

Industrial Property

Monthly Review of the United International Bureaux
for the Protection of Intellectual Property (BIRPI)
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WORLD INTELLECTUAL PROPERTY ORGANIZATION

SWEDEN

Ratification of the WIPO Convention

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

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the above Convention, has the honor to notify him that the Government of the Kingdom of Sweden deposited on August 12, 1969, its instrument of ratification dated June 27, 1969, of the Convention Establishing the World Intellectual Property Organization (WIPO).

The Kingdom of Sweden has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently ratifying

- the Stockholm Act of the Paris Convention with the limitation provided for in Article 20(1)(b)(i) of the said Act to the effect that the ratification shall not apply to Articles 1 to 12,
- and the Stockholm Act of the Berne Convention with the exception of Articles 1 to 20 and with a declaration admitting the application of the Protocol Regarding Developing Countries to works of which it is the country of origin.

A separate notification will be made of the entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO), when the required number of ratifications or accessions is reached.

Geneva, September 8, 1969.

WIPO Notification No. 13

INTERNATIONAL UNIONS

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

SWEDEN

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

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the above international

instrument, adopted at Stockholm, has the honor to notify him that the Government of the Kingdom of Sweden deposited, on August 12, 1969, its instrument of ratification, dated June 27, 1969, of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967, with a declaration to the effect that its ratification shall not apply to Articles 1 to 12.

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

September 8, 1969.

Paris Notification No. 10

Ratification of the Additional Act of Stockholm to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods

SWEDEN

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

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the above international instrument, adopted at Stockholm, has the honor to notify him that the Government of the Kingdom of Sweden deposited, on August 12, 1969, its instrument of ratification, dated June 27, 1969, of the Additional Act of Stockholm, of July 14, 1967, to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods.

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

September 8, 1969.

Madrid (Indications of Source) Notification No. 6

Ratification of the Stockholm Act of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks

SWEDEN

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

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and,

in accordance with the provisions of the above international instrument, adopted at Stockholm, has the honor to notify him that the Government of the Kingdom of Sweden deposited, on August 12, 1969, its instrument of ratification, dated June 27, 1969, of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Stockholm on July 14, 1967.

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

September 8, 1969.

Nice Notification No. 6

ICIREPAT Plenary Committee

First Session

(Geneva, September 18 and 19, 1969)

Note ¹

The first session of the Plenary Committee (hereinafter referred to as "the Committee") of the Paris Union Committee for International Cooperation in Information Retrieval among Patent Offices (ICIREPAT) was held in Geneva on September 18 and 19, 1969.

The list of participants appears at the end of this Note.

The Committee unanimously elected Mr. W. E. Schuyler, Jr., Commissioner of Patents, US Patent Office, as its Chairman, and Mr. E. Armitage, Assistant Comptroller, UK Patent Office, as its Vice-Chairman, for the three-year term provided for in the Organizational Rules of ICIREPAT.

The Secretariat informed the Committee that ICIREPAT now comprises 20 participating countries².

1. Rules of Procedure of the Committee

The Committee adopted its Rules of Procedure.

2. Assessment of Past ICIREPAT Activities

The Committee reviewed the decisions made by the Enlarged Transitional Steering Committee of ICIREPAT in connection with the assessment of the shared systems program of ICIREPAT. In addition, the Committee examined a document prepared by BIRPI listing all ICIREPAT activities — other than the shared systems — in respect of which substantial work had been done in the past in the fields of Standardization, Microform, and System Design, Implementation and Testing. The Committee noted the decision made by the Technical Coordination Committee in its first session concerning the reconfirmation of all recommendations on matters disposed of by the former ICIREPAT, and the maintaining of matters pending on the program and their reassignment to

Technical Committees. The Committee decided to conclude the assessment of past (disposed of or still pending) ICIREPAT activities by approving the decisions made in this connection by the Enlarged Transitional Steering Committee and the Technical Coordination Committee (subject to the exclusion from reconfirmation of the recommendation on the standardization of microform referred back by the Technical Coordination Committee to Technical Committee IV for further study).

3. ICIREPAT Program

There was a general debate on the program of ICIREPAT which showed a general desire to arrive at clear commitments for each major participating Office. Without such commitments, real cooperation could not be achieved.

4. Preparation of Program

The Committee decided to continue to meet each year in September and agreed on the following sequence for the preparation of the program: the April meeting of the Technical Coordination Committee should prepare a proposal for a draft program for the subsequent year — based on any views expressed by the previous September meeting of the Committee — on the basis of which the Director of BIRPI should establish a provisional draft program of ICIREPAT; that provisional draft program should be submitted to the subsequent session of the Executive Committee of the Paris Union (to be held just after the September meetings of the Committee and the Technical Coordination Committee).

List of Participants

I. Member States

Australia

Mr. J. P. Harkins, Senior Assistant Secretary, Attorney General's Department, Canberra

Austria

Dr. K. Springer, Ratssekretär, Patent Office, Vienna

Canada

Mr. F. W. Simons, Assistant Commissioner of Patents, Department of Consumer and Corporate Affairs, Ottawa
Mr. J. Corbeil, Second Secretary and Consul, Permanent Mission of Canada, Geneva

Czechoslovakia

Mr. J. Jirásek, Head of Examination Section, Patent Office, Prague
Mrs. M. Fořtová, Head of Mechanization Department, Patent Office, Prague

Denmark

Mr. E. Tuxen, Director, Patent Office, Copenhagen
Mr. A. Morsing, Chief Engineer, Patent Office, Copenhagen

Finland

Mr. B. Norring, Chief of Section, Patent Office, Helsinki

France

* Mr. P. Rouliot, National Institute of Industrial Property, Bureau of Classification, Paris

¹ This Note has been prepared by BIRPI on the basis of the official documents of the session.

² See list reproduced at the end of this Note.

* The asterisk before the names of some delegates indicates that they attended both the Plenary Committee and Technical Coordination Committee sessions.

Germany (Federal Republic)

- * Mr. R. Singer, Leitender Regierungsdirektor, Patent Office, Munich
- * Mr. W. E. A. Axhausen, Regierungsdirektor, Patent Office, Munich
- * Mr. A. Wittmann, Regierungsdirektor, Patent Office, Munich

Ireland

Mr. P. Slavin, Chief Examiner, Patents Office, Dublin

Israel

Mr. Ze'ev Sher, Deputy Attorney-General, Ministry of Justice, Jerusalem

Japan

- * Mr. M. Kuroda, First Secretary of the Permanent Delegation of Japan, Geneva

Netherlands

- * Mr. G. J. Koelewijn, Head of Documentation Department, Patent Office, The Hague

Soviet Union

- * Mr. Y. Maksarev, Chairman, Committee for Inventions and Discoveries, Council of Ministers of the USSR, Moscow
- * Mr. V. Ilyin, Deputy Chief, External Relations Department, Committee for Inventions and Discoveries, Council of Ministers of the USSR, Moscow
- * Mr. N. G. Sarkisov, Deputy Director, Central Institute of Patent Information, Committee for Inventions and Discoveries, Council of Ministers of the USSR, Moscow

Spain

Mr. A. Fernandez Mazarambroz, Director, Industrial Property Registration Office, Madrid
 Mr. H. Guillamón Reyes, Industrial Engineer, Member of the Spanish Permanent Delegation, Paris
 Mr. A. Miret, Engineer, Ministry of Industry, Industrial Property Registration Office, Madrid

Sweden

- * Mr. T. Gustafson, Deputy Director General, National Patent and Registration Office, Stockholm

Switzerland

Mr. J.-L. Comte, Head of Section Ia, Federal Bureau of Intellectual Property, Berne
 Mr. M. Leuthold, Head of Section II, Federal Bureau of Intellectual Property, Berne

United Kingdom

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

United States of America

- * Mr. W. E. Schuyler, Jr, Commissioner of Patents, Patent Office, Washington
- * Mr. H. J. Winter, Assistant Chief, Business Practices Division, Commercial Affairs and Business Activities, Bureau of Economic Affairs, Department of State, Washington
- * Mr. R. A. Spencer, Director, Office of Research, Development and Analysis, Patent Office, Washington
- * Mr. J. Brennan, Acting Director, Office of International Patent & Trademark Affairs, Patent Office, Washington
- * Mr. E. Hurd, Director, Organization and Systems Analysis Division, Patent Office, Washington
- * Miss P. M. McDonnell, Patent Research Specialist, Office of Documentation, Patent Office, Washington

II. Observer Country*Yugoslavia*

- * Mr. N. Janković, Legal Counsellor, Patent Office, Belgrade

III. Intergovernmental Organization*International Patent Institute*

- * Mr. G. Finniss, Director General, The Hague
- * Mr. P. Van Waasbergen, Technical Director, The Hague
- * Mr. L. F. W. Knight, Consultant in Information Retrieval, The Hague
- * Mr. R. Weber, Head of Division, The Hague

IV. Officers of Technical Committees and ABCS

- * Miss I. L. Schmidt, Chairman of TC.I, Danish Patent Office, Copenhagen
- * Mr. A. Wittmann, Chairman of TC.II, German Patent Office, Munich
- * Mr. L. F. W. Knight, Chairman of TC.III, IIB, The Hague
- * Mr. E. Hurd, Chairman of TC.IV, US Patent Office, Washington
- * Mr. J. J. Hillen, Vice-Chairman of TC.V, Netherlands Patent Office, The Hague
- * Mr. D. G. Gay, Chairman of TC.VI, UK Patent Office, London
- * Mr. J. Dekker, Chairman of ABCS, Netherlands Patent Office, The Hague

V. Officers of the Session of the Plenary Committee

Chairman: Mr. W. E. Schuyler, Jr. (United States)
 Vice-Chairman: Mr. E. Armitage (United Kingdom)
 Secretary: Dr. Arpad Bogsch (BIRPI)

VI. Officers of the Session of the Technical Coordination Committee

Chairman: Mr. G. Finniss (International Patent Institute)
 Vice-Chairman: Mr. T. Gustafson (Sweden)
 Secretary: Mr. K. Pfanner (BIRPI)

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

- * Professor G. H. C. Bodenhausen, Director
- * Dr. Arpad Bogsch, First Deputy Director
- * Mr. Klaus Pfanner, Counsellor, Head of the Industrial Property Division
- Mr. I. Morozov, Counsellor, Industrial Property Division
- * Mr. W. Weiss (German Patent Office)
- * Mr. H. D. Hoinkes (US Patent Office)
- * Mr. P. H. Claus, Technical Assistant
- * Mr. S. Hayashi (Japanese Patent Office)

ICIREPAT Technical Coordination Committee

Second Session

(Geneva, September 17 to 19, 1969)

Note ¹

The second session of the Technical Coordination Committee of the Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) was held in Geneva from September 17 to 19, 1969.

The list of participants appears on page 271.

¹ This Note has been prepared by BIRPI on the basis of the official documents of the session.

The Secretariat informed the Technical Coordination Committee that the following 20 countries were now participating countries of ICIREPAT: Australia, Austria, Canada, Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Hungary, Ireland, Israel, Japan, Netherlands, Norway, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America.

Yugoslavia has expressed interest in the work of ICIREPAT but has not yet made the required pledge.

The following are among the more important decisions made by the first session of the Technical Coordination Committee:

1. ICIREPAT Program for 1970

The Technical Coordination Committee prepared a proposal for the ICIREPAT program for 1970 whose essentials are the following:

The work on shared systems should be continued and should take first priority. Assuming that the indexing for the first group of five shared systems (Lubricants, AD Converters, Lasers and Masers, Layered Products, and Alloys) agreed upon by the Enlarged Transitional Steering Committee of the former ICIREPAT in June 1968 can be completed by the end of 1969, the "package" of the following six shared systems — Steroids, Organometallics, Electrolysis, Taps and Valves, Insulated Cables and Lines, and Color TV — agreed upon by the Enlarged Transitional Steering Committee in December 1968 should be fully indexed in 1970. In addition, the four Offices now participating in the shared systems program (Federal Republic of Germany, United Kingdom, United States of America and the International Patent Institute) will each complete, as originating Office, one additional system.

Another first priority item designated by the Technical Coordination Committee was the definition of standards for the 8-up aperture card, which is the standard microform accepted for international exchange within ICIREPAT. The competent Technical Committee (TC. IV) of ICIREPAT should attempt to finish its work on this subject as early as possible in 1970.

A further first priority item concerns the study of problems related to computer compatibility and convertibility of exchanged information for use on various computers.

Besides the first priority items mentioned above, the Technical Committees of ICIREPAT should work on the following high priority tasks in accordance with their mandates outlined by the Technical Coordination Committee in April 1969:

Technical Committee I should study requirements for systems and indexing performance. Technical Committee II should continue its study of fields of technology which are considered desirable for shared systems and should compile further "packages" of fields for system development and system implementation. Technical Committee III should study the state of the art in advanced computer techniques and should attempt to coordinate the work of those Offices able to work in this field. Technical Committee V should deal with the unification of the layout of patent documents and should investigate computer type setting and photo setting processes. Technical Committee VI should produce a new recommenda-

tion on the procedure for the sharing of the workload of updating indexing and deal with standardization of input format for bibliographic data for information carriers other than machine punched cards applicable to both patent and non-patent literature.

The Advisory Board for Cooperative Systems (ABCS) will continue its work within the framework of the shared systems program and will give priority to systems forming part of the packages agreed upon by the Enlarged Transitional Steering Committee and the Technical Coordination Committee.

2. Place and Convening of Meetings of Technical Committees

The Technical Coordination Committee agreed in general that, as a rule, all meetings of all Technical Committees, the Advisory Board for Cooperative Systems and other working groups of ICIREPAT should be held in Geneva at the headquarters of BIRPI.

3. Transfer of the Secretarial Tasks Concerning the ABCS

It was agreed that BIRPI would take over the secretarial tasks of the ABCS as from January 1, 1970.

4. Chairmanship of the ABCS

Upon the proposal of the representative of the Netherlands, the Technical Coordination Committee unanimously elected Mr. D. C. Snow (United Kingdom Patent Office) as Chairman of the ABCS as from January 1, 1970.

5. Suggestions and Requests of Technical Committees

Several suggestions and requests emanating from the Technical Committees were discussed and a number of decisions made concerning in particular the classification of the mandates of the Technical Committees.

As regards commitments for shared systems and long-range planning, the Technical Coordination Committee reinforced its urgent recommendation that all Offices which agreed to the shared systems "package" program should comply with the commitments as rapidly as possible and within the envisaged time schedule. The Technical Coordination Committee also recommended that implementation of the first five systems (see above) be completed at the earliest possible time. As to the necessity for having a long-range plan for the shared use systems program, a majority (4 for, 2 against, 2 abstentions) stressed the need to carry on with the shared systems program on a long-range basis. The Offices were invited to study their possibilities as to the manpower available and to indicate what commitments they could make in time to enable the meeting of the Technical Coordination Committee dealing with the program for 1971 to continue its study of a long-range program.

The Technical Coordination Committee adopted several recommendations by Technical Committee IV (Microform). Taking into account the warning of the Secretariat that the recommendation concerning image resolution and image density was rather vague and would not result in real standardization, the Technical Coordination Committee requested

Technical Committee IV to reconsider the problem with the aim of elaborating a more specific and detailed recommendation. That study and a reconsideration of the recommendation already adopted for microform standards should take place within a short period and should produce a new basis for decision by the Technical Coordination Committee in its next session.

6. Next Meetings

The Technical Coordination Committee decided to hold its third session on December 12, 1969, in Geneva. The Secretariat will prepare a schedule of meetings for 1970 after consultation with the Chairmen of the respective bodies of ICIREPAT.

LEGISLATION

FINLAND

The Trademark Law

(of June 1, 1964) *

CHAPTER I

General Provisions

Article 1

By registration in accordance with this Law, a trader may acquire the sole right to a trademark as a special symbol to distinguish goods which he offers for sale, or otherwise purveys in his business, from those of others.

A trademark may consist of a device, one or more words, letters or numerals, or of the distinctive get-up of the goods or their packaging.

The provisions of this Law in respect of goods shall apply equally to services offered by a trader or by one exercising a vocation or profession.

Article 2

A trader shall acquire sole rights to a trademark, even without registration, after it has become established.

By right of establishment, he may also acquire sole rights to a slogan for use as a special symbol in his business. Such a symbol may not be entered in the Register of Trademarks.

A trade symbol shall be regarded as established if it has become generally known in the appropriate business or consumer circles in Finland as a symbol specific to its proprietor's goods.

Article 3

Any person may use his surname or his firm's name, or an intrinsic part of such names in his business as a trade symbol for his goods unless its use is liable to cause confusion with

the protected trademark of another, or with a name or firm's name that another is already using lawfully in his business.

No one else's name or firm's name may be included in a trademark. The same applies to any intrinsic part of a firm's name, and to any trade name or abbreviation of a firm's name established in Finland by another, unless it can be considered that the said part of the firm's name lacks distinguishing power or that the branches of trade or types of goods in question are different.

Article 4

The right to a trade symbol as specified in Articles 1 to 3 of this Law means that no one other than the proprietor may use any symbol liable to be confused with it for his goods, whether on the goods or their packaging, in advertising or commercial documents, or in any other way, including orally. This applies equally regardless of whether the goods are offered for sale or intended to be offered for sale in Finland or abroad, or are imported for business purposes.

If spare parts, accessories, or the like, suitable for use with the goods of another, are offered for sale, it is illegal to allude, in the manner specified in the first paragraph of this Article, to the trade symbol of such other party in any way liable to create the impression that the goods offered for sale originate with the proprietor of the said trade symbol or that the proprietor has permitted the use of the trade symbol.

If goods are offered for sale using a particular trade symbol, and if thereafter someone other than the proprietor of the symbol substantially alters them by modifying or repairing them, or the like, the symbol may not be used when the goods are again offered for sale in Finland unless the change is clearly indicated or announced, or is otherwise plainly evident.

Article 5

The sole right to a trade symbol shall not apply to any part of the symbol that is intended mainly to render the goods or their packaging more suitable for their purpose, or else serves some purpose other than that of a trade symbol.

Article 6

Unless otherwise specified in the second paragraph of Article 3, trade symbols in accordance with this Law shall be regarded as leading to confusion only if they apply to the same or similar kinds of goods.

In exceptional cases, however, such symbols can also be regarded as confusing:

- (a) if a trade symbol is particularly well established and widely known to the public (*KODAK* marks) in Finland and the use of another symbol similar to it would entail unfair exploitation of the goodwill it enjoys;
- (b) in the case of an established trade symbol if, in view of the nature of the goods in question, the use of another symbol similar to it would clearly diminish its goodwill.

The provision of the second paragraph of this Article shall apply equally to any trade name, or part or abbreviation of a firm's name such as is referred to in the second paragraph of Article 3.

* Text kindly provided by the Association of Finnish Patent Attorneys, with minor editorial changes by BIRPI.

Article 7

If, by virtue of Article 1 or 2, several parties demand sole rights to trade symbols that would lead to confusion, preference shall be given to the party that can claim the earliest entitlement, unless otherwise specified in Article 8 or 9 below.

Article 8

If a registered and widely used trademark is liable to be confused with an earlier established symbol that is not registered, the use of the later mark shall not be prohibited provided that the application for registration was made in good faith and that it was valid for five years from the date of registration before a suit was brought to annul it.

Article 9

If an established trademark is liable to be confused with another earlier registered or established trademark, but the proprietor of the earlier trademark has not subsequently taken steps to prevent the use of the later trademark within a reasonable period of time, he shall no longer be entitled to prohibit the use of the later trademark.

Article 10

In the cases referred to in Article 8 or 9, it may be decided, where reasonable, that one or both of the trade symbols may only be used in a specific manner — for example, shaped in a particular way, or with the addition of a place name or some other explanatory feature.

The first paragraph of this Article shall apply equally if there is danger of confusion in a case referred to in the first paragraph of Article 3.

Article 11

At the request of the proprietor of a registered trademark, the author, editor or publisher of a dictionary, glossary, manual or similar publication shall ensure that the trademark is not reproduced without indicating that it is registered as such.

Anyone who fails to observe the above paragraph shall take steps to see that a correction is published in whatever manner and to whatever extent is considered reasonable, and shall bear the cost of publishing the said correction.

CHAPTER II

Registration of Trademarks

Article 12

A Register of Trademarks shall be kept by the Patent and Registration Office.

Article 13

To qualify for registration, a trademark must be such as to distinguish its proprietor's goods from those of others. A mark that, either solely or with only a few alterations or additions, indicates the type, quality, quantity, purpose, price, or place or time of manufacture shall not, as such, be regarded as distinctive. In assessing whether a trademark possesses distinguishing power, all the factual circumstances shall

be borne in mind, particularly the length of time and extent to which the mark has been used.

A trademark formed solely of letters or numerals and which cannot be regarded as a device mark may only be registered if it has been shown to have become so established as to be distinctive.

A trade symbol may not be registered as a trademark if it consists solely of something that might seem to indicate the name of the applicant or his firm.

Article 14

A trademark shall not be registered:

1. if it is contrary to law and order, or to morality;
2. if it is liable to mislead the public;
3. if, without proper permission, it incorporates national armorial bearings, a national flag or other emblem, a sign or hallmark indicating control and warranty used by the State for goods of the same or a similar type as those for which the trademark is requested, the armorial bearings of a Finnish commune, or any device or emblem liable to be confused with the symbols or emblems referred to in this item;
4. if it contains anything that may give the impression of the firm's name, any part or abbreviation of such a name, or the trade name of another, as specified in the second paragraph of Article 3, or of the name or likeness of another person, unless such name or likeness plainly refers to someone who died a long time ago;
5. if it contains anything likely to give the impression of being the title of another's protected literary or artistic work, unless the said title is a commonplace expression, or if it infringes another's copyright in such a work or his right to a photographic illustration;
6. if it is liable to be confused with the name or firm's name of another, with any part or abbreviation of such a firm's name, with a trade name of the sort referred to in the second paragraph of Article 3, or with the trademark of another that has been registered on the grounds of an earlier application, or with the trade symbol of another party that is already established at the time when the application is made;
7. if it is liable to be confused with a trade symbol being used by another party for his goods at the time of the application, and if the applicant has cognizance of such use at the time of his application and had not used his own mark before the other trade symbol came into use.

In the cases referred to in items 4, 5, 6 and 7, registration may be granted if the proprietor of the right so consents, and provided that it does not contravene any of the other provisions stipulated in the first paragraph of this Article.

Article 15

Sole rights to a trademark acquired by registration do not apply to any part of the mark that cannot be registered as such.

If the trademark contains any such part and there is special reason to believe that its registration may cause uncertainty regarding the extent of the sole right granted, pro-

tection of the said part may be specifically disclaimed when the registration is made.

If a part of a trademark excluded from protection later becomes registrable, a fresh registration can be made to cover such part or to comprise the entire trademark without the exclusion of the said part from protection.

Article 16

A trademark shall be registered in one or more classes of goods. The classification of goods shall be established by the Patent and Registration Office.

Article 17

Anyone wishing to register a trademark shall apply in writing to the registering authority. The application shall indicate the name of the applicant or of his firm, and the nature of the business and kind or class of goods for which the mark is intended; in addition, a clear reproduction of the trademark shall be submitted.

Article 18

If a trademark which the applicant used for the first time with goods shown at an international exhibition is submitted for registration within six months of the date on which the goods were first exhibited, the application shall be regarded as having been made on the said date for the purpose of determining priority over other applications for trademarks or the use of other trade symbols.

Article 19

If the applicant fails to observe the regulations concerning the making of an application, or if the registering authority finds that the application cannot be approved for some other reason, the applicant shall submit a statement or rectify his application within a specified time; otherwise his application may be shelved.

If the registering authority considers the application unacceptable, even after the applicant has submitted a statement, it shall be rejected unless there is cause to issue a further official letter.

Article 20

When the application documents are complete, and if there is no cause to reject the application, the registering authority shall give public notice thereof.

Anyone, who then wishes to submit an objection to the application shall do so in writing to the registering authority within two months of the date of the public notice.

Article 21

At the end of the period of time specified in Article 20, the registering authority shall subject the application to further consideration.

If the application is approved, the trademark shall be registered as soon as the decision acquires legal effect, and public notice thereof shall be given.

If an application publicly announced in accordance with Article 20 is rejected or shelved, public notice of this shall be given as soon as it acquires legal effect.

Article 22

Registration shall take effect as from the date on which the application was made and shall remain in force for ten years from the date of registration.

Registration shall be renewable, upon application by the proprietor of the trademark, every ten years from the date of expiry of the previous registration.

Renewal shall be requested in writing from the registering authority not earlier than one year before and not later than six months after the registration expires. The application shall be handled, where applicable, in accordance with Article 19 above.

Article 23

If the proprietor of a registered trademark so requests, minor changes which do not alter the total impression of the trademark may be entered in the Register.

CHAPTER III

Expiry of Legal Protection and Annulment of Registration

Article 24

If the proprietor of a registered trademark fails to apply for renewal of the registration, as specified in Article 22, the said trademark shall be struck from the Register.

A trademark shall also be struck from the Register, while the registration is valid, if the proprietor so requests. If, according to an entry in the Register, there is a lien on the trademark, the latter may not be struck from the Register without permission from the holder of the lien.

Upon application by the proprietor of the trademark, the list of goods or of classes of goods for which it has been registered may be reduced. The provision in the second paragraph concerning the consent of the holder of a lien shall apply in this case, too.

Article 25

If a trademark has been registered contrary to the provisions of this Law, the registration shall be declared null and void unless the provisions of Article 8 or 9 are applicable or some other change in circumstances affects the issue.

Article 26

A trademark shall be forfeited:

1. if it has plainly lost the power to distinguish its proprietor's goods from those of others since the time it was registered or became established;
2. if it has become misleading or contrary to law and order or to morality since the time it was registered or became established;
3. if it has not been used for the last five years and its proprietor is unable to give a valid reason for such non-use;
4. if its proprietor is no longer engaged in industry, commerce, or a trade or profession.

Article 27

A court of law shall decide on the annulment of a registration and forfeiture of a trademark when a suit to that effect is brought against its proprietor.

A suit of the kind referred to in the above paragraph may be brought by anyone who suffers inconvenience as a result of the registration. If the case is based on Article 13, on items 1 to 3 of the first paragraph of Article 14 or on Article 26, the suit may also be brought by the public prosecutor or by any organization watching over the interests of the industry, commerce, trade or profession concerned.

If the plaintiff so requests, an entry to the effect that the suit has been brought shall be made in the Register.

CHAPTER IV

Special Provisions for the Protection of Foreign Trademarks

Article 28

If an applicant for a trademark does not carry on his business in Finland, his application must be accompanied by a certificate to the effect that he has had the same trademark registered for the same goods in the foreign country in which he carries on his business or is resident, or of which he is a national.

No certificate of the kind referred to in the above paragraph shall be demanded if the foreign country does not require a similar statement from a person who is a Finnish citizen, or who is resident or carries on his business in Finland.

Article 29

A trademark registered in a foreign country shall be registered in Finland in the form in which it is registered in the said foreign country, provided that reciprocal rights exist, that the registration does not contravene Article 14, or the first or second paragraphs of Article 13, and that the trademark has not lost its distinguishing power.

Irrespective of the above paragraph, minor changes may be made on the basis of reciprocity when registering a foreign trademark, provided that they do not alter the general impression of the trademark.

Article 30

If registration is applied for in Finland for a trademark for which a similar application has been made previously in a foreign country, and if reciprocal rights exist, the application shall be regarded, for the purpose of determining priority, as having been made at the same time as the foreign application was submitted, provided that the application in Finland is made within six months of the date of the application in the other country, and the applicant requests such priority right from the Finnish registering authority before public notice of the application is given. After a request for priority right has been submitted and fully documented grounds for the request have been presented, no third party may subsequently assume the right to use a trade symbol that is similar to a foreign trademark registered in Finland on the ground of events that occurred between the date of the priority right and that of registration.

Article 31

An applicant for or proprietor of a registered trademark not resident in Finland shall appoint an agent resident there

to represent him in all matters concerning the trademark. The name of the agent shall be noted in the Register.

If no duly empowered agent is noted in the Register, the registering authority shall send the proprietor of the trademark a note, directed to his last known address, enjoining him to remedy the situation within the period of time stipulated therein, upon pain of the said mark's being struck from the Register.

CHAPTER V

Assignment and Licenses

Article 32

A trademark may be transferred to another party; such assignment may cover either all or some of the goods for which it was registered or became established.

When a firm holding a trademark changes hands, the trademark shall accompany the property unless the condition has been made that it shall remain with the previous owner, or that both the previous and the new owner of the firm may use it for different kinds of goods.

Article 33

Upon request, the assignment of a registered trademark shall be noted in the Register. If the registering authority finds that the use of a trademark subsequent to such assignment is clearly liable to mislead the public, permission to enter the assignment in the Register shall be withheld unless the fault is eliminated by making a change in or addition to the trademark.

An assignment not noted in the Register shall not affect a third party who, in good faith, has obtained the right to the trademark.

If it is desired to place a lien on the right to a trademark, a written agreement shall be made and entered in the Register. No right to a lien shall exist until such an entry has been made.

Article 34

The proprietor of a registered trademark may authorize another to use it in his business without relinquishing his right as such to the trademark. Upon request, such a license shall be entered in the Register. The registering authority may, however, refuse to make this entry if the use of the trademark as a result of granting the license is plainly liable to mislead the public. When the said license is proved to have expired, the entry shall be struck from the Register.

A license not entered in the Register shall not affect a third party who in good faith has obtained the right to the trademark.

Unless otherwise agreed, the licensee may not transfer his right to a third party.

Article 35

The right to a trademark shall not be seized for debt unless a lien has been established on it.

If the property of the proprietor of a trademark is relinquished at bankruptcy, the right to the trademark shall be included in the bankrupt's estate.

CHAPTER VI

Prohibition of the Use of Misleading Trade Symbols

Article 36

If a trade symbol that has been assigned or for which a license has been issued becomes misleading in the form in which it is used by its new proprietor or licensee, a court of law may, as it sees fit, forbid the new proprietor or licensee to use it.

Its use may also be prohibited in any case, if the trade symbol is misleading or if its proprietor or anyone else with his permission uses it in a manner misleading to the public.

A suit in connection with this Article may be brought by the public prosecutor, by anyone who suffers inconvenience as a result of the use of the trade symbol, or by an organization set up to protect the interests of the traders or professionals involved.

Article 37

If the right to use a trade symbol is denied by virtue of Article 36, the court may, where reasonable, order that a trade symbol that has been placed on goods, their packaging, brochures, leaflets, commercial documents, or the like, contrary to a prohibition specified in Article 36, shall be erased or altered so as not to be misleading. If this can be done in no other way, the court shall order that the property so marked be destroyed or changed in a specified manner.

Property referred to in the above paragraph may be sequestered pending the said order; in this case, the general regulations on sequestration in criminal cases shall be applied.

CHAPTER VII

Consequences of Infringement of Trademark Rights

Article 38

Whoever infringes the right of the proprietor of a trade symbol protected by this Law can be prohibited by a court order from continuing or repeating such misdeed unless there are special reasons to the contrary.

If the infringement has been deliberate or due to negligence, the aggrieved party shall be entitled to compensation from the defendant for all the damage he has suffered. If the negligence has only been slight, the court may modify the compensation awarded to whatever extent it sees fit.

Even if the defendant is not found guilty of negligence, the court may, where deemed reasonable in view of his financial and other circumstances, rule that he shall hand over to the aggrieved party the profits he has gained from such infringement for up to but not more than the three preceding years.

Article 39

Anyone who deliberately infringes the right to a trade symbol protected by this Law shall be fined or sentenced to a maximum of six months' imprisonment.

Prosecution for infringement according to the above paragraph shall not be brought by the public prosecutor except at the instance of the aggrieved party.

In the case of a registered trademark, no penalty may be imposed unless the infringement occurred after the date of registration.

Article 40

A suit for damages according to Article 38 must be brought within three years of the time when the plaintiff learned of the infringement and ascertained the identity of the infringer, and in any case not later than ten years from the time when the infringement occurred.

In the case of a registered trademark, a suit may be brought for infringement before the date of registration irrespective of the above paragraph, provided that it is brought within a year of that date.

Article 41

On the request of one whose right to a trade symbol has been infringed, the court may rule, if it sees fit, that a symbol that has been placed without authorization on goods, their packaging, leaflets, commercial documents, or the like, shall be erased or altered in such a way as to ensure that it will no longer be misused. If this can be effected in no other way, the court shall order that the property so marked be destroyed or changed in a specific manner. The court may also, upon request, order that the property be handed over to the plaintiff against payment.

Regardless of whether the infringement is deliberate or not, the public prosecutor or the court may order that the property here referred to be sequestered if the plaintiff so requests and, where considered necessary, gives acceptable surety for any damages the defendant may suffer as a result of the sequestration and for the costs occasioned by said sequestration; otherwise, in this case the general regulations on sequestration in criminal cases shall be applied.

CHAPTER VIII

Litigation Concerning Trademarks

Article 42

In matters concerning trademarks, the general legislation concerning the proper court of law in each case shall be observed.

A suit brought against the proprietor of a trademark not resident in Finland shall be heard in the Municipal Court of Helsinki.

Article 43

A plea for injunction according to Article 38 may be heard at the same time as prosecution brought in accordance with Article 39.

Article 44

If the defendant in a case concerning the infringement of the right to a trademark based on registration claims that the registration is null and void and the truth of the matter is not immediately clear, the court shall grant him a period of time in which to bring a suit at a separate court hearing in order to have the registration declared null and void; no decision on the original case may be handed down until the

validity of the registration has been finally settled for or against. If the secondary suit is not brought within the time limit granted, the court shall make its decision on the case regardless of the counterclaim.

The above paragraph shall apply equally if the defendant claims that the trademark has been forfeited.

Article 45

If someone has been granted the sole right to use a registered trademark in Finland and an entry regarding such license has been made in the Register, the plaintiffs in any case concerning an infringement of the right to the trademark can be either its proprietor or the licensee, or both.

If the licensee referred to in the above paragraph wishes to bring a suit for infringement, he shall notify the proprietor of the trademark; if he fails to do so, his suit shall not be heard.

This Article shall apply equally if the proprietor has reserved rights to parallel use for himself upon granting another an exclusive license.

Article 46

A suit brought to establish whether or not a right to a trade symbol exists, or whether a specific act infringes such right, can be heard in cases where uncertainty exists and is harmful to the plaintiff.

In such cases, Article 45 shall apply correspondingly.

Article 47

A suit to have a trademark registration declared null and void can be continued against the original defendant in the event of the trademark's being assigned to another after legal proceedings have been commenced, and, if the court finds for the plaintiff, its decision shall be equally binding upon the party to whom the trademark has been assigned. This shall apply equally in the case of a suit brought to declare a trademark forfeited.

Article 48

When a suit is brought to obtain an injunction in accordance with this Law, the court may, on the request of the plaintiff, issue an injunction against the defendant during the proceedings or in its decision, to be in force until the principal case has been settled with legal effect, or until the same or another court decides otherwise. Before such an injunction is issued, the plaintiff may be ordered to give acceptable surety for the damage the defendant may suffer from the said injunction.

A separate appeal may be made against a court decision handed down during proceedings concerning an injunction or cancellation thereof.

Article 49

A copy of any court decision in a case concerning the infringement of trade symbols, or in one such as is referred to in Articles 10, 25, 26, 36 and 46, shall be sent by the court to the Patent and Registration Office.

CHAPTER IX

Public Notice and Appeals

Article 50

Except in the cases referred to in Articles 20 and 21, public notice shall be given when a registration is renewed according to Article 22, when a registered trademark is modified in accordance with Article 23, when registration is cancelled in accordance with Articles 24 to 26 or 31, or when an assignment by virtue of Article 33 or a license granted under Article 34 is noted in the Register.

Article 51

An appeal against a final decision of the Patent and Registration Office on a case concerning a trademark may be made to the Supreme Administrative Court within sixty days of the date of the decision.

After a trademark is registered in a case in which an objection has been raised in accordance with Article 20, the objector may not appeal against the final decision of the registering authority in the manner prescribed in the above paragraph, but shall bring a suit against the proprietor of the trademark in a court of law.

CHAPTER X

Collective Trademarks

Article 52

Any association, cooperative or other body that has been set up to watch over the interests of those exercising a trade or profession, and is competent before the law, shall be permitted, by registering, to obtain the sole right to a trademark to be used by its members in their business or profession. Such a mark is termed a "collective trademark."

The above paragraph shall apply equally to public or official institutes and institutions.

Article 53

An application for the registration of a collective trademark shall be accompanied by an appropriate extract from the Register of Associations or the Commercial Register, the statutes of the association, and the association's regulations specifying the conditions under which members are entitled to use the trademark. If the said regulations are later modified, the registering authority must be notified.

Article 54

A collective trademark may only be transferred to, or registered upon expiry of protection in the name of, another association which functions in the same field and which intends to use it as its symbol.

Article 55

The right to a collective trademark shall be forfeited if the association that has registered it ceases to function, if it permits the trademark to be used in a manner contrary to its regulations, as recorded by the registering authority, or if the provisions of items 1, 2 or 3 of Article 26 are applicable.

Article 56

In the event of infringement of the right to a registered collective trademark, only the association shall be regarded as the plaintiff. It may also bring a suit for damages on behalf of its members.

Article 57

Unless specified otherwise in Articles 52 to 56, the provisions concerning trademarks in this Law shall apply correspondingly to collective trademarks.

CHAPTER XI

Enforcement and Implementation of the Law

Article 58

Further instructions on the procedure to be followed by applicants for registration, the giving of public notice, and other procedures in such connection, and on the maintenance of the Register of Trademarks, including changes to be made in the Register, and other orders necessary for the implementation of this Law shall be given by decree.

Article 59

This Law shall come into force on the first day of June, 1964. The following shall thereby be rescinded:

The Decree on the Protection of Trademarks of February 11, 1889;

Chapter XXXVI, Article 13, of the Criminal Code;

Article 2 of the Decree of December 21, 1885, granting greater freedom to the iron industry.

Article 60

The validity of trademarks registered before the entry into force of this Law shall be determined in accordance with the earlier regulations.

The right to a trademark can be declared forfeited in accordance with Article 26 even though it was granted or became established before the entry into force of this Law.

Pending applications for registration shall be subject to the new Law.

Article 61

In the case of trademarks registered earlier, the five years provided for in Article 8 shall be counted as beginning from the date of the entry into force of this Law.

Article 62

The provisions of Article 40 regarding the period of time within which damages shall be claimed shall apply equally if the deed for which compensation is payable was committed before the present Law takes effect; if, however, the three years referred to in the said Article began before the date of the entry into force of this Law, they shall be counted as having begun on the said date.

Article 63

When the registration of an earlier registered trademark is renewed for the first time after the entry into force of this

Law, the registration period based on the said renewal of registration shall be regarded as ending on the date corresponding to the original date of registration, even if a registration period according to an earlier renewal was calculated otherwise.

Upon renewal of registration, the classes of goods listed shall be modified to conform to any changes that have been made in the classification.

Article 64

A trademark registration that was renewable without application under the former regulations (one granted before 1889) shall be renewed from now on in accordance with the provisions on renewal contained in the present Law. Unless application for renewal is made within one year of the date on which this Law takes effect, the trademark shall be struck from the Register.

ITALY

Decrees

Concerning the Temporary Protection of Industrial Property Rights at Four Exhibitions

(of July 28 and 30, August 4, and September 15, 1969)¹

Single Article

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

II° Salone internazionale del mobile e IX° Salone del mobile italiano (Milan, September 21 to 28, 1969)

VII^a Mostra internazionale dei trasporti interni e del magazzino-manutenzione degli impianti — container — «TRAMAG» (Padua, October 8 to 12, 1969)

XIII° Salone internazionale campeggio sport «SINCAS» (Milan, October 25 to 27, 1969)

MITAM — Mercato internazionale del tessile per l'abbigliamento arredamento (Milan, November 11 to 14, 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.

LETTERS FROM CORRESPONDENTS

Letter from Scandinavia

By Professor Berndt GODENHJELM, Helsinki

I

Since my last "Letter" (see *Industrial Property*, 1967, p. 317), the new Nordic Patent Laws, 1967¹, have come into force with effect from January 1, 1968. It might therefore be of interest to see what has transpired from experience of the amended legislation. However, there is an important exception to the enforcement of the new Laws. Chapter III of the Laws, containing the provisions regarding "Nordic Patent Applications," will not enter into force until a special decree to that effect has been issued. Today it seems very uncertain whether that ever will happen. The international development of patent law will perhaps make the Nordic patent application system, if not superfluous at least undesirable or unnecessary. In Denmark, in particular, and I believe also in Norway, there has been much opposition to the Nordic patent application system, the opponents thinking it more suitable to wait for a European patent system or for the putting into operation of the Patent Cooperation Treaty (PCT) project.

In my view, however, there are many good reasons for the enforcement of the Nordic patent application system even if the PCT plan, as I think it will be, is adopted and ratified by the Scandinavian countries. In connection with the planning of the Nordek-treaty the first draft also contains an explicit provision according to which the Nordic patent application system should enter into force at the latest by January 1, 1972 (see *Nordisk Utredningsserie*, 1969, 1). There are thus some political aspects to the enforcement of Chapter III that make it difficult to estimate the real value of the arguments opposing its enforcement.

But, on the other hand, the new Nordic Patent Laws have made cooperation between the Scandinavian Patent Offices closer than it was previously. Of course, cooperation is already a well-established institution and the Scandinavian Patent Offices arrange periodical meetings to discuss matters of common interest. These meetings have now become of even greater interest especially as regards the handling of patent applications but also regarding questions relating to trademarks, the Scandinavian legislation on trademarks having been amended by new uniform Laws in the early 1960s. I will later return to discussion of the last joint meeting of the Scandinavian Patent Offices, held in Helsinki, in May 1969.

II

First, I will refer to some legislative matters connected with the new Nordic Patent Laws, 1967. *Decrees* giving more detailed provisions regarding patent applications than those contained in the Patent Laws have been elaborated in close cooperation between the Scandinavian countries. Of consider-

able interest are, for example, Sections 13 to 15 dealing with patent claims. Section 13 enacts provisions concerning the contents of the claims, viz: (1) a statement of the invention claimed with an indication of the subject matter to which the invention relates, (2) the state of prior art in relation to which the invention is considered to be new, and (3) a statement of the features that are new and peculiar to the invention. The invention is, if possible, to be classified in one of the following categories: product, process or use. The last category — use — was not mentioned in the former Nordic patent legislation, but had already been recognized in practice before the new Laws. Accordingly, an invention concerning the use of, for instance, a known chemical product in order to obtain a different result from anything obtained before, is considered a patentable invention; this is, of course, only true if the invention complies with the requirements of Section 2 of the Patent Laws, 1967, as to novelty and inventive level.

Section 14 of the Decree indicates the relationship between several claims in the same application. It is now possible to have not only one principal claim but several independent claims. This is, however, an exception to the rule that the first claim is considered the principal one. The ways in which several independent claims are possible in the same application is regulated in Section 15. If the principal claim concerns a product, it is possible to claim an invention for one process for the manufacture of that product, or an invention for a single use of that product. And, if the principal claim concerns a process, another claim may concern an invention as to the means designed to carry out that process.

Here may also be mentioned the rules in Sections 20 and 21 regarding the division of a patent application and the withdrawal of a part of such an application. The former applies to cases where the application contains several distinct inventions, the latter to cases where the applicant has inserted new matter in an application which does not relate to what was contained in the original application. In both cases, the Law grants to the applicant priority from the original filing date.

Next, there should be mentioned the uniform Nordic *Patent Rules* issued by the Patent Offices in Denmark, Finland, Norway and Sweden. They are not published in the same way as the ordinary statutes, that is in the Official Gazette (*Suomen Asetuskokoelma — Finlands Författningssamling* only to mention the Finnish Gazette), but by order of the Patent Offices in whatever way they consider appropriate. In Finland, for instance, the Patent Rules are printed in the Office's own publication, *Patentti- ja rekisterilehti — Patent- och register-tidningen*, and are also available separately (*Patenttimääräykset — Patentbestämmelser*).

The Patent Rules contain very detailed regulations regarding patent applications concerning the description and the claims etc., and are thus very useful to applicants. In the main rules, reference is made to the special rules relating to patent applications regarding microbiological processes. Such rules were elaborated as early as before the issue of the Patent Laws, 1967, in the above-mentioned joint meetings of the Scandinavian Patent Offices and they are now incorporated as a special part in the Nordic Patent Rules.

¹ See *Industrial Property*, 1968, p. 172.

Among these rules attention should be paid to the following statement:

"Since the description of the organism cannot be considered to include mutants whose qualities are essentially different from those described in the patent specification, it is not permitted to use wordings such as 'the invention is not limited to the use of the said organism but shall also embrace the use of both natural and artificially induced mutants of the organism'."

This rule is connected with the problem of invention and reproduction of the invented process. In this regard, some other countries have required that a strain of the described micro-organism should be deposited in a well-known national or international institute. The Nordic Patent Rules, however, do not contain any absolute requirement of deposit but state that, if a culture of the used and described micro-organism is deposited, this should also be mentioned in the patent, not only in the description, but also in the claims.

III

In this connection, I would emphasize that the Nordic Patent Laws, 1967 — like the Finnish Patent Law, 1943 — contain in Section 39 an explicit provision as to the significance of the claims. In accordance with Article 8(3) of the Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, 1963, it is enacted that the scope of the patent is determined by the terms of the claims and that, nevertheless, the description and the drawings may be used to interpret the claims. There are, for the moment, several interesting cases pending in the Courts, concerning the scope of patents in the microbiological field. One of the cases was decided by the Norwegian Supreme Court on May 25, 1968, when the Court, denying the appeal from *Eidsivating Lagmannsrett*, in fact maintained the decision of that Court. The plaintiff — *American Cyanamid Company* — brought an action against a Norwegian company *Dumex A/S* for infringement of its Norwegian patent (No. 90077) covering a process for the production of an *antibioticum tetracycline*. The Court held that the patent was to be interpreted in such a way that the process covered only the use of those micro-organisms of *Streptomyces Aureofaciens* which in the presence of chlorine produce *chlorine-tetracycline*. The process aimed therefore to eliminate or regulate the chlorine content in the substratum. As the defendant used, in the substratum, a micro-organism that did not affect chlorine, that micro-organism was in the sense of the patent a different one and the Court therefore held that the plaintiff's patent was not infringed by the defendant's process for producing tetracycline. This judgment, in my opinion, conforms fully with what is stated in the above-mentioned Patent Rules and with the principle of patent interpretation enacted in Section 39 of the Nordic Patent Laws, 1967. It is therefore interesting to see whether the Supreme Court of Finland will follow the principles laid down in the Norwegian decision when judging a similar case.

Other interesting cases on infringement of patents are also pending in the Scandinavian Courts. The rule in Section 39 of the Patent Laws, 1967, enacts the principle that the scope of protection is determined by the claims. However, the Report of the Scandinavian Patent Committees did not deal with this

question completely, leaving it to the Courts to develop a fair practice on the matter. Nothing was said about the use of so-called equivalents, but on the other hand it was emphasized that the interpretation should not be a literal one. Now it is up to the Courts to decide on the real merit of the patented inventions brought before them. Of course, there are inventions of different value. Some of them are rather close to the prior art and their scope of protection is naturally a narrow one. Other inventions have a greater merit and their scope should be broad enough to give the inventor a fair position in relation to his competitors.

There are accordingly very important matters to be solved by the Courts. These questions may be of great importance for the whole patent system. Another significant matter in patent law is the question of patentability since now the requirement for novelty is absolute in accordance with Article 4(2) of the Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, 1963. So, the state of the art comprises everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of the patent application or of a foreign application, the priority of which is validly claimed. Of course, this rule does not affect the novelty search by the Patent Office, but may to a higher degree affect the possibility of having the patent invalidated by the Courts in legal proceedings. This is not only an important question for the Scandinavian countries but it is also important on the international level in relation to the above-mentioned rule of the 1963 Convention. Even if the novelty search is very careful — which I think it is in the Scandinavian countries, where the Offices in using the same material try to apply the same standards of judgment — there will always be some uncertainty as to the validity and the scope of protection of the patent; worldwide research by a competitor may bring to light a prior publication not known to the Patent Office and affecting the validity or the scope of the patent. It is therefore possible that the inventor or his employer, when the invention belongs to the latter, may not apply for a patent but use the invention as a trade secret in the way of "know-how." This rather new legal concept has been the object of discussions both at the joint meetings of the Scandinavian associations for the protection of industrial property in Helsinki, in 1965, and at the Meeting of Scandinavian Lawyers — an organization started in 1872 — held in Stockholm in 1966. In this respect, I refer to the papers of Mogens Plesner, "Know-How — og Erhvervshemmeligheder" ["Know-How and Trade Secrets"] in *NIR*, 1965, pp. 6 to 41, and of Birger Stuevold Lassen, "Know-How — noen aktuelle rettsspørsmål" ["Current Problems in the Law of Know-How"] in *NIR*, 1966, pp. 310 to 328. I may also refer to my own paper "Om 'know-how' och företagshemligheter såsom föremål för licensupplåtelse" ["On the Licensing of Know-How, Secret Processes and Methods"] in *JFT (Tidskrift utgiven av Juridiska Föreningen i Finland)*, 1965, pp. 277 to 304.

IV

After this general survey on matters referring to the enforcement of the new Nordic Patent Laws, 1967, I return to Chapter III of these Laws, as mentioned at the beginning of

my "Letter." In many of the opinions expressed by interested organizations concerning the Report of the Committees on new patent legislation, it was held that for the purpose of attaining uniform decisions under the uniform Patent Laws, it would be necessary to have a common Nordic Administrative Court. On a recommendation of the Nordic Council, the Governments, taking this into consideration, in 1965 appointed State Committees entrusted with the task of examining the question and of elaborating a Draft Convention on the subject. This was, of course, a very interesting and novel task for the Scandinavian Law Committees. The solution demanded some sort of a supranational organization not yet known in Scandinavia.

The Committees gave their Report in January 1968, published in the Series of the Nordic Council [*Nordisk utredningsserie*] (NU, 1968, 1). They agreed to propose a system for a common Nordic administrative authority, which should deal with patent applications as the third and highest instance. How the authority should be named was a difficult question as Finland and Sweden desired to consider it a court — a supreme administrative court for patent applications — but Denmark and Norway, denying the character of court, did not want to have the word court in the denomination of the proposed authority. The Committees finally proposed the name *Nordisk patentråd*, that is, the Nordic Patent Council.

According to the Draft Convention, parties — both applicant and persons opposing the grant of a patent — may appeal to the Nordic Patent Council from the Appeal Department of the Patent Offices.

The Committees propose that the Nordic Patent Council should consist of four lawyers and eight persons skilled in technical matters. The lawyers should come from each of the contracting States and, on principle, the other members should also equally represent the different States in so far as another distribution is not desirable in order to furnish the Council with the most qualified technical members. When bearing a case, the Council should consist of seven members, four lawyers and three of the technical members selected according to the technical field of the invention in respect of which a patent is applied for.

The procedure shall be in writing but the possibility of having oral hearings is also provided for. The Draft Convention contains very detailed rules as to the procedure before the Nordic Patent Council on which I cannot comment in this rather brief "Letter." I might, however, mention only that the Council should hold its sessions in each of the Scandinavian countries according to which country the appeal comes from. A common secretariat is not envisaged, but each of the lawyer members should be the administrative chairman of the Council for a two-year period. The full Council would deal with the administrative questions of the Council, legislative matters, and other questions of common interest to the Council, but would not proceed to solve the question of patentability in a certain case pending before the Council.

There are now governmental Commissions studying the observations made by interested organizations and other circles on the Draft Convention with the task of improving the Convention so far as it is thought appropriate. In this con-

nection, the Commissions also have to consider the possibility of bringing into force Chapter III of the Patent Laws, 1967.

In the Committees' Report it is thought that an appeal to the Nordic Patent Council could refer both to Nordic patent applications — for which the authority in the first place was intended — and to national patent applications in the different Scandinavian countries. But, what will happen if Chapter III of the Patent Laws, 1967, never enters into force and there are no Nordic patent applications? Two members of the Nordic Council (Mr. Yngve Holmberg, Sweden, and Mr. Juha Rihtniemi, Finland) have, it is true, made a proposal that the Nordic Patent Council should be founded irrespectively of the system of Nordic patent applications. This proposal will now be studied. Personally, I think the proposal has many merits, for instance, with the aim of harmonizing decisions as to patentability in the Scandinavian countries by the application of the uniform Patent Laws. But, as both Chapter III and the Nordic Patent Council are mentioned in connection with each other in the first report on the Nordek-treaty, I think it is possible to hope for the accomplishment of both ideas.

V

In August 1968, the Thirteenth Nordic Conference on the Protection of Industrial Property was held in Stockholm. One of the items on the agenda of that Conference was the question of protection of matters concerned with computers, especially the protection of so-called *software*. Even if it was generally held that there could be no patent protection for software, some speakers were in favor of accepting computer programs as patentable subject matter under certain circumstances. On the other hand, those programs were held to be protected under the law of copyright.

During the meeting of the Scandinavian Patent Offices in May 1969, the same item was discussed on the basis of a report by Mr. E. Thomsen, of the Danish Patent Office. It seems that there is a need for more precise guidelines regarding the patentability of software. I think that we have here as good a subject for common regulation as the inventions in the microbiological field.

During the same meeting, several items connected with the entry into force of the new Nordic Patent Laws were also discussed, such as the publication of patent applications when the application is laid open to public inspection in accordance with Section 22(1) of the Laws. There was also a discussion on several questions regarding close cooperation between the Scandinavian Patent Offices prior even to the enforcement of Chapter III of the Patent Laws, for instance, on the question of sending microfilmed copies of applications which, according to Section 22(2) of the Patent Laws, have become public in one country to the Offices of the other countries. These very few examples show the importance of the joint Scandinavian meetings, an institution which will be even more valuable after a closer integration of their activities has been achieved in accordance with Chapter III.

VI

I now turn to other items of industrial property. I have already mentioned the new Scandinavian Trademark Laws of the beginning of this decade. They are not as uniform as the

Patent Laws, 1967, and they are not even of the same year. However, their texts were worked out in very close cooperation between the Committees concerned, but each Committee gave its own Report to its Government.

The main rule is that protection of trademarks is given either by registration or by considerable use [*inarbetande*] so that the mark is generally known in the circles concerned. Originally protection was obtained only by registration, but a development allowing for obtaining protection by considerable use had already occurred before the new Laws were enacted, even if it was not completed. Now the two modes of protection are quite on a par with each other.

According to the new Laws, there may be considered as trademarks both trademarks in the usual sense — that is, devices, one or more words, letters or numerals — and a distinctive get-up of the goods or their packing. In the same way, service marks are also protected as trademarks. A special form of mark are slogans. In Finland and Sweden these cannot be registered and are protected only in the case of considerable use, whereas in Denmark and Norway they are considered ordinary trademarks and are thus protected in the same way as other trademarks.

The new Trademark Laws contain special provisions regarding the transfer and licensing of trademarks. Under the former legislation, transfer of marks was only possible in connection with transfer of the business in which the trademark was used. Even before the new Laws were enacted, a more liberal practice as to the possibility of transfer was established and now the new Laws have enacted the principle of the free transfer of trademarks.

As to the effect of the transfer of a trademark or the licensing of such a mark, the situation where the mark becomes misleading to the public is covered. In this case, the competent authority may refuse registration of that transfer or license. In the case of transfer, the mark may be registered if it is changed so that the obscurity which is misleading to the public disappears.

The Finnish Trademark Act contains a provision regarding the pledging or mortgaging of trademarks. The contract should be in writing and a note thereof made in the trademark register. Until such a note has been made the contract has no effect.

The provisions regarding the remedies for infringement of marks are much more detailed in the new Laws than in the former legislation where they were quite incomplete in many respects. It is, however, very interesting to observe the rather considerable differences between such remedies, on the one hand, in the different Scandinavian countries and, on the other hand, in the patent law and the trademark law. To mention only the situation in Finland, the provisions regarding the remedies for infringement under trademark law were constructed in accordance with the provisions of the Patent Law, 1943, where damages for infringement, in principle, depended on negligence on the part of the defendant. If the negligence of the defendant was only slight, the damages could, however, be adjusted. But, even if there had been no negligence at all and the defendant had acted in good faith, he was nevertheless obliged to reimburse the plaintiff with the profits he had

gained from the use of the trademark, to the extent deemed reasonable in view of the circumstances of the case. This rule was very much criticized in the Swedish Trademarks Report and in the new Patent Laws the possibility for the plaintiff to always obtain a sum corresponding to a royalty for the use of the patent as damages is taken care of, in the case of good faith, only, however, to the extent that appears fair and reasonable. The Swedish Trademark Law, for instance, already contained a different and more flexible rule than the Finnish Trademark Law.

As in many other countries, the question of double importation has been very much discussed and there are some interesting cases on the subject. I may mention a Swedish case (*NJA 1967 p. 458, NIR 1968 p. 404*). The Swedish companies *Skandinavisk Henkel Aktieselskab* and *Parfymeri Trading Aktiebolag* sued Mr. Wolf Charaz for infringement of the trademarks *Polycolor* and *Polylock*. The trading company was the exclusive agent in Sweden for the *Herman Henkel* company. Mr. Charaz imported goods bought from *Therachemie*, in Germany. The Supreme Court of Sweden held on October 17, 1967, that, as both *Therachemie* and the Swedish *Henkel* company were part of the so-called *Henkel-konzern*, and as *Therachemie* practically controlled the whole activity of the Swedish company, and as the latter was thus only in a dependent position in relation to *Therachemie*, the Swedish company could not be regarded as holder of the trademark in any way other than as a representative of *Therachemie*. Therefore, the importation of goods marked with the said trademarks were to be judged in the same way as if *Therachemie* was still the holder of the two marks. Accordingly there was no infringement of the plaintiff's right.

A Finnish case (*HD 1968 II 5, NIR 1969 p. 96*) stated, in a more precise and explicit manner, the principle laid down in the above-mentioned Swedish case, holding that, since the agent's registration of the mark *Felica* had been made with the consent of the German enterprise *Vredeborch GmbH*, and even though the mark was registered in the agent's name, the mark was to be considered a foreign trademark registered in Finland and, as the goods imported by the defendant *Kalle Anttila Oy* were marked with the original trademark by *Vredeborch GmbH*, the agent's action for damages for infringement of the mark was turned down.

VII

Finally, I should like to draw attention to the protection of trade names. Under the present legislation, which derives from the end of the last century and which is very much influenced by German law, the legislative rules are concerned with the question of registration of trade names but do not contain any provisions regarding the protection of trade names against third persons who use the same or a similar trade name without registration. The need for new legislation has thus already been present for a long time in spite of the fact that the Courts have developed a protection on the lines of that afforded by trademark law.

In 1959 and 1960, Committees for the revision of the law on trade names were appointed in Denmark, Finland and Norway whereas the Swedish Trademarks and Trade Names Committee, appointed as long ago as 1949, was divided into

two Committees, one for trademarks and one for trade names. The Committees have worked in close cooperation. To some extent the existing differences between the actual rules, however, seem to continue to exist. One of the main questions is the registration system. Should there be a central registration, as in Finland, or a decentralized system, as in Sweden? I think there are national traditions in support of both systems which can hardly be overlooked by the revision of the trade names legislation.

Some of the Committees have already given their Reports. I only mention here the Swedish Report "*Firmaskydd, betänkande med förslag till firmalag m.m. avgivet av firmautredningen*," published in the series "*Statens offentliga utredningar*," 1967, 35, 479 pages. As usual, the Swedish Report is very comprehensive and goes into further detail than the other Scandinavian reports. The Report contains two main draft laws, one concerning trade names and the other concerning the commercial register [*handelsregister*]. The legislation now in force deals with the two subjects in the same Law, which also contains provisions regarding "*procura*."

As to the trade names draft, the Swedish Report suggests that the registration of a trade name or the considerable use of it confers on its owner an exclusive right to the trade name. Considerable use can also give rise to the exclusive right to another sign used in the trade. According to the Law now in force, the right to a trade name arises from the adoption and use of the trade name. The proposed rules are thus more rigorous than the present ones, but it is believed that this will not cause any difficulty. There is no special rule as regards foreign trade names (see Article 8 of the Paris Convention). They have, however, been considered protected as soon as the foreign enterprise extends its activities to Sweden or takes real steps in this respect. The same rule — so far as I know — also applies in the other Scandinavian countries.

It is proposed that a trade name — as in the Law now in force — should only be transferable in connection with the enterprise. However, if the trade name becomes misleading in the trade of the new proprietor, the Court can prohibit the use of the trade name.

The Report contains — as was expected — detailed suggestions regarding the sanctions for infringement of a trade name. A person who intentionally infringes another's trade name can be punished by a fine or by imprisonment for a period not exceeding six months. When the infringement has been deliberate or due to negligence, the infringer has to pay damages caused by the infringement. If the negligence has only been slight, the damages can be adjusted. These rules are in conformity with the corresponding provisions of the Scandinavian Trademark Laws. There is, however, a noticeable difference between the sanctions proposed in the trade names draft and those existing in other fields of industrial property. The Report proposes that an infringement which is not due to negligence but has been in good faith shall have no consequences. As I have already mentioned, the question of sanctions in the latter case has caused some difficulties in drafting the new Patent and Trademark Laws. The problem was solved in different ways in the two Laws, and there are also differences in the solutions given in the various Scandinavian coun-

tries. In the Swedish Trademark Law there is no provision for damages in cases where the infringement is not due to negligence. The use of such an infringing mark may, however, be prohibited. The same is true also in the trade names draft.

I hope my "Letter" has given some information about the development of industrial property in the Scandinavian countries. The whole area is covered or will soon be covered by new legislation. However, the preparation of uniform Scandinavian legislation takes a long time. Meanwhile, the international developments in this field of law have been of very great interest. Moreover, even if this development — especially in patent law — has been taken care of by new legislation, continuing developments on the international level cannot be without influence on the *status quo* in the Scandinavian countries, as was underlined in an address dealing with the evolution of law in the Scandinavian countries at the opening of the 25th Meeting of Scandinavian Lawyers, in Oslo, last August.

GENERAL STUDIES

The Role of Employees' Inventions¹ in the USSR *

Y. E. MAKSAREV

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

The question of employees' inventions has been acquiring ever greater importance with the development of technology. An invention requires for its creation an increasing volume of resources, equipment and work performed by auxiliary personnel. The sphere of activities of individual inventors becomes narrower, while the share of inventions created by employees using the means, material and labor resources of organizations in the process of fulfilling their normal working functions increases.

Moreover, the importance of employees' inventions is also growing because of the fact that inventions created in the course of fulfilling normal working functions have a greater chance of being utilized as they are the kind of inventions that solve the problems facing the organization.

It is natural, therefore, that the legislation of the parties to the Paris Convention solves, in one way or another, the question of employees' inventions, in the pursuit of two aims: to protect the rights of the organization which has provided the means, resources and other facilities for the creation of the invention and to establish the motivation to encourage and stimulate men to create something really new which qualitatively raises the level of technology and its economic effectiveness or, in other words, inventions. As a rule, the inventor assigns such inventions to the firm in order to enable it to take out patents the right to which belongs to the firm.

* BIRPI translation.

¹) Служебные изобретения

The firm itself decides whether and how the inventor should be given some encouragement (payment as a reward, promotion, etc.). In some cases the inventor receives a certain remuneration on the basis of a contract with the firm.

Rules have appeared recently in the legislation of some countries, providing for the obligatory payment of a special remuneration to the authors of employees' inventions, depending on their effectiveness. Such rules will certainly serve the cause of technological progress and facilitate its acceleration, since the protection of the rights of the inventor helps to stimulate his creative intellectual activities.

The USSR was the first country to have legislation expressly providing for the material encouragement of authors of employees' inventions. One of the main principles of the Soviet law on inventions is that the author of an employee's invention has all the rights possessed by the author who has created an invention on his own initiative, independently of his normal working activities. Moreover, in this connection, Soviet legislation did not even provide for such a special category as an "employee's invention". The law limited only the choice of the form of protection: the author had no right to claim the protection of his invention by a patent, he could only obtain an inventor's certificate under which the right to the utilization of the invention belongs to the State. This rule can hardly even be called a limitation since, in practice, Soviet inventors did not ask for patents to be issued to them; in all cases they applied for inventors' certificates.

Practice has shown, however, that the absence of the category of an employee's invention does give rise to certain negative consequences.

Not infrequently, an engineer, a development man or a scientist considered it improper on moral grounds to make an application for the protection of their original solutions to problems considering that they received a good salary and enjoyed all the material facilities of the institutions for which they worked. In many cases, they limited themselves to publishing their achievements in the scientific, technical and popular magazines, receiving their author's honorarium for that. This led to widespread diffusion and the loss of any possibility to protect the author's achievements as inventions.

On the other hand, the filing of an application by one of the development men without the knowledge of others — the co-authors or the management — resulted in considerable misunderstandings leading to judicial proceedings in connection with disputes as to authorship. The management sometimes learnt about the achievements of its employees from the official bulletin on inventions published by the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR and could not take measures in time to organize production or to reduce costs and so lost precious time.

Thus, the absence of a clearly formulated concept of an employee's invention caused damage both to the national economy and to the human relations among the personnel of an organization. That is why a decision was adopted in 1962 expressly providing for certain rules concerning employees' inventions.

What is the essence of these rules?

To begin with, an obligation was established for an author to inform his organization about the employee's invention created (an invention created during the fulfilment of a service task, a research work plan, or plans for the development and introduction of new technology, etc.) and for the directors of the organizations an obligation was established to draw up an application for the issue of an inventor's certificate and to file it together with their conclusion concerning the invention's utility with the Committee for Inventions and Discoveries. This rule, on the one hand, ensures the filing of applications for the protection of all new technological achievements created in the organization as inventions and, on the other hand, an acceleration of the practical utilization of these achievements, and, finally, it is aimed at helping the author to carry out the complex task, requiring specialized knowledge, of filing and processing an application.

The special value of employees' inventions is also explained by the fact that in many respects they enjoy favorable treatment. Thus, it has been established that a duly filed application for the protection of an employee's invention should be examined by the Committee for Inventions and Discoveries within four months and not the six months provided for in the case of most applications.

At the same time it should be emphasized that the introduction of the employee's invention category does not in any way whatsoever infringe the rights of authors. They retain all the rights which they had before and which belonged to the authors of "unorganized" inventions.

Moreover, special property rights have been provided for in the case of the authors of employees' inventions.

The Government permitted the Committee for Inventions and Discoveries, the Ministries and other departments to pay a remuneration by way of encouragement up to an amount of 200 roubles for an invention but not more than 50 roubles to an author when an inventor's certificate is obtained in respect of inventions created in connection with carrying out a service task. This lump sum remuneration is subsequently taken into account during the final payment to the author at the time that the invention is first worked (the final payment is calculated on the basis of the amount of savings accrued to the national economy or of any other effect on the national economy). The Government considered that where an invention was created in furtherance of research or the development of new technology within an enterprise or organization this fact coincided with the main direction of the development of technological progress in the country and should be encouraged.

The application of these rules concerning employees' inventions has brought tangible results. Firstly, the activity of inventors has increased. Secondly, if many inventions remained unprotected before, the cases of such technological novelties not being covered by applications for their protection are increasingly diminishing at present. As a result, the number of applications filed has increased sharply, the increase being accounted for mostly by applications for the protection of employees' inventions. The share of such applications has been steadily growing, reaching 62 per cent in 1968 (see Table 1).

Table 1

Years	Applications filed		Examined		Recognized as inventions		% of applications granted in relation to the number of applications examined	
	total	employees' inventions	total	employees' inventions	total	employees' inventions	total	employees' inventions
1964	94,698	28,069	68,944	17,419	12,091	3,539	17.6	20.02
1965	103,616	42,379	76,250	33,101	16,628	8,280	21.8	24.8
1966	108,377	55,451	75,003	40,340	19,085	11,812	25.4	29.4
1967	112,309	66,617	80,757	49,029	25,480	18,412	31.6	37.6
1968	110,428	65,784	77,015	49,810	24,926	18,856	32.4	37.8

The recording of employees' inventions has provided an objective criterion for evaluating the activities of development workers and organizations, and has increased their sense of responsibility; this has resulted in a sharp growth not only of the total number of proposals accepted as inventions but also of the share of inventions in the total number of applications filed.

All this shows the great role played by the decision of the Soviet Government concerning employees' inventions which has not infringed the initiatives of individual inventors.

The introduction of the obligation to register inventions created in connection with service tasks has made the research and development workers and technologists, on completion of their research and development work, draw up applications for its protection while the managers take care of the preparation of conclusions as to the utility of the inventions involved and of the timely filing of the applications with the Committee for Inventions and Discoveries.

This has led to another important development. The creation of an invention in connection with the scientific and technological activities of the organization has brought about more favorable conditions for its utilization in production. An examination of the dynamics of the utilization of inventions over a three year period shows a considerable growth (Table 2).

Table 2

Years	Total number of inventions utilized in industry	Including those utilized for the first time
1966	13,427	5,112
1967	17,855	5,939
1968	20,904	7,530

A high percentage of employees' inventions also resulted in the acceleration of the preparation of documentation relating to inventions, and the acceleration of the testing and introduction into serial production of inventions. Analysing how soon inventions are utilized after their entry in the State Register, one can see that out of the inventions used for the first time in 1967, the percentage of inventions registered in the same year of 1967 was 33.5, in 1966 - 32.00, in 1965 - 11.4. It transpires that the inventions are rapidly utilized. If one considers the pace of the utilization of the inventions in 1968 as measured from the date of their entry in the State

Register and from the priority date of the application filed (Table 3), the picture looks somewhat different but it also shows that this process is sufficiently rapid¹.

Table 3

Inventions worked in 1968 broken down according to:	1968	1967	1966	1965
Registration date	29.4	40.9	11.5	5.5
Priority date	3.1	25.8	25.5	17.9

The establishment of the employee's invention category has made it possible to combine the interests of inventors with the interests of enterprises and organizations where new original solutions ensuring novelty and utility have been found. The filing and protection of such inventions in the USSR create the premises and offer the possibilities allowing of their patenting abroad, so giving rise to the possibility of selling licenses and so exporting the products of Soviet industry.

If inventions are created in connection with the service activities of the inventor and in connection with research and development work in accordance with the new technology plan, it is natural that this gives a real possibility for planning invention activities. In accordance with a decision of the government, while evaluating the activities of research institutions, the designing, technological offices and other organizations engaged in designing and developing new solutions, the number and the effectiveness of the discoveries and inventions created in these organizations should be taken into account. The appraisal of the work of scientific personnel and of engineers has also been made dependent on the level of the machines, mechanisms, appliances and technological processes created by them which in turn depends on the extent to which the inventions are put to use in them.

Thus the government and the competent bodies not only stimulate technological progress but also have possibilities for its planning. The "employees' inventions" category is called upon to facilitate an organization's permanent efforts to accelerate technological progress, to create such solutions that will ensure the maximum output/investment-capital ratio

¹ As percentage of the total number of inventions worked during 1968.

and considerably raise labor productivity both in the production of new technology and in its utilization.

The pace of the introduction of inventions in the USSR should be kept in mind in connection with the time limits envisaged under the Patent Cooperation Treaty (PCT) plan according to which the author of an international application has a guarantee that within 18 months of filing his application will not be published and its examination will not begin.

In accordance with the obligations undertaken by our country under the Paris Convention, the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR has to revoke an inventor's certificate or a patent for invention already issued if a convention application is filed by a foreigner claiming an earlier priority date. This rule is being observed.

However, due to the rapid introduction of inventions in industry, it may occur that, by the time the convention application is filed and especially by the time the patent is issued on the basis of this application, the invention has already been introduced, for inventors' research is carried out simultaneously and in many cases inventors in several countries find new progressive solutions almost at the same time. A situation can arise when two inventors — in the USSR and in some other country — have simultaneously created similar inventions. In the USSR the application of the Soviet author has not only been examined and the inventor's certificate issued but the invention itself has already been introduced in industry while the convention application, even claiming an earlier priority date, has not yet been received. The delay in filing the application by the foreign author may cause various disputes, in particular a dispute concerning the right of prior use of the Soviet organization which has introduced the invention. In our country, the introduction or preparatory work often begins before the filing of an application with the Committee for Inventions and Discoveries and it may occur that the introduction has begun before the date of the convention priority of the foreign author's application. The earlier an application is received in the USSR the fewer the misunderstandings that are likely to arise.

NEWS CONCERNING NATIONAL PATENT OFFICES

The Activities of the Danish Patent Office in 1968

By E. P. TUXEN

The problems of the Danish Patent Office are — as is the case with patent offices in most other countries where patents are granted after a novelty search and subsequent prosecution — the steadily increasing number and the evergrowing complexity of incoming patent applications.

The year 1968 was marked by the advent of the new Danish Patent Law, which came into force on January 1,

1968, and which in several respects involves changes in the existing organization and procedure. The Law has given rise to a prosecution routine which in many ways is more complicated than the previous one and has introduced a new organization, since the former Patent Board — composed of two legal experts and 16 technical experts and having the power to decide in each individual case whether a patent should be granted or not — has been abolished, and the grant of patents is decided in the first instance by the Patent Office under the responsibility of its Director. This change does, of course, make heavier demands on the examiners.

The new Law comprises an arrangement for Nordic administrative cooperation according to which a patent application filed in Denmark, Finland, Norway, or Sweden may cover not only the country in which it is filed but also the other countries mentioned, so that each of these countries may grant a patent for all four countries on the basis of one application. This arrangement was expected to result in a very substantial reduction in the work of the individual Nordic Patent Offices. The arrangement has, however, not yet come into operation since there have been certain political difficulties, and the question of its coming into operation has now been incorporated into a more comprehensive Nordic scheme, which is at present under discussion in Nordic political circles.

As to other measures which might facilitate the situation of the Patent Office, it should especially be noted that the new Law makes it possible to utilize examinations carried out by other patent offices: under the provisions of the Law, in all cases where priority is claimed from another examining country we now request information about the results of the examination regarding the patentability of the invention in the priority country. Moreover, we have the opportunity to accept the results of novelty searches made in respect of corresponding applications by other patent offices or by international institutions.

As regards the trend during the years 1961 to 1968, the following statistics may be given:

	Applications filed	Patents issued	Applications disposed of
1961	5,265	2,235	4,302
1962	5,692	2,541	4,670
1963	6,116	2,517	4,651
1964	6,453	2,999	5,173
1965	6,713	2,692	4,864
1966	6,798	2,671	5,127
1967	6,722	2,290	5,151
1968	6,415	1,945	4,517

At the end of 1968, a total of 28,480 applications were pending; this corresponds to the number of applications filed in the course of about four years. The number of examiners is at present 81.

The fluctuation in the number of filed patent applications, which, as will be seen, reached a peak in 1966, may have some connection with the fact that in 1965 an increase was made in the annual fees and that on April 1, 1967, a substantial increase was made in the filing fee, viz from Dkr. 250 to Dkr. 400. These increases may have contributed to a decline in

the number of filings. The proportion between the number of applications filed in 1967 and the number of applications filed in 1968 probably reflects the desire of many applicants to have their applications filed under the previous Law. Thus in December 1967 we received 692 applications.

The relatively limited number of patents issued in 1968 is a consequence of the new Law. While previously patents were not printed until a decision had been taken as to their issue, now the accepted application is printed and the applicant is given a respite of two months in which to pay the printing fee. The fact that the transitional rules of the new Law prescribe that applications which had not been laid open to public inspection before January 1, 1968, are to be prosecuted in accordance with the provisions of the new Law has caused a delay of up to two months, in comparison with previous years, in the laying open of such applications for public inspection. Furthermore, since the time allowed for opposition has been extended from two to three months, this means an additional delay in the issue of patents. These two facts together have thus led to the result that, for a period of almost three months, only a very small number of patents were issued.

In addition, some of the rules embodied in the new Law have caused an increase in the examiners' work; this is especially true of the rule whereby the total contents of a previously filed application which is published later on must be considered an obstacle to novelty. This rule requires a far more exhaustive examination of the applications pending in the Patent Office and having better priority rights than was the case previously when examinations concerned only the claims of the applications.

Another very important factor which, in 1968 and presumably also in the current year, has acted and will continue to act as a brake on the activities of the Danish Patent Office is the Nordic cooperation, which means that whenever fundamental problems arise the Patent Offices of Finland, Norway, and Sweden must be contacted in order to arrive at a uniform solution. This has had the effect that several cases have not been disposed of because discussions — which are often protracted and difficult — with the other Nordic patent authorities have not led to any definitive results. Questions concerning the detailed prosecution of applications and decisions on cases involving fundamental problems arose, of course, especially in 1968, but it is to be expected that problems will always arise to some extent when four countries coordinate their prosecution procedure.

A further factor which puts a strain on the examiners is the new rule according to which any application the filing or priority date of which dates back more than 18 months is available to the public. Due to this rule, the examiners have to allow applications on which they are working to be removed for presentation to the public, an incident that has happened very frequently. Thus, in the last half of 1968 (this rule did not take effect until July 1, 1968), about 10,000 pending applications were required by third parties for viewing and perhaps for the purpose of ordering copies of the application documents or other documents belonging to the case. In this connection, it should be noted that the inconvenience referred

to is linked up with the very great interest taken by the public in having access to the documents of the applications; consequently, in this respect, the rule appears to be of great value.

As will be seen from the above, 1968 has been quite an extraordinary year for the Danish Patent Office. It has, however, been one of temporary phenomena, which is shown by the figures for the first half of this year during which we received 3,547 applications, that is, an increase of 10 to 11 per cent, and issued 1,571 patents, a figure which surpasses the number of patents that have ever been issued during a similar period. Hence, there is reason to believe that the situation is now under control to a certain extent. Nevertheless, an arrangement to relieve the workload in the Danish Patent Office, either in the form of a Nordic arrangement, through the Patent Cooperation Treaty, or in some other way, will still be a necessity.

Summary of the 1968 Annual Report of the Swedish Patent Office

By Torsten GUSTAFSON

New Patent Law

A new Patent Law came into force on January 1, 1968. It is based on a report made in collaboration with the other Nordic countries which have also introduced essentially the same patent legislation. This Law involves a number of new departures in the treatment of patent applications. Among these are: the opportunity now afforded for patents to be granted for chemical compounds with the exception, for the time being, of those involving foodstuffs and pharmaceuticals; the disclosure of patent applications still pending after a lapse of 18 months from the date of priority; the opportunity to request the results of the examination from another country undertaking an examination as to novelty; the widening of the novelty rule; the adjustment of running days; and new rules for patents of addition. The changes in the working routines that have resulted have had a considerable effect on the work of the Patent Office during the year.

Patent Examining Operations

From 1957 onwards the number of patent applications increased year by year and by 1967 reached 18,148. Last year, however, there was a slight decline to a total of 18,080. Of these 4,742 came from Swedish applicants, a figure which is 567 or nearly 11 per cent below the 1967 level. The number of applications from abroad, on the other hand, increased by 499 — or 4 per cent — to 13,338.

The United States of America is still the country from which most foreign applications come, and last year it accounted for 3,985 or 22 per cent of all new applications. However, this number represents a decrease of 4 per cent in relation to 1967. On the other hand, the number of applications from the Federal Republic of Germany rose by 11 per cent to 3,009, or nearly 17 per cent of the total. Next in order

came the United Kingdom with 1,564, followed by Switzerland with 931, France with 727, and the Netherlands with 704. All these countries recorded increases over 1967. The number of applications disposed of rose by 2 per cent to 17,607. The backlog of complete patent applications still pending is 61,329.

The increase in the number of Swedish applications filed abroad has continued. In 1967 these totalled 8,745, which exceeded the 1966 figure by 279 or 3 per cent. The corresponding figures for Swedish applicants filing in Sweden during 1967 were 5,309, 452 and 9 per cent.

Trademark and Design Examining Operations

The number of applications for the registration of trademarks has increased slightly in recent years and reached 5,600 during 1968. However, the proportion of applications from Swedish applicants continued to decrease and comprised no more than 40 per cent of the total as compared with an average of 45 per cent during the years 1963 to 1967. Of the applications from abroad, increases were noted in the number received from Denmark, Germany, Japan, the Netherlands, the United Kingdom and the U. S. A.

1968 was also a record year in respect of the number of trademarks registered. Slightly more than 3,800 trademarks were registered as compared with about 3,600 in each of the years 1966 and 1967.

The registration of a trademark is valid for ten years and can thereafter be renewed for an unlimited number of ten-year periods. About 70 per cent of registrations that are due for renewal are in fact renewed. In 1968 about 3,400 renewal applications were received.

According to the present Law for the Protection of Designs, registration is restricted to decorative designs in the metalworking industry. Interest in design protection is for that reason low. During 1968 the number of applications for designs was 417.

A proposal for a new Design Law has not yet passed.

Appeals

The Board of Appeals received 814 patent appeals and 182 trademark appeals in 1968. This means that the number of patent appeals has increased considerably. The number exceeds by no less than 78 per cent that of 1967 which, in turn, represented a great increase in comparison with previous

years. Trademark appeals have increased by about 45 per cent in the past year.

Nordic and International Cooperation

Since the uniform Swedish, Danish, Finnish and Norwegian Patent Laws came into force on January 1, 1968, representatives of the various Patent Offices have met on a number of occasions in order to superintend matters relating to practice as regards the implementation of these Laws.

The question of the coming into operation of the Nordic patent system, together with the related question of the setting up of a joint Nordic court of appeal, has been linked with the joint Nordic discussions concerning increased economic cooperation in general (Nordek).

An edition of the Nordic Patent Law translated into English and French was published by BIRPI in 1968*, and a German translation was published in *GRUR, Heft 10*, 1968.

By virtue of an authorization given by the Swedish Government, informal agreements have been made with the Federal Republic of Germany and the USA concerning an exchange of results of examinations of applications with priority from each of these countries, on a reciprocal basis. Co-operation based on these agreements has now commenced.

Sweden has played an active part in the working group within the Committee of Experts on Patents of the Council of Europe and in the work within BIRPI concerning ICIREPAT and the Patent Cooperation Treaty (PCT). Working groups have been appointed in all the Nordic countries to study the effect of PCT on the Nordic Patent Offices.

Financing

Income from patents and trademarks during the fiscal year 1967/68 was about 24,000,000 and the expenditure was about 22,000,000 Swedish Crowns.

The Patent Office has not only financed its activities but has furthermore made a total net profit of approximately 4,600,000 Swedish Crowns in the past five fiscal years.

Personnel

The personnel of the Patent Office numbered 590 at December 31, 1968, and comprised 215 engineers, 56 lawyers, 6 librarians and 313 others.

* See *Industrial Property*, 1968, page 172.

CALENDAR OF MEETINGS

BIRPI Meetings

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

October 27 to 29, 1969 (Munich) — Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICI-REPAT) — Technical Committee II (Technical Fields: Forward Planning) (2nd Session)

October 30 and 31, 1969 (Munich) — ICIREPAT — Technical Committee III (Advanced Computer Techniques) (2nd Session)

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 Dhabi, Bahrain, Dubai, Qatar, and Sharjah — *Observers:* Intergovernmental and international non-governmental Organizations concerned

November 3 and 4, 1969 (Geneva) — ICIREPAT — Technical Committee I (Retrieval Systems, Design and Testing) (2nd Session)

November 5 and 6, 1969 (Geneva) — ICIREPAT — Technical Committee VI (Systems Implementation) (2nd Session)

November 10 to 12, 1969 (Geneva) — ICIREPAT — Technical Committee IV (Microform) (2nd Session)

November 13 and 14, 1969 (Geneva) — ICIREPAT — Technical Committee V (Patent Format and Printing) (2nd Session)

November 11 to 13, 1969 (Buenos Aires) — South American Seminar on Industrial Property

Object: Exchange of views on the application of the Paris Convention for the Protection of Industrial Property — *Invitations:* Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela — *Observers:* Intergovernmental and international non-governmental Organizations concerned

December 10 to 12, 1969 (Paris) — Intergovernmental Committee Rome Convention (Neighboring Rights) (2nd Session)

Object: Consideration of various questions concerning neighboring rights — *Invitations:* Congo (Brazzaville), Czechoslovakia, Ecuador, Mexico, Sweden, United Kingdom — *Observers:* Brazil, Denmark, Germany (Fed. Rep.), Niger; Intergovernmental and international non-governmental Organizations concerned — *Note:* Meeting convened jointly by ILO, Unesco and BIRPI

December 15 to 19, 1969 (Paris) — Permanent Committee of the Berne Union (14th Ordinary Session)

Object: Consideration of various questions concerning copyright — *Invitations:* Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom — *Observers:* All other member States of the Berne Union; Intergovernmental and international non-governmental Organizations concerned

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)

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

April 13 to 17, 1970 (Geneva) — Committee of Experts for the Revision of the Madrid Agreement (Marks)

Object: Study of the revision of the Agreement — *Invitations:* All member States of the Madrid Agreement (Marks); Denmark, Finland, Japan, Norway, Soviet Union, Sweden, United Kingdom, United States of America — *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

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

November 18 to 20, 1969 (The Hague) — International Patent Institute (IIB) — 102nd Session of the Administrative Council

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 — Committee of Experts
