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INTERNATIONAL UNIONS

Locarno Agreement

Ratifications

DENMARK

The Director General of the World Intellectual Property Organization has notified the Governments of the union countries that the Government of the Kingdom of Denmark deposited, on January 27, 1971, its instrument of ratification, dated December 23, 1970, of the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968.

The said instrument of ratification was accompanied by the following declaration: "... until further notice this Arrangement does not apply to the Faeroe Islands."

A separate notification of the entry into force of the Locarno Agreement is published below.

Locarno Notification No. 5, dated February 10, 1971.

NORWAY

The Director General of the World Intellectual Property Organization has notified the Governments of the union countries that the Government of the Kingdom of Norway deposited, on January 27, 1971, its instrument of ratification, dated January 8, 1971, of the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968.

A separate notification of the entry into force of the Locarno Agreement is published below.

Locarno Notification No. 6, dated February 10, 1971.

SWITZERLAND

The Director General of the World Intellectual Property Organization has notified the Governments of the union coun-

tries that the Government of the Swiss Confederation deposited, on January 27, 1971, its instrument of ratification, dated January 14, 1971, of the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968.

A separate notification of the entry into force of the Locarno Agreement is published below.

Locarno Notification No. 7, dated February 10, 1971.

Entry into Force of the Locarno Agreement

The Director General of the World Intellectual Property Organization, referring to Article 14(5) of the Locarno Agreement Establishing an International Classification for Industrial Designs, has informed the Governments of the union countries that, pursuant to the provisions of Article 9(3)(a), the said Agreement will enter into force on

April 27, 1971,

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

In this connection, instruments of ratification or accession, relating to the Locarno Agreement, were deposited:

- on October 13, 1969, by the German Democratic Republic
- on July 7, 1970, by the Kingdom of Sweden
- on July 9, 1970, by Ireland
- on August 4, 1970, by the Czechoslovak Socialist Republic
- on January 27, 1971, by the Kingdom of Denmark
- on January 27, 1971, by the Kingdom of Norway
- on January 27, 1971, by the Swiss Confederation.

The notification of the deposit of the first of these instruments gave rise to communications from some Governments disputing its validity, communications which have been transmitted to the countries party to the said Agreement.

Locarno Notification No. 8, dated February 10, 1971.

WIPO/BIRPI MEETINGS

World Intellectual Property Organization Advisory Group of Governmental Experts on the Protection of Computer Programs

(Geneva, March 8 to 12, 1971)

Report

Introduction

1. The purpose of the meeting of this Advisory Group was to advise the International Bureau of WIPO on the preparation of a study of the following questions:

(i) What form of legal protection of computer programs at the national level is most appropriate both from the point of view of the developing countries and from that of the producers of software?

(ii) What new international arrangements, or modification or reinforcement of existing arrangements, are called for?

This study is called for in a report of the Secretary-General of the United Nations on the application of computer technology for development (UN document E/4800, paragraph 201).

Opening of the meeting

2. The meeting was opened by the Director General of WIPO, who welcomed the governmental experts. The list of participants is annexed to this Report.

Election of Officers

3. On the proposal of the Expert of the United States of America, supported by the Expert of Germany (Federal Republic), Mr. F. W. Simons, Expert of Canada, was elected Chairman of the meeting.

Adoption of the agenda

4. The draft agenda contained in document AGCP/1 was adopted.

General discussion on the legal protection of computer programs

5. Document AGCP/3, a memorandum prepared by the International Bureau of WIPO on questions to be discussed, was considered paragraph by paragraph, after a general discussion had taken place upon these questions.

6. It was emphasized that the views expressed by the experts did not necessarily reflect any official views of the governments which had nominated them and were in no way binding upon those governments.

7. The Director General suggested that attention should be concentrated on four major points during the general discussion.

(i) Should consideration be given to the protection of all forms of computer software, or of computer programs only?

(ii) Should protection be provided for all programs, or only those which resulted from truly inventive or creative efforts? (In this context, the Director General referred to an estimate made by a major computer manufacturer that at the very most some 20 % of investment in the development of software was devoted to new concepts.)

(iii) In what way can the interests of the developing countries best be served?

(iv) Would it be helpful, for further study, to obtain the written views of the governments of member States and statements concerning their relevant existing laws?

8. The Expert of the United States of America considered that it was important not to confuse the study of the legal protection of computer software by including also questions concerning the use of works protected by copyright in computer systems. Within that limitation, the terms of reference of the study should be wide enough to include all computer programs, whether truly inventive or not. So far as the needs of the developing countries were concerned, particular emphasis should be given to the question of international relations not only as between developing and developed countries and as among developing countries themselves, but also as among the developed countries, in addition to the possibility of preparing model laws for assistance at the national level. For any future meeting of a committee of governmental experts with participation on behalf of the private sector very thorough documentation would be required; although questionnaires to governments did not always produce successful results, this method was probably appropriate in this case provided that it followed independent studies undertaken under the responsibility of WIPO.

9. The Expert of the United Kingdom said that the first requirement was an investigation of the question whether a real need existed for new systems of legal protection of computer software. Current experience in the United Kingdom suggested that existing laws of contract and practices relating to trade secrets provided adequate protection.

10. The Expert of Germany (Federal Republic) said that it would be helpful to obtain the written views of governments of both developed and developing countries upon the need for legal protection of computer software and their plans, if any, to meet such needs, bearing in mind the desirability of a degree of harmonization.

11. The Expert of the Soviet Union stressed that the question of the needs of the developing countries was one upon which the governments of those countries should express their own views. In the Soviet Union computer programs were protected by common law, and inventiveness was rewarded through the normal channels. Experience in the field of international trade in computer software was not yet sufficient; if, however, proposals for international arrangements were made by other

countries, the Soviet Union would be willing to take part in the negotiation of such arrangements. He emphasized that, in such arrangements, there should be no discrimination between developed and developing countries.

12. The Expert of France recalled that the new French patent law specifically excluded computer programs from patentability; he emphasized that this did not imply that France opposed the legal protection of computer programs by other means. In this connection, the Expert of the United Kingdom expressed the view that patents were not the appropriate form of protection for computer programs. He stated that the Banks Committee on the British Patent System had recommended that computer programs should not be patentable. He added, however, that the United Kingdom might be willing to reconsider the matter if other countries came out in favor of patent protection.

13. The Expert of Spain informed the meeting that no specific protection for computer software was provided by the laws of Spain, although some help could be obtained under the copyright law. Spain wished to examine the experience of other countries in this field.

14. The Expert of Canada pointed out that any protection available under existing Canadian law was accidental. There was an absence of economic facts upon which specific proposals for the legal protection of computer software could be made; it was difficult even to define a program or to specify the nature of appropriate protection and of possible exceptions to it in certain circumstances. Programs were of many different types, and it could well be that different types of protection or terms of protection would be appropriate to different types of programs.

Scope of the study

15. It was generally agreed that the question to be studied should embrace all computer programs, whether or not regarded as "inventive" or "original", in a creative sense, for the purposes of existing legal systems, in view of the substantial investment required for the development of even non-inventive computer programs, and in view of their commercial value. The question of a precise definition of a program would depend upon the type of protection to be granted to it.

16. In this connection, the Expert of the United States of America pointed out, in relation to some possible methods of protection, the distinction between programs merely as instructions to a machine and programs in a form making a computer operable or changing its internal configuration. In any event, the question of whether the concept of "program" should include preliminary works such as workflow descriptions, flow charts and block diagrams should be scrutinized.

The need for legal protection

17. The Advisory Group examined the arguments in favor of the legal protection of computer programs set out in paragraph 6 of document AGCP/3. The Expert of Germany (Federal Republic) laid particular emphasis on the importance of the argument that the absence of legal protection drives inven-

tors to rely on secrecy which, from the point of view of the advance of technology, is undesirable. An adequate form of legal protection would improve the possibility of access to computer programs for the public in the developed and the developing countries.

18. The Expert of Canada thought that the weight of the arguments suggested could vary according to the type of program concerned; evidence would be necessary before it could be decided that the arguments justified the establishment of special legal protection for programs. This view was supported by the Expert of the United Kingdom, although it was agreed that the nature of the evidence could not always be factual but might involve the assessment of probabilities. Subject to the need for further study of the factual background relating to the development of programs and commercial transactions in programs, it was generally agreed that the arguments contained in paragraph 6 of document AGCP/3 constituted reasons which were valid in principle for the establishment of legal protection of computer programs.

Contracts and trade secrets

19. The Expert of the United States of America gave a brief account of the changes which had taken place in the pattern of commercial transactions in computer programs in her country, which had led to pressures from some quarters for the recognition of the need for legal protection of computer programs by means other than the law of contract and of trade secrets. The Expert of Canada emphasized that one objective of any system of protection of programs was disclosure of technological advances in this field with a view to the avoidance of duplication of effort and increased availability of programs for users. For this purpose the possibility could well be considered of providing, in any special legislation for computer programs, that no protection of a trade secrets' nature would be available. In this connection the Expert of the United States of America informed the meeting that recent decisions of the American courts had thrown some doubt on the applicability of trade secrets protection in cases where the subject matter had been communicated to others, or had been licensed, even under contractual obligations of confidentiality.

20. After considering paragraph 9 of document AGCP/3, the Advisory Group decided to examine, in addition to the questions set out in that paragraph, the following aspects of legal protection:

- (i) possible limitations of the protection in certain circumstances;
- (ii) means of detecting infringements.

The Advisory Group noted that the question of what acts should be protected involved the further question of the definition of the program.

21. The Expert of the Soviet Union, expressing the view of the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR, said that the protection of programs could most easily be assimilated to that of utility models or an invention at the national level. Such protection would be effective against unauthorized use, and would last

for a reasonably short period; in the view of the Committee for Inventions and Discoveries, from 5 to 10 years would be a reasonable period for computer programs; a longer period would make no sense. At the international level, the protection of utility models was already covered by the Paris Convention, which could be extended in relation to computer programs. It would be necessary to provide for at least a registration of a brief description of the program and for the deposit of a copy in machine-readable language in order to overcome any difficulties relating to priority and in order to avoid innocent infringement.

Protection against use

22. The Advisory Group noted that the copyright laws of many countries would not provide protection against the use of a program effected without copying or reproduction of the program. In spite of the fact that it was normally necessary, in the present state of technology, for a program to be "reproduced" in order to be used in a computer, the Advisory Group expressed the view that any system for the legal protection of computer programs should desirably provide protection against use without reproduction, particularly for the reason that it is impossible to predict the technological developments which may take place. In this connection the Expert of the United States of America drew attention to the fact that certain interests, particularly educational groups, had expressed concern over possible restrictions against the use of programs whose physical possession had been legally acquired; this was a matter which could probably be dealt with by legal presumptions which would operate in the absence of specific agreement.

23. The Advisory Group agreed to consider not only the two "property rights" approaches referred to in paragraphs 11 and 12 of document AGCP/3, but also a third such approach, following the suggestion made by the Expert of the Soviet Union, based on the concept of utility models (paragraph 21, *supra*).

24. The Expert of the United States of America gave a brief account of developments in the United States in relation to the patentability of inventive computer programs. The situation was still far from clear, in spite of recent court decisions in the area. Some representatives of the private sector had advanced proposals for a new system of protection which in many respects would resemble the "utility model" approach suggested by the Expert of the Soviet Union. The United States Copyright Office accepted computer programs for registration, although no decision of the courts had yet been taken upon whether these works were protected by United States copyright law. In the last six years less than 200 programs had been registered with the Office, probably because only published works could be registered and potential applicants might fear the loss of protection under trade secrets laws.

25. The Expert of Germany (Federal Republic) reported that the application of the existing patent law to computer programs was still not clear in her country. She posed the question whether patent protection would, in practical terms, be appropriate for computer programs, bearing in mind the dif-

ficulty of examining such programs for novelty and inventiveness and the doubtful need for a protection in the nature of a patent monopoly as opposed to a protection against use or copying without authorization. The existing legislation in her country on the subject of utility models was certainly not applicable to the majority of computer programs. So far as the copyright approach was concerned, she drew attention to the danger that the broad concept of adaptation, coupled with the long period of protection granted by copyright laws, could result in an indefinite period of protection being granted to a succession of programs derived from one original program.

26. The Expert of Spain observed that in his country it would be impossible to obtain protection for computer programs by means of utility models because, according to the national legislation, the latter protection applied only to the functional elements of the external form of industrial articles.

27. The Advisory Group noted that the definition of originality, for the purposes of copyright law, varied from country to country and that the aim of protecting all computer programs, referred to in paragraph 15 of this Report, could not be met by some such laws.

28. In relation to the "unfair use" approach referred to in paragraphs 13 and 16 of document AGCP/3, the Expert of Germany (Federal Republic) suggested that, in the absence of a specific right of the program-maker, certain developments in the law of unfair competition in her country would prevent the application of such principles to the main bulk of computer programs. The Expert of the United States of America commented that constitutional problems might have a similar effect in her country, and might even make it difficult to adopt a new federal law for the protection of computer programs based on such an approach.

29. At the conclusion of the discussion of the possible advantages of the three approaches referred to in document AGCP/3 and the further approach suggested by the Expert of the Soviet Union, the Advisory Group agreed that the study should concentrate upon the desirable ingredients of any system of legal protection of computer programs, rather than follow rigidly the lines of established legal concepts which differed substantially from country to country.

Protection against other acts

30. The Advisory Group agreed that translation of a computer program from one computer language to another should desirably be protected, and that, for reasons including those advanced earlier by the Expert of Germany (Federal Republic), the concept of adaptation as a protected act required considerable study and refinement, in order to avoid the possibility that a system to protect the form in which instructions were expressed should accidentally extend to a protection of the ideas from which the instructions had been derived. The Expert of France suggested that no distinction should be made between programs in machine-readable form and programs at an earlier stage of development requiring translation into such form. The Expert of the United Kingdom suggested that any system would probably require the hearing of expert

evidence in relation to the question of adaptation and to the related question of whether one program was substantially similar to another or was the same as another with minor modifications only.

Remedies

31. The Advisory Group accepted the suggestions contained in paragraph 21 of document AGCP/3.

Period of the protection

32. The Advisory Group agreed that the principles governing the period of protection under copyright laws were not necessarily applicable to the appropriate period of protection to be granted for computer programs. However, in the absence of specific evidence concerning such matters as the effective commercial life of a computer program, or the time needed for the reasonable recoupment of investment in its development, the Advisory Group was unable to suggest any particular period of protection, and drew attention to the fact that current opinions upon this matter might well prove to be out of date particularly if technological changes ceased to take place at the present rapid rate.

33. The Expert of the United States of America pointed out that a system of legal protection could provide for different terms of protection subject to different conditions, and could include the possibility of renewals of the period.

Limitation on the protection

34. The Advisory Group noted that limitations on the protection granted to computer programs might be required by the existing legislative policies of some countries, and might be imposed either by the general legislation of a country for the control of monopolies, misuse and restrictive business practices or by specific provisions, relating, for instance, to compulsory licensing, to be contained in the system itself.

35. The Expert of Germany (Federal Republic) said that if protection were granted in respect of use, then some "fair use" provisions should be considered, for instance for purposes of trial or of comparison between programs. The Expert of France observed that in his opinion a limitation on the copying of programs for internal purposes within an installation would, in the present state of the technology, constitute an obstacle to their use. The Experts of Canada and the United Kingdom suggested that the compulsory licensing provisions contained in the patent laws of their countries might well be regarded as appropriate in relation to the protection of programs.

Procedure and conditions

36. The Expert of the United Kingdom, while emphasizing that his country had no experience of a registration system in the field of copyright, suggested that consideration should be given to problems of standardization of format should registration or deposit be required. The Expert of Canada expressed the view that some system of disclosure would be

desirable in order to assist in achieving the aim that protected computer programs should be readily available for use.

37. The Advisory Group noted that compulsory registration systems (as in the United States of America for copyright purposes) or optional registration systems (as in India and Canada) might be desirable; their establishment would depend on the legislative traditions and the administrative resources of the country concerned.

Beneficiary of the protection

38. The Advisory Group expressed general support for the suggestion made in paragraph 24 of document AGCP/3, provided that the "person" who orders (i. e., who commissions or controls) the development of the program should be interpreted sufficiently widely to include enterprises. The Expert of Germany (Federal Republic) pointed out that in some countries the position of employed inventors was regulated by laws which would have an influence upon this question.

Means of detecting infringement

39. The Advisory Group agreed that a system for the protection of computer programs could be effective even if minor or individual infringements could not readily be detected or proved. The state of knowledge existing in the computer profession (which could itself assist by establishing codes of professional conduct) about the activities of different enterprises could normally be relied upon to supply at least *prima facie* evidence of major or continuing infringements. In this event, consideration could be given to an onus of proof being placed upon the possible infringer to show that his program had been developed independently, or to the law giving power to the courts to order an independent inspection. The Expert of Canada pointed out that the expected increase in the use of computer utilities could assist largely in the practical task of detecting infringements.

Application at the national level

40. The Advisory Group agreed that the basic issues upon which decisions concerning the legal protection of computer software would have to be taken were not yet sufficiently clarified. However, it was agreed that further study at the international level, including possibly the drafting of model provisions upon which national legislation could be based, would be of value even at this stage in the interest of obtaining reasonable harmonization or compatibility of national laws.

International arrangements

41. The Advisory Group agreed that, in the long run, international links between national laws for the protection of computer software would be desirable and that such links could appropriately take the form of international treaties incorporating the principle of national treatment, with certain minimum levels and maximum conditions of protection. Preliminary discussion of such instruments could well assist in preventing wide divergences between national laws.

42. The Expert of the Soviet Union pointed out that his country would prefer such negotiations to take place within the

context of the International (Paris) Convention for the Protection of Industrial Property, in view of the fact that it was not a member of any of the international conventions concerning copyright.

Possible future action

(a) Convening a committee of governmental experts

43. The Advisory Group agreed that a committee of governmental experts to study the question of the legal protection of computer programs, to which the governments of all member States of the Paris and Berne Unions, or possibly of the United Nations, would be invited, should not be convened except upon the basis of thoroughly prepared documentation giving an indication of the economic evidence on the need for legal protection, and information about the state of the relevant laws in the member countries. A more limited meeting of governmental experts might be of assistance to the International Bureau of WIPO in preparing such documentation. The documentation should include special studies on the specific needs of the developing countries. It was noted that decisions upon the convening of future meetings would be taken by the appropriate Administrative Bodies of WIPO.

44. It was further agreed that the undertaking of the studies necessary for the preparation of documents for a future large-scale meeting of governmental experts should appropriately be entrusted to the International Bureau of WIPO, with the assistance of governments and of such outside consultants as might be necessary, and in consultation with other intergovernmental or international non-governmental organizations with relevant experience, whose work should, so far as possible, be used in such studies.

45. The Expert of Canada suggested that a thorough factual study of the technological and commercial aspects of the industry should precede the next meeting. The aims of the study should include the encouragement, nationally and internationally, of the development and use of computer programs, by means of effective disclosure and the provision of reasonable access. The study should also be coordinated with other existing studies of the computer industry on the international level. Any recommended system of legal protection should be capable of being administered economically and of granting protection in time for the needs of the software industry. In his view, the studies upon which future documentation should be based should take into account the following questions:

What are the effects of trade secrets protection? Is more incentive needed? If so, intellectual property rights are only one of a variety of possible ways of providing new incentives. Do hardware manufacturers require the same types of guarantees as software houses? Does trade secrecy really hinder the disclosure or utilization of computer programs, or do the marketing efforts of producers serve to distribute them adequately? Would a statutory scheme of protection have any effect beyond substituting another legal basis for marketing? Would special statutory protection necessarily mean that the industry would not continue to rely heavily on trade secrecy? Should it be accompanied by a denial of trade secrecy protection through the courts? Are the needs for protection likely

to change if the industry stabilizes or programs acquire a longer average life? How would a new basis of protection affect the structure of the computer industry? Would it favor the hardware manufacturers and restrain the current dynamic growth of the industry as a whole, or would it help guarantee the positions of software houses? In terms of domestic industries and balance of payments, would an international regime of protection be unduly favorable to countries with established hardware manufacturing capability?

The Expert of Canada accepted that some of these questions were not capable of being answered except in terms of presumptions and probabilities. In general, three types of questions should be addressed:

(i) What types of programs lend themselves technologically to special legal protection?

(ii) Of those that do, which types should receive protection, and in what way?

(iii) The needs of developing countries, in terms of unsatisfied need and the commercial impact of a special system of protection, should receive special attention, with the objective of making programs readily available to developing countries.

46. The Expert of the United Kingdom suggested that attention should be concentrated on three basic questions:

(i) What types of programs should be protected?

(ii) What type of protection would be appropriate?

(iii) What are the needs of the developing countries?

47. The Advisory Group emphasized the need to associate representatives of computer users and of the industry (including both the hardware and the software sectors) with the study at as early a stage as possible, as well as the intergovernmental and international non-governmental organizations concerned.

(b) Preparation of documents

48. The Expert of the Soviet Union suggested that at least the following three documents should be presented to a meeting of governmental experts of all member States of the Paris and Berne Unions:

(i) a memorandum setting out the major points and the history of the problem;

(ii) an outline draft of substantive provisions of a possible new international arrangement (which could form part of or a protocol to the Paris Convention) as a basis for discussion;

(iii) a summary of information on relevant laws and current trading practices in the member States.

The purpose of the meeting of governmental experts should be to determine whether international arrangements in this field are necessary or desirable and, if so, within what framework they should be achieved.

(c) Technical assistance, and

(d) Preparations for the revision of conventions or for the establishment of new instruments

49. The Advisory Group agreed that these questions could not be the subject of practical recommendations at this stage.

Summary of the conclusions of the Advisory Group

50. The Advisory Group therefore agreed unanimously that:
concerning the scope and nature of the study

(i) the study to be undertaken in accordance with the recommendation contained in the report of the Secretary-General of the United Nations (UN document E/4800) should embrace the legal protection of all computer programs whether or not such programs can be regarded as "inventive" or "original" in a creative sense;

(ii) the study should concentrate upon the desirable ingredients of any system of legal protection of computer programs, rather than follow rigidly the lines of established legal concepts for the protection of other inventions or works;

concerning possible ingredients of any legal system

(iii) any system for the legal protection of computer programs should probably provide protection against use;

(iv) the mere fact that a program has been translated from one computer language to another should not deprive the program of protection;

(v) the beneficiary of the protection should be the person or enterprise responsible for ordering (i. e., for commissioning or controlling) the development of the program; national laws on the protection of employed inventors should be taken into account;

(vi) the period of protection to be granted for computer programs should be based not upon established concepts of intellectual property law but upon up-to-date evidence concerning the effective commercial life of a program and the time needed for the reasonable recoupment of investment;

(vii) whether or not required for the administration of any system of legal protection, some form of disclosure through registration or deposit might be desirable if the administrative resources of the country concerned made this possible;

(viii) the remedies for infringement of protection should include the right to prevent possible infringements and to obtain financial compensation for past infringements;

(ix) while there might be practical difficulties in the detection of individual infringements of the protection, ways could be found to render a system of legal protection generally effective;

concerning future action

(x) further international study of the problem would be of value for the avoidance of unnecessary divergences of national laws;

(xi) international agreements linking national laws and possibly providing for minimum conditions of protection would be desirable;

(xii) the International Bureau of WIPO should be entrusted with the task of preparing or commissioning studies in depth upon the economic and legal aspects of the problem, with particular reference to the needs of the developing countries, and of preparing documentation based on those studies to be presented to a future meeting of governmental experts.

Adoption of the Report

51. A draft report prepared by the International Bureau of WIPO (document AGCP/5) was considered paragraph by paragraph by the Advisory Group and, certain modifications having been agreed, the Advisory Group adopted this Report.

Closing of the meeting

52. The Director General thanked the experts for their valuable contributions to the discussion, and for the advice which the Advisory Group had given. He expressed particular thanks to the Chairman, whose efficient and agreeable conduct of the debates had contributed largely to their success.

53. After several experts had endorsed the comments of the Director General, the Advisory Group agreed on a vote of thanks to its Chairman, who then declared the meeting closed.

List of Participants

I. Governmental Experts

Brazil: J. G. Marques Porto. Canada: F. W. Simons; B. C. McDonald; F. W. Herrmann. Congo: R. Kumbu; A. Nkuba-Mpozi (Mrs.). France: J. Gunther; J. P. Costa. Germany (Federal Republic): E. Steup (Mrs.). India: G. Shankar. Soviet Union: V. Kalinine. Spain: J. D. Montero-Rios; C. Marquez Labajo; D. Torra. United Kingdom: N. W. P. Wallace. United States of America: B. A. Ringer (Miss); J. B. Farmakides.

II. WIPO

G. H. C. Bodenhausen (*Director General*); C. Masouyé (*Senior Counsellor, Head, External and Public Relations Division*); R. Harben (*Counsellor*); M. Stojanović (*Counsellor*).

Patent Cooperation Treaty

Interim Committees

First Sessions

(Geneva, February 8 to 11, 1971)

Note*

As contemplated in the "Resolution Concerning Preparatory Measures for the Entry Into Force of the Patent Cooperation Treaty" adopted by the Washington Diplomatic Conference on the Patent Cooperation Treaty (PCT) on June 17, 1970, and endorsed by the Assembly, the Conference of Representatives, and the Executive Committee of the Paris Union in their sessions held at Geneva in September 1970, the three Interim Committees met in Geneva from February 8 to 11, 1971.

The PCT Interim Committees, namely, the PCT Interim Committee for Technical Cooperation, the PCT Interim Committee for Technical Assistance, and the PCT Interim Advisory Committee for Administrative Questions, were con-

* This Note has been prepared by the International Bureau of WIPO.

vened in separate meetings. These were the first sessions of each of the Interim Committees. Their principal task was to draft a program of activities to be presented to the September 1971 ordinary session of the Executive Committee of the Paris Union for adoption.

The members of each of the Interim Committees are the 35 States which have signed the PCT.

The list of participants from the States, intergovernmental organizations, and non-governmental organizations represented appears at the end of this Note.

The meetings were opened by the Director General of WIPO. He greeted the representatives of States, meeting for the first time as representatives of the signatories of the PCT. The great number of signatures and the fact that among the signatories were countries from the developed and the developing countries, from all continents, and from all social and economic systems, showed the global importance of the Patent Cooperation Treaty. This fact and the great number of participants augured well for the ultimate success of the Treaty.

He specially welcomed the representatives of the intergovernmental organizations and said that WIPO intended to extend its cooperation with them also into the field of the PCT.

He emphasized the importance of the active participation of the non-governmental organizations representing the prospective users of the PCT. As in the preparation of the Treaty, so also in the work of the Interim Committees WIPO was counting on their advice and cooperation. He was glad that they had sent highly representative delegations.

Interim Committee for Technical Cooperation. The first session of this Committee was chaired by Mr. R. Labry (France) (Chairman) and Mr. R. D. Tegtmeier (United States of America) (Vice-Chairman). The program of technical cooperation activities drafted by this Committee relates in general to studies and surveys in the fields of minimum documentation, information meetings on searching techniques, test searches, patent families and the bibliographical data of patent documents — all this with a view to assisting the prospective International Searching and International Preliminary Examining Authorities to achieve the maximum degree of uniformity and high quality in the international search and international preliminary examination when the Treaty becomes operational. The Committee agreed to give priority to the work relating to minimum documentation and patent families. It set up a Standing Subcommittee whose members are the prospective International Searching and Preliminary Examining Authorities, namely: Austria, Germany (Federal Republic), Japan, Soviet Union, Sweden, United Kingdom, United States of America, the International Patent Institute, and — as observer — Brazil.

Interim Committee for Technical Assistance. The first session of this Committee was chaired by Mr. P. Cabral de Mello (Brazil). It dealt with two major topics: the pilot technical assistance projects and the fields of technical assistance. The program of technical assistance activities drafted by this Committee relates in general to the patent systems of developing

countries, the patent legislation of developing countries with respect to the Patent Cooperation Treaty, and patent documentation centers. The Committee agreed to give priority to the technical assistance projects requested by the Government of Brazil and by the Industrial Development Centre for Arab States (IDCAS).

Interim Advisory Committee for Administrative Questions. The first session of this Committee was chaired by Mr. S. Pretnar (Yugoslavia). The Committee agreed that its competence should extend to all questions not within the province of the other two Interim Committees. The program of activities drafted by this Committee relates in general to studies concerning national legislation, particularly with a view to drafting models of provisions for implementing the Patent Cooperation Treaty, models which will have to be anchored to the BIRPI Model Law for Developing Countries on Inventions. The program also relates to procedures in national Offices and in the International Bureau. The Committee agreed to give priority to the work relating to national legislation.

List of Participants*

I. States

Algeria: S. Bouzidi; A. Boussaid; K. Lokmane. Argentina: L. M. Laurelli. Austria: T. Lorenz; G. Gall; P. Klein. Brazil: P. Cabral de Mello; T. Thedim Lobo; M. Couto. Canada: G. A. Asher. Denmark: E. Tuxen; D. Simonsen (Mrs.); E. Mølgaard. Finland: P. Salmi; B. Norring. France: R. Labry; P. Guérin. Germany (Federal Republic): R. Singer; K.-H. Hofmann; D. Bernecker. Hungary: E. Tasnádi; J. Bobrovsky. Ireland: M. J. Quinn. Israel: M. Gabay. Italy: G. Trotta; A. Annunziata. Japan: I. Shamoto; M. Kuroda. Monaco: J. M. Notari. Netherlands: J. Dekker; M. van Dam. Norway: L. Nordstrand; T. Alfsen. Romania: I. Camenita; F. Dinu (Mrs.). Soviet Union: Y. Maksarev; V. Kalinin. Sweden: G. Borggård; S. Lewin; B. Hansson. Switzerland: E. Lips; J.-L. Comte (Interim Committee for Technical Cooperation). W. Stamm; F. Curchod (Interim Committee for Technical Assistance). R. Kämpf; M. Leuthold (Interim Advisory Committee for Administrative Questions). Syria: M. Wehbeh. Togo: M. Eklo. United Arab Republic: A. Elshalakany; Y. Rizk. United Kingdom: D. G. Gay; I. J. G. Davis. United States of America: R. D. Tegtmeier; H. J. Winter; R. A. Spencer; H. D. Hoinkes. Yugoslavia: S. Pretnar.

II. Intergovernmental Organizations

United Nations (UN): H. Cornil. United Nations Conference on Trade and Development (UNCTAD): R. Krishnamurti; R. E. Smith. United Nations Development Programme (UNDP): M. Mir Khan. United Nations Industrial Development Organization (UNIDO): L. Katkhouda. International Patent Institute (IIB): P. van Waasbergen; L. F. W. Knight. African and Malagasy Industrial Property Office (OAMPI): J.-F. Anguile-Ousmane. Industrial Development Centre for Arab States (IDCAS): A. Abdel Hak.

III. Non-Governmental Organizations

Asian Patent Attorneys Association (APAA): A. Sugimura; F. Ohtsuka; K. Chun Bong; S. Imai. Committee of National Institutes of Patent Agents (CNIPA): C. H. J. van Soest. Council of European Industrial Federations (CEIF): M. Meunier; J. Willems. European Industrial Research Management Association (EIRMA): R. Messerotti-Benvenuti; A. van der Auweraer. International Association for the Protection of Industrial Property (IAPIP): C. M. R. Davidson. International Chamber of Commerce (ICC): D. A. Was; D. O. Lewis; H. Vanderborcht. International Federation of Inventors Associations (IFIA): H. Romanus; A. L. Cotterell. International Federation

* A list containing the titles and functions of the participants may be obtained from the International Bureau upon request.

of Patent Agents (FICPI): H. Bardehle; J. Corre; P. O. Langballe. Pacific Industrial Property Association (PIPA): E. W. Adams, Jr.; A. L. Snow. Union of European Patent Agents: G. H. Edmunds. Union of Industries of the European Community (UNICE): I. P. L. Hazelzet; C. Payraudeau.

IV. WIPO

G. H. C. Bodenhausen (*Director General*); A. Bogsch (*First Deputy Director General*); K. Pfanner (*Senior Counsellor, Head of the Industrial Property Division*); I. Morozov (*Counsellor, Head of the PCT Section, Industrial Property Division*); P. Claus (*Technical Counsellor, Head of the ICIREPAT Section, Industrial Property Division*).

V. Officers of the Interim Committees

Interim Committee for Technical Cooperation. *Chairman*: R. Labry (France); *Vice-Chairmen*: R. D. Tegtmeyer (United States of America); M. Eklo (Togo); *Secretary*: A. Bogsch (WIPO).

Interim Committee for Technical Assistance. *Chairman*: P. Cabral de Mello (Brazil); *Vice-Chairmen*: W. Stamm (Switzerland); E. Tasnádi (Hungary); *Secretary*: A. Bogsch (WIPO).

Interim Advisory Committee for Administrative Questions. *Chairman*: S. Pretnar (Yugoslavia); *Vice-Chairmen*: E. Tuxen (Denmark); I. Shamoto (Japan); *Secretary*: A. Bogsch (WIPO).

CONVENTIONS NOT ADMINISTERED BY WIPO

European Convention relating to the Formalities required for Patent Applications

Ratification by Austria

Austria deposited, on March 3, 1971, its instrument of ratification of the European Convention relating to the Formalities required for Patent Applications. This ratification takes effect on April 1, 1971.

The Convention, which came into effect on June 1, 1955, will thus bind the following States: Austria, Belgium, Denmark, France, Germany (Federal Republic), Greece, Iceland, Ireland, Israel, Italy, Luxembourg, Netherlands, Norway, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom.

LEGISLATION

BENELUX

Administrative Regulations of the Uniform Benelux Trademark Law

(The Hague, November 27, 1970)

Article 1

1. The pattern of the forms (in format A4), referred to in Articles 1(2), 11(2) and 32 of the Executive Rules¹, for filing, renewal of registration of a filing and filing with a claim to acquired rights is contained in the Annexes to these Regulations.

2. The forms shall be submitted in quintuplicate.

¹ The Executive Rules are published in *Industrial Property*, November 1970, p. 369. The Uniform Benelux Trademark Law itself is published in *Industrial Property*, November 1969, p. 307.

Article 2

1. In the forms referred to in Article 1, word marks shall be written in capital letters.

2. Marks requiring a particular typeface or special form of writing, figurative marks, marks in color and marks which represent, in whole or in part, the shape of the article or of its packaging shall be reproduced in black print on white paper and submitted in fifteen copies, five of which shall be affixed to the forms.

3. The reproductions referred to in paragraph (2) shall be suitable for offset printing.

4. Where color or colors are claimed as a distinctive feature of the mark, twenty reproductions in color of the mark shall in addition be submitted with the filing.

5. The length and width of the reproductions referred to in paragraph (2) may not be less than 15 millimeters (0.6

inches) nor more than 10 centimeters (3.9 inches). Where the mark consists of several separate parts, each of such parts shall conform to the dimensions mentioned above. The parts shall be assembled and affixed to one sheet of paper of format A4.

6. The dimensions of the reproductions referred to in paragraph (4) may not exceed the length and width of format A4.

Article 3

1. The pattern of the forms (in format A4), referred to in Article 16(2) of the Executive Rules, for international registration, renewal of international registration and territorial extension of protection is contained in the Annexes to these Regulations.

Where the list of goods contained in the request for international registration is in Dutch, it shall be accompanied by a French translation.

2. The forms and the translation shall be submitted in quadruplicate.

Article 4

Unless otherwise provided in these Regulations, any application, notification or accompanying letter, addressed to the Benelux Office or to the services of national Offices, shall be submitted in duplicate.

Article 5

Acknowledgment of receipt of any document intended for registration in the Benelux Register or in the International Register of the International Bureau for the Protection of Industrial Property shall be effected by returning one stamped copy of the document or of the accompanying letter, as provided for in Article 22 of the Executive Rules.

Article 6

If a general power of attorney is exercised, a copy of such power shall be produced at the time of all transactions.

Article 7

1. The Benelux Office and the services of national Offices shall be open to the public, for transactions affecting the date of Benelux filings, from Monday to Friday — from 10 a. m. to 12 a. m. and from 2 p. m. to 4 p. m., except on the following days: January 1, Good Friday, Easter Monday, April 30, May 1, Ascension Day, Whitmonday, June 23, July 21, August 15, November 1, 2, 11 and 15, and December 25 and 26.

2. If the Benelux Office or the services of national Offices are also closed at other hours or on other days than those specified above, a notice shall be made in the *Recueil des Marques Benelux*.

Article 8

1. The payment of fees or charges, due under Article 28 of the Executive Rules, for transactions carried out in the Benelux Office or in national Offices, may be effected in any of the following ways:

(a) by transfer or payment to the postal cheque account or bank account of the Benelux Office in the countries where the transactions are carried out;

(b) by a written request — in duplicate — for the amount to be debited to a current account opened by the applicant or his agent with the Benelux Office. In this case the holder of the account shall receive at least quarterly a statement of the payments made and of the balance of the account.

2. Payment for issues of the *Recueil des Marques Benelux* and for annual subscriptions shall be effected by the means provided for in paragraph (1).

3. Every payment must state clearly and completely the object of the payment, specifying, where applicable, each transaction.

4. The payments referred to in paragraph (1) shall precede each transaction, subject to Articles 3 and 12 of the Executive Rules. Proof of payment must be produced at the time of each transaction with the Benelux Office or the national Offices. The following shall be considered proof of payment:

- (a) the document obtained from the postal service, postal cheque office or bank, or a copy of such document, evidencing that the transfer or payment has in fact been made;
- (b) the written request for the amount to be debited to the current account with the Benelux Office, where the transaction is carried out in the Benelux Office itself and there are sufficient funds in the current account;
- (c) evidence that the amount has been debited to the current account with the Benelux Office, or a copy of such document, where the transaction is carried out in a national Office.

Article 9

These Regulations shall enter into force on the date of entry into force of the Uniform Law².

² That is, January 1, 1971. (*Editor's Note*).

BRAZIL

Law

Establishing the National Institute of Industrial Property and Regulating Other Matters

(No. 5648, of December 11, 1970)

1. — The National Institute of Industrial Property (INPI)¹ is hereby established as an autonomous federal entity, linked to the Ministry of Industry and Commerce, with its seat and forum in the Federal District.

Sole Paragraph: The Institute shall enjoy the privileges of the Union as far as its assets, income and the services linked to its essential objectives, or objectives resulting therefrom, are concerned.

2. — The main objective of the Institute shall be to implement, on the national level, the regulations governing indus-

¹ INPI is the official Portuguese abbreviation.

trial property in the light of its social, economic, juridical and technical functions.

Sole Paragraph: Without prejudice to other tasks that may be entrusted to it, the Institute shall adopt, with a view to fostering the economic development of the country, measures calculated to accelerate and regulate the transfer of technology, and to establish better conditions for negotiating and utilizing patents; it shall further express its opinion on the desirability of signing, ratifying or denouncing conventions, treaties and bilateral or multilateral agreements on industrial property.

3. — The assets of the Institute shall be the property, rights and securities belonging to the Union and presently assigned to the National Department of Industrial Property, or under its responsibility, which are transferred to said Institute by this Law, as well as the income resulting from the performing of its services and the budgetary funds allocated to it by the Union.

4. — The Executive Power is hereby authorized to open a special credit in favor of the Institute, utilizing for that purpose the balance of the budgetary allocation of the National Department of Industrial Property.

5. — The President of the Institute, proposed by the Minister of Industry and Commerce, shall be freely appointed or dismissed by the President of the Republic.

6. — The Executive Power shall decide on the structure, tasks and functions of the various organs of the Institute, as well as on the staff regulations and the employment contracts.

7. — The liquidation of the National Department of Industrial Property shall be effected by the Executive Power, the posts and functions being terminated as the new administrative structure and charts of the autonomous entity established by this Law are approved.

Sole Paragraph: Once the National Department of Industrial Property has been liquidated, all its former tasks shall be transferred to the INPI.

8. — The Executive Power shall take all the necessary measures to redistribute the staff formerly allocated to the National Department of Industrial Property, the Institute being entitled to admit within the framework of its administrative structure all employees of the former Department, as long as they have the qualifications required to fill the posts or carry out the functions provided for in the administrative structure or charts.

9. — The Institute shall have its own publication, whose purpose shall be to publish the activities and decisions of the Institute, as well as matters concerning its services.

Sole Paragraph: The Regulations of this Law shall make provision for the transfer to the periodical referred to in this Article of all the publications presently made in the Official Journal (Diário Oficial) of the Union, Section III, in accordance with the terms of Decree-Law No. 2131, of April 12, 1940.

10. — This Law shall come into force on the date of its publication, all contrary provisions being hereby repealed.

BULGARIA

Law on Inventions and Rationalizations

(Sofia, October 8, 1968)

I. General Provisions

1. — This Law governs the activities and relations of socialist organizations — government bodies, State economic associations, enterprises, and scientific, cooperative, trade union and other public organizations — as well as those of other legal entities, firms and citizens, in the field of inventions and rationalizations.

2. — The large-scale movement in the field of inventions and rationalizations in the People's Republic of Bulgaria is promoted and developed in a planned manner, combining the creative work and interests of the authors of inventions and rationalizations with the objectives and interests of a socialist society.

3. — The authors of an invention or rationalization are one or more physical persons who, by their own creative work, have devised an invention or rationalization.

The authors' rights shall come into effect with the realization of the invention or rationalization and shall belong solely to the inventor or rationalizer.

4. — Changes in authorship may be admitted, with the written consent of the author or of all co-authors, before the final decision on the relevant application has been taken. Changes after such decision may be made only by decision of the Sofia City Court, in the case of inventions, and of the respective district court, in the case of rationalizations.

5. — Authors' rights and the personal intangible rights relating thereto are inalienable. Only tangible rights arising from authorship may be alienated or inherited.

Should an author die before obtaining the document attesting to authorship, his successors may ask for such document to be issued in his name and may claim the remuneration due.

6. — Bulgarian citizens may send, export, register, assign, sell or work accepted inventions and rationalizations abroad or assign, transfer or sell them to foreign citizens in Bulgaria, in accordance with the relevant regulations and with the permission of the President of the State Committee for Science and Technical Progress.

In the case of proposals not yet submitted or accepted in accordance with this Law, the acts referred to in subsection (1) may be performed with the permission of the President of the State Committee for Science and Technical Progress.

7. — Citizens of foreign countries not members of the Union for the Protection of Industrial Property shall have the same rights and obligations under this Law as Bulgarian citizens, on the condition of reciprocity.

8. — Applications for inventors' certificates and rationalization proposals, as well as applications and appeals made by

any physical persons or legal entities in connection with the examination, or appeals against the decisions taken on such applications and proposals, shall be free of charge.

Appeals made by socialist organizations in relation to patents improperly issued shall also be free of charge.

II. Guidance in the field of Inventions and Rationalizations

9. — The State Committee for Science and Technical Progress, shall be the leading body in the field of inventions and rationalizations. This function shall be carried out by the Institute of Inventions and Rationalizations.

10. — The State Committee for Science and Technical Progress, the Institute of Inventions and Rationalizations and other socialist organizations, with the wide and direct participation of public organizations, shall elaborate and execute undertakings for the further development and exploitation of inventions and rationalizations.

11. — For the fulfilment of the tasks in the field of inventions and rationalizations, specialized organs shall be set up in the socialist organizations.

III. Inventions

Part I. Definition. Applications. Priority

12. — An invention is any new, creative, technical solution of a given problem which is more progressive and more useful in comparison with the existing level of technology and is related to any branch of national economy, science, culture, public health or national defense.

The following proposals for inventions shall not be accepted:

- (a) proposals that are contrary to public or state interests or to the principles of socialist morality. Any patent or inventor's certificate granted for such a proposal shall be declared null and void;
- (b) proposals based on ideas, scientific discoveries, scientific principles and basic rules of science, which do not specify concrete ways and means for their utilization;
- (c) proposals concerning the elaboration of methods and formulae for calculation, systems of methodological structures and transformations, the choice of absolute geometrical dimensions for articles and equipment, or proposals consisting of scales, diagrams and nomograms;
- (d) proposals relating to methods and systems of education, teaching and drilling.

13. — Any inventor may request the Institute of Inventions and Rationalizations for recognition of his authorship, through the issue of inventors' certificates or patents.

14. — Only inventors' certificates may be granted for the following:

- (a) substances obtained by chemical methods;
- (b) healing substances, foodstuffs, gustatory and cosmetic substances, whether or not obtained by chemical methods;
- (c) new methods of prophylaxis, diagnosis and treatment of human, animal or plant diseases;

- (d) new species or varieties of agricultural crops or new animal breeds;
- (e) technical solutions of problems bearing on the use of nuclear energy;
- (f) inventions realized in connection with the inventor's employment in a socialist organization or pursuant to a commission thereof;
- (g) inventions for whose realization the inventor has received help in funds or materials from a socialist organization;
- (h) inventions relating to national defense or security.

Patents may also be granted for new methods of obtaining the substances referred to under (a) and (b).

15. — Every application shall relate to one invention only. The application shall consist of a request for an inventor's certificate or patent, a specification of the invention claimed and, where necessary, drawings and evidence of the applicability, usefulness and progressiveness of the invention.

Domestic applications shall be submitted in duplicate: applications from abroad shall be submitted in one copy. The specification, drawings and evidence shall be submitted in triplicate. The application shall be signed by the inventor, his successors or a representative.

Applicants from abroad shall submit the documents in the Bulgarian language. They shall specify the countries in which corresponding applications have already been filed and shall transmit to the Institute of Inventions and Rationalizations any comments that have been received on such applications.

Should the application not be in conformity with the requirements laid down in the foregoing subsections, the Institute of Inventions and Rationalizations shall invite the applicant to amend the application within a period of three months. If the applicant fails to do so, the application shall be considered withdrawn.

16. — Applications from foreign citizens for inventors' certificates should be sent directly to the Institute of Inventions and Rationalizations; applications for the grant or renewal of a patent should be sent via the Bulgarian Chamber of Commerce. Patent applications from Bulgarian citizens should be submitted to the Institute of Inventions and Rationalizations.

17. — Within one month of filing the application at the Institute of Inventions and Rationalizations, the applicant may supplement and correct the specifications and drawings submitted, without changing the substance of the invention claimed.

Additional material should likewise be submitted in triplicate. Where such material changes the substance of the invention initially proposed, it may, on instructions from the Institute of Inventions and Rationalizations, be drawn up by the applicant as an independent application.

18. — The applicant's right of priority shall date from the moment that the application, drawn up in accordance with

Section 15(1), (2) and (3), is filed at the Institute of Inventions and Rationalizations.

Where, during the examination of his application, the applicant changes the substance of the invention claimed, priority shall date from the receipt of such change, provided that Section 15(1), (2) and (3) has been observed.

Applicants from member countries of the Union for the Protection of Industrial Property, as well as applicants from countries not members of the Union but owning active and substantial commercial or industrial enterprises on the territory of one of the member countries of the Union, shall enjoy priority based on the application filed in the respective member country of the Union in accordance with its domestic law.

The right of priority may be invoked during the twelve months following the date of filing of the first application.

The right of priority under the foregoing subsection shall be claimed at the time of the application itself and shall be evidenced, within the following three months at the latest, by the submission of a copy of the original application duly certified by the competent authority of the country where the application was filed.

19. — Where a prospective invention, not yet the subject of an application, is displayed at an official or officially recognized international exhibition in Bulgaria or in a member country of the Union for the Protection of Industrial Property, the right of priority shall date from the day the claimed invention is exhibited, provided that within one month of the close of the exhibition, an application is submitted, in accordance with Section 15 of this Law, and is accompanied by a document stating the date of the display at the exhibition and the date of its close.

Part II. Inventors' Certificates

20. — An application for an inventor's certificate, drawn up in accordance with Section 15(1), (2) and (3), shall be submitted by the author to the socialist organization whose activity the invention concerns. At the same time, the author shall forward one identical copy, together with the documents listed above, directly to the Institute of Inventions and Rationalizations, in order to preserve the priority under Section 18.

21. — The managers of the respective socialist organizations shall, within thirty days from the filing of the application, forward to the Institute of Inventions and Rationalizations all prospective inventions created or submitted in accordance with Section 20, and shall state their conclusions on the usefulness and applicability of the proposed inventions and give their views on how far the inventions are progressive and new.

Where the socialist organization takes an unfavorable decision on an application for recognition of an invention, the whole file together with the reasons for the decision shall be forwarded, within the period prescribed in subsection (1), to the superior organization. The superior organization shall consider the case within one month and send it to the Institute of Inventions and Rationalizations together with its own reasoned opinion.

22. — The Institute of Inventions and Rationalizations shall carry out an expert examination of the proposed invention and establish the presence or absence of the characteristics of an invention.

The Institute of Inventions and Rationalizations shall examine the application and take its decision within eight months from the date of filing. The Institute shall notify the author of its decision granting or refusing an inventor's certificate. In cases where trials of the invention are necessary and involve a period of time exceeding the eight months referred to above, the author shall be notified of the decision within one month after the results of the trials are available.

Together with the decision granting an inventor's certificate, the author shall receive the description, the author's claims as delimited and the accepted date of priority. With the decision of refusal, the reasons for refusal shall also be forwarded to the author.

23. — An inventor's certificate shall be issued to the author of a proposal that has been accepted. Where the accepted proposal was submitted by more than one author, each of them shall be entitled to a copy of the inventor's certificate, in which the names of all the co-authors shall be mentioned.

The inventor's certificate shall certify the acceptance of the proposal as an invention, the priority, the authors' rights, as well as the exclusive right of the State to work and alienate the invention.

Data on the accepted invention shall normally be published in the Bulletin of the Institute of Inventions and Rationalizations.

24. — The applicant may inspect the documents which have served as the basis for the decision of the Institute of Inventions and Rationalizations and for the conclusions of the expert examination. He may also ask for copies of adverse documents to be supplied to him free of charge.

25. — The socialist organizations through which the application relating to an invention has been transmitted to the Institute of Inventions and Rationalizations shall have the right to work that invention. The name of the user shall be entered on the inventor's certificate or on a separate document.

Where the corresponding application was submitted to the Institute of Inventions and Rationalizations under Section 16 or 21(2), the invention for which an inventor's certificate has been granted shall remain at the disposal of the Institute, which shall take care of its economic exploitation.

26. — The user of the invention under Section 25(1) may carry out the invention in Bulgaria. Other socialist organizations may also make use of the invention free of charge or on payment to the user, by mutual agreement, of part or all of the expenses incurred in connection with the creation and experimentation of the invention. Where no agreement can be reached, the question in dispute shall be decided by the competent arbitration court. Should the interests of the State so require, the State Committee for Science and Technical Progress may direct that the invention be worked by other

organizations, without payment of the expenses incurred by the organization in which the invention was created.

Part III. Patents

27. — The provisions of Sections 15, 16, 22 and 23(3) shall apply to patent applications and to the examination of such applications.

28. — Patent applications submitted by foreign applicants shall be accompanied by a copy of the patent specification in the respective foreign language, a translation in triplicate of such specification, and drawings. Where the applicant claims Convention priority, a certificate of priority shall also be submitted, in accordance with Section 18(4).

29. — The applicant shall have the rights provided under Section 24 on payment to the Institute of Inventions and Rationalizations of the expenses of copying the requested adverse documents.

30. — The author of an accepted invention shall be granted a patent valid for fifteen years dating from the day of filing of the application at the Institute of Inventions and Rationalizations. Where an application is submitted by several authors each of them shall be entitled to a copy of the patent, in which the names of all the co-authors shall be mentioned.

31. — The patent shall certify the acceptance of the invention as such, the authors' rights, the priority of the patent application and the exclusive right of the patentee over the invention.

32. — The examination of the patent application, its publication, the renewal of patents issued, and the assignment of patent rights shall be subject to payment, by the applicant, of the fees specified in the Regulations on Fees and Charges for Government Bodies, annexed to the Law on State Fees.

The annual patent fee shall be paid, at the latest, at the end of each patent year, which shall begin on the day the application was filed.

The fees for patents of addition shall be the same as those of the principal patents and paid separately.

33. — Where the annual fee is not paid in time, the patentee shall retain his rights over the patent provided that twice the amount of the fee is paid within the six months following the expiry of the time limit laid down in Section 32(2).

Where the annual fee is not paid, the patentee shall forfeit his rights over the invention, which may then be worked by the State.

A patent may also be terminated at the request of the patentee.

34. — At the request of the patentee, the Institute of Inventions and Rationalizations may, if it thinks fit, substitute an inventor's certificate for a patent.

Substitution of a patent for an inventor's certificate shall not be admissible.

35. — Enterprises, institutions, organizations and persons that have, prior to the filing of the patent application, used

the invention, independently of the inventor, or have made the necessary preparations to use it, shall retain their right to continue using the invention as prior users.

A prior user may request recognition in writing of this right from the patentee. In case of refusal, the dispute shall be decided by the Sofia City Court.

36. — The patentee may grant a license to work the patent or assign it entirely. The contract or relevant document attesting to the assignment or to the grant of a license shall be registered at the Institute of Inventions and Rationalizations.

37. — Where an invention is of considerable importance to the national economy and is not being used by the patentee, or where the invention directly affects the public interests and no agreement is reached with the patentee as to the assignment of the patent rights, the President of the State Committee for Science and Technical Progress may order a compulsory license to be issued for the exploitation of the invention. Such an order shall be based on the reasoned request of the interested socialist organization.

A compulsory license shall not be issued earlier than three years after the publication of the patent or four years after the filing of the patent application, whichever period last expires.

The remuneration in the case of a compulsory license and the terms of payment of such remuneration shall be settled between the patentee and the licensee.

Should no agreement be reached between the patentee and the licensee concerning remuneration and terms of payment, the dispute shall be decided by the State Committee for Science and Technical Progress. If the patentee fails to comply with the decision of the State Committee for Science and Technical Progress, the patent shall be declared null and void.

Part IV. Supplementary Inventions

38. — A supplementary invention is one which satisfies the requirements laid down in Section 12 and improves or supplements another invention (the basic invention) which has already been the subject of an inventor's certificate or patent issued by the Institute of Inventions and Rationalizations, provided that such supplementary invention cannot be worked without the use of the basic invention.

39. — An inventor's certificate of addition or patent of addition shall be issued for a supplementary invention.

Where an inventor's certificate has been issued for the basic invention, such a certificate shall also be issued for the supplementary invention.

Where a patent has been issued for the basic invention, the supplementary invention may, at the option of the applicant, be the subject of an inventor's certificate of addition or of a patent of addition. The patent of addition shall be valid for the same period as the principal patent.

40. — A supplementary invention shall become independent when more than fifteen years have elapsed since the issue of the inventor's certificate covering the basic invention.

41. — An application relating to a supplementary invention, filed by the author of the basic invention within three months from the day when the Bulletin of Inventions containing the notification of the grant of the inventor's certificate or patent for the basic invention was signed for printing, shall have priority over applications relating to the same supplementary invention filed by third persons. Such priority shall date from the grant of the inventor's certificate or patent for the basic invention.

42. — Where the basic invention has not been implemented but has been accepted for exploitation in combination with the supplementary invention, the remuneration shall be divided between both inventors by mutual consent. Disputes in this connection shall be decided by the Sofia City Court, which shall determine the respective shares in the remuneration according to the contribution of each inventor.

43. — Save in the cases referred to in Section 37, where a patent has been issued for the basic invention, the supplementary invention may be worked only with the agreement of the owner of the patent covering the basic invention.

44. — When the principal inventor's certificate or principal patent terminates, for reasons not related to the supplementary invention, the inventor's certificate of addition or the patent of addition shall become independent, the patent of addition remaining in force until the expiry of the term of the principal patent.

IV. Patenting of Inventions Abroad

45. — For the protection of priority rights and of the interests of the country and inventors, inventions may be patented abroad with the permission of the President of the State Committee for Science and Technical Progress and in accordance with the provisions adopted for this purpose. This process shall be carried out by the Institute of Inventions and Rationalizations.

46. — The use of foreign currency obtained from the sale and licensing of patents abroad and the equivalent of such currency in leva shall be governed by the provisions laid down by the Council of Ministers.

V. Rationalizations

47. — A rationalization is any technical solution of a given problem, which is novel at least within the framework of the enterprise or organization concerned and which introduces useful and progressive changes into existing production processes, constructions, designs, technology, scientific organization or into material used and which has not been recommended by written instructions from the superior or other socialist organization as to how to approach the solution of the particular problem.

Rationalizations may also be the adoption of solutions taken from the literature or practice of other enterprises and organizations, with a supplementary elaboration in compliance with the requirements of subsection (1).

Rationalization proposals submitted during the process of design work or of the construction itself should introduce useful changes in the approved design plans or in the approved preceding stage of a given scheme.

48. — The following rationalization proposals shall not be accepted:

- (a) proposals based on ideas without specifying how they are to be put into practice, as well as proposals concerning the existence or removal of shortcomings or errors;
- (b) proposals of a commercial, supply or bookkeeping nature producing useful results but not of a technical character, except in the cases referred to in Section 47(1).

49. — Rationalization proposals shall not be accepted if they were developed in the course of the author's official duties and concern rationalizations within the meaning of Section 47, or if they were developed on the basis of documentation received during the performance of contractual obligations or other tasks entrusted during official missions, as well as proposals by persons charged with tasks in connection with the fulfilment of plans related to organizational and technical undertakings and the Plan for Technical Progress.

Proposals submitted in connection with approved plans and competitions for particular rationalizations shall not be considered to have been developed in the course of official duties.

50. — Proposals for useful changes in approved design plans or in a preceding approved stage of a given scheme shall be accepted as rationalizations created by the designers in the design organizations and institutes, only where such persons have not participated in the elaboration and approval of the initial design plans or the approved scheme itself and where they have not expressed an opinion on the work and have not been entrusted with bringing about changes in the design plans or the scheme itself.

51. — The designers taking part in the elaboration and approval of a given scheme may claim rights under this Law where their proposal for a change or an improvement of the scheme has been accepted as an invention.

52. — The application relating to a rationalization shall contain the author's name and address, the title of the proposal, a description and where necessary a sketch or schematic drawing revealing the nature of the proposal, as well as specific instructions as to the possibilities for the implementation of the rationalization proposal.

53. — Rationalization proposals shall be submitted to and examined by the socialist organizations whose activity they concern, in accordance with the provisions laid down in the Regulations.

54. — Rationalization proposals shall be drawn up and submitted for examination before they have been put into practice.

By way of exception, a proposal may be submitted as a rationalization even after it has been put into practice, but only under a joint decision by the manager of the enterprise

or organization concerned, the local trade union committee, and the scientific and technical society, and not later than three months following the beginning of the actual implementation of the rationalization.

55. — Priority of the rationalization shall date from the day of filing with the socialist organization concerned.

Where the application does not contain the particulars required under Section 52, the socialist organization shall, within fifteen days following the filing of the proposal, invite the applicant to complete his application within one month. Where the additional material changes the substance of the proposal, it may, on instructions by the socialist organization, be drawn up as an independent rationalization proposal.

56. — When the same rationalization proposal has been submitted to the same socialist organization at different times by different persons, priority shall be given to the person first submitting the proposal. This rule shall also apply in the case where the proposal first submitted has been rejected.

57. — The socialist organizations concerned shall issue to the authors of implemented rationalizations certificates, in a form drawn up by the Institute of Inventions and Rationalizations.

Where the rationalization proposal was submitted by more than one author, each co-author shall be entitled to a copy of the certificate, in which the names of all the co-authors shall be mentioned.

The certificate shall be issued not later than two months after the implementation of the rationalization proposal has started.

Where it becomes obvious during the implementation of the rationalization proposal that it is economically unprofitable, the implementation shall be discontinued; any certificate issued shall accordingly be annulled.

58. — Should it become evident, during the examination, that the rationalization proposal has the characteristics of an invention, the manager of the socialist organization shall direct that the proposal be drawn up as an application relating to an invention and shall submit it to the Institute of Inventions and Rationalizations.

59. — The enterprise where the rationalization proposal was originally implemented shall place the documentation available relating to the implementation at the disposal of other enterprises free of charge. The cost of copying the documents shall be borne by the recipient enterprise.

VI. Inventions and Rationalizations constituting State Secrets

60. — Inventions and rationalizations constituting State secrets shall be examined in accordance with the appropriate regulations.

61. — All questions in the field of inventions and rationalizations relating to national defense shall be examined and decided by a specialized body at the Ministry of National Defense, in accordance with this Law and the provisions of a

special decree approved by the State Committee for Science and Technical Progress and the Ministry of National Defense.

Inventors' certificates and rationalization certificates relating to national defense shall be issued by the Ministry of National Defense.

VII. Implementation and Exploitation of Inventions and Rationalizations

62. — Inventions for which inventors' certificates have been issued and rationalizations shall be implemented and exploited.

The socialist organizations concerned shall provide the economic and technical conditions necessary for the implementation of inventions and rationalizations.

63. — The trials and implementation of inventions and rationalizations shall be carried out in accordance with the provisions laid down in the Rules for the application of this Law.

VIII. Rights and Obligations of the Authors of Inventions and Rationalizations

64. — Authors of implemented inventions recognized by inventors' certificates and of implemented rationalizations shall be entitled to remuneration. The remuneration due to an inventor shall be paid by the socialist organization which has first implemented the invention or, in cases specified by the Committee for Science and Technical Progress, by the Institute of Inventions and Rationalizations. The remuneration due to a rationalizer shall be paid by the socialist organization which has implemented the rationalization proposal.

Authors shall be paid fifty percent of the remuneration not later than two months after the implementation has started.

The balance of the remuneration, estimated according to the actual annual economic effect, shall be paid within one year following the beginning of the implementation.

Should a higher annual economic effect be obtained in the course of each of the four subsequent years following the beginning of the implementation of an invention, the author shall receive additional remuneration on the basis of the highest actual economic effect.

For rationalizations, additional remuneration shall be payable where the economic effect is higher in the course of the second year following implementation.

The sale and licensing of patents abroad shall also constitute implementation.

The socialist organizations shall inform the author of the calculated economic effect of implementation and of the remuneration due to him.

65. — Where the production to which the proposal relates is transferred to another enterprise before the periods referred to in Section 64 have expired, the balance of the remuneration shall be paid by the second enterprise.

66. — Remuneration for implemented inventions recognized by inventors' certificates and rationalizations whose

economic effect can be calculated or are such as to improve working conditions or labor safety or whose effect is incalculable and bonuses due to workers, engineers, technicians and employees in the socialist organizations who directly participated in the trials and implementation of the inventions or rationalizations, shall be determined and paid in accordance with the special decrees and rates approved by the Council of Ministers.

67. — Remuneration, bonuses and competition prizes received in good faith shall not be refunded save in the case of technical errors of accounting in the estimation of the amount due.

Good faith shall be presumed in the absence of proof to the contrary.

68. — Authors' remuneration, competition prizes and bonuses paid under this Law shall be free of tax.

69. — Persons holding inventors' certificates shall have the right to the title of "Inventor."

Authors of implemented inventions recognized by inventors' certificates shall also have the following rights:

- (a) priority in cases of specialization in Bulgaria and abroad;
- (b) priority when applying for enrolment in specialized educational institutions, when applications for employment are examined and in competitions for appointments in scientific organizations;
- (c) priority in obtaining loans for house-building granted by enterprises and organizations;
- (d) for a period of five years, the right to paid additional annual leave of six working days notwithstanding the leave provided for in the Labor Code and other laws.

70. — Authors of implemented inventions recognized by inventors' certificates whose annual economic effect exceeds 50,000 leva for a single invention, or who have received a lump sum as authors' remuneration for an annual saving exceeding that amount, shall have the following rights:

- (a) priority in obtaining housing space and the right to additional living space consisting of one room additional to the space due to them;
- (b) priority when applying for scholarships;
- (c) for a period of five years, the right to paid additional annual leave of twelve working days, including the leave under Section 69(d), notwithstanding the leave provided for in the Labor Code and other laws.

71. — The rights provided in Sections 69 and 70 shall not be enjoyed by inventors who have substituted inventors' certificates for their patents or who have inventors' certificates for some of their inventions and patents for others.

72. — Persons holding rationalization certificates shall have the right to the title of "Rationalizer."

Where the rationalization proposal has an annual economic effect exceeding 30,000 leva or where a lump sum as authors' remuneration for an annual saving exceeding that amount has been received, the authors shall be entitled to the rights and

benefits laid down in Section 69(2), the right to additional leave being granted for a period of two years.

Where the proposal has an annual economic effect exceeding 100,000 leva or where a lump sum as authors' remuneration for an annual saving exceeding that amount has been received, the authors shall be entitled to the rights laid down in Section 70.

73. — Distinguished inventors and rationalizers shall be awarded honorary insignia and prizes in accordance with the provisions laid down in the Regulations approved by the State Committee for Science and Technical Progress and the Central Council of the Trade Unions.

74. — Implemented inventions and rationalizations and authors' remuneration shall be entered in the labor records of the authors.

IX. Financing of Activities in the field of Inventions and Rationalizations

75. — Invention and rationalization activities shall be financed by a special Inventions and Rationalizations Fund, in accordance with regulations approved by the Council of Ministers. In case of shortage, inventions and rationalizations shall be financed by capital investment funds and funds for scientific and technical progress as well as by bank credits, where necessary. In the case of budget establishments, funds shall be drawn from budgetary resources.

X. Disputes

76. — Should an author, or applicant, disagree with the reasons for the refusal of an inventor's certificate or patent or with the accepted author's (patent) claims relating to the invention or with the decision to issue an inventor's certificate instead of a patent, he may submit a reasoned appeal to the Institute of Inventions and Rationalizations within one month (or three months in the case of foreign applicants) from the day of receiving the decision or the copies of the adverse documents. The appeal shall be examined within a period of two months. The decision of the Institute of Inventions and Rationalizations shall be final.

77. — Should an author disagree with the decision of the manager of the socialist organization accepting or rejecting his rationalization proposal, he may submit a reasoned appeal against the decision within one month of receiving a copy thereof. Such appeal shall be considered jointly by the management of the socialist organization and the respective trade union committee. Where the author is employed in the same organization, the appeal shall be examined with his participation.

An author may appeal to the immediately superior organization against the decision referred to in subsection (1) within one month of receiving a copy thereof.

An appeal against the decision of the superior organization may be made within one month of its receipt to the respective government body, whose decision shall be final.

78. — Appeals by authors of implemented inventions and rationalizations concerning the assessment of the economic effect and the calculation of the amount of authors' remuneration shall be decided in accordance with Section 77.

79. — Where the assessed remuneration is not paid, the author may institute legal proceedings.

80. — Disputes arising during the examination of a rationalization proposal as to whether or not such proposal was developed in the course of the author's official duties shall be decided jointly by the management and the respective trade union committee.

An appeal may be made against the decision in accordance with Section 77. The examination and decision in such appeals shall take place at a joint meeting with the respective superior trade union organs.

81. — Disputes concerning authorship or co-authorship of inventions shall be decided in legal proceedings before the Sofia City Court, and in the case of rationalizations — before the respective district court.

82. — Where legal proceedings relating to disputes concerning authorship and co-authorship of inventions are brought, the Institute of Inventions and Rationalizations shall also be informed and a copy of the statement of claim shall be transmitted to the Institute, which may not be made a party to the case.

In the case of a dispute concerning authorship of a rationalization, a copy of the statement of claim shall be transmitted to the respective socialist organization for its information; the organization may not be made a party to the case.

83. — Should proceedings relating to a dispute concerning authorship or co-authorship of inventions be instituted before the inventor's certificate or patent has been issued, the court shall decide the dispute after the Institute of Inventions and Rationalizations has decided whether or not an invention exists.

The Institute of Inventions and Rationalizations shall issue an inventor's certificate or patent to the true author in accordance with a court's decision which has become effective.

Subsections (1) and (2) shall apply *mutatis mutandis* to disputes over authorship of rationalizations, the court awaiting the decision of the competent socialist organization.

84. — Disputes over priority of inventions shall be decided by the Institute of Inventions and Rationalizations; in the case of rationalizations, the decision shall be taken by the managers of the socialist organizations concerned. Persons not satisfied with the decision may appeal to the respective district court.

85. — Socialist organizations and individual citizens may request the annulment of patents, inventors' certificates and rationalization certificates, on proof that the accepted proposals do not satisfy the requirements of this Law or where it has been proved by a decision of the court that the true author is another person.

Where, in the cases referred to in subsection (1), annulment of a patent issued for an invention referred to in Section 14 is applied for and such patent is declared null and void, an inventor's certificate may be issued to the author or to the applicant at his request.

86. — A request for the annulment of an inventor's certificate shall be submitted to the Institute of Inventions and Rationalizations within one year of the day on which the Bulletin containing information on granted inventors' certificates was signed for printing.

The annulment of inventors' certificates which are not to be published may be requested within one year following their entry in the corresponding Register.

A request for the annulment of a rationalization certificate shall be submitted to the respective socialist organization within one year following the issue of the certificate.

Requests for annulment of patents based on irregularities in their grant shall not be subject to any limitation period.

87. — The Institute of Inventions and Rationalizations shall inform the respective holder of an inventor's certificate or the respective patentee of the requests for annulment received and allow him at least one month to submit his objections. After the expiry of the period prescribed, the Institute of Inventions and Rationalizations shall make a final decision on the request for annulment.

The same procedure shall be observed also by the socialist organizations in relation to requests for the annulment of rationalization certificates. Decisions taken on such requests shall be subject to appeal in accordance with Section 77.

88. — Where an inventor's certificate is issued on the basis of a court's decision, a corresponding entry shall be made in the State Register and an announcement shall also be made in the Bulletin of Inventions. In such cases, the priority of the annulled certificate shall be entered on the new inventor's certificate.

Annulled inventors' certificates, patents or rationalization certificates shall be returned to the organization which issued them within one month at the latest following notification of the final decision.

89. — Announcements concerning the annulment of inventors' certificates or patents or their substitution by new certificates or patents shall be published in the Bulletin of Inventions.

90. — Where it is proved that the invention covered by an inventor's certificate or patent has been partially anticipated, the Institute of Inventions and Rationalizations shall substitute the document issued by a new document containing the corresponding changes in the specification and author's claims.

IX. Sanctions

91. — Persons found guilty of delay or inobservance of the time limits for the examination of inventions and rationalizations, or failure to inform the authors about the utilization of their proposals or about errors in the calculation of

the savings realized or in the remuneration due, or delay in its payment, and persons found guilty of using funds intended for the promotion of invention and rationalization activities for purposes other than those referred to in the regulations of the Council of Ministers shall be liable to a fine not exceeding 200 leva, provided that they are not guilty of a more serious offense.

92. — Persons including as co-author a person who has taken no part in the creative work leading to the invention or rationalization shall be liable to a fine not exceeding 500 leva. Persons who have agreed to be included as such a co-author shall be liable to the same penalty.

93. — Any person who sends, exports, registers, assigns, sells or works accepted or prospective inventions or rationalizations abroad or who assigns, transfers or sells such inventions or rationalizations to foreign citizens and firms in Bulgaria in contravention of the relevant regulations and without the permission required by Section 6 of this Law, shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding 2,000 leva, provided that he is not guilty of a more serious offense under another law.

94. — Infringements of this Law shall be established by statements of facts drawn up by the organs of the Institute of Inventions and Rationalizations and by the organs of the central departments.

Penal sentences shall be imposed by the Director of the Institute of Inventions and Rationalizations and by the executives of the central departments.

The statements of facts referred to above shall be drawn up and the penal sentences shall be issued and subject to appeal, in accordance with the provisions of Chapter XXVIII of the Code of Criminal Procedure.

Penal sentences of a fine not exceeding 20 leva shall not be subject to appeal.

95. — Where the activity established constitutes a crime, the case shall be referred to the respective public prosecutor.

96. — Persons infringing this Law shall be financially liable to the socialist organizations and persons concerned for any material damage caused.

XII. Transitional and Final Provisions

97. — This Law shall apply to invention and rationalization proposals submitted after its entry into force, as well as to proposals pending at the time of entry into force and in the cases where appeals have been submitted within the time limits prescribed against decisions accepting or rejecting the proposals.

This Law shall also govern the rights of authors of proposals where the document for the implementation of the particular proposal has been issued after this Law has entered into force.

98. — The Council of Ministers shall approve Rules for the application of this Law and the State Committee for

Science and Technical Progress shall issue instructions and directives for the implementation of its provisions.

99. — This Law repeals the Law on Discoveries, Inventions and Rationalization Proposals¹, published in the Official Gazette, No. 10/1961, with the exception of Sections 5, 6, 7, 13, 17, 19, 20, 21, 23 and 24 in so far as these provisions relate to the status of discoveries. This Law shall enter into force on January 1, 1969.

The President of the State Committee for Science and Technical Progress shall be entrusted with the implementation of this Law.

¹ See *Industrial Property*, September 1966, p. 213.

ITALY

Decrees Concerning the Temporary Protection of Industrial Property Rights at Eleven Exhibitions

(of December 19, 1970, and January 4, 16 and 19, 1971) *

Sole Section

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

XXXII^e Salone Mercato Internazionale dell'Abbigliamento - SAMIA (Turin, February 5 to 8, 1971);

V^o Salone internazionale delle vacanze e del turismo (Turin, February 27 to March 9, 1971);

V^o MOBILSUD - Salone internazionale del mobile per il mezzogiorno e l'oltremare (Naples, March 14 to 21, 1971);

XXIII^a Fiera campionaria della Sardegna (Cagliari, March 16 to 28, 1971);

Mostra nazionale delle sementi certificate (Lonigo (Vicenza), March 22 to 25, 1971);

II^o Salone internazionale del veicolo industriale (Turin, March 27 to April 4, 1971);

VIII^a Fiera internazionale del libro per l'infanzia e la gioventù and V^a Mostra internazionale degli illustratori (Bologna, April 1 to 4, 1971);

Salone-Mercato dell'abbigliamento "Moda-Selezione" (Turin, April 23 to 26, 1971);

I^o Salone delle industrie lattiero-casearie (Parma, April 28 to May 2, 1971);

IV^o Salone internazionale della profumeria e cosmesi - COS-MOPROF (Bologna, April 28 to May 3, 1971);

VIII^o Salone internazionale delle arti domestiche (Turin, April 29 to May 11, 1971)

shall enjoy the temporary protection provided by Laws No. 1127 of June 29, 1939¹, No. 1411 of August 25, 1940², No. 929 of June 21, 1942³, and No. 514 of July 1, 1959⁴.

* Official communications from the Italian Administration.

¹ See *La Propriété industrielle*, August 1939, p. 124; May 1940, p. 84.

² *Ibid.*, November 1940, p. 196.

³ *Ibid.*, October 1942, p. 168.

⁴ *Ibid.*, February 1960, p. 23.

**The Draft Conventions for a European System
for the Grant of Patents and for the European Patent
for the Common Market**

By Kurt HAERTEL
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I. Introduction

In 1959, work toward creation of a European patent law began within the six Member States of the Common Market. The goal was to create a European patent system. However, that patent was a mere EEC patent, a patent for the Common Market. As is known, this work came to a standstill at the end of 1964. The reason was not failure of the experts to agree as to the details of a European patent law. There were no material differences. Instead, the standstill was caused exclusively for political reasons. Power politics affected this special area; one Member State, the Netherlands, wanted to have the United Kingdom included in the work, while another, France, was opposed. Work was interrupted and remained dormant until the end of 1968. The French Government then took the initiative and awakened Sleeping Beauty. Following up an idea of the former President of the Netherlands Patent Office, Dr. de Haan, the French Government proposed resumption of the work, however, with essentially altered objectives. The Council of Ministers of the European Communities took up the French suggestion and a committee of experts from the six Member States revised and refined the French proposals.

II. The New Objectives

What then are the new objectives? In reality, two separate goals are to be reached with two different conventions.

One convention creates a European patent granting procedure, beginning with the filing of a European patent application and ending with the grant of a European patent, actually a bundle of national patents. The parties to this convention, referred to as the First Convention, should include as many European countries as possible. This First Convention then, extends beyond the territory of the Common Market and is completely independent therefrom.

Another convention, referred to as the Second Convention, is a treaty only for the members of the Common Market. The Second Convention is to begin where the first leaves off,

* Dr. Haertel is chairman of the International Conference for the Setting Up of a European System for the Grant of Patents. He is also chairman of the "Community Patent" Work Group of the European Common Market. This Study incorporates the essential parts of an article by the author published in *IHC* No. 3/1970, which was based on an address that he gave in Milan on March 16, 1970, at the invitation of the AICIPI (Associazione Italiana Consulenti in Proprietà Industriale di Enti o Imprese).

Note: In this Study, the abbreviation "First Convention" refers to the projected Convention Establishing a European System for the Grant of Patents. "Second Convention" refers to the projected Convention for the European Patent for the Common Market.

namely, after grant of a European patent. For the six Member States of the EEC, the granted European bundle of national patents applicable to EEC territory will be gathered into a single Community Patent. The two Conventions would be prepared parallel to one another, signed simultaneously, and have the same effective date.

Certainly, there are a number of reasons for the changed position of the French Government vis-à-vis the project for a European patent. One of the reasons could have been the one expressed by French industry that the domestic industry of a country where patents are not examined as to novelty but are only registered — and this aspect possibly is also of relevance for Italian industry — is at a disadvantage vis-à-vis large foreign firms that own many unexamined patents. In the case of license negotiations, these firms could throw the unexamined patents into the balance, leaving domestic industry without the possibility of verifying their validity. This situation can best be illustrated with a few figures. According to the World Intellectual Property Organization, 11,300 patent applications were filed in France during 1968 by applicants from the United States of America and 10,700 patents were granted to United States nationals. In contrast, 12,000 patent applications were filed by United States applicants in the Federal Republic of Germany, but only 3,800 granted. I believe that this contrast of patent grants gives a striking picture of the different patent situations in France and Germany. In the future, this contrast would only intensify. The Patent Cooperation Treaty (PCT) was discussed and revised at the Washington Diplomatic Conference last year. Once this Treaty enters into force, patent applications from the United States, as well as those from the Federal Republic of Germany, the Soviet Union, and Japan will be subjected to an international search procedure and where required, will receive an international preliminary examination report. The international search and the international preliminary examination report will be prepared by the national Patent Offices of these countries. The search, respectively this report, will give the applications from these countries a strengthened presumption of validity. Since experience has shown that it is practically impossible today for a national Patent Office to convert from a registration procedure to an examination procedure, creation of a European system for the grant of patents that would yield a carefully examined European patent, offers a solution to this situation.

III. Current Progress

What has happened as a result of the French proposal? The six Member States of the Common Market invited a number of other European States to assist with the work on the First Convention. A total of eleven Western European countries have responded. These include the seven countries of the European Free Trade Association (Austria, Denmark, Norway, Portugal, Sweden, Switzerland, and the United Kingdom),

as well as countries outside of either trade association, i. e. Greece, Ireland, Spain, and Turkey. Altogether seventeen countries have resolved to cooperate. Three other countries, Cyprus, Iceland, and Monaco, have indicated their interest in the project without taking part.

How is the work on the First Convention organized? In May 1969, seventeen countries formed an intergovernmental conference, for the purpose of preparing a complete draft of the Convention, which would be submitted to the governments for approval and, when approved, would be signed at a diplomatic conference. Four working parties were established within this Conference. Working Party I concerns itself with patent law problems; Working Party II with aspects of public law, for example, problems involving accession to the Convention; Working Party III with the business and political aspects of personnel; and finally, Working Party IV is preparing the financial provisions and the entire financial planning. In addition, two subgroups were set up, dealing with the regulations concerning the granting procedure and with fees.

The work of Working Party I has shown the most progress. This working party was able to submit a Preliminary Draft of the Convention for a European System for the Grant of Patents to the Intergovernmental Conference at its second session in January 1970. The Intergovernmental Conference basically approved this First Preliminary Draft and released it for publication to enable discussion at the end of April 1970 by interested private international organizations, in order to determine whether these groups agree with the general approach taken in the Draft. The Preliminary Draft and the relevant committee reports by the individual delegations have already been published¹.

IV. Basic Concepts of the First Convention

It should be stressed initially that the First Convention is still incomplete. The closing provisions of the Preliminary Draft have not yet been drawn up; provisions governing the institutional and financial aspects must still be worked out; and even the patent law section could not yet be completed. Of particular interest now, however, is the section on procedures.

A. The European System for the Grant of Patents

One can distinguish the following stages in the procedure:

- (1) the European patent application;
- (2) examination of this European patent application for formal deficiencies;
- (3) obtaining a report on the state of the art;
- (4) publication of the European application eighteen months from the priority date, together with the report on the state of the art, if already available;
- (5) examination of the European patent application for novelty and patentability;
- (6) grant of the European patent, and
- (7) the European post-grant opposition procedure.

¹ Available from the Sales Office for Publications of the European Communities, P. O. Box 1003, Luxembourg.

1. The European Patent Application²

Considering the various sections just enumerated, the patent application provisions are not particularly complex. As far as possible, these provisions will be adjusted to those governing the filing of an international application according to the Patent Cooperation Treaty. Hopefully, corresponding provisions for international and European applications will lead to a harmonization of the provisions governing national applications, so that uniform filing procedures for Europe will exist in the future, regardless of whether a national, a European, or an international patent application is intended.

2. Examination for Formal Deficiencies³

The second stage of the proposed European procedure concerns examination of the European application for completion of the prescribed formalities. This phase does not contain anything extraordinary, all national patent laws provide for a similar examination.

3. The Report on the State of the Art⁴

Following an examination for formal deficiencies; the third stage in the European procedure occurs, obtaining a report on the state of the art. This report is to be made by the International Patent Institute in The Hague and not by the European Patent Office. In contrast to the Patent Cooperation Treaty, the European patent law thus provides for a centralized novelty search.

4. Publication — The Eighteen Month Period⁵

After receipt of the report on the state of the art, at the latest eighteen months from the priority date, the European patent application will be published. The procedure of publishing a patent application prior to completion of an examination for patentability, has received increasing support in Europe. At present, such procedure is followed in the Federal Republic of Germany, France, the Netherlands, and the Scandinavian countries. This policy has the advantage of making industry aware as early as possible of the kind of inventions for which patents have been applied for, enabling industry to make the necessary adjustments and to avoid misinvestment. Naturally, some type of protection must exist for the applicant of a published invention. The Preliminary Draft of the First Convention leaves it to Contracting States to determine whether the published application should receive the full protection of a patent or only the narrower protection commensurate with "appropriate compensation."⁶

5. Examination for Patentability⁷

The next stage in the procedure is examination of the application as to patentability, novelty, advance, and inventive merit. In order to be able to carry out such an examination, the First Convention required provisions regarding substan-

² Arts. 64 ff. First Preliminary Draft of the Convention Establishing a European System for the Grant of Patents (First Convention).

³ Art. 77 First Preliminary Draft, First Convention.

⁴ Art. 79 First Preliminary Draft, First Convention.

⁵ Art. 85 First Preliminary Draft, First Convention.

⁶ Art. 19(1), (2) First Preliminary Draft, First Convention.

⁷ Arts. 88 ff. First Preliminary Draft, First Convention.

tive patent law. These provisions were adopted from the (Strasbourg) European Convention for the Unification of Certain Points of Substantive Law on Patents for Invention, which has been signed by eleven countries, including Italy, but only ratified by one country, Ireland⁸. However, it is hoped that ratification of the Strasbourg Convention will be accelerated by other signatory countries, in the event that the First Convention should materialize.

Examination of the European application will not be made *ex officio* but only upon the special request of the applicant and upon payment of a fee as part of the so-called *deferred examination procedure*⁹. There is no dispute concerning initiation of that period of time during which a request for examination must be filed: it starts with the filing date of the application, just as is the case in the new German Patent Law. However, there is some dispute regarding the length of that period. At the moment, three terms are up for discussion: two years, five years, and seven years. The final decision will be made upon evaluation of the results of current discussions and comments submitted by interested international organizations (see Section F on page 87).

Independent of the question as to the length of the deferred examination period, there is agreement that the procedure should be flexible. Furthermore, the supervising authority for the European Patent Office, an Administrative Council consisting of government representatives of all Contracting States, will have the power to lengthen or shorten the period for filing a request for examination. Furthermore, in individual instances, the Council may order the immediate examination of applications filed within a certain field of technology¹⁰. Third parties are excluded from the examination procedure, which takes place between the applicant and the European Patent Office.

6. Grant of the European Patent¹¹

Upon successful completion of the examination by the European Patent Office, an application reaches the sixth and next to last stage in the procedure, namely, grant of the European patent.

It is not quite correct to speak of *the* European patent. The European patent is not a unitary patent, but with the exception of the special regulation governing the six Member States of the Common Market, it is a bundle of national patents. Even the term "national" is not quite correct. Actually, it is the grant of an international patent which in every State for which it is granted, has the effect of a *national* patent. For example the European Patent Office will not grant a British or Swedish patent, rather, it will grant a European patent for the United Kingdom or Sweden.

In this connection, it should be mentioned that an applicant for a European patent is not obliged to take out a patent for *all* States party to the proposed Convention. He can select those countries in which he desires protection. This list of

selected countries, however, must be submitted within the priority period of twelve months, a period corresponding to the provisions of the PCT Treaty. On the other hand, an applicant will always be able at a later date to reduce the number of countries designated by him, by merely waiving his rights in one country or another.

What effect does the European patent have in those countries for which it has been granted? It will have the same effect as a national patent granted by the national Patent Office¹². It is a logical consequence of this approach that a European patent can be declared invalid in one country even if it was validly granted by the European Patent Office. An example can best illustrate this. The European patent law provides for the patentability of chemical and pharmaceutical products¹³. If such a patent has been granted for a country which does not provide protection for chemical and pharmaceutical products, then the European patent could be declared invalid in that country by a national nullity proceeding. This has been called the "minimum approach."

The minimum approach has the advantage of being logically consistent and the further advantage that it allows countries to join the European Convention, whose national patent law differs from the European, without forcing them to amend their domestic patent law. The minimum approach, which gives the basis to the published Draft of the First Convention, proceeds on the assumption that the purpose of the Convention is simply to rationalize the patent granting procedure in Europe and not to require compulsory standardization of national patent laws of the Contracting States. In other words, this Convention should assist an applicant and industry in general in acquiring a patent in different European States easily and more simply. The extent of protection provided by that patent, however, would be determined by national law in the individual States and thereby remain as varied as it has been under the present system of individual national patents.

At the last session of the Intergovernmental Conference in January 1970, the majority of the delegations surprisingly favored the so-called "maximum approach." This concept implies that the European patent can only be declared invalid in the States for which it was granted, by reasons provided for in the European patent law, and not by those provided for in the domestic patent laws. In addition, consideration is being given to a uniform period of duration for a European patent of twenty years from the filing date, regardless of the duration of national patents according to domestic law. Whether the Convention Draft will eventually contain the minimum approach or the maximum approach, will depend upon the results of discussions with various interested international organizations. But even if the interested parties opt for the maximum approach, as this author believes they will, that solution as such will not be incorporated in the Convention. In this event, the Contracting States will have the right, at least during a period of transition, to be totally exempt from the maximum approach, or to exclude certain areas of technology, for example, that of chemical and pharmaceutical

⁸ November 27, 1963. Signatories are: Belgium, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom.

⁹ Art. 88 First Preliminary Draft, First Convention.

¹⁰ Art. 89 First Preliminary Draft, First Convention.

¹¹ Art. 97 First Preliminary Draft, First Convention.

¹² Art. 2 First Preliminary Draft, First Convention.

¹³ Art. 9 First Preliminary Draft, First Convention.

products, from the maximum approach. In order to avoid a misunderstanding, it should be emphasized that the problem of a maximum or a minimum approach is only of significance to those countries not belonging to the Common Market, since the Common Market countries are bound by a provision in the Second Convention which goes even beyond that of a maximum approach¹⁴.

7. *The European Post-Grant Opposition Procedure*¹⁵

The seventh and last stage of the procedure for grant is the opposition procedure. According to the Preliminary Draft, a European patent is to be granted without participation of third parties, of opponents. That opponents at some time must be given the opportunity to participate in the proceedings in order to present their objections to the grant of a patent, is undisputed. An action for invalidity is not a substitute for an opposition procedure, if for no other reason than that of its length and cost. Originally, it was planned to provide for an opposition procedure prior to the grant of a European patent. During the discussions, however, certain misgivings arose regarding the classical pre-grant opposition procedure. A prerequisite for this classical approach would be a second publication of the patent application upon completion of the examination and in the form it was considered patentable. The revised German Patent Law has provisions for this solution. This approach in the European system would not only require an application to be printed a second time, but this same application would have to be re-translated into the languages of all countries in which the applicant desires protection. Should an applicant desire protection in seventeen countries, translations into eleven languages would be necessary. This procedure would then entail considerable expense for the applicant even though he would not yet have received a patent. The other difficulty encountered, was the concern by a segment of the Conference that full patent protection would not be available to the applicant upon publication of the fully examined patent; instead, patent protection would depend upon the outcome of the opposition procedure. In order to meet these difficulties, the Intergovernmental Conference decided to place the opposition procedure subsequent to the grant of the European patent. In the United Kingdom, this system is known as "belated opposition" or "post-grant opposition." Accordingly, the Preliminary Draft of the First Convention provides for a period of twelve months starting from the grant of a European patent, within which time anyone may file an opposition with the European Patent Office concerning the grant of that patent¹⁶. After examination of the opposition by the European Patent Office, the European patent may be wholly or partially cancelled with effect for all countries, or the opposition may be rejected¹⁷. The post-grant opposition procedure is very similar in its effect to a European action for invalidity.

¹⁴ Art. 1 First Preliminary Draft of a Convention for the European Patent for the Common Market (Second Convention). Text available from the Sales Office for Publications of the European Communities, P. O. Box 1003, Luxembourg.

¹⁵ Arts. 101 ff. First Preliminary Draft, First Convention.

¹⁶ Art. 101(1) First Preliminary Draft, First Convention.

¹⁷ Arts. 102-105 First Preliminary Draft, First Convention.

B. *The European Patent Office*¹⁸

The institution which will examine the European patent application and grant a European patent will be a common establishment of the States party to the First Convention as well as of the parties to the Second Convention, a European Patent Office.

The organization of the European Patent Office is determined by its function. Examination of an application as to formal deficiencies will be carried out by technical examiners staffing the Examining Sections¹⁹. The patentability of an invention will be determined in the Examining Divisions, which also administer the opposition proceedings²⁰. In order to ensure the European character of a decision as far as possible, each Examining Division will be staffed by three examiners.

Furthermore, Boards of Appeals will be formed within the European Patent Office, providing a second instance²¹. The individual Boards will hear appeals from decisions of the Examining Sections and the Examining Divisions and will be composed of three or five members, either technically or legally qualified. The members of the Boards of Appeals will have a judge-like status. They will not be bound by instructions and cannot be removed from office for a definite period of several years. To ensure a uniform case law within the European Patent Office, an Enlarged Board of Appeals is envisioned, composed of seven members. This Enlarged Board will decide on legal questions submitted by one of the Boards of Appeals²².

Creation of an Enlarged Board of Appeals proved necessary because it does not appear possible at this time to establish a European Patent Court. Having the Court of Justice of the European Economic Community competent in this area, appears to suggest itself. However, this possibility was rejected following objections by the government of one Member State that did not wish to see the organization of the EEC used for a Convention created outside the realm of the Common Market.

C. *The Language Issue*

A few comments should be made regarding the rather delicate and troublesome problem of languages. For the European Patent Office, this question must first of all be considered under the aspect of practicability. One must admit that an authority as large as the future European Patent Office cannot function effectively in more than three languages. Recognizing this, the Draft calls for three working languages, namely German, French, and English²³. The European patent applications and the patents will be published in only one of these languages, together with translations of the claims in the other two working languages.

On the other hand, consideration is taken of applicants and contestants from Contracting States in which languages other than these three are spoken. Residents of these countries may submit a European patent application in their own

¹⁸ Arts. 30 ff. First Preliminary Draft, First Convention.

¹⁹ Arts. 54 ff. First Preliminary Draft, First Convention.

²⁰ Art. 55 First Preliminary Draft, First Convention.

²¹ Art. 56 First Preliminary Draft, First Convention.

²² Art. 57 First Preliminary Draft, First Convention.

²³ Art. 34 First Preliminary Draft, First Convention.

language, but must forward a translation in one of the working languages within a certain period of time.

Those countries with an official language which is not one of the working languages of the European Patent Office, are entitled to grant protection to a patent application as published eighteen months from its priority date, only after the claims have been translated into their own language. With respect to the European patent itself, these countries may make the reservation that the protection given by virtue of a European patent is effective in their country only upon receipt of a complete translation of the European patent documents into their own language.

This approach appears to provide a practical solution to the language issue, although I fear that discussion on this topic will yet continue.

D. Headquarters of the European Patent Office

Whenever a new international institution is established, a contest arises as to which country will have the honor of hosting that institution. This contest always seems to come at the end of the international negotiations. Therefore, you will only find a row of dots in the present Draft of the First Convention to indicate the location of the headquarters of the European Patent Office²⁴. Up to now, the contestants for the headquarters are: Luxembourg with its capital Luxembourg, the Netherlands with The Hague, and the Federal Republic of Germany with Munich.

E. The European Patent Convention and the Patent Cooperation Treaty (PCT)

In closing my comments on the First Convention, I should like to place particular emphasis on the section of the Draft which is designed to restructure the European Patent Convention and the Patent Cooperation Treaty into an integrated system²⁵.

When work was resumed on the creation of a European patent law, the PCT drafts had already progressed far enough for it to be generally acknowledged that the two projects would not be incompatible. On the contrary, experts agreed that the interlocking of the two treaties, in spite of their different objectives, would considerably increase the advantages for parties filing both international applications on the basis of the PCT and European applications in terms of the projected European Convention.

Since discussions, happily, have been held parallel during the last two years, every effort has been and is being made to harmonize the two treaties. The final version of the PCT, based on the results of the Washington Diplomatic Conference, confirms the success of those efforts, at any rate in respect of that treaty.

The PCT expressly emphasizes that so-called regional patent conventions, such as the proposed Convention Establishing a European System for the Grant of Patents, are equivalent to individual national legislation. The definitions in Article 2 of the PCT contain several references to regional patents and

patent applications, to the corresponding regional conventions, and to the regional authorities set up by them, such as the European Patent Office, thereby obviating the extensive use of references in a large number of Articles and Rules and facilitating consultation of the PCT text.

Particularly significant for the proposed European System for the Grant of Patents is Article 45 of the PCT. This provision, which underwent substantial amendment at the Washington Diplomatic Conference, admits of the combination of international PCT procedure with regional patent systems, but only on condition that the regional convention is open to all nationals of — or applicants from — Contracting States in terms of Article 9(1) of the PCT. Consequently the rules on limited accessibility at present contained in the Preliminary Draft of the First Convention have to all intents and purposes become superfluous, and no longer need appear in the final text of the European Convention²⁶. Furthermore, if the regional convention is open to all PCT applicants, a State which is a party to both instruments may, under its domestic law, provide that designation of that State in the request for processing of an international application is to be treated as an indication of the wish to obtain a regional patent rather than a national patent. Therefore, with respect to international applications, that State may close the route to its national Patent Office and direct the applicant in the way of the regional patent. This possibility is of particular significance in cases where the domestic law of the State in question grants only registration rights, whereas the regional convention (for instance the First Convention) provides for an examination as to novelty, patentability and inventiveness.

Although under the PCT the applicant may not name a regional patent authority as the designated Office, Article 4(1)(ii) allows for the possibility of special features in regional conventions. While it is true that a State party to the regional convention must be designated in the request for processing of the international application, the designation may embody the indication that a regional patent rather than a national patent is being applied for. Moreover, the Article expressly permits the possibility, at present contained in the Draft of the Second Convention, of creating a single patent for the Common Market States. This would mean that the party filing an international application, having chosen the regional procedure, may be compelled to take as a regional patent the "Community Patent" for *all* Member States of the EEC. In that case the designation of *one* of the Contracting States of such a special convention, of which the Second Convention would be one, would be treated as the designation of *all* the States party to the special convention. Naturally the party filing the international application remains free to obtain directly, through the PCT, a national patent in one or more States party to the special convention.

An additional advantage for the party filing an international application is provided by Rule 15.1(ii) of the PCT Regulations. This Rule provides that only one designation fee is due under the PCT for the designation of several States party to a regional convention, in cases where a regional pat-

²⁴ Art. 33(1) First Preliminary Draft, First Convention.

²⁵ Arts. 117 ff. First Preliminary Draft, First Convention.

²⁶ Art. 5(2) First Preliminary Draft, First Convention.

ent is being sought. However, Rule 15.1(ii) does not preclude the possibility of additional designation fees being charged under the regional convention in the case of the designation of several States party to the regional convention.

The successful conclusion of the PCT will, in my opinion, have a favorable effect on future work toward the creation of a European patent law, and will lead to a situation in which an applicant for a patent obtains the greatest possible advantages from the combined action of both treaties.

F. The Views of Private International Organizations

On April 21 and 22, 1970, in Luxembourg, the Intergovernmental Conference of the First Convention heard the views of ten private international organizations. The hearings were limited to twelve basic questions which the Conference had previously conveyed to the organizations. A large majority of the organizations advocated the maximum approach²⁷.

In the event that deferred examination is introduced into the European patent granting procedure, the organizations endorsed a short period of time during which a request for examination must be made, this period to be not longer than six months following publication of the report on the state of the art. Subject to further study and evaluation of details, the majority of the organizations spoke in favor of a post-grant opposition procedure.

G. Future Developments

The Intergovernmental Conference will hold its next meeting at the end of April 1971. If possible, it is planned to decide at this meeting on the Complete Draft of the First Convention together with the Implementing Regulations and the Schedule of Fees. Private international organizations will again have an opportunity to state their positions on all aspects of that Draft. Completion of the work on the First Convention through a diplomatic conference cannot be expected before 1972.

V. Basic Concepts of the Second Convention

The Second Convention, the "Convention for the European Patent for the Common Market," is to be signed only by the six Member States of the Common Market. Its First Preliminary Draft has been released and published, together with a general report prepared by the President of the French Patent Office, Mr. Savignon²⁸. The Preliminary Draft of the Second Convention is also incomplete, because its missing sections depend upon the final version of certain provisions of the First Convention.

The Preliminary Draft of the Second Convention was prepared by a committee of experts of the six Member States of the Common Market, appointed by the Permanent Representatives of the Ministers of the EEC States in Brussels. The role of the Permanent Representatives with respect to the Second Convention is about the same as the role of the Intergovernmental Conference with respect to the First Conven-

tion. The Permanent Representatives, also in January 1970, considered the Preliminary Draft of the Second Convention and released it for publication to enable discussion during May 1970 in Brussels by interested international organizations.

As mentioned earlier, the Second Convention begins where the First Convention leaves off. The Second Convention unites the bundle of national patents for the six States of the Common Market into a single, unitary patent, the Community Patent. This Community Patent does not exist by virtue of national law, as does the European patent for other countries: rather, it exists exclusively by virtue of European law, i. e. the law contained in the Second Convention²⁹.

It follows from the unitary character of the Community Patent that it can only be assigned in its entirety, invalidated or revoked as a whole, and can only lapse as a single unit³⁰. The Community Patent is considered an instrument of the Common Market, a means toward economic integration. Following the abolition of tariff barriers within the Common Market, the Community Patent will cause disappearance of the "patent boundaries" that still impede the free exchange of goods within the Common Market.

Thus, the Second Convention contains a complete patent law for the Community Patent, a patent law which does not replace national patent law but is coexistent with it. Accordingly, the Second Convention contains provisions regarding the assignment of a Community Patent³¹, the rights derived from the Community Patent³², the causes of invalidity³³, the procedure for revocation³⁴, and its duration, planned to be twenty years³⁵. Concerning the procedure for revocation, the Community Patent can only be declared invalid through a European procedure, which provides for two instances before the European Patent Office and a further appeal procedure before the Court of Justice of the European Communities in Luxembourg³⁶.

One cannot speak of the Community Patent without referring to the problem of the so-called economic clauses³⁷. The economic clauses are provisions which will prevent division of the Common Market by means of the Community Patent. That such division on the basis of patents would be contrary to the purpose of the Common Market, is readily apparent. Nevertheless, a realistic appraisal of the present situation will show that the Common Market is still partially in the planning stage. Therefore, the Second Convention provides that the so-called economic clauses will not be applicable during a transitional period³⁸. This transitional period is set at a maximum of ten years after the effective date of the Second Convention. Upon expiration of this period, neither a Community Patent nor, under certain conditions, national patents may serve to divide up the Common Market.

²⁹ Art. 1 First Preliminary Draft, Second Convention.

³⁰ Arts. 18, 55, 57 First Preliminary Draft, Second Convention.

³¹ Art. 18 First Preliminary Draft, Second Convention.

³² Arts. 14, 18 ff. First Preliminary Draft, Second Convention.

³³ Art. 57 First Preliminary Draft, Second Convention.

³⁴ Arts. 59 ff. First Preliminary Draft, Second Convention.

³⁵ Art. 16 First Preliminary Draft, Second Convention.

³⁶ Arts. 66-67 First Preliminary Draft, Second Convention.

³⁷ Arts. 11(1), 23(2) First Preliminary Draft, Second Convention.

³⁸ Art. 99 First Preliminary Draft, Second Convention.

²⁷ *Supra*, pp. 84/85.

²⁸ See 1 *IIC*, No. 3/1970, p. 340 also for details concerning the report.

According to the Preliminary Draft, compulsory licenses will be granted in accordance with national law; i. e. compulsory licenses on a Community Patent can be granted according to national law and by domestic courts but under the condition that such national compulsory licenses are effective only within the territory of the country whose courts granted the license³⁹.

It is planned that the governments issue a common declaration at the time the Second Convention is signed, to the effect that they will endeavor to europeanize the system of compulsory licensing by the end of the transitional period.

While the question as to participation is still open for the First Convention, there is agreement that the parties to the Second Convention are to be limited to the Member States of the Common Market⁴⁰. Countries which join the Common Market in the future, will not only be entitled but obliged to accede to the Second Convention.

As with the First Convention, an opportunity was given to interested private international organizations to state their views on the Second Convention. This hearing took place in Brussels on May 13, 1970, before the Committee of Experts of the six States of the Common Market. Twelve organizations participated in the discussions on four of the basic questions proposed by the Committee of Experts. The majority of the organizations advocated granting double protection for inventions by a Community Patent as well as one or more national patents, at least during a transitional period. In spite of certain reservations regarding the possible length of the procedure, all organizations basically agreed to an invalidity procedure involving three instances⁴¹. Some misgivings were expressed by the organizations regarding the provision proposed in the Draft concerning the stay of infringement proceedings when there is also an allegation of invalidity of a Community Patent⁴². The details of the so-called economic clauses of the Draft applicable subsequent to the transitional period, were generally approved by the majority of the organizations⁴³. Regarding the provision covering the transitional

period, however, various changes were suggested. In particular, an adjustment period was recommended of at least two years before the effective date of the decision governing expiration of the transitional period. With respect to compulsory licenses for the Community Patent, the organizations tended to view the proposed declaration of intent by the governments to europeanize the licensing system, as insufficient. What is needed, according to the organizations, is a commitment by the governments to initiate a uniform Community treatment upon completion of the transition period, at least for compulsory licensing in the event of non-use and domination by other patents.

As to further developments, the Draft of the First Convention is to be completed before the Draft of the Second Convention is finalized. Accordingly, a meeting of the Committee of Experts has been called for June 1971. Thereafter, interested private organizations will again be given the opportunity to state their views on all aspects of the Second Convention. Work on the final stages will be kept parallel for both Conventions. Upon completion, the Second Convention will be submitted for signature to the Council of Ministers of the European Communities.

VI. Concluding Remarks

In viewing the European patent system to be created by the two Conventions, the additional Implementing Regulations, and Fee Schedule, the following conclusions appear possible:

1. A European patent system of this kind will essentially simplify the acquisition of patents in Europe.
2. The system will enable all European countries to obtain patents for their territory that have been examined for novelty and, therefore, can more safely be presumed valid and, thus, are more valuable.
3. In its economic significance, the European patent will hold its own with any other patent in the world.
4. The European patent system evidences that the European nations can cooperate beyond the borders of the Common Market. This recognition could be of considerable political significance.

³⁹ Art. 68 First Preliminary Draft, Second Convention.

⁴⁰ Art. 100 First Preliminary Draft, Second Convention.

⁴¹ Arts. 57 ff. First Preliminary Draft, Second Convention.

⁴² Art. 55(2) First Preliminary Draft, Second Convention.

⁴³ Art. 99(3) First Preliminary Draft, Second Convention.

We should like to take this opportunity to congratulate Mr. de Silva on his appointment.

Foreign owned	131
Locally owned	2
Total	133

We should like to take this opportunity to congratulate Mr. Lee on his appointment.

CALENDAR

WIPO Meetings

- April 14 to 16, 1971 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems
- April 14 to 16, 1971 (Geneva) — ICIREPAT — Technical Committee for Computerization
- April 19 to 23, 1971 (Geneva) — ICIREPAT — Technical Committee for Shared Systems
- April 26 to 30, 1971 (Geneva) — ICIREPAT — Technical Committee for Standardization
- April 21 to 30, 1971 (Lausanne) — Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites
Object: Study of the problems — *Invitations:* Member States of the Berne Union, Member States of the Paris Union and Member States of the United Nations or of a Specialized Agency — *Observers:* Intergovernmental and non-governmental organizations concerned — *Note:* Meeting convened jointly with Unesco and in cooperation with the International Labour Office and the International Telecommunication Union
- May 3 to 7, 1971 (London) — International Classification of Patents (IPC) — Working Group V of the Joint ad hoc Committee *
- May 24 to 28, 1971 (Strasbourg) — International Classification of Patents (IPC) — Bureau of the Joint ad hoc Committee *
- June 14 to 16, 1971 (Geneva) — ICIREPAT — Technical Coordination Committee
- June 22 to 25, 1971 (Montreux) — WIPO Lecture Series: "Current Trends in the Field of Intellectual Property"
 Participation open to all interested persons subject to payment of a registration fee
- July 5 to 9, 1971 (Munich) — International Classification of Patents (IPC) — Working Group III of the Joint ad hoc Committee *
- July 5 to 24, 1971 (Paris) — Diplomatic Conference for the Revision of the Berne Convention
Object: Revision of the Stockholm Act — *Invitations:* Member States of the Berne Union — *Observers:* Other States, members of the United Nations or of a Specialized Agency; Intergovernmental and non-governmental organizations concerned
- September 6 to 10, 1971 (London) — International Classification of Patents (IPC) — Working Group IV of the Joint ad hoc Committee *
- September 13 to 17, 1971 (The Hague) — International Classification of Patents (IPC) — Working Group I of the Joint ad hoc Committee *
- September 21 and 22, 1971 (Geneva) ** — WIPO Headquarters Building Subcommittee
Members: Argentina, Cameroon, France, Germany (Fed. Rep.), Italy, Japan, Netherlands, Soviet Union, Switzerland, United States of America
- September 22 to 24, 1971 (Geneva) — ICIREPAT — Plenary Committee
- September 27 to October 1, 1971 (Berne) — International Classification of Patents (IPC) — Working Group II of the Joint ad hoc Committee *
- September 27 to October 2, 1971 (Geneva) — WIPO Coordination Committee, Executive Committees of the Paris and Berne Unions, Assembly and Committee of Directors of the National Property Offices of the Madrid Union, Council of the Lisbon Union
- October 4 to 9, 1971 (Geneva) — International Classification of Patents (IPC) — Working Group V of the Joint ad hoc Committee *
- October 4 to 11, 1971 (Geneva) — Committee of Experts on International Registration of Marks
Object: Preparation of the Revision of the Madrid Agreement or of the Conclusion of a New Treaty — *Invitations:* Member States of the Paris Union and organizations concerned
- October 11 to 15, 1971 (Geneva) — ICIREPAT — Technical Committee for Computerization
- October 13 to 15, 1971 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems
- October 18 to 22, 1971 (Geneva) — ICIREPAT — Technical Committee for Shared Systems
- October 25 to 29, 1971 (Geneva) — ICIREPAT — Technical Committee for Standardization
- November 9 to 12, 1971 (Geneva) — International Classification of Patents (IPC) — Bureau of the Joint ad hoc Committee *
- November 15 to 18, 1971 (Geneva) — International Classification of Patents (IPC) — Joint ad hoc Committee *
- November 15 and 16, 1971 (Geneva) — Intergovernmental Committee Established by the Rome Convention (Neighboring Rights)
Note: Meeting convened jointly with the International Labour Office and Unesco
- November 17 to 20, 1971 (Geneva) — Executive Committee of the Berne Union
- December 6 to 8, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Advisory Committee for Administrative Questions
Members: Signatory States of the PCT
- December 8 to 10, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation
Members: Austria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil
- December 13 to 15, 1971 (Geneva) — ICIREPAT — Technical Coordination Committee
- December 13 to 18, 1971 (Cairo) — Seminar on Treaties Concerning Industrial Property
Object: Discussion on the principal multilateral treaties on industrial property and the WIPO Convention — *Invitations:* States members of the Arab League — *Observers:* Intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with the Industrial Development Centre for Arab States (IDCAS)

* Meeting convened jointly with the Council of Europe.

** Dates to be confirmed later.

Meetings of Other International Organizations Concerned with Intellectual Property

April 14 to 16, 1971 (The Hague) — International Patent Institute — Administrative Council

April 17 to 24, 1971 (Vienna) — International Chamber of Commerce — Congress

May 14 and 15, 1971 (Oslo) — International Federation of Inventors Associations — General Assembly

May 18 to 21, 1971 (Caracas) — Inter-American Association of Industrial Property — 3rd Congress

May 18 to 22, 1971 (Stockholm) — International Federation of Patent Agents — General Assembly

May 19 to 22, 1971 (Vienna) — International Secretariat of Entertainment Trade Unions — Congress

May 25 to 29, 1971 (Leningrad) — International Association for the Protection of Industrial Property — Council of Presidents

July 5 to 24, 1971 (Paris) — Unesco — Diplomatic Conference for the Revision of the Universal Copyright Convention

September 9 and 10, 1971 (West Berlin) — International League Against Unfair Competition — Study Mission on German Restrictive Trade Practices Law

International Conference for the Setting Up of a European System for the Grant of Patents (Luxembourg):

April 20 to 30, 1971 — Conference

September 13 to 17, 1971 — Working Party I

October 11 to 22, 1971 — Working Party I

November 15 to 19, 1971 — Working Party I
