

# Industrial Property

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## Contents

	Pages
INTERNATIONAL UNIONS	
Committee for International Cooperation in Information Retrieval Among Examining Patent Offices (ICIREPAT). First Session of the Enlarged Transitional Steering Committee (Geneva, March 30, 1968). Note . . . . .	171
LEGISLATION	
Denmark, Finland, Norway and Sweden. The Nordic Patent Laws . . . . .	172
Algeria. Order No. 67-223 of October 19, 1967 . . . . .	189
GENERAL STUDIES	
I. The New Nordic Patent Legislation (G. Borggård) . . . . .	189
II. Draft for Nordic Legislation on Unfair Competition (H. Bergqvist) . . . . .	192
NEWS CONCERNING NATIONAL PATENT OFFICES	
United States Patent Office in 1967 (Summary of the Annual Report) . . . . .	201
Use of the International Classification of Goods and Services for the Purposes of the Registration of Marks by the U. S. Patent Office (David B. Allen) . . . . .	203
BOOK REVIEWS . . . . .	203
NEWS ITEMS	
Appointment of new Controller-General of the Indian Patent Office . . . . .	204
Appointment of new President of the Netherlands Patent Council (Octrooiraad) . . . . .	204
CALENDAR OF MEETINGS	
BIRPI Meetings . . . . .	205
Meetings of Other International Organizations Concerned with Intellectual Property . . . . .	206

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# INTERNATIONAL UNIONS

## ICIREPAT

### Enlarged Transitional Steering Committee

#### First Session

(Geneva, March 30, 1968)

#### Note \*)

On December 21, 1967, the Conference of Representatives of the Paris Union decided to transform the Committee for International Cooperation in Information Retrieval Among Examining Patent Offices (ICIREPAT), founded in 1961 as "an informal international committee of patent office experts whose purpose is the promotion and implementation of cooperative research and development programs in information retrieval,"<sup>1)</sup> into a Committee of Experts of the Paris Union<sup>2)</sup>. At the time this decision was taken, ICIREPAT had twenty-one members among the national patent offices<sup>3)</sup>.

The Conference of Representatives furthermore decided to institute an interim organ of ICIREPAT, the "Enlarged Transitional Steering Committee," consisting of the following seven countries: Germany (Federal Republic), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America. This Committee has as its mandate, in addition to carrying forward the technical functions of the Steering Committee of the former ICIREPAT<sup>4)</sup>, to advise the Director of BIRPI by means of consultations with respect to the elaboration of detailed proposals concerning the statutes, rules of procedure, program and budget of the new ICIREPAT<sup>4)</sup>, in preparation for the meeting of the Executive Committee of the Paris Union in September 1968.

The Enlarged Transitional Steering Committee met for the first time on March 30, 1968, at the headquarters of BIRPI in Geneva, under the chairmanship of Mr. E. Armitage (United Kingdom); Mr. M. Sasaki (Japan) acted as Vice-Chairman. All seven member countries of the Committee were represented. The International Patent Institute was also invited and participated as an observer.

The meeting considered a draft of the statutes of the new ICIREPAT, provisionally called "Organizational Rules."

In April 1968, the draft, amended in the light of the discussions held during the meeting, was submitted by BIRPI to the Governments of all member countries of the former

\*) This note was prepared by BIRPI on the basis of the official documents of the meeting.

1) ICIREPAT Manual 1967, page 1.

2) See Report of the Meeting of the Conference of Representatives in *Industrial Property*, 1968, page 15.

3) These are the following countries: Australia, Austria, Canada, Czechoslovakia, Denmark, Germany (Federal Republic), Finland, France, Hungary, Ireland, Israel, Japan, Mexico, Netherlands, New Zealand, Norway, Philippines, Soviet Union, Sweden, United Kingdom, United States of America.

4) By "former" ICIREPAT is meant the ICIREPAT prior to the above-mentioned decision of the Conference of Representatives of the Paris Union. By "new" ICIREPAT is meant the ICIREPAT which is a Committee of Experts of the Paris Union.

ICIREPAT for written comments. The next session of the Executive Committee of the Paris Union, scheduled for September 1968, will be invited to finalize the "Organizational Rules" of the new ICIREPAT.

In the meantime, the Enlarged Transitional Steering Committee will meet to discuss the future program of ICIREPAT.

## List of Participants

### I. Member States of the Committee

#### Germany (Federal Republic)

- Mr. K. Haertel, President, German Patent Office, Munich.
- Mr. R. Singer, Leitender Regierungsdirektor, German Patent Office, Munich.
- Mr. H. Mast, Regierungsdirektor, Federal Ministry of Justice, Bonn.
- Mr. W. E. A. Axhausen, Regierungsdirektor, German Patent Office, Munich.

#### Japan

- Mr. M. Sasaki, Director, General Administration Division, Patent Office, Tokyo.

#### Netherlands

- Mr. G. J. Koelewijn, Member of Patent Board, Netherlands Patent Office, The Hague.
- Mr. J. Dekker, Member of Patent Board, Netherlands Patent Office, The Hague.

#### Sweden

- Mr. T. Gustafson, Deputy Director, National Patent and Registration Office, Stockholm.
- Mr. S. Lewin, Head of Division, National Patent and Registration Office, Stockholm.

#### Union of Soviet Socialist Republics

- Mr. E. I. Artemiev, Deputy Chairman, Committee for Inventions and Discoveries attached to the Council of Ministers of the U. S. S. R., Moscow.
- Mr. I. Kichkin, Deputy Director of the All-Union Scientific Research Institute of State Patent Examination, Moscow.

#### United Kingdom

- Mr. E. Armitage, Assistant Comptroller, Patent Office, London.
- Mr. D. G. Gay, Superintending Examiner, Patent Office, London.

#### United States of America

- Mr. G. D. O'Brien, Assistant Commissioner, Patent Office, Department of Commerce, Washington.
- Mr. W. O. Quesenberry, Director, Office of International Patent and Trademark Affairs, Patent Office, Department of Commerce, Washington.
- Mr. W. E. Hewitt, Chief Legal Officer, United States Mission, Geneva.

### II. Intergovernmental Organization (Observer)

#### International Patent Institute (IIB)

- Mr. G. Finnis, Director-General, The Hague.
- Mr. P. van Waasbergen, Technical Director, The Hague.
- Mr. L. F. W. Knight, Counsellor in Information Retrieval, The Hague.

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

- Professor G. H. C. Bodenhausen, Director.
- Dr. Arpad Bogsch, Deputy Director.
- Mr. Klaus Pfanner, Counsellor, Head of the Industrial Property Division.
- Mr. I. Morozov, Counsellor, Industrial Property Division.
- Mr. Y. Hashimoto, Patent Office of Japan.

#### IV. Officers of the Meeting

Chairman: Mr. E. Armitage (United Kingdom)  
 Vice-Chairman: Mr. M. Sasaki (Japan)  
 Secretary: Dr. Arpad Bogsch (BIRPI)

## LEGISLATION

### The Nordic Patent Laws\*)

Issued

in Denmark on December 20, 1967 (No. 479),  
 in Finland on December 15, 1967 (No. 550),  
 in Norway on December 15, 1967, and  
 in Sweden on December 1, 1967 (No. 837)

#### Introductory Note

*The new Danish, Finnish, Norwegian and Swedish Patent Laws, which came into force on January 1, 1968, are the result of close collaboration between the Nordic countries which consulted together constantly throughout the whole legislative procedure, from the initial research right up to and including the parliamentary committee stage. To a very large extent, therefore, harmonization of these new Laws has been achieved. Differences in the Laws mainly concern the organization of the various judicial and administrative authorities, since it is inevitable that the various national laws on court proceedings should be reflected by greater variances in the provisions dealing with these matters.*

*To emphasize the harmonized nature of the Laws, it seems appropriate to present them to the international reader as a unity, in so far as this is possible. The following text is therefore presented under the title "The Nordic Patent Laws" as a common text. Where separate translations of certain Sections were necessary due to differences in substance, the Sections concerned are set out in full for each country. Minor differences are given in footnotes. Due to the differences in the national laws on court proceedings etc., from Chapter IX onwards the Laws are presented separately as continuous texts for each country, except in those cases where it has been possible to substitute references to the Swedish text. The latter text is given first as the translator originally worked from that text. It should, however, be noted that the differences referred to do not in any way detract from the harmonization achieved by the common general principles of patent law contained in the Laws.*

#### Chapter I. General Provisions

##### Section 1

On application, any person who has made an invention which is capable of industrial application, or his successor in

title, shall have the right to obtain a patent for the invention and thereby acquire an exclusive right to exploit the invention commercially in accordance with this Law.

A patent shall not be granted for

- (1) an invention the exploitation of which would be contrary to morals or public order;
- (2) plant or animal varieties or essentially biological processes for the production of plants or animals; however, a patent may be granted for a microbiological process and the products thereof.

##### Section 2

A patent shall be granted only for an invention which essentially differs from what was known prior to the date of the application for a patent.

Everything made available to the public in writing, during lectures, by exploitation, or otherwise, shall be considered known. Further, the contents of a patent application filed in this country before the said date shall be considered known if the application becomes available to the public in accordance with the provisions of Section 22.

Nevertheless, a patent may be granted for an invention despite the fact that the invention was made available to the public if this was done within six months prior to the filing of the patent application

- (1) in consequence of an evident abuse in relation to the applicant or his predecessor in title, or
- (2) because the applicant or his predecessor in title displayed the invention at an official or officially recognized international exhibition.

##### Section 3

The exclusive right conferred by a patent shall consist, subject to the exceptions stated below, in the fact of others being prohibited, except with the permission of the proprietor, from commercially exploiting the invention by using a patented process, by manufacturing, importing, using or selling a patented product, or by offering it for sale, lease or hire, or in any other way.

If the invention concerns a process for the manufacture of products, the exclusive right shall also include the products manufactured by such process.

The exclusive right shall not extend to the exploitation of articles which, in violation of this right, have been sold in this country in retail stores or in a similar manner, provided that the purchaser at the time of purchase did not know or ought not to have known that the exclusive right was infringed.

##### Section 4

A person who, at the time when the application was filed, was commercially exploiting the invention in this country may continue to do so without regard to the patent so long as he retains the general character of the previous exploitation, provided that the exploitation did not constitute evident abuse in relation to the applicant or his predecessors in title. Such right of exploitation shall, subject to the same conditions, also be accorded to a person who has undertaken sub-

\*) Translation kindly supplied by the Swedish Patent Office, in agreement with the Patent Offices of Denmark, Finland and Norway.

stantial preparations to exploit the invention commercially in this country.

The right according to the preceding paragraph may pass to another party only together with the enterprise where it originated or where it was intended that exploitation should take place.

#### Section 5

A patent shall not prevent the exploitation of the invention on foreign vessels, aircraft or other foreign means of transport for their needs when they enter this country in regular traffic or otherwise.

The Government<sup>1)</sup> may decree that, without being hindered by a patent, spare parts and accessories to aircraft may be imported into this country and may be employed here for the repair of the aircraft of a foreign country in which corresponding privileges are granted in relation to the aircraft of this country.

#### Section 6

The Government may decree that an application for a patent for an invention previously described in an application for protection abroad, when applying Section 2, first and second paragraphs, and Section 4, shall be considered to have been filed simultaneously with the application abroad if the applicant so claims.

The decree shall state the further conditions necessary for obtaining convention priority.

#### Section 7

The proprietor of a patent may be granted a patent of addition for a development of the invention if an application therefor is made before the application for the main patent has been made available to the public pursuant to Section 22.

A patent of addition may be granted for an invention although it does not satisfy the requirement of Section 2, first paragraph, in relation to the contents of the application for the main patent. A patent of addition shall, except as stated in the third paragraph of this Section, expire as the same time as the main patent and may be transferred to another party only together with the main patent.

If the main patent expires because the patentee surrenders the patent or because the patent is declared invalid, the patent of addition shall become an independent patent for the remainder of its term. If there are a number of patents of addition to the parent patent, the patent of addition first granted shall be a main patent, and the remainder shall be patents of addition to that patent.

### Chapter II. Applications for Patents. Examination of Applications

#### Section 8 (SWEDEN)<sup>2)</sup>

The patent authority for Sweden shall be the Patent Office (*Patent- och registreringsverket*).

<sup>1)</sup> The term "Government" used in this translation should be understood to mean: in the case of Denmark, the "Minister of Commerce"; in the case of Norway and Sweden, the "King in Council"; and in the case of Finland, "by (governmental) decree."

<sup>2)</sup> Where, in this consolidated version, the texts of the Laws of the four countries differ, the Swedish text is presented first for the reason that the translator originally worked from the Swedish text.

#### Section 8 (DENMARK)

The patent authority shall be the Patent Office (*Direktoratet for patent- og varemaerkevaesenet*), headed by a Director, and the Patent Board of Appeal.

The Patent Board of Appeal shall be appointed by the Government to handle appeals from Patent Office decisions, cf. Sections 25 and 67. The Patent Board of Appeal shall consist of up to 18 members appointed for a period of five years. Two of the members, including the Chairman, shall fulfill the current conditions of getting an appointment as a High Court judge, while the other members must have the best possible skill in patent matters and have graduated from the Danish Institute of Technology ("*Danmarks Tekniske Højskole*") or another university. The Chairman shall decide which of the members and how many of them are to participate in the examination of each case, while having regard to the nature of the case.

#### Section 8 (FINLAND)

The patent authority for Finland shall be the Patent Office (*Patentti- ja rekisterihallitus*) in accordance with special provisions relating thereto.

#### Section 8 (NORWAY)

The patent authority for Norway shall be the Patent Office (*Styret for det industrielle rettsvern*).

#### Section 9

An application for a patent shall be filed in writing with the Patent Office.

The application shall contain a description of the invention, including drawings when such are needed, and an explicit statement of what is sought to be protected by the patent (patent claims). The description must be sufficiently clear to enable the invention to be worked by a person skilled in the art.

The name of the inventor shall be given in the application. If the patent is applied for by somebody other than the inventor, the applicant must prove his title to the invention.

The applicant shall pay an application fee prescribed by decree<sup>3)</sup>.

#### Section 10

Two or more inventions which do not form unity of invention must not be applied for in the same application.

#### Section 11

If a patent is sought for an invention which is disclosed in an application which the applicant had filed previously and which has not been disposed of by a final decision, the

<sup>3)</sup> The Finnish text of Section 9 contains the following additional paragraph:

"The description and the claims shall be in Finnish or Swedish according to the provisions of the law on languages in force. If the claims are in only one of the native languages, the Patent Office shall provide for the translation of the claims into the other language before the application becomes available to the public pursuant to Section 22, second paragraph. The applicant shall pay the translation fee prescribed. In the case of a foreign applicant, the description shall be in Finnish and the claims in both Finnish and Swedish. However, anyone shall be entitled to write the description and the claims in both Finnish and Swedish."

later application shall, in the conditions prescribed by the Government, be deemed to have been filed at the time when the documents disclosing the invention were lodged with the Patent Office, if the applicant so requests.

#### Section 12

An applicant who is not domiciled in this country shall have an agent resident here who is empowered to represent him in everything that concerns the application.

#### Section 13

An application for a patent must not be amended so as to claim protection for elements that were not disclosed in the application documents at the time of the filing of the application or at the time when the application is deemed to have been filed according to Section 14.

#### Section 14

If the applicant amends his application within six months from the date of filing, the application shall, if he so requests, be deemed to have been filed at the time when the amendment was filed.

A request under the first paragraph may only be made once and cannot be withdrawn.

#### Section 15

If the applicant has not complied with the requirements for the application, or if the Patent Office finds other objections to the acceptance of the application, the applicant shall be notified thereof by an official action, and be given a fixed period to answer the objections or to make the necessary corrections.

If the applicant fails, within the given period, to answer the action or to take steps to meet the objections raised, the application shall be dismissed as abandoned. The action shall include a notice to that effect.

Nevertheless, the application shall be reinstated if, within four months from the expiration of the fixed period, the applicant answers the action or takes steps to meet the objections raised and at the same time pays the prescribed reinstatement fee.

#### Section 16

If the applicant has answered the action, but there is still an objection to the acceptance of the application which the applicant had been given an opportunity to answer, the application shall be rejected unless there is reason to deliver another official action to the applicant.

#### Section 17

If any person other than the applicant claims before the Patent Office to have a title to the invention, and if the case is deemed uncertain, the Patent Office may direct him to bring an action before a court of law within a fixed period at the risk of the claim's being disregarded in the further processing of the patent application.

If a suit regarding a title to an invention in respect of which a patent is applied for is pending before the courts, the

patent application may be declared in abeyance until the suit is finally decided by the courts.

#### Section 18

If any person proves to the Patent Office that he and not the applicant has a title to the invention, the Patent Office shall, if he so requests, transfer the application to him. The transferee shall pay a renewed application fee.

If a request is made for transfer of a patent application, the application shall not be dismissed, rejected, or granted, until a final decision has been made on the request.

#### Section 19

When the application satisfies the formal requirements and no objections are found to the grant of a patent, the application shall be accepted for public inspection pursuant to Section 21.

When the decision to accept the application for public inspection is made, the patent claims may not be enlarged in scope, and a request according to Section 14 shall no longer be permitted.

#### Section 20

Within two months from the time the application has been accepted for public inspection, the applicant shall pay the prescribed printing fee. In default of this, the application shall be dismissed. However, the examination shall be resumed if, within four months from the expiry of the stated period, the applicant pays the printing fee together with the prescribed reinstatement fee.

If an application for a patent is filed by the inventor and, within two months from the acceptance of the application for public inspection, he makes a petition for exemption from the printing fee, the Patent Office may grant such exemption if the applicant has great difficulty in paying the fee. If the petition is rejected, a fee paid within two months thereafter shall be deemed to have been paid on time.

#### Section 21

When the printing fee has been paid in accordance with Section 20, or an exemption from the printing fee has been granted, the Patent Office shall lay the application open for public inspection to afford the general public an opportunity to enter opposition against the application. The laying open of the application for public inspection shall be advertised.

An opposition must be filed with the Patent Office in writing within three months from the date of the advertisement.

From the date on which the application is laid open for public inspection, printed copies of the description of the invention and the patent claims, giving also the name of the applicant and the inventor, shall be obtainable from the Patent Office.

#### Section 22

Starting from the date on which the application is laid open for public inspection, the documents of the application shall be available to the public.

Eighteen months from the date of the filing of the application or, if priority is claimed, from the date of the priority requested, the documents shall be made available to the public, regardless of whether the application has been laid open for public inspection or not. Nevertheless, if a decision has been made to dismiss or to reject the application, the documents shall only be made available if the applicant requests the reinstatement of the application or appeals from the decision.

On the request of the applicant, the documents shall be made available earlier than as provided for in the first and second paragraphs.

When the documents are made available in accordance with the second and third paragraphs of this Section, the Patent Office shall advertise the fact.

If special reasons are shown, the Patent Office may, upon request, order that a document containing business secrets which do not concern an invention in respect of which a patent is applied for be withheld from the public wholly or in part. If such request has been made, the document shall not be made available until the request has been denied by a decision which has won legal effect<sup>4)</sup> 5).

#### Section 23

Following the expiry of the period specified in Section 21, second paragraph, the examination of the application shall be continued in order to decide whether a patent will be granted. For this examination, Sections 15 to 18 inclusive shall apply.

If an opposition to the grant of the patent has been entered, the applicant shall be notified thereof and given an opportunity to answer the opposition.

#### Section 24

The applicant may appeal from a final decision by an Examining Division of the Patent Office in cases regarding patent applications if the decision went against him. From a decision whereby a patent has been granted in spite of duly filed opposition, an appeal may be brought by the person who lodged the opposition. If he withdraws his appeal, it may nevertheless be considered if there are special reasons to do so.

From a decision whereby a request for reinstatement in accordance with Section 15, third paragraph, or Section 20, first paragraph, has been rejected, or a request for the transfer of an application according to Section 18 has been granted, an appeal may be brought by the applicant. From a decision whereby a request for the transfer of an application has been rejected according to Section 18, an appeal may be brought by the party who made the request.

<sup>4)</sup> In the Danish text, the last sentence of Section 22 is replaced by the following:

"If such request has been made, the document shall not be made available until a decision has been made or before the end of the period within which an appeal against the decision is possible. An appeal shall have a postponing effect."

<sup>5)</sup> The Norwegian text of Section 22 contains the following additional paragraph:

"Proposals, drafts, reports, and similar working documents, prepared by the Patent Office for its own use in the prosecution of an application shall not be accessible unless the Patent Office so decides."

From a decision whereby a request for an order in accordance with Section 22, fifth paragraph, has been rejected, an appeal may be brought by the applicant or any other party who made the request.

#### Section 25 (SWEDEN and FINLAND)

An appeal in accordance with Section 24 shall be taken up by the Board of Appeal of the Patent Office and shall be lodged within two months from the date of the decision. Within the same period, the appellant shall pay the prescribed appeal fee, on default of which the appeal shall not be considered.

The applicant may appeal from a decision of the Board of Appeal if the decision went against him. An appeal shall be taken to the Supreme Administrative Court, and shall be lodged within two months from the day of the decision.

The provisions of Section 22, fifth paragraph, shall apply correspondingly to documents which are submitted to the Supreme Administrative Court.

#### Section 25 (DENMARK)<sup>6)</sup>

Appeals from decisions concerning applications for patents shall be filed with the Patent Board of Appeal not later than two months after the Patent Office has informed the party concerned of the decision. Within the same term, the prescribed fee shall be paid. Otherwise, the appeal shall be dismissed.

Decisions of the Patent Board of Appeal cannot be brought before a higher administrative authority.

Legal actions for the trial of decisions of the Patent Office from which appeal can be made to the Patent Board of Appeal cannot be brought before the court until the decision of the Patent Board of Appeal is available, cf. however Sections 52 and 53. Legal actions for the trial of decisions in which the Patent Board of Appeal rejects a patent application shall be brought within two months after the party concerned has been informed of the decision.

The provisions of Section 22, subsection (5), are similarly applicable with regard to documents filed with the Patent Board of Appeal.

#### Section 25 (NORWAY)

An appeal must be lodged with the Patent Office within two months from the date on which notification of the decision was sent to the party concerned. Within the same period, the prescribed appeal fee shall be paid. In default of this, the appeal shall not be taken up for consideration.

A decision by the Board of Appeal of the Patent Office to reject an application for a patent may be brought to a court of law not later than two months after the applicant has been notified of the rejection. The time limit for appeal shall be included in the notification.

There is no remedy for failure to comply with the terms provided in the first and second paragraphs.

<sup>6)</sup> In the Danish text, the paragraphs of each Section are preceded by a number (subsections). References to subsections in the text of the this Section, and of subsequent Sections of the Danish text set out in full (cf. Sections 44, 45, and Chapter IX onwards), are thus references to paragraphs so far as the preceding text is concerned.

The provisions of Section 22, fifth and sixth paragraphs, shall also apply to documents filed with the Board of Appeal of the Patent Office.

#### Section 26

A patent shall be granted when the application is approved and the approval has taken legal effect. When the patent is granted, it shall be advertised and letters patent issued. If the description or the patent claims have been amended after being printed in accordance with Section 21, third paragraph, printed copies of the documents, also stating the names of the applicant and the inventor, shall be available at the Patent Office in their final form.

If an application which has been made available to the public is dismissed or rejected, the decision shall be advertised when it has taken legal effect.

#### Section 27

A granted patent shall be entered in the Register of Patents which is kept by the Patent Office<sup>7)</sup>.

### Chapter III. Nordic Patent Application<sup>8)</sup>

#### Section 28

Following an agreement with Denmark, Finland and Norway whereby patents for one invention may be obtained in Sweden, Denmark, Finland and Norway, or in any three of these countries, on the basis of one application for the patents in one of the countries to which the application (Nordic patent application) is directed, the Government is hereby empowered to decree that Sections 29 to 38 shall be complied with.

#### Section 29

A Nordic patent application filed in this country shall pertain, in addition to a patent effective in Sweden, to a patent effective in either Denmark, Finland and Norway or in two of these countries.

Such application shall be processed and examined, in observance of the provisions in this Chapter, according to the procedure governing patent applications in general. A patent granted on such application has the same validity in this country as other patents granted here.

If a patent has been granted in respect of Sweden on a Nordic patent application filed in Denmark, Finland or Norway, the patent shall have the same validity in Sweden as if it had been granted here.

If, in regard to a patent granted in Finland, the description and the patent claims are presented in both the Swedish and the Finnish languages and the two texts disagree, the patent protection in this country shall embrace only what is evident from both texts. However, the patent protection shall be

<sup>7)</sup> The Norwegian text contains the following additional paragraph: "Any person shall be entitled to examine the Register of Patents, to obtain certified extracts therefrom, and to obtain copies of the documents of the patent applications which are available to the public pursuant to the provisions of Section 22."

<sup>8)</sup> The text of this Chapter is that of the Swedish Patents Act, that is, where Sweden is the country of filing. The other texts should be read *mutatis mutandis*.

determined by the Swedish text alone, if this is decisive in Finland<sup>9)</sup>.

#### Section 30

In respect of a Nordic patent application filed in this country, the provision of Section 2, second paragraph, last sentence, shall be correspondingly applied with regard to an earlier patent application in another country covered by the application. In respect of a patent application effective in Sweden only, the said provision shall be correspondingly applied with regard to a Nordic patent application filed in another country and covering Sweden.

#### Section 31 (SWEDEN, DENMARK, NORWAY)

If a Nordic patent application filed in this country also covers Finland, the application can only be accepted for public inspection if the description and the patent claims are also presented in the Finnish language.

#### Section 31 (FINLAND)

If the description and claims of a Nordic patent application are only presented in Finnish or Swedish, the Patent Office shall provide for their translation into the other language. The applicant shall pay the prescribed translation fee. In the case of a foreign applicant, he shall present the description and the claims in both Finnish and Swedish.

#### Section 32

In respect of a Nordic patent application filed in this country, the printed copies of the description and the claims referred to in Section 21, third paragraph, shall specify the countries covered by the application. When the application is laid open for public inspection, such copies shall be forwarded to the patent offices of the other countries covered by the application and shall there be made available to the public according to the provisions pertaining thereto.

#### Section 33

When a Nordic patent application filed in another country and covering Sweden is laid open for public inspection in that country, it shall simultaneously be laid open for public inspection in this country. The laying open for public inspection shall be advertised.

Printed copies of the description and claims shall be obtainable at the Patent Office of this country.

#### Section 34

An opposition to a Nordic patent application filed in this country may, within the period stipulated in Section 21, be lodged at the patent office of another country covered by the application as well as at the Patent Office of this country.

If an opposition to a Nordic patent application filed in another country and covering Sweden is lodged with the

<sup>9)</sup> In the Finnish text of Section 29, the last paragraph is replaced by the following:

"If a patent covering Finland has been granted in Denmark, Norway or Sweden with the description and claims in Finnish as well as in Danish, Norwegian or Swedish, and the two texts disagree, the patent protection in Finland shall embrace only what is evident from both texts."

Patent Office of this country, the Patent Office shall without delay forward the document to the patent office of the other country stating the date on which the document was received.

#### Section 35

A Nordic patent application filed in this country and covering Sweden, Denmark, Finland and Norway may be converted into a Nordic application covering Sweden and two of the other countries.

A Nordic patent application filed in this country may be converted into an application covering Sweden only.

If a conversion provided for under the second paragraph is made, or if the application is withdrawn at the Patent Office of this country, the applicant may, in accordance with the provisions pertaining thereto, continue the application as a separate application in another country covered by the application. In such cases, the applicant shall, at the time of the conversion or withdrawal, give a declaration to that effect to the Patent Office of this country.

If the application documents have been made available under the provisions of Section 22, a conversion, withdrawal and declaration made under the first to third paragraphs shall be advertised. The declaration shall also be entered in an advertisement pursuant to Section 21, first paragraph.

#### Section 36

If a Nordic patent application that covers Sweden has been filed in another country, and the applicant converts the application to an application covering that country only, or withdraws the application and further makes a declaration in accordance with Section 35 that he intends to continue the application as an application covering Sweden only, the Patent Office of this country shall take up the application and continue the examination, provided the applicant files a notice to that effect with that Office within two months from the date of the conversion or withdrawal. If the application documents are available to the public pursuant to Section 22, the notice shall be advertised.

An application that has been taken up in accordance with the first paragraph of this Section shall be processed and examined as if it had been originally filed in this country as an application covering Sweden only. The applicant shall pay the prescribed application fee in this country even if he has paid the application fee in the country where the application was filed.

#### Section 37

Where a Nordic patent application filed in this country is approved, the letters patent shall name the countries in respect of which a patent has been granted.

#### Section 38

Upon agreement with any country concerned, the Government may decree that Nordic patent applications filed in this country shall be transferred to the patent office of another country covered by the applications, under such further provisions as may be prescribed in the decree. However, such decree must not pertain to applications filed by applicants who are residents of this country.

Upon agreement with any country concerned, the Government may also decree that Nordic patent applications filed in another country and which cover Sweden may be transferred to the Patent Office in this country. Applications which have been transferred in accordance with such decree shall be processed and examined as if originally filed in this country.

### Chapter IV. Scope and Term of Patents

#### Section 39

The extent of the protection conferred by a patent shall be determined by the terms of the claims. The description may serve as guidance for the interpretation of the claims.

#### Section 40

A granted patent may be maintained for seventeen years after the date on which the patent application was filed.

Regarding the maintenance of patents of addition, the provisions of Section 7 shall apply.

### Chapter V. Annual Fees

#### Section 41

In respect of a patent that is not a patent of addition, an annual fee, laid down by decree, shall be paid for each year of its term calculated from the date of the filing of the patent application (patent year).

If a patent of addition has become an independent patent in accordance with the provisions of Section 7, third paragraph, the annual fees shall be paid as from the following patent year in the amount that would have been due for the main patent had it still been in force.

#### Section 42

The annual fee shall be due for payment no later than the first day of the patent year which is covered by the fee. However, the annual fee for a patent year which began prior to the grant of the patent or within two months thereafter shall not be due for payment until two months have passed since the grant of the patent. An annual fee can be paid neither prior to the grant of the patent nor more than six months before the start of the patent year.

If the patent is held by the inventor himself and if he has considerable difficulty in paying the annual fee, the Patent Office may grant him an extension of the period for paying the fee of not more than three years from the grant of the patent, provided that a request to this effect is made by the inventor no later than on the last day an annual fee is first due for payment. If the request is refused, a fee that is paid within two months of that decision shall be regarded as having been paid on time.

An annual fee, increased by the amount laid down by decree, may be paid within six months after the start of the corresponding patent year, or, in respect of a patent year which began prior to the grant of the patent, six months after the grant. An annual fee concerning which an extension of time for payment has been granted in accordance with the second paragraph of this Section may, with the same increase,

be paid within six months after the extended period of time has ended.

## Chapter VI. Licenses, Assignments, etc.

### Section 43

If the patentee has granted another party permission to exploit the invention commercially (license), the licensee shall be entitled to assign his right to a third party only if there is agreement to that effect.

### Section 44 (SWEDEN)

The transfer of a patent and the grant of a license shall on request be recorded in the Register of Patents.

If it is shown that a license recorded in the Register is no longer in force, the entry regarding the license shall be cancelled from the Register.

The provisions of the first and second paragraphs shall apply correspondingly to compulsory licenses and rights in accordance with Section 53, second paragraph.

The person who has last been recorded in the Register as patentee shall be regarded as such in lawsuits and other cases concerning the patent.

### Section 44 (DENMARK)<sup>10)</sup>

The transfer of a patent and the grant of a license shall on request be recorded in the Register of Patents.

If it is shown that a license recorded in the Register is no longer in force, the entry regarding the license shall be cancelled from the Register.

The provisions of subsections (1) and (2) shall apply correspondingly to compulsory licenses and rights in accordance with Section 53, subsection (2).

Lawsuits concerning a patent may always be brought against the person who is recorded as the patentee in the Register and communications from the Patent Office may be sent to him.

### Section 44 (FINLAND)

The transfer of a patent and the grant of a license shall on request be recorded in the Register of Patents.

If it is shown that a license recorded in the Register is no longer in force, the entry regarding the license shall be cancelled from the Register.

The provisions of the first and second paragraphs shall apply correspondingly to compulsory licenses and rights in accordance with Section 53, second paragraph.

The person who has last been recorded in the Register as patentee shall be regarded as such in lawsuits and other cases concerning the patent.

If any person has requested the Patent Office to record in the Register that a patent has been assigned to him, or that he has obtained a license to or a right of security in a patent, and if, when making the request, he has acted in good faith, prior assignment of the patent or of rights therein shall have no validity against him, if the other party has not previously requested registration as assignee or holder of rights in the patent.

### Section 44 (NORWAY)

The transfer of a patent and the grant of a license shall on request be recorded in the Register of Patents.

If it is shown that a license recorded in the Register is no longer in force, the entry regarding the license shall be cancelled from the Register.

The provisions of the first and second paragraphs shall apply correspondingly to compulsory licenses and rights in accordance with Section 53, second paragraph.

The person who has last been recorded in the Register as patentee shall be regarded as such in lawsuits and other cases concerning the patent.

Voluntary assignment of a patent or grant of a license the registration of which has been requested shall take priority over an assignment or a license the registration of which had not been requested, or had been requested at a later date, provided that the holder of the right in question acted in good faith when making the request for registration in the Register of Patents.

### Section 45

If three years have expired from the grant of the patent as well as four years from the filing of the application, and if the invention has not been worked in this country to a reasonable extent, a party who desires to work the invention in this country may be granted a compulsory license for that purpose, provided there is no acceptable excuse for the failure to work the invention.

Subject to reciprocity, the Government may decree that, in applying the first paragraph of this Section, the working of the invention in a specified foreign country shall be considered equivalent to working in this country<sup>11)</sup>.

### Section 46

The proprietor of a patent for an invention the exploitation of which is prevented by a patent held by another party may obtain a compulsory license to exploit the invention protected thereby, if this is deemed reasonable in view of the importance of the invention first mentioned or if there are other special reasons therefor.

The proprietor of a patent in respect of which a compulsory license is granted in accordance with the first paragraph of this Section, may, if there are no special reasons to the contrary, obtain a compulsory license to exploit the other invention.

### Section 47

When required by superior public interests, a party who wants to exploit an invention commercially for which another party holds a patent may obtain a compulsory license for that purpose.

### Section 48

Any person who in this country was commercially exploiting an invention which is the subject of a patent application, when the application documents were made available in ac-

<sup>11)</sup> In the Danish text of Section 45, the last paragraph is replaced by the following:

"If an agreement with the other Nordic countries is made pursuant to Chapter III, the Minister of Commerce may decide, in application of the provisions of subsection (1), that working in one of these countries shall be regarded as working in this country."

<sup>10)</sup> See footnote 6.

cordance with Section 22 shall, if the application results in a patent, be granted a compulsory license for such exploitation, provided there are very strong reasons for this and, further, that he had no knowledge of the application and such knowledge could not reasonably have been obtained by him. The same right shall, under the corresponding conditions, apply to a person who has undertaken substantial preparations to exploit the invention commercially in this country. Compulsory licenses may also be applied in respect of the time before the patent was granted.

#### Section 49

A compulsory license may only be granted to a person who is deemed to possess the necessary prerequisites to exploit the invention in an acceptable manner and in accordance with the terms of the license.

A compulsory license shall not prevent the patentee himself from exploiting the invention, or from granting licenses under the patent. A compulsory license may be transferred to a third party only together with the enterprise in which it is exploited or is intended to be exploited.

#### Section 50 (SWEDEN, FINLAND, NORWAY)

Compulsory licenses shall be granted by a court of law, which shall also decide the extent to which the invention may be exploited and establish the remuneration to be paid and other conditions for the license. When it is called for by substantially changed circumstances, the court may, on request, revoke the license or lay down new conditions therefor.

#### Section 50 (DENMARK)

Compulsory licenses shall be granted by the Maritime and Commercial Court of Copenhagen, as the court of first instance, which shall also decide the extent to which the invention may be exploited and establish the remuneration and other conditions for the license. When this is called for by substantially changed circumstances, the Court may on request revoke the license or lay down new conditions therefor.

### Chapter VII. Termination of a Patent, etc.

#### Section 51

If an annual fee is not paid in accordance with the provisions of Sections 41 and 42, the patent shall lapse as from the start of the patent year for which the fee has not been paid.

A patent which has lapsed in accordance with the first paragraph of this Section may be restored by the Patent Office if the patentee shows satisfactory excuse for his failure to pay the annual fee. A request for the restoration of a patent shall be made in writing to the Patent Office without delay and not later than six months from the last day when the fee should have been paid. Within the same period of time, the annual fee, including the prescribed increase in fee and the prescribed restoration fee, shall be paid. A request duly made shall be advertised.

Any person who, after the lapse of the patent but before the request for the restoration of the patent has been advertised, has started to exploit the invention commercially in

this country, or who has made substantial preparations therefor, has, if the patent is restored, the same right as that provided for under Section 4.

#### Section 52

If a patent has been granted contrary to the provisions of Sections 1 or 2, the court shall, in an action brought to this effect, declare the patent invalid. However, a patent may not be declared invalid on the ground that the person to whom the patent was granted was entitled only to a certain share therein.

The court action may, with the exception provided for in the third paragraph of this Section, be brought by any person [who suffers harm from the patent and also, when this is called for in the public interest, by a public authority appointed by the Government]<sup>12)</sup>.

An action in which it is claimed that the patent has been granted to a person other than the person entitled to the patent in accordance with the provisions of Section 1 may be brought only by the person claiming entitlement to the patent. Such action shall be brought within one year after knowledge was gained of the grant of the patent and of such other circumstances on which the action is founded. Where the patentee acted in good faith when the patent was granted or assigned to him, action cannot be brought later than three years after the grant of the patent.

#### Section 53

If a patent has been granted to a person other than the person entitled to the patent in accordance with the provisions of Section 1, the court shall, when an action is brought by the party so entitled, transfer the patent to him. As regards the time within which the action shall be brought, the provisions of Section 52, third paragraph, shall apply.

If the party who is deprived of the patent has, in good faith, begun to exploit the invention commercially or has undertaken substantial preparations for that purpose, he shall, in consideration of reasonable remuneration and subject to otherwise reasonable conditions, be entitled to continue the exploitation already begun, or to begin the exploitation intended, while retaining its general character. Subject to the same conditions, a holder of a license under the patent whose license has been recorded in the Register of Patents shall have the same right.

Rights under the second paragraph of this Section can only be transferred to others together with the enterprise in which they were exploited or intended to be exploited.

#### Section 54

If a patentee surrenders the patent to the Patent Office in writing, the Patent Office shall declare the patent terminated.

If the patent is seized for debt or if there is a suit pending for the transfer of the patent, the patent may not be declared terminated so long as the seizure is effective or the suit has not been brought to a final decision.

<sup>12)</sup> The phrase between brackets does not appear in the Danish and Norwegian texts.

## Section 55

If a patent has lapsed, been declared terminated, been declared invalid by a court decision that has taken legal effect, or been transferred, the Patent Office shall publish an advertisement to this effect. Such advertisement shall also be published when a request for restoration has been received by a decision that has taken legal effect.

## Chapter VIII. Obligation to Give Patent Information

## Section 56

If an applicant invokes the application against another person before the application documents have been made available in accordance with Section 22, he shall be required to allow that person to inspect the documents upon request.

Any person who, by direct warning to another person, or by advertisement, or by marking on articles, or packaging, or otherwise, asserts that a patent has been granted or applied for, and at the same time does not give the number of the patent or patent application, shall be required to give the number on request without delay. When it is not specifically stated that a patent has been granted or applied for, but the circumstances are such that an impression to that effect is created, information as to whether or not a patent has been granted or applied for shall be given on request without delay.

SWEDEN <sup>13)</sup>Chapter IX. Infringement and Compensation,  
Court Proceedings

## Section 57

If any person infringes the exclusive right pertaining to a patent (patent infringement), and if such infringement is committed deliberately, he shall be punished by a fine or by imprisonment for a period not exceeding six months.

An indictment for this offense may be brought by the public prosecutor only if the injured party refers it to him for prosecution and if the indictment is required for special reasons in the public interest.

## Section 58

Any person who, deliberately or through negligence, infringes a patent shall pay a reasonable compensation for the exploitation of the invention and damages for other injury caused by the infringement. If there is only minor negligence, the compensation may be adjusted accordingly.

If any person is guilty of patent infringement that is not deliberate or due to negligence, he shall pay compensation for the exploitation of the invention if and to the extent that this is found reasonable.

An action for compensation for patent infringement can only cover damages for the last five years before the action was brought. For damage suffered prior to this period, the right to compensation shall be lost.

<sup>13)</sup> The text from Chapter IX onwards is different in each of the four national Laws. The provisions of Chapter IX et seq. are therefore set out separately in full. Where the texts are identical, the texts of the Danish, Finnish and Norwegian Laws are supplanted by a reference to the Swedish text.

## Section 59

On a motion by the party injured by patent infringement, the court may, to the extent deemed reasonable for the prevention of continued patent infringement, order that articles which have been produced without the permission of the patentee, or products the use of which would constitute patent infringement, be altered in a prescribed manner, or be impounded for the remainder of the patent term, or be destroyed, or, in the case of patented articles, be surrendered to the injured party in consideration of payment of their value. The foregoing shall not apply to a person who, in good faith, has obtained the property or special rights thereto, provided he has not himself been guilty of infringement.

Property mentioned in the first paragraph of this Section may be seized if it can be reasonably assumed that the offense mentioned in Section 57 has been committed. In that case, the provisions regarding seizure in criminal cases in general shall apply.

Notwithstanding the first paragraph of this Section the court may, on request, when there are very special reasons for it, order that the possessors of property mentioned in the first paragraph shall, in consideration of a reasonable compensation and subject to otherwise reasonable conditions, be able to dispose of the property during the remainder of the patent term or a part thereof.

## Section 60

If any person commercially exploits an invention which is the subject of a patent application after the application documents have been made available in accordance with Section 22, the provisions relating to patent infringement shall correspondingly apply in so far as the application results in a patent. However, he shall not be liable to punishment, and compensation for damage due to exploitation prior to the advertisement of the laying open of the application for public inspection in accordance with Section 21 can only be decided in accordance with Section 58, second paragraph.

The provisions of Section 58, third paragraph, shall not apply if an action for compensation is brought no later than one year from the grant of the patent.

## Section 61

If a patent has been declared invalid by a decision that has taken legal effect, punishment, payment of compensation, or preventive measures under Section 57 to 60 cannot be ordered.

If, in infringement proceedings, the person against whom the action is brought claims that the patent is invalid, the court shall at his request stay proceedings until the question has been finally resolved. If an action for this purpose has not yet been brought, the court shall, in connection with the staying of proceedings, order him to bring such action within a prescribed period.

## Section 62

Any person who, deliberately or through negligence which is not of a minor nature, fails to do what is required of him under Section 56 shall be sentenced to a fine.

Any person who, in the situations described in that Section, deliberately or through negligence which is not of a minor nature, gives false information shall also be sentenced to the same penalty if the offense is not punishable according to the Penal Code.

Any person who, deliberately or through negligence, fails to do what is required of him under Section 56, or in the situations therein described gives false information, shall pay compensation for the resulting damage. If the negligence is of a minor nature the compensation may be adjusted accordingly.

An indictment for an offense mentioned in the second and third paragraphs of this Section can be brought by the public prosecutor only if the injured party refers it to him for prosecution and an indictment is required for special reasons in the public interest.

#### Section 63

The patentee or any person who is authorized to exploit the invention under license may bring an action before the court for a declaratory judgment as to whether the patent gives him protection against another party, if there is uncertainty in this respect which is harmful to him.

Any person who conducts or intends to conduct commercial activities can, subject to the same conditions, bring an action against the patentee for a declaratory judgment as to whether the patent is a hindrance to this activity.

If, in the prosecution of an action in accordance with the first paragraph of this Section, it is claimed that the patent is invalid, the provisions of Section 61, second paragraph, shall correspondingly apply.

#### Section 64

Any person who wishes to bring an action for the invalidation of a patent, the transfer of a patent, or the grant of a compulsory license, shall report this to the Patent Office and shall notify all those who are recorded in the Register of Patents as licensees under the patent. If a licensee wants to bring an action for the invalidation of a patent or for a declaratory judgment in accordance with Section 63, first paragraph, he shall give the patentee notification thereof.

The obligation to notify in accordance with the first paragraph of this Section shall be regarded as fulfilled when the notification by paid registered letter has been sent to the address recorded in the Register of Patents.

If it is not shown when the action is brought that a report or notification has been made in accordance with the provisions of the first paragraph of this Section, the plaintiff shall be given time to do so. If the time limit is exceeded, the action shall not be tried.

#### Section 65

The City Court of Stockholm shall be the competent court in proceedings regarding

1. the proper title to an invention in respect of which a patent is applied for,
2. the invalidation or transfer of a patent,
3. the granting of a compulsory license, establishing new conditions for, or the revocation of, such license, or

rights which are referred to in Section 53, second paragraph.

4. patent infringement,

5. declaratory judgments in accordance with Section 63 or

6. the taxation of compensation under Section 75.

#### Section 66

In the proceedings mentioned in Section 65, the City Court, except in the case referred to in the second paragraph of this Section, shall consist of six members, three of which shall be legally qualified and three shall be technically qualified. Nevertheless, in the event that one of the members is excused after the main session has started, the Court shall be competent to try the case with the remaining five members. One of the legally qualified members shall be the President of the Court.

Where a case is decided without a main session, and in proceedings that do not take place at a main session or by an inspection on the site, the City Court shall consist of a legally qualified member, or, if this is appropriate, of one legally and one technically qualified member, in which case the legally qualified member shall be the President of the Court.

#### Section 67

In cases which have been decided in the City Court with the participation of one or more technically qualified members, the Court of Appeal shall be competent with four legally and two technically qualified members. More than five legally and three technically qualified members may not take part in the proceedings.

#### Section 68

The Government, or such authority as the Government may determine, shall appoint at least twenty-five persons who shall serve as technically qualified members in the City Court and the Court of Appeal for three years at a time. During a three-year period, the Government may, when required, appoint additional persons for such duty during the remaining part of the period.

The President of the Court shall select from among the persons thus appointed those who shall sit in the Court for each case separately, having regard to the technical qualification desired and other relevant circumstances. A technically qualified member who has retired shall be required to serve in the later proceedings in a case in the processing of which he has previously taken part.

#### Section 69

In proceedings under Section 65, the Court shall request the views of the Board of Appeal of the Patent Office, if the circumstances so require.

#### Section 70

Copies of judgments or final decisions in proceedings mentioned in Section 65 shall be dispatched to the Patent Office.

## SWEDEN

## Chapter X. Special Provisions

## Section 71

A patentee who is not domiciled in this country shall have an agent resident here who has the authority to receive services of writs of indictments or summonses and other documents in proceedings and matters concerning the patent, with the exception of writs of indictments in penal cases and summonses for a party to appear personally before a court. The agent appointed shall be reported for recording in the Register of Patents.

If the patentee has not appointed an agent as stated in the first paragraph of this Section, documents to be served may be sent to him by paid mail to his address as recorded in the Register of Patents. If there is no full address recorded in the Register, a document may be served by posting it in the premises of the Patent Office. Such service shall be advertised in the public newspapers. The service shall be considered effected when the procedure described herein has been completed.

Subject to reciprocity, the Government may decree that the stipulations of the first and second paragraphs of this Section shall not apply to a patentee domiciled in a specified foreign country, or who has an agent residing in that country, provided the agent is reported for recording in the Register of Patents of this country and is authorized in the manner prescribed in the first paragraph of this Section.

## Section 72

Appeals from final decisions of the Patent Office other than those covered by Section 24 shall be lodged with the Board of Appeal of the Patent Office within two months from the date of the decision. A person who wishes to appeal shall, within the same period, pay the prescribed appeal fee; if this is not done the appeal shall not be taken up for consideration.

Appeals from decisions by the Board of Appeal shall be made to the Supreme Administrative Court and shall be lodged within two months from the date of the decision.

## Section 73

The amount of fees to be paid according to this Law shall be prescribed by the Government. With respect to annual fees, the Government may, in this connection, decree that one or more of the first patent years shall be exempt from fees.

## Section 74

Further regulations regarding applications for patents, advertisements in patent cases, publications of the application documents, the Register of Patents, and the Patent Office, shall be issued by the Government, or, to the extent determined by the Government, by the Patent Office. To the extent decreed by the Government the records kept by the Patent Office shall be available to the public.

The Government may decree that documents relating to applications for patents may be delivered to the authorities of another country.

The Government may also decree that the examination of patent applications, upon request by the Patent Office, may be undertaken by the appropriate authority of another country, or by an international institution, and, further, that an applicant for a patent in respect of an invention for which a patent was filed earlier in another country shall be required to divulge anything communicated to him in relation to an examination of the patentability of the invention by the patent office of that country.

## Section 75

If the country is in a state of war or war emergency the Government, when this is in the public interest, may decree that rights in a particular invention shall be surrendered to the State or to another party designated by the Government. A reasonable compensation shall be paid for the rights in an invention subject to such a decree. If agreement regarding the compensation cannot be reached with the person entitled thereto, the compensation shall be determined by a court of law.

If, pursuant to the first paragraph of this Section, rights in an invention have been surrendered to any person other than the State, and if such person does not fulfill his obligations with regard to payment, the State shall be obliged to pay the compensation immediately, at the request of the person entitled thereto.

## Section 76

Special provisions shall apply to inventions of importance to the defense of the country.

## SWEDEN

## Entry into Force and Transitional Provisions

(1) The present Law shall enter into force on January 1, 1968, when the Patent Law of May 16, 1884 (No. 25) (the old Law) shall be repealed. Nevertheless, if an invention concerns foods or medicines a patent may not be granted for the product itself until otherwise decreed by the Government.

(2) The new Law shall also be applicable to patents granted prior to the time of its entry into force or which will be granted on applications filed prior to that time unless the following provisions provide to the contrary.

The provisions of Section 16, first paragraph (right of prior use), of the old Law shall still apply in respect of patents which have been granted or which will be granted on applications filed before this Law enters into force or which are regarded as filed before that date pursuant to the provisions of Section 6 of the new Law.

(3) The question of invalidation of a patent granted in accordance with the old Law, and the right to bring an action for invalidation shall be governed by the old Law. With regard to compensation for patent infringement which occurred before the new Law entered into force, and the right to bring an action therefor, the old Law shall still apply.

(4) Anyone, who, at the time the new Law entered into force, was commercially exploiting, in this country, an invention in respect of which a patent could not be granted ac-

ording to the old Law, or who has undertaken substantial preparations for such exploitation, shall, without prejudice to a patent being subsequently granted for the invention, have such right to exploit the invention as is stipulated in Section 4 of the new Law, regardless of the fact that the exploitation of the invention or the preparations therefor were made after the filing of the application.

(5) If, prior to the entry into force of the new Law, an invention has become available to the public in consequence of measures taken by the applicant or his predecessor in title, Section 3 of the old Law shall be applicable in deciding whether, for this reason, there is a hindrance to the grant of a patent, or whether a patent shall be declared invalid; provided that the application for a patent was filed before July 1, 1968.

(6) A patent application which is pending at the Patent Office at the time the new Law enters into force shall be processed and decided upon in accordance with the old Law, provided that the Patent Office gives the applicant notice pursuant to Section 7, first paragraph (notice of the laying open of the application for public inspection), of the old Law before the new Law enters into force.

(7) An application for a patent which has been filed before the entry into force of the new Law shall not be made available in accordance with Section 22 of the new Law before July 1, 1968, unless prior to that date the application is laid open for public inspection or the applicant requests that the application be made available to the public.

(8) With regard to an annual fee for a patent year starting prior to July 1, 1968, the provisions of Section 11 of the old Law shall apply.

(9) The special provisions for patents of addition in the old Law shall, instead of Section 7, second paragraph, second sentence, and third paragraph, and Section 41, second paragraph, of the new Law, apply to patents of addition granted before the new Law enters into force.

(10) The provisions of Section 61, second paragraph, and Section 63, third paragraph, of the new Law shall not apply to court proceedings for which an action is brought before the new Law enters into force. For such proceedings the old Law shall apply instead. The provisions of Section 67 of the new Law shall not apply to patent proceedings on which the City Court reaches a decision before the new Law enters into force.

## DENMARK

### Chapter IX. Infringement and Compensation; Court Proceedings

#### Section 57<sup>14)</sup>

If any person infringes the exclusive right pertaining to a patent, and the infringement is committed deliberately, he shall be punished by a fine or, if there are aggravating circumstances, by ordinary imprisonment of up to three months.

If the offense has been committed by a limited liability

company, a cooperative society or the like, the enterprise as such may be liable to a fine.

Indictment shall be by the injured party.

#### Section 58

Any person who deliberately or negligently is guilty of patent infringement shall pay a reasonable compensation for the exploitation of the invention and damages for any other injury caused by the infringement.

If any person is guilty of patent infringement that is not deliberate or due to negligence and if he has made a profit therefrom, he shall be liable to pay compensation and damages according to the provisions of subsection (1) if and to the extent this found reasonable, but not in excess of the profit he is presumed to have made as a result of the patent infringement.

#### Section 59

In a case of patent infringement, the court may, to the extent found reasonable and when claimed, make decisions to prevent abuse of products manufactured in accordance with the patented invention, or of an apparatus, tool or other article the use of which would involve patent infringement. Thus, it may be decided that the article shall be altered in a specified manner or destroyed or, if it is a patented article, surrendered to the injured party in consideration of remuneration. However, this does not apply to the party who, in good faith, has acquired the article in question or acquired rights with respect to it and who himself is not guilty of patent infringement.

Where there are very special reasons, the court may, irrespective of the provisions of subsection (1) and when claimed, grant permission to dispose freely of the products, apparatus, tools or other articles mentioned in subsection (1) during the term of the patent or a part thereof in consideration of reasonable remuneration and on otherwise reasonable conditions.

#### Section 60

If any person makes an unauthorized commercial use of an invention after the files of the application have been made available to the public and if the application results in a patent, the provision on patent infringement shall similarly be applicable. However, this does not apply to the provision of Section 57. Damages for injury as a consequence of infringement which took place before the advertisement about the laying open of the application for public inspection under Section 21, shall be paid by the infringer only to the extent stipulated in Section 58, subsection (2).

Limitation of claims for damages under subsection (1) shall commence at the earliest one year after the grant of the patent.

#### Section 61

In lawsuits for patent infringement, it can only be claimed that the patent is invalid if an action for the patent to be declared invalid is brought against the patentee, subject to the latter's having been summoned according to the provisions of Section 63, subsection (4). If the patent is declared invalid, the provisions of Sections 57 to 60 shall not apply.

<sup>14)</sup> See footnote 6.

## Section 62

Any person who, in the instances mentioned in Section 56, fails to meet his obligations or gives false information shall be liable to a fine, if a more severe punishment is not provided for by other legislation, and shall be liable to make good the damage thereby caused to the extent that is found reasonable.

The provisions of Section 57, subsections (2) and (3) shall be similarly applicable.

## Section 63

Any person who brings an action for the invalidation of a patent, for the transfer of a patent, or for a compulsory license, shall at the same time notify the patent authority and, by registered mail, give notification about the action to any registered license whose address is recorded in the patent register. A licensee who wants to bring an action for patent infringement shall in a similar way give notification to the patentee if the latter's address is stated in the Register.

If on the day on which the case comes up for trial, the plaintiff does not prove that notification as prescribed in subsection (1) has taken place, the court may fix a term for fulfilling the conditions of subsection (1). If the said term is disregarded, the action shall be dismissed.

In actions for patent infringement brought by the patentee, the defendant shall give notification according to the provisions of subsection (1) to the patent authority and registered licensees if he intends to claim that the patent should be declared invalid. The provision of subsection (2) shall be similarly applicable so that the claim that the patent be declared invalid shall be dismissed if the term fixed is disregarded.

In actions for patent infringement brought by a licensee, the defendant may summon the patentee, irrespective of the latter's venue, in order to claim against him that the patent be declared invalid. The provisions of Chapter 34 of the Administration of Justice Act shall be similarly applicable.

## Section 64

The actions listed below shall be brought before the High Court as the court of first instance:

- I. actions concerning the right to an invention which is the subject of a patent application;
- II. actions for the grant of a patent, cf. Section 25, subsection (3);
- III. actions for the invalidity of a patent or for the transfer of a patent, cf. Sections 52 and 53, and for rights under Section 53, subsection (2);
- IV. actions for rights under Section 4 and Section 51, subsection (3);
- V. actions concerning patent infringement, and
- VI. actions for the assignment of a patent and cases concerning voluntary licenses.

In actions brought under this Law, applicants and patentees who are not domiciled in this country shall be regarded as having their venue in Copenhagen.

## Section 65

Copies of judgments in the cases mentioned in Section 64, subsection (1), shall be sent to the Patent Office on the initiative of the court.

## DENMARK

## Chapter X. Special Provisions

## Section 66

A patentee who is not domiciled in this country shall have an agent who is resident here and entered in the Register of Patents and who, on his behalf, can receive announcements and other notifications concerning the patent.

If the patentee does not have such an agent, announcements etc. may be served in the way prescribed in Section 160, subsection (2), of the Administration of Justice Act.

Subject to reciprocity, the Minister of Commerce may decide that the provisions of subsection (1) shall not apply to patentees who are domiciled in other countries or who have an agent residing in these countries and entered in the Register of Patents in this country and who can receive announcements and other notifications etc. on their behalf.

## Section 67

Appeals from decisions of the Patent Office under Section 44 or Section 51, subsection (2), may be made by the patentee to the Patent Board of Appeal not later than two months after he has been informed of the decision. Others who are interested in the decision concerned, may file a similar appeal not later than two months after the announcement of the decision.

The fee fixed for the appeal shall be paid within the term mentioned in subsection (1). If payment is not made, the appeal shall be dismissed.

## Section 68

The Minister of Commerce shall determine the amount, etc., of the fees under this Law and of the fees for services, etc.

As far as annual fees are concerned, cf. Section 41, the Minister of Commerce may decide that no fee shall be payable for one or more of the first patent years.

## Section 69

The Minister of Commerce shall issue specific rules and regulations on patent applications and their examination, on the arrangement and keeping of the Register of Patents, on the publication and contents of the Patent Gazette, and on the procedure of the Patent Office and the Patent Board of Appeal. It may be decided that the Patent Office records of applications filed shall be available to the public. The Minister of Commerce may issue specific rules regarding the days when the Patent Office is closed.

The Minister of Commerce may decide that, at the request of the authorities of another country, the Patent Office may give such other authorities information about the examination of patent applications filed in this country and that, when deciding whether or not the conditions of patentabi-

lity are met, the Patent Office may accept novelty searches which have been carried out in this respect by a corresponding authority in another country or by an international institution.

Moreover, the Minister of Commerce may decide that applicants in another country may be requested by the Patent Office to give information within a certain period of time about the result of the examination on the patentability of the invention communicated to them by the patent authority of the country in question.

#### Section 70

For inventions which concern war materials or processes or methods for the production of war materials, secret patents may be granted in accordance with special provisions.

### DENMARK

#### Chapter XI. Entry into Force and Transitional Provisions

(1) This Law shall come into force on January 1, 1968. At the same time the Patent Law, as published in law notification No. 361 of December 19, 1958, shall be repealed. Furthermore, Section 4 of Act No. 142 of April 29, 1955, concerning inventions by employees, shall be repealed.

Patents for inventions of food and pharmaceutical products as well as patents for processes concerning the production of food may, however, be granted only at a later date fixed by the Minister of Commerce.

(2) Subject to the following exceptions, this Law shall also be applicable to patents which have been granted in accordance with the previous legislation and to patents which will be granted in accordance with the previous legislation.

If a right to exploit an invention according to Section 6 of the former Law has been acquired before the coming into force of this Law, this right is maintained irrespective of whether the conditions of Section 4 of this Law have been fulfilled.

(3) A patent which has been granted or will be granted under the previous legislation can only be declared invalid in accordance with the provisions of Section 24 of the former Patent Law.

(4) Any person who, at the entry into force of this Law, commercially exploits in this country an invention for which a patent could not be granted in accordance with Section 1 of the former Patent Law, or who has taken substantial measures for such an exploitation, shall be entitled to continue the exploitation in accordance with the provisions of Section 4 of this Law, regardless of whether he began the exploitation or took measures therefor after the filing of the patent application and whether or not a patent for the invention is later granted.

Any person who, at the entry into force of this Law, commercially exploits in this country an invention for which someone else has a patent without thereby acting contrary to the provisions of Section 5 of the former Patent Law, shall be entitled to continue the exploitation so long as it retains its general character. The same right shall be due in similar conditions to any party who, before the said date, took substantial measures for such exploitation of the invention in

this country. The right may only be transferred to other parties together with the enterprise where it originated or in which it was intended to exploit it.

(5) If, before the entry into force of this Law, an invention became available to the public as a result of measures taken by the applicant or any person from whom he derives his right, and if the patent application is filed not later than July 1, 1968, only Section 1, subsection (2) No. (3), of the former Patent Law shall be applicable in deciding whether a patent can be granted irrespective of the said measures or whether a patent is to be regarded as invalid.

(6) Applications pending with the patent authority when the new Law enters into force shall be examined and decided upon according to the provisions of the former legislation if the applicant has been informed that publication according to Section 16 of the former Patent Law may take place.

(7) Applications which are filed before the entry into force of this Act shall not, irrespective of the provisions of Section 22, be made available to the public until six months after the coming into force of this Law, unless the application is laid open for public inspection at an earlier date or the applicant requests that the application be made available.

(8) The annual fees in respect of the patent years beginning before July 1, 1968, shall be payable in accordance with the provisions of the former Patent Law.

(9) For a patent of addition granted before this Law enters into force, the provisions concerning a patent of addition in the former Law shall apply, in place of Section 7, subsection (2), second sentence, and subsection (3), as well as Section 41, subsection (2), of the present Law.

### FINLAND

#### Chapter IX. Infringement and Compensation; Court Proceedings

##### Section 57

If any person infringes the exclusive right pertaining to a patent, the court may forbid him to continue or repeat the activity. If any person is deliberately guilty of patent infringement, he shall be punished by a fine or by imprisonment of no more than six months.

An indictment for this offense may not be brought by the public prosecutor unless the injured party reports it to him for prosecution.

##### Section 58

(See the Swedish text)

##### Section 59

(See the Swedish text)

##### Section 60

(See the Swedish text)

##### Section 61

(See the Swedish text; however, in the second paragraph, second sentence, replace "the court *shall* ..." by "the court *may* ...".)

## Section 62

(See the Swedish text; however, delete the third paragraph.)

## Section 63

(See the Swedish text)

## Section 64

(See the Swedish text; however, in the first paragraph, first sentence, add the words "or old security in the patent.")

## Section 65

(See the Swedish text; however, instead of "The City Court of Stockholm ..." read "The City Court of Helsinki ...")

## Section 66

In the proceedings mentioned in Section 65, the City Court shall be assisted by two technical experts appointed by the Court. Such experts shall give their views on the questions presented to them by the Court. The views shall be entered in the records. Such experts shall have the right to put questions to parties and witnesses.

## Section 67

The City Court shall, for each calendar year, appoint the necessary number of experts referred to in Section 66. Prior to making the appointment, the Court shall request the opinion of the National Institute for Technical Research and the Central Chamber of Commerce. No one, without a legal excuse, may refuse such assignment.

Before the expert commences his assignment he shall give the prescribed oath.

## Section 68

At the request of the plaintiff, the Court may grant an interlocutory injunction against the use of the patent or order that property referred to in Section 59 shall be seized temporarily for the duration of the proceedings.

If the Court has ordered an injunction or seizure pursuant to the first paragraph of this Section, the plaintiff may be required to give such security as the Court will accept for any damage and inconvenience that might be inflicted on the other party by the action.

Relief from a decision regarding injunction or seizure or the lifting of the same during the course of proceedings may be sought by special appeal.

## Section 69

In proceedings regarding the invalidation of a patent, the Court shall request the views of the Patent Office.

In other patent cases, the Court may request the views of the Patent Office when this is called for by the circumstances of the case.

## Section 70

Copies of decisions in cases referred to in Section 65 shall be sent by the Court to the Patent Office with an indication as to whether the decision has obtained legal effect.

## FINLAND

## Chapter X. Special Provisions

## Section 71

(See the Swedish text; however, second paragraph, second sentence, reads: "If an address is not entered in the Register, summonses and notices may be served by advertisement in the official journal.")

## Section 72

(See the Swedish text)

## Section 73

(See the Swedish text)

## Section 74

(See the Swedish text)

## Section 75

(See the Swedish text)

## Section 76

(See the Swedish text)

## FINLAND

## Entry into Force and Transitional Provisions

(1) This Law shall enter into force on January 1, 1968. The Patent Law of May 7, 1943 (387/43) (the old Law), shall thereby be repealed. However, if an invention concerns foods or medicines a patent may not be granted for the product as such but only for a process of manufacture thereof until otherwise prescribed by decree.

Prior to the entry into force of this Law, such regulations may be given by decree as are necessary to put the new Law into operation.

(2) First paragraph: (See the Swedish text)

Second paragraph: the provisions of this Law shall be of no consequence in respect of rights arising from Section 2 of the old Law.

(3) (See the Swedish text)

(4) (See the Swedish text)

(5) (See the Swedish text; however, instead of "Section 3 of the old Law" read "Sections 14, 15 and 18 of the old Law, the last Section in the reading of October 20, 1950")

(6) A patent application which is pending at the time of the entry into force of this Law shall be examined and resolved in accordance with the old Law, provided that the Patent Office has made a decision to lay the application open for public inspection in accordance with Section 47 of the old Law before the new Law came into operation.

(7) (See the Swedish text)

(8) In regard to the payment of the annual fee for a patent year starting prior to July 1, 1968, the provisions of the old Law shall apply.

(9) (See the Swedish text)

(10) In patent proceedings, where a court summons has been requested before the entry into force of this Law the

competent court and procedure shall be determined according to the provisions of the old Law.

## NORWAY

### Chapter IX. Infringement and Compensation; Court Proceedings

#### Section 57

Any person who deliberately infringes the exclusive right pertaining to a patent, or contributes thereto, shall be punished by a fine or by imprisonment of up to three months.

The public prosecutor shall only prosecute when requested to do so by the injured party.

#### Section 58

First paragraph: (See the Swedish text)

Second paragraph: If the infringement is committed in non-negligent good faith, the court may, to the extent deemed reasonable, order the infringing party to pay damages; however, such damages shall not exceed the profits that the said party may be assumed to have acquired as a result of the infringement.

#### Section 59

First and second paragraphs: See first paragraph of the Swedish text; however, in the first sentence, instead of "impounded for the remainder of the patent term" read "*confiscated*."

Third paragraph: Notwithstanding the first paragraph of this Section, the court may on request, when there are very special reasons for it, grant permission to dispose of the patented property, in consideration of a reasonable compensation and subject to reasonable conditions, during the remainder of the patent term or a part thereof.

#### Section 60

First paragraph: (See the Swedish text)

Second paragraph: The statutory period of limitation for claims in accordance with the previous paragraph shall not begin until the patent is granted.

#### Section 61

In a civil action regarding patent infringement, an acquittal may not be based on the fact that the patent was invalid or that a transfer of the patent could be claimed, cf. Sections 52 and 53, until a decision has been made regarding the validity or the transfer of a patent.

#### Section 62

Any person who deliberately or through negligence fails to supply information, or to allow another party to inspect the documents specified in the provisions of Section 56, or gives wrong information in the circumstances referred to in Section 56, shall be liable to a fine and shall pay compensation for the resulting damage, to the extent this is found reasonable.

The public prosecutor shall only prosecute when requested to do so by the injured party.

## NORWAY

### Chapter X. Court Proceedings

#### Section 63

The City Court of Oslo shall be the competent court in proceedings regarding:

1. the proper title to an invention in respect of which a patent is applied for;
2. reconsideration of a decision of the Appeal Board of the Patent Office whereby the grant of a patent has been refused; cf. Section 25, second paragraph;
3. the invalidation or transfer of a patent; cf. Sections 52 and 53.

The City Court of Oslo shall be the venue for applicants and patentees who are not residents of this country.

#### Section 64

Any person who brings an action for the invalidation of a patent, the transfer of the patent to himself, or the grant of a compulsory license, shall at the same time notify the Patent Office thereof, and shall give notice by registered mail to any licensee whose address is recorded in the Register of Patents. A licensee wishing to bring an action for patent infringement shall, in the same way, notify the patentee thereof, if the address of the patentee is recorded in the register.

If the plaintiff is unable to prove that he has given notice as specified in the first paragraph, the Court may allow a time limit for such notification. If the time limit is exceeded, the action shall be dismissed.

#### Section 65

In proceedings concerning patent rights, the court may, in consideration of industrial or commercial secrets of any of the parties or witnesses concerned, rule that the public shall be barred from the proceedings or a part thereof.

#### Section 66

Copies of the decisions made by the court in the cases specified in Section 63 shall be sent to the Patent Office.

## NORWAY

### Chapter XI. Special Provisions

#### Section 67

A patentee who is not domiciled in this country shall have an agent resident here whose name shall be recorded in the Register of Patents and who shall have the authority to receive service of writs or summonses and other documents in proceedings and matters concerning the patent, on behalf of the patentee.

If the patentee has not appointed an agent, documents to be served may be sent by registered mail to his address as recorded in the Register of Patents. In such cases, the provisions of Section 178 of the Law Relating to the Courts of Justice shall be applicable. If there is no complete address recorded in the Register, or otherwise when the court finds it necessary, a writ may be served by publication of the documents concerned, or extracts of same, in "*Norsk Ly-*

*singsblad*” and in the publication issued by the Patent Office, with notification that the documents may be collected at the office of the court. In such cases, the provisions of Section 181, fourth paragraph, of the Law Relating to the Courts of Justice shall be applicable. The time of notification in the publication of the Patent Office shall then replace the time when the notice was posted by the court.

Subject to reciprocity, the Government may decree that the stipulations of the first and second paragraphs shall not apply to a patentee domiciled in a specified foreign country, or who has an agent residing in that country, provided the agent is recorded in the patent register of that country and is authorized pursuant to the first paragraph of this Section. The writ or the notification shall then be served in accordance with the general provisions of Chapter IX of the Law Relating to the Courts of Justice.

#### Section 68

The fees to be paid according to this Law shall be prescribed by the Government. The Government shall also make the specific rules for the payment of the fees. With regard to annual fees, the Government may decree that one or more of the first patent years shall be exempt from fees. When the annual fees are revised, the Government may also, within the limitations of the provisions of Section 72, subsection (8), decree that the revised fees shall also apply to patents granted previously.

The Government shall also prescribe the fees payable for records made in the Register of Patents and for copies and certificates issued by the Patent Office.

#### Section 69

Further regulations regarding applications for patents, the examination of applications, the Register of Patents, the publication issued by the Patent Office, and regarding the practice of this Law in general, shall be issued by the Government. In this connection, it may be decided that the records in which the applications are entered, shall be available to the public.

The Government may decree that the Patent Office, on request by the patent authority of another country, may give the said authority information regarding the examination of an application filed in this country, and that the examination of the patent application as to novelty may take place at the appropriate authority of another country, or at an international institution.

The Government may also decree that an applicant for a patent in respect of an invention for which a patent application was previously filed in another country shall be required to show what the patent office in that country has communicated to him in regard to an examination of the patentability of the invention.

#### Section 70

If the country is in a state of war or war emergency, or in an ensuing crisis, the Government may decree that the right to an invention shall be surrendered to the State or to another party designated by the Government. Compen-

sation shall be paid for the rights thus surrendered. If an agreement regarding the compensation cannot be reached, the compensation shall be determined by a court of law.

If the rights in an invention pursuant to the first paragraph have been taken over by a person other than the State, and if he does not fulfill his obligations with regard to payment, the Government shall be obliged to pay the compensation immediately at the request of the person entitled thereto.

#### Section 71

A special law shall apply to inventions of importance to the defense of the country.

### NORWAY

#### Entry into Force and Transitional Provisions

#### Section 72

(1) This Law shall enter into force on January 1, 1968. Simultaneously, the Patent Law of July 2, 1910, with subsequent amendments, shall, within the limitations stated hereinafter under paragraphs (2) to (8), be repealed. Nevertheless, if an invention concerns food or medicines, a patent may not be granted for the product itself, but only for the process of manufacture, until otherwise decreed by the Government.

(2) The new Law shall also be applicable to patents which have been granted prior to the time of its entry into force or which will be granted on applications filed prior to that time unless the following provisions provide to the contrary.

The right relating to prior use pursuant to the provisions of Section 7 of the previous Law shall remain in force irrespective of whether the conditions pursuant to the provisions of Section 4 of the present Law have been met.

(3) A patent which has been granted or is being granted in accordance with the provisions of previous legislation, can only be invalidated in accordance with the provisions of that legislation.

(4) Any person who, at the time the new Law entered into force in this country, commercially exploited an invention in respect of which a patent could not be granted according to the provisions of Section 1 of the previous Patent Law, or who has undertaken substantial preparations for such exploitation, shall be entitled to continue the exploitation in accordance with the provisions of Section 4 of this Law, regardless of the fact that the exploitation of the invention or the preparations therefor were made after the filing of the application.

(5) If, prior to the entry into force of this Law, an invention has become available to the public in consequence of measures taken by the applicant or his predecessor in title, Section 2 of the previous Patent Law shall be applicable in deciding whether, for that reason, there is a hindrance to the grant of a patent, or whether a patent shall be declared invalid, provided that the application for a patent was filed before July 1, 1968.

(6) A patent application which is pending at the Patent Office at the time the new Law comes into force shall be

examined and resolved in accordance with the provisions of the previous legislation, provided it has been decided to lay the application open for public inspection in accordance with the provisions of Section 26 of the previous Patent Law.

(7) An application for a patent which was filed before the entry into force of the Law, shall not, irrespective of the provisions of Section 22, be made available to the public before six months after the entry into force of the Law, unless prior to that time the application was laid open for public inspection or the applicant requests that the application be made available to the public.

(8) In regard to the annual fee for a patent year starting prior to July 1, 1968, the provisions of the previous Patent Law shall apply. Annual fees for patents granted prior to September 1, 1953, shall also be stipulated in accordance with the provisions of the previous Patent Law.

## ALGERIA

### Order

Completing Order No. 66-57, of March 19, 1966,  
on Trademarks

(No. 67-223, of October 19, 1967)

#### Article 1

New applications filed at the record offices of Algerian courts between July 3, 1962, and March 24, 1966, shall be put in order on the basis of the provisions prescribed in the above-mentioned Order No. 66-57, of March 19, 1966, and shall be registered at the National Office of Industrial Property with effect from the date of filing at the record office.

#### Article 2

French trademarks which were in force in Algeria on July 3, 1962, and which were kept in force in pursuance of Article 40 of the above-mentioned Order No. 66-57, of March 19, 1966, shall be protected throughout the national territory from July 3, 1962, until the date of expiry of the term of protection in their country of origin.

#### Article 3

International trademarks which were in force in Algeria on July 3, 1962, and which, between March 24 and December 24, 1966, underwent formalities for keeping them in force and for renewal shall be protected for a period of 10 years calculated from the date of filing of the application for renewal.

The formalities for keeping a trademark in force are intended to protect them during the period running from July 3, 1962, to the date of filing of the application for renewal.

#### Article 4

Foreign trademarks in respect of which protection in the country of origin expired between July 3, 1962, and March 24, 1966, and which have been renewed in pursuance of Article 43

of the above-mentioned Order No. 66-57, of March 19, 1966, shall be protected for a period of 10 years reckoned from July 3, 1962.

#### Article 5

This Order shall be published in the *Journal officiel* of the Democratic and Popular Republic of Algeria.

## GENERAL STUDIES

### The New Nordic Patent Legislation

By G. BORGGÅRD, Director General, Patent Office, Stockholm

#### History

The idea of Nordic collaboration in the patent field can be traced back to the eighties when a Nordic meeting of jurists suggested the possibility of harmonized patent laws. At various times thereafter contacts were made for this purpose, but it was not until 1938 that actual negotiations were started. These negotiations were interrupted by the Second World War, but the results were anyway put to use by the introduction of a new Patent Law for Finland in 1943 and a revision of the Swedish Patent Law in 1944.

It should already be said in this connection that, from the end of the last century, it has been a tradition in the Nordic countries to try to reach harmonization whenever new legislation of more general importance is contemplated. Thus many major law reforms have been preceded by common preparatory deliberations. This has been especially true in the field of intellectual property, and recent laws in Denmark, Finland, Norway and Sweden on copyright, trademarks and family names are all the result of common preparatory work.

It is therefore only natural that this legislative cooperation should extend also to the patent field. However, patent legislation is special inasmuch as the constitution of patent rights is dependent on an administrative procedure that, as the patent system has developed, has become complicated and lengthy. All four countries have long been examining countries and have had the same difficulties as other examining countries in keeping up with the increasing number of applications. It was therefore realized that harmonization of patent legislation should lay the groundwork for common efforts in expediting the procedure necessary for obtaining patent rights. Legislation to that end needed to be harmonized not only with regard to general principles but also as to details.

The initiative for devising a scheme of practical collaboration between the Nordic Patent Offices was taken by the Nordic Council, an interparliamentary body created for the furtherance of Nordic cooperation. A common Nordic Com-

mittee presented an investigation on possible alternatives for patent collaboration in 1952. The solution recommended was called the Nordic application system, whereby an application for patents in all the Nordic countries could be filed in any one of the countries. The common application would result in a "bundle" of patents which thus were to be national patents in the separate countries. To prepare the legislative basis, national committees were established which, working in common, presented a preliminary report in 1962 and, having obtained the views of interested circles, a final one in 1963. Collaboration continued all the way through the preparation of the Government Bills and also in the parliamentary stage.

### General

The Nordic Patent Committees agreed on the following broad principles upon which their report was founded.

The existing Patent Laws in the four countries, which in most parts were of old date, should be replaced in their entirety by new laws which should take account of modern developments and be in step with recent international trends in patent legislation, taking full account of wider international harmonization efforts.

The Nordic patent application system should make it possible to retain the full examination system which was thought to offer the best guarantees of legal security both to the applicants and the general public.

The harmonization of the patent systems should not stop at law unification but be carried over to all stages of actual practice, that is, it should also extend to the adoption of common implementing regulations and Patent Office rules and be based on continuous close cooperation between the Patent Offices.

The new Laws, as adopted, give full expression to these main principles. It is not the purpose of this article to explain the new legislation in detail — for that the reader is referred to the actual texts of the Laws as published in this issue. I shall only mention certain main features which merit being discussed in an introduction of a more general nature.

### Main Points of Substantive Law

The legislation incorporates the solutions contained in the Council of Europe Convention of 1963 on the Unification of Certain Points of Substantive Law on Patents for Invention.

As far as the patentable field is concerned, there are thus — with the exceptions contained in Article 2 of the Convention — no restrictions other than are inherent in the fact that an invention shall apply to technology and be capable of industrial application (the word industrial being taken in its widest sense<sup>1</sup>). It must straight away be said, however, that it was felt that a transitional period was needed for the present exceptions from patentability of foods and medicines. This exception is therefore retained for the present, as appears from the transitional provisions, in such

a way that the Governments are empowered to remove them by decree. In the same manner the Danish Law also contains a temporary exception for the patenting of methods for producing foodstuffs.

The Laws also adhere to the principle of general or absolute novelty, that is, everything available to the public before the time of the filing of the application, or, in the case of priority, before the priority date, can be destructive of novelty, regardless of the way in which the material became available. The Laws further adopt the alternative solution in Article 4(3) of the European Convention of also including prior applications in the known art, as long as such applications will eventually be made public. This applies equally to an applicant's own prior applications. However, in this case, the applicant is given the possibility to file for a patent of addition as foreseen in the European Convention.

The right to obtain a patent is restricted to the inventor or his successor in title. Although a patent can be applied for not only by the inventor but also by his assignee, the latter has to prove his title to the invention before the Patent Office. The inventor must always be named in the application.

The legislation has re-evaluated the rights that should properly be apportioned to applicants and patentees as compared to the equally valid interests of competitors and the general public. Thus, it is recognized that long periods of secrecy represent a danger to industry as a whole. An early evaluation of what is already the subject of patents or patent applications is increasingly necessary for the planning of, and investment in, research and development. A balancing of applicants' interests and those of industry in general has therefore led the lawmakers to the conviction that patent applications — regardless of the stage of processing — should be available for inspection by anybody as early as possible. To take account of the inventor's need to make improvements to inventions even after an application has been filed, the time for making the application available has been set at 18 months from the filing of the priority date, respectively. Since the applicant cannot extend the period of secrecy by delaying proceedings, it is also hoped that this provision will be instrumental in speeding up the processing of applications.

There has been an increasing awareness of the importance to consumers that patent rights should not be used in such a manner as to monopolize markets to an extent not justified by the contribution implied in the invention as such. Thus, the legislators have not ruled out the possibility of applying existing legislation against restrictive business practices where patent rights are involved. There has been agreement, however, that protective actions by society should only be directed against such effects of the employment of the patent monopoly as may prove harmful, and not to the dissolution of the patent monopoly as such. In the Laws there is, therefore, no possibility of invalidating the patent for reasons of abuse. However, the possibilities of obtaining compulsory licenses have been extended to several more cases than that exclusively treated in the old Laws, that is, non-working of the invention (see Chapter VI of the texts of the Laws).

<sup>1</sup> In Denmark, where the word "industrial" is interpreted in a more limited sense especially in the agricultural field, the competent minister declared in Parliament that this practice might be upheld until the Nordic patent system has come into operation.

### The Explanatory Notes

Not only the texts of the Laws but also the intentions of the legislators, as accounted for in the explanatory notes, the motivations of the competent Ministers, and the debates of the Parliamentary Committees, will be of importance in practice. I therefore think it appropriate to indicate a few major points that are not evident from the texts.

It has appeared that the requirement for inventive step — in the new Laws expressed as a requirement for essential difference as compared to the known art — has often been applied more rigidly in the Courts than by Patent Offices. Industry has very strongly emphasized that the patent system, in order to function properly, must be reserved for inventions that represent real contributions to industrial progress. If solutions which are more or less obvious or are in line with what can be ordinarily expected of a person skilled in the art can be patented, the patent monopoly will be a hindrance rather than an aid to technical development. Furthermore, when the requirement for inventive step falls below a certain level, industry will be forced to file patent applications for any new advance, however routine, in order to safeguard themselves against patenting by others, thus unnecessarily overburdening the patent system. It is thought, also, that this problem of proliferation of patents is of special importance when seen in connection with the Nordic patent application system. That an invention, in order to be patentable, must represent an inventive step of real significance had therefore already been emphasized by the Committee and was further strongly insisted upon during the Parliamentary debates at the time of the acceptance of the Laws.

It was previously mentioned that chemical compounds as such are patentable according to the new legislation. However, opinions have varied among experts as to whether the scope of protection of such compounds should be unrelated to the purpose for which they were invented, that is, to the utility of the compound as found by the inventor. The prevailing opinion has been that, in analogy with patentability requirements in other fields, a patentable invention must be directed to the solution of a technical problem. Thus, a mere combination of mechanical parts can generally not be protected except in relation to the useful work it is designed to accomplish (for example, as a can-opener). Similarly, a chemical compound could be looked upon as an invention only in connection with its utility in specified fields. These fields should then be mentioned in the patent claims and the protection restricted thereto. The finding of utility for the same compound in another field could constitute a patentable invention in itself. A patent for such invention, directed to a novel use, would then be independent of the patent given for the compound, for example, a patent granted for the protection of nitroglycerine in the field of explosives would not prevent the granting of an independent patent for nitroglycerine as a medicine against heart disease. It should be pointed out that this solution is different from the one presented by the Committees, who proposed patenting of chemical compounds without any restrictions. In their comments on this solution, the Ministers

in charge of the Bills pronounced that the limitation to technical fields need not be too narrow; the one who invented the compound and proved its utility should be allowed a reasonable margin of protection. If several different fields of utility were specified this should not, by itself, constitute lack of unity of invention.

Except for stating the requirement of unity of invention, the Laws themselves do not further elaborate on this question. Being considered of interest mainly from the view of facilitating examination and from the fiscal point of view, the requirements with regard to unity of invention are more fully treated in the implementing regulations. Generally, patent claims in Nordic practice follow the principle of hierarcbic structure, that is, the first or main claim defines the invention in its broadest concept and the following claims narrow the scope of the invention by the addition of further characterizing features. Besides these claims, however, further claims may be added that are of a different category from the main claim — process instead of product, etc. — which in principle can be said to enjoy an independent protection. The implementing regulations rather strictly confine the allowance of such independent claims. Thus, if the main claim, for example, refers to a product, only one independent claim for a process to manufacture the product is allowed. Further claims, restricting the scope of that claim, may of course be entered as dependent claims. The reason for this is obviously one of confinement of the search needed in the processing of one and the same application.

The applicant is, of course, allowed to divide an application lacking in unity of invention. It should be observed that, due to special provisions in the Laws, his prior application will not become a novelty hindrance to the divisional application. Further, Section 2 of the Laws provides that applications filed on the same day cannot constitute novelty hindrance relative to each other. If it is necessary, to conform with the rules on unity of invention, an applicant can therefore on the same day file several applications, even if the descriptive matter in support of the claims is more or less common to the several applications.

### The Nordic Application System

As previously emphasized, the primary task of the new legislation was to create a foundation for a common system for examination and grant of patents in the Nordic countries. The legal framework is contained in Chapter III of the new Laws. A Nordic patent application can either be made for all four countries or, alternatively, for any three of the countries, including of course the country where the application is filed. In the country where the application is filed, it is examined and decided upon in the same manner as a national application for that country only. The possibility of filing national applications is maintained besides the Nordic application system. A Nordic patent application shall be in the language of the country of filing. As to the granting procedure, no translation between Danish, Norwegian and Swedish is required. Thus a Swedish patent resulting from a Nordic patent application filed in Denmark will be

in the Danish language. An exception was only necessary with regard to Finland, since Finnish is generally not understood in the other countries, and since the larger part of the Finnish population does not understand Swedish — the other legally recognized language in Finland — well. If a Nordic patent application that includes Finland is filed in Denmark, Norway or Sweden, a Finnish translation must be submitted before the patent application can be accepted for public inspection. If a Nordic patent application is filed in Finland, it is required that it be presented in both Finnish and Swedish. For further details on the Nordic application system, I refer to the texts of the Laws themselves.

It has been estimated that the work-sharing involved in the Nordic system could save up to 30% of the total work of examination as compared to the situation where the work is done separately in the various countries.

It should be mentioned that, besides the Nordic system, the new Laws authorize cooperation on a wider international scale, for example by the exchange of search results, or using examination results of other countries or international institutions (cf. the PCT Plan).

#### Unification of Practice

Even though the Nordic application system forms part of the Laws as accepted by the Parliaments, the system will not come into force until a definite agreement has been reached between the Governments of the four countries. It was thought, however, that prior to the implementation of the system, further guarantees should be given that actual practice in the granting of patents will be the same in all the Offices involved. In particular, a common Board of Appeal should be established. Work was immediately started on investigating this question, and Nordic Committees, in March of this year, presented a common report that sets out in detail the functions and organization of a common Board of Appeal. The Board would be the third and final instance for the grant of patents to which appeals could be taken from the national Boards of Appeal. The Board would have competence for Nordic as well as national applications. It would consist of highly qualified legal and technical experts.

The work in harmonizing actual practice in the application of the new Laws is already now being conducted on all levels of patent administration. Thus the heads of the Nordic Patent Offices, with their assistants, meet regularly to discuss any matters of importance referring especially to rules of practice in the Patent Offices. Whenever problems arise in special fields, the persons in the various Offices responsible for these operations meet to iron out any difficulties. A special contact group, consisting of the heads of the patent examining operations and their legal assistants, has been formed to coordinate all activities in this respect. Annual meetings are held with larger groups of examiners to allow common discussions of problems that have arisen in practice.

#### Conclusion

In conclusion, I may therefore state that the groundwork for the introduction of the Nordic Patent System is now laid, both with regard to the legal prerequisites and on the

practical level, and that in view of the amalgamation already achieved there is every expectation that the system will work successfully. The Nordic system also includes provisions for the distribution of applications to ensure that each Patent Office will receive the number of applications corresponding to its capacity. In fact, with the acceptance of the system, the Nordic Patent Offices may for all practical purposes be considered as branches of one organization with a greatly increased capacity and thus, in effect, as one examining unit. We hope thereby to be in a better position to contribute not only to the solution of our own internal problems but also to the improvement of the patent system on a wider international scale.

## Draft for Nordic Legislation on Unfair Competition

By Hans BERGQVIST, Justice of the Court of Appeal, Vällingsby

#### Introduction

The view that free, substantially unrestricted competition in trade, industry and commerce is the best means of ensuring economic progress has been characteristic of trade policy in the Nordic countries — Denmark, Finland, Norway and Sweden — ever since the end of the Second World War. In legislation, this view has found expression in the adoption, in all of these countries, of new or amended laws whose purpose it has been to prevent such restrictions on competition as have been deemed injurious from the standpoint of public interest. There are considerable differences among these laws, but their common purpose is to promote effective competition in trade, industry and commerce. Representatives of the authorities administering these laws meet regularly to compare the results of the experience they have gained.

After the laws for the prevention of restrictions on competition were enacted, it was found highly desirable also to revise the legislation on unfair competition. The laws now in force in the Nordic countries all date from the 1920s and 1930s and are regarded — particularly in the light of partially new views that have arisen on competition in trade, industry and commerce — as antiquated. Moreover, the four laws are quite different from one another both as to form and as to substance. This has been considered a disadvantage, as the tariff barriers between the Nordic countries have been demolished within the framework of the EFTA and FINEFTA agreements, and the exchange of goods and services has greatly increased. With the gradual transformation of the Nordic countries into a common market, the conditions in which competition is conducted within them should be coordinated as far as possible.

During the last few years, legislative Committees in the four Nordic countries have been working in close cooperation on the drafting of new laws for the repression of unfair

competition. As the result of their work, we now have four drafts for new laws — uniform in all their essential particulars — which were published in Denmark in April 1966, in Finland in November 1967, in Norway in October 1966 and in Sweden in January 1967. The reason why no common draft was submitted is due mainly to the existence of certain differences in fundamental questions relating to penal law and the rules of court procedure. It is considered, however, that the most important objective has been attained by the large measure of agreement achieved among the drafts as far as substantive law is concerned.

The new draft laws are based on the assumption that, in principle, the choice of the means of competition should be free. The relatively restricted purpose of legislation on unfair competition is to ensure the possibility of recourse to legal action in order to repress misleading, fraudulent, dishonest and other — from the standpoint of public interest — unfair methods of competition. Such legislation is viewed as a necessary complement to those laws whose purpose it is to promote effective competition in trade, industry and commerce.

Another guiding principle behind the work carried on in connection with the drawing up of the new draft laws was the theory that legislation on unfair competition should protect the interests both of the consumers and of trade, industry and commerce. As a rule, this does not involve any conflict of interest, especially as far as advertising and marketing are concerned. It is in the interest both of the consumers and of trade, industry and commerce that misleading advertising and dishonest marketing methods should be repressed.

The first provision in the four draft laws is a so-called general clause — a rather vague provision which German jurists refer to as "*Generalklausel*" and which is sometimes termed "*standard juridique*" in French law. Following this, all of the drafts contain special provisions directed against certain specific kinds of unfair competitive activity, namely misleading advertising, industrial espionage, and the misuse of trade secrets, technical prototypes or designs, and technical directions. The Finnish, Norwegian and Swedish drafts also contain a provision against bribery and the acceptance of bribes in the course of industrial or commercial activity. There is no corresponding provision in the Danish draft, because of the fact that Danish penal law already contains a provision fulfilling the same function. In regard to the fundamental provisions set out above, the drafts are thus very similar. With respect to the more peripheral provisions, there are certain differences among the drafts, although these are partly of a formal nature. A more detailed account of these differences is given below.

Sections 1 to 7 of the Danish draft, 1 and 6 of the Finnish draft, 1 to 8 of the Norwegian draft and 1 to 5 of the Swedish draft, which contain the proposed substantive regulations, appear in translation in the annex to this article. Sections 2 to 5 of the Finnish draft are, except for some minor differences mentioned below, identical with the Swedish draft.

All four drafts conclude with regulations concerning the consequences of violations of the law, the right to take legal action, etc. These regulations are not included in the annex, but are broadly described in the text below.

#### General Clause

The present Danish, Finnish and Norwegian laws on unfair competition contain — as, for example, do the corresponding German and Austrian laws — a general clause (*Generalklausel*) prohibiting the performance of any activities, in trade, industry and commerce, which conflict with sound business practice. The Danish, Finnish and Norwegian drafts retain this general clause essentially unaltered, with only minor changes in the formulation employed.

Unlike the laws of the other Nordic countries, the present Swedish law does not contain a *Generalklausel*. Investigation of the question of complementing the law in this respect made up an important part of the work of the Swedish Committee entrusted with drafting the new law. In studying this question, the Committee based itself on the principle that a general clause against unfair competition must, of course, not be used in such a way as to obstruct efforts to promote effective competition. It was also emphasized that the general clause should serve the interests not only of trade, industry and commerce but also those of the consumers. The results of the Swedish Committee's deliberations were the proposal of a general clause whose formulation differs from those of the three other drafts. The intention of the formulation is to stress that it will not be possible, under the provision, to attack any acts of competition except dishonest ones and that, in the implementation of the clause, the interests of the consumers should also be taken into account.

It is evident from the interpretative comments attached to the four drafts that the Swedish Committee takes a view which differs somewhat from that of the others as regards the scope and applicability of the proposed general clause. The Danish, Finnish and Norwegian general clauses are used as a complement to the provisions relating to specific acts. The Swedish Committee, on the other hand, emphasizes that the general clause should be used only for cases of unfair competition of a type differing from those covered by the special provisions. In the opinion of the Swedish Committee, the competitive activities against which it should be possible to take steps by virtue of the general clause are dishonest marketing methods, for instance methods which involve an unfair exploitation of the public's credulity or ignorance, methods which expose the public to the seller's arbitrariness, or methods which involve a substantial element of chance. The Swedish Committee mentions the following examples of such methods: combined offers or supplementary offers which give the public a grossly erroneous idea of the advantageousness of the offer; "trading-stamp" systems which do not give the consumers any possibility of judging the value of the benefits offered to them; prize contests which are clearly difficult to supervise satisfactorily or in which the value of the stakes depends largely on chance; "gift distri-

butions" for advertising purposes, arranged in such a way that the public receives a false impression of the chances of receiving a "gift"; the so-called "negative sales method", whereby unsolicited goods are sent to ordinary consumers, with whom a firm has not had previous business relations, who are told that the goods will be charged to them unless returned within a certain period of time. This last method is considered dishonest by the Swedish Committee because it is calculated to give the consumers the false idea that they are legally liable to pay for the goods. The Swedish Committee points out, in connection with this exemplification, that the general clause may only be used to repress methods of competition the dishonesty of which is beyond doubt and that freedom of choice among various honest methods of business must not be reduced by legislation on unfair competition.

The Danish, Finnish and Norwegian general clauses are often relied upon in the investigation of questions relating to what is termed the "slavish imitation" of others' products. The Swedish Committee points out, however, that questions of slavish imitation should be dealt with within the framework of the laws regulating special exclusive rights, i. e. laws on patents, designs, copyright, trademarks and trade names.

The legal sanction for violation of the general clause is, according to all four drafts, a court injunction on the performance of the competitive activity. As a provisional remedy, the courts may pronounce an injunction with immediate effect. In such a case, however, the person claiming such immediate injunction must put up adequate security for any loss or harm which may be suffered by the person affected by the injunction. Violation of the general clause may, according to the Danish, Finnish and Norwegian drafts, involve a liability to pay damages. According to the Swedish draft, damages in such cases cannot be awarded until the injunction pronounced by the court has been disobeyed.

#### Misleading Advertising and the Like

From the practical point of view, the most important provision in the four draft laws is the one in Section 2 on advertising.

The requirement laid down in the Nordic drafts is that all advertising and all other commercial descriptions or statements must be accurate. This principle is expressed in the text of the drafts by the rule that it is not permitted to use false or misleading descriptions or statements that are calculated to influence the demand for a commodity, service or other utility. The requirement of accuracy applies not only to written and oral advertising intended for a large number of persons, but also to any other statements or descriptions made for selling purposes, for example, those made orally by the vendor when talking to the customer or those made in sales letters addressed personally to the possible purchaser.

The normal purpose of advertising is to create a favorable impression of the advertiser's own enterprise or of the goods or services it supplies. But it is also possible to promote the sale of one's own products by creating an unfavorable impression of competing enterprises or their goods or ser-

vices. The drafts are therefore applicable to inaccurate advertising and to other false or misleading commercial descriptions or statements, regardless of whether they apply to the advertiser's own enterprise and his own products or to those of others.

The fact that such a uniform stipulation is made with respect to accuracy is of particular importance for the evaluation of advertising in which comparisons are made. The question whether it should be permissible to make comparisons in advertising has been much debated. In Germany, it is considered that direct comparisons with identifiable competing goods are contrary, in principle, to sound business practice, whereas certain other types of comparisons are regarded as permissible. In the Anglo-Saxon countries, on the other hand, a liberal attitude towards comparisons in advertising is traditional. The question is dealt with thoroughly in the Swedish interpretative comments on the new draft. It is pointed out that, as the purpose of advertising is to promote the sale of the advertiser's own products, there is a risk that the requirement for accuracy will be disregarded to the extent that the characteristics which can be cited in favor of the advertiser's own commodity or service will be accentuated at the expense of the characteristics which can be cited in favor of the competitor's commodity or service. On the other hand, it is stressed that correctly made comparisons are an excellent means of giving information to the customer and that they thus help to provide a basis on which he can make a satisfactory selection among the goods available to him. The Nordic drafts reflect the view that all types of comparison in advertising are permissible but that the comparisons must be based on the principle of accuracy. This implies that the information given must be correct and further that the comparison must be representative, i. e. that it must give a fair overall picture of whatever is being compared.

The suggested provision refers not only to advertising and other descriptions or statements which are sent "on", as it were, in the direction of the goods, that is to sellers representing later links in the marketing chain and to consumers; it also applies to descriptions or statements addressed "back" to earlier sellers and suppliers, in other words to all those supplying raw materials, labor, credits, premises and other utilities. This is expressed in somewhat varying ways in the different draft laws. The Finnish and Swedish drafts state that industrialists and traders may not use false or misleading descriptions or statements that are calculated to affect the offer or supply of a commodity, service or other utility. The Danish and Norwegian drafts speak instead of prohibiting descriptions or statements which are otherwise calculated to promote or to injure anyone's industrial or commercial activity. The fact that varying methods of expression have been chosen is due to certain differences in the legal systems concerned. No substantive difference is intended.

A few other types of descriptions or statements which, it has been thought, should be forbidden are dealt with in the second paragraph of Section 2 of the Danish, Norwegian and Swedish drafts. These primarily concern descriptions

or statements which, because of their formulation, are unfair to another industrialist or trader. The purpose is not to prevent an industrialist or trader from giving correct information that is detrimental to other industrialists or traders. It should, for example, be possible for information to be given regarding the inadequate serviceability of a competing product without running the risk of legal sanction. Likewise, it should be permissible to warn the public, in an acceptable manner, that a competitor has shown, in his business activities, that he lacks the will or the capacity to fulfill his obligations satisfactorily. It has, however, been deemed to be in the public interest that it should be possible to repress descriptions or statements which are offensive, insulting, harmful or otherwise unfair in their formulation and which are calculated to affect the sale of goods and services. According to the drafts, the other type of descriptions or statements against which it should be possible to take action are those which, because they refer to irrelevant circumstances, are unfair to competitors. What the draft laws have in mind here is the publicizing of information regarding the race, religion, political opinions, etc. of a competitor; such information is quite irrelevant to his industrial or commercial activities but may nevertheless influence the inclination of consumers or others to do business with him. It was deemed to be in the public interest to seek to check the exploitation of existing aversions and prejudices of this kind for the purposes of competition. The Finnish draft law contains no such regulation. It was the view of the Finnish Committee that such unfair descriptions or statements, occurring as they do relatively rarely, can be prohibited by virtue of the general clause.

In cases of violation of the provision relating to misleading advertising, etc., the normal sanction according to the draft laws is a court injunction; in urgent cases, and provided that security is put up for loss or harm, it would be possible for the injunction to be pronounced with immediate effect. It would also be possible to obtain an injunction even if the person responsible for the advertising or for the description or statement had acted in good faith. The normal sanction for deliberate violation of Section 2 is a fine. On this point, there is a difference between the Danish, Finnish and Norwegian drafts on the one hand and the Swedish draft on the other: according to the former, damages can be awarded as soon as Section 2 has been violated, while, according to the latter, no damages can be awarded unless someone has violated a court injunction or has become guilty of a criminal offense.

#### Industrial Espionage and the Misuse of Trade Secrets and the Like

The interpretation given to the term "trade secret" has not been defined in any of the Nordic draft laws. The interpretative comments of the Swedish draft say that a trade secret is incorporeal knowledge which is probably most frequently materialized in the form of some object or some action but which can also exist merely as a memory or an experience in certain persons. According to the Swedish interpreta-

tive comments, a trade secret within the meaning of the drafts does not exist unless the knowledge it involves is confined to a certain enterprise or enterprises and is not generally known or is not known to many outside parties; lastly, its concealment must be of essential importance to the commercial or industrial activity of the enterprise. The trade secret may be of either a technical or a commercial nature or may contain both technical and commercial elements.

The normal legal consequences of a violation of the provisions relating to trade secrets and the like, according to a provision contained in the final part of the draft laws, are penal sanctions; according to the Finnish and Swedish drafts, it is impossible to have a court injunction pronounced in such cases. Activities involving penal sanctions also constitute grounds for the award of damages.

The first paragraph of Section 3 of all of the draft laws deals with what has been termed "industrial espionage". Anyone — an employee or an outside party — can be prosecuted if he improperly gains access to a trade secret or tries to do so. (For technical reasons, the regulation relating to attempted espionage has been included in the final part of the Swedish draft.) Examples of improper methods of gaining access to a trade secret are: entering the premises without permission and photographing secret documents there; recording secret conferences on hidden tape-recorders; taking photographs with a concealed microcamera during a study visit when photographing has been prohibited, etc. Modern techniques in telecommunications and photography offer an abundant variety of aids to improper procedures in this field. The Finnish and Swedish draft laws also expressly state that a person who has improperly gained access to a trade secret must not use or divulge it. The addition appears to be of importance with respect to the question of statutory limitation.

In the second paragraph of Section 3, the responsibility prescribed in the first paragraph is extended as regards employees or those who, although not employees, carry out assignments for industrialists or traders. They are liable to penal sanction if, without due authorization, they use or divulge any trade secret of an employer or principal, even if they have not gained access to it in an improper manner. This rule applies also, according to the Danish and Norwegian drafts, to industrialists or traders who collaborate with the enterprise whose secrets have been divulged.

In Section 4 of the draft laws, there is a provision regarding the misuse of technical prototypes or designs, or of technical directions. This refers to objects of which, or on the basis of which, copies or imitations can be made, or on which technical work can be carried out. In principle, such prototypes or designs or directions are not secret, but they may embody trade secrets. Before it is possible for action to be taken against misuse, the technical prototype or design or the technical directions must have been entrusted to someone — an employee or an outside party — for work to be carried out or for business purposes. According to the draft laws, anyone entrusted with the prototype or design, or with

the directions, who uses them improperly or who informs another person of them may be punished.

The responsibility for the misuse of a trade secret, technical prototype or design, or technical directions, applies also, according to the third paragraph of Section 3 and the second paragraph of Section 4, to a third party who has come into possession of such trade secret, prototype or design, or directions, through previously committed industrial espionage or breach of confidence, and who was acting in bad faith when he gained access to the trade secret.

A much discussed question was whether the criminal liability of employees and acceptors of assignments for the use of trade secrets of which they gained knowledge in a proper manner during the course of their work for the owner of the secrets should be restricted to the period of employment or the period of carrying out the assignment, or whether such criminal liability should be extended to the period thereafter. The following arguments have been adduced, *inter alia*, against the extension of such criminal liability. The term "trade secret" is one of which it is difficult to form a concrete, intelligible idea and one which is hard to define, and it is hazardous to try to differentiate between trade secrets on the one hand, and occupational or professional experience, skill and vocational proficiency on the other. It may be difficult for the employee or acceptor of an assignment to know what he may or may not use of his knowledge in a new appointment or in an assignment for another employer. This may cause the person concerned to restrict himself in using his knowledge in a way that is undesirable from the standpoint of public interest. Moreover, in general, very few employees and acceptors of assignments acquire knowledge of trade secrets. If criminal liability is extended to include the few who have access to actual secrets, a situation of uncertainty is created at the same time for the many who, for good reasons, cannot distinguish between what is secret and what is not. It must further be taken into account that the time during which trade secrets retain their interest varies greatly, and therefore any fixing of a specific period of criminal liability after the end of the period of employment or assignment — and everyone is agreed that there must be a time limit on such liability — will become irrational and may make it difficult to find solutions that could otherwise be reached by contract. Trade secrets can be protected in a more practical and realistic way by means of individual contracts between the parties. The principal argument adduced in support of an extension of criminal liability is that the danger that trade secrets will be revealed is greatest precisely when an employment or an assignment ends, and that it is therefore unreasonable that criminal liability should cease at just that time. The solutions adopted as a result of the deliberations are not identical: according to the Danish and Norwegian drafts, criminal liability for use of the trade secrets concerned — *i. e.*, secrets which have not been acquired improperly and which were not embodied in entrusted technical prototypes or designs or in technical directions — has been extended to one year after the end of the period of employment or assignment; this extension is not included in the Finnish and Swedish texts.

In the Swedish Committee, however, a substantial minority has associated itself with the Danish-Norwegian solution.

### Bribery in Industry and Trade and the Like

According to Section 5 of the Finnish and Swedish drafts as well as the final clauses relating to sanctions in these two draft laws, it is a criminal offense to give, promise or offer a bribe or other improper benefit to anyone who is employed by or who fulfills an assignment for an industrial or commercial enterprise if such bribe or benefit is calculated to induce the recipient, in the course of his service or in the fulfillment of an assignment, to favor the briber or another party. A person who is employed by or who fulfills an assignment for an enterprise is liable to penal sanctions if he receives, allows himself to be promised or requests a bribe or other improper benefit that is calculated to induce him, in the course of his service or in the fulfillment of an assignment, to favor the briber or another party. Likewise regarded as equivalent to a bribe or other such improper benefit are gifts received subsequently and constituting improper rewards for the fact that the recipient, in the course of his service, has favored the briber or another party.

The Norwegian Section 5 is formulated rather differently. It explicitly provides that the above actions are prohibited only if they occur without the knowledge of the recipient's principal, and only if the gift or benefit is intended and calculated to procure an unjustified benefit for the giver or anyone else. However, according to the Finnish and Swedish drafts as well, these circumstances are to be taken into account in appraising the question whether bribery or the acceptance of a bribe exists. There is, therefore, hardly any substantive difference between these three drafts.

The fact that the Danish draft lacks a similar provision is due, as previously mentioned, to the prior existence in Danish penal law of a provision which has, in principle, the same function as the Finnish, Norwegian and Swedish texts to which reference has just been made. It is stipulated in the Danish Penal Code (Section 299, No. 2) that the following are liable to penal sanctions: (a) the person who, when in charge of the property affairs of another person, receives, requests or allows himself to be promised a pecuniary benefit the receipt of which is to be concealed from the person of whose property affairs he is in charge; and (b) anyone who gives, promises or offers such a benefit.

### Other Substantive Provisions

#### *Discount stamps*

Section 6 of the Danish draft contains a provision regarding discount stamps which closely resembles the British Trading Stamps Act of 1965. It is stipulated in the Danish draft that, if an industrialist or trader, in the marketing of goods or services, gives a discount or other benefit in the form of stamps, coupons or the like which are to be redeemed at a later date, the stamps are to be marked with the issuer's name or trade name and with the value in Danish currency. It is also stipulated that an issuer of discount stamps must redeem them at the stated value when stamps for a total

value to be fixed by the Minister of Commerce are presented for that purpose. The Danish Committee considers that it should be possible to cash in stamps when they reach a value of five Danish Kroner. Violation of the regulation can entail a court injunction or the imposition of a fine.

According to the Norwegian draft, discount stamps that are not redeemable solely in the form of cash are entirely prohibited (Section 6; see below under "Gifts"). The opinion of the majority of the Swedish Committee is that an industrialist or trader must be deemed to be exploiting the credulity of the public if he issues discount stamps which do not fulfill the requirements of Section 5 of the Danish draft, and that it ought therefore to be possible to forbid the use of such a discount-stamp system by virtue of the general clause. However, some members of the Swedish Committee wished to have a special provision entirely prohibiting the use of trading stamps. The proposed Finnish general clause would probably suffice as the legal basis to secure a court injunction against dishonest trading-stamp systems.

Opinions on discount stamps are thus fairly uniform in the four Nordic countries, but the legislative treatment of them varies in the draft laws.

#### Marks and Other Trade Symbols

In all the Nordic countries, misuse of marks and other trade symbols is dealt with primarily within the framework of the special laws on trademarks and trade names. However, in the present Danish law on unfair competition, there is a supplementary provision which fills the lacunae of the special laws and which the Danish Committee has considered it necessary to retain (first paragraph of Section 7). The other Committees have not found such a provision necessary; reference is made, instead, in the interpretative comments attached to the respective drafts, to the special laws and — as far as Finland and Norway are concerned — to the general clause. The difference between the drafts with respect to this part may be regarded as being merely of a technical nature.

The Danish draft further contains a provision prohibiting the use of reproductions of the Danish flag or of representations of the Danish Royal Family on goods of foreign origin (second paragraph of Section 7). In addition, the Danish draft takes up a provision appearing in present Danish law authorizing the Minister of Commerce to order that certain kinds of marked wrappers may be used only for certain kinds of goods. The legal consequences of a violation of Section 7 or of regulations issued under Section 7 are a court injunction or the imposition of a fine. None of the other Committees has found it necessary to propose similar regulations.

#### "Gifts"

The present Nordic laws on unfair competition all contain provisions prohibiting certain kinds of "gifts" in connection with the marketing of goods. Of the drafts, however, only the Norwegian one retains a provision to that effect (Section 6). According to this provision, it is prohibited in retail trade to present or offer a "gift" unless it is of the

same kind as the main commodity or can be regarded as an accessory to the main commodity or is a service having a reasonable and natural connection with the main commodity. A "gift" is defined in the Norwegian draft as something that is given on the condition that goods are purchased. A "gift" is also deemed to exist when a particularly low price is offered for an additional commodity or service. A discount or refund on a purchase is not held to be a "gift", nor are coupons and the like if they are redeemable only in cash. If a sample of a commodity other than the main commodity is packed together with the main commodity, the sample is not regarded as a "gift" unless the purpose is manifestly to influence the sale of the main commodity. Action contrary to this provision renders the offender liable to a court injunction or penal sanction.

The interpretative comments on the Swedish draft state that certain additional offers may be held to constitute an exploitation of the public's credulity and that, in such cases, it should be possible to prohibit them by virtue of the general clause. It would also probably be possible to use the proposed Danish and Finnish general clauses in a similar way. However, where "gifts" are concerned there are substantive differences between the various Nordic drafts, since the prohibition in the Norwegian draft has a wider range of application. In the Danish and Swedish Committees, there were supporters of the view that the drafts should all be provided with a general prohibition similar to the one in the Norwegian draft.

#### Lotteries for Purposes of Sales Promotion

In Sweden a general lottery law is in force according to which governmental permission is required for the organization of lotteries unless they are for charitable or similar purposes. This means, in practice, that it is not possible to use lotteries as a method of marketing goods or services.

The other Nordic countries have no lottery laws having such a general range of application. But the Norwegian draft for a law on unfair competition contains a provision according to which the drawing of lots or other random distribution of goods, services or other utilities to consumers would not be permitted if participation were subject to the purchase of a commodity or utility (Section 7). And, in the Finnish draft it is stipulated that no one, in the course of an industrial or commercial activity, may give or promise a benefit the receipt of which depends on chance if the possibility of receiving the benefit is contingent upon the making of a payment or the giving of remuneration in another way (Section 6). As originally published, the Danish draft did not contain any prohibition on lotteries, but a provision similar to the one in the Norwegian draft, Section 5, was later added to it.

In all of the Nordic countries, therefore, if the drafts become laws, it will be a criminal offense to market goods with the aid of lotteries.

#### Sales

The present Danish, Finnish and Norwegian laws on unfair competition — but not the corresponding Swedish law

— contain very detailed regulations as to the times when seasonal sales may be held and the conditions under which clearance sales may otherwise be held. None of the drafts retains these rules, but several members of the Danish and Norwegian Committees considered that they should be kept in force.

In the Norwegian draft, however, there is a provision directly referring to sales (Section 8). According to this provision, announcements or other notifications regarding sales at reduced prices may be made only when the prices of the goods offered have really been reduced. Certain regulations are also laid down as to the way in which the clearance sale is to be organized.

The Danish, Finnish and Swedish Committees did not wish to formulate such a provision. The reason for their attitude was that they considered that false or misleading offers in connection with sales could be more suitably combated by invoking the proposed general regulations against misleading advertising (Section 2).

According to all four proposals, therefore, it is permissible in principle to hold seasonal clearance sales at any time of the year and to organize other sales for any reason. All advertising in connection with sales must, however, be accurate, like all other advertising.

#### Self-discipline

In Finland, Norway and Sweden there are special business practice councils, established by trade, industry and commerce, whose task it is to ascertain whether steps taken for advertising purposes or other competitive activities in the course of trade are compatible with sound business practice. In Finland a single council acts for the entire country and is composed of representatives of various sectors of trade, industry and commerce. In Norway there are several councils, three of which exert influence outside the particular sectors with which they are concerned. The Swedish Council on Business Practice (*Näringslivet's Opinionsnämnd*) has acted for the whole country since 1957; it is now composed not only of representatives of all sectors of trade, industry and commerce, but also of representatives of the consumers, appointed by the consumers' and employees' organizations. The Finnish and Swedish, as well as a few of the Norwegian, councils collaborate with one another.

The Danish and Norwegian Committees which prepared the drafts for laws on unfair competition suggest that nationwide business practice councils should be established in their countries with the same broad foundations in trade, industry and commerce and among consumers as that of the Swedish Council on Business Practice.

When investigating the advertising submitted to them, the councils in Finland and Sweden, and also a few in Norway, apply the International Chamber of Commerce Code of Advertising Practice. Since it is more common to have advertising reviewed before a business practice council in these countries than to hold a court inquiry, the self-disciplinary standards, manifested primarily in the ICC Code, have acquired a status of great importance. This is particularly true in Sweden, where self-discipline, as it has de-

veloped in the statements of the Council on Business Practice, has had a strong impact on the ethics of competition and advertising.

The new ICC Code of Advertising Practice, accepted by the Council of the Chamber in November 1966, is based — like the Nordic draft laws on unfair competition — on the view that a free market economy featuring competition promotes progress more effectively than other economic systems do, but that in a modern market economy there is, at the same time, a necessity for certain safeguards against abuse. The aim of the Code, and also of the draft laws, is thus to repress forms of advertising which are dishonest or otherwise unfair. The Code and the draft laws thus harmonize well with each other.

If, in accordance with the proposals of the Committees, similarly organized nationwide business practice councils are set up in all of the Nordic countries, and if they all apply the ICC Code of Advertising Practice, it will be possible to achieve wider collaboration between them and to establish uniform extralegal practice and perhaps — in the long run — legal practice as well.

#### ANNEX

### PARALLEL NORDIC DRAFTS FOR LAWS ON UNFAIR COMPETITION

#### DENMARK

##### *General Clause*

##### Section 1

No action that is contrary to sound business practice may be taken in trade, industry or commerce.

##### *Misleading Advertising and the Like*

##### Section 2

1. An industrialist or trader may not use false or misleading presentations which are calculated to influence the demand for any goods or services or which in any other way are calculated to promote or injure the industrial or commercial activities of any person.

2. The rule in the first paragraph of this Section shall also apply to presentations which, because of their form or because they concern irrelevant facts or circumstances, are unfair to other industrialists or traders.

3. The provisions of the first and second paragraphs of this Section shall likewise be applicable to persons who are employed by industrialists or traders and to associations and organizations which administer the interest of industrialists, traders or consumers.

##### *Trade Secrets*

##### Section 3

1. It shall be forbidden improperly to acquire knowledge of or access to trade secrets, or to attempt to acquire such knowledge or access.

2. A person who, in the course of employment, in circumstances of collaboration, or during the performance of

an assignment, has acquired knowledge of or has obtained access to trade secrets may not, without due authorization, divulge or make use of such trade secrets.

3. An industrialist or trader may not make use of a trade secret if he is aware that knowledge of it or access to it has been obtained in a manner that is contrary to the provisions of the first or second paragraphs of this Section.

#### *Technical Drawings and the Like*

##### Section 4

1. A person who, with a view to carrying out specific work or for industrial or trade purposes, has been entrusted with technical drawings, descriptions, designations, designs or the like, may not, without due authorization, make use of such materials or make it possible for other persons to do so.

2. The provisions of the third paragraph of Section 3 shall apply to this Section.

#### *Lotteries for Purposes of Advertisement*

##### Section 5

1. An industrialist or trader may not distribute prizes by the drawing of lots or by any similar arrangement if participation is subject to the acquisition by payment of a commodity or of a service.

2. However, the publisher of a periodical may organize the drawing of lots for the distribution of prizes in connection with the solving of prize competitions in which readers are invited to participate.

#### *Discount Stamps*

##### Section 6

If an industrialist or trader, in connection with the selling of goods or services, gives a discount or other benefit in the form of stamps, coupons and the like to be redeemed at a later date, the stamps shall be clearly marked with the issuer's name or trade name, and with the value in Danish currency. When requested to do so, the issuer shall redeem the stamps in Denmark for the sum representing their value, where the request relates to a total sum the amount of which shall be determined by the Minister of Commerce.

#### *Marks and Other Trade Symbols*

##### Section 7

1. An industrialist or trader may not make use of marks or other trade symbols to which he is not entitled, or use his own mark in a manner that is calculated to bring about confusion with those of other industrialists or traders.

2. Goods of foreign origin may not be sold or offered for sale if a reproduction or designation of the Danish flag or other national symbols or memorials is attached to or appears on the goods or their wrappers. This rule shall apply likewise to goods of foreign origin upon which or upon whose wrappers there appears, without due authorization, a portrait of the King or of the Royal Family.

3. After consulting the principal trade, industry, commerce, and consumer organizations concerned, the Minister

of Commerce may order restrictions on the purchase, sale and use of such articles of packaging or parts thereof as are, in a more particularly specific manner, either marked with the name or commercial symbol of a Danish enterprise, or marked to the effect that they are destined solely for goods of a particular kind. The Minister of Commerce may similarly prohibit the deliberate destruction of or damage to such articles.

## NORWAY

#### *General Regulation (General Clause)*

##### Section 1

No acts which are unfair according to sound business practice may be undertaken in trade, industry or commerce.

#### *Misleading Advertising and the Like*

##### Section 2

An industrialist or trader may not use any false or misleading presentation calculated to influence the demand for any goods, service or other utility or in any other way calculated to promote or injure the industrial or trade activities of anyone.

The provisions of the first paragraph of this Section shall apply likewise to a presentation that is unfair because of its form or because it concerns irrelevant facts.

The provisions of the first and second paragraphs of this Section shall apply correspondingly to anyone who is employed by an industrialist or trader or by an organization that is in charge of the interests of an industrialist or trader or that otherwise acts on behalf of an industrialist or trader or of such an organization.

The term "presentation" in this Law shall mean any form of communication or information expressed in speech or writing or in any other way, and shall include designations, pictures, demonstrations, and the form, size, arrangement, display etc. of wrappers.

#### *Trade Secrets*

##### Section 3

No one may improperly obtain or seek to obtain knowledge of or access to a trade secret.

A person who, in the course of service or collaboration in the fulfillment of a confidential assignment or in connection with an assignment, has acquired knowledge of or has had access to a trade secret may not, without due authorization, make use of such a secret or reveal it to others.

No one may, without due authorization, make use of a trade secret if he has obtained knowledge of or access to it by a violation of the provisions of the first and second paragraphs of this Section.

#### *Technical Drawings and the Like*

##### Section 4

A person who, in order to perform a task or for an industrial or commercial purpose, has been entrusted with technical drawings, descriptions, directions or formulas, designs or

the like may not, without due authorization, make use of them or make it possible for others to do so.

The provisions of the third paragraph of Section 3 shall apply to this Section.

*Gifts and Similar Benefits to the Employees of an Industrialist or Trader (Bribery)*

Section 5

It shall be prohibited to give or offer a gift or other benefit to anyone who is employed by an industrialist or trader or who acts on his behalf, if such a gift or other benefit is given or offered without the knowledge of the industrialist or trader and if the said gift or benefit is calculated and likely to provide the donor or anyone whom he wishes to favor with an unjustified advantage in connection with the performance of a service or with the sale of a commodity or other utility.

It shall be similarly prohibited for anyone who is employed by an industrialist or trader or who acts on his behalf to request or accept a gift or other benefit or a promise of such gift or benefit in circumstances such as those mentioned in the first paragraph of this Section.

The provisions of the first and second paragraphs of this Section shall also apply to anyone who gives or receives an improper reward for having obtained an unjustified advantage such as is mentioned in the first paragraph of this Section.

*Gifts in Retail Trade*

Section 6

No gift may be given or offered in retail trade unless it is of the same kind as the main commodity, may be held to be an accessory to it, or is a service performance having a reasonable and natural connection with it.

A "gift" in this Law shall mean an article or service that is given on the condition that goods are bought. A gift shall also be deemed to exist when an especially low price is set on such additional commodity, service or other utility.

Discounts and refunds on purchases shall not be deemed to be gifts, nor shall coupons and the like when they are redeemable only in the form of cash.

A gift shall also not be deemed to exist when a sample of a commodity other than the main commodity is packaged together with the latter, unless there is a manifest intention to influence the sale of the main commodity.

*Lotteries, Prize Distribution and the Like among Consumers*

Section 7

The drawing of lots or any other form of fortuitous distribution of goods, services or other utilities among consumers shall be prohibited if it is a condition of participation that a commodity or utility be purchased or ordered against payment.

Further, the provisions of the first sentence of the final paragraph of Section 10 of the Lotteries Act of May 12, 1939, shall correspondingly apply to the drawing of lots or to similar measures for the purposes of advertising.

*Sales*

Section 8

Public announcements or other notifications regarding clearance sales or other forms of sales at reduced prices in retail trade may be made only when the prices of the goods offered have actually been reduced.

If a sale such as is referred to in the first paragraph of this Section does not apply to the whole of the stock in trade of the business, the said sale shall be arranged in such a manner that customers can see which commodities are included in the said sale.

If the sale comprises defective goods or commodities of a lower quality, attention shall be drawn to this fact by means of marking, display and the like.

It shall be the obligation of everyone to give the police the information they require in order to check that the regulations in the preceding paragraph are being observed.

SWEDEN

*General Clause*

Section 1

No competitive activity may be undertaken in trade, industry and commerce, if honesty and sound business ethics with respect to consumers or other industrialists or traders are thereby disregarded.

Sections 2 to 5 prescribe special kinds of prohibited activities.

*Misleading Advertising and the Like*

Section 2

An industrialist or trader may not use any false or misleading presentation calculated to influence the demand for or the offer of any product, service or other utility.

Nor may an industrialist or trader use any presentation which, because of its formulation or because it refers to irrelevant facts, is unfair to any other industrialist or trader and is calculated to have an effect such as that mentioned in the first paragraph of this Section.

The provisions in the first and second paragraphs of this Section shall likewise apply to associations of industrialists and traders and to anyone who is employed by or who carries out an assignment for an industrial or commercial enterprise or such an association.

*Industrial Espionage and the Misuse of Trade Secrets and the Like*

Section 3

No one may improperly gain access to a trade secret. If anyone has improperly gained access to a trade secret, he may not use or divulge it.

Nor may an employee or a person fulfilling an assignment who has gained access to a trade secret in a proper manner use or divulge such trade secret without due authorization.

Where any person has gained access to a trade secret which he knows to have been obtained by a violation of the

provisions of the first or second paragraph of this Section, he may not, without due authorization, make use of or divulge such trade secret.

#### Section 4

An employee or other person who has been entrusted with a technical prototype or design or technical directions for the carrying out of work or for industrial or trade purposes may not, without due authorization, use such a prototype, design or directions or communicate them to another person.

Where any person has gained access to a technical prototype or design or to technical directions which he knows to have been obtained by a violation of the provisions of the first paragraph of this Section, he may not, without due authorization, use such a prototype, design or directions or communicate them to another person.

#### *Bribery in Industry and Trade and the Like*

#### Section 5

No one may give, promise or offer a bribe or other improper benefit to anyone who is employed by or who carries out an assignment for an industrialist or trader, such bribe or other improper benefit being calculated to induce the recipient, in the course of his service or in the fulfillment of his assignment, to favor the briber or any other person.

A person who is employed by or who carries out an assignment for an industrialist or trader may not receive, allow himself to be promised or request a bribe or other improper benefit that is calculated to induce him, in the course of his service or in the fulfillment of the said assignment, to favor the briber or any other person.

The provisions of the first and second paragraphs of this Section shall likewise apply to an improper reward for the fact that the recipient, in the course of his service or in the fulfillment of his assignment, has favored the briber or any other person.

### FINLAND

#### *General Clause*

#### Section 1

No activity contrary to sound business practice may be undertaken in trade, industry or commerce.

#### *Benefits Depending on Chance*

#### Section 6

No one may, in trade, industry or commerce, give or promise a benefit the receipt of which depends on the drawing of lots or otherwise on chance, if the possibility of receiving such a benefit is contingent on the making of a payment or the giving of remuneration in another way.

## News Concerning National Patent Offices

### Summary of the Annual Report of United States Patent Office for the Fiscal Year Ending June 30, 1967

#### Patent Examining Operations

During fiscal year 1967, 89,000 patent applications were filed, compared to 93,000 (a record) the previous year; 97,000 patent applications were disposed of as compared with 91,000 in fiscal year 1966. For the first three years of the Office's "streamlined examining program," an average of 97,000 disposals per year has been obtained, a figure far in excess of the annual average of 77,500 for the 10 years preceding commencement of the program. Disposals are expected to exceed 100,000 in fiscal year 1968. At year's end, the backlog of pending applications stood at 201,000 compared with 209,000 at the end of the previous year. The approximately 7 percent increase in disposals during the year was attained with no appreciable change in examiner staffing, the patent examining and classifying staff comprising a total of 1239 at the end of fiscal year 1967.

A number of steps were taken to speed the examining process including:

- the adoption of a new procedure for the submission of amendments to claims by applicants;
- the institution of a "quality audit program" for reviewing the quality of the examination of patent applications;
- the adoption of a new system for reporting examiner activities and workload inventories;
- the development of additional form letters for communication with applicants.

#### Patent Services

Significant progress was made during the year on the development of the microfilm patent copy document system. The microfilming of U. S. patents, which began in February 1967, was nearly one-third completed by the end of the fiscal year and should be finished by the spring of 1968. The system will be used to fill orders for copies of U. S. patents and eventually for the creation of a microform search file system. It is expected that the filmcard file will be put into use in the patent copy fulfillment subsystem by July 1968.

At the end of the year, final implementation was under way on a computer-based system for matching incoming foreign patents with their U. S. counterpart applications, where the priority, if any, of a U. S. application is claimed for the purpose of rapid classification and incorporation of foreign patents into the U. S. search files.

A contract was concluded during the year to initiate the development of a pilot microform viewer as a part of the long-range program to convert the search files in the Patent

Examining Corps and the Public Search Room to a microform search file system.

### Patent Documentation

As of January 1, 1967, abstracts were required in all newly submitted patent applications for publication with the issued patent.

Progress in the Patent Office in several of the systems under the Committee for International Cooperation in Information Retrieval Among Examining Patent Offices<sup>1)</sup> (ICIREPAT) five-year program has been made. Testing in the glass technology system is underway and trial indexing in both alloy and lubricant systems is being done. Final authorization to index on a production basis in the revised steroid system is awaited from ICIREPAT.

At the close of the year, plans had been completed with Rand Corporation of Santa Monica, California, to explore the relationship of an examiner in dialogue with a computer storing an indexed patent file.

Concentration on the reclassification of very active and rapidly growing areas of art, using examiners under the direction of senior classifiers, continued during the fiscal year. Completed in the fiscal 1967 activities were three major reclassification projects covering the fields of magnetically operated switches, optics, and metal founding.

During the year the Office of Patent Classification was reorganized to established a Chemical Classification Division, an Electrical Classification Division, and a Mechanical Classification Division, reporting, respectively, to the Directors of the Chemical, Electrical, and Mechanical Examining Operations.

### Patent Appeals

The Board of Appeals received 10,916 appeals, including 494 petitions for reconsideration, as compared with 13,744 appeals the preceding year. The number of appeals on hand at the end of the year was 4,336, compared with 5,569 the previous year, a reduction of 1,233.

### Trademark Examining Operations

As a result of the introduction of streamlined prosecution practices, further progress was made in reducing the backlog of pending trademark applications and the time required in reaching pending applications for examination.

Applications for registration filed during the year totaled 27,584. Applications on file at the end of the year were 37,457, compared to 38,198 the previous year, a decrease of 741.

Disposals totaled 28,325, consisting of 21,831 marks which were registered on the Principal Register and Supplemental Register and 6,494 applications which were abandoned.

There were 20,855 marks published for opposition and 1,214 oppositions were received.

At the end of the fiscal year, maximum time for acting on new applications or registration of marks was 10 months. Amended cases were acted upon as soon as received.

<sup>1)</sup> Now known as the "Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices".

### Legislation

On February 21, 1967, President Johnson forwarded to the Congress the "Patent Reform Act of 1967" which would bring about the first major revision of U.S. patent laws in more than 130 years. This bill was based upon and incorporated most of the recommendations of the President's Commission on the Patent System appointed in 1965.

### International Activity

Briefing conferences were planned and held with interested members of the patent and business community regarding the draft Patent Cooperation Treaty released by the United International Bureaux for the Protection of Intellectual Property (BIRPI) on May 31, 1967.

A number of patent search exchange programs have been initiated with the patent offices of other countries including Austria, Czechoslovakia, France, Germany, Japan, the Philippines, Sweden and Switzerland.

The joint final report on the first phase of a search exchange with the Federal Republic of Germany was published during the year.

In trademark affairs, the principal development during the year was the first of a series of meetings with selected representatives of the business and legal community on the question of whether the United States should adhere to the Madrid Agreement Concerning the International Registration of Trademarks of April 14, 1891, as revised at Nice on June 15, 1967.

A study favorable to the adoption of the International Classification of Goods and Services for the Purposes of the Registration of Marks was completed, with implementation scheduled to begin in fiscal year 1968.

### Operating Cost and Income

The Patent Office appropriation for fiscal year 1967 was \$37,050,000.

Program costs for this period were \$35,533,392 and, with the addition of \$1,454,941 net obligations incurred for costs of other years, the total amount obligated during fiscal 1967 was \$36,988,333.

Compensation for an average of 2,528 employees accounted for 71 percent of total operating expenses; related costs of employee benefits for 6 percent; printing and reproduction for 18 percent; and all other operating costs for 5 percent.

During the year the office received \$23,813,252 in fees and deposits from all sources. Net income for 1967, the first full year under the higher fee structure effective October 25, 1965, was \$23,666,062, or about 67 percent of operating costs.

### General

An Office of Planning and Programming was established during the year with responsibility for coordinating the planning and programming in all areas of the Patent Office, including patent examination, patent documentation, and implementation of any changes in the patent and trademark laws and international agreements.

An Automatic Data Processing Division was also established.

During the year, about two-thirds of the patent examining staff — the Electrical and Mechanical Operations — were moved from the Commerce Building into new, modern office space in the Crystal Plaza complex of the Crystal City development in Arlington, Virginia. The remainder of the examining staff (the Chemical Examining Operation) and the Public Search Room, Scientific Library, Commissioner's Offices, and other units are scheduled to move to the new location in fiscal year 1968.

## Use of the International Classification of Goods and Services for the Purposes of the Registration of Marks by the U.S. Patent Office

Note by David B. ALLEN, U. S. Patent Office

Beginning with the *Official Gazette* dated March 5, 1968, the United States Patent Office has started to indicate the appropriate International Class for all trademarks and service marks published for opposition. Notice of this action appeared in the *Official Gazette* dated January 5, 1968, as follows:

"Beginning with the *Official Gazette* of March 5, 1968, the publication of trademarks for opposition under the provisions of Section 12(a) of the Trademark Act of 1946, registrations passed on the Supplemental Register and renewals, with the exception of certification and collective membership marks, will include, in addition to the U. S. classification, the International Classification as follows: (Int. Cl. . .).

"Such published marks, upon issuance as registrations, will so include the International Classification.

"In the International Classification of services, classes 35 to 42, are identical to classes 100 to 107, respectively, of the U. S. Schedule.

"Applicants are requested to include in applications for the registration of trademarks, in addition to the U. S. Schedule of classes of goods and services, the International Classification."

This announcement followed a study by the Office of International Patent and Trademark Affairs in cooperation with the Trademark Examining Operation of the U. S. Patent Office as a result of which the following conclusions were reached:

1. To adopt the International Classification as a subsidiary classification system;
2. To make further studies, when sufficient data has been compiled as a result of the dual classification procedure, with a view to determining whether the international system should be established as a primary classification system; and

3. To recommend to the Department of State that steps be taken to adhere to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

Activity is now underway with respect to all of these points. It is of interest to note that a number of interested private groups have expressed their support of the action taken by the U. S. Patent Office, including the Patent, Trademark and Copyright Section of the American Bar Association, The United States Trademark Association, and the American Patent Law Association.

## BOOK REVIEWS

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- ESPAGNE. REGISTRO DE LA PROPIEDAD INDUSTRIAL. *Sistema de clasificación internacional de patentes de invención*. [Madrid], Registro de la propiedad industrial, 1968. - 47 p.
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- KAWALLE (Otto). *Patentrecht. Der Patentverletzungsstreit und die Nichtigerklärung von Patenten*. Berlin, Staatsverlag der DDR, 1967. - 168 p. Amt für Erfindungs- und Patentwesen der DDR.

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## NEWS ITEMS

### INDIA

#### *Appointment of a new Controller-General of the Indian Patent Office*

We have recently been informed that Mr. S. Vedaraman has been appointed Controller-General of the Indian Patent Office. He succeeds Mr. A. Jogarao who has retired.

We take this opportunity to wish Mr. Jogarao a happy retirement and to congratulate Mr. Vedaraman on his appointment.

### THE NETHERLANDS

#### *Appointment of a new President of the Patent Council (Octroiraad)*

We have recently been informed that Dr. J. B. van Benthem has been appointed President of the Patent Council (Octroiraad) with effect from September 9, 1968. He succeeds Dr. C. J. De Haan who is retiring.

We take this opportunity to wish Dr. De Haan a happy retirement and to congratulate Dr. van Benthem on his appointment.

# CALENDAR OF MEETINGS

## BIRPI Meetings

Date and Place	Title	Object	Invitations to Participate	Observers Invited
<b>1968</b>				
July 1 to 5 Paris (Unesco Headquarters)	Committee of Experts on the Photographic Reproduction of Works Protected by Copyright, convened jointly with Unesco	To examine the copyright problems raised by the reproduction of protected works by photographic or analogous processes and to formulate appropriate recommendations with a view to possible solutions	Argentina, Bulgaria, Congo (Kinshasa), Czechoslovakia, France, India, Iran, Japan, Lebanon, Mexico, Nigeria, Netherlands, Spain, Sweden, United States of America. Consultants from Germany (Fed. Rep.) and the United Kingdom	<i>Intergovernmental Organizations:</i> United Nations and Specialized Agencies <i>Non-Governmental Organizations:</i> International Confederation of Societies of Authors and Composers (CISAC); International Congress on Reprography; International Council on Archives; International Federation for Documentation; International Federation of Library Associations; Internationale Gesellschaft für Urheberrecht; International Law Association; International Literary and Artistic Association; International Publishers Association
September 24 to 27 Geneva	Interunion Coordination Committee (6 <sup>th</sup> Session)	Program and Budget of BIRPI for 1969	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	All the other member States of the Paris Union; United Nations; International Patent Institute; Council of Europe
September 26 and 27, 1968 Geneva	Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration (3 <sup>rd</sup> Session)	Annual Meeting	All Member States of the Lisbon Union	All other Member States of the Paris Union
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	States not members 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 14 to 16 Geneva	Working Group on Copyright Problems of Satellite Communications	Exchange of views on the copyright and neighbouring rights problems which might arise from broadcast transmissions by communications satellites	Experts invited individually and the international and national Organizations concerned	—

Date and Place	Title	Object	Invitations to Participate	Observers Invited
October 21 to November 1 Tokyo	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Technical Meetings	Questions of technical cooperation in information retrieval	All member States of ICIREPAT	International Patent Institute; Council of Europe; European Atomic Energy Community; Fédération internationale de documentation
November 25 to 29 Geneva	BIRPI Symposium on Practical Aspects of Copyright [held with the cooperation of the International Confederation of Societies of Authors and Composers (CISAC)]	To offer to participants information on practical aspects of copyright protection (collection and distribution of royalties, organization and working of authors' societies or other bodies, etc.)	Personalities from developing countries. Members and officers of authors societies. Individual participants against payment of a registration fee	International Labour Office; Unesco; Council of Europe
December 2 to 10*) Geneva	Committee of Experts — Patent Cooperation Treaty (PCT)	New Draft Treaty	All member States of the Paris Union	<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

\*) This meeting replaces the meetings previously announced for July 1 to 9, and November 4 to 12, 1968.

## Meetings of Other International Organizations Concerned with Intellectual Property

Place	Date	Organization	Title
<b>1968</b>			
The Hague	July 8 and 9	International Patent Institute (IIB)	97th Session of the Administrative Council
Paris	October 31	International Chamber of Commerce	Committee for International Protection of Industrial Property
Lima	December 2 to 6	Inter-American Association of Industrial Property (ASIPI)	Congress



