

Industrial Property

Monthly Review of the United International Bureaux
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WORLD INTELLECTUAL PROPERTY ORGANIZATION

RATIFICATIONS AND ACCESSIONS

RUMANIA

Ratification of the WIPO Convention

*Notification of the Director of BIRPI to the Governments
of the countries invited to the Stockholm Conference*

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the above Convention, has the honor to notify him that the Government of the Socialist Republic of Rumania deposited, on February 28, 1969, its instrument of ratification dated December 28, 1968, of the Convention Establishing the World Intellectual Property Organization (WIPO), with the following declaration:

“The provisions of Articles 5 and 14(1) of the Convention Establishing the World Intellectual Property Organization signed at Stockholm on July 14, 1967, are not in accordance with the principle of universality of treaties, by which all States have the right to become parties to multilateral treaties regulating questions of general interest.” (*Translation*)

The Socialist Republic of Rumania has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently ratifying the Stockholm Act of the Paris Convention in its entirety.

A separate notification will be made of the entry into force of the said Convention, when the required number of ratifications or accessions is reached.

Geneva, March 10, 1969.

WIPO Notification No. 9

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Ratification of the WIPO Convention

*Notification of the Director of BIRPI to the Governments
of the countries invited to the Stockholm Conference*

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the above Convention, has the honor to notify him that the Government of the Ukrainian Soviet Socialist Republic deposited on February 12, 1969, its instrument of ratification dated September 30, 1968, of the Convention Establishing the World Intellectual Property Organization (WIPO), with the following declaration:

“The Ukrainian Soviet Socialist Republic declares that the Convention Establishing the World Intellectual Property Organization regulates questions concerning the interests of all countries; and that is why it must be open to participation

of all States, in accordance with the principle of their sovereign equality.” (*Translation*)

The deposit of this instrument of ratification is in conformity with the provisions of Article 14(1)(ii) and of Article 5(2)(i) of the said Convention.

Geneva, February 24, 1969.

WIPO Notification No. 7

UNITED KINGDOM

Ratification of the WIPO Convention

*Notification of the Director of BIRPI to the Governments
of the countries invited to the Stockholm Conference*

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the above Convention, has the honor to notify him that the Government of the United Kingdom of Great Britain and Northern Ireland deposited on February 26, 1969, its instruments of ratification dated November 18, 1968, of the Convention Establishing the World Intellectual Property Organization (WIPO).

The United Kingdom of Great Britain and Northern Ireland has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently ratifying the Stockholm Act of the Paris Convention in its entirety and by acceding to the Stockholm Act of the Berne Convention with the declaration provided for in Article 28(b)(i) of the said Act to the effect that the accession shall not apply to Articles 1 to 21 and to the Protocol Regarding Developing Countries.

A separate notification will be made of the entry into force of the said Convention, when the required number of ratifications or accessions is reached.

Geneva, March 10, 1969.

WIPO Notification No. 8

INTERNATIONAL UNIONS

RATIFICATIONS AND ACCESSIONS

Ratification of the Stockholm Act of the Paris Convention for the Protection of Industrial Property

RUMANIA

*Notification of the Director of BIRPI to the Governments
of the Union Countries*

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his com-

pliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the above international instrument adopted at Stockholm, has the honor to notify him that the Government of the Socialist Republic of Rumania deposited, on February 28, 1969, its instrument of ratification dated December 28, 1968, of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967.

The Socialist Republic of Rumania availed itself of the reservation provided for in Article 28(2) of the said Convention and made also the following declaration:

“The Council of State of the Socialist Republic of Rumania considers that the maintenance of the state of dependence of certain territories to which reference is made in Article 24 of the Paris Convention for the Protection of Industrial Property revised at Stockholm on July 14, 1967, is not in accordance with the declaration on the grant of independence to colonial countries and peoples, adopted by the General Assembly of the United Nations on December 14, 1960, by Resolution 1514 (XV), in which is stressed the need to bring an end rapidly and unconditionally to colonialism in all its forms and manifestations.” (*Translation*).

A separate notification will be made of the entry into force of the Stockholm Act of the said Convention, when the required number of ratifications or accessions is reached.

Geneva, March 10, 1969.

Paris Notification No. 8

Ratification of the Stockholm Act of the Paris Convention for the Protection of Industrial Property

UNITED KINGDOM

Notification of the Director of BIRPI to the Governments of the Union Countries

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the above international instrument adopted at Stockholm, has the honor to notify him that the Government of the United Kingdom of Great Britain and Northern Ireland deposited on February 26, 1969, its instrument of ratification dated November 18, 1968, of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967.

A separate notification will be made of the entry into force of the Stockholm Act of the said Convention, when the required number of ratifications or accessions is reached.

Geneva, March 10, 1969.

Paris Notification No. 7

LEGISLATION

Treaty

Between the Swiss Confederation and the Federal Republic of Germany on the Protection of Indications of Source and Other Geographical Denominations *

(of March 7, 1967)

*The Swiss Federal Council and
The President of the Federal Republic of Germany*

considering the interest of the two contracting States in ensuring effective protection against unfair competition for natural and manufactured products and in particular for indications of source, including appellations of origin, and likewise other geographical denominations used for certain specified products or merchandise,

have agreed to conclude a treaty for this purpose and have designated as their plenipotentiaries . . .

who, having exchanged their credentials found in good and due form, have agreed as follows:

Article 1

Each of the contracting States undertakes to take all necessary measures to ensure effective protection for

1. natural and manufactured products originating in the territory of the other contracting State against unfair business competition,
2. the names, denominations and graphic representations mentioned in Articles 2, 3 and 5, paragraph 2, and likewise the denominations set forth in Annexes A and B to the present Treaty, in conformity with this Treaty and with the Protocol annexed thereto.

Article 2

1. The name “Federal Republic of Germany” [*Bundesrepublik Deutschland*], the denomination “Germany” [*Deutschland*], the names of German *Länder* and likewise the denominations set forth in Annex A to this Treaty shall, except where otherwise provided in paragraphs 2 and 4 hereunder, be reserved exclusively, in the territory of the Swiss Confederation, for German products or merchandise and may be used therein only in accordance with the conditions laid down by the legislation of the Federal Republic of Germany. However, certain provisions of that legislation may be declared inapplicable by a protocol.

2. If any denomination set forth in Annex A to this Treaty, other than the names of the State and of *Länder* mentioned in paragraph 1, is used for products or merchandise other than those to which it is assigned in Annex A, paragraph 1 shall apply only:

1. where such use is likely adversely to affect, in the field of competition, enterprises that lawfully use the said denomination in respect of German merchandise or

* BIRPI translation.

products mentioned in Annex A, unless a legitimate interest exists in using the said denomination in the territory of the Swiss Confederation in respect of products or merchandise that are not of German origin, or

2. where such use is likely to detract from the particular renown or attractiveness of the denomination.

3. If any denomination protected pursuant to paragraph 1 corresponds to the name of a region or a locality situated outside the territory of the Federal Republic of Germany, nothing in paragraph 1 shall preclude the denomination from being used in respect of products or merchandise manufactured in such region or in such locality. However, supplementary provisions may be made by a protocol.

4. Furthermore, the provisions of paragraph 1 shall not prevent any person from indicating his name or business name, to the extent that this comprises the name of a natural person, and his domicile or registered office, on products or merchandise, on their wrappers, on business documents or in advertising, in so far as such indications do not serve to distinguish the products or merchandise concerned. The use of the name and business name as a distinctive sign shall nevertheless be lawful if a legitimate interest so justifies.

5. The provisions of this Article shall be without prejudice to those of Article 5.

Article 3

1. The name "Swiss Confederation" [*Schweizerische Eidgenossenschaft*], the denominations "Switzerland" [*Schweiz*] and "Confederation" [*Eidgenossenschaft*], the names of the Swiss cantons and likewise the denominations set forth in Annex B to this Treaty shall, except where otherwise provided in paragraphs 2 to 4 hereunder, be reserved exclusively in the territory of the Federal Republic of Germany for Swiss products or merchandise and may be used therein only in accordance with the conditions laid down by the legislation of Switzerland. However, certain provisions of that legislation may be declared inapplicable by a protocol.

2. If any denomination set forth in Annex B to this Treaty is used for products or merchandise other than those to which it is assigned in Annex B, paragraph 1 shall apply only:

1. where such use is likely adversely to affect, in the field of competition, enterprises that lawfully use the said denomination in respect of Swiss products or merchandise mentioned in Annex B, unless a legitimate interest exists in using the said denomination in the territory of the Federal Republic of Germany in respect of products or merchandise that are not of Swiss origin, or

2. where such use is likely to detract from the particular renown or attractiveness of the denomination.

3. If any denomination protected pursuant to paragraph 1 corresponds to the name of a region or a locality situated outside the territory of the Swiss Confederation, nothing in paragraph 1 shall preclude the denomination from being used in respect of products or merchandise manufactured in such region or in such locality. However, supplementary provisions may be made by a protocol.

4. Furthermore, the provisions of paragraph 1 shall not prevent any person from indicating his name or business name, to the extent that this comprises the name of a natural person, and his domicile or registered office on products or merchandise, on their wrappers, on business documents or in advertising, in so far as such indications do not serve to distinguish the products or merchandise concerned. The use of the name and business name as a distinctive sign shall nevertheless be lawful if a legitimate interest so justifies.

5. The provisions of this Article shall be without prejudice to those of Article 5.

Article 4

1. If denominations protected pursuant to Articles 2 and 3 are used, in business dealings contrary to those provisions, for products or merchandise, or for their get-up or wrappers, or on invoices, carriage documents or other business documents or in advertising, such use shall be repressed by virtue of this Treaty by all judicial or administrative means, including confiscation, that, under the legislation of the contracting State in which protection is claimed, may be available for combating unfair competition or for repressing unlawful denominations in any other manner.

2. The provisions of this Article shall apply even in cases where such names or denominations are used in translation, or with an indication of the true source, or with the addition of words such as "kind," "type," "imitation" or the like. In particular, this Article shall not be rendered inapplicable by the fact that denominations protected pursuant to Articles 2 and 3 are used in a modified form, if a risk of confusion in the trade still remains despite the modification.

3. The provisions of this Article shall not apply to products or merchandise in transit.

Article 5

1. The provisions of Article 4 shall likewise apply in cases where, for products or merchandise, or for their get-up or wrappers, or on invoices, carriage documents or other business documents, or in advertising, use is made of distinctive signs, marks, names, inscriptions or graphic representations containing, whether directly or indirectly, any false or deceptive indications as to the source, origin, nature, variety or substantive qualities of the products or merchandise concerned.

2. The names or graphic representations of localities, buildings, monuments, rivers, mountains, etc. which, for a major proportion of the business circles concerned in the contracting State in which protection is claimed, evoke the other contracting State or a particular locality or region of that State shall be deemed to be false or deceptive indications of source within the meaning of paragraph 1, if they are used for products or merchandise not originating in that State, except where, in the particular circumstances of the case, nothing but a descriptive or imaginative meaning can reasonably be attached to such name or graphic representation.

Article 6

Actions alleging violation of this Treaty may be brought before the courts of the contracting States not only by the persons and companies which, in accordance with the legislation of the contracting States, are entitled to institute them, but also by associations or groupings that represent the producers, manufacturers, traders or consumers concerned and have their registered office in one of the contracting States, in so far as the legislation of the State in which that office is situated empowers them to act in civil proceedings. Subject to the same conditions, they may claim rights and adduce grounds for claims in penal proceedings, to the extent provided by the legislation of the State in which the proceedings take place.

Article 7

1. Products and merchandise, wrappers, invoices, carriage documents and other business documents and likewise advertising material which, at the time of entry into force of this Treaty, are in the territory of one of the contracting States and have lawfully been marked with indications the use of which is prohibited under this Treaty may still be disposed of or used for a period of two years following the entry into force of this Treaty.

2. Furthermore, persons who or companies which, at the time of signature of this Treaty, have already lawfully used any of the denominations protected pursuant to Articles 2 and 3 shall be entitled to continue such use for a period of six years following the entry into force of this Treaty. This right may not be transferred by provisions following death or *res inter vivos acta* except with the enterprise or the part thereof to which the denomination belongs.

3. Where any denomination protected pursuant to Articles 2 and 3 constitutes an element of a business style already in lawful use at the time of signature of this Treaty, the provisions of Article 2, paragraph 4, first sentence, and of Article 3, paragraph 4, first sentence, shall apply even if the said business style does not comprise the name of a natural person. Paragraph 2, second sentence, shall apply by analogy.

4. The provisions of this Article shall be without prejudice to those of Article 5.

Article 8

1. The lists in Annexes A and B to this Treaty may be amended or extended by an exchange of notes. However, each contracting State may reduce the list of denominations relating to products or merchandise originating in its territory without the consent of the other contracting State.

2. The provisions of Article 7 shall apply in cases of amendment to or extension of the list of denominations relating to products or merchandise originating in the territory of one of the contracting States, provided that the effective date shall be the date of publication of the said amendment or extension by the other contracting State, instead of the time of signature and of entry into force of the Treaty.

Article 9

The provisions of this Treaty shall be without prejudice to more extensive protection which is or may be granted in

one of the contracting States, pursuant to domestic legislation or to other international conventions, to denominations and graphic representations of the other contracting State that are protected pursuant to Articles 2, 3 and 5, paragraph 2.

Article 10

1. A joint commission composed of representatives of the Governments of each contracting State shall be established to facilitate the implementation of this Treaty.

2. The joint commission shall be responsible for examining any proposals for amending or extending the lists in Annexes A and B to this Treaty and for which the consent of the contracting States is required, and likewise for discussing all questions relating to the implementation of this Treaty.

3. A meeting of the joint commission shall be convened if either contracting State so requests.

Article 11

This Treaty shall also apply to the *Land* Berlin, unless the Government of the Federal Republic of Germany transmits a declaration to the contrary to the Government of the Swiss Confederation within three months following the date of entry into force of this Treaty.

Article 12

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Berne as soon as possible.

2. This Treaty shall enter into force three months after the exchange of the instruments of ratification and shall remain in force without any limitation of duration.

3. Either contracting State may at any time denounce the present Treaty by giving one year's prior notice to that effect.

Protocol

The High Contracting Parties

Desirous of providing in greater detail for the implementation of certain provisions of the Treaty of this date on the protection of indications of source and other geographical denominations,

Have agreed on the following provisions which shall form an integral part of the Treaty:

1. Articles 2 and 3 of this Treaty shall not oblige the contracting States to apply, at the time when products or merchandise covered by denominations protected pursuant to Articles 2 and 3 of the Treaty enter into trade in their territory, the legislation and administrative provisions of the other contracting State in regard to administrative supervision, in particular those relating to the maintenance of entry and exit records and the movement of the said products or merchandise.

2. Articles 2 and 3 of the Treaty shall not apply to denominations of animal breeds.

They shall likewise not apply to denominations which, in accordance with the International Convention for the

Protection of New Varieties of Plants, of December 2, 1961, must be used to designate varieties, provided that the said Convention has entered into force in the relations between the contracting States.

3. This Treaty shall not affect the provisions governing imports of products and merchandise into each of the contracting States.
4. The following homonymous denominations of wine, which are included in Annexes A and B to the Treaty, may be used in the other contracting State only with an indication of the country of origin or with the additional notation shown hereunder:

<i>German denominations in the Swiss Confederation (Article 3, paragraph 3, of the Treaty)</i>	<i>Swiss denominations in the Federal Republic of Germany (Article 2, paragraph 3, of the Treaty)</i>
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Weinhauehiet Baden	Baden (Aargau)
Dottingen (Baden)	Döttingen (Aargau)
Erlenbach (Franken)	Erlenbach (Zürich)
Erlenbach (Württemberg)	
Forst (Rheinpfalz)	Forst (St. Gallen)
Johannisherg (Rheingau)	Johannisherg (Wallis)
Winkel (Rheingau)	Winkel (Zürich)

The list of these denominations may be amended or extended according to the procedure provided for in Article 8 of the Treaty.

5. The following denominations included in Annex B to the Treaty may be used in the Federal Republic of Germany only when accompanied by the name "Switzerland" or the name of the canton in which the locality or region indicated by the denomination is situated:

Wines:

Auvernier	Pully
Chahlais	Satigny
Coteaux du Jura	Saint-Auhin
Fully	Vully
Lully	

Spirits:

Schwarzbuhen Kirsch

6. The inclusion of the denomination "Clevner" in Annex B to the Treaty shall not preclude its use in the Federal Republic of Germany to designate a vine variety in addition to a geographical denomination.
7. The inclusion in Annex B to the Treaty of the denomination "Emmentaler Käse" shall not preclude its use in the Federal Republic of Germany for cheeses that are not of Swiss origin, provided that it is accompanied by an indication of the country of manufacture in letters that are identical in type, dimension and color with those of the denomination. Furthermore, the term "Emmentaler" may be used for German cheeses, provided that the term "Allgäu" ("Allgäuer") is added in the same manner; in such cases the word "Deutschland" or "deutsch" must be added in clearly visible and legible letters, except on invoices, carriage documents and other

business documents, the use of one of these denominations in the business style or address of the enterprise being sufficient.

8. The corresponding Latin terms shall be deemed to be translations of the denominations protected pursuant to Articles 2 and 3 of the Treaty (Article 4, paragraph 2, of the Treaty); likewise, the term "romand" shall be deemed to correspond to the denomination "westschweizerisch." The protection afforded by Article 4, paragraph 2, of the Treaty to adjectives derived from protected denominations shall also extend to the abbreviation "Bündner" in the case of the canton name "Grauhünden."
9. The time limit provided for in Article 7, paragraph 2, of the Treaty shall be extended to 20 years in respect of persons and companies in cases where, at the time of signature of the Treaty, they or their rightful predecessors had, for more than fifty years, been lawfully using any denomination protected pursuant to Articles 2 or 3 of the Treaty.
10. The time limit provided for in Article 7, paragraph 2, of the Treaty shall be extended to 12 years in respect of persons and companies in cases where, at the time of signature of the Treaty, they or their rightful predecessors were lawfully using the denomination "Steinhäger" in the territory of the Swiss Confederation.

ITALY

Decrees

Concerning the Temporary Protection of Industrial Property Rights at Sixteen Exhibitions

(of January 2, 9, 13, 14 and 15, 1969)¹

Single Article

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

III° Salone nazionale delle vacanze e del turismo (Turin, February 22 to March 2, 1969);

Salone internazionale della ceramica (Vicenza, March 2 to 9, 1969);

LXXI^a Fiera internazionale della agricoltura e della zootecnica — XXII° Salone della macchina agricola (Verona, March 2 to 17, 1969);

VI° Salone internazionale delle arti domestiche (Turin, March 13 to 16, 1969);

MOBILSUD — III° Salone del mobile per il mezzogiorno e l'oltremare (Naples, March 16 to 23, 1969);

Mostra nazionale delle sementi certificate (Lonigo, March 22 to 25, 1969);

XLVII^a Fiera campionaria internazionale di Milano (Milan, April 14 to 25, 1969);

¹ Official communications from the Italian Administration.

- VI^a Fiera internazionale del libro per l'infanzia e la gioventù e III^a Mostra internazionale degli illustratori (Bologna, April 19 to 23, 1969);
- IV^a Fiera nazionale del tempo libero (Messina, April 27 to May 6, 1969);
- V^a Mostra internazionale supermercati (Parma, April 30 to May 4, 1969);
- BIMBOSUD — II^o Salone internazionale del giocattolo - arredamento - abbigliamento - alimentazione per il fanciullo (Naples, May 11 to 18, 1969);
- XXXIII^a Fiera campionaria di Bologna — Salone della profumeria e della cosmesi (Bologna, May 14 to 25, 1969);
- XXIV^a Fiera del Mediterraneo — Campionaria internazionale (Palermo, May 24 to June 8, 1969);
- S. I. R. — II^o Salone internazionale del regalo (Naples, May 31 to June 5, 1969);
- II^a Mostra nazionale dell'oreficeria - argenteria - gioielleria (Vicenza, September 7 to 14, 1969);
- XIX^o Salone internazionale della tecnica e VI^o Salone internazionale della montagna (Turin, September 25 to October 6, 1969)

shall enjoy the temporary protection provided by Laws No. 1127 of June 29, 1939², No. 1411 of August 25, 1940³, No. 929 of June 21, 1942⁴, and No. 514 of July 1, 1959⁵.

² See *La Propriété industrielle*, 1939, p. 124; 1940, p. 84.

³ *Ibid.*, 1940, p. 196.

⁴ *Ibid.*, 1942, p. 168.

⁵ *Ibid.*, 1960, p. 23.

NEWS CONCERNING INTERNATIONAL ORGANIZATIONS OTHER THAN BIRPI

Cooperation Between the United Nations and BIRPI in 1968

During 1968, BIRPI continued and extended its cooperation in industrial property matters with the United Nations and its subsidiary bodies, in accordance with the working agreement between BIRPI and the United Nations, established in 1964.

United Nations Commission on International Trade Law (UNCITRAL)

The first session of UNCITRAL was held in New York from January 29 to February 26, 1968. BIRPI was represented throughout almost the entire session; the Director of BIRPI participated personally in a few meetings and made a statement to the Commission on February 9, 1968.

UNCITRAL drew up a list of the subjects it intends to deal with and selected four which are to be given priority. "Intellectual Property" is among the subjects to be taken up but not among the four to be given priority. It can thus be expected that UNCITRAL will not deal actively with intellectual property in the immediate future.

United Nations Conference on the Law of Treaties

BIRPI was represented by observers at the first session of this Conference, held in Vienna from March 26 to May 24, 1968. It was convened in accordance with a decision taken by the General Assembly on the recommendation of the International Law Commission to study the draft articles on the law of treaties submitted by that Commission and to conclude an international convention. BIRPI had submitted in advance a written statement on the practices adopted within the Unions in relation to treaty obligations between countries that are members of the same Union but party to different Acts. The draft articles relating to this question, and to that of majority voting at international conferences, remain to be considered at the second session which will be held in 1969. An article has already been provisionally approved which should make it clear that the application of the Convention to any treaty which is the constituent instrument of an international organization, or to any treaty adopted within an international organization, will be without prejudice to any relevant rules of the organization.

International Law Commission

At its twentieth session, held in Geneva from May 27 to August 2, 1968, this Commission began consideration of the question of the succession of States to multilateral treaties; the working documents included studies of the relevant practices of the Unions administered by BIRPI. BIRPI was represented by observers.

United Nations Industrial Development Organization (UNIDO): International Symposium on Industrial Development

BIRPI was represented at this Symposium which was organized by UNIDO and held in Athens from November 29 to December 19, 1967. There were 78 countries represented at the Symposium, 53 of which were members of the Paris Union and 41 of which were members of the Berne Union. BIRPI and UNIDO formed a joint secretariat during the consideration of an item of the agenda pertaining to administrative machinery for industrial development, namely, special arrangements for industrial property.

Two recommendations relating to BIRPI's work were adopted by the Symposium. One called upon UNIDO, in collaboration with other national and international organizations, to study present industrial property arrangements, having regard to the special situations and problems of the developing countries. The other advised developing countries, in their own interests, to enact patent laws or to modernize existing laws so as to be in a better position to benefit from discoveries made in other countries.

Industrial Development Board

The second session of this Board took place from April 17 to May 14, 1968, in Vienna, and BIRPI was represented. UNIDO's program of work for 1968 and 1969 was approved by the Board; this program includes "assistance to developing countries in the field of patents" with the "cooperation

and participation of the United Nations Department of Economic and Social Affairs, of BIRPI, and of other interested agencies." Great interest was shown in the possibility of joint publication by BIRPI and UNIDO of an authoritative compilation of industrial legislation, including patent laws, on a world-wide basis.

Discussions have continued between BIRPI and the UNIDO Secretariat on this matter; in addition, practical cooperation with UNIDO has been discussed in relation to traineeships and a proposed joint seminar or symposium on patent office administration.

Second United Nations Conference on Trade and Development (UNCTAD)

This Conference, held in New Delhi from February 1 to March 29, 1968, and at which BIRPI was represented, had on its agenda an item relating to the transfer of technology, including know-how and patents. The United Nations Under Secretary-General for Economic and Social Affairs, in a statement to the Conference in plenary session, spoke of the role of patents in this context and emphasized the need for international arrangements. He stressed the potential importance to developing countries of ICIREPAT and of the BIRPI Plan for a Patent Cooperation Treaty. The working group to which this item on the transfer of technology has been assigned did not have time to consider a draft resolution, submitted by a group of States, recommending that the Trade and Development Board, after taking the views of the Economic and Social Council, should consider establishing a committee to examine the question of transfer of technology to developing countries, including the effects of existing international regulations for the protection of industrial property upon the economic development of developing countries. This draft resolution was therefore referred to the Conference, which decided, after some amendments had been made, to transmit it to the Trade and Development Board for consideration at its seventh session in September 1968.

The Conference adopted a draft resolution calling for a study of restrictive business practices adopted in developed countries, with particular reference to the harmful effects they have on the exports of developing countries. Since the text of the resolution drew attention to the large extent to which the developing countries rely on the transfer of patents and know-how, the Secretary-General of UNCTAD asked for the assistance of BIRPI in preparing his study; a paper outlining BIRPI's relevant activities was submitted, and issued as a background document for consideration of this item by the Committee on Manufactures.

Economic and Social Council

BIRPI was represented at the forty-fifth session of ECOSOC, which took place in Geneva from July 8 to August 2, 1968, and was resumed in New York in November. BIRPI's main interest was in the consideration of the draft resolution from UNCTAD II relating to new intergovernmental machinery for problems of the transfer of technology to developing countries. BIRPI was specifically invited to sit with the

United Nations Administrative Committee on Coordination which was preparing a background paper for this item. The Council gave considerable attention to this item and the BIRPI representative intervened to explain BIRPI's program in the field of the transfer of technology. The proposed draft resolution met with considerable opposition, mainly on the ground of duplication of the work of existing bodies, and in the result the Council adopted a compromise resolution calling on the Secretary-General of the United Nations in consultation with the Secretary-General of UNCTAD, the appropriate organizations in the United Nations system, and other appropriate international organizations, to submit a further report to the Council at its forty-sixth session outlining the means by which the scope of present and contemplated activities in the field of transfer of science and technology could be more clearly defined, strengthened and coordinated. It further decided that the summary records of the relevant debates of the Council should be transmitted to the Trade and Development Board and requested that the Board should defer any final action until it had considered this further report.

UNCTAD: Trade and Development Board

BIRPI was represented at the seventh session of the Board which took place in Geneva from September 2 to 23, 1968. Again, its main interest lay in the draft resolution of UNCTAD II referred to above. A lively and lengthy debate took place on two draft resolutions, one sponsored by the Group B (Western) countries and the second by the Group of 31 (developing countries, members of the Board). There were many points of agreement between the two drafts but differences arose as to whether any machinery, if established, should necessarily be within UNCTAD. Finally, on a roll-call vote, the draft of the Group of 31 was adopted on September 21, 1968, by 24 votes to 17 with 7 abstentions.

The resolution stressed the need to establish within the framework of UNCTAD appropriate intergovernmental machinery to study the general question of transfer of patented and unpatented technology likely to promote the economic development of the developing countries, but decided to postpone final action until the session of the Board following the forty-sixth session of ECOSOC.

Economic Commission for Europe

The Executive Secretary of the ECE asked BIRPI to assist in the preparation of studies called for by resolutions of the Commission at the twenty-third session, held in May 1968. The first required an account of BIRPI's activities relevant to the promotion of technological cooperation (for the benefit not only of the countries of the Commission's region but also of those of other geographical regions), for consideration by a special meeting of governmental experts to be held in January 1969. The second related to practices followed for trade in patents and licenses, with a view to finding means to promote the development of such trade, for consideration by the Committee on the Development of Trade in October 1969.

GENERAL STUDIES

Legal Protection of Scientific Discoveries in the USSR *

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I

After the extensive preparatory work of the Committees of Experts convened by BIRPI, the Diplomatic Conference of Stockholm adopted in July, 1967, the Convention Establishing the World Intellectual Property Organization (WIPO).

All participants of the Conference signed the final text and approved the provisions of the Convention which determine the main objectives and functions of the new organization.

Article 2(viii), defining the results of man's intellectual activity that are protected under the Convention, lists scientific discoveries — already protected by legislation in certain countries — as an independent subject of legal protection.

The laws on inventions of the USSR, Czechoslovakia and Bulgaria provide for the separate legal protection of scientific discoveries as distinct from the legal protection of other matters. For instance, the "Fundamentals of the Civil Legislation of the USSR and the Union Republics" approved by the Supreme Soviet of the USSR on December 8, 1961 (Part V, Article 107), reads as follows: "The author of a discovery shall have the right to claim recognition of his authorship and priority in the discovery, which shall be certified by a diploma issued in such cases and according to the procedure laid down in the Statute on Discoveries, Inventions, and Rationalization Proposals, enacted by the Council of Ministers of the USSR. The author of a discovery shall be entitled to remuneration payable to him on receipt of the diploma, and also to the privileges provided for in the Statute on Discoveries, Inventions, and Rationalization Proposals."

Article 108 provides that the right to obtain the diploma of a deceased author of a discovery and also the remuneration payable for the discovery, shall descend by inheritance, according to the general rules of law.

Article 109 provides that disputes concerning the authorship of a discovery shall be settled by the court. In 1947, before the adoption of the present law, the Council of Ministers of the USSR when establishing the Committee for Inventions and Discoveries had already contemplated legal protection of scientific discoveries but, practically, this kind of protection became applicable only in 1956, and the appropriate rules were later introduced in the above-mentioned "Fundamentals of the Civil Legislation of the USSR and the Union Republics" in accordance with the experience gained in the filing and examination of applications concerning discoveries.

From 1956 to January 1, 1969, more than 7,000 applications for the registration of alleged discoveries were filed with the Committee, but a number of these applications were returned because the content of the application did not satisfy the notion of a scientific discovery or other prescribed requirements. During this time, 1,300 applications were subjected to a thorough scientific examination by the USSR Academy of Sciences and the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR, and the subject matter of 64 applications was recognized as involving discoveries and entered in the State Register of the USSR.

The essence of the discoveries was widely published, and the authors received State diplomas and remuneration.

In 1959 the notions of invention and discovery were clearly differentiated in the USSR. The Statute on Discoveries, Inventions, and Rationalization Proposals, approved by the USSR Council of Ministers on May 1, 1959, gives the following definition of discovery: "the establishment of hitherto unknown objective laws, properties, or phenomena of the material world." Geographical, archaeological, paleontological and other similar discoveries, i. e., discoveries-findings, as well as discoveries in the field of social sciences, are not included in the category protected under this Statute.

A discovery should be confirmed experimentally or proved theoretically; therefore, no hypotheses or allegations about the possibility of creating a "perpetuum mobile," or other similar propositions, are recognized as discoveries. The authors of alleged discoveries should file regular applications containing a description of the essence of the discovery with enclosed calculations, arguments and experimental data confirming the discovery.

The organizations of which the authors are employees should help them in carrying out the experimental tests, publishing the results, and drafting the application.

The priority of a discovery for which application for registration is made is determined from the date on which the author first formulates the concept of the proposition claimed as a discovery in a report on the study accomplished, in a paper presented to a conference or meeting of a scientific or technical council, or in reports to different organizations or in the press. If there are no such reports and publications, the priority of a discovery is determined as from the date of receipt of the application by the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR.

State registration of scientific discoveries serves the following purposes:

- confirmation of the authenticity of the scientific concepts in respect of which application for registration has been made, by State examination;
- determination of the author's priority, and thereby of the State's priority, in a discovery;
- maintenance of the State inventory of discoveries and collection of well-founded objective information on them, with a view to their fullest utilization in science and in the national economy;
- encouragement of the authors of discoveries.

* BIRPI translation

The scientific examination of alleged discoveries is rather complicated but necessary and at present is carried out in the following manner.

Applications concerning alleged discoveries are sent to the Scientific Research Institute of State Patent Examination, where they are first thoroughly examined for compliance with the regulations in force. After the establishment of the existence of an alleged discovery, with due regard to the results reported by the author, the application is passed to the Department of Scientific Discoveries of the Committee which arranges for its scientific examination in appropriate divisions of the USSR Academy of Sciences, the Academies of Sciences of the Union Republics, the USSR Academy of Agricultural Sciences or the USSR Academy of Medical Sciences. The results of the examination and the arguments of the author are studied by an appropriate body of the USSR Academy of Sciences which decides whether to confirm the existence of a discovery and approves the formula (the wording or formulation of the discovery). Then the Department of Scientific Discoveries of the Committee arranges for all examination documents to be considered in sessions of the Committee and the Expert Council where the author makes a report in the presence of his opponents or the representatives of the scientific organizations which confirmed the discovery.

After full discussion the Committee takes the final decision concerning the registration of the discovery and the publication of its essence (the formula) in the official bulletin of the Committee, "Discoveries, Inventions, Trademarks and Industrial Designs," and in the appropriate journal of the Academy of Sciences.

If within a year of the date of publication no justified objection to the registration of the discovery is raised, the Committee solemnly grants the author a diploma and certain encouraging remuneration.

The Presidium of the Supreme Soviet of the USSR, by its Decree of September 19, 1968, ratified the Stockholm Act of the Paris Convention and the Convention Establishing the World Intellectual Property Organization (WIPO). It seems to us that the establishment of international protection for scientific discoveries is one of the essential problems arising from the spirit and the text of the WIPO Convention. This problem was studied for 17 years by the League of Nations, then by Unesco and the Bureau for the Protection of Industrial Property (BIRPI). These international organizations worked out a number of schemes for the international protection of discoveries. As was noted by the League of Nations and Unesco, the main reason for the rejection of these schemes was the fact that the legal regulation of discoveries should first be established in the individual countries and only afterwards would it be possible to adopt an international convention for the protection of discoveries.

Therefore, the competent bodies of the countries which are party to the Paris Convention and the Berne Convention, as well as the member countries of WIPO, will now be faced with the problem of perfecting their national legislation.

Many authors of discoveries in the USSR also wonder what rights they may have outside their country. At present,

the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR intends to include a new provision (article) in the Draft Law concerning discoveries, inventions, trademarks and industrial designs, now in course of preparation. By virtue of this new provision, authors of discoveries forming the basis of inventions would have the right to receive supplementary remuneration consisting in a certain percentage of the savings realized by the State in using such discovery-based inventions protected by inventors' certificates. If the author of a discovery creates inventions himself on the basis of his own discovery, the percentage of the deduction from the savings to be used as his remuneration would be increased. We intend to give Soviet authors some privileges, such as additional State-paid holidays, advantageous pensions, etc.

The State registration of discoveries, and their protection not only on a national but also on an international scale, will stimulate scientists and further enlarge the frontiers of our knowledge of the material world and bring to the service and well-being of mankind new forces of nature.

One should be realistic when forecasting the time needed for general recognition of the legal protection of scientific discoveries. The Berne Convention was adopted in 1886 but, in fact, it has taken 400 years to establish copyright firmly in the life of society and to legalize it in many States. Invention and patent law has been in existence for almost 200 years, although the Paris Convention was established only in 1883. Let us hope that a convention concerning scientific discoveries will be adopted before the end of this century.

It is not yet clear to many people how the international protection of published discoveries should be effected or whether one should or should not prohibit the unhampered use of this kind of scientific achievement without compensation. There are scientists who think that there is no sense in filing applications and in the State registration of discoveries; they think that it is enough to fix their authorship and the authenticity of the discovery in the press and that the priority may be determined by the date of publication.

The experience of State registration and legal protection of discoveries in the USSR could be used by the competent bodies of the countries party to the WIPO Convention as a basis for the preparation of their legislations, and the WIPO governing bodies could work out, with the help of experts, the basic provisions of a special convention for the protection of scientific discoveries throughout the world.

II

I should like to offer readers examples of several discoveries made by Soviet scientists which have become, in the course of their development, a basis for practical application and discovery-based inventions.

"The Cahanov effect": Doctor of Technical Sciences N. I. Cahanov discovered a new phenomenon characterized by the fact that radio waves, reflected by the ionosphere while falling to earth, are partly dispersed by its surface; a certain part of the dispersed energy returns to the source of radiation, where it can be detected and recorded. The "Cahanov effect" makes it possible to carry out a practical

investigation of the ionosphere and to provide for reliable long-distance (9,000-12,000 kilometers) radio communication.

It also found practical application in the ionosphere radar.

Doctor of Physical and Mathematical Sciences V. V. Vitkevitch discovered, in the close-to-sun space, electronic heterogeneities which create dispersion and refraction and which change the amplitude of the radio waves passing through them. On the basis of the discovery a new method of investigation of so-called "solar wind" was created. The discovery provides a new idea on the diffusion of one-meter-range radio waves in interplanetary space.

The discovery by K. I. Gringauz, Doctor of Physical and Mathematical Sciences, V. V. Bezrukih, V. D. Ozerov and P. E. Ribchinsky of the plasma cover of the earth at an altitude of 2,000 to 20,000 kilometers is very important for the solution of problems concerning the diffusion of radio waves and radio communication, for astronautics and flights of man-made satellites. The discovery will also help in understanding the nature of geomagnetic and ionospheric disturbances.

Academician G. I. Budker discovered a regularity showing that in a magnetic system having unclosed force lines not only separate particles but also sufficiently thin plasma are retainable. For this purpose, condensations of magnetic force lines ("blockings") are used. When there are two "blockings," particles can thus, under certain conditions, be closed in a limited volume. The discovery has found various scientific and practical applications in the physics of plasma, in cosmic physics, etc. On the basis of this discovery, the thermonuclear installations of the "magnetic trap" type have been built.

The discovery made by Professors V. A. Fabricant and M. M. Vudinsky and Master of Technical Sciences F. A. Butaeva of the phenomenon of the amplification of electromagnetic waves of all ranges by means of stimulated emission of radiation using the media in disequilibrium has served as a basis for creating quantum amplifiers and generators (lasers and masers).

A discovery, called "the Davidov fission," made by A. C. Davidov, Academician of the Ukrainian Academy of Sciences, has been defined as follows: "a phenomenon of fission of non-degenerated intramolecular terms within molecular crystals into two or more quasi-continuous zones of excited crystal states, the number of zones being equal to the number of molecules of an elementary cell." This discovery has been used as the basis of the author's theory of spectra of absorption, luminescence and dispersion of light within complex molecular crystals and for the theory of excitons.

Doctor of Technical Sciences E. V. Aleksandrov made a discovery in the field of the impact of solid bodies during the elastic impact. Basing his work on the discovery, the author developed the theory of calculation of the coefficient of energy transmission, of restoration, etc. The author has made a number of inventions, based on his discovery, relating to perforators, jack hammers and the antivibration protection thereof.

Doctors of Technical Sciences, Professors D. N. Garkunov and I. B. Kragelsky discovered the phenomenon of the selec-

tive transfer (of matter) in the process of copper-alloys/steel friction. This has provided the solution to problems of self-restoration of friction surfaces.

Academician P. A. Rebinder, Doctor of Physical and Mathematical Sciences V. I. Lihtman, Doctor of Chemical Sciences Y. V. Gorunov, Master of Chemical Sciences N. V. Pertsov, Master of Chemical Sciences L. A. Kochanova, and Master of Physical and Mathematical Sciences L. S. Bruhanova discovered the new phenomenon of a sharp change in the mechanical properties of metals in the presence of small quantities of metallic melts that are highly absorption-active in relation to the metals. The discovery is of fundamental scientific and practical importance. It explains the reasons for, and provides the possibility of avoiding numerous cases known in practice of catastrophic brittle destructions of metal constructions and machine parts which, under high temperatures, are in contact with liquid metallic heat-transfer media and solders, melted antifriction alloys and protective metallic covers. The discovery has a wide application in the field of the physics of plasticity and hardness of solid bodies.

Academician A. L. Kursanov and Doctor of Biological Sciences M. N. Zaprometov discovered a property of catechols extracted from tea leaves, namely, their ability to regulate the permeability of the blood vessels, to strengthen their walls and to prevent haemorrhage in various diseases. The discovery has provided the possibility of preparing vitamin P (a complex of catechols) by a cheap process using the waste of tea leaves. The process has been protected as an invention by an inventor's certificate, issued to the author of the discovery.

Master of medical sciences L. M. Dondish discovered the phenomenon of the high content of silver in the grey matter of the big cerebral hemispheres of epilepsy patients. This discovery has served as a fundamental basis for conceiving a method of removing silver from their organisms. The author, together with Professor A. D. Bezzubov and D. D. Federov is working on the production of a corresponding medical preparation protected as an invention by an inventor's certificate.

Only a few Soviet discoveries have been listed here. However, readers may obtain more detailed information on discoveries from the brochure entitled "Discoveries in the USSR, 1957-1967" published by the Committee. As to the history of the institution of the legal protection of discoveries in the USSR, one may find some details in the article by E. A. Kozhina (Mrs) published in the Committee's review *Voprosi izobretatelstva* [Problems of Invention], No. 1, 1968, and also in the work of Professor V. I. Serebrovsky entitled "Legal Protection of Scientific Discoveries in the USSR" which was published by the USSR Academy of Sciences in 1960.

The Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR, if the necessity arises, will be in a position to reply to readers' questions concerning the practice of legal protection of discoveries in the USSR.

LETTERS FROM CORRESPONDENTS

Letter from Greece *

By Michel MOUMOURIS, Doctor of Laws,
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Review of Court Decisions in Matters of Industrial Property Law from 1963 to 1966

During the period running from 1963 to 1966, notable decisions on industrial property matters were, as in the past, rendered by the Greek courts. Characterized by a spirit of liberality and showing a tendency to protect good faith in commercial transactions, these decisions contributed to the formation of a body of case law on industrial property that is both up to date and more exhaustive.

I. Trademarks

1. Imitation and Infringement

As had been the case in previous years, most of the activities of the Trademark Courts in the years 1963 to 1966 concerned disputes over trademark imitation and infringement.

In order to obtain judicial recognition of the existence of trademark imitation or infringement, the allegedly infringing mark must be used in respect of goods that are identical with or similar to those of the infringed mark (Council of State, Nos. 2622/1965, 2623/1965 and 2624/1965), thereby causing a risk of confusion or misunderstanding in the mind of the consumer. In determining the risk of confusion, it is the point of view of the average buyer — that is, the person who simply glances at the merchandise and afterwards has only a vague recollection of what he has seen — that is taken into consideration.

The Trademark Court of Second Instance ("TMD") applied the foregoing in its decision No. 330/1963, ruling that the *Supervidox* mark, intended for films and X-ray equipment for medical use, represented an imitation of the *Velox* mark which had been filed previously to protect a sensitized photographic film. According to the Court, it was immaterial that it was not customary for buyers to break a mark up into its constituent elements — which could be done if the viewer paid greater attention to the word. One had to consider, in this particular case, the fact that the first two syllables of the *Supervidox* mark were generally believed to evoke an idea of the goods' superior effectiveness; a great many buyers, therefore, would think that the real mark was to be found in the second part, *Vidox*, the sight and sound of which were similar to the previously filed *Velox* mark. As a matter of fact, the TMD had already ruled, in its decision No. 327/1963, that the *Vidox* mark was an imitation of the *Velox* mark.

In another decision (No. 329/1963) rendered on marks used in respect of the goods mentioned above, the TMD relied on the same grounds. It held that the *Neovidox* mark constituted an imitation of the earlier *Velox* mark because the first

two syllables, *Neo*, were generally known to the public for their suggestion of novelty, i. e., an improved appearance and yield, and that many purchasers would consequently take the second part, *vidox*, to be the real mark, although it was merely an imitation of the *Velox* mark. In a further similar case, the TMD ruled (in decision No. 328/1963) that the *Diavidox* mark constituted an imitation of the previously filed *Velox* mark, here again because *Dia* was of a descriptive nature and the following part, *vidox*, would be thought to be the actual mark, regardless of the fact that, as mentioned, it merely represented an imitation of the *Velox* mark.

On the other hand, as concerns marks intended for pharmaceutical products or specialties, the standards of differentiation applicable are not the same, for, in the first place, it frequently happens that use is made of a generic term representing the basic substance in the composition of the pharmaceutical product and, secondly, such marks can be differentiated even by very slight changes.

The Trademark Court of Second Instance applied the above principles in its decision No. 349/1963 by ruling that the *Tetran* mark was not an imitation of the previously filed *Tetrex* mark. The Court declared that, in the special case of medicines, since it was naturally impossible to invent a fanciful word as the basis of the mark, it was common to use names the roots or endings of which indicated either the therapeutic action of the medicine or the basic substance employed in the composition of the pharmaceutical product. The marks in question both being based on the term *Tetracycline*, a generic term designating the antibiotic products of a given group, the last syllable of each — *ex* and *an* — differentiated the two words (marks) and prevented any danger of confusion.

2. Imitations of Composite Marks

In deciding whether or not imitation exists in cases involving composite marks, it is the entire composition that must be taken into consideration from the standpoint of the visual and auditory impression it gives; any differences or similarities that might be found in the design alone are irrelevant, even if the latter includes elements in common use or indicative of the nature of the goods and which are therefore ineligible for use as marks (TMD, Nos. 370/1965 and 333/1963; Council of State, Nos. 1459/1964, 1049/1965, 1051/1965, 1467/1965 and 296/1965). As regards a mark in which colors are claimed, the color combination used in the design plays an important role (TMD, No. 370/1965; Council of State, No. 1051/1965; and Trademark Court of First Instance ("TMP"), No. 138/1963). Imitation of a composite mark exists whenever there is a risk that the consumer may be confused as to the origin of the goods. Thus, the mark composed of a design and the word *Cowboys* was deemed to be an imitation of the mark composed of the word *Chiclet* and a design (TMD, No. 370/1965). Similarly, the *Fruta-Cola* mark was considered an imitation of the *Coca-Cola* mark (Council of State, No. 1459/1964, which quashed the reverse decision, No. 333/1966, of the TMD).

On the other hand, it was ruled that there was no imitation between the marks: *Mr. Clean* with a bust design, and *Clean-All* (TMD, No. 345/1963); *Negro* with a design in black

* BIRPI translation.

of a man wearing a wide-brimmed hat and a big earring, and *Bravo* with a design of the head of a man wearing a hat characteristic of the Mexican campaigns and a earring (TMD, No. 347/1963).

Likewise, the title *Economicos Vorras*, as the name of a periodical, was not deemed to be an imitation of the title *Hellinicos Vorras*, a daily newspaper (President of the District Court of Thessalonika, No. 908/1965). It should perhaps be mentioned in passing that, according to Article 1(2) of the Greek Trademark Law (Law No. 1998/1939), the title of a daily newspaper or a periodical is considered a mark.

3. Surnames Used as Marks

(a) Article 4 of the Trademark Law provides that if the mark is the actual name of the applicant and if the same name has already been filed as a mark by another party for identical or similar goods, then a distinctive sign must be added to the newer mark so as to distinguish it from the earlier one.

The purpose of this provision is to avoid any risk of confusing or misleading the buyer as to the origin of the goods, and it is on this basis that it must be decided whether or not a brief addition to the name suffices to make a "clear distinction" over the previously filed name mark. Accordingly, the President of the District Court of Athens ruled, in his decision No. 1140/1963, that the addition of *Adam* to the new applicant's surname *Yotis* was not sufficient to avoid confusion with the previously filed *Yotis* mark which was also the name of the earlier applicant.

(b) Moreover, according to Article 3(1) (ST) of the Trademark Law, the names and portraits of third parties are unacceptable as marks, even with the permission of the parties concerned.

In the opinion of the Trademark Court (TMD), this prohibition covered not only the names of individuals but also those of legal entities (companies)¹. Nevertheless, the Council of State, judging an appeal to quash decision No. 301/1961 of the TMD in the *Tricosa* case², ruled otherwise in its decision No. 322/1963, namely, that the above interdiction applied to the name of an individual but not to the business style of a limited company. The Council of State felt that this was also clear from Article 18 of the Trademark Law, as the terms "name" and "business style" were used separately, meaning that a business style could not be inferred from the word "name" according to that Law.

4. A Mark Having Belonged to a Dissolved Company

In the event that a company is dissolved, its mark lapses. However, if the enterprise of the company is preserved, the mark goes to the party that continues the enterprise, provided that the partners in the dissolved company assigned to that enterprise the rights in the mark filed by the company (TMP, No. 368/1963). By preservation of the former enterprise, the Law means its preservation as it appeared as a whole. If there is any doubt on this point, the Trademark Courts settle the

matter at the request of the interested party (Articles 21(5) and 22 of the Trademark Law).

5. Good Faith

Good faith is prescribed in the Trademark Law notably in two provisions: Article 3(2) of the Law lays down the principle that no mark will be accepted which is contrary to good faith; Article 15(1)(h) provides for the cancellation of a mark filed in bad faith. The first of these provisions relates to objective good faith and prevents the creation of rights in a mark; the second represses subjective bad faith and causes all rights in a mark already in existence to be forfeited.

(a) The Trademark Courts still display a strong attachment for an extension of the principle of non-acceptance of marks not applied for in good faith: they consider that this provision of the Law also covers all marks applied for in violation of fair business practices, regardless of whether or not there has in fact been any intent to deceive on the part of the applicant. Decision No. 355/1963 of the TMD states this principle in a characteristic manner:

"Furthermore, considering that — as can be seen generally from the legislation on marks — a guarantee of protection afforded to a mark must not be in the interest of private rights alone, but must also be in the public interest, which is to prevent any risk of deceit or confusion regarding the origin of the goods or merchandise offered for sale, it follows that, leaving aside the question of preserving the rights of the first party to file the mark, no mark whose registration would be counter to good faith (in the sense that it might cause confusion for the public regarding the origin of the goods) is acceptable, since its exclusion is the natural result of the fair business practice that must be observed by all new applicants."

The Council of State, in its decision No. 1937/1965, also abided by the principle set forth above.

(b) The *Tricosa* Case. The limited company *Tricosa S. A.*, manufacturers, inter alia, of knitted goods and having its registered offices in Paris, filed its *Tricosa* mark in France in 1947. It did not, however, file this mark in Greece or sell its goods there, and these goods were completely unknown in that country. In 1957, a Greek enterprise filed a *Tricosa* mark in Greece for the same goods, and the mark was accepted for registration. In 1959, *Tricosa S. A.* filed its mark in Greece and requested cancellation of the earlier mark filed by the Greek firm. In its decision No. 944/1960, the TMP rejected both the request for cancellation and the declaration of the French company concerning the filing of its mark³. The French company then appealed against this decision, and the TMD, in its decision No. 301/1961, ordered the cancellation of the prior Greek mark and accepted the declaration of filing in respect of the French company's mark⁴. The TMD's decision was, however, quashed by a judgment of the Council of State (No. 322/1963) for insufficient grounds, and the case was referred back to the TMD for re-examination of the main issue. In its new decision (No. 372/1965), the TMD sustained

¹ See Mamopoulos, "Letter from Greece," in *Industrial Property*, 1963, p. 61.

² *Ibid.*

³ See Mamopoulos, "Letter from Greece," in *Industrial Property*, 1963, p. 62.

⁴ *Ibid.*

the earlier one (No. 301/1961): it declared that the French company's appeal was admissible, accepted the declaration of filing, and ordered cancellation of the Greek firm's mark. The line of reasoning followed by the TMD in its new and particularly interesting decision (No. 372/1965) was explained as follows:

"The use by the Greek enterprise of a mark in all respects like that of the French company's was undertaken with the knowledge that the mark existed and was being used by the said company, as can be seen from a detailed comparison of the Greek enterprise's mark with the French company's mark; this proves that the Greek enterprise had tried to protect its own similar goods by preventing the goods manufactured in France by the French company from being circulated in Greece. Thus, in filing its mark, the Greek enterprise knowingly acted counter to the principles of good faith and honest business practices, and it is irrelevant that the French company was established abroad rather than in Greece and had not yet filed its mark in that country or put its goods into circulation there. These goods were being marketed in a number of countries and it was likely that one day they would also be imported into Greece, which did happen some time later."

6. Rights in a Mark and Their Protection

Rights in a mark are acquired as from the time when the decision of the Trademark Court accepting it becomes final and the word "registered" is recorded in the Register of Marks by the head of the competent service. Thereafter, the mark enjoys civil and penal protection. The existence of rights in a mark must be mentioned by the holder thereof in any writ of summons or in any petition for injunction against another party who is using the mark, imitating it or infringing it (decision No. 14226/1964 of the President of the District Court of Athens). Once it becomes final, the decision of the Trademark Court to accept the mark is binding on the ordinary courts (Article 30 of the Trademark Law and Supreme Court judgment No. 406/1965), which have no power to invalidate the mark. It can then be canceled only by a decision of the Trademark Court (Article 15 of the Trademark Law; President of the Court of Appeal of Athens, No. 275/1963; and District Court of Thessalonika, No. 243/1963).

Until canceled, the mark remains protected under the law (TMD, No. 370/1965). According to the Trademark Law, a mark enjoys legal protection in so far as the owner uses it as it was filed and accepted by the Trademark Court, but protection ceases to exist if the mark is presented in a different or modified form (see decision No. 199/1963 of the President of the Court of Appeal of Athens).

II. Unfair Competition

1. Additional Benefits (Premiums)

An additional benefit or premium, that is, a tradesman's offering his customer a gift and giving him a gratuitous article in addition to whatever is sold to him, does not *per se* constitute an act of unfair competition.

The decisions of the Greek courts have consistently established that an investigation must be made of each case of

premiums in order to determine whether or not there has been any violation of Article 1 of the Law on Unfair Competition (No. 146/1914). This provision "prohibits, in commercial, industrial or agricultural transactions, any act counter to fair practice committed for purposes of competition." Accordingly, it was ruled that the promise of premiums having an exceptionally disproportionate value with respect to the value of the goods sold constitutes an act of unfair competition. This is also true if it can reasonably be assumed that the offer of a valuable premium might induce the consumer to give preference to a certain article, despite its lower quality, over other articles of the same type (President of the District Court of Athens, No. 8241/1965).

Likewise, the offering of premiums to certain customers only, by drawing lots, represents an act of unfair competition. In this particular instance, the naïve buyer, lured in one way or another, is enticed to purchase the article having the premium without taking into consideration its lower quality or his own needs (President of the District Court of Kavala, No. 394/1963). On the other hand, the offer of a premium the value of which is lower than that of the article being sold is not regarded as an act of unfair competition (President of the District Court of Athens, No. 8241/1965, as well as No. 407/1966 of the President of the District Court of Thessalonika).

2. Special Get-up or Particular Dressing of Merchandise

Special get-ups and particular dressings of the merchandise, its wrapper or packaging are protected under Article 13 of the Law on Unfair Competition as distinctive signs of the shop or enterprise from which they originate.

To benefit from protection, it is not necessary for the special get-up or particular dressing to be especially novel or original; in transactions, a minimum of originality suffices to establish in each case, on the basis of the get-up or dressing alone, regarded as distinctive signs, that a certain product originates from a given enterprise (President of the District Court of Athens, No. 15902/1963, and President of the Court of Appeal of Athens, No. 279/1963).

So that a special get-up or particular dressing will be protected, the following conditions must first be met: (a) these particularities must be known in the trade as being distinctive of the merchandise manufactured by a given party (Article 13 of the Law on Unfair Competition), as a result of which the merchandise will already have to have been in circulation for a certain period of time; and (b) the use of the get-up or dressing by another tradesman must be likely to cause confusion, in the trade circles concerned, as to the origin of the goods (President of the Court of Athens, No. 15902/1963). According to this same decision, a likelihood of confusion is apparent if the similarity of the get-up or dressing of goods originating from different enterprises might give the buying public the impression that the goods all originate from the same enterprise. There is no need, however, for the buyers to know further the business style of the tradesman concerned or the distinctive sign of the enterprise from which they presume the goods originate.

3. Signs of Establishment

The use, as a sign of establishment, of the title of another establishment does not represent an act of unfair competition in cases where the two establishments deal in different merchandise, as this difference prevents any likelihood of confusion (President of the Court of Appeal of Athens, No. 344/1963).

III. Patents of Invention

A decision (No. 570/1963) of the President of the District Court of Thessalonika, as well as one of the District Court of Athens (No. 24716/1964), defines the word "invention" as follows: the term "invention" means any creation of the human mind that provides a solution to a new technical problem or establishes a hitherto unknown method, or that improves, facilitates, accelerates, or lowers the cost of, solutions to known technical problems or methods already applied in a different or more costly way.

Patents are granted for new inventions capable of industrial application. According to decision No. 570/1963, novelty is not deemed to exist in the case of a simple adaptation of known elements or methods not leading to original, remarkable results or to an original, remarkable improvement over known results. Novelty does, however, exist in an invention if, through a novel application of known means of production, a new product or an improvement over an existing product is obtained, or if, through a new combination of known methods, a result differing from the known result is obtained (President of the District Court of Piraeus, No. 106/1963).

Under the "declarative" system used in Greece, the novelty and industrial applicability of an invention are not examined prior to the grant of the patent. Patents are, however, examined by the ordinary courts which grant the protection of the law if the required elements are found to exist. If such elements do not exist, protection is refused and, furthermore, at the request of any person having a legitimate interest therein, the patent will be pronounced null and void. (See the following judgments: President of the District Court of Athens, No. 9923/1965; District Court of Athens, No. 24716/1964; District Court of Athens, No. 23262/1964; District Court of Thessalonika, No. 1946/1963; President of the District Court of Athens, No. 1674/1963).

BOOK REVIEWS

Das neue Verfahren in Patent- und Warenzeichensachen [The New Procedure for Patent and Trademark Applications]. The effects of the Law for the Amendment of the Patent Law, Trademark Law and Other Laws. By *Ortwin Schulze* and *Herbert Wesener*. Published by Carl Heymans Verlag KG, Cologne, 1968. Price DM 32. (In German)

This book contains a commentary on the new provisions of the German Patent and Trademark Laws which were introduced by the Law of September 4, 1967 (see Krieger: "The New German Patent and Trademark Law," *Industrial Property*, 1968, p. 155).

As the authors participated in the preparatory work for the amendment of the Patent Law, they were especially qualified to comment on the modifications which mainly concern Patent Office procedure (introduction of the deferred examination and unrestricted publication 18 months after the priority date). The instructive commentary is supplemented by charts, which represent an excellent — and universally understood — medium for explaining the complicated provisions on procedure.

L. B.

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Warenzeichengesetz [Trademark Law]. Commentary by *Wilhelm Hartgen*. Published by Carl Heymanns Verlag KG, Cologne, 1968. Price DM 65. (In German)

This commentary on the German Trademark Law is intended — as the author points out in his preface — for the use of practitioners, especially those who deal with the filing of trademark applications. It contains a concise and clear introduction to the Trademark Law, taking into account the amendment by the Law of September 4, 1967 (See Krieger: "The New German Patent and Trademark Law," *Industrial Property*, 1968, p. 155), an exhaustive commentary on the provisions of the Law and a comprehensive appendix of regulations concerning formalities relating to the application, fees, and other questions likely to interest the applicant.

Thus, the book fulfills its purpose well in giving full information to all who have to deal with the practical aspects of the German Trademark Law.

L. B.

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CALENDAR OF MEETINGS

BIRPI Meetings

- April 14 to 16, 1969 (Berne) — **Joint Ad Hoc Committee on the International Classification of Patents**
Object: Practical application of the classification and revision of the European Convention — *Invitations:* Czechoslovakia, France, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Spain, Switzerland, United Kingdom, United States of America — *Observers:* International Patent Institute — *Note:* Meeting convened jointly with the Council of Europe
- April 17 and 18, 1969 (Geneva) — **Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — Technical Coordination Committee (1st Session)**
- June 9 to 12, 1969 (Abidjan) — **African Committee of Experts**
Object: To draft model statutes for societies of authors in African States — *Invitations:* Congo (Kinsbasa), Ghana, Ivory Coast, Kenya, Malawi, Nigeria, Senegal, Tunisia — *Observers:* Intergovernmental and non-governmental organizations concerned — *Note:* Meeting convened jointly with Unesco
- June 20 and 21, 1969 (Geneva) — **Permanent Committee of the Berne Union (Extraordinary Session)**
Object: Consideration of various questions concerning copyright — *Invitations:* Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom — *Observers:* All other member States of the Berne Union; interested international intergovernmental and non-governmental organizations
- August 29, 1969 (Geneva) — **Information Meeting of International Non-Governmental Organizations**
Object: To appoint observers to the International Copyright Joint Study Group — *Invitations:* Interested Organizations — *Note:* Meeting convened jointly with Unesco
- September 17, 1969 (Geneva) — **Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — Technical Coordination Committee (2nd Session)**
- September 18 and 19, 1969 (Geneva) — **Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — First Annual Meeting**
- September 22 to 26, 1969 (Geneva) — **Interunion Coordination Committee (7th Session)**
Object: Program and Budget of BIRPI for 1970 — *Invitations:* 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 22 to 26, 1969 (Geneva) — **Executive Committee of the Conference of Representatives of the Paris Union (5th Session)**
Object: Program and Budget (Paris Union) for 1970 — *Invitations:* 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 — *Observers:* All the other member States of the Paris Union; United Nations; International Patent Institute
- September 22 to 26, 1969 (Geneva) — **Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration (4th Session)**
Object: Annual Meeting — *Invitations:* All member States of the Lisbon Union — *Observers:* All other member States of the Paris Union
- September 29 to October 3, 1969 (Washington) — **International Copyright Joint Study Group**
Object: To examine all questions concerning international copyright relations — *Invitations:* Argentina, Australia, Brazil, Canada, Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), India, Italy, Ivory Coast, Japan, Kenya, Mexico, Netherlands, Nigeria, Peru, Philippines, Rumania, Senegal, Spain, Sweden, Tunisia, United Kingdom, United States of America, Yugoslavia — *Observers:* Organizations to be designated — *Note:* Meeting convened jointly with Unesco
- December 10 to 12, 1969 (Paris) — **Intergovernmental Committee Rome Convention (Neighboring Rights), convened jointly by BIRPI, ILO and Unesco (2nd Session)**
- December 15 to 19, 1969 (Paris) — **Permanent Committee of the Berne Union (14th Ordinary Session)**

Meetings of Other International Organizations Concerned with Intellectual Property

- May 19 to 22, 1969 (Prague) — **International Federation of Musicians — Executive Committee**
- May 25 to 29, 1969 (Vienna) — **International League Against Unfair Competition (LICCD) — 21st Congress**
- May 31 to June 7, 1969 (Istanbul) — **International Chamber of Commerce (ICC) — XXIInd Congress**
- June 9 to 14, 1969 (Venice) — **International Association for the Protection of Industrial Property (IAPIP) — XXVIIth International Congress**
- June 23 to 27, 1969 (Paris) — **Unesco — Subcommittee of the Intergovernmental Copyright Committee**
- July 1 to 5, 1969 (Moscow) — **Moscow Jubilee Symposium 1969 (Industrial Property)**
- July 2 to 7, 1969 (Moscow) — **International Writers Guild (IWG) — 2nd Congress**
- September 8 to 12, 1969 (Nuremberg) — **International Federation of Musicians — 7th Ordinary Congress**