

# Industrial Property

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## WORLD INTELLECTUAL PROPERTY ORGANIZATION

### Convention Establishing the World Intellectual Property Organization (WIPO)

#### Entry into Force

#### *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, referring to Article 19(i) of the Convention Establishing the World Intellectual Property Organization (WIPO), has the honor to inform him that, pursuant to the provisions of Article 15(1), the said Convention will enter into force on

April 26, 1970,

that is, three months after ten States members of the Paris Union and seven States members of the Berne Union have fulfilled the conditions set forth in Article 14(1), (2) and (3).

In this connection, the Director of BIRPI, referring to his previous notifications, has the honor to remind him that:

(1) *Convention Establishing the World Intellectual Property Organization (WIPO)*

- (a) Ireland signed the said Convention, without reservation as to ratification, on January 12, 1968;
- (b) instruments of ratification or accession, relating to the said Convention, were deposited by
  - the German Democratic Republic, on June 20, 1968,
  - the Republic of Senegal, on September 19, 1968,
  - the Union of Soviet Socialist Republics, on December 4, 1968,
  - the United Kingdom of Great Britain and Northern Ireland, on February 26, 1969,
  - the Socialist Republic of Rumania, on February 28, 1969,
  - Spain, on June 6, 1969,
  - the State of Israel, on July 30, 1969,
  - the Kingdom of Sweden, on August 12, 1969,
  - the Hungarian People's Republic, on December 18, 1969,
  - the Kingdom of Denmark, on January 26, 1970,
  - the Swiss Confederation, on January 26, 1970.

(2) *Stockholm Act of the Paris Convention for the Protection of Industrial Property*

- (a) in its entirety: instruments of ratification or accession were deposited by Ireland on March 27, 1968, and by the German Democratic Republic, the Republic of Senegal, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the Socialist Republic of Rumania, the State of Israel, the Hungarian People's Republic,

the Kingdom of Denmark and the Swiss Confederation on the respective dates mentioned above;

- (b) with only the limitation set forth in Article 20(1)(b)(i) of the said Act: an instrument of ratification was deposited by the Kingdom of Sweden on August 12, 1969.

(3) *Stockholm Act of the Berne Convention for the Protection of Literary and Artistic Works*

- (a) in its entirety: instruments of ratification or accession were deposited by the German Democratic Republic and the Republic of Senegal on the respective dates mentioned above, and by the Socialist Republic of Rumania on October 29, 1969;
- (b) with only the limitation set forth in Article 28(1)(b)(i) of the said Act: instruments of ratification were deposited by the United Kingdom of Great Britain and Northern Ireland, Spain, the State of Israel, the Kingdom of Sweden (with, however, a declaration admitting the application of the Protocol Regarding Developing Countries), the Kingdom of Denmark and the Swiss Confederation on the respective dates mentioned above.

The Director of BIRPI has the honor to remind him further that the notification of the deposit of the instruments of accession by the German Democratic Republic has given rise to communications from some Governments disputing the validity of such accession, communications which have been transmitted to the States concerned.

Furthermore, the Director of BIRPI has the honor to inform him that, pursuant to the second sentence of Article 15(1), the said Convention will enter into force also on April 26, 1970, in respect of States which, not being members of either of the two Unions, but fulfilling the conditions set forth in Article 5(2)(i), have taken action as provided in Article 14(1) three months or more prior to the said date, that is:

- the Byelorussian Soviet Socialist Republic,
- the Ukrainian Soviet Socialist Republic,

which deposited their instruments of ratification of the said Convention on March 19, 1969, and February 12, 1969, respectively.

Geneva, February 4, 1970.

WIPO Notification No. 17

### Ratifications of the WIPO Convention

#### HUNGARY

#### *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 Hungarian People's Republic deposited on December 18, 1969, its instrument of ratification dated October 9, 1969, of the

Convention Establishing the World Intellectual Property Organization (WIPO), with the following declaration:

"At the time of ratification of the Convention, the Presidential Council of the Hungarian People's Republic repeats the declaration made by the Hungarian Government at the moment of signature of the instrument, in accordance with which, the Convention having the character of a universal international Convention which concerns the interests of all States, any State has the right, on the basis of the principle of the sovereign equality of States, to become party to the Convention." (*Translation*)

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

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

Geneva, January 19, 1970.

WIPO Notification No. 14

#### DENMARK

##### *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 Denmark deposited on January 26, 1970, its instrument of ratification dated December 31, 1969, of the Convention Establishing the World Intellectual Property Organization (WIPO).

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

A separate notification is being made of the entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO).

Geneva, February 4, 1970.

WIPO Notification No. 15

#### SWITZERLAND

##### *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 Swiss Confederation deposited on January 26, 1970, its instrument of ratification dated January 13, 1970, of the Convention Establishing the World Intellectual Property Organization (WIPO).

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

A separate notification is being made of the entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO).

Geneva, February 4, 1970.

WIPO Notification No. 16

#### BULGARIA

##### *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 People's Republic of Bulgaria deposited on February 19, 1970, its instrument of ratification dated January 26, 1970, of the Convention Establishing the World Intellectual Property Organization (WIPO), with the following declaration:

"The People's Republic of Bulgaria considers it necessary to stress that the text of Article 5 of the Convention is of a discriminatory nature in that it excludes, for a certain number of States, the possibility of participating in it. The Article is in flagrant contradiction with the nature of the World Intellectual Property Organization, the purpose of which is to unite the efforts of all States for the protection of intellectual property and for the regulation of problems in this field which are of concern to all countries.

The People's Republic of Bulgaria therefore feels that adhesion to conventions of this type should be open, without restriction, to all States, in conformity with the principle of the sovereign equality of States." (*Translation*)

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

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization (WIPO) will enter into force, in respect to the People's Republic of Bulgaria, three months after the date of the deposit of the instrument of ratification, that is, on May 19, 1970.

Geneva, February 27, 1970.

WIPO Notification No. 18

# INTERNATIONAL UNIONS

## Paris Union for the Protection of Industrial Property Entry into Force of Articles 1 to 12 of the Stockholm Act

### *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 has the honor to remind him that instruments of ratification or accession, relating to Articles 1 to 12 of the Paris Convention for the Protection of Industrial Property, of March 20, 1883, as revised at Stockholm on July 14, 1967, were deposited by:

- Ireland, on March 27, 1968,
- the German Democratic Republic, on June 20, 1968,
- the Republic of Senegal, on September 19, 1968,
- the Union of Soviet Socialist Republics, on December 4, 1968,
- the United Kingdom of Great Britain and Northern Ireland, on February 26, 1969,
- the Socialist Republic of Rumania, on February 28, 1969,
- the State of Israel, on July 30, 1969,
- the Hungarian People's Republic, on December 18, 1969,
- the Kingdom of Denmark, on January 26, 1970,
- the Swiss Confederation, on January 26, 1970,
- the People's Republic of Bulgaria, on February 19, 1970.

The Director of BIRPI has the honor to remind him further that the notification of the deposit of the second of these instruments has given rise to communications from some Governments disputing its validity, communications which have been transmitted to the States party to the Paris Convention.

In accordance with Article 29(5) of the Stockholm Act of the above Convention, the Director of BIRPI has the honor to notify him that, pursuant to the provisions of Article 20(2)(a) of the said Act, Articles 1 to 12 will enter into force three months after the deposit of the tenth instrument of ratification or accession, that is:

- either on April 26, 1970 (three months after the date of deposit by the Swiss Confederation),
- or on May 19, 1970 (three months after the date of deposit by the People's Republic of Bulgaria),

depending on whether the validity of the second of the above mentioned instruments is accepted or not.

In addition, referring to Paris Notification No. 14 by which he notified that, pursuant to the provisions of Article 20(2)(b), and of Article 20(3), Articles 13 to 30 of the Stockholm Act of the Paris Convention will enter into force on April 26, 1970, the Director of BIRPI has the honor to draw attention

to the fact that the said Act will enter into force in its entirety on one or the other of the dates mentioned above. In accordance with Article 23, after the entry into force of the Stockholm Act in its entirety, a country may not accede to earlier Acts.

Geneva, February 27, 1970.

Paris Notification No. 16

## Paris Union for the Protection of Industrial Property Entry into Force of Articles 13 to 30 of the Stockholm Act

### *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 has the honor to remind him that instruments of ratification or accession, relating to Articles 13 to 30 of the Paris Convention for the Protection of Industrial Property, of March 20, 1883, as revised at Stockholm on July 14, 1967, were deposited by:

- Ireland, on March 27, 1968,
- the German Democratic Republic, on June 20, 1968,
- the Republic of Senegal, on September 19, 1968,
- the Union of Soviet Socialist Republics, on December 4, 1968,
- the United Kingdom of Great Britain and Northern Ireland, on February 26, 1969,
- the Socialist Republic of Rumania, on February 28, 1969,
- the State of Israel, on July 30, 1969,
- the Kingdom of Sweden, on August 12, 1969,
- the Hungarian People's Republic, on December 18, 1969,
- the Kingdom of Denmark, on January 26, 1970,
- the Swiss Confederation, on January 26, 1970.

The Director of BIRPI has the honor to remind him further that the notification of the deposit of the second of these instruments has given rise to communications from some Governments disputing its validity, communications which have been transmitted to the States party to the Paris Convention.

In accordance with Article 29(5) of the Stockholm Act of the above Convention, the Director of BIRPI has the honor to notify him that, pursuant to the provisions of Article 20(2)(b) and Article 20(3) of the said Act, Articles 13 to 30 will enter into force on

*April 26, 1970,*

that is, three months after the deposit of the tenth instrument of ratification or accession.

Geneva, February 4, 1970.

Paris Notification No. 14

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

**HUNGARY**

*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 Hungarian People's Republic deposited, on December 18, 1969, its instrument of ratification dated October 9, 1969, of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967.

The Hungarian People's Republic availed itself of the reservation provided for in Article 28(2) of the said Convention and made also the following declaration:

"The Presidential Council of the Hungarian People's Republic draws attention to the fact that the provisions of Article 24 of the Convention are contrary to Resolution No. 1514 (XV) on the independence of colonial countries and peoples, adopted on December 14, 1960, by the General Assembly of the United Nations." (Translation)

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

Geneva, January 19, 1970.

Paris Notification No. 11

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

**DENMARK**

*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 Denmark deposited, on January 26, 1970, its instrument of ratification dated December 31, 1969, of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967.

A separate notification is being made of the entry into force of certain provisions of the Stockholm Act of the said Convention.

Geneva, February 4, 1970.

Paris Notification No. 12

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

**SWITZERLAND**

*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 Swiss Confederation deposited, on January 26, 1970, its instrument of ratification dated January 13, 1970, of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967.

A separate notification is being made of the entry into force of certain provisions of the Stockholm Act of the said Convention.

Geneva, February 4, 1970.

Paris Notification No. 13

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

**BULGARIA**

*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 People's Republic of Bulgaria deposited, on February 19, 1970, its instrument of ratification dated January 26, 1970, of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967.

The People's Republic of Bulgaria, availed itself of the reservation provided for in Article 28(2) of the said Convention and made also the following declaration:

"The People's Republic of Bulgaria considers that the provisions of Article 24 of the Convention, which grant to countries the right to extend the application of the Convention to territories for which they are responsible, are contrary to modern international law and to the Resolution of the General Assembly of the United Nations on the grant of independence to colonial countries and peoples." (Translation)

A separate notification is being made of the entry into force of the Stockholm Act of the said Convention.

Geneva, February 27, 1970.

Paris Notification No. 15

**Madrid Agreement for the Repression  
of False or Deceptive Indications of Source on Goods  
Entry into Force  
of the Additional Act of Stockholm**

*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 Article 6(5) of the Additional Act of Stockholm of July 14, 1967, of the above Agreement, has the honor to notify him that, pursuant to the provisions of Article 5(1), the said Additional Act will enter into force on

*April 26, 1970,*

that is, on the date on which the Stockholm Convention of July 14, 1967, Establishing the World Intellectual Property Organization has entered into force.

Geneva, February 4, 1970.

Madrid (Indications of Source) Notification No. 9

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

**HUNGARY**

*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 Hungarian People's Republic deposited, on December 18, 1969, its instrument of ratification dated October 9, 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 of the said Agreement, when the required number of ratifications or accessions is reached.

Geneva, January 19, 1970.

Madrid (Indications of Source) Notification No. 7

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

**SWITZERLAND**

*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 Swiss Confederation deposited, on January 26, 1970, its instrument of ratification dated January 13, 1970, 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 of April 14, 1891.

A separate notification is being made of the entry into force of the Additional Act of Stockholm of the said Agreement.

Geneva, February 4, 1970.

Madrid (Indications of Source) Notification No. 8

**Madrid Agreement  
for the Repression of False or Deceptive Indications  
of Source on Goods  
Accession to the Lisbon Act**

**SWEDEN**

According to a communication received from the Swiss Federal Political Department, the following note was addressed by the Embassies of the Swiss Confederation in the countries of the Paris Union to the Ministries of Foreign Affairs of those countries:

"An instrument of accession of the Kingdom of Sweden to the Madrid Agreement for the Repression of False or Deceptive Indications of Source of April 14, 1891, as revised at Lisbon on October 31, 1958, was deposited with the Federal Political Department on August 14, 1969.

In accordance with Article 16, paragraph (3), of the Paris Convention for the Protection of Industrial Property, to which Article 6, paragraph (2), of the Madrid Agreement refers, this accession took effect on October 3, 1969 . . . "

**Ratification of the Stockholm Act  
of the Madrid Union Concerning the International  
Registration of Marks**

**HUNGARY**

*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 Hungarian People's Republic deposited, on December 18, 1969, its instrument of ratification, dated October 9, 1969, of the Madrid Agreement Concerning the International Registration of Marks, of April 14, 1891, as revised at Stockholm on July 14, 1967, with the following declarations:

"1. The Presidential Council of the Hungarian People's Republic draws attention to the fact that the provisions of Article 14, paragraph (7), of the Agreement are contrary to Resolution No. 1514 (XV) on the independence of colonial countries and peoples, adopted on December 14, 1960, by the General Assembly of the United Nations.

2. On the basis of the possibility assured to it by Article 3<sup>bis</sup> of the Agreement, the Hungarian People's Republic declares that it will not consider itself bound to grant protection resulting from the international registration of marks except in the case when it is expressly requested by the proprietor of the mark." *(Translation)*

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

Geneva, January 19, 1970.

Madrid (Marks) Notification No. 4

### **Ratification of the Stockholm Act of the Madrid Union Concerning the International Registration of Marks**

#### **SWITZERLAND**

#### *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 Swiss Confederation deposited on January 26, 1970, its instrument of ratification, dated January 13, 1970, of the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, as revised at Stockholm on July 14, 1967.

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

Geneva, February 4, 1970.

Madrid (Marks) Notification No. 5

### **Nice Union Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks**

#### **Entry into Force of the Stockholm Act**

#### *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 has the honor to remind him that instruments of ratification or accession, relating to 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, were deposited:

- on March 27, 1968, by Ireland,
- on June 20, 1968, by the German Democratic Republic,
- on February 26, 1969, by the United Kingdom of Great Britain and Northern Ireland,
- on July 30, 1969, by the State of Israel,
- on August 12, 1969, by the Kingdom of Sweden,
- on December 18, 1969, by the Hungarian People's Republic.

The Director of BIRPI has the honor to remind him further that the notification of the deposit of the second of these instruments has given rise to communications from some Governments disputing its validity, and which have been transmitted to the States party to the Nice Agreement.

In accordance with Article 15(5) of the Stockholm Act of the above Agreement, the Director of BIRPI has the honor to notify him that, pursuant to the provisions of Article 9(4), the said Act either entered into force on November 12, 1969 (three months after the date of deposit by the Kingdom of Sweden) or will enter into force on March 18, 1970 (three months after the date of deposit by the Hungarian People's Republic), depending on whether the validity of the second of the above-mentioned instruments is accepted or not.

Geneva, January 19, 1970.

Nice Notification No. 8

### **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**

#### **HUNGARY**

#### *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 Hungarian People's Republic deposited, on December 18, 1969, its instrument of ratification, dated October 9, 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.

Geneva, January 19, 1970.

Nice Notification No. 7

**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**

**DENMARK**

*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 Denmark deposited, on January 26, 1970, its instrument of ratification, dated December 31, 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.

Pursuant to the provisions of Article 9(4)(b), the Stockholm Act of the said Agreement will enter into force, with respect to the Kingdom of Denmark, three months after the date of this notification, that is, on May 4, 1970.

Geneva, February 4, 1970.

Nice Notification No. 9

**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**

**SWITZERLAND**

*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 Swiss Confederation

deposited, on January 26, 1970, its instrument of ratification, dated January 13, 1970, 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.

Pursuant to the provisions of Article 9(4)(b), the Stockholm Act of the said Agreement will enter into force, with respect to the Swiss Confederation, three months after the date of this notification, that is, on May 4, 1970.

Geneva, February 4, 1970.

Nice Notification No. 10

**Ratification of the Complementary Act of Stockholm,  
of July 14, 1967, to the Hague Union Concerning  
the International Deposit of Industrial Designs**

**SWITZERLAND**

*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 Swiss Confederation deposited, on January 26, 1970, its instrument of ratification dated January 13, 1970, of the Complementary Act of Stockholm, of July 14, 1967, to The Hague Agreement Concerning the International Deposit of Industrial Designs.

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

Geneva, February 4, 1970.

The Hague Notification No. 2

**Ratification of the Stockholm Act of the Lisbon  
Union for the Protection of Appellations of Origin  
and their International Registration**

**HUNGARY**

*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 Hungarian People's Republic deposited, on December 18, 1969, its instrument of ratification, dated October 9, 1969, of the Lisbon Agreement for the Protection of Appellations of Origin and their Inter-



national Registration of October 31, 1958, as revised at Stockholm on July 14, 1967, with the following declaration:

"The Presidential Council of the Hungarian People's Republic draws attention to the fact that the provisions of Article 14, paragraph (4) of the Agreement are contrary to Resolution No. 1514 (XV) on the independence of colonial countries and peoples, adopted on December 14, 1960, by the General Assembly of the United Nations." (Translation)

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

Geneva, January 19, 1970.

Lisbon Notification No. 3

**Madrid Union**  
**Committee of the Directors**  
**of the National Industrial Property Offices**  
**of the Madrid Union**  
**Second Extraordinary Session**  
(Geneva, January 19 to 23, 1970)

**Note \***

The Committee of Directors of the National Industrial Property Offices of the Madrid Union held its Second Extraordinary Session from January 19 to 23, 1970, at BIRPI Headquarters, at Geneva.

The following member countries of the Madrid Union were represented: Austria, Belgium, France, Germany (Fed. Rep.), Hungary, Italy, Luxembourg, Monaco, Morocco, Netherlands, Portugal, Rumania, Spain, Switzerland, United Arab Republic, Yugoslavia. The following countries were not represented: Czechoslovakia, Liechtenstein, San Marino, Tunisia and Viet-Nam.

The list of participants is annexed to this note.

The Committee examined a draft, prepared by the Director of BIRPI, for the revision of the Regulations of the Madrid Agreement Concerning the International Registration of Marks. The Regulations must be revised by the time the Nice Act enters into force for all the member countries of the Madrid Union. (At the present time, two countries have not yet deposited their instruments of ratification.)

The Committee also discussed the financial situation of the Madrid Union.

It was noted that Rumania, having adopted a new law on marks providing for prior examination of marks, including international marks, qualified, as from January 1, 1969, for coefficient 3 provided by Article 29(1) of the Regulations in force.

The Committee will hold a Third Extraordinary Session, at Geneva, from April 27 to 29, 1970, mainly to complete examination of the draft revised Regulations.

\* This note has been prepared by BIRPI on the basis of the official documents of the session.

## List of Participants

### I. States Parties to the Madrid Agreement

#### *Austria*

Mr. Erich Dudeschek, Ratssekretär, Patent Office, Vienna

#### *Belgium*

Mr. A. Schurmans, Director of the Industrial and Commercial Property Service, Brussels

#### *France*

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

Mr. Roger Labry, Counsellor of Embassy, Ministry of Foreign Affairs, Directorate of Economic and Financial Affairs, Paris

Mr. Maurice Bierry, Civil Administrator, Ministry of Industrial Development, Paris

#### *Germany (Federal Republic)*

Mr. Romuald Singer, Leitender Regierungsdirektor, German Patent Office, Munich

Mr. Ekhard Nadler, Regierungsdirektor, German Patent Office, Munich

Mrs. Rikarda von Schleussner, Oberregierungsrätin, German Patent Office, Munich

#### *Hungary*

Mr. Emile Tasnádi, President, National Office for Inventions, Budapest

Mrs. Marta Bognár, Substitute Head, Marks Service, Budapest

#### *Italy*

Mr. Aldo Pelizza, Inspector General, Ministry of Industry and Commerce, Rome

#### *Luxembourg*

Mr. Jean-Pierre Hoffmann, Head, Industrial Property Service

#### *Monaco*

Mr. Jean-Marie Notari, Director, Industrial Property Service, Monaco

#### *Morocco*

Mr. Saïd Abderrazik, Head, Moroccan Industrial Property Office, Casablanca

#### *Netherlands*

Mr. Enno van Weel, Vice-President, Patent Council, The Hague

#### *Portugal*

Mr. José Luis Esteves da Fonseca, Director-General for Commerce, Lisbon

#### *Rumania*

Mr. Lucian Marinete, Director, State Office for Inventions and Marks, Bucharest

#### *Spain*

Mr. Antonio F. Mazarambroz, Director, Industrial Property Registration Office, Madrid

Mr. Ernesto Rúa, Head of Appeals Section (Industrial Property Registration Office), Madrid

Mrs. Elisa de Goytia, Head, International Section, Industrial Property Registration Office, Madrid

#### *Switzerland*

Mr. Paul Braendli, Chief, Marks Section, Federal Bureau of Intellectual Property, Berne

Mr. François Balleys, Lawyer, Marks Section, Federal Bureau of Intellectual Property, Berne

#### *United Arab Republic*

Mr. Abdalla M. El Shahed, Assistant Supervisor, Department of Trade-marks, Cairo

#### *Yugoslavia*

Mr. Nenad Janković, Legal Advisor, Federal Patent Office, Belgrade

## II. BIRPI

Professor G. H. C. Bodenhansen, Director  
 Dr. Arpad Bogsch, First Deputy Director  
 Mr. J. Voyame, Second Deputy Director  
 Mr. B. A. Armstrong, Counsellor, Head, Administrative Division  
 Mr. L. Egger, Counsellor, Head, International Registrations Division  
 Mr. R. Walther, Counsellor  
 Mr. E. Margot, Head, Trademark Registration Section.

## III. Officers

Chairman: Mr. F. Savignon (France)  
 Secretary: Mr. J. Voyame (BIRPI)

## International Classification of Patents for Invention

Supplement to the Note published in *Industrial Property*,  
 1969, pp. 299-302

### A. Countries Using the Classification

#### Italy

Using International Classification from 1957. Pursuant to the reservation allowed by Article 3, paragraph 2, of the European Convention on the International Classification of Patents for Invention of December 19, 1954, to States which do not classify for the purpose of examining novelty, the Italian Patent Office, for the time being, marks its patent documents only with classes and subclasses of the International Classification.

# LEGISLATION

## AUSTRALIA

### Patents Act

(No. 34 of 1969) \*

#### An Act to amend the Patents Act 1952-1966

Be it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

[Short title and citation]

1. — (1) This Act may be cited as the *Patents Act* 1969.

(2) The *Patents Act* 1952-1966<sup>1</sup> is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Patents Act* 1952-1969.

\* Assented to on June 14, 1969.

<sup>1</sup> Act No. 42, 1952, as amended by No. 14, 1954; No. 3, 1955; No. 107, 1960; No. 84, 1962, and No. 93, 1966.

[Commencement]

2. — (1) Sections 1, 2, 6 and 7, Subsection (1) of Section 11 and Sections 13, 22, 25, 29, 30, 31, 33, 39, 40, 41 and 44 of this Act shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

[Parts]

3. — Section 3 of the Principal Act is amended by omitting the words "Part V — Opposition (Sections 59-61)" and inserting in their stead the words "Part V — Opposition (Sections 59-60)."

[Application of Act]

4. — Section 5 of the Principal Act is amended by omitting from Subsection (4) the words "and any reference in this Act to a priority date indicated in a claim includes a reference to such a priority date."

[Definitions]

5. — Section 6 of the Principal Act is amended —

(a) by inserting before the definition of "Examiner" the following definition:

"'examination,' in relation to an application for a patent and the complete specification lodged in respect of the application, means an examination of the application and complete specification in accordance with Section 48 of this Act or a modified examination of the application and complete specification, and 'examine' has a corresponding meaning"; and

(b) by inserting after the definition of "license" the following definition:

"'modified examination,' in relation to an application for a patent and the complete specification lodged in respect of the application, means an examination of the application and complete specification in accordance with Section 52 of this Act."

[Who may apply for patent]

6. — Section 34 of the Principal Act is amended by adding at the end thereof the following Subsection:

"(4) Where, at any time before a patent has been granted, a person would, if the patent were then granted, be entitled, by virtue of an assignment or agreement made by the applicant or one of the applicants for the patent, or by operation of law, to the patent or to the interest of the applicant in the patent or to an undivided share in the patent or in that interest —

(a) the Commissioner may, upon a request being made as prescribed, direct that the application is to proceed in the name of the person or in the names of the person and the applicant or the other joint applicant or applicants, as the case requires; and

(b) upon such a direction being given, this Act applies as if the person were the applicant or one of the joint applicants, as the case requires."

[Form of application]

7. — Section 35 of the Principal Act is amended by inserting before paragraph (a) of Subsection (1) the following paragraph:

“(aa) shall be in respect of a manner of new manufacture the subject of letters patent and grant of privilege within Section 6 of the Statute of Monopolies.”

[Each claim of complete specification to have a priority date]

8. — Section 44 of the Principal Act is amended by omitting Subsection (2) and inserting in its stead the following Subsection:

“(2) Where a claim of a complete specification defines more than one form of an invention, the claim shall, for the purposes of the application of the provisions of this Act relating to the priority date of the claim, be deemed to constitute a separate claim in relation to each form of the invention that is so defined.”

[Priority dates]

9. — Section 45 of the Principal Act is amended —

(a) by inserting after Subsection (3) the following Subsection:

“(3A) The priority date of a claim of a complete specification accompanying an application made by virtue of Subsection (1) of Section 49A of this Act, being a claim fairly based on matter disclosed in the complete specification from which the invention has been excluded by an amendment made under Section 49 or Section 52D of this Act or would be excluded if an amendment included in a statement of proposed amendments lodged under either of those Sections were made, is the date that would have been the priority date of that claim if that claim were a claim of that last-mentioned specification”; and

(b) by inserting after Subsection (4) the following Subsection:

“(4A) Where a patent has been revoked in circumstances referred to in Section 107 of this Act, the priority date of a claim of a complete specification lodged in respect of an application made after the revocation by virtue of that Section, being a claim fairly based on matter disclosed in the complete specification of the revoked patent, is the date that would have been the priority date of that claim if that claim were a claim of the complete specification of the revoked patent.”

10. — Sections 47, 48, 48A, 49 and 49A of the Principal Act are repealed and the following Sections inserted in their stead:

[Request for examination]

“47. — An applicant may, at any time before the expiration of five years after the date of lodgment of the complete specification or the expiration of two years after the date fixed under Subsection (2) of Section 2 of the *Patents Act* 1969, whichever is the later, request the making of an examination of the application and complete specification.

[Power of Commissioner to direct applicant to request examination]

“47A. — (1) Where a complete specification has been lodged in respect of an application and the Commissioner

considers it desirable to give a direction under this Section on all or any of the grounds specified in the next succeeding Subsection, he may, at any time before the expiration of five years after the date of lodgment of the complete specification or the expiration of two years after the date fixed under Subsection (2) of Section 2 of the *Patents Act* 1969, whichever is the later, by notice in writing given to the applicant, direct the applicant to request the making of an examination of the application and complete specification.

“(2) The grounds referred to in the last preceding Subsection are —

- (a) that the Commissioner considers it expedient to give the direction having regard to the progress made in the examination of applications lodged before the date of lodgment of the application concerned;
- (b) that the Commissioner considers it to be in the public interest to give the direction; and
- (c) that the Commissioner considers it expedient to give the direction having regard to the examination of another application.

“(3) Where the Commissioner gives a direction to an applicant under this Section, he shall at the same time inform the applicant of the ground or grounds on which the direction is given.

[Any person may require Commissioner to direct applicant to request examination]

“47B. — (1) At any time before the expiration of five years after the date on which a complete specification has been lodged in respect of an application or the expiration of two years after the date fixed under Subsection (2) of Section 2 of the *Patents Act* 1969, whichever is the later, a person other than the applicant may, by notice in writing lodged at the Patent Office, require the Commissioner to direct the applicant to request the making of an examination of the application and complete specification and, unless the applicant has already made, or been directed to make, such a request, the Commissioner shall, upon receipt of the notice, by notice in writing given to the applicant, direct the applicant accordingly.

“(2) The last preceding Subsection does not apply in relation to an application and complete specification unless the application and complete specification have become open to public inspection.

[Application to lapse if request not made]

“47C. — Where an applicant does not request the making of an examination of the application and complete specification —

- (a) before the expiration of five years after the date of lodgment of the complete specification or the expiration of two years after the date fixed under Subsection (2) of Section 2 of the *Patents Act* 1969, whichever is the later; and
- (b) where he has been directed by the Commissioner to make the request — before the expiration of six months after the date on which the direction was given, the application shall lapse.

[Application to lapse if continuation fee not paid]

“47D. — (1) Subject to this Section, an application shall lapse if the applicant fails, within the prescribed time, to pay a fee prescribed for the purposes of this Section (in this Section and the next succeeding Section referred to as a ‘continuation fee’).

“(2) If an applicant fails to pay a continuation fee within the prescribed time, he may apply to the Commissioner for an extension of the time for making that payment, and the Commissioner shall extend the time accordingly, but the time for making a payment shall not be extended for more than six months.

[Restoration of lapsed application]

“47E. — (1) Where an application has lapsed under either of the last two preceding Sections, the Commissioner shall advertise that fact in the *Official Journal*.

“(2) The applicant may make an application (in this Section referred to as ‘the application for restoration’) to the Commissioner for the restoration of the lapsed application.

“(3) The application for restoration shall —

- (a) in the case of an application that lapsed under Section 47C of this Act — be accompanied by a request for the making of an examination of the lapsed application and the complete specification and contain a statement of the circumstances that led to the failure to make the request within the prescribed time; or
- (b) in the case of an application that lapsed under the last preceding Section — be accompanied by the unpaid continuation fee and contain a statement of the circumstances that led to the failure to pay the fee within the prescribed time.

“(4) If the Commissioner is satisfied that the failure to make the request or to pay the continuation fee, as the case may be, within the prescribed time was unintentional and resulted from an error or omission on the part of the applicant or of his agent or attorney or from circumstances beyond the control of the applicant and that there has been no undue delay in the making of the application for restoration, the Commissioner shall advertise the application for restoration in the *Official Journal*, but, if he is not so satisfied, he shall refuse the application for restoration.

“(5) A person interested may, within such time as is prescribed, give notice to the Commissioner of opposition to the restoration and shall serve a copy of the notice on the applicant.

“(6) If notice of opposition is not so given, the Commissioner shall restore the lapsed application.

“(7) If notice of opposition is so given, the Commissioner shall hear the case and either restore the lapsed application or refuse the application for restoration.

“(8) Where a lapsed application is restored under this Section, such provisions as are prescribed have effect for the protection or compensation of persons who availed themselves, or took definite steps by contract or otherwise to avail themselves, of the subject matter of the lapsed application

after the lapse of the application was advertised in the *Official Journal* and before the date of the first advertisement of the application for restoration.

“(9) Proceedings shall not be taken in pursuance of Section 54C of this Act in respect of any act or thing done during the period from and including the date on which the application for the patent lapsed to and including the date of the restoration of the application.

“(10) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under this Section.

[Examination of application and complete specification]

“48. — (1) Subject to Section 52C of this Act, where an applicant requests, in pursuance of this Act, the making of an examination of the application and complete specification, an examiner shall make an examination of the application and complete specification in accordance with this Section.

“(2) The examiner shall report —

- (a) whether the application and complete specification comply with the requirements of this Act; and
- (b) whether acceptance of the application and complete specification could be refused under Section 155 of this Act.

“(3) In respect of the complete specification, the examiner —

- (a) shall ascertain and report whether the invention, so far as claimed in any claim, is the subject of a claim of the complete specification of another application for a patent lodged in Australia, being a claim having a priority date earlier than the priority date of the first-mentioned claim;
- (b) shall ascertain and report whether the invention, so far as claimed in any claim, has been published before the priority date of that claim in a specification lodged in respect of an application for a patent made in Australia within fifty years before that date;
- (c) shall ascertain and report whether the invention, so far as claimed in any claim, is the subject of a claim of earlier priority date contained in the complete specification of a patent;
- (d) shall ascertain and report whether the invention, so far as claimed in any claim, has, before the priority date of the claim, been published in Australia in any other document (not being a document referred to in paragraph (a) of Subsection (1) of Section 158 of this Act) to which, or that is included in a class of documents to which, he is, or examiners generally are, directed to have regard by the Commissioner; and
- (e) shall report whether, to the best of his knowledge, the invention, so far as claimed in any claim, was novel on the priority date of the claim and, if he reports that the invention was not novel on that date, shall specify the reasons for that report.

“(4) The reference in paragraph (a) of the last preceding Subsection to an application does not include a reference to an application that has lapsed or has been refused or withdrawn or to an application upon which a patent has been granted and the reference in paragraph (c) of that Subsection

to a patent does not include a reference to a patent that is not in force.

“(5) In making a report under Subsection (3) of this Section, an examiner shall have regard to any matter of which notice has been duly given to the Commissioner under Section 57 of this Act and, for the purposes of paragraph (e) of Subsection (3) of this Section, any such matter shall be deemed to be within the knowledge of the examiner.

[Additional report where specification amended]

“48A.— Where a complete specification has been amended under Part VIII after an examiner has made a report under the last preceding Section in respect of that specification and before the specification has become open to public inspection, an examiner shall, in so far as the specification has been so amended, ascertain and report as provided by that Section, and this Act applies to a report so made as if it were a report under that Section.

[Action on examiner's report on examination]

“49. — (1) If an examiner reports adversely to an application or specification under either of the last two preceding Sections, the applicant may lodge at the Patent Office a statement in writing of proposed amendments of the application or specification.

“(2) An examiner shall report on the application or specification as proposed to be amended as if it were an original application or specification and shall also report whether the proposed amendments are allowable.

“(3) If the examiner reports adversely under the last preceding Subsection, the applicant may amend the statement of proposed amendments and the last preceding Subsection thereupon applies as if the amended statement were a statement lodged under Subsection (1) of this Section.

“(4) An amendment of the specification (not being an amendment for the purpose of correcting a clerical error or an obvious mistake) is not allowable if the specification would, as a result of the amendment, claim matter not in substance disclosed in the specification as lodged.

“(5) If the Commissioner is satisfied that a proposed amendment is an allowable amendment, or that proposed amendments are allowable amendments, and that, if that amendment or those amendments were made, all lawful grounds of objection to the application or specification under the last two preceding Sections would be removed, the Commissioner shall allow the amendment or amendments, which shall thereupon be deemed to be made.

“(6) If the application or specification is not amended as provided by the last preceding Subsection, the Commissioner may, by notice in writing given to the applicant, direct that the applicant lodge a statement of proposed amendments to the satisfaction of the Commissioner within such time as the Commissioner allows.

“(7) If the Commissioner is satisfied that the amendments set out in a statement lodged in pursuance of a direction under the last preceding Subsection are allowable amendments and that, if those amendments were made, all lawful grounds of

objection to the application and specification under the last two preceding Sections would be removed, the Commissioner shall allow the amendments which shall thereupon be deemed to be made.

“(8) An appeal lies to the Appeal Tribunal from a direction of the Commissioner under Subsection (6) of this Section.

[Division of application after objection]

“49A. — (1) The applicant may make a separate application for a patent for an invention falling within the scope of a claim —

- (a) that has been excluded by an amendment made under Section 49 or Section 52D of this Act; or
- (b) that would be excluded if an amendment included in a statement of proposed amendments lodged under either of those Sections were made.

“(2) An application made by virtue of the last preceding Subsection shall be accompanied by a complete specification.”

[Single patent for cognate inventions]

11. — (1) Section 50 of the Principal Act is amended —

- (a) by inserting after Subsection (1) the following Subsections:

“(1A) Where the applications were lodged by the same applicant, the applications shall, subject to Section 50A of this Act, be treated for the purposes of this Act as if they constituted one application made by that applicant.

“(1B) Where the applications were lodged by different applicants, the applications shall, subject to Section 50A of this Act, be treated for the purposes of this Act as if they constituted one application made jointly by those applicants”; and

- (b) by omitting Subsection (5).

(2) Section 50 of the Principal Act is amended by omitting from Subsection (2) the words “The examiner” and inserting in their stead the words “Where a request has been made for the making of an examination of the applications and the complete specification, the examiner.”

[Procedure where single patent not granted]

12. — Section 50A of the Principal Act is amended —

- (a) by omitting from paragraph (c) of Subsection (1) the word “and” (last occurring); and
- (b) by inserting after that paragraph the following paragraph:

“(ca) the request for the making of an examination of the applications and the cancelled complete specification shall, for the purposes of the operation of this Act in relation to each application and the complete specification lodged in respect of that application under the last preceding paragraph, be treated as if it were a request by the applicant for the making of an examination of the application and of that complete specification and had been made on the date of lodgment of that complete specification; and.”

[Voluntary division of application]

13. — Section 51 of the Principal Act is amended by omitting Subsection (1) and inserting in its stead the following Subsection:

“(1) An applicant for a patent (not being an applicant in respect of an application that has lapsed or has been refused or withdrawn) may, at any time before the application has been accepted, make one or more further applications in respect of an invention disclosed in the provisional specification or complete specification lodged in respect of the first-mentioned application.”

14. — After Section 52 of the Principal Act the following Sections are inserted:

[Request for modified examination of application and complete specification]

“52A. — (1) Where a Convention application has been made and—

(a) a patent has been granted in a prescribed Convention country in respect of an application made in that country that—

(i) constitutes the basic application or one of the basic applications for the purposes of Part XVI; or

(ii) claimed a priority in that country based on an application made in another country that constitutes the basic application or one of the basic applications for the purposes of that Part; and

(b) the specification of that patent is in the English language, the applicant, instead of requesting the making of an examination of the application and the complete specification in accordance with Section 48 of this Act, may request, as prescribed, the making of a modified examination of the application and complete specification.

“(2) The request is of no effect unless it is accompanied by a copy of the specification of the patent granted in the prescribed Convention country, being a copy certified by the official chief or head of the Patent Office in that country or otherwise verified to the satisfaction of the Commissioner.

“(3) Where the text and drawings (if any) of the complete specification lodged in respect of the application, or of that specification as amended under Part VIII, are not, apart from matters of form, the same as the text and drawings (if any) of the specification of the patent granted in the prescribed Convention country, the applicant shall lodge with the request a statement in writing of proposed amendments for the purpose of making the text and drawings (if any) of the complete specification the same, apart from matters of form, as the text and drawings (if any) of the specification that accompanied the request.

“(4) At any time before acceptance of the application and complete specification, the applicant may withdraw the request and may request the making of an examination of the application and complete specification in accordance with Section 48 of this Act.

[Request for deferment of examination of an application and complete specification]

“52B. — (1) Where—

(a) a Convention application has been made;

(b) an application for protection in respect of an invention (in this Section referred to as a ‘foreign application’) has been made in a prescribed Convention country, being an application that—

(i) constitutes the basic application or one of the basic applications for the purposes of Part XVI; or

(ii) claims a priority in that country based on an application made in another country that constitutes the basic application or one of the basic applications for the purposes of that Part;

(c) a patent has not been granted in respect of the foreign application; and

(d) the applicant has been directed by the Commissioner under Section 47A of this Act to request the making of an examination of the application and complete specification, being a direction given on a ground that is not, or on grounds that do not include, either of the grounds specified in paragraphs (b) and (c) of Subsection (2) of that Section,

the applicant, instead of requesting the making of an examination of the application and complete specification, may request, as prescribed, the deferment of the examination of the application and complete specification.

“(2) Where an applicant makes a request in accordance with the last preceding Subsection, paragraph (b) of Section 47C of this Act does not apply in relation to the application.

“(3) Where—

(a) the applicant does not request the making of an examination of the application and complete specification before the expiration of nine months after the date on which the request for deferment was lodged in the Patent Office; and

(b) the application has not previously lapsed under Section 47C of this Act,

the application shall lapse.

“(4) Section 47E of this Act applies in relation to an application that has lapsed under the last preceding Subsection as it applies in relation to an application that has lapsed under Section 47C of this Act.

[Modified examination of application and complete specification]

“52C. — (1) Where an applicant requests the making of a modified examination of the application and complete specification, an examiner shall make an examination of the application and complete specification in accordance with this Section.

“(2) The examiner shall report—

(a) whether the request is as prescribed;

(b) whether the application complies with the requirements of this Act other than the requirement of paragraph (a) of Subsection (1) of Section 35 of this Act;

(c) whether the text and drawings (if any) of the complete specification, or of the complete specification as pro-



posed to be amended under Subsection (3) of Section 52A of this Act, are, apart from matters of form, the same as the text and drawings (if any) of the specification of the patent granted in the prescribed Convention country;

- (d) whether any proposed amendments of the complete specification that have been lodged under Subsection (3) of Section 52A of this Act would be allowable under Section 49 of this Act if that Section were applicable; and
- (e) whether acceptance of the application and complete specification could be refused under Section 155 of this Act.

“(3) Subject to the Regulations, Subsections (3), (4) and (5) of Section 48 of this Act have effect in relation to the examination of the complete specification in accordance with this Section.

“(4) The Regulations may, either generally or in relation to applications included in such classes of applications as are specified in the Regulations, exclude or modify the operation, for the purposes of the examination of applications and complete specifications in accordance with this Section, of all or any of the provisions of the Subsections of Section 48 referred to in the last preceding Subsection.

[Action on examiner's report on modified examination]

“52D. — (1) If the examiner reports adversely under the last preceding Section, the succeeding Subsections of this Section have effect.

“(2) The applicant may do either or both of the following things:

- (a) if the request is not as prescribed — he may lodge at the Patent Office an amended request for a modified examination of the application and complete specification;
- (b) he may lodge at the Patent Office a statement in writing of proposed amendments of the application or complete specification, or, if such a statement has been lodged under Subsection (3) of Section 52A of this Act, amend the statement, for the purpose of —
  - (i) removing a ground of objection to the application under the last preceding Section;
  - (ii) excluding a claim or claims of the complete specification and making any consequential amendments of any other claim of the specification; or
  - (iii) making the text and drawings (if any) of the complete specification the same, apart from matters of form, as the text and drawings (if any) of the specification of the patent granted in the prescribed Convention country.

“(3) Subject to the next succeeding Subsection, the examiner shall report in accordance with the last preceding Section as if the amended request for a modified examination were the original request for such an examination, or the statement or amended statement of proposed amendments had been lodged with the request for a modified examination, as the case may be, and shall also report whether the proposed amendments are allowable.

“(4) The examiner shall not report under the last preceding Subsection that the text of the complete specification, or of that specification as proposed to be amended under

Subsection (3) of Section 52A of this Act and Subsection (2) of this Section, is not the same as the text of the specification of the patent granted in the prescribed Convention country if those texts differ by reason only of amendments proposed to be made under subparagraph (ii) of paragraph (b) of Subsection (2) of this Section.

“(5) If the examiner reports adversely under Subsection (3) of this Section, Subsection (1) of this Section applies as if that report were a report under the last preceding Section.

“(6) If the Commissioner is satisfied that —

- (a) a proposed amendment is an allowable amendment, or proposed amendments are allowable amendments, under paragraph (b) of Subsection (2) of this Section;
- (b) the proposed amendment would be an allowable amendment, or the proposed amendments would be allowable amendments, under Section 49 of this Act if that Section were applicable; and
- (c) if the proposed amendment or the proposed amendments were made, all lawful grounds of objection to the application or specification under the last preceding Section would be removed,

the Commissioner shall allow the amendment or amendments, which shall thereupon be deemed to be made.

“(7) If the Commissioner is satisfied that there is no lawful ground of objection to the application and complete specification under the last preceding Section, or that the grounds of objection to the application and complete specification under that Section have been removed, the Commissioner shall accept the application and complete specification.

“(8) If the Commissioner is not so satisfied, he may —

- (a) refuse to accept the application and complete specification; or
- (b) direct the applicant to lodge a statement of proposed amendments of the application and complete specification, or, if such a statement has been lodged under Subsection (3) of Section 52A of this Act or under paragraph (b) of Subsection (2) of this Section, amend the statement, to the satisfaction of the Commissioner within such time as the Commissioner allows.

“(9) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under the last preceding Subsection.

“(10) Section 52 of this Act (other than Subsection (4) of that Section) does not apply in relation to an application and complete specification that has been examined in accordance with the last preceding Section and, for the purposes of the application of Subsection (4) of Section 52 of this Act in relation to such an application and complete specification, an advertisement in the *Official Journal* of the acceptance of the application and complete specification shall include a statement that the acceptance has resulted from a modified examination.

[Modified examination not to affect opposition to, or revocation of, grant of patent]

“52E. — The provisions of this Act relating to a modified examination of an application and complete specification do not affect the operation of Sections 59 and 100 of this Act.”



[Time for acceptance]

[Result of search may be disclosed]

15. — Section 54 of the Principal Act is amended —

(a) by omitting Subsection (1) and inserting in its stead the following Subsections:

“(1) Subject to this Section, the period within which an application and complete specification may be accepted is twelve months after the date on which the first report of the examiner arising out of the examination of the application and complete specification was sent to the applicant, whether that report arose out of an examination made in accordance with Section 48 of this Act or out of a modified examination.

“(1A) Subject to the succeeding provisions of this Section, if an applicant has requested the making of a modified examination of an application and complete specification but has withdrawn that request and has requested the making of an examination of the application and complete specification in accordance with Section 48 of this Act, the period within which the application and complete specification may be accepted is 12 months after the date on which the first report of the examiner arising out of the examination of the application and complete specification made in accordance with Section 48 of this Act was sent to the applicant.

“(1B) The Commissioner may extend the period within which an application and complete specification may be accepted, whether or not that period has expired, but an extension of time under this Subsection shall not be granted for a period expiring more than 21 months after the date referred to in Subsection (1) of this Section”; and

(b) by omitting from Subsection (4) the words “Subsection (1) of” and inserting in their stead the words “Subsection (3) of.”

[Effect of publication of complete specification]

16. — Section 54C of the Principal Act is amended —

(a) by inserting after the words “subject to” the words “this Section, to Subsection (9) of Section 47E of this Act and to”; and

(b) by adding at the end thereof the following Subsections:

“(2) The last preceding Subsection does not give to the applicant a right to bring an action or proceeding in respect of the doing of an act unless the act would, if it had been done after the sealing of the patent that was granted on the application, have constituted an infringement of a claim of the complete specification to which that patent relates.

“(3) It is a defense to an action or proceeding brought under Subsection (1) of this Section in respect of the doing of an act after the complete specification became open to public inspection but before the application was accepted if the defendant establishes that a patent could not validly have been granted in respect of the claim of the complete specification, as framed at the time when the act was done, that is alleged to have been infringed by the doing of that act.”

17. — Section 56 of the Principal Act is amended by inserting before the words “Section 48” the words “Subsection (3) of.”

18. — After Section 56 of the Principal Act the following Section is inserted:

[Notice to Commissioner of matters affecting validity of patent]

“57. — (1) At any time after a notification that a complete specification is open to public inspection has been published in the *Official Journal* and before acceptance of the application and complete specification has been advertised in the *Official Journal*, any person may, by notice in writing lodged at the Patent Office and accompanied by such documents as are prescribed, inform the Commissioner of any matter —

- (a) that has been published in a document in Australia before the priority date of a claim of that specification as so open to public inspection; and
- (b) that the person asserts would, if a patent were granted in respect of the invention so far as claimed in that claim, affect the validity of that patent on a ground specified in paragraph (e), (f) or (g) of Section 100 of this Act.

“(2) The Commissioner shall give notice in writing to the applicant of any matter to which a notice given to the Commissioner under the last preceding Subsection relates.

“(3) Any document that accompanied a notice given to the Commissioner under Subsection (1) of this Section is open to public inspection.”

[Opposition to grant of patent]

19. — Section 59 of the Principal Act is amended by inserting after Subsection (2) the following Subsection:

“(2A) Where a person (in this Subsection referred to as ‘the opponent’) lodges notice of opposition to the grant of a patent on the ground specified in paragraph (c) of Subsection (1) of this Section and a request has not been made for the making of an examination of the other application referred to in that paragraph and the complete specification lodged in respect of that application, then if —

- (a) where the opponent is the person, or one of the persons, who lodged the other application — such a request is not made within three months after the notice of opposition was lodged; or
- (b) in any other case — such a request is not made within the period referred to in the last preceding paragraph and the opponent does not, within that period, give notice to the Commissioner under Section 47B of this Act requiring him to direct the person who lodged the other application to make such a request,

the notice of opposition, so far as it relates to that ground, shall be deemed to have been withdrawn and a further notice of opposition to the grant of the patent on that ground is not receivable.”

[Notice of opposition to applicant and hearing]

20. — Section 60 of the Principal Act is amended by omitting Subsection (2) and inserting in its stead the following Subsection:

“(2) In so deciding the case, the Commissioner may take into account a ground of opposition specified in the last preceding Section whether relied upon by the opponent or not.”

[Notice of opposition may be given on basis that indicated priority date is incorrect]

21. — Section 61 of the Principal Act is repealed.

[Refusal of assignee or joint applicant to proceed]

22. — Section 63 of the Principal Act is amended by omitting paragraph (b) of Subsection (1).

[Grant of patent of addition]

23. — Section 73 of the Principal Act is amended by inserting after Subsection (2) the following Subsection:

“(2A) An application for a patent of addition and the complete specification lodged in respect of that application shall not be examined before a request is made for the making of an examination of the application for the patent for the main invention and of the complete specification lodged in respect of that application.”

[Nature of amendments allowable]

24. — Section 78 of the Principal Act is amended by omitting Subsection (4) and inserting in its stead the following Subsection:

“(4) An amendment under this Part is not allowable after the complete specification has become open to public inspection if, as a result of the amendment, the specification would not comply with the requirements of Section 40 of this Act.”

[Application for restoration of patents that have ceased]

25. — Section 97 of the Principal Act is amended —  
(a) by omitting Subsection (1) and inserting in its stead the following Subsection:

“(1) Where a patent has ceased (whether before or after the commencement of the *Patents Act* 1969) by reason of failure to pay a prescribed fee within the prescribed time —

(a) the patentee;

(b) if the patentee has died — the legal representative of the deceased patentee; or

(c) a person who would, if the patent had not ceased, have been entitled to the patent,

may apply to the Commissioner for the restoration of the patent”; and

(b) by omitting from Subsection (3) the word “patentee” and inserting in its stead the words “applicant for the restoration of the patent.”

[Grounds of revocation]

26. — Section 100 of the Principal Act is amended by inserting in paragraph (ka) of Subsection (1), after “49” the words “or Section 52D.”

[Petition may be presented on basis that indicated priority date is incorrect]

27. — Section 101 of the Principal Act is repealed.

[Grant of patent where patent revoked]

28. — Section 107 of the Principal Act is amended by omitting Subsections (2) and (2A).

[Applications under International Conventions]

29. — Section 141 of the Principal Act is amended by omitting from Subsections (1) and (2) the words “a patent or similar.”

[Multiple priorities]

30. — Section 142 of the Principal Act is amended —  
(a) by omitting from Subsection (1) the words “patents or similar”; and  
(b) by omitting Subsections (2), (3) and (5).

[Withdrawn application not to be used as basic application in certain circumstances]

31. — Section 142AA of the Principal Act is amended by omitting from paragraphs (a) and (d) the words “a patent or similar.”

[Priority dates may be amended]

32. — Section 156 of the Principal Act is repealed.

[Invention not anticipated or patent not invalid in certain cases]

33. — Section 158 of the Principal Act is amended by omitting from Subparagraph (ii) of paragraph (a) of Subsection (1) the words “a patent or similar.”

[Priority date of certain amended claims]

34. — Section 159A of the Principal Act is amended —  
(a) by omitting from Subsection (1) the words “a statement of proposed amendments was lodged under Section 49 of this Act, or a request seeking leave to make amendments was made under Part VIII, as a result of the making of which amendments the complete specification disclosed the new matter” and inserting in their stead the words “the new matter was disclosed in a statement of proposed amendments of the complete specification lodged under Section 49, Section 52A or Section 52D of this Act or in a request made under Part VIII seeking leave to make amendments of the complete specification”;  
(b) by omitting from Subsection (3) the words “a statement of proposed amendments was lodged under Section 49 of this Act, or a request seeking leave to make amendments was made under Part VIII, as a result of the making of which amendments the complete specification lodged in respect of the original application disclosed the new matter” and inserting in their stead the words “the new matter was disclosed in a statement of proposed amendments of the complete specification lodged in respect of the original application, being a statement lodged under Section 49, Section 52A or Section 52D of this Act, or in a request made under Part VIII seeking leave to make amendments of that complete specification”; and  
(c) by inserting in Subsection (5), after the words “Section 49” the words “Section 52A or Section 52D.”

[Restriction on recovery of damages, etc.]

35. — Section 159B of the Principal Act is amended by adding at the end thereof the following Subsection:

“(2) This Section has effect subject to Subsections (2) and (3) of Section 54C of this Act.”

36. — After Section 159B of the Principal Act the following Section is inserted:

[Applications for licenses]

“159C. — (1) Where —

- (a) a claim of a complete specification lodged in respect of an application for a patent has been amended;
- (b) before the date of the amendment, a person gave to the Commissioner a notice under Subsection (1) of Section 57 of this Act in relation to the invention so far as claimed in that claim; and
- (c) after the date on which the notice was given but before the date of the amendment, that person availed himself, or took definite steps by way of contract or otherwise to avail himself, of the invention so far as claimed in that claim on the basis that a patent could not validly be granted in relation to that claim,

that person may apply, as prescribed, to the Commissioner for the grant of a license to make, use, exercise and vend the invention except in so far as the making, using, exercising or vending would constitute an infringement of a claim that was included in the specification before the amendment and in relation to which a patent has been validly granted.

“(2) A license shall not be granted under the last preceding Subsection if the Commissioner or the Appeal Tribunal, as the case may be, is satisfied that a statement proposing the amendment was lodged at the Patent Office with reasonable diligence after notice was given to the applicant for the patent under Subsection (2) of Section 57 of this Act of the matters to which the notice referred to in paragraph (b) of Subsection (1) of this Section related.

“(3) The Regulations may make provision for and in relation to the hearing and determination of applications under Subsection (1) of this Section.

“(4) A license granted under this Section shall be on such terms as the Commissioner thinks just.

“(5) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under this Section.”

[Extension of times by reason of errors]

37. — Section 160 of the Principal Act is amended by adding at the end thereof the following Subsection:

“(8) This Section does not apply in relation to the doing of an act or the taking of a step under Section 47, Section 47A, Section 47B, Section 47C or Subsection (1) of Section 52B of this Act.”

[Exercise of discretionary power by Commissioner]

38. — Section 162 of the Principal Act is amended by adding at the end thereof the following Subsection:

“(2) The last preceding Subsection does not apply in relation to the power of the Commissioner to give a direction under Section 47A or Section 47B of this Act.”

39. — After Section 172 of the Principal Act the following Section is inserted:

[Service of documents]

172A. — Where this Act provides for a notice, direction or other document to be served on, or given or sent to, a person and the person has furnished to the Commissioner an address in Australia for service of documents, the notice, direction or other document may be served on, or given or sent to, the person by post to that address.”

[Fees]

40. — Section 176 of the Principal Act is amended by adding at the end thereof the following Subsection:

“(4) The Regulations may make provision for the refund, in circumstances specified in the Regulations, of the whole or any part of a fee paid in respect of the lodgment of a document at the Patent Office.”

[Regulations]

41. — Section 177 of the Principal Act is amended by omitting paragraph (ab) and inserting in its stead the following paragraphs:

“(ab) empowering the Commissioner to direct an applicant for a patent to do such things as are necessary to ensure that the complete specification is in accordance with the requirements of the Regulations relating to the preparation of documents for lodgment at the Patent Office and —

- (i) providing for the lapsing of the application if such a direction by the Commissioner is not complied with within a time specified in the Regulations; and
- (ii) making provision for and in relation to the restoration of an application that has so lapsed;

“(ac) making provision for and in relation to appeals to the Appeal Tribunal from decisions of the Commissioner made under the Regulations.”

[Restricted application of certain amendments]

42. — (1) The amendments of the Principal Act made by Sections 4, 5 and 8 to 10 (inclusive), Subsection (2) of Section 11, Sections 12, 14 and 15, paragraph (a) of Section 16 and Sections 17 to 21 (inclusive), 23, 24, 26 to 28 (inclusive), 30, 32, 34, 36, 37 and 38 of this Act apply in relation to applications for patents other than an application in respect of which a copy of the first report of an examiner on the complete specification was sent to the applicant before the date fixed under Subsection (2) of Section 2 of this Act.

(2) The amendments of the Principal Act made by paragraph (b) of Section 16 and Section 35 of this Act apply in relation to applications for patents other than an application in respect of which the complete specification became open to public inspection before the date fixed under Subsection (2) of Section 2 of this Act.

[Power of Commissioner to amend complete specifications to omit references to priority dates of claims]

43. — Where a claim of a complete specification lodged in respect of an application in relation to which the amendments referred to in Subsection (1) of the last preceding Section apply contains a reference to the date that the applicant considers to be the priority date of the claim, the Commissioner may amend the specification by omitting the reference to that date from the claim.

[Making of regulations]

44. — At any time after this Act receives the Royal Assent and before the date fixed under Subsection (2) of Section 2 of this Act, Regulations may be made under the Principal Act as amended by this Act as if the provisions of this Act referred to in that Subsection had come into operation on the date on which this Act receives the Royal Assent, but Regulations so made shall not come into operation before the date fixed under that Subsection.

## IRAK

### Law Amending Patents Law No. 61 of 1935

(No. 210 of December 29, 1968; Effective, January 8, 1969)

In the name of the People,  
The Presidency of the Republic,

In accordance with the provisions of Article 50 of the Interim Constitution, pursuant to the proposal of the Minister of Economics and with the approval of the Council of Ministers and the concurrence of the Council of the Revolutionary Command, the following Law has been ratified:

#### Article 1

Article 14 of the amended Patents Law No. 61 of 1935 shall be considered as Item 1. and the following two items are to be added to same.

2. The Registrar shall have the right to reject applications for patents of invention or for the assignment of granted patents, their amendment or renewal; he also shall have the right to expunge from the Register any registered patent which he may find to be conflicting with public interest.

3. The Registrar's decision shall be subject to opposition to the Minister of Economy, within thirty days from the date of notification of the same. Those concerned may oppose the Minister's decision to the Council of Ministers, within fifteen days from the date of notification; the Council's decision in the matter shall be final.

#### Article 2

This Law shall come into force from the date of its publication in the *Official Gazette*.

#### Article 3

The Ministers are charged with the execution of this Law.

## ITALY

### I

### Decrees Concerning the Temporary Protection of Industrial Property Rights at Five Exhibitions

(of January 15, 1970) <sup>1</sup>

#### Single Article

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

XI<sup>a</sup> *Mostra convegno internazionale — Riscaldamento condizionamento refrigerazione idrosanitaria* (Milan, March 1 to 8, 1970);

IV<sup>o</sup> *Salone internazionale delle vacanze e del turismo* (Turin, March 5 to 15, 1970);

XXIV<sup>a</sup> *Presentazione internazionale moda della calzatura* (Bologna, March 7 to 12, 1970);

XXII<sup>a</sup> *Fiera campionaria della Sardegna* (Cagliari, March 7 to 19, 1970);

IV<sup>o</sup> *MOBILSUD — Salone internazionale del mobile per il Mezzogiorno e l'Oltremare* (Naples, March 15 to 22, 1970)

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

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

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

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

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

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

### II

### Law Amending Article 13 of Royal Decree No. 929, of June 21, 1942, Concerning Registration of Trademarks

(No. 158 of March 21, 1967)

#### Sole Article

The second paragraph of Article 13 of Royal Decree No. 929 of June 21, 1942, shall be amended to read as follows:

"Any persons being entitled to a name, trade name, initials or insignia shall have the exclusive right to use it as a trademark in respect of their industry or undertaking provided it does not comprise a name, trade name, initials or insignia identical or similar to one used by any other person in a previously existing trademark for products or goods of the same kind."

The present Law, bearing the State seal, shall be inserted in the official publication of the laws and decrees of the Italian Republic. It shall be obligatory for all persons concerned to observe it and ensure its observance as a law of the State.

## LETTERS FROM CORRESPONDENTS

### Letter from Italy

By Mario G. E. LUZZATI

#### I. Patents

##### A. Novelty, Inventiveness and Patentability

1. In my previous "Letter from Italy,"<sup>1</sup> I commented on two 1961 judgments of the Court of Cassation that were based on an interpretation of Articles 15 and 16 of the Patent Law and that appeared likely to cause prejudice chiefly to foreign inventors. I am referring to the decisions adopting a new principle whereby an earlier foreign patent application is regarded as preventing the patentability of the same invention in Italy in the absence of a claim to priority. The interpretation of 1961 was restated by the Court of Cassation in a judgment of 1963<sup>2</sup>.

The issue was again raised before the Supreme Court in 1966 with specific reference, for the first time, to the question whether the restrictive interpretation of Article 16 of the Patent Law should be applied also in cases where the first foreign applicant and the Italian applicant are the very same person.

The Joint Civil Divisions, in judgment No. 2427 of October 10, 1966<sup>3</sup>, upheld, in so far as the wider problem of the interpretation of Article 16 was concerned, the judgments delivered in 1961. As for the specific problem of a person being the holder of the prior foreign application as well as of the subsequent Italian one, the Court felt that this could not be regarded as an exception to the general rule, in view of the general principle, inherent in the whole system, whereby patentability is subject to the essential requirement of absolute novelty.

The Supreme Court seemed to make the decision depend primarily on the letter of Article 16, which would not allow for any other solution. It expressly recognized that a different system might be better but added that any change made in the present one was a matter for Parliament.

The ruling of the Supreme Court was followed by the lower courts. A change of case law appears extremely unlikely, so long as the present text of Article 16 remains in force.

At present, a foreign inventor, when filing a patent application in Italy, must be careful always to claim priority from the first filing in one of the countries of the Paris Union. Failing this, he will run the risk that the patent granted in Italy may be adjudged null and void because of his own earlier foreign patent application.

<sup>1</sup> See *Industrial Property*, 1963, p. 108.

<sup>2</sup> Court of Cassation, Section I, judgment No. 2380 of August 29, 1963, *Kelderer v. Schenk*, *Massimario del Foro Italiano*, 1963, p. 681.

<sup>3</sup> Court of Cassation, Joint Civil Divisions, judgment No. 2427 of October 10, 1966, *Martin v. Brama*, *Rassegna della Proprietà Industriale, Letteraria, Artistica*, January/December 1966, p. 103.

2. In a judgment of 1968<sup>4</sup>, the Court of Cassation stated for the first time, so far as I am aware, exactly what the subject matter of a patent may be.

The patent at issue concerned a process and a machine for drilling artesian wells, permitting, in the opinion of the Court of Appeal of Milan, a reduction in the amount of time required, thus sparing labor, as well as at least partial elimination of the danger of noticeable swinging or deviation of the tubes while they are plunged into the ground. It was disputed whether such immaterial results were patentable. The Court of Cassation decided they were, stating that what is meant by a "new patentable invention" is not merely a new object or material, such as a machine, an instrument, a tool, a mechanical device, or an article, but also the saving of energy or heat, the acceleration of a chemical reaction, an increase in the degree of electric tension, a shortening of the time required, and the improved running of a machine obtained by eliminating drawbacks that could not be removed by the means previously known or used, and generally the fulfillment of typically industrial needs.

3. In two subsequent judgments rendered at the end of 1963<sup>5</sup>, the Court of Cassation held that anaesthetics were to be deemed "medicines" and as such were not patentable in view of the prohibition of Article 14, second paragraph, of the Patent Law.

In another judgment of the same period<sup>6</sup>, the Court of Cassation held that the "medicine" nature of a product was not eliminated merely because it could also be used as a co-adjuvant in the breeding of cattle.

I should add that the problem of reforming the law on this point was put forward quite some time ago. In July 1965, the Government laid before the Senate a Bill introducing patentability of processes for the manufacture of therapeutic substances, while upholding the principle of non patentability of the latter. The Bill was short lived, however, and lapsed with the end of the Legislature, while a new Bill replacing it has so far not been presented.

4. On the problem of the patentability of new plant varieties, the courts have taken different views. More particularly, the Court of Naples<sup>7</sup> held that they were not patentable, having regard chiefly to the uncertainty and instability of the results, which depend on imponderable elements beyond control such as the climate, the personal skill of the selector, the anomalies of the material of propagation, etc., and the resulting impossibility for others to repeat the work carried out by the inventor. The Court of Milan<sup>8</sup> held instead that new methods or processes of generation, breeding or treatment of entities belonging to the animal

<sup>4</sup> Court of Cassation, Section I, judgment No. 821 of March 14, 1968, *Costa v. Allard*, *Foro Italiano*, 1968, I, 2213.

<sup>5</sup> Court of Cassation, Section I, judgment No. 3064 of November 29, 1963, *Imperial Chemical Industries v. Min. Industry*, *Massimario del Foro Italiano*, 1963, 865, and judgment No. 3159 of December 14, 1963, *Imperial Chemical Industries v. Min. Industry*, *Foro Italiano*, 1964, I, 1553.

<sup>6</sup> Court of Cassation, Section I, judgment No. 3158 of December 14, 1963, *Deutsches Gold- und Silber-Scheideanstalt vormals Roessler v. Min. Industry*, *Foro Padano*, 1964, I, 562.

<sup>7</sup> Court of Naples, September 10, 1965, *Moro v. Oliviero*, *Rivista della Proprietà Industriale e della Concorrenza*, 1967, 125.

<sup>8</sup> Court of Milan, May 29, 1967, *Barni v. SpA Fratelli Ingegnoli*, *Monitore dei Tribunali*, 1967, 845.

or vegetable kingdom, and particularly the new plant varieties that may result, were patentable in principle. The problem will no doubt continue to be disputed until it is solved through specific enactments. In this connection, I should mention that Italy is a signatory to, but has not yet ratified, the Convention for the Protection of New Varieties of Plants, signed at Paris on December 2, 1961.

#### *B. Lapse for Non-working - Introduction of the Compulsory License into the Italian System*

1. Article 54 (original text) of the Patent Law of 1939 provided that a patent would lapse if the invention was not worked within three years from the date of grant or if, after such three-year period, working was stayed for three years.

In recent years it had been debated before the courts whether this provision was still in force or should instead be regarded as having been repealed as a result of Law No. 1322 of December 15, 1954, ratifying and enforcing in Italy the 1934 London Act of the Paris Convention (more particularly Article 5A thereof).

In 1968, the Court of Cassation, in two judgments of the same date<sup>9</sup>, resolved the problem in the negative.

Restating the principle followed several years ago, after Italy's ratification of the Paris Convention as revised at The Hague in 1925<sup>10</sup>, the Court held that the provisions of Article 5A contained directions for the lawgivers of each country, obliging them to make domestic law conform to that Article by introducing the necessary changes. It excluded the possibility that Article 5A might be directly applied by the courts in the absence of ad hoc domestic laws amending the law in force, and above all without compulsory licensing having first been introduced. In short, the Supreme Court held that, failing any action by Parliament, lapse of a patent on the ground of non-working was still provided for by law, also in so far as the citizens of the countries of the Union were concerned. The same line had been taken previously by the lower courts<sup>11</sup>.

2. The situation changed with the coming into force (on August 15, 1968) of Decree No. 849 of the President of the Republic, of February 26, 1968, establishing compulsory licensing.

According to the new provisions, failure to work an invention within the periods of time prescribed by law no longer entails, as a rule, lapse of the patent. It may cause the grant, by decree of the Minister of Industry, of a compulsory non-exclusive license to any person interested. The applicant must prove failure to come to an agreement with the patentee on equitable terms. A compulsory license may not be granted to a patent infringer. The grant does not relieve the patentee

from the burden of working the invention. Lapse of the patent is retained in the event that the invention is not worked within two years from the grant of the first compulsory license.

3. The Decree contains no transitional provisions. It is therefore a moot point whether it also applies retrospectively or not. It is safe to say that it applies to patents granted after it came into force.

It should also apply to patents that had been granted less than three years prior to its entry into force and that consequently were not yet liable to lapse on the ground of non-working. The question arises instead in connection with patents in respect of which, on August 15, 1968, one or more three-year periods had gone by without the relevant invention having been worked.

#### *C. Taxation of Royalties Paid by Italian Entrepreneurs to Foreigners in Respect of Patent, Trademark, or Know-how Licenses*

In a suit between a foreign company and the Ministry of Finance<sup>12</sup>, the Court of Cassation made, for the first time, a ruling on the problem of taxation for the purposes of income tax on the sums paid by Italian entrepreneurs to foreigners in return for licenses under a patent, trademark or process of manufacture owned by the same. It had been argued that such sums were a mixed revenue of capital and labor and, as such, subject to tax only if they were the proceeds of a commercial activity carried out in Italy. The Court of Cassation rejected this argument remarking that, according to the fundamental principle of territoriality, taxation law regards — with an absolute presumption — as produced in Italy any non-land revenue, whether gross or net, whether of labor or of capital, owed by a person domiciled or residing within the State, quite apart from any question as to the place where it is produced or achieved from an economic point of view.

The principle of taxation, laid down by the Court of Cassation, is not obviously applicable whenever, between Italy and the State to which the foreign holder belongs, there is a convention aiming at preventing double taxation.

## II. Trademarks

### *A. Use of a Trade Name as a Trademark*

In so far as trademarks are concerned, we must mention first of all Law No. 158 of March 21, 1967, amending Article 13, second subsection, of R. D. June 21, 1942, No. 929 (Trademark Law).

The new text of Article 13, after restating that the trader has the sole right to use his trade name as a trademark, provides that this does not apply whenever the name, trade name, initials or insignia are identical with or similar to another's earlier trademark for products or goods of the same kind.

The old text of the second subsection of Article 13 provided that the second comer might use his trade name as a trademark, except that he had to associate it with elements capable of differentiating it from any prior identical or similar trademarks.

<sup>9</sup> Court of Cassation, Section I, judgments No. 3507 of October 25, 1968, *Suisse v. Ditta Promotor*, and No. 3508 of October 25, 1968, *Burgsmüller v. OMC*, both in *Foro Italiano*, 1968, I, 2667.

<sup>10</sup> Court of Cassation, judgment No. 3312 of November 9, 1929, *Bonifacie e Muller v. Compagnia Generale di Elettricità*, *Foro Italiano*, 1929, I, 1243; No. 663 of February 28, 1936, *Soc. Rheinische Gummi- und Celluloid-Fabrik v. Soc. Mazzucchelli*, *Massimario del Foro Italiano*, 1936, 134, and judgment No. 1509 of May 4, 1936, *Soc. Fivre v. Soc. Philips e Zenith*, *Foro Italiano*, 1937, I, 119.

<sup>11</sup> Court of Milan, September 23, 1965, *Calico Printers' Association v. Magni*, *Rassegna cit.*, January/December 1965, 291; December 28, 1967, *FMC Corporation v. SpA Châtillon*, *Rivista della Proprietà Industriale e della Concorrenza*, 1968, 134.

<sup>12</sup> Court of Cassation, Section I, judgment No. 1750 of July 24, 1965, *Soc. Nestlé v. Ministry of Finance*, *Foro Italiano*, 1965, I, 1878.



### B. Strong and Weak Trademarks

As a rule, Italian case law draws a distinction between the so-called strong and weak trademarks, with the effect of granting the two categories a different degree of protection. "Strong" trademarks are considered those endowed with a typically distinctive power, that is to say those not having, at any rate directly, any connection with the goods they mark; "weak" trademarks are deemed to be those calling to mind, more or less intensely, the composition, quality or purpose of the goods.

The Court of Cassation<sup>13</sup> held that the protection of the single element making up a strong trademark extends to the kind of element, in the sense that any variations or modifications, though considerable and original, not affecting substantially the identity of the mark, are unlawful. More particularly, the Supreme Court held, in the case of a strong trademark consisting of a representation of a cat for wool, that any other representation, though original, of the same animal was unlawful.

The principle applied for the purpose of evaluating and protecting weak trademarks is quite different. Indeed, it was held that even common words may be a valid trademark, when combined in an original way<sup>14</sup>; quite obviously, however, the protection against imitations is confined only to cases in which likelihood of confusion is certain.

### C. Prior Use

In a recent judgment<sup>15</sup>, the Court of Cassation stated the limits within which prior use of a non-registered trademark may be relevant in comparison with one registered later. It held that the extent of prior use of a non-registered trademark, enjoying purely local repute, must be considered with regard to the time of filing and not the time of grant of the later registration.

The ruling was based on the principle according to which the rights deriving from registration have retrospective effect from the date of filing.

### D. Conclusiveness of a Registered Trademark

Article 48 of the Trademark Law provides that, whenever a trademark has been publicly used in good faith for five years without challenge, the validity of the relevant registration may no longer be questioned on the ground that the word, figure or sign it consists of is confusingly similar to a word, figure or sign already known at the time of the application as marking products or goods of the same kind, or because it contains a person's name or portrait.

The courts had always interpreted this provision as governing only conflicts between a registered trademark and one used from an earlier date and enjoying more than purely local repute, and not conflicts between two registered trademarks. In this last case, the trademark registered subsequently was considered null and void because of lack of novelty, regardless of whether it had been used without challenge for

any length of time. Some legal writers, however, dissented. In view of the contrasting opinions, the point was recently raised before the Joint Divisions of the Court of Cassation.

The Supreme Court<sup>16</sup> upheld the previous interpretation and restated the principle that conclusiveness of a trademark applies only to conflicts between a trademark used with general repute and one registered later.

### E. Competent Plaintiffs in Actions for the Protection of a Trademark

The proprietor of the registration, even if he does not use the mark directly within the territory of Italy, as well as the exclusive licensee are deemed competent plaintiffs in actions for the protection of a trademark.

This principle is well established in our case law and was restated recently by the Court of Cassation as well as by the lower courts<sup>17</sup>.

Seeing that the law protects the proprietor of the registration against anyone placing on sale or introducing into the territory of the State, for commercial purposes, products bearing an infringing trademark, it was held that even a mere importer of such goods may be sued as an infringer<sup>18</sup>.

## III. Unfair Competition

### A. Slavish Imitation

It should be mentioned that there is an ever-increasing tendency on the part of the courts to specify, and in some respects to restrict, the ambit of protection against reproduction of one's product by competitors. At present, it may be said that the imitation, even if servile, of another's product may be considered unlawful only if it affects outer non-essential elements that simply have the effect of singling it out.

It is also necessary for the imitation to be likely to confuse the public; for the purpose of determining whether or not this is so, the court must appraise the outer and formal elements, taken as a whole, which contribute to the identification of the article and its source<sup>19</sup>. Reproduction of functional or aesthetic elements is, however, lawful, unless they are covered by an unexpired patent.

### B. False and Deceitful Propaganda

In short, it may be said that unfair competition exists if given false statements, or references to specific facts likely to disparage, or comparison with other products, identified or identifiable, are made<sup>20</sup>. It was thus held that the pro-

<sup>16</sup> Court of Cassation, Joint Divisions, judgment No. 1507 of June 23, 1967, *Kröne SpA and FISAM Srl v. Soc. Knorr and Monda SpA*, *Rassegna cit.*, 1967, 164.

<sup>17</sup> Court of Cassation, Section I, judgment No. 2688 of November 6, 1967, *Salatto v. Colgate Palmolive Company and Colgate Palmolive SpA*, *Foro Italiano*, 1968, I, 1273; Court of Appeal of Milan, July 8, 1966, *Cosmesis SpA v. Revlon SpA*, *Rassegna cit.*, 1966, 129.

<sup>18</sup> Court of Appeal of Milan, July 8, 1966, cited above.

<sup>19</sup> Court of Cassation, Section I, judgment No. 1651 of June 23, 1964, *Soc. Metallurgica Rinnovel v. The Kaymet Company*, *Massimario del Foro Italiano*, 1964, 433; Section I, judgment No. 2575 of October 25, 1966, *Soc. Off. Simoncini v. Mergenthaler*, *ibidem*, 1966, 893; judgment No. 890 of April 5, 1966, *Gatto v. SpA Sicule Lombarde Industrie Associate*, *Rassegna cit.*, 58; Section I, judgment No. 1561 of June 17, 1966, *Arcieri v. Rinello*, *ibidem*, 82.

<sup>20</sup> Court of Milan, December 14, 1967, *Vallardi v. Carzanti*, *Rassegna cit.*, 1967, 324.

<sup>13</sup> Court of Cassation, Section I, judgment No. 893 of May 11, 1965, *Filatura e Tessitura di Tollegno v. Bancroft*, *Rassegna cit.*, 1965, 158.

<sup>14</sup> Court of Milan, October 30, 1967, *General Food Corp. v. FAEMA*, *Rassegna cit.*, 1967, 301.

<sup>15</sup> Court of Cassation, Section I, judgment No. 172 of January 23, 1969, *SpA Chianti Ruffino v. Galletta*, *Giustizia Civile*, 1969, I, 186.



paganda of a firm that marked its products with a foreign name, and advertised the same saying, contrary to the truth, that they were manufactured under a foreign license and with original parts imported from abroad, and placed on them a label with the wording "Patented," in the absence of any patent, was unlawful<sup>21</sup>, all such elements leading the consumer to believe that he was dealing with a foreign product. On the other hand, exaggerated and even untruthful praise of one's goods was deemed lawful, provided that it was done in a generic way, such advertising (superlative propaganda) being considered by now not likely to mislead the public and divert customers. It was stated, however<sup>22</sup>, that there may be unfair competition whenever, through comparative, express or implied reference, the advertising turns into disparagement of the products of one's competitor, who is identified or at any rate identifiable.

### C. False Indications of Source on Goods

The Court of Milan held<sup>23</sup> that it was unlawful to use the wording "Scotch Whisky" in connection with a whisky that had not been wholly distilled in Scotland, such use being contrary to Article 1 of the Madrid Agreement, in the London text then in force in Italy, as well as implying the use of means contrary to honest business practice and professional correctitude, and likely to injure another's business. The Court also held that the Scotch Whisky Association, whose purpose it is to protect the Scotch whisky trade at home and abroad, was a competent plaintiff entitled to sue for the protection of the name "Scotch Whisky." The decision in this respect was based on Article 10<sup>ter</sup>(2) of the Paris Convention (again in the London text then in force in Italy), providing that syndicates and associations representing producers or traders are entitled to sue for unfair competition for the protection of the goods they defend.

### D. Selling at a Discount

"Selling at prices reduced with respect to those appearing on the price lists of the producer is lawful, in so far as it corresponds to the principles of social utility envisaged in Article 41, second paragraph, of the Constitution of the Republic. It is no disparagement of the producers for a retailer to place in its advertising the prices of the same next to his own discounted ones, provided the data quoted are objective and truthful."<sup>24</sup> In the opinion of the Court the reason for the lawfulness of the reduction of the prices lies in the fact that the interests of the consumer should prevail whenever they conflict with those of the producers, because, under Article 41, second paragraph, of the Constitution, private economic initiative may not take place if it collides with social utility. The Court stated, however, that, apart from cases of clear social utility to be assessed one by one, the principle of professional correctitude holds good. It would seem that, by a recent judgment, the Court of Appeal confirmed the line followed by the Court.

<sup>21</sup> Court of Padua, July 26, 1966, *Sas Riello Bruciatori v. Blow-Therm, Temi*, 1966, 573.

<sup>22</sup> Court of Appeal of Milan, September 22, 1967, *Numismatica Italiana v. Euronummus, Rassegna cit.*, 1967, 207.

<sup>23</sup> Court of Milan, March 9, 1964, *The Scotch Whisky Association et al. v. Stock, Rassegna cit.*, 1966, 19.

<sup>24</sup> Court of Milan, December 18, 1967, *Free Discount Hall v. Ignis et al., Rassegna cit.*, 1967, 328.

## NEWS CONCERNING NATIONAL PATENT OFFICES

### Report of the Canadian Patent and Copyright Office

By Gordon ASHER

#### Appointment of Commissioner

During 1968, Mr. J. W. T. Michel retired as Commissioner of Patents after 39 years of service in the Office. Mr. Michel had been Commissioner since 1950. He was succeeded on August 1, 1968, by Mr. Archibald Laidlaw, Q. C. Mr. Laidlaw has had many years of experience in the field of patents, both in private practice and in public affairs.

#### New Legislation

The Patent and Trademarks Acts were amended on June 27, 1969 (Ch. 49, 17-18 Elizabeth II), to extend compulsory licensing provisions for patented inventions relating to medicines. Licenses may now be granted by the Commissioner of Patents to import medicines, as well as to work the inventions in Canada. Sale of imported pharmaceuticals by the licensee under a trademark of another company will be permitted if the pharmaceuticals were obtained abroad directly or indirectly from a company related to the owner of the trademark in Canada. Regulations governing the new licensing provisions were made at the same time. Since then, 51 applications for license have been filed, one rejected on a technicality, and two withdrawn. Four hearings have been held on other applications. As of December 1969, no licenses had been granted.

The new licensing provisions have already led to an action in the Supreme Court of Ontario, in the form of a Writ of Prohibition filed by American Home Products against the Commissioner of Patents. The issues raised were whether compulsory licenses could be granted for medicines useful for veterinary purposes (as distinct from medicines for human use), and whether the licensing provisions were applicable to patents issued before the new legislation was enacted, as contended by the Commissioner. In its decision (December 1969), the Supreme Court sustained the Commissioner's position, but an appeal has since been filed.

The amendment of June 27 also made Saturday a day when the Office is officially closed for business. Any filing or action by applicants due on a Saturday is now extended to the following Monday.

A second amendment to the Patent Act was made on July 9, 1969 (Ch. 55, 17-18 Elizabeth II). It deleted from the legislation such fees as were prescribed in the legislation and authorized the setting of all patent fees by regulation. These regulations were proclaimed at the same time, and extensive changes made to the fee structure. In addition to some increases in fees, a fee is now required for independent claims in excess of two, and for each claim in excess of ten. For a fee, inquirers will also be advised of the patent number corresponding to any specified application number.

On March 4, 1969, the regulations were amended to require that abstracts be filed with applications.

In addition to the changes mentioned above, the June 27 amendment to the regulations authorized the Commissioner to designate regional offices for patent filings. These have since been set up in Halifax, Montreal, Toronto, Winnipeg and Vancouver.

#### Filings

During the year April 1, 1968, to March 31, 1969, the number of applications for patents increased 5.1 per cent, applications for copyright by 2.2 per cent, and applications for industrial designs decreased by 7.4 per cent.

The following tables indicate the changes over the last decade.

PATENTS	Applications filed	Applications reported	Patents issued
1958-59	22,915	29,543	18,283
1967-68	29,586	39,488	25,806
1968-69	31,091	34,707	27,683
COPYRIGHT	Applications filed	Copyrights registered	
1958-59	5,497	5,331	
1967-68	8,139	7,875	
1968-69	8,321	8,067	
INDUSTRIAL DESIGNS	Applications filed	Designs registered	
1958-59	798	684	
1967-68	1,384	1,197	
1968-69	1,282	902	

During the ten-year period, patent filings have increased 35½ per cent; patents granted by 51½ per cent; copyright filings by 51½ per cent; copyrights registration by 51 per cent; industrial design filings by 60 per cent, and industrial designs registration by 32 per cent.

#### Staff

The staff of the Patent and Copyright Office has increased during the past ten years from 311 (including 101 examiners) to 403 (including 194 examiners).

#### International Cooperation

Membership in ICIREPAT and PCT was continued and representatives from the Patent Office attended various meetings of these bodies. The Canadian Office has continued its exchange program for training of examiners with the United States Patent Office. In addition, an examiner from the Philippine Office is now undergoing training in Ottawa.

#### Decisions of the Courts

In *Laboratoire Pentagone v. Parke-Davis*, February 1968, the Supreme Court of Canada held that the production of chloramphenicol by a fermentation process, followed by solvent extraction, is a chemical process within the meaning of Section 41 of the Canadian Patent Act, and that a *per se* claim to chloramphenicol was consequently invalid. Medicines and foods governed by Section 41 can only be claimed in terms of the specific process of preparation disclosed and claimed.

In *Rhône-Poulenc and Ciba v. Gilbert et al.*, Supreme Court of Canada, June 1968, a broad claim to a group of new drugs was held invalid on the ground that there was an inadequate showing that all of the compounds covered by the claim possessed the therapeutic properties claimed for them.

In *Smith, Kline and French v. Micro Chemicals*, Exchequer Court of Canada, July 1969, it was held that the production of a medicine before the grant of a compulsory license is an infringement of a patent even where such production was for the purpose of experimentation by the defendant in order to prepare himself for marketing the medicine once the licenses were granted. The only experiments which would not be liable for infringement are those directed to improving the invention.

In *Alladin Industries v. Canadian Thermos Products*, Exchequer Court, March 11, 1969, expungement of the trademark "Thermos" was refused, even though the word had fallen into everyday use as synonymous with "vacuum bottle" by many people in Canada. It was found that the word was properly registrable when registration had been made (originally in 1907), and that "Thermos" was still distinctive today to an appreciable portion of the population.

In *Institut National des Appellations d'Origine des Vins et Eaux-de-vie v. Château-Gai Wines*, Quebec Superior Court, December 23, 1968, the rights of the *Institut* to prevent the use of the word "Champagne" to describe wines made in Canada were upheld on the strength of a Franco-Canadian trade agreement duly sanctioned by a statute of Canada.

In *Cuisenaire v. South West Imports*, Supreme Court of Canada, December 20, 1968, it was held that no copyright protection exists in colored rods of uniform square cross section and ten different lengths and colors for teaching arithmetic in schools. While the book describing the use of the rods is entitled to copyright protection, copyright does not extend to mechanical devices described in such book.

### NEWS CONCERNING INTERNATIONAL ORGANIZATIONS OTHER THAN BIRPI

#### The European Patent Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents

##### Second Session

(Luxembourg, January 13 to 16, 1970)

##### Note \*

The Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents held its Second Session in Luxembourg from January 13 to 16, 1970.

All States members of the Conference were represented (Austria, Belgium, Denmark, France, Germany (Federal Re-

\* This Note was prepared by BIRPI.

public), Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom). BIRPI was represented by Dr. Arpad Bogisch, First Deputy Director, and Mr. Klaus Pfanner, Senior Counsellor, Head of the Industrial Property Division. Other intergovernmental organizations represented by observers were the Commission of the European Communities, the Council of Europe, and the International Patent Institute (IIB).

The meeting was presided over by Dr. Kurt Haertel, Chairman of the Intergovernmental Conference and President of the German Patent Office.

The main subject of the discussions at this session of the Conference was a preliminary draft convention on the conditions of and the procedure for the grant of European patents. This draft was prepared by a special Working Group (Working Group I) which was instituted at the first session of the Intergovernmental Conference in Brussels on May 21, 1969, and which elaborated the said draft in three meetings in the course of 1969.

The draft proposes an international procedure for the grant of patents in which a European patent office would grant a European patent with effect in all countries designated by the applicant. The draft provides for uniform European law only with respect to the procedure up to the grant of the European patent. After grant, the European patent is to be considered as a "bundle" of national patents which are subject to the laws of the respective contracting States. It is planned to supplement this convention, as far as the six member States of the European Economic Community are concerned, by a second convention, which would contain provisions transforming the European "bundle patent," as for the territory of the Common Market, into a uniform "Common Market patent."

The criteria of patentability provided for in the draft are closely adapted to the provisions of the European Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, of November 27, 1963. The formal requirements for European patent applications correspond to the provisions of the European Convention Relating to the Formalities Required for Patent Applications, of December 11, 1953, and are closely harmonized with the corresponding provisions of the BIRPI draft for a Patent Cooperation Treaty (PCT). The proposed procedure for the grant of the European patent follows the principle of deferred examination. In the first phase of the procedure, the European patent application would be examined with respect to formal requirements and would be subjected to a search for prior art by the International Patent Institute (IIB). The draft proposes publication of the European patent application 18 months after the priority date, together with the search report. In the second phase of the procedure, which would start only upon request by the applicant or a third party, the application would be examined by the European Patent Office as to the patentability of the claimed invention.

A chapter of the draft contains provisions allowing for simultaneous use of the future European Convention and the proposed Patent Cooperation Treaty. International applications under the PCT of nationals of contracting States of the European Convention could be filed also as European patent

applications with the European Patent Office; the international application could, of course, contain designations of other PCT States as well. On the other hand, international applications under the PCT, filed outside the contracting States of the European Convention, could designate some or all of the European States for procedure for the grant of a European patent by the European Patent Office instead of for procedure for the grant of national patents by each of the respective national offices.

The Conference made minor changes in the draft. It decided to have it published as a "Preliminary Draft of the Conference" and to give the interested international non-governmental organizations an opportunity to make observations. It is proposed to discuss the Preliminary Draft during the Third Session of the Conference, which will take place from April 21 to 24, 1970, in Luxembourg, with a number of interested international non-governmental organizations representing interested circles. It is planned that, thereafter, the Preliminary Draft will be revised by Working Group I in order to take into account the results of the consultations with interested circles.

The Conference set up three further Working Groups (II, III and IV), which will examine and report on the international law provisions to be included in the Draft, questions relating to staff matters, and the financial implications of the proposed system.

The final Draft relating to the European patent system would be submitted to a Diplomatic Conference, tentatively scheduled for the end of 1971 or the first half of 1972.

## The Role of the African and Malagasy Industrial Property Office \*

By Denis EKANI

One of UNIDO's functions, as specified in resolution 2152 adopted at the twenty-first session of the United Nations General Assembly, is "the improvement of the international system of industrial property," which it must try to achieve "in cooperation with the international bodies or intergovernmental regional bodies concerned with industrial property."

The only such regional body to date is the African and Malagasy Industrial Property Office (OAMPI), which was set up under the Libreville Agreement of September 13, 1962. All of its members are developing nations, and it has been officially included in the list of intergovernmental bodies called upon to cooperate with UNIDO.

The Libreville Agreement created an instrument for regional cooperation by instituting a joint system for securing and protecting industrial property rights. This regional arrangement comes within the general framework of the Paris Union Convention of March 20, 1883, Article 15 of which permits members of the Union to conclude special arrange-

\* This article which appeared in the August 1968 issue of *Industrial Research and Development News*, Review published by UNIDO, is printed with the kind permission of that Organization. The chapter entitled "Outlook for the Future" was added by Mr. Ekani.

ments among themselves concerning the protection of industrial property.

### Regional Cooperation

As developing countries, the newly independent French-speaking African states were anxious to recognize and protect industrial property in their countries, for they realised that industrial property is an important factor in economic development and technological progress. These countries also knew that setting up the proper machinery would place a heavy strain on their legal, administrative, financial and human resources.

Before these states attained independence, the administrative machinery necessary to apply the legislation covering most overseas possessions had been centralized by the colonial powers in the metropolitan countries. Though preparations had been made for the transfer of powers in such spheres as education and general administration, nothing had been done locally in regard to industrial property.

The new states faced the task of drafting legislation that not only would suit their needs but also would take into account the interests of those who held industrial property rights and would provide for setting up an administration to carry out the new laws, for finding the necessary funds and, above all, for appointing and training men capable of running the program. As these countries assessed the situation, they realized that for each state to draft special national legislation and set up an administration to enforce it would entail a financial burden out of all proportion to the services provided and would considerably hamper access to the new technology sought through the protection of industrial property.

Since independence in 1958, African countries with only national systems for the protection of industrial property have received few patent applications — in some cases barely a dozen — as compared with the thousands of applications now filed with OAMPI.

The institution of a regional system for the protection of industrial property and of a single office has, from the standpoint of savings, achieved the anticipated benefits. Since 1964 the fees received for the protection of rights have financed the operation of a joint administration without need for recourse to national budgets and with a minimum of staff drawn from the administrations of member states.

### International Cooperation

Although the African and Malagasy Industrial Property Office was established for the purpose of obviating the type of difficulty that would inevitably have arisen at the national level, industrial property poses other problems within an international context, such as ensuring worldwide protection of inventions, verifying their novelty and bringing about a real transfer of technology.

*Ensuring worldwide protection of inventions.* Modern communication media have had the effect of facilitating the dissemination of ideas and of technological innovations. Consequently, the research results can be protected only on an international basis. This necessity has instilled new life into

the Paris Convention of 1883 and into the International Bureaux for the Protection of Intellectual Property (BIRPI) which received the task of administering the Convention. Since the Second World War, many countries, regardless of political or economic status, have acceded to the Convention, to which seventy-nine states, including the members of OAMPI, are party.

By signing the Convention, the members of OAMPI have accepted a number of commitments. They have undertaken to pay their contributions to the budget of the Bureaux and have assumed various obligations, such as participation in assemblies for the administration of the Convention. Needless to say, the exercise of this prerogative calls for the presence of qualified industrial property experts.

Obligations must be assumed at the national level also, for Article 12 of the Paris Convention stipulates that each of the countries of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs and trademarks. The special industrial property service is to publish an official periodical journal which will include the names of the proprietors of patents granted, with a brief description of the invention patented and with reproductions of trademarks registered.

These commitments obviously entail additional expenditures which, though small, could have contributed to meeting more pressing needs. The establishment of a central office has enabled member states to honor their obligations while saving on related expenses which OAMPI bears.

At the same time, the role of OAMPI is to cover a wider international field. OAMPI and BIRPI have arranged for close cooperation, and OAMPI has the power, within certain limits, to represent its members at international meetings organized within the framework of the Paris Union. This is a result of an amendment adopted at Stockholm — at the suggestion of the members of OAMPI — and incorporated into the provisions of Article 13 of the Paris Convention as revised at Stockholm.

*Verifying the novelty of inventions.* It is becoming increasingly apparent, for both theoretical and practical reasons, that the examination of inventions is the only valid working system for patent offices. From the theoretical point of view, such examinations are the logical counterpart of the privilege which society confers upon the inventor; from the practical point of view, they constitute an important test prior to the negotiation of rights and make it possible to avoid the artificial encumbrance caused by the piling up of worthless patents. Consequently, the general tendency among patent offices is to adopt the examination system. It should be added, however, that most offices favor the system of deferred examination. This is because patent offices which require prior examinations encounter innumerable difficulties — owing largely to the increasing rate of technological progress and its specialization, the growing volume of documentation to consult, the need for a large staff of examiners and the slower issue of patents. The deferred examination system seems to represent a happy compromise between the system of registration, which entails a purely formal examination, and the system of thorough examination prior to issue of a patent.

One might suppose that developing countries, such as the members of OAMPI, which are anxious to ensure the transfer of genuine technological know-how, would have an examination system. Because of the heavy commitments mentioned above, however, the attainment of that objective is beyond the means of any one of them alone.

The adoption of such a system may be beyond the means of a central office of the size of OAMPI, primarily because of the lack of the necessary administrative staff and of technicians capable of undertaking research. For this reason, the Office initially opted for the system of registration. Later it may adopt the system of deferred examination in cooperation with such specialized international agencies as the International Patent Institute of The Hague, which could do research for OAMPI.

At the same time, these international agencies can help the Office to build up the documentation and to train the necessary personnel to do novelty-testing research, a task which could be undertaken directly by the OAMPI at a later stage. Naturally such a second stage will be more desirable and feasible if the Office, possibly with United Nations assistance, can broaden its foundations and become a vast regional patent centre. OAMPI will bear the obligations and expenses which, in its absence, would represent a burden to each member country without any compensating advantages.

*Ensuring the transfer of technology.* A vast, worldwide network to ensure the transfer of technology is now being established. It is made up of patent offices, standardization bureaux, industrial technology institutes, development associations and the technical departments of such ministries as planning, industry, agriculture and mining. By means of this network, institutions will be able to pool and coordinate their resources to the best advantage of the developing countries. As far as OAMPI's member countries are concerned, only a central patent office can usefully integrate itself within this network and profit from it.

### Organization

The above considerations afford an idea of the importance and of the current role and prospects of the African and Malagasy Industrial Property Office as a central office which, without placing too heavy a burden on its member states, enables them to train qualified personnel for the administration of industrial property and to cooperate fully in the efforts that are being made to ensure the transfer of technology.

The Office was organized according to three principles which guarantee the interests of member states and ensure its effectiveness: centralization, the equality of members and respect for national sovereignty.

*Centralization.* This is the fundamental principle of OAMPI, laid down in Article 1 of the Libreville Agreement, which, in turn, is based on Article 12 of the Paris Convention for the Protection of Industrial Property. As mentioned above, the Convention imposes on each signatory state the obligation to organize a special national service for the protection of industrial property. The problem confronting the members of OAMPI was to comply with this provision while

avoiding the burdens that its literal application might have entailed for each of them. Solving this problem through the establishment of a single joint service has brought about a marked centralization of structure and procedure.

As specified in Article 1 of the Libreville Agreement, the joint service takes the place of the "national service" in the case of each state. In other words, member states of OAMPI have no national industrial property services. The Libreville Agreement does sanction the procedure for filing "national applications" in each state rather than with the international organization, but that, as will be explained later, is only an extension of the procedure for the filing of applications with the African and Malagasy Industrial Property Office. Moreover, only the organs of the Office are competent to apply the administrative procedures established under the Agreement and, at a higher level, only the heads of member states are empowered to amend and adopt the Libreville Agreement and its annexes and, if appropriate, to extend the competence of the Office.

The supreme organ of OAMPI is the Administrative Council, which is composed of representatives of member states. On the technical and administrative level, the Director-General of the Office is responsible not only for administrative procedures, such as the issue and publication of patents, but also for studying questions of principle to be submitted to the Administrative Council. The Council's decisions are binding on member states.

To our knowledge no other inter-African body is so thoroughly centralized and integrated; the Office is probably the only inter-African supranational body.

*State sovereignty.* Although the Office is a supranational body, the certificates it issues are national. A patent issued by the Office automatically and *pleno jure* becomes a national patent in each of the member states. Moreover, any legal disputes concerning such rights lie with national courts in accordance with the traditional criteria governing the delimitation of jurisdiction.

Furthermore, each member state is responsible not only for organizing its policy on research and industrial property within its own territory but also for laying down the general principles of that policy within the limits set by the Libreville Agreement.

Each state thus retains full competence to deal with infringements and abuses of the industrial property rights granted by OAMPI.

This compromise permits the coexistence within the Office of states having different political, economic and ideological systems, and makes it possible for countries with quite different basic political and economic outlooks to be members of OAMPI.

*Equality between states.* The Office might have adopted a system for voting and contributions on the basis of such criteria as population or economic capacity of each member state. As establishing OAMPI was an act of solidarity, however, the members felt that the only applicable principle was that of equality between member states. This equality relates primarily to expenses. When the countries established OAMPI, it needed operating funds which could only come from contributions by signatory states. Each state contributed the same

amount. The concern for equality also led member states to establish this initial system on a permanent basis in order to ensure identical treatment for founder states and newcomers. Under Article 17 of the Libreville Agreement, new members pay an initial contribution. This contribution is the only subsidy that members of the Office have paid since its establishment; OAMPI is expected to balance its own budget. Moreover, provision is made for the equal distribution of any budgetary surplus among member states.

### Structure

OAMPI is managed by an Administrative Council and a Director-General, whose respective responsibilities are defined by the Libreville Agreement.

The Administrative Council consists of the ministers responsible for industrial property questions in each member state, e. g. the Minister of Trade and Industry, the Minister of Economic Affairs and Planning or the Minister of Mining. Article 13 of the Libreville Agreement specifies the responsibilities of the Administrative Council. These include the application of the Libreville Agreement and its annexes, the general operation of the Office, voting on the budget, and financial, technical and administrative supervision of the management of OAMPI. The Council appoints the Director-General and the Deputy Director.

The Administrative Council, which holds a regular session once a year, elects a chairman who represents it between sessions and who has extensive powers enabling him to keep the operation of OAMPI under continuous surveillance and to take decisions on behalf of the Council.

The Administrative Council makes decisions according to majority vote, with each member country having one vote.

OAMPI, whose central office was established by the Libreville Agreement at Yaoundé in the Federal Republic of Cameroon, is under the authority of a Director-General, who is responsible to the Council for all matters concerning financial, administrative and technical management, on which he must make an annual report.

With regard to financial management, the Director-General is the authorizing officer for expenditures. It is his duty to prepare the budget and to submit the annual accounts and inventory to the Administrative Council. His handling of financial business is permanently supervised by a financial controller and by an auditor.

The administrative duties of the Director-General include the management of personnel, whom — apart from the Deputy Director and the Controller — he recruits and appoints. He is also responsible for the procedure governing registration of industrial property rights and for all subsequent action that may affect such rights.

The Director-General of the Office thus acts on behalf of OAMPI and, consequently, of its member states in all the following procedures.

*Receiving and centralizing applications.* The Office is responsible for receiving all applications that the Agreement specifies have to be filed with it — and these form the vast majority — and for centralizing those filed with national administrations.

*Processing and approving applications and declarations.* Articles 5, 6 and 7 of the Agreement empower OAMPI to process applications. The approval of applications and declarations is subject to the conditions laid down in the annexes and regulations.

*Registering and issuing official patents and certificates.* OAMPI is responsible for the official certification of industrial property, i. e. for the issue of patents and registration certificates for trademarks, designs or models. It may reject irregular applications.

*Publishing.* In accordance with Article 12 of the Paris Convention, OAMPI publishes an official journal enumerating the patents issued, the trademarks registered and the designs or models for which publicity has been requested and giving information on the activities of the Office or on matters that might be of interest to applicants. Fascicles of all patents and improvement patents are issued as well as special registers of patents, trademarks and industrial designs or models.

Article 9 of the Agreement stipulates that OAMPI shall keep, for all member states, special registers of patents, trademarks and designs or models in which transfers of the ownership or use of exclusive rights are recorded and shall issue copies of these entries to third parties.

*Issuing certificates and official copies.* OAMPI is to issue certification on action it has taken or noted and is to prepare official copies of documents that it has received, registered or issued (official copies of patents, certificates for trademarks, designs or models, copies of or certificates regarding entries in the special registers).

*Collecting fees.* OAMPI is responsible for collecting all fees payable under the annexes of the Libreville Agreement and other regulations, such as annual patent fees, known as annuities, failing payment of which a patent lapses.

To perform these duties OAMPI has various technical, financial and administrative departments. Each of the two technical departments, one for patents and one for trademarks, designs and models, has a Chief and an administrative staff. The offices of the controller, the auditor (a Cameroon official) and the accounts officer, who is assisted by an administrative staff, make up the financial department. The administrative departments provide secretariat services and deal with personnel, property, publications and documentation on behalf of the Director-General and the General Services Section.

At present, OAMPI has a staff of 21. The professionals have been recruited internationally from the member states; members of the executive staff are Cameroon nationals.

As mentioned earlier, the African and Malagasy Industrial Property Office finances, as a rule, its own operations. One exception is the initial contribution; another is the contribution required of member states under Article 18 of the Libreville Agreement "if necessary for the purpose of balancing the budget."

OAMPI normally obtains its funds by collecting fees for the various transactions it carries out. To date, it has been able to balance its budget without calling for contributions from member states and has registered a surplus which has made its physical organization possible.



### Higher Appeals Committee

Among the organs of OAMPI is the Higher Appeals Committee, an administrative tribunal competent to deal in the last instance with appeals against the decisions of the Director-General. Its rules specify its powers and composition.

Every two years the Administrative Council elects the Committee's members, by secret ballot, from a list of candidates proposed by the member states. Three members and three alternates are elected. The rules specify that these persons must be qualified lawyers or members of the judiciary. The Committee has a secretariat headed by an OAMPI staff member, appointed by the Administrative Council. He centralizes procedure, is responsible for the notifications prescribed by the rules and keeps the minutes of the Committee's meetings and its archives.

The Committee's competence extends only to appeals against the rejection of applications.

Appeals are administrative in nature and must be presented in writing. The lodging of an appeal involves the payment of a fee. No appeals have so far been lodged, but it may be noted that the establishment of the Higher Appeals Committee is the first step towards setting up an international industrial property court.

### National Administrations

The national administrations in certain member states play a part in the application procedure. The Libreville Agreement offers a choice between direct application to OAMPI or to a national administration. Thus, application is made either to the competent national administration, if the state (Congo-Brazzaville, Ivory Coast, Niger, Senegal, Togo, Upper Volta) in which the applicant is domiciled has chosen this procedure, or to OAMPI, if the state (Cameroon, Central African Republic, Chad, Dahomey, Gabon, Malagasy Republic, Mauritania) in which the applicant is domiciled has opted for this method of application or if the applicant is domiciled outside the member states. In the latter case, the applicant must designate an agent in one of the member states.

Article 3 of the Agreement provides for postal applications to OAMPI. In such cases, the agent is designated in the application or at a later stage.

The national application procedure is advantageous only to OAMPI's most economically advanced member states, which have facilities for the filing of patents, trademarks or industrial designs or models. This procedure enables them to pursue their own activities and make independent progress while cooperating with the other members of the Office. For other countries, the national application procedure is of scant advantage. In fact, the number of national applications is negligible compared with that of direct applications, which come almost exclusively from non-African countries.

From the legal point of view, only the date indicated by the national administration receiving the application is of importance, since the application is effective from that time. On the other hand, such matters as registration, the issue of patents and their publication are the exclusive responsibility of OAMPI, which also centralizes all files. This means that the national administration merely serves as an offshoot

extension of OAMPI. National applications are made either to the clerk of the civil court, in the case of trademarks, or to the ministry in charge of industrial property questions, in the case of patents and industrial designs or models. The reason for this difference in procedure is that industrial property matters are organized on the lines of the French system, which also provides the pattern for the regulations of the Office.

Under the terms of Article 25 of the Libreville Agreement of September 13, 1962, OAMPI is open to "every African State being concerned and not having signed the Convention for the Protection of Industrial Property signed in Paris on March 20, 1883, and revised in Lisbon on October 31, 1958." The Republic of Togo, in joining OAMPI on October 24, 1967, and bringing the number of members to thirteen, has underlined the importance of the Office. OAMPI's member states are confident that other African nations will soon follow the precedent set by Togo in adding its name to the roll of OAMPI members.

### Outlook for the Future

The role of the African and Malagasy Industrial Property Office is therefore far from negligible. The Office is an instrument for regional and international cooperation, it stimulates investment, and it serves as a center for training African specialists in the complex field of industrial property.

This role appears rather limited, however, when one considers the needs of developing countries for transfer of technical know-how. The Office does not make technical examinations of inventions or inquire into their economic usefulness or their exploitation. It grants patents without government guaranty. Generally speaking, the Office's participation in the industrialization process of its member states is rather small.

It appears that the African and Malagasy Industrial Property Office has been assigned a role which imitates too closely the role of Industrial Property Offices in countries with market economics, particularly that of the National Institute of Industrial Property in Paris. Rich in engineers and scientists, those countries are in a position to reap development rewards from industrial property, the activities of their Offices being followed very closely with a view to exploitation. Our countries, by contrast, are poor in this respect. The role of the African and Malagasy Industrial Property Office should consequently be enlarged to make up for this deficiency in the private sector.

In her excellent report prepared for the recent Group of Experts meeting cosponsored in Vienna by UNIDO and BIRPI on the subject of the administration of Industrial Property Offices in developing countries, Professor Hildegard Rondón de Sansó has, in fact, undertaken to define the role which ought to be assigned to the Industrial Property Office of developing countries:

1. "Industrial property should be so organized as to be able to keep track of a patent that has been granted, in order to determine whether it is of real technological value and deserves the protection the State has given it, or whether it merely conceals competitive or other interests that are of no



benefit for the development plans of the country granting the patent."

2. "Industrial property offices should constitute a link between a national inventor who needs capital and State credit institutions which can provide him with capital to enable him to work a patent or else put it into the hands of others who can. The office could of course also serve as an intermediary between foreign patentees and nationals interested in exploiting their invention."

3. "Industrial property offices should give preferential treatment to inventions, discoveries and distinguishing marks relating to the processing of domestic raw materials and to those that are intended for use in connection with substitutes for imports. This preferential treatment should be conceived as part of a general programme covering the entire system of incentives for foreign investment."

4. "Industrial property offices should exercise control over licensing and know-how contracts in order to determine the true amount of royalties paid and to assess the economic advantages resulting from the industrial products manufactured under these contracts."

5. "In view of the close relationship between industrial property and copyright, which are almost inseparable in the case of industrial models and designs, it would be useful to establish appropriate bodies to advise the applicant as to the best form of protection for each of the rights accruing from his intellectual creations."

6. "Industrial property offices should avail themselves of the services of a body specialized in the evaluation, compilation and processing of the data of which the need has already been pointed out."<sup>1</sup>

Naturally this list, which does not claim to be exhaustive, is open to discussion. Certain functions can be added to it and others eliminated. In any case, however, it raises the very timely question of the adaptation of the role of Industrial Property Offices to the needs of developing countries.

It therefore appears necessary to reexamine the role of the African and Malagasy Industrial Property Office in the near future, with a view to making the protection of industrial property an integral part of the development process of member states. The experience acquired under the present system should make it possible to pursue this new phase in the development of OAMPI with success.

<sup>1</sup> Cf. Mme. Hildegard Rondón de Sansó, "Industrial Property Offices as an element of the investment climate." Document of the BIRPI-UNIDO "Expert Group Meeting on the Organization and Administration of Industrial Property Offices."

## BOOK REVIEWS

La Suisse et l'harmonisation du droit des brevets [Switzerland and the Harmonization of Patent Law], by Jean Daniel Pointet. Verlag für Rechts und Gesellschaft AG, Basle, 1969.

This monograph, submitted as a doctoral thesis to the University of Neuchâtel School of Law and Economics, deals with a subject of fore-

most interest today. Current efforts for harmonization in the field of patent law have reached an unprecedented degree of intensity.

The author describes various proposals to harmonize patent law and examines whether these are compatible with the Federal Constitution and the judicial system of Switzerland. The expression "harmonization of patent law" is employed in a broad sense which includes the whole range of possibilities regarding international patent cooperation. Thus, in chapter II (pages 7 to 41), the author points out, in chronological order, the efforts, treaty proposals and treaties directed toward such cooperation. In particular, he notes the various proposals made before World War II, the renewed efforts following the war, the Agreement concerning the Establishment of an International Patent Institute, the work undertaken by the Council of Europe, the EEC Draft Convention of 1962 relating to a European Patent Law, the work of the European Free Trade Association, the cooperation of the Scandinavian countries, and the Draft Patent Cooperation Treaty (PCT) which will not be limited territorially to Europe.

Chapters III and IV (pages 42 to 53) deal with the question of whether the EEC Draft Convention of 1962 is compatible with Articles 15 and 2 of the Convention of Paris for the Protection of Industrial Property (problems of whether special arrangements may be closed, and of accessibility).

Chapter V (pages 54 to 91) is devoted to the main subject of the thesis, concerning whether a treaty which provides for the granting of patents by a supranational authority is compatible with the Federal Constitution and judicial system of Switzerland. The author studies this question in connection with the EEC Draft Convention of 1962. In addition, he takes account of the work recommenced in 1968, particularly the proposal for a dual convention (on the one hand, a general convention open alike to member and non-member countries of the European Economic Community and establishing procedure for the granting of patents by a supranational Office; and on the other hand, a convention restricted to member countries of the Community and providing for a uniform substantive law governing European patents, as well as for a supranational Court).

The author concludes (pages 94 and 95) that serious constitutional difficulties would arise only in the event of a convention establishing a supranational Court, but not in the case of a convention limited to the granting of a European patent, nor, *a fortiori*, in the case of the PCT.

Apart from carefully tracing the history of efforts to achieve international patent cooperation, this monograph has the merit of studying in depth those aspects of international law which are of particular importance in this context. Consequently, the monograph will be of interest not only to Swiss lawyers, but also to experts from other countries who are concerned with the harmonization of patent law. L. B.

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### Selection of New Publications

BENKARD (Georg), BOCK (Hans), LÖSCHER (Otto), BALLAUS (Werner), BRUCHHAUSEN (Karl). *Patentgesetz, Gebrauchsmustergesetz mit den ergänzenden Vorschriften*. Munich, C. H. Beck, 1969. - 2091 p. Beck'sche Kurz-Kommentare. Band 4. Fifth edition.

BURST (Jean-Jacques). *Brevet et licencié, leurs rapports juridiques dans le contrat de licence*. Paris, Librairies techniques, 1970. - 322 p. Centre d'Etudes internationales de la propriété industrielle. Strasbourg.

JALLADE (Philippe). *Circulation économique des produits et droit sur la marque*. Lyon, 1969. - 199 p. Thesis.

SCHADE (Hans). *Patent-Tabellen. Uebersicht über materielle und formelle Recht in 43 Ländern*. Munich, C. Heymann, 1969. - 42 p. Third edition.

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# CALENDAR OF MEETINGS

## BIRPI Meetings

- April 7 to 10, 1970 (Paris)** — Joint ad hoc Committee on the International Classification of Patents (3rd Session)  
*Object:* Study of Draft Agreement for the revision of the European Convention on the International Classification of Patents for Invention of December 19, 1954 — *Invitations:* Czechoslovakia, France, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Spain, Switzerland, United Kingdom, United States of America — *Observers:* International Patent Institute — *Note:* Meeting convened jointly with the Council of Europe
- April 8 to 10, 1970 (Geneva)** — Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — Technical Committee IV (Microform) (3rd Session)
- April 13 and 14, 1970 (Geneva)** — ICIREPAT — Technical Committee V (Patent Format and Printing) (3rd Session)
- 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:* African and Malagasy Industrial Property Office, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents
- April 15 to 17, 1970 (Geneva)** — ICIREPAT — Technical Committee II (Technical Fields: Forward Planning) (3rd Session)
- April 20 and 21, 1970 (Geneva)** — ICIREPAT — Advisory Board for Cooperative Systems (ABCS) (12th Session)
- April 20 to 22, 1970 (The Hague)** — ICIREPAT — Technical Committee VI (Systems Implementation) (3rd Session)
- April 22 to 24, 1970 (Geneva)** — ICIREPAT — Technical Committee I (Retrieval Systems, Design and Testing) (3rd Session)
- April 27 to 29, 1970 (Geneva)** — Committee of Directors of National Industrial Property Offices of the Madrid Union (Marks)  
*Object:* Finalization and possible adoption of revised Regulations under the Madrid Agreement — *Invitations:* All member States of the Madrid Agreement (Marks)
- April 28, 1970 (Geneva)** — Joint ad hoc Committee on the International Classification of Patents — Working Group I (Revision of the Classification) (1st Session) — *Note:* Meeting convened jointly with the Council of Europe
- April 29, 1970 (Geneva)** — Joint ad hoc Committee on the International Classification of Patents — Working Group II (Revision of the Classification) (1st Session) — *Note:* Meeting convened jointly with the Council of Europe
- April 30, 1970 (Geneva)** — Joint ad hoc Committee on the International Classification of Patents — Working Group III (Revision of the Classification) (1st Session) — *Note:* Meeting convened jointly with the Council of Europe
- May 1st, 1970 (Geneva)** — Joint ad hoc Committee on the International Classification of Patents — Working Group IV (Revision of the Classification) (1st Session) — *Note:* Meeting convened jointly with the Council of Europe
- May 11 to 15, 1970 (Geneva)** — Working Group concerning the International Classification of Figurative Elements in Marks  
*Object:* Elaboration of a draft Classification — *Invitations:* Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Netherlands, Rumania, Spain, Sweden, Switzerland, United Kingdom — *Observers:* International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents
- May 14 and 15, 1970 (Geneva)** — ICIREPAT — Technical Coordination Committee (4th Session)
- May 19 to 21, 1970 (Geneva)** — Ad Hoc Preparatory Committee for the Revision of the Berne Convention  
*Object:* To prepare a draft text of the proposals for revision of the Berne Convention — *Invitations:* France, Germany (Fed. Rep.), India, Italy, Mexico, Tunisia, United Kingdom, Yugoslavia — *Observers:* Kenya, United States of America — *Non-participating Observers:* All other States members of the Berne Union or party to the Universal Copyright Convention; representatives from international non-governmental organizations to be appointed
- May 25 to June 19, 1970 (Washington)** — Diplomatic Conference for the Adoption of the Patent Cooperation Treaty (PCT)  
*Object:* Negotiations and Conclusion of the Patent Cooperation Treaty — *Invited with the right to vote:* The member countries of the Paris Union — *Observer States:* Member States of the United Nations and the U.N. Specialized Agencies, not member countries of the Paris Union — *Observer Intergovernmental Organizations:* United Nations, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, United Nations Conference on Trade and Development, United Nations Industrial Development Organization, International Institute for the Unification of Private Law, International Patent Institute, African and Malagasy Industrial Property Office, Commission of the European Communities, Council of Europe, European Free Trade Association, Industrial Development Centre for Arab States, Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents, Latin American Free Trade Association, Organization of American States, Permanent Secretariat of the General Treaty for Central American Economic Integration — *Observer International Non-Governmental Organizations:* Asian Patent Attorneys Association, Committee of National Institutes of Patent Agents, Council of European Industrial Federations, European Industrial Research Management Association, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Inventors' Associations, International Federation of Patent Agents, Pacific Association for Industrial Property, Union of European Patent Agents, Union of Industries of the European Community
- June 29 and 30, 1970 (Geneva)** — Sub-Committee of the Committee of Experts for the International Classification of Goods and Services (Marks)  
*Object:* Consideration of proposals for amendments and additions to the International Classification — *Invitations:* Members of the Sub-Committee
- June 29 to July 3, 1970 (London)** — Joint ad hoc Committee on the International Classification of Patents — Working Group V (2nd Session)  
*Object:* Supervision of the uniform application of the Classification — *Invitations:* Germany (Fed. Rep.), Netherlands, Soviet Union, United Kingdom, United States of America — *Note:* Meeting convened jointly with the Council of Europe
- July 1 to 10, 1970 (Geneva)** — Committee of Experts for the International Classification of Goods and Services (Marks)  
*Object:* Decisions concerning the proposals for amendments and additions to the International Classification — *Invitations:* All member States of the Nice Union — *Observers:* All member States of the Paris Union
- September 21 to 29, 1970 (Geneva)** — Administrative Bodies of WIPO and of the Paris, Berne, Nice and Lisbon Unions (Bodies to be specified later)  
*Object:* Constitution of the new organs on the basis of the entry into force of some of the Stockholm (1967) texts; elections; budget and program; other administrative questions — *Invitations:* Member States of WIPO and the Paris, Berne, Nice and Lisbon Unions — *Observers:* To be announced later
- November 2 to 6, 1970 (Geneva)** — Committee of Experts for an Agreement on the Protection of Type Faces
- November 23 to 27, 1970 (Geneva)** — Joint ad hoc Committee on the International Classification of Patents — Working Group V (3rd Session)  
*Object:* Supervision of the uniform application of the Classification — *Invitations:* Germany (Fed. Rep.), Netherlands, Soviet Union, United Kingdom, United States of America — *Note:* Meeting convened jointly with the Council of Europe

## Meetings of Other International Organizations Concerned with Intellectual Property

- April 1 to 3, 1970 (Luxembourg) — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents — Working Group I (4<sup>th</sup> Session)
- April 6 to 10, 1970 (Luxembourg) — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents — Working Group III (1<sup>st</sup> Session)
- April 21 to 24, 1970 (Luxembourg) — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents — 3<sup>rd</sup> Session
- May 1 to 10, 1970 (Asunción) — 8<sup>th</sup> Interamerican Meeting on Copyright
- May 3 to 6, 1970 (Istanbul) — International League Against Unfair Competition (LICCD) — Symposium
- May 4 to 6, 1970 (Luxembourg) — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents — Working Group IV (1<sup>st</sup> Session)
- May 11 to 16, 1970 (Paris) — United Nations Educational, Scientific and Cultural Organization (Unesco) — Ad Hoc Preparatory Committee for the Revision of the Universal Copyright Convention
- June 22 to 27, 1970 (Las Palmas) — International Confederation of Societies of Authors and Composers (CISAC) — 27<sup>th</sup> Congress
- July 6 to 10, 1970 (Luxembourg) — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents — Working Group IV (2<sup>nd</sup> Session)
- September 9 to 11, 1970 (Luxembourg) — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents — Working Group I (5<sup>th</sup> Session)
- October 19 to 24, 1970 (Madrid) — International Association for the Protection of Industrial Property (IAPIP) — Executive Committee

### VACANCY FOR A POST IN BIRPI

Applications are invited for the following post:

#### *Competition No. 120*

#### *Legal Assistant*

(Industrial Property Division / General Section)

#### *Category and grade:*

P. 1/P. 2, according to the qualifications and experience of the incumbent.

#### *Principal duties:*

Within the framework of BIRPI's Industrial Property program, the incumbent will in particular perform various duties relevant to the activities of the "General Section." His basic tasks will be the following:

- (a) Collaborating in studies and enquiries on industrial property matters.
- (b) Participating in the work of revising or elaborating conventions, agreements and model laws.
- (c) Drafting of correspondence relevant to the General Section.
- (d) Drafting of documents relating to international meetings, in which BIRPI participate or are interested in, as well as on relations with other organizations in the field of industrial property.
- (e) Participating in international meetings where legal questions within the competence of the Section are treated.
- (f) As necessary, collaborating in any other tasks assigned to the Division.

The duties mentioned above are subject to supervision by the Head of Section.

#### *Qualifications:*

- (a) University degree in law or qualifications equivalent to such degree.
- (b) A certain professional experience in the field of industrial property is required for an appointment at the P. 2 level.
- (c) Excellent knowledge of one of the two official languages of BIRPI (English/French) and at least a good working knowledge of the other. Knowledge of other languages would be an advantage.

#### *Nationality:*

Candidates must be nationals of one of the member States of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no national is on the staff of BIRPI.

#### *Age limit:*

Candidates must be less than 50 years of age at date of appointment.

#### *Date of entry on duty:*

As soon as possible.

#### *Applications:*

*Application forms* and full information regarding the *conditions of employment* may be obtained from the Head of the Administrative Division, BIRPI, 32, chemin des Colombettes, 1211 Geneva, Switzerland. Please refer to the number of the competition.

*Closing date:* May 5, 1970.