

Industrial Property

Monthly Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

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

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

Convention Establishing WIPO

Accession

JORDAN

The Director General of the World Intellectual Property Organization has notified the Governments of the countries invited to the Stockholm Conference that the Government of the Hashemite Kingdom of Jordan deposited, on April 12,

1972, its instrument of accession dated February 21, 1972, to the Convention Establishing the World Intellectual Property Organization (WIPO).

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization (WIPO) will enter into force, in respect to the Hashemite Kingdom of Jordan, three months after the date of the deposit of the instrument of accession, that is, on July 12, 1972.

WIPO Notification No. 37, of April 17, 1972.

INTERNATIONAL UNIONS

Paris Convention

Accession to the Stockholm Act

JORDAN

The Director General of the World Intellectual Property Organization has notified the Governments of the member countries of the Paris Union that the Government of Jordan deposited, on April 12, 1972, its instrument of accession, dated February 21, 1972, to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967.

Concurrently with depositing the said instrument of accession, Jordan indicated, pursuant to Article 16(4)(b), that it wished to belong to Class VII.

Pursuant to the provisions of Article 21(3), the Stockholm Act of the Paris Convention will enter into force, with respect to Jordan, three months after the date of the notification, that is, on July 17, 1972.

Paris Notification No. 37, of April 17, 1972.

Madrid Agreement (Indications of Source)

Accession to the Lisbon Act and to the Additional Act of Stockholm

ALGERIA

The Director General of the World Intellectual Property Organization has notified the Governments of the member countries of the Paris Union that the Government of Algeria deposited, on March 24, 1972, its instrument of accession, dated January 20, 1972, to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891, as revised at Lisbon on October 31, 1958, as well as to the Additional Act of Stockholm of July 14, 1967, to the Agreement.

Pursuant to the provisions of Article 5(2) of the Additional Act of Stockholm, the Agreement will enter into force, with respect to Algeria, three months after the date of notification, that is, on July 5, 1972.

Madrid (Indications of Source) Notification No. 13, of April 5, 1972.

Madrid Agreement (Marks)

Accession to the Stockholm Act

ALGERIA

The Director General of the World Intellectual Property Organization has notified the Governments of the member countries of the Paris Union that the Government of Algeria deposited, on March 24, 1972, its instrument of accession, dated January 20, 1972, to the Madrid Agreement concerning the International Registration of Marks of April 14, 1891, as revised at Stockholm on July 14, 1967.

Referring to Article 3^{bis}(1) of the Stockholm Act, the Government of Algeria declared that it reserved the right not to extend the protection resulting from the international registration to its territory except at the express request of the proprietor of the mark.

Pursuant to the provisions of Article 14(4)(b), the Stockholm Act of the Agreement will enter into force, with respect to Algeria, three months after the date of the notification, that is, on July 5, 1972.

Madrid (Marks) Notification No. 14, of April 5, 1972.

Nice Agreement

Accession to the Stockholm Act

ALGERIA

The Director General of the World Intellectual Property Organization has notified the Governments of the member countries of the Paris Union that the Government of Algeria deposited, on March 24, 1972, its instrument of accession, dated January 20, 1972, to the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Stockholm on July 14, 1967.

Pursuant to the provisions of Article 9(4)(b), the Stockholm Act of the Agreement will enter into force, with respect to Algeria, three months after the date of the notification, that is, on July 5, 1972.

Nice Notification No. 21, of April 5, 1972.

Lisbon Agreement

Accession to the Stockholm Act

ALGERIA

The Director General of the World Intellectual Property Organization has notified the Governments of the member countries of the Paris Union that the Government of Algeria deposited, on March 24, 1972, its instrument of accession,

dated January 20, 1972, to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised at Stockholm on July 14, 1967.

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

Lisbon Notification No. 7, of April 5, 1972.

Patent Cooperation Treaty (PCT)

Ratification

MADAGASCAR

The Director General of the World Intellectual Property Organization has notified the Governments of the member countries of the Paris Union that the Government of Madagascar deposited, on March 27, 1972, its instrument of ratification, dated March 16, 1972, of the Patent Cooperation Treaty (PCT) adopted at Washington on June 19, 1970.

A separate notification will be made of the date of the entry into force of the Treaty, when the required number of ratifications or accessions, in accordance with Article 63, is reached.

PCT Notification No. 3, of April 5, 1972.

Strasbourg Agreement

Accession

IRELAND

The Director General of the World Intellectual Property Organization has notified the Governments of the member countries of the Paris Union that the Government of Ireland deposited on April 19, 1972, its instrument of accession, dated March 24, 1972, to the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971.

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

Strasbourg Notification No. 2, of April 28, 1972.

CONVENTIONS NOT ADMINISTERED BY WIPO

European Convention on the International Classification of Patents for Invention

Denunciation by Ireland

In accordance with Article 8(2) of the European Convention mentioned above of December 19, 1954, and with Article

13(1)(c) of the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, the Government of Ireland has denounced the European Convention mentioned above.

Denunciation was made by the Government of Ireland in a letter of March 24, 1972, registered at the Secretariat General of the Council of Europe on April 11, 1972.

WIPO MEETINGS

Patent Cooperation Treaty

Standing Subcommittee of the Interim Committee for Technical Cooperation

Second Session

(Geneva, April 6 and 7, 1972)

Note*

It is recalled that in its first session, held in December 1971, the Standing Subcommittee of the PCT Interim Committee for Technical Cooperation invited the International Bureau to continue the negotiations concerning the creation of an institute to be established by and under the responsibility of the Austrian Government in Vienna for the rendering of services in the field of patent documentation (see *Industrial Property*, 1972, page 29).

The negotiations in question took place during the early months of 1972 between representatives of the Austrian Government, the International Bureau, the national Offices of France, Germany (Federal Republic), Japan, the Soviet Union, Sweden, Switzerland, the United Kingdom and the United States of America, as well as the International Patent Institute (The Hague) and Derwent Publications, Ltd. (London), particularly with a view to exploring the possibilities of cooperation and exchange of materials and/or services between the proposed institute, national Offices, the International Patent Institute and Derwent.

In its second session, held on April 6 and 7, 1972, the Standing Subcommittee examined a report on the said negotiations, the plans of the Austrian Government for the prospective institute and the draft of an agreement between WIPO and the Republic of Austria. Since that draft refers to the planned institute under the name of "International Patent Documentation Center," the expression "prospective Vienna Center" will be used in this Note.

The negotiations referred to above give grounds for hoping that there will be close cooperation between the prospective Vienna Center, the said eight national Offices and the International Patent Institute. The negotiations with Derwent Publications Ltd. have not so far led to positive results but it is possible that they still may do so. The list of those national Offices whose cooperation will be sought is not limited to the said eight national Offices: it is planned that others will also be contacted later.

The plans of the Austrian Government in relation to each of the three services envisaged — namely, the "Patent Family Service," the "Identification by Classification Service," and the "Patent Copy Service" — dealt with the question of the countries whose patent documents would be covered, the timetable for the initiation of the services, the question of cooperation referred to above, and the cost and price of the services.

As far as the agreement between the Austrian Republic and WIPO is concerned, the Standing Subcommittee approved, subject to minor amendments, the draft which the International Bureau and the Government of Austria had drawn up. The draft agreement provides that "for the purposes of a

* This Note has been prepared by the International Bureau.

worldwide patent documentation service, the Republic of Austria shall, according to Austrian law, establish an International Patent Documentation Center with headquarters in Vienna" (Article I) and defines the tasks of the Center as well as the role that WIPO would play in assisting it and in the management of it. The draft agreement now awaits signature and ratification for it to enter into force. (Once it has entered into force, the full text of the agreement will be published in this periodical.) In the meantime, the Austrian Government plans to negotiate, with the assistance of WIPO, detailed bilateral working agreements between the prospective Vienna Center and the national Offices as well as the International Patent Institute.

List of Participants*

I. Members of the Standing Subcommittee

Austria: T. Lorenz; W. Pilch; F. Ceska. Germany (Federal Republic): K. H. Hofmann; R. von Schleussner (Mrs.). Japan: K. Matsuie; K. Takami. Netherlands: J. Dekker. Soviet Union: E. Artemiev; V. Evgeniev. Sweden: S. Lewin; B. Hansson. United Kingdom: D. G. Gay. United States of America: R. A. Wahl; E. A. Hurd. International Patent Institute: P. van Waasbergen; L. F. W. Knight.

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

II. Observer Member of the Standing Subcommittee

Brazil: T. Thedim Loho; G. R. Coaracy.

III. Observer States

France: D. Cuvelot. Switzerland: M. Leuthold.

IV. Observer Organization

United Nations: H. Einhaus.

V. 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, PCT Section, Industrial Property Division*); R. Harhen (*Counsellor, Deputy Head of the External and Public Relations Division*); P. Claus (*Technical Counsellor, Head, ICIREPAT Section, Industrial Property Division*); N. Scherrer (*Project Officer, PCT Section, Industrial Property Division*); P. M. McDonnell (Miss) (*Technical Consultant (US Patent Office)*).

VI. Officers

Chairman: R. A. Wahl (United States of America); *Vice-Chairmen*: E. Artemiev (Soviet Union); D. Cuvelot (France); *Secretary*: K. Pfanner (WIPO).

LEGISLATION

ARGENTINA

Law establishing a National Register of License and Know-How Agreements*

(No. 19 231 of September 13, 1971)**

1. — A National Register of License and Know-How Agreements is instituted within the Ministry of Industry, Commerce and Mining.

2. — All agreements capable of producing effects within Argentine territory must be recorded in the Register created by Section 1 when they commit persons or entities domiciled in the country within the meaning of Section 89 and Sec-

tion 90, paragraph (4) of the Civil Code, to make payments or render any kind of consideration to persons resident abroad or to foreign entities, with regard to:

- (a) licensing the use of trademarks;
- (b) licensing the use and working of patents;
- (c) licensing the use of industrial designs, when these can be appraised;
- (d) furnishing technical know-how in the shape of plans, diagrams, models, instructions, formulations, specifications and preparation and training of personnel and other means;
- (e) the provision of detailed engineering for the setting up of installations or the manufacture of products;
- (f) technical advice, whether supplied on an occasional, periodical or permanent basis.

3. — The Control Agency for the National Register of License and Know-How Agreements shall, in line with the provisions of Section 2, consider the conditions and liabilities

* The Law, as published in the *Boletín Oficial*, is not given a title.

** This translation was prepared by Marval & O'Farrell, Attorneys at Law, Patent Agents, Buenos Aires, and is published here with their kind permission.

set forth in the agreements submitted for recordal and may refuse registration in the following instances:

- (a) when the object of the agreement is the use, on an Argentine product, of a foreign trademark or an Argentine trademark registered in the name of a person resident abroad or a foreign entity, without providing any technical contribution or innovation;
- (b) when it can be shown that the object of the agreement involves the importation of know-how of a standard already available in the country;
- (c) when the price or other consideration is disproportionate to the license granted or the know-how transferred;
- (d) when the rights granted are such that they may allow for the direct or indirect control or disturbance of national production, distribution, marketing, investment, research or technological development;
- (e) when the agreement contains an obligation to acquire equipment or raw material from a particular source, and outside the country;
- (f) when the agreement forbids the export or sale for export of Argentine products, or when the right to sell is made subject to permission from abroad or any limit or control whatsoever is placed on exports;
- (g) when the agreement requires the transfer, whether for consideration or not, of any patents, trademarks, innovations or improvements that may have been obtained in the country in connection with the license agreed upon or the know-how conveyed;
- (h) when prices are set for the sale or resale of the goods produced in Argentina;
- (i) when the trial and adjudication of any suits concerning the interpretation or fulfillment of the agreement is made subject to the jurisdiction of foreign courts. Such suits shall be brought before the competent Argentine courts.

4. — The National Executive Power may set, for particular sectors, activities or specific objects, a maximum percentage rate for payments to be made, or other considerations to be rendered, by the recipients of know-how pursuant to the agreements specified in Section 2. Such maximum rate shall be established according to the nature of the object and the net profits that it generates, the circumstances prevailing in the sector or line of activity, the demands of economic development and national interest.

5. — The agreements described in Section 2, as well as any changes therein or extensions thereto, which are not recorded in the National Register of License and Know-How Agreements pursuant to the provisions of this Law and the regulations thereunder, as well as those the registration of which has lapsed or been cancelled, shall be legally invalid and unenforceable before the Argentine courts.

6. — The agreements described in Section 2 shall be legally valid and binding as from the date on which they are executed, provided that they are recorded in the National Register of License and Know-How Agreements within the

subsequent sixty consecutive days. Once this term has expired, they shall be legally valid and effective only as from the date on which they are recorded.

7. — All agreements of the type specified in Section 2, entered into prior to this Law's entry into force, shall be legally valid and binding as from the date on which they were entered into, provided that they are recorded in the National Register of License and Know-How Agreements before January 1, 1972. Such agreements shall be recorded automatically, but must be adapted before January 1, 1974 to meet the provisions of Section 3, pursuant to the rules that the Control Agency for the Register shall establish. Otherwise, once this term has lapsed, the registration thereof shall expire, by operation of law, without prejudice to the right of third parties affected thereby to bring suit for damages against the party whose omission resulted in loss of legal protection.

8. — Agreements of the type specified in Section 2 which were entered into prior to this Law's entry into force, and which are not recorded in the National Register of License and Know-How Agreements before January 1, 1972, shall not enjoy the benefit of automatic registration as provided in Section 6¹ and shall be subject to the requirements of Section 3.

9. — Entry in the National Register of License and Know-How Agreements, of agreements of the type specified in Section 2, shall lapse by operation of law if, within two consecutive years from the date of recordal, the agreement has not been put into practice or has not produced any effect in the country. However, in cases where just cause is shown, the Control Agency for the National Register of License and Know-How Agreements may permit the agreements to be recorded again, provided that the request is made prior to the expiry of the term set in this Section and that the situation referred to in Section 3, paragraph (b) has not materialized.

10. — The price or other consideration provided for in the agreements described in Section 2 shall be restricted to the liquid profits generated by the licensed goods or services. When the price or other consideration due is formalized as an investment as the result of the payment of a predetermined lump sum, the foregoing restriction will not apply. The National Executive Power may allow exceptions to the requirement set forth in this Section, as regards those sectors or products in relation to which specific technological know-how is needed in the country according to appraisals and studies made in this connection by the technical bodies referred to in Section 17.

11. — Agreements referred to in Section 2, wherein transfer is effected as an investment to be paid in a lump sum agreed upon, shall be exempt from stamp tax. The National Development Bank may, subject to the recommendation of the Control Agency, provide special lines of credit to aid companies that, according to Law 18875 and subsequent rules

¹ Presumably it is intended to refer to Section 7 (*Translator's Note*).

thereunder, may be considered domestic concerns of local capitals, to acquire know-how from abroad as an investment to be paid for in a lump sum agreed upon.

12. — The Central Bank of Argentina shall only authorize payments or money remittances abroad in relation to the agreements described in Section 2, provided that such agreements are recorded in the Register created in Section 1, for which purpose it shall issue the pertinent rules, with due consideration to the provisions of Section 4.

13. — The National Register of License and Know-How Agreements shall issue a formal certificate of approval and registration of the agreement, which will entitle the owner thereof to treat the expenses and outlays incurred in connection with the recorded agreement as being intended to earn, maintain and preserve taxable income derived from his own activity.

14. — For purposes of recordal in the Register, the agreements specified in Section 2 shall be drawn up in writing and in the Spanish language, except in regard to technical terms having no equivalent therein.

15. — The information that is to be furnished to the National Register of License and Know-How Agreements shall be established by the National Executive Power. Such information shall suffice clearly to define and determine the purpose or subject matter of the agreement, the scope, degree and other characteristics of the rights and obligations stipulated therein, the price and any other consideration provided for, the term of duration and all other relevant circumstances. The National Register of License and Know-How Agreements shall draw up statistics of the agreements recorded, and any modifications therein, showing the amount of the royalties agreed upon and the sums remitted abroad in respect thereof.

16. — The rules to issue pursuant to this Law shall ensure that applications for recordal of agreements in the National Register of License and Know-How Agreements shall be made public and that any party showing a legitimate interest shall have the right to file opposition thereto.

17. — The Control Agency for the National Register of License and Know-How Agreements shall be the Ministry of Industry, Commerce and Mining, within which the necessary technical bodies shall be appointed to undertake the examination and appraisal called for in Section 3, and it shall establish rules in regard to the functioning of these bodies, and criteria governing the discharge of their duties.

18. — The Control Agency for the National Register of License and Know-How Agreements is authorized to furnish advice, through the technical bodies provided for in Section 17, to interested parties who may seek guidance concerning the negotiation and conclusion of the agreements referred to in Section 2 of this Law. The conditions under which such advice may be given shall be set forth in the rules to issue pursuant to this Law.

19. — The Control Agency may penalize those who fraudulently infringe the provisions of this Law, by:

- (a) cancelling the registration of the agreement in the National Register of License and Know-How Agreements;
- (b) levying fines of up to one million pesos;
- (c) disqualification of the infringer from engaging in trade or industry, over a period of up to two years;
- (d) deprival of legal capacity, where civil or commercial entities are concerned.

20. — Decisions granting or refusing recordal of the agreements specified in Section 2, or of amendments or extensions thereto, in the National Register of License and Know-How Agreements, shall be rendered by the Control Agency within a term of ninety consecutive days from the date of application therefor. Should no decision have been rendered upon expiry of said term, the interested party shall enter a request for prompt attention and, should a further ten days elapse without any result, the application shall be deemed to have been granted and the agreement shall be recorded in the Register as submitted.

21. — Decisions whereby the registration of an agreement specified in Section 2, or of any amendments or extensions thereto, is granted, refused, cancelled or declared to have lapsed, or decisions imposing the penalties prescribed in Section 19, may be appealed before the Federal Court of Appeals. The term for entering appeal shall be ten working days as from the date on which the interested party was served notice of the decision at the address appointed by him in his application for registration. When fines are involved, such appeal may only be entered after payment thereof.

22. — The Ministry of Industry, Commerce and Mining, as Control Agency for the National Register of License and Know-How Agreements and the enforcement of this Law shall, within a term of sixty days, propose the rules to issue thereunder and the framework and organization of the said Register as well as the technical bodies referred to in Section 17. The National Executive Power shall provide the funds that may become necessary for the purpose of this Law.

23. — When the investment of foreign capital in the form of intangible assets, as authorized in Section 2, paragraph (e) of Law 19 151, is effected as a contribution or transfer of know-how, such contribution or transfer shall be so determined as to meet the requirements of this Law.

24. — [*Routine procedure concerning publication of the Law.*]

COLOMBIA

Decree
establishing the Commercial Code

(No. 410 of March 27, 1971)

BOOK THREE. COMMERCIAL PROPERTY

TITLE II. INDUSTRIAL PROPERTY

Chapter I. New Creations

I. Patents

534. — Any invention which is new, results from creative activity or is of an inventive level shall be patentable provided that it is capable of industrial application. The same shall apply to an improvement on an invention if it fulfills the requirements of novelty and industrial applicability, where the application is filed by the owner of the original patent. Principles and discoveries of a purely scientific nature shall not in themselves be patentable.

535. — An invention shall not be new if it forms part of the state of the art, that is, if it has been made available to the public, anywhere and at any time whatsoever, through commercial or industrial exploitation, or by means of a written or oral description, by use, or in any other way that would enable it to be implemented, before the date of the filing of the patent application or the validly claimed priority date.

Notwithstanding the provisions of this Section, disclosure of the invention during the six months preceding the filing of the application shall not entail loss of novelty where such disclosure is the direct or indirect result of:

- (i) an ostensible act of bad faith to the detriment of the applicant or his successor in title, such as the illicit obtaining of plans or documents, misconduct or disloyalty on the part of the inventor's agent, colleagues or employees, industrial espionage or the like, or
- (ii) the invention's display by the applicant or his successors in title at an officially recognized exhibition held in the country.

536. — An invention shall be considered to result from creative activity or to be of an inventive level if it does not obviously follow from the state of the art either as to the combination of methods or processes or as to the industrial result it produces.

537. — An invention shall be considered capable of industrial application, if its subject can be manufactured or used in any kind of industry, including agriculture.

538. — Patents may not be granted in respect of:

- (i) plant varieties and animal breeds and species or essentially biological processes for the production of plants or animals. However, microbiological processes and the products thereof shall be patentable;

- (ii) pharmaceutical products and the active substances used therein, medicaments, foods or drinks for human, animal or vegetable consumption.

However, patents may be granted for pharmaceutical processes and for processes resulting in active substances to be used in pharmaceutical products, and for processes resulting in foods or drinks for human, animal or vegetable consumption, provided that the applicant proves that he is exploiting in Colombia the process for which the application is being made and that he is in a position to supply it to the market on reasonable terms as to quantity, quality and price.

Nevertheless, the application may be filed although the aforementioned requirement has not been satisfied, in which case the Office shall grant a one-year period for the fulfillment of the requirement, failing which the application shall be declared abandoned, and

- (iii) inventions whose application or exploitation may be contrary to public order and morality. An invention shall not be considered as contrary to public order or morality merely because its exploitation by private individuals is prohibited by law.

539. — In the absence of provisions to the contrary, an invention made by an employee or agent engaged for the purposes of research shall belong to the employer or to the person having commissioned the work.

The same rule shall apply where the employee has not been engaged for the purposes of research if the invention is made using data or means which are known or used because of the work being done. In such a case the employee shall be entitled to compensation taking into account his salary and the importance of the invention, the profit made by the employer and other similar factors.

In the absence of agreement between the parties, the amount of compensation shall be fixed by the courts.

540. — Without prejudice to the provisions of the preceding Section, and to the action claiming an invention, in the cases specified in this Title, the right to an invention shall belong to the first person to file the application or his successors in title. If several persons have jointly made an invention, they shall all own the right thereto.

541. — Where a patent application includes an invention illicitly obtained from the inventor or his successors in title or where it is the result of the non-performance of a contractual or statutory obligation, the injured person may claim the invention and demand that the rights attached to the application be transferred to him.

The same action shall lie when the patent has been granted.

The action shall be decided by the courts. The action shall suspend the processing of the application, provided that the plaintiff deposits a sum which, in the opinion of the court, is sufficient to compensate for any damage caused.

542. — The inventor shall be entitled to be named as such in the patent and he may similarly oppose such mention.

543. — The application for a patent shall be made to the Industrial Property Office and shall contain:

- (i) the name, address and residence of the applicant and the inventor, if he is not the applicant;
- (ii) the title or short name of the invention;
- (iii) a complete description of the invention accompanied by drawings, where necessary, and mention of the class to which the invention belongs, and
- (iv) one or more claims defining and limiting the scope of the novelty and the industrial application of the invention for which the patent is requested.

Paragraph 1. Where the applicant resides outside the country, he shall appoint a representative in Bogotá who shall be entitled to receive communications and to appoint an agent or attorney. He shall also state the address of such representative.

Paragraph 2. The mere fact that he has applied for and been granted a patent in Colombia shall not imply that a foreign applicant has a permanent place of business in the country.

544. — The application shall be accompanied by:

- (i) the power of attorney or a certificate attesting that it has been duly filed at the Industrial Property Office, or a duly authenticated photocopy of the power of attorney;
- (ii) proof, where applicable, of the existence or representation of the legal entity making the application;
- (iii) proof, in the form prescribed for the power that paragraph (1) of the preceding Section has been complied with;
- (iv) an abstract of the application containing at least one claim characteristic of the invention, and
- (v) the plans, if any.

Paragraph. Any applicant who wishes to avail himself of the priority of an earlier application made in another country shall do so within six months of that application; he shall state in his request the date and number of the earlier application and the country in which it was filed; he shall furthermore, within three months from the date of filing the application in Colombia, furnish a copy of the earlier application certified by the Industrial Property Office of the country in which it was made.

545. — The description shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

546. — A patent may be granted only for a single invention or for a group of inventions related in such a way as to constitute a unit. Any application not complying with the foregoing conditions shall be divided or limited within a period of six months.

Divisional applications shall benefit from the same priority as the initial application.

547. — The Industrial Property Office shall examine the application for conformity with Sections 543 to 546. The

Office shall inform the applicant of any defect and shall postpone the processing of the application until it has been rectified.

Where, after six months, the conditions for the application have still not been fulfilled, the application shall be considered abandoned and no declaration to that effect shall be necessary.

548. — Where the application complies with the aforementioned requirements, the publication of an abstract shall be ordered, and the application shall then be open to public inspection. Within sixty days following the date of publication, anyone may file an observation on the state of the art which might affect the novelty of the invention, providing documentary evidence thereof.

At the end of that period, a preliminary reasoned report, taking account of observations made by third parties, shall be prepared; at the same time, mention shall be made of any application previously filed or of any patent already granted in Colombia for a similar invention. This report shall be brought to the knowledge of the applicant in order that he may, within the following thirty days, file observations or documents or redraft his claims. At the end of that period, the report shall become final.

Paragraph. The Government may, by decree and in relation to one or more specific branches of industry, order a complete survey to be carried out on the state of the art affecting the patentability of inventions.

549. — Where no observations are made by third parties and if the preliminary report is wholly favorable, the patent shall be granted.

In any other case, the procedure shall be the following:

If the final report is wholly favorable, the patent shall be granted; if it is partially favorable, the patent may be granted including only those claims accepted; if the report is wholly unfavorable or if the applicant does not agree to limit his claims, a reasoned decision shall be taken refusing the patent.

550. — Once the patent has been granted and numbered, the Industrial Property Office shall order the publication of the claim characteristic of the invention.

Any person may consult patents granted and obtain copies thereof at his own expense.

551. — The scope of the protection conferred by the patent shall be determined by the claims; the descriptions, drawings and reports shall be used to interpret the claims.

552. — The exclusive right conferred by the patent shall include the preclusion of third parties from exploiting the patented invention and, in particular, from:

- (i) making the product for which the patent was issued;
- (ii) using, importing, alienating, offering for sale or placing on the market, in any form whatsoever, the patented product and from stocking it for the purpose of using it or placing it on the market;

- (iii) using or implementing, alienating or offering for sale the process and methods referred to in the patented invention, and
- (iv) performing any of the acts referred to under (ii) above, with respect to products obtained by the patented process.

Furthermore, this right shall include the preclusion of third parties from granting, allowing or promising anyone, other than a licensee, the process or means for implementing a patented invention.

Paragraph. Any act whose sole purpose is to scientifically experiment with the subject of the patented invention shall not be considered to infringe the rights guaranteed by this Section.

553. — The maximum term of a patent shall be twelve years. The patent shall initially be granted for eight years from the decision as to its grant, but the patentee may have it extended for a further four years. To obtain an extension, the patentee must prove that the invention is being worked in Colombia or that it was worked during the preceding year.

Any patent for an improvement on the original invention shall expire at the same time as the original patent.

554. — In the absence of any special agreement between the parties, a joint application for a patent shall be governed by the following rules:

- (i) each co-patentee may work the invention and take proceedings for infringement;
- (ii) licenses to work the invention shall be granted to third parties only with the consent of all the co-patentees or with the authorization of a civil judge after a hearing in Chambers, and
- (iii) any co-patentee may assign his share but the other co-patentees shall have a right of preference thereto; such right must be exercised within three months from the notification of the intention to assign.

In the case of disagreement, the price shall be fixed by the civil court, in consultation with experts.

555. — The applicant for a patent, or patentee, may grant a license to another to work his invention, by contract in writing.

Such license shall be known as a contractual license.

556. — In the absence of any stipulation to the contrary, the contractual license shall be governed by the following rules:

- (i) the license shall not preclude the grant of other licenses nor prevent the licensor from working the invention himself;
- (ii) the licensee shall be entitled to work the invention for the whole duration of the patent, in the entire territory of the country and for any application of the invention, and
- (iii) the licensee may not assign his license to third parties nor grant sub-licenses.

557. — Clauses in license contracts shall be null and void where they impose upon the licensee, in the industrial or commercial field, restrictions not deriving from the rights conferred by the patent.

The following shall not be deemed such restrictions:

- (i) restrictions concerning the extent of the subject of the patent or the duration of the license, and
- (ii) restrictions limiting the marketing of the product when it does not meet the conditions as to quality.

558. — At any time after the expiration of a period of three years from the date of the grant of a patent, or four years from the date of the filing of the application, whichever period last expires, any person may petition the courts for the grant of a license to work that patent if, at the moment of presenting the petition, and in the absence of legitimate reasons, any of the following has occurred:

- (i) the patented invention has not been worked within the country or its working has been suspended for more than one year;
- (ii) the working of the invention does not meet the demand of the national market on reasonable terms as to quantity, quality or price, or
- (iii) the patentee has not granted contractual licenses enabling a licensee to meet the demand of the national market on reasonable terms as to quantity, quality and price.

Paragraph 1. The patentee may, upon notification, oppose the grant of a compulsory license. Importation of the product shall not constitute a legitimate reason.

Paragraph 2. Working shall mean the permanent and regular use of the patented processes or the manufacture of the product protected by the patent with a view to putting the final results on the market on the above-mentioned reasonable terms, provided that the circumstances referred to in this Section have occurred in Colombia.

Paragraph 3. The license referred to in this Section shall be known as a compulsory license; it may not be exclusive and shall in no case entitle the licensee to import the product or to assign the license or to grant sub-licenses.

559. — The court order granting the compulsory license shall, on the basis of reports from the administrative authorities and the opinion of experts, establish the duration of the license, the conditions under which it is to be granted, its field of application and the amount of compensation to be paid to the patentee.

560. — In the case of patents of interest to public health or where economic development so requires or where the products which are the subject of the patent have not been made available to the public in sufficient quantities, or are not of a sufficient quality, to meet its normal needs, or where their price is excessive, the Public Prosecutor may request the courts to have the patent put under license. Similarly, the owner of a patent which necessarily requires the use of another in its exploitation may apply for a license.

Such a license shall be known as a license of authority (*licencia de oficio*); it shall not be exclusive and the licensee may not assign it or grant sub-licenses.

561. — When the court order mentioned in the preceding Section has become final, any private person or legal entity which can show that it is currently able to work the invention, or any public legal entity, may request the Industrial Property Office for the grant of a license of authority.

Such a license shall define the terms for its grant, its duration and field of application, but it shall not mention the compensation payable. The license shall take effect from the date on which the parties are notified of the relevant decision.

In the absence of an agreement, approved by the Department of Industry and Commerce, the amount of compensation shall be fixed by the courts with the assistance of experts.

562. — At the request of the patentee or of the holder of a compulsory license or license of authority, the license terms may be modified by the authority that approved the license where new factors so justify and, in particular, where the patentee has granted the license under more favorable terms than those laid down in a compulsory license or license of authority.

The application shall be dealt with in accordance with the particular case.

563. — Where the holder of a compulsory license or license of authority does not comply with the conditions prescribed therein, the patentee or the other licensees may request the court to revoke the license.

The request shall be dealt with in the manner and by the officials referred to in the preceding Section.

564. — The patentee and the licensee may take any legal action which may be necessary to defend the rights granted under the patent, jointly or separately.

When the action is instituted by the licensee, the patentee must be personally notified.

565. — Any patents concerning public health or national defense shall be considered of social interest and public utility. Should the case arise, the appropriate Ministry shall make an order of expropriation.

566. — The patent, or one or more of its claims, may be surrendered by the patentee at any time.

The surrender shall be made in writing to the Industrial Property Office. Where the patent is subject to a license or other right, the surrender shall be effective only if the owners of such rights consent.

567. — The patent shall be null and void if the invention was not patentable within the meaning of Sections 534 to 538 or if the description did not meet the requirements of Section 545. If the patent is partially void, nullity shall be declared in the form of a limitation of the claims. The request may be made by the Public Prosecutor or any person.

The judgment, when final, shall be communicated to the Industrial Property Office.

The *Consejo de Estado* shall have jurisdiction over nullity proceedings.

568. — Any patentee or licensee may apply to the courts to order preventive measures necessary to avoid the infringement of the rights guaranteed to the patentee.

The plaintiff shall append to his application such elements as may summarily prove the existence of the infringement; he shall indicate in his petition how in his opinion such infringement should be prevented, and he shall deposit the security ordered to guarantee the compensation of any damage to the alleged infringer or third parties.

The preventive measures may consist in ordering the infringer to deposit security as guarantee that he will refrain from committing the act for which he was denounced; in confiscating the articles manufactured in infringement of the patent and in issuing an injunction forbidding the advertising thereof; in the seizure of the machinery or equipment used for manufacturing the articles infringing the patent, or in any other similar measure.

The police shall assist in the enforcement of the measures ordered.

569. — An appeal, without any suspensive effect, may be lodged against a court order for preventive measures; an appeal, with suspensive effect, may be lodged against the court's refusal to order such measures. Nevertheless, an appeal with suspensive effect may be made to the court ordering the preventive measures provided that the alleged infringer deposits security, of the kind and amount deposited by the plaintiff, to indemnify the latter for any damage caused him.

570. — The alleged infringer must bring an action to the court proving the legality of his acts within four months of the issue of the order for preventive measures, failing which his right to do so shall lapse.

Should the alleged infringer justify his claim, the court shall revoke the preventive measures and award damages against the defendant.

571. — Any patentee or licensee may institute criminal proceedings or proceedings for damages on account of the infringement without applying for an order for preventive measures or when such measures have been refused.

II. Industrial Designs¹

572. — An industrial design means any combination of shapes, lines or colors incorporated in an industrial product in order to enhance its attractiveness, without changing its intended purpose nor increasing its utility.

An industrial model means any three-dimensional shape which serves as the prototype for the manufacture of an industrial product, provided that it does not involve any technical effects.

¹ Except in the case of Section 572 below, relating to definition, the comprehensive term "industrial designs" has been used in this translation although the original Spanish speaks of "industrial models and designs" (*Editor's Note*).

573. — Applications for the registration of designs may be in the same form as those provided for patents or, at the applicant's option, the descriptions, drawings and samples may be submitted under sealed cover, in which case they shall be kept secret for a period not exceeding twelve months.

574. — Each application may comprise one to fifty designs provided that the products are of the same type or fall within the same class.

575. — Where the application is not made under sealed cover, it shall be examined by the Industrial Property Office for fulfillment of the formal requirements laid down in the case of patents; the Office shall decide whether the design is contrary to public order or morality, whether it simply embodies a technical advantage or whether the registration of a similar design has already been granted.

576. — Where the examination shows that the design may be registered, the certificate of registration shall be immediately issued and its publication ordered.

577. — Where the application is made under sealed cover and the documents required for patents are attached, the certificate shall be granted and the publication of the registration ordered.

578. — Once the cover has been removed at the request of the interested party or on the order of the court or ex officio at the expiry of the twelve-month period counted from the filing date, the Industrial Property Office shall supplement the examination referred to by a further examination to determine whether the remaining requirements have been satisfied.

Where the examination shows that the registration of the design should not have been granted, it shall be cancelled.

The decision taken as a result of the supplementary examination shall be published.

579. — The owner of the design shall benefit from the protection provided for herein from the moment the cover is removed.

580. — The Industrial Property Office, the Public Prosecutor or any person may request that the certificate of registration of a design be declared null and void if the design is not new or if it involves any technical advantage.

The *Consejo de Estado* shall have jurisdiction over such proceedings.

581. — The sections relating to patents concerning novelty, industrial applicability, inventions made by an employee or person commissioned, the right to apply for a patent, claiming an invention, the right of the inventor to be named as such, the application requirements and documents, sufficient description and the abandonment of incomplete applications, examination and publication of patents granted, exclusive rights, the patent term excluding extension, joint ownership and contractual licenses, renunciation of rights and the provisions on preventive measures shall apply *mutatis mutandis* to designs.

582. — The protection afforded herein to designs shall be without prejudice to the protection afforded to the creator by other laws.

Chapter II. Distinctive Signs

I. Definitions

583. — (i) "Trademark" means any sign serving to distinguish the goods of one enterprise from those of another;

(ii) "service mark" means any sign serving to distinguish the services of one enterprise from those of another;

(iii) "collective mark" means any sign, designated as such, serving to distinguish the origin or any other common characteristic of goods or services of different enterprises or bodies which use the mark under the control of the registered owner;

(iv) "trade name" means one which identifies the enterprise of a person or legal entity;

(v) "signboard" means the sign used by an enterprise to identify its premises;

(vi) "indication of source" means any expression or sign used to indicate that a product or service originates in a given country or group of countries, region or locality, and

(vii) "appellation of origin" means the name of a country, region or locality which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or principally to the geographical environment, including natural and human factors.

II. Trademarks and Service Marks

584. — Arbitrary or fanciful designations, words in any language, proper names, pseudonyms, geographical names, slogans, devices, reliefs, letters, numbers, labels, packaging, envelopes, emblems, prints, stamps, vignettes, seals, selvages, borders and edgings, combinations and arrangements of colors and any other distinctive signs may be used as marks.

In the determination of whether a sign is distinctive, account shall be taken of the special circumstances involved such as the amount of time that the sign has been in use as a mark in Colombia or other countries, or has been considered to be distinctive in national or foreign trade circles.

Paragraph. When the mark consists of a foreign word or a geographical name, the place of manufacture of the product must be appended as a footnote.

585. — The following may not be registered, marks:

- (i) which consist of shapes or forms imposed by the inherent nature of the goods or services or by their industrial function;
- (ii) which consist exclusively of a sign which may serve, in industry or trade, to designate the type, kind, quality, quantity, intended purpose, value, place of origin or time of production or of supply of the goods or services concerned;
- (iii) which consist exclusively of a sign which has become, in the current language or trade practices of the country, a customary designation of the goods or services concerned;

- (iv) which, for other reasons, are incapable of distinguishing the goods and services of one enterprise from those of another;
- (v) which are contrary to public order or morality or which are liable to deceive trade circles or the public as to the nature, the source, the manufacturing process, the characteristics or the suitability for their purpose, of the goods or services concerned;
- (vi) which reproduce or imitate the armorial bearings and any other emblems, initials, or names of any State or any international organization, without the permission of the competent authority;
- (vii) which reproduce or imitate official signs or hallmarks adopted by a State, without the permission of the competent authority;
- (viii) which resemble, in such a way as to be likely to mislead the public, a collective mark whose registration has expired, or in relation to which the renunciation, removal or nullity has been recorded, in the course of the three-year period prior to the new application.

586. — Nor may the following be registered, marks:

- (i) which resemble in such a way as to be likely to mislead the public, a mark already registered or filed by a third party, or subsequently filed by a person validly claiming priority, in respect of the same goods or services or those of a similar nature;
- (ii) which resemble, in such a way as to be likely to mislead the public, a mark publicly used by another in Colombia for identical or similar goods, if the applicant is aware, or could not have been unaware, of such use;
- (iii) which resemble, in such a way as to be likely to mislead the public, a trade name or signboard already used in Colombia by a third party in connection with the same activity as that for which the name or signboard is intended to be used;
- (iv) which constitute a reproduction, in whole or in part, an imitation, a translation or a transliteration, likely to mislead the public, of a mark, trade name or signboard belonging to a third party and well known in Colombia;
- (v) which infringe other third-party rights or are contrary to the rules for the prevention of unfair competition, or
- (vi) which are filed by the agent or the representative of a third person who is the proprietor of these marks in another country, without the authorization of such proprietor, unless the representative or agent justifies his action.

587. — The application for registration of a mark shall be made to the Industrial Property Office and shall contain:

- (i) the name and address of the applicant;
- (ii) the description of the mark with a clear and complete list of the particular goods or services in respect of which the application for registration of the mark is being made, and,
- (iii) representations of the mark.

588. — The applicant for registration of a mark who has exhibited goods or services under the mark at an officially recognized exhibition held in the country and who applies for registration of that mark within six months from the day on which the goods bearing the mark or the services rendered under the mark were first displayed in the exhibition, shall be deemed to have applied for the registration on the date of exhibition.

The facts referred to in this Section shall be evidenced by a certificate issued by the competent authorities of the exhibition; such certificate shall state the date on which the mark was first used in connection with the products or services concerned.

Paragraph. The provisions of this Section shall not extend any other period of priority claimed by the applicant.

589. — Where the Industrial Property Office considers that the mark filed cannot be registered, it shall inform the applicant, who shall communicate the reasons in support of his application within thirty days.

At the end of that period, the Office shall decide in accordance with the facts before it.

The official dealing with the application may cite any information whatsoever.

590. — Where the application is accepted, an order shall be issued for the publication of an abstract. Any person may, within thirty days of the date of publication, oppose the registration of the mark.

Once opposition has been entered, the Industrial Property Office shall set a period of thirty days for the production of evidence — ten days in which to request permission to adduce certain evidence and twenty days in which to produce it.

591. — If no opposition is entered, or if opposition is rejected, the mark shall be registered and a certificate in the form of a diploma guaranteeing the right shall be issued. The certificate shall be published once only.

Paragraph. Marks shall be registered by classes.

592. — Registration of a mark shall be for a period of ten years from the date of grant and may be renewed indefinitely for periods of five years.

593. — Registration shall confer upon the registered owner the right to the exclusive use of the mark and the right to prevent the use of any other mark likely to cause confusion in relation to the products or services concerned.

594. — License contracts shall contain stipulations guaranteeing the quality of the goods produced or services offered by the licensee. The registered owner of the mark shall exercise effective control over such quality and he shall be jointly responsible to third parties for any damage caused.

Upon request or ex officio, the office responsible for controlling standards and qualities shall take adequate steps to guarantee such quality and to impose such sanctions as may be required.

595. — The registration of the mark shall lapse and be cancelled at the request of any person if the registered owner has not used the mark in Colombia, either directly or through third parties, save in the case of force majeure or accident, during the five years immediately preceding the filing date.

A decision on whether a mark has lapsed shall lie with the Industrial Property Office; anyone obtaining a favorable decision shall have a preferential right to registration of the mark, if he so requests within three months subsequent to the final decision.

The use of the mark for one or more of the goods or services belonging to any given class shall suffice to prevent its lapse in respect of the other goods or services of the same or different classes. Similarly, lapse shall not occur in the case of defensive marks.

Paragraph. The use of a mark for goods or services shall be optional, but the Government may make it compulsory.

596. — The certificate of registration may be declared null and void on the request of any person if its issue is proved to have been contrary to Sections 585 and 586; however, in the latter case, proceedings must be instituted within five years of the date of registration of the mark whose cancellation is sought. Such decision shall lie with the *Consejo de Estado*.

597. — The sections relating to patents concerning the obligation upon foreigners to appoint a representative, the status of foreign companies applying for and obtaining patents, the documents to accompany applications, the abandonment of incomplete applications, the examination of files, joint ownership and contractual licenses, the renunciation of rights and the provisions on preventive measures shall apply *mutatis mutandis* to marks.

III. Collective Marks

598. — The State, its decentralized bodies, guilds, trade unions or any group of manufacturers or traders may, with a view to their common interest, or in order to encourage the development of the activities of their members, apply for registration of collective marks for goods or services.

599. — Collective marks shall be used directly by the legal entity or group or by the members of the guild or association, by way of control, subject to the supervision and under the conditions contained in the relevant agreement or regulation.

600. — Applications for the registration of a collective mark must be accompanied by a copy of the regulations governing its use, in which shall be specified the common characteristics of the products or services to be protected by the mark, the conditions relating to its use, the persons entitled to use it, the way in which effective control over its use in accordance with the regulations is to be exercised and the sanctions for any infringement of the regulations.

601. — The registration of a collective mark may be declared null and void, in particular:

- (i) where the regulations governing use of the mark are contrary to public order and morality, or
- (ii) where the mark is used or allowed to be used in conditions other than those laid down in the regulations.

602. — The general provisions concerning marks shall be applicable to collective marks, without prejudice to the special rules with respect to the quality of goods or services.

IV. Trade Names and Signboards

603. — The right to a trade name shall be acquired by first use and there shall be no need for registration. Nevertheless, registration may be applied for. Where the application satisfies the formal requirements prescribed for the registration of marks, the issue of a certificate shall be ordered and published.

604. — Where the name has already been filed for the same activities, the Industrial Property Office shall inform the applicant accordingly and, should he pursue his application, the existence of the earlier application shall be indicated on the certificate of registration.

605. — The registration, or the indication of the earlier registration, shall not constitute a right with regard to the name.

It shall be presumed that the applicant started to use the name on the date of the application and that third parties were aware of such use from the date of publication.

606. — A trade name shall not be admissible if it is contrary to public order or morality or if it is liable to deceive third persons as to the nature of the activity which is carried out under that name.

607. — Third persons shall not be permitted to use a trade name or a trademark or service mark which is identical or similar to a trade name already in use in the same branch of activity, except in the case of a name which legally belongs to a person, in which case the necessary modifications shall be made to avoid any confusion at first sight that might occur.

608. — The trade name may be transferred only with the establishment or the part thereof designated by the name, but the assignor may reserve the name for himself upon transferring the establishment.

The transfer shall be in writing.

609. — Anyone sustaining damage as the result of the use of a trade name may apply to the courts to prevent such use and may claim damages.

The case shall be tried under the shortened procedure laid down in the Civil Procedure Code.

610. — The right to a trade name shall lapse on the retirement of the registered owner, on the cessation of the branch of activity for which it is used or on the adoption of another name for the same activity.

611. — The provisions relating to trade names shall apply to signboards.

Chapter III. Miscellaneous Provisions

612. — Cases concerning industrial property which fall within the jurisdiction of the *Consejo de Estado* shall be tried under the ordinary procedure for administrative litigation.

Where the annulment is sought of a decision which created a given individual situation, the owner of the rights thereby created shall be informed in person before the action for annulment is entered on the court lists. Should any party to the dispute so request, the hearing shall be held in public.

613. — Where the competent court is to fix the amount of compensation, or the price where a right of preference is exercised, the procedure shall be the following:

The Statement of Claim shall be given to the other party for a period of three days. At the end of that period the compensation or share of the joint owner shall be assessed by experts.

When the court order becomes final, the judge shall decide the amount.

614. — All civil judges on the Bogotá Circuit and, of those, such judge or judges that the Superior Court of Bogotá shall appoint in accordance with Section 13 of Law No. 16 of 1968, shall have competence for the purposes of this Title.

615. — Colombian nationals and foreigners resident in Colombia may apply to the appropriate judicial or administrative authorities for the application of any advantage deriving from an agreement on industrial property which has been signed and ratified by Colombia.

616. — To be binding on third parties, patents granted, designs, marks, names, signboards, assignments, transfers, changes of name or address of a registered owner, renunciations, licenses, and regulations governing joint ownership and the use of collective marks must be registered with the Industrial Property Office — without prejudice to the provisions on the registration of businesses.

617. — In the absence of provisions to the contrary in this Title, the rights inherent in industrial property may be assigned.

618. — The Government may draw up Rules for the application of the provisions in this Title.

ITALY

Decrees concerning the Temporary Protection of Industrial Property Rights at Exhibitions

(of February and March, 1972) *

Sole Section

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

XIX^a Rassegna internazionale elettronica, nucleare e teleradio-cinematografica (Rome, March 22 to April 3, 1972);

XVIII^o Salone nazionale della calzatura e della pelletteria (Padua, April 23 to 25, 1972);

XXXVI^a Fiera Campionaria internazionale di Bologna (Bologna, May 24 to June 4, 1972);

XV^o S. I. A. — Salone internazionale dell'alimentazione (Bologna, May 24 to June 4, 1972);

L^a Fiera Campionaria internazionale di Padova (Padua, May 25 to June 5, 1972);

XX^a Fiera Campionaria generale di Roma (Rome, May 27 to June 11, 1972);

XXVII^a Fiera del Mediterraneo — Campionaria internazionale (Palermo, May 27 to June 11, 1972);

IV^o MOBILEVANTE — Fiera internazionale del mobile e dell'arredamento (Bari, May 31 to June 5, 1972);

V^o S. I. R. - Salone internazionale del regalo (Naples, May 31 to June 5, 1972);

XIX^a Mostra internazionale avicola (Varese, June 1 to 5, 1972);

V^o Salone internazionale dell'aeronautica e dello spazio (Turin, June 1 to 11, 1972);

IV^a Mostra internazionale dei servizi pubblici SEP (Padua, June 13 to 17, 1972);

I^o Salone internazionale tecniche e attrezzature contro gli inquinamenti "POLLUTION 72" (Padua, June 13 to 17, 1972);

XXIV^a Fiera di Trieste - Campionaria internazionale (Trieste, June 17 to 29, 1972);

XV^a Fiera internazionale della casa (Naples, June 21 to July 2, 1972);

XXXII^a Fiera di Ancona - Mostra mercato internazionale della pesca, degli sports nautici e attività affini (Ancona, June 24 to July 2, 1972);

XXXIII^a Fiera di Messina - Campionaria internazionale (Messina, August 5 to 20, 1972);

XXVI^a Fiera Campionaria nazionale Friuli-Venezia Giulia (Pordenone, August 27 to September 10, 1972);

Moda-maglia — Salone della maglieria italiana (Bologna, September 1 to 4, 1972);

Mostra nazionale dell'oreficeria, gioielleria, argenteria (Vicenza, September 3 to 10, 1972)

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*, 1939, p. 124; 1940, p. 84.

² *Ibid.*, 1940, p. 196.

³ *Ibid.*, 1942, p. 168.

⁴ *Ibid.*, 1960, p. 23.

Colombia's New Industrial Property System

By Manuel PACHÓN *

Introduction

Until the promulgation of the Commercial Code, industrial property in Colombia was governed by Laws Nos. 31 of 1925 and 94 of 1931, which were based on the Argentine laws of 1864 and 1900 and the French laws of 1844 and 1857. The Colombian legislation contained many defects and no doubt corresponded to far less advanced concepts than those envisaged in the instruments on which it had been modeled.

Starting in 1937, various reform bills were submitted to Congress for the amendment of industrial property legislation. None of these became law.

A draft commercial code of 1958 also included some provisions on industrial property. The draft was first discussed in the Senate and then shelved so that there was still no amendment of industrial property law.

By Law No. 16 of 1968 the President of the Republic was granted special powers to issue a Commercial Code, once a commission of experts had revised the 1958 draft. The Commission created by the Government found it necessary to substantially modify existing legislation on industrial property as well as the terms of the 1958 draft. In view of the complexity of the subject, a subcommittee, of which the author had the honor to be a member, was set up to prepare a preliminary draft on the subject.

The existing Title Two of Book Three of the Commercial Code¹ was largely the result of the preliminary draft of the subcommittee, improved in many respects by the valuable cooperation of national and foreign experts.

The provisions concerning industrial property basically follow the lines of the model laws for developing countries prepared by the World Intellectual Property Organization and are, to a lesser extent, based on the French trademark law of 1964 and patent law of 1968 — account being taken of the current situation in Colombia and of the problems which occur in practice.

1. The Inclusion of Industrial Property Rules in the Code

Book Three of the Commercial Code governs property in the context of trade. Chapter I concerns the rules governing commercial enterprises.

In the statement of what property forms part of commercial enterprises, in the absence of provisions to the contrary, mention is made of trademarks, patents, industrial designs, trade names and signboards.

This leads to the conclusion that industrial property is a kind of property in the context of trade which is closely related to the concept of the commercial enterprise.

2. The Nature of Industrial Property Rights

Various theories have been formulated to explain the nature of these rights. Sometimes the ideas expressed are not contradictory but complementary. The Code does not defer to any theory, leaving this problem to authors on the subject. Let it suffice to say that these rights have the characteristics of property rights, that they give rise to a temporary monopoly and lead to the acquisition of goodwill.

3. Classification of Industrial Property Rights

The Code, in accord with the most modern authors, classifies the rights attaching to industrial property into two main groups: (*a*) new creations and (*b*) distinctive signs.

New creations include patents and industrial designs. These are titles granted by the State guaranteeing the owner exclusive rights in the use of his creation, which may be an intrinsic creation (patents) or simply an aesthetic appearance of the product of which it forms part (industrial designs).

Distinctive signs are vehicles used by an enterprise to identify itself (trade names), to identify its premises (signboards) or to identify its products or services (trade or service marks). They are used by an enterprise to attract its goodwill.

4. Patents

The Code does not define a patentable invention but simply indicates the characteristics necessary if an inventive idea is to enjoy legal protection. The characteristics required by the Code are: (a) novelty, (b) inventive level and (c) industrial applicability.

5. Novelty

First, the subject of the invention must be new. The idea of novelty means that it must be different to that which is already known. Logically, all inventions are new; nevertheless, the principle of novelty is important because the law of each country specifies when it exists and it is on this basis that an invention may be patented in one country and considered lacking in novelty in another.

According to the Code, novelty does not exist when the invention already forms part of the state of the art. The state of the art is all that which has been made available to the public at any time whatsoever through commercial or industrial exploitation, or by use or in any other way that would enable it to be implemented, before the date of the filing of the patent application or the validly claimed priority date.

It is worth defining three aspects of the definition of novelty.

* Attorney at Law, member of the firm Pachón & Feged, Bogotá. Dr. Pachón was a member of the Subcommittee which prepared the preliminary draft of the new industrial property provisions discussed in this Study.

¹ The text of this Title is published on p. 128 above.

A. Geographical scope.

The Code adopts the criterion of what is called absolute novelty: the invention must not be known either in Colombia or abroad.

B. Facts which destroy novelty.

Novelty is lost when the knowledge is made available to the public at any time or by any means whatsoever. This may occur by:

- (a) industrial or commercial exploitation, that is the manufacture of the invention and the possibility of the public being able to acquire the invention and understand how it works;
- (b) an oral or written description: for instance when the inventor explains to the public in general of what his invention consists either by a lecture or in a book; or
- (c) any method which might enable its implementation: for instance, if the invention is demonstrated or exhibited.

C. At what moment must novelty exist?

As a general rule, novelty must exist at the moment when the application for the patent is made, this date being deemed in law to be that of the realization of the invention.

The Code admits two exceptions to this rule. One relates to the exhibition of the invention in officially recognized fairs or exhibitions held in the country or to disclosure caused by an ostensible act of bad faith. Novelty will not be affected if the patent application is made within six months of the date on which the facts which affected it occurred.

The second exception covers the possibility of there existing a priority date in relation to which novelty will be judged. The Code grants persons who have filed an application abroad a period of six months in which to apply for a patent in Colombia and, as a consequence, anything which occurs within those six months is considered as not affecting the novelty of the invention, provided that the existence of the foreign application is proved, in the manner prescribed by the Code, within the three months following the filing of the later application.

In establishing a sole criterion for judging novelty, the Code does away with what were known as patents of confirmation, which could be obtained on the basis of inventions patented abroad provided that the invention was not known in Colombia although it may have been worked abroad.

6. Inventive Level

Among the conditions for patentability the Code mentions inventive level, which is also erroneously called creative activity.

In order for an invention to be patentable it is not enough that it be new. It also requires the existence of what is known as inventive level (*Erfindungshöhe*). This means that there must have been an intellectual effort on the part of the inventor, so that when the invention is compared with the state of the art it does not obviously follow from the state of the art either as to the combination of methods or as to the industrial result it produces.

If a person skilled in the art could have arrived at the solution of a given problem, using his normal methods, then that solution is not patentable even though it may be new.

I do not consider the expression "creative activity" to be an adequate objective condition for patentability in accordance with the requirements analysed. What is important is that the technical aspect be of inventive level; this condition, therefore, is not concerned with the birth of the invention or with the invention as a whole, which is the impression given by the idea of mental effort or creative activity.

7. Industrial Application

The patentable invention can be distinguished from other forms of creativity by the fact that the idea inherent in it is capable of industrial application; a patent whose object cannot be produced on an industrial basis would be meaningless.

The Code mentions specifically that "principles and discoveries of a purely scientific nature" are not patentable as they cannot be industrially applied. It does not mention, as superfluous, other unpatentable creations for which the courts have quite rightly refused protection, such as financial plans, teaching methods, natural substances and rules for games.

8. Exceptions to Patentability

The Code, like the laws of most other countries, precludes the patentability of certain objects which, in themselves, meet the requirements of patentability.

The cases in which patents are not granted by way of exception are:

- (a) New animal breeds and new plant varieties as well as essentially biological processes for the production of plant varieties or animal breeds.

The reason for not granting patents in these cases is based on public interest, which aims at removing from the system of exclusive exploitation implied by a patent, objects such as improved varieties of coffee, wheat or livestock, which are so important for the Colombian economy.

The exclusion does not apply to industrial applications of microbiological processes or the industrial product of microbiological processes except in the case of pharmaceutical products, drugs, foodstuffs or drinks for human, animal or vegetable consumption, in which case the rule discussed below is applied.

- (b) Pharmaceutical products and the active substances used therein, medicaments, foods or drinks for human, animal or vegetable consumption.

The system of patentability to be applied to these inventions gave rise to lengthy debates. The solution proposed to the Commission by the Subcommittee was to consider pharmaceutical products, drugs, foods and drinks for human or animal consumption to be among the exceptions to patentability, but to allow the processes to be patented.

The proposals slightly modified by the Commission were changed by the Government, which maintained the prohibition on products and allowed patentability of the processes but subjected them to a special system which is difficult to

understand but would seem to require the applicant to be in possession of material elements (such as laboratories and sales points) enabling him to market his invention within one year of filing the application.

(c) Inventions whose application or exploitation may be contrary to public order and morality.

This provision, according to authors, is hardly ever applied. Mention has been made of the settled cases of an apparatus to be used for a game of chance (France) and a coffin which could be opened from inside (Italy). Pouillet gives the example of an invention which teaches vice to young people.

As the Code takes account of the fact that the patent simply confers upon the owner the right to prevent other persons from exploiting his invention but does not in itself authorize the patentee to exploit the invention, it allows patents to be granted even when the patentee is in no position to work the invention in the country, as occurs in Colombia with the preparation of liquors or the manufacture of arms or ammunition, which are monopolies of the Departments and the Armed Forces respectively.

9. Patentable Objects

The Code differs from Law No. 31 of 1925 in that it does not specify what objects must be considered as patentable. Nevertheless, it would seem from some of its provisions that the following objects are recognized as patentable:

(a) Industrial products.

By these, it means specific objects which have a particular combination or structure or certain characteristics which distinguish them from those already in existence. A patent for a product prevents any person other than the patentee from manufacturing the product even by totally different means. For example, if one person has obtained a new product by means of distillation, he may prevent another person doing so by means of electricity.

(b) Processes.

These may be of two kinds relating either to the inventive idea behind a new method or simply to the new application of an already known method.

A new method exists when an industrial result has been obtained through the use of chemical processes (agents), or physical or mechanical processes (organs or apparatus). A patent for a new method does not prevent other persons from using some other process for obtaining the same result.

In the case of a new application of an already known method, the invention does not cover the method, which is already known, but the relationship between the use of the method and the result. Such a patent does not take the method outside the public domain; it may continue to be used for any application other than that which is patented.

10. Persons Entitled to Apply for a Patent

As a general rule the Code provides that the right to seek a patent belongs to the first person to file the application, who, in the eyes of the law, is presumed to be the inventor.

This legal presumption may be rebutted in certain cases:

(a) when the rights arising from an application or the patent itself may be claimed by another person. This is the case where the invention concerned was illicitly obtained from the inventor or where the application was made as a result of the non-performance of a contractual or statutory obligation;

(b) when an invention has been jointly made by several persons, in which case any co-inventor not included in the application may demand to be recognized as such;

(c) when an invention was made by an employee or a person specially commissioned, in which case the Code lays down a number of rules for determining who is entitled to apply for the patent.

The Code contains the distinction made by authors between free inventions (*Freie Erfindungen*) and employment-tied or service inventions (*Gebundene Erfindungen*). It regulates, in the absence of other agreements, the complex problem of inventions made by employees or persons engaged to do a task in the following way:

(a) if the employee or person commissioned was engaged to do research, the invention belongs to the employer;

(b) if the employee was not engaged for the purposes of research but the invention was made using data or material provided by the employer, the invention belongs to the employer but the employee is entitled to compensation taking into account the importance of the invention, the profit made from it by the employer or any similar factor;

(c) if the employee was not engaged for the purposes of research and made the invention without using data or material provided, and solely by his own work, the invention belongs to him.

11. Grant Procedure

A. Application requirements.

Patents are granted by the President of the Republic, who — by virtue of Law No. 102 of 1936 — has delegated this power to the appropriate Ministry, which is now the Ministry of Economic Development and which, in its turn, exercises the function through the Industrial Property Division of the Department of Industry and Commerce.

The procedure begins with the filing of an application accompanied by various documents. The application requirements laid down by the Code may be summarized as follows:

The application must contain the name, address and residence of the inventor and the applicant, the name of the agent, if any, the title of the invention, a description of the invention sufficiently clear and complete for it to be carried out by a person skilled in the art, one or more claims defining and limiting the scope of the novelty and the industrial application of the invention and an indication of the class to which the invention belongs.

The application must be accompanied by such documents as the power of attorney, a copy of the assignment instrument made by the inventor and an abstract of the application for publication in the Industrial Property Gazette as well as drawings and proof of payment of the fees.

An application may refer only to a single invention or to a group of inventions related in such a way as to constitute a unit.

B. Examination as to form.

Once the application has been filed, the Office must check that it meets the legal requirements. Should the examination show that some requirement has not been met, the applicant will be informed and may rectify the application within six months. If he does not, the application will, without more, be considered abandoned.

Whenever an application does not comply with the unity requirement of an invention, the applicant may limit or divide it into two or more applications within the six months referred to.

C. Publication of the application.

If the application is not defective or if the defects pointed out in the formal examination have been rectified, publication of the abstract in the Industrial Property Gazette will be ordered. From that moment the application will be open to public inspection.

D. Invitation to third parties to file observations on the state of the art which might affect the novelty of the invention.

Once the abstract of the patent application has been published in the Industrial Property Gazette, anyone may, within sixty days following the date of publication, file any observation on the state of the art which might affect the novelty of the invention and accompany such observations with documentary evidence.

E. Examination as to substance.

Once the sixty days have elapsed, the Office studies the observations made by third parties and considers whether a patent has already been granted or an application filed for the same invention; by this is meant an invention using the same means to attain an identical result. The Office then prepares a preliminary report, which sets out the state of the art that might affect the novelty of the invention.

If the report considers the invention to be new, the report becomes final and a patent must be issued.

If the preliminary report indicates the existence of prior disclosures which might affect the novelty of the invention, the applicant must be informed and may, within thirty days, file observations or documents or redraft his claims. After a further twenty days, the Office proceeds with the preparation of the final report, which is to influence the granting of the patent:

(a) if the final report considers the reasons for the changes made by the applicant to be acceptable, the granting of the patent will be authorized;

(b) if it considers that the reasons given in the reports to support the lack of novelty of the invention still subsist, it will indicate the claims which are acceptable, if any, or it will refuse a patent.

If the report is partially unfavorable and the applicant so desires, a patent may be granted to cover the claims accepted. The Office may also refuse a patent where only some of the claims are acceptable, in which case it must give its reasons.

When the report is totally unfavorable the patent is refused. A decision to refuse the grant of a patent is subject to appeal to the Administration and the administrative courts as provided for by law.

When a patent is granted in spite of the observations made by third parties, the only remedy for them is an action for a declaration of nullity before the administrative courts.

12. Rights Conferred by the Patent

A. Prohibition against exploitation.

In accordance with modern trends, the patent confers the right of precluding third parties from exploiting the subject of the patent. The Code gives by way of example some acts which are considered as infringing the rights of the patentee. In this respect it follows the wording of the French law of 1968. Specifically, it prohibits the manufacture, use, import, sale, offering for sale and placing on the market of the patented product itself as well as the simple stocking of the patented object with the intention of placing it on the market. It also prohibits the use, execution or offering for sale of the process referred to in the patented invention and the carrying out of the acts previously mentioned in connection with the product obtained by means of a patented process.

Finally, it prohibits any act whereby a third party grants, allows or promises to anyone, except a licensee, the process or means for implementing a patented invention.

B. Limits of the right to prohibit third parties from exploiting the invention.

The right to prevent third parties from exploiting the subject of a patent must, in my opinion, be limited to commercial operations, as is correctly stated in Section 3 of Law No. 31 of 1925, which refers to "exploitation for gain and industrial exploitation." In the Subcommittee referred to earlier, I prepared a provision to this effect, which was not accepted by a majority of the members. I nevertheless feel that this is the position of the law, even in the absence of an express legal provision.

The Code mentions that any act whose sole purpose is to scientifically experiment will not be considered to infringe the rights granted to the patentee.

13. Other Rights Conferred Upon the Patentee

A. Assignment of a patent.

The owner of an invention may transfer his right to the patent to third parties as, under the general rule laid down in the Code, industrial property rights may be assigned in the absence of other agreement.

The transfer of industrial property rights has, for many years now, been incorrectly called assignment, for the transferee is receiving an absolute title and not merely an interest in all or part of the patent rights.

B. Authorization to work the invention.

The patentee may authorize a third party to work the invention. This authorization is effected by a license contract, which unlike an assignment entails no change in the ownership of the patent rights, the licensee being authorized to

carry out activities which in the absence of a license would be prohibited.

Before the Commercial Code there were no provisions governing license contracts, which fell outside the special categories of contract enumerated in the law. The first rules concerning what was known as the "use of patents" contract, or more technically the patent license contract, were Section 102 of Decree No. 444 of 1967 and Sections 6, 7 and 8 of Decree No. 688 of the same year, which required license contracts to be registered with the Foreign Exchange Office of the *Banco de la Republica* after their approval by a Committee created for that purpose in cases involving a transfer of foreign exchange.

Under the Code, license contracts must be in writing and, if they are to bind third parties, they must be registered with the Industrial Property Division. In the absence of statutory or contractual provision to the contrary, the following rules are applicable:

- (a) licenses do not preclude the grant of other licenses nor prevent the licensor from working the invention himself;
- (b) licenses are granted for the whole duration of the patent, in the entire territory of the country and for any application of the invention;
- (c) the licensee may not assign his license nor grant sub-licenses.

C. Null and void clauses in license contracts.

Licenses must not be a means of obtaining advantages other than those conferred by the patent grant; the Code therefore makes null and void all clauses which impose upon the licensee industrial or commercial restrictions not deriving from the rights conferred by the patent.

These restrictions, which have been sufficiently studied by authors and have been called "binding clauses," are concerned more with antitrust law than patent law. A detailed study therefore falls outside the scope of this Study.

By way of example the Code gives a list, which it does not consider exhaustive, of clauses which are not prohibited: those restricting the scope of the license either in time or space or those preventing the marketing of defective products.

14. Non-Contractual Licenses

In full accord with modern trends, the Colombian Code makes it possible for interested third parties to obtain licenses to work an invention even against the will of the patentee. Two types of non-contractual licenses are provided for, which basically differ only in the way in which they are obtained.

A. Compulsory licenses.

A person interested in working the invention may petition the appropriate court for the grant of a license, known as a compulsory license, if the patentee has, without a legitimate reason, failed to exploit the invention either directly or through the grant of a license within three years from the patent grant or four years from the filing date, whichever period last expires.

In order for a patent to be considered as worked, it must meet the requirements set down in the Code. These are that the patented processes shall have been in permanent and regular use in Colombia, or the patented product manufactured there, with a view to putting the end result on the market on reasonable terms as to quantity, quality and price. Obviously, in accordance with the definition given, the import of the product protected by the patent or manufactured by means of the patented process cannot be taken to constitute such working.

The decision granting a compulsory license will set out the terms relating to duration and royalties payable.

B. Licenses of authority (*licencias de oficio*).

Originally, this type of license was to be established for patents of interest to public health or national defense or necessary to economic development and in the cases where the working of one patent entailed the use of another. Some changes in the text of the section extended this function of licenses to those cases in which the subject of the patent is being exploited in an anti-economic manner.

The characteristics of the license of authority are as follows: it may be applied for at any time. The decision lies with the Civil Court in Bogotá. Except in the case of dependent patents, only the Public Prosecutor may make the application. If the application succeeds, the patent is opened to licenses of authority.

Parties interested in working the patent must apply to the Industrial Property Office for a license. The decision to grant that license will define the duration and scope but will not mention royalties, a decision in this respect requiring the agreement of the licensee and the patentee, failing which they will be fixed by the Court.

C. Variation of the terms of non-contractual licenses.

In a similar manner to that laid down for contracts in general in Section 862 of the Code, the terms of non-contractual licenses may be varied if new facts so justify, where the obligations on one of the parties are excessive and in particular where contractual licenses are granted on more favorable terms.

D. Termination of non-contractual licenses.

Should the licensee not comply with the license terms, the patentee or other licensees may petition the Court to revoke the license.

15. The Patent Term

The Code reduces the duration of exclusive use under a patent. Under Law No. 31 of 1925, the patent term was, in some cases, a maximum of twenty years. Under the new system the patent is granted for eight years, which may be extended by a further four provided that it can be proved that the invention has been worked in Colombia. This system tries to avoid the need for proceedings for revocation of patents which have not been worked.

Patents of addition — i.e., those requested by the owner of another patent which do not meet the inventive level requirement — expire with the main patent.

16. Joint Patents or Patent Applications

The Code sets out the following rules to govern patents jointly owned or applications jointly filed by several persons:

- (a) joint patentees may establish a co-ownership agreement, in which case the terms of the agreement govern the working of the patent. The agreement must be registered with the Industrial Property Office;
- (b) in the absence of such an agreement, the following rules apply:
 - (i) each co-patentee may work the invention independently of the others and keep for himself any financial profit realized; in other words, each co-patentee is considered as the owner of the rights conferred upon the inventor, the only difference being that he must accept the working of the patent by the other co-patentees;
 - (ii) contractual licenses may be granted only with the agreement of all co-patentees. In exceptional cases where it is necessary to grant a contractual license and all the co-patentees cannot reach agreement, a license may be granted by one of the co-patentees provided that he obtains judicial approval;
 - (iii) co-patentees may assign their shares, but they must first offer them to the other co-patentees, with a view to the exercise of their right of preference.

17. Expropriation of Patents

Patents concerning public health or national defense are considered as being of public interest and may consequently be expropriated. In accordance with the constitutional guarantees, expropriation must be ordered by the Court and may only be implemented after compensation has been paid.

18. Surrender of Patents

In a rule similar to that adopted by administrative practice in the absence of an express provision, the Code allows the rights conferred by a patent or one or more of its claims to be surrendered on a written petition to the Industrial Property Office. If there are licenses or other rights in rem with regard to a patent, the surrender will take effect only if the owner of such rights consents.

19. Nullity of the Patent

Under the Code, a patent may be totally or partially null and void. This point gave rise to controversies during the term of application of the 1925 Law.

The causes of nullity of a patent are restrictively enumerated:

- (a) non-fulfillment of the conditions for patentability — lack of novelty, inventive level or industrial applicability;
- (b) where the subject of the patent is included in one of the exceptions to patentability, i. e., if it concerns a plant variety or animal breed, a pharmaceutical composition or an active substance used in the manufacture

of such composition or if its implementation would be contrary to public order and morality;

- (c) if the description of the invention is not sufficient for a person skilled in the art to carry it out.

20. Protection of the Patent

The very nature of the rights conferred by the patent makes it necessary to establish a system which protects a person who has obtained a title from the State without at the same time leaving alleged infringers completely defenseless.

The Code has opted for the establishment of two procedures: under the first, a rapid decision may be taken which, based on evidence of infringement, prevents the alleged infringer from continuing any infringement of the rights of the patentee; the second enables an alleged infringer to prove the legality of his acts. Under the first procedure, the defenses open to the infringer are limited and will probably be based on the existence of a valid right to work the invention; under the second procedure, any facts may be relied on, including those used to attack the validity of the patent concerned.

21. Industrial Designs

A. Special characteristics.

Industrial designs are creations of the mind not involving a technical result, as is the case with patentable inventions, but directed solely towards enhancing the attractiveness of a product.

The Code distinguishes between two-dimensional designs (*dibujos*) and three-dimensional designs (*modelos*), but they are both governed by the same law.

The Code introduces basic changes in the method of granting industrial designs. It allows the application to be filed either under sealed cover or in the same form as a patent application. It makes no provision for opposition nor for an examination of applications as to substance.

If the same filing procedure as that for patents is used, the examination is limited to ensuring that the design is not contrary to public order or morality, that it does not simply involve a technical advantage or that no similar design has been previously accepted.

When the design is submitted under sealed cover an examination is carried out to ensure that the documents required by the Code are enclosed and, should this be found to be so, a provisional certificate is immediately granted.

The examination of the other requirements is completed when the cover is removed, which may occur in three cases:

- (a) after the twelve-month period from the filing date;
- (b) at the request of the certificate owner, and
- (c) on a court order.

If at the further examination it is found that the design should not have been approved, the certificate will be canceled; if the design is found eligible for registration, the certificate becomes final. The design will however only benefit from the special protection granted by the Code from the date on which the cover is removed.

I feel that it is important to provide for the possibility of filing design applications under sealed cover. This is a much debated question, but it is submitted that the system is extremely useful for industries involved in the manufacture of "seasonal" articles, which could suffer serious setbacks if it were possible to examine the industrial designs to be applied to articles not yet manufactured and intended for sale the following season. The filing under sealed cover avoids the risk of copies or simply imitations of the general style of the products, which would result in a reduction in the economic value of the articles, whose *raison d'être* is their originality.

The fact that the invitation for oppositions has not been included in the Code should not give cause for alarm as the rights of persons who consider themselves prejudiced by the grant of a certificate are sufficiently protected by the nullity action.

Industrial designs are null and void if they are not new or if they simply embody some technical advantage. Anyone may request a declaration of nullity.

The owner of an industrial design certificate may invoke the protection offered by other laws. Special protection will consist mainly in that provided for artistic property in Law No. 86 of 1946 and the provisions of the Code relating to trademarks and patents.

B. The application of the rules on patents.

In order to keep the industrial property provisions in the Commercial Code to a minimum, the rules on patents considered to be applicable were not repeated in the sections on industrial designs. This system may in some cases present difficulties. Administrative and judicial practice will, it is hoped, gradually solve any problems that might arise.

The patent provisions relating to novelty, industrial applicability, inventions by employees or persons commissioned, the right to apply for a patent, the claim to an application filed by a third party, the right of the inventor to be named, the application requirements and documents, the patent term not including extension, joint ownership, contractual licenses and the protection of patents will all apply to industrial designs.

22. Trademarks and Service Marks

The Code, in full accord with modern ideas on the subject, deals with trademarks, which in Law No. 31 of 1925 were called "manufacturing, trade and agricultural marks," and service marks.

Trademarks and service marks are subject to the same legal rules and differ only in the object to which they apply — tangible in the case of trademarks and intangible in the case of service marks.

23. Signs which may be Used as Marks

The Code restricts itself to giving, by way of example, some signs which may be used as marks. These may be classified as follows:

- (a) word marks — these include the names of persons, geographical names, arbitrary denominations including words in any language and slogans;

- (b) figurative or device marks such as reliefs, packaging, emblems, prints, stamps, vignettes, seals, selvages, borders and edgings, letters, numbers and combinations or arrangements of colors;
- (c) three-dimensional marks, consisting of containers and forms which are not essential to the products.

It is of course possible to combine the different groups mentioned, as for example with words and drawings, containers and labels, etc.

From this it may be deduced that the Code does not exclude the possibility of registering as marks certain signs which may be recognized by senses other than sight, as may occur with those that may only be recognized by hearing.

24. Signs which cannot be Registered as Marks

When dealing with signs which cannot be registered as marks, the Code mentions two classes: signs which cannot be used as marks for objective reasons and those which cannot be used as marks for subjective reasons.

A. Signs which may not be registered for objective reasons.

The following signs cannot be registered for objective reasons: those which consist of forms of the product imposed by the inherent nature of the goods or by their industrial function; those which simply designate the characteristics of the goods or services in question; those which have become a customary designation of the goods or services; those which for other reasons are incapable of distinguishing the goods or services in question (i. e. mainly those signs which the public would not consider as marks due to their extreme simplicity or complexity); those which are contrary to morality; those which may be confused with the armorial bearings or names of any State or intergovernmental organization and which are used without the permission of the competent authority, and those which imitate official signs or hallmarks adopted by a State.

There is a temporary restriction on signs which had been adopted as collective marks and which, for some reason, have ceased to be so either because their registration was not renewed or because they have lapsed or have been declared null and void.

All these prohibitions must be read in the light of a provision in the Code (similar to that in the Paris Convention before the Lisbon revision) which requires the Administration or the Courts, when determining whether a mark is distinctive, to consider such circumstances as the period in which the sign was used as a mark and whether the sign is considered as being distinctive in the country in question or abroad or in the circles concerned.

B. Signs which may not be registered for subjective reasons.

- (a) The following signs may not be registered, in view of the infringement of third-party rights: those which resemble, in such a way as to mislead the public, a mark already registered or filed in the name of a third party, or subsequently filed by a person validly claiming priority, in respect of the same or similar goods or services.

This universal principle of commercial law presents a problem which in practice is difficult to solve, but it is not possible to formulate it more precisely as its application depends in each case on the opinion of the officials concerned.

(b) The second case under this heading concerns those marks which may be likely to mislead the public because they resemble a mark already in use in Colombia, if the applicant is aware or could not have been unaware of such use.

This does not mean that a person who does not register a mark is given rights over it based on use; it simply means that, in certain cases, the user may oppose registration of the similar mark or institute nullity proceedings.

(c) Even though a trade name and a mark are two separate concepts — the former identifies the trader as such and the second distinguishes the product or service — a conflict may arise between the owner of a mark and the owner of a trade name.

The Code provides that signs which resemble trade names which have previously been used may not be registered as marks whenever the activity of the trader who has previously made use of such signs coincides with the category of goods or services for which registration of the mark is requested.

(d) Registration is also prohibited with regard to signs which resemble marks which are already well known. Such marks constitute an exception to the essentially relative protection granted by the trade mark certificate, which generally covers only those goods or services for which the mark has been registered or, at the most, similar goods or services. A well-known mark is protected whether it is registered or not. Furthermore, if it has been registered for specific goods or services, this is sufficient to prevent the registration of any other similar mark even if it is used for different goods or services. The decision as to whether a mark is well-known or not is a problem which must, of necessity, be solved by the competent authorities in each particular case and it is not possible to evolve any ready-made criteria to clarify this concept.

(e) The registration of marks infringing other third-party rights such as those including the picture, signature or name, etc., of a person other than the owner of the registered marks — unless the third party's authorization has been obtained — is also forbidden, as is registration of marks contrary to the rules on unfair competition such as those which are disparaging of a competitor's goods or services.

(f) Finally, the registration of marks filed by the agent or representative of a person who is the proprietor of these marks in another country, without the authorization of such proprietor or unless the representative or agent otherwise justifies his action, is also prohibited.

25. Registration Procedure

Registration of marks takes place in the Industrial Property Office. The application must comply with the same requirements as those mentioned with regard to patents.

The Office has to carry out an examination as to form to determine whether the application does in fact fulfill the requirements and an examination as to substance to ensure

that registration is not contrary to the provisions forbidding the registration of marks for subjective or objective reasons mentioned above. The applicant is informed of the result of this examination and he is entitled to submit any objections to the decision taken by the Administration.

When the Industrial Property Office decides that registration may be granted, publication of an abstract of the application in the Industrial Property Gazette is ordered. Within thirty days of such publication, any person may enter opposition on the grounds that the mark is not eligible for registration. Oppositions will be decided directly by the Industrial Property Office. Appeal may be made against the decision to a higher instance in the Administration and to the administrative courts.

26. Special Provisions on the Quality of Products in Trademark Licensing

License contracts concerning marks are governed in the same manner as those for patents. However, there is also a special provision which requires the owner of a mark to take all necessary measures to guarantee the quality of the product. It is hardly necessary to mention that the consumer, accustomed to a certain quality of a product manufactured by the owner of a mark, must find the same quality when the product bearing that mark is manufactured by a licensee.

27. Use of the Mark

One of the rights conferred by registration is the exclusive use of the sign. Use of the mark is understood as use to distinguish a product either by affixing the mark to the product itself or its packaging or by using it in advertising the products or services concerned.

In view of the legal system in Colombia, the trader or manufacturer must be free to use marks to distinguish all, some or none of the products or services concerned. As an exception, and in the general interest, some products or services must bear a mark, as is the case in Colombia with products based on coffee or the transport service.

This freedom to use a mark and the exception concerning the obligation to distinguish a product or service by means of a mark should not be confused with the lapse of trademarks owing to non-use. In this last case, while the trader's right to market goods or services not bearing a mark is recognized, he is obliged to use that mark within a certain period, failing which he will lose the right conferred by the Administration.

The reasons given by authors in support of the lapse of marks for non-use may be summarized as follows: only those marks which are in fact used should be protected by the State. If the lapse of marks were not provided for, many businessmen would have a large number of marks registered to make it difficult for their competitors to find appropriate marks. Finally, the penalty is one way of ensuring that marks, as any other form of property right, comply with the social function set out in the Constitution.

I do not share these opinions and am opposed to the introduction in the Code of lapse as the sanction for failure to use a mark.

Before a mark is declared to have lapsed, it must not have been used for five years, save in the case of force majeure or accident or defensive marks.

Defensive marks do not differ from other marks in their characteristics and in the way they are obtained. They may be of two kinds: those which are identical to a registered mark which is used to distinguish products or services in another class, and those similar to marks which are registered and used to distinguish products or services in the same class.

Once a mark is declared to have lapsed, any person may use that sign as a mark. The person who applied for the declaration as to lapse has a preferential right to apply for registration of that mark during a three-month period.

28. Nullity of the Trademark Certificate

Marks which are registered contrary to the objective provisions are absolutely null and void and consequently a declaration of nullity can be sought at any time. Marks registered contrary to the subjective provisions are "relatively" null and void; nullity proceedings may only be brought within five years of the registration.

This is the meaning that the provision has retained. The drafters had originally intended that the five-year limitation period should be expressly restricted to cases where the ground for nullity invoked was that of prior use (see paragraph 24(B)(b) above); but this restriction was omitted in the final version of the Code.

29. Patent Provisions Applicable to Marks

For reasons similar to those mentioned with reference to industrial designs, the patent provisions concerning the processing of the application, joint ownership, contractual licenses, renunciation of rights and protection of patents also apply to trademarks.

30. Collective Marks

By collective mark is meant any mark that serves to distinguish the origin or any other common characteristic of products manufactured or distributed, or services performed, by different enterprises.

Collective marks must have regulations governing their use, specifying the quality of products or services concerned and providing for sanctions for infringement of the regulations.

The rules on trademarks or service marks apply to collective marks. Furthermore, a collective mark certificate may be declared null and void if the regulations governing use are contrary to public order and morality or if the mark is used in conditions other than those laid down in the regulations.

31. Trade Names and Signboards

The Code, in full accord with Law No. 31 of 1925 but perhaps in departure from the main present-day criterion as expressed by authors, makes a distinction between the trade name in its strict sense which is used by the trader in the ordinary run of his business and the "signboard" or title of the commercial establishment.

The regulation of trade names, which also applies to signboards, may be summarized as follows: the right to a trade name is acquired by first use. For the purposes of examination and publicity, a deposit system is provided for, under which certain documents evidencing the acquisition of a right of use over the name may be submitted to the Industrial Property Office.

The certificate issued by the Industrial Property Division has the following effect: it does not give any right over the name but establishes a presumption that the name started to be used on the date on which the deposit was applied for and that third parties were aware of the existence of the deposit as from the date on which the certificate was published in the Industrial Property Gazette.

The owner of a trade name is entitled to prevent third parties from using the same or a similar name in the same branch of activity. In order to enforce this right, application must be made to the courts as there is no declaration by the State as to who owns the name.

The trade name may be transferred only with all or part of the establishment concerned. The right to a trade name lapses on the retirement of the owner or on the adoption of another name.

32. Miscellaneous Provisions

The Title of the Commercial Code relating to industrial property ends with a number of general provisions of which the following are worthy of mention. Colombian nationals and foreigners resident in Colombia may apply to the appropriate judicial or administrative authorities for the application of any advantage deriving from an agreement on industrial property which has been signed and ratified by Colombia.

This provision tries to seek a solution to the theoretical problem of whether Colombian "ressortissants" are covered by the provisions of agreements on this subject or not. This problem has been debated by authors for some time.

In order to avoid any further discussion of this matter the solution applied in Brazil, France, the United States of America, and other countries was adopted. This permits Colombians and foreigners resident in Colombia to consider the provisions of agreements, insofar as provided for by domestic law, to be applicable to them in settling conflicts between two "ressortissants" or between a "ressortissant" and a foreigner.

LETTERS FROM CORRESPONDENTS

Letter from Mexico

By César SEPÚLVEDA *

It was said in the last Letter from Mexico¹ that major changes could be expected in industrial property legislation, institutions and practice in Mexico. In the event, those predictions have not been confirmed and the changes have not yet taken place because attention has had to be given to other more pressing aspects of economic life. It is however possible to report some events of interest that have occurred in the interval.

General Aspects

Some concern has been felt over a number of decisions of the *Tribunales Colegiados de Circuito*² in regard to powers of attorney executed abroad — particularly, in the United States of America. These decisions are not convincing and would seem to be too stringent in that they require a large amount of data and information to be furnished for the purposes of the certification of the signatures of the parties to the power. In addition, they entail a radical interpretation of the Inter-american Protocol on Uniformity of Powers of Attorney which are to be Utilized Abroad, signed at Washington on February 17, 1940 and in force as between a number of countries on the American continent. In one decision, it was held that proof must in all cases be produced that the certification was in conformity with the law of the country where it was performed, which is a departure from all local practice. Significantly, however, these decisions, which were made in early 1969, ignored the fact that the administrative authority — the Patent Office — had already accepted the powers of attorney concerned.

Fortunately, this situation can in some measure be attributed to inexperience, in that these Courts — whose creation was mentioned in my previous Letter — had been set up only a short time before and lacked sufficient experience regarding the effects of administrative decisions.

Furthermore, the cases concerned powers of attorney produced in the course of litigation — more specifically, in proceedings for a declaration of nullity of trademarks owned by Mexican firms — and this considerably limits the effects of the decisions.

From another aspect, the concern was unwarranted because in the case of patents, a revocation action cannot be based on defects in a power of attorney: whether intentionally or otherwise, the Law does not recognize this as grounds for nullity. Accordingly, all patents issued remain valid, and

any action based on defects in a power of attorney at the time of application would fail. In the case of marks, it is unlikely that a registration would be annulled on the grounds of a formal defect in the power of attorney; moreover, where a trademark has been in force for more than ten years, the defendant can always plead that the action is statute-barred.

Although these decisions can be criticized in some respects, they have yielded some beneficial results. First, industrial property agents in Mexico have taken more care to ensure that their powers of attorney are really complete and meet all the formal requirements laid down in the decisions referred to. Another favorable consequence of the decisions is that it has been realized that, in actions for patent, trademark or other infringement, the original power of attorney included in the documents in the case must be examined carefully; if the power is no longer valid or is defective for any other reason, a new instrument that meets all the new requirements must be executed.

It should be added that the Office is also requiring the certification document to state that the person granting the power has sufficient capacity to do so. Where the local law does not require such a statement, it is necessary to prove that the domestic legislation concerned does not provide for such a requirement. For this purpose a certificate from the competent legal authority, authenticated by the Mexican consul, will be enough. Although this requirement is of a mandatory nature, in the case of non-compliance the power of attorney will still remain virtually unassailable by third parties.

Patents

There has been an appreciable speeding-up in the issue of patents. At present, the period between the application and the grant of a patent is on average twenty months, as against twenty-five months in recent years. It is interesting to note a decline in the total number of patent applications: whereas 9,300 applications were filed between September 1, 1969 and September 1, 1970, only 7,891 had been filed by September 1, 1971. This is attributable to a worldwide trend, not to domestic factors.

The percentage of Mexican applications as compared with those from abroad has been diminishing over the past three years, and represents approximately 13% of the total. The United States of America accounts for 54%; Germany (Federal Republic) for 10%; Switzerland for 5.64%; the United Kingdom for 3.70%, and Japan for 3.60%.

It should be noted that in actions for patent infringement the Office has tightened its requirements concerning proof where infringement of a chemical process is alleged to have been committed by importation of the end substance. In several important cases recently decided, the Office has ruled that proof must be shown that the substance had in fact been produced by a process identical or very similar to that

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¹ *Industrial Property*, 1968, p. 372.

² Special federal appeal courts for administrative matters.

covered by the patent. This was true especially in respect of pharmaceutical products, where the defendants were local manufacturers, the evident intention being to protect domestic firms. Basically, this is only one aspect of the economic nationalism that is characteristic of Latin America today.

Service Marks

This field has become somewhat more complicated since my last Letter, in that the Office has rejected a number of applications on the formalistic view that since there is no legislation specifically requiring service marks to be registered, no such marks can be registered.

The parties concerned have appealed against the decisions to the *Tribunales Colegiados de Circuito*. In my last Letter, it was foreseen that the two Courts might establish conflicting precedents (a third court has now been set up). That prediction has been strikingly fulfilled in the case of service marks; the First Court (four cases to date) has held that service marks are not eligible for registration in Mexico; the Second Court (seven cases decided) has held that they are.

In future, interested parties will naturally arrange for their appeals from refusal to register marks to come before the Second Court. The Third Court has not yet decided any cases concerning industrial property.

The end result of all this should logically be a reform of the Industrial Property Law; considerable technical, political and emotional complications are involved, however, and no amendment is to be expected in the next few years. Little by little, registration of service marks will gradually creep in through the passage afforded by the decisions of the Second Court, and eventually the Office will probably give way.

In the light of this experience, it might be thought desirable that the next revision of the Paris Convention should provide for the registration of service marks. This method of legislating through treaty law has in fact brought about advances in industrial property matters in many countries — including Mexico — where there are difficulties in the way of amending domestic law or promulgating new laws.

Industrial Property Case Law

As was foreseen in my last Letter, a body of case law on industrial property matters is slowly emerging, but less rapidly than had been hoped.

As already mentioned, the new *Tribunales Colegiados de Circuito* have been set up — first two, and now a third — in order to lighten the burden of the Supreme Court.

Since the Courts were set up, in October 1968, they have decided an appreciable number of cases (approximately two hundred), most of them concerning trademarks; they have in fact decided far more industrial property cases than the Supreme Court since 1920.

Even allowing for the fact that the Courts were starting in a new field and had no precedents, and that each was free to lay down its own law — which has sometimes given rise to conflicting decisions, it can already be said that a body of case law is beginning to emerge, which is tending to encourage new and more consistent practices in the Patent Office and more uniform criteria on the part of lawyers specializing in this field. A synopsis of this case law is to be published shortly, which will contribute to a better knowledge of this important branch of law.

Miscellaneous

It is of interest to report that, in April 1972, 36 issues of the Industrial Property Gazette were printed in a single operation; the last issue to appear had been that for July 1968. This means that there will now be issues up to July 1971. The cost of the 36 issues is 720 dollars. In order to prevent too many time limits expiring on the same date (for example, the lapse of marks for non-use), the date of publication of each set of four volumes will occur at weekly intervals during the nine weeks following April 6, 1972. The simultaneous appearance of all these volumes will have a considerable impact, because many of the rights published therein will be the subject of actions of all kinds: patent and trademark nullity, lapse of marks for non-use, infringement, etc. A substantial, and unquestionably beneficial, activity is therefore to be expected in coming months.

OBITUARY

C. J. de Haan

On April 4, 1972 the death occurred of a man who left on industrial property a mark which will be slow to fade:

C. J. de Haan, former President of the *Octrooiraad*

Born in 1903, C. J. de Haan received the ideal training for a career in industrial property: after obtaining a diploma in electronic engineering at Delft Polytechnic, he studied law at

Amsterdam University, leading to a doctorate. With this impressive academic background he practised at the Bar of The Hague from 1933 to 1947. On March 1, 1947, he was appointed President of the *Octrooiraad*, a post which he retained and excelled in until his retirement in 1968.

It was not his country alone, however, which benefited from C. J. de Haan's knowledge and experience. He was particularly active at the international level. On a number of

occasions he represented the Netherlands at diplomatic conferences, where he frequently exercised important functions. He was Chairman of the Second Committee at the 1958 Lisbon Conference and Chairman of the General Committee at the Hague Conference in 1960. In fact C. J. de Haan participated in all the post-World War II activities that took place at the international level in the industrial property field. BIRPI in particular benefited frequently from his cooperation, and in 1966 he distinguished himself as Chairman of the Interunion Coordination Committee. He was also an alternate member of the Administrative Council of the International Patent Institute in the Hague, his position as President of the *Octrooiraad* bringing him into close collaboration with the Institute. Finally he had a great influence on the development of cooperation in industrial property matters among European countries. In the field of patents he gave his name to the "de Haan Plan," which was presented in 1954; the basic ideas of this plan are today being realized. He also

played a leading part in the trademark field as the Chairman of the "Trademarks" Working Group of the European Economic Community.

In the performance of the activities which we have only been able to outline here, C. J. de Haan will be remembered for his intelligence and clear thinking, for the originality of his views, for a perseverance undaunted by obstacles, and for his natural integrity and loyalty which won the confidence of his colleagues. In spite of his remarkable stamina, the sheer volume of work he undertook caused his health to deteriorate in the latter years of his career. His friends hoped that the quietness of retirement would give him many years in which to cultivate the artistic and literary interests which he had been unable to enjoy as much as he had wished. This hope was fulfilled, but for too short a time. At least, C. J. de Haan had the satisfaction of watching the growth and development, in many fields of industrial property, of the rich seed he had sown.

J. V.

CALENDAR

WIPO Meetings

June 5 to 9, 1972 (The Hague) — International Patent Classification (IPC) — Joint ad hoc Committee

June 26 to July 7, 1972 (The Hague) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

July 5 to 7, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee

July 10 to 14, 1972 (The Hague) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

September 4 to 8, 1972 (London) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

September 11 to 15, 1972 (London) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

September 20 to 22, 1972 (Geneva) — ICIREPAT — Plenary Committee

September 21 and 22, 1972 (Geneva) — Intergovernmental Committee Established by the Rome Convention (Neighboring Rights) — Extraordinary Session

Object: Consideration of various questions concerning neighboring rights — *Invitations:* Brazil, Denmark, Germany (Fed. Rep.), Mexico, Niger, United Kingdom — *Observers:* Congo, Costa Rica, Czechoslovakia, Ecuador, Fiji, Paraguay, Sweden; intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with the International Labour Office and Unesco

September 25 to 29, 1972 (Berne) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

September 25 to 30, 1972 (Geneva) — Coordination Committee of WIPO, Executive Committees of the Paris and Berne Unions, Assemblies of the Madrid, Lisbon and Locarno Unions

October 2 to 9, 1972 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees and Standing Subcommittee of the Interim Committee for Technical Cooperation

Members of the Interim Committees: Signatory States of the PCT — *Observers:* Intergovernmental organizations and international non-governmental organizations concerned; *Members of the Standing Subcommittee:* Austria, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil

October 9 to 13, 1972 (Geneva) — Committee of Experts on a Model Law for Developing Countries on Appellations of Origin

Object: To study a Draft Model Law — *Invitations:* Developing countries members of the United Nations — *Observers:* Intergovernmental and international non-governmental organizations concerned

October 9 to 13, 1972 (Geneva) — ICIREPAT — Technical Committee for Standardization

October 16 to 20, 1972 (Nairobi) — African Seminar on Intellectual Property

October 16 to 20, 1972 (Geneva) — ICIREPAT — Technical Committee for Computerization

October 23 to 27, 1972 (Geneva) — ICIREPAT — Technical Committee for Shared Systems

October 23 to 27, 1972 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems

October 30 to November 3, 1972 (Geneva) — Committee of Experts on a Patent Licensing Convention

November 20 to 24, 1972 (Geneva) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

November 27 to December 1, 1972 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee

December 13 to 15, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee

May 7 to June 2, 1973 (Vienna) — Diplomatic Conference on: (a) the International Registration of Marks, (b) the International Classification of the Figurative Elements of Marks, (c) the Protection of Type Faces

September 24 to October 2, 1973 (Geneva) — Administrative Bodies of WIPO (General Assembly, Conference, Coordination Committee) and of the Paris, Berne, Nice and Lisbon Unions (Assemblies, Conferences of Representatives, Executive Committees)

UPOV Meetings

November 7 and 10, 1972 (Geneva) — Diplomatic Conference

Object: Amendment of the Convention

November 8 and 9, 1972 (Geneva) — Council

July 2 to 6, 1973 (London/Cambridge) — Symposium on Plant Breeders' Rights

Meetings of Other International Organizations concerned with Intellectual Property

June 9 and 10, 1972 (Copenhagen) — International Federation of Inventors Associations — Annual Assembly

June 19 to 30, 1972 (Luxembourg) — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents

July 3 to 7, 1972 (Paris) — International Literary and Artistic Association — Working Session

July 4 to 6, 1972 (The Hague) — International Patent Institute — Administrative Council

October 16 to 21, 1972 (Mexico) — International Confederation of Societies of Authors and Composers — Congress

October 23 to 26, 1972 (The Hague) — International Patent Institute — Administrative Council

November 12 to 18, 1972 (Mexico) — International Association for the Protection of Industrial Property — Congress

December 11 to 15, 1972 (The Hague) — International Patent Institute — Administrative Council

May 20 to 26, 1973 (Rio de Janeiro) — International Chamber of Commerce — Congress

VACANCY IN WIPO

Competition No. 181

Technical Assistant - IPC Section (Industrial Property Division)

Applications are invited for the following post:

Category and grade: P. 3

Principal duties:

The incumbent will assist the Head of the IPC Section in the implementation of WIPO's program in the field of International Patent Classification (IPC).

His duties in particular will be the following:

- (a) assistance in the preparation of long range and short range draft programs for the IPC and of reports on the work performed and plans concerning the IPC;
- (b) preparatory work and assistance in the Secretariat for meetings of the IPC Interim Committee and its subsidiary bodies and, after the entry into force of the Strasbourg Agreement concerning the International Patent Classification, of the bodies and technical committees to be set up under that Agreement;
- (c) assistance in coordinating the work of the Offices of the participating countries and the International Patent Institute in execution of the IPC program;
- (d) contacts with industry and private organizations to ensure harmonization of efforts in patent classification;

- (e) participation in meetings of other international organizations having an interest in patent classification.

Qualifications required:

- (a) university degree in a relevant field of science or technology or qualifications equivalent to such degree;
- (b) good knowledge and experience in the field of patent classification;
- (c) excellent knowledge of English and at least a good knowledge of French.

Nationality:

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

Date of entry on duty:

To be agreed.

Applications:

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

Closing date: July 31, 1972.