

Industrial Property

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WIPO MEETINGS

Paris Union

Sub-Working Group for the Mechanization of Trademark Searches

(Geneva, February 20 to 23, 1973)

Note *

At the invitation of the Director General of WIPO, the Sub-Working Group for the Mechanization of Trademark Searches, set up by the Working Group which met from May 16 to 18, 1972¹, held its second session at the headquarters of WIPO in Geneva from February 20 to 23, 1973.

The following countries and one organization had been invited: Belgium, Canada, France, Germany (Federal Republic of), Netherlands, Spain, United Kingdom, United States of America and the Benelux Trademark Office. With the exception of the United States of America, the countries and the organization invited were all represented. The list of participants follows this Note.

After noting the results of the first series of tests carried out by three firms from the United States of America, one European firm and one Canadian organization, in addition to the three European firms which had already performed these tests, the Sub-Working Group felt that the results were satisfactory and that this first series of tests, which had consisted of searches in respect of more than 100 marks among approximately 1,000 other similar marks, could now be considered as completed.

The Sub-Working Group noted and approved a report by the International Bureau on the steps taken and the proposals formulated by the latter with a view to the performance of a second series of tests. These expanded tests will deal with searches in respect of 104 marks among some 40,000 marks taken from those registered in the International Register under Classes 1 and 5 of the International Classification of Goods and Services. The Sub-Working Group decided that the eight firms and the organization which had taken part in the first series of tests would be invited to carry out the second series.

* This Note has been prepared by the International Bureau.

¹ See *Industrial Property*, 1972, p. 174.

To facilitate assessment of the results of the second series of tests, the same material will be the subject of two manual searches carried out separately by the Swiss Federal Intellectual Property Office, free of charge, and by the International Bureau.

The Sub-Working Group inter alia approved the program prepared by the International Bureau with a view to completing the studies of the search systems to be tested. These studies will deal in particular with the following points: speed of operation and cost per search, flexibility of the system and its adaptability to special linguistic and other requirements, other possibilities of the system (such as its capacity for use as a system for the financial administration of trademarks, as a renewal reminder system or as a system providing statistical data), the means of updating the data base, the hardware required, human intervention in the search process and the manner in which similarities in the meaning suggested by a mark are sought.

List of Participants *

I. Countries

Belgium: C. G. Tas. Canada: R. D. Auger. France: J. Norguet; F. Lagache (Mrs.). Germany (Federal Republic of): K. K. Fischer; K. H. Bolz. Netherlands: H. de Vries. Spain: F. Gil-Serantes; C. Marquez. United Kingdom: V. A. Scola.

II. Intergovernmental Organization

Benelux Trademark Office: C. J. Verweij.

III. Officers

Chairman: H. de Vries (Netherlands); Vice-Chairman: V. A. Scola (United Kingdom); Secretary: C. Werkman (WIPO).

IV. WIPO

L. Egger (Counsellor, Head, International Registrations Division); C. Werkman (Project Officer, International Registrations Division); Ch. Leder (Head, Trademark Search Section, International Registrations Division).

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

PLANT VARIETIES

Plant Variety Denominations and Trademarks

Note prepared by the UPOV Secretariat

Under Article 6 of the International Convention for the Protection of New Varieties of Plants, all protected plant varieties must be given a denomination. Article 13 of the Convention contains detailed provisions regarding, *inter alia*: the requirements as to the nature or character of the denomination itself (identifying power); the denomination's relationship with other denominations (it must differ from any denomination which designates another variety of the same or a closely related species) and with trademarks (a designation protected as a trademark is unacceptable as a denomination; it is permissible to add a trademark to the denomination); obligatory use of the denomination as the generic name of the variety when propagating material is offered for sale or sold; and the principle of having the same denomination in all member States of UPOV.

In spite of the very elaborate way in which Article 13 had been drafted, the authorities of the member States felt a strong need for more guidance in their task of approving proposed denominations, the more so because the aim of the Convention to have the same denomination in all countries requires a common approach to the question by the authorities of the member States.

It was therefore natural that, after the entry into force of the Convention and the establishment of the International Union for the Protection of New Varieties of Plants (UPOV), one of the first objectives was to work out some principles on the requirements which the denominations would have to meet; accordingly, in October 1970 the Council of UPOV adopted some "Provisional Guidelines for Variety Denominations" and recommended the member States to apply these Guidelines when implementing Article 13 of the Convention.

These Guidelines contain provisions on the nature or character which the denominations must have in order to be approved by the authorities, the main background for these provisions being the desire to avoid denominations which have not sufficient identifying power and, consequently, are not suitable for use as generic names. In addition, the Guidelines prescribe what is to be understood by the expression "the same or a closely related botanical species" for the purpose of defining the varieties, the denominations of which must be different. Where no exception has been made, "closely related botanical species" are species belonging to the same genus, but in the case of some of the most important crops the genus has been divided into more classes or some genera have been merged.

After the publication of the Guidelines the professional international organizations forwarded suggestions and proposals for their amendment. The Council of UPOV therefore

decided that the Provisional Guidelines should be reconsidered by the Working Group on Variety Denominations, after a "hearing" of the professional organizations.

The Working Group met from December 5 to 7, 1972. On the second day (December 6) the "hearing" of the following international professional organizations took place: ASSINSEL (International Plant Breeders Association for the Protection of New Varieties), CIOPORA (*Communauté internationale des obtenteurs de plantes ornementales de reproduction asexuée*), FIS (International Federation of Seed Trade), IAPIP (International Association for the Protection of Industrial Property), and ICC (International Chamber of Commerce).

The essence, purpose and importance of the variety denomination were expounded in a discussion which lasted several hours. The result of the discussion can be summarized as follows:

Each new variety must, if protected, be given a denomination that is to be considered the generic name for that variety, the use of which is obligatory for any person who offers for sale or markets propagating material of the variety, even after the expiration of the protection. As a consequence the denomination cannot be a trademark, but it is permitted to add a different trademark to the denomination.

The purposes of the denomination and the accompanying trademark are entirely different. The denomination, being the generic name, indicates the variety as such as opposed to other varieties and independently of the origin of the actual lot of propagating material, whereas the trademark distinguishes the goods offered or sold by one enterprise from those of another.

In this connection it was pointed out that in most countries, in fact in all member States, important trials are carried out by government institutes or other impartial bodies for the assessment of the value of the varieties. The results of these trials are published with an indication of the variety denomination only and they constitute an important source of information for the growers and their advisors.

It is therefore important, in the case of simultaneous use of a denomination and a trademark, that the denomination should be of such a character that it is not overshadowed and its significance is not appreciably diminished by the trademark; it is particularly important to prevent the trademark from appearing to be the name of the variety itself.

This implies, in respect of the *use of the denomination* in connection with a trademark (which is not governed by the Guidelines), that it is recommended that member States should prescribe in their national legislation that, in advertisements, catalogs, price lists, labels, invoices and all other documents made available to the public, the denomination must always be visibly presented as such, in order to be distinguished from all other signs and indications, and that it must be clearly distinguishable and legible in all such documents.

In respect of the *character and nature of the denomination*, there was general agreement on the importance of the identifying power of the variety denomination enabling the denomination to be used as the generic name. This means that the denomination must be easy to pronounce and remember and must make it possible for a buyer of average attentiveness to identify the variety without risk of confusion. In other words, the user of seed and vegetative propagating material must have a fair chance to be able to order the correct variety on the basis of the information he has received from publications, meetings, trial demonstrations, talks with the advisor and the like.

Even if it was not felt necessary to require that the denomination be a "fancy name," a too "flat" denomination would not be sufficient. Words without any pre-existing meaning would be acceptable if they fulfilled the above requirements in respect of their identifying power. These requirements are hardly likely to be met if very short words are used (for instance, Qum, Bys and Quol), especially if they have no pre-existing meaning.

The professional international organizations had shown an understanding for the above-mentioned principles and considerations and the Working Group noted with satisfaction that a valuable dialog had been established.

In answer to a proposal by the professional organizations to the effect that it should be permissible to include non-word elements (especially figures) in a denomination, the Working

Group declared itself ready to reconsider the question of allowing the denominations of varieties used exclusively as the initial source for the production of other varieties (hereditary components) to be formed by the combination of letters and figures, if such combinations are established practice, and, in general, to include figures up to a certain maximum if they have a meaning. As examples of denominations where figures have a meaning, mention was made of the name of a king or of a queen followed by the respective number.

However, it must be borne in mind that the above-mentioned requirements as to the identifying power will still have to be met, and that the competent authorities in each case will have to assess the merits of a proposed denomination in this respect. This task may be difficult. The Working Group is therefore likely to maintain the existing provision according to which a denomination may not be formed by substituting figures for other figures of a denomination already in use or by adding figures to such denomination.

One of the professional organizations pointed out that the above-mentioned definition of "closely related species" had rendered the classes too narrow because it allowed the same denomination to be given to varieties of species which did not belong to the same class but which might well serve the same need; the organization therefore considered such practice unsatisfactory.

The Working Group took note of the wish for broader classes and undertook to study the question.

LEGISLATION

MEXICO

Decree to Amend the Industrial Property Law

(of December 30, 1972)

Sole Section. — In Part Three, Chapter I [of the Industrial Property Law]¹, paragraphs (ii) and (xii) of Section 105 shall be amended; in the same Part Three a Chapter X shall be added, which shall include Sections 208-A to 208-Z; in Part Eight, Chapter II shall be supplemented by Section 258^{bis}; the terms of the said changes are as follows:

¹ See *La Propriété industrielle*, 1944, p. 116.

PART THREE

Chapter I

105. — The following may not be registered as trademarks:

(ii) names which have come into common use in the country to designate goods of the same nature or type as those in respect of which trademark protection is sought, except where such names are appellations of origin in terms of Chapter X of this Part;

(xii) proper or common geographical denominations and nouns and adjectives when these indicate merely the source of the products or are liable to confuse or mislead as to the

source of the products for which protection is sought. This paragraph shall not apply to names of places in private ownership when they are distinctive or not confusing and the owner's consent has been obtained, and to names which are appellations of origin protected by this Law, in terms of Chapter X of this Part.

Chapter X

208-A. — "Appellation of origin" means the geographical name of a region or locality which serves to designate a product originating therein, the quality and characteristics of which are due exclusively to the geographical environment, including natural and human factors.

For the purposes of this Chapter, an appellation of origin shall be considered as such when, without referring to the name of a specific place, it is closely linked to such place by geographical, social, linguistic or cultural factors, in such a way that its characteristics or reputation are due exclusively to those factors.

208-B. — The protection afforded by this Law to appellations of origin shall arise upon a declaration issued by the Secretariat for Industry and Commerce and shall render applicable the sanctions for illegal use, which shall include use in conjunction with terms such as "kind," "type," "make," "imitation," or other similar terms liable to lead to confusion in the mind of the consumer or to constitute unfair competition.

208-C. — The declaration of protection of an appellation of origin shall remain in force so long as the circumstances determining such protection are present; it shall cease to have effect only upon a declaration by the Secretariat for Industry and Commerce issued in the cases of nullity, lapse and expiry provided for in this Chapter.

208-D. — The general declaration of protection of an appellation of origin may be made ex officio by the Secretariat for Industry and Commerce, or upon a request to the Secretariat made by any person or legal entity showing a legal interest. For the purposes of this Section, the following shall be considered to have a legal interest:

- (i) natural persons or legal entities directly engaged in the extraction, production or preparation of the product or products which the appellation of origin is to cover;
- (ii) guilds or associations of manufacturers or producers;
- (iii) departments or agencies of the Federal Government and of the Governments of States or Territories.

208-E. — The application for a general declaration of protection of an appellation of origin shall be made in writing in triplicate; it shall be accompanied by evidence in support of the request, and shall contain the following particulars:

- (i) the name, address and nationality of the applicant; if the applicant is a legal entity, it shall specify also its nature and the activities in which it is engaged;
- (ii) the name of the appellation of origin, and the product or products which the appellation is to cover;

- (iii) the legal interest of the applicant in obtaining the declaration of protection of the appellation of origin;

- (iv) a detailed description of the products to be covered by the appellation, including the following particulars: composition or form, process of extraction, preparation or manufacture; the standards to which such extraction, preparation or manufacture will be subject shall be indicated when this is a determining factor in establishing the relationship between the appellation and the product;

- (v) the place or places of extraction, production or preparation of the product in respect of which the appellation of origin is sought, with a description or demarcation of the territory of origin, taking into account topographical features and political subdivisions;

- (vi) a detailed indication of the links existing between the appellation, the product and the territory, as appropriate;

- (vii) any other particulars which may be considered necessary or relevant by the applicant, taking into account the nature or special characteristics of the product and the territory to be covered by the appellation of origin.

208-F. — On receipt of the application by the Secretariat for Industry and Commerce, and on payment of the examination fees, the documents submitted shall be examined.

If, in the judgment of the Secretariat for Industry and Commerce, the documents submitted do not meet the requirements of the law and regulations, or in any way are not sufficient for the comprehension or analysis of any part of the application, it shall inform the applicant accordingly, in order that he may make the necessary clarifications or additions, allowing him for the purpose a non-renewable period to be determined in relation to the nature and circumstances of the case by the Secretariat for Industry and Commerce, which shall not exceed three months. If the applicant fails to comply in time with the provisions of this Section, the application shall be considered abandoned.

208-G. — Where the documents submitted meet the requirements of the law and regulations, the Secretariat for Industry and Commerce shall prepare an abstract of the application and shall publish such abstract in the *Diario Oficial* of the Federation.

The procedure initiated ex officio by the Secretariat for Industry and Commerce to declare an appellation of origin protected shall begin on publication, in the *Diario Oficial* of the Federation, of a summary of the particulars and requirements as provided for in paragraphs (ii) to (vii) of Section 208-E of this Law.

208-H. — In the abstract referred to in Section 208-G above, mention shall be made of a period of 45 days from the date of publication in the *Diario Oficial* of the Federation, within which any third party showing his legal interest may make such observations or objections as he considers relevant and at the same time provide the appropriate supporting evidence.

208-I. — For the purposes of this Chapter, all kinds of evidence shall be admissible with the exception of admissions,

testimony and expert evidence which falls within the competence of the Secretariat for Industry and Commerce.

The Secretariat for Industry and Commerce may, at any time prior to the final declaration, make whatever investigations it considers appropriate and take whatever supplementary evidence it considers necessary.

208-J. — On expiry of the period referred to in Section 208-H and after verification of the evidence, the Secretariat for Industry and Commerce shall issue the final decision refusing or granting protection of the appellation of origin in accordance with this Chapter. No administrative appeal shall lie against the decision contained in the declaration.

208-K. — The declaration of the Secretariat for Industry and Commerce granting protection to an appellation of origin shall specify finally the elements and requirements provided for in Section 208-E of this Law and shall be published in accordance with Section 208-G.

208-L. — An appellation of origin which is the subject of a general declaration shall, once the latter has been issued, be registered at the Secretariat for Industry and Commerce and protected in accordance with the provisions governing trademark registrations.

208-M. — The terms of the declaration of protection of an appellation of origin may be amended at any time, either ex officio or at the request of an interested party, under the procedure laid down in Sections 208-F to 208-L above.

The corresponding application shall contain the particulars required under paragraphs (i) to (iii) of Section 208-E of this Law, together with a detailed indication of the amendments requested and the grounds for such request.

208-N. — The right to use an appellation of origin which has been the subject of a general declaration may be applied for by any person or legal entity that proves to the Secretariat that he or it satisfies the following conditions:

(i) he or it is directly engaged in the extraction, production or preparation of the product or products covered by the appellation of origin;

(ii) he or it carries on such activity within the territory of origin as specified in the general declaration of protection of the appellation of origin;

(iii) he or it observes the standards laid down by the Secretariat for Industry and Commerce, in accordance with the laws governing the respective products, or specified in the general declaration of protection of the appellation of origin;

(iv) any other conditions specified in the general declaration of protection of the appellation of origin.

208-O — For the right to use an appellation of origin, an application must be filed with the Secretariat for Industry and Commerce stating:

(i) the name, address and nationality of the applicant. If the applicant is a legal entity, it shall also specify its nature and the activities in which it is engaged;

(ii) the name of the appellation of origin and the products covered by it;

(iii) identification of the declaration of the Secretariat for Industry and Commerce which granted protection to the appellation of origin;

(iv) designation of the place in which the applicant carries out the extraction, production or preparation of the product;

(v) indication of the way in which the applicant meets the requirements and conditions laid down for the acquisition of the right to use the appellation of origin, as stated in the general declaration of protection of the appellation of origin;

(vi) any other information which may be expressly specified in the general declaration of protection of the appellation of origin.

208-P. — On receipt of the application for registration of ownership of the right to use an appellation of origin, the Secretariat for Industry and Commerce shall proceed as provided in Section 208-F of this Law.

When the documents submitted meet the requirements of the law and regulations, the Secretariat for Industry and Commerce shall, without more, take a decision on the registration.

208-Q. — Through the intermediary of the Secretariat for External Relations, the Secretariat for Industry and Commerce shall take the necessary steps to obtain international protection, under the relevant treaties, for registrations of appellations of origin in respect of which a general declaration of protection has been issued pursuant to this Law. For this purpose, the Government of the United Mexican States shall be deemed the owner of the appellation of origin and the Secretariat for Industry and Commerce, its representative.

208-R. — Registration of the right to use an appellation of origin shall be in effect during five years from the date and time of the filing of the corresponding application at the Secretariat for Industry and Commerce. This term may be renewed for equal periods where the interested party so requests, subject to proof of the latter's continued compliance with the conditions and requirements which determined the grant of registration of ownership of the right to use the appellation of origin, and to payment of the corresponding fees.

208-S. — The owner of the right to use an appellation of origin shall be obliged to use the appellation of origin as it appears in the general declaration, on pain of forfeiture of his right, as provided in paragraph (iii)(b) of Section 208-W of this Law. The provisions of this Section shall not apply to changes which do not alter or affect the identity of the appellation of origin or which concern only its dimensions or the material on which it is printed, engraved or otherwise reproduced.

208-T. — The right to use an appellation of origin may be transferred in accordance with the ordinary law. However, the transfer shall not take effect until it is registered at the Secretariat for Industry and Commerce, subject to proof that

the new owner meets the conditions and requirements provided in this Law for the acquisition of the right to use an appellation of origin.

208-U. — The owner of the right to use an appellation of origin may grant licenses for such use only to persons who distribute or sell his products. The license agreement shall not take effect until it has been approved and registered by the Secretariat of Industry and Commerce, subject to proof that the licensee meets the requirements provided for in paragraphs (iii) and (iv) of Section 208-N of this Law. It shall be ensured that the agreement contains a clause stating expressly that the licensee may use the appellation only together with a registered mark owned by the licensor which has previously been in actual use by the licensor within the national territory.

208-V. — The general declaration of protection of an appellation of origin shall cease to be in force as a result of:

(i) nullity, where the general declaration of protection of the appellation of origin is issued contrary to this Law;

(ii) lapse, where during the three years following its publication in the *Diario Oficial* no applications for registration of ownership of the right to use the appellation of origin are filed;

(iii) expiry, where the circumstances and conditions which determined the issue of the general declaration of protection are no longer present.

208-W. — The registration of the right to use the appellation of origin shall cease to be in force as a result of:

(i) nullity, in the following instances:

(a) when it is granted contrary to this Law;

(b) if registration was granted on the basis of false indications or statements in the application, relating to the nature or quality of the product for which registration of ownership of the right to use the appellation of origin was obtained, to the designation of the place in which the applicant carries out the extraction, production or preparation of the product, or to the applicant's compliance with the conditions or requirements for ownership of the right to use the appellation of origin;

(ii) lapse, if registration is not renewed as provided in Section 208-R of this Law;

(iii) expiry, in the following instances:

(a) automatically, as a result of a declaration of nullity, lapse or expiry of the general declaration of protection of the appellation of origin;

(b) where the registered owner of the right to use the appellation of origin does not commence exploitation thereof within a period of two years from the filing date of his application for registration, or at any time discontinues such exploitation for a period of more than two consecutive years;

(c) where it is proved that the owner of the right to use the appellation of origin no longer meets the requirements laid down in Section 208-N of this Law.

208-X. — The administrative declarations provided for in this Chapter, concerning the cessation of the general declaration of protection of an appellation of origin or the cessation of registration of ownership of the right to use the same, shall be made by the Secretariat for Industry and Commerce, ex officio or at the request of the interested party or of the Federal Public Prosecutor. The procedure applicable shall be that provided for in Sections 229 to 235 inclusive of this Law.

Owners of the right to use the appellation of origin may take part in the proceedings for a declaration of cessation of a general declaration of protection of an appellation of origin.

208-Y. — The protection of appellations of origin shall be governed, in so far as applicable and unless otherwise provided, by the rules laid down for trademarks.

208-Z. — In addition to the publications expressly provided for in this Chapter, declarations issued and registrations granted by the Secretariat for Industry and Commerce shall be published in the Industrial Property Gazette, as shall any instrument amending or terminating the duration or effects of the rights granted with respect to appellations of origin.

PART EIGHT — Criminal and Civil Liability

Chapter II — Persons Infringing Other Industrial Property Provisions

258^{bis}. — Any person who without authorization uses an appellation identical or confusingly similar to one in respect of which a general declaration of protection has been issued in accordance with Chapter X of Part Three, and applies it to identical or similar products, shall be guilty of the offense of illegal use of an appellation of origin.

Such a person shall be liable to a fine of from 1,000 to 100,000 pesos and imprisonment of from six days to six years, or to one of these penalties, at the discretion of the judicial authority.

Proceedings against illegal use of an appellation of origin shall be instituted ex officio and shall be subject to an administrative declaration by the Secretariat for Industry and Commerce that the offense has been committed, under the procedure laid down in Sections 229 to 235 of this Law.

TRANSITIONAL PROVISION

This Decree shall enter into force on the day of its publication in the *Diario Oficial* of the Federation ².

² The Decree was published in the *Diario Oficial* of January 4, 1973.

GENERAL STUDIES

Industrial Property as a Factor in Technical Development and Economic Progress

By Stephen P. LADAS *

In approaching this subject, it is desirable to consider the following three questions:

First, what is the precise problem in conjunction with which the factor represented by industrial property is called into question?

Secondly, examination of the factor of industrial property in technical development and economic progress.

Thirdly, what are the respective positions of developed and developing countries?

I

The Problem surrounding the Factor of Industrial Property

In dealing with the first question, we are basically concerned with the pressing aspiration of developing countries to achieve economic progress and improve the standard of living of their peoples. These countries believe that their objective can be achieved through rapid industrialization which can be accomplished by technical assistance, expanding capabilities to generate and use technology for their development, a higher share of national income for the natural products they supply and a ready access to the industrial world's markets.

This is too broad an objective involving a great many factors: political, financial, commercial, educational and ecological. It involves particularly the internal development of human resources, capabilities and skills to increase productivity and competitiveness — both by the acquisition of appropriate foreign technology and by indigenous creation and adaptation which may support domestic industry and export trade.

It is not possible to deal here with all these factors. We must limit ourselves to a discussion of the role of industrial property in developing countries by generating new wealth out of their natural resources and by bringing new production into existence. This is what is summarized by the somewhat mystic concept of "transfer of technology" to developing countries.

The expression "transfer of technology" to developing countries is somewhat misleading and so is the term "developing countries." There are really three groups of countries which the latter term purports to cover. There are first about 25 countries, mostly in Africa, Asia and Oceania, which are least developed or hard-core poor countries, for which "trans-

fer of technology" means hardly any local industrial exploitation of patented or unpatented technology. Those countries aspire to the importation of foreign technology specially prepared or adapted to their needs by foreign enterprises, since there is no availability of indigenous technicians or trained personnel capable of absorbing foreign technology.

Then there is a group of advanced developing countries with significant technological capabilities, such as Brazil, Mexico, Israel and India, in which both domestic and foreign technology have been at work for a number of years and which are in a position to absorb new imported technology and adapt it to their needs.

Finally, there is an intermediary group of countries, the most numerous one, where economic advance has been quite moderate, because of the slow rate of growth of local capital, agricultural output, education and technical ability. Any industrial development in this last group of countries has been mainly through foreign investment and the importation of foreign technology. Indeed, there has been no comparative study of the local exploitation due to indigenous development of technology, patented or unpatented, as compared with exploitation of the technology imported from foreign sources. In any case, in those countries, the real problem is not so much "transfer" of technology as adaptation of foreign imported technology to their needs. There is a serious doubt that these countries can do such adaptation if left to themselves. The reasons are several as pointed out in a recent draft Report of the National Academy of Sciences and National Academy of Engineering, of the United States of America:

1. The market of these countries is generally of a limited size. Over 40 of the developing countries have populations of less than five million and most of the population is hardly a market for industrial products. Plans based on production designs of industrialized countries would be uneconomical as an investment as well as a production proposition.

2. Because of the surplus of unskilled labor and large reserves of unemployed people, these countries need labor — intensive production techniques —, while the technology of industrialized countries generally involves capital — intensive production equipment and techniques.

3. While developing countries may have some natural resources in abundance requiring exploitation, they also lack many other raw materials. Adaptive technology will have to take account of the different physical resources base.

4. Environmental differences, physical and cultural, have also to be considered. Many developing countries are in semitropical climates. Agricultural systems, food consumption patterns, clothing, housing and health needs, culturally determined consumer preferences — all of these have an impact on production processes or products, and technology must be developed by relevance to these factors.

* Member of Bureau, International Association for the Protection of Industrial Property; Honorary Chairman, Commission for Industrial Property, International Chamber of Commerce; Senior Member, Law Firm Ladas, Parry, Von Gehr, Goldsmith & Deschamps, New York.

5. Equipment must be adapted to the particular characteristics of the local work force, maintenance capabilities and local price distortions. Farm equipment must be more rugged with standardized and interchangeable parts, ease of replacement, and readily available tools in view of possible absence of repairmen and hardware facilities.

Thus the unrestrained appetite for advanced technology by developing countries should somehow have to be curbed. There are certain necessary evolutionary stages prerequisite to the introduction of advanced technology.

Indeed, it may be said that many of this group of developing countries appear to have veered away from peasant reform — the traditional left-wing position — toward industry in the interest of the rich and middle classes, which have been pressing for industrialization as the salvation of their country. "Until this is accomplished, all else will have to wait."¹

Such industrialization as has been carried out is protected by ever-increasing tariffs and special subsidies in an effort to build a local market free of outside competition for the local businesses. The prices of local manufacturers have shot sky high and this has led to an inflationary spiral.

Of course industrialization is not solely responsible for inflation. The falling prices of raw materials on the international market and the rising cost of foreign manufactured goods are partly responsible.

I submit that this only emphasizes the need for curbing the appetite for quick industrialization and the wisdom of evolutionary and adaptive technology.

II

The Factor of Industrial Property in Technical Development and Economic Progress

A great deal has been said about the need of developing countries to create and maintain a good system of industrial property in order to encourage the importation of patented and unpatented technology. This is somewhat confusing.

A good legal system of industrial property in a developing country would not necessarily guarantee a ready access to technology, but a bad system may seriously impede this because it is a factor in the element of confidence and legal security which stimulates investment. A system which denies protection to industrial property and particularly to patents deprives the country of a convenient vehicle for the transfer of technology. The existence of a local patent is an important element for such transfer through licensing of locally established enterprises, for three reasons:

(a) it provides a means of evaluating the subject matter of the license, which unpatented technology may not provide because it is generally secret;

(b) it ensures to the licensee the exclusivity of the right to make and sell the subject matter of the patent, which is not ensured by know-how alone;

(c) it enables the licensee to obtain simultaneously with the patent license also the communication of unpatented know-how.

It is true that in most of the developing countries a huge percentage of patents are sought out by foreigners. Even in highly industrialized countries the percentage of patent applications filed by foreigners is higher than that filed by nationals — which is understandable because the total number of inventions made in the rest of the world is larger than those made within a country. This is true of such countries as Belgium, France, Germany (Federal Republic of), the Netherlands and the United Kingdom.

The system of industrial property constitutes a special institutional factor in the process of transferring new technology to developing countries because:

(a) it may encourage the introduction of new technology through the legal protection afforded to the owner of such property; and

(b) it may operate to restrain ready access to new technology by the exclusive rights granted to foreigners which are not accompanied by local development or which involve financial and operational terms onerous to such countries.

The real issue is what is the best means of securing (a) and avoiding (b)? It is clear that unwise action seeking to avoid (b) may destroy motivation and discourage (a). To attain the dual goal, a necessary balance must be accomplished so as to avoid abuse but preserve private enterprise and initiative.

But in addition to being an institutional factor, industrial property is also a psychological and political element in the relation between developed and developing countries. The Report of the Secretary General of the United Nations in 1964² has sought to explain carefully and objectively, in a balanced and discriminating exposition, the various factors and elements involved in the transfer to developing countries of patented and unpatented technology, the complexity of varied possible situations and the relevance of capital resources and multinational and bilateral assistance plans. If the conclusions of this Report were to guide action by developing countries, the present ferment might be contained within accepted limits.

However, the psychological factor still exists. To the leaders of some developing countries, industrial property of developed countries conjures the idea of exploitative connotation, of economic weapons, and of instruments for extraction of tribute and for submission to unwanted restrictions.

To a large extent, this is not a factual condition. Owners of industrial property do realize that failure to extend the benefits of such property to large parts of the world denies to the whole system its ultimate fulfillment. Yet the fact is that because of technical conditions prevailing in developing countries, such owners had only a peripheral interest in industrialization in such countries. Also, in the past most of these countries pursued a limited policy of industrial development through import-substituting industries primarily concerned with the satisfaction of local needs and not of an advanced

¹ See Ramon Eduardo Ruiz "Latin America: Democracy without Reform" in (1960) *Massachusetts Review*, p. 316.

² *The Role of Patents in the Transfer of Technology to Developing Countries*, New York, United Nations Document E/3861/Rev. 1.

industrialization³. Finally, the developing countries themselves are at fault in not modernizing their old laws on industrial property with a view to the advancement of the national economy, and to the benefit of the consumers. Indeed, hardly any of these countries took advantage of the Model Laws for Developing Countries on patents and know-how and trademarks, prepared by the International Bureau of the Paris Union with the cooperation of representatives of such countries.

Developing countries are now stirred by the urgent wish for speedy industrialization. They must, of necessity, fix priorities toward this end and minimize the high cost in foreign currency of profit and royalty remittances. As a result, official control on production, distribution, imports and new investment is a pervasive factor of their economic policy.

They do know that they have to come to terms with owners of foreign industrial property and must create an attractive legal and administrative climate for private enterprise. It is highly desirable to illuminate the problems for the less developed countries as well as for the business enterprises in developed countries so that both may clearly understand the forces they are dealing with.

We must not take a doctrinaire attitude in thinking that any government intervention is necessarily evil, any more than the doctrinaire attitude of certain governments in viewing private enterprise as ruthless and extortionist.

We react adversely to the developing countries' demands for control of industrial property agreements with foreign enterprises, but we must remember that, in many highly developed countries, this State control and regulation exist although they are practiced in a more subtle manner. The role of government is growing larger every day, and this is not necessarily a threat to private enterprise.

There is a fundamental confusion in the attempt to set off as opposing forces private enterprise and State intervention in economic development. Each has a part to play. What matters is that the total system for economic development should have a more rational and effective way of relating the parts to the whole.

The important thing is that the governments should operate through organisms or State authorities that are capable of exercising wise discretion by a procedure of hearing the interested parties concerned and taking all relevant elements into consideration. It is to be feared that in a number of developing countries the planning organization is usually dominated by economists who give consideration to economic objectives in a narrow sense, ignoring the problems of manpower and technological infrastructure or giving them a secondary place. This may lead to import of unsuitable technology or arbitrary or unwise interference with private initiatives⁴.

³ See particularly, Council for Latin America, Inc., *The Effects of United States and other Foreign Investment in Latin America*, particularly Tables 4 and 5.

⁴ *Transfer of "Operative Technology" at the Enterprise Level*, New York, United Nations Document ST/ECA/151, § 52, 54, 59 and 63. Also Edward P. Hawthorne, *The Transfer of Technology*, Paris OECD, 1971, Chapter IV.

III

The Respective Positions of Developed and Developing Countries

In the final resort, the real problem for developing countries is to entice capital, local and foreign, to invest in processing their raw materials and establishing a viable and efficient industry capable not only of substituting for imports but also of developing local human and material resources and acquiring the benefits of an export economy.

Since inventions and advanced technology are generated by research and by a broad body of technical knowledge and technicians, developing countries must of necessity remain for some time to come tributary to foreign invention — not only in the sense that most patents will be taken out by foreigners (this is indeed true even for many highly industrialized countries) but also in the sense that foreign enterprises must furnish the capital and the technical information and training to enable new inventions and technology to be adapted and used in the developing countries.

In this connection, it must be recognized that private enterprises seek to operate where the conditions are most favorable. They must make their decision after analyzing various factors, such as the existence of an efficient labor force, availability of raw materials, transportation facilities, proximity of markets, taxation, foreign exchange conditions, economic infrastructure, and general political and legal environment and stability.

On the other hand, developing countries are in a certain weak bargaining position because they cannot by themselves create a self-sustainable industrialization. On the other hand, they afford new markets and they can take advantage of the fact that most foreign investments are "defensive," in the sense that if the producers continued operating in their country only, they would lose their markets to foreign competitors. This is the curious contrast. Enterprises are reluctant to venture abroad. They would prefer staying home, but they must go out if they are to protect their markets. A recent Harvard Business School study has reached this conclusion and explanation of the United States foreign investment of 78 billion dollars by 1970, and still growing by eight billion yearly.

To obtain, maintain and increase their market in developing countries, foreign enterprises must accept limitations in the exercise of their patent privileges not only as the rational counterpart of the grant but also as a matter of sharing in the responsibility for social and economic progress of developing countries, which ultimately will benefit such enterprises as well as the countries concerned.

Some of these limitations are obvious. They exist in most of the highly industrialized countries as well:

1. The obligation on the patentee to exploit the invention in the country granting the patent directly or through a licensee "to the extent of satisfying the demand for the patented articles in the country on reasonable terms and to the fullest extent that is reasonably practicable" (to use the terms of the United Kingdom Patents Act). Importation of the patented products from abroad should not be deemed to constitute the

required exploitation. Such exploitation should be required to commence within a reasonable time, which is now internationally recognized to be a term of three years from the grant of the patent. In the absence of exploitation, the patent should be liable to compulsory license, which may be granted to any party interested in manufacturing locally if no voluntary license on reasonable terms can be agreed upon. Of course, it must be remembered that there is a difference from industrialized countries in that, because of widespread technology and competence in private economy, the system of compulsory license works by itself in those countries, whereas in the ambivalent economy in developing countries the government may have to take the initiative in enforcing the limitation, which means that government and private technical resources must be focused on the object.

2. Compulsory license should be permitted even without waiting for the period of three years from the grant, for causes of important public interest, such as public health, urgent requirements of national economy or national defense. Such compulsory license for public interest is well recognized in many developed countries, although the notion of public interest may differ from country to country. So long as reasonable compensation is paid to the patentee, the public interest must dominate the private right.

3. The governments of developing countries should have the right to prohibit restrictions in patent licenses which are against the public interest. Such restrictions are already prohibited in developed countries by what is known as antitrust law or rules of competition. Such restrictions are:

(a) tying clauses, requiring the licensee to acquire unpatented intermediate goods and components from the patentee or sources designated by him. Such a clause may be permitted only when such goods and components are not locally available and the price stated by the licensor corresponds to normal levels in the international market;

(b) price-fixing clauses, by which the licensor fixes the prices of sale and resale of the patented products by the licensee;

(c) clauses prohibiting the use by the licensee of competitive technology;

(d) excessive grant-back clauses, requiring the licensee to turn over to the licensor all developments and improvements made by the licensee in practicing the patented invention;

(e) clauses requiring the licensee to pay royalties for unused patents.

4. Developing countries are particularly anxious to free local licensees from any restriction to export from the developing country the patented products. This is a subject of great interest to such countries because it affects their ability to develop an export economy and to supplement thereby the limited or gradually reduced foreign income from the sale of raw materials or unfinished products.

Restrictions against export may be implicit or explicit. They are implicit in the case where the manufacturing licensee in a developing country is owned or controlled by the

parent company in a developed country. This can only be a matter of speculation since there may not be a written agreement setting out the restrictions. Some enterprises do enter into agreements with their foreign subsidiaries as a matter of orderly keeping of records, for tax purposes or for enabling compliance with foreign exchange regulations. Refusing to a foreign company majority ownership or control of a local manufacturing subsidiary is not a proper solution particularly in industries in which high investment in research and development is necessary, and in which foreign companies are unwilling to let control of patents and know-how get out of their hands.

Explicit restrictions against export are made in license agreements with independent licensees, involving the use of patents, know-how and trademarks. They are revealed through the legal requirements for registration or approval of agreements.

The restrictions against exports by controlled or independent licensed manufacturing enterprises in developing countries are not necessarily harmful. They may foster internal economic growth and efforts to reduce costs and satisfy local demands. Also, such restrictions may not be unjustified. Parent companies in developed countries may understandably be concerned by competition from firms in developing countries with cheap labor and materials. The parent company may already have an export trade in a particular market which it wishes to retain for itself, or the parent company may have granted exclusive license rights to local firms in other export territories.

All of this shows that there are conflicting interests in terms of economic and trade objectives between the two groups of countries and that the only practical solution is an effort to reconcile these on a rational basis satisfactory to both. There are many cases where the export restrictions are retained as a matter of standing pattern.

Then the law of comparative advantage should rule the agreement. If the foreign enterprise can have its compensation by adequate profits or reasonable royalties, it should be willing to yield in the matter of export by licensees.

The fact of the matter is that, according to reliable figures relating to production and sale by local subsidiaries of foreign manufacturing companies, the picture with respect to exports is quite unsatisfactory. It is not unreasonable on the part of developing countries to ask that restrictions affecting the ability to export should be avoided unless they are really necessary to protect vital economic or legal interests of the parent enterprises. The governments may help by inquiring for the reasons of such restrictions and recognizing their need when valid in the appropriate cases. Ultimately, licensing is a business proposition primarily and as such it must be profitable to both parties, else it may not be entered into.

This is another phase of the persistent problem of creating a legal environment which eliminates the clash between the defenders and the opponents of the current concept of industrial property as a factor of economic development and which resolves the dilemma between the impetus for investment that industrial property creates and the restraints to the ready access to technology which legal monopolies involve.

This legal environment can be ensured in an objective manner which seeks to moderate the excessive and emotional views of developing countries and of foreign enterprises which react adversely to restrictions and limitations imposed by the governments of such countries with respect to financial and operational terms onerous to their countries.

A proper legal climate conducive to fruitful cooperation will be greatly helped by adherence of developing countries to the Paris Convention for the Protection of Industrial Property, dating back to 1883 and revised successively since then. This Convention is the best existing international arrangement for the recognition, reconciliation and satisfaction of the interests and demands of both developed and developing countries. Eighty countries are party to this Convention, both developed and developing.

Many countries of substantial or incipient economic and technical development have not yet adhered to this international charter, and this deprives them of the advantages of such Convention and also discourages enterprises of developed countries with respect to transfer of technology.

Indeed, both categories of countries will find satisfaction in such provisions of the Convention as:

1. The national treatment clause (Article 2).
2. The right of priority (Article 4).
3. Provisions against abuse of patent monopolies, for instance non-working (Article 5).
4. Period of grace for fees and taxes (Article 5^{bis}).
5. Protection of industrial designs (Article 5^{quinquies}).
6. Protection of variation of trademarks in actual use (Article 5C(2)).
7. Provisions on requirements of marking (Article 5D).
8. Provisions for registration of trademarks with recognition of cases of non-registrability.
9. Protection of well-known marks under proper conditions (Article 6^{bis}).
10. Protection of service marks (Article 6^{sexies}).
11. Protection against misappropriation of trademarks by agents (Article 6^{septies}).
12. Protection of association marks (Article 7^{bis}).
13. Protection of trade names (Article 8).
14. Protection against false indications of origin (Article 10).
15. Special remedies for infringement (Article 9).
16. Protection against acts of unfair competition (Article 10^{bis}).

In the absence of adherence to the Paris Convention, foreign enterprises willing to transfer technology to developing countries must rely only on the provisions of the national law of such countries, which do not afford the security of the Paris Convention. It is indeed a matter of regret that such

important countries, as China, India, Pakistan and 36 other countries⁵ on the way to development, not counting a number of smaller countries⁶, are not party to the Paris Convention.

The point is that the Paris Convention allows member countries, and therefore developing countries, to adopt national legal measures as may be deemed necessary or desirable by such countries in the public interest. Indeed, each developing country adhering to the Paris Convention may:

- (a) require working of patents within a fixed period;
- (b) provide for compulsory license for such working after such period;
- (c) provide for compulsory license at any time for reasons of important public interest;
- (d) prohibit restrictive clauses in license agreements likely to impede competition and domestic economic progress;
- (e) provide for appropriate control and approval of industrial property license agreements.

Where such legal provisions are adopted by a country party to the Paris Convention, they will not be regarded as creating an erosion of the legal system of industrial property or as manifesting a lack of adequate international protection provided, of course, such measures are applied flexibly and do not destroy the inducement for economic cooperation.

Developed countries, on the other hand, should bear in mind that the future of international trade and the long term economic progress of the peoples of the earth require us to respond more readily to human wants or social objectives. They should not view any inroad upon habit as a catastrophic revolution. We must find ways of applying our legal materials to new situations. We must not make immutable principles out of relative economic or political experiences. As President Kennedy once said in an address to the Congress of the United States of America: "We must change to master change." Or as my old compatriot, Heracleitos, reminded us: "Nothing is more permanent than change."

The highly developed countries of the present time, which pride themselves for the achievements of their age, cannot be its prisoners. They rely on their scientists and technicians to lead them in the ceaseless adventure of man in widening the boundaries of knowledge and, in the process, changing human life for the whole world. They are indeed an inseparable part of the world. They do realize that a prosperous Africa, an Asia with a higher standard of living, and a Latin America with a wider diffusion of purchasing power, are an indispensable requirement in the context of their enduring national interest and welfare.

⁵ Afghanistan, Albania, Bolivia, Burma, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Ethiopia, Gambia, Ghana, Guatemala, Guyana, Honduras, Iraq, Jamaica, Korea, Kuwait, Liberia, Libyan Arab Republic, Malaysia, Mali, Nepal, Nicaragua, Panama, Paraguay, Peru, Saudi Arabia, Sierra Leone, Somalia, Sudan, Thailand, Venezuela, Yemen, Zaire.

⁶ For instance: Botswana, Burundi, Fiji, Khmer Republic, Lesotho, Maldives, Mauritius, Rwanda.

Practical Working of the New German Patent Law

By Dietrich LEWINSKY *

Introduction

This Study will discuss the principal amendments — which came into force on October 1, 1968¹ — to the Patent Law of Germany (Federal Republic of). It will deal in some detail with those of the new provisions from which practical experience has been gained. It will also discuss a number of features — relating to the filing of patent applications — which are being given more consideration than hitherto by the Patent Office examiners.

The reason why the Patent Law was amended was to facilitate the work of the Patent Office; a similar preoccupation can be seen in practically all the countries which have a system for the examination of industrial property applications. In this connection reference should above all be made to the adoption of "deferred examination." Under the former Patent Law, the German Patent Office examined all patent applications for novelty, technical advance and inventive level — without any special request being required for such examination. Now such a request is needed for applications filed in the Federal Republic of Germany on or after October 1, 1968. Where no request is made, the applications are examined only for obvious defects of form and for a number of substantive law obstacles to the grant of a patent (preliminary examination). This point will be dealt with later.

A fee is payable for the request for examination of patent applications. The request need not be made at the time of filing; but if it is not made within seven years from the filing date, the patent application will be deemed withdrawn.

Before filing a request for examination, applicants may also first request the Patent Office to carry out a search for the publications which are to be considered in connection with the determination of patentability of the invention concerned. In this case, any subsequent request for examination will not be taken up until after the novelty search has been completed. It should be stressed now that both the request for a search report and the request for examination may be made not only by the applicant but also by any third party; third parties will not however take part in the examination procedure but will only be informed of the results.

Preliminary Examination

The purpose of the preliminary examination is to establish whether the subject of the application constitutes an invention by reason of its nature and lends itself to industrial application, and to ensure that its use would not be contrary to law or morality and, in the case of a patent of addition, that

it is an improvement or further development of the main invention. In the case of any defect in this respect, the Patent Office will invite the applicant to state his views within a specified period. Where necessary, the examiner will at the same time ask the applicant to comply with a number of formal requirements of the Patent Law or to remedy any defects in this respect. Where the applicant fails to do this or maintains the application as it stands although it discloses no invention within the meaning of the law, the application will be rejected.

An incomplete application form or one which goes beyond the relevant power of attorney are examples of such formal defects. Another example is where there is uncertainty as to whether the application should be filed by one person or a number of persons or by a company. But it is above all the case where documents forming part of the application are missing, such as the description, claims or drawings, or where the inventor has not been named or where such designation is incomplete. During the examination as to form, objections will be made to any of the application documents that are unfit for printing purposes in the published specification. However, in a recent decision² a Chamber of the Federal Patent Court clearly held that the Patent Office had no power to be more strict in this connection than the rules of the European Convention relating to the Formalities required for Patent Applications, which has been ratified by Germany (Federal Republic of).

During the preliminary examination procedure, applications will above all be examined for unity of invention. Unity of invention exists where a single problem gave rise to the invention and where all the features of the invention directed towards the solution of the problem are necessary for that solution or at least suitable for bringing it about. Where a problem as such is novel, or known but hitherto unsolved, a number of separate approaches to a solution may be dealt with in a single application. When at least one solution of a problem is already in existence, the new solutions put forward in an application must all be based on the same approach. Where these requirements are not complied with, the invention will lack unity.

When the patentability of the invention is examined at this stage, novelty, technical advance and inventive level are all irrelevant. The examination will rather be concerned with the ability of the invention to give a technical teaching which can be carried out, reproduced in its practical form and technically utilized. The Patent Office will also examine whether the subject of the invention may be carried out in a technical industrial plant or be used as a technical element in such a plant.

It should be mentioned that the new Patent Law has removed the prohibition against patenting foodstuffs, medicaments and pharmaceutical products as well as products prepared by a chemical process.

Applications for patents of addition are examined at the time of filing principally to ensure that the main application

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Note: this Study is based on a talk given, in Paris on June 9, 1972, to the French Association of Specialists in Industrial Property (ASPI).

¹ A translation of the Patent Law (text of January 2, 1968) is published in *Industrial Property*, 1968, p. 134.

² Published in the periodical *Mitteilungen der deutschen Patentanwälte*, 1971, p. 118.

or main patent is still in force and that the person applying for the patent of addition is the same as the owner of the main application. The existence of a sufficient technical relationship between the subjects of the two applications is also examined.

In this preliminary examination, the only defects that must be pointed out are those which are obvious to the examiner on looking through the documents without any further examination and without there being any need for him to justify his reasons for the objection at any length.

Laying Open to the Public and Provisional Protection

Where the defects pointed out by the examiner have been remedied or no defects have been found, applications are laid open for public inspection, 18 months after the priority date. At the same time a yellow document, prepared by a photocopying process and called "*Offenlegungsschrift*," is published. From that time on, any person can inspect the application files, and there is no longer any need to contact the applicant on this subject.

The laying open for public inspection is the starting point for a limited provisional protection. From that moment, the applicant may claim from any person who has used the subject of the application although he knew or should have known that the invention was the subject of an application, compensation appropriate to the circumstances. He will not however be able to claim damages or seek an injunction until the completion of the novelty examination — that is, until the publication properly so called. The kind of compensation and its scope are questions with which no experience has yet been had. The person from whom compensation is claimed will almost certainly object that the application should first be examined to see whether a patent will issue and a court will require the plaintiff to initiate such examination by the Patent Office before it will be able to determine how far the claim to compensation should be upheld.

The Search

On the basis of a request for search, the Patent Office decides which publications are to be considered for the determination of the patentability of the invention concerned. Where such a request is made in the case of an application for a patent of addition, it must also be made in the case of the main application. A request for search may be made at the time an application is filed. It may not however be made in the case of patent applications filed before October 1, 1968.

Originally, requests for search were partly handled in Munich by the Patent Office itself: they are now exclusively handled by the Berlin Branch of the Patent Office. This Branch Office is the successor of what was known as the *Treuhandstelle* of Berlin, an institute for searches, which now has the same documentation as the Patent Office in Munich. For this search, all publications found must — within reasonable limits — be reported against each claim, apart from the claims which contain only self-evident features. If, because of the very wide scope of the main claim, the number of documents to be cited is too large, those which are particularly relevant to the

subject of the invention will be chosen, regard being had to the restrictive features of the subsidiary claims. In the search report not only the publications forming part of the state of the art are cited, but also older German patent applications which, with respect to the priority of the application concerned, have not yet been published but give rise to prior rights.

The official search report states the classes, groups and subgroups in which the search has been carried out. The documents found are cited separately for each claim. The search takes account not only of patent literature but also of the technical literature. No evaluation is made, however, as between the documents found and the invention concerned.

Where, after receiving the search report, the applicant does not file a request for examination, the Patent Office will have no reason to take further action and the application will therefore expire at the end of seven years from the filing date. Where the search report is entirely unfavorable, there will of course be nothing for the applicant to do unless he decides to withdraw his application before the end of the seven-year period. If however the search report turns out to be favorable and the applicant intends to maintain his application beyond the seven years, he must file a request for examination.

Aspects of the Grant Procedure

As has been said, the request for examination is subject to a fee. Where the applicant has requested a search, the search fee paid is taken into consideration when the examination fee is fixed. The examination procedure continues even where the request for examination is withdrawn by the applicant. Once the examination procedure is initiated, the only way the applicant can terminate it is by withdrawing his application.

Unlike the request for search, the request for examination may also be made for patent applications filed before October 1, 1968. The only prerequisite is that the application has been laid open for public inspection by the Patent Office. This is now the case with all the "old" patent applications.

The filing of a request for examination is published in the Patent Gazette. Where it has been filed by a third party, the applicant is informed. The official reports are, even in this latter case, sent only to the applicant. Third parties, as I have already mentioned, take no part in the examination procedure.

As soon as the request for examination has been filed, the competent examiner immediately begins the examination or, if he does not have the time to do so, he at least briefly looks through the application to see whether any defect was missed during the examination as to form. This can happen, for instance, where literal translations of foreign applications have been filed; in such cases the requirements relating to the form and content of the description or claims may not have been observed or the applications may lack unity of invention. This point will be discussed later.

During this first reading, the examiner must also check whether the prior art known to the applicant, with which the subject of the application will be compared, has been indi-

cated. If this is not the case and the application documents show that the applicant must be aware of an item in the prior art concerned, he will be asked to indicate the documents from which the prior art can be ascertained. If the application documents show, for example by claiming Convention priority, that the applicant has also filed a similar application abroad and if it can be assumed that, during the procedure in the other country or countries, documents were cited against the application (it may have been filed in an examining country or in a country where at least a search report is prepared — France, for example), the applicant will be asked to state the documents which have been cited against his application during the procedure before foreign Patent Offices. The applicant must also state the serial numbers of the applications filed abroad. In this connection, it is advisable to set out the serial numbers on a separate sheet of paper since the Patent Office has to keep the serial numbers of parallel applications separate from the files that may be inspected by the public. The reason for this is that competing enterprises need to know neither whether the applicant has made corresponding applications abroad nor in what countries he has done so.

The question of unity of invention must be raised at the time of the first report. It should be mentioned that lack of unity frequently arises only because the main claim has collapsed on account of adverse prior art. In the case of applications lacking unity of invention, only the material necessary to prove lack of unity need be cited. However, the examiner will cite at this point any anticipations of the different inventions so as to enable the applicant to decide whether to pursue the application or not and to see which of the multiple inventions should be the subject of an application. As is well known, only a single invention can be the subject of an application. The applicant must either desist from claiming another invention in the same application or separate the various subjects of the invention and deal with them in separate applications, paying the fees in each case and claiming, of course, the initial filing or priority date. Although this was not the case under the previous German practice, the applicant may also divide the application on his own initiative, even where there is no lack of unity of invention.

On the subject of divisional applications, one other problem should be mentioned. Under the former Patent Law it was possible to apply, in relation to a patent, for an inadmissible extension — a feature of the invention inserted at a later date which was not contained in the original application documents. This was done by means of a separate application enjoying priority from the date of the first description of the feature concerned. Under the new Patent Law, such inadmissible extensions no longer confer any rights. They must be separated from the application documents, and it is not possible to use this separate feature as a basis for a separate application enjoying the priority of its first description. Instead, this new feature can only be the subject of a new application which is entirely separate — it will however be useless to do this if the first application containing the extended feature has been published and the six months during which novelty is preserved have run out. Also, where an inadmissible extension has been inserted in an application

at a time when the specification has already been published, it should be remembered that any third party can, by inspecting the file, learn of the extended feature which has not obtained protection, where no separate application was made. In any event, great care must be taken in the examination procedure to ensure that replies to official reports do not disclose features which have any inventiveness but were not contained in the original application documents; otherwise, competitors will be given an advantage unless the features are protected by new applications enjoying new priority.

I now return to the examination procedure properly so called. There is first of all again a search into the state of the art. Unlike the isolated search made on a request for search, which is designed to give a complete picture of the relevant state of the art, the search during the examination procedure is limited to the material which suffices to show that the subject of the application is not patentable. Here, the examiner must, as far as possible, complete the search in a single operation. In other words, he must not begin by searching only into the material which is relevant to the main claim and carry out the rest of the search at the time of subsequent official reports. Instead, he must immediately cite, in respect of all the claims, any prior art which may be adverse to the application so as to give the applicant, right from the beginning, a clear idea of the state of the art, so that he can then draft the corresponding claims or abandon the application.

During the last two years, it has been seen in practice that the Berlin Branch of the Patent Office, in response to a request for search, not only cited to the applicant considerably more prior art than was cited against the application later by the examiner in Munich following a request for examination, but also — to the applicant's surprise — the examiner in Munich often referred to prior art which was quite different to that which had been reported following the request for search. The reason for this, it is generally thought, is that the search undertaken upon request in Berlin is above all based on the different features of the claims, whereas the Munich examiner, at the time of the substantive examination of the application in relation to the state of the art, is above all concerned with the idea of the invention as it results from the problem posed and from the solution put forward. In most cases therefore, it is preferable not to request an isolated search in Berlin but to file a request for examination immediately even though, where the result of the search is unfavorable, the cost to the applicant will be higher than in the case of an isolated search and even though both the search and the examination would have discovered the same prior art adverse to the application (which does sometimes occur in cases where a search is requested). I would, therefore, recommend that as a general rule an isolated search should not be requested and a request for examination should be filed immediately provided that this is justified by the economic importance of the application concerned. This is in fact also the view of the Patent Office examiners, who far prefer to receive a request for examination of an application which has not been the subject of an isolated search; they feel that the results of such a search are of no help to them and indeed make the examination more complicated.

As in the past, the examiner also takes account of the prior rights which can arise from applications filed earlier but not yet published. The examination for prior rights has, in part, been facilitated by the new examination procedure: it has also in part been made considerably more complicated. It is facilitated insofar as the earlier applications are, due to the 18-month publication rule, published more quickly than before. Since the earlier specification is published, the later applicant is able to restrict his application, although he is not obliged to do so since it cannot be foreseen whether the earlier application will in fact lead to a patent. The examination for prior rights is at the same time made more difficult in that the examiner of the later application may be completely unaware of the earlier applications when they have not yet been published and are not being examined following a request for examination. But even where an earlier application has already been published but has not been the subject of a request for examination, a later applicant who wishes to know whether the earlier application will give rise to a prior right must either file the request for examination relating to the earlier application himself (and pay the corresponding fee) or wait for the seven-year period to elapse. He cannot be required to adopt either solution. For this reason, it has been the practice of the Patent Office not to suspend the examination of the later application — even where it has not been restricted in view of the earlier application — unless the owner of the later application expressly desires such suspension. If he does not, the examination must be continued and the later application must — provided that it satisfies the other prerequisites — be published without any restriction in view of the earlier application. In any event, even in the absence of opposition, no patent will be granted on the later application until the earlier application has been decided.

Content of the Application Documents

The examination of an application must cover not only the main claim but also all the dependent claims even where no separate protection is claimed for them. In the drafting of the introductory part of the main claim, only one document should be used as a basis. Any aspects that are not based on that document should be placed in the characterizing part of the claim. What is important is that the claims should correspond, word for word, with the corresponding part of the description. If there are technical features in the characterizing part which are already known in a different context, it is sufficient to state this in the description. Dependent claims containing nothing that is not obvious or self-evident will not be accepted. Where the technical features of the dependent claims are, in themselves, already known or do not strictly contain any inventive content, this must be mentioned in the description or the description can state that the dependent claims are valid only in relation to the main claim. Statements made by way of example should not be placed in the claim unless they are necessary or at least helpful for understanding the claim. Otherwise, their place is in the description. All the technical features which are necessary for the solution of the problem in accordance with the invention must be contained in the first patent claim, the main claim.

In order to make the content of the claims easier to understand, the examiners may require the technical features set out in the claims to be accompanied by signs referring to the drawings. However, the characterizing part of the claims must be so drafted as to be readily understandable without any help from the description or drawings, even if reference signs are added in parentheses.

A few words about the drafting of the description: the first paragraph must state what the invention is concerned with, in other words the relevant technical field. This means that the first paragraph must correspond to the introductory part of the main claim. The area of application of the invention should in any event emerge from the text of this paragraph.

It is then necessary to state the prior art on which the invention is based, — as far as possible — giving the corresponding references. An explanation should be given of the disadvantages that are inherent in the prior art.

Next, the technical problem underlying the invention must be stated.

A further paragraph should set out the technical features which are directed towards the solution of the problem in accordance with the invention; in other words this paragraph must correspond to the characterizing part of the main claim.

It is necessary, at this point, to describe the major technical advance brought about by the invention. But only the advantages which follow from the novel features in the main claim can be referred to.

Then the subject matter of the dependent claims can be dealt with. This, however, will be advisable only if specific advantages can be stated.

Where the application contains drawings, these drawings — or the illustrations which they contain of how the invention is to be carried out — must be explained. In the drafting of the description, care must be taken to ensure that a technical idea or feature is always given the same technical designation.

In connection with the drawings, I would simply point out that the Patent Office examiners, in recent times, have more and more frequently been requiring the diagrams of electrical circuits to contain not only reference numbers but also the relevant electrical symbols for the different units of the circuit, in order to make the drawings easier to understand without any help from the description.

One further remark concerning the application documents: where, during the examination procedure, the description, claims or drawings are amended otherwise than at the examiner's suggestion, the examiner may require the applicant to give particulars showing where the inventive characteristics in the new documents are described in the original application documents. This should help to prevent inadmissible extensions slipping into the application documents.

Technical Advance and Inventive Level

The technical advance of the subject of the application must be stated and judged separately for any single subject matter indicated as already known. As a general rule the technical advance need not be proved; that it is plausible is suffi-

cient. No specific amount of technical advance can be required. The advance is sufficient if the advantages are not outweighed by the disadvantages. However, if the examiner is not sure whether the stated method of performing the invention is feasible and will in fact have the results stated, he can require the invention to be demonstrated. In general, it is not very difficult to justify sufficient technical advance — with a little imagination technical advantages can always be found.

On the other hand, it is much more difficult to convince the examiner that the subject of the application is of sufficient inventive level. In judging inventive level, it is necessary to compare the subject of the application with the relevant prior art as a whole. In general, inventive level is said to be present where the inventiveness was beyond the power of the average engineer at the application's priority date. Indications of this might, for example, be a sudden technical advance, the overcoming of prejudices or a simpler means of mass-producing articles. As in the past, the value of the German patent lies in the fact that the only inventions that can be patented are those which go beyond the limits of what can be done by the average engineer. But if the examiner is in doubt as to whether these limits have been passed, this would be a case for saying that there is sufficient inventive level since clearly there are no serious reasons for deciding otherwise.

Experience has shown that the Federal Patent Court is often more demanding on the question of inventive level than the Patent Office examiners. It is therefore recommended that every effort be made to convince the examiner — if necessary, by an interview — that the subject of the application is of sufficient inventive level. In most cases, appreciation of inventive level is rather subjective.

Examiners' Reports

In the view of the Patent Office, it is preferable that the second examiner's report should be the last. Unfortunately this is not the rule in practice. In most cases the number of reports is appreciably higher. This is often due to the fact that the examiners merely state that the claims are not acceptable without explaining, in relevant cases, that other claims might be accepted if they were directed to features hitherto unclaimed.

To correct these shortcomings and to reduce the number of reports and also to prevent the many exchanges of letters between the applicant and the Patent Office from weighing down the files with their statements which, in any subsequent infringement action, would have the effect of reducing the scope of the patent protection, it is recommended that more use be made of the possibility for oral discussion. This is especially useful where the method of performance or the technical advance of the subject of the invention need to be clarified and where there are matters which it would be tiresome to explain in writing and also where it is not clear how the claims should be drafted. Whenever therefore it is difficult to pursue the application in writing, the applicant should make a request for a discussion, which is normally willingly accepted by the Patent Office — provided however that the applicant at the same time sets out his views in writing, at least briefly, concerning the preceding report. One should not

therefore simply seek an interview to reply to a report since the examiner will be quite unable to decide whether such a discussion is necessary.

As a general rule, these discussions will not entail any great cost since the examiner will normally agree to the date suggested so that several interviews relating to different applications can be grouped together. What is important is that the interviews should be properly prepared; it is often useful for the inventor to take part since it is usually he who is most able to answer the technical questions of the examiner. Unfortunately, many examiners felt that all that was required on these occasions was to hear the applicant's views. But, in directives issued to examiners by the President of the Patent Office³, such a view was expressly discouraged. The examiner should first point out the matters which are obscure or give rise to difficulties and then hear the applicant's views on the subject. If agreement is reached on patentability, the applicant and examiner should immediately seek agreement on the claims and even — whenever possible — determine the general structure of the description. In this way, it is in practice possible, without any further official report, to arrive at a definitive evaluation of the subject of the application and sometimes even to enable the application to be published.

Publication, Opposition and Grant

To prepare for the publication of the application, the description should be adapted to the text of the claims as agreed with the examiner, and the prior art selected during the examination procedure should be evaluated — in other words, the disadvantages previously existing should be highlighted and set beside the advantages brought about by the subject of the invention. As in the past, the application is published as a green specification ("*Auslegeschrift*") and gives rise to provisional protection enabling the applicant to seek an injunction against any infringer and to sue him for damages.

The rest of the procedure before the Patent Office has remained unchanged. On publication, the three-month period begins during which any third party may oppose the grant of a patent on the application. In the absence of opposition the patent is, as a general rule, granted without further formality. Any patent issued may, as before, be challenged in revocation proceedings.

Since the spirit of the new Patent Law is to facilitate the work of the Patent Office and to make the examination procedure more strict, examiners have been recommended to be extremely sparing in granting extensions of time. In principle, official reports must be replied to within four months. This time limit cannot be extended unless sufficient reason is given and supported by evidence. The easiest way of obtaining an extension is only to request a further period of three or four weeks, explaining that the necessary information has only just arrived and that, at all events, a reply will be made to the report within the further period requested. Under a very recent decision of the legal Chamber of Appeal of the Federal

³ Published in *Blatt für Patent-, Muster- und Zeichenwesen*, 1972, p. 298.

Patent Court, the examiner may not reject the application concerned on procedural grounds since it will be apparent from the request for extension of time that the applicant will appeal and reply to the official report at that time, so that the examiner would have to revoke his earlier decision and resume the processing of the application; this would, in practice, be uneconomic from a procedural point of view⁴.

Annual Fees

Under the former Patent Law, the patent fees were payable only for patents granted; annual fees falling due before the grant were paid all at the same time after grant. As from October 1, 1968, the annual fees must be paid from the third year — that is, two years after the filing of the application in Germany (Federal Republic of) — whether or not the application has already been examined or published and even whether or not a patent has already been granted. These fees are not refunded even where the grant is subsequently refused. This means of course that the applicant should carefully consider his course of action. If, for instance, he maintains his application for seven years without requesting an examination, he will have to pay, in addition to the application fee, the annual fees for the third to the seventh year without the hope of obtaining a patent. In order to avoid paying these high annual fees to no purpose, it seems advisable in any case of economic importance to make a request for examination *immediately* — as soon as possible after filing — in order to be certain, hopefully within the first two years, as to the success of the application or at least to be in a position to decide what action to take before the annual fees become payable. If, on examination, the application is unsuccessful all that will be lost are the application and examination fees. If, on the other hand, the request for examination is made only later, all the annual fees that have fallen due will in addition have been paid.

* * *

As I explained at the beginning of this Study, the purpose of the new provisions governing the patent grant procedure is to eliminate within a reasonable time the backlog of undecided applications at the Patent Office and to speed up the processing of new applications. The desired efficiency of the examination procedure will however be obtained only if applicants observe the procedure in the kinds of ways suggested in this Study. If they do not, they can expect processing delays and in some cases the rejection of their application. It is therefore important that consideration should be given, in connection with the examination procedure, at least to the basic requirements that regularly come up in the course of the processing of applications.

This Study has only been able to outline the fundamental rules of the examination procedure in Germany (Federal Republic of) arising, for the most part, from the amendments to the Patent Law. It is hoped that the Study will be of some assistance to applicants.

⁴ *Mitteilungen der deutschen Patentanwälte*, 1971, p. 52.

Mexico's New System for Appellations of Origin

By David RANGEL MEDINA *

I. Introduction

1. *Lisbon Agreement on Appellations of Origin*

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was signed in Lisbon on October 31, 1958 and entered into force on September 25, 1966. On July 14, 1967 it was revised at Stockholm.

Under Article 1, the member countries constitute a Special Union within the framework of the Paris Union for the Protection of Industrial Property and undertake to protect on their territories the appellations of origin of products of the other countries of the Special Union, recognized and protected as such in the country of origin and registered at the International Bureau of Intellectual Property referred to in the WIPO Convention.

By the end of 1972, the Lisbon Union consisted of the following ten States: Algeria, Cuba, Czechoslovakia, France, Haiti, Hungary, Israel, Italy, Portugal and Mexico¹.

The principal obligation on the countries of the Lisbon Union is to protect the appellations of origin of products from the other member countries — subject to two prerequisites: first, the appellations of origin must be recognized and protected as such in the country of origin; second, these appellations, recognized and protected in accordance with each national law, must be entered in the International Register of Appellations of Origin.

Under Article 2(1) of the Agreement, appellation of origin means "the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors."

The constituent elements of the concept of an appellation of origin are thus seen to be:

(a) *a geographical name* — understood in the broadest sense so as to include any name of a delimited geographical area, whether a country, a region or a locality. In other words, any geographical place. Such a place must be that in which the product is manufactured, prepared, harvested or extracted;

(b) *a typical product* — in other words, a product originating in that geographical environment. It cannot be any product coming from that place, but one whose characteristics and quality are dependent upon the geographical place by reason either of its natural factors, such as the composition of the soil and water, or of its human factors, such as traditional methods and experience in cultivation and manufacturing;

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¹ *Industrial Property*, 1973, p. 23.

(c) *a link between the name of the geographical place and the typical product* — arising from the use of the geographical name as an appellation for the product and from the reputation of the geographical place, covered by the appellation, for its products since they are typical of the place;

(d) *prior and continuing use of the appellation* — to constitute an appellation of origin, the geographical name must have been genuinely and continuously used on the market to designate precisely that product, which has certain clear-cut characteristics and properties.

2. Mexico's Accession to Lisbon Agreement

The Lisbon Agreement was approved by the Mexican Senate on December 28, 1962² and by the Executive on December 19, 1963. The instrument of accession was deposited with the Swiss Government on February 21, 1964 and the Agreement was brought into force by a Presidential Decree of April 9, 1964³.

3. Trade Agreement between Mexico and France

The Lisbon Agreement was not, however, Mexico's first international undertaking in the field of appellations of origin. As far back as November 29, 1951, a trade agreement was signed in Mexico City with France. Article 8 provides:

"Each of the High Contracting Parties undertakes to take all measures necessary to effectively protect the natural or manufactured products originating in the other Contracting Party from any unfair competition in commercial transactions."

Article 8 continues:

"Each of the High Contracting Parties undertakes, in particular, to take all measures necessary to avoid the misuse, on its territory, of geographical names or marks of origin belonging to the other Party, provided that such names or marks are duly protected in the country of origin and that they have been notified by the said Party. Such notification shall principally specify the documents issued by the competent authority in the country of origin which set out the right to such names or marks of origin. No such names or marks of origin may be considered generic."⁴

In accordance with the second part of Article 8, the French Embassy in Mexico notified the Mexican Government (by note No. 298 of April 3, 1958) of the list of appellations, geographical names or marks of origin which enjoyed protection in France, including the appellation "Cognac."⁵

4. Use of "Tequila" as Appellation of Origin

Another antecedent for the regulation of Mexican appellations of origin — a national antecedent, this time — concerned the word "tequila." The most recent regulation of this word is to be found in a decision (of November 27, 1970) of the Secretariat for Industry and Commerce, making the official quality standard compulsory for the word "tequila." In the decision, it was considered that the use of "tequila" to designate alcoholic beverages which did not meet the require-

ments and specifications of the official quality standard for "tequila" could give rise to unfair competition and to confusion and deception among consumers, that it was in the public interest to avoid such a situation and that the best way of doing so was to ensure that alcoholic beverages bearing the name "tequila" did in fact completely satisfy the official quality standard. Another reason given was that since a considerable volume of *tequila* went for export, it was necessary, in the interests of the economy, to ensure that the product fulfilled the requirements and specifications in the quality standard if its prestige on international markets was to be maintained.

Under the decision:

(a) the word "tequila" may be used by manufacturers to designate the product concerned, on receipt of authorization from the Secretariat of Industry, only when the product fully satisfies the official quality standard;

(b) bottlers may also be authorized to use the word "tequila" on their product, provided they can show that they obtain that product from authorized manufacturers and that they bottle it without removing or adding any ingredients;

(c) an authorization granted to any enterprise may be revoked if the standard is not complied with;

(d) the manufacture, bottling, sale or export of alcoholic beverages bearing the name "tequila" without express authorization from the Secretariat for the use of such appellation is an offense for which the manufacturers, distributors, bottlers, exporters and any other person who in any way trades in the product will be liable;

(e) the authority for supervising the application of the decision is the General Directorate for Standards of the Secretariat for Industry and Commerce⁶.

5. Reasons for Domestic Legislation on Appellations of Origin

Apart from these administrative provisions issued under the General Law on Standards, Weights and Measures, appellations of origin were neither recognized nor protected by any specific or general law. The existing Mexican Industrial Property Law of December 31, 1942 gave no protection either.

To remedy the situation, President Echeverría proposed to Congress that the Law should be amended. He gave the following reasons:

(a) The absence of national protection for Mexican appellations of origin had made it impossible to fulfill the essential requirement, under Article 1 of the Lisbon Agreement, for registration with the International Bureau and for the consequent protection in the other signatory countries.

(b) Legislation protecting appellations of origin would be important as a preliminary to the negotiation of bilateral or multilateral treaties with other nations not party to the Lisbon Agreement.

(c) The protection of Mexican appellations of origin would help to increase exports of internationally known products.

² Decree published in the *Diario Oficial* of the Federation of December 31, 1962 and in the *Revista Mexicana de la Propiedad Industrial y Artística*, No. 1, p. 152.

³ *Diario Oficial* of July 11, 1964.

⁴ *Diario Oficial* of July 16, 1954.

⁵ See David Rangel Medina, *Tratado de Derecho Marcario*, Mexico City, 1960, pp. 67-8.

⁶ *Diario Oficial* of December 7, 1970; *Revista Mexicana de la Propiedad Industrial y Artística*, Nos. 15-16, p. 291.

(d) Apart from these foreign-trade considerations, the legal protection of appellations of origin would also be of considerable importance at the domestic level since it would stimulate regional industries that had been able to develop markets on the basis of the prestige of products identified with Mexican appellations of origin.

(e) Finally, the presidential note pointed out that the existing Industrial Property Law contained no provisions prohibiting the use of Mexican appellations of origin on products abroad⁷.

6. The New Mexican Law

With the approval of Congress, by decree of December 30, 1972⁸ the Executive promulgated the amendments to the Industrial Property Law, containing specific provisions on appellations of origin.

The amendments are the following:

(a) addition of paragraphs (ii) and (xii) to Section 105 to enable appellations of origin to be registrable as trademarks even when they are names in common use or geographical names;

(b) addition of a Chapter X to Part Three, comprising 26 sections (208-A to 208-Z);

(c) addition in Chapter II of Part Eight, of Section 258^{bis}, which creates and sanctions the offense of illegal use of an appellation of origin.

The Decree entered into force on January 4, 1973, the day it appeared in the *Diario Oficial* of the Federation.

7. Delimitation of Appellation of Origin

Using the concept established in the Lisbon Agreement as a pattern, the first part of Section 208-A, defines an appellation of origin as "the geographical name of a region or locality which serves to designate a product originating therein, the quality and characteristics of which are due exclusively to the geographical environment, including natural and human factors."

Up to here, as can be seen, the definition is taken almost word-for-word from the text of the Agreement.

The second part of this Section, however, carries the idea beyond geographical or place names by also considering as appellations of origin those which, without referring to the name of a specific place, are closely linked to such place by geographical, social, linguistic, or cultural factors, in such a way that their characteristics or reputation are due exclusively to those factors.

This criterion in the definition of appellations of origin is new with regard both to comparative law and to the legal theory discussed above. The following clarification is given in the Explanatory Statement:

"In view of the peculiarities of our culture and economic development, the concept of appellation of origin has been broadened in the Decree so as to include what are not appellations of origin in the strict sense — namely, appellations which do not identify a specific place but are distinctive of one or more products that are closely linked to the territory in which they are produced by geographical, social or cultural factors, for example the alcoholic beverage 'xtahentún,' which comes

from the Yucatan Peninsular. In this case there is a link between the product and the territory, just as there is in the case of an appellation of origin in the strict sense, even though the product and the territory have different names."

8. Source of Protection

The protection of an appellation of origin arises from the general declaration, made by the Secretariat for Industry and Commerce, which confers the protection of the Law on a specific appellation of origin.

It is now proposed to examine the characteristics of this general declaration and the procedure by which it is obtained.

II. Procedure for Declaring Appellation of Origin Protected

9. Persons Eligible to Apply for a General Declaration

The general declaration of protection of an appellation of origin may be made ex officio by the Secretariat for Industry and Commerce (referred to below as "the Secretariat").

The declaration may also be made at the request of private individuals or other State bodies having a legal interest, for example:

- (a) natural persons or legal entities directly engaged in the extraction, production or preparation of the products to be covered by the appellation of origin;
- (b) guilds or associations of manufacturers or producers;
- (c) government enterprises of a federal nature;
- (d) the governments of the various states;
- (e) the governments of the territories.

10. Application Requirements

The application for a general declaration must be addressed to the Secretariat and must specify:

- (a) the name, address and nationality of the applicant, and the applicant's nature and activities if it is a legal entity;
- (b) the name of the appellation of origin and the products to be covered;
- (c) the legal interest of the applicant;
- (d) description of the products, indicating their composition and form, the process of extraction, preparation or manufacture and the standards which apply to such process;
- (e) the place of extraction, preparation or manufacture, with a delimitation of the territory of origin;
- (f) description of the links between the appellation, the product and the territory.

11. Examination Fees and Publication of the Application

The examination of the application is subject to a fee — whose amount has not yet been fixed.

Once the fee has been paid, the documents comprising the application will be examined. If the Secretariat considers that all the requirements under the Law relating to the grant of protection to the proposed appellation of origin have been complied with, an abstract of the application will be published in the *Diario Oficial* of the Federation.

12. Opposition

The publication of the abstract is to allow anyone showing a legal interest to enter opposition to the general declaration

⁷ Explanatory Statement to the draft law submitted to the Senate.

⁸ See p. 77 above.

sought, within 45 days. All kinds of evidence are admissible except admissions, testimony and expert evidence, without prejudice to the Secretariat's right to collect its own forms of evidence.

13. *The Decision*

Once the documents showing the existence of the legal interest of the applicant for the general declaration have been examined, the requirements in the Law for the grant of protection of an appellation of origin have been fulfilled, the 45-day period has elapsed and the evidence has been admitted, the Secretariat will decide whether to refuse or grant the protection sought, bearing in mind that its decision will not be subject to appeal by administrative channels. The decision can only be challenged before the constitutional court.

The decision declaring an appellation of origin protected is also published in the *Diario Oficial*. The appellation of origin which has been the subject of the general declaration must be registered at the Secretariat and both the declaration and the registration must also be published in the Industrial Property Gazette.

14. *Abandonment of Application*

If the Secretariat considers that the documents submitted with the application for a general declaration are insufficient for a comprehension or analysis of the application, it will require the applicant, within a non-renewable period not exceeding three months, to make the necessary clarifications or additions. If the applicant has not done so by the end of the period, the application will be considered abandoned.

15. *Ex-Officio Declaration*

So far I have dealt with the procedure for a general declaration of protection that has been initiated upon request. However, as has been said, the general declaration may be made ex officio by the Secretariat. In this case the procedure begins with the publication in the *Diario Oficial* of a notice containing the same information as required of an applicant, except of course for the information concerning the name, address, nationality, etc. Once this publication has appeared, the rest of the procedure is the same as that described for applications made by interested parties.

16. *Amendment of General Declaration*

General declarations may be amended at any time either ex officio or at the request of an interested party. For this purpose, a new application must be filed giving the same information as for the application for the original declaration, together with a description of the amendments requested and the grounds for the request. The decision on this application is subject to the same procedure as for the original declaration.

III. Effects, Duration and Expiry of General Declaration

17. *Effects of General Declaration*

The effects of the general declaration and of its registration with the Secretariat are:

First, the following are established — (a) the name of the appellation of origin; (b) the name of the product to be covered by it; (c) the characteristics of the product, with reference to its components and form and to the standards and methods applicable to its extraction, preparation or manufacture; (d) the delimited territory of origin, and (e) the links existing between the appellation, the product and the territory.

Second, the unauthorized use of the registered appellation of origin or of a confusingly similar appellation for identical or similar products is punishable as an illegal use of the appellation.

Similarly, the general declaration implies not only that the appellation may not be used by anyone not entitled, but also that it may not be used in conjunction with terms likely to mislead the consumer or to give rise to unfair competition, such as "kind," "type," "make," or "imitation."

The Mexican Law has thus adopted the principle in Article 3 of the Lisbon Agreement under which the protection of appellations of origin "shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as 'kind,' 'type,' 'make,' 'imitation' or the like."

All these effects will not arise until publication in the *Diario Oficial*.

18. *Ownership of Appellations of Origin*

Unlike trademarks, appellations of origin cannot be appropriated by private persons but are owned by the State. The Law provides in this connection that the Mexican Government is considered the owner of appellations of origin and that the Secretariat for Industry and Commerce is its representative.

Very aptly, in view of the juridical nature of this distinctive sign, the Explanatory Statement has the following comment on this provision:

"It was felt that an appellation of origin should not belong exclusively to a natural person or a legal entity. It was decided to have a general declaration of protection, which could be used by any person or entity situated within the defined territory and engaged directly in the extraction, production or preparation of the product covered by the appellation of origin."

19. *Duration of the Protection*

General declarations are of unlimited duration provided that the circumstances determining the protection are always in existence. Consequently, the protection of appellations of origin continues for as long as the general declaration remains in force.

This illustrates a further difference between a trademark and an appellation of origin, in that a mark may initially be registered only for a fixed period of ten years; it may then be indefinitely renewed for further ten-year periods.

20. *Cessation of General Declaration*

The General Declaration may terminate for three reasons: nullity, lapse and expiry.

Nullity will occur if the general declaration was granted in contravention of the law governing the protection of appellations of origin.

The legal effects of a general declaration will *lapse* if, within three years of its publication in the *Diario Oficial*, no application has been filed for the registration of the right to use the appellation of origin.

The general declaration will *expire* if the circumstances and conditions which determined the Secretariat's grant of protection under the general declaration, cease to obtain.

These grounds for the termination of a general declaration for the protection of an appellation of origin are different from the grounds determining the nullity, lapse and expiry of trademark registrations.

IV. Registration of Right to Use Appellation of Origin

21. Who may Apply for Right to Use

The protection of an appellation of origin is justified only if it is used to designate products whose extraction, production or preparation takes place in the corresponding territory of origin. Once an appellation of origin has been recognized and declared protected, it must be used; otherwise it will lapse through non-use.

The Mexican Law has created an institution known as the Register of the Right to Use an Appellation of Origin, which confirms the right of persons or legal entities to use on their products the distinctive sign which has been the subject of a general declaration as an appellation of origin.

The conditions to be met and proved by anyone wishing to use the appellation or origin are:

(a) the applicant must be directly engaged in the extraction, production or preparation of the products covered by the sign concerned;

(b) such activities must be carried on within the territory of origin defined in the general declaration;

(c) the standards of quality relating to the products concerned, or the standards specified in the declaration, must be satisfied.

22. How to Obtain Right to Use

The right to use an appellation of origin is acquired by registration at the Secretariat, granted on the basis of an application containing the following information:

(a) the name, address and nationality of the applicant and, where applicable, the nature and activities of the legal entity;

(b) the name of the appellation of origin;

(c) the products designated by the appellation;

(d) data identifying the declaration of protection;

(e) the place in which the applicant exploits the product;

(f) the way in which the applicant meets the standards laid down in the general declaration.

The procedure for such an application is the same as that already considered in connection with applications for general declarations, with the same requirement for payment of an examination fee. There is also an examination of the documents produced and the applicant will have an opportunity to provide any clarifications or additions that may be required where the Secretariat considers the application to be insufficient. The Secretariat will decide on the registration if it considers that the documents submitted meet the legal requirements.

23. Duration of Registration

The registration of the right to use an appellation of origin remains valid for five years from the date and time of filing of the application with the Secretariat.

This period may be renewed for further five-year periods whenever the applicant requests, provided that he pays the corresponding fees and proves that he continues to fulfill the requirements laid down at the time that the registration to be renewed was granted. The amount of the fee has not yet been fixed.

24. Obligations on the Registrant

The owner of the registration of the right to use an appellation of origin must use the appellation exactly as it appears in the general declaration — except that he may make changes which do not affect the identity of the appellation of origin or which concern only its dimensions or the material on which it is reproduced.

Apart from these cases, the use of an appellation of origin in any other form will lead to forfeiture of the registration.

25. Rights of the Registrant

The rights acquired by the owner of the registration of the right to use an appellation of origin are:

(a) he may use the appellation on his products and in advertising them;

(b) he may transfer this right of use;

(c) he may grant a license for the use covered by his registration.

The owner of this single registration may transfer the right that the registration confers on him. However, to have effect, the transfer must be registered with the Secretariat, which will only accept it for registration on proof that the new owner meets the legal conditions governing the acquisition of the right to use the appellation concerned.

The owner of a registration may also grant a license to anyone distributing or selling his products. The license will take effect only when the agreement concerned has been approved and registered by the Secretariat itself, following proof that the licensee fulfills the requirements which applied to the original owner when registration was granted.

Furthermore, the licensee may use the appellation of origin only together with a registered mark belonging to the licensor, which has previously been in actual use by the licensor on Mexican territory.

26. How Registration Terminates

The registration of the right to use may terminate for three reasons: nullity, lapse and expiry.

Nullity will occur if the registration was granted in contravention of the amended Industrial Property Law. It will also occur if registration was granted on the basis of false declarations in the application.

The registration will *lapse* if it is not renewed at the end of each five-year period.

The registration will *expire* in three cases:

(a) where the general declaration with which the registration is associated is declared to be null, to have lapsed or to

have expired. In this case the registration will expire automatically;

(b) where the registered owner of the right to use does not begin such use within two years from his application for registration or at any time discontinues such use for more than two years;

(c) where it is proved that the owner of the registration no longer meets the requirements laid down for the grant of the right to use.

27. Procedure for Termination of Registration

The administrative declarations of nullity, lapse and expiry of both the authorization to use an appellation and the general declaration of protection are made by the Secretariat under the same procedure as that laid down for the nullity and expiry of patents and trademarks and for the infringement of industrial property rights in general. The decision may be taken ex officio or at the request of a party.

As the registration of the right to use an appellation of origin terminates at the same time as the general declaration of protection, whenever such a declaration is challenged all the owners of the right to use the appellation concerned will be invited to the proceedings as interested parties.

V. Miscellaneous Provisions

28. Criminal Liability

The unauthorized use of a protected appellation of origin or of a confusingly similar appellation for identical or similar products to those in the general declaration, constitutes a special offense "illegal use of an appellation of origin," which is punishable by imprisonment and/or fine. The prosecution is initiated ex officio. The proceedings are however subject to a procedural condition: the Secretariat must make an administrative declaration that the offense of illegal use has been committed.

The thirty-years' experience with this prerequisite to the prosecution of industrial property offenses gives rise to the fear that the severity of the punishment (fine of from 1000 to 100,000 pesos or imprisonment of from six days to six years) will be rendered ineffective due to the slow administrative procedure to which the prosecution is subjected, followed by an equally long judicial procedure.

29. International Protection

Under Article 1 of the Lisbon Agreement, two conditions must be met for appellations of origin to be protected in the countries constituting the Special Union: the appellations of origin must be recognized and protected as such in the country of origin; they must be registered at the International Bureau of Intellectual Property.

Article 5 of the Agreement establishes the procedure for effecting such registration at the International Bureau. This is done on the request of the Administrations of the countries of the Special Union, and in the name of any natural persons or legal entities, public or private, having a right to use such appellations.

In the case of Mexico, the amended Law provides that registrations of appellations of origin that have been the subject

of a general declaration of protection, will be transmitted by the Secretariat for Industry, in its capacity of owner of the appellation of origin, through the intermediary of the Secretariat for External Relations.

30. Registration of Appellations of Origin as Marks

Under Article 6 of the Lisbon Agreement, an appellation which has been granted protection in one of the countries of the Special Union cannot be deemed to have become generic in that country as long as it is protected as an appellation of origin in the signatory country.

In order to bring Mexican law into line with this international provision, Section 105 of the Industrial Property Law has been amended so as to allow names that have come into common use in the country as well as geographical denominations which merely indicate the source of products to be registrable as trademarks — provided that such names or denominations are appellations of origin protected by the new provisions.

VI. Final Remarks

A critical analysis of the effectiveness of the new provisions on appellations of origin would be both rash and premature. With time, the interpretation and application of the new provisions will enable an opinion to be formed. It is however possible to set out some brief reflections on the formal structure of the system adopted and on some of the guiding principles.

First. — The legal system governing appellations of origin, contained in the 28 sections of the provisions discussed in this Study, is so extensive and complex that it stands out in contrast to the other sections of the law in force. It could be said that the institutions created by the new system — such as the general declaration of protection, the registration of the right to use appellations and the various ways of terminating or transferring them — have such special features that they require a more specific instrument such as a separate law expressly designed to protect appellations of origin.

It could however be argued that appellations of origin, as a form of distinctive sign for merchandise, are linked with the other aspects of industrial property, of which they are part, such as patents, trademarks, trade names, trade notices and the protection against unfair competition. The idea of a specific law would also be unacceptable to those who feel that a multiplicity of separate laws covering related fields should be avoided.

This is a question which will solve itself in time since a general revision of the existing Industrial Property Law is now being prepared by the Mexican Secretariat for Industry, together with the National Council for Science and Technology and the Mexican Association of Industrial Property Agents.

Second. — In the context of the general revision of the Industrial Property Law, consideration might also be given to amending other provisions of the Law so as to include possibilities, requirements and circumstances which are specific to appellations of origin. For example: the decisions relating to the nullity, lapse and expiry of the general declaration and of

the registration of the right to use appellations of origin; declarations concerning the illegal use of appellations of origin; the procedures leading to such administrative declarations, etc. At present, the amendments in the new provisions on these subjects simply refer to the procedures established under the existing provisions, thus assimilating the protection of an appellation of origin with trademark protection.

Third. — It is necessary to observe that, in the context of what has just been said, the new amendments equate or identify an appellation of origin which has been the subject of a general declaration, with a trademark registration. Despite this assimilation, which appears in Section 208-L, I feel that a registered appellation of origin should be treated differently from a registered trademark: the purposes of a trademark and of an appellation of origin are different in that a mark is a sign which serves to distinguish goods and services from the goods and services of competitors; the purpose of an appellation of origin is to designate a product originating in a country, region or locality when the quality or characteristics of that product are due exclusively to the geographical environment, including natural and human factors. Furthermore, as has been seen (point 18, above), unlike trademarks, appellations of origin have no owner able to guarantee protection against misuse; "the capacity to prevent or repress such misuse is therefore given to the competent authority of the country concerned."⁹ The source of protection, the conditions governing their duration and validity, the methods of terminating the corresponding right and many other factors determine the legal difference existing between the two categories of distinctive signs.

Fourth. — In establishing the machinery for enjoying the authorization to use an appellation of origin, the Law allows such authorization to be transferred and also licensed (Sections 208-T and 208-U). The new provisions expressly provide that whereas the Mexican State is the sole proprietor of appel-

lations of origin recognized and protected in Mexico (Section 208-Q), the right to use an appellation can be transferred by private individuals. Another solution (in my view, preferable) would have been for the Law to provide that the authorization to use an appellation cannot be transferred or licensed to third parties. The Law would then have fixed the requirements for the grant of permission to use an appellation, and left the door open for anyone meeting those requirements to apply for and obtain, directly from the Administration, permission to use the appellation. It would thus be possible — since the Law does not make it a condition for registration that such operations should be carried out free of charge — to prevent the right to transfer or license from giving rise to speculation on the part of the persons who originally obtained the right to use the appellation.

Fifth. — The amendments to Section 105(ii) and (xii) (see point 30 of this Study) may give rise to some difficulties due to the different natures of a trademark and an appellation of origin. A mark may be appropriated normally by individuals and exceptionally by the Nation, whereas an appellation of origin belongs solely to the State. This means that in practice it may not be possible to exempt an appellation in common use or a proper or common geographical denomination from the bar against registrability, as provided in the amended provisions. If a private individual, whether or not established in the place of origin, requests the registration of an appellation of origin as a trademark, registration would have to be refused, *inter alia*, on the grounds that appellations of origin cannot be appropriated by private individuals. Similarly, if a government body sought registration of an appellation of origin as a trademark, its application also would have to be rejected.

Sixth. — It is hoped that the new Mexican Industrial Property Code, shortly to be issued, will resolve the problems mentioned here in a constructive spirit without underestimating the firm resolve of those who have endeavored to provide our country with the instrument enabling it to fulfill its international commitments.

⁹ *Model Law for Developing Countries on Marks, Trade Names and Acts of Unfair Competition*, BIRPI, Geneva, 1967, p. 84 — Commentary to Section 51.

LETTERS FROM CORRESPONDENTS

Letter from the United Kingdom

By Gordon GRANT *

PATENTS

In 1971 the number of applications for patents again fell. Since there was a slight increase in the examining staff, the number of unexamined applications fell by nearly 3,000 by the end of the year — the first reduction since 1965. The complete specifications filed from abroad under the Paris Convention fell by 0.7%. The decreases were fairly general, apart from France and Japan.

Patent Office Finances

The increase in fees in 1971 stemmed the deficit in the Patent Office finances, which had averaged £ 180,000 a year between 1960 and 1969. In 1971 there was a surplus of £ 142,000.

European System for the Grant of Patents

The draft Convention for the proposed European system has been the subject of keen interest and discussion, particularly with regard to patentability, the treatment of claims and the right of representation before the European Patent Office.

Following representations from the interested organisations, the British Government proposed that the European Patent Office should be housed in Britain. That this proposal, which seemed entirely logical in view of the expected preponderance of applications in the English language, should have been rejected was the cause of keen disappointment in patent circles.

Patents in the EEC

With the knowledge that the United Kingdom was to join the European Economic Communities, the draft Convention for the European Patent for the Common Market has attracted much interest. There has also been much discussion and some concern in industrial and professional circles about the intentions of the Competition Directorate of the European Commission and the decisions, in industrial property matters, of the European Court.

Development of Inventions

The last Letter¹ referred to an enquiry about the exploitation of inventions which the Government had asked Mr. Patrick Docksey, formerly General Manager of the Research and Technical Department of British Petroleum, to undertake. When Mr. Docksey's report was presented, the Govern-

ment was not willing to publish it. The argument which developed over this was subsequently resolved by the Select Committee of Parliament on Science and Technology, which, since it had access to the report, decided to publish it as part of a special report of its own². There is nothing sensational in Mr. Docksey's report, although it is an interesting contribution to a difficult subject from an authoritative source.

Patent Abridgments

The representations to the Government³ about the proposal to abandon the printed abridgments of patent specifications led to a decision to maintain them for the time being. It was said that the proposal will inevitably fall for reconsideration when the Patent Cooperation Treaty and the European Patent become operative, since in those circumstances the majority of patents effective in the United Kingdom are likely to be published with a PCT or European Patent abstract.

TRADE MARKS

The number of applications for trade marks again fell in 1971 by 4.7% compared with 1970. The greatest number of marks registered continued to be in pharmaceuticals and scientific instruments and apparatus. Applications from the United States of America again greatly exceeded those from any other country and amounted to 12% of all applications.

Review of Trade Mark Legislation

The Government has at last acceded to representations about the need for a review of British trade mark legislation — the present Act dates from 1938 — and has set up a committee under the chairmanship of Mr. H. R. Mathys, a Deputy Chairman of Courtaulds Limited. Mr. Mathys, who at one time practised as a patent agent, is well known in industrial property circles and is Chairman of the Industrial Property Commission of the International Chamber of Commerce. The terms of reference of his Committee are "to examine the British trade mark law and practice and consider whether any changes are desirable in the light of present day trading conditions and international developments". It is clear that special weight has been given to the "consumer" aspect, since three of the other six members of the Committee have no professional connection with trade marks.

Trade Mark Registration Treaty

Active interest has continued in the proposed Treaty and while something of this kind is generally favoured, it is clear that there is no lessening of opposition to anything which savours of what is generally known as "central attack".

* Comptroller-General of Patents, Designs and Trade Marks and Head of the Industrial Property and Copyright Department of the Department of Trade and Industry, 1958-1969; Secretary of the Trade Marks, Patents and Designs Federation, since 1970.

¹ *Industrial Property*, 1971, p. 315.

² *First Special Report from the Select Committee on Science & Technology*, Session 1972-73, Her Majesty's Stationery Office, London.

³ See *Industrial Property*, 1971, p. 316.

INDUSTRIAL DESIGNS

In 1971 the number of applications for registration of industrial designs rose by some 400 compared with the number in 1970, although it was still 1,000 less than in 1962. The applications for textile articles increased by 7.6 %.

Some concern has been expressed in professional circles about the working of the Design Copyright Act of 1968, which was intended to enable the owner of an industrial design to take action against copying during a period of 15 years. It now seems likely that the Government will undertake a review of the copyright legislation in the fairly near future, and it may be expected that this will include a thorough discussion of the relationship between copyright and industrial design protection, on which industry and the professional bodies are likely to have a good deal to say.

JUDICIAL PROCEEDINGS

Patents for Medical Treatment

An appeal (by Schering A. G.) against the refusal of the Patent Office to consider an application for a patent for a method of contraception on the ground that it was a process for the treatment of human beings was allowed by the Patents Appeal Tribunal. The Court accepted the argument that the established practice related only to medical treatment and that contraception did not fall within the prohibition on processes for medical treatment⁴.

"Disclosure" by the Commissioners of Customs and Excise

Norwich Pharmacal Company obtained a judgment against the Commissioners requiring them to disclose the names and addresses of importers of a chemical compound for which they held the patent. On appeal, the Court of Appeal held that the balance of public interest was in favour of preserving confidence in respect of information disclosed by importers to the Customs.

Importation under Compulsory Licence

The Comptroller of Patents granted compulsory licences, including licence to import, under a patent for the drug chlor-diazepoxide (Hoffmann-La Roche). An appeal against the Comptroller on the ground that he had no power to grant a

licence to import, was rejected by the Patents Appeal Tribunal. An application for orders of certiorari to quash the decision of the Patents Appeal Tribunal was rejected by the Divisional Court on the ground that importation with a view to sale was a use or exercise of an invention, and that the Comptroller was entitled under Section 41 of the Patents Act to grant a licence to import the drug and the intermediate with a view to their sale in the United Kingdom.

Protection of Functional Designs

In October 1971 the House of Lords gave its decision on an appeal in an action about an alleged infringement of two registered designs for electric terminals. In the trial Court the plaintiffs had admitted that function was the sole reason why the author of the designs had chosen the particular shape. The Judge held that the designs were invalid, since they lacked originality or novelty and were dictated solely by the functions which had to be performed. The Court of Appeal reversed the trial judge's findings. The defendant appealed to the House of Lords, which decided that the features of the designs were dictated solely by function and that the designs were invalid⁵.

"Waterford"

Waterford is a town in the Republic of Ireland which has long been famous for glassware, although the original factory closed in 1851. In February 1972 the High Court upheld the refusal of the Registrar of Trade Marks to register "Waterford" on behalf of a manufacturer of glassware in the town, who had started trading in 1947⁶.

Passing-Off — Granada

In March 1972 Granada, very well known for activities in television, the theatre, cinema and publicity, sought an interlocutory injunction in the High Court to restrain the Ford Motor Company from using the name Granada for a new model of motor car. The judge rejected the application from Granada on the ground that the plaintiffs had failed to produce evidence to satisfy the Court that there was a likelihood of confusion between the business of Ford and that of Granada.

⁵ *Amp Incorporated v. Utilux Proprietary Limited*, [1972] R. P. C. 103.

⁶ *"Waterford" Trade Mark*, [1972] R. P. C. 149.

⁴ *Schering A. G.'s Application*, [1971] R. P. C. 337.

NEWS FROM PATENT OFFICES

UNITED KINGDOM

The Work of the Patent Office in 1971-72

A report on the work of the United Kingdom Patent Office was published in *Industrial Property* in November 1971, and covered the period from 1969 to mid-1971. Since then, the principal trend noted in that report, a slight downward movement in the number of patent applications received coupled with an easing of the difficulty of recruiting suitably qualified examiners, has continued. It is therefore the theme of this report that the progress made by the Office in solving the problems of its patent branch has been maintained. The situation in the trade mark and designs branches is not so clear-cut; the number of trade mark applications is again rising whereas design applications are falling.

Patents

The decline in the annual input to the patents branch, noted in the previous report, has continued. Thus, 61,078 applications were received in 1971 compared with 62,101 in 1970 (a drop of 1,023), and the number of applications (30,891) received in the first half of 1972 was 353 less than the number received in the first half of 1971. 48,246 complete specifications were filed in 1971 compared with 49,377 in 1970 (a decrease of about 2.3 %) and the number of complete specifications (24,114) filed in the first half of 1972 was 651 less than the number filed in the first half of 1971, a decrease of about 2.2 %. It remains to be seen whether this downward trend will be maintained.

Of the complete specifications filed in 1971, 73 % originated outside the United Kingdom, 28 % coming from the United States of America and 35 % from Europe. A comparison of the 1970 and 1971 figures indicates that the input of complete specifications filed under the Paris Convention fell by about 0.7 %, whereas the input of domestic complete specifications filed after provisional specifications fell by about 5 %. The further increase in the fee for filing a complete specification, imposed in March 1971, may have influenced the latter figure.

The receipt of applications and the filing of complete specifications in the early part of 1971 were temporarily impeded by a postal strike, and this resulted in some 10,000 complete specifications all bearing the filing date 19 April 1971. In all these cases, the normal period for putting the application in order will expire on the same day, i. e. 19 October 1973, and problems could arise in practice if amendments of such complete specifications to meet examiners' objections were delayed until near the end of the period in question. Steps have been taken, in consultation with the Chartered Institute of Patent Agents, with a view to avoiding this difficulty.

By continuing recruitment of examiners on a modest scale, we were able to maintain sufficient technical staff in post during 1971 to reduce the backlog of unexamined complete specifications by 2,198 to a figure of 45,971 at the end of that year, the first reduction since 1965. A further reduction of 559 to a figure of 45,412 was achieved in the first half of 1972.

From the patent specifications published in 1971, it is possible to discern a considerable number of fields of increased inventive activity, but it is not possible to mention them all in a report of the present length. Most noteworthy, perhaps, is that inventors are increasingly turning their attention to problems of pollution and other hazards associated with existing technology. This can be seen in inventions relating to the removal of sulphur from oil, improvements in carburettors and exhaust gas treatments to reduce pollution caused by motor exhaust, and in devices, such as gas-filled bags, which seek to protect the occupants of motor vehicles in the event of a crash.

The previous report referred to the publication of the Report of the Departmental Committee (Banks Committee) on the British patent system. Since then, it has been announced in Parliament that the Government regards the principal recommendations of the Report as providing a satisfactory basis for legislation, when time permits, but subject to further consideration of the recommendations in relation to payment for the Crown use of patent inventions, the publication of abridgments, and the settlement of disputes and appeals.

Trade Marks

The situation in the trade marks branch from 1971 onwards is summarised in the following table:

Year	Applications Received	Applications Dealt with	Opening Backlog	Closing Backlog	Difference (+ or -)
1971	15,735	16,712	5,688	4,711	— 977
1972 (half year to 1. 7. 72)	9,436	7,909	4,711	6,238	+ 1,527

The number of applications received in 1971 showed a further fall in comparison with each of the two preceding years, but a reversal of this trend is apparent in the first half of 1972. Despite the 1969 increase in examination staff, the backlog of applications awaiting examination is again rising.

The proportion of applications received from abroad in 1971 was slightly under 40 % of all applications, compared with over 41 % in 1970. The trend for the first half of 1972 is for the proportion of applications from abroad to rise.

Following the practice of reviewing our intellectual property laws from time to time, a Departmental Committee under the chairmanship of Mr. H. R. Mathys was established in 1972

to examine United Kingdom trade mark law. The Committee has begun its work and hopes to finish its enquiry by the end of 1973.

Industrial Designs

In the designs branch, the fall in the number of applications for registration which had been in evidence since 1966 was reversed in 1971, when 6,788 applications were received, as compared with 6,306 in 1970. However, the half-year figure for 1972 was 3,100, which may indicate a return to the downward trend previously noted. Moreover, now that Nigeria has followed other ex-British dependencies in setting up its own system of design protection, it may be that this will tend to reduce the number of textile design applications received in the United Kingdom.

International Cooperation

In international matters, our main preoccupation has again been the European Patent Convention, the negotiations

on which have made heavy demands on the time of our senior staff. On the Patent Cooperation Treaty, we are now participating in the work of the Interim Committees; and we continue to cooperate in work on the International Patent Classification and ICIREPAT. On the trade mark side, we have been involved in the preparatory work on the Trade Mark Registration Treaty, which will be considered at the Vienna Conference this year.

* * *

To sum up, 1971 and the first half of 1972 was a period in which there were no major new developments, but in which the Office continued to improve its position in relation to the backlog of patent work. At the same time, the European Patent and the European Patent Office began to assume a more definite shape and will, clearly, increasingly make their influence felt in the life and work of the United Kingdom Office.

ACTIVITIES OF OTHER ORGANIZATIONS

International Association for the Protection of Industrial Property (IAPIP)

XXVIIIth Congress

(Mexico City, November 12 to 18, 1972)

The above Congress of IAPIP was the first Congress of this Association ever held in a country of Latin America. It was a resounding success because, notwithstanding the enormous number of participants (approximately 1,100 delegates accompanied by 700 ladies), its organization was excellent, the discussions were interesting and the various receptions and excursions organized surpassed each other in splendor. The personal attendance to the minutest details of the President of IAPIP, Mr. Antonio Ruiz Galindo Jr., and of the Chairman of its Mexican Group, Mr. Antonio Correa, was highly appreciated by all participants and contributed considerably to the exceptionally congenial atmosphere of the Congress.

The World Intellectual Property Organization was represented at the Congress by its Director General, Professor G. H. C. Bodenhausen (who represented also the Union for the Protection of New Plant Varieties as its Secretary General) and by its First Deputy Director General, Dr. A. Bogsch.

At Congresses, where hundreds of participants attend each meeting, considerable skills must be displayed by the General Rapporteur or by special rapporteurs and perhaps even more so by the chairmen of the working sessions, if meaningful resolutions are to be adopted.

The resolutions adopted by the Mexico Congress are the following:

QUESTION 45 B

Value of Industrial Property for Technical Development and Economic Progress

The International Association for the Protection of Industrial Property,

Recalling that, at its Congress of Tokyo in 1966, it considered the problem of the relation of Industrial Property to technical and economic progress, especially for developing countries, recognized the need of adjustment of legislation to meet the special situation of such countries and expressed its willingness to collaborate for the accomplishment of this object; and

Noting that all peoples of the world have the right to adequate food, housing, clothing, schooling and medical care;

Noting that since the Congress of Tokyo the aspiration of a large part of the world to reach a sustained and satisfactory

economic development, which is a condition for satisfying such needs, has become more intense and pressing;

Noting that a decisive contribution to the attainment of this object is the creation or acquisition of appropriate technology and its application to such sectors of the economy as are best adapted to balanced growth in the particular circumstances of each country;

Noting that at least in the early stages of development most of the needed modern technology suitable to the conditions of developing countries cannot be transferred except from developed countries;

Noting that international cooperation between the holders of technology protected or not, by patents or by other means, and enterprises in developing countries is best achieved when the conditions are favorable to the recognition and protection of rights of Industrial Property, and as a counterpart of such recognition and protection, the owners of such rights may be subject to conditions preventing abuses in the exercise of the rights as a means of sharing in the responsibility for the economic and technical progress of developing countries;

Noting that this cooperation is favored by the provisions of the International Convention for the Protection of Industrial Property, which is the best existing international arrangement for the recognition and satisfaction of the interests and demands of both developed and developing countries, as shown by the adherence of 79 countries belonging to both categories of countries;

Noting that the Convention allows countries to adopt such national legal measures as may be deemed necessary or desirable by each country for the advancement of its technical and economic growth. Indeed each developing country in adhering to the Paris Convention may:

- (a) require working of patents within a fixed period;
- (b) provide for compulsory license for such working after such period and also at any time for reasons of important public interest;
- (c) prohibit restrictive clauses in License Agreements, likely to unduly impede competition and domestic economic progress and
- (d) provide for appropriate government control and approval of Industrial Property License Agreements;

Provided such legal and administrative measures should be applied flexibly and do not reach such excessive limits that they affect the substance of the Industrial Property rights and destroy the inducement for economic cooperation,

Concludes:

1. Decides to keep the present question on its agenda as an item of predominant importance and to continue the study under the broadest aspects.
2. Directs the appointment of a special committee for that purpose, to work in close cooperation with intergovernmental organisations, especially WIPO, and in private associations, in efforts directed towards the needs of developing countries.
3. Shall undertake such efforts as may persuade non-member countries to adhere to the Paris Convention.

QUESTION 51 B

Application of the International Convention for the Protection of New Varieties of Plants of 1961

The International Association for the Protection of Industrial Property,

Considering that it has been invited to attend the meetings of the UPOV Working Party on Variety Denominations which will discuss the observations of a certain number of non-governmental organizations regarding the provisional guidelines for variety denominations;

Considering that the intention behind the provisions of Article 13(5) of the UPOV Convention clearly is that the denomination of a new variety should as far as possible be the same in all the Member-States;

Considering that it becomes increasingly difficult to find trademarks, which can freely be adopted and that plant breeders should not be subjected to the same difficulties in selecting variety denominations;

Considering further that Article 13(9) of the Convention provides that it shall be permitted in respect of a product to add a trademark or a trade name to the denomination of a new variety,

Considering also that no undue restrictions can be imposed regarding the use of a trademark by its lawful owner,

Expresses as its opinion:

(1) that the adoption of common rules for determining variety denominations is desirable with a view to harmonizing the application of Article 13 of the Convention in all Member-States, but that the present guidelines are too exacting in the conditions they impose upon variety denominations and should therefore be eased, more particularly in that it should not be necessary that the variety denomination consists solely of a word or words or of a combination of a word with letters and or figures, but it should be sufficient that the denomination consists of one or more syllables optionally combined with one or more figures or/and letters,

(2) that no obligation as regards the use of a trademark in addition to the variety denomination should be imposed other than the provision that the variety denomination must always be used in such a manner that it is clearly visible and legible, so that the buyer will not be confused with regard to the identity of a variety.

QUESTION 52 B

Revision of Madrid Agreement

The International Association for the Protection of Industrial Property,

On the Central Attack

Noting that many Conferences of Experts, as well as several meetings of the IAPIP, have failed to devise a generally acceptable method of Central Attack within the framework of TRT despite the desire of a substantial number of countries for a method of Central Attack;

Noting that the question will be settled at the 1973 Diplomatic Conference, whose participants will have the opportunity of proposing still further solutions to this question,

Concludes that the TRT system is inherently difficult to reconcile with any method of Central Attack, that additional study is unlikely to lead to a solution, and that potential members of TRT must decide for themselves, in the event that the Diplomatic Conference fails to adopt a provision for Central Attack, whether it is in the interest of their nationals to adhere to TRT without such a provision.

On the Options Available to Member Countries (Art. 4(6) and 5(4))

Noting that the text of TRT retains, in Articles 4(6) and 5(4), options whereby member countries may impose upon their nationals and residents the obligation to file or register first in their own countries, and may also exclude "self-designation",

Emphasizes that these options are inconsistent with the direct and independent filing with the International Bureau which is a basic principle of TRT and,

Affirms the Resolution of the Council of Presidents at Cannes opposing the inclusion of these options in TRT.

On the Systems of Imposition of Fees (Rules 9 and 28)

Noting that TRT relegates to Rules 9 and 28, the systems whereby the imposition of fees, and their distribution to the designated States, are fixed;

Noting that under Article 33 the Regulations may be amended by three-quarters of the votes cast, which may be as few as three-eighths of the member countries;

Noting that the question of fees is of vital importance to many countries and may determine their adherence to TRT,

Affirms the Resolution of the Council of Presidents at Cannes that the main provisions relating to the systems for the imposition and distribution of fees should be a part of the text of the Treaty itself.

On the Limitation of the Number of Classes (Art. 13(2))

Noting that Article 13(2) of TRT prohibits the imposition of a limit on the number of classes which may be covered in one international registration;

Noting the great concern repeatedly expressed on behalf of many countries that TRT might lead to a proliferation of trademarks and a cluttering up of national registers;

Believing that a limit on the number of classes which may be covered in one international registration would tend to deter excessive and unjustified claims, and that only a very small number of marks require protection in many classes,

Affirms the position adopted by the Council of Presidents at Munich, favoring a limitation on the number of classes which may be covered in one international registration, and believes that the limit ought to be three classes.

On the Term for Refusing the National Registration Effect (Art. 12(2))

Affirms the Resolution adopted by the Council of Presidents at Cannes to the effect that the term within which national registration effect may be refused under Article 12(2) should be twelve months.

On the Change of Names and Addresses of Registrants (Art. 14)

Affirms the Resolution adopted by the Council of Presidents at Cannes to the effect that Article 14 should provide for the recordal of changes of name and of address and, in general, declares that all changes affecting the identification as well as the identity of the owner of an international registration should be recorded, and

Affirms the Resolution adopted by the Council of Presidents at Cannes to the effect that new owners of international registration not qualified under TRT to own such registration should be given a two-year term within which to qualify.

On the Effect of Renewal of an International Registration (Art. 16)

Favors modification of the wording of Article 16 and the Commentary thereunder to make it clear that renewal of an international registration under this article does not affect the applicability of national law in regard to the validity of the national effect resulting from such renewal.

On Collective and Certification Marks

Deeming that differences in national definitions of collective and certification marks, and in the requirements applicable to such marks, render impractical the inclusion of these marks in TRT at the present time,

Affirms the decision of the Council of Presidents at Lenin-grad that collective and certification marks ought not to be included now as marks registrable under TRT.

On the Suspension of the Requirements of Use (Art. 18(3))

Affirms the Resolution adopted by the Council of Presidents at Cannes to the effect that the term during which national requirements for the use of a trademark are to be suspended under Article 18(3) should be five years.

On the Conditions for Amending such Term (Art. 18(3) and 36)

Believing the time limit fixed in Article 18(3) to be of vital importance, states that its amendment under Article 36 ought to be subject to the same rule of unanimity as that article provides for the term fixed in Article 12(2)(a)(i).

QUESTION 53 B

Know-How

The International Association for the Protection of Industrial Property,

1. *Approves* the doctrine submitted to the Congress in the Summary Report (*Rapport de Synthèse*) that Know-how is formed of knowledge and experience, acquired not only for the practical application of a technique but also for the industrial, commercial, administrative and financial conduct of an enterprise.
2. *Entrusts* the Executive Committee with the task of drafting the text of the provision which could be introduced in the Convention as a separate article.
3. *Recommends* the introduction of such doctrine into the national legal systems.

QUESTION 54 B

European System for the Grant of Patents

The International Association for the Protection of Industrial Property,

1. *Approves* the action of the Council of Presidents.
2. *Entrusts* the Council of Presidents to pursue with the continuation of this action.
3. *And instructs* the Delegation, which will be appointed for the Munich Diplomatic Conference, to represent the views of IAPIP.

International League Against Unfair Competition

Twenty-Second Congress

(Geneva, May 21 to 25, 1972)

The 22nd Congress of the International League Against Unfair Competition was held in Geneva under the chairmanship of Professor Edmond Martin-Achard, President of the Swiss Association for the Study of Competition and of the International League Against Unfair Competition.

The meeting was attended by participants from 20 countries and by representatives of public and private international bodies. WIPO was represented by Mr. J. Voyame, Second Deputy Director General.

The agenda of the Congress included general reports as well as various reports on questions submitted for continued discussion and on new questions. These reports could, after the discussions, be the subject of motions.

The following motions were accordingly adopted:

Comparative Advertising

It is not permissible to use untruthful information in advertising. Advertisers may emphasize the specific characteristics and advantages of their products or services in a fair and comprehensive manner without resorting to sensational claims. Disparagement of competitors is inadmissible; irrelevant allusions to competitors must be avoided.

Comparison with a competitor's product or service is permissible where it is objective and justified in order to inform the public or as a defense against prohibited comparisons.

It is desirable that national laws provide speedy and effective remedies to restrain abusive practices.

Infringement of Trade Secrets in the field of Competition

In the present state of most national legislations and under the international conventions, trade secrets as a whole do not enjoy sufficiently effective protection.

The International League Against Unfair Competition has a number of tentative definitions of a trade secret which, in its opinion, form a useful working basis.

Before a final definition can be proposed, the greatest possible number of concrete situations should be studied; this preliminary analysis should, at a second stage, enable a definition to be formulated.

Once this conceptual delimitation has been completed, a decision will have to be taken on the most suitable ways of protecting trade secrets (by such means as criminal or civil actions or professional measures).

Protection of Indications of Source and Appellations of Origin

The Congress expresses:

- its satisfaction to note the great progress that has been made in the field of the protection of appellations of origin and indications of source since the Vienna Congress;
- its desire to see this protection made more effective in countries where it is insufficient at present;

and recommends:

- accession to the Lisbon Agreement;
- the adoption of bilateral agreements providing for the protection of indications of source and appellations of origin;
- the improvement of national legislation and international conventions providing for the protection of appellations of origin and indications of source, where the protection resulting from existing provisions is not sufficient.

* * *

At the end of the Congress, Professor Remo Franceschelli, of Milan, was appointed President of the International League in succession to Professor Edmond Martin-Achard.

BOOK REVIEWS

Lizenzbandel [License Transactions], by Kretschmer and Osterland. Die Wirtschaft, Berlin, 1972. - 223 pages.

It has been six years since a work was last published in the German Democratic Republic on the subject of license agreements; this was the brochure by Feige and Seiffert entitled *Internationale Lizenzen* (International Licenses).

As a result of economic development and the various changes that have occurred, the brochure mentioned above, which at the time was widely acclaimed, has become out of date; this new book on the subject is therefore welcome. It is particularly fortunate that one of the authors, Professor Osterland, should be a lawyer who is very competent in the field and well known in Socialist countries, while his co-author is a patent agent with a wide experience in technical aspects.

The book is in two parts; the first deals with the implications of international license transactions for the national economy of the German Democratic Republic. This part gives an overall picture of the buying and selling of licenses abroad, with reference to license agreements and methods of negotiation, and their bearing on the German Democratic Republic's foreign trade plan. It therefore provides information on domestic provisions in the German Democratic Republic governing international license transactions, which only indirectly affect foreign contracting parties.

The second part of the book, which is concerned with the drafting of agreements as a means of safeguarding the purpose and the effectiveness of license transactions, deals with questions which do affect foreign contracting parties directly. An interesting and detailed section on the drafting of clauses (pages 114 to 178) affords useful guidance to the reader. The authors devote special attention to the question of guarantees, analyzing the practice in this regard in the United States of America and in Germany (Federal Republic of). In addition, and this is what gives the chapter a unique value, there is a synthesized table of the legislative provisions in the Soviet Union, Czechoslovakia and Hungary concerning the guarantees accorded to the licensor.

Indeed, it is difficult to imagine a clause which the authors have not thought of and discussed. Their book would undoubtedly make worthwhile reading even outside the Socialist countries.

A. Vida, Budapest

* * *

Selection of New Publications

COHEN JEHOAM (Herman). *The Protection of Know-How in 13 Countries*. Kluwer, Deventer, Herman Cohen Jehoram, 1972. - 164 p.

DANTZ (Hellmunt). *Das Inanspruchnahmerecht an einer Dienstleistung*. Sarrebrücken, University of the Saarland, 1972. - 132 p.

DILGER (Peter). *Die Abgrenzung des Vorbenutzungsrechts vom Patentrecht bezüglich Voraussetzungen und Wirkungen*. St. Gall Law Faculty, 1972. - 434 p.

DOI (Teruo). *Digest of Japanese Court Decisions in Trademark and Unfair Competition Cases*. Tokyo, The American Chamber of Commerce in Japan, 1971. - 174 p.

GEISSLER (Bernhard). *Der Umfang des Stoffschutzes für chemische Erfindungen*. Cologne, Berlin, Bonn, Munich, Carl Heymanns Verlag KG, 1972. - 216 p.

KRASSER (Rudolf). *La répression de la concurrence déloyale dans les Etats membres de la Communauté Economique Européenne - Tome IV: France*. Munich, Dr. Dr. H. C. Eugen Ulmer, Max-Planck-Institut für ausländisches und internationales Patent-, Urheber- und Wettbewerbsrecht, 1972. - 693 p.

MÉGRET (Jacques), **LOUIS** (Jean-Victor), **VIGNES** (Daniel) and **WAELEBROECK** (Michel). *Le droit de la communauté économique européenne, Volume 4: Concurrence*. Editions de l'Université de Bruxelles, 1972. - 518 p.

NIX (Frank Arnold). *Die Rechtsstellung des Erfinders im sowjetischen Recht*. Frankfurt/Main University, 1972. - 168 p.

PFENNINGER (Ernst). *Schutz und Standort der Ausstattung im schweizerischen gewerblichen Rechtsschutz*. Zurich, Schulthess Polygraphischer Verlag AG, 1971. - 97 p.

PHILIPPOVSKII (E. E.). *Patentnaia sistema i nauchno-tekhnicheskii progress v kapitalisticheskikh stranakh*. Moscow, Izdatel'stvo "Nauka", 1972. - 128 p.

REIMER (Eduard). *Wettbewerbs- und Warenzeichenrecht*. Cologne, Berlin, Bonn, Munich, Carl Heymanns Verlag KG, 1972. - 706 p.

SCHMIDT (Joanna). *L'invention protégée après la loi du 2 janvier 1968*. Paris, Librairies techniques, 1972. - 315 p.

SKRIPKO (V. R.). *Okhrana prav izobretelei i ratsionalizatorov v SSSR*. Moscow, Izdatel'stvo "Nauka", 1972. - 153 p.

Tax Guide for Patents, Trademarks and Copyrights. Patent Law Association of Chicago, 1970. - 158 p.

WEINSTEIN (Z.). *Le régime fiscal de la propriété industrielle*. Paris, Editions J. Delmas et Cie, 1972. - 197 p.

CALENDAR

WIPO Meetings

- April 9 to 13, 1973 (Geneva) — Committee of Experts on a Model Law for Developing Countries on Appellations of Origin and Indications of Source
Object: To study a Draft Model Law — *Invitations:* Developing countries members of the United Nations — *Observers:* Intergovernmental and international non-governmental organizations concerned
- April 25 to 30, 1973 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation
- April 30 to May 4, 1973 (Geneva) — ICIREPAT — Subcommittee on Organic Chemistry (STC)
- May 2 to 4, 1973 (Geneva) — WIPO Coordination Committee — Extraordinary Session
- May 2 to 4, 1973 (Paris) — Working Group on Photocopying
Participants: Experts invited in their personal capacity — *Note:* Meeting convened jointly with Unesco
- May 7 to 11, 1973 (Geneva) — ICIREPAT — Technical Committee for Shared Systems (TCSS)
- May 14 to 18, 1973 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)
- May 17 to June 12, 1973 (Vienna) — Vienna Diplomatic Conference on Industrial Property, 1973
Object: Adoption of (a) the Trademark Registration Treaty, (b) the Agreement for the Protection of Type Faces and their International Deposit, (c) an instrument establishing an International Classification of the Figurative Elements of Marks — *Invitations:* States members of WIPO, the Paris or Berne Union — *Observers:* Other States members of the United Nations or of a Specialized Agency; intergovernmental and international non-governmental organizations concerned
- June 12 to 23, 1973 (Stockholm) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee
- June 25 to 29, 1973 (Geneva) — WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Provisional Committee
Object: To make proposals to the competent organs of WIPO — *Invitations:* Member States of WIPO or of the Paris or Berne Union — *Observers:* Other States members of the United Nations or of a Specialized Agency; intergovernmental and international non-governmental organizations concerned
- June 26 to 30, 1973 (Stockholm) — International Patent Classification (IPC) — Joint ad hoc Committee
- July 2 to 11, 1973 (Nairobi) — Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites
Object: Study of the problems — *Invitations:* States members of the Berne Union or of the Paris Union and other States members of the United Nations or of a Specialized Agency — *Observers:* Intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with Unesco
- July 4 to 6, 1973 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)
- September 3 to 7, 1973 (Geneva) — Madrid Union — Assembly and Committee of Directors of the National Industrial Property Offices
Object: Revision of the Regulations of the Madrid Agreement Concerning the International Registration of Marks — *Members:* States members of the Madrid Union — *Observers:* States members of the Paris Union, not members of the Madrid Union; Benelux Trademark Office
- September 10 to 18, 1973 (Geneva) — Nice Union — Committee of Experts for the International Classification of Goods and Services for the Purposes of the Registration of Marks
Object: Amendments and additions to the International Classification — *Members:* States members of the Nice Union — *Observers:* States members of the Paris Union, not members of the Nice Union; Benelux Trademark Office
- September 17 to 21, 1973 (Geneva) — Committee of Experts on a Model Law on Neighboring Rights
Object: To study a Draft Model Law — *Participants:* International non-governmental organizations concerned — *Note:* Meeting convened jointly with the International Labour Organisation and Unesco
- September 24 to 28, 1973 (Geneva) — Sub-Working Group for the Mechanization of Trademark Searches
Object: Examination of tests carried out concerning mechanized trademark searches — *Members:* Belgium, Canada, France, Germany (Federal Republic of), Netherlands, Spain, United Kingdom, United States of America — *Observer:* Benelux Trademark Office
- October 1 to 12, 1973 (Ahidjan) — Committee of Governmental Experts on a Copyright Model Law for African States
Object: To study a Draft Model Law — *Invitations:* African States — *Observers:* States members of the Berne Union or party to the Universal Copyright Convention; intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with Unesco
- October 8 to 19, 1973 (Geneva) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee
- October 22 to 27, 1973 (Tokyo) — Patent Cooperation Treaty (PCT) — Interim Committees for Administrative Questions, for Technical Assistance and for Technical Cooperation, and Standing Subcommittee of the latter
- October 30 to November 2, 1973 (Bangkok) — Asian Industrial Property Seminar
- November 5 to 9, 1973 (Geneva) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee
- November 14 to 16, 1973 (Geneva) — ICIREPAT — Plenary Committee (PLC)

November 19 to 27, 1973 (Geneva) — Administrative Bodies of WIPO (General Assembly, Conference, Coordination Committee) and of the Paris, Berne, Madrid, Nice and Locarno Unions (Assemblies, Conferences of Representatives, Executive Committees)

Invitations: States members of WIPO, or of the Paris or Berne Union — *Observers:* Other States members of the United Nations or of a Specialized Agency; intergovernmental and international non-governmental organizations concerned

November 26 and 27, 1973 (Geneva) — Lisbon Union — Council

Members: States members of the Lisbon Union — *Observers:* Other States members of the Paris Union

November 28 to 30, 1973 (Geneva) — Working Group on Scientific Discoveries

Invitations and observers: To be announced later

December 3 to 5, 1973 (Paris) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee

Note: Meeting convened jointly with the International Labour Organisation and Unesco

December 3 to 7, 1973 (Geneva) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

December 3 to 7, 1973 (Geneva) — ICIREPAT — Technical Committee for Shared Systems (TCSS)

December 5 to 11, 1973 (Paris) — Executive Committee of the Berne Union — Extraordinary Session

Note: Some meetings with the Intergovernmental Copyright Committee established by the Universal Copyright Convention

December 10 to 14, 1973 (Paris) — ICIREPAT — Technical Committee for Standardization (TCST)

December 17 to 21, 1973 (Geneva) — Working Group for the Mechanization of Trademark Searches

Object: Report and recommendations to a Committee of Experts on mechanized trademark searches — *Invitations:* Australia, Austria, Belgium, Canada, France, Germany (Federal Republic of), Ireland, Japan, Luxembourg, Netherlands, Soviet Union, Spain, Sweden, United Kingdom, United States of America — *Observers:* Colombia, Benelux Trademark Office

UPOV Meetings

April 2 and 3, 1973 (Geneva) — Working Group on Variety Denominations

April 4 and 5, 1973 (Geneva) — Consultative Committee

June, 1973 (Avignon) — Technical Working Party for Vegetables

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

October 9 to 12, 1973 (Geneva) — Council

Meetings of Other International Organizations concerned with Intellectual Property

April 28 to May 1, 1973 (Valencia) — International League against Unfair Competition — Study meetings

May 3 to 5, 1973 (Brussels) — Union of European Patent Agents — General Assembly

May 7 to 11, 1973 (London) — International Federation of Musicians — Congress

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

May 21 to 25, 1973 (Paris) — Unesco International Copyright Information Centre

May 22 and 23, 1973 (Malmö) — International Plant Breeders Association for the Protection of New Varieties — Congress

June 26 to July 17, 1973 (Washington) — Organization of American States — Committee of Governmental Experts on Industrial Property and Technology Applied to Development

September 10 to 14, 1973 (Stockholm) — International Federation of Actors — Congress

September 10 to October 6, 1973 (Munich) — Munich Diplomatic Conference for the Setting Up of a European System for the Grant of Patents, 1973

September 24 to 28, 1973 (Budapest) — International Association for the Protection of Industrial Property — Symposium

October 28 to November 3, 1973 (Jerusalem) — International Writers Guild — Congress

December 10 to 14, 1973 (Brussels) — European Economic Community — "Community Patent" Working Party

