

Industrial Property

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Contents

	Pages
INTERNATIONAL UNIONS	
<i>Ratifications and Accessions</i>	
The Hague Union. Ratification of the Additional Act of Monaco. Spain	207
LEGISLATION	
Germany (Federal Republic). I. Regulations Concerning Patent Applications (Text of July 30, 1968)	207
II. Regulations Concerning Utility Model Applications (Text of July 30, 1968)	210
III. Order Amending the Second Order for the Application of the Law Concerning Employees' Inventions (Text of August 22, 1968)	212
IV. Order Concerning the International Registration of Trademarks (Text of September 5, 1968)	213
V. Order Concerning the German Patent Office (Text of September 5, 1968)	214
VI. Order Concerning Article 28a of the Patent Law (Text of October 1, 1968)	216
Italy. Decrees Concerning the Temporary Protection of Industrial Property Rights at Six Exhibitions (of May 29, June 10 and July 1, 1969)	216
GENERAL STUDIES	
The New Italian Law on Compulsory Licenses (Raffaele Nobili)	217
LETTERS FROM CORRESPONDENTS	
Letter from the USSR (E. Artemiev)	222
NEWS CONCERNING NATIONAL PATENT OFFICES	
The Activities of the United Kingdom Patent Office in 1968 (I. J. G. Davis)	226
Moscow Jubilee Symposium, 1969. Note	227
NEWS CONCERNING INTERNATIONAL ORGANIZATIONS OTHER THAN BIRPI	
International League Against Unfair Competition (International Association for the Study of Competition) (21 st Congress, Vienna, May 25 to 29, 1969). Note	227
CALENDAR OF MEETINGS	
BIRPI Meetings	229
Meetings of Other International Organizations Concerned with Intellectual Property	230
Announcements for Vacancies for Posts in the Office of UPOV	231

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INTERNATIONAL UNIONS

The Hague Union

Ratification of the Additional Act of Monaco

SPAIN

According to a communication from the Federal Political Department, dated July 31, 1969, the latter addressed, on July 31, 1969, the following notification to the Governments of the States which signed the Additional Act of Monaco to the Hague Agreement:

(Translation)

"On July 9, 1969, the Spanish State deposited, with the Government of the Principality of Monaco, an instrument effecting the ratification by Spain of the Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925, revised at London on June 2, 1934. . . . In conformity with Article 7(3) [of the aforesaid Additional Act], this ratification will take effect on August 31, 1969."

LEGISLATION

GERMANY (Federal Republic)

I

Regulations

Concerning Patent Applications

(Text of July 30, 1968) *

In accordance with Article 26, paragraph (3), of the Patent Law in the version of January 2, 1968 [as amended]¹, ... the following Regulations are hereby made:

Article 1

Application

Anyone wishing to obtain a patent shall file an application in writing with the German Patent Office (Articles 26, paragraph (1), sentence 1, and 45 of the Patent Law).

The application shall comprise (Article 26, paragraph (1), sentences 3 to 6, of the Patent Law):

1. the request (Article 2);
2. the description (Article 3);
3. the patent claims (Article 3a);
4. the necessary drawings (Article 4).

If it is requested that an invention should be entered in the Utility Model Register in the event that the patent application in respect of the same article is unsuccessful (auxiliary application in respect of utility model), the Regulations concerning utility model applications shall be valid for the said request.

Article 2

Request

The patent application shall be submitted in two identical copies on forms prescribed by the Patent Office.

The request shall contain:

1. the civil name, the trade name or any other designation of the applicant, the place of domicile or establishment, and the address (postal number, place, postal district if any, street, and number of building). The civil name comprises the given name and surname, as well as the maiden name in the case of women. In the case of foreign towns, the State and district shall also be indicated; foreign place names shall be underlined.

It shall be made clearly visible whether the patent is requested on behalf of one or more individuals or a company, or for the applicant under his trade name or under his civil name. Firms shall be designated in the manner in which they appear in the Commercial Register (column 2a).

The Office shall be immediately notified of any subsequent changes in name, trade name, place of domicile or establishment, or address; in the case of changes in name or trade name, written evidence shall be submitted;

2. A short, precise technical designation of the subject matter of the invention (no fancy designations);

3. a statement that a patent is requested for the invention. If a patent of addition is requested, the number of the parent patent or the file number of the parent patent application shall be given;

4. if an authorized representative is appointed, his name and address. Only a person able to sue and be sued in civil proceedings and designated by his or her civil name may be appointed authorized representative. More than one representative may be appointed. The power of attorney shall be appended to the request;

5. if several persons having no joint representative file an application or several representatives having different addresses are appointed, a statement indicating which of the said representatives is empowered to receive service of official communications;

6. the signature of the applicant or applicants or representative;

7. if the applicant's power to contract is limited by reason of his being under age (Article 106 of the Civil Code) or for any other reason (Article 114 of the Civil Code), the consent of the legal guardian in writing.

Article 3

Description

(1) The description shall explain the character of the invention in such a manner as to make its use by others skilled

* BIRPI translation of the text as published in the German *Bundesgesetzblatt I*, p. 1004.

¹ See *Industrial Property*, 1968, p. 134.

in the art possible (Article 26, paragraph (1), sentence 4, of the Patent Law).

(2) The description shall be submitted in two identical copies.

(3) The civil name, trade name or other designation of the applicant (Article 2, paragraph (2), No. 1) and the technical designation of the invention (Article 2, paragraph (2), No. 2) as title shall be placed at the head of the description.

(4) The description shall contain:

- (a) an indication of the area of application of the invention;
- (b) if the applicant either spontaneously or at the request of the Patent Office (Article 26, paragraph (4), of the Patent Law) states the prior art on which the invention is based, an indication of sources from which the prior art can be ascertained, to the extent known to the applicant;
- (c) an explanation of the invention as characterized in the claims, in such a manner that the technical problem and its solution can be clearly understood;
- (d) so far as necessary, an explanation of the invention, preferably by setting forth modes for carrying out the invention;
- (e) a statement of the advantages gained through the invention as compared with the prior art;
- (f) reference signs if the drawing is cited.

(5) Embodiments of the invention for which protection is sought by means of dependent claims shall be explained in the description to the extent necessary.

(6) The description shall include only such indications as are necessary in order to explain the character of the invention.

(7) The same technical designation shall always be used to describe the same technical concept. Where technical concepts in applications for patents of addition are identical to concepts in the parent application, the same designations shall be used as in the parent application.

(8) Units of measurement, for example, lengths and weights, shall be in accordance with the metric system, and temperatures shall be given in degrees Celsius (centigrade). In regard to electrical units of measurement, the rules agreed by international practice shall be observed. In regard to chemical formulae, the signs commonly used in Germany shall be used.

(9) Fancy designations, trademarks or other designations which do not clearly show the character of the subject matter may not be used in the description.

(10) No drawings may be included in the description. Chemical and mathematical formulae form exceptions to this rule.

Article 3a

Patent Claims

(1) Patent claims shall specify what is to be protected by patent (Article 26, paragraph (1), sentence 5, of the Patent Law).

(2) Every patent claim shall contain:

- (a) a statement containing the technical designation (Article 2, paragraph (2), No. 2) and the distinguishing features of the subject matter of the invention in so far as the said features are known or shall not be covered by the protection.
- (b) the characterizing part stating in summarized form what is to be protected by patent in connection with the statement (as defined in sub-paragraph 2(a), above). The characterizing part shall be introduced by such words as "characterized in that" or "characterized by."

Patent claims may be drafted in some other form if expedient.

(3) All of the features which are necessary for the solution of the problem in accordance with the invention shall be contained in the first patent claim, the principal claim.

(4) Provided that the principle of unity is maintained (Article 26, paragraph (1), sentence 2, of the Patent Law), a different solution to the same general technical problem, that is, independent of the solution characterized in the principal claim, may be stated in an independent claim. As a general rule, independent claims shall not refer to other patent claims but shall contain the same statement (as defined in sub-paragraph 2(a), above) as the principal claim. The independent claim shall contain all of the features needed for the other solution.

(5) Embodiments of the invention in accordance with the principal claim or an independent claim may form the subject of dependent claims. Dependent claims must contain a reference to a preceding patent claim. The statement (as defined in sub-paragraph 2(a), above) of the dependent claim may be replaced by a complete or partial reference to a preceding patent claim if this is sufficient to clarify the claim for protection.

(6) If several patent claims are filed they shall be numbered consecutively in Arabic numerals.

(7) The patent claims shall clearly characterize what is to be protected by the patent even without reference to the description or to drawings. If drawings are submitted, reference signs relating to the drawing figures shall be added in the patent claims in brackets (cf. Article 4, No. (4)). Wherever necessary for the purpose of understanding, reference signs shall be inserted. General references to the description or the drawing (for example, "as shown in the drawing" or "as described") shall not be included in the patent claims.

(8) The provisions of Article 3, Nos. (2) and (7)-(10), shall apply in regard to patent claims, *mutatis mutandis*.

Article 4

Drawings

(1) Drawings (Article 26, paragraph (1), sentence 6, of the Patent Law) shall be submitted in triplicate, of which two copies shall be for the files together with the application, while the third for printing purposes shall be supplied not later than the time at which a decision is issued with regard to publication.

(2) The prescribed size of sheet is DIN A4 (29.7×21 cm) lengthways or, in exceptional circumstances, sideways. Sheets of 29 to 34 cm length are also permissible.

The area used for drawings may not exceed 25.7×17 cm.

(3) Drawings shall be made in lines and strokes only; sections shall be clearly indicated by hatching. No coloring is permissible. The drawings shall be made throughout by means of dark (if possible, black) lines and strokes of equal intensity, clearly delineated, durable and indelible, covering the background properly. They must be suitable for reproduction by microfilming and photocopying.

The scale selected shall be such that photographic reproduction shall permit easy reading of all details even in the case of two-thirds reduction. If the scale of the drawing is shown in exceptional circumstances, it shall be drawn and not indicated in writing.

The figures shall be arranged on the sheet in such a way as to avoid wasting space while remaining clearly separated from one another. They shall be numbered consecutively.

(4) All written signs on the drawings shall be simple and clear; they shall not be smaller than 3.2 mm in height. For the various parts of figures, reference signs (if possible, Arabic numerals) shall be used in the description only to the extent that a reference to the relating part of the figure is necessary for the understanding of the invention.

The same parts shall be given the same reference signs in all figures, corresponding exactly to the reference signs in the description. The same reference signs may not be used for different parts, even if the figures are on different sheets.

(5) Explanatory matter shall not be included in drawings, with the exception of brief indications such as "water," "steam," "section AB (figure 3)," "open" or "shut," or key words needed in order to understand flow sheets, switch gear or diagrams. All indications in the form of words shall be in German.

(6) The indication of the application to which the drawing relates (Article 6, No. (1)) shall be placed in the margin.

(7) The drawing for printing purposes shall be made on transparent, flexible, resistant, matt material (for example, tracing canvas or tracing paper) and submitted unfolded, smooth and without wrinkles. It may also be produced by heliographic process. The material may not be either dark or spotted.

For the two drawings for the files strong, white, non-glossy paper shall be used. Positive photographic prints on durable paper may also be used. They must be identical to the printed drawing. Negative photographic prints may not be used.

Article 5

Models and Samples

(1) Models and samples shall be supplied to the Patent Office only upon request.

(2) Fragile models and samples shall be submitted in sturdy containers clearly so marked. Articles of small dimensions shall be fastened on stiff paper.

(3) Samples of poisonous, corrosive or inflammable materials shall be clearly designated as such on the packing and, if possible, on the actual article.

(4) Samples of chemical materials shall be submitted in glass containers closed by means of a firm seal and bearing a firmly affixed indication of the contents. A list following the same order as the description or the patent claim shall be attached to the samples.

(5) Dyeing and tanning samples shall be kept as flat as possible and shall be firmly fixed, preferably on stiff paper (of size DIN A4) and provided with a written indication corresponding exactly to the description. The said dyeing and tanning samples shall be accompanied by a precise description of the dyeing or tanning process followed.

Article 6

Further Requirements Concerning Submissions

(1) Items appended to the request shall clearly state the application to which they relate. Following notification of the official file number, this shall be quoted in full on all communications to the Patent Office, at the head of at least the first sheet of written submissions, and in the bottom right-hand corner of drawings beneath the drawing area.

(2) Written submissions for communication to other persons or referring to more than one application shall be supplied in the necessary number of copies.

(3) Strong white paper shall be used for all written submissions. The patent request, description and patent claims shall be submitted on paper of size DIN A4. Sheets of 29 to 34 cm \times 20 to 22 cm may also be used.

(4) The sheets shall be typed or printed on one side only. Symbols not existing on the keyboard may be added by hand.

The print shall be easy to read and in black or some other dark color, indelible and durable. The type character and the form shall be such as to permit microfilming and photocopying. There shall be a distance of $1\frac{1}{2}$ lines between the lines.

A margin of not less than 2.5 cm shall be kept free at the left-hand side of the sheet. An area of 25.7×17 cm shall in no case be exceeded for the description and claims. The sheets making up each submission shall be numbered consecutively and shall be joined together in a manner permitting easy separation.

(5) The description and patent claims should not contain any parts which have been erased, altered or written over. If the original copy does, however, contain any parts which have been erased, altered or written over, such marks should be the same on all copies.

(6) If the description, the patent claims or the drawings are altered in the course of the proceedings, and if such alterations have not been suggested by the Patent Office, the applicant shall state in detail where the features of the invention described in the new documents are disclosed in the original documents submitted. Upon request by the Patent Office, any missing information shall be supplied.

If so requested by the Patent Office, the applicant shall submit clean copies incorporating any changes in the description or patent claims.

(7) New parts of descriptions and new patent claims shall in each instance be submitted on separate sheets.

Article 7

Translations

If any written submission is not in German, it shall be accompanied by a German translation made by an officially authorized translator. Upon request, the translator's signature and the fact that he is officially authorized to perform such duties shall be officially certified (Article 129 of the Civil Code).

This shall not apply in the case of priority documents submitted in accordance with the revised Paris Convention for the Protection of Industrial Property in the Hague version of November 6, 1925, in the London version of June 2, 1934, or in the Lisbon version of October 31, 1958; these may also be submitted in English or French. The section competent for dealing with the application shall decide in each instance whether a translation of such documents is required.

Article 8

Berlin

In accordance with Article 14 of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt I*, p. 1), in conjunction with Article 7, paragraph (5), of the Law for the Amendment of the Patent Law, Trademark Law and Other Laws, of September 4, 1967 (*Bundesgesetzblatt I*, p. 953), these Regulations shall also be applicable in the *Land Berlin*.

Article 9

Entry into Force

These Regulations shall supersede the Regulations concerning Patent Applications of March 30, 1965 (*Bundesanzeiger* No. 77, of April 24, 1965). They shall come into force on October 1, 1968.

II

Regulations

Concerning Utility Model Applications

(Text of July 30, 1968)*

In accordance with Article 2, paragraph (4), of the Utility Model Law in the version of January 2, 1968¹,... the following Regulations are hereby made:

Article 1

Application

An application in writing shall be filed with the Patent Office in respect of any article for which protection as a utility model is sought (Article 2, paragraph (1), of the Utility Model Law).

A separate application is required in respect of each article.

The application shall consist of:

1. the request (Article 2);
2. the description (Article 3);
3. the claims for protection (Article 3a);
4. the drawings or models (Article 4 or 5).

If it is requested that registration in the Utility Model Register should not be effected until such time as the patent application in respect of the same article has been disposed of (auxiliary application in respect of utility model), two further copies of the request for granting the patent as attached to the patent application and a third copy each of the description of the patent application, the patent claims and the drawings accompanying the patent application shall further be supplied. If the patent application is not accompanied by either a drawing or a model, a drawing or a model shall be submitted together with the request.

Article 2

Request

The request for registration in the Utility Model Register shall be made on the forms prescribed by the Patent Office in two identical copies.

The request shall contain:

1. the civil name, the trade name or any other designation of the applicant, his domicile or establishment, and the address (postal number, place, postal district if any, street, and number of building). The civil name comprises the given name and surname, as well as the maiden name in the case of women. In the case of foreign towns, the State and district shall also be indicated; foreign place names shall be underlined.

It shall be made clearly visible whether the utility model is requested on behalf of one or more individuals or a company, or for the applicant under his trade name or under his civil name. Firms shall be designated in the manner in which they appear in the Commercial Register (column 2a).

The Office shall be immediately notified of any subsequent changes in name, trade name, domicile or establishment, or address; in the case of changes in name or trade name, written evidence shall be submitted;

2. a short, precise technical designation of the article to which the invention relates (no fancy designations);

3. a statement to the effect that registration of a utility model is requested in respect of the article;

4. if an authorized representative is appointed, his name and address. Only a person able to sue or be sued in legal proceedings and designated by his or her civil name may be appointed authorized representative. More than one representative may be appointed. The power of attorney shall be appended to the request;

5. if several persons having no joint representative file an application or several representatives having different addresses are appointed, a statement indicating which of the said representatives is empowered to receive service of official communications;

6. the signature of the applicant or applicants or of the representative.

Only one copy of the request need be thus signed;

* BIRPI translation of the text as published in the German *Bundesgesetzblatt I*, p. 1008.

¹ See *Industrial Property*, 1969, p. 19.

7. if the applicant's power to contract is limited by reason of his being under age (Article 106 of the Civil Code) or for any other reason (Article 114 of the Civil Code), the consent of the legal guardian in writing.

Article 3

Description

(1) The description of the article shall be submitted in a single copy.

(2) The description shall state what new configuration, arrangement or device is to serve the purpose of work or use (Article 2, paragraph (2) of the Utility Model Law). The article to which the application refers shall be described in such a manner as to make its reproduction by others skilled in the art possible. The description shall include only such indications as are needed in order to explain the character of the article.

The civil name, trade name or other designation of the applicant (Article 2, paragraph (2), No. 1) and the technical designation of the invention (Article 2, paragraph (2), No. 2) as title shall be placed at the head of the description.

(3) Units of measurement, for example, lengths and weights, shall be in accordance with the metric system, and temperatures shall be given in degrees Celsius (centigrade). In regard to electrical units of measurement, the rules agreed by international practice shall be observed. In regard to chemical formulae, the signs commonly used in Germany shall be used.

(4) No drawings may be included in the description. Chemical and mathematical formulae form exceptions to this rule.

(5) Fancy designations, trademarks or other designations which do not clearly show the character of an article may not be used in the description.

(6) The same technical designation shall always be used to describe the same technical concept.

(7) If the description refers to drawings, reference signs (numbers or letters) shall be used.

Article 3a

Claims for Protection

(1) Claims for protection shall indicate what new configuration, arrangement or device is to be protected. If reference is made to drawings, reference signs relating to the drawing figures shall be added in brackets (see Article 4, paragraph (4)). General references to the description or the drawing (for example, "as shown in the drawing" or "as described") shall not be included in the claims for protection.

(2) If more than one claim for protection is made, each claim shall be numbered consecutively in Arabic numerals.

(3) The provisions of Article 3, Nos. (1), (3) and (6), shall apply to claims for protection, *mutatis mutandis*.

Article 4

Drawings

(1) Drawings shall be submitted in a single copy.

The drawings shall show the new technical configuration,

arrangement or device of the article of everyday use, working tool or implement, or part thereof.

(2) The prescribed size of sheets is DIN A4 (29.7 × 21 cm) lengthways or, in exceptional circumstances, sideways. Sheets of 29 to 34 cm length are also permissible.

The area used for drawings may not exceed 25.7 × 17 cm.

(3) Drawings shall be made in lines and strokes only; sections shall be clearly indicated by hatching. No coloring is permissible. The drawings shall be made throughout by means of dark (if possible, black) lines and strokes of equal intensity, clearly delineated and indelible, covering the background properly. They must be suitable for reproduction by microfilming and photocopying.

The scale selected shall be such that photographic reproduction shall permit easy reading of all details even in the case of two-thirds reduction. If the scale of the drawing is shown in exceptional circumstances, it shall be drawn and not indicated in writing.

The figures shall be arranged on the sheet in such a way as to avoid wasting space while remaining clearly separated from one another. They shall be numbered consecutively.

(4) All written signs on the drawings shall be simple and clear and may not be smaller than 3.2 mm in height. For the various parts of the figures, reference signs (if possible, Arabic numerals) shall be used if a reference to the passage in the description relating to that part makes it easier to understand the invention.

The same parts shall be given the same reference signs in all figures, corresponding exactly to the reference signs in the description. The same reference signs may not be used for different parts, even if the figures are on separate sheets.

(5) Explanatory matter shall not be included in drawings, with the exception of brief indications such as "water," "steam," "section AB (figure 3)," "open" or "shut," or key words needed in order to understand flow sheets or diagrams. All indications in the form of words shall be in German.

(6) The indication of the application to which the drawing relates (Article 6, No. (1)) shall be placed in the margin.

(7) Strong, white, non-glossy paper shall be used for drawings. Positive photographic prints on strong paper may also be used. Negative photographic prints may not be used.

Article 5

Models

(1) If models are submitted instead of drawings (Article 2, paragraph (3), of the Utility Model Law), two identical copies are required. Models shall be made of durable materials and shall not exceed 50 cm in height, breadth or depth.

(2) It is unlawful to submit models which by reason of their nature are liable to cause damage to person, articles or premises.

Models consisting of materials constituting a danger to health (for example, materials that are poisonous, corrosive, inflammable) shall be submitted in a safe container. They shall be designated as such by means of a clear inscription on the packaging and, if possible, on the actual model.

(3) In the case of models designed to contain perishable goods, such as foodstuffs, alcoholic beverages or tobacco, the said goods shall not be added in their normal state.

(4) Models which are perishable by nature shall be submitted in a form suitable for preservation.

(5) Fragile models shall be submitted in sturdy containers clearly so marked. Articles of small dimensions shall be fastened on stiff paper.

Article 6

Further Requirements Concerning Submissions

(1) Items appended to the request shall clearly state the application to which they relate. The same shall apply in regard to models. Following notification of the official file number, this shall be quoted in full on all communications to the Patent Office, at the head of at least the first sheet of written submissions, and in the bottom right-hand corner of drawings beneath the drawing area.

(2) Written submissions for communication to other persons or referring to more than one application shall be supplied in the necessary number of copies. The request, description, claims for protection and drawings shall not contain any communications referring to other applications.

(3) Strong, non-transparent, white paper shall be used for all written submissions. The request, description and claims for protection shall be submitted on paper of size DIN A4. Sheets of 29 to 34 cm × 20 to 22 cm may also be used.

(4) The sheets shall be typed or printed on one side only. Symbols not existing on the keyboard may be added by hand.

The print shall be easy to read and in black or some other dark color, durable and indelible. The type character and the form shall be such as to permit microfilming and photocopying. There shall be a distance of 1½ lines between the lines.

A margin of not less than 2.5 cm shall be kept free at the left-hand side of the sheet. The sheets making up each submission shall be numbered consecutively and shall be joined together in a manner permitting easy separation.

(5) The description and claims for protection shall not contain any parts which have been erased, altered or written over.

(6) If so requested by the Patent Office, the applicant shall submit clean copies incorporating any changes in the description or claims for protection.

(7) New parts of descriptions and new claims for protection shall in each instance be submitted on separate sheets.

Article 7

Translations

If any written submission is not in German, it shall be accompanied by a German translation made by an officially authorized translator. Upon request, the translator's signature and the fact that he is officially authorized to perform such duties shall be officially certified (Article 129 of the Civil Code). This shall not apply in the case of priority documents submitted in accordance with the revised Paris Convention

for the Protection of Industrial Property in the Hague version of November 6, 1925, the London version of June 2, 1934, or the Lisbon version of October 31, 1958; these may also be submitted in English or French. The section competent for dealing with the application shall decide in each instance whether a translation of such documents is required.

Article 8

Berlin

In accordance with Article 14 of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt I*, p. 1), in conjunction with Article 7, paragraph (5), of the Law for the Amendment of the Patent Law, Trademark Law and Other Laws, of September 4, 1967 (*Bundesgesetzblatt I*, p. 953), these Regulations shall also be applicable in the *Land Berlin*.

Article 9

Entry into Force

These Regulations shall supersede the Regulations concerning Utility Model Applications of October 16, 1954 (*Bundesanzeiger* No. 217 of November 10, 1954). They shall come into force on October 1, 1968.

III

Order

Amending the Second Order for the Application of the Law Concerning Employees' Inventions

(Text of August 22, 1968) *

In accordance with Article 45 of the Law Concerning Employees' Inventions of July 25, 1957¹,... the following Order is hereby made in agreement with the Minister of Labor and Social Affairs:

Article 1

The Second Order for the Application of the Law Concerning Employees' Inventions, dated October 1, 1957 (*Bundesgesetzblatt I*, p. 1680)², is hereby amended as follows:

In Article 2, paragraph (2), No. 2, the words "... are not subject to compulsory coverage by the salaried employees' insurance scheme and" shall be deleted.

Article 2

In accordance with Article 14 of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt I*, p. 1), in conjunction with Article 47, paragraph (1), of the Law Concerning Employees' Inventions, this Law shall also be applicable in the *Land Berlin*.

Article 3

This Order shall come into force on the day following its publication.

* BIRPI translation of the text as published in the German *Bundesgesetzblatt I*, p. 994.

¹ See *La Propriété industrielle*, 1958, p. 21.

² See *La Propriété industrielle*, 1958, p. 42.

IV

Order

Concerning the International Registration
of Trademarks

(Text of September 5, 1968) *

In accordance with Article 4 of the Law of July 12, 1922¹, concerning the accession of the German *Reich* to the Arrangement of Madrid for the International Registration of Trade Marks²,... the following Order is hereby made:

Article 1

The regulations governing the processing of, and procedure relating to, trademark questions shall be applied, *mutatis mutandis*, in regard to the international registration of trademarks unless otherwise provided in this Order.

Article 2

(1) Publication in accordance with Article 5, paragraph (2), of the Trademark Law shall be replaced, in the case of internationally registered foreign marks, by publication in *Les Marques internationales*, as published by the International Bureau for the Protection of Industrial Property (Article 3 (4) of the Agreement in the version signed at Nice on June 15, 1957 — *Bundesgesetzblatt* 1962 II, p. 125).

(2) The time limit for lodging opposition (Article 5, paragraph (4), of the Trademark Law shall begin, in the case of foreign marks published in *Les Marques internationales*, on the first day of the month following the month indicated as the month of publication in the number containing the said publication.

(3) If opposition is lodged on the basis of an internationally registered foreign mark, Article 5, paragraph (7), of the Trademark Law shall apply, provided that registration in the Trademark Register shall be superseded by expiry of the time limit laid down in Article 5 (2) of the Agreement, or, if examination has not been completed at the expiry of that time limit, service of the notification that protection is granted.

(4) With regard to the calculation of the period specified in Articles 11, paragraph (1), No. 4, sentence 1, and 11, paragraph (5) of the Trademark Law, paragraph (3) above shall be applied, *mutatis mutandis*.

Article 3

(1) Any person requesting the Patent Office to effect international registration of his mark shall provide evidence that the international fee (Article 8 (2) of the Agreement) has been paid to the International Bureau. Payment of the said fee to the Patent Office shall not be valid.

(2) The national fee (Article 8 (1) of the Agreement; Article 2, paragraph (2), of the Law of July 12, 1922) is

* BIRPI translation of the text as published in the German *Bundesgesetzblatt I*, page 1001.

¹ See *La Propriété industrielle*, 1922, p. 137.

² This instrument is now known as the Madrid Agreement for the International Registration of Marks.

payable at the time of the filing of the request. If the trademark has not been registered at the time of the filing of the request, the fee shall become payable only upon such registration.

Article 4

The date and number of international registration shall be recorded in the Register. These indications will not be published.

Article 5

If the Patent Office is requested to renew an international registration, the national fee is again payable. Evidence of this further payment of the international fee shall be provided.

Article 6

In the owner of an internationally registered mark renounces protection in one or more countries of the Union, the fact shall not be recorded in the Trademark Register. The same shall apply in regard to extension of the protection of an internationally registered mark (Article 3^{er} of the Agreement).

Article 7

(1) International registration of a foreign mark shall have the same effect as if an application had been made for registration of the mark in the Trademark Register in respect of the goods specified and such registration had been effected. Such effect shall begin, in the case of marks registered internationally before December 1, 1922, on the day of collective notification (Article 11 of the Agreement), but not earlier than the calendar day named, or, in the case of marks registered subsequently, on the day of registration. Effect shall be null and void, also retrospectively, if the mark is refused trademark protection.

(2) These marks shall not be registered in the Trademark Register.

Article 8

(1) Trademark protection acquired through the intermediary of the International Bureau may be put into effect only by a representative appointed within the country. If no such representative is appointed, a declaration may, however, be made at the time of examination of the mark (Article 3 of the Law of July 12, 1922) whereby an objection to the granting of trademark protection is refuted.

(2) Protection shall not be refused on the ground that the business enterprise is not specified.

Article 9

(1) The consent provided for in Article 9^{bis} (1) of the Agreement shall be communicated to the International Bureau irrespective of whether the new owner had made an application to the Patent Office in respect of the mark and it has been registered in the Trademark Register.

(2) If the country of origin of the mark is a country which has acceded to the version of the Agreement signed in London on June 2, 1934 (*Reichsgesetzblatt* 1937 II, pp. 583 and 608), the consent provided for in Article 9^{bis} (1) of that version shall be communicated only if and in so far as the

new owner had made an application to the Patent Office in respect of the mark and it has been registered in the Trademark Register.

Article 10

If the provisions of Articles 10 and 11 of the Trademark Law are used against an internationally registered foreign mark, cancellation shall be replaced by withdrawal of protection. With regard to the calculation of the period specified in Articles 11, paragraph (1), No. 4, sentence 1, and 11, paragraph (5), of the Trademark Law, Article 2, paragraph (3), shall be applied, *mutatis mutandis*.

Article 11

The Order Concerning the International Registration of Trademarks in the version of July 17, 1953 (*Bundesgesetzblatt I*, p. 656), is hereby repealed.

Article 12

This Order shall also be applicable in the *Land* Berlin, in so far as it is put into effect in the *Land* Berlin.

Article 13

This Order shall come into force on October 1, 1968.

V

Order

Concerning the German Patent Office

(Text of September 5, 1968) *

In accordance with Articles 18, paragraph (5), 22, 26, paragraph (3), and 36, paragraph (4), of the Patent Law in the version of January 2, 1968¹,... most recently amended by the Law of June 25, 1968,... with Articles 2, paragraph (4), 4, paragraph (2), and 21 of the Utility Model Law in the version of January 2, 1968²,... with Articles 2, paragraph (2), 5, paragraph (9), 12, paragraph (5), and 36 of the Trademark Law in the version of January 2, 1968³,... and with Article 4, paragraph (2), of the Fifth Law for the Amendment of Provisions in the Field of Industrial Property and Transitional Measures Relating Thereto of July 18, 1953,... in the version of the Sixth Law for the Amendment of Provisions in the Field of Industrial Property and Transitional Measures Relating Thereto of March 23, 1961,... the following Order is hereby made:

PART ONE

Patent Divisions and Patent Examining Sections

Article 1

(1) The President shall determine the area of competence of the Patent Divisions and the Patent Examining Sections.

(2) The President shall decide all matters relating to the assignment of each case to the appropriate patent class and subclass.

Article 2

The Chairman shall rule on the conduct of business in proceedings before a Patent Division.

Article 3

Unless otherwise ordered by the Chairman, the examiner shall serve as reporter in proceedings before a Patent Division. The reporter shall state the facts of the case and draft decisions and opinions. The Chairman shall examine the said drafts and approve them. In the event of any difference of opinion regarding substance, the Patent Division shall decide the matter.

Article 4

(1) No decision may be given in proceedings before a Patent Division without discussion and voting at a meeting, in the case of:

1. decisions concerning the grant or restriction of a patent;
2. opinions and decisions rejecting a request for the delivery of an opinion.

In exceptional circumstances, no meeting need be held if the Chairman deems that it is not necessary.

(2) In the cases covered by paragraph (1), No. 2, a legal member of the Patent Division shall participate in the discussions and voting if none of the other persons participating is a legal member.

Article 5

The decisions of a Patent Division shall be by a majority vote; in the event of the votes being equal, the Chairman shall have the casting vote.

PART TWO

Utility Model Divisions and Utility Model Section

Article 6

Articles 1 to 3 and 5 shall apply, *mutatis mutandis*, to the Utility Model Divisions and the Utility Model Section and to proceedings before a Utility Model Division.

Article 7

No decision may be given in proceedings before a Utility Model Division without discussion and voting at a meeting, in the case of:

1. decisions concerning a request for cancellation;
2. opinions and decisions rejecting a request for the delivery of an opinion.

In exceptional circumstances, no meeting need be held if the Chairman deems that it is not necessary.

Article 8

A certificate of entry in the register shall be issued to the owner of the utility model.

* BIRPI translation of the text as published in the German *Bundesgesetzblatt I*, page 997.

¹ See *Industrial Property*, 1968, p. 134.

² See *Industrial Property*, 1969, p. 19.

³ See *Industrial Property*, 1969, p. 23.

PART THREE

Trademark Divisions and Trademark Examining Sections

Article 9

Articles 1 to 3 and 5 shall apply, *mutatis mutandis*, to the Trademark Divisions and the Trademark Examining Sections and to proceedings before a Trademark Division.

Article 10

No decision may be given in proceedings before a Trademark Division without discussion and voting at a meeting, in the case of:

1. decisions to cancel a trademark or to reject a request for cancellation of a trademark;
2. opinions and decisions rejecting a request for the delivery of an opinion.

In exceptional circumstances, no meeting need be held if the Chairman deems that it is not necessary.

Article 11

A certificate of entry in the register shall be issued to the owner of the trademark.

PART FOUR

General Provisions

Article 12

The President shall conduct and supervise the affairs of the Patent Office. He shall ensure that all cases are dealt with in the same manner and that the same principles are applied in all instances.

Article 13

(1) The date of receipt shall be recorded on all documents.

(2) No documents shall be received on Sundays or on public holidays.

Article 14

(1) If more than one person is involved in proceedings before the Patent Office, all written submissions shall be accompanied by copies for the other persons involved. If a party to proceedings fails to comply with this requirement despite a request by the Patent Office, the necessary number of copies shall be prepared by the Patent Office at the expense of that party.

(2) Written submissions containing a request or notice of withdrawal of a request shall be served *ex officio* on the other parties involved; all other written submissions shall be communicated to them by the ordinary means, unless it is ordered that they should be served on them.

Article 15

(1) With regard to a request to inspect the files and models and samples relating thereto, in accordance with Article 24, paragraph (3), sentence 1, of the Patent Law, Article 3, paragraph (5), sentence 2, of the Utility Model Law and Article 3, paragraph (2), sentence 2, of the Trademark Law, the decision shall lie with the branch of the Patent Office

which is competent for the case to which the files relate or, if the treatment of the case has been completed, which was most recently competent for the case, unless competence is otherwise determined by the President.

(2) In cases covered by paragraph (1) above and in cases where anyone is free to inspect the files, inspection of the files shall, to the extent that the Patent Office's files have been recorded on microfilm, be permitted by making the said microfilm available.

Article 16

(1) Copies of decisions and notices shall be headed "*Deutsches Patentamt*," with the designation of the Examining Section or Division at the end.

(2) Notices of the Patent Office shall bear the signature, the impression or stamp of the name of the person empowered to sign, or the impression of the seal of the Patent Office.

Article 17

The President shall have discretionary power regarding the disposal of models, samples and similar items attached to the application if no request has been made for their return:

1. where the application in respect of the patent, utility model or trademark has been rejected or withdrawn, one year after final rejection or withdrawal;
2. where the patent has been granted or refused, one year after the decision to grant or refuse the patent becomes final;
3. where the utility model has been registered, three years after the end of the period of protection;
4. where the trademark has been registered or registration has been refused, one year after its registration or notification of such refusal, but not until one year has elapsed after the completion of the opposition proceedings in the cases described in Article 6a, paragraph (4), of the Trademark Law.

Article 18

(1) Authorized representatives shall submit a power of attorney to the Patent Office.

(2) Such power of attorney shall be made out in the civil names of persons able to sue or be sued in legal proceedings, unless merely containing authority to receive service of notices.

Article 19

Witnesses and experts shall be entitled to receive compensation in accordance with the Law on the Compensation of Witnesses and Experts in the version of September 26, 1963 (*Bundesgesetzblatt I*, pp. 757-758), as amended by the Law of December 20, 1967 (*Bundesgesetzblatt I*, p. 1246).

PART FIVE

Transfer of Powers

Article 20

The powers laid down in Article 18, paragraph (5), 26, paragraph (3), and 36, paragraph (4), of the Patent Law, in Articles 2, paragraph (4), and 4, paragraph (2), of the Utility

Model Law, in Articles 2, paragraph (2), 5, paragraph (9) and 12, paragraph (5), of the Trademark Law, and in Article 4, paragraph (2), of the Fifth Law for the Amendment of Provisions in the Field of Industrial Property and Transitional Measures Relating Thereto of July 18, 1953 (*Bundesgesetzblatt I*, p. 615), in the version of the Sixth Law for the Amendment of Provisions in the Field of Industrial Property and Transitional Measures Relating Thereto of March 23, 1961 (*Bundesgesetzblatt I*, pp. 274 and 316), shall be transferred to the President of the Patent Office.

PART SIX

Final Provisions

Article 21

The Order of May 9, 1961, concerning the German Patent Office (*Bundesgesetzblatt I*, p. 585) is hereby repealed.

Article 22

In accordance with Article 14 of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt I*, p. 1), in conjunction with Article 7, paragraph (5), of the Law for the Amendment of the Patent Law, Trademark Law and Other Laws, of September 4, 1967 (*Bundesgesetzblatt I*, p. 953), this Order shall also be applicable in the *Land Berlin*.

Article 23

This Order shall come into force on October 1, 1968.

VI

Order

Concerning Article 28a of the Patent Law

(Text of October 1, 1968) *

In accordance with Article 28a, paragraph 8, Nos. 1 and 2, of the Patent Law in the version of January 2, 1968 [as amended]¹,... the following Order is hereby made:

Article 1

The search for publications which are to be considered in connection with the determination of patentability of an invention in respect of which an application has been filed, as provided for in Article 28a, paragraph (1), of the Patent Law, shall be undertaken by the Technical Department of the Berlin Branch Office of the German Patent Office.

Article 2

The German Patent Office may communicate information taken from the files relating to patent applications to foreign or international authorities for the purpose of reciprocal cognizance of the results of the examination procedure or of investigations concerning the state of the art, in the case of applications in respect of inventions for which a patent has also been requested from the said foreign or international authorities.

Article 3

If the Technical Department of the Berlin Branch Office of the German Patent Office remains for the time being unable to undertake the search for publications provided for in Article 28a, paragraph (1), of the Patent Law, the Examining Sections of the German Patent Office shall remain competent.

Article 4

In accordance with Article 14 of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt I*, p. 1), in conjunction with Article 7, paragraph (5), of the Law for the Amendment of the Patent Law, Trademark Law and Other Laws, of September 4, 1967 (*Bundesgesetzblatt I*, p. 953), this Order shall also be applicable in the *Land Berlin*.

Article 5

This Order shall come into force on the day following its publication.

* BIRPI translation of the text as published in the German *Bundesgesetzblatt I*, p. 1042.

¹ See *Industrial Property*, 1968, p. 134.

ITALY

Decrees

Concerning the Temporary Protection of Industrial Property Rights at Six Exhibitions

(of May 29, June 10 and July 1, 1969) ¹

Single Article

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

SAMIA — *Salone mercato internazionale dell'abbigliamento* (Turin, September 5 to 8, 1969)

VII^a Mostra internazionale del marmo e delle macchine per l'industria marmifera (S. Ambrogio di Valpolicella, September 6 to 15, 1969)

XXII^a Fiera di Bolzano campionari internazionale (Bolzano, September 12 to 22, 1969)

Salone della attività zootecniche — Mercati concorso del bestiame e delle carni (Verona, October 5 to 12, 1969)

MODA SELEZIONE — *Salone mercato dell'abbigliamento* (Turin, October 24 to 27, 1969)

IV^o SIMEI — *Salone internazionale macchine per l'enologia e l'imbottigliamento* (Milan, November 8 to 16, 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.

¹ Official communications from the Italian Administration.

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.

GENERAL STUDIES

The New Italian Law on Compulsory Licenses

By Professor Raffaele NOBILI, Lawyer, Milan, and Lecturer
at the Catholic University of Milan

It is known that in the Italian Patent Law (Royal Decree No. 1127 of June 29, 1939) there was no provision on compulsory licensing.

Article 54 of this law only provided that patents would lapse if the patented invention was not worked within three years of the date of issue of the patent or, thereafter, for any three consecutive years.

This lack of provision on compulsory licensing created, for many years, a very uncertain situation with regard to the application of Article 54, in view of the conflict with the provisions of Article 5A(3) of the Paris Convention, particularly after Italy ratified the Convention as revised in London (Law No. 1328 of December 15, 1954) and, recently, as revised in Lisbon (Law No. 676 of July 4, 1967).

Contrary to the view held by virtually all legal writers,¹ Italian courts have firmly followed the path which had been established in the pre-war years by our Supreme Court.² As a matter of fact, all known judgments rendered in recent years, including two very recent ones by the Supreme Court,³ have supported the view that Article 5A(3) of the Paris Convention did not have a direct effect on the Italian legal system (as argued by the writers), but that it only imposed an obligation on the Italian Government to amend its own laws in order to make them comply with the provisions of the Convention. Until then, Article 54 of the Patent Law remained in force, so that if a given patent was not worked for three years, the rights thereunder lapsed according to the provisions of the said Article 54.

At any rate, Decree No. 849 of the President of the Italian Republic, dated February 26, 1968, and published in the Official Gazette of Italy of July 31, 1968, No. 193,* has finally instituted compulsory licensing, thus closing the gap between internal laws and international conventions, at least for the future (with regard to the past, the problem remains unsolved, as will be demonstrated later on).

* * *

In short, the new Decree sets forth two grounds upon which compulsory licenses may be applied for. One is non-working or inadequate working of the patented invention;

¹ See, recently, Vanzetti, *Rivista di diritto industriale*, 1966, I, p. 275; Aghina, *Rivista di diritto industriale*, 1965, II, p. 235.

² See, in particular, Court of Cassation, February 28, 1936, *Giurisprudenza italiana*, 1936, I, 1, 281; Court of Cassation, May 4, 1936, *Foro italiano*, 1937, I, 119; Court of Cassation, June 13, 1939, *Foro italiano*, 1940, I, 41.

³ Court of Cassation, October 25, 1968, Nos. 3507 and 3508, both published in *Foro italiano*, 1968, I, 2667 or *Giurisprudenza italiana*, 1969, I, 1, 278.

* See *Industrial Property*, 1968, p. 369.

the other is in order to allow dominated or dependent patents to be worked.

More precisely, with regard to the first case, the new law provides that, after three years have elapsed from the date on which the patent was granted, or four years from the date on which the patent was applied for, whichever is later, if the patentee has not worked the invention, directly or through licensees, in the Italian territory, a non-exclusive compulsory license may be granted to any interested person who applies for it (Article 54, first paragraph).

The same rule applies if the working of the patent has been subsequently discontinued for any three consecutive years (Article 54, second paragraph (1)).

Working of a patent to an extent which is in serious disproportion to the needs of the country⁴ is equivalent to non-working (Article 54, first paragraph and second paragraph (1)).

However, no compulsory license may be granted if the non-working or inadequate working of the invention is due to circumstances which are "independent of the will of the patentee."⁵

As in the old law, lack of financial resources is no excuse. Absence of demand on the Italian market will be no defense either, whenever the product which is the subject matter of the patent or the result of a patented process is "in circulation" abroad (Article 54^{bis}, first paragraph).⁶

Notwithstanding the grant of a compulsory license, non-working or inadequate working for two years after the grant of the first compulsory license will cause the patent to lapse (Article 54^{ter}, second paragraph).

Furthermore, a compulsory license to work a patent may be granted to the owner of a more recent patent covering an invention which cannot be worked without prejudice to rights in a patent granted in respect of an application having a prior date.

In order to entitle the owner of the more recent patent to a compulsory license, however, the invention covered by the dependent patent must represent considerable technical progress over the invention claimed in the dominating patent.

Moreover, if both inventions serve the same industrial purpose, the compulsory license may be granted (on the request of the owner of the dominating patent) subject to the grant of a cross license for the dominated patent to the owner of the dominating patent (Article 54, second paragraph (2)).

On the other hand, no right to a compulsory license is provided for with regard to patented inventions belonging

⁴ The requirement that the invention has to be worked in some proportion to the needs of the country was already in the old law and was criticized for being "vague, imprecise, very dangerous" (Rotondi, *Diritto industriale*, 1965, p. 287). It has been answered (Auletta, *Commentario Scialoja-Branca*, 1964, sub art. 2591, p. 313) that the provision is an application of the general rule of Article 2597 of the Civil Code whereby "those who exercise an enterprise under a monopoly granted by the law are under the obligation to enter into agreements with anybody requesting the services which are the object of the enterprise."

⁵ The expression "circumstances independent of the will of the patentee" includes circumstances which do not amount to *force majeure* in a technical sense: Greco-Vercellone, *Le invenzioni ed i modelli industriali*, 1968, p. 195.

⁶ The extent of such "circulation," both in quantity and geographically, will clearly be the source of many discussions.

to the Military Administration and those which are kept secret under Article 41 of the Patent Law.

The compulsory license is always non-exclusive (Article 54, first paragraph) and is subject to the payment of reasonable compensation to the patentee (Article 54^{bis}, first paragraph).

The license may not be granted for a period exceeding the duration of the patent (Article 54^{bis}, fourth paragraph). It is transferable only with the whole business of the licensee or with the branch of that business in which the license is used, except that the patentee may give his consent to a free transfer of the license (Article 54^{bis}, fourth paragraph).

The licensee is not barred from bringing an action to have the licensed patent declared null and void (Article 54^{bis}, fifth paragraph).

In order to qualify for a compulsory license, the party must first apply to the patentee requesting him to grant a license by contract on reasonable terms (Article 54, third paragraph).

The party applying for the compulsory license must give proper evidence of his ability to fulfill his obligations under the compulsory license satisfactorily (Article 54^{bis}, second paragraph).

No compulsory license may be granted to a party who infringes or has infringed the patent for which the license is sought (Article 54^{bis}, third paragraph).

* * *

The procedure for issuing a compulsory license is, in short, as follows:

(1) The applicant must file his application with the Italian Central Patent Office, stating the reasons for the application, the compensation and the terms of payment which are offered (Article 54^{quater}, first paragraph).

(2) Notice of the application is promptly given by the Office, by registered mail, to the patentee and to such other persons as may have acquired rights in the patent and have entered a record of their rights in the Patent Register (Article 54^{quater}, first paragraph).

(3) Within 60 days of receipt of the notice, the patentee or the other persons mentioned above may oppose the grant of the license altogether or, alternatively, they may only oppose the amount of compensation and the terms of payment which have been offered. In any event, their opposition must set forth the grounds on which the application is being opposed (Article 54^{quater}, second paragraph).

(4) Notice of the opposition and of its grounds is promptly given by the Office to the applicant, by registered mail (Article 54^{quinquies}, first paragraph).

(5) The applicant must submit his reply to the Office within 60 days of receipt of the registered letter sent by the Office (Article 54^{quinquies}, second paragraph).

(6) The license is then granted or refused by a decree of the Ministry of Industry (Article 54^{quinquies}, third paragraph). The decree specifies the duration of the license, the conditions of exploitation, the guarantees and other conditions to

which issuance of the license is subject, as well as the amount and terms of payment (Article 54^{sexies}, first paragraph).

(7) The decree is published in the Official Patent Bulletin and a record of it is entered in the Patent Register (Article 54^{sexies}, fifth paragraph).⁷

* * *

The terms of the license may be amended later on, either by the same Ministry on the request of either the licensee or the patentee, who must give valid grounds therefor (Article 54^{sexies}, second paragraph), or on the request of the licensee in the event that the patentee has granted a license to another party on terms which are more favorable than those laid down in the compulsory license (Article 54^{sexies}, third paragraph).

The license may be cancelled, by a decree of the Ministry of Industry, if the conditions for exploiting the license are not met or if the licensee does not pay the compensation at the dates prescribed in the license (Article 54^{sexies}, third paragraph).

Amendments to and cancellations of existing compulsory licenses are published in the Official Patent Bulletin and recorded in the Patent Register (Article 54^{sexies}, fifth paragraph).

The fees due in connection with the procedure for granting compulsory licenses are as follows (see Articles 3 and 4 of the 1968 Decree):

- (1) an application fee of 60,000 Lire, to be paid before filing the application;
- (2) a fee of 200,000 Lire for the grant of the license, to be paid on the request of the Central Patent Office before the formal issuance of the ministerial decree granting the license.

* * *

Now that a short survey of the provisions of the new law has been given, it will be easier to mention at least some of the many problems which will have to be faced in interpreting and applying the new law.

The first one in time, which many of us are already faced with in pending cases, concerns the legal status of the patents which had not been worked for three or more years prior to the coming into force of the new law. The problem is not an easy one, owing to the absence of any indication in the new law.

Obviously, if one follows the view that Article 54 has already been abrogated by Article 5A(3) of the Paris Convention, so that patents can no longer lapse for non-working, then no problem would arise. If, on the contrary, one starts from the position which was mentioned above and which has been constantly followed by all Italian courts, namely, that Article 5A(3) of the Convention merely imposed an obligation on the Italian Government to change its internal legislation, so that until such a change was brought about Article 54 of the Patent Law continued to apply, the problem becomes a serious one.

⁷ It is worth while to mention that, under Article 66 of the Patent Law, only licenses lasting not less than three years have to be recorded at the Patent Office. In the case of compulsory licenses, however, a record of all licenses seems to be required, irrespective of their duration.

On the basis of the view, generally supported by Italian writers, that under the old Article 54 a patent automatically lapsed for mere non-working for three years, with the result that any judgment on that point was purely declaratory,⁸ it should be expected that Italian courts will hold that patents which have not been worked for three years prior to the entry into force of the new law had already lost their legal value before that law came into existence, so that the new law would not affect their status.

It must be emphasized, however, that what has just been said is a mere (if reasonable) guess at the moment, as there are no indications yet of our courts' trends. True, the Supreme Court rendered its two latest judgments on Article 54, which are mentioned above, on October 25, 1968, and therefore after the new law was already in force, but, if one looks at those judgments carefully, it must be concluded that the new law may not have been taken into account at all, either expressly or implicitly, in the rendering of the decisions.

* * *

Several points must be considered in connection with the concept of working the invention.

The main rule is still that of Article 52 of the Patent Law, which states that an industrial invention which is the subject matter of a patent must be worked in the territory of the State to such an extent as not to be in serious disproportion to the needs of the country.

The new law starts from the same point, although from a negative angle, when it asserts that, if the invention is not worked at all or is worked in such a way as to result in serious conflict with the needs of the country, during the period indicated in the law, then compulsory licenses may be granted.

Therefore, basically, there should be no real difficulty in reading these two rules together.

Difficulties may instead arise in coordinating the second paragraph of Article 52 with the new provisions.

Article 52 of the Patent Law provides that inventions concerning articles which are displayed for the first time at an official exhibition in Italy are considered worked, throughout the time they are so displayed, with the consequence that a new three-year period is allowed for actually working the invention.

Now, should we interpret the new law in the sense that, if an invention is displayed at an exhibition according to the cited Article 52, such exhibition is the point from which one should count the three years which must elapse before a compulsory license may be applied for?

If one considers that Article 52 is formally still in force and that there is no precise evidence in the new law to sup-

⁸ Greco-Vercellone, *Le invenzioni e i modelli industriali*, 1968, p. 321; Rotondi, *Diritto industriale*, 1965, p. 288; Auletta, *Commentario Scialoja-Branca*, 1964, sub art. 2591, p. 317; Ascarelli, *Teoria della concorrenza e dei beni immateriali*, 1960, p. 620, 627.

It is interesting to note that Italian courts have held, in the similar case of lapse of patents for non-payment of the annual fee, that when such fees are not paid patents lapse automatically, even if the Patent Office does not enter in the Patent Register the record required by Article 56 of the Patent Law, which record is only of a declaratory nature (Court of Cassation, January 24, 1962, *Giustizia civile*, 1962, I, 462; Court of Cassation, October 23, 1956, *Repertorio Giustizia Civile*, 1956, *Brevetti*, No. 61).

port the view that the second paragraph of Article 52 is inconsistent with the new provisions, the most acceptable reply should be that an invention may still be worked by exhibiting it in an official exhibition.⁹

Both the old and the new laws state that the invention must be worked in the territory of the State. On the other hand, Article 53 of the Patent Law is still in force and provides that the importation or the sale in the territory of the State of articles produced abroad does not constitute working of the invention. There is no doubt, then, that only actual production in Italy (or the exploiting in Italy of a process invention) meets the requirements of the law.

One point which must be mentioned in this connection, however, is that the old text of Article 54 provided that patent rights would lapse if the invention was not "carried out" [*messa in attuazione*] within the three-year period,¹⁰ whereas the new law speaks plainly of an invention not being "worked" within the prescribed period. Whether this change involves stricter requirements or not, it is hard to say. Probably the most reasonable interpretation of the law is that, if the patentee has only begun the construction or organization of the plant or of the other facilities required for working the invention, then compulsory licenses may still be granted. If such organizational work is not yet completed but has progressed far enough to show that the patentee seriously intends to work the invention, then there is no longer a need to grant a compulsory license.¹¹

For the same reason, if the invention, although not worked within the prescribed period of time, has been worked later on, but prior to the application for a compulsory license, such a license should perhaps no longer be granted.¹²

A further problem is whether the grant of a compulsory license to a person who works the invention to the fullest practicable extent, thus meeting the needs of the country, prevents the issuance of other compulsory licenses.

A similar problem arises from the provision of Article 54^{ter} whereby "the issuance of a compulsory license shall not release the owner of the patent or his '*avente causa*'¹³ from the obligation to work the invention. The patent shall lapse if the invention is not worked within two years of the issuance of the first compulsory license, or is worked in such a way as to result in a serious conflict with the needs of the country."

Does this mean that the patentee has to work his patent even when the compulsory licensee is working it to the full

⁹ No doubt this interpretation runs counter to a well-organized system of compulsory licensing, and therefore the courts might very well take just the opposite view to the one I have suggested.

¹⁰ It was consequently held that the organization of the manufacture, with installation of equipment and machinery, was enough to prevent lapse (Ascarelli, *Teoria della concorrenza e dei beni immateriali*, 1960, p. 617).

¹¹ One should not forget that also the party applying for a compulsory license usually requires some time before he is able to work the invention.

¹² This is a point which may be very much influenced by the basic position taken in regard to the interpretation of the new law. If, as we shall discuss later on, the grant of compulsory licenses is primarily a matter of the subjective rights of the other competitors, then probably the right accrues as soon as the period prescribed by the law has elapsed, so that late working is not relevant. If, on the contrary, the main aim of the law is to induce people to work their inventions in order to meet the needs of the country, late working should prevent the granting of the compulsory license.

¹³ "*Avante causa*" probably means only the assignee of the patent.

extent, or that adequate working by the compulsory licensee suffices to keep the patent alive?

In both of the cases which have been referred to here, if one looks at the *ratio legis* on compulsory licensing, the reply should be that once the patented invention is adequately worked, whether by a compulsory licensee or by the patentee, the needs of the country are properly served. Consequently, the grant of a compulsory license to a person who exploits it adequately to protect such needs should prevent the issuance of further compulsory licenses and make further working of the patent by the patentee himself unnecessary (so that there would be no lapse of the patent in the absence of such direct working).

This interpretation would be in line with the system of the Paris Convention, which declares that forfeiture of a patent cannot be prescribed except in cases where the grant of compulsory licenses has not been sufficient to prevent "abuses" in the exercise of patent rights (Article 5A(2) and (3) of the Convention).¹⁴

The new law does not contain any provisions with regard to the working of only part of a patent. It is true that Article 29 of the Patent Law prescribes that each patent may refer to one invention only, but all of us know that in fact there may be many instances where one and the same patent covers more than one invention, or alternative processes leading to the same products, etc. In view of this, one should interpret the new Italian law in the sense that compulsory licenses may be given only for such claims of the patent as have not been worked.¹⁵

One last remark with regard to the working of the invention: the new law expressly allows working either by the patentee or by licensees, so that working by an infringer, even with the conscious tolerance of the patentee, cannot prevent the issuance of compulsory licenses to other interested parties.¹⁶

Another group of problems relates to the case of compulsory licenses which may be granted to the owners of dominated patents.

¹⁴ It must be noted, however, that the wording of Article 54^{ter} is rather ambiguous. At first glance it would appear that working by the patentee is required in spite of the grant of a compulsory license. It is only when the *ratio legis* is taken into account that the apparent meaning of Article 54^{ter} can be restricted. After all, what the compulsory licensing is aimed at is the actual working of patented inventions in Italy, so that working by the patentee or his assignee or a voluntary licensee or a compulsory licensee is exactly the same as far as the economic development of the country is concerned. The only exception is, of course, working by an infringer: see note 16 below.

¹⁵ With respect to the old law, however, the question was discussed whether the working of part of a patent saved the patent altogether (Rotondi, *Diritto industriale*, 1965, p. 287) or whether only those patent claims which had not been worked lapsed (Luzzatto, *Trattato generale delle privative industriali*, vol. II, 1914, p. 491). Obviously, the lapse of a patent was a much more serious consequence, so that it is understandable why it was sometimes held that working in part was sufficient to keep the patent alive.

¹⁶ Under the old law, it was unanimously held that working by an infringer did not prevent the patent from lapsing. The most convincing argument in favor of such an interpretation was that the manufacture and sale of the patented products by an infringer do not meet the requirements of the consumers, because the purchase of such products would be against the law and the buyers could be sued by the owner of the patent (Auletta, *Commentario Scialoja-Branca*, 1964, sub art. 2591, p. 315; Greco-Vercellone, *Le invenzioni e i modelli brevettati*, 1968, p. 194).

The general system of the law has already been briefly described. Looking now a bit more closely at the matter, one can see that the right to a compulsory license under a prior patent is given to "the owner" of a more recent patent, "provided that the latter represents significant technical progress with regard to the earlier patent." What amounts to "significant" progress is not easy to say, and this may become in practice the subject of extensive dispute. The meaning of the law is, however, clear.

Although the right is expressly granted only to the *owner* of the dominated patent, I submit that the same right also belongs to a licensee of a dominated patent.¹⁷

In spite of the fact that the second paragraph of Article 54, where this matter is covered, begins with the words "the compulsory license mentioned in the preceding paragraph" (where it is provided that a period of three or four years must elapse before a compulsory license may be granted), it is likely that in reality the new law allows a compulsory license to be applied for at once by the owner of a dominated patent. In fact, the *ratio legis* is clearly different here from what it is in the case of a license for a patent which has not been properly worked.¹⁸

For the same reasons, a compulsory license may be granted to the owner of a dominated patent even if the main patent is properly and adequately worked.

It is worth while to remark again that the new law gives the owner of the dominating patent the right to request, in the course of the proceedings for the compulsory license sought against him, that the compulsory license he granted on condition that a cross license for the dominated patent (which, it will be remembered, must represent a significant technical improvement over the former one) be granted to the owner of the dominating patent.

Although the law does not say so, it is likely that, once such a condition is made, the owner of the main patent is entitled to request himself a compulsory license, if he fails, when the time comes, to agree to a voluntary license.¹⁹

Such a right to a cross license is given only "when the two inventions serve the same industrial purpose," an expression which is not easy to interpret, unless it means that both inventions must concern the same field.

* * *

The right to obtain a compulsory license is made subject by the law to certain other conditions, as briefly mentioned above.

¹⁷ This extension is called for by the *ratio legis*. On the other hand, it would not be possible for the owner to apply for a compulsory license and then sublicense it to the licensee of the dominated patent, as compulsory licenses are, as a rule, not transferable except with the consent of the licensee.

¹⁸ In this case there is no reason why the owner of the dominated patent should wait the three or four years which are given to the owner of the dominating patent for working his patent, as such working would not affect the right to a compulsory license under the dominating patent.

¹⁹ I do not think that the provision of the law means that the owner of the dominating patent must obtain a complete cross license in the same proceeding. It seems more reasonable that, at the time the compulsory license is granted, the owner of the dominating patent merely reserves his right to the cross license, for it would be rather difficult for him to specify at once the extension and the terms of such license, the need of which may arise only in the future.

The party applying for the license must prove that "he has previously approached the owner of the patent and has been unable to obtain a contractual license on equitable terms." In other words, the applicant must prove that he requested a non-exclusive license from the patentee and his request was refused or a counter offer on unreasonable terms was made, or at least that the patentee remained silent for an unreasonable period of time. Whether or not the conditions proposed by the patentee or by the applicant were reasonable is a matter for discussion during the proceedings for compulsory license which must be taken into account in deciding for or against the application.

The applicant must also offer to pay reasonable compensation to the patentee. In fact, the law expressly says that he has to state the amount of such compensation and the terms of its payment in his application.²⁰

Nothing being said in the law, compensation could be in the form either of a lump sum or of a royalty.²¹

Furthermore, the applicant must "give the necessary guarantees that the invention will be worked satisfactorily in accordance with the conditions laid down in the license itself." It is not clear whether this expression refers only to the financial side of the license or whether it extends also to the technical ability of the applicant to work the invention. Furthermore, the law does not clearly indicate what is meant by "guarantees," namely, whether the applicant must offer security for the performance of his obligations or whether he must only satisfy the authorities that he is in a position to fulfill his financial obligations. In my opinion, the applicant must satisfy the Ministry that he can work the invention properly²² and has the financial means to do so, even if he has not put up any security (in the strict legal sense of the word).

A last requirement set forth by the law is that the license can never be granted to an infringer. This probably means that the party applying for a compulsory license must not, until the end of the procedure, do anything which could infringe the patent in respect of which a license is sought, including working his own dominated patent.²³

* * *

The area where the law is most difficult to interpret and where serious practical problems will arise is that of procedure. The procedural provisions of the law have already

been described. A few remarks will give an idea of the difficulties which have just been mentioned.

So far as the procedure for obtaining a compulsory license is concerned, two points must be mentioned. The first one is that the Central Patent Office must act "promptly" in giving notice to the interested parties of the application for a compulsory license or to the applicant of the oppositions and replies of such interested parties. The law does not specify, however, what happens if action is not taken "promptly" by the Office.²⁴

The second point is that private parties are given certain time limits in which to oppose the application or reply to the opposition, but the law does not specify whether or not the parties are barred from acting after such time limits have expired.

In other words, can the Office take into account documents which have reached it too late? Or, at least, can the Office extend such time limits on the request of the parties? Furthermore, can the parties file statements in addition to those expressly mentioned in the law?

The procedure before the Patent Office seems to be rather informal, and one would think that the Office will in fact take into account all statements and documents, even if filed after the prescribed time limits; the only exception might possibly be the timely filing of oppositions.

* * *

It is even more difficult to give satisfactory answers to the next group of problems, concerning the remedies available to the parties against the ministerial decree granting the license or rejecting the application.

The new law unfortunately does not say anything about this. Nor can any help be sought in the procedural provisions of the Patent Law. It is certain, in my opinion, that the so-called "*Commissione dei Ricorsi*," referred to in Article 71 of the Patent Law, has no jurisdiction over this matter, as the authority of the Commission does not extend beyond the cases expressly mentioned in the Patent Law. The answer must then be found in the general principles of Italian law.

There is no doubt that the decree of the Ministry is an administrative act and not a judgment. Basically, the general position of Italian law is that if the law is made primarily in order to protect public interest and individual interests are protected only indirectly (so that they are only "legitimate interests"), then administrative courts have jurisdiction. If, on the contrary, the administrative acts violate the "subjective rights" of the interested parties, then regular courts have jurisdiction.

Now, when the law provides that a compulsory license is granted if a patented invention is not adequately worked with regard to the needs of the country, what interest does the law

²⁰ It is very hard to say whether the unreasonableness of the offer made by the party seeking the compulsory license is in itself a ground for rejecting the application, or whether the Patent Office may change the terms of the offer, in particular by increasing or decreasing the royalty offered, with the result that the applicant might withdraw the application, or waive the license or not use it.

²¹ No argument against this statement can be found in Article 54^{sexies}, where it is provided that the compulsory license may be revoked if the licensee does not pay the remuneration at the dates prescribed in the license. This provision would only be applicable in the case of royalty payments. It is true, however, that in practice the grant of a compulsory license in consideration of royalty payments will be the usual case.

²² It is for this reason that the license may not be transferred except with the whole business of the licensee or with the branch of such business in which the license is exploited.

²³ The ministerial decree granting the license creates such a license and the rights thereunder, so that until then the applicant has no right to work the patent.

²⁴ On the other hand, the new law has no provision on the temporary grant of the license, pending the outcome of the procedure at the Patent Office. In addition, it is very doubtful whether and in what cases the parties could avail themselves of the rule of Italian administrative law whereby the inaction on the part of the Administration after certain periods of time is equivalent to rejection of an application thus enabling the applicant to act against such refusal.

primarily protect? If having all inventions worked in accordance with the needs of the country is a public interest, then the interest of the party applying for the license is protected only subject to such prevailing public interest. If, on the contrary, the view is held that the conflict settled by the law is only one between two interests of a similar nature, that of the patentee and that of his competitors who want to use the invention, with public interest only being indirectly furthered by the action of the individuals or companies interested in working the patent, then it can be said that the new law grants a subjective right to all competitors to obtain the license.

A similar problem arises with regard to the provision allowing compulsory licenses to be granted to the owner of a dominated patent. Does the law primarily protect the public interest in technical progress, or rather (as is more likely in this particular case) the interest of the owner of the dominated patent?

If one looks at the same problems from the angle of the owner of the patent in respect of which the compulsory license is sought, the compulsory license may be considered a restriction of his right imposed either to protect a primarily public interest or only to favor the private interests of his competitors. The answer to this question will have a bearing, as we shall see below, on the remedies afforded to such patentee.

From the point of view of procedural laws, the main consequences of the different theories would be as follows. If a compulsory license is refused, the applicant would have to go to regular courts under the theory that the law merely protects the private interests of the competitors. He would have to appeal to administrative courts if the theory prevailed that what is primarily protected by the law on compulsory licensing is the public interest in having all patented inventions worked to the extent required by the needs of the country.

If, on the contrary, the compulsory license is granted, the owner of the licensed patent would always have to bring action in regular courts, if it is considered that his right has been restricted to protect the conflicting interests of his competitors. He would instead have to appeal to administrative courts (at least in some cases), if the opposite theory should prove correct.

The writer does not wish to take any stand on such problems here, because they are so fundamental in the interpretation of the new law that a reasoned answer will require long debate among all interested circles.

LETTERS FROM CORRESPONDENTS

Letter from the USSR

E. ARTEMIEV

Deputy Chairman of the Committee for Inventions and Discoveries
attached to the Council of Ministers of the USSR

The System of Patent Information and Patent Services in the Soviet Union

In a relatively short period of time, the Soviet Union has become a great industrial power. The creative activities of inventors have played a substantial part in this achievement.

My country was one of the first to introduce a patent system. As early as 1812 a patent law was passed in Russia. Similarly, the Soviet Union was the first country to introduce a national patent information system. I shall describe the manner in which that system was set up.

* * *

It was decreed by law, in 1919, that inventions belong to society, and this legal principle is reflected in all the areas of activity of the patent authority of the Soviet Union. In particular, it provides the basis for unimpeded circulation of patent information. Another specific feature of the patent system in the Soviet Union consists of the concern shown by our patent authority to ensure the practical utilization of inventions, which is something to which the foreigner is quite unaccustomed.

Nevertheless, despite the unique collection of descriptions of patents and inventors' certificates, there was in practical terms no general national system of patent information in the Soviet Union until the beginning of the 1960s.

The lack of information available to scientists, inventors and industrial specialists regarding existing patents meant that people were sometimes grappling with problems that had long since been solved.

There were frequently annoying and anomalous situations arising when authors of inventions who had worked out an original solution to a technical problem simply did not bother to protect their priority and failed to file applications for the protection of their inventions, merely publishing a brief description. In other words, although they were *de facto* inventors they did not become so *de jure*.

However, it had always been understood in the USSR that inventions are of vital importance in accelerating technological progress and raising productivity. And now a complex job has been completed. Patent information has become one of the principal components in the general system of scientific and technical information throughout the country. A single centralized national system of patent information has been established in an extremely short period of time. There is nothing like this to be found in any other country. Our socio-

* BIRPI translation. — The first "Letter" was published in *Industrial Property*, 1967, p. 225.

political structure and our planned economic system greatly facilitated the organization of this system.

Soviet Russia has on several occasions during its history been obliged to direct considerable effort and resources to the solution of specific problems. The creation of the system of patent information is one further example of the successful solution of such a task. It demanded the selfless work, determination and persistence of hundreds of people.

Now, when they undertake a new development, both individual inventors and large creative collectives of scientists, engineers and technicians in my country devote great attention to the study of the available scientific and technical information, and, in particular, to the study of patent information. Thanks to the timely, efficient, and complete patent information placed at their disposal, the creators of new technological developments are enabled to have a precise view of the present level of their respective arts. In the final analysis this helps them to arrive at technical solutions which are sometimes superior to the most outstanding achievements anywhere in the world; it also makes it possible to create competitive and patentable products that can be successfully marketed abroad.

Not so long ago researchers used to spend a good third of their time simply finding out what had been done previously. The widespread use of patent information has helped to cut the time needed for studying literature considerably.

The establishment of a national system of patent information has rapidly resulted in an increase in the number of inventions. A few comparative figures clearly illustrate the change. During the first 50 years of Soviet power a total of 220,000 inventions were registered. That represents an average of 4,400 inventions per year. But in 1967 alone, 24,100 inventors' certificates were granted, and in 1968 24,600.

* * *

Since there were no precedents elsewhere in the world we were unable to draw on anyone else's experience. We were obliged to carry out our searches and investigations ourselves.

The basic patent resources in the country consisted of eight million descriptions of domestic and foreign inventions. These are kept in the All-Union Technical Patent Library (VPTB). Previously most experts used to work in this Library.

It had become urgently necessary to create local patent collections, which meant duplicating the descriptions stored in the Patent Library. These were filed in accordance with old systems of classification. It would have taken 5 to 6 years to reclassify the whole of this vast collection. It therefore had to be decided whether the descriptions should be reclassified under the new system, and refiled before they were duplicated, or whether on the other hand they should be duplicated in the order in which they were arranged already. Owing to the lack of time we were obliged to choose the second alternative.

But in addition to having retrospective collections we also had to organize a system of efficient information regarding

new Soviet and foreign inventions. This was also a complicated task because the number of inventions registered throughout the world is steadily increasing every year. Another requirement consisted of coordinating user facilities in accordance with particular demands.

The whole of the Patent Library's unique collection of Soviet and foreign descriptions of patents and inventors' certificates was recorded on negative film. The total length of this gigantic film library amounted to 700,000 metres. Two intermediate (working) copies were made of it. This meant that 2,100,000 metres of microfilm was used. If this were to be projected at the normal speed of cinema film it would take 58 days to show without any interruption.

It would have taken several decades to produce paper copies of the whole of this retrospective collection. It was only by means of microfilming that we were able to produce hundreds of millions of copies of descriptions of inventions in a very short time. At present any number of copies can be duplicated at will.

Previously there was virtually only the All-Union Technical Patent Library which kept a collection of descriptions of patents and inventors' certificates, whereas now there are local collections within convenient reach of researchers and potential inventors. The functions which the central library was performing on its own quite recently are now distributed almost equally throughout practically the whole of the country. There are now 72 towns in the Soviet Union with a total of 576 industrial collections and 21 territorial patent funds in successful operation. These are stocked with a total of 250 million copies of descriptions of Soviet and foreign inventions. Thus the number of copies (on paper and on microfilm) produced from the central patent collection is more than 30 times greater than the original material. Substantial resources have been devoted to the establishment of these 597 patent depositories.

Our activities are mainly geared to the industry-level patent collections. The enterprises and organizations under which they are established come under the jurisdiction of 47 Union-level ministries. The function of each such collection is to supply patent information to enterprises coming within a clearly defined field of activity. Each collection therefore contains only the descriptions of inventions within that particular industry. In the same way the various collections contain foreign patent materials relating largely to the countries occupying an important place in that industry or to which that industry's products are exported. That is the situation at present, but as the influx of patent descriptions from all over the world steadily grows we hope also to expand the collections for each industry and to make them exhaustive.

The territorial patent collections are located in major towns or in centres within large industrial regions. They have a very broad coverage, and it is only natural that they should be part of the system of 27 republic-level and other bodies supplying scientific and technical information. As their name indicates, these territorial collections are designed to serve extensive industrial regions. Since these collections are intended for use by various industries they contain descriptions relating to a wide range of subjects. These collections must

¹) Всесоюзная патентно-техническая библиотека (ВПТБ).

naturally be sufficiently thorough and extensive. Both the territorial and the industrial patent collections have descriptions of Soviet and foreign inventions covering the past 15 to 20 years.

Each of the territorial patent collections is really a large scientific and technical public library. For example, the Leningrad collection is used every day by an average of 300 persons.

Contrary to expectations, after the local collections had been established, the flow of visitors to the All-Union Technical Patent Library did not decline but actually increased. In 1966, there was an average of 1,425 persons working there every day; in 1967, it was 1,926; and in 1968, it was 2,082. This bears witness to the popularity of patent information among scientists and technologists in the Soviet Union. The Moscow scientists represent a particularly large proportion of the users of this Library.

The same trend is borne out by the steady growth in the number of special patent subsections in ministries, enterprises and design organizations. It was the Committee for Inventions and Discoveries which initiated the establishment of these bodies. In 1963, there were only some 30 patent offices in the whole country. At present there are about 7,000 such subsections, with over 30,000 employees.

There are at present over 10 million patent descriptions throughout the world. Every year a further 340,000 patents are issued in respect of 180,000 inventions.

The Soviet Union endeavors energetically to collect patent descriptions from all parts of the world. We now have a mutual exchange system with 37 countries. Where necessary, we buy descriptions from countries with which we have not yet got any such exchange agreement. This means that my country now receives about 90 per cent of all the patent descriptions published in all parts of the world. This wealth of information is not allowed to moulder in filing cabinets. Together with descriptions of Soviet inventions, it is sent to persons whose efforts are directed towards finding new solutions to technological problems. They need to have such knowledge of everything that has been done in their field if they are not to labor over matters that have already been successfully dealt with.

The patent divisions, groups and departments established in enterprises, design offices, and research institutes, assist inventors a great deal in this respect. Their basic function is to promote inventions and to undertake patent search. In addition, they help inventors to draw up their applications and to prepare the drawings; they consider whether foreign patents should be applied for, and establish search reports, the so-called "patent passports"; they also examine licensing requirements if foreign inventions are to be incorporated in the process or product under development.

Patent information is provided not only by the All-Union Technical Patent Library but also by the Central Scientific Research Institute of Patent Information and Technical-Economic Studies (CNIPI) and the polygraphic enterprise called "Patent." A large number of highly-skilled specialists are employed by these two bodies.

The CNIPI, which was established in 1963, is one of the most important departments of the Committee for Inventions and Discoveries, and it is the central body in charge of patent information.

The Institute's collaborators are concerned with all aspects of patent information. They also engage in technological and economic research, study patent statistics, and examine ways of perfecting documentation machinery, mechanizing information retrieval and translating information on inventions by mechanical means. The Institute has its own computer-based data processing centre.

An important aspect of the Institute's activities consists of preparing descriptions of inventions and other information for publication, the actual printing being performed by the polygraphic enterprise "Patent."

The Institute performs very valuable work in circulating concise information on foreign patents. Subscribers to this service receive brief information on inventions that have been registered in the United States, the United Kingdom, Japan, France, the Federal Republic of Germany, the member States of the Council for Mutual Economic Assistance, and in many countries of Northern Europe, Asia and the Middle East. To put it in a nutshell, information is supplied on new patents in all the countries whose technological development is of interest to Soviet specialists. Previously it used to be the actual institutions which arranged for Russian translations of descriptions of inventions affecting them. Centralization of this work has cut out duplication of effort and has resulted in substantial savings every year. It is now possible to commission translations direct through the Institute.

The Institute also issues and circulates to its subscribers information regarding particularly important inventions recommended for practical use. Enterprises and organizations regularly receive communications concerning inventions that have already been introduced into production processes. In order to avoid any infringement of patentees' rights, the Institute supplies subscribers with information concerning patents that have been granted in the USSR.

The following figures will give some idea of the vast and steadily expanding flow of information: in 1965 it amounted to 10,430 printer's sheets, whereas by 1968 it had grown to 21,700.

The All-Union Technical Patent Library increases its collection by a further 300,000 descriptions of inventions every year, not to mention a wide range of other items of patent information and scientific and technological literature. The Library's staff processes incoming material, since the Library remains the main documentation and bibliographical centre for patent information. It supplies copies of any descriptions of inventions requested by organizations or other libraries. People who come from other towns to use the Library's facilities can be very quickly supplied with copies through the polygraphic enterprise "Patent".

The polygraphic enterprise "Patent" has very extensive activities, and it also controls a steadily growing network of branches. By the beginning of 1969 it had 21 affiliates in other towns, all of which have direct teletype link with its Moscow office.

It was "Patent" which duplicated the descriptions already existing in the Soviet Union, providing industry and territorial collections with the necessary retrospective material. It continues to receive orders for selective copying of information. It has a regular system of current Soviet and foreign patent information for its 20,000 subscribers, whose number includes enterprises and institutions in the USSR and abroad.

Since 1966, "Patent" has been duplicating an enormous amount of material each year. It produces some 80 million microfilmed copies of descriptions of inventions per year. This represents 500 million microframes. Hitherto five million copies of patent documentation have been produced each year by electrographic means, but this year the capacity will be doubled. In addition 70 million offprint pages are produced. This is a highly efficient firm, and last year the value of its output amounted to 5.5 million roubles. As these figures reveal, it is a major enterprise for the duplication of patent documentation.

"Patent" provides facilities not only to Soviet organizations and citizens, but also to foreigners.

What are the patent facilities available to firms and individuals in the Soviet Union? What special publications may be of interest to them?

Brief, preliminary information on Soviet inventions is published in the official bulletin of the Committee for Inventions and Discoveries, which comes out three times a month. This bulletin is entitled "Discoveries, Inventions, Industrial Designs, Trademarks," and it has been published for the past 45 years (since 1924). This bulletin publishes the formula (claims) of every discovery and invention as entered in the USSR State Register, as well as information on industrial designs and trademarks. These are accompanied by a drawing or reproduction.

Shortly after publication of this brief information in the bulletin, the description of the invention the subject of an inventor's certificate or a patent issued in the USSR is also published. Each description contains detailed information regarding the invention and, if necessary, it is accompanied by drawings or diagrams. It is estimated that about 28,000 inventions will be registered in 1969; it will be possible to obtain the description of any of these.

On the instructions of the Committee for Inventions and Discoveries, preparatory work has recently started with a view to introducing English translations of titles in our publications. Beginning with the last part of 1969, or from 1970, we believe it should be possible to bring out an appendix to each issue of the bulletin, in English. This appendix will give a complete bibliographical description of each inventor's certificate or patent, consisting of the author's name and initials, the applicant's designation, the classification symbol, the number, and other useful designations followed by an elaboration of the title of the invention, a sort of succinct abstract of the invention. At the end of each such appendix, also in English, it is intended to give an alphabetical index and a subject-matter index. This means that in the near future it will become far easier for foreign firms, libraries and inventors to obtain information regarding the relevant patent situation in the Soviet Union.

A guide to the previous year's issues of the bulletin is published in five volumes. In addition to indices by subject matter and serial number, there is an alphabetical list of authors, and information on changes in existing patents and inventors' certificates.

A brief handbook is also published, separately, under the title of "Bibliographical Guide to Patents Valid in the USSR".

Since 1968, a quarterly publication entitled "Introduction of Inventions" has been issued. This contains brief information on new solutions of particular technological problems which are already in use in industry. It also describes the economic results obtained and gives the addresses of the enterprises which first introduced the particular invention.

The Soviet patent office devotes particular attention to improving the professional standards of patent specialists. The Committee for Inventions and Discoveries operates permanent courses for the training of leading specialists, engineers and technologists engaged in patent and invention matters (ZKPI). Over 30,000 members of different organizations have already attended such courses. Last year, the Committee set up a Central Institute for the further training of responsible staff and specialists in economics with regard to patent work (ZIPK), which provides more intensive and thorough training than the abovementioned courses.

There is a public (trade union) organization in the form of the All-Union Society of Inventors and Authors of Rationalization Proposals (VOIR). Where necessary, it helps authors to prepare drawings, to file applications in respect of inventions, and so on. It further supervises the introduction of inventions, and it ensures that authors receive the full remuneration due to them in proper time. But there are also fairly frequent occasions where a settlement must be found for more complex matters demanding extensive and thorough knowledge and requiring the services of professionals representing different branches of knowledge.

In response to a request by an organization, firm or private individual, whether a Soviet citizen or a foreigner, the enterprise "Patent" in Moscow or any of its affiliates may agree to provide certain facilities in the patent field, the so-called "patent services."

These services are provided in cases where knowledge of patent matters, patent law, technology or foreign languages is required, or where the originator of the request simply has not enough time to do some particular job. Most of the requests are for search or for copying of patent materials, for provision of additional material for patent collections or appropriate study, or for compilation of patent descriptions on specific subjects.

In certain cases, "Patent" merely serves as a go-between. In such instances it will ask for the work to be done by the CNIPI, the All-Union Scientific Research Institute of State Patent Examination, the All-Union Technical Patent Library, or other sections of the Committee for Inventions and Discoveries.

Upon request, the prospects for patent validity may be examined, with regard both to Soviet and to foreign patents.

Anyone may request "Patent" to prepare an application for an industrial design, trademark or invention, to undertake translations, to make drawings, and so on. This enterprise provides considerable assistance to authorities in preparing the necessary documents with a view to patenting our inventions abroad.

The above description shows that the Soviet Union has an active system of patent information and services. We look forward to closer contacts with foreign firms, entrepreneurs and individual inventors.

At the present stage of development of science and technology the finest attainments of the human spirit cannot remain the property of isolated individuals: they must belong to the whole of humanity. Full and comprehensive exchange of scientific and technological knowledge, including patent information, is therefore highly desirable.

NEWS CONCERNING NATIONAL PATENT OFFICES

The Activities of the United Kingdom Patent Office in 1968

By I. J. G. DAVIS

The Comptroller-General's annual report to Parliament for 1968 was published on May 22, 1969. The report covers the work of the Office in patents, designs and trademarks.

In the corresponding report on the activities of the Office in 1967, Edward Armitage mentioned that one of the aims of the Patent Office is to be self-supporting in all three branches. The Office again fell slightly short of this target in 1968 and, with a view to overcoming the tendency of costs to rise ahead of fees, fee increases have been made to balance income and expenditure over a three-year period.

The staffing position of the patent examiners improved somewhat during the year. Fifty-three new examiners joined the staff, forty-five of them in the second half of the year. Losses from retirement and other causes were thirty-three giving a net gain of twenty. There are signs that this improvement may be continued throughout 1969, although it seems likely that the Office will have to accept as normal considerable movements of staff. Perhaps this interchange with industry is on the whole useful but, when young examiners barely out of their training period leave, it represents a considerable loss of the investment which the Office has made in training them.

As was explained in the previous report, the number of applications made in the United Kingdom, including as it does those filed with provisional specifications many of which are not proceeded with, is not a true representation of the work-load of the Office. Only "complete" specifications are examined and the number filed annually has risen from

nearly 34,000 in 1959 to nearly 49,000 in 1968. Oddly, filings of complete specifications in 1967 showed a small decrease from the previous year, but in 1968 were two thousand (4.3%) up on 1967, dashing hopes that input might be levelling out. Moreover, although the output of the examiners was sustained at a high level, the backlog of unexamined complete specifications rose by some 2,800. Of course, the improvement in recruitment of examiners can have had little effect in 1968. It might, however, if continued in 1969, help to hold the backlog. The actual period before a complete specification is examined is still less than one year but this is two years from the filing date in the case of a Convention application and, if the input continues to rise, seems likely to increase. Clearly, there must be some limit to the number of skilled personnel engaged on the examination of patent specifications and the United Kingdom Office, in common with all other major offices, is looking for long-term solutions.

For this reason, the United Kingdom has actively supported the work leading toward the Patent Cooperation Treaty. Over seventy per cent of United Kingdom applications originate abroad and, if the treaty became operative, it could save the Patent Office a considerable amount of work. In 1968, the Office participated in a number of drafting meetings and the Comptroller-General and other members of the Office attended the December meeting of the Committee of Experts, in Geneva.

The Comptroller's report refers to "signs of a revival of interest in the European Patent" and the events of 1969 have shown that this reference was fully justified. It now seems likely that work on the European Patent will be pressed forward with all possible speed, but we believe that this new initiative should not be allowed to interfere with the successful conclusion of the work on the Patent Cooperation Treaty. There is a real difficulty here. In common with most other offices the Patent Office has difficulty in finding sufficient qualified personnel to negotiate numerous major projects at once. There is also the need to reconcile these projects one with another if they are to result in economical and efficient protection of inventions.

Apart from the international work, the Committee set up in 1967 under the chairmanship of Mr. Maurice Banks (formerly Deputy Chairman of British Petroleum, Ltd.) to examine and report on the British patent system continued its work during the year, considering evidence from numerous interested bodies. It is hoped that this Committee will report towards the end of this year. In the meantime, the Standing Advisory Committee under the chairmanship of Mr. H. R. Mathys (Deputy Chairman of Courtaulds, Ltd.) has been able to give the Government advice on matters which required urgent consideration.

In patents then, this was very much a "wait and see" year. We have our difficulties but we are still in a better position than most other major offices. Nevertheless we look to the report of the "Banks Committee," and to the successful completion of the work on the Patent Cooperation Treaty and on the European Patent to put our house in order for the years ahead.

In trademarks as in patents the number of applications has risen steadily — from 14,160 in 1959 to a record 16,820 in 1968. This rise reflects the increasing tendency of traders to seek, as an aspect of marketing technique, the registration of separate marks for use in respect of individual products. The number of marks registered was 10,907, a 4.5 per cent increase on 1967.

In the Designs Branch, however, there was a fall of 14.5 per cent to 7,096 in the matter of applications received; those in respect of textile articles fell by 43.9 per cent as a result of a sharp decline in applications from Nigeria. This is accounted for by the war in Nigeria and by Nigerian law which makes registration there dependent on previous registration in the United Kingdom. The Comptroller's report refers also to the Designs Copyright Act 1968 which became law in October. This law, which was described by William Wallace in an article in *Copyright* for November 1968, could have an effect on the number of design applications filed in that it will provide automatic protection under United Kingdom Copyright Law for works of applied art. It will also enable United Kingdom industry to claim protection for works of applied art in those countries which protect such works under their copyright law and will of course offer protection here to foreign works.

Moscow Jubilee Symposium, 1969

Note *

In order to commemorate the 50th anniversary of the promulgation of the first decree of the Soviet Union providing for the protection of inventions (June 30, 1919), the USSR State Committee for Inventions and Discoveries attached to the Council of Ministers of the Soviet Union organized a scientific symposium in Moscow. The theme of the Symposium was described as "Inventive activity and scientific and technical progress. Problems of patent information retrieval." It took place from July 1 to July 5, 1969, at Moscow University.

The Jubilee Symposium was opened by Mr. V. N. Novikov, Deputy Chairman of the Council of Ministers of the Soviet Union. He welcomed some one thousand participants, including 330 foreigners coming from 33 countries. Among the participants from the Soviet Union itself were some 100 officers of the USSR State Committee for Inventions and Discoveries. This team was headed by Mr. Y. Maksarev, Chairman of the said Committee.

Mr. Maksarev and the Director of BIRPI, Professor G. H. C. Bodenhausen, were the two other featured speakers at the opening ceremony. Several foreign patent office chiefs and the Director General of the International Patent Institute addressed the opening meeting as well.

The participants included the heads of the industrial property offices of Algeria, Bulgaria, Czechoslovakia, Cuba, Fin-

* This Note has been prepared by BIRPI on the basis of information received from the Organizing Committee of the Symposium.

land, France, Federal Republic of Germany, German Democratic Republic, Hungary, India, Mongolia, Poland, Rumania, United Arab Republic, United States of America, Yugoslavia. The International Association for the Protection of Industrial Property was represented by its Secretary General and by its Rapporteur général.

In addition to its Director, BIRPI was represented by Dr. Arpad Bogsch, First Deputy Director, and Mr. I. Morozov, Counsellor, Industrial Property Division.

The working meetings of the Symposium took place in two sections, one dealing with "inventive activity and scientific and technical progress," the other with "problems of patent information retrieval." In these two sections, 46 papers in all were read and discussed by the participants. It is planned that these papers will be published in English and Russian by the organizers of the Committee towards the end of 1969.

In the plenary meeting, Mr. Maksarev read a paper entitled "Lenin's Decree of 1919 and its role in the promotion of inventive activity in the USSR." This paper, too, will be among those published.

The Symposium was excellently organized from every point of view. It was a useful exercise, for most of the papers conveyed interesting new information. It was also a pleasant occasion thanks to the generous hospitality of the Russian hosts.

NEWS CONCERNING INTERNATIONAL ORGANIZATIONS OTHER THAN BIRPI

International League Against Unfair Competition (International Association for the Study of Competition)

(21st Congress, Vienna, May 25 to 29, 1969)

Note *

The 21st Congress of the International League Against Unfair Competition (LICCD) was held in Vienna under the presidency of Dr. Forster, Vice-President of the Austrian Federal Chamber of Commerce. It was attended by participants from 14 countries and different international bodies, both public and private.

BIRPI was represented by Mr. J. Voyame, Deputy Director.

The agenda of the Congress included informational reports as well as various other reports, followed by discussion, relating to questions carried over from an earlier Congress and to new questions.

* This Note was kindly supplied by the Rapporteur général of the LICCD.

The informational reports concerned the following problems:

- The evolution, since the 1967 Nice Congress, of legislation and case law on unfair competition and anti-competitive practices;
- The protection of indications of source and appellations of origin;
- The professional rules and practices followed in trade and industry where matters of competition are concerned;
- The violation of industrial and trade secrets in matters of competition;
- Credit cards;
- The study of dumping as a means of restricting competition on the international level.

Questions carried over and new questions pertained to the following matters:

- Free competition and recommended usage;
- The comparative study of competition in the so-called socialist and capitalist countries;
- Specific problems, in the field of competition, relating to the so-called developing and industrializing countries;
- Retailers' voluntary chains and purchasing groups;
- Consumer groups, their services and their responsibilities;
- Comparative advertising;
- Subliminal advertising.

At the close of a thorough discussion of the problems appearing on the agenda in connection with questions carried over and new questions, the following motions were adopted:

QUESTION No. 1 (carried over)

Free Competition and Recommended Usage

The Congress,

Notes that recommended usage is any action whereby a certain product of a given origin (as indicated by the mark, trade name, etc.) is promoted for use in the maintenance or operation of another product (a machine, material, etc.);

Considers that such recommended usage is not in conformity with fair business practices:

- where it is a condition for the giving of a guarantee, without there being any technical necessity for such condition,
- where it includes a disparagement directed toward competitors or contains fallacious appraisals and, in particular, if it wrongly appears in the guise of disinterested advice;

Is of the opinion that, if necessary, it can be deemed to fall within the provisions of legislation repressing restrictive agreements and practices.

QUESTION No. 2 (new)

Retailers' Voluntary Chains and Purchasing Groups

The Congress,

Notes that voluntary chains and purchasing groups constitute a means of adapting traditional trade to the new structural situation of the market;

Decides that, in view of its importance, the study of this question will be continued.

QUESTION No. 3 (new)

Consumer Groups, Their Services and Their Responsibilities

The Congress,

Emphasizes the necessity for consumers to have true and objective information and for them to be represented;

Considers that associations of consumers can help to carry out this twofold task;

Is of the opinion that satisfactory accomplishment of this mission requires that such organizations should be independent of any competitive interests and that the information they supply should be objective;

Expresses the opinion that, if the associations carry out comparative tests, the latter must be made seriously and the results expressed in such a way as to avoid any misinterpretation.

QUESTION No. 4 (new)

Comparative Advertising

The Congress,

Noting that several participants felt that comparative advertising should henceforth be allowed in cases where the author thereof is in a position to prove the veracity of his allegations;

Decides that the principle contained in the third sentence of the resolution adopted in Brussels in 1952, "competitors should not be named, and allusions to a competitor which are out of place should be avoided," will be re-examined at a future Congress of the League.

* * *

At the close of the Congress, Professor Martin-Achard (Switzerland) was named President of the LICCD, in succession to Dr. Forster.

CALENDAR OF MEETINGS

BIRPI Meetings

- 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 Ordinary Session**
- 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
- September 30 to October 2, 1969 (Geneva) — Committee of Experts on the Establishment of a "Priority Fee" (Paris Convention)**
Object: Implementation of the Recommendation adopted by the Stockholm Conference — *Invitations:* Algeria, Argentina, Austria, France, Germany (Fed. Rep.), Iran, Italy, Japan, Kenya, Netherlands, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia — *Observers:* Intergovernmental and international non-governmental Organizations concerned
- October 6 to 10, 1969 (Vienna) — Expert Group Meeting on the Organization and Administration of Industrial Property Offices**
Object: Discussion of various aspects of the organization and administration of Industrial Property Offices in developing countries — *Invitations:* To be announced later — *Note:* Meeting convened jointly with the United Nations Industrial Development Organization (UNIDO)
- October 21 to 24, 1969 (Munich) — Joint ad hoc Committee on the International Classification of Patents (2nd Session)**
Object: Practical application of the Classification — *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
- October 27 to 31, 1969 (Geneva) — Committee of Experts on a Model Law for Developing Countries on Industrial Designs**
Object: To study a Draft Model Law — *Invitations:* Developing countries members of the United Nations — *Observers:* Intergovernmental and international non-governmental Organizations concerned
- November 3 to 8, 1969 (Cairo) — Arab Seminar on Industrial Property**
Object: Exchange of views on industrial property questions and on their importance for developing countries — *Invitations:* Algeria, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Republic of Yemen, Saudi Arabia, South Yemen People's Republic, Sudan, Syria, Tunisia, United Arab Republic; Sheikdoms of Abu Djaybia, Bahrain, Dubai, Qatar, and Sharyja — *Observers:* Intergovernmental and international non-governmental Organizations concerned
- 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)**
- January 19 to 23, 1970 (Geneva) — Committee of Directors of National Industrial Property Offices of the Madrid Union (Marks)**
Object: Administrative questions — *Invitations:* All member States of the Madrid Agreement (Marks)
- January 26 to 30, 1970 (Geneva) — Committee of Experts for the Revision of the Madrid Agreement (Marks)**
- March 9 to 20, 1970 (Geneva) — Preparatory Study Group on PCT Regulations**
Object: Study of Draft PCT Regulations — *Invitations:* All member States of the Paris Union — *Observers:* Intergovernmental and international non-governmental Organizations concerned
- May 25 to June 19, 1970 — Diplomatic Conference for the adoption of the Patent Cooperation Treaty (PCT)**
Invitations: All member States of the Paris Union — *Observers:* Other States; Intergovernmental and international non-governmental Organizations concerned — *Note:* The exact place of the Conference will be announced later

Meetings of Other International Organizations Concerned with Intellectual Property

September 8 to 12, 1969 (Nuremberg) — International Federation of Musicians (FIM) — 7th Ordinary Congress

October 14 to 17, 1969 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents — Working Group

November 12 to 14, 1969 (Strasbourg) — Committee of Experts on Patents of the Council of Europe

November 25 to 28, 1969 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents — Working Group

December 8 to 11, 1969 (The Hague) — International Association for the Protection of Industrial Property (IAPIP) — Council of Presidents

January 12 to 16, 1970 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents

ANNOUNCEMENT OF A VACANCY FOR A POST

**Office of the International Union
for the Protection of New Varieties of Plants
(UPOV), to be established in Geneva,
Switzerland**

*Terms and Conditions of Appointment of
VICE SECRETARY-GENERAL*

Category and Grade

D.1 on the BIRPI/UN scale, with entry at a step to be determined having regard to the qualifications and experience of the person appointed.

Principal responsibilities and duties

Subject to the responsibilities of the Secretary-General, the incumbent will direct the Plant Varieties Department of the Bureau of UPOV which Department will be responsible for all questions concerning the substantive provisions of the Convention for the Protection of New Varieties of Plants and for all activities concerning international cooperation in the field of plant breeders' rights.

Subject to the general directives of the Council of UPOV and the overall responsibility of the Secretary-General, the duties of the incumbent will include in particular:

- i) study and preparation of measures to safeguard the interests and encourage the development of UPOV;
- ii) preparation and presentation of reports, working papers, meetings, programmes, plans and publications on plant breeders' rights and related matters;
- iii) execution of programmes approved by the Council of UPOV;
- iv) maintenance of contacts with and provision of advice and assistance to plant breeders' rights' offices of member and other States;
- v) contacts with international and other organizations, and participation in their meetings;
- vi) cooperation with the appropriate sections of BIRPI in relation to the preparation of budgets and generally in the use of BIRPI common services.

Qualifications and Experience

- (a) University degree in a relevant field of agricultural science, economics, administration or law, or an equivalent academic qualification;
- (b) Wide experience in the field of plant breeders' rights including its international aspects;
- (c) Excellent knowledge of one of the official languages (English, French and German) and preferably a good knowledge of the two others.

The incumbent must have the national and international standing and specialised experience necessary to carry out the duties successfully.

Nationality

Candidates must be nationals of one of the member States of UPOV, or of one of the States which have signed but have not yet ratified the Convention for the Protection of New Varieties of Plants.

Age limit

Normally, less than 55 years of age at date of appointment.

Date of entry on duty

As mutually agreed.

Conditions of employment

The conditions governing employment are substantially the same as those defined in the Staff Regulations and Rules of BIRPI. They follow generally those of the United Nations "common system."

— Duration of appointment: probationary period of two years, after satisfactory completion of which a permanent appointment will be offered.

— Medical examination: the appointment is subject to a satisfactory medical examination.

— Annual salary (present rates): from 69,440 Swiss francs (step 1) to 81,026 Swiss francs (highest step), by annual or biennial increments.

About 9% of the salary is deducted as a contribution to the pension scheme.

— Annual post adjustment (present rates): — with dependants: from 5,858 Swiss francs (amount corresponding to the starting salary) to 6,506 Swiss francs;

— without dependants: from 3,905 Swiss francs (amount corresponding to the starting salary) to 4,337 Swiss francs.

— Dependency allowances: 1,728 Swiss francs per year for dependent spouse; 1,296 Swiss francs per year for each dependent child.

— Education grant: 75% of the cost of attendance up to a maximum of 4,320 Swiss francs for each dependent child (under the age of twenty-one).

— Salary, post adjustment and allowances are tax free.

— Conditions also include: payment of travel and removal expenses (including installation grant); five-day week; annual leave of 30 working days; home leave; pension scheme and medical benefit scheme.

Applications

Persons wishing to apply should write to the Head, Administrative Division, BIRPI, 32, chemin des Colombettes, Geneva, Switzerland, for application forms. These forms, duly completed, should be returned, *not later than September 15, 1969*, to the Division of International Organisations of the Federal Political Department, 3000 Berne (the Swiss Federal Council being the supervisory authority of UPOV).

