

Industrial Property

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INTERNATIONAL UNIONS

Joint ad hoc Committee of the Council of Europe and BIRPI on the International Classification of Patents

Third Session

(Paris, April 7 to 10, 1970)

Note *

The Third Session of the Joint ad hoc Committee of the Council of Europe and BIRPI on the International Patent Classification (hereinafter designated "Joint ad hoc Committee") was held at Paris, at the offices of the International Civil Aviation Organization, from April 7 to 10, 1970.

The following States were represented: Czechoslovakia, France, Germany (Federal Republic), Japan, Netherlands, Spain, Switzerland, Union of Soviet Socialist Republics, United Kingdom, United States of America. The International Patent Institute (IIB) was represented by an observer. The list of participants appears at the end of this note.

For the period until the first session of the Joint ad hoc Committee in 1971, the Committee elected Mr. Werner Rubach (Germany (Federal Republic)) Chairman, Mr. Harvey J. Winter (United States of America) First Vice-Chairman, Mrs. Odile Kavyrchine (France) Second Vice-Chairman, and Mr. Igor Cherviakov (Union of Soviet Socialist Republics) Third Vice-Chairman of the Joint ad hoc Committee. In view of the legal nature of the subject to be considered, the First Vice-Chairman, Mr. Harvey J. Winter, was asked to take the chair for the main part of the Third Session of the Joint ad hoc Committee.

Examination of the Draft Agreement Concerning the International Patent Classification

The Joint ad hoc Committee examined the Draft Agreement concerning the International Patent Classification prepared by the Secretariat General of the Council of Europe and BIRPI, acting as Secretariat of the Committee, in preparation for the Strasbourg Diplomatic Conference on the International Patent Classification.

In a general discussion, the delegation of the United States of America stressed the great interest in applying the International Patent Classification (hereinafter designated "Classification") universally and declared that its country was committed to undertake a great deal of work in this field. The Joint ad hoc Committee agreed in principle with the proposed Draft Agreement.

In a detailed discussion, the Draft Agreement was examined article by article by the Joint ad hoc Committee. A number of amendments were proposed which will be taken into

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

account by the Secretariat in the drafting of the preparatory documents for the Strasbourg Diplomatic Conference.

The Draft Agreement, as amended by the Joint ad hoc Committee, proposes to establish a Special Union within the framework of the Paris Union to administer the International Patent Classification as a single universal classification of patents for inventions, inventors' certificates, utility models and utility certificates. The Draft Agreement defines the Classification as being the existing Classification established pursuant to the provisions of the European Convention on the International Classification of Patents for Invention of December 19, 1954, which came into force and was published by the Secretary General of the Council of Europe on September 1, 1968, subject to the amendments and additions that may be made to it prior to the entry into force of the Agreement or thereafter. Under the proposed Agreement as amended, each country would reserve the right to use the Classification either as a principal or as a subsidiary system. The symbols of the Classification would be included in the official documents and notices concerning patents, inventors' certificates, utility models and utility certificates as defined by the Agreement. The Committee agreed that the right to make a reservation as regards applying the symbols of the complete version of the Classification (i. e., the right not to use the groups and subgroups of the Classification) should neither be open to countries having a system of examination as to patentability, whether immediate or deferred, nor to countries where the procedure for the grant of patents provides for a search into the state of the art.

As to the provision of the Draft Agreement providing for the establishment of a Committee of Experts entrusted with the revision of the Classification and the promotion of its uniform application, the Joint ad hoc Committee agreed that, besides the member countries of the Special Union, inter-governmental organizations specialized in the patent field such as the International Patent Institute in The Hague, the future European Patent Office and other regional patent offices shall have the right to be represented by observers.

The Joint ad hoc Committee devoted considerable discussion to the provision of the Draft Agreement providing for the adoption of amendments and additions to the Classification by the Committee of Experts. The Draft Agreement as amended shall provide that amendments and additions which give rise to a modification in the basic structure of the Classification or which entail a substantial work of reclassification require a majority of three-fourths of the countries represented for their adoption. Whether or not an amendment or addition falls under this rule shall be decided by one-fifth of the countries represented.

The Joint ad hoc Committee agreed, subject to minor amendments, with the administrative provisions of the Draft Agreement, which are based on the administrative provisions of the Stockholm Acts of the Paris Convention and its existing special Agreements. In particular, the Joint ad hoc Committee approved the system proposed for the entry into force of the Agreement which provides for a minimum number of ratifications or accessions comprising at least two-thirds of

the countries party to the European Convention and three countries party to the Paris Convention, not previously party to the European Convention, one of which must be a country with more than 40,000 patent applications per year.

Strasbourg Diplomatic Conference

As regards the Strasbourg Diplomatic Conference on the International Patent Classification, which will be held at the headquarters of the Council of Europe at Strasbourg (France), the Joint ad hoc Committee agreed to the dates of March 15 to 24, 1971. It considered that the Conference should be organized in accordance with the usual practice applied to diplomatic conferences convened within the framework of the Paris Union.

Next Session

The Joint ad hoc Committee, upon an invitation by the delegation of Spain, decided to hold its Fourth Session at Madrid, from October 6 to 9, 1970.

List of Participants

I. Member States

Czechoslovakia

Mr. J. Conk, Counsellor, Office for Patents and Inventions, Prague

France

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

Mr. R. Gajac, Legal Advisor, Head of Division, National Institute of Industrial Property, Paris

Mrs. O. Kavyrchine, Technical Section, Patent Division, National Institute of Industrial Property, Paris

Germany (Fed. Rep.)

Mr. H. Mast, Ministerialrat, Federal Ministry of Justice, Bonn

Mr. W. Ruhach, Regierungsdirektor a. D., German Patent Office, Munich

Mr. A. Wittman, Regierungsdirektor, German Patent Office, Munich

Japan

Mr. K. Sadashige, Trial Examiner, Japanese Patent Office, Tokyo

Netherlands

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

Mr. W. Neervoort, Secretary, Patent Office, The Hague

Spain

Mr. J. Delicado Montero-Rios, Head of the Technical and Administrative Office, Industrial Property Registration Office, Madrid

Mr. J. Cabanillas Rojas, Engineer, Technical Section, Industrial Property Registration Office, Madrid

Mr. H. Guillamón Reyes, Patent Agent, Spanish Embassy, Paris

Switzerland

Mr. E. Lips, Deputy Director, Federal Bureau of Intellectual Property, Berne

Mr. R. Kaempf, Scientific Assistant, Federal Bureau of Intellectual Property, Berne

Union of Soviet Socialist Republics

Mr. I. Cherviakov, Deputy Director, Central Scientific Research Institute of Patent Information and Technical-Economic Studies (CNIPI), Moscow

United Kingdom

Mr. R. Bowen, Superintending Examiner, Patent Office, London

Mr. J. Winter, Senior Examiner, Patent Office, London

United States of America

Mr. H. J. Winter, Assistant Chief, Business Practices Division, Bureau of Economic Affairs, Department of State, Washington, D. C.

Mr. J. Schneider, Assistant Commissioner of Patents, Patent Office, Department of Commerce, Washington, D. C.

Mr. J. Sheehan, International Patent Specialist, Patent Office, Department of Commerce, Washington, D. C.

II. International Organization

International Patent Institute (IIB)

Mr. L. F. W. Knight, Conseiller à l'Informatique, The Hague

III. Officers of the Session

Chairman: Mr. W. Rubach (Federal Republic of Germany)

Vice-Chairmen: Mr. H. J. Winter (United States of America)

Mrs. O. Kavyrchine (France)

Mr. I. Cherviakov (Union of Soviet Socialist Republics)

IV. Secretariat

Council of Europe

Mr. R. Muller, Deputy Director, Directorate of Legal Affairs

Mr. P. von Holstein, Principal Administrative Officer, Directorate of Legal Affairs

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

Mr. J. Voyame, Second Deputy Director

Mr. K. Pfanner, Senior Counsellor, Head of the Industrial Property Division

Miss G. Davies, Legal Assistant, Industrial Property Division

Madrid Union (Marks)

Committee of Experts for the Revision of the Madrid Agreement (Marks)

(Geneva, April 13 to 16, 1970)

Note *

A Committee of Experts for the possible revision of the Madrid Agreement Concerning the International Registration of Marks met in Geneva from April 13 to 16, 1970.

All the member States of the Madrid Union Concerning the International Registration of Marks were invited, and also the following countries, which showed interest in the Madrid Agreement: Denmark, Finland, Japan, Norway, Sweden, Union of Soviet Socialist Republics, United Kingdom, United States of America.

The following countries were represented: Austria, Belgium, Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Hungary, Italy, Netherlands, Norway,

* This note has been drawn up by BIRPI on the basis of the official documents of the meeting.

Portugal, Rumania, San Marino, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom, United States of America, Yugoslavia.

One intergovernmental organization, the Commission of European Communities, was represented by an observer.

The following three non-governmental international organizations were represented by observers: International Association for the Protection of Industrial Property (IAPIP), International Chamber of Commerce (ICC), International Federation of Patent Agents (FICPI).

The list of participants is appended to this note.

The purpose of the meeting was to have a preliminary discussion of the possible revision of the Madrid Agreement and to inform BIRPI on the wishes and probable attitudes of countries which are already members of the Madrid Union and others which have shown a certain interest in the Madrid Union. The Committee of Experts studied the principal questions which might arise in this connection, on the basis of a report prepared by the Director of BIRPI¹. In the light of the work of the Committee of Experts, a preliminary draft for the revised Agreement will be prepared, which will be submitted to an enlarged Committee of Experts at a future date.

List of Participants

I. States

Austria

Mr. T. Lorenz, Vorsitzender Rat, Austrian Patent Office, Vienna

Belgium

Mr. A. Schurmans, Director, Industrial Property Department, Ministry of Economic Affairs, Brussels

Mr. P. Peetermans, Administration Secretary, Industrial Property Department, Ministry of Economic Affairs, Brussels

Czechoslovakia

Mr. J. Prošek, Head of the International Marks Section, Office of Patents and Inventions, Prague

Denmark

Mrs. J. Olsen, Registrar of Trademarks, Danish Patent and Trademark Office, Copenhagen

Finland

Mr. E. Wuori, Head of Division, Patent and Registration Office, Helsinki

France

Mr. F. Savignon, Director, National Industrial Property Institute, Ministry of Industrial and Scientific Development, Paris

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

Mr. M. Bierry, Civil Administrator, National Industrial Property Institute, Paris

Germany (Federal Republic)

Mrs. E. Steup, Ministerialrätin, Federal Ministry of Justice, Bonn

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

Mr. W. Tilmann, Amtsgerichtsrat, Federal Ministry of Justice, Bonn

Hungary

Mr. E. Tasnádi, President, National Office of Inventions, Budapest

Mrs. M. Bognár, Deputy Head of the Marks Section, National Office of Inventions, Budapest

Italy

Mr. A. Pelizza, Inspector General, Ministry for Industry, Central Patent Office, Rome

Mr. G. Guglielmetti, Professor of Law, Attorney, Milan

Netherlands

Mr. W. M. J. C. Phaf, Director of the Legal Department, Ministry of Economic Affairs, The Hague

Mr. E. van Weel, Vice-President, Patent Office, The Hague

Norway

Mr. R. Røed, Chief of Trademark Division, Norwegian Patent Office, Oslo

Portugal

Mr. J. L. Esteves da Fonseca, Director General of Commerce, Lisbon

Mr. J. Van-Zeller Garin, Assistant to the General Administration of Commerce, Lisbon

Rumania

Mr. C. Mitran, Second Secretary, Permanent Mission of Rumania, Geneva

San Marino

Mr. J. C. Munger, Chancellor, Permanent Mission of the Republic of San Marino, Geneva

Spain

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

Sweden

Mr. C. Uggla, Chairman on the Board of Appeals, Royal Office of Patents and Registrations, Stockholm

Mr. B. Lundberg, Counsellor, Head of Trade Marks Department, Royal Office of Patents and Registrations, Stockholm

Switzerland

Mr. P. Braendli, Head of Section, Federal Intellectual Property Office, Berne

Mr. F. Balleys, Federal Intellectual Property Office, Berne

Union of Soviet Socialist Republics

Mr. V. Kalinin, Second Secretary, Permanent Mission of the USSR, Geneva

Mr. V. Podylov, Head of the Section of Patent Information, Scientific Research Institute of the Control Equipment, Moscow

United Arab Republic

Mr. Y. Rizk, Second Secretary, Permanent Delegation of the United Arab Republic, Geneva

United Kingdom

Mr. W. Wallace, C. M. G., Assistant Comptroller, Industrial Property and Copyright Department, Board of Trade, Patent Office London

Mr. R. L. Moorby, Assistant Registrar of Trade Marks, Patent Office, London

¹ See document MM/I/2.

United States of America

- Mr. W. E. Schuyler, Jr., Commissioner of Patents, Department of Commerce, Washington, D. C.
 Mr. J. H. Schneider, Assistant Commissioner of Patents, Department of Commerce, Washington, D. C.
 Mr. D. B. Allen, Office of International Patent and Trademark Affairs, Patent Office, Department of Commerce, Washington, D. C.
 Mr. H. J. Winter, Assistant Chief, Business Practices Division, Commercial Affairs and Business Activities, Bureau of Economic Affairs, Department of State, Washington, D. C.
 Mr. A. R. Desimone, President, United States Trademark Association, Merck Corporation, Rahway, New York, N. Y.
 Mr. B. W. Pattishall, Attorney at Law, Pattishall, McAuliffe and Hofstatter, Chicago, Illinois
 Mr. G. M. Frayne, Secretary, United States Group of the International Patent and Trademark Association, Langner, Parry, Card and Langner, New York, N. Y.

Yugoslavia

- Mr. S. Pretnar, Director, Federal Patent Office, Belgrade

II. Intergovernmental Organization*Commission of European Communities*

- Mr. B. Schwab, Principal Administrator, Commission of European Communities, General Administration XIV, Brussels

III. Non-Governmental Organizations*International Association for the Protection of Industrial Property (IAPIP)*

- Mr. S. P. Ladas, Member of Bureau of IAPIP, New York
 Mr. W. Oppenhoff, Lawyer, Cologne

International Chamber of Commerce (ICC)

- Mr. D. A. Was, Group Industrial Property Adviser, Royal Dutch/Shell, The Hague
 Mr. D. E. Parker, Trade Marks Manager, Royal Dutch/Shell Group, London
 Mr. H. von der Hude, Patent Agent, Copenhagen
 Mr. Ch.-L. Magnin, Former Deputy Director of the United International Bureaux for the Protection of Intellectual Property, Geneva

International Federation of Patent Agents (FICPI)

- Mr. L. Holmqvist, Lars Holmqvist Patentbyrå AB, Malmö
 Mr. A. F. Barnay, Trademarks Consultant, Paris

IV. Officers of the Meeting

- Chairman: Mr. W. M. J. C. Phaf (Netherlands)
 Vice-Chairmen: Mr. W. E. Schuyler, Jr. (United States of America)
 Mr. A. F. Mazarambroz (Spain)
 Secretary: Mr. J. Voyame (BIRPI)

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

- Professor G. H. C. Bodenhausen, Director
 Mr. J. Voyame, Second Deputy Director
 Mr. L. Egger, Counsellor, Head, International Registrations Division
 Mr. E. Margot, Head, Trademark Registration Section
 Mr. P. Maugué, Legal Assistant, International Registrations Division

LEGISLATION**CANADA****Office Consolidation of the Patent Act**(in the 1969 version)¹

An Act Respecting Patents of Invention

Short Title

1. — This Act may be cited as the *Patent Act*.

Interpretation

2. — In this Act, and in any rule, regulation or order made under it,

- (a) "applicant" includes an inventor and the legal representatives of an applicant or inventor;
 (b) "Commissioner" means the Commissioner of Patents;
 (c) "Exchequer Court" means the Exchequer Court of Canada;
 (d) "invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter;
 (e) "legal representatives" includes heirs, executors, administrators, guardians, curators, tutors, assigns and all other persons claiming through or under applicants for patents and patentees of inventions;
 (f) "Minister" means the Minister of Consumer and Corporate Affairs or such other Minister of the Crown as may be appointed by the Governor in Council to administer this Act;
 (g) "patent" means letters patent for an invention;
 (h) "patentee" means the person for the time being entitled to the benefit of a patent for an invention;
 (ha)² "prescribed fee" means a fee prescribed by any rule or regulation made by the Governor in Council pursuant to section 12;
 (i) "regulation" and "rule" include rule, regulation and form;
 (j) "work on a commercial scale" means the manufacture of the article or the carrying on of the process described and claimed in a specification for a patent, in or by means of a definite and substantial establishment or organization and on a scale that is adequate and reasonable under the circumstances.

Patent Office and Officers

3. — There shall be attached to the Department of Consumer and Corporate Affairs or to such other department of the Government of Canada as may be determined by the Governor in Council an office called the Patent Office.

¹ R. S. C. 1952, c. 203, as amended by 1953-54, c. 19; 1953-54, c. 40, s. 15; 1966-67, c. 25, s. 38; 1967-68, c. 16, s. 10; 1968-69, cc. 28, 49, 55.

² Effective October 1, 1969 (P. C. 1969-1501, July 29, 1969).

4. — (1) The Governor in Council may appoint a Commissioner of Patents who shall, under the direction of the Minister, exercise and perform the powers and duties conferred and imposed upon that officer by or pursuant to this Act.

(2) The Commissioner shall receive all applications, fees, papers, documents and models for patents, shall perform and do all acts and things requisite for the granting and issuing of patents of invention, shall have the charge and custody of the books, records, papers, models, machines and other things belonging to the Patent Office, and shall have, for the purposes of this Act, all the powers that are or may be given by the *Inquiries Act* to a commissioner appointed under Part II thereof.

(3) The Commissioner holds office during pleasure and shall be paid such annual salary as may be determined by the Governor in Council.

5. — (1) An Assistant Commissioner of Patents may be appointed in the manner authorized by law; he shall be a technical officer experienced in the administration of the Patent Office.

(2) When the Commissioner is absent or unable to act, the Assistant Commissioner, or, if he also is at the same time absent or unable to act, another officer designated by the Minister, may and shall exercise the powers and perform the duties of the Commissioner.

6. — There may be appointed in the manner authorized by law, such principal examiners, examiners, associate examiners and assistant examiners, clerks, stenographers and other assistants as are necessary for the administration of this Act.

7. — No officer or employee of the Patent Office shall buy, sell, acquire or traffic in any invention, patent or right to a patent, or any interest in any thereof, and every purchase, sale, assignment, acquisition or transfer of any invention, patent or right to a patent, or any interest in any thereof, made by or to any such officer or employee is null and void, but this section does not apply to a sale by an original inventor or to an acquisition under the last will, or by the intestacy, of a deceased person.

8. — Clerical errors in any instrument of record in the Patent Office shall not be construed as invalidating the same, but, when discovered, they may be corrected by certificate under the authority of the Commissioner.

9. — If any patent is destroyed or lost a certified copy may be issued in lieu thereof upon payment of the prescribed fee.

10. — All specifications, drawings, models, disclaimers, judgments, returns, and other papers, except *caveats*, and except those filed in connection with applications for patents that are still pending or have been abandoned shall be open to the inspection of the public at the Patent Office, under such regulations as are adopted in that behalf.

11. — Notwithstanding the exception in section 10, the Commissioner, upon the request of any person who states in writing the name of the inventor, if available, the title of the invention and the number and date of a patent said to have been granted in a named country other than Canada, and who pays or tenders the prescribed fee, shall inform such person whether an application for a patent of the same invention is or is not pending in Canada.

Rules and Regulations

12. — (1) The Governor in Council, on the recommendation of the Minister, may make, amend or repeal such rules and regulations as may be deemed expedient

- (a) for carrying into effect the objects of this Act, or for ensuring the due administration thereof by the Commissioner and other officers and employees of the Patent Office;
- (b) for carrying into effect the terms of any treaty, convention, arrangement or engagement that subsists between Canada and any other country; and
- (c) in particular, but without restricting the generality of the foregoing, with respect to the following matters
 - (i) the form and contents of applications for patents,
 - (ii) the form of the Register of Patents and of the indexes thereto,
 - (iii) the registration of assignments, transmissions, licences, disclaimers, judgments or other documents relating to any patent,
 - (iv) the form and contents of any certificate issued pursuant to the terms of this Act,
 - ³ (v) the fees that may be charged in respect of the filing of applications for patents or the taking of other proceedings under this Act or under any rule or regulation made pursuant to this section, or in respect of any services or the use of any facilities provided thereunder by the Commissioner or any person employed in the Patent Office, and
 - ³ (vi) the payment of any fees prescribed by any rule or regulation made pursuant to this section, including the time when and the manner in which any such fees shall be paid and the circumstances in which any such fees previously paid may be refunded in whole or in part.

(2) Any rule or regulation made by the Governor in Council is of the same force and effect as if it had been enacted herein.

Seal

13. — (1) The Commissioner shall cause a seal to be made for the purposes of this Act and may cause to be sealed therewith every patent and other instrument and copy thereof issuing from the Patent Office.

(2) Every court, judge and person whosoever shall take notice of the seal of the Patent Office, and shall receive the impressions thereof in evidence in like manner as the impressions of the Great Seal are received in evidence, and shall also take notice of and receive in evidence, without further

³ Effective October 1, 1969 (P. C. 1969-1501, July 29, 1969).

proof and without production of the originals, all copies or extracts certified under the seal of the Patent Office to be copies of or extracts from documents deposited in such office.

Proof of Patents

14. — In any action or proceeding respecting a patent of invention authorized to be had or taken in Canada under the provisions of this Act a copy of any patent granted in any other country, or any official document connected therewith, purporting to be certified under the hand of the proper officer of the government of the country in which such patent has been obtained, may be produced before the court or a judge thereof, and the copy of such patent or document purporting to be so certified may be received in evidence without production of the original and without proof of the signature or of the official character of the person appearing to have signed the same.

Patent Attorneys

15. — (1) A register of attorneys shall be kept in the Patent Office on which shall be entered the names of all persons entitled to represent applicants in the presentation and prosecution of applications for patents or in other business before the Patent Office.

(2) Entry on such register shall be made in accordance with regulations to be made by the Commissioner with the approval of the Governor in Council.

16. — For gross misconduct or any other cause that he may deem sufficient, the Commissioner may refuse to recognize any person as a patent agent or attorney either generally or in any particular case.

Appeals

17. — In all cases where an appeal is provided from the decision of the Commissioner to the Exchequer Court under this Act, such appeal shall be had and taken pursuant to the provisions of the *Exchequer Court Act* and the rules and practice of that Court.

18. — Whenever an appeal to the Exchequer Court from the decision of the Commissioner is permitted under this Act notice of his decision shall be mailed by the Commissioner by registered letter addressed to the interested parties or their respective agents and the appeal shall be taken within three months after the date of mailing of such notice, unless otherwise extended by the Commissioner with the approval of the Minister and unless herein otherwise expressly provided.

Use of Patents by Government

19. — The Government of Canada may, at any time, use any patented invention, paying to the patentee such sum as the Commissioner reports to be a reasonable compensation for the use thereof, and any decision of the Commissioner under this section is subject to appeal to the Exchequer Court.

Government Owned Patents

20. — (1) Any officer, servant or employee of the Crown or of a corporation that is an agent or servant of the Crown,

who, acting within the scope of his duties and employment as such, invents any invention in instruments or munitions of war, shall, if so required by the Minister of National Defence, assign to such Minister on behalf of Her Majesty all the benefits of the invention and of any patent obtained or to be obtained for the invention; and any other person who invents any such invention may so assign to such Minister on behalf of Her Majesty all the benefits of the invention and of any patent obtained or to be obtained for the invention.

(2) An inventor, other than an officer, servant or employee of the Crown or of a corporation that is an agent or servant of the Crown, acting within the scope of his duties and employment as such, is entitled to compensation for an assignment to the Minister of National Defence under this Act; in the event that the consideration to be paid for such assignment is not agreed upon it is the duty of the Commissioner to determine the amount of such consideration, but his decision is subject to appeal to the Exchequer Court; proceedings before the Exchequer Court under this subsection shall be held in camera upon request made to the court by any party to the proceedings.

(3) The assignment effectually vests the benefit of the invention and patent in the Minister of National Defence on behalf of Her Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise are valid and effectual, notwithstanding any want of valuable consideration, and may be enforced accordingly by the Minister of National Defence.

(4) Any person who, as aforesaid, has made an assignment under this section to the Minister of National Defence, in respect of any covenants and agreements contained in such assignment for keeping the invention secret and otherwise in respect of all matters relating to the said invention, and any other person who has knowledge of such assignment and of such covenants and agreements, shall be, for the purposes of the *Official Secrets Act*, deemed to be persons having in their possession or control information respecting the said matters that has been entrusted to them in confidence by any person holding office under Her Majesty; and the communication of any of the said information by such first mentioned persons to any person other than one to whom they are authorized to communicate with, by or on behalf of the Minister of National Defence, is an offence under section 4 of the *Official Secrets Act*.

(5) Where any agreement for such assignment has been made the Minister of National Defence may submit an application for patent for the invention to the Commissioner, with the request that it be examined for patentability, and if such application is found allowable may, before the grant of any patent thereon, certify to the Commissioner that, in the public interest, the particulars of the invention and of the manner in which it is to be worked are to be kept secret.

(6) If the Minister of National Defence so certifies, the application and specification, with the drawing, if any, and any amendment of the application, and any copies of such documents and drawing and the patent granted thereon, shall be placed in a packet sealed by the Commissioner under authority of the Minister of National Defence.

(7) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Commissioner, and shall not be opened save under the authority of an order of the Minister of National Defence.

(8) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorized by the Minister of National Defence to receive it, and shall if returned to the Commissioner be kept sealed by him.

(9) On the expiration of the term of the patent, the sealed packet shall be delivered to the Minister of National Defence.

(10) No proceeding by petition or otherwise lies to have declared invalid or void a patent granted for an invention in relation to which a certificate has been given by the Minister of National Defence as aforesaid, except by permission of the said Minister.

(11) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as in this section otherwise directed, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(12) The Minister of National Defence may at any time waive the benefit of this section with respect to any particular invention, and the specification, documents and drawing shall be thenceforth kept and dealt with in the regular way.

(13) No claim shall be allowed in respect of any infringement of a patent that occurred in good faith during the time that such patent was kept secret under the provisions of this section; and any person who, before the publication of such patent, had in good faith done any act that, but for the provisions of this subsection would have given rise to any such claim, is entitled, after such publication, to obtain a licence to manufacture, use and sell the patented invention on such terms as may, in the absence of agreement between the parties, be settled by the Commissioner or by the Exchequer Court on appeal from the Commissioner.

(14) The communication of any invention for any improvement in munitions of war to the Minister of National Defence or to any person or persons authorized by the Minister of National Defence to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

(15) The Governor in Council, if satisfied that an invention relating to any instrument or munition of war, described in any specified application for patent not assigned to the Minister of National Defence, is vital to the defence of Canada and that the publication of a patent therefor should be prevented in order to preserve the safety of the State, may order that such invention and application and all the documents relating thereto shall be treated for all purposes of this section as if the invention had been assigned or agreed to be assigned to the Minister of National Defence.

(16) The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the purpose and intent thereof.

21. — Where by any agreement between the Government of Canada and any other government it is provided that the Government of Canada will apply the provisions of section 20 to inventions disclosed in any application for a patent assigned or agreed to be assigned by the inventor to such other government, and the Commissioner is notified by any minister of the Crown that such agreement extends to the invention in a specified application, such application and all the documents relating thereto shall be dealt with as provided in section 20, except subsection (2), as if the said invention had been assigned or agreed to be assigned to the Minister of National Defence.

Patents Relating to Atomic Energy

22. — Any patent application for an invention that, in the opinion of the Commissioner, relates to the production, application or use of atomic energy shall, before it is dealt with by an examiner appointed pursuant to section 6, be communicated by the Commissioner to the Atomic Energy Control Board.

General

23. — No patent shall extend to prevent the use of any invention in any ship, vessel, aircraft or land vehicle of any other country, entering Canada temporarily or accidentally, if such invention is employed exclusively for the needs of the ship, vessel, aircraft or land vehicle, and not so used for the manufacture of any goods to be vended within or exported from Canada.

24. — (1) Every patentee under this Act shall, if possible, stamp or engrave on each patented article sold or offered for sale by him notice of the year of the date of the patent applying to such article, thus — Patented, 1935, or as the case may be.

(2) When, from the nature of any patented article it cannot be so stamped or engraved the patentee shall, if possible, affix to it, or to every package wherein one or more of such articles is or are enclosed, a label marked with the like notice.

(3) When any patented article or material is, from its nature or character, such that it cannot be so stamped or engraved and cannot, reasonably, be packaged or labelled the patentee shall, in all descriptive or advertising matter published by him and relating to such patented article or material, insert the like notice.

25. — In all proceedings before any court under this Act the costs of the Commissioner are in the discretion of the court, but the Commissioner shall not be ordered to pay the costs of any other of the parties.

26. — No relief, right or privilege granted to or acquired by any patentee or other person in respect of any patent or application for any patent under chapter 44 of the statutes of 1921 is affected by the repeal of that Act, but such relief,

right or privilege continues as if that Act had remained in force.

27. — The Commissioner shall, in each year, cause to be prepared and laid before Parliament a report of the proceedings under this Act, and shall, from time to time and at least once in each year, publish a list of all patents granted, and may, with the approval of the Governor in Council, cause such specifications and drawings as are deemed of interest or essential parts thereof, to be printed, from time to time for distribution or sale.

Application for Patents

28. — (1) Subject to the subsequent provisions of this section, any inventor or legal representative of an inventor of an invention that was

- (a) not known or used by any other person before he invented it,
 - (b) not described in any patent or in any publication printed in Canada or in any other country more than two years before presentation of the petition hereunder mentioned, and
 - (c) not in public use or on sale in Canada for more than two years prior to his application in Canada,
- may, on presentation to the Commissioner of a petition setting forth the facts (in this Act termed the filing of the application) and on compliance with all other requirements of this Act, obtain a patent granting to him an exclusive property in such invention.

(2) Any inventor or legal representative of an inventor who applies in Canada for a patent for an invention for which application for patent has been made in any other country by such inventor or his legal representative before the filing of the application in Canada is not entitled to obtain in Canada a patent for that invention unless his application in Canada is filed, either

- (a) before issue of any patent to such inventor or his legal representative for the same invention in any other country, or
- (b) if a patent has issued in any other country, within twelve months after the filing of the first application by such inventor or his legal representative for patent for such invention in any other country.

(3) No patent shall issue for an invention that has an illicit object in view, or for any mere scientific principle or abstract theorem.

29. — (1) An application for a patent for an invention filed in Canada by any person entitled to protection under the terms of any treaty or convention relating to patents to which Canada is a party who has, or whose agent or other legal representative has, previously regularly filed an application for a patent for the same invention in any other country which by treaty, convention or law affords similar privilege to citizens of Canada, has the same force and effect as the same application would have if filed in Canada on the date on which the application for patent for the same invention was first filed in such other country, if the application in this country is filed within twelve months from the earliest date

on which any such application was filed in such other country or from the 13th day of June, 1923.

(2) No patent shall be granted on an application for a patent for an invention that had been patented or described in a patent or publication printed in Canada or any other country more than two years before the date of the actual filing of the application in Canada, or had been in public use or on sale in Canada for more than two years prior to such filing.

30. — No patent granted by virtue of *The Patent Act*, chapter 23 of the statutes of 1923, or by virtue of this Act, on an application filed prior to the 1st day of August, 1935, or within six months thereafter and within two years of the date of the grant of the first patent granted in any country other than Canada for the same invention, is void by reason of the date of filing of such application having been more than twelve months after the date of filing in such other country of the first application for the same invention or by reason of a patent having been granted in such other country prior to application in Canada.

31. — (1) Any applicant for patent who does not appear to reside or carry on business at a specified address in Canada shall, at the time of filing his application or within such period thereafter as the Commissioner may allow, nominate as his representative a person or firm residing or carrying on business at a specified address in Canada.

(2) Subject as hereinafter provided, such nominee shall be deemed to be the representative for all purposes of this Act, including the service of any proceedings taken thereunder, of any such applicant and of any patentee of a patent issued on his application who does not appear to reside or carry on business at a specified address in Canada, and shall be recorded as such by the Commissioner.

(3) An applicant for patent or a patentee may by written advice to the Commissioner appoint another representative in place of the last recorded representative, or may advise the Commissioner in writing of a change in the address of the last recorded representative, and shall so appoint a new representative or supply a new and correct address of the last recorded representative on the despatch by the Commissioner to him of a notice in writing by registered mail that the last recorded representative has died or that a letter addressed to him at the last recorded address and sent by ordinary mail has been returned undelivered.

(4) Where, after the despatch of a notice as aforesaid by the Commissioner, no new appointment is made or no new and correct address is supplied by the applicant or patentee within three months or such further period as the Commissioner may allow, the Exchequer Court or the Commissioner may dispose of any proceedings under this Act without requiring service on the applicant or patentee of any process therein.

(5) No fee is payable on the appointment of a new representative or the supply of a new and correct address, unless such appointment or supply follows the despatch of a notice

in writing by the Commissioner as aforesaid, in which case a fee as prescribed shall be payable.

32. — Each application for a patent shall be completed within twelve months after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within six months after any examiner, appointed pursuant to section 6, has taken action thereon of which notice has been given to the applicant, such application shall be deemed to have been abandoned, but it may be reinstated on petition presented to the Commissioner within twelve months after the date on which it was deemed to have been abandoned, and on payment of the prescribed fee, if the petitioner satisfies the Commissioner that the failure to complete or prosecute the application within the time specified was not reasonably avoidable; an application so reinstated shall retain its original filing date.

Joint Applications

33. — (1) Where an invention is made by two or more inventors, and one of them refuses to make application for a patent or his whereabouts cannot be ascertained after diligent enquiry, the other inventor or his legal representative may make application, and a patent may be granted in the name of the inventor who makes the application, on satisfying the Commissioner that the joint inventor has refused to make application or that his whereabouts cannot be ascertained after diligent enquiry.

(2) In any case where

- (a) an applicant has agreed in writing to assign a patent, when granted, to another person or to a joint applicant and refuses to proceed with application, or
- (b) disputes arise between joint applicants as to proceeding with an application,

the Commissioner, on proof of such agreement to his satisfaction, or if satisfied that one or more of such applicants ought to be allowed to proceed alone, may allow such other person or joint applicant to proceed with the application, and may grant a patent to him, so, however, that all persons interested are entitled to be heard before the Commissioner after such notice as he may deem requisite and sufficient.

(3) Where an application is filed by joint applicants, and it subsequently appears that one or more of them has had no part in the invention, the prosecution of such application may be carried on by the remaining applicant or applicants on satisfying the Commissioner by affidavit that the remaining applicant or applicants is or are the sole inventor or inventors.

(4) Where an application is filed by one or more applicants and it subsequently appears that one or more further applicants should have been joined, such further applicant or applicants may be joined on satisfying the Commissioner that he or they should be so joined, and that the omission of such further applicant or applicants had been by inadvertence or *bona fide* mistake and was not for the purpose of delay.

(5) Subject to the provisions of this section, in cases of joint applications the patent shall be granted in the names of all the applicants.

(6) An appeal lies to the Exchequer Court from the decision of the Commissioner under this section.

Improvements

34. — Any person who has invented any improvement on any patented invention may obtain a patent for such improvement, but he does not thereby obtain the right of making, vending or using the original invention, nor does the patent for the original invention confer the right of making, vending or using the patented improvement.

Specifications and Claims

35. — The applicant shall, in his application for a patent, insert the title or name of the invention, and shall, with the application, send in a specification in duplicate of the invention and an additional or third copy of the claim or claims.

36. — (1) The applicant shall in the specification correctly and fully describe the invention and its operation or use as contemplated by the inventor, and set forth clearly the various steps in a process, or the method of constructing, making, compounding or using a machine, manufacture or composition of matter, in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most closely connected, to make, construct, compound or use it; in the case of a machine he shall explain the principle thereof and the best mode in which he has contemplated the application of that principle; in the case of a process he shall explain the necessary sequence, if any, of the various steps, so as to distinguish the invention from other inventions; he shall particularly indicate and distinctly claim the part, improvement or combination which he claims as his invention.

(2) The specification shall end with a claim or claims stating distinctly and in explicit terms the things or combinations that the applicant regards as new and in which he claims an exclusive property or privilege.

⁴ (3) Repealed 1968-69, c. 55, s. 3.

Examination

37. — On each application for a patent a careful examination shall be made by competent examiners to be employed in the Patent Office for that purpose.

Divisional Applications

38. — (1) A patent shall be granted for one invention only but in an action or other proceeding a patent shall not be deemed to be invalid by reason only that it has been granted for more than one invention.

(2) Where an application describes and claims more than one invention the applicant may, and on the direction of the Commissioner to that effect shall, limit his claims to one invention only, and the invention or inventions defined in the other claims may be made the subject of one more divisional applications, if such divisional applications are filed before the issue of a patent on the original application; but if the

⁴ Effective October 1, 1969 (P. C. 1969-1501, July 29, 1969).

original application becomes abandoned or forfeited, the time for filing divisional applications terminates with the expiration of the time for reinstating or restoring or reviving the original application under this Act or the rules made thereunder.

(3) Such divisional applications shall be deemed to be separate and distinct applications under this Act, to which the provisions thereof shall apply as fully as may be; separate fees shall be paid on each of such applications and they shall bear the filing date of the original application.

Drawings and Models

39. — (1) In the case of a machine, or in any other case in which the invention admits of illustration by means of drawings, the applicant shall also with his application, send in drawings in duplicate, showing clearly all parts of the invention; each drawing shall bear the signature of the inventor, or of the applicant, or of the attorney of such inventor or applicant, and shall have written references corresponding with the specification, but the Commissioner may require further drawings or dispense with any of them as he sees fit.

(2) One duplicate of the specification and of the drawings, if there are drawings, shall be annexed to the patent, of which it shall form an essential part, and the other duplicate shall remain deposited in the Patent Office.

(3) The Commissioner may, in his discretion, dispense with the duplicate specification and drawing and the third copy of the claim or claims, and in lieu thereof cause copies of the specification and drawing, in print or otherwise, to be attached to the patent, of which they shall form an essential part.

40. — (1) In all cases in which the invention admits of representation by model, the applicant, if required by the Commissioner, shall furnish a model of convenient size exhibiting its several parts in due proportion; and when the invention is a composition of matter, the applicant, if required by the Commissioner, shall furnish specimens of the ingredients, and of the composition, sufficient in quantity for the purpose of experiment.

(2) If such ingredients or composition are of an explosive or dangerous character, they shall be furnished with such precautions as are prescribed in the requisition therefor.

Chemical Products and Substances

41. — (1) In the case of inventions relating to substances prepared or produced by chemical processes and intended for food or medicine, the specification shall not include claims for the substance itself, except when prepared or produced by the methods or processes of manufacture particularly described and claimed or by their obvious chemical equivalents.

(2) In an action for infringement of a patent where the invention relates to the production of a new substance, any substance of the same chemical composition and constitution shall, in the absence of proof to the contrary, be deemed to have been produced by the patented process.

(3) In the case of any patent for an invention intended or capable of being used for the preparation or production of food, the Commissioner shall, unless he sees good reason to the contrary, grant to any person applying for the same a licence limited to the use of the invention for the purposes of the preparation or production of food but not otherwise; and, in settling the terms of the licence and fixing the amount of royalty or other consideration payable, the Commissioner shall have regard to the desirability of making the food available to the public at the lowest possible price consistent with giving to the inventor due reward for the research leading to the invention.

(4) Where, in the case of any patent for an invention intended or capable of being used for medicine or for the preparation or production of medicine, an application is made by any person for a licence to do one or more of the following things as specified in the application, namely:

- (a) where the invention is a process, to use the invention for the preparation or production of medicine, import any medicine in the preparation or production of which the invention has been used or sell any medicine in the preparation or production of which the invention has been used, or
- (b) where the invention is other than a process, to import, make, use or sell the invention for medicine or for the preparation or production of medicine,

the Commissioner shall grant to the applicant a licence to do the things specified in the application except such, if any, of those things in respect of which he sees good reason not to grant such a licence; and, in settling the terms of the licence and fixing the amount of royalty or other consideration payable, the Commissioner shall have regard to the desirability of making the medicine available to the public at the lowest possible price consistent with giving to the patentee due reward for the research leading to the invention and for such other factors as may be prescribed.

(5) At any time after the expiration of six months from the day on which a copy of an application to the Commissioner pursuant to subsection (4) is served on the patentee in prescribed manner, the applicant may, if the Commissioner has not finally disposed of the application, request the Commissioner to grant to him an interim licence to do such one or more of the things specified in the application as are specified in the request, and the Commissioner shall, upon receipt of such request, forthwith serve upon the patentee a notice stating that he may, within such a period as is specified by the Commissioner in the notice, not exceeding twenty-one days from the day the notice is served on the patentee, make representations with respect to the request.

(6) Upon the expiration of the period specified by the Commissioner in the notice to the patentee referred to in subsection (5), the Commissioner shall, if he has not finally disposed of the application, grant an interim licence to the applicant to do the things specified in the request except such, if any, of those things in respect of which he sees good reason not to grant such an interim licence.

(7) Subsection (4) applies, *mutatis mutandis*, in settling the terms of an interim licence granted pursuant to subsection (6) and fixing the amount of royalty or other consideration payable.

(8) The Commissioner shall not grant an interim licence pursuant to subsection (6) unless the applicant has filed with the Commissioner a guarantee bond satisfactory to the Commissioner, payable to Her Majesty in right of Canada, to secure the payment by the applicant of the royalties or other consideration that may become payable to the patentee under the interim licence.

(9) Subject to subsection (10), an interim licence granted pursuant to subsection (6) shall have effect according to its terms for an initial period, not exceeding six months from the day on which the interim licence is granted, specified by the Commissioner in the licence and may, in prescribed circumstances, be renewed by order of the Commissioner for a further period or periods not exceeding six months in all.

(10) An interim licence granted to an applicant pursuant to subsection (6) ceases to have effect

- (a) where the Commissioner grants a licence to the applicant pursuant to his application made under subsection (4), on the day on which such licence becomes effective; or
- (b) where the Commissioner rejects such application, on the expiration of the period for which the interim licence is then in effect.

(11) Any decision of the Commissioner under this section is subject to appeal to the Exchequer Court, except that a decision of the Commissioner with respect to an interim licence is final for all purposes and is not subject to appeal or to review by any court.

(12) Notwithstanding subsection (2) of section 67, where the importation from abroad of an invention or medicine by a licensee pursuant to a licence or an interim licence granted under a patent pursuant to subsection (4) or (6), or by the patentee while the licence or interim licence is in effect, is preventing or hindering the working within Canada on a commercial scale of the invention to which the patent relates, the exclusive rights under the patent shall not be deemed to have been abused in any of the circumstances described in paragraph (a) or (b) of subsection (2) of section 67.

(13) Where an application is made pursuant to subsection (4) or a request is made pursuant to subsection (5), the Commissioner shall forthwith give notice of such application or request to the Department of National Health and Welfare and to any other prescribed department or agency of the Government of Canada.

(14) The Governor in Council may make rules or regulations

- (a) prescribing anything that by this section is to be prescribed;
- (b) regulating the procedure to be followed on any application made pursuant to subsection (3) or (4), including, without limiting the generality of the foregoing, the information to be contained in any such application and the making of representations to, and the adducing of

evidence before, the Commissioner with respect to any such application;

- (c) respecting the form and manner in which an applicant or patentee may make representations to, and adduce evidence before, the Commissioner with respect to any application or request referred to in this section;
- (d) respecting the manner in which any application, request, notice or other document referred to in this section or in any regulation made under this subsection may or shall be made, served, forwarded or given;
- (e) providing for the making of representations to the Commissioner on behalf of the Government of Canada with respect to any application or request referred to in subsection (13); and
- (f) generally, for carrying the purposes and provisions of this section into effect.

(15) Any rules or regulations made under paragraph (b) or subsection (14) regulating the procedure to be followed on any application made pursuant to subsection (4) shall include provision for the final disposal by the Commissioner of such application not later than eighteen months after the day on which a copy of the application is served on the patentee in prescribed manner.

(16) Nothing in this section or in any licence or interim licence granted pursuant to this section shall be construed as conferring upon any person authority to prepare, produce, import or sell any medicine contrary to, or otherwise than in accordance with, the requirements of the *Food and Drugs Act* and the regulations thereunder and of any other law applicable thereto.

Refusal of Patents

42. — Whenever the Commissioner is satisfied that the applicant is not by law entitled to be granted a patent he shall refuse the application and, by registered letter addressed to the applicant or his registered agent, notify such applicant of such refusal and of the ground or reason therefor.

43. — Whenever it appears to the Commissioner that the invention to which an application relates has been, before the filing of the application, described in a patent granted in Canada or any other country, and such application was filed within two years after the date on which such patent was so granted and the Commissioner entertains doubts whether the patentee of such invention is, as between him and the applicant, the first inventor, the Commissioner shall, by registered letter addressed to the applicant or his registered agent, object to grant a patent on such application and state, with sufficient detail to enable the applicant, if he can, to answer, the ground or reason for such objection; the applicant has the right, within such period or extended period of time as the Commissioner may allow, to answer such objection and if it is not in due course answered to the satisfaction of the Commissioner he shall refuse the application.

44. — Every person who has failed to obtain a patent by reason of a refusal or objection of the Commissioner to grant it may, at any time within six months after notice as provided

for in sections 42 and 43 has been mailed, appeal from the decision of the Commissioner to the Exchequer Court and that Court has exclusive jurisdiction to hear and determine such appeal.

Conflicting Applications

45. — (1) Conflict between two or more pending applications exists

- (a) when each of them contains one or more claims defining substantially the same invention, or
- (b) when one or more claims of one application describe the invention disclosed in the other application.

(2) When the Commissioner has before him two or more such applications he shall notify each of the applicants of the apparent conflict and transmit to each of them a copy of the conflicting claims, together with a copy of this section; the Commissioner shall give to each applicant the opportunity of inserting the same or similar claims in his application within a specified time.

(3) Where each of two or more of such completed applications contains one or more claims describing as new, and claims an exclusive property or privilege in, things or combinations so nearly identical that, in the opinion of the Commissioner, separate patents to different patentees should not be granted, the Commissioner shall forthwith notify each of the applicants to that effect.

(4) Each of the applicants, within a time to be fixed by the Commissioner, shall either avoid the conflict by the amendment or cancellation of the conflicting claim or claims, or, if unable to make such claims owing to knowledge of prior art, may submit to the Commissioner such prior art alleged to anticipate the claims; thereupon each application shall be re-examined with reference to such prior art, and the Commissioner shall decide if the subject matter of such claims is patentable.

(5) Where the subject matter is found to be patentable and the conflicting claims are retained in the applications, the Commissioner shall require each applicant to file in the Patent Office, in a sealed envelope duly endorsed, within a time specified by him, an affidavit of the record of the invention; the affidavit shall declare:

- (a) the date at which the idea of the invention described in the conflicting claims was conceived;
- (b) the date upon which the first drawing of the invention was made;
- (c) the date when and the mode in which the first written or verbal disclosure of the invention was made; and
- (d) the dates and nature of the successive steps subsequently taken by the inventor to develop and perfect the said invention from time to time up to the date of the filing of the application for patent.

(6) No envelope containing any such affidavit as aforesaid shall be opened, nor shall the affidavit be permitted to be inspected, unless there continues to be a conflict between two or more applicants, in which event all the envelopes shall be opened at the same time by the Commissioner in the presence of the Assistant Commissioner or an examiner as witness

thereto, and the date of such opening shall be endorsed upon the affidavits.

(7) The Commissioner, after examining the facts stated in the affidavits, shall determine which of the applicants is the prior inventor to whom he will allow the claims in conflict and shall forward to each applicant a copy of his decision; a copy of each affidavit shall be transmitted to the several applicants.

(8) The claims in conflict shall be rejected or allowed accordingly unless within a time to be fixed by the Commissioner and notified to the several applicants one of them commences proceedings in the Exchequer Court for the determination of their respective rights, in which event the Commissioner shall suspend further action on the applications in conflict until in such action it has been determined either

- (a) that there is in fact no conflict between the claims in question,
- (b) that none of the applicants is entitled to the issue of a patent containing the claims in conflict as applied for by him,
- (c) that a patent or patents, including substitute claims approved by the Court, may issue to one or more of the applicants, or
- (d) that one of the applicants is entitled as against the others to the issue of a patent including the claims in conflict as applied for by him.

(9) The Commissioner shall, upon the request of any of the parties to a proceeding under this section, transmit to the Exchequer Court the papers on file in the Patent Office relating to the applications in conflict.

Grant of Patents

46. — Every patent granted under this Act shall contain the title or name of the invention, with a reference to the specification, and shall, subject to the conditions in this Act prescribed, grant to the patentee and his legal representatives for the term therein mentioned, from the granting of the same, the exclusive right, privilege and liberty of making, constructing, using and vending to others to be used the said invention, subject to adjudication in respect thereof before any court of competent jurisdiction.

47. — Repealed. 1953-54, c. 40, s. 15.

Form and Term of Patents

48. — Every patent granted under this Act shall be issued under the signature of the Commissioner and the seal of the Patent Office; the patent shall bear on its face the date on which it is granted and issued and it shall thereafter be *prima facie* valid and avail the grantee and his legal representatives for the term mentioned therein, which term shall be as provided in and by section 49.

49. — (1) The term limited for the duration of every patent of invention issued by the Patent Office under this Act the application for which patent is filed after the 1st day

of August, 1935, shall be seventeen years from the date on which the patent is granted and issued.

(2) The term limited for the duration of every patent of invention issued by the Patent Office under this Act the application for which patent was filed prior to the 1st day of August, 1935, shall be eighteen years from the date on which the patent is granted and issued.

Reissue of Patents

⁵ 50. — (1) Whenever any patent is deemed defective or inoperative by reason of insufficient description or specification, or by reason of the patentee's claiming more or less than he had a right to claim as new, but at the same time it appears that the error arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention, the Commissioner may, upon the surrender of such patent within four years from its date and the payment of a further prescribed fee, cause a new patent, in accordance with an amended description and specification made by such patentee, to be issued to him for the same invention for the then unexpired term for which the original patent was granted.

(2) Such surrender takes effect only upon the issue of the new patent, and such new patent and the amended description and specification have the same effect in law, on the trial of any action thereafter commenced for any cause subsequently accruing, as if such amended description and specification had been originally filed in their corrected form before the issue of the original patent, but in so far as the claims of the original and reissued patents are identical such surrender does not affect any action pending at the time of reissue nor abate any cause of action then existing, and the issued patent to the extent that its claims are identical with the original patent constitutes a continuation thereof and has effect continuously from the date of the original patent.

(3) The Commissioner may entertain separate applications and cause patents to be issued for distinct and separate parts of the invention patented, upon payment of the fee for a reissue for each of such reissued patents.

Disclaimers

51. — (1) Whenever, by any mistake, accident or inadvertence, and without any wilful intent to defraud or mislead the public, a patentee has

- (a) made his specification too broad, claiming more than that of which he or the person through whom he claims was the first inventor, or
- (b) in the specification, claimed that he or the person through whom he claims was the first inventor of any material or substantial part of the invention patented of which he was not the first inventor, and to which he had no lawful right,

⁶ he may, on payment of the prescribed fee, make disclaimer of such parts as he does not claim to hold by virtue of the patent or the assignment thereof.

(2) Such disclaimer shall be in writing, and in duplicate, and shall be attested by one or more witnesses; one copy thereof shall be filed and recorded in the office of the Commissioner; the other shall be attached to the patent and made a part thereof by reference; the disclaimer shall thereafter be deemed to be part of the original specification.

(3) No disclaimer affects any action pending at the time when it is made, except as to unreasonable neglect or delay in making it.

(4) In case of the death of the original patentee or of his having assigned the patent a like right to disclaim vests in his legal representatives, any of whom may exercise it.

(5) The patent shall, after disclaimer as in this section provided, be deemed to be valid for such material and substantial part of the invention, definitely distinguished from other parts thereof claimed without right, as is not disclaimed and is truly the invention of the disclaimant, and the disclaimant shall be entitled to maintain an action or suit in respect of such part accordingly.

Assignments and Devolutions

52. — (1) A patent may be granted to any person to whom an inventor, entitled under this Act to obtain a patent, has assigned in writing or bequeathed by his last will his right to obtain it; in the absence of such assignment or bequest the patent may be granted to the personal representatives of the estate of a deceased inventor.

(2) Where the applicant for a patent has, after filing his application, assigned his right to obtain the patent, or where he has either before or after filing his application assigned in writing the whole or part of his property or interest in the invention, the assignee may register such assignment in the Patent Office in the manner from time to time prescribed by the Commissioner, and no application for a patent shall be withdrawn without the consent in writing of every such registered assignee.

(3) No such assignment shall be registered in the Patent Office unless it is accompanied by the affidavit of a subscribing witness or established by other proof to the satisfaction of the Commissioner that such assignment has been signed and executed by the assignor.

53. — (1) Every patent issued for an invention is assignable in law, either as to the whole interest or as to any part thereof, by an instrument in writing.

(2) Such assignment, and every grant and conveyance of any exclusive right to make and use and to grant to others the right to make and use the invention patented, within and throughout Canada or any part thereof, shall be registered in the Patent Office in the manner from time to time prescribed by the Commissioner.

(3) No such assignment, grant or conveyance shall be registered in the Patent Office unless it is accompanied by the affidavit of a subscribing witness or established by other proof to the satisfaction of the Commissioner that such assignment, grant or conveyance has been signed and executed by the assignor and also by every other party thereto.

⁵ Effective October 1, 1969 (P. C. 1969-1501, July 29, 1969).

⁶ Effective October 1, 1969 (P. C. 1969-1501, July 29, 1969).

(4) Every assignment affecting a patent for invention, whether it be referable to this section or section 52, is null and void against any subsequent assignee, unless such instrument is registered as hereinbefore prescribed, before the registration of the instrument under which such subsequent assignee claims.

54. — The Exchequer Court has jurisdiction, on the application of the Commissioner or of any person interested, to order that any entry in the records of the Patent Office relating to the title to a patent be varied or expunged.

Legal Proceedings in Respect of Patents

55. — (1) A patent is void if any material allegation in the petition of the applicant in respect of such patent is untrue, or if the specification and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, and such omission or addition is wilfully made for the purpose of misleading.

(2) Where it appears to the court that such omission or addition was an involuntary error, and it is proved that the patentee is entitled to the remainder of his patent *pro tanto*, the court shall render a judgment in accordance with the facts, and shall determine as to costs, and the patent shall be held valid for that part of the invention described to which the patentee is so found to be entitled.

(3) Two office copies of such judgment shall be furnished to the Patent Office by the patentee; one of them shall be registered and remain of record in the office and the other shall be attached to the patent and made a part of it by a reference thereto.

Infringement

56. — (1) An action for the infringement of a patent may be brought in that court of record that, in the province where in the infringement is said to have occurred, has jurisdiction, pecuniarily, to the amount of the damages claimed and that, with relation to the other courts of the province holds its sittings nearest to the place of residence or of business of the defendant; such court shall decide the case and determine as to costs, and assumption of jurisdiction by the court is of itself sufficient proof of jurisdiction.

(2) Nothing in this section impairs the jurisdiction of the Exchequer Court under section 21 of the *Exchequer Court Act* or otherwise.

57. — (1) Any person who infringes a patent is liable to the patentee and to all persons claiming under him for all damages sustained by the patentee or by any such person, by reason of such infringement.

(2) Unless otherwise expressly provided, the patentee shall be or be made a party to any action for the recovery of such damages.

58. — Every person who, before the issuing of a patent has purchased, constructed or acquired any invention for which a patent is afterwards obtained under this Act, has the right of using and vending to others the specific article, machine, manufacture or composition of matter patented and so

purchased, constructed or acquired before the issue of the patent therefor, without being liable to the patentee or his legal representatives for so doing; but the patent shall not, as regards other persons, be held invalid by reason of such purchase, construction or acquisition or use of the invention by the person first mentioned, or by those to whom he has sold it, unless it was purchased, constructed, acquired or used for a longer period than two years before the application for a patent therefor, in consequence whereof the invention became public and available to public use.

59. — (1) In any action for infringement of a patent the court, or any judge thereof, may, on the application of the plaintiff or defendant make such order as the court or judge sees fit,

(a) restraining or enjoining the opposite party from further use, manufacture or sale of the subject matter of the patent, and for his punishment in the event of disobedience of such order, or

(b) for and respecting inspection or account, and

(c) generally, respecting the proceedings in the action.

(2) An appeal lies from any such order under the same circumstances and to the same court as from other judgments or orders of the court in which the order is made.

60. — When in any action or proceeding respecting a patent that contains two or more claims, one or more of such claims is or are held to be valid, but another or others is or are held to be invalid or void, effect shall be given to the patent as if it contained only the valid claim or claims.

61. — The defendant, in any action for infringement of a patent may plead as matter of defence any fact or default which by this Act or by law renders the patent void, and the court shall take cognizance of such pleading and of the relevant facts and decide accordingly.

Impeachment

62. — (1) A patent or any claim in a patent may be declared invalid or void by the Exchequer Court at the instance of the Attorney General of Canada or at the instance of any interested person.

(2) Where any person has reasonable cause to believe that any process used or proposed to be used or any article made, used or sold or proposed to be made, used or sold by him might be alleged by any patentee to constitute an infringement of an exclusive property or privilege granted thereby, he may bring an action in the Exchequer Court against the patentee for a declaration that such process or article does not or would not constitute an infringement of such exclusive property or privilege.

(3) Except the Attorney General of Canada or the attorney-general of a province of Canada the plaintiff in any action under this section shall, before proceeding therein, give security for the costs of the patentee in such sum as the Court may direct, but a defendant in any action for the infringement of a patent is entitled to obtain a declaration under this section without being required to furnish any security.

Priority of Inventions

63. — (1) No patent or claim in a patent shall be declared invalid or void on the ground that, before the invention therein defined was made by the inventor by whom the patent was applied for, it had already been known or used by some other person, unless it is established either that,

- (a) before the date of the application for the patent such other person had disclosed or used the invention in such manner that it had become available to the public, or that
- (b) such other person had, before the issue of the patent, made an application for patent in Canada upon which conflict proceedings should have been directed, or that
- (c) such other person had at any time made an application in Canada which, by virtue of section 29, had the same force and effect as if it had been filed in Canada before the issue of the patent and upon which conflict proceedings should properly have been directed had it been so filed.

(2) Notwithstanding the provisions of section 43, an application for a patent for an invention for which a patent has already issued under this Act shall be rejected unless the applicant, within a time to be fixed by the Commissioner, commences an action to set aside the prior patent, so far as it covers the invention in question, but if such action is so commenced and diligently prosecuted, the application shall not be deemed to have been abandoned unless the applicant fails to proceed upon it within a reasonable time after the action has been finally disposed of.

(3) Where the application was filed within one year from the date of the filing of the application for the prior patent, the provisions of subsection (1) do not apply to the determination of the respective rights of the parties to such action.

Judgments

64. — A certificate of the judgment voiding in whole or in part any patent shall, at the request of any person filing it to make it of record in the Patent Office, be entered on the margin of the enrolment of the patent in the Patent Office, and the patent or such part thereof as is so voided shall thereupon be and be held to have been void and of no effect, unless the judgment is reversed on appeal as hereinafter provided.

65. — Every judgment voiding in whole or in part or refusing to void in whole or in part any patent is subject to appeal to any court having appellate jurisdiction in other cases decided by the court by which such judgment was rendered.

Conditions

66. — (1) The Commissioner may, at any time, by notice in writing addressed to the patentee of any patent specified by him, or to his registered representative in Canada, and to every person who has a registered interest in such patent, require the patentee and such persons in respect of such specified patent to transmit and deliver to the Commissioner within sixty days from the date of such notice, or within such further time as the Commissioner may allow, a return stating

- (a) whether the patented invention is being worked on a commercial scale in Canada, and the place where and the name and address of the person by whom the patented invention is being so worked, and
- (b) the reasons, if any, why such patented invention is not being worked on a commercial scale in Canada.

(2) The failure of the patentee or his registered representative in Canada or that of any such person having a registered interest to comply with the terms of the notice mentioned in subsection (1) shall be deemed to be an admission on the part of the patentee or the person, as the case may be, so failing, that the patented invention is not being worked on a commercial scale in Canada.

67. — (1) The Attorney General of Canada or any person interested may at any time after the expiration of three years from the date of the grant of a patent apply to the Commissioner alleging in the case of that patent that there has been an abuse of the exclusive rights thereunder and asking for relief under this Act.

(2) The exclusive rights under a patent shall be deemed to have been abused in any of the following circumstances:

- (a) if the patented invention (being one capable of being worked within Canada) is not being worked within Canada on a commercial scale, and no satisfactory reason can be given for such non-working, but if an application is presented to the Commissioner on this ground, and the Commissioner is of opinion that the time that has elapsed since the grant of the patent has by reason of the nature of the invention or for any other cause been insufficient to enable the invention to be worked within Canada on a commercial scale, the Commissioner may make an order adjourning the application for such period as will in his opinion be sufficient for that purpose.
- (b) if the working of the invention within Canada on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him, or by other persons against whom the patentee is not taking or has not taken any proceedings for infringement;
- (c) if the demand for the patented article in Canada is not being met to an adequate extent and on reasonable terms;
- (d) if, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of Canada or the trade of any person or class of persons trading in Canada, or the establishment of any new trade or industry in Canada, is prejudiced, and it is in the public interest that a licence or licences should be granted;
- (e) if any trade or industry in Canada, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire, licence, or use of the patented article, or to the using or working of the patented process;
- (f) if it is shown that the existence of the patent, being a patent for an invention relating to a process involving the use of materials not protected by the patent or for

an invention relating to a substance produced by such a process, has been utilized by the patentee so as unfairly to prejudice in Canada the manufacture, use or sale of any such materials.

(3) It is declared with relation to every paragraph of subsection (2) that, for the purpose of determining whether there has been any abuse of the exclusive rights under a patent, it shall be taken that patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be worked on a commercial scale in Canada without undue delay.

68. — On being satisfied that a case of abuse of the exclusive rights under a patent has been established, the Commissioner may exercise any of the following powers as he may deem expedient in the circumstances:

(a) he may order the grant to the applicant of a licence on such terms as the Commissioner may think expedient, including a term precluding the licensee from importing into Canada any goods the importation of which, if made by persons other than the patentee or persons claiming under him would be an infringement of the patent, and in such case the patentee and all licences for the time being shall be deemed to have mutually covenanted against such importation; a licensee under this paragraph is entitled to call upon the patentee to take proceedings to prevent infringement of the patent, and if the patentee refuses, or neglects to do so within two months after being so called upon, the licensee may institute proceedings for infringement in his own name as though he were the patentee, making the patentee a defendant; a patentee so added as defendant is not liable for any costs unless he enters an appearance and takes part in the proceedings; service on the patentee may be effected by leaving the writ at his address or at the address of his representative for service as appearing in the records of the Patent Office; in settling the terms of a licence under this paragraph the Commissioner shall be guided as far as may be by the following considerations:

- (i) he shall, on the one hand, endeavour to secure the widest possible use of the invention in Canada consistent with the patentee deriving a reasonable advantage from his patent rights,
- (ii) he shall, on the other hand, endeavour to secure to the patentee the maximum advantage consistent with the invention being worked by the licensee at a reasonable profit in Canada, and
- (iii) he shall also endeavour to secure equality of advantage among the several licensees, and for this purpose may, on due cause being shown, reduce the royalties or other payments accruing to the patentee under any licence previously granted, and in considering the question of equality of advantage, the Commissioner shall take into account any work done or outlay incurred by any previous licensee with a view to testing the commercial value of the invention or to securing the working thereof on a commercial scale in Canada;

- (b) if the Commissioner is satisfied that the invention is not being worked on a commercial scale within Canada, and is such that it cannot be so worked without the expenditure of capital for the raising of which it will be necessary to rely on the exclusive rights under the patent, he may, unless the patentee or those claiming under him will undertake to find such capital, order the grant to the applicant, or any other person, or to the applicant and any other person or persons jointly, if able and willing to provide such capital, of an exclusive licence on such terms as the Commissioner may think just, but subject as hereafter in this Act provided;
- (c) if the Commissioner is satisfied that the exclusive rights have been abused in the circumstances specified in paragraph (f) of subsection (2) of section 67, he may order the grant of licences to the applicant and to such of his customers, and containing such terms, as the Commissioner may think expedient;
- (d) if the Commissioner is satisfied that the objects of this section and section 67 cannot be attained by the exercise of any of the foregoing powers, he shall order the patent to be revoked, either forthwith or after such reasonable interval as may be specified in the order, unless in the meantime such conditions as may be prescribed in the order with a view to attaining the objects of this section and section 67 are fulfilled, and the Commissioner may, on reasonable cause shown in any case, by subsequent order extend the interval so specified; but the Commissioner shall make no order for revocation which it at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party;
- (e) if the Commissioner is of opinion that the objects of this section and section 67 will be best attained by making no order under the above provisions of this section, he may make an order refusing the application and dispose of any question as to costs thereon as he thinks just.

69. — (1) In settling the terms of any such exclusive licence as is provided in paragraph (b) of section 68, due regard shall be had to the risks undertaken by the licensee in providing the capital and working the invention, but, subject thereto, the licence shall be so framed as

- (a) to secure to the patentee the maximum royalty compatible with the licensee working the invention within Canada on a commercial scale and at a reasonable profit, and
- (b) to guarantee to the patentee a minimum yearly sum by way of royalty, if and so far as it is reasonable so to do, having regard to the capital requisite for the proper working of the invention and all the circumstances of the case;

and, in addition to any other powers expressed in the licence or order, the licence and the order granting the licence shall be made revocable at the discretion of the Commissioner if the licensee fails to expend the amount specified in the licence as being the amount that he is able and willing to provide for the purpose of working the invention on a com-

mercial scale within Canada, or if he fails so to work the invention within the time specified in the order.

(2) In deciding to whom such an exclusive licence is to be granted the Commissioner shall, unless good reason is shown to the contrary, prefer an existing licensee to a person having no registered interest in the patent.

(3) The order granting an exclusive licence under section 68 operates to take away from the patentee any right that he may have as patentee to work or use the invention and to revoke all existing licenses, unless otherwise provided in the order, but on granting an exclusive licence the Commissioner may, if he thinks it fair and equitable, make it a condition that the licensee shall give proper compensation to be fixed by the Commissioner for any money or labour expended by the patentee or any existing licensee in developing or exploiting the invention.

70. — (1) Every application presented to the Commissioner under section 67 or 68 shall set out fully the nature of the applicant's interest and the facts upon which the applicant bases his case and the relief which he seeks; the application shall be accompanied by statutory declarations verifying the applicant's interest and the facts set out in the application.

(2) The Commissioner shall consider the matters alleged in the application and declarations, and, if satisfied that the applicant has a *bona fide* interest and that a *prima facie* case for relief has been made out, he shall direct the applicant to serve copies of the application and declarations upon the patentee or his representative for service and upon any other persons appearing from the records of the Patent Office to be interested in the patent, and the applicant shall advertise the application in the *Canada Gazette* and the Canadian Patent Office Record.

71. — (1) If the patentee or any person is desirous of opposing the granting of any relief under sections 67 to 72, he shall, within such time as may be prescribed or within such extended time as the Commissioner may on application further allow, deliver to the Commissioner a counter statement verified by a statutory declaration fully setting out the grounds on which the application is to be opposed.

(2) The Commissioner shall consider the counter statement and declarations in support thereof and may thereupon dismiss the application if satisfied that the allegations in the application have been adequately answered, unless any of the parties demands a hearing or unless the Commissioner himself appoints a hearing; in any case the Commissioner may require the attendance before him of any of the declarants to be cross-examined or further examined upon matters relevant to the issues raised in the application and counter statement, and he may, subject to due precautions against disclosure of information to rivals in trade, require the production before him of books and documents relating to the matter in issue.

(3) In any case where the Commissioner does not dismiss an application as hereinbefore provided, and

(a) if the parties interested consent, or

(b) if the proceedings require any prolonged examination of documents or any scientific or local investigation that cannot in the opinion of the Commissioner conveniently be made before him,

the Commissioner with the approval in writing of the Minister may order the whole proceedings or any issue of fact arising thereunder to be referred to the Exchequer Court, which has jurisdiction in the premises, and where the whole proceedings are so referred, the judgment, decision or order of said Court is final; and where a question or issue of fact is so referred, the said Court shall report its findings to the Commissioner.

72. — (1) Any order for the grant of a licence under this Act, without prejudice to any other method of enforcement, operates as if it were embodied in a deed granting a licence executed by the patentee and all other necessary parties.

(2) The provisions of sections 67 to 72 do not apply to patents granted subject to the provisions of section 47.

(3) For the purposes of sections 67 to 72, the expression "patented article" includes articles made by a patented process.

73. — All orders and decisions of the Commissioner under sections 67 to 72 are subject to appeal to the Exchequer Court, and on any such appeal the Attorney General of Canada or such counsel as he may appoint is entitled to appear and be heard.

Caveats

74. — (1) Any intending applicant for a patent who has not yet perfected his invention and is in fear of being despoiled of his idea, may file in the Patent Office a document setting forth a description of his invention so far as it has proceeded, with or without plans, at his own will; and the Commissioner, on payment of the prescribed fee shall cause that document, which shall be called a *caveat*, to be preserved in secrecy with the exception that he shall deliver copies thereof whenever required by the applicant or by any judicial tribunal; the secrecy of the document ceases when the applicant obtains a patent for his invention.

(2) Where application is made by any other person for a patent for any invention with which such *caveat* may in any respect interfere the Commissioner shall forthwith give notice of such application by mail to the person who has filed such *caveat*, and such person shall, within three months after the date of mailing the notice, if he wishes to avail himself of the *caveat*, file his petition and take the other steps necessary on an application for a patent, and if, in the opinion of the Commissioner, the applications are conflicting, like proceedings may be had in all respects as are by this Act provided in the case of conflicting applications.

(3) Unless the person filing a *caveat* makes application within one year from such filing the Commissioner is relieved from the obligation of giving notice and the *caveat* thereafter remains as a simple matter of proof as to novelty or priority of invention, if required.

7 Forfeiture and Restoration of Applications

Rep. and new. 1968-69, c. 55, s. 6

7 75. — (1) Where the prescribed fees stated to be payable in a notice of allowance of patent are not paid within six months from the date of the notice, the application for patent is thereupon forfeited.

(2) A forfeited application may be restored and a patent granted thereon on application to the Commissioner within six months from the incurrance of the forfeiture, on payment with the application for restoration, in addition to the fees payable on the grant of the patent, of a further prescribed fee.

(3) A restored application is subject to amendment and re-examination.

7 76. — Repealed. 1968-69, c. 55, s. 7.

7 77. — Repealed. 1968-69, c. 55, s. 7.

7 78. — Repealed. 1968-69, c. 55, s. 7.

Newfoundland Patents

79. — (1) Patents issued under the laws of Newfoundland prior to the 1st day of April, 1949, shall be deemed to have been issued under the laws of Canada, as of the date and for the term thereof.

(2) In the event of conflict between patents issued under the laws of Newfoundland prior to the 1st day of April, 1949, and patents issued under the laws of Canada prior to that date

(a) the patents issued under the laws of Newfoundland shall have the same force and effect in the Province of Newfoundland as if Newfoundland had not become part of Canada, and all rights and privileges acquired under or by virtue thereof may continue to be exercised or enjoyed in the Province of Newfoundland as if Newfoundland had not become part of Canada; and

(b) the patents issued under the laws of Canada shall have the same force and effect in any part of Canada other than the Province of Newfoundland as if Newfoundland had not become part of Canada, and all rights and privileges acquired under or by virtue thereof may continue to be exercised or enjoyed in any part of Canada other than the Province of Newfoundland as if Newfoundland had not become part of Canada.

(3) The laws of Newfoundland as they existed immediately prior to the expiration of the 31st day of March, 1949, shall continue to apply in respect of applications for patents under the laws of Newfoundland pending at that time, and any patents issued upon such applications shall, for the purposes of this section, be deemed to have been issued under the laws of Newfoundland prior to the 1st day of April, 1949; and patents issued under the laws of Canada upon applications pending immediately prior to the expiration of the said 31st day of March shall, for the purposes of this section, be deemed to have been issued under the laws of Canada prior to the said 1st day of April.

(4) No claims for infringement of a patent issued in Canada prior to the 1st day of April, 1949, shall be entertained by any court against any person for anything done in Newfoundland prior to that date in respect of the invention protected by such patent, and no claims for infringement of a patent issued in Newfoundland prior to that date shall be entertained by any court against any person for anything done in Canada prior to that date in respect of the invention protected by such patent.

Offences and Penalties

80. — Any patentee under this Act or any one claiming under him who, in contravention of any requirement of section 24, sells or offers for sale any articles patented under this Act, is liable to a fine not exceeding one hundred dollars, and in default of the payment of such fine, to imprisonment for a term not exceeding two months.

81. — Every person who

(a) without the consent of the patentee, writes, paints, prints, moulds, casts, carves, engraves, stamps or otherwise marks upon anything made or sold by him, and for the sole making or selling of which he is not the patentee, the name or any imitation of the name of any patentee for the sole making or selling of such thing;

(b) without the consent of the patentee, writes, paints, prints, moulds, casts, carves, engraves, stamps or otherwise marks upon anything not purchased from the patentee, the words *Patent*, *Letters Patent*, *Queen's or King's Patent*, *Patented*, or any word or words of like import, with the intent of counterfeiting or imitating the stamp, mark or device of the patentee, or of deceiving the public and inducing them to believe that the thing in question was made or sold by or with the consent of the patentee; or

(c) with intent to deceive the public offers for sale as patented in Canada any article not patented in Canada is guilty of an indictable offence, and liable to a fine not exceeding two hundred dollars, or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

82. — Every person who in relation to the purposes of this Act and knowing it to be false

(a) makes any false representation;

(b) makes or causes to be made any false entry in any register or book;

(c) makes or causes to be made any false document or alters the form of a copy of any document; or

(d) produces or tenders any document containing false information

is guilty of an indictable offence and is liable upon conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

83. — Every patent heretofore or hereafter issued shall be deemed to have been properly issued if all the conditions of the issue of a valid patent that may have been or shall be

⁷ Effective October 1, 1969 (P. C. 1969-1501, July 29, 1969).

in force, either at the date of the application therefor or at the date of the issue thereof, have been satisfied; but any provisions in force from time to time relating to the continued validity of patents after issue apply to all patents whenever granted.

84. — (1) Where any time limit or period of limitation specified under or pursuant to this Act expires upon a day when the Patent Office is closed for business, such time limit or period of limitation shall be deemed to be extended up to the next day when the Patent Office is open for business.

(2) The Patent Office shall be closed for business on Saturdays and holidays and on such other days as the Minister by order declares that it shall be closed for business.

(3) Every order made by the Minister under subsection (2) shall be published in the *Canadian Patent Office Record* as soon as possible after the making thereof.

HUNGARY

Law on Trademarks

(No. IX of 1969)

PART I

Legal Protection of Trademarks

CHAPTER I

Conditions of Trademark Protection

Article 1

Subject Matter of Trademark Protection

Under the present Law, all marks shall be granted trademark protection which

- (a) are appropriate to distinguish goods and services (hereinafter "goods") from other goods, and
- (b) the protection of which is not excluded by law.

Article 2

Distinctive Character

(1) A mark is appropriate for distinguishing if it gives to the goods compared with identical or similar goods a special, different character.

(2) A mark can consist of a word, a combination of words, a figure, a picture, a combination of colors, a two or three-dimensional device, an audio or visual signal or a combination of these elements.

(3) A mark lacks distinctive character particularly where

- (a) it is used generally to indicate the product;
- (b) it indicates exclusively the kind, quality, quantity, characteristics, purpose, value, place of origin or time of production of the goods.

Article 3

Marks Excluded from Trademark Protection

- (1) A mark shall not be granted trademark protection if:
- (a) it is liable to create confusion;
 - (b) its use would be contrary to law or socially accepted moral rules;
 - (c) it infringes individual rights of third parties;
 - (d) it is identical or confusingly similar to a trademark held by a third party and well-known in the country, even if that trademark is not registered in the country.

(2) Trademark protection shall not be granted to a mark which consists exclusively of the name, abbreviation, flag, armorial bearing or emblem of a state, an authority or an international or intergovernmental organization, or the imitation thereof; such marks may be used, however, with the authorization of the competent authority, as elements of trademarks.

(3) With respect to identical or similar goods, a mark shall not be granted trademark protection if:

- (a) it consists of official signs or hall-marks indicating control and warranty, or imitations thereof;
- (b) it has been under trademark protection for the benefit of a third party and, the protection having expired because of surrender or failure to renew, less than two years have elapsed since such expiration;
- (c) it is identical or similar, to a degree liable to create confusion, to a third party's trademark registered on an earlier priority date or to a trademark effectively used but not registered;
- (d) it is the name of a protected plant variety or animal breed.

CHAPTER II

Rights and Duties Deriving from Trademark Protection

Article 4

Right to Trademark Protection

(1) The right to a trademark and to legal protection thereof shall be enjoyed only by a party who has registered the mark in accordance with the procedure laid down in this Law. If more than one applicant seeks registration of the same mark or of similar marks, the trademark shall be registered in the name of the party with the earlier priority date, unless an interested party shows use prior to the priority date.

(2) Trademark protection shall be granted to an enterprise, a cooperative, or to any other organ or party entitled to pursue economic activities (hereinafter collectively designated an "enterprise").

(3) Associations of enterprises having legal personality (trade unions, professional associations, etc.) shall obtain collective trademark protection for trademarks intended to be used by associate enterprises, even where such associations are not entitled to engage in economic activities, provided

- (a) the goods of the enterprises have some common characteristics (e. g. regional character), and
- (b) the collective trademark is used by the enterprises under the control of the association.

Article 5

Obtaining Trademark Protection

Trademark protection is obtained by registration, with retroactive effect to the date of filing.

Article 6

Duration of Trademark Protection

(1) Trademark protection shall have a duration of ten years, beginning on the date of filing the application.

(2) Trademark protection shall be renewable for further periods of ten years. In case of renewal, the new period of protection begins on the day after the date of expiration of the previous period.

Article 7

Effect of Trademark Protection

The proprietor of a trademark shall, on the basis of trademark protection and within the limits fixed by legislation, enjoy the exclusive right to use the trademark for goods enumerated on the list of goods or to grant licenses to others for its use.

CHAPTER III

Contracts of Exploitation

Article 8

Conclusion of Contracts of Exploitation

On the basis of a contract of exploitation (agreement granting a trademark license), the proprietor of the trademark grants a license for the use of the trademark; in exchange, the user is under obligation to pay royalties.

Article 9

Rights and Obligations of the Parties

(1) A license agreement grants, for the duration of trademark protection, the right to use the trademark, without territorial limitation, for all goods enumerated on the list of goods. However, unless expressly stipulated, the user shall have no exclusive right of exploitation, and, unless expressly authorized by the proprietor of the trademark, he shall not grant a further license to a third party.

(2) The proprietor of the trademark may stipulate in the contract that the trademark shall be used only for goods having a specific quality. In such case, he shall have the right to control the quality of the goods, even if this is not mentioned in the contract.

(3) The contract of exploitation is void if its existence or application is liable to create confusion.

Article 10

Expiration of the Contract of Exploitation

The contract of exploitation expires, with prospective effect, when the duration fixed in it comes to an end, or if certain specified circumstances occur.

Article 11

Effect of the Rules Relating to the Contract of Exploitation

(1) The parties, by mutual consent, may lay down terms that differ from the provisions relating to contracts of exploitation, where this is not prohibited by legislation.

(2) Matters relating to contracts of exploitation and not covered by this Law shall be governed by the provisions of the Civil Code.

CHAPTER IV

Transfer of Rights

Article 12

(1) The successor in title to an enterprise obtains trademark protection along with the enterprise.

(2) Trademark protection shall be assignable by contract. The contract of assignment is void where the successor in title has no capacity to acquire trademark protection, or where the assignment would cause the trademark to be excluded from protection, and especially where the assignment may lead to fraud.

(3) Matters of transfer of rights, not covered by this Law, are governed by the provisions of the Civil Code.

CHAPTER V

Infringement

Article 13

Infringement of Trademark

(1) Any party who uses another party's trademark or any confusingly similar mark, for goods on the list of goods, or for similar goods, commits trademark infringement.

(2) The proprietor of the trademark shall have the following civil remedies against the infringer, depending on the circumstances of the case:

- (a) the right to petition the courts for a declaration of infringement;
- (b) the right to seek an injunction against present and future infringement;
- (c) the right to demand satisfaction from the infringer by way of a declaration or by other appropriate means; if necessary, the declaration shall be made public by the infringer or at his expense;
- (d) the right to demand restitution of the enrichment obtained by the trademark infringement;
- (e) the right to seek a court order for seizure of the instruments used for the infringement and of the infringing products.

(3) The court may rule, depending on the circumstances of the case, that the seized instruments and products be divested of their infringing character or be auctioned pursuant to judicial procedure; in the latter case the court shall fix the sum to be collected.

(4) If the trademark infringement has caused material damage, damages shall be payable under the relevant provisions of the Civil Code. In assessing damages the impact of the trademark infringement on the entire economic activity of the enterprise shall be taken into consideration.

Article 14

Rights of the User in the Event of Trademark Infringement

In the event of trademark infringement, the registered user may institute proceedings in his own name, provided he has previously called upon the proprietor of the trademark to take appropriate action in order to put a stop to the infringement and the latter has failed to take action within thirty days.

Article 15

Decision of Non-Infringement

(1) Any party who fears that proceedings for trademark infringement will be instituted against him may, before the institution of such proceedings, request a decision ruling that the mark used or desired to be used by him does not infringe a particular trademark specified by him.

(2) A final decision of non-infringement bars the institution of infringement proceedings on the basis of the trademark concerned.

CHAPTER VI

Expiration of Trademark Protection

Article 16

Causes of Expiration

Trademark protection shall expire:

- (a) when the period of protection expires without renewal, on the day following the date of expiration;
- (b) if the proprietor surrenders his trademark, on the day following receipt of the surrender, or on an earlier date specified by the party surrendering the trademark;
- (c) if the trademark has not been used in the country for five years, on the date specified in the decision declaring expiration;
- (d) if an enterprise entitled to a trademark or an organization entitled to a collective trademark has ceased to exist without leaving a successor in title, on the day it ceases to exist;
- (e) if the trademark is declared null and void, with retroactive effect to the date of filing of the application (Article 19(1)).

Article 17

Surrender of Trademark Protection

The proprietor of a trademark may surrender trademark protection by written declaration addressed to the National Office of Inventions. If surrender affects the rights of third parties based on legislation, on decisions of an authority, or on a license agreement, surrender shall take effect only with the consent of the parties concerned.

Article 18

Expiration for Lack of Use

(1) A trademark is used on goods and wrappers and in business correspondence and advertising.

(2) Expiration of protection shall not be declared for lack of use if the proprietor shows adequate justification.

Article 19

Nullity of and Limitations on Trademark Protection

(1) Trademark protection shall be declared null and void with retroactive effect to its origin, if the mark does not satisfy the requirements laid down in Articles 1 to 3.

(2) If five years have elapsed since registration and the trademark has become known through effective use, nullity shall be declared only if such use is contrary to law or socially accepted moral rules (Article 3(1)(b)).

(3) If conditions of nullity exist only in relation to a part of the list of goods of the trademark, the list shall be limited accordingly.

PART II

Procedure in Trademark Matters

CHAPTER VII

General Regulations for Procedure before the National Office of Inventions

Article 20

Powers of the National Office of Inventions

The National Office of Inventions is empowered to

- (a) register trademarks;
- (b) renew protection of trademarks;
- (c) declare expiration of trademark protection;
- (d) declare nullity of trademark protection;
- (e) declare non-infringement;
- (f) deal with matters concerning the registration of trademarks.

Article 21

Application of the General Provisions on Administrative Procedure

(1) The National Office of Inventions shall proceed in trademark matters, subject to the exceptions prescribed in this Law, by applying Law No. IV of 1957 on the General Provisions on Administrative Procedure. In the cases specified in special legislation, the National Office of Inventions takes decisions *in camera*.

(2) The National Office of Inventions shall not set aside or modify its decisions on trademark matters taken on the merits. Its decisions shall not be invalidated or changed by a supervisory authority; they shall be without appeal.

(3) Decisions in trademark matters taken by the National Office of Inventions may be modified by the court under the provisions of Article 37.

Article 22

Power of Attorney

(1) The National Office of Inventions may order the party, where warranted, to authorize a patent attorney or an attorney at law in order to represent him jointly or alone.

(2) An alien shall be obliged to give power of attorney to an attorney at law, a patent attorney or other qualified person, in order to represent him in proceedings before the National Office of Inventions.

Article 23

Registration of Trademark Matters

(1) The National Office of Inventions shall keep a Register of the registered trademarks and the rights and facts relative thereto. All relevant circumstances shall be recorded therein.

(2) Any right relative to trademark protection may be invoked against a third party who has acquired his right in good faith only if it is recorded in the Register.

(3) Information shall be recorded in the Register only on the basis of final decisions of the National Office of Inventions or of a court.

(4) The Trademark Register shall be accessible to anyone; copies of the information it contains shall be available on request.

(5) All decisions and all facts the publication of which is prescribed by legislation shall be published in the *Official Gazette* of the National Office of Inventions.

Article 24

Restoration of Rights

In trademark proceedings — unless prohibited by legislation — a request for the restoration of rights can be submitted within fifteen days from the unobserved time limit, or the last day of the unobserved period.

Article 25

Use of Languages

In trademark proceedings, documents in foreign languages may also be submitted; the National Office of Inventions may, however, require a translation into the Hungarian language.

CHAPTER VIII

Trademark Registration Procedure

Article 26

Application for the Registration of a Trademark

(1) The procedure for trademark registration shall begin with the filing of an application with the National Office of Inventions.

(2) The application shall consist of the claim, information concerning the required data and other enclosures. Detailed regulations concerning the formalities to be complied with in trademark applications shall be published by the President of the National Office of Inventions in the *Official Gazette* in the form of a notice.

(3) Rights can be based only on an application which contains at least the name and address of the applicant as well as the mark to be registered and the list of goods.

Article 27

Priority

(1) The date of priority giving rise to a right of priority shall be:

- (a) generally, the day on which the application for registration of a trademark arrived at the National Office of Inventions (application priority);
- (b) in the cases defined by special legislation, the filing date of the foreign application (Convention priority);
- (c) in the cases determined by an announcement of the President of the National Office of Inventions published in the *Official Gazette*, the day of the exhibition of the trademark (exhibition priority).

(2) The order of priority of applications which arrived on the same day shall be determined by their serial number in the list of applications.

(3) The priority defined in paragraph (1)(b) and (c) can be claimed only by a party who has submitted his declaration of priority simultaneously with the trademark application. The document establishing priority shall be submitted — on pain of loss of the priority right — within three months of the filing of the application.

Article 28

Formal Examination of the Trademark Application

(1) The National Office of Inventions shall examine the trademark application in order to ascertain whether it complies with the requirements prescribed in Article 26(2) and (3).

(2) If the trademark application is so incomplete that no right can be based on it (Article 26(3)), the application shall be rejected without further procedure.

(3) If the trademark application does not comply with the requirements set forth in Article 26(2), the applicant shall be invited to remedy the defects. If the invitation is not complied with, the application for a trademark shall be rejected.

Article 29

Substantive Examination of the Trademark Application

(1) The National Office of Inventions shall examine the substance of the trademark application in regard to the following points:

- (a) whether the mark complies with the requirements prescribed in Articles 1 to 3; and
- (b) whether the application benefits from the claimed right of priority.

(2) If the examination as to substance reveals defects, the applicant shall be invited to remedy the same according to their character or to give an explanation.

(3) If the National Office of Inventions finds at the expiration of the delay set that the defects were not remedied, or in spite of this, that the sign is not fit for registration, it shall reject the application.

Article 30

Modification

(1) The applicant may not modify the trademark shown in the application.

(2) The list of goods of the trademark may not be enlarged.

Article 31

Registration of the Trademark

Depending on the results of the examination as to substance, the National Office of Inventions shall register the trademark or reject the application.

Article 32

Publication of the Trademark

The National Office of Inventions issues a trademark certificate. The trademark shall be entered in the Register of Trademarks and published in the *Official Gazette* of the National Office of Inventions.

CHAPTER IX

Procedure in the National Office of Inventions in Matters of Registered Trademarks

Article 33

Renewal Procedure

(1) The proprietor of the trademark shall apply to the National Office of Inventions for renewal of trademark protection, giving the registration serial number.

(2) Renewal shall not contain modifications of the final version of the trademark registered.

(3) Renewal of trademark protection shall be recorded in the Register of Trademarks and published in the *Official Gazette* of the National Office of Inventions.

Article 34

Declaration of the Expiration of Trademark Protection

Expiration of trademark protection, as prescribed in Article 16(b) to (d), shall be declared by a decision of the National Office of Inventions, which shall be recorded in the Register of Trademarks and published in the *Official Gazette* of the Office.

Article 35

Procedure for Declaration of Nullity and of Expiration for Lack of Use

(1) Any party may request that protection of a trademark be declared null and void, or expired for lack of use. The request with its appendices shall be submitted in two copies to the National Office of Inventions. The request shall state the grounds upon which it is based. The originals of the documents in proof or certified copies thereof shall be appended to the request.

(2) The National Office of Inventions shall forward the request with its appendices to the proprietor of the trademark and shall invite him to make a statement. Following the written preparatory work, the National Office of Inventions shall give its decision on nullity or expiration in a hearing.

(3) If the request is withdrawn, proceeding may be continued ex officio. In the proceeding no settlement is permitted.

(4) The losing party shall be required to pay the cost of the procedure.

(5) Expiration shall be recorded in the Register of Trademarks and published in the *Official Gazette* of the National Office of Inventions.

Article 36

Proceeding for a Decision on Non-Infringement

(1) The petitioner shall submit his request for a decision on non-infringement to the National Office of Inventions, showing the mark used or to be used as well as the list of goods and specifying the trademark in question. The National Office of Inventions shall give its decision on non-infringement in a hearing.

(2) The costs of the procedure for a decision on non-infringement shall be born by the petitioner.

CHAPTER X

Court Procedure in Trademark Cases

Article 37

Review of Decisions Taken by the National Office of Inventions

(1) On request, the court may review the decisions of the National Office of Inventions taken with regard to:

- (a) registering the trademark or any entry in the Register;
- (b) declaration of expiration of trademark protection;
- (c) declaration of nullity of trademark protection;
- (d) non-infringement.

(2) Any person who took part, as a party, in the proceedings at the National Office of Inventions or who has a legal interest in review of the decision, or the procurator, may request that the decision be reviewed.

(3) The period within which such a request shall be submitted shall be thirty days from the day on which the party was notified of the decision.

(4) The request shall be submitted either to the National Office of Inventions or to the court. The National Office of Inventions shall forward the request, together with the relevant documents, within eight days.

Article 38

Jurisdiction

(1) Court proceedings for a review of decisions taken by the National Office of Inventions shall be under the exclusive jurisdiction of the Metropolitan Court of Budapest.

(2) The Supreme Court shall have jurisdiction to deal with appeals lodged against decisions of the Metropolitan Court of Budapest.

Article 39

Composition of the Court

In such proceedings, the bench of the Metropolitan Court of Budapest shall consist of three professional judges.

Article 40

Application of the Provisions of the Code of Civil Procedure

(1) In cases involving requests for the review of a decision on a trademark, the Court shall proceed in accordance

with the rules of "non-contentious" civil procedure, with the departures mentioned in this Chapter. The procurator shall enjoy all rights which he otherwise has under such procedure.

(2) The court of first instance shall take evidence in accordance with the provisions of the Code of Civil Procedure and shall conduct a trial. If the case can be settled on the basis of documentary evidence, the court may take a decision without a trial, but the party, on request, shall be heard.

(3) The decision taken by the court of first instance shall be dealt with by the court of appeal in accordance with the provisions of the Code of Civil Procedure; the court may also take evidence within certain limits.

Article 41

Incompatibility

(1) In addition to the persons listed in Articles 13 to 15 and 21 of the Code of Civil Procedure, no one shall consider the case and act as judge if he

- (a) participated in taking the decision at the National Office of Inventions;
- (b) is a relative, former husband or wife — as stated in Article 13(2) of the Code of Civil Procedure — of a person mentioned under (a) above.

(2) The provisions of paragraph (1) shall also apply to court reporters and experts.

Article 42

Restoration of Rights

The provisions of Article 24 shall apply to claims for restoration of rights in proceedings of the Court.

Article 43

Representation

In addition to the persons listed in Article 67(1) of the Code of Civil Procedure, patent attorneys may also act as representatives.

Article 44

Decisions

(1) If the court changes a decision taken in a trademark case, the court judgement shall replace the decision of the National Office of Inventions.

(2) The court shall vacate the decision and order the National Office of Inventions to start new proceedings if a person against whom incompatibility may be invoked, participated in the taking of the decision or if important rules of procedure were infringed during the proceedings which cannot be remedied by the court.

Article 45

Review to Safeguard Legality

As to the review to safeguard legality, final decisions dismissing an application for trademark registration, declaring expiration of protection, or declaring nullity of trademark protection, cannot be set aside on the merits, and the Supreme Court shall be restricted to a ruling of error of law.

CHAPTER XI

Trademark Litigation

Article 46

Jurisdiction

(1) Court proceedings for trademark infringement shall be under the exclusive territorial and subject matter jurisdiction of the Metropolitan Court of Budapest.

(2) In such proceedings, the bench of the Metropolitan Court of Budapest shall be composed as prescribed in Article 39.

(3) In the court proceedings referred to in paragraph (1), the provisions of the Code of Civil Procedure shall apply as well as the provisions of Articles 41 and 43 of this Law.

(4) In any other trademark litigation not mentioned in paragraph (1), the courts of *comitats* (or the Metropolitan Court) or the economic commission of arbitration shall proceed in accordance with the general rules.

PART III

Final Provisions

Article 47

(1) This Law shall enter into force on July 1, 1970.

(2) Simultaneously with the entering into force of this Law, the following shall be repealed:

— the provisions of Law No. II of 1890 and of Law No. XLI of 1895 on the protection of trademarks still in force, legislation completing and amending those Laws (provisions concerning trademarks of Law No. XI of 1913, Laws No. XII of 1913, No. XXII of 1921, and No. XVII of 1932, Decree No. 20700/1948 (XI.24) of the Minister of Industry), as well as the provisions implementing that legislation;

— Article 6(1) and (4), Articles 7 to 18 of Decree 121/1950 (IV.25) MT of the Council of Ministers concerning compulsory classification of goods produced in the country and the marking of certain goods.

(3) The President of the National Committee of Technical Development and the Minister of Justice shall be authorized to issue, by decree and in cooperation with the President of the National Office of Inventions, the transitional provisions concerning the entry into force of this Law and other rules of implementation.

(4) The Minister of Justice shall be authorized to issue, in cooperation with the President of the National Committee of Technical Development and with the President of the National Office of Inventions, detailed rules on court procedure in trademark cases.

ITALY

Decrees Concerning the Temporary Protection of Industrial Property Rights at Four Exhibitions(of March 23, and April 21, 1970)¹

Single Article

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

III^a Mostra delle forniture per ospedali, case di cura e comunità - TECNOSPITAL (Genoa, May 27 to June 2, 1970);

III^o BIMBOSUD - Salone del giocattolo arredamento, abbigliamento ed alimentazione per il fanciullo (Naples, June 20 to July 5, 1970);

AGROSUD - III^o Salone per lo sviluppo della flororticoltura, della frutticoltura, della meccanizzazione e delle industrie agricole nel mezzogiorno e l'oltremare (Naples, June 20 to July 5, 1970);

XIII^a Fiera internazionale della casa (Naples, June 20 to July 5, 1970)

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

¹ Official communications from the Italian Administration.

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

³ *Ibid.*, 1940, p. 196.

⁴ *Ibid.*, 1942, p. 168.

⁵ *Ibid.*, 1960, p. 23.

GENERAL STUDIES**New Hungarian Law on Trademarks**

By Márta BOGNÁR, Deputy Head of Trademarks Section,
Hungarian Office of Inventions

At its session of December 12, 1969, the National Assembly of the Hungarian People's Republic adopted the new Trademarks Act (No. IX of 1969). The Act will enter into force on July 1, 1970.

*

The Hungarian Trademarks Law now in force is very old, even in comparison with those of other European countries. The first Hungarian Trademarks Act, No. II of 1890 — is essentially still in force. It did undergo a number of amendments between 1895 and 1967, nevertheless some of its provisions are long outdated. Moreover, on account of the numerous amendments and supplements, its provisions have become very complex and difficult to encompass.

The amendments mentioned above were made partly to satisfy the needs of technical development, partly to update

legislation according to the latest texts of ratified international treaties. Recently, court practice has also aimed at closing the gaps in outdated legal provisions, without actually going beyond the limits of the statutes. In view of all this, the modernization of Hungarian trademark legislation, outdated as it is in spirit, structure, terminology and, to a certain extent, content, has become inevitable.

The adoption of a new statute on trademarks has become urgent, not only for the reasons given above, but also because Hungary, like the other socialist countries, recently introduced a new system of economic planning. The new economic system gives the economic units (enterprises) much more scope for competition than before in production, trade and services. No longer is a considerable proportion of goods produced by enterprises in monopolistic positions. Participation in international trade has increased. Hungarian enterprises have improved opportunities to import and export products, and trade relations with socialist as well as capitalist countries are constantly being extended. The Government Decree concerning the new economic system is designed to improve the level of production, its variety and quality. If this is to be achieved, the first task is to obtain adequate relation and equilibrium between production and the market. Under the new system there is increased and much more intense competition between production and marketing enterprises operating on domestic and foreign markets. The means of competition, including trademarks, their use and protection, have to fulfil a considerably more important role than before. In the earlier economic system, trademarks were not given sufficient importance. The misguided trademark policy of enterprises and administrative bodies often caused considerable prejudice to trademark owners, indeed also to Hungarian industry and commerce as a whole.

The elaboration of the new Bill was governed by the following main principles:

- to satisfy the needs of modernization and technical development;
- to harmonize the interests of competitive enterprises and consumers with the provisions of the law on trademarks;
- to increase harmonization with relevant international conventions and with the trademark laws of countries having close economic relations with Hungary.

In the following we shall sum up the main characteristics of the new law, with the emphasis on those provisions which, compared with the rules presently in force, represent considerable changes.

The Right to a Trademark

Protection ensuring exclusivity can only be acquired by registration according to the law. A mark used without registration does not confer the right to a trademark, and its illegal use can only be prevented by other means of civil law, unfair competition, etc. The official commentary on the Bill, in the section relating to this provision, emphasized the advantages for all interested parties, namely for the owner of the trademark (in the terminology of the Act, the proprietor of the trademark) and for competitors and consumers, of acquiring

the right by registration. The advantage consists in the fact that the capacity of the trademark for protection is examined in the course of the registration procedure, and possible collisions may be discovered; moreover, the very fact of registration is irrefutable evidence of the acquisition and existence of the right.

Protection may be obtained for products and services. The registration of service marks was made possible by an amendment to the law in 1967, but the Hungarian authority for the protection of industrial property (the National Office of Inventions) in practice registered service marks even before that date.

Registration may be requested by an enterprise, a cooperative, or any other organ or person entitled to pursue economic activities. The protection of a collective trademark may be requested by an organization having legal personality (union, professional association) for an enterprise belonging to the organization, even if the organization itself is not entitled to pursue economic activities. The condition for the acquisition of a collective trademark is that the products of the enterprises concerned which are entitled to use the trademark should have some common characteristics, and also that the use of the trademark should be subject to the control of the organization.

Protection is made retroactive to the day on which the application was filed. The duration is ten years from the date of filing of the application, and protection may be renewed for further periods of ten years. In cases of renewal the new period of protection begins on the day following the date of expiration of the previous period. Renewal may be requested at the earliest 12 months before and at the latest six months after the date of expiration.

Marks Appropriate for Protection

The Act defines the general characteristics of those marks which are appropriate for protection. Registration may be requested for words, combinations of words, figures, pictures, combinations of colors, two or three dimensional devices, audio or visual signals or a combination of these elements. Besides the types of indications which have already been admitted for registration by legislation and court practice, the registration of the audio and visual signals used in modern advertising has now been made possible. The registration of industrial designs was introduced earlier in practice, even in the absence of corresponding legislative provisions.

Marks Excluded from Protection

The marks which are not appropriate for protection are listed in the Act. For certain types of marks exclusion from protection is absolute: those liable to create confusion, or the use of which would be contrary to law or socially accepted moral rules or would infringe individual rights of third parties, or those which are identical or confusingly similar to a trademark held by a third party and well known in the country, even if the well-known trademark is not registered in Hungary. The latter are excluded without regard for the products for which registration is requested.

Similarly no protection can be granted to marks which consist of the name, abbreviation, flag, armorial bearing or emblem of a State, an authority, an international or inter-governmental organization, or the imitation thereof. Such marks may be used, however, with the authorization of the competent authority, as elements of trademarks.

Compared with former provisions, the Act contains precise and unequivocal rules concerning marks which may not be registered for identical or similar goods, that is:

- marks consisting of official signs or hall-marks indicating control or warranty, or imitations thereof;
- trademarks registered previously for a third party, if the protection expired because of surrender or failure to renew and if two years have not elapsed since such expiration;
- marks identical or similar, to a degree liable to create confusion, to a third party's trademark registered on an earlier priority date or to a trademark effectively used but not registered;
- the name of a patented plant variety or animal breed.

The latter provision has become necessary because the new Hungarian Act on the Protection of Inventions (No. II of 1969) provides the opportunity to obtain patents also for new plant varieties and animal breeds.

We should mention here that questions of detail concerning the assessment of protectability will be governed by the rules contained in the Decree on the implementation of the Act. This will simplify court procedures and ensure uniformity. Such questions would include the enumeration of marks which have no distinctive character at all (marks consisting of the simple image of the product, numbers, letters which do not form a pronounceable word, or simple geometrical figures), and the determination whether the mark was already known before the application for registration. This Decree will give a detailed definition of marks liable to create confusion, of the criteria for determining the possibility of confusion of marks and goods, and for evaluating the declaration of consent given by the author of a trademark registered earlier concerning the registration of another mark liable to create confusion.

Assignment of Trademark Rights

Former rules of trademark law did not deal with questions of assignment of trademark rights. The new Act expressly admits the possibility of such assignment, also in exchange for remuneration. The content of a contract of assignment may be freely determined by the parties within the limits of the provisions of the Civil Code relating to contracts. Unless expressly provided otherwise, the contract of exploitation extends to all goods in the list of goods and is not limited in time. The user may not grant rights to a third party without the express authorization of the owner of the trademark. The owner of the trademark may stipulate that the trademark be used only in connection with goods of a certain quality. In that case he is entitled to verify the quality of the products for which the trademark is used. A contract of exploitation

is void if its existence or application is liable to create confusion.

Transfer of Rights

Succession in title is possible even without the transfer of the enterprise or a part of it. This provision of the Act is completely new in comparison with the rules hitherto in force. The transfer of rights is governed by the provisions of the Civil Code concerning contracts. The contract is void, however, if

- the successor in title does not have the capacity to acquire trademark protection;
- if the transfer would cause the trademark to be excluded from trademark protection, especially if assignment entails a risk of deception.

Consequences of Trademark Infringement

Any party who uses another party's trademark or any confusingly similar mark, for goods on the list of goods, or for similar goods, commits trademark infringement. The proprietor of the trademark may use various civil remedies against the infringer. He may petition the court for a declaration of infringement, seek an injunction against present and future infringements, etc. If the infringement has caused material damage, damages shall be determined by taking into consideration the impact of trademark infringement on the entire economic activity of the enterprise. Under certain circumstances the registered user of the trademark may also institute action in his own name against the infringement.

Expiration of Trademark Protection

The Act provides, besides the traditional causes of expiration (failure to renew, surrender, cancellation, etc.) the possibility of declaring expiration of protection in cases where the trademark has not been used in Hungary for five years and the owner of the trademark does not supply adequate justification of the lack of use. Any person may request a declaration of expiration on that basis. The use of the trademark consists in applying it to goods and wrappers and in business correspondence and advertising.

If the registered trademark is not protectable for some reason, it must be declared null and void. If five years have elapsed since registration and the trademark has become known through effective use, nullity may only be declared if its use is contrary to law or socially accepted moral rules. Any person may file an application for a declaration of nullity. If conditions of nullity exist only in relation to a part of the list of goods of the trademark, the list is to be limited accordingly.

The owner of the trademark should participate both in the nullity proceedings and in those concerning the declaration of expiration.

Rules of Procedure

The registering of trademarks and renewal of protection, declarations of expiration, nullity and non-infringement and other matters concerning the registration of trademarks belong to the competence of the National Office of Inventions. The procedure is governed by law No. IV of 1957 on the

General Rules of Administrative Procedure, provided that the Trademark Act does not rule to the contrary. In proceedings for nullity, declarations of non-infringement and declarations of expiration of protection, the Office takes decisions in camera, with three persons.

The Office may not revise its decisions taken on the merits, nor may such decisions be revised by a supervisory authority; they may not be set aside, and there is no appeal from them. To have a decision reviewed, an action should be brought before the Metropolitan Court of Budapest, and in second instance, the Supreme Court of the Hungarian People's Republic. In such cases the courts apply the rules of "non-contentious" civil procedure; they sit in camera with three professional judges. No party to the decision of the National Office of Inventions, nor any person qualified as a relative of such party may participate in the court proceedings as a judge, clerk or expert.

The court of first instance for trademark infringements is the Metropolitan Court of Budapest. In such proceedings the court applies the provisions of the Code of Civil Procedure.

Power of Attorney

In proceedings before the National Office of Inventions an alien may only be represented by a patent attorney, an attorney-at-law, or another qualified person domiciled in the country. The Office may, where warranted, order a party domiciled in the country or a foreigner to authorize a patent attorney or other qualified person to represent him. In court proceedings, besides the persons listed in the Code of Civil Procedure, a patent attorney is also entitled to proceed and represent the party.

Trademark Registration Procedure

The right to a trademark can only be granted on the basis of an application containing at least the name and address of the applicant, the mark to be registered and the list of goods. Detailed regulations concerning the formalities of registration are published by the President of the National Office of Inventions in the form of a notice. The mark indicated in the application may not be altered, nor may the list of goods be enlarged.

The priority of the application is determined either by the date of the application (its arrival at the National Office of Inventions), or, in specific cases, by the filing date of a foreign application (Convention) or the priority of exhibition. An application for a special priority may only be submitted together with the application for registration.

Applications for the registration of trademarks are officially examined according to formal and material criteria specified by the law. Before the National Office of Inventions takes its decision, the applicant is given the opportunity to eliminate defects or make a statement.

Registered trademarks are published in the official gazette of the Office (*Szabadalmi Közlöny és Védjegyértesítő*, Gazette of Patents and Trademark Bulletin). The same gazette also publishes information on changes affecting the legal situation of the trademark.

The New French Patent Law *

By P. C. HENRIQUEZ

Introduction

Since the Second World War many emphatic calls have been made for the modernization and unification of patent legislation. One argument has been that legislation and case law in the various countries have led to such complexity and divergency that the system is a hindrance rather than a help to industry. Most criticisms of the patent system — mainly on the part of economists — are ill-founded, but there is an element of truth in this particular argument.

Many national and international efforts have been made to bring about an improvement, but what little has been achieved so far on the international level is dwarfed by the huge amount of energy spent.

In recent years, more has been accomplished within national borders. New laws have been enacted, first in the Netherlands, then in Germany and the Scandinavian countries, and, most recently, in France. In the United States, a project for reform is being studied by Congress and in the United Kingdom a preparatory study is being made.

However, when the situation is looked at as a whole, there is no denying that present achievement and probable advance in the near future will by no means answer the fervent hope for simplification and unification of legal concepts in this field. Each of the new laws will give rise to completely new case law, and they will differ from each other no less than the former laws — at least as regards fine detail. This means that patent agents must continue to be aware of parallel development of new systems representing different legal approaches. For agents — and for industry too — things will soon be not simpler, but more complicated.

The cause of all this is that changes in national legislation have come at a time when modernization of legal principles underlying the international patent system is insufficiently advanced. Too little attention has been paid, or is still being paid, to a reappraisal of the fundamental logical basis of the patent system and the building of a new structure on this foundation. No doubt it is extremely difficult to eliminate prejudices rooted in history and vested interests. But in international discussions, there must first be agreement on basic values; at least it must be known on precisely which points there are differences of opinion and why. In international discussions on patent law a Biblical image sometimes obtrudes, that of the tower of Babel when "the Lord did there confound the language of all the earth."

With all this in mind, the following discussion will pay attention not only to how the new French law differs from the old French law, but also to a few important points on which it differs from the new Netherlands and German laws, and to the probable consequences of these differences.

The Reasons for Change

In discussions with patent agents of various large French companies about the desirability of the new law, the impression gained is that the law is largely superfluous. The only point about which anyone has anything good to say is the express provision that what is patented must not only be "new" but must also satisfy the requirement of involving an inventive step (*activité inventive*). The absence of such an express provision in the old law made it possible (and this need not have been so — see the Netherlands and German case law) for the courts to favor the patentee too greatly at the expense of third parties. Most industrial patent agents seem to approve the provision requiring an inventive step; for the rest, they think that everything could have remained as it was. They argue that in doubtful cases the parties concerned would in practice come to an agreement. It was said that no change was necessary since in France there was no more patent litigation than in countries requiring preliminary examination.

Obviously the Government thought that the field of technology was too thickly sown with "no trespassing" signs, and that it was not sufficiently easy for small and medium-sized firms to check whether those signs had been put up rightly or wrongly. A factor probably contributing to this was that the number of patents of "foreign" origin rose sharply after the war with German, Japanese and U.S. companies filing more and more frequently in France.

It was feared in government circles that the small and middle-sized French industrialist would gradually have less room in which to manoeuvre.

The new law is part of a network of measures with which the French government is seeking to bridge the "technological gap" between France and the most highly-developed industrial countries, or at least to prevent it from widening.

It is thought that the old law hampered technological development because:

- (a) it was very difficult for third parties to determine the validity of patents;
- (b) the scope of protection afforded to valid patents was too great because of the absence of a requirement of non-obviousness; and
- (c) the nature and scope of rights were not evident from the claims — if present at all — but from the description in its entirety.

Thus, the rationale of the new French law is to provide third parties with more security but without going the whole way as in countries with the preliminary examination system. Four phases may be distinguished in the Patent Office procedures of such countries:

- (1) Examination as to compliance with formality requirements;
- (2) Documentary search¹ concerning everything that is relevant to the inventive step on which the application is based;

* Translation of a publication in *Bijblad bij de Industrieële Eigen-dom*, October 15, 1968, pp. 207-216.

¹ The term "novelty search" is avoided here in order to prevent the misunderstanding which could arise from the distinction usually made between "novelty" and "inventive step."

- (3) The granting procedure itself (which may be in two stages if an appeal is necessary) up to publication of the application; this includes discussion (almost always very protracted) between the applicant and the Patent Office about the wording of the description and the claims, the number and kind of examples, the unity of the invention, the technical character, the "obviousness," etc.;
- (4) The procedure if the application is opposed (with all the possible complications this may bring), during which all the criteria mentioned under (3) are debated once more (again possibly in two stages if an appeal is lodged).

Of these four phases of the granting procedure, only the first two and a small part of the third phase have been adopted in France. It is felt that it should in this manner be possible, in a comparatively short time and with comparatively little work, to grant patents whereby third parties:

- (a) know precisely what rights the applicant claims;
- (b) are well informed about published patent documentation which may be cited in opposition to the application, and are in a position to estimate the validity of the application.

In this way, it is thought, much help will be given to third parties. Not only will they be able to estimate the validity of the application in this manner, but they will also be provided with documentation to help them find, if desired, paths circumventing the patent, if it is valid at all.

First Phase of the Examination

The first phase of the examination (which under Article 67 will be carried out by the French Patent Office, whereas the second phase will be entrusted to the International Patent Institute at The Hague (IIB)) covers the following points (see Article 16):

- (1) Purely formal requirements to be spelled out in detail in implementing provisions (Article 13 and Article 73 in conjunction with Article 16(1)).
- (2) Unity (Article 14 in conjunction with Article 16(2)).
- (3) Prohibition of "new matter" in divisional applications (Article 16(3)).
- (4) Conformity to law, public order and morals (Article 11 in conjunction with Article 16(4)).
- (5) "Industrial character":
 - (a) exclusion of creations of an exclusively ornamental nature (Article 7(2) in conjunction with Article 16(5));
 - (b) exclusion of systems of a purely abstract nature (Article 7(3) in conjunction with Article 16(5)).
- (6) Sufficient clarity to permit the documentary report (Article 16(6) in conjunction with Article 19, first and second paragraphs).

With regard to the above-mentioned points the following remarks may be made.

With regard to item (2), it is clear that an investigation concerning "unity" carried out without a prior documentary report is only a rough screen for sifting out cases of non-unity. It often happens that the non-unitary character of the

sub-claims comes to light when it has been shown that the covering main claim has been anticipated. This drawback has to be accepted. A rough screen can be useful and can, for example, work preventively. It should be noted that in other countries where the Patent Office does not carry out a documentary search, non-unity objections can be — and are — made, e. g. in Spain. According to the new German law, non-unity objections can be made too, without a documentary search, during the "formal" phase of the examination. In the Netherlands it has been seen how the total absence of examining for unity during the formal phase of the examination has led to undesirable situations.

In Article 14, first paragraph, it is explicitly stated that various inventions can be incorporated in one application provided they are so linked as to form a unity (*lien d'unité*); thus it may be assumed that there will be no objection to the granting, side by side, of claims covering e. g. a product, methods of producing the product, applications of the product, and specific apparatus for these uses.

As regards item (5)(a), it is possible to argue at length about where the border line between "inventions having an industrial character" and "creations of an exclusively ornamental nature" lies (in Germany, in connection with the exemption clauses in the old law concerning foodstuffs, etc., there is elaborate and complicated case law about this). Apparently, here too only a "rough screen" for excluding obvious cases is involved.

With respect to item (5)(b), financial and accounting systems and other systems of "purely abstract nature" are excluded. The same applies to computer programming methods. It is wise that the line between "industrial" and "non-industrial" has been clearly drawn. Because this was lacking in the old German law, complicated case law also developed in this field².

It is a debatable point whether or not it should be possible to protect computer programs (and in the United States of America for example, the point has been argued at considerable length); from a pragmatic viewpoint the exclusion seems to be a happy decision, considering the great difficulties connected with describing them in claims and establishing novelty and an inventive step.

It is interesting that the French Patent Office does not have the power to rule upon the line between "discovery" and "invention." This requirement is set out in Article 7(1). This distinction was evidently considered too subtle for a formal examination and its evaluation has been reserved for the courts.

In all the cases mentioned above under items (1) to (6), the Patent Office has the right to refuse the grant of a patent (Article 67). The applicant can appeal to the Court of Paris (Article 68, second paragraph).

Second Phase (Documentary Report)

As soon as the first phase of the examination has ended and the Patent Office is satisfied that the requirements of

² See for example *Mitteilungen*, 1964, Vol. 5, pp. 97-100.

Article 16 have been met, the second phase of the examination begins, in which a documentary report on the invention is drawn up (Article 19, first paragraph). During this phase the Patent Office cannot exercise any kind of direct coercion at all upon the applicant to have him alter the application in one way or another because of anticipations found (however, from what follows it will be apparent that there is a strong indirect coercion).

It is intended to entrust the establishment of the documentary report to the International Patent Institute (IIB) in The Hague.

Article 20 gives further indications about the manner in which work on the documentary report will be done. During this investigation a maximum of three stages are possible. After each stage the applicant gets the opportunity to alter the claims in such a way as to distinguish them from the prior art cited.

The application documents are made available to the public eighteen months after the first filing, or earlier if the applicant so requests (Article 17). If the application documents have not been made available to the public after the second stage, the complete file is made available to the public (Article 20(2)).

After the making available to the public of the file (with or without the results of the documentary report) third parties have the opportunity to submit observations (Article 20(2)). These comments are passed on to the applicant who can react to them and take them into consideration when filing new claims. This means that the applicant can file a set of claims four times: a first time with the original filing in France, a second time after the first documentary report, a third time after the second documentary report and a fourth time after observations have been received from third parties.

Ultimately, a final documentary report is prepared, after which the patent is granted. The patent and the final report are printed (Article 21).

It must be kept well in mind that Article 20 speaks only of amending the claims; there is not a word about altering the description. Implicitly it seems to follow that amendment of the description is not permitted (except for such things as slips of the pen and typing errors). It would appear that the U. S. system has been followed, so the situation is quite different from the one that exists in the Netherlands and Germany, for example. In those countries, it is possible to make drastic alterations to the description during the examination procedure: clarifications, deletion of less felicitous passages, better definition of the inventive idea, etc. This implies that greater care with the wording of the description is demanded in France than is the case in European countries with preliminary examination, and that in order to avoid incongruity between the description and the altered claims (possibly limited and based on differently formulated inventive ideas), the invention must have been analysed thoroughly before being filed and all the inventive ideas to which it may later on be desirable (or imperative) to restrict oneself must have been taken into account. As has already been set out elsewhere, this

is a situation which already exists, for example, in Belgium and Sweden³.

How must the documentary report be drawn up and to what must it be directed? It seems to me that in answering these two questions a realistic attitude has been taken. Two idealist fictions have been eschewed, viz, that it is usually possible to accomplish a satisfactory documentary search in one stage and that this search can be carried out on the basis of the total contents of the application (i. e. claims plus the descriptive part of the specification), or that it is possible for the Examiner to single out on his own account what he thinks to be the essential features of the invention and narrow the documentary search to those selected features.

The drafters of the new French law have realized:

- that a well-directed documentary report can be established only on the basis of the inventive idea as incorporated in the claims (Article 19, second paragraph) (it is inefficient and undesirable for the Examiner on his own account to interpret the inventive ideas from the description);
- that there need be (and often, for practical reasons, can be) no question of finding and mentioning all anticipating documents which can be brought forward against very broadly formulated claims;
- that, for the two reasons mentioned above, the examination should be carried out in several stages, during which the applicant is given the opportunity at each stage to revise the claims in the light of the documents cited in opposition.

In considering all this it must be remembered that the French Patent Office has no power whatever to force the applicant to amend his claims at a second and third stage. Thus, the applicant may, for example, file a very broad claim incorporating many generally known methods. The IIB report can mention one or more anticipations for one or a few of these methods which the applicant can simply ignore if he wishes. The application must then be made public with this one very broad claim and with mention of only one or few anticipations. There would thus be an absolute failure to comply with the most fundamental reason for the new law⁴, viz, furnishing third parties with the anticipations which enable them to assess the validity of the patent, if the applicant, later on in a lawsuit, comes forward with a claim incorporating the real (limited) inventive idea⁵.

The documentary report would not have been directed to that. Therefore, in order to comply with the purpose of the law, the judge would have to reject a limitation of this sort (in which something emerges that was not covered by the report). This is somewhat corroborated by what is expressed in the last paragraph of Article 71. In this paragraph

³ See *Bijblad bij de Industrieële Eigendom (BIE)*, 1967, No. 6, p. 148.

⁴ This most fundamental reason for the law is clearly stated in the explanatory memorandum (see "Exposé des motifs," "Proposition de loi," Annex No. 244, 1967, p. 2): "Si l'administration ne prononce pas de rejet de la demande de brevet à la suite de cette recherche, en revanche cette procédure aboutit à l'établissement d'un avis sur la nouveauté qui permet au déposant et aux tiers d'apprécier, dans les meilleures conditions, la réalité et la portée de l'invention" (the italics are the author's).

⁵ This has been more fully examined in *BIE*, 1967, No. 6, pp. 144-150.

there is mention of infringement proceedings with regard to a patent which was filed prior to the date of coming into operation of the new law (and which therefore does not need to contain claims).

The judge acts only if:

“... the applicant [submits] a novelty report in regard to those claims in his patent in respect of which infringement is alleged, wherein the items of the state of the art which may affect the novelty thereof shall be cited.”

Thus, a documentary search has to be carried out that is specifically directed towards those parts which are believed to constitute an infringement.

There is, then, all the more reason for the applicant, in his own interest, to try to include in sub-claims, so that they may be subjected to the documentary search, all the inventive ideas to which he will want to resort later on, if necessary. This is the “indirect coercion” thrust upon the applicant to collaborate with the documentary examination and to show clearly all the possible inventive ideas in the claim.

This is completely in agreement with a sensible interpretation of Article 8(3) of the Strasbourg Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, in which it is stated that:

“The extent of the protection conferred by the patent shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims.”

It is clear that in all circumstances, even in court, there must be an opportunity to drop claims which are too broad and to resort to sub-claims.

The fact that the Patent Office offers the applicant no help with respect to the form in which claims are presented, in my opinion justifies the view that the courts will have to be lenient as to questions of form and must accept amendments in this respect.

Furthermore, it seems to me that the new demands made by the law, viz, that the courts must base their decision on the claims (read, of course, in the light of the description) and not on the totality of the description by no means rules out a broad and liberal interpretation of the application. That is to say, a broad interpretation of the inventive idea as expressed in the claims and not as it can be extracted from any part of the description. Clarity is in fact better served by a liberal rather than literal approach. All too often this is not understood. The semantic precision dictated by the Anglo-Saxon conception of law is intended to favor clarity. The costliness, complexity and protraction of lawsuits (particularly those relating to patents) in Anglo-Saxon countries show that the effect is exactly the opposite of what is intended. Interpretation according to the spirit, yes, and not the letter; according to the spirit that emerges from the claims.

Discrimination Against Nationals

It is interesting that, whilst redrafting their law, the French, just like the Dutch and the Germans, have failed to grasp the opportunity to redress the discrimination against their own nationals, which is inherent in the fact that the

multiple priority regulations are written only for foreign applications. Because of the possibility of combining several consecutive foreign filings for a convention filing in France (without losing the priorities of the separate parts), the foreigner is in a position to produce a considerably more sound and better developed application in that country than the Frenchman can.

The possibility of filing patents of addition (which with regard to the main patent need have no inventive character) is a palliative, but nothing more than that; after all, the amalgamation of several applications can produce a much better result than just putting these together as a mosaic (deletions, clarifications, sharper formulation of the inventive idea, etc., are possible).

With respect to the above, the Frenchman is in a more unfavorable position than the Dutchman or the German. Whereas the latter two can circumvent discrimination by their own law by having the first filing take place in a country in which they have little interest (e. g. Luxembourg) or in a country that recognizes the system of filing a provisional specification, the Frenchman is forced to file in his own country (Article 25, second paragraph).

The remedy would be simple: introduce the provisional specification, as in the United Kingdom (and as the United States wants to introduce it to replace the much more far-reaching possibility of continuation and continuation in part).

Position of Third Parties

As already mentioned, the improvement of the position of third parties was a basic idea underlying the new French law. To what extent this will actually be the case only time will tell, but that an improvement will result is indisputable.

A development in the opposite direction has taken place in the Netherlands and Germany. In these countries, the basic aim has been to take some of the pressure off the Patent Office. It was thought that although there was a risk of making the position of third parties worse, this would be outweighed by the important advantage for third parties that would result from the new laws regarding much earlier publication of the applications. At the least, it was thought, advantage and disadvantage for third parties would more or less balance out. But the hoped-for advantage can be fully realized only if the implications of the applications laid open to public inspection can be assessed by third parties without too great an effort. Two circumstances have greatly hindered this: the far greater number of applications being published, and the greater obscurity and uncertainty concerning their scope.

The new French law should promote clarity through a formal examination which is not too superficial (particularly with respect to unity) and through the indirect enforcement of claims which are clear and not too broad. Examination for non-unity is also recognized by the new German law. It was likewise the purpose of the German legislation to exert an indirect pressure upon the applicant to set down his intentions in clearly worded claims. In the explanatory memorandum (April 24, 1967, pages 4 and 5) the following is said

about the infringement of application which have not yet been examined:

“ In fixing the amount of compensation, account will be taken, in particular, of whether the infringer knew or should have known of the deposit, whether the infringement was sufficiently obvious from the attending factual circumstances, whether the application contained a clear enough description of the scope of the protection claimed and delimited this scope in relation to the state of the art, or whether, to the contrary, the applicant himself, by making overly-broad claims contributed to the unclear situation giving rise to the litigation. In this way, applicants will be prevented from obtaining advantages to which they are not entitled by making applications which are in fact unjustifiably broad.”

We shall, of course, have to wait and see what the German courts make of this. In any case, the cited passage in the explanatory memorandum hangs like a sword of Damocles above the head of the applicant and he will no doubt be stimulated to draft clear claims (unless, of course, the courts ultimately go so far as to ignore this passage completely).

The situation in the Netherlands in this respect is much worse. The existing rules make it possible to file an application with an utterly meaningless title (e. g. “ Method of making new product ”; here the aim can be to make it as difficult as possible for competitors to get on its track) and under which a great number of different inventions may be assembled. The application may also actually be without claims (omnibus claims or very broad claims are equivalent to no claims at all).

It is easy to imagine how this situation encourages complex and obscure applications, and also its annoyance to third parties. It is not at all unlikely that these evils will multiply as more people realize what possibilities lurk in the new law.

Uncertainty as to whether they might ultimately get hurt during the granting procedure or before the courts might have worked as a check upon persons intending to make the most of the “ possibilities.” But there is no uncertainty, and it may well be queried whether for a small country like the Netherlands, flooded by applications of foreign origin, clarity of the applications would not be even more important than for France or Germany. Be it noted, too, that case law in Sweden has also led the way towards clear claims⁶.

There is one alleviating factor for the Dutch third party that must be mentioned in connection with the above, and that is Article 43A of the Netherlands' law.

The objections to the situation in the Netherlands can no doubt be countered by the fact that when the third party wants certainty he can always file a request for a documentary report and request an additional documentary report on suspect applications. In the case of complex application, particularly those lacking unity, it is, however, altogether out of the question that this certainty can be obtained in this manner within a reasonable time. It is, as practice has shown, a drawn-out and frustrating game.

⁶ Reference has already been made to *BIE*, 1967, No. 6, p. 148, bottom of right-hand column.

Matters Within the Exclusive Jurisdiction Courts

Only the courts have jurisdiction to decide in all cases concerning requirements which do not follow from Article 16 (and the Articles to which it refers).

In the first place, there are the requirements of novelty and inventive step.

In Article 6, second paragraph, it is stated that the invention must not only be new but must also involve an inventive step. Semantically this is open to criticism. If something involves an inventive step (Article 9 defines this as being: not evident from the state of the art) it must also be new (Article 8 provides that “ new ” means that: it is not included in the state of the art). So, being new and (furthermore) involving an inventive step says nothing more than involving an inventive step.

The state of the art has the same meaning as in the Netherlands law (Article 8, second paragraph). So there seems to be no conformity with the Haertel plan (Article 11(3)) or the new Scandinavian law (Article 2, second paragraph) and U.S. case law, according to which the content of applications laid open for public inspection after the priority date can also be taken into consideration as prior art with respect to which an inventive step must be demonstrated.

The inclusion in the law of the requirement of an inventive step will force French courts to follow a new course in ruling on anticipations. It must be conceded, however, that there is a fluent transition between the concepts of novelty and inventive step. The old French case law was already acquainted with the concept of *tour de main* (which we could perhaps best translate as very obvious) that invalidated the patent.

Professor A. Chavanne has written:

“ In estimating patent ability subjective criteria are always used and when the courts refused patent ability to juxtapositions in inventions based on new combinations and to simple new uses in patents for new applications, they were in fact already applying the criteria of the inventive step although, in most cases, they avoided saying so ” (*translation*)⁷.

Lawyers seem to feel somewhat uneasy about the new requirement of an inventive step and do not want to go as far as in Germany⁸. More will be said about this further on.

An important doctrine from the old French case law, viz, that the literature cited must be an *antériorité de toute pièce* will probably have to be revised. The old doctrine said that all essential elements of the patent would have to be found in one anticipation if this anticipation was to be considered damaging.

Some people will perhaps hold the view that the transition from the criterion of novelty to the criterion of inventive step is regrettable from the point of view of legal security. An idea not seldom encountered is that novelty is an “ objective ” criterion and inventive step “ subjective.” It seems to me that this idea is grossly erroneous. Absolute conformity

⁷ *Juris-Classeur Périodique*, 1968, No. 2.186 (sub point 10).

⁸ See e. g. Valancogne, *L'invention*, Vol. I, 1968, p. 344, No. 764, and Mouzon, *Gazette du Palais*, 1968, 1st qr, p. 45, bottom of right-hand column, and p. 46, top of left-hand column.

between application and anticipation hardly ever occurs, so that the requirement of novelty, as already indicated above, amounts to the requirements of a greater difference than in that of a *tour de main*. So the requirement of novelty is really nothing more than the requirement of a low degree of the involvement of an inventive step. No matter where the bounds are set, high or low, judging whether something falls below or above remains subjective, equally subjective and as practice has proved, often more difficult to judge.

A third requirement for validity falling exclusively within the jurisdiction of the courts can perhaps best be compared with the requirements known in the case law of English-speaking countries as that of sufficiency of disclosure and fairly based. These requirements are perhaps somewhat stricter than the one according to which the expert, working from the description, must be able to apply the invention. This last-mentioned requirement can be found in Article 49, first paragraph. However, added to this, is a second requirement which can be found in Article 28, second paragraph, according to which the claim may extend no further than the description. It seems to me that these two requirements combined yield the following: "all processes covered by the claims must, in the description, be explained in such a manner that, working from it, the expert can apply these processes."

Furthermore, the courts alone have jurisdiction to deal with matters of prior claiming (Article 12); so the existing situation remains unchanged.

It has already been mentioned that the Patent Office has jurisdiction to rule on the industrial merit of the invention as far as the exclusion of cases mentioned in Article 7(2) and (3) is concerned, viz, of an exclusively ornamental nature, accounting and financial systems, sets of rules and all systems of a purely abstract character, such as programming methods for computers. The courts have exclusive jurisdiction over whether an invention or discovery is involved (Article 7(1)) and also in all other cases which could arise from this. From the wording of Article 7, first paragraph, it appears that it must be inferred that an industrial character is also ascribed to agricultural products and methods. The definition given of "industrial character" is quite interesting:

"Any invention shall be considered industrially, by reason of its subject matter, its field of application and the result it produces, whether carried out by the hand of man or through the use of machinery, it contributes to the making of goods or to the attainment of technical results."

In the former law there were no definitions at all (as is still the case in the Netherlands). But there are still unsolved questions. What is the situation with regard to the protection of, for instance, plant varieties? Several years ago the French courts forced the Patent Office to grant a patent for a new variety of rose, without, however, thereby having acknowledged the validity of this patent. In the patenting of a new variety of carnation in 1963 the Court of Aix-en-Provence went further⁹. It seems to me that the new law leads to an expansion rather than to a narrowing of the possibilities. We shall, however, have to wait and see how case law develops.

⁹ Valancogne, *L'invention*, Tome I, 1968, p. 179, No. 372.

The Inventive Step Reconsidered

From the foregoing it can already be gathered that there are indications that industrialists and lawyers have a different attitude towards the higher demands made by the new law with respect to the requirement of an inventive step. In industrial circles it is being welcomed, but lawyers shy away from it. The attitude of the latter is easy to understand. They have developed a certain mode of reasoning for testing inventive merit and now a different approach is necessary.

The abandonment, for example, of a concept as firmly anchored in case law as that of *antériorité de toute pièce* will give many French patent lawyers a feeling of uncertainty. It is no wonder that they want to stay as close as possible to the former law and want to keep the criteria with respect to the inventive step as unassuming as possible.

It is different with industrialists. A serious company will not apply for patents for every obvious modification on the basis of known principles and has no wish to be continually hampered in its use of such principles.

It is possible, too, that industrialists have a better idea than lawyers of what The American Challenge can signify for France in the patent field. Comparatively speaking, in the United States many patents are applied for (and granted) which are new combinations of a number of steps which by themselves are known or obvious. These patents have little chance of ultimately being declared valid in a lawsuit; there is — not according to the law but *de facto* — a great difference between the criteria for inventive step applied by the U.S. Patent Office and those applied by the Supreme Court. However, they do have (in view of the complexity, costliness and long duration of litigation in the United States) a certain deterrent value. Furthermore (sometimes mainly), they serve to prevent others from obtaining patents for the combination in question. Applications for such combinations have little change in countries like the Netherlands, Germany and Sweden, but in France many of them would be valid according to the old law's criteria of novelty. As U. S. nationals are now filing more and more patents in Europe, French industry could suffer serious inconvenience from this dynamic U. S. behavior if it were not protected by high requirements with respect to inventive step.

Pharmaceutical Products

Pharmaceutical products (medicines, human or veterinary) are subjected by the new law to a number of special regulations. In Article 10 it is stated that an invention in the field of pharmaceuticals is patentable only if the product is disclosed as a medicament "for the first time" which, according to the scanty and brief French commentaries existing on the new law, means that "a new therapeutical application of a remedy already known (for another therapeutical purpose) is not patentable."

It seems to me that this is somewhat misleading. If a specific preparation is made (for another kind of medical treatment) which has the same active ingredient as the preparation according to a prior patent (application), why should a separate patent be impossible? Suppose, for example, that sub-

stance A is found to be effective against disease Y. Substance A has to be used in a potion. Subsequently it is found that substance A is also effective against quite another disease, Z. This time substance A has to be incorporated in a suppository. Why should it be impossible this second time to get a patent for the suppository containing substance A? Obviously, when the preparation containing A in the first case is identical with the preparation in the second case, a second patent is not possible. But then we have a case of chance anticipation. Hence one could ask whether Article 10 contains more than the general rule that a chance anticipation prevents the granting of a valid patent. In fact, is Article 10 not redundant?¹⁰

In Article 19, third paragraph, another exception crops up. Delaying the documentary search for two years, possible for other applications, is not possible for pharmaceutical products.

Nor is it possible to obtain a certificate of utility (which would not require a documentary report) for inventions in the field under discussion (Article 3, first paragraph).

From Article 30, first and second paragraphs, it follows that a patent with a substance claim (not mentioning therapeutic application of the substance) cannot prevent the substance from being used by persons other than the patentee as starting material for the manufacture of a pharmaceutical product, provided, of course, that in manufacturing substance, processes patented by other persons are not used.

From Article 30, third paragraph, it follows that patents for therapeutics may in no way impede the preparation of prescriptions in dispensaries ("*préparation magistrale effectuée extemporanément et par unité*"). This is a very important provision.

Certificate of Utility

Alongside the normal patent, the new French law has introduced a second kind of patent, the certificate of utility (Article 3). French industry does not seem to like the novelty that this has created. Matters are only complicated and no one feels that it is really needed.

The certificate of nullity, now already popularly dubbed *petit brevet*, has a duration of only six years. A documentary report is not required. The requirements for validity are the same as those of the normal patent. The application for a normal patent can within two years be converted into an application for a certificate of utility (Article 19, fourth paragraph). The reverse is not possible. If postponement of examination has been requested for the normal application and if no request for a documentary report has been filed before the expiry of the two-year term fixed for this postponement, the normal application will be converted by the Patent Office into an application for a certificate of utility (Article 19, fourth paragraph).

Whereas the applicant for a normal patent cannot institute an infringement suit, unless the documentary report has al-

ready been made or requested, this does not apply in the case of an applicant for or holder of a certificate of utility.

The requirements for and rights attached to the certificate of utility are the same as those of the normal patent (Article 3, third paragraph), which means that, among other things, there is no question of being able to get by with a lower degree of inventiveness.

The question has been asked whether the certificate of utility will indeed be recognized as a priority document.

With the institution of the certificate of utility the greater legal security so sedulously aimed for by the new law is badly shaken. The certificate is thus an old style patent, but with a duration of only six years and having the additional requirement of inventive step. A further requirement, namely that there must be claims, probably amounts to very little as far as the certificate is concerned for, as has been set out in detail above, good claims can only be indirectly enforced by the procedure in the second phase of the examination, during which the documentary report is established. The whole procedure of Article 20 was instituted for the very purpose of establishing good claims. If the certificate is exempted from this procedure, it is on the face of it, an admission that bad claims (claims which, for example, are too broad and thus meaningless) will have to be tolerated and that the courts in fact will have to depend on the complete contents of the description after all. Case law will have to decide this; it is yet another complication and adds to insecurity.

Compulsory Licenses

In the foregoing it has been pointed out repeatedly that the general tenor of the new French law, compared with the old, is an improvement in regard to safeguarding the interests of third parties and in preventing the field of technology from being strewn with danger. This is also expressed in the paragraphs concerning compulsory licenses. The existing possibilities of obtaining a compulsory license have been maintained (Articles 32 to 35 and 64), which means that an application for a non-exclusive compulsory license can be made to the Court (*Tribunal de Grande Instance*) if three years after the grant of the patent the patentee (without legitimate excuse) has not seen to it that the invention has been seriously and effectively exploited or has suspended exploitation for three consecutive years.

The provisions concerning the compulsory license in connection with a patent of improvement and the provision concerning the license of right are new.

With respect to the first case (Article 36), the owner of a patent of improvement can apply to the court for a compulsory license on the basic patent (while conversely he must grant the owner of the basic patent a license on his own patent). The following requirements must be met:

- (a) the invention must relate to an important improvement of the basic patent;
- (b) the granting of the compulsory license must be in the public interest;
- (c) three years must have passed since the granting of the basic patent;

¹⁰ For the convenience of the reader Article 10 is reproduced here (the underlining is the author's): "A patent cannot be validly granted in respect of an invention relating to a medicine unless its subject matter is a product, a substance or a compound disclosed for the first time as being a medicine within the meaning of Article L. 511 of the Public Health Code."

(d) the license extends only to what is necessary to apply the patent of improvement.

In those cases for which the newly introduced system of the license of right is operative the right to decide whether or not to grant a compulsory license is taken out of the court's hands. This decision is now left to the Minister responsible for Industrial Property. The fixing of the financial terms, to the extent that this is not done by amicable settlement, is the preserve of the court.

According to the system of the license of right patents can, by decree, be subjected to a special regime, according to which anyone can ask the Minister for a compulsory license. Appeal to the courts against a decision is not possible.

The provisions concerning the license of right differ slightly, depending on whether they relate to pharmaceutical products or other products. In the case of pharmaceutical products the Minister responsible for Industrial Property, at the request of the Minister responsible for Public Health (when the latter believes that the patentee does not serve the public interest sufficiently), can by decree place the patent under the regime (Articles 37 and 38).

In the case of "other products" the Minister must first declare the patentee in default and request him to exploit the patent within a year in such a manner, that the needs of the national economy are met. If after a year it appears that the patentee has responded inadequately, so that "economic development is seriously harmed," the patent is brought under the regime of the license of right (Article 39) by decree of the Council of Ministers.

A further difference between pharmaceutical products and others is that in the case of the latter it is expressly stipulated that the compulsory license can only be non-exclusive (Article 39, fourth paragraph). Nothing is said about the former products but it seems unlikely that it would be possible to obtain even an exclusive compulsory license for patents covering these products.

Furthermore, in the interest of national defense, according to Article 40 the State can at any time obtain a compulsory license for itself or on its own behalf, by decree of the Minister responsible for Industrial Property.

It seems to me that the extensive provisions in the new law devoted to compulsory licenses to some extent mirror the myth, spread by some economists, of the great danger of "blocking patents," as well as the previously mentioned more legitimate fear of foreign technological domination.

Furthermore, with respect to pharmaceutical products there has been an attempt to steer a middle course between, on the one hand, stimulation of the pharmaceutical industry by handling the patenting of pharmaceuticals in practically the same way as all other products, and on the other hand, satisfaction in part of the wish expressed by so many sources to have bounds set to the exorbitant price inflation of medicines protected by patents.

In the French industrial world the new provisions concerning compulsory licenses have stirred up considerable uneasiness. It is feared that the State will start bringing patents under the regime of the license of right on a large scale. In-

deed, it is much easier to obtain a license of right than a license which (according to Article 32) has to be wrested from the courts. However, it seems to me that, considering the demands made when a patent is subjected to the regime of the licence of right, this fear is exaggerated.

Personal Possession

According to Article 31 the patentee cannot assert his rights with respect to persons who are in possession of the invention. It is difficult to believe that this means anything other than prior knowledge; thus, that prior use, as required in the Netherlands, is not necessary. This matter of personal possession was not mentioned at all in the old law, although case law accepted the concept¹¹.

One of the ways in which proof of prior knowledge of an invention can be arranged is by filing a "Soleau envelope" (also called *pli cacheté*) at the Patent Office. Prior knowledge is described as accurately as possible and enclosed in two envelopes. Both are stamped and sealed by the Patent Office; one is held by the Patent Office, one by the owner himself. The institution of the Soleau envelope, as has already been pointed out earlier, is not regulated by legislation.

Patentee's Rights and Infringement

The rights of the patentee are summed up in Article 29. These are primarily the rights which are also well known in the Netherlands. However, in Article 29(4), a few interesting provisions have been incorporated.

In the first place infringement is perpetrated by the user, importer or retailer of a product that has been directly obtained according to a patented method (Article 29(4), first paragraph).

According to Article 29(4), second paragraph, indirect patent infringement is the providing of means aimed at infringement of a patent.

In Article 29(4), third paragraph, it is quite clearly stated that personal, household or experimental use of a patented product or method does not constitute infringement.

Article 51 stipulates that it may not be presumed that the seller or user of a patented product, when this is someone other than the maker, is aware of the patent. He must have been notified of this first if there is to be a question of infringement.

In the case of patents which have already been open to public inspection but not yet granted, an infringement suit can be started only after the infringer has been warned (Article 55(1)). An infringement suit can be brought before the court only after the applicant or patentee has requested a documentary report in accordance with Article 20 (Article 55, second paragraph; remember that this application for non-

¹¹ Some uncertainty existed as to the interpretation of this concept. Some people believed that prior knowledge was sufficient (see e. g. Casalonga, *Traité des brevets d'invention*, Vol. II, 1949, p. 101, sub 968), other that prior use was necessary (see e. g. Pouillet, *Traité des brevets d'invention*, 6th ed., 1915, bottom of p. 544 and top of p. 545). A recent decision of the *Cour de Paris* concurs with the latter view: exploitation or serious preparation for exploitation is deemed necessary (see *Annales de la propriété industrielle, artistique et littéraire*, No. 1, 1967).

pharmaceuticals can be delayed for two years). However, the court delays action until the patent has been granted (Article 55, third paragraph). It should be repeated that, application for a documentary search is not a condition to an infringement suit based on a certificate of utility.

Article 53 deals with the question of who is entitled to bring an infringement suit. In the first place, the patentee, of course, has this right, and in the second place, the owner of an exclusive or compulsory license, except where the licensing contract provides otherwise, and only if the patentee himself, after notice has not brought suit (second paragraph).

Furthermore, every owner of a license can join in an infringement suit brought by the patentee (and vice versa) in order to try to obtain redress for the damage he has sustained.

The *Tribunaux de Grande Instance* and respective Courts of Appeal have jurisdiction in infringement cases (Articles 54 and 68, first paragraph).

Nullity

Although express provision is not made in the new law (Article 49), as it is in the old law (Article 34), it must be assumed that any interested party may bring a nullity suit.

Here, too, the *Tribunaux de Grande Instance* have jurisdiction (Article 68, first paragraph). The judgment binds only the parties to the suit, except when nullity has been requested in the name of the State (Article 50, second paragraph). Thus the (theoretical?) possibility still exists that a patent may be valid pursuant to one judgment and invalid pursuant to another.

Compare this with the situation in the Netherlands, where infringement suits can be brought before different courts but a nullity suit is possible only before the Court of The Hague.

Transitional Provisions

Transitional provisions for the introduction of the new law are to be found in Articles 71 and 73.

Patents applied for prior to the effective date of the new law (January 1, 1969) remain subject to the old provisions. Claims need not be added and those patents are not subjected to an examination. It has already been pointed out, however, that an infringement suit cannot be instituted until after a

documentary search has been carried out as to the specific part of the patent on which the claimed infringement is being made (Article 71, fourth paragraph).

Procedures for the exercise of patent rights based on applications filed before the date of the introduction of the new law are governed by the new provisions (licenses, infringement suits, etc.) (Article 71, third paragraph).

The provisions of Articles 19 and 20 concerning the second phase of the examination, including the documentary report will not be applied immediately to all patent applications but progressively to different technological fields (Article 73, second paragraph). Here, too, the rule applies that an infringement suit can be instituted only after a documentary search has been requested.

NEWS ITEMS

COLOMBIA

Appointment of a New Head of Industrial Property

We have been informed that Miss Stella Villegas has been appointed Head of Industrial Property in the Ministry of Economic Development of Colombia.

We take this opportunity of congratulating Miss Stella Villegas on her appointment.

UNITED ARAB REPUBLIC

Appointment of a New Director General of the Commercial Registration Administration

We have been informed that Mr. Ali Mahmoud Khalil has been appointed Director General of the Commercial Registration Administration.

We take this opportunity of congratulating Mr. Ali Mahmoud Khalil on his appointment.

CALENDAR OF MEETINGS

BIRPI Meetings

- 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
- July 13 to 17, 1970 (Geneva)** — Joint ad hoc Committee on the International Classification of Patents — Bureau (3rd Session)
Object: Supervision and coordination of the activities of the Working Groups — *Invitations:* Czechoslovakia, Germany (Fed. Rep.), Netherlands, Soviet Union, United Kingdom, United States of America — *Observer:* International Patent Institute — *Note:* Meeting convened jointly with the Council of Europe
- September 14 and 15, 1970 (Geneva)** — BIRPI Headquarters Building Subcommittee (a Subcommittee of the Internion Coordination Committee) (2nd Session)
Object: Plans for the extension of the Headquarters Building of BIRPI — *Invitations:* Argentina, Cameroon, France, Germany (Fed. Rep.), Italy, Japan, Netherlands, Soviet Union, Switzerland, United States of America
- September 14 to 18, 1970 (Geneva)** — Permanent Committee of the Berne Union (Extraordinary Session)
Object: Consideration of various questions concerning copyright — *Invitations:* Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom — *Observers:* All other member States of the Berne Union; Unesco; International non-governmental Organizations concerned
- September 16 to 18, 1970 (Geneva)** — Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — Plenary Committee (2nd Session)
- September 21 to 29, 1970 (Geneva)** — Administrative Bodies of WIPO and of the Paris, Berne, Nice and Lisbon Unions
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
- October 5 to 9, 1970 (Madrid)** — Joint ad hoc Committee on the International Classification of Patents — (4th Session)
Object: Supervision and coordination of the activities of the Working Groups — *Invitations:* Czechoslovakia, France, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Spain, Switzerland, United Kingdom, United States of America — *Observer:* International Patent Institute — *Note:* Meeting convened jointly with the Council of Europe.
- October 12 to 14, 1970 (Geneva)** — ICIREPAT — Technical Committee I (Retrieval Systems, Design and Testing) (4th Session)
- October 14 to 16, 1970 (Geneva)** — ICIREPAT — Technical Committee VI (Systems Implementation) (4th Session)
- October 15 and 16, 1970 (Geneva)** — ICIREPAT — Advisory Board for Cooperative Systems (ABCS) (13th Session)
- October 19 and 20, 1970 (Geneva)** — ICIREPAT — Technical Committee II (Technical Fields: Forward Planning) (4th Session)
- October 21 to 23, 1970 (Geneva)** — ICIREPAT — Technical Committee III (Advanced Computer Techniques) (3rd Session)
- October 26 to 28, 1970 (Geneva)** — ICIREPAT — Technical Committee V (Patent Format and Printing) (4th Session)
- October 29 and 30, 1970 (Geneva)** — ICIREPAT — Technical Committee IV (Microform) (4th Session)
- 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
- December 7 and 8, 1970 (Geneva)** — ICIREPAT — Technical Coordination Committee (5th Session)
- December 14 to 18, 1970 (The Hague)** — Joint ad hoc Committee on the International Classification of Patents — Temporary Working Group VI
Object: Harmonization of French and English texts — *Note:* Meeting convened jointly with the Council of Europe
- February 22 to 26, 1971 (Geneva)** — Committee of Experts for an Agreement on the Protection of Type Faces
- March 15 to 24, 1971 (Strasbourg)** — Diplomatic Conference for the Adoption of the Agreement Concerning the International Patent Classification
Note: Conference convened jointly with the Council of Europe

Meetings of Other International Organizations Concerned with Intellectual Property

June 22 to 27, 1970 (Las Palmas) — International Confederation of Societies of Authors and Composers (CISAC) — 27th Congress

June 30 to July 2, 1970 (The Hague) — International Patent Institute (IIB) — Administrative Council (103rd Session)

July 6 to 9, 1970 (Paris) — International Literary and Artistic Association (ALAI) — Symposium

September 2 to 11, 1970 (Paris) — United Nations Educational, Scientific and Cultural Organization (Unesco) — Intergovernmental Copyright Committee — Extraordinary Session

September 21 to 25, 1970 (Amsterdam) — International Federation of Actors (IFA) — 8th Congress

October 18 to 23, 1970 (Madrid) — International Association for the Protection of Industrial Property (IAPIP) — Executive Committee

Luxembourg — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents:

June 23 to 26, 1970 — Working Party I — “Implementing Regulations” Subcommittee (1st Meeting)

July 1 to 3, 1970 — Working Party III (2nd Meeting)

July 6 to 9, 1970 — Working Party IV (2nd Meeting)

September 1 to 5, 1970 — Working Party II (2nd Meeting)

September 8 to 11, 1970 — Working Party I (5th Meeting)

September 15 to 18, 1970 — Working Party I — “Implementing Regulations” Subcommittee (2nd Meeting)

October 6 to 8, 1970 — Working Party II (3rd Meeting)

October 13 to 15, 1970 — Working Party IV (3rd Meeting)

October 20 to 23, 1970 — Working Party I — “Implementing Regulations” Subcommittee (3rd Meeting)

November 24 to 27, 1970 — Working Party I — “Implementing Regulations” Subcommittee (4th Meeting)

December 1 to 4, 1970 — Working Party I (6th Meeting)
