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- (c) medicaments and nutritive or chemico-pharmaceutical substances, materials, mixtures or products, of any kind, including processes for obtaining or modifying them;
- (d) mixtures of metals, and alloys in general, with the exception however of those which do not fall within (c) above and which have specific intrinsic qualities especially characterized by their qualitative composition defined by reference to quantities or to any special treatment which they have undergone;
- (e) combinations of known processes, means or elements, mere changes in form, proportions, dimensions or materials, unless the overall result produces a new or different technical effect not covered by the prohibitions in this Section;
- (f) the uses or application of discoveries, including varieties or species of microorganisms, for specific purposes;
- (g) operating or surgical or therapeutic techniques, not including devices, apparatus or machines;
- (h) systems and programs, plans or schemes for commercial bookkeeping, calculation, financing, credit, selection of lottery winners, speculation or advertising;
- (i) purely theoretic concepts;
- (j) substances, materials, mixtures, components or products of any kind, as well as the modification of their physical and chemical properties and the processes for obtaining or modifying them, which result from a transformation of the atomic nucleus.

Chapter III. Utility Models and Industrial Designs

I. Patentable Utility Models and Industrial Designs

10. — For the purposes of this Code, a utility model means any new arrangement or form obtained from known objects or embodied therein, provided that it is capable of practical use or work.

(1) The word "object" covers implements, working tools or utensils.

(2) Protection shall be granted only to a new form or arrangement that contributes to a better application of the function for which the object or machine part is intended.

11. — For the purposes of this Code:

- (i) industrial model² means any three-dimensional shape which is capable of use as a pattern for manufacturing an industrial product and which is also characterized by a new ornamental configuration;
- (ii) industrial design means any new arrangement or assembly of lines or colors which may be applied, for an industrial or commercial purpose, to the ornamentation of a product, by any manual, mechanical or chemical means, either single or combined.

12. — For the purposes of this Code, an industrial design shall also mean one which, even though its components are already known, achieves a new combination giving the article

² See footnote 1 above.

to which it is applied a general appearance having its own special characteristics.

II. Non-Patentable Utility Models and Industrial Designs

13. — The following shall not be patentable:

- (a) anything that is not patentable as an invention, under Section 9;
- (b) works of sculpture, architecture, painting, engraving, enameling, embroidery and photography and any other industrial design of a purely artistic nature;
- (c) anything that forms the subject of a patent for invention or of a registration under Section 2(b).

Chapter IV. Patent Applications

14. — In addition to the request, the application, which shall seek only one patent, shall contain:

- (a) a description;
- (b) one or more claims;
- (c) one or more drawings (where necessary);
- (d) an abstract;
- (e) evidence of compliance with the requirements contained in specific legislation;
- (f) other documents necessary to complete the application.

(1) The request, description, claims, drawings and abstract shall comply with the conditions laid down by the National Institute of Industrial Property.

(2) The claims, which shall always be based on the description, shall specify the characteristics of the invention, fixing and delimiting the inventor's rights.

15. — Separate protection may be obtained for any characteristic of the invention if it is the subject of a specific request and provided that the characteristic is severable from the invention as a whole and has not previously been described in detail.

Chapter V. The Filing of Patent Applications

16. — Once the application has been presented, a formal preliminary examination shall be carried out and, where the application is complete, it shall be filed.

Sole subsection. The following shall, on request, be recorded on the certificate of filing: the time, day, month, year and serial number of the application, the title and nature of the patent sought, priority indications, where priority is claimed, and the full name and address of the applicant and of his agent, if any.

Chapter VI. Applications Filed Abroad

17. — An application for protection duly filed in a country bound by an international agreement to which Brazil is also party shall have a right of priority if filed in Brazil within the period fixed in the agreement.

(1) During such period, the priority shall not be invalidated by reason of the filing or publication of an identical application, or the use, working or grant of the patent therefor.

(2) The priority claim shall be substantiated by an appropriate document from the country of origin, always accompanied by a complete translation, and bearing the number, date, title, description and claims relating to the filing or to the patent.

(3) Where such a document is not produced at the time of filing, it shall be produced within 180 days of the filing date, failing which priority will be lost.

(4) Without prejudice to the time limit prescribed in subsection (3) of this Section, where the examination is brought forward on the basis of Section 18, the applicant shall be invited to produce the substantiating document within 90 days.

Chapter VII. The Publication and Examination of Patent Applications

18. — The patent application shall be kept secret until its publication, which shall take place after 18 months following the date of the earliest priority; publication may be brought forward at the request of the applicant.

(1) The applicant or any interested person may request an examination of the application within 24 months from the date of the publication referred to in this Section, or from the date of entry into force of this Law in the case of applications already pending.

(2) Where the examination is not requested within the period prescribed, the application shall be deemed to have been finally withdrawn.

(3) The description, the claims, the drawings and the abstract may not be amended except in the following cases:

- (a) for the correction of printing or typing errors;
- (b) where indispensable for explaining, clarifying or restricting the application, and only up to the date of the request for examination;
- (c) as provided for in Section 19 (3).

19. — Once the request for examination has been published, a time limit of 90 days shall be allowed for the filing of any oppositions, which shall be notified to the applicant.

(1) The examination, which shall not be dependent on the filing of any oppositions, shall ascertain whether the patent application fulfills the legal requirements and whether its subject is technically well-defined, not included in prior art and whether it is industrially applicable.

(2) The application shall be rejected if its subject is considered not to be patentable by virtue of Sections 9 and 13 of this Code.

(3) At the time of examination, all requirements considered essential shall be made known to the applicant, including requirements for the filing of a new description, new claims, new drawings or a new abstract, provided that the original scope of the application is not increased thereby.

(4) The original scope of the application shall be respected when the requirements are being complied with.

(5) If any requirement is not complied with or objected to within 90 days, the application shall be shelved and the administrative proceeding terminated.

(6) Where the objection to the requirement is held unfounded, the application shall be shelved.

(7) Subject to subsection (5) of this Section, the decision to grant, reject or shelve a patent application may be appealed within 60 days.

20. — Where the application claims priority, the objections, the documents relating to the search for prior art and the results of examinations, connected with the grant procedure for the corresponding application in other countries, shall be submitted on request.

Chapter VIII. The Issue of Patents

21. — Letters patent shall be issued after the time limit for appeal has expired or, where an appeal has been lodged, after it has been decided.

(1) Where, after expiration of the time limit referred to in this Section, proof of payment of the fee due is not produced within 60 days, the case shall be shelved and the administrative proceeding terminated.

(2) The patent shall contain its serial number and the name, nationality, profession and address of the inventor or his successor or assignee, if any, the title and nature of the patent, its duration, and any foreign priority applicable (where substantiated). The patent shall not affect third-party rights nor entail government liability in respect of the novelty and the utility of the subject of the patent. The patent shall also contain the claims and the drawings.

22. — Patents granted shall be widely disclosed through publication in the official organ of the National Institute of Industrial Property.

Sole subsection. For the purposes of this Section, the National Institute of Industrial Property may, under agreements with governmental or professional bodies, promote the disclosure by other communication media.

23. — A patentee whose invention is, without his authorization, used by a third party between the filing date and the date of the patent grant shall, after the patent has issued, have a right to damages to be fixed by the courts.

Sole subsection. In the assessment of damages, the use of the invention during the period referred to in this Section shall also be taken into account.

Chapter IX. The Patent Term

24. — Provided that the legal requirements are observed, the periods in force shall be 15 years in the case of patents for inventions and 10 years in the case of patents for utility models and industrial designs, counted from the filing date.

Sole subsection. Once the patent has expired, its subject shall fall into the public domain.

Chapter X. Annual Fees

25. — The annual patent fees must be paid from the beginning of the third year counted from the filing date. Proof of payment must be produced within the first 180 days of the yearly period concerned.

Chapter XI. Transfers - Changes in the Name and Address of Owners of Applications or Patents - License Contracts

26. — Ownership in a patent may be transferred by an act *inter vivos* or by intestate or testamentary succession.

27. — Requests for recordal of a transfer or of a change in the name or address of the owner must be accompanied by the patent and all other necessary documents.

(1) Transfers shall be binding on third parties only after the acceptance of the recordal concerned has been duly published.

(2) Without prejudice to the other requirements applicable, the original instrument of transfer shall contain at least the full name and field of activity of the assignor and assignee and those of the witnesses as well as a precise identification of the application or patent concerned.

(3) All acts relating to the suspension, limitation, expiry or revocation of the patent by administrative or judicial decision shall likewise be recorded.

28. — The owner of the application or the patent and his heirs or successors in title may grant licenses for its exploitation.

29. — The grant of licenses of exploitation shall be effected under an instrument in due legal form setting out the terms relating to remuneration and to the exploitation of the patent. The instrument shall specify the number and title of the application or the patent.

(1) The remuneration shall be fixed in accordance with the legislation in force and with instructions issued by the authorities responsible for finance and exchange.

(2) The license may not impose any restrictions as to the marketing or exportation of the product covered by it, nor as to the importation of articles or material necessary for the product's manufacture.

(3) In accordance with the conditions and purposes in this Code, all rights to improvements made by the licensee to the product or process shall belong to him.

30. — Both the acquisition of a patent and the grant of a license shall be subject to registration at the National Institute of Industrial Property.

Sole subsection. The registration shall have no effect as far as royalties are concerned where it relates to:

- (a) a patent granted outside Brazil;
- (b) a patent whose owner is resident, domiciled or established abroad and which does not have the priority provided for in Section 17 of this Code;
- (c) a patent that has expired or that is in the process of annulment or revocation;
- (d) a patent whose previous owner had no right to such royalties.

31. — A decision refusing recordal or registration may be appealed within 60 days.

32. — At the request of anyone having a legitimate interest who has instituted proceedings for forgery or invalidity of the instruments relating to the recordal of the transfer of patent rights or patent applications, or to the registration of the license contract, the court may — giving its reasons — order the suspension of the recordal of the transfer or the registration until a final decision has been rendered.

Chapter XII. Compulsory Licenses

33. — Except where *force majeure* is proved, a patentee who has not actually begun to work the patent in the country within three years of its issue, or who has discontinued the working for more than one year, shall be compelled to grant a license of exploitation to a third party applying for one, in accordance with the terms and conditions provided for in this Code.

(1) For reasons of public interest, a special non-exclusive compulsory license for the working of an unworked patent or one for which actual working does not meet the demand on the market may be granted to third parties applying for it.

(2) Actual working shall not be considered to have taken place where the production has been replaced or supplemented by importation, except in the case of an international agreement for the complementation of products to which Brazil is a party.

(3) For the purposes of this Section and Sections 49 and 52, any patentee shall, upon request, prove the actual working in Brazil of the subject of the patent, either himself or through authorized third parties.

34. — Applications for compulsory licenses shall state the terms offered to the patentee.

(1) When the application for the license has been submitted, the patentee shall be notified and should present his observations within 60 days.

(2) If the person notified takes no action within this period, the application shall be accepted on the terms offered.

(3) If the terms are contested, investigations and expert examinations shall be ordered and all steps shall be taken to clarify the matter so as to enable the consideration to be determined.

(4) For the purposes of the preceding subsection, a committee shall be appointed, which shall draw up a binding report within 60 days. The committee shall consist of three experts, who need not belong to the staff of the National Institute of Industrial Property.

35. — Except where *force majeure* is proved, the owner of a compulsory license shall begin the actual working of its subject within twelve months of the date of its grant and shall not discontinue such working for more than one year.

36. — It shall be for the patentee to supervise the production, the total amount of sales and the proper use of the invention, according to the license terms, as well as to demand the agreed consideration.

37. — Where the patentee proves that the licensee has failed to comply with Sections 35 and 36, he may obtain revocation of the compulsory license.

38. — The licensee shall be vested with powers of representation enabling him to protect the patent by administrative or judicial procedures.

Chapter XIII. Expropriation of Patents

39. — A patent may be expropriated in accordance with law, where this is considered to be in the interest of national security or where the national interests demand the patent's divulgation or even its exclusive exploitation by an agency or organ of the federal administration or one in which the federal administration participates.

Sole subsection. Except in the case of the national security interest, requests for expropriation — which shall always be properly reasoned — shall be addressed to the Minister of Industry and Commerce by any agency or organ of the federal administration or by one in which the federal administration participates.

Chapter XIV. Inventions made during Employment or Contracts for Services

40. — Inventions, and any improvements, made during the validity of a contract whose expressed object is research in Brazil and in which the inventive activity of the employee or person commissioned has been foreseen, or is implied by the very nature of the functions performed under the contract, shall belong solely to the employer.

(1) In the absence of an express term to the contrary, the compensation for the work or service performed shall be limited to the salary or remuneration agreed.

(2) Unless otherwise agreed, inventions and improvements for which patent rights are sought by the employee or person commissioned within one year following termination of the contract shall be deemed to have been made during the validity of the contract.

(3) Any invention or improvement resulting from a contract under this Section shall be patented, and have its priority, in Brazil.

(4) Both the fact that the invention or improvement resulted from the contract and the inventor's name shall appear in the application and in the patent.

41. — Inventions or improvements made without any relation to an employment or service contract and without the use of the employer's resources, data, means, materials, installations or equipment shall belong solely to the employee or person commissioned.

42. — In the absence of an express term to the contrary, inventions or improvements made by the employee or person commissioned which do not come within the provisions of Section 40 and which result from both the personal contribution of the author and the resources, data, means, materials, installations or equipment of the employer shall be owned

jointly in equal shares: the employer shall have an exclusive right to a license of exploitation and the employee or person commissioned shall have a right to a fixed remuneration.

(1) The exploitation of the subject of the patent shall be started by the employer within a year from the date of the patent grant, failing which the invention or improvement shall become the exclusive property of the employee or person commissioned.

(2) The employer may also apply for a patent abroad provided the fixed remuneration is guaranteed to the employee or person commissioned.

(3) In the absence of an agreement to start the exploitation of the patent or during such exploitation, either of the joint owners — on an equal footing — may exercise his right of preference within the period provided under the general law.

43. — This Chapter shall apply, where pertinent, to the direct or indirect federal, state or municipal agencies of public administration.

Chapter XV. Inventions of Interest to National Security

44. — Where the subject of a patent application is considered to be of interest to national security, the application shall be processed in secret and the publications referred to in this Code shall not take place.

(1) For the purposes of this Section, the application shall be submitted to the General Secretariat of the National Security Council.

(2) It shall be for the General Staff of the Armed Forces to issue a binding technical opinion on the requirements for the grant of patents relating to matters of a military nature; such technical examination may be delegated to the military ministries.

(3) Where the interest to national security is not acknowledged, the application shall no longer be confidential.

45. — A copy of the patent resulting from an application referred to in Section 44, which shall also be kept secret, shall be sent to the General Secretariat of the National Security Council and to the General Staff of the Armed Forces.

46. — Any invention considered to be of interest to national security may be expropriated in accordance with Section 39, following a decision of the General Secretariat of the National Security Council.

47. — The violation of secrecy of an invention considered, under Section 44, to be of interest to national security shall be punishable as an offense against national security.

Chapter XVI. The Expiry and Forfeiture of Patents

48. — A patent shall expire:

- (a) at the end of the term of legal protection;
- (b) on surrender under an appropriate instrument by the patentee or his successors;
- (c) as a result of forfeiture.

49. — Except where force majeure is proved, a patent shall, ex officio or on the petition of any interested party, be held forfeited:

- (a) where its actual working has not been started in Brazil within four years — or within five years where a license of exploitation has been granted — from the date of issue of the patent;
- (b) where working has been discontinued for more than two successive years.

Sole subsection. It shall be for the patentee, notified in accordance with Section 53, to prove that the situation in (a) or (b) above has not occurred or that reasons of force majeure exist.

50. — A patent shall be automatically forfeited where the annual fee due is not paid within the period specified in Section 25, without prejudice to restoration of rights, or where Section 116 is not complied with.

51. — Restoration of a patent may be requested, irrespective of any notification, within a maximum of 30 days from the date when the patent was forfeited due to failure to prove in time that the annual fee had been paid.

52. — In accordance with Section 33(3), actual working means the proven, continuous and regular working of the invention on an industrial scale, either through production by the patentee or through production under a license of exploitation granted to third parties.

53. — The decision as to forfeiture for lack of actual working shall be rendered after 60 days following the date of notification to the patentee.

54. — The decision declaring or refusing to declare forfeiture for lack of actual working may be appealed within 60 days.

Sole subsection. The patent shall fall into the public domain when the declaration of forfeiture is not appealed against or is confirmed on appeal.

Chapter XVII. Patent Nullity and Revocation

55. — A patent shall be null:

- (a) where its subject did not fulfill the conditions in Sections 6, 10, 11 and 12;
- (b) where the grant was contrary to Sections 9 and 13;
- (c) where the grant infringed rights of third parties;
- (d) where the title does not correspond to its real subject matter;
- (e) where any measure whatever considered by this Code as essential to the evaluation of the invention and issue of the patent was omitted at the processing stage;
- (f) where Section 40 (3) has not been complied with.

Sole subsection. Nullity need not relate to all of the claims.

56. — Subject to Section 58, the question of nullity shall be for the courts to determine. The appropriate legal action may be brought at any time during the validity of the patent.

57. — The National Institute of Industrial Property or any person having a legitimate interest may institute proceedings on the ground of nullity.

58. — A patent may be revoked by the Administration where it has been granted contrary to Section 6, 9 or 13, where Section 40 (3) has not been complied with, or where any measure considered by this Code as essential to the evaluation of the invention and issue of the patent was omitted at the processing stage.

(1) The revocation procedure may only be initiated within one year following the patent grant.

(2) On being notified that the procedure has been initiated, the party concerned may contest the revocation within 60 days.

(3) Applications for revocation shall be decided within 180 days from their submission.

(4) The decision granting or refusing revocation may be appealed within 60 days.

Title II. Trademarks³, Service Marks and Publicity Slogans and Signs

Chapter I. Trademarks and Service Marks

I. General Provisions

59. — The ownership of a mark and its exclusive use shall be guaranteed throughout the national territory to anyone who obtains registration thereof, in accordance with this Code, to distinguish his goods or services from other identical or similar goods or services belonging to the class corresponding to his activities.

Sole subsection. The protection under this Section covers the use of marks on papers, printed matter and documents relating to the owner's activity.

60. — Trademarks may be applied directly to goods, containers, packaging, stickers or labels.

61. — For the purposes of this Code:

- (i) industrial mark means a mark used by a manufacturer, industrialist or craftsman to distinguish his goods;
- (ii) trademark means a mark used by a trader to distinguish goods in his trade;
- (iii) service mark means a mark used by a self-employed professional, an agency or an enterprise to distinguish their services or activities;
- (iv) collective mark means a mark which identifies the origin of a series of products each of which is distinguished by its own mark.

Sole subsection. Collective marks may be used only together with an individual mark.

62. — Registration of a mark may only be requested by private persons or entities, the Union, the States, the Terri-

³ Except in the case of Section 61 below, relating to definition, the English term "trademarks" has been used in this translation although the original Portuguese speaks of "industrial marks and trademarks" (*Editor's Note*).

tories, the Municipalities, the Federal District and its organs of direct or indirect administration.

Sole subsection. In accordance with Section 61, private persons or entities may only request the registration of marks that relate to an activity which they are actually and lawfully carrying on.

63. — This chapter shall apply, where pertinent, to publicity slogans and signs.

II. Registrable Marks

64. — The following shall be registrable as marks: names, words, denominations, monograms, emblems, symbols, devices and any other distinctive signs which do not contain anything that forms part of an existing registration or conflicts therewith and are not prohibited by law.

III. Unregistrable Marks

65. — The following shall not be registrable as marks:

- (i) national, foreign or international escutcheons, armorial bearings, medals, emblems, badges and monuments, of an official, public or similar nature, as well as descriptions, devices or imitations relating thereto;
- (ii) letters, numerals and dates, in isolation, except in a sufficiently distinctive shape;
- (iii) expressions, devices or drawings that are offensive to public morals or customs or insulting of individuals, religions or ideas or sentiments deserving respect and veneration;
- (iv) designations and acronyms of official organizations or institutions which cannot lawfully be used by the applicant;
- (v) titles of establishment or trade names;
- (vi) generic names or graphic representations thereof and expressions in general use to designate kind, type, nature, nationality, intended purpose, weight, value or quality;
- (vii) shapes or packaging of goods;
- (viii) colors and names of colors except when they are combined to form an original whole;
- (ix) names or indications denoting origin as well as misleading imitations thereof;
- (x) purely descriptive names of goods or services to which the mark is to be applied and those which may be misleading as to quality or origin;
- (xi) fanciful medals capable of confusion with medals awarded at exhibitions, fairs, or congresses or with decorations;
- (xii) the name, well-known pseudonym or picture of another person unless such person or his immediate successors have given express authorization;
- (xiii) technical terms used in industry, science or the arts that are in any way connected with the goods or services to be distinguished;
- (xiv) the reproduction or imitation of official hallmarks generally used as a warranty for precious metals or firearms and official standards of any kind;

- (xv) titles of literary, artistic or scientific works, of theatrical or cinematographic plays and of official games or sports or the like, which may be broadcast by any communication medium, as well as artistic designs however printed, except when such use to distinguish goods or services has been expressly authorized by the author or owner concerned;
- (xvi) the reproduction or imitation of title deeds, bonds, coins or paper currency of the Union, States, Territories, Municipalities, the Federal District or foreign countries;
- (xvii) imitations and reproductions in whole or in part or with additions of another's registered mark distinguishing identical or similar goods or services belonging to the same or a related field of activity, when such use may lead to error, doubt or confusion; the use of a translation thereof not current in Brazil shall however be permissible;
- (xviii) marks made up of components eligible for protection as industrial designs;
- (xix) two marks of a single owner for the same article, except when each is sufficiently distinctive in shape;
- (xx) names, denominations, signs, devices, acronyms or symbols that are in essential, common or everyday use in relation to the goods or services to be distinguished, except when they are sufficiently distinctive in shape.

66. — A mark shall not be registered where its characteristic features contain words or indications, including those in a foreign language, which are misleading as to origin or quality.

IV. Well-Known Marks

67. — A mark considered well known in Brazil that is registered in accordance with the conditions and purposes of this Code shall be given special protection in all classes and be kept on a special register so as to prevent the registration of another mark reproducing or imitating it in whole or in part, where confusion may arise as to the origin of the goods or services or where the reputation of the well-known mark is damaged.

Sole subsection. The unlawful use of a mark reproducing or imitating a well-known mark registered in Brazil shall constitute an aggravation of the offense defined under the relevant law.

V. Foreign Marks

68. — For the purposes of this Code, foreign mark means a mark which has been regularly filed in a country party to an international agreement of which Brazil is a signatory or to which Brazil is a party, where the mark has also been filed in Brazil during the period of priority laid down in the agreement concerned, without prejudice however to third-party rights and provided that the country concerned gives reciprocal rights for the registration of Brazilian marks.

(1) During the priority period, the priority of the mark shall not be invalidated by reason of the filing of an identical mark by a third party.

(2) The priority claim shall be substantiated by an appropriate document from the country of origin and shall always be accompanied by a complete translation of the application or registration together with its number and date and a reproduction thereof.

(3) Where such a document is not produced at the time of filing, it shall be produced within 120 days of the filing date, failing which priority will be lost.

69. — Subject to Section 68, the mark of a person resident abroad may, at his request, be registered in Brazil, in accordance with the conditions and purposes of this Code, provided however that the owner proves that the mark relates to his industrial, commercial or professional activities actually and lawfully carried on in the country of origin.

VI. Indications of Source

70. — Subject to Section 71, for the purposes of this Code, the name of a locality, city, region or country shall be an indication of source if it is well known as a center for the extraction, production or manufacture of particular goods.

71. — Any geographical name which has come into common use as a designation of the nature, kind or type of goods for which the mark is intended shall not be considered an indication of source.

72. — Unless it constitutes an indication of source, the name of a place may serve as the characteristic feature of a mark intended to distinguish goods originating elsewhere only if it is used as a fanciful name.

Chapter II. Publicity Slogans or Signs

I. General Provisions

73. — Publicity slogans or signs mean any original and characteristic captions, advertisements, words, word combinations, drawings or engravings intended for use as a means of recommending any lawful activity, emphasizing the quality of goods or attracting users or consumers.

(1) Anyone carrying on a lawful activity may apply for registration of a publicity slogan or sign.

(2) Publicity slogans and signs may be used on posters, signboards, leaflets, printed matter in general or any other communication medium.

74. — A trademark or service mark may form part of a publicity slogan or sign where it is registered in the name of the same owner for the class or classes corresponding to the subject of the publicity.

75. — The registration of a publicity slogan or sign shall be valid throughout the national territory.

II. Unregistrable Publicity Slogans or Signs

76. — The following shall not be registrable as publicity slogans or signs:

(i) words, word combinations or phrases that are purely descriptive of the quality of the articles or activities;

(ii) posters, signboards or advertisements which lack originality or are publicly known and used for other articles and services by third parties;

(iii) advertisements, phrases or words that are offensive to morals, that contain personally insulting statements or allusions or that are offensive to ideas or religions or sentiments deserving veneration;

(iv) any posters or advertisements which include a mark, title of establishment, badge, trade name or award which the applicant may not lawfully use;

(v) words, phrases, posters, advertisements or slogans which have already been registered by third parties or which may be misleading or cause confusion with such prior publicity;

(vi) those included in any of the prohibitions concerning the registration of marks.

Chapter III. Applications for Registration

77. — In addition to the request, the application, which shall relate to only one registration, shall contain:

(a) a description;

(b) a printing block;

(c) evidence of compliance with the requirements contained in specific legislation;

(d) other documents necessary to complete the application.

Sole subsection. The request, the description and the printing block shall comply with the conditions laid down by the National Institute of Industrial Property.

Chapter IV. The Filing of Applications for Registration

78. — Once the application has been presented, a formal preliminary examination shall be carried out and, where the application is complete, it shall be filed.

Sole subsection. The following shall, on request, be recorded on the certificate of filing: the time, day, month, year and serial number of the application, the nature of protection sought, priority indications, where priority is claimed, and the full name and address of the applicant and of his agent, if any.

Chapter V. Examination of Applications for Registration

79. — The examination shall determine whether the application conforms to the legal requirements, whether its subject is technically well-defined and whether it contains anything that forms part of an existing registration or conflicts therewith.

(1) At the time of examination, all requirements considered essential shall be stated, including requirements for the filing of a new description, a new printing block and further documents.

(2) If any requirement is not complied with or objected to within 60 days, the application shall be shelved and the administrative proceeding terminated.

(3) Where the objection to the requirement is held unfounded, the application shall be shelved.

(4) Once the registration is found to be in order, the printing block shall be published, a time limit of 60 days being allowed for any oppositions, which shall be notified to the applicant.

(5) Subject to subsection (2) of this Section, the decision to grant, reject or shelve an application for registration, which shall not be dependent on the filing of any oppositions, may be appealed within 60 days.

80. — Denominations similar to marks may be registered as marks when they are intended to distinguish pharmaceutical or veterinary products with identical therapeutic purpose, except where there is a clear likelihood of error, doubt or confusion in the mind of the consumer.

81. — A mark intended to distinguish pharmaceutical or veterinary products may only be used together with a collective mark referred to in Section 61 of this Code, the two marks being given the same emphasis.

82. — The grant of registration of a mark distinguishing goods and services shall be subject to the production of evidence that the requirements contained in the specific legislation have been complied with.

Sole subsection. Where the required evidence is not produced within 180 days from the date of priority, the application shall be shelved. An appeal shall lie during the following 60 days.

Chapter VI. The Issue of Certificates of Registration

83. — A certificate of registration shall be issued after the time limit for appeal has expired or, where an appeal has been lodged, after it has been decided.

(1) Where, after expiration of the time limit referred to in this Section, proof of payment of the fee due is not produced within 60 days, the case shall be shelved and the administrative proceeding terminated.

(2) The certificate shall contain the registration number, the name, nationality, complete address and field of activity of the registrant or his successor or assignee (if any), the characteristic features of the registration, the date of its expiry, and the foreign priority applicable (where substantiated).

84. — Any mark or publicity slogan or sign that is used with any alteration of its characteristic features, as shown in the certificate of registration, shall not have the protection provided in this Code.

Chapter VII. The Duration and Renewal of Registration - The Registration Fee

85. — The registration of a mark or publicity slogan or sign shall be for a ten-year period, beginning on the date of issue of the certificate; the registration may be renewed for successive ten-year periods.

(1) Renewal may be applied for only during the last year of the current ten-year period of protection.

(2) Renewal shall not be granted where the registration is contrary to the provisions of this Code, without prejudice however to the registered owner's right to adapt the subject, if possible, so as to comply with said provisions.

86. — In accordance with Section 83, proof of payment of the fee for the ten-year period shall be produced together with proof of payment of the fee for the issue of the certificate.

Sole subsection. Proof of payment of the fee relating to the succeeding ten-year period shall be produced at the time of application for renewal referred to in Section 85(1).

Chapter VIII. Transfers - Changes in the Name and Address of Registered Owners - License Contracts

87. — Ownership in a mark or publicity slogan or sign may be transferred by an act inter vivos or by intestate or testamentary succession.

Sole subsection. Save in the case of intestate or testamentary succession, the new owner shall fulfill all the requirements for applications for registration.

88. — Requests for recordal of a transfer or of a change in the name or address of the owner must be accompanied by the certificate of registration and all other necessary documents.

(1) Transfers shall be binding on third parties only after the acceptance of the recordal has been published.

(2) Without prejudice to the other requirements applicable, the original instrument of transfer shall contain at least the full name and field of activity of the assignor and assignee and those of the witnesses as well as a precise identification of the application or registration.

(3) All acts relating to the suspension, limitation, expiry or cancellation of the registration by administrative or judicial decision shall likewise be recorded.

89. — The transfer to an assignee shall comprise all registrations or applications relating to identical or similar marks in the name of the assignor, on pain of ex-officio cancellation of the registrations or applications for registration not transferred.

90. — Owners of marks or publicity slogans or signs may authorize their use by third parties duly specified, under an exploitation contract which shall mention the number of the application or registration and the remuneration terms as well as the owner's obligation to exercise effective control over the description, nature and quality of the articles or services concerned.

(1) The remuneration shall be fixed in accordance with the legislation in force and with instructions issued by the authorities responsible for finance and exchange.

(2) The exploitation contract may not impose any restrictions as to industrialization or marketing, including export.

(3) The exploitation contract as well as its renewals or extensions shall be binding on third parties only after it has

been approved and recorded by the National Institute of Industrial Property.

(4) The recordal shall have no effect as far as the payment of royalties is concerned where it relates to:

- (a) a registration granted outside Brazil;
- (b) a registration whose owner is resident or established abroad and which does not have the priority provided for in Section 68;
- (c) a registration that has expired or that is in the process of annulment or cancellation;
- (d) a registration in force by virtue of a renewal;
- (e) a registration whose previous owner had no right to such royalties.

91. — A decision refusing recordal may be appealed within 60 days.

92. — At the request of anyone having a legitimate interest who has instituted proceedings for forgery or invalidity of the instruments relating to the recordal of the transfer of an application for registration or of the registration rights, or relating to the recordal of the exploitation contract, the court may — giving its reasons — order the suspension of the recordal of the transfer or the exploitation contract until a final decision has been rendered.

Chapter IX. The Expiry and Forfeiture of Registrations

93. — A registration of a mark or publicity slogan or sign shall expire:

- (i) in the absence of renewal, at the end of the term of legal protection;
- (ii) on express renunciation under an appropriate instrument by the registered owner or his successors;
- (iii) as a result of forfeiture.

94. — Except in the case of force majeure, a registration shall, ex officio or on the petition of any interested party, be held forfeited where its use has not been started in Brazil within two years from the date of the registration grant or has been discontinued for more than two successive years.

Sole subsection. It shall be for the owner of the registration, notified in accordance with Section 95, to prove use or force majeure justifying non-use.

95. — The decision as to forfeiture for lack of actual use shall be rendered after 60 days following the date of notification to the registered owner.

Sole subsection. An infringement of Sections 81 and 84 shall not prevent a declaration of forfeiture.

96. — The registration shall be automatically forfeited where Section 116 is not complied with.

97. — The decision declaring or refusing to declare forfeiture of the registration for lack of actual use may be appealed within 60 days.

Sole subsection. Where no appeal is made against a declaration of forfeiture or the declaration is confirmed on appeal, the forfeiture shall be recorded in a special register.

Chapter X. Nullity and Review of Registrations

98. — Any registration which is contrary to the provisions of this Code shall be null.

Sole subsection. Proceedings for nullity shall be statute-barred after five years following the grant of registration.

99. — Subject to Section 101 of this Code, the question of nullity shall be for the courts to determine.

100. — The National Institute of Industrial Property or any person having a legitimate interest may institute proceedings on the ground of nullity.

101. — The grant of a registration may be reviewed by the Administration when Sections 62, 64, 65, 66 and 76 were infringed thereby.

(1) The review procedure may only be initiated within six months following the grant of registration.

(2) The review may be contested during the 60 days following the notification of the beginning of the procedure. The decision shall also be rendered within 60 days.

(3) The decision may be appealed within 60 days.

Title III. Accredited Experts

102. — In addition to its own staff, the National Institute of Industrial Property may have a panel of experts accredited to it either directly or through an agreement with an organ or agency of the public administration, with organizations recognized as organs of public utility by the Federal Government, or with teaching institutions.

Sole subsection. The accredited experts shall be remunerated in accordance with a scale to be approved by the Minister of Industry and Commerce on the proposal of the National Institute of Industrial Property.

103. — In special cases, the National Institute of Industrial Property may delegate the examination of an application for a patent or a registration to an organ, agency or institution, referred to in Section 102.

Title IV. General Provisions

Chapter I. Actions, Decisions and Time Limits

104. — Actions, rulings and decisions in administrative proceedings relating to industrial property shall take effect only from the date of their publication in the official organ of the National Institute of Industrial Property — with the following exceptions:

- (a) actions, rulings or decisions which this Code expressly makes dependent on notification or publication;
- (b) interlocutory decisions where notification is made by mail or through communication to the party concerned in the course of the proceeding;
- (c) internal counsels and rulings which do not have to be notified to the parties.

105. — Unless expressly provided otherwise, time limits laid down in this Code shall start from the publication or notification referred to in Section 104.

106. — Unless provided otherwise, the time limit for complying with the requirements contained in this Code shall be 60 days.

Sole subsection. Where a requirement has not been complied with by the time limit established in this Section, the proceeding relating thereto shall be automatically shelved.

Chapter II. Requests, Oppositions and Appeals

107. — Requests, oppositions and appeals shall not be accepted:

- (a) where they are submitted after the end of the time limit prescribed in this Code;
- (b) where they are legally unfounded;
- (c) where they are not accompanied by proof of payment of the relevant fee.

108. — The appeals provided for in this Code shall be decided by the President of the National Institute of Industrial Property, except in cases under Sections 58(4) and 101(3), where the decision shall lie with the Minister of Industry and Commerce.

(1) The Minister of Industry and Commerce shall decide the cases under Sections 58(4) and 101(3) within 90 days from their lodgment.

(2) With the decision on the appeal, the administrative proceeding shall be terminated.

Chapter III. Certificates and Photocopies

109. — Upon request, the National Institute of Industrial Property shall supply interested parties with certificates or photocopies relating to matters dealt with in this Code, within a period of 30 days save in the case of force majeure.

Chapter IV. The Classification of Patents and Registrations

110. — A classification of patents and registrations shall be established by the National Institute of Industrial Property.

Chapter V. Fees

111. — The cost of the services provided for in this Code shall be defrayed by fees paid by users in accordance with an action of the Minister of Industry and Commerce determining their amount and period in force in accordance with Section 2 of Decree-Law No. 1156 of March 9, 1971.

112. — The procedure for payment of the fee shall be determined by the National Institute of Industrial Property.

113. — The payment of the fee shall take effect only where proved to the National Institute of Industrial Property within the time limit applicable and in accordance with the fee-scale in force.

114. — Fees duly paid shall not be refunded.

Chapter VI. Powers of Attorney

115. — Where the interested party is not acting personally, the filing of requests or documents initiating proceedings shall be accompanied by an appropriate power of attorney as well as a duplicate, certificate or authenticated photocopy of the instrument; execution of the power of attorney shall not be necessary.

(1) Where the power of attorney is not submitted at the time of filing, it may be produced within 60 days, failing which the case will be finally shelved.

(2) Save in the case of Section 116, after the grant of the patent or registration and where two years have elapsed since the grant of the powers, the agent may act only under a new and updated instrument, duplicate or certificate.

(3) Where photocopies are produced, the National Institute of Industrial Property may demand to see the original.

116. — Persons resident abroad shall appoint a duly qualified agent resident in Brazil who shall have power to represent them and to receive judicial summonses in matters relating to industrial property. The agent shall be retained at the time of the filing date and throughout the validity of the patent or registration.

Sole subsection. The time limit for contesting actions in which the judicial summons, mentioned in this Section, is made shall be 60 days.

Chapter VII. Final and Transitional Provisions

117. — This Code shall apply to all pending applications, including applications for extension or renewal and appeals.

118. — Patents for inventions, utility models or industrial designs already granted shall be valid for the terms established in prior legislation; they shall however be subject to the annual fees determined under Title IV, Chapter V of this Code.

Sole subsection. Pending applications for patents filed more than three years before the entry into force of this Law shall be subject, from that date, to payment of the annual fees during the remaining period, in accordance with Section 25.

119. — Trade names and titles of establishment shall continue to be protected under the relevant legislation, and this Code shall not apply to them.

(1) Pending applications for registration of trade names and titles of establishment shall be forwarded to the National Department of Commercial Registration.

(2) Registrations of trade names, insignia, titles of establishment and industrial awards already granted shall permanently expire at the end of their respective periods of validity.

120. — Registrations of publicity slogans or signs, granted under prior legislation, shall remain in force for the duration of the original periods and may be renewed for the periods prescribed in this Code and subject to the conditions therein, provided that renewal is requested during the final year of the registration concerned.

121. — So long as a new classification is not adopted in accordance with Section 110, applications for patents and registrations shall be filed with a reference to Tables I and II annexed to Decree-Law No. 254 of February 28, 1967.

122. — So long as they are in force in Brazil, international marks shall have the same rights as those established in this Code for foreign marks as far as transfers, changes of name, cancellation, renunciation, forfeiture and renewals are concerned.

123. — In order to be protected under the Industrial Property Code, any users of marks or publicity slogans or signs not yet registered but in proven use in Brazil shall have 90 days, beginning from the entry into force of this Law, in which to apply for the registration to which they claim to be entitled.

124. — Applications for reconsideration, oppositions and appeals provided for under prior legislation but not in this Code shall be decided by the President of the National Institute of Industrial Property, whose decision shall bring an end to the administrative proceeding.

125. — Owners of patents or registrations granted before the entry into force of this Law shall have 180 days, starting

from that date, in which to fulfill the requirements of Section 116.

126. — For the purposes of Section 2, sole subsection, of Law No. 5648 of December 11, 1970, all transactions or contracts involving the transfer of technology shall be subject to registration at the National Institute of Industrial Property.

127. — Decree-Law No. 254 of February 28, 1967, setting up the Council of Industrial Property Appeals, as well as subsequent amendments thereof, is hereby repealed.

128. — Sections 169 to 189 of Decree-Law No. 7903 of August 27, 1945, shall remain in force until the entry into force of the Criminal Code (Decree-Law No. 1004 of October 21, 1969).

129. — This Law shall enter into force on the date of its publication⁴.

130. — Decree-Law No. 1005 of October 21, 1969, and all other provisions conflicting with this present Law, are hereby repealed.

⁴ The Law was published in the *Diário Oficial (Seção 1 - Parte 1)* of December 31, 1971.

GENERAL STUDIES

Questions of Distinctiveness in Hungarian Trademark Practice

By Márta BOGNÁR *

Efforts to harmonize industrial property legislation — and within this field, trademark law — can be observed all over the world. In past decades there has been a considerable expansion in international trade. Technological developments in rapid transportation and advertising have virtually removed the barriers in marketing imposed by time and space. The smooth functioning of international cooperation in the field of marketing requires the creation of uniform territories for the application of law and an increasing coordination in the drafting and implementation of legislation.

The trademark legislations in the different countries regulate a large number of basic problems in the same way. There are however considerably greater differences in the applica-

tion of the law — in spite of the trends towards harmonization. One reason for this is that there are much fewer legislators than implementing organs. Even in one country, cases may be decided differently. The treatment of cases is influenced by a variety of factors, such as the particular situation of a country, its economic and commercial conditions and those governing the production and marketing of specific goods. Trademark policy is — to some extent — a factor of economic development; if applied judiciously it can have a beneficial impact on certain branches of national economy.

In establishing the criteria for granting trademark protection and the exclusive right arising from such protection, Industrial Property Offices have to take a number of elements into account. Apart from the purely economic factors, the elaboration of criteria can be influenced by a country's particular historical make-up or by other factors concerning the market and the consumers. For instance, the general background of the sector of the population who are considered potential customers, their standard of living, their degree of professional and general education and, last but not least, their

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knowledge of languages should all be taken into consideration.

Problems arising from the knowledge of foreign languages are particularly frequent in a small country like Hungary. Where, in foreign applications for registration, the words making up a trademark are meaningful, they are drafted in a language other than Hungarian. In trademark practice, the Trademark Office and applicants very often disagree as to the distinctiveness of denominations submitted in a foreign language. The applicants argue that for the Hungarian consumer such words should be considered as fanciful denominations and are thus distinctive. Is such an argument well-founded? It is not accepted in established Hungarian practice.

The Hungarian Trademark Law of 1969¹, by Section 1, grants protection only to marks which are appropriate to distinguish goods and services from other goods and services. Among the marks devoid of distinctive character the Code, in line with the provision in the Paris Convention, specifically mentions signs exclusively designating kind, quality, characteristics, purpose, place of origin etc. Marks consisting of a product's name or those in general use to designate a product are placed in the same category. The task arising in practice is to decide which marks formulated in a foreign language do have distinctive character and which do not.

A basic factor in such a decision is the knowledge of languages of the prospective purchasers, since on this will depend the question whether the meaning of a foreign word or words designating the name, kind or characteristics of a product is actually conveyed to them. If they do not understand the word, it can be qualified as a distinctive mark in regard to them: the word will not be distinctive if they do know its meaning; in this case the particulars of which the word consists do not fulfill the role of designating a product of the enterprise owning the mark. Consequently, the problem can be seen in terms of deciding whether or not the consumer understands the meaning of a mark consisting of words having a meaning in a foreign language.

This leads back to the particular situation of small countries, referred to earlier. Experience shows that citizens of a country whose language is not widely spoken in the world are increasingly compelled to study foreign languages. In Hungary, for instance, two foreign languages are compulsory subjects in secondary schools. Apart from this, the knowledge of foreign languages is absolutely necessary for the use of scientific works coming from abroad. The requirements of foreign trade and the desire to read literary works in the original are further incentives to learn languages, as is tourism inside Hungary and abroad. The geographical, historical and economic conditions in Hungary have therefore favored a widespread knowledge of several languages, such as the Slavic languages in addition to German, English and French. It is difficult to support the argument that for Hungarian professional circles or the general public, marks in a foreign language constitute meaningless, fanciful names, particularly if a given mark is a technical term or — in the case of consumer goods — a word in everyday use.

To allow registration of such marks and the exclusive rights attaching to them is unjustified having regard to the consumer: it is also unjustified from the standpoint of competitors. With the growth of foreign trade, goods are increasingly coming from abroad. Throughout the stages of marketing — the offering for sale, advertising and packaging etc. of goods — every foreign enterprise should be in a position to give the particulars relating to the goods and services concerned that are essential or useful for the consumer to know. The interpretation of the law adopted in Hungarian practice is therefore in the interest of foreign competitors using their own language for marketing their goods.

In the case of marks not containing distinctive features, the fact that the mark has been in use and has already become known is not accepted as a basis for protection. However, in the case of a mark consisting exclusively of numerals, consonants or geometrical shapes the fact that it is known in the country will be taken into consideration when the decision as to its registration is taken.

The following are examples of expressions that have been held unregistrable in current practice:

(a) Words solely designating the name or kind of the goods (or services) appearing on the list attached to the application: Pimentade; Des œuvres complètes de Charles Baudelaire; Biscuits des Familles; Tissu; Les Cahiers de l'Informatique; Folklore de Monde; Bouchet Naturmild; Swimpool; Polo-shirt; Thermotable; Towmotor; Flexowriter; Omnigraph; Khleba Wodka; Tischdress; Habanos 68.

Where the words making up the mark have been slightly modified but their original meaning nevertheless reappears, protection is not granted. Examples are Snak and Dolorinfant. The word Pebegaz was also found unregistrable since it denoted propane-butane gas, the first two syllables of the word being the initials PB as pronounced in Hungarian; the name had moreover come into current use for that kind of gas, independently of the enterprise selling it. In some other marks, the names of the goods concerned had had the following words added to them; again the view adopted in Hungarian practice was that they were lacking in distinctiveness: Bi-Dentifricio; General Chocolates; Intershoe; Eurobuilding; Everdoor; Le Guide de l'Acheteur; Mon Savon; Servitable.

(b) Words denoting the purpose of the goods concerned: Pied Bad (for pedicure products); Maxisouple, Blonds Enchantés (for hair treatment); Miniwater, Miniair (for measuring instruments); Print Super (for printing machines); Bio-rein (for washing products); Kitchenaid (for kitchen gadgets); Icecube (for ice producing machines); Brain (for medicaments); All Schluckt Flecken (for cleaning products); General Cold (for freezers); Mini House (for prefabricated building elements); Aqua Brillante (for mineral water and soft drinks).

(c) Words solely referring to the characteristics of goods: A votre vêtement à vos mesures (for garments); Quick Wash (for hygienic products); Norma Cube and Norma Cadre (for building materials); Water Flow (for cooling equipment); Top Dry (for chemical products); Nuts (for chocolate). This category includes the device widely used as the wool mark.

¹ *Industrial Property*, 1970, p. 181.

(d) Words solely denoting the quality of the goods concerned: Superfil; Securipac; Net Nail; Fit Milk; The Right Bank in the Right Place; Pretty Form; Charm Chic; Jersey Bel; Evernice; Ligeros.

The criteria in the case of marks derived from dead languages are less strict, especially if the mark is well known: the mark Videoton, for example, was registered for television sets although an examination of its content shows that it does not have sufficient distinctiveness. On the other hand, registration of the mark Aquaglobus was rejected; although the word comes from Latin, it was felt that its meaning did not differ from Hydroglobus, which is in wide use as a generic term for water storage tanks.

Where there is a risk of confusion between identical or similar words, a word's meaning can become a decisive factor. If two similarly sounding or similarly written words have a different meaning which is understood by the consumer, there is little likelihood of confusion; but if the words are found to be meaningless for the majority of consumers — and are thus fanciful words — it is irrelevant for the purposes of registration that they have in fact a different meaning. Here, there is a danger of confusion for the public, which is also of course a serious disadvantage for the trademark proprietor. In such cases of similar words with different meanings the linguistic knowledge of potential consumers must be carefully considered. Accordingly, in Hungarian practice, registration is refused in the case of foreign words whose meaning is widely known in the country, if such words, as written or pronounced, may be confused with another person's mark registered earlier.

There follows, by way of illustration, a list of pairs of words which were found to be mutually confusing and where one if not both words in each pair have a meaning in a foreign language: Checker : Checkerherry; Pocket : Pocketeer; Alfamilk : Afanid; Tri : Bri; Pastomoll : Pastopon; Hepafood : Hepafort; Caress : Carex; Biomagic : Biomaga; Gallimicyn : Galtimicyn; Biodisher : Biodis; Brevinarcon : Bovinarcon; Amo : Amor. At the same time, Brevinarcon : Felinarcon were found not to be confusing, on the basis that the words could be distinguished even by persons who did not know the meaning of the prefixes Brevi- and Feli- derived from Latin.

The similarity of goods is also important for the assessment of distinctive capacity — of the extent to which words are capable of confusion. The question depends to a large degree on the market situation and the market conditions in the country. The Hungarian Office of Inventions has held Scotch whisky to be similar to the following beverages: wine, champagne, spirits, brandy and aperitifs, since all alcoholic drinks can be bought in Hungary at stores of the same type (and having the same name). The consumer will attribute the same commercial origin to products sold in the same place under the same trademark. On such reasoning, a list of goods including smokers' pipes was held similar to a list referring to cigarettes, both being sold in the same place. The National Office has held the following pairs of articles to be similar: musical phonograph discs : radio and television sets; Scotch whisky : certain chocolate products; washing, cleaning products and soaps : dishwashing products, perfumes and polishers. The al-

most identical trademarks Rehell and Rehelle were found unregistrable, the lists of goods concerned referring respectively to "men's clothes and underwear" and "women's underwear, nightgowns and bathing suits"; products on both lists are sold in some stores in Hungary and some factories produce both men's and women's underwear. No similarity was found, however, between "pharmaceutical products" and "resins."

It should also be mentioned that, in Hungarian practice, the declaration of consent given by the proprietor of a mark registered earlier is not accepted; if the marks are capable of being confused the later may not be registered. The basis for this is the rule in the Trademark Law prohibiting registration, for identical or similar goods, of a mark which is identical or similar to another's registered mark having an earlier priority date, if confusion is likely to arise. The legislation does not make any exception in the case of a declaration of consent by the proprietor of the protected mark. It may of course happen that the consent of the proprietor of the earlier trademark is motivated not by a lack of economic interest but by a general disinterest in the trademark itself — the trademark may not have been used for a considerable time. In this case the new applicant may apply for a declaration of lapse and a new registration will thus be possible.

Again, no exception is made in Hungarian practice for identical marks of affiliated enterprises. Trademarks likely to cause confusion cannot therefore be registered even in the case of enterprises linked economically or legally. Such enterprises are considered as separate legal entities and, for the purposes of trademark protection, as "another enterprise." This practice is justified in view of the National Office's task to maintain the distinguishing role of trademarks not only in relation to competitors but also to consumers. If a third party needs to use a trademark, a license agreement offers a satisfactory solution. The rights deriving from a license agreement and the registration of licenses are regulated by Hungarian legislation. The license rights evidenced by the registration of the license, which may be inspected by the public, are thus adequately safeguarded. The consumers' interests are sufficiently protected in that if the license agreement is likely to lead to confusion of trademarks it may be partially or wholly annulled.

In the procedure for registration of pharmaceutical trademarks, the argument is frequently advanced that there is less danger of confusion in this field than in others in view of the special knowledge of the physicians prescribing the medication and the pharmacists delivering it. In this field Hungarian practice is no doubt more severe than practice elsewhere. Applications for registration of similar marks are refused even where the products concerned have different purposes. The reason for this is that in Hungary the entire population are covered by social insurance and the possibility of obtaining medicaments is thus virtually unlimited. In these circumstances it is only natural that the amount of unused pharmaceutical products in each household is relatively large. The risk of confusion when a medicament for a different purpose is used at a later date presents a great danger to health and even to life. It is undeniable that due to the great number of pharmaceutical trademarks it is often very difficult to devise new

marks. However, for the reasons given above, the established practice is justified in the public interest.

Trademarks consisting of geographical or similar names may also be ineligible for protection. Such cases can be divided into two groups. If the geographical name in fact corresponds to the product's source, it will be unregistrable only if the mark contains no other distinctive features: if the name does not designate the source, it will be held confusing even though it is supplemented by other features. (A geographical name may be that of a country, region, locality, mountain, river or nation or any other characteristic term or device which indicates to the consumer a relationship with a geographical element.)

The general background and culture of the consumers are important elements in the decisions relating to such geographical marks. It seems quite clear that the terms Italian Design, Pisa, Helveticum and Cubay would be understood by consumers as only indicating source. The following less well-known names were also found to be lacking in distinctiveness, in spite of the suffixes in some of the cases: Winfield, Horgen-Glarus, Cabanas, El Aragones, Marc Vieux-Sion, Duo Suisse, Bière d'Alsace, Swissphone, Swissy, Hale de Vichy. The applicants in such cases frequently argue that consumers are not familiar with lesser known geographical names or, at least, that they do not firmly associate such names with a given area. However, it is not inconceivable that in a relatively small area another enterprise starts an activity in an identical or similar field. Due to the exclusive nature of trademark law, such an enterprise would be unable to use the name of its geographical locality. The use of names of mountains is of course different, for example Mont-Blanc or Kekes; such names are not a direct reference to a product's source.

The following trademarks were rejected due to likelihood of confusion: Sierra and Auto Cologne (Dutch applicants); Tripoli and Riga-Bari (French applicants); Essen and Naxos (Italian applicants); Old Heidelberg (Canadian application); Etna (French application). Westminster, with a picture of Westminster Abbey, in a French application, Oxford Street for a Belgian, Piccadilly for a German and Madame Sans-Souci for a Swiss applicant were all rejected due to their misleading effect. The same decision was taken in the case of other names although the words had received some alterations or additions: Ma'Kao (French applicant); Korsikat (German (Federal Republic) applicant); California Girl (Belgian applicant); Karachi King Super, Bretonne and Finnt (Dutch applicants); Bavorske (Bavarian) (Czechoslovak applicant). For special reasons, registration was allowed for the trademark Milford submitted in an application from Germany (Federal Republic). Localities having this name are, it is true, to be found in a number of countries; but, in Hungary, the name is well known as a locality in Wales. János Arany, a poet laureate of Hungary, mentioned it as such in his epic "The Bards of Wales." In these circumstances, the mark was accepted for "tea imported from Great Britain," featuring on the list of goods.

Moreover, it should be taken into consideration that general knowledge is increasing day by day due to the modern means of communication, to the press — which is becoming

more and more international in character — and to literature. Travel has also made a considerable impact. Tourism is a worldwide phenomenon: people can in principle visit any place in the world. Regions that are virtually unknown today may become wellknown overnight. For one or other of these reasons, therefore, the argument that a given geographical name is unknown and therefore qualifies as a fanciful denomination is becoming increasingly unjustified.

In the trademark registration procedures and other procedures relating to registrability (for example, those for a declaration of lapse or nullity), the National Office of Inventions has always aimed to make its practice conform to the letter and the spirit of the relevant law. It is therefore endeavoring to ensure that the trademarks protected should fulfill their role for the benefit of consumers in the country — as an appropriate means of identification for the consumer, helping him to recognize the product and to make his choice without any risk of confusion. At the same time, the Office is conscious of the important task of ensuring, in given cases, the right of competitors to exercise their trademark rights provided that there is no abuse; this is equally valid for foreign and national enterprises. Consequently, no rights can be acquired in Hungarian practice to marks where the unilateral and exclusive use of such marks would be generally unjustified from the point of view of competitors (for this reason, no protection is granted for terms whose use is essential or customary in the trade nor for those which would infringe the prior rights in a trademark belonging to another).

In trademark procedures, it has often been argued that the Hungarian practice is severe, first of all with respect to meaningful foreign words. Earlier practice was however more rigid. Registration had been refused to such marks as King, Prince and Meister on the ground that they indirectly designated quality. Such earlier decisions refusing registration reflected an interpretation under which marks of that kind were held to be "referring" to the quality or purpose etc. of the goods concerned. Registration of geographical names had also often been refused solely on the ground of their geographic character, even though the marks concerned indicated more than the source of the goods or could not be qualified as confusing in respect of their geographical origin. Searches relating to the possibility of confusion with third parties' trademarks have now become more detailed, even though mechanization in this field is not for the moment very extensive.

Under the new rules of procedure, the number of appellate instances has increased. Decisions of the National Office of Inventions on the merits of a case may be appealed to the Metropolitan Court of Budapest. This Court also had jurisdiction under the former Law, but the bench consisted of two ad hoc members from the National Office and of one professional judge. Now, all the members of the bench are judges of the Court. Under the present rules, an appeal lies from a decision of the Metropolitan Court to the Supreme Court of the Hungarian People's Republic, which previously did not hear cases relating to applications for registration. Since the entry into force of the new rules in 1970 some experience can be reported concerning their application. The Supreme Court can be said to have taken the same stand as that adopted by the National

Office in relation to the evaluation of the distinctive character of trademarks. With regard to declarations of consent by the proprietors of trademarks having priority, the Supreme Court has again accepted the interpretation adopted at first instance. Its stand has also been identical in substance on the question of pharmaceutical trademarks and marks leading to confusion.

The rules governing the protectability of trademarks have a purpose beyond themselves. Hungarian legislation in this field is in line with international agreements. The interpretation and application of these rules by Hungarian authorities is aimed at achieving the purpose of these rules: they are not applied mechanically — each case is considered on its merits, account being taken where possible of the interests of trade and fair competition.

Special Features of the US Trademark Law

By Eric D. OFFNER *

The trademark law of the United States of America has a number of special features. They may be due to a desire to be responsive to economic change.

1. Economic Background

In the United States, only six percent of two hundred million people are farmers. The United States has moved, in one generation, from an agricultural economy to one dominated by manual labor. Today, it is on the eve of its next evolutionary stage, which may be called superindustrialism. Furthermore, the United States is the world's first service economy: more than fifty percent of non-farm labor consists of white collar occupations.

2. Service Marks

Thus it is not surprising that the United States was the first country to introduce the concept of marks for services as distinguished from goods. The services which can be protected include advertising; insurance; financial; construction; communication; transportation; material treatment; education and entertainment. In fact these US service mark classes coincide with the international classification of services, which is gradually being adopted by a majority of the countries.

3. Classification

Early in 1972, the United States adhered to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. However, for the present at least, the United States will also retain the US classification. On the other hand, to recognize the international trend and to afford the member countries of the said Agreement some cooperation, the US

Patent Office refers to the international classification at the time an application is filed and the corresponding international classification number appears on all certificates of registration and renewal certificates. In fact this procedure will convert the US Trademark Register to a dual system of classification within the twenty-year renewal term. At the end of the twenty-year period, the conversion or adoption of the international classification as the primary classification would be a simple matter since all existing registrations will have the dual classification. This appears to be a particularly practical and convenient solution for a transition from one classification system to another.

4. Use

The United States seems, for practical purposes, to be the only country which requires use of the trademark as a condition precedent to actual filing. (The practice in the Philippines and in the Republic of Korea today has changed so that foreign applicants can avoid the use requirements prior to filing.) Trademark rights, in the United States, are acquired by *use*. This fundamental principle has a constitutional basis, since the mark must be used by US nationals in commerce subject to the control of Congress (*US v. Steffens* 100 US 82 (1879)). Thus the US Patent Office requires all US nationals to allege a date of first use, a date of first use in interstate commerce, a precise specification of goods for the exact goods placed in commerce and five specimens showing the mark as used.

Are there any sound reasons for these requirements, apart from the constitutional requirements? A trademark register should not be determined by the appetite of a trademark applicant, and should not permit easy filing by so-called "pirates" but, rather, reflect the actual marketplace. The practical result is a trademark register uncluttered by deadwood registrations and subject to conditions subsequent to use as well.

How do these requirements apply to foreign nationals who wish to apply in the United States, particularly Paris Union nationals? Foreigners who are entitled to national treatment have an advantage over US nationals. Foreign nationals do not need to file applications in the United States based on use in foreign commerce with the United States. What then is the constitutional basis for the filings? The treaty-making power of Congress, recognized by the Constitution. Foreigners who own a foreign application or registration, and who rely on these rights, need not use the mark in the United States as a condition precedent to filing. Use in any foreign country is sufficient. Foreign applicants who rely on their home registration or application are afforded a number of advantages which US nationals do not have. The specification of goods need not be as limited, since it will be based on the goods of the foreign registration or application. The final specification of goods to be allowed, however, will depend on a number of factors. If the trademark is the house mark of the application, a very broad specification has always been allowed. Under a recent interpretation of the US Patent Office, which appears to be part of an attempt by the United States to follow the international practice, goods or services appearing in the

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index to the international classification will be allowed, subject to certain exceptions such as those where: (a) the broad term includes items which are classified in more than one class; (b) the broad term is too indefinite for proper examination; (c) the term is inconsistent with the goods or services disclosed by the specimens.

5. Specimens

What about the requirements of filing prints, labels, or tags, showing the trademark in actual use in relation to goods or services? There are only three decided cases in the United States which have dealt with this point as far as foreign applicants are concerned. The US Commissioner of Patents in a decision on October 6, 1949, *Ex parte British Insulated Callendar's Cables Ltd.* (83 USPQ 319), held that it was necessary to file such specimens. On May 27, 1955, the Commissioner held in *Ex parte Société Fromageries Bel* (105 USPQ 302) that to apply the use test would make a mockery of the treaty (referring to the Paris Convention). This view was also short-lived since on March 20, 1963, the Commissioner reversed *Fromageries Bel* in a case entitled *In Re Certain Incomplete Trademark Applications* (137 USPQ 69). This latter decision was intended to clarify amended Rule 2.39, under which specimens must be submitted by foreigners at the time of the filing of the application. This unique requirement remains in force.

Notwithstanding the availability of basing applications on use *abroad* and filing specimens showing use *abroad*, if a foreign applicant has used the mark in the United States, it is strongly urged that he rely on the use in commerce with or in the United States. Acquisition of trademark rights is primarily based on use in the United States and if such use has taken place, it should be alleged in the application forms. Foreign applicants can in a single application rely on their foreign application or registration and use in the United States for the combination of advantages which such a procedure affords the foreign applicant.

6. Licensed Use

The United States is unique among the common law countries having a statutory recognition of trademark licensing in the sense that it does not provide for the recordal of a license agreement. Use by a "related company" will inure to the benefit of a trademark applicant at the time of the filing of the application and will inure to the benefit of a registrant to meet user requirements after registration.

7. Use After Registration

In the United States, registrants must meet several user requirements: abandonment, Section 8 affidavits, and proof of use at time of renewal of registration.

(a) Abandonment

Abandonment is defined in Section 45 of the Lanham Act (the US trademark statute). It occurs when use has been discontinued for two years without any intent to resume such use. This section applies to foreign registrants as well (*Sinclair v. Deb Chemical Proprietaries Ltd.* (137 USPQ 161)). It is, however, difficult to determine what constitutes an intention not to resume use. This peculiarity of the US law sometimes leads to the most interesting results such as when non-use for 17 years was not deemed to be abandonment (*Ideal Toy Corporation v. Cameo Exclusive Products Inc.* (170 USPQ 596)).

(b) Section 8

The United States, Haiti, Mexico and the Philippines seem to be the only countries which require affirmative action by the registrant, prior to renewal, to maintain registration, by the submission of affidavits of use or non-use. The statistics of the US Patent Office reveal that numerous registrants each year fail to file the required affidavit of use or (excusable) non-use at the Patent Office between the fifth and sixth anniversary date of the registration. Thus, the experience of the Patent Office merits consideration in other countries as an efficient basis for the elimination of deadwood registrations. It is to be noted that US practice affords foreign nationals better treatment than US nationals. US nationals must allege "use in commerce" to satisfy Patent Office requirements and to maintain a valid registration. Foreign nationals need only allege "use" to meet Patent Office requirements. The courts have not yet analyzed the validity of such registrations. If, however, the foreign registrant has used the mark *in commerce* with the United States, it is of course advisable to allege such "use in commerce." If use has not occurred in the United States, the foreign national can maintain the registration by meeting the present Patent Office requirements.

It is expected that, by amendments of the Lanham Act, foreign and domestic nationals will be placed on the same footing.

(c) Section 15

Another special feature of the Lanham Act is that it requires an affidavit or declaration to claim incontestability for US registrations (Section 15). In other countries, passage of a specific time limit in itself affords incontestability.

(d) Renewals

Trademark renewals must also be supported by a claim of use by the registrant, a procedure not followed in other countries of the world.

Presentation

INPI was created at the end of 1970; the actual establishment of the new body began on February 5, 1971 with the issue of the Regulations determining its structure and the procedures for the performance of its activities.

Organization

The organization of the Institute is based on a structure which is sufficiently flexible to keep it free of the rigid principles of the departmental form and the resulting difficulties and cost for an autonomous administration.

INPI is made up of organs situated at four hierarchically different levels:

- (a) Supreme Directorate
 1. Presidency
 - 1.1 Attorney's Office
 - 1.2 Consultant's Office
 - 1.3 Assistant's Office
- (b) Sectorial Directorate
 2. Trademark Secretariat
 3. Patent Secretariat
 4. Secretariat for Information and Transfer of Technology
- (c) Auxiliary Activities
 5. Personnel Unit
 6. Financial Administration Unit
 7. Communications Unit
 8. General Services Unit
 9. Data Processing Unit
- (d) Regional and Local Bodies
 10. Superintendencies (4)

Operations

The Institute functions on the basis of a small organizational infrastructure with a small number of tasks. Its activities are carried on for the most part through projects and working groups with specific terms of reference and dynamic operational powers covering the various sectors of the Institute's activity.

Activities

Activities in 1971 were carried on within the framework of 16 specific projects covering all the areas of INPI's functions.

Presidency

The Presidency coordinated and adopted the establishment of the structure created by the Regulations. The Attorney's Office examined and processed about 3,500 cases, acted in 87 judicial proceedings which were currently in progress, 52 of them before the courts of the city, and studied 3,200 decisions against which an appeal had been laid. The Assistant's Office set objectives to be achieved by means of projects, studied standards and time limits for the execution of relevant tasks and drafted essential administrative documents to be issued by the President.

Trademark Secretariat

The services of this Secretariat were developed in successive stages, after the shortcomings of the old system had been diagnosed, on the basis of the achievement of some of the previously established objectives. Of the two alternatives of shock treatment and gradual restructuring, the latter was

adopted in order to avoid causing greater prejudice to third parties.

In order to give an idea of the situation encountered it should be mentioned that, out of every 100 applications examined, only 23 were accepted and, of these, no more than 12 reached the final, registration stage. This gave the Trademark Secretariat an efficiency rate of only 12%, which alone was sufficient justification for completely redesigning the system.

By means of one of the specific projects for this area (Starting Project), 176,718 applications (between Nos. 700,000 and 942,000) were examined; these had not undergone any examination since July 1965, and 112,745 were dealt with in the space of ten months. This work was paralleled during a period of 105 days by another project (Repair Project), in which 352,534 registrations were examined, and about 232,000 of these were held to have been cancelled, or to have expired or lapsed, or to be outside the scope of INPI.

Apart from the routine work of deciding on applications for registration Nos. 300,000 to 700,000, the Administration initiated the necessary studies for the adoption of the new Trademark Classification, due account being taken of international experience and the special national situation. This task has already been completed and, although the approved Classification did not come into effect until January 1, 1972, the amendments were previously applied internally to 120,000 existing applications for registration.

Work started on the establishment of a new card index, since use of the existing one involved searching among about five million cards for a total of only 120,000 registrations in force. This card index was an obstacle to the mechanization of the system and was organized in a totally inadequate manner.

The revision of the Industrial Property Code has made it possible to go ahead with plans to introduce a new system for the examination of marks in 1972, with gradual mechanization of services, with a view to the establishment of the Trademark Secretariat in Brasilia in 1974.

Patent Secretariat

Examination work and the grant of the various forms of patents, which come under the Patent Secretariat, were developed on the basis of a decentralized project, with tasks divided into three groups. 21,580 applications were examined, 3,339 accepted, 9,233 refused and 7,689 shelved, while 1,319 were held over awaiting the applicants' compliance with the formal requirements. This represents an efficiency rate of 15.5%, which illustrates the urgent need to redesign the system and the legal standards governing it.

The main purpose of the revision of the Industrial Property Code, which came into force in January 1972, was to establish a new system consistent with the requirements and interests of the country.

As in the case of the Trademark Secretariat, the Administration gave orders for the necessary studies to be made also in the Patent Secretariat with a view to the adoption of the International Patent Classification. The new Classification should be adopted in the course of 1972.

At the same time, work was started on the creation of documentary files for the examination, the redesigning of the

patent files and the making of card indexes for bibliographic data, with a view to providing suitable conditions for setting up the nucleus of the Patent Information Service.

The establishment of the Patent Secretariat in Brasilia is scheduled for 1974, when the headquarters building of the Institute will be completed.

Secretariat for Information and Transfer of Technology

This Secretariat has not been fully organized for want of definitions, which only the Industrial Property Code could provide. Its functions have been developed by means of two separate projects, one covering publications and library services and the other dealing with the service for the recording of trademarks and patent transfers.

In connection with the "Publications Project," 276,772 different items were prepared and sent to the National Printers for publication in the Official Gazette (Part III), covering 5,260 pages and filling 250 issues of the Gazette. At the same time a number of typewritten, mimeographed and duplicated documents were drawn up and preparations were made for the constitution and organization of a library specialized in industrial property matters.

In the project which dealt with the recording of transfers, 16,512 trademark files were prepared and the necessary entries were made on 3,345 of these; examination of the remainder continued. With regard to patents, 3,388 files were examined and 952 entries were made, the remainder being dispatched for further processing.

The Institute has also been entrusted with the establishment of an efficient patent information service, covering not only patents filed in Brazil but also patented technology in industrialized countries. A further project was therefore initiated for the study of the establishment of such a system.

In the context of the political strategy of the Government, the National System of Scientific and Technological Information has a fundamental role. The First National Plan for Economic and Social Development (1972-1974), which has already become law, provides for the establishment of this system, which is structurally linked to the National Research Council but whose operations will be decentralized. One of the components of the system is the subsystem for Patented Technological Information, which will be centered in Brasilia under the responsibility of INPI.

Patents, if adequately utilized, are an important channel for the acquisition of know-how necessary for the country's industrial development. They should not be seen only as providing the legal protection of industrial property and as an incentive to creative activity and innovation in the field of technology. Their economic function goes much further: they are in fact the means whereby technology ceases to be secret and becomes an economic commodity. Thus knowledge — essentially intellectual in nature — penetrates the market in the form of tangible goods subject to the laws of economics.

In themselves, therefore, patents create a situation of relative scarcity, which is a necessary prerequisite for the creation of economic goods. Consequently, analysis of the international patented technology market is of paramount importance to developing countries, whose industries make exten-

sive use of foreign technology by means of license contracts. Yet this market is characterized by the startling difference between the bargaining power of buyers and sellers. The buyer is generally at a disadvantage owing to his regrettable ignorance of the availability of alternative technology. Usually an industrialist from a developing country, the buyer is more often than not confronted with a single seller in a negotiation where the latter seems to enjoy monopolistic privileges which in fact are non-existent. The effect of this situation requires no comment. Only a specialized information service can render the market less unfavorable to developing countries.

It should be emphasized here that a key to technological development in Brazil may well lie in the adequate use of the possibilities afforded by national legislations and international treaties on patents, since it is a legal fact that patents granted in foreign countries only are not valid in Brazil. Consequently patents not applied for or not granted in Brazil are in the public domain and may therefore be lawfully copied and used, by any person resident in Brazil who is technically capable of so doing, without payment of compensation. This fact is universally recognized by conventional law.

In order to have an idea of the importance of a worldwide patent information service designed so as to indicate available supplies of technology and alternative possibilities on the world market, it is sufficient to look at the 1969 figures for patent applications in various countries and compare them with the number of applications in Brazil:

France:	45,000
Germany (Federal Republic):	66,000
Japan:	105,000
United Kingdom:	63,000
United States of America:	101,000
Brazil:	10,000

The practice described earlier is quite common in the industrialized world, and especially in Japan, where intelligently planned assimilation of world technology not patented there, or even the use of license contracts, contributed to the development of the country's own technology.

The structuring of such an Information Service is a highly complex task in view of the great diversity of the technological universe and the sheer volume of patents filed throughout the world, which increases in geometric proportion to the advancement of technology.

So great is this complexity that, even in the most advanced countries, the machinery of patent information systems is not yet satisfactory despite the high degree of sophistication attained in the science of information, in other words data processing.

Therefore, in designing a service which is to be put into operation for the first time, certain practical limits have to be set on account of the impossibility — both material and financial — of covering the vast area of world technology. The setting of such limits calls for careful selection of objectives.

The basic objectives of the Information Service are the following:

- (i) to provide industry as soon as possible with a source of detailed information on technology contained in pat-

ents filed in Brazil and in the main industrialized countries; in this connection the Service would offer alternative technology and options to interested industrial circles;

- (ii) to make bibliographic searches for the INPI Patent Secretariat, in anticipation of the possibility of the Institute's becoming an International Searching Authority, as provided for in the Patent Cooperation Treaty (Washington, 1970);
- (iii) to give information to the Analysis Section of the INPI Secretariat for Information and Transfer of Technology;
- (iv) to publish abstracts of technology which has been evaluated and selected by the Analysis Section, for distribution to specific industrial sectors.

The envisaged Service may be expanded or supplemented, in collaboration with the Contract Registration Section of the Secretariat for Information and Transfer of Technology, by the inclusion of a system whereby interested parties would be assisted in license negotiations, receiving guidance for the drafting of their license and know-how contracts in the light of the Industrial Property Code and other applicable laws and regulations.

The Units

In the context of the auxiliary activities mentioned above, the Units have administrative functions and were created to give the necessary support to the activities of the other organs of the Institute. Their activities were evolved by means of three separate projects, each of which covered a specific area.

(i) *Personnel Unit*

The purpose of the project concerned here was to design and establish the Unit in such a way that it might carry out a rational and up-to-date policy in accordance with the staff administration system of the Federal Government and the special legislation governing INPI. Through it a work force was tentatively organized and a procedure established for the selection of staff for the working groups. The adoption of these measures made it possible to recruit more qualified staff to fill existing vacancies, account being taken of the requirements of the various technical and administrative sections. At the same time the Unit created and developed principles for the evaluation, training and supervision of staff, initiated studies with a view to defining rules governing the functions of its staff, and entered into an agreement with the Ministry of Industry and Commerce for the provision of medical assistance for INPI staff.

(ii) *Communications Unit*

The project for this Unit entailed its structuring and organization on the basis of a number of activities which had already been developed in what was the Reception, Information and Mailing Service of the former National Department of Industrial Property (DNPI). Tasks were divided among six sections: Reception, Filing, Processing, Time Limits, Annual Fees and Preparation of Certificates and Letters Patent. In order to suitably receive persons who came to INPI to settle their business directly, the Reception Section was created and equipped with modern furnishings and staff trained to assist

such persons and able to examine applications and inform the public on subjects relating to industrial property. Within this Unit a General Protocol Section was formed for the control of official documents and incoming and outgoing correspondence, with a postal pouch service between Brasilia and São Paulo. At the same time, studies were undertaken on the introduction of uniform standards and systems of communication between the various departments of the Institute.

(iii) *Financial Administration Unit*

The activities of this Unit were determined in accordance with the operational potential of INPI. An Accounting Section and a Property Section were set up. The establishment of an INPI Accounting Plan was followed by the creation of a Fixed Cash Fund and, in August 1971, an Accounting Plan for the Budgetary System. In connection with economic and financial administration, mention should be made of the Net Worth Variation and the Financial Surplus to be used in the work schedule for the installation of the Institute in Brasilia.

(iv) *General Services Unit*

This Unit was designed and established to carry out a number of different tasks in support of the activities of the other organs of the Institute: covering supplies, property control, maintenance and statistics. A survey was made in cooperation with the Ministry of Industry and Commerce on the assets of the former DNPI which, under legislation, devolved on INPI. The Supplies Section was organized as a single system for the whole of INPI, as directed by the Federal Public Service.

(v) *Data Processing Unit*

This Unit has not yet started operations, since studies on mechanized processing are still in progress. The aims of these studies, which will benefit the whole of INPI, will be established in 1972, and operations will then start.

International Activities

In the international area INPI has taken an active part in discussions and negotiations relating to its sphere of activity, as a result of obligations assumed by the Government, and especially in view of Brazil's participation in the Patent Cooperation Treaty, adopted in Washington in 1970.

During 1971 the Institute provided the official representation of Brazil at a number of international meetings and attended others as an observer, always working for an increase in contacts in the industrial property field. A brief mention should be made of the important part played by Brazil in the conferences and meetings at Washington on February 8, 1971, Strasbourg in March 1971 and Geneva in April 1971.

In addition, owing to the importance of the matters discussed, attention should be drawn to Brazil's participation in the Administrative Meetings of WIPO in Geneva from September 27 to October 2, 1971, at which a number of pertinent subjects were brought up and discussed including, for example, assistance to developing countries and patent licensing and developing countries, as well as the WIPO Symposium on Patents, Marks and Copyright, held in Bogotá from November 24 to 27, 1971, at which Brazil, as a special guest, discussed topics of great importance to its development such as

the role of patents in economic development, the state of the development of national and international legislation in the field of industrial property, and the organization and modernization of national and regional industrial property offices.

Also worthy of note is Brazil's participation in various activities involving the development of relations and agreements, and especially the initial understanding prior to an agreement between INPI and Germany (Federal Republic), following an Exchange of Notes between representatives of the Institute and the German Patent Office. The ultimate aim of the initial understanding is an Agreement for Cooperation and the Exchange of Information.

In January 1971 the First Deputy Director General of WIPO visited Brazil, accompanied by one of his assistants, to collect preliminary data for the draft "Technical Assistance Project" with a view to securing financial assistance from the United Nations Development Program (UNDP). On November 19 and 20, 1971, a "tripartite meeting" of INPI, UNDP and WIPO was held in New York, for the purpose of settling the terms of reference of a preparatory mission to visit Brazil and undertake the drafting of the final text of the Project.

In view of its signature of the Patent Cooperation Treaty, Brazil is qualified vis-à-vis the Conference for the Application of Science and Technology to the Development of Latin America (CACTAL—OAS) to apply for the position of Searching Center for Latin America, following INPI's participation in the Inter-Ministerial Study Groups which prepared the basic documents for Brazil's candidature.

General Matters

Brasilia

By decision of the Minister of Industry and Commerce the Presidency of INPI is to be located in Brasilia, where the President's Office, a secretariat, a nucleus of the Communications Unit and of the Secretariat for Information and Transfer of Technology, and a New Buildings Section are already operating. Work on the Institute's headquarters building and the residential blocks for the accommodation of its staff is scheduled to start in 1972, using the surplus of the 1971 fiscal year.

Local Bodies

The industrial property activities of the office of the Ministry of Industry and Commerce in the State of Rio de Janeiro came to an end with the creation of the Reception Section of the Communications Unit. When the nucleus of the Communications Unit was recently established in Brasilia, the office of the Ministry in Goiás discontinued all business which lay within the competence of INPI. On November 8, 1971, the nucleus of an INPI agency was set up in São Paulo, with its offices in premises on the University campus lent by the Institute of Technological Research, and from that date the office of the Ministry in the State of São Paulo stopped dealing with matters relating to industrial property.

Lectures

In September 1971 the President of the Institute gave a lecture at the Federation of Commerce of the State of São Paulo, on the invitation of its directors. The subject of the lec-

ture was Industrial Property in Brazil, and the President gave an account of various aspects of its development up to the eventual adoption of the philosophy that guided the drafting of the new Industrial Property Code. He also described the creation and organization of INPI and answered questions raised by representatives of trade circles in São Paulo.

Conclusion

For nations like Brazil, development has ceased to be a process dependent on the goodwill of others and has become a creative process. The formulation of the development project is both a denial of all that is backward and an act of self-affirmation. The denial is expressed in the acknowledgement of the need to transform: the act of self-affirmation is that which gives the formulation of the development project a mandatory character in compliance with the will of the nation. The development project is thus an act of reason in that it involves selection of the appropriate means of promoting material progress, and an act of will in that it delimits the scope of the development process. This process is one in which false situations and conflicts must be overcome, difficulties faced and reality accepted.

Consequently, the transformation of Brazil into an industrialized country called for a change of attitude in the face of existing problems.

In the industrial property field, Brazil's immediate concern is to stimulate international competition. Developing countries must, without prejudicing the respect for industrial property — a legal concept — seek means of reducing costs by improving present conditions on the international market. The only way of making the market less unfavorable to the consumer is to increase competition by reducing the possibility of monopolies in favor of producers, through the creation of an adequate information service.

The purpose of the Government's policy on industrial property is to "safeguard national interests" by providing for the following:

- (i) *at the international level*, participation in the world system in the field, in order to obtain the information essential to the selection of the technology best suited to the various situations existing and to bring about better conditions for negotiation;
- (ii) *at the national level*, the adoption, with a view to national economic development, of measures designed to speed up the transfer of technology through the creation of better conditions for assimilation and adaptation; at the same time, the promotion of the development of national technology by making full use of the volume of information to be built up and disseminating it to industry and research, drawing the buyers' attention to the existence of alternatives, which may be either alternative processes or products or alternative areas of supply.

The organization of INPI and the adoption of the Industrial Property Code have taken the execution of the Government's policy a step further and mark the beginning of a new stage in Brazil's industrial development.

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CALENDAR

WIPO Meetings

- 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 (Munich) — 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
- April 9 to 13, 1973 (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
- 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

- October 10 and 11, 1972 (Aarslev) — Technical Working Party for Vegetables
- November 7 to 10, 1972 (Geneva) — Diplomatic Conference
Object: Amendment of the Convention
- November 8 and 9, 1972 (Geneva) — Council
- December 5 to 7, 1972 (Geneva) — Working Group on Variety Denominations
- March 13 and 14, 1973 (Geneva) — Technical Steering Committee
- July 2 to 6, 1973 (London/Cambridge) — Symposium on Plant Breeders' Rights

Meetings of Other International Organizations concerned with Intellectual Property

- August 4 to 15, 1972 (Libreville) — African and Malagasy Industrial Property Office — Administrative Council
- October 13 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. 175**Head, IPC Section***(Industrial Property Division)**

Applications are invited for the following post:

Category and grade: P. 4

Principal duties:

Under the supervision of the Head of the Industrial Property Division, the incumbent will be responsible for the implementation of WIPO's program in the field of International Patent Classification (IPC).

His duties in particular will be the following:

- (a) preparation of long range and short range draft programs for the IPC;
- (b) preparation of reports on the work performed and plans concerning the IPC;
- (c) 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;
- (d) execution of those parts of the IPC program which are within the competence of the International Bureau of WIPO;
- (e) assistance in coordinating the work of the Offices of the participating countries and the International Patent Institute in execution of the IPC program;
- (f) contacts with industry and private organizations to ensure harmonization of efforts in patent classification;
- (g) participation in meetings of other international organizations having an interest in patent classification.

Qualifications:

- (a) university degree in a relevant field of science or technology or qualifications equivalent to such degree;
- (b) wide 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.

Age limit:

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

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:

Deferred until September 1, 1972.