba, Haiti and Mexico.

The following eight States, party to the Paris Convention for the Protection of Industrial Property but not to the Lisbon Agreement, were represented by observers: Cameroon, Denmark, Finland, Germany (Federal Republic), Italy, Malta, Norway, and Sweden.

The list of participants is attached to this report.

The following new Officers were unanimously elected: Mr. F. Savignon (France), Chairman, and Mr. E. Tasnádi (Hungary), Vice-Chairman.

#### Activities of the Special Union and Financial Questions

As regards the activities of the Lisbon Union in 1967, and the proposed budget for 1968, the Council noted with approval the reports of the Director of BIRPI.

The Council unanimously agreed to raise the registration fee per appellation of origin, from 50 to 200 Swiss francs; the increase became effective on January 1, 1968.

### List of Participants

#### States Party to the Agreement

##### *Czechoslovakia*

Mr. M. D. Špunda, Head of Department, Office for Patents and Inventions, Prague.

##### *France*

Mr. F. Savignon, Director, National Institute of Industrial Property, Paris.

Mr. R. Labry, Counsellor of Embassy, Ministry of Foreign Affairs, Paris.

Mr. A. Devletian, Agricultural Expert; Head, External Service, National Institute of Appellations of Origin, Paris.

Mr. M. Bierry, Civil Administrator, Ministry of Industry, Paris.

<sup>1)</sup> This Report was prepared by BIRPI on the basis of the official documents of the session.

<sup>2)</sup> As to the first session of the Council, see *Industrial Property*, 1966, p. 231.

**Hungary**

Mr. E. Tasnádi, President, National Office for Inventions, Budapest.  
Mr. I. Sándor, Attaché, Ministry of Foreign Affairs, Budapest.

**Israel**

Mr. Z. Sher, Registrar of Patents, Designs and Trade Marks, Office of the Registrar of Patents, Designs and Trade Marks, Jerusalem.  
Mr. R. Cohn, Patent Attorney, Tel Aviv.

**Portugal**

Mr. J. Van Zeller Garin, Assistant to the Department of Trade, Industrial Property Office, Lisbon.  
Mr. J. Mota Maia, Head of the Inventions Service, Industrial Property Office, Lisbon.

**Observers****Cameroon**

Mr. G. Dieng, Head of the Trademarks and Designs Service, African and Malagasy Industrial Property Office, Yaoundé.

**Denmark**

Mr. G. Jensen, Ministry of Commerce, Copenhagen.

**Finland**

Mr. B. Godenhielm, Professor of Law, University of Helsinki, Helsinki.

**Germany (Federal Republic)**

Mr. A. Krieger, Ministerialrat, Ministry of Justice, Bonn.  
Mr. H. Mast, Regierungsdirektor, Ministry of Justice, Bonn.  
Mrs. Elisabeth Steup, Regierungsdirektorin, Ministry of Justice, Bonn.

**Italy**

Mr. A. Pelizza, Inspector General, Ministry of Industry, Rome.

**Malta**

Mr. O. Grech, Higher Executive Officer, Department of Trade, Valletta.

**Norway**

Mr. L. Nordstrand, Director, Patent Office, Oslo.

**Sweden**

Mr. C. A. Uggla, Legal Advisor to the Board of Appeal; Swedish Patent and Registration Office, Stockholm.  
Mr. H. Linton, Secretary of Embassy, Permanent Delegation of Sweden, Geneva.

**Officers**

Chairman: Mr. F. Savignon (France)  
Vice-Chairman: Mr. E. Tasnádi (Hungary)  
Secretary: Mr. Ch.-L. Magnin (BIRPI)

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

Professor G. H. C. Bodenhausen, Director.  
Mr. Ch.-L. Magnin, Deputy Director.  
Mr. B. A. Armstrong, Counsellor; Head, Division of Finance, Personnel and General Administration.  
Mr. L. Egger, Counsellor; Head, Division of Registrations.

**LEGISLATION****ITALY****Decrees****concerning the Temporary Protection of Industrial Property Rights at Twelve Exhibitions**

(of October 23, November 20 and 27, December 14, 1967 and January 15, 1968)<sup>1)</sup>

**Single Article**

Industrial inventions, utility models, designs and trademarks relating to objects appearing at the following exhibitions:

*Mercato internazionale della pelletteria MIPEL* (Milan, January 20 to 24, 1968);

*II° Salone delle attrezzature albreghiere turistiche et di pubblico esercizio per il mezzogiorno et l'oltremare - EXSPO-SUDHOTEL* (Naples, January 27 to February 4, 1968);

*VI° Salone internazionale del giocattolo* (Milan, January 31 to February 6, 1968);

*VII° Salone nautico internazionale e Salone internazionale rimorchio campeggio* (Genoa, February 1 to 11, 1968);

*V° Salone internazionale macchine per movimenti di terra, da cantieri e per l'edilizia rurale S.A.MO.TER* (Verona, February 7 to 12, 1968);

*XXIV° Salone mercato internazionale dell'abbigliamento* (Turin, February 16 to 19, 1968);

*LXX° Fiera internazionale dell'agricoltura e della zootecnica, XXI° Salone della macchina agricola* (Verona, March 10 to 19, 1968);

*38° Salon international de l'Automobile* (Geneva, March 14 to 24, 1968);

*XI° Salone internazionale dell'alimentazione* (Bologna, March 30 to April 7, 1968);

*V° Fiera internazionale del libro per l'infanzia e la gioventù* (Bologna, April 27 to May 1, 1968);

*XXXII° Salone internazionale delle calzature, del cuoio, delle macchine e degli affini* (Vigevano (Pavia), August 30 to September 5, 1968);

*IV° Salone internazionale dell'industrializzazione edilizia* (Bologna, October 5 to 13, 1968)

shall enjoy the temporary protection provided by laws No. 1127 of June 29, 1939<sup>2)</sup>, No. 1411 of August 25, 1940<sup>3)</sup>, No. 929 of June 21, 1942<sup>4)</sup>, and No. 514 of July 1, 1959<sup>5)</sup>.

<sup>1)</sup> Official communications from the Italian Administration.

<sup>2)</sup> See *La Propriété industrielle*, 1939, p. 124; 1940, p. 84.

<sup>3)</sup> *Ibid.*, 1940, p. 196.

<sup>4)</sup> *Ibid.*, 1942, p. 168.

<sup>5)</sup> *Ibid.*, 1960, p. 23.

## NEWS CONCERNING INTERNATIONAL ORGANIZATIONS other than BIRPI

### Cooperation Between the United Nations and BIRPI in 1967

As was indicated in the January issue at page 4, BIRPI has continued and extended its cooperation in industrial property matters with the United Nations and its subsidiary bodies during 1967.

By virtue of the Working Agreement established in 1964 between the United Nations Secretariat and BIRPI (see *Industrial Property*, 1964, page 207), BIRPI was represented at a number of meetings of United Nations bodies including, in particular, the Trade and Development Board, the Industrial Development Board, the Economic and Social Council, the Advisory Committee on the Application of Science and Technology to Development, the Economic Commission for Europe, and the General Assembly.

#### United Nations Conference on Olive Oil, Geneva, March 1967

Having cooperated on certain matters with the Olive Oil Council for some years, BIRPI was invited to be represented at the United Nations Conference on Olive Oil in Geneva in March 1967. The object of the Conference was to extend the existing Olive Oil Treaty, due to expire in September, for a further twelve months pending a revision of the treaty. The BIRPI representative took the opportunity to mention to the Conference the coming into force of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, a convention which might be of interest to producer-countries of olive oil.

#### Industrial Development Board, First Session, New York, April 1967

It is recalled that the Twenty-First Session of the General Assembly in 1966 set up a new body, the United Nations Industrial Development Organization (UNIDO), one of whose functions is to propose, "in cooperation with the international bodies or intergovernmental regional bodies concerned with industrial property, measures for the improvement of the international system of industrial property with a view to accelerating the transfer of technical know-how to developing countries and to strengthening the role of patents consistent with national interests as an incentive to industrial innovations."

UNIDO consists of all the Members of the United Nations and of any of the Specialized Agencies and operates mainly through a Board of 45 members, each of whom remains in office for three years. This Board held its first meeting in New York in April 1967.

In the general debates, the opinion was widely expressed that UNIDO should mainly be a coordinating body in regard

to work which was already being satisfactorily done by other Organizations.

This Session of the Board adopted its Rules of Procedure, which provided for the designation of international organizations to be in permanent association with the Board. Under this provision, BIRPI is one of only four intergovernmental organizations designated so far, having expressed its wish to be associated and having been unofficially represented at the meeting.

In private session, a Sessional Committee of the Board considered UNIDO's future program and a Resolution, adopted by the Board, laid down certain guide-lines for the Executive Director. This program at present provides for a meeting of an "Advisory Committee on Patents for Developing Countries," but the program will only be finalized by the next meeting of the Board in April 1968, when it may become more apparent how this Committee is to be constituted and what it will do. BIRPI expects to be invited by the Secretariat to cooperate.

The program also proposes publication in the "Industrial Legislation Series" of all laws and regulations affecting industry, including those on patents and trademarks, and BIRPI has also been asked to cooperate on this.

#### Trade and Development Board, Invisibles Committee, New York, April 1967

BIRPI was represented at this meeting, which had before it two papers prepared by the Fiscal and Financial Branch of the Department of Social and Economic Affairs of the United Nations dealing in part with the transfer of technology and acknowledging cooperation with BIRPI in the industrial property field. It was, however, suggested that ECOSOC should initiate the preparation of "basic texts" of legislation on various economic subjects, including industrial property. On this point the BIRPI representative, in order to avoid the danger of duplication, drew attention to BIRPI's Model Laws in this field.

#### Advisory Committee on the Application of Science and Technology to Development, Seventh Session, New York, May 1967 - Eighth Session, Paris, November 1967

BIRPI was represented at both these meetings, the former dealing mainly with the use of natural resources, and the latter with science education for developing countries. It is the wish of the Committee that BIRPI should maintain contact with it as it has on its program of future work the consideration of the transfer of technology.

#### Economic and Social Council, Forty-Second Session, New York, March 1967

BIRPI was represented at this Session of ECOSOC, which considered, *inter alia*, "arrangements for the transfer of operative technology to developing countries" in the Second Committee. There were several appreciative references to the work of BIRPI in this field by way of assistance to developing countries on legislation, and its training scheme for officials likely to be engaged in industrial property administration. The BIRPI

representative, in describing the BIRPI program, pointed out the necessity for creating a favorable climate in developing countries to encourage the transfer of technology and observed that an essential element was a satisfactory patent system.

**Economic and Social Council, Forty-Third Session,  
Geneva, July-August 1967**

BIRPI was represented also at this Session of ECOSOC, where its interest lay mainly in two items on the agenda, namely, "The Report of the Industrial Development Board" and "Relations between the Economic and Social Council and Non-United Nations Intergovernmental Organizations in the Economic and Social Field."

As to the first, the Report duly showed BIRPI as having been designated under the Rules of Procedure to be in permanent association with UNIDO.

As to the second point, the Secretary-General of the United Nations had proposed that relations between ECOSOC and non-United Nations intergovernmental organizations should be reconsidered. This derives from a lacuna in the Charter of the United Nations, which makes no reference to intergovernmental organizations other than specialized agencies, a lacuna which naturally leaves a large body of useful expertise untapped. It appears that it is the wish of the Secretary-General to establish more formal relations with certain of these intergovernmental organizations.

On this question a resolution was adopted by the Council inviting the Secretary-General "where he considers it would help to further the aims and work of the Council, to propose to the Council the names of intergovernmental organizations outside the United Nations system that should be represented by observers at sessions of the Council."

BIRPI's present relationship with the United Nations depends mainly on an exchange of letters between the Director of BIRPI and the Under-Secretary for Economic and Social Affairs of the United Nations. This has worked satisfactorily so far but it may be that as a result of the above resolution a more formal basis may be established. It is likely that the Secretary-General's list will include those intergovernmental organizations with whom a relationship has already been established.

**Trade and Development Board, Fifth Session,  
Geneva, August-September 1967**

BIRPI was represented at this Session of the Board, where a large part of the discussions was directed to the objectives and planning for the Second United Nations Conference on Trade and Development (2<sup>nd</sup> UNCTAD) in New Delhi in February and March 1968. There appears on the agenda for this conference the item "Transfer of technology, including know-how and patents," an item of direct interest to BIRPI.

**General Assembly, Twenty-Second Session,  
New York, September-December 1967**

BIRPI was represented during the earlier part of this Session, of which the principal features, from BIRPI's point of

view, were (a) the establishment of the United Nations Commission on International Trade Law (UNCITRAL), (b) the decision to hold a Diplomatic Conference on the Law of Treaties and (c) the receipt of an information document from the developing countries outlining their approach to the 2<sup>nd</sup> UNCTAD.

As to (a), as reported in the February 1967 issue of *Industrial Property* at page 48, the Twenty-First Session of the General Assembly adopted a resolution to establish UNCITRAL and it was left to the Twenty-Second Session to appoint the 29 Member States. This was done by secret ballot and the following countries were nominated to serve for six years (except those marked with an asterisk, which were drawn by lot to serve only for three): Argentina, Australia, Belgium, Brazil, Chile\*, Colombia\*, Congo (Kinshasa), Czechoslovakia\*, France\*, Ghana\*, Hungary, India, Iran, Italy\*, Japan\*, Kenya, Mexico, Nigeria\*, Norway\*, Rumania, Spain, Syria, Tanzania\*, Thailand\*, Tunisia, Union of Soviet Socialist Republics\*, United Arab Republic\*, United Kingdom\*, and United States of America.

Provision is made for cooperation with intergovernmental organizations and, in advance of permanent arrangements, BIRPI received an invitation to be represented at the first session of the Commission beginning on January 29, 1968, whose task — among other things — is to decide the priorities to be given to the study of legislation in a number of fields relating to trade, including industrial property and copyright.

As to (b), the General Assembly approved a resolution to hold a Diplomatic Conference to establish a Convention on the Law of Treaties, the first session of which will be held in Vienna in March and April, 1968, and a second in 1969. The conference will base its work on a draft convention prepared by the International Law Commission and BIRPI has received an invitation to be represented. As administrator of several international treaties BIRPI is greatly interested in the development of treaty law.

As to (c), during the early part of the Session the developing countries were holding a private meeting in Algiers, which adopted the so-called "Charter of Algiers" for submission to the 2<sup>nd</sup> UNCTAD and which was before the General Assembly as an information document. This contains, inter alia, recommendations on industrial property and shows the appreciation of the developing countries of the necessity of the transfer of technology for their development.

**International Symposium on Industrial Development,  
Athens, December 1967**

This Symposium, at which BIRPI was represented by an observer, was organized by the United Nations Industrial Development Organization (UNIDO) and attracted the participation of 78 countries, of which 54 were members of BIRPI. The debates ranged over the whole field of industrial development, including industrial property, and led to many recommendations for action by UNIDO. One of them urges developing countries to help themselves to attract technology on reasonable terms by adopting proper patent legislation.

### Economic Commission for Europe, Geneva, 1967

BIRPI has continued its cooperation with the Working Party of the Economic Commission for Europe set up to prepare guide-lines for clauses on the licensing of know-how in engineering contracts.

#### United Nations Institute for Training and Research

The United Nations Institute for Training and Research (UNITAR) each year organizes a six-months training course in Geneva for foreign service officers from developing countries. In 1967, for the first time, it was arranged that this course should visit BIRPI. Thus, in August, the course, consisting of trainees from 21 developing countries, was addressed in BIRPI's Conference Room on the structure, functions and objectives of BIRPI and made a tour of the building.

### Council of Europe Committee of Experts on Patents

(Strasbourg, November 6 to 8, 1967)

#### Note

The Committee of Experts on Patents of the Council of Europe met from November 6 to 8, 1967, at the Headquarters of the Council of Europe in Strasbourg.

The following Member States of the Council of Europe were represented: Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, Switzerland, Turkey, United Kingdom. Spain and the United States of America participated with observers.

BIRPI was represented by Mr. K. Pfanner, Counsellor, Head of the Industrial Property Division, and Miss G. Davies, Legal Assistant.

The Committee elected Mr. J. Voyame (Switzerland) to be Chairman in the place of Mr. G. Grant (United Kingdom) to whom it expressed its gratitude for his eminent services.

The Committee discussed in particular the following points:

#### Program of the Council of Europe for 1968

The Committee took note of the program which provides for the continuation of its work in the fields of the harmonization of patent laws and the International Patent Classification. Several delegations underlined the importance of a close cooperation between the Council of Europe and BIRPI. They stressed the geographically limited character of the activities of the Council of Europe and the fact that activities of a world-wide character in the field of intellectual property fall within the province of BIRPI by virtue of the world-wide scope of the Conventions administered by them.

### The International Patent Classification

The complete elaboration of the International Patent Classification in the English and French languages, prepared by the Classification Working Party over more than 15 years of intensive work and which contains a classification system comprising some 40,000 sub-divisions, was approved by the Committee. It will probably enter into force in the second half of 1968.

The Committee also:

- (a) approved the texts of a Foreword and Guide to the Classification which form an integral part of the Classification;
- (b) authorized the Classification Working Party to complete the Catchword Indexes in English, French and German;
- (c) agreed to the principle of five years' revision periods for the Classification;
- (d) replaced the present Classification Working Party by a Classification Sub-Committee of the Committee of Experts on Patents.

The tasks of this Sub-Committee shall be:

- (i) to address to Contracting Parties during intervals between the five years' revisions recommendations with the purpose of facilitating the use of the Classification System;
- (ii) to prepare the five years' revisions of the Classification System and the revisions of the Foreword and Guide;
- (iii) to see to the uniform application of the Classification System;
- (iv) to assist, as far as possible, in establishing translations of the classification into languages which are not official languages of the Council of Europe.

A debate took place concerning the future of the Classification Convention. The Committee stressed the interest that has been shown in the International Patent Classification outside the countries of the Council of Europe. The fact that, under the present system, third countries have no possibility of participating in decisions on future modifications of the Classification on an equal basis was stressed. The Committee, therefore, agreed that the Classification Convention should be given a more universal character in order to facilitate its world-wide adoption. In particular, States using the International Classification should be encouraged to adhere to the Convention, and all Contracting Parties should have an equal status.

The Committee requested the Secretariat-General, in collaboration with BIRPI, to study the ways — such as a revision of the Convention — in which this result could be obtained, and to submit a report before its next meeting.

#### Harmonization of Patent Law

The Committee authorized the continuation of the work of the Working Party set up to consider the revision of the European Convention Relating to the Formalities Required for Patent Applications (1953) and other proposals for harmonization of patent law.

#### Harmonization of Trademark Law

The representative of BIRPI informed the Committee that BIRPI is preparing a Conference to revise the Paris Conven-

tion for the Protection of Industrial Property and the Madrid Agreement Concerning the International Registration of Marks which is expected to be held in Vienna in 1972. It is very likely that this Conference will deal with a number of trademark problems. Under these circumstances, the Committee found it preferable to defer any study on the harmonization of trademark law until after the results of the Vienna Conference are known.

## LETTERS FROM CORRESPONDENTS

### Letter from Czechoslovakia

Dr. Karel NEUMANN, Prague

#### *Inventions and Patents*

1. — The patent law at present in force in Czechoslovakia is governed by Patent Act No. 34 of July 5, 1957, and Ordinance of Execution No. 43 of August 2, 1957.

An applicant from abroad will probably first of all be interested in obtaining an answer to the following questions: How can I obtain protection of an invention in Czechoslovakia and what does the grant of a patent in Czechoslovakia effectively give me? Let us start with these questions and discuss the legal effects of a patent as well as the conditions under which a valid patent can be obtained.

2. — The grant of a patent gives to its owner the exclusive right to give (or refuse) his consent to the use of the invention; without this consent, nobody is entitled to use it. To use an invention means to produce the object of the invention industrially, to place it on sale on the market (product patent) or to use it industrially and in the course of production (method or process patent). As far as method or process patents are concerned, however, the protection does not automatically include the products obtained directly by the patented method or process.

It follows from the above mentioned fundamental regulation in Section 3 of the Patent Act that the positive patent right includes the exclusive right of the patent owner to allow use of the invention by others. His negative right, on the other hand, includes the right to restrain other persons from using the invention and to prosecute any illicit use. By concluding license agreements, the patent owner exercises his positive right; to safeguard his negative right, the patentee has available all the usual procedural means to stop infringement, and to obtain restitution and to obtain damages, if the infringement was committed wilfully (Section 352 Gen. Civ. Act, 1950). In case of wilful infringement the Penal Act provides for imprisonment up to six months.

In accordance with the economic structure and system of a socialist State, the Czechoslovak Patent Act does not take into account the possibility that the owner of the patent

himself could exercise his patent rights by producing on his own the products covered by the invention and placing them on the market or by making use of the invention industrially. This is especially due to the fact that patents can only be granted to physical persons, i.e., to the respective inventors. The positive patent right consists, therefore, in the exclusive right of granting consent to the use of the invention. This right, however, can be transferred, which means that the owner of the patent (the inventor) can transfer to others his exclusive right to grant licences in respect of the patent. The property right (ownership) of the patent, however, cannot be transferred and is always and exclusively incumbent on the inventor as his personal right. If, therefore, the inventor decides to transfer his exclusive right to allow use of the invention by a third person, physical or moral, he is free to do so, and then he is left with only the patent itself as *nuda proprietas*. This principle — the transferability of material patent rights, but not of personal rights — means that negative patent rights are also transferable. Such a transfer is, in principle, possible at any time, even before the grant of the patent, as a license agreement may also be contracted before grant of the patent. It becomes effective, against third parties, only after it has been recorded in the Register, which, however, can only take place after grant of the patent.

3. — The scope of protection is defined by the wording of the claims. The purpose of the specification and the drawings is to interpret the claims. A wide interpretation of the claims is not possible; anything that is not covered by the claims enjoys no protection.

4. — The above-mentioned legal effects can naturally only exist on condition that there is a patentable invention, that protection has been applied for in the form of a patent application, and that a patent has been granted in respect of this application. This brings us to the most important notion, the notion of a patentable invention. In this respect, the law stipulates the following conditions:

(1) Positive conditions:

- (a) the invention must be the solution to a technical problem;
- (b) this solution must be new;
- (c) in comparison with prior art, it must itself represent progress by means of a new or improved effect;
- (d) the object of the invention must be capable of practical use in industry (possibility of industrial realization).

(2) Negative conditions:

- (a) Foodstuffs, medicines and chemical products *per se* cannot be protected by patents, only methods of producing them are patentable;
- (b) New methods for curing and preventing diseases, new kinds of seeds and plants, and new breeds of animals are also excluded from patent protection.

5. — An invention is always the result of the work of an individual — i.e., of the inventor. The law, therefore, in principle only allows inventors or their heirs to file patent applications. Should there be several inventors, it is not necessary that a patent application should be filed in the names of

all of them. A person who has only given technical help and assistance to the inventor is not considered as a co-inventor, the invention being considered to be the result of creative activity. The applicant is considered as the author of the respective invention, provided that he confirms his authorship by signing a Declaration of Inventorship.

Should any controversy or litigation arise as to the authorship of an invention, the Court has to decide who is the real and true inventor. The actual practice of the Patent Office requires a Court's formal decision even in cases when a further co-inventor wishes to enter into the proceedings and there are no objections from the original applicant as to his co-inventorship, so that no controversy whatsoever has arisen. The correctness of this practice appears to be somewhat doubtful with regard to the very clear and precise wording of the Patent Act. As stated above, a patent application does not require to be filed in the names of all the co-inventors, and very often, cases may arise when a person who has not been named in the original application but who is regarded and recognized by all the other applicants as a co-inventor, wishes to enter the proceedings at a later stage, so that no controversy is likely to arise and no Court decision seems necessary. In such cases it is, of course, possible to conclude a judicial agreement between the parties, without starting a law-suit, such an agreement having the same effect before the Patent Office as would a Court decision. The Court examines all such agreements to confirm that they are not contrary to the law or to public interest. As far as foreigners are concerned, the jurisdiction of the Court is determined by the seat of the Czechoslovak Patent Office.

A company cannot file a patent application in its name, but it can — after the patent application has been filed — acquire from the applicant (the inventor) the respective patent rights, when the inventor assigns his exclusive right to allow use of the invention by the company. However only the inventor participates later on in the examination procedure. The assignment of patent rights is conditional on the patent being granted.

6. — Sometimes, the special conditions in which an invention comes into being entail certain consequences. In a socialist State, there are no private enterprises, but only socialist enterprises such as national corporations and cooperatives. If the invention has come into being in connection with the inventor's work in such an enterprise, or if an enterprise has given him material aid in completing the invention (employees' inventions), the inventor is obliged to mention the fact in the patent application and to inform the enterprise in question that he has filed the patent application. Should the inventor refuse to file the application, the enterprise is entitled to do so on its own, but with the Patent Office's consent and in the inventor's name. The same applies to cases where the above conditions are fulfilled in respect of only one co-inventor.

In such cases, the law stipulates that the right to use the invention automatically belongs to the Czechoslovak State, a separate declaration from the inventor no longer being required. This is an exception to the rule that an invention may only be used on the strength of a special authorization

by the patentee. In the present case, the State acquires a kind of legal exclusive licence. Naturally, the inventor's right to claim an adequate royalty for the use of the invention remains unchanged, but his patent rights are restricted *ex lege*; he cannot refuse the use of the invention to socialist enterprises. The right to use the invention belongs *ex lege* to the State.

The law also provides for other cases where the right to use the invention may belong to the State, for example, following the applicant's (inventor's) specific declaration of intent. This is called "putting an invention at the disposal of the State". Every applicant or patentee can make an irrevocable declaration to the Patent Office that he is putting the invention, the subject-matter of his patent or of his patent application, at the disposal of the Czechoslovak State. The legal consequences are the same as in the previous case. This specific voluntary declaration can be made at any time and is effective from the day it reaches the Patent Office.

Another consequence of the State having acquired the use of an invention, be it *ex lege* or on the strength of a voluntary declaration, is to free the applicant (the patentee) from all official and government taxes. Every socialist enterprise has the possibility and the right to use such an invention, but it is bound to pay an adequate royalty to the patentee. The amount of the royalty as well as the extent to which the inventor (or the patentee) should cooperate in realizing the invention are determined and regulated by a contract with the patentee, who, however, can no longer refuse his consent to the use of the invention. The amount of the royalty depends on the economic effect of the use of the invention, the extent of this use, and its importance. Should controversies arise, they are decided by the competent Court. Every socialist enterprise desiring to use such an invention is obliged to conclude an agreement with the inventor concerning royalties and his cooperation.

7. — If the right to use the invention does not belong to the State, then the patentee is in full possession of his patent rights, and the use of the invention is fully bound by and dependent on the conclusion of a normal license agreement. The patentee has first of all to give his consent to the use of the invention, under conditions stipulated by contract. The active capacity to conclude such an agreement rests either directly with the inventor, as patentee, or with the person to whom this positive right has been transferred.

8. — The effects of a patent are subject only to restrictions stipulated in the Patent Act: the right of prior user, the compulsory license and the exclusion of vehicles remaining in the State only temporarily.

The right of prior user appertains to any person who, independently of the inventor, has already been using the subject-matter of the patent before the filing of the patent application or who has already made the necessary arrangements to that end. It is irrelevant whether this use has stopped before the filing of the patent application, or not; the decisive question is whether it began before the filing of the application. Objective evidence must be furnished in this respect. The prior user may demand that the patentee recognizes his right by a special written document. Should the

patentee refuse to do so, the Court will decide on the existence or non-existence of the right of prior user. The right of the intermediate user is disposed of in connection with the reinstatement. A person who in the period between the expiration of the rights of the applicant or the patentee and their reinstatement has started to use the invention, or has already made the necessary arrangements to that end, is entitled to continue this use.

A decision of the Patent Office can be substituted for the consent of the patentee to the use of the invention, should the invention be of extraordinary importance to the State (e.g. for its defense), and should all attempts to conclude a license agreement have been unsuccessful. In this case too — as always when when no agreement can be reached as to royalties — it is for the Court to decide on the amount of indemnity to be paid to the patentee. The Patent Act does not stipulate expressly who has to decide whether an invention is of extraordinary importance to the State, but it is to be assumed that this lies in the competence of the Patent Office which reaches a decision only after having interrogated and heard the participants as well as representatives of the competent State offices. There are no other kinds of compulsory licenses. More particularly, as there is no compulsory working of patents in Czechoslovakia, there is no question of a compulsory license being granted merely for failure to work a patent.

In accordance with international agreements, patents are not infringed by means of transportation (land vehicles, ships, planes etc.) or by devices or on means of transportation which only temporarily enter Czechoslovak territory.

9. — A patentee, or any person who proves his interest, may file an action with the Patent Office to decide whether in the particular case a patent is being infringed or not. The Patent Office's decision is then binding on the Courts and all administrative offices, and therefore generally precedes any action in Court. The practice has developed to the extent that such actions are also admitted when their purpose is to determine whether an enterprise is using an invention the use of which has been put at the disposal of the State because the invention was made under the conditions stipulated in the Patent Act, or because of a voluntary declaration of the inventor. The question here is, of course, not to determine whether or not a patent has been infringed, but to decide whether the inventor has the right to claim an adequate royalty and the conclusion of an agreement.

10. — During examination proceedings, the Patent Office verifies whether the patent application fulfills all formal requirements and whether the subject-matter of the patent application corresponds to all the material stipulations of the Patent Act.

Only the inventor or his heir may be the applicant. Applicants from abroad must be represented by an agent residing in Czechoslovakia. The applicant has to confirm that he is the true inventor by signing a declaration. The specification and claims have to be filed in four copies; the same applies to the drawings, of which 1 bristol, 1 cloth, and 2 copies, are to be lodged. Convention priority must be claimed at the time of filing in the patent application; it is not pos-

sible to claim priority subsequently as, for example, in Germany. Moreover, the right to claim the priority must be materially and formally documented. The priority document must be filed within a limited term of 3 months, from the filing date of the application, and should it not be in the name of the Czechoslovak applicant (i.e., of the inventor) an "Assignment of Priority Right" has to be filed together with the priority document. This Assignment is therefore always required when the priority document stands in the name of a firm; moreover, it must also be filed when the applicants of the first and of the Czechoslovak application are not the same (not only when there are more applicants mentioned in the priority document than in the Czechoslovak application, but also when more inventors have filed the patent application in Czechoslovakia than are indicated on the priority document). The practice of the Patent Office of requesting an Assignment of Priority Right even in the last mentioned case (fewer inventors on the original application than in Czechoslovakia) which, in my opinion, is rather questionable, is based on a decision of the Appeals Department in 1961.

Partial as well as multiple priorities are recognized, but only on condition that each individual claim is based on one priority only. This stipulation is not contained in the Patent Act, but it has developed through constant practice.

11. — Different categories of patents correspond to different categories of inventions.

As far as so-called "application" patents are concerned, the Patent Office requires the invention to be based on a discovery of new properties which allow the use of something (for example, a product) already known, for a purpose for which it has never been used before.

Substances produced by chemical processes are not patentable *per se*. Substances produced mechanically or by physical means are patentable. A few words may be said in this connection on mixtures, dilutions and alloys. Patents are granted for mixtures only when all the components of the mixture are effective. A process for the preparation of the mixture is considered patentable only where the mixing takes place under special conditions which result in a new or improved effect. Different kinds of varnishes can be held to be patentable dilutions; the same applies to the process for their preparation as to the preparation of mixtures. Alloys are patentable only when prepared in a non-mechanical way. Their preparation can be patented only if it does not consist of a mere mixing of the components.

12. — As far as unity of invention is concerned, the Patent Act stipulates that each patent application may concern only one subject-matter, which means that it may relate to only one single invention. The fact that the claims of a patent application fall into different patent categories does not necessarily mean that the patent application lacks unity; this has been confirmed by a decision of the Appeals Department in 1962. The unity of the application is to be judged by the unity of the problem and its solution.

13. — The technical achievement for which protection is claimed is examined as to whether it represents a patent-

able invention as defined in the Patent Act. It should be a solution and not merely a statement of a problem or of a task. The novelty of the invention and its progressiveness are examined, in comparison with the prior art, and evaluated. Every solution which results in a new or improved effect is considered as progressive.

The notion of novelty is defined, in Section 15, in a negative way, by stating typical examples of facts which are prejudicial to the novelty of an invention. Its subject-matter is not considered as new if it is found to have been known in Czechoslovakia or abroad, before the filing of the patent application, especially by reason of:

- (a) having been described or shown in previously printed matter, drawings, photographs etc., in published printed patent specifications, reports of organizations for scientific research, planning and construction;
- (b) being identical with the subject-matter of a patent application filed at an earlier date;
- (c) having been used, exposed or demonstrated in such a notorious manner that its use by expert technicians has become possible.

I would like to stress that in this respect the fiction of world-wide novelty is being advanced, and that the above enumeration represents only typical examples and is in no way exhaustive.

The notion of the subject-matter being "not new" supposes — as expressly stated in the official introduction to the bill and pointed out without any restriction whatsoever — that the subject-matter of the invention is accessible to an unrestricted number of persons. As far as previously filed patent applications are concerned, the official introduction states that the question of whether patents have or have not vance. It is, of course, clear that here too the general condition of general accessibility predominates and that the contents of a patent application filed previously become generally known only after its publication and disclosure for public inspection, the application thus becoming accessible to an unlimited number of persons. Otherwise, a prior application might be considered only as a "prior right" and might represent an obstacle with regard to the prohibition on so-called "double patenting". It can represent a bar to the novelty of the latter application only if it has been laid open to public inspection and published before the priority date of the latter application.

A patent application enjoys priority from the moment it reaches the Patent Office (Section 12 of the Patent Act). The provisions of International Agreements remain untouched by the Act (Section 23). In connection with the Regulations (Section 15 b), the wording of this part of the Act does not seem very well chosen, no sufficiently strong line having been drawn between the notions of "prior right" and "novelty", although there cannot be the slightest doubt that the two notions, their purpose, and their effects, are quite different and independent of each other. This, however, is more or less my personal opinion which is not generally accepted. No decision of principle has, to my knowledge, yet been issued in this regard by the Appeals Department.

14. — The results of the examination are communicated to the applicant by Official Letters in reply to which he may file a counter-statement. The term fixed in the Official Letter for filing such an answer is extendable for a reasonable period of time. When the applicant fails to answer an Official Letter, the proceedings are discontinued. The consequence of a belated reply to an Official Letter is the loss of the original priority which is then deferred to the date of the filing of the belated reply.

15. — When the examination of a patent application leads to its acceptance, that is, to the conclusion that the subject-matter fulfills all the stipulations of the law, the application is laid open to public inspection for a period of two months. The term for filing opposition is three months. An opposition may be filed on the following grounds: that the subject-matter is not patentable, that only a dependent patent can be granted, that the applicant is not the true inventor or that he is only the co-inventor, and finally, in the case of an employee's invention in the sense mentioned above under paragraph (6), that the relevant circumstances have not been adequately described, that the enterprise has not been notified of the filing of the application, or that conditions for an exceptional filing by the enterprise were not given. Opposition must be motivated and supported by proof (to be attached or at least referred to). A detailed account of the grounds for opposition may be filed additionally, within a period which has to be applied for and granted for this purpose. The Patent Office then invites the applicant to file a counter-statement, granting him for this purpose an extendable term. Thereafter, the decision concerning the opposition rests with the Patent Office.

After the application has been laid open to public inspection the claims can only be modified by restricting the scope of protection; such a restriction must correspond to the disclosed invention and must be possible on the strength of the disclosed characteristics. It may not, however, introduce any new elements.

16. — An action for nullity may be filed against a granted patent at any moment during the 15 year period of protection, counted from the filing date of the application. The proceedings are very much the same as in the case of opposition proceedings. The decision nullifying a patent declares the patent invalid as from the filing day of the application. A patent is invalidated if the Patent Office comes to the conclusion that no patent should have been granted.

17. — An appeal may be filed against any decision of the Patent Office within 30 days of the written decision being delivered. An appeal filed within such term has a delaying effect.

18. — A term which has lapsed may be reinstated if there is a reasonable excuse for the lapse and providing that the application for reinstatement is filed not later than 2 months after the obstacle has ceased to exist and that the omitted action is carried out simultaneously. A reinstatement is, however, no longer possible if more than one year has

passed since the term lapsed; it is also impossible so far as the priority claim, and the substantiating of this claim, and the filing of an opposition, are concerned.

19. — Independent and dependent patents are granted. There are no patents of addition. A dependent patent is granted when the use of the invention protected by such a patent involves the use of an invention covered by a patent granted on a previous application (main invention). Should the main patent lapse or become invalid, the dependent patent automatically becomes an independent one. If such a patent has not been marked as a dependent one, such marking may be requested at any time by the owner of the main patent. There is no difference between the two types of patents as far as official taxes are concerned. The marking of a patent as a dependent one is naturally of importance as regards the question of licenses. Practically, the question is of interest only if the owners of the two patents concerned are different. The requirements of the law are the same for independent as for dependent patents.

20. — A patent lapses either on expiration of the 15 years' period of protection, or for non-payment of renewal fees or, lastly, on the grounds of a written statement by the patentee abandoning the patent; in this case the patent lapses on the day on which such a statement has been received by the Patent Office.

21. — Government fees which have to be paid to keep a patent in force (in so far as the patent does not concern an invention in respect of which the right of use belongs to the State) have been newly regulated by Ordinance No. 160/60, which entered into force on January 1, 1961 (republished within the frame work of Ordinance No. 146/65 on Fees in Administrative Proceedings and slightly amended by Ordinance No. 26/1967). This Ordinance also determines all other fees to be paid in patent matters. There are global fees and normal annuities. The first global fee covers the 1<sup>st</sup> to 5<sup>th</sup> year, the second global fee assures protection for the 6<sup>th</sup> to 8<sup>th</sup> year. Thereafter, starting with the 9<sup>th</sup> year, normal annuities become due. An application fee must be paid when a patent application is filed, unless the invention is put at the disposal of the State at the time of filing, i.e., in the patent application, or unless an invention, where the right of use belongs to the State *ex lege*, is concerned (employees' invention). Further fees are payable for the registration of an assignment of patent rights and of a license agreement. Oppositions, actions for nullity, and appeals, are free of official fees.

22. — Relations with other States are ruled by the principles of reciprocity and the preeminence of international law. Since January 4, 1962, the Lisbon Act of the Paris Convention is applied in Czechoslovakia. In relation to States which have not yet ratified the Lisbon Act, the Acts of the Hague or London have to be applied.

23. — A Czechoslovak citizen (or firm) can conclude a license agreement with a foreigner only through the mediation of the Foreign Trade Organization Polytechna, which

acts as the representative of the Czechoslovak party. The foreign party to the contract may naturally freely choose its own adviser or representative. The license agreement becomes effective when recorded in the Patent Register. If the patentee himself has found no partner for a license agreement and yet desires to conclude such an agreement, he may at any moment, even during the examination period, inform the Patent Office of his readiness to conclude such an agreement. The Office will then examine the possibilities of the invention in question being used by socialist enterprises and inform the applicant of the results of such an examination, so that the applicant may then himself contact the enterprises interested in his invention. There are, in principle, no restrictions to the conclusion of active or passive license agreements.

In the field of industrial property, too, the principle of friendly co-existence and international economic cooperation finds its practical application and no doubt will do so more and more<sup>1)</sup>.

<sup>1)</sup> A new Industrial Property Act is now under preparation in Czechoslovakia. It will be reported on as soon as it comes into force, which is expected to be in 1968.

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# CALENDAR OF MEETINGS

## Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
<b>1968</b>				
March 12 to 14 Geneva	Working Group - Stockholm Recommendation No. III (Copyright)	Study of ways and means for giving effect to the Recommendation	United Nations Educational, Scientific and Cultural Organization; Council of Europe; International Confederation of Societies of Authors and Composers; Internationale Gesellschaft für Urheberrecht; International Literary and Artistic Association; International Publishers Association; International Writers Guild; individual consultants	Persons invited individually
March 25 to 29 Geneva	Working Group — Patent Cooperation Treaty (PCT)	Questions concerning Searching, etc.	<i>Countries in which over 5000 patent applications were filed in a year according to latest statistics:</i> Argentina, Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), India, Italy, Japan, Mexico, Netherlands, Norway, Poland, South Africa, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	<i>Intergovernmental Organizations:</i> United Nations; United Nations Industrial Development Organization; United Nations Conference on Trade and Development; International Patent Institute; Organization of American States; Permanent Secretariat of the General Treaty for Central American Economic Integration; Latin-American Free Trade Association; Council of Europe; European Atomic Energy Community; European Economic Community; European Free Trade Association; African and Malagasy Industrial Property Office <i>Non-Governmental Organizations:</i> Committee of National Institutes of Patent Agents; Council of European Industrial Federations; European Industrial Research Management Association; Inter-American Association of Industrial Property; International Association for the Protection of Industrial Property; International Chamber of Commerce; International Federation of Patent Agents; Japan Patent Association; National Association of Manufacturers (U. S. A.); Union of European Patent Agents; Union des industries de la Communauté européenne
March 30 Geneva	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Enlarged Transitional Steering Committee	Structural questions	Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America	International Patent Institute
April 1 to 7 Moscow	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Standing Committee III		This meeting is not organized by BIRPI	
April 22 to 26 Munich	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Advisory Board for Cooperative Systems - Standing Committees I and II		These meetings are not organized by BIRPI	

Date and Place	Title	Object	Invitations to Participate	Observers Invited
May 3 and 4 Geneva	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Enlarged Transitional Steering Committee	Questions of technical cooperation	Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America	International Patent Institute
July 1 to 5 *) Geneva	Working Group — Patent Cooperation Treaty (PCT)	Questions concerning Formalities, etc.	States invited to the March 1968 Meeting	Observers invited to the March 1968 meeting
September 24 to 27 Geneva	Interunion Coordination Committee (6 <sup>th</sup> Session)	Program and Budget of BIRPI	Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Denmark, France, Germany (Fed. Rep.), Hungary, India, Iran, Italy, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	—
September 24 to 27 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (4 <sup>th</sup> Session)	Program and Budget (Paris Union) for 1969	Argentina, Australia, Austria, Cameroon, France, Germany (Fed. Rep.), Hungary, Iran, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	United Nations; International Patent Institute; Council of Europe
October 2 to 8 Locarno	Diplomatic Conference	Adoption of a Special Agreement concerning the International Classification of Industrial Designs	All Member States of the Paris Union	<i>Intergovernmental Organizations:</i> United Nations; UNESCO; Council of Europe <i>Non-Governmental Organizations:</i> Committee of National Institutes of Patent Agents; Inter-American Association of Industrial Property; International Association for the Protection of Industrial Property; International Chamber of Commerce; International Federation of Patent Agents; International League Against Unfair Competition; International Literary and Artistic Association; Union of European Patent Agents
October 21 to November 1 Tokyo	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Meeting		Particulars to be announced later	
November 4 to 12 Geneva	Committee of Experts — Patent Cooperation Treaty (PCT)	New Draft Treaty	All Member States of the Paris Union	Observers invited to the March 1968 meeting

\*) Changed from June 17 to 21

## Meetings of Other International Organizations Concerned with Intellectual Property

Place	Date	Organization	Title
<b>1968</b>			
The Hague	March 6 and 7	International Patent Institute (IIB)	95 <sup>th</sup> Session of the Administrative Council
Buenos Aires	April 15 to 19	International Association for the Protection of Industrial Property (IAPIP)	Presidents' Conference
Paris	April 29 and 30	International Patent Institute (IIB)	96 <sup>th</sup> Session of the Administrative Council
Prague	May 1 to 5	International League Against Unfair Competition (LICCD)	Symposium
Strasbourg	June 17 to 21	Council of Europe	Working Party of the Committee of Experts on Patents
Amsterdam	June 9 to 15	International Publishers Association (IPA)	Congress
Vienna	June 24 to 29	International Confederation of Societies of Authors and Composers (CISAC)	Congress
Lima	December 2 to 6	Inter-American Association of Industrial Property (ASIPI)	Congress

