Industrial Property

Monthly Review of the
WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

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

Published monthly
Annual subscription: Sw.fr. 75.—
Each monthly issue: Sw.fr. 9.—

12th year - No. 11
NOVEMBER 1973

WORLD INTELLECTUAL PROPERTY ORGANIZATION

Staff Change in WIPO

Mr. Joseph VOYAME, Second Deputy Director General, has resigned with effect from Novemher 1, 1973, and has returned to the services of the Swiss Federal Government.

INTERNATIONAL UNIONS

Paris Convention

Application of the Transitional Provisions (Five-Year Privilege) of the Stockholm Act

MAURITANIA

The Government of Mauritania has notified its desire to avail itself of the provisions of Article 30(2) of the Stockholm Act of the Paris Convention for the Protection of Industrial Property.

This notification entered into force on the date of its receipt, that is, on October 26, 1973.

Pursuant to the said article, Mauritania, which is a member of the Paris Union, may, until the expiration of five years from the date of entry into force of the WIPO Convention, that is to say until April 26, 1975, exercise the rights provided under Articles 13 to 17 of the Stockholm Act of the Paris Convention, as if it were hound by those articles.

Paris Notification No. 47, of November 12, 1973.

Locarno Agreement

Ratification

HUNGARY

The Government of Hungary deposited on Septemher 28, 1973 its instrument of ratification, dated Septemher 7, 1973, of the Locarno Agreement Estahlishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968, with the following declaration:

"The Presidential Council of the Hungarian People's Republic declares that the provisions of Article 13 of the Locarno Agreement Estahlishing an International Classification for Industrial Designs of Octoher 8, 1968, are contrary to Resolution 1514 (XV) on the granting of independence to colonial countries and peoples, adopted hy the General Assemhly of the United Nations on Decemher 14, 1960." (Translation)

Pursuant to Article 9(3)*(b)*, the Locarno Agreement will enter into force with respect to Hungary on January 1, 1974.

Locarno Notification No. 15, of October 1, 1973.

WIPO MEETINGS

World Intellectual Property Organization

Industrial Property Seminar

(Bangkok, October 30 to November 2, 1973)

Report

prepared by the International Bureau

Introduction

1. The World Intellectual Property Organization (WIPO) convened, under the auspices of the Government of Thailand, an Industrial Property Seminar in Bangkok from October 30 to November 2, 1973. The conference facilities for the Seminar were provided by courtesy of the United Nations Economic Commission for Asia and the Far East (ECAFE).

2. Eighteen Asian States were invited to designate participants. The following eleven States were represented: Bangladesh, India, Indonesia, Iran, Khmer Republic, Malaysia, Philippines, Republic of Korea, Republic of Viet-Nam, Sri Lanka, Thailand. The following seven States were not represented: Afghanistan, Burma, Laos, Mongolia, Nepal, Pakistan, Singapore. Furthermore, two intergovernmental organizations, ECAFE and the International Patent Institute (IIB), and three non-governmental organizations, the International Association for the Protection of Industrial Property (AIPPI), the Asian Patent Attorneys Association (APAA) and the Lawyers' Association of Thailand, participated in an observer capacity. A list of participants follows this Report.

Opening of the Seminar

3. The Seminar was opened by the Representative of the Government of Thailand, Mr. Vicharn Nivatvongs, Under-Secretary of State for Commerce, and by Professor G. H. C. Bodenhausen, Director General of WIPO. They welcomed the participants and stressed the importance of the protection of industrial property as a factor facilitating the acquisition by developing countries of technology from the more advanced countries of the world, a necessary element for achieving rapid progress in their economic development.

Officers

4. The Seminar unanimously elected Mr. Talerngsri (Thailand) Chairman and Mr. Vedaraman (India) and Mr. Prodjomardojo (Indonesia) Vice-Chairmen.

5. Mr. K. Pfanner, Senior Counsellor, Head of the Industrial Property Division, WIPO, acted as Secretary of the Seminar.

Subjects of Industrial Property

6. The Seminar discussed this subject on the basis of document BS/3, prepared by the International Bureau of WIPO.

7. The Representative of WIPO introduced document BS/3, outlining briefly the essential elements of the various forms of industrial property protection and drawing the particular attention of the Seminar to the three Model Laws for developing countries prepared by WIPO and its predecessor BIRPI (Model Law for Developing Countries on Inventions, Model Law for Developing Countries on Marks, Trade Names, and Acts of Unfair Competition, Model Law for Developing Countries on Industrial Designs) as well as to the Model Law on Appellations of Origin and Indications of Source in course of preparation.

8. In the ensuing discussion, each of the participants of the Seminar gave a brief outline of the system of protection of industrial property in his country. The Seminar discussed each of these reports. In this context, particular emphasis was placed on efforts to introduce new legislation or to revise existing legislation. The participants of several countries which so far are not members of WIPO or of the Conventions and Agreements administered by it, in particular the Paris Convention for the Protection of Industrial Property, stressed their countries' interest in acceding to the Paris Convention and stated that the question of accession was being actively pursued.

Impact of Industrial Property on Developing Countries and its Role in Industrial Development

9. The Seminar discussed the impact of industrial property, particularly on developing countries, on the basis of document BS/4, prepared by the International Bureau, and the role of patents and trademarks in industrial development, with particular reference to the transfer of technology, on the basis of document BS/5, kindly contributed to the Seminar by ECAFE.

10. The Representative of WIPO introduced document BS/4, stressing the need of developing countries for an adequate patent and trademark system. Such system should, on the one hand, take the special problems of developing countries into account, in particular the need to encourage industrialization by the working of inventions in the country and by an effective control of licensing agreements. It should, on the other hand, be sufficiently strong to create an incentive for native inventiveness, transfer of foreign know-how and foreign investment.

11. The Representative of ECAFE introduced document BS/5, underlining the efforts of, and the effective cooperation established between, the United Nations and WIPO in the field of transfer of technology related to industrial property and the active role of WIPO in this field. He stressed, in particular, the fact that industrial property laws must be geared to the needs of industrial development and must consequently

be visualized as a vehicle for implementing economic policy. Existing patent and trademark laws must be revised with the needs of industrial development in mind. A closer scrutiny by governments of licensing agreements should establish a relevance between technological inputs in terms of needs and costs involved.

12. In the ensuing discussion, the need to synchronize the policy of a particular developing country in the field of industrial property with the requirements of its industrial development was stressed. It was difficult to give general rules in view of the great differences between countries as to conditions and requirements for development. A careful assessment was needed in each case to determine whether the necessary conditions for implementing a given technology in the country and a real need to establish production existed, before taking decisions with a view to exploiting a certain technology in the country.

13. To facilitate decisions on the choice of the appropriate technology, the search facilities to be created under the Patent Cooperation Treaty (PCT) and open to all developing countries which are party to the Paris Convention and accede to the PCT, as well as the services of the International Patent Documentation Center (INPADOC), should be used, as soon as available. It was stated in this context that the IIB — and, after its incorporation in the European Patent Office, the latter — would be available to conduct PCT searches for developing countries.

14. Reference was also made to the WIPO Program for the Acquisition by Developing Countries of Technology Related to Industrial Property, to be established by the General Assembly of WIPO in its November 1973 session. Within the framework of this Program, particular emphasis would be given to studies with a view to facilitating the transfer of appropriate technology to developing countries through the publication of a licensing opportunities periodical containing offers and requests for licenses, and through the creation of a special type of patent, the transfer of technology patent, to be granted jointly to a foreign patentee and to the local user of the technology patented abroad, or of an industrial development patent, as proposed by the Government of Brazil.

Technical Information in Patent Documents

15. The Seminar discussed questions related to the technical information contained in patent documents on the basis of document BS/6, prepared by the International Bureau of WIPO.

16. The Representative of WIPO introduced document BS/6, stressing in particular the need to possess at least the minimum documentation specified in Rule 34 of the PCT, arranged for search purposes, in order to carry out a meaningful novelty search, and underlining the usefulness of INPADOC's patent family service in order to establish which patent documents constitute duplicate publications of the same invention.

17. In the ensuing discussion, the requirements of the PCT minimum documentation and the services to be offered by INPADOC were considered in more detail. The importance of ready access to patent documents as a means to obtain rapid information on new technology was stressed. It was underlined that a patent family service such as that to be offered by INPADOC would constitute an effective aid in reducing the number of documents to be handled, by eliminating duplicate publications, and in facilitating the use of a particular patented technology by providing access to duplicate documents published in a more accessible language.

18. The participants expressed the opinion that developing countries should not, as a rule, strive to establish by themselves full search facilities complying with the requirements of PCT minimum documentation. In order to eliminate as much as possible the duplication of search and to profit from the search results already obtained elsewhere, they should accede to the PCT and benefit from the centralized search system to be established under that Treaty.

19. Finally, the need for effective measures to ensure a sufficiently clear and detailed disclosure of the invention in patent documents was emphasized, in order to facilitate the use of technology by developing countries.

International Industrial Property Relations

20. The Seminar discussed international industrial property relations on the basis of document BS/7, prepared by the International Bureau of WIPO.

21. The Representative of WIPO introduced document BS/7, underlining the importance of early accession to the Paris Convention for the Protection of Industrial Property by all countries not yet having done so, and describing the principal aims and elements of the PCT system and the system for the international registration of marks to be set up under the Trademark Registration Treaty (TRT) signed in Vienna in June 1973. He also stressed the importance of the International Patent Classification (IPC) for the setting up of documentation centers in developing countries.

22. In the ensuing discussion, the need was stressed to accede as rapidly as possible to the WIPO Convention, the Paris Convention and those of the Treaties and Agreements administered by WIPO which were particularly useful to developing countries, especially the PCT, the TRT and the Agreement concerning the IPC.

23. With particular reference to the advantages offered by the PCT to developing countries, it was stated that the developing countries of the Asian region did not possess enough information on that subject. The wish was expressed that representatives of WIPO would visit interested countries in order to provide the necessary, more detailed information.

24. With respect to accession to special Treaties and Agreements such as the PCT, it was underlined that prior accession to the Paris Convention was a necessary prerequisite for membership in a special Treaty or Agreement.

25. The International Bureau of WIPO was urged to provide for more specific training of staff from Offices of developing

countries concerning the functioning in detail of the PCT system and the interpretation of the Model Laws for developing countries.

26. In the context of a discussion on efforts being made in other areas of the world, whether developed or developing, to achieve closer cooperation on a regional hasis, particularly in the patent field (OAMPI, Andean Group, English-speaking African States, European Patent Convention), the need was felt to consider possibilities of regional cooperation also in the Asian region, particularly among countries having a similar background with respect to their industrial property systems. Such efforts should also envisage the possibility of creating a regional institution which could eventually undertake certain functions under the PCT.

The WIPO Program and its Interest for Developing Countries

27. The Seminar discussed the WIPO program and its interest for developing countries, on the hasis of document BS/8 prepared by the International Bureau of WIPO.

28. The Representative of WIPO introduced document BS/8, underlining in particular the advantages offered hy the PCT and the TRT to developing countries in their efforts to introduce meaningful patent and trademark systems geared to their particular needs. He expressed the continued readiness of WIPO to assist developing countries in the preparation of industrial property legislation on the hasis of the WIPO Model Laws. Such assistance would be provided upon presentation of a detailed request by the country concerned and preferahly on the basis of a first draft, and would include the sending of an expert to the country to assist in the drafting of the legislation required.

29. In the ensuing discussion, the participants emphasized the importance of WIPO's technical assistance program and the henefits accruing to developing countries under that program. They urged WIPO to continue and expand its program in order to allow developing countries to derive more henefit from it.

30. Several specific suggestions were made in this respect. One was to examine whether the training program for staff from developing countries could also he extended to studies of industrial property law at universities of developed countries. Another was to study means to extend the benefits of the training program to a wider circle of staff memhers of the middle echelons of the Offices of developing countries. A third was to provide assistance to Offices in their efforts to huild up industrial property lihraries suitable for the training of their staff on the spot.

31. The Representative of WIPO remarked that those suggestions and other possihilities of expanding the technical assistance program would be carefully studied, but that it would have to he horne in mind that the hudgetary means for that program had so far heen rather limited. That situation might change after WIPO hecame a specialized agency of the United Nations (like FAO and Unesco) in the near future.

Conclusions

32. The major conclusions reached hy the Seminar may he briefly summarized as follows:

(i) Developing countries which have not yet done so should accedc as rapidly as possible to the WIPO Convention, the Paris Convention and those of the Treaties and Agreements administered hy WIPO which are particularly useful to developing countries, especially the PCT, the TRT and the Strasbourg Agreement concerning the IPC.

(ii) Developing countries preparing new or revised legislation in the field of industrial property should use the Model Laws of WIPO and the assistance of WIPO in the preparation of draft legislation. WIPO should continue to draft Model Laws for developing countries and should revise existing Model Laws to the extent that revision appears useful.

(iii) Developing countries should use the search system of the PCT, instead of trying to establish separate, costly national documentation systems. In order to facilitate the implementation of the PCT in the Asian region, the possibility of regional cooperation among certain States should he studied. WIPO should provide more information on the advantages of the PCT system to developing countries, preferably through direct ccntacts with the authorities of interested States.

(iv) WIPO should continue and expand its technical assistance program for developing countries, in particular its training program for their personnel.

33. At the close of their deliberations, the participants expressed their gratitude to WIPO for having organized the Seminar, to the Government of Thailand for having allowed it to he held under its auspices, and to ECAFE for its valuahle contribution to the Seminar, which included the provision of the conference facilities.

34. *This report was unanimously adopted by the Seminar at its closing meeting on November 2, 1973.*

List of Participants *

I. States

Bangladesh: A. M. N. Alam. India: S. Vedaraman. Indonesia: H. Prodjomardojo. Iran: M. Ghaffarzadeh. Khmer Republic: P. H. Hok. Malaysia: N. N. Dadameah. Philippines: C. C. Sandiego. Republic of Korea: B.-A. Moon. Republic of Viet-Nam: Nguyen Thi Nga (Mrs.). Sri Lanka: J. A. I. Wijeyekoon. Thailand: C. Nidhiprabha; P. Talerngsri; R. Parichattkul.

II. Intergovernmental Organizations

United Nations Economic Commission for Asia and the Far East (ECAFE): T. Thein; R. M. Seneviratne; M. S. Haeri. International Patent Institute (IIB): G. Finniss.

III. Non-Governmental Organizations

Asian Patent Attorneys Association (APAA): K. Yuasa; K. Asamura; K. Hayashi; K. Maejima; D. Garden; D. A. Cho (Mrs.); D.-U. Krairit. International Association for the Protection of Industrial Property (AIPPI): A. Degen. Lawyers Association of Thailand: C. Manoihai; S. Lewmanomont.

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

IV. Officers

Chairman: P. Talerngsri (Thailand); *Vice-Chairmen:* S. Vedaraman (India); H. Prodjomardojo (Indonesia); *Secretary:* K. Pfauner (WIPO).

V. WIPO

G. H. C. Bodenhausen *(Director General)*; K. Pfanner *(Senior Counsellor, Head, Industrial Property Division)*; Y. A. Gromov *(Counsellor, Head, PCT Section, Industrial Property Division)*; M. Qayoom *(Head, Common Services Section, Administrative Division)*.

Paris Union

Sub-Working Group for the Mechanization of Trademark Searches

(Geneva, September 24 to 27, 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, 1972, beld a third session at the headquarters of WIPO.

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

The Sub-Working Group noted the results of the broader tests wbich the Working Group for the Mechanization of Trademark Anticipation Searches had asked it to have carried out, at its session in May 1972 [1]. These tests consisted in computer searches, among some 40,000 marks taken from the International Register, for marks identical with or similar to 104 marks submitted by members of tbe Sub-Working Group, each of whom bad submitted about 15 marks. The tests were carried out by eight firms and one organization, five of them in Europe, three in the United States of America and one in Canada.

The Sub-Working Group also noted the information obtained by the International Bureau from each of the firms and the organization taking part in the tests on the financial, technical and economic aspects of their search systems.

It was noted that the work undertaken bitherto had made it possible to obtain valuable information and to achieve a substantial number of results, including:

(a) a worldwide inventory of the main firms and the organization carrying out trademark anticipation searches by computer;

(b) a worldwide inventory of the marks contained in the data bases of those firms and that organization;

(c) an inventory of various types of hardware capable of being used in mechanized searching;

(d) information on the operation and the application of automation of the various search systems;

(e) evidence that the main problems, technical, linguistic or other, raised by the adoption of a computer search system can be solved;

(f) an indication that trademark anticipation searches by computer can produce a result/cost relationship capable of competing with that of manual searching systems;

(g) a general picture of the different systems used, wbich could serve as a basis for a more thorough study of those systems, from a technical and economic standpoint, by the countries or organizations interested.

The Sub-Working Group adopted its report, intended for the Working Group for the Mechanization of Trademark Anticipation Searcbes, which will meet in December 1973.

List of Participants *

I. Countries

Belgium: C. G. Tas. Canada: W. G. Clare. 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: C. Curran. United States of America: P. Davis (Mrs.).

II. Intergovernmental Organization

Benelux Trademark Office: B. van Doorslaer de Ten Ryen; G. J. Verweij.

III. Officers

Chairman: H. de Vries (Netherlands); *Vice-Chairmen:* K. K. Fischer (Germany (Federal Repuhlic of)); F. Gil-Serantes (Spain); *Secretary:* C. Werkman (WIPO).

IV. WIPO

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

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

Nice Union

Committee of Experts for the International Classification of Goods and Services

(Geneva, September 10 to 18, 1973)

Note *

The Committee of Experts set up under Article 3 of the Nice Agreement for the International Classification of Goods and Services for the Purposes of the Registration of Marks held its sixth ordinary session [1] at tbe headquarters of WIPO.

* This Note has been prepared by the International Bureau.
[1] See *Industrial Property*, 1972, p. 174.

* This Note has been prepared by the International Burcau.
[1] For a Report on the fifth ordinary session, see *Industrial Property*, 1970, p. 337.

The following countries party to the Nice Agreement were represented: Austria, Belgium, Denmark, France, Germany (Federal Republic of), Netherlands, Norway, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America. Cameroon, Gabon and Nigeria were represented by observers, as was the Benelux Trademark Office. The list of participants follows this Note.

The Committee adopted new rules of procedure. Under these rules, documents intended for the Committee will in future be drafted in English and French, including terms designating goods and services appearing in the Classification or terms whose inclusion may be proposed to the Committee. It was understood that the French text would continue to be the only authentic one, in accordance with Article 1(6) of the Nice Agreement.

The Committee noted with approval the International Bureau's intention to make a general examination of the Alphabetical List of Goods and Services with respect to form, with a view to a future session. It invited the International Bureau to carry out a survey on the subject consulting all the countries of the Nice Union in particular. It also invited the International Bureau to submit to it a new version of the explanatory notes, in the form which was adopted for the International Classification for Industrial Designs, for instance.

Several delegations alluded to the increased importance of the International Classification of Goods and Services for the Purposes of the Registration of Marks as a result of the adoption of the Trademark Registration Treaty (TRT) by the Vienna Conference in June 1973, adding that it was all the more important for the Alphabetical List of Goods and Services to be as complete and up to date as possible at all times, in such a way that it might be used to the fullest extent possible for the establishment of lists of goods and services. They also pointed out that, in order that it might remain a practical working instrument, the Alphabetical List should be kept within reasonable limits, and that it could for instance be relieved of a certain number of indications which nowadays are outdated, unnecessary, too detailed or too long.

The Committee adopted a slight amendment to the wording of Class 16, to make it more precise, and a series of amendments, additions and deletions affecting the Alphabetical List of Goods and Services. Its decisions have been notified to the competent Offices of the countries of the Nice Union in accordance with Article 4(1) of the Nice Agreement, and have also been communicated to the Offices of the other Paris Union countries. They are published in full in the September 1973 issue of the review *Les Marques internationales* and will also be published in the form of a supplement to the second (1971) original French-language edition of the International Classification of Goods and Services for the Purposes of the Registration of Marks, and to the editions of the official translations that have been established.

List of Participants *

I. Countries Party to the Nice Agreement

Austria: E. Dudeschek. **Belgium:** C. G. Tas. **Denmark:** R. Carlsen (Mrs.); I. Sander (Miss). **France:** M. Bierry. **Germany (Federal Republic of):** R. Zimmermann; G. Jehle. **Netherlands:** C. G. Tas. **Norway:** R. Røed. **Soviet Union:** A. S. Zaitsev. **Spain:** J. Ruiz del Arbol; E. Goytia Scbuck (Mrs.). **Sweden:** B. Lundberg; G. Deijenberg. **Switzerland:** K. Serempus; J. Weber. **United Kingdom:** M. P. Eggleston (Miss); J. A. Cooper. **United States of America:** G. E. Pence.

II. Observers

Countries not party to the Nice Agreement:
Cameroon: J. Ekedi-Samnik. **Gabon:** A. Davin. **Nigeria:** J. A. Adeosun.

Intergovernmental organization:
Benelux Trademark Office: S. de Hoop.

III. Officers

Chairman: R. Carlsen (Mrs.) (Denmark); *Vice-Chairmen:* M. Bierry (France); G. E. Pence (United States of America); *Secretary:* L. Egger (WIPO).

IV. WIPO

J. Voyame *(Second Deputy Director General)*; L. Egger *(Counsellor, Head, International Registrations Division)*; C. Leder *(Head, Trademark Search Section, International Registrations Division)*; F. Carrier *(Principal Examiner, International Trademarks Section, International Registrations Division)*.

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

Patent Cooperation Treaty

Interim Committees

1973 Sessions
(Tokyo, October 22 to 27, 1973)

Note *

The three PCT Interim Committees were convened from October 22 to 27, in Tokyo, on the invitation of the Japanese Government [1]. States which have signed or acceded to the PCT or which, without having done so, pledge special contributions to the PCT budget, qualify as members of the Interim Committees. There were 39 such States at the time of the meeting of the Interim Committees. Eighteen of them were represented. In addition, one intergovernmental organization — the IIB — and six non-governmental organizations were represented. A list of participants follows this Note.

* This Note has been prepared by the International Bureau.

[1] This was the fourtb session of tbe PCT Interim Advisory Committee for Administrative Questions, and tbe third session of the PCT Interim Committee for Technical Assistance and of the PCT Interim Committee for Technical Cooperation. For a Note on tbe 1972 sessions of the Interim Committees, see *Industrial Property*, 1972, p. 345.

Interim Advisory Committee for Administrative Questions

Administrative Instructions. This Committee examined a document prepared by the International Bureau which contained a revised draft of the Administrative Instructions relating to Chapter I of the PCT, incorporating the changes proposed at the third session of the Committee in October 1972, as well as a first draft of the Administrative Instructions relating to the procedure before the International Bureau under Chapter II of the PCT, in particular as far as the tasks of the International Preliminary Examining Authorities are concerned, and also concerning matters found in the other Chapters of the PCT. The Committee approved without comment a number of sections in this draft. As for the remainder, the Committee agreed that they should be revised in the light of the comments and suggestions made.

Draft Forms. The Committee had before it a document containing a revised draft of the Forms to be employed by the International Authorities under Chapter I of the PCT, prepared by the International Bureau on the basis of the comments made at the third session in October 1972 of the Standing Subcommittee of the PCT Interim Committee for Technical Cooperation [2], as well as a first draft of the Forms to be employed by the International Authorities under other Chapters, in particular Chapter II, of the PCT, also prepared by the International Bureau. After a discussion, the Committee postponed further consideration of the draft Forms until a later session. These draft Forms are to be revised by the International Bureau, taking into account the written observations on them submitted to it. The Committee agreed furthermore to establish a Working Group on Forms to examine the revised draft of the Forms and to consider the question of the mandatory or optional character of such Forms as well as their layout.

The Committee considered a document prepared by the International Bureau which contained a revised draft of printed Forms for the request and the international search report. This revised draft took into account the comments on the first draft made during the fourth session of the Standing Subcommittee referred to above [3] as well as the comments submitted after that session. The Committee agreed to refer further consideration of this question to the Working Group on Forms. The draft of these Forms is to be revised by the International Bureau, taking into account any observations received.

Results of the Munich Diplomatic Conference. The Committee took note of a report prepared by the International Bureau, concerning the results of the Munich Diplomatic Conference for the Setting Up of a European System for the Grant of Patents (see page 329 below), as far as these results related to the PCT.

Program for 1974. The Committee approved a program for the year 1974, which includes: the continuation of the elaboration of the Administrative Instructions; the continuation of the work on the Forms; the preparation of a first draft of guidelines setting forth the duties of the receiving Offices under the PCT; the preparation of a first draft of guidelines for applicants using the PCT; the preparation of a draft model agreement between the International Bureau and the International Searching Authorities.

Interim Committee for Technical Assistance

Licensing Opportunities Periodical. This Committee discussed a report on the feasibility study concerning a licensing opportunities periodical prepared by the International Bureau. The Committee recommended that work on the project be continued within the framework of the WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property [4] ("The WIPO Technology Acquisition Program").

Draft Regulations under Chapter IV of the PCT. The Committee had before it a report concerning draft regulations under Chapter IV (Technical Services) of the PCT, prepared by the International Bureau. The Committee decided that a further study on any detailed rules for the implementation of Chapter IV of the PCT, possibly in the form of decisions of the PCT Assembly, should be deferred for the time being. The Committee concluded that the study should not be undertaken before a clear delimitation of fields between the PCT technical assistance program and other WIPO technical assistance programs was possible, and should, in any case, wait until the entry into force of the PCT was imminent. The Committee also concluded that the PCT technical assistance program should in the future be more specifically directed to PCT related activities, whereas other technical assistance projects should be dealt with within the framework of the WIPO Technology Acquisition Program.

Technical Assistance Projects. The Committee considered a progress report, prepared by the International Bureau, on the project concerning the modernization of the Brazilian patent system. The Committee noted the successful completion of the preparatory stage of the Brazilian project and the fact that its implementation had started. The Committee considered a report by the International Bureau on other technical assistance projects, including those concerned with the establishment of regional patent documentation services or centers under the aegis of the Industrial Development Centre for Arab States (IDCAS) and the African and Malagasy Industrial Property Office (OAMPI).

Program for 1974. The Committee approved the following program for the year 1974: continuation of the Brazilian project; a study concerning the establishment of a regional patent documentation center within OAMPI and preparatory work connected with that project as well as with the task of preparing OAMPI for the possibility of acting as an International Searching Authority under the PCT; continuation of the work concerning the establishment of a patent documentation center of IDCAS; work in connection with other possible

[2] See *Industrial Property*, 1972, p. 346.
[3] See *Industrial Property*, 1973, p. 167.
[4] See *Industrial Property*, 1973, p. 199.

requests within the framework of the PCT technical assistance program; a study of the usefulness of INPADOC and of the PAL project (see below) to developing countries.

Interim Committee for Technical Cooperation

International Patent Documentation Center (INPADOC). A representative of INPADOC informed this Committee of the progress made with the establishment of the services of INPADOC. He said that negotiations for the conclusion of agreements of cooperation had been held between INPADOC, assisted by members of the International Bureau, and thirteen Patent Offices as well as the International Patent Institute (IIB); that agreements had been concluded with five Patent Offices and the IIB; that so far two deliveries of accumulated data tapes to the Cooperating Offices had been effected; that the tapes contained data relating to patent documents from Australia, Austria, Finland, Germany (Federal Republic of), Japan, Norway, the Soviet Union and some of the countries of the Council for Mutual Economic Assistance (CMEA); that data delivery to INPADOC from the French Patent Office and the IIB was expected to start shortly; that discussions were continuing concerning the data of the patent documents of Canada, Denmark, and Sweden; and, finally, that INPADOC planned to start key-punching of the data of any other country, including the United States of America, required in order to achieve the envisaged minimum coverage of 25 countries by the beginning of 1974.

PAL Project of INSPEC. A representative of INSPEC (Information Services in Physics, Electro-Technology, Computers and Control, operated hy the Institution of Electrical Engineers, London) informed the Committee of the progress made in the establishment of the Patent Associated Literature (PAL) system, a system designed to facilitate access hy national Offices to selected areas of non-patent literature. He said that firm commitments had been given hy the Brazilian Patent Office, the German Patent Office, and the United States Patent Office, and that the Japanese Patent Office had notified INSPEC that it intended to suhscribe to the PAL full text copy service; that efforts to obtain copyright clearance from the publishers of some 550 journals on INSPEC's acquisition list identified as containing patent relevant items during the past year was continuing, permission having already been obtained in respect of 150 journals; and, finally, that the service was expected to become operational by February 1974.

Minimum Documentation: Non-Patent Literature. The Committee considered a progress report, prepared by the International Bureau, on the study of the periodicals to he included in the PCT minimum documentation, and a proposal of the Netherlands Patent Office regarding the establishment of objective criteria for the selection of such periodicals. The Committee decided to ask its Standing Subcommittee to continue the study of this question on the basis of the results of the survey reflected in the progress report, the proposal of the Netherlands Patent Office, the proposal of the German Patent Office according to which all the periodicals indicated by three or more prospective International Searching Authorities as reflected in the index by three main technical fields would be selected, and the observations made during the discussions in the Committee.

The Committee considered a progress report, prepared by the International Bureau, on the citation rate of non-patent literature and on the conclusions of the Standing Subcommittee regarding the interest in the use of non-patent literature for search and examination. The Committee decided that its Standing Subcommittee should continue to study the question in the light of the discussions in the Committee, which included suggestions that the study should also reflect the citation rate in respect of the number of applications searched.

Study of Searching Techniques. The Committee considered a study, prepared by the International Bureau, which outlined the possible approaches for continuing the study of searching techniques. The Committee decided that, in order to compile the necessary information on the present searching techniques of the prospective International Searching Authorities, the solution should be adopted of sending a questionnaire along the lines of the draft quostionnaire prepared hy the International Bureau and submitted to the Committee. The Committee decided that the Standing Subcommittee should consider this question further, hearing in mind the views expressed on the subject during the discussions in the Committee.

Minimum Documentation: Patent Documents. The Committee considered a progress report, prepared by the International Bureau, relating to those patent documents in the English, French and German languages which will not form part of the minimum documentation unless they are provided to the International Searching Authorities by the Offices concerned (Rule 34.1*(c)*(vi)). The report gave a survey on the question whether the 16 Offices issuing such patent documcnts were prepared to sort them out — and if so, from what date — with a view to placing them subsequently at the disposal of each of the International Searching Authorities. The Committee approved the continuation of the survey by the Standing Subcommittee.

The Committee also decided that the Standing Subcommittee should prepare a study on the question raised by the proposal of the United States of America concerning the treatment of patent documents forming part of patent families within the framework of the PCT minimum documentation.

Report on Isolated Searches. The Committee noted with approval the contributions made by the German Patent Office and by the IIB in their reports on isolated searches and expressed the wish that this valuable material be fully used in further studies relating to the requirements of PCT searches.

Program for 1974. The Committee approved the following program for itself and its Standing Subcommittee for the year 1974: the continuation of the work in connection with INPADOC and the PAL project of INSPEC; the continuation

of the studies concerning the inclusion of non-patent literature in the PCT minimum documentation; the frequency of citation of non-patent literature; current searching techniques; the inclusion in the minimum patent documentation of those English, French or German language patent documents not now included; a comparison of the findings in the reports on isolated searches with the results of the survey on current searching techniques; a study of the questions concerning the treatment of patent documents forming part of patent families by prospective PCT International Authorities in the context of the PCT minimum documentation; a study of the measures relating to the acquisition by the prospective PCT Authorities of the minimum documentation required under the PCT; a study of the feasibility of test searches; a study of the question of the preparation of a model search report.

List of Participants*

I. Member States

Austria: G. Gall. **Brazil:** G. R. Coaracy; A. C. Bandeira. **Canada:** A. M. Laidlaw; J. Corbeil. **Finland:** E. Wuori. **France:** P. Guérin. **Germany (Federal Republic of):** H. Mast; K.-H. Hofmann. **Hungary:** E. Tasnádi; G. Bánrévy. **Iran:** G. Raissian; H. Jamshidi. **Japan:** H. Saito; K. Otani; H. Saegusa; I. Shamoto; Y. Hashimoto; K. Takami; K. Ichioka. **Netherlands:** J. Dekker. **Norway:** I. Aune. **Philippines:** M. R. de Joya. **Romania:** L. Marinete; I. Camenita. **Soviet Union:** L. A. Inozemtsev; L. E. Komarov; A. S. Ignatiev. **Sweden:** S. Lewin; L. Törnroth. **Switzerland:** J.-L. Comte. **United Kingdom:** A. F. C. Miller. **United States of America:** W. I. Merkin; H. D. Hoinkes; F. J. Cohen; G. R. Clark.

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

II. Intergovernmental Organization

International Patent Institute (IIB): A. Vandecasteele.

III. Non-Governmental Organizations

Asian Patent Attorneys Association (APAA): K. Yuasa; M. Okabe; K. Asamura; K. Inomata. **International Association for the Protection of Industrial Property (AIPPI):** G. R. Clark; S. Matsui; M. Takeda; A. Aoki; A. Sugimura; K. Toyosaki; A. Kukimoto; N. Oshima; N. Matsuhara. **International Chamber of Commerce (ICC):** T. Fujii; F. Yoshida; S. Ichikawa. **International Federation of Patent Agents (FICPI):** A. Braun. **Pacific Industrial Property Association (PIPA):** M. Suzuki; H. Sugino; H. Ono. **Union of European Patent Agents (UNEPA):** W. Cohausz; K. Hoffmann.

IV. Observer Organizations

International Patent Documentation Center (INPADOC): G. Rubitschka. **Institution of Electrical Engineers (INSPEC):** R. B. Cox.

V. Officers

Interim Advisory Committee for Administrative Questions. *Chairman:* H. Mast (Germany (Federal Republic of)); *Vice-Chairmen:* A. M. Laidlaw (Canada); L. A. Inozemtsev (Soviet Union); *Secretary:* K. Pfanner (WIPO).

Interim Committee for Technical Cooperation. *Chairman:* K. Otani (Japan); *Vice-Chairmen:* E. Tasnádi (Hungary); W. I. Merkin (United States of America); *Secretary:* K. Pfanner (WIPO).

Interim Committee for Technical Assistance. *Chairman:* H. Jamshidi (Iran); *Vice-Chairmen:* G. R. Coaracy (Brazil); L. Marinete (Romania); *Secretary:* K. Pfanner (WIPO).

VI. WIPO

A. Bogsch *(First Deputy Director General)*; K. Pfanner *(Senior Counsellor, Head, Industrial Property Division)*; Y. A. Gromov *(Counsellor, Head, PCT Section, Industrial Property Division)*; J. Kohnen *(Legal Officer, PCT Section)*; T. Takeda *(Consultant)*.

PROGRESS REPORTS

International Patent Classification

Joint ad hoc Committee

Eighth Session

(Stockholm, June 26 to 29, 1973)

Note *

The eighth session[1] of the Joint ad hoc Committee of the Council of Europe and the World Intellectual Property Organization on the International Patent Classification (IPC) was presided over by Mr. T. Gustafson (Sweden), the Acting Chairman and First Vice-Chairman of the Committee.

Representatives of Brazil, France, Germany (Federal Republic of), Japan, Netherlands, Spain, Sweden, Switzerland, United Kingdom, United States of America and the International Patent Institute (IIB) participated in this session. A list of participants follows this Note.

Adoption of Amendments to the IPC and Related Decisions. The Joint ad hoc Committee agreed to adopt the amendments to the IPC as proposed by the Bureau taking into consideration the proposals for amendments thereto. The Committee also adopted the changes of references within the IPC as recommended by the Bureau. The Committee discussed in detail the amendments proposed by the Bureau to the Foreword, the Guide and the Glossary, in the English and French versions, of the IPC and adopted them with minor changes; it also decided that no further amendments could be taken into consideration for the second edition of the IPC. The Committee also agreed on a procedure for the preparation of the necessary revision of the subclass indexes in the English and French versions of the IPC.

Past and Current IPC Activities. The Committee was informed by the Chairmen of the various Working Groups about their activities and the completion of their priority programs. The Committee expressed its appreciation for the excellent work performed by the Bureau and Working Groups in connection with the first revision of the IPC.

As for the publication of the second edition of the IPC, the Committee made a number of recommendations concerning form and layout. The Committee discussed the suggestions of the Bureau for the preparation of the manuscript for the publication of the second edition and agreed that this was a task for the Secretariat.

The Committee considered the report of the Rapporteur General containing recommendations concerning the distribution of work over the future five-year revision periods, the rational organization of the revision work, the need for standardization, and the overload of work incumbent on the members of the Secretariat. The Committee accepted the report of the Rapporteur General as a basis for a fundamental discussion of the organization of the second revision period at the Committee's next session. The Committee unanimously agreed that the length of the second revision period should be five years and that the last year of that period should be reserved for the establishment of the manuscript and the publication of the new text.

The Committee agreed that the existing Working Groups I to V should be maintained and that the general distribution of the tasks among them should remain unchanged. The Committee noted the willingness of a number of Patent Offices to continue to participate in the work of revising the IPC and adapting it to new technological developments.

Activities in 1974. The Committee decided that a training seminar to inform classification officers about the principles of the IPC system and about some new subjects which needed to be taken into consideration as soon as the second edition of the IPC came into force should be held at the International Patent Institute (IIB) from May 6 to 10, 1974.

Finally, the Committee suggested a tentative program of sessions for the Committee, the Bureau and the five Working Groups during the year 1974.

List of Participants *

I. States

Brazil: S. de Moura (Mrs.). **France:** O. Kavyrchine (Mrs.); G. Beneut. **Germany (Federal Republic of):** A. Wittmann; K. Sölla. **Japan:** H. Uchiyama. **Netherlands:** G. J. Koelewijn. **Spain:** A. Sagarminaga. **Sweden:** T. Gustafson; J. von Döbeln; L. G. Björklund. **Switzerland:** R. Junod. **United Kingdom:** D. G. Gay; J. H. Callow. **United States of America:** T. F. Lomont.

II. International Organization

International Patent Institute (IIB): L. F. W. Knight; F. de Laet.

III. Secretariat

Council of Europe

P. von Holstein *(Principal Administrative Officer, Directorate of Legal Affairs)*; W. L. J. Ennerst *(Consultant Expert, Directorate of Legal Affairs)*; C. Dollinger (Mrs.) *(Administrative Assistant, Directorate of Legal Affairs)*.

WIPO

K. Pfanner *(Senior Counsellor, Head, Industrial Property Division)*; K. Sarre *(Technical Consultant (German Patent Office))*; B. Hansson *(Technical Officer, International Patent Classification Section, Industrial Property Division)*; P. Trépanier *(Technical Officer, International Patent Classification Section)*.

* This Note has been prepared by the International Bureau.

[1] A Note on the seventh session of the Joint ad hoc Committee was published in *Industrial Property*, 1973, p. 140.

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

CONVENTIONS NOT ADMINISTERED BY WIPO

Munich Diplomatic Conference on the European Patent Convention

(September 10 to October 5, 1973)

Note *

The Diplomatic Conference for the Setting Up of a European System for the Grant of Patents took place in Munich at the invitation of the Government of Germany (Federal Republic of) from September 10 to October 5, 1973. The following 21 States participated in the Diplomatic Conference: Austria, Belgium, Denmark, Finland, France, Germany (Federal Republic of), Greece, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom and Yugoslavia. Moreover, four intergovernmental organizations (Council of Europe, Commission of the European Communities, International Patent Institute and WIPO) as well as 16 non-governmental organizations from interested circles were represented in the Diplomatic Conference. The representatives of WIPO (who were, with one exception, present for only part of the time) were the following: Professor G. H. C. Bodenhausen, Director General; Dr. A. Bogsch, First Deputy Director General; Mr. K. Pfanner, Senior Counsellor, Head of the Industrial Property Division; Mr. L. Baeumer, Counsellor, Head of the Legislation and Regional Agreements Section, Industrial Property Division; and Mr. J. Kohnen, Legal Officer, PCT Section, Industrial Property Division.

The Diplomatic Conference concluded with the adoption of the Convention on the Grant of European Patents (hereinafter referred to as " the Convention ") signed on October 5, 1973, by the following 14 States: Belgium, Denmark, France, Germany (Federal Republic of), Greece, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Sweden, Switzerland and the United Kingdom. The Convention will remain open for signature until April 5, 1974. In addition, the Diplomatic Conference adopted the following instruments: the Implementing Regulations, the Protocol on Jurisdiction and the Recognition of Decisions in Respect of the Right to the Grant of a European Patent (Protocol on Recognition), the Protocol on Privileges and Immunities of the European Patent Organisation (Protocol on Privileges and Immunities), the Protocol on the Centralisation of the European Patent System and on its Introduction (Protocol on Centralisation), and the Protocol on the Interpretation of Article 69 of the Convention. Finally, the Munich Diplomatic Conference passed several resolutions, in particular a resolution on technical assistance to developing countries.

The Convention provides for a system for the grant of " European patents " on the basis of European patent applications, which will have to be filed in English, French or German and which must designate the Contracting States in which protection is sought. For each European patent application a European search report will be drawn up; examination as to substance will be made only upon a request by the applicant, which must be filed within six months from the date on which the European Patent Bulletin mentions the publication of the European search report (normally published together with the European patent application). Granted European patents will have the same effect in the designated States as national patents.

In the drafting of the Convention and the related texts, the international conventions administered by WIPO were fully taken into account, in particular the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT) and the Strasbourg Agreement Concerning the International Patent Classification.

With respect to the PCT, the Convention contains a special chapter providing for the possibility of the conjunctive use of the procedure under the PCT with the procedure for the grant of European patents on the basis of one and the same patent application. The fundamental provision of this Chapter states that international applications filed under the PCT may be the subject of proceedings before the European Patent Office (EPO) and that, in the case of conflict, the provisions of the PCT prevail. The EPO may act as a receiving Office under the PCT; it will act as a designated and as an elected Office under the PCT for those States party to the Convention which are designated or elected in an international application taking the European route. Moreover, the EPO will act as an International Searching Authority and an International Preliminary Examining Authority under the PCT — not only in cases where the applicant is a resident or national of a Contracting State but, subject to an agreement between WIPO and the EPO, also in cases where the applicant is not such a resident or national. At the same time, the Protocol on Centralisation mentioned above obliges Contracting States, with some exceptions, mostly of a transitional nature, to renounce in favor of the EPO any activities as Internatioual Searching and Preliminary Examining Authorities. Of particular interest is the relationship between an international search report under the PCT and a European search report under the Convention: where the EPO is acting as a designated Office, the international search report will in principle replace the European search report. However, subject to a decision of the Administrative Council putting this principle fully into effect, a supplementary European search report is to be drawn up in respect of all international applications. Furthermore, the publication by the International Bureau of an international application for which the EPO is acting as a designated Office will replace the publication of a European patent application. In addition to these main points, all other

* This Note has been prepared by the International Bureau.

relevant provisions of the Convention, in particular those dealing with procedural matters and with the form and content of European patent applications, have been harmonized to a considerable extent with the PCT.

Finally, it is to be noted that the Convention provides for WIPO to be represented on the Administrative Council of the future European Patent Organisation.

European Convention on the International Classification of Patents for Invention

Denunciation by Norway

In accordance with Article 8(2) of the European Convention mentioned above of December 19, 1954 and with Article 13(1)*(c)* of the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, the Government of Norway has resolved to denounce the European Convention mentioned above, with effect from the date on which the conditions stipulated in Article 13 of the Strasbourg Agreement have been fulfilled.

The Government of Norway notified this denunciation to the Secretary General of the Council of Europe in a letter of September 17, 1973, registered at the Secretariat General of the Council of Europe on September 19, 1973.

Denunciation by Sweden

In accordance with Article 8(2) of the European Convention mentioned above of December 19, 1954 and with Article 13(1)*(c)* of the Strasbourg Agreement, the Government of Sweden has denounced the European Convention mentioned above, the denunciation to take effect from the date on which the Strasbourg Agreement comes into force in application of Article 13(1)*(a)* thereof.

The Government of Sweden notified this denunciation to the Secretary General of the Council of Europe in a letter of August 27, 1973, registered at the Secretariat General of the Council of Europe on the same date.

LEGISLATION

CZECHOSLOVAKIA

Law on Discoveries, Inventions, Rationalization Proposals and Industrial Designs

(No. 84 of November 1, 1972)

Preliminary Provisions

1. — This Law regulates the personal and property rights and the obligations of citizens, socialist organizations (hereinafter referred to as "organizations") and the Czechoslovak State arising from the creation and exploitation for the benefit of society of discoveries, inventions, rationalization proposals and industrial designs and of thematic tasks [1]. Unless provided otherwise in the law, other persons or entities may also be the subject of such rights and obligations.

2. — (1) The author of a discovery, invention, rationalization proposal or industrial design shall be the person who has made a discovery, invention, rationalization proposal or industrial design by his own creative work and also, in the case of a rationalization proposal, the person who has made use of a solution taken from the technical literature or from the practices of another organization and has creatively adapted that solution to the circumstances of the organization concerned.

(2) Persons who have contributed by their joint creative work to a discovery, invention, rationalization proposal or industrial design shall be considered co-authors thereof.

3. — (1) The author of a discovery, invention, rationalization proposal or industrial design shall have the right to be designated as such in accordance with this Law and the right to file an application for protection of the object concerned, to deal with it within the limits set by this Law and to participate in the execution, trials and implementation of his discovery, invention, rationalization proposal or industrial design.

(2) The co-authors of discoveries, inventions, rationalization proposals and industrial designs shall share the relevant rights and obligations on the basis of equality, unless agreed otherwise among themselves or determined otherwise by the courts.

4. — Applications concerning discoveries, inventions or industrial designs shall be filed with the Office for Inventions and Discoveries (hereinafter referred to as "the Office"); applications concerning rationalization proposals shall be filed with the organization to whose branch of activity they are relevant or, where appropriate, to the organ to which the said organization is responsible. On filing an application, the applicant shall acquire the right of priority in accordance with this Law.

5. — The rights of authors shall be attested by a diploma in the case of a discovery, by an inventor's certificate or a patent in the case of an invention, by a rationalization certificate in the case of a rationalization proposal and by a certificate or a patent in the case of an industrial design.

6. — (1) Inventions for which an inventor's certificate has been granted and rationalization proposals and industrial designs recognized by a certificate shall be national property.

(2) The State shall have the right to exploit the national property mentioned in the preceding subsection; it shall have the obligation to ensure the widest possible utilization of such national property. Unless otherwise provided for in this Law (Section 104), all the organizations may use such national property. The State shall also ensure the widest possible exploitation of discoveries.

(3) The organizations which shall administer the national property mentioned in subsection (1) and the rights and obligations arising from such administration shall be determined by law. The organization designated in pursuance of this Law to administer the national property shall have the right and obligation, once an application has been filed, to take all necessary steps to ensure the exploitation and protection of the invention, rationalization proposal or industrial design. The Office may authorize another organization to take such steps.

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[1] For the definition of a thematic task, see Section 111(3) of the Law *(Editor's Note)*.

7. — The right of the author to be designated as such shall be inalienable.

8. — (1) Subject to reciprocity, foreign nationals shall have the same rights and obligations as Czechoslovak citizens.

(2) The provisions of the international conventions to which the Czechoslovak Socialist Republic is a party shall not be affected.

CHAPTER I

Discoveries

9. — (1) A discovery shall be any determination of phenomena, properties or laws of the material world that were previously unknown, that exist objectively and that are proved by a scientific method.

(2) The following shall not be discoveries:

(a) the determination of the properties of new matter and of the relationships between such properties where, having regard to the known laws of nature and the prior art, such properties can be readily deduced from the properties of similar matter that is already known;

(b) the more precise specification of orders of magnitude;

(c) the concretization of known laws;

(d) discoveries made in the fields of geology, geography, archaeology, and paleontology.

10. — Proof by a scientific method shall mean proof by experiment or, where the nature of the discovery does not allow this, at least proof by theoretical demonstration.

11. — The subject of a discovery shall be unknown if it has not been published in the Czechoslovak Socialist Republic or abroad before the date on which the applicant's right of priority arose.

12. — (1) Discoveries shall be attested by diplomas granted by the Office.

(2) Diplomas shall not be granted in respect of discoveries made in the field of the social sciences.

13. — (1) Applications for a diploma shall be made by filing an application concerning a discovery with the Office.

(2) The application shall be filed by the author of the discovery or his heir.

14. — No diploma shall be granted where the subject of the application is identical in content with the subject of another application concerning a discovery filed in the Czechoslovak Socialist Republic and having priority.

15. — (1) Where a discovery has been made by an author or co-author in the performance of the tasks arising from his employment relationship with an organization, membership of the organization or similar relationship therewith or in direct connection with the performance of such tasks (hereinafter referred to as " employment relationship ") or with material support from the organization, the author shall immediately inform the organization of his discovery. The organization shall ensure that applications are filed for the discovery and for the inventions resulting from the discovery.

(2) The author or co-author shall inform the organization mentioned in subsection (1) if he has filed an application concerning a discovery. The organization shall submit to the Office its opinion on the discovery.

16. — (1) The applicant shall have the right of priority as from the date of publication of the essence of his discovery; if the discovery was disclosed for the first time in the application concerning the discovery, his right of priority shall date from the moment the application is received by the Office.

(2) Where, during the procedure, the applicant amends the essence of the discovery, his right of priority shall begin only when the document notifying the amendment is received by the Office.

17. — (1) The Office shall examine the application in order to ensure that its subject fulfills the requirements for the grant of a diploma.

(2) The Office may invite the applicant to supplement or amend his application within a prescribed time limit.

(3) If the discovery is consistent with the requirement in Section 10, the Office shall transmit the application, for its opinion, to the Czechoslovak Academy of Sciences, the Slovak Academy of Sciences or the Czechoslovak Academy of Agricultural Sciences. Where none of the three institutions referred to has working premises covering the field of activity to which the discovery pertains, the application shall be examined by an organization having the relevant scientific laboratory. When examining the application, such organization shall have the same rights and the same obligations resulting from this Law as the Czechoslovak Academy of Sciences, the Slovak Academy of Sciences or the Czechoslovak Academy of Agricultural Sciences.

(4) The Czechoslovak Academy of Sciences, the Slovak Academy of Sciences or the Czechoslovak Academy of Agricultural Sciences shall inform the Office of its opinion regarding the subject of the application. Where the opinion is favorable, the Office shall, after hearing the author, draw up the definition of the discovery and the designation thereof and shall publish the designation, in cooperation with the Czechoslovak Academy of Sciences, the Slovak Academy of Sciences or the Czechoslovak Academy of Agricultural Sciences, in the scientific press and shall notify it in its Official Journal. Where the opinion is adverse, the application shall be refused.

18. — Within one year from the publication in the Official Journal, any person may file with the Office his objections to the grant of a diploma for the discovery.

19. — The Office shall grant the diploma for a discovery or refuse the application within the time limit specified in Section 18.

20. — The diploma shall be granted in the name of the author of the discovery.

21. — (1) As from the grant of the diploma, the subject of the application shall be recognized as a discovery and the authorship of the discovery and the author's right of priority

shall be confirmed. The grant of the diploma shall entitle the author of the discovery to the remuneration and the benefits prescribed by law.

(2) The remuneration shall be fixed by the Office after hearing the Czechoslovak Academy of Sciences, the Slovak Academy of Sciences or the Czechoslovak Academy of Agricultural Sciences; the remuneration shall be paid by the Office.

22. — Where the Office subsequently finds that the requirements for the grant of a diploma were not fulfilled in whole or in part, it shall revoke the diploma or part thereof. Revocation of the diploma shall be retroactive to the date of the diploma's entry into effect.

23. — The organizations whose field of activity covers the discovery shall ensure, in cooperation with the author, that the discovery is exploited comprehensively, rationally and economically.

CHAPTER II

Inventions

Basic Provisions concerning Inventions

24. — (1) An invention shall be any solution of a technical problem which is new and constitutes an advance, as compared with the prior art in the world, in the form of a new or enhanced effect.

(2) A solution, as defined in subsection (1), shall not be an invention where the subject of the application is not capable of industrial application or cannot be used for the purposes of manufacture or exploitation.

(3) A solution of a technical problem shall not be an invention where it is contrary to the interests of society, in particular to the principles of humanity and socialist morality.

25. — The subject of an application concerning an invention shall be new where, prior to the date on which the applicant acquired the right of priority, it had not been made known in the Czechoslovak Socialist Republic or abroad by any means generally accessible to the public, in particular:

(a) where it had not been described or depicted in printed publications;

(b) where it had not been publicly worked, displayed, orally described or presented in such an evident way as to enable experts to derive an advantage therefrom.

26. — (1) The effect of the invention shall mean the aggregate of the technical, economic or other results whose application is beneficial to society.

(2) The effect shall be new where it is qualitatively different from the effect obtained through existing technical means for the solution of a technical problem.

(3) The effect shall be considered enhanced where in terms of quantity it exceeds the effect obtained through existing technical means for the solution of a technical problem.

27. — (1) The Office shall grant inventors' certificates or patents.

(2) In the application concerning an invention, the applicant may request the grant of an inventor's certificate or a patent.

(3) The name of the inventor shall be stated in the application.

28. — Only an inventor's certificate shall be granted for:

(a) inventions made by the inventor or a joint inventor in the context of an employment relationship with an organization or with material support from the organization;

(b) inventions of substances resulting from the transformation of the atomic nucleus and technical solutions solely relating to the obtaining or exploitation of nuclear energy;

(c) inventions of medicaments, substances obtained through chemical processes, foodstuffs and microorganisms used in industrial manufacture.

29. — The Office shall examine the application concerning an invention in order to ensure that its subject fulfills the requirements for the grant of an inventor's certificate or a patent.

30. — Neither an inventor's certificate nor a patent shall be granted where the invention is identical with the subject of another application concerning an invention filed in the Czechoslovak Socialist Republic and having priority.

31. — (1) The applicant's right of priority shall date from the moment the application is received by the Office.

(2) The applicant must claim the right of priority under an international convention in his application and must produce evidence of that right within three months thereafter.

(3) Where, during the procedure, the applicant amends the essence of the application, his right of priority shall date only from the moment the document notifying the amendment is received by the Office.

32. — The Office may recognize the right of priority (exhibition priority) of articles displayed at exhibitions organized on the territory of the Czechoslovak Socialist Republic as from the moment when the articles were displayed at the exhibition, provided that the article displayed is the subject of an application concerning an invention filed with the Office within three months from the close of the exhibition.

33. — At the request of the Office, the applicant shall state the countries in which he has filed an application concerning the same invention, any objections that have been raised in those countries and the results of the corresponding examination procedures.

34. — The Office may invite the applicant to prove that the invention is practicable and that it has the foreseen effect by producing the subject of the application or by some other appropriate technical method; where, without a valid reason, the applicant is unable to provide such proof, the invention shall be deemed impracticable or incapable of producing a new or enhanced effect.

35. — (1) During the examination of the application, the Office shall, after notifying the applicant, publish the descrip-

tion of the invention and the corresponding drawings in its Official Journal.

(2) Within three months from the publication in the Official Journal, any person may file objections to the grant of an inventor's certificate or a patent.

36. — On the invitation of the Office, an organization whose field of activity covers the subject of the application shall give its opinion on the application, free of charge, with respect to the effect and the economic exploitability of the invention; it shall give such opinion within the time limit prescribed in the Rules. At the same time the organization shall, to the extent of its resources and knowledge, give its opinion on the novelty and the practicability of the invention.

37. — (1) Where the subject of the application fulfills the prescribed requirements, the Office shall grant the inventor's certificate or the patent and shall advertise the grant in the Official Journal.

(2) Where the prescribed requirements have not been fulfilled, the Office shall refuse the application.

38. — (1) An invention which depends upon another invention for which an application has been filed (basic invention) and an inventor's certificate or a patent has been granted shall be the subject of a dependent inventor's certificate or a dependent patent if its use necessarily requires the use of the basic invention.

(2) Dependent inventors' certificates or patents shall become independent upon the revocation of the inventor's certificate or patent for the basic invention or upon the lapse of the patent.

(3) The inventor or the administrator of the basic invention or the patentee with respect to the basic invention may request that an inventor's certificate or patent be designated as dependent.

39. — (1) The Office shall revoke the inventor's certificate or the patent in whole or in part if it finds that the requirements for its grant were not fulfilled.

(2) The revocation shall be retroactive to the date of the entry into effect of the inventor's certificate or the patent.

40. — The person working the invention shall mean the person who manufactures the subject of the invention as part of his economic activity or makes use of it, or uses it as a manufacturing process or in the course of his activity, or engages in trade therein.

41. — (1) An inventor's certificate or a patent shall not be effective against anyone who, before the application was filed, was using the invention independently of the inventor or the patentee or who can be shown to have taken steps to that end.

(2) Where the inventor or the patentee enjoys a right of priority under an international convention, the date of such priority shall be decisive as far as the date of the right of prior user is concerned.

(3) Once the inventor's certificate or the patent has been granted, the prior user may require the inventor or the patentee to recognize his right.

42. — The rights conferred by an inventor's certificate or a patent shall not be infringed where the protected invention is used:

(a) on board vessels of other countries party to international conventions that are binding on the Czechoslovak Socialist Republic (hereinafter referred to as "Union countries"), in the body of the vessel or in the machinery, tackle, gear or other accessories, when such vessels temporarily or accidentally enter the Czechoslovak Socialist Republic, provided that such devices are used exclusively for the needs of the vessel;

(b) in the construction and operation of aircraft or vehicles of Union countries or of components of such aircraft or vehicles, when those aircraft or vehicles temporarily or accidentally enter the Czechoslovak Socialist Republic.

43. — (1) At the request of any person showing a legal interest therein, the Office shall determine whether the solution of the technical problem specified in the request falls within the scope of a specific inventor's certificate or patent.

(2) Such determination shall be binding on the courts and all other State organs and organizations. It may not be examined by the courts, even as an interlocutory question.

44. — (1) Where the Office is satisfied that another person was the inventor or a joint inventor, it shall substitute his name for the name indicated in the application concerning the invention, the inventor's certificate or the patent.

(2) Where proceedings have been brought concerning the identity of the inventor or where a person other than the inventor designated in the application claims to be the inventor, the Office shall continue the procedure in respect of the application, but shall make a decision thereon only after a final court decision has been notified to it.

45. — (1) Inventions made in the Czechoslovak Socialist Republic and inventions made by Czechoslovak citizens resident abroad may be the subject of an application filed abroad only after a corresponding application has been filed in the Czechoslovak Socialist Republic and subject to approval by the Office, except where the Office grants an exception or where an international convention provides otherwise.

(2) The approval of the Office shall also be required in the case of the withdrawal of an application concerning an invention filed abroad or the surrender of a patent granted abroad.

Inventors' Certificates

46. — (1) The inventor's certificate shall constitute recognition that the subject of an application concerning an invention is an invention and shall attest the authorship of the invention and the right of priority thereto, as well as the mutual rights of the State and of the inventor.

(2) The inventor shall be entitled to remuneration for the working of the invention and to participate in the execution, trials and implementation of the invention and shall be eligible for the other benefits prescribed by law.

(3) The rights conferred by the inventor's certificate shall enter into effect on the filing date of the application concern-

ing the invention and shall be of unlimited duration; where Section 31(3) applies, the rights shall enter into force on the date the Office receives the document notifying an amendment of the essence of the application.

47. — (1) An application concerning an invention in which an inventor's certificate is requested may be filed by the inventor or his heir. In accordance with Law No. 105/1951, in the Legislative Series (Sb.), on administrative fees, the Minister for Finance of the Czechoslovak Socialist Republic shall exempt from fees the application concerning an invention, the request for the inventor's certificate and the inventor's certificate itself.

(2) The inventor of an invention made in an employment relationship with an organization or with material support from such organization shall notify the latter thereof without delay. The organizations shall systematically follow up such inventions.

(3) The organization referred to in subsection (2) shall file an application concerning an invention in the name of the inventor where the latter has not done so himself within two months from the date on which he notified the organization of the invention or on which the organization became aware of it.

(4) The inventor's certificate shall be granted in the name of the inventor.

48. — In the case of an application in respect of an invention made in the conditions set out in Section 28*(a)*, the organization shall submit to the Office a report on the results of the preliminary examination as to the novelty, the practicability, the effect and the economic exploitability of the invention.

49. — (1) The organization with which the inventor has an employment relationship shall, at the inventor's request, give him assistance free of charge in drafting and filing the application in respect of his invention and represent him in the application procedure, where the invention falls within its field of activity and the application contains a request for an inventor's certificate.

(2) The organization shall give assistance under the preceding subsection even when the inventor has no employment relationship with it, except where the invention is clearly not useful for the national economy.

50. — (1) Inventions made by an inventor or joint inventor in an employment relationship with a State organization or with material support from such organization shall be administered by the latter. Inventions made by an inventor or joint inventor in an employment relationship with a cooperative, social or other socialist organization or with material support therefrom shall be administered by the Office, which may entrust such organizations with all or part of the rights and obligations arising from its administration. After consulting the State organization and the appropriate central authority, the Office may also transfer the administration of the inventions to such organization.

(2) Other inventions for which an inventor's certificate has been granted shall be administered by the State organization whose field of activity covers the invention and which the Office, on the proposal of the appropriate central authority, has entrusted with the administration of the invention.

51. — The State organization administering an invention shall ensure that it is worked in a planned and comprehensive manner and shall deal with it in accordance with the interests of the State and of the national economy. In particular, it shall ensure that the invention is widely known and shall, with the aid of the inventor, supervise its protection and safeguard his legitimate interests.

Patents

52. — An application concerning an invention in which a patent is requested may be filed by the inventor or his heir or other successor in title.

53. — (1) The patent shall be granted to the applicant or to his successor in title (patentee); the name of the inventor shall be designated in the letters patent.

(2) The patent shall constitute recognition that the subject of the application is an invention and shall attest the authorship of the invention and the right of priority thereto.

(3) An invention protected by a patent may be worked only with the patentee's consent.

(4) A patented invention that has been acquired by an organization may be worked by any of the organizations, except in cases where the Office has determined otherwise in agreement with the appropriate central authority.

(5) The rights conferred by the patent shall lapse at the end of the fifteenth year following the filing date of the application concerning the invention or, where Section 31(3) applies, the date on which the Office received the document notifying an amendment to the essence of the application.

54. — (1) The patentee may:

(a) authorize an organization to work the patent (license) or assign the patent to an organization;

(b) authorize a foreign national to work the patent (license) or assign the patent to a foreign national *.

(2) A license or an assignment of a patent shall be in writing and shall take effect when it is entered in the Register of Patents.

55. — (1) Upon the request of an organization, the Office may grant a compulsory license where the patentee is not working the patent or is working it insufficiently and the patentee and the organization have failed to reach agreement concerning the grant of a license. A compulsory license may be granted only after four years from the filing date of the application or three years from the grant of the patent, whichever period expires last. A compulsory license shall not be granted if the patentee justifies his inaction by legitimate reasons.

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* In granting his authorization, the patentee shall comply with Section 19(1)*(c)* of Law No. 142/1970 Sb. on foreign exchange control.

(2) Upon the request of an organization, the Office may grant a compulsory license even before the end of the period referred to in subsection (1) where the invention is of special interest to the State, for example in connection with national defense, and where the organization and the patentee have failed to reach agreement concerning the grant of a license.

(3) If the organization and the patentee fail to reach agreement on the remuneration for the compulsory license, the question shall be settled by the courts, on the request of the patentee.

56. — (1) During the examination of the application, the applicant may substitute his request for a patent by a request for an inventor's certificate.

(2) During the first seven years of the term of a patent, the Office shall, upon the patentee's request, substitute the patent by an inventor's certificate.

(3) Subsection (2) shall not apply where the patentee has already granted a license to work the patent, unless the Office grants an exception. The Office may grant an exception only where the rights conferred by the license are not affected.

57. — A patent shall lapse:

(a) at the end of its term;

(b) on surrender by the patentee; in this case, the patent shall cease as from the day on which a written declaration by the patentee is received by the Office;

(c) in the event of non-payment of a fee which has become due.

CHAPTER III

Rationalization Proposals

58. — (1) A rationalization proposal shall be any concrete solution of a problem in the field of manufacturing techniques, the organization of production or the economic structure of the organization, where the solution is new for the organization concerned and its exploitation is beneficial to society.

(2) A solution shall not be a rationalization proposal where it does not go beyond the task entrusted to the author, having regard to his work, to specific instructions or to the conditions and indications fixed when the task was assigned. This rule shall not apply where the author has found the solution for a thematic task.

59. — (1) A rationalization proposal shall be new within the organization where, prior to the filing of the application, there had not been:

(a) any preparatory steps, capable of proof, that were directly designed for the implementation of a solution identical with the subject of the application concerning a rationalization proposal;

(b) an identical solution contained in regulations or orders (such as technical standards or instructions).

(2) The use of the solution in the organization, on the initiative of the author and during the three months preceding the application, shall not be a bar to the novelty of the rationalization proposal.

60. — The following in particular shall not be considered concrete solutions of a problem in the field of manufacturing techniques, the organization of production or the economic structure:

(a) merely designating a task;

(b) merely recommending the purchase of equipment or materials, unless at the same time there is an indication of a more advantageous method for exploiting and obtaining them;

(c) proposing an amendment of a legal provision;

(d) reporting an infringement of a rule in force or drawing attention to defects and errors clearly due to negligence on the part of another person.

61. — In the examination of social usefulness, account shall be taken in particular of the extent to which the implementation of a rationalization proposal contributes to the enhancement of the economic, technical and other effects, especially to the improvement of work productivity, production costs, quality, the useful life of products or equipment, work safety and the social and cultural facilities of workers.

62. — An application concerning a rationalization proposal may be filed by any citizen who has created the subject of the application or cooperated in its creation, or by his heir.

63. — (1) The application shall be filed with the organization to whose field of activity, in particular its manufacturing and service arrangements, it is relevant. If the application is not relevant to the field of activity of the organization receiving it, the organization shall transmit the application, within the prescribed time limit, to the organization to whose activity it is relevant.

(2) Where the subject of the application is relevant to the field of activity of several organizations, the application may be submitted to the superior organ of those organizations.

(3) An employee shall file an application concerning a rationalization proposal in the first instance with the organization with which he has an employment relationship, where the application is relevant to the organization's field of activity, in particular its manufacturing or service arrangements.

(4) Pending a favorable decision by the Office, applications concerning inventions in which an inventor's certificate is requested which are received by the organization shall be deemed to be applications concerning rationalization proposals, as shall industrial design applications in which a certificate is requested where this is appropriate having regard to the nature of the industrial design.

64. — (1) From the moment of its receipt by the organization referred to in Section 63(1), an application concerning a rationalization proposal shall have priority over any application subsequently filed with the same organization and relating to an identical rationalization proposal. The later application shall accordingly be refused by the organization.

(2) From the moment of its receipt by the superior organ referred to in Section 63(2), an application concerning a rationalization proposal shall have priority simultaneously in respect of all the organizations responsible to that organ.

(3) The application concerning an invention or an industrial design (Section 63(4)) shall, as far as the rationalization proposal is concerned, have priority as from the date of its submission to the organization. An invention made in the conditions prescribed in Section 28*(a)* or an industrial design created in the conditions prescribed in Section 82*(a)* shall have priority as from the date on which the organization became aware of it.

65. — (1) The organization shall record the application concerning a rationalization proposal in the journal of rationalization proposals, indicating the date on which it received the application. Where the subject of the application is relevant to the organization's field of activity, in particular its manufacturing or service arrangements, the application shall be decided by the organization. It shall also consider whether the subject of the application is an invention or an industrial design; in the affirmative, it shall notify the applicant accordingly. Applications concerning rationalization proposals submitted to the superior organ under Section 63(2) shall be decided by the organizations responsible to that organ, to which the applications have been transmitted.

(2) The organization shall also record in the journal of rationalization proposals all applications concerning inventions referred to in Section 63(4).

(3) An application concerning a rationalization proposal may not be withdrawn even where the application concerning an invention or industrial design is withdrawn.

66. — Before making its decision, the organization shall give the applicant an opportunity to express his views concerning the results of its examination. This shall not apply where the organization intends to give a favorable decision on the application.

67. — (1) The organization shall decide the application within two months from the date of submission and shall notify the applicant of such decision. Where the decision is favorable, the organization shall inform the applicant that the subject of the application fulfills the prescribed requirements for a rationalization proposal and shall set a date for implementing it.

(2) Where the examination of the application entails a thorough study, preventing the organization from making its decision within the two-month period, it shall set another appropriate time limit, informing the applicant and stating its reasons. The procedure shall be the same where an application concerning a rationalization proposal has been simultaneously presented as a solution to a thematic task.

68. — By implementation of a rationalization proposal is meant the effective application, within the organization, of the proposed measure.

69. — (1) The State organization which first gave a favorable decision on the application shall administer the rationalization proposal.

(2) A rationalization proposal which was accepted in the first instance by a cooperative, social or other socialist organization shall be administered by the Office, which may entrust such organizations with all or part of the rights and obligations arising from its administration; after consulting the State organization and the appropriate central authority, the Office may also transfer the administration of the rationalization proposal to such organization.

70. — The State organization administering a rationalization proposal shall ensure that it is implemented in a planned and comprehensive manner and shall deal with it in accordance with the interests of the State and of the national economy. In particular, it shall ensure that the rationalization proposal is widely known and safeguard the legitimate interests of the author.

71. — (1) When giving its favorable decision, the organization shall issue to the author a certificate in respect of the rationalization proposal.

(2) By issuing the certificate, the organization recognizes that the subject of the application is a rationalization proposal, confirms that it will implement the proposal and attests the authorship and the right of priority in respect of the rationalization proposal within the organization; in addition, the certificate confirms the mutual rights of the State and of the author of the rationalization proposal.

(3) The author of the rationalization proposal shall be entitled to remuneration for the use of the proposal and to participate in the execution, trials and implementation of the rationalization proposal and shall be eligible for the other benefits prescribed by law.

(4) If the organization revokes its favorable decision, having subsequently found that the requirements for the implementation of the rationalization proposal were not fulfilled, the certificate shall lapse.

72. — (1) Where the organization has refused an application concerning a rationalization proposal or revoked its decision to implement a proposal, the applicant may, within one month following such refusal or revocation, request the superior organ of the organization to review the decision. Such request shall be presented through the intermediary of the organization that has refused the application or revoked its decision to implement the proposal. The organization may itself allow the request and amend its decision. Otherwise, it shall within one month transmit the request to the superior organ, together with its reasoned opinion.

(2) Section 66 shall apply to the review.

(3) The decision of the superior organ shall be final.

73. — Rights conferred by an inventor's certificate or patent or by an industrial design certificate or patent shall constitute a bar to the rights conferred by a rationalization proposal.

74. — The organization implementing the rationalization proposal shall ensure that it is used at the level of all its subsidiary services that can make use of the proposal.

75. — (1) Where an organization is using a rationalization proposal that can be utilized by several organizations, it shall transmit the proposal to its superior organ or directly to

the other organizations which, to its knowledge, can make use of it. It shall inform the author of the rationalization proposal accordingly. The organization shall have the same obligations in respect of proposals which it has not implemented itself and which, to its knowledge, can be used by another organization.

(2) The superior organ to which the proposal is relevant shall ensure that the proposal is widely known in its field of activity having regard to the requirements of economic plans.

(3) A rationalization proposal received by an organization through the dissemination of rationalization proposals shall be examined in the same way as an application addressed directly to the organization.

76. — (1) The remuneration for the implementation of a rationalization proposal shall be paid by the organization implementing it. Where it is being implemented by two or more organizations, the remuneration may be paid by their common superior organ. The latter may require each of the organizations implementing the rationalization proposal to reimburse to it a proportion of the remuneration. Each such proportion shall be fixed by the superior organ having regard to the degree of implementation by the various organizations.

(2) Each of the organizations concerned shall inform the administrator of the extent to which it has implemented the rationalization proposal and the amount of the remuneration paid. The organizations shall have the same obligation vis-à-vis the superior organ which has paid on their behalf the remuneration for the implementation of the rationalization proposal.

CHAPTER IV

Industrial Designs

Basic Provisions concerning Industrial Designs

77. — (1) An industrial design shall be any solution for the external aspect of a product, in two or three dimensions, which is new and capable of industrial application.

(2) The external aspect of a product shall comprise in particular its special external appearance, shape, contours, design, colors, special arrangement of colors or a combination of such distinctive characteristics.

(3) An industrial design shall be capable of industrial application where it can serve as a model for repeated manufacture of products by industrial means.

(4) A solution for the external aspect of products shall not be an industrial design where it is contrary to the interests of society, in particular to the principles of humanity and socialist morality.

78. — Where the subject of an application concerning an industrial design comprises a work protected under copyright law, the use of such design shall be governed exclusively by the provisions on industrial designs.

79. — (1) The subject of an application concerning an industrial design shall be new where, prior to the date on which the applicant acquired the right of priority, it had not been made known in the Czechoslovak Socialist Republic or abroad by any means generally accessible to the public, in particular:

(a) where it had not been described or depicted in printed publications;

(b) where it had not been publicly exploited, displayed, orally described or otherwise presented.

(2) The disclosure of an identical or similar external aspect in respect of products of another kind or such a disclosure made 50 years before the application shall not be a bar to novelty.

(3) The subject of an application concerning an industrial design shall be similar to another industrial design where it presents only minor differences in the external aspect, perceptible on particularly close examination.

80. — (1) The Office shall attest industrial designs by a certificate or a patent for an industrial design.

(2) In the application concerning an industrial design, the applicant may request the grant of an industrial design certificate or an industrial design patent.

(3) The name of the creator shall be stated in the application.

81. — An application concerning an industrial design may relate to a number of external aspects of a single product, which may be similar aspects.

82. — Only an industrial design certificate shall be granted where the creator or a joint creator made the design:

(a) in the context of an employment relationship with an organization or with material support from the organization;

(b) in pursuance of a contract concluded with the organization.

83. — The Office shall examine the application concerning an industrial design in order to ensure that its subject fulfills the requirements for the grant of an industrial design certificate or a patent.

84. — Neither an industrial design certificate nor a patent shall be granted where the industrial design is identical or similar to the subject of another industrial design application filed in the Czechoslovak Socialist Republic and having priority.

85. — (1) The applicant's right of priority shall date from the moment the application is received by the Office.

(2) The applicant must claim the right of priority under an international convention in his application and must produce evidence of that right within three months thereafter.

(3) Where, during the examination procedure, the applicant amends the essence of the application, his right of priority shall date only from the moment the document notifying the amendment is received by the Office.

86. — The Office may recognize the right of priority (exhibition priority) of articles displayed at exhibitions organized on the territory of the Czechoslovak Socialist Republic as from the moment when the articles were displayed at the

exhibition, provided that the article displayed is the subject of an application concerning an industrial design filed with the Office within three months from the close of the exhibition.

87. — At the request of the Office, the applicant shall state the countries in which he has filed an application concerning the same industrial design, any objections that have been raised in those countries and the results of the corresponding examination procedures.

88. — The Office may invite the applicant to prove that the industrial design is capable of industrial application by producing the subject of the application; where, without a valid reason, the applicant is unable to provide such proof, the industrial design shall be deemed incapable of industrial application.

89. — (1) During the examination of the application, the Office may, after notifying the applicant, publish the description and an illustration of the industrial design in its Official Journal.

(2) Within two months from the publication in the Official Journal, any person may file objections to the grant of an industrial design certificate or a patent.

90. — On the invitation of the Office, an organization whose field of activity covers the subject of the application shall give its opinion on the application, free of charge, with respect to the effect and the economic exploitability of the industrial design; it shall give such opinion within the time limit prescribed in the Rules. At the same time the organization shall, to the extent of its resources and knowledge, give its opinion on the novelty and the practicability of the industrial design.

91. — (1) Where the subject of the application fulfills the prescribed requirements, the Office shall grant the industrial design certificate or the patent and shall advertise the grant in the Official Journal.

(2) Where the prescribed requirements have not been fulfilled, the Office shall refuse the application.

92. — (1) The Office shall revoke the industrial design certificate or the patent in whole or in part if it finds that the requirements for its grant were not fulfilled.

(2) The revocation shall be retroactive to the date of the entry into effect of the industrial design certificate or the patent.

93. — (1) The person exploiting the industrial design shall mean the person who manufactures the subject of the design as part of his economic activity or engages in trade therein.

(2) An organization exploiting the industrial design shall indicate on the products that they have been manufactured in accordance with the design.

94. — (1) An industrial design certificate or a patent shall not be effective against anyone who, before the application was filed, was using the industrial design independently of the creator or the patentee or who can be shown to have taken steps to that end.

(2) Where the creator or the patentee enjoys a right of priority under an international convention, the date of such priority shall be decisive as far as the date of the right of prior user is concerned.

(3) Once the industrial design certificate or the patent has been granted, the prior user may require the creator or the patentee to recognize his right.

95. — (1) At the request of any person showing a legal interest therein, the Office shall determine whether the external aspect of a product, as specified in the request, falls within the scope of a specific industrial design certificate or patent.

(2) Such determination shall be binding on the courts and all other State organs and organizations. It may not be examined by the courts, even as an interlocutory question.

96. — (1) Where the Office is satisfied that another person was the creator or a joint creator, it shall substitute his name for the name indicated in the application concerning the industrial design, the industrial design certificate or the patent.

(2) Where proceedings have been brought concerning the identity of the creator of an industrial design or where a person other than the creator designated in the application claims to be the creator, the Office shall continue the procedure in respect of the application, but shall make a decision thereon only after a final court decision has been notified to it.

97. — (1) Industrial designs created in the Czechoslovak Socialist Republic and designs created by Czechoslovak citizens resident abroad may be the subject of an application filed abroad only after a corresponding application has been filed in the Czechoslovak Socialist Republic, and subject to approval by the Office, except where the Office grants an exception or where an international convention provides otherwise.

(2) The approval of the Office shall also be required in the case of the withdrawal of an application concerning an industrial design filed abroad or the surrender of an industrial design patent granted abroad.

Industrial Design Certificates

98. — (1) The industrial design certificate shall constitute recognition that the subject of the application is an industrial design and shall attest the authorship of the industrial design and the right of priority thereto, as well as the mutual rights of the State and of the creator.

(2) The creator of the industrial design shall be entitled to remuneration for the exploitation of the industrial design and to participate in the execution, trials and implementation of the industrial design and shall be eligible for the other benefits prescribed by law.

(3) The rights conferred by the certificate shall enter into effect as from the filing date of the application; where Sec-

tion 85(3) applies, the rights shall enter into force on the date the Office receives the document notifying an amendment of the essence of the application. The rights shall be of unlimited duration.

99. — (1) An application concerning an industrial design in which a certificate is requested may be filed by the creator or his heir. In accordance with Law No. 105/1951 Sb. on administrative fees, the Minister of Finance of the Czechoslovak Socialist Republic shall exempt from fees the application concerning an industrial design, the request for a certificate and the certificate itself.

(2) The creator of an industrial design made in an employment relationship with an organization or with material support therefrom or in pursuance of a contract therewith shall notify the latter thereof without delay. The organizations shall systematically follow up such industrial designs.

(3) The organization referred to in subsection (2) shall file an application concerning an industrial design in the name of the creator where the latter has not done so himself within two months from the date on which he notified the organization of the industrial design or on which the organization became aware of it.

(4) The industrial design certificate shall be granted in the name of the creator.

100. — In the case of an application in respect of an industrial design created in the conditions set out in Section 82, the organization shall submit to the Office a report on the results of the preliminary examination as to the novelty, the possibilities for utilization in industrial manufacture and the economic exploitability of the industrial design.

101. — (1) The organization with which the creator has an employment relationship shall, at the creator's request, give him assistance free of charge in drafting and filing the application in respect of his industrial design and represent him in the application procedure where the industrial design falls within its field of activity and the application contains a request for a certificate.

(2) The organization shall give assistance under the preceding subsection even where the creator has no employment relationship with it, except where the industrial design concerned is clearly not useful for the national economy.

102. — (1) Industrial designs made by a creator or joint creator in an employment relationship with a State organization or with material support from such organization or in pursuance of a contract shall be administered by the organization. Industrial designs made by a creator or joint creator in an employment relationship with a cooperative, social or other socialist organization or with material support therefrom or in pursuance of a contract therewith shall be administered by the Office, which may entrust such organizations with all or part of the rights and obligations arising from its administration. After consulting the State organization and the appropriate central authority, the Office may also transfer the administration of the industrial designs to such organization.

(2) Other industrial designs for which a certificate has been granted shall be administered by the State organization whose field of activity covers the industrial design and which the Office, on the proposal of the appropriate central authority, has entrusted with the administration of the industrial design.

103. — The State organization administering an industrial design shall ensure that it is exploited in a planned and comprehensive manner and shall deal with it in accordance with the interests of the State and of the national economy. In particular, it shall ensure that the industrial design is widely known and shall, with the aid of the creator, supervise its protection and safeguard his legitimate interests.

104. — Where an industrial design is of particular importance to society, the Office may, at the request of the appropriate central authority, direct that the State's right to exploit the design be exercised, for a specified period, exclusively by a limited number of organizations.

Industrial Design Patents

105. — An application concerning an industrial design in which a patent is requested may be filed by the creator of the industrial design or his heir or other successor in title.

106. — (1) The patent shall be granted to the applicant or to his successor in title (patentee); the name of the creator shall be designated in the letters patent.

(2) The patent shall constitute recognition that the subject of the application is an industrial design and shall attest the authorship of the industrial design and the right of priority thereto.

(3) An industrial design protected by a patent may be exploited only with the patentee's consent.

(4) A patented industrial design that has been acquired by an organization may be exploited by any of the organizations, except in cases where the Office has determined otherwise in agreement with the appropriate central authority.

(5) The rights conferred by the patent shall lapse at the end of the fifth year following the filing date of the application concerning the industrial design or, where Section 85(3) applies, the date on which the Office received the document notifying an amendment of the essence of the application.

(6) Upon request, the term of a patent may be extended for one five-year period.

107. — (1) The patentee may:

(a) authorize an organization to exploit the design (license) or assign the patent to an organization;

(b) authorize a foreign national to exploit the design (license) or assign the patent to a foreign national *.

(2) A license or an assignment of a patent shall be in writing and shall take effect when it is entered in the Register of Industrial Design Patents.

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* In granting his authorization, the patentee shall comply with Section 19(1)*(c)* of Law No. 142/1970 Sb. on foreign exchange control.

108. — (1) Upon the request of an organization, the Office may grant a compulsory license where the patentee is not exploiting the industrial design or is exploiting it insufficiently and the patentee and the organization have failed to reach agreement concerning the grant of a license. A compulsory license may be granted only after tbree years from the filing date of the application or two years from the grant of the patent, whichever period expires last. A compulsory license shall not be granted if the patentee justifies his inaction by legitimate reasons.

(2) Upon the request of an organization, the Office may grant a compulsory license even before the end of the period referred to in subsection (1) where the industrial design is of special interest to the State and where the organization and the patentee have failed to reach agreement concerning the grant of a license.

(3) If the organization and the patentee fail to reach agreement on the remuneration for the compulsory license, the question shall be settled by the courts, on the request of the patentee.

109. — (1) During the examination of the application, the applicant may substitute his request for a patent by a request for an industrial design certificate.

(2) During the first three years of the term of a patent, the Office shall, upon the patentee's request, substitute the patent by an industrial design certificate.

(3) Subsection (2) shall not apply where the patentee has already granted a license to exploit the industrial design, unless the Office grants an exception. The Office may grant an exception only where the rights conferred by the license are not affected.

110. — An industrial design patent shall lapse:

(a) at the end of its term;

(b) on surrender by the patentee; in this case, the patent shall cease as from the day on which a written declaration by the patentee is received by the Office;

(c) in the event of non-payment of a fee which has become due.

CHAPTER V

Common Provisions

111. — (1) Within their respective fields, the organs and organizations shall orient the activities of inventors and rationalizators by periodically drawing up and announcing plans for thematic tasks.

(2) By means of thematic tasks, creative activity shall be directed in such a way as to contribute, in particular, to the solution of the principal tasks set by economic plans, in particular by medium-term and operational plans, at all levels of economic management.

(3) A thematic task shall mean a concrete requirement for the solution of a given problem in the field of manufacturing techniques, the organization of production or the economic structure. The announcement of a thematic task shall include the conditions for the competition and specify the remuneration to be awarded for the solution of the task.

112. — In cooperation with the organs and the economic and social organizations, the Office shall draw up and announce the plans for thematic tasks designed to solve technical and economic problem, arising out of economic plans, which are of particular importance for society.

113. — (1) The organs and organizations shall be responsible for making adequate preparations, for drawing up and periodically and systematically announcing the plans for thematic tasks, and for carefully studying proposals received by them. From the moment when the plans for thematic tasks are announced, the organs and organizations shall have full responsibility for ensuring the prompt utilization of the solutions considered to be the best. In appraising solutions, the organs and organizations shall establish a concrete program for their prompt realization.

(2) The organizations which announce plans shall establish all the conditions conducive to the solution of thematic tasks.

(3) The authors of solutions considered to be the best shall be entitled to a special remuneration, which shall be independent of any remuneration that may eventually be paid in respect of a rationalization proposal or an invention.

(4) The organization shall enter all proposed solutions received by it in the journal of rationalization proposals and shall treat them as applications concerning rationalization proposals.

114. — (1) The organization with which the author has an employment relationship shall enable him to participate, where the Office has invited such participation, in the examination procedure in respect of applications concerning a discovery, concerning an invention where an inventor's certificate is requested, and concerning an industrial design where an industrial design certificate is requested.

(2) The organization shall invite the author to take part in the execution, trials and implementation of his invention, rationalization proposal or industrial design for which the State holds the right of exploitation; in the case of a rationalization proposal, the organization shall not be under such an obligation where the cost of tbe author's participation would be heavily disproportionate to the expected social utility of the proposal or where the cost would be an adverse factor. The author of an invention, rationalization proposal or industrial design shall participate in the execution, trials and implementation of his invention, rationalization proposal or industrial design and assist in its protection abroad, where such participation is in the common interest. The organization with which the author has an employment relationship shall facilitate his cooperation and grant him the necessary leave of absence; where the cooperation in the execution, trials or implementation of the solution is to take place in another organization, the latter shall make arrangements regarding leave of absence with the organization with which the author has an employment relationship.

(3) Where the author's cooperation in the execution, trials or implementation of the solution coincides with the working hours under his employment relationship, the organi-

zation that employs him shall pay him a wage indemnity equivalent to his average wage. Where, during his working hours, he participates in the execution, trials or implementation of the solution in another organization, the latter shall reimburse the indemnity to the organization which has paid it. Where the author's cooperation in the execution, trials or implementation of his solution takes place outside his working hours, the relevant rights and obligations shall be settled by a special agreement.

115. — The author of an invention, rationalization proposal or industrial design for which the State holds the right of exploitation shall be entitled to appropriate expenses in respect of the preparation of drawings, models or prototypes, where the organization has duly received them for the purpose of considering whether to use the invention, rationalization proposal or industrial design, or of using it.

116. — The author's right to remuneration shall arise on the issue of the diploma for a discovery, on the exploitation of an invention attested by an inventor's certificate, on the implementation of a rationalization proposal attested by a rationalization certificate, and on the use of an industrial design attested by a certificate. Where the organization fails to make any decision on an application concerning a rationalization proposal within two months or within the extended period (Section 67) and uses the subject of the application, the author of the rationalization proposal shall be entitled to remuneration where the subject of the application fulfills the requirements for a rationalization proposal.

117. — (1) The remuneration for a discovery shall be determined in the light of the importance of the discovery for society; it shall be paid within six months of the grant of the diploma.

(2) The amount of the remuneration for the use of an invention, rationalization proposal or industrial design shall depend on the benefit derived by society from such use, and not only on the benefit for the organization that exploits it.

(3) The remuneration for the use of inventions, rationalization proposals and industrial designs and the compensation for drawings, models and prototypes shall be determined by the organization that uses them, in accordance with the relevant provisions.

(4) Within one month from the determination of the remuneration, the organization shall transmit to the author the documents on the basis of which the remuneration was established in respect of the invention, rationalization proposal or industrial design.

(5) The date of payment of remuneration and compensation shall be agreed by contract. Unless the parties agree on an earlier date, the remuneration shall be payable within one month from the end of the first year of exploitation of the invention, rationalization proposal or industrial design.

118. — In the event of revocation, in whole or in part, of a diploma for a discovery, an inventor's certificate, industrial design certificate or a favorable decision on a rationalization proposal, no part of the remuneration shall be repaid provided it was acquired in good faith.

119. — Remuneration granted in respect of inventions, rationalization proposals or industrial designs may not be set off, in whole or in part, against other remuneration or similar benefits.

120. — (1) The author of a discovery attested by a diploma, the inventor of an important invention attested by an inventor's certificate, the author of an important rationalization proposal attested by a rationalization certificate, and the creator of an important industrial design attested by a certificate shall, where his invention, rationalization proposal or industrial design has been exploited — and all other factors heing equal, have certain benefits:

(a) for his enrollment in schools in order to pursue his professional education, for the improvement of his qualifications and for the grant of fellowships;

(b) for his admission to an employment and in the competitive examinations for admission to various posts;

(c) for the examination of the degree of urgency of his housing needs, in particular for the allocation of lodgings and determination of dwelling space.

(2) The conditions for the grant of the benefits referred to in subsection (1), and their extent, shall be determined by special regulations.

(3) Under special regulations, an honorary title and an emblem may be awarded to the inventor of an invention for which an inventor's certificate has been granted where the use of the invention is of substantial benefit to society, and similarly to the author of a rationalization proposal attested by a certificate where the use of the proposal is of substantial benefit to society.

(4) Upon request by the author of a discovery for which a diploma has been granted and upon request by the inventor of an invention attested by an inventor's certificate where the use of the invention is of substantial benefit to society, the Office may direct that the discovery or invention bear the author's name; with the author's consent, the Office may make such a direction on some other initiative.

121. — Anyone who has demonstrated his spirit of initiative by participating in the execution, trials and implementation of a discovery, invention, rationalization proposal or industrial design for which the State holds the right of exploitation shall be entitled to remuneration for such participation. Such entitlement shall not extend however to executives of the organization whose material interest is regulated by special provisions or to employees of the organization whose tasks include such participation.

122. — Anyone who has drawn an organization's attention to the possibility of using an invention or a rationalization proposal already implemented by another organization shall thereby be entitled to remuneration from the organization that has taken up his recommendation and implemented the invention or rationalization proposal. Such entitlement shall not extend however to employees who have, inter alia, the task of following up and proposing the application of new techniques and working methods.

123. — The organization that was the first to implement a discovery, invention, rationalization proposal or industrial design or which drew up the necessary documents for exploiting it may request the organization that has taken over those documents to refund a proportion of the expenditure incurred in connection with the research and development necessary for the exccution and trials.

124. — (1) The courts shall have jurisdiction to hear and decide:

(a) disputes as to the authorship of a discovery, invention, rationalization proposal or industrial design;

(b) disputes as to whether the author or a co-author of a discovery, invention or industrial design was acting in an employment relationship with his organization or with material support therefrom;

(c) disputes concerning the right of prior user;

(d) disputes concerning remuneration for a discovery, invention, rationalization proposal or industrial design, particularly disputes as to the existence of the right to remuneration, the manner of determining remuneration and the amount of remuneration;

(e) disputes concerning the remuneration for the solution of a thematic task, for the participation in the execution or implementation of a discovery, invention, rationalization proposal or industrial design, or for drawing attention to the possibility of using an invention or a rationalization proposal;

(f) disputes concerning the compensation to be paid in respect of drawings, models and prototypes;

(g) disputes concerning infringement of the rights conferred by an inventor's certificate, industrial design certificate, patent of invention or industrial design patent, particularly disputes concerning infringement of the right of exploitation of inventions and industrial designs;

(h) disputes concerning the remuneration for a compulsory license.

(2) The boards of arbitration in economic affairs shall be competent to decide disputes between organizations concerning legal relationships arising from discoveries, inventions, rationalization proposals and industrial designs.

125. — (1) The courts shall hear and decide disputes concerning remuneration for inventions, rationalization proposals and industrial designs only where a prior conciliation procedure with the competent trade-union organ (hereinafter referred to as " trade-union organ ") has yielded no result. Where no such organ has been set up, such disputes shall be heard and decided directly by the courts.

(2) The purpose of the conciliation procedure shall be to reach an amicable settlement of the matter in dispute. Any such settlement shall be approved by the trade-union organ unless it is contrary to the regulations in force.

126. — (1) During the procedure, the trade-union organ shall ascertain the facts as rationally and rapidly as possible and shall ensure that the amicable settlement is consistent with the regulations in force.

(2) Before approving an amicable settlement, the trade-union organ shall invite the parties to produce the necessary documents and to take part in the proceedings; it shall invite other persons who may be able to clarify the matter to participate in the proceedings.

127. — (1) Where, within three months following the request, an amicable settlement has not been approved by the trade-union organ, a party may propose that the dispute be immediately submitted to a court or may directly appeal to a court.

(2) The limitation period shall be suspended during the conciliation procedure before the trade-union organ, provided that such suspension shall not exceed three months.

128. — (1) The amicable settlement shall have force of law as from the trade-union organ's decision to approve it. Once approved, the settlement shall be binding upon the parties and upon all the organs.

(2) Where the obligations under an approved settlement have not been fulfilled, the person entitled may request the court to enforce the settlement.

129. — (1) The approval of a settlement by the trade-union organ may be annulled by the court if the settlement is subsequently found to be contrary to law. In such event, the court shall decide upon the merits of the case.

(2) A request for annulment of an amicable settlement may be made by a party, by a State organization or by a social organization within three years from the date when the settlement gained force of law.

130. — (1) Upon the request of a party, the trade-union organ shall revoke its approval of a settlement if particularly important circumstances are subsequently found to exist which, through no fault of his own, the party was unable to plead and which warrant a decision substantially more favorable to him.

(2) The request for revocation may only be submitted within three months from the day on which the party became aware of the circumstances warranting the change proposed, and within not more than three years following the day in which the settlement gained force of law.

131. — (1) Where any infringement of the obligations under this Law has delayed or precluded the fulfillment of the application requirements, the examination procedure or the trials, exploitation and dissemination with respect to inventions, rationalization proposals and industrial designs for which the State holds the right of exploitation, or where such infringement has diminished or violated the property or other rights of the State or of an author, the central authorities of the State administration of the Federation and the Republics shall be empowered to impose the following fines:

(a) on a subordinate organization, a fine not exceeding 100,000 koruny and, in the case of a further infringement of obligations for which a fine has already been imposed, a fine not exceeding 200,000 koruny;

(b) on the employees of the subordinate organizations who have caused the infringement of obligations, a fine not

exceeding three times their average monthly wage; the fine shall be imposed after the executives of the organization have been heard.

(2) The power referred to in subsection (1) shall be vested in the regional national committees, in the case of organizations directed by national committees and their employees, or in the case of cooperative organizations and their employees.

132. — In the case of an infringement of the obligations under this Law, other than that referred to in Section 131 (1)*(b)*, the persons responsible shall be liable to a disciplinary penalty in accordance with the relevant legal provisions.

133. — The Office may propose the measures referred to in Sections 131 and 132. The organs and organizations shall inform the Office of the results of the measures taken.

134. — (1) Sections 131 and 132 shall not apply where the same infringement has already been the subject of a sentence of imprisonment, a reformatory measure, a fine or any other penalty against property, imposed under other provisions, particularly in criminal proceedings.

(2) In the imposition of fines under Section 131, the general law of administrative procedure shall be observed.

(3) Fines imposed under Section 131 shall be paid into the State budget in the field of activity of the authority which imposed them.

135. — (1) The general law of administrative procedure shall apply to the procedure before the Office, taking into account the exceptions provided for in this Law and excluding Sections 29 and 49 of Law No. 71/1967 Sb. on administrative procedure (Code of Administrative Procedure).

(2) All applications filed with the Office shall be in writing; where the nature of the matter permits, they may be presented orally and entered in the record.

136. — The organizations shall give assistance to the Office upon its request; in particular, they shall furnish to the Office or make available to it the necessary documents and shall inform it of the results of trials and other relevant findings.

137. — The Office may allow the files or parts thereof to be inspected by third persons showing a legal interest. Prior to the publication of the subject of the application and the decision regarding the grant of a certificate or patent for an industrial design, only the name of the applicant and of his agent, the filing date and the title and serial number of the application may be communicated to third persons.

138. — (1) The Office shall excuse the failure to comply with any time limit, due to serious reasons, where the party to the procedure so requests within two months from the day on which the reason for the failure to comply ceased to exist provided that the omitted act has been performed within that time.

(2) The failure to comply with a time limit may not be excused after one year from the latest date by which the act was to have been performed; furthermore, failure to comply with the time limit for claiming or evidencing the right of priority and for filing objections to the grant of an inventor's certificate or patent or an industrial design certificate or patent may not be excused.

(3) The rights acquired by third persons between the expiry of the time limit and the reinstatement shall not be affected.

139. — (1) If a party in the procedure fails to respond to an invitation by the Office within the prescribed time limit, the Office may suspend the procedure.

(2) The Office may suspend the procedure at the request of any party.

140. — Decisions of the Office shall be subject to appeal within one month from their notification.

141. — (1) The Office shall publish an Official Journal, which shall include the necessary particulars concerning the examination procedure relating to discoveries, inventions and industrial designs, as well as official notices and important decisions.

(2) The registers maintained by the Office shall record the grants of diplomas for discoveries, inventors' certificates and patents and industrial design certificates and patents; where a discovery, invention or industrial design contains elements that are to be kept secret under special regulations, the corresponding entries shall be made in special registers.

CHAPTER VI

Obligations and Functions of the Organs and Organizations

Office for Inventions and Discoveries

142. — (1) The Office for Inventions and Discoveries is a federal central authority of the State administration in the field of discoveries, inventions, rationalization proposals, industrial designs, thematic tasks, trademarks and indications of source. The Office shall be the former Office for Patents and Inventions *.

(2) The Office shall be directed by a president, who shall be responsible for its activities. The President may be represented by the Vice-President. Where the President of the Office is a citizen of the Czech Socialist Republic, the Vice-President shall be a citizen of the Slovak Socialist Republic, and vice versa. The President of the Office, the Vice-President and the deputies of the President shall be appointed by the Government of the Czechoslovak Socialist Republic.

143. — The Office shall perform the tasks specified in this Law and those relating to trademarks and indications of source as well as, within its field of activity, the following tasks:

(a) it shall participate in framing the national policy of the Federation and, consistently with the economic planning system, direct, organize and control the implementation of that policy and propose appropriate action to be taken to that end;

* The relationship of the Office under Section 54(1) of Law No. 133/1970 Sb. on the activities of the Federal Ministries shall not be affected.

(b) it shall prepare the draft development outline and projects for the solution of specific matters and propose the principles to be adopted and measures to be taken to that end;

(c) in cooperation with the central authorities of the State administration of the Federation and the Republics, it shall direct and coordinate the broadest possible exploitation, within the national economy, of important discoveries, inventions, rationalization proposals and industrial designs;

(d) it shall keep under review the legal regulation of matters within the purview of the Federation and prepare draft laws for the Federal Assembly and draft orders for the Government of the Czechoslovak Socialist Republic;

(e) it shall carry out tasks relating to the development of socialist integration within the framework of the Council for Mutual Economic Assistance and to the development of international relations and cooperation; it shall prepare draft international agreements to be concluded and ensure the performance of tasks resulting from such agreements and from the membership of the Czechoslovak Socialist Republic in international organizations;

(f) it shall draw up for the Government of the Czechoslovak Socialist Republic and for the Governments of the Czech Socialist Republic and the Slovak Socialist Republic annual reports on the situation, development and the results obtained in the field of responsibility entrusted to it;

(g) it shall manage the central pool of world patent literature, the creation, exchange and availability to the public of the pool of information, and direct and orient the activities of a network of specialized information centers, within the field of responsibility entrusted to it;

(h) in cooperation with the appropriate central authorities of the State administration of the Federation and the Republics, it shall provide for and implement the training of experts.

144. — More detailed provisions regarding the tasks of the Office, the principles governing its activities, and its organization shall be the subject of its statute to be approved by the Government of the Czechoslovak Socialist Republic.

Central Authorities of the Federation and the Republics

145. — (1) The central authorities of the State administration of the Federation and the Republics shall carry out, each within its field of responsibility, the tasks specified by this Law, in cooperation with the Office.

(2) In addition, they shall be responsible, in the field of discoveries, inventions, rationalization proposals and industrial designs:

(a) for directing the activities of the subordinate organizations that are carrying out the tasks assigned to them under this Law, and for supervising the performance thereof;

(b) for organizing and encouraging the exploitation and dissemination of discoveries, inventions, rationalization proposals and industrial designs in the field of responsibility entrusted to them and within the framework of scientific and technical cooperation;

(c) for systematically evaluating the state of development of that field and its influence on the progress of the national economy and of the level of technology, and on the fulfillment of planned tasks;

(d) in agreement with the Office, for issuing directives to the subordinate organizations;

(e) for organizing the most extensive assistance possible to the authors of inventions, rationalization proposals and industrial designs for which the State holds the right of exploitation.

(3) The Central Council of Cooperatives and the central organs of the consumption, production and housing cooperatives shall carry out the tasks referred to in the preceding subsections within the field to which this Law pertains and each within its field of responsibility.

Organizations

146. — (1) The organizations shall be responsible for the fulfillment of all the tasks resulting for them, within the field of their economic activity, from the implementation of this Law.

(2) To that end, the organizations shall:

(a) establish, in accordance with the requirements of the economic plans, the necessary conditions for the development of that field and of the creative faculties of the workers, and ensure as necessary the appropriate conditions for the trials, exploitation and dissemination of discoveries, inventions, rationalization proposals and industrial designs;

(b) ensure the prompt implementation and exploitation of discoveries, inventions, rationalization proposals and industrial designs that are useful for society, in particular their integration in the technical development plan, and inform the Office when the working begins of inventions protected by an inventor's certificate, specifying the social benefit expected from the use of such inventions;

(c) ensure the protection of the interests of the State and of authors in the Czechoslovak Socialist Republic and abroad, in particular by seeing that the necessary applications are filed in time for inventions and industrial designs and by following up the protection of those rights;

(d) supervise and systematically follow up the performance of tasks and periodically evaluate the state of development in that field and its influence on the raising of the level of production, equipment and products within the organization;

(e) grant extensive assistance to the authors of discoveries, inventions, rationalization proposals and industrial designs for which the State holds the right of exploitation.

Cooperation with the Socialist Organizations

147. — (1) The organs and organizations shall carry out their obligations in the field of discoveries, inventions, rationalization proposals and industrial designs in cooperation with the Revolutionary Trade-Union Movement, the Socialist Youth Union and the Czechoslovak Scientific and Technical Socicty. In cooperation with the organs of the Revolutionary Trade-Union Movement, they shall issue organizational instructions and directives in that field.

(2) The Revolutionary Trade-Union Movement shall primarily take part in the work of political organization in respect of the development of creative activity, the establishment of a long-term approach for directing and developing such activity — having regard to the requirements of the national economic plans —, the evaluation and application of the results obtained, and the exercise of social control; the Movement shall contribute to creating conditions conducive to successful creative activity by the authors of inventions, rationalization proposals and industrial designs and shall give them manifold assistance, in particular, moral assistance.

(3) The Czech Union of Production Cooperatives and the Slovak Union of Production Cooperatives shall designate the organs of production cooperatives responsible for exercising the activity which, under this Law, is within the purview of the organs of the Revolutionary Trade-Union Movement; where the participation of the higher trade-union organs is needed, such activity shall be exercised by the Czech Union of Production Cooperatives and the Slovak Union of Production Cooperatives.

CHAPTER VII

Transitional and Final Provisions

Transitional Provisions

148. — Applications concerning discoveries shall bc examined under this Law where the examination procedure has not been concluded by a final decision on the entry into force of this Law.

149. — (1) Applications concerning inventions which have not been decided by the entry into force of this Law shall, where the State holds the right of exploitation in the invention under the existing provisions, be dealt with under the provisions of this Law applicable to applications concerning inventions in which an inventor's certificate is requested.

(2) Other applications concerning inventions which have not been decided by the entry into force of this Law shall be dealt with under the provisions of this Law applicable to applications concerning inventions in which a patent is requested.

150. — (1) As from the entry into force of this Law, the provisions concerning inventors' certificates shall apply to legal relationships arising from patents of invention granted prior to the entry into force of this Law, where the State holds the right of exploitation in the invention under the existing provisions. The rights and duties arising from tbe obligations under Section 3(6) of Law No. 34/1957 Sb.[2] shall not be affected.

(2) As from the entry into force of tbis Law, legal relationships arising from other patents of invention shall be governed by the provisions concerning patents of invention; tbis Law shall not affect tbe term of such patents under the existing provisions.

151. — Within seven years from the beginning of the term of a patent granted prior to the entry into force of this Law, the patentee may, where the State does not hold the right of exploitation in the invention, request that the patent be substituted by an inventor's certificate provided be has neither granted a license under this Law nor concluded a contract to work the patent under Law No. 34/1957 Sb. If, in accordance with Section 3(1) of Law No. 34/1957 Sb., the right to authorize the working of the invention bas been transferred to another person, the request may be approved only if it is accompanied by the authorization of the person entitled.

152. — (1) Applications concerning rationalization proposals which have not been decided by the entry into force of this Law sball, where the proposal has not been implemented by that date, be examined under this Law.

(2) This Law shall apply to legal relationships arising from rationalization proposals decided prior to the entry into force of this Law, where the proposal has not been implemented by that date.

(3) Otber applications concerning rationalization proposals sball be dealt with under the existing provisions.

(4) The rights and duties arising from the obligations under Section 31(3) of Law No. 34/1957 Sb. sball not be affected.

153. — (1) Protected designs registered under Law No. 8/1952 Sb.[3] shall be considered industrial designs from the entry into force of this Law.

(2) From the entry into force of this Law, tbe provisions concerning industrial design certificates sball apply to legal relationships arising from protected designs registered in tbe name of an organization.

(3) From the entry into force of this Law, the provisions concerning industrial design patents shall apply to legal relationsbips arising from otber protected designs, unless tbe owners tbereof request an industrial design certificate.

(4) For other matters, Section 150 shall apply mutatis mutandis.

154. — Applications concerning designs which have not been decided by the entry into force of this Law shall be dealt with under tbis Law, as follows:

(a) an application filed by a socialist organization shall be dealt with under the provisions concerning applications in which an industrial design certificate is requested;

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[2] I. e. the former patent law (*La Propriété industrielle*, 1958, p. 86).
[3] *La Propriété industrielle*, 1952, p. 182.

(b) in other cases, the application shall be dealt with under the provisions concerning applications in which an industrial design patent is requested unless, within three months from the entry into force of this Law, the creator requests an industrial design certificate.

Final Provisions

155. — (1) In agreement with the appropriate central authorities, the Office shall issue Rules concerning:

(a) the procedure regarding applications concerning discoveries, inventions, rationalization proposals and industrial designs;

(b) the working of inventions in the national economy, the administration of inventions, rationalization proposals and industrial designs, the transfer of such administration and relations between organizations in connection with the exploitation of inventions, rationalization proposals and industrial designs;

(c) the remuneration and reimbursement of expenses in the field of discoveries, inventions, rationalization proposals and industrial designs;

(d) the planning of thematic tasks;

(e) foreign relations and the representation of foreigners in the procedure before the Office.

(2) New methods of prophylaxis, diagnosis and treatment of human and animal diseases and new methods for the protection of plants against pests and diseases shall be the subject of a certificate. The details shall be determined, under implementing regulations, by the appropriate Ministries in agreement with the Ministry of Finance and the Office.

156. — Detailed regulations on the conciliation procedure in disputes concerning the remuneration for inventions, rationalization proposals and industrial designs shall be issued, in agreement with the Office, by the Central Council of Trade Unions. For the production cooperatives, the details of this procedure shall be determined, in agreement with the Office, by the central organs of production cooperatives (Section 145(2)*(d)* and (3)).

157. — The Federal Ministry of Agriculture and Food may provide, within its field of responsibility and in agreement with the Ministry of Finance and the Office, for the necessary exceptions regarding the filing of applications and the implementation, dissemination and remuneration of rationalization proposals.

158. — The following are hereby repealed:

(i) Sections 14 to 31 of Law No. 8/1952 Sb. on trademarks and designs;

(ii) Sections 15 to 25 of Order of the Minister-President of the State Planning Office No. 15/1952 Sb. implementing Law No. 8/1952 Sb. on trademarks and designs [4], and Sections 26 to 37 of the Order, insofar as designs are concerned, and the annex to the Order containing instructions on the remuneration for designs created by employees;

(iii) Law No. 34/1957 Sb. on inventions, discoveries and rationalization proposals, within the meaning of the regulations derogating therefrom;

(iv) Government Order No. 43/1957 Sb. on inventions;

(v) Government Order No. 44/1957 Sb. on discoveries;

(vi) Government Order No. 45/1957 Sb. on rationalization proposals;

(vii) Instruction No. 162/1957, in the Official Gazette (Ú. l.), of the President of the Office for Inventions and Standardization, on the remuneration for inventions and for participation in the execution, trials, implementation or dissemination of inventions;

(viii) Instruction No. 163/1957 Ú. l. of the President of the Office for Inventions and Standardization, on the remuneration for discoveries;

(ix) Instruction No. 164/1957 Ú. l. of the President of the Office for Inventions and Standardization, on the remuneration for rationalization proposals and for participation in the execution, trials, implementation or dissemination of rationalization proposals;

(x) Instruction No. 165/1957 Ú. l. of the President of the Office for Inventions and Standardization, on the remuneration for the examination in respect of inventions, discoveries, rationalization proposals and technical standardization;

(xi) Notice No. 166/1957 Ú. l. of the President of the Office for Inventions and Standardization, on thematic tasks;

(xii) Notice No. 167/1957 Ú. l. of the President of the Office for Inventions and Standardization, on the filing abroad of applications concerning inventions and on the working of inventions in relations with other countries;

(xiii) Notice No. 168/1957 Ú. l. of the President of the Office for Inventions and Standardization, on the representation of foreigners in the procedure before the Office for Inventions and Standardization;

(xiv) Notice No. 207/1957 Ú. l. of the Minister for Public Health, on inventors' certificates in respect of new methods of prophylaxis and treatment of diseases;

(xv) Notice No. 76/1958 Ú. l. of the Minister for Agriculture and Forestry, establishing in respect of the field of responsibility of the Ministry of Agriculture and Forestry certain exceptions from the provisions of Government Order No. 43/1957 Sb. on inventions, and from the provisions of Government Order No. 45/1957 Sb. on rationalization proposals;

(xvi) Notice No. 149/1968 Sb. of the President of the Office for Patents and Inventions, amending Notice No. 168/1957 Ú. l. on the representation of foreigners in the procedure before the Office for Patents and Inventions at Prague;

(xvii) Section 5 of Law No. 170/1968 Sb. on certain measures regarding the federal organization of the State insofar as the Office for Patents and Inventions is concerned.

159. — This Law shall enter into force on January 1, 1973.

[4] *La Propriété industrielle*, 1953, p. 4.

FINLAND

Law on the Right to Employees' Inventions

(No. 656 of December 29, 1967)

1. — This Law shall apply to inventions, patentable in Finland, which have been made by a person in the service of another person — employee —. This Law shall apply *mutatis mutandis* to persons connected with the public service.

Doctors of medicine and the scientific personnel of universities, other colleges or equivalent scientific institutions of learning shall not, in such capacity, be regarded as employees within the meaning of this Law. This Law shall however apply to teachers at a military institution of learning who hold an office or appointment in the defense services.

2. — The provisions of this Law shall serve as a guide insofar as nothing else has been provided for by contract or clearly results from the employment or from other circumstances. Contractual terms incompatible with Sections 7(1), 8(2) and 9 shall be invalid.

3. — Employees shall have the same right to their inventions as other inventors unless anything else follows from the provisions of this Law or any other law.

4. — Where an invention has come about as the result of an employee's activity in the performance of the work given to him or substantially as a result of using his experience in the enterprise of his employer, the employer may acquire the right to the invention, in whole or in part, if the use of the invention falls within his field of activity. Where the invention is the result of a task given in the course of service and specified with more precision, the employer may acquire the right even if the use of the invention is not within his field of activity.

Where an invention whose use falls within the field of activity of the employer has come about in any connection with the employment other than those mentioned in subsection (1), the employer may acquire the right to use the invention.

Should the employer wish to acquire a more comprehensive right to an invention referred to in subsection (2) than that provided for therein or should he wish to acquire the right to an invention which has come about without any connection with the employment but whose use falls within his field of activity, the employer shall have an option to acquire such right by agreement with the employee.

5. — An employee who makes an invention referred to in Section 4 shall notify the employer accordingly without delay and at the same time communicate such particulars of the nature of the invention as to enable the employer to understand it; he shall also inform the employer of what he considers to be the connection between the employment and the making of the invention.

6. — An employer who wishes to acquire the right to an invention in accordance with Section 4(1) or (2) shall, within four months from his receipt of the notification provided for in Section 5, notify the employee accordingly in writing. An employer must exercise the option given to him under Section 4(3) within the same period.

During the four months following the receipt of the notification under Section 5, the employee may not dispose of an invention referred to in Section 4 without his employer's permission in writing or make any disclosure which would render the invention public or would enable it to be used for the benefit of another person. The employee may however, when the notification has been made in accordance with Section 5, apply for a patent for the invention in Finland, in which case he shall notify the employer accordingly in writing within one week from the day the application was filed with the patent authorities.

7. — Where an employer acquires the right to an invention of an employee in accordance with Section 4 or on the basis of any other right, the employee shall be entitled to a reasonable remuneration even if it was agreed otherwise by contract before the invention was made.

In the assessment of the remuneration, special regard shall be given to the value of the invention, the scope of the right which the employer acquires, as well as to the terms of employment of the employee, and the significance which the employment may have had for the making of the invention.

Where an action for remuneration has not been instituted within five years from the employer's notification that he is acquiring the right to the invention, the right of action shall lapse. If a patent for the invention has been applied for, the action may always be instituted within one year from the grant of the patent.

8. — Where, during the six months following the termination of the employment, an application for a patent is filed for an invention to which Section 4 would apply if it had come about during the employment, the invention shall be deemed to have been made during the employment unless the inventor can show on the balance of probability that the invention came about after the employment had ceased.

Any agreement between an employer and employee which limits the employee's right to dispose of an invention made more than one year after the termination of the employment shall be invalid.

9. — Notwithstanding any agreement in a court order or contract concerning remuneration under Section 7, the court may vary the remuneration if this is required by a substantial change in circumstances. An employee shall not be obliged to refund remuneration already paid.

If the application of contractual terms regarding the right to employees' inventions is obviously contrary to morals or is otherwise unreasonable, such terms may likewise be rectified or declared unenforceable.

10. — Anyone who learns about an invention as a result of the provisions of this Law may not make use of what he has learned or disclose anything about it without lawful justification.

11. — A board of inventions shall be instituted which shall give opinions on questions relevant to the application of this Law; the board shall consist of a chairman and six members.

An opinion may be sought by employers and employees as well as by the courts where the dispute has been submitted to them. The same right shall be available to the Patent Office if it is dealing with an application for a patent for the invention.

The chairman and two members shall be appointed by the Government for a certain term, from persons who are considered not to represent employer or employee interests. The chairman and one of the members referred to, who shall at the same time act as vice-chairman, shall have the qualifications of a judge and be familiar with the work of a judge. The other member shall have an engineering training and be familiar with patent questions.

The other members, who shall be familiar with labor conditions and of whom two shall represent the employers and two the employees, shall be appointed by the Government, for two years at a time, on the suggestion of the respective organizations.

Each member of the board shall have an alternate, appointed by the Government, with the qualifications prescribed for the member.

The board's costs shall be paid from the public funds. Detailed regulations for the board and its activities shall be issued by the Government.

12. — The City Court of Helsinki shall have jurisdiction in disputes concerning employers' or employees' rights under this Law. In such proceedings, the rules relating to court procedure in patent cases shall apply where appropriate.

13. — More detailed rules for the application of this Law shall be issued by decree.

14. — This Law shall enter into force on January 1, 1968.

This Law shall not apply to inventions made before January 1, 1968.

FRANCE

Order

Determining the Applications for Patents and Patents of Addition that are Subject to a Documentary Report (end of transitional period)

(Paris, August 24, 1973)

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1. — The period referred to in Section 101 of Decree No. 68-1100 of December 5, 1968 [1], mentioned above, during which the provisions of Chapter VI of that decree are not applicable in all the technical branches of the International Patent Classification, shall come to an end on December 31, 1973.

Accordingly, all applications for patents or patents of addition filed on or after January 1, 1974 shall be subject to the provisions of Chapter VI of Decree No. 68-1100 of December 5, 1968, mentioned above.

2. — The Director of the National Institute of Industrial Property is entrusted with the implementation of this Order, which shall be published in the *Journal Officiel* of the French Republic.

[1] *Industrial Property*, 1969, p. 115.

ITALY

Decrees concerning the Temporary Protection of Industrial Property Rights at Exhibitions

(of July, August and September 1973) *

Sole Section

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

XI[a] Mostra internazionale del marmo e delle macchine per l'industria marmifera (S. Ambrogio di Valpolicella (Varese), September 8 to 16, 1973);

XXVI[a] Fiera di Bolzano — Campionaria internazionale (Bolzano, September 15 to 22, 1973);

XXXVII[a] Fiera del Levante — Campionaria internazionale (Bari, September 22 to October 1, 1973);

VII[o] SUDPEL — Salone italiano della pelletteria e del guanto (Naples, October 6 to 9, 1973);

III[a] Fiera agricola dell'Arco Alpino (Bolzano, October 19 to 22, 1973);

XIII[o] Salone nautico internazionale and *III[o] Salone internazionale delle attrezzature subacque* (Genoa, October 19 to 28, 1973);

VII[a] Mostra nazionale del mobile (Florence, October 27 to November 4, 1973);

XXXIV[a] MITAM — Tessuti per l'abbigliamento (Milan, November 8 to 11, 1973);

X[o] TECNHOTEL — Mostra internazionale delle attrezzature alberghiere e turistiche and *IV[a] BIBE — Mostra internazionale dei vini, liquori ed altre bevande* (Genoa, November 17 to 25, 1973);

VII[a] Giornata del vino italiano — VINITALY (Verona, December 5 to 9, 1973)

shall enjoy the temporary protection established by the decrees mentioned in the preamble [1].

* Official communications from the Italian Administration.

[1] Royal Decrees No. 1127 of June 29, 1939, No. 1411 of August 25, 1940, No. 929 of June 21, 1942 and Law No. 514 of July 1, 1959. (See *La Propriété industrielle*, 1939, p. 124; 1940, pp. 84 and 196; 1942, p. 168; 1960, p. 23.)

GENERAL STUDIES

Spheres of Influence in the Legal Regulation of Employees' Inventions

A Comparative Study

By Fredrik NEUMEYER *

Introduction

When one is looking for the final purpose in order to find a basis for the harmonization of various nationally regulated fields of law existing in all corners of the world, some system of *grouping* interrelated legal provisions is needed. This is also true when such a basis is sought for the harmonization of a specific branch of law such as the law on employees' inventions, regulating the relations between an employer and an employee who has made an invention in the course of his employment.

Ancient systems of law, such as Hindu law, Muslim law, Jewish law and Roman law, are to some extent sources of legal rules which are still valid in some countries. There are in addition certain broad groups of law which usually go under the name of the Common Law group, the Germanic law group, the Roman law group and the Socialist law group. The French jurist René David distinguishes three main contemporary " families of law ": the Romano-Germanic family, the Common Law family and the Socialist law family [1]. In addition, he points to certain systems of a religious or philosophical rather than a juridical nature, such as Muslim or Hindu law, which are the laws of a community of believers irrespective of citizenship and emphasize the duties of the " just man. " [2]

However, neither the traditional classification of legal systems nor David's " families of law " are suited to the kind of classification needed in the field of employees' inventions. As I stated in an earlier Study published in this review [3], the law on employees' inventions belongs partly to patent law, partly to labor law and partly to contract law. It is, first and foremost, closely connected with the state of industrialization in the various countries and with their general economic and social system. Apart from Japan and the United States of America, the majority of the countries concerned are still the European countries. There are therefore no " families of law " in this connection but individual nations have had a strong influence in the past, either as colonial powers " exporting " concepts of law relating to the protection of inventions or as powers with a strong political and economic ideology such as the Soviet Union.

Thus, there are a number of countries each of which has influenced the legislation on employees' inventions in other countries and has helped to create specific rules regarding the rights and obligations arising from inventions made in the course of employment. This legal influence is not to be found institutionalized in any international agreement between the countries concerned. A detailed study of the legislative history of the origin of laws which are similar in this field would probably reveal the contacts which have taken place between the legislature in the " recipient " countries and the donor of the impulse for such legislation. The purpose of this Study is however merely to point out existing spheres of legal influence in the field of employees' inventions in all parts of the world. This Study will briefly refer to law provisions relating to employees' inventions in seven countries, characterized as donors of impulse, and will show where the law of each donor country has been used to a varying degree as a model in the " recipient " countries. The seven countries to be studied here are the United Kingdom, France, Italy, the Soviet Union, Germany (Federal Republic of), Sweden and the United States of America.

I. United Kingdom

The main source of the modern law on employed inventors in the United Kingdom are the common law cases, in which many basic principles have been formulated by the courts ever since the early 19th century. The body of law in force today has grown out of the traditional law of master and servant. It has gained its force of law through long usage and universal acceptance throughout the Kingdom [4]. The decided cases cover many important principles applicable to employees' inventions but do not in any way represent a complete system of codified law. Questions of conflict which have to some extent been answered by case law include the following: Who is a " servant "? What are the general duties of a servant? Who is the author of an employee's invention? What is the range of duties of a director and how far can he be said to contribute to an employee's invention? The cases also cover such subjects as the important trusteeship concept (in the context of employed inventors), implied and express service agreements relating to inventions, the obligation to give remuneration for inventions on the basis of various agreements, and the use of confidential information and trade secrets [5].

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Note: This Study is based on Part III of a study by the author entitled *The Comparative Law of Employee Inventions with Special Reference to Developing Countries,* supported by funds from the Swedish Federal Bank.

[1] See for instance R. David, *Major Legal Systems in the World Today — An Introduction to the Comparative Study of Law,* London 1968; see also " Die Zukunft der Europäischen Rechtsordnungen: Vereinheitlichung oder Harmonisierung? " in *Europäische Zusammenarbeit im Rechtswesen,* K. Zweigert, Tübingen 1955, pp. 1 ff.

[2] See R. David, op. cit., pp. 18 ff., 386 ff. and 411 ff.

[3] F. Neumeyer, " The Employed Inventor as Subject of Legislatiou — An Ideological Survey," *Industrial Property,* 1971, p. 243.

[4] See F. R. Batt, *The Law of Master and Servant,* 4th edition, London 1953, pp. 20 and 24.

[5] For a systematic review of leading cases in the field of employees' inventions in the United Kingdom, see F. Neumeyer, *The Law of Employed Inventors in Europe,* Study No. 30, United States Senate Subcommittee on Patents, Washington 1963, Chapter V (rulings and decisions), pp. 79 ff.; regarding trade secrets, see A. Turner, *The Law of Trade Secrets,* London 1962 (1st supplement 1968).

The only statutory rule on employees' inventions is to be found in Section 56 of the United Kingdom Patents Act of 1949. This section deals with situations " where a dispute arises between an employer and a person who is or was at the material time his employee as to the rights of the parties in respect of an invention made by the employee either alone or jointly with other employees or in respect of any patent granted or to be granted in respect thereof " (Section 56(1)). In these cases, the Comptroller General is empowered, upon application by either party, to determine the matter in dispute and make such orders as are necessary for giving effect to his decision (Section 56(1)). The Comptroller (or the court, as the case may be) may — unless satisfied that one or the other of the parties is entitled to the exclusion of the other to the entire benefit of an invention made by the employee — " by order provide for the apportionment between them " of the benefits of the invention or patent (Section 56(2)). A decision of the Comptroller has the same effect as a decision of the court (Section 56(3)). An appeal lies from any such decision of the Comptroller to an appeal tribunal (Section 56(4)). The Comptroller may decline to deal with a dispute if it involves questions which are more properly determined by a court (Section 56(1)) and leave the parties to bring appropriate proceedings in the High Court.

The most important court decision interpreting Section 56 is the case of *Patchett* v. *Sterling Engineering Coy. Ld.*, which through the years has led to decisions in different courts in 1953, 1954-55, 1963 and 1966 [6]. In the 1954-55 decision of the House of Lords in the *Patchett* case, it became clear that the provision in Section 56(2) concerning the apportionment of rights " to the exclusion of the other [party] " was inadequate to solve the many cases where no express contract existed [7]. The Banks Report on the British Patent System in fact recommended the repeal of Section 56(2) [8]. The whole section is however still in force today.

In which other countries are this statute law and the body of common law applied and to what extent? The " migration of the Common Law " to certain other countries is a well-known fact [9]. Specific provisions in national patent laws which in principle correspond to Section 56, or parts of it, of the United Kingdom Patents Act are to be found in six other countries. These are:

Australia (Patents Act, 1952, Section 154) [10]

India (Patents Act, 1970, Sections 20(5), 28 and 69(3)*(b)*) [11]

Ireland (Patents Act, 1964, Section 53) [12]

New Zealand (Patents Act, 1953, Section 65; Patents Regulations, 1954, Part XXIV)

Rhodesia (Patents Act, 1957, Section 46(1) to (4)) [13]

South Africa (Patents Act, 1952, Section 63(1) to (3)) [14].

In a number of other African and Asian countries [15], certificates of national registration of patents will confer rights and privileges similar to those enjoyed in the United Kingdom. The United Kingdom Patent Office construes this situation as " applying the whole of the law of the UK relating to patents including case law interpreting the various patent enactments. " [16] Some of these countries do expressly provide that the law of the United Kingdom relating to patents shall apply on their territory; others have no such provision. The majority seem to express the situation by stating that patents are only obtainable as confirmation of United Kingdom patents. This is the case in all the countries mentioned in footnote 15 above [17].

In addition, it should be noted that the patent legislation in three of the six countries mentioned above was introduced into one other African or Asian country: the former Indian patent legislation was introduced into Pakistan; Rhodesian patent legislation was introduced into Malawi and Zambia, and the South African Patents Act was introduced into Botswana. It is also of interest to note that the statement by Professor Bentwich, former British Attorney-General of the Government of Palestine, that English legal principles and practice are still the basis of the law and practice in Israel [18] does not apply to the law on employees' inventions.

The somewhat complex pattern of the influence of the United Kingdom law in some Asian and African countries is referred to here in order to facilitate an understanding of the international interdependence of the law existing in the field of employees' inventions. Naturally, the practical importance of these legal regulations lies with a limited number of the countries mentioned above, namely those which are at present engaged in developing their own domestic industries and research activities such as Australia, India, Ireland, Rhodesia and South Africa.

II. France

From 1844 until 1968, the French patent law remained basically unchanged. In 1968, a new patent law was enacted which in many ways is closely adapted to the provisions of the revised Paris Convention and of some current European patent laws [19]. The former law of 1844 had no provisions on

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[6] For the decisions in 1953, 1954 and 1955. see F. Neumeyer, op. cit. preceding footnote, pp. 100 to 103 and 109 to 112, see also 71 R. P. C. 61, and 72 R. P. C. 50; for later decisions, see [1963] R. P. C. 90 and [1967] R. P. C. 77, 237.

[7] See F. Neumeyer, op. cit. footnote 5.

[8] *The British Patent System — Report of the Committee to Examine the Patent System and Patent Law*, London 1970, pp. 131 ff., at p. 139.

[9] See for instance " The Migration of the Common Law," a series of introductory talks on the World Service of the BBC, *Law Quarterly Review*, Vol. 76, London 1960, pp. 39 ff.

[10] *Industrial Property*, 1962, p. 112.

[11] *Industrial Property*, 1972, p. 304.

[12] *Industrial Property*, 1964, p. 188.

[13] *Patent and Trademark Review*, 1958, pp. 215 and 289.

[14] For some judicial decisions, see R. O. P. Gerntholtz, " Inventions of Employees " in *Comparative and International Law Journal of Southern Africa*, 1968, pp. 248 to 265.

[15] Bahrain, Cyprns, Gambia, Ghana, Jamaica, Kenya, Malaysia, Sierra Leone, Somalia, Uganda, United Republic of Tanzania (including Zanzibar), Zambia.

[16] Communication to the author from the Industrial Property and Copyright Department, London, by letters of May 23 and October 17, 1972.

[17] More detailed information on national law provisions can to some extent be drawn from *Manual for the Handling of Applications for Patents, ... throughout the World* (loose-leaf system), Octrooibureau Los En Stigter (Amsterdam) and *Foreign Business Practices* (separate pamphlets), US Department of Commerce, Washington D. C. Regarding African States, see Helge E. Grundmann, " Patent Laws in New African States," *Journal of the Patent Office Society*, 1968, p. 486.

[18] See " The Migration of the Common Law," op. cit., at p. 67.

[19] The French patent law was published in *Industrial Property*, 1968, p. 67.

employed inventors. The new law affirms the *droit moral* of the inventor (the right to be mentioned as such), in accordance with Article 4ter of the Paris Convention. A new Section 42 for the first time introduces into French statute law the concept of *copropriété*. In a large number of decisions, the earliest dating from 1857 [20], the French courts had adopted and elaborated the concept of the " common ownership " of the employer and employee with respect to inventions made by the employee. French legal experts have extensively analyzed the concept of *copropriété* and almost all of them take a very negative attitude as to its practical usefulness [21]. Section 42 allows each joint owner of a patent application or a patent to exploit the invention " in proportion to his share in the patent "; he may however grant a license only with the agreement of the other joint owners. In the case of assignment of his share by one joint owner, the others have a right of preemption for a period of three months. In the absence of agreement, the price of the share will be fixed by the courts. The provisions mentioned above apply in all cases where a contract does not expressly stipulate otherwise.

In addition to these provisions of the patent law of 1968, and the extensive judge-made law (mainly on *copropriété*), there are a number of collective bargaining agreements in France in organized professions and branches of industry. Some of them contain detailed provisions on patents and employees' inventions, the most advanced being the " Convention Collective de la Chimie, " which includes a clause 17 providing for extra compensation for employed inventors whose inventions are used commercially and specifying one category of invention which entirely belongs to the employee.

The regulation of employees' inventions by different types of standard contracts is also found in private French industry and at official and semi-official government agencies. Standardized rules are found in certain industrial employment contracts (for instance, in the metallurgical industry) and in government offices such as the offices for broadcasting (ORTF), railways (SNCF) and aeronautical research (ONERA), and the National Scientific Research Center (CNRS). The French Ministry of Defense has well-formulated rules for employees' inventions in its general instructions since 1951.

Finally, it should be mentioned that a bill on employees' inventions was presented to the French Parliament in 1967, together with the bill for the new patent law. The bill on employees' inventions was however separated from the other, on the ground that it concerned both labor law and industrial property law and that the two bills should not be mixed. A bill on employees' inventions is however expected to be placed before the French Parliament shortly [22].

As can be seen, the French law on employees' inventions is a combination of a few statutory rules in the patent law, extensive judge-made law and contractual practice in industry and government.

Which other countries have been influenced by the French approach to employees' inventions?

A large number of independent countries were formerly dependent territories of France or were under a French mandate. Such territories included Algeria and Madagascar and the countries of former French Equatorial Africa and former French West Africa. There were the protectorates of French Morocco and Tunisia and the mandates over Cameroon, Lebanon, Syria and Togo (disregarding former French Indochina). Many leaders in the former French Africa had been members of the French Parliament and had even been Ministers in France [23].

According to René David, the reception in these countries of one of the Western, fully developed laws was an obvious necessity in fields such as commercial law, where the customary laws offered no basis whatsoever. Thus, for instance, company law, maritime law and patent law were imported from the West [24]. French patent law was formerly applied in the member countries of OAMPI (the African and Malagasy Industrial Property Office) [25]. The patent law applied under the OAMPI Agreement is substantially the same as that applied under the former French law of 1844 [26]. French law continues to be temporarily applicable in Mali. Guinea has set up a separate industrial property system similar to the French patent system. Syria and Lebanon, which were under a French mandate, have codified laws on industrial property which are said to be based on the corresponding French laws.

However, the influence of the French law on employees' inventions has extended beyond the territories formerly under French control. The Brazilian Industrial Property Code of 1971 [27] contains the concept of *copropriété* of the employer and employee (Section 42). Sections 40, 41 and 43 relate to inventions made during an employment contract or a contract for services. Moreover, the Patents Acts of Australia and New Zealand have provisions on *copropriété* of the French type [28]. It should also be mentioned that Mexico is said to have based its patent law on the former French law of 1844.

III. Italy

After many years of preparation, a complete, new patent law was promulgated in Italy by Mussolini on June 29, 1939. This law has four provisions — Sections 23 to 26 [29] — which constitute the basic legal rules on employees' inventions, made in the performance of a labor or service contract or a contract whose specific object is inventive activity. Since 1957, employees in the government administration are covered by similar rules [30]. These provisions contain rules on the alloca-

[20] The first case was a decision of the Lyons Court of December 26, 1857, affirmed by the *Cour de cassation* on December 1, 1858, *Annales* 59. 21 D. 59. 1. 452.

[21] See for instance, Casalonga, *Traité technique et pratique des brevets d'invention*, Paris 1949, Vol. 1, p. 399; Roubier, *Le droit de la propriété industrielle*, Paris 1954, Partie spéciale, pp. 198 ff.

[22] See *Industrial Property*, 1973, p. 180.

[23] R. David, op. cit., Title IV, Chapter II, p. 467, footnote 51.

[24] R. David, op. cit., p. 468.

[25] Cameroon, Central African Republic, Chad, Congo, Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal, Togo, Upper Volta.

[26] See Helge E. Grundmann, op. cit., at p. 498.

[27] *Industrial Property*, 1972, p. 175.

[28] Australian Patents Act, 1952-1960, Sections 153 and 154 (see footnote 10 above), New Zealand Patents Act, 1953, Sections 63 and 64.

[29] *La Propriété industrielle*, 1940, p. 84 at p. 86.

[30] Section 34, Presidential Decree of January 10, 1957, No. 3, on the status of civil employees of the State.

tion of rights in an invention and on the payment in certain circumstances of special compensation to the inventor, as well as on the employer's right of preemption in the case of the exclusive or non-exclusive use of the invention and the acquisition of domestic or foreign patents. The law also set up an arbitration board for disputes relating to compensation and to other terms connected with employees' inventions (Section 25). Finally, there is an express rule making the provisions applicable until one year after the employee has left the employment concerned (Section 26). There are some Italian court decisions interpreting the statutory provisions, but such decisions are not given the same weight in Italy as precedents in Common Law countries. There are a number of Italian commentaries on labor law which deal with employees' inventions [31].

The basic ordinances and guidelines on employees' inventions issued by Hitler in Germany in 1942, 1943 and 1944 were probably inspired by the Italian Fascist legislation since the industrial needs in both countries before the second World War were similar, both countries being anxious to give preferential treatment to domestic inventors of first-class weapons.

In addition to Germany, Portugal followed the Italian legislation. In the Portuguese industrial property code issued on August 24, 1940, we find a Section 9 with eight paragraphs [32], which is almost identical to Sections 23 to 26 of the Italian patent law of 1939. In Section 9 of the Portuguese law, paragraph (1) substantially corresponds to Section 23 of the Italian law; paragraphs (2) and (3) to Section 24; paragraphs (5) and (8) to Section 25, and paragraph (6) to Section 26; paragraph (7) corresponds to Article 4ter of the Paris Convention, and paragraph (4) seems to be "indigenous," providing that the acquisition of the right by the employer is void unless compensation is completely paid within a period prescribed by law. Portuguese law is also applied in Angola and Mozambique.

IV. Soviet Union

The principle of the inventor's certificate as the legal basis for the protection of inventors is unique to Socialist societies. It was presented to the Soviet Union for the first time by Lenin in a decree of June 30, 1919. The framework of the legal regulation of inventions in the Soviet Union today is found in the Fundamentals of the Civil Legislation of the USSR and the Union Republics, of December 8, 1961 (Articles 110 to 116), which integrates the two main legislative texts on inventions, both adopted on April 24, 1959: the Statute on Discoveries, Inventions and Rationalization Proposals and the Regulations on Remuneration for Discoveries, Inventions and Rationalization Proposals [33].

The fundamental principle of these laws is to give various personal incentives for creative technical work to all citizens by the protection of inventions, scientific discoveries and rationalization proposals. In addition, the State has the right and the duty to disseminate and exploit inventive achievements and the inventor is notably entitled to a pecuniary remuneration for all inventions which are useful to society [34].

Under Section 49 [35] of the Statute mentioned above, where an invention is made in connection with the work of the inventor in a State, cooperative or public enterprise or organization or on the order of any of these, or where the inventor has received material aid from such bodies to develop his invention, he may *only* apply for an inventor's certificate. This category of an invention is similar to the concept of a service invention in the West. Since the majority of all creative individuals in the Soviet Union are employees of collectively owned industries, government agencies, scientific or educational academies, trade unions or military units, they can only acquire inventors certificates for their inventions [36]. The prerequisite for the payment of remuneration for inventions is that an inventor's certificate has been granted and that the invention has been put into practical use in at least one enterprise. Under Section 7 of the Regulations mentioned above, the remuneration is determined according to the annual savings realized by the utilization of the invention or the rationalization proposal concerned. For each invention under Section 49, a standard lump sum is paid. In ideological terms, the compensation represents a share of the value of the product or process created by the inventor, measured by reference to the quantitative and qualitative usefulness of the invention to Soviet society [37].

According to Nathan, the Soviet Union's law on inventions and rationalization proposals has been a model for the legal development in the other Socialist countries, since the basic principles of this law almost necessarily follow from the nature of the Socialist conditions of production [38]. The various differences in these national legislations cannot be dealt with here. But it might be mentioned that the concept of the Soviet type of inventor's certificate as the basis for a general title of protection and for remuneration for inventions is also found in the legislation of Albania and Bulgaria. An inventor's certificate is available in Poland and Romania. It does not exist in the German Democratic Republic and was abolished in Czechoslovakia, Hungary and Yugoslavia but has recently been reintroduced into Czechoslovakia.

The basic idea of a specific kind of employee's invention known as a service invention or service improvement can be seen in Section 49 of the Soviet Statute mentioned above; in

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[31] See for instance, Franceschelli, *Lavoro autonomo subordinato e invenzioni di servizio*, Terni 1952; Sanseverino, *Diritto del lavoro*, 7th ed., Padua 1955; Vercellone, *Le invenzioni dei dipendenti*, Milan 1961.

[32] *La Propriété industrielle*, 1941, p. 96 at p. 97.

[33] Since this Study was written, a new Statute on Discoveries, Inventions and Rationalization Proposals was adopted on August 21, 1973. Under Section 108 of this Statute, two new sets of regulations on remuneration are to be adopted by the State Committee for Inventions and Discoveries of the Council of Ministers of the USSR. For a translation of the former Statute, see *Industrial Property*, 1967, p. 79; for a translation of the 1959 regulations on remuneration, see *Journal of the Patent Office Society*, 1961, p. 78.

[34] See Y. E. Maksarev, "The Role of Employees' Inventions in the USSR," *Industrial Property*, 1969, p. 285 at p. 286; Y. Eminescu, "Allgemeine Kennzeichnung u. Systematisierung des sozialistischen Erfinderrechts," *Jahrbuch für Ostrecht*, Vol. XI, July 1970, p. 141 at p. 143; Nathan *Erfinder- und Neuererrecht der Deutschen Demokratischen Republik*, Berlin 1968, Vol. I, p. 79.

[35] A provision which is almost identical in substance is contained in the new Statute of August 21, 1973 — as Section 24.

[36] In the Stockholm Act of the Paris Convention, the Soviet inventor's certificate was placed on an equal footing with the Western patent.

[37] See for instance, Nathan, op. cit., p. 87.

[38] See Nathan, op. cit., p. 90.

Section 9 of the Hungarian law [39]; Section 20 of the Polish law [40]; Section 5 of the Law of the German Democratic Republic [41]; Section 7(1)*(a)* of the Romanian law [42]; Section 37 of the Yugoslav law [43]; Section 31 of the Albanian law [44]; Section 14(1)*(f)* of the Bulgarian law [45]; and Section 28*(a)* of the Czechoslovak law [46].

The influence of the Soviet legislation on inventions is not limited to Eastern Europe, one developing country in Africa has adopted a law on the Soviet pattern: Algeria. The Ordinance relating to Inventors' Certificates and Patents for Inventions of March 3, 1966 [47] and its implementing decree of March 19, 1966 [48], issued by the Algerian Government, incorporate the main features of the 1959 Statute of the Soviet Union, referred to above, such as the concept of the inventor's certificate (Section 7 of the Algerian Ordinance) and the right of a certificate owner to remuneration if his invention is used in any State organization (Sections 23 to 25). The concept of a service invention is carefully defined in Section 20 of the Ordinance. It should be added that the Algerian legislation of 1966 was also inspired by the BIRPI Model Law on Inventions of 1965 [49].

V. Germany (Federal Republic of)

On July 25, 1957, the Federal Republic of Germany issued a special law on employees' inventions, containing 49 sections [50]. Together with the special laws on employees' inventions in the four Scandinavian countries and the wide-ranging legal provisions in the same field in the laws on inventions of the East European countries and in the patent laws of such countries as Austria, Italy, Japan and the Netherlands, the German law still represents one of the most comprehensive legal regulations in this field.

The current German law has grown out from the basic radical regulations promulgated by Hitler: the ordinance of July 12, 1942, the ordinance of March 20, 1943, and the detailed directives regarding the assessment of compensation, issued on October 10, 1944 (the latter were reissued by the Federal Ministry of Labor on July 20, 1959 [51], and extended on December 1, 1960 so as to cover all employees in civil and military service).

The German special law, inter alia, defines a service invention and lays down the principle that the legal provisions designed to protect the employee cannot be defeated by contract — the *Unabdingbarkeit* principle. The law covers inventions protected by patents and utility models, as well as unpatented proposals for technical improvements. Compensation is provided for where the employer acquires an unlimited right in an employees' invention and also where he acquires a limited right. For the assessment of compensation, due consideration is to be given to the commercial applicability of the service invention, to the employee's duties and position in the enterprise concerned and to the employer's contribution to making the invention. Disputes concerning the interpretation of the special law can be brought for settlement to an arbitration board in the German Patent Office; the board's procedure is regulated in detail [52].

What impact has the German law on employees' inventions had on other countries?

Many representatives from foreign, especially non-European, countries have — it is said — visited the German Patent Office in order to study the working of the law. Documentary evidence of the influence of the German law would seem to be apparent in the patent laws of Japan and Israel and in a law bill submitted several times since 1970 to the Congress of the United States of America (Moss Bill) [53]. Apart from Israel, Brazil and Mexico have adopted certain features of the German law.

In Japan, the rules on employees' inventions are embodied in Section 35 of the Patent Law of April 1959 [54]. The provision constitutes only a minimum regulation on the allocation of rights in an employee's invention and on the validity of agreements between the employer and employee relating to such inventions, and it is limited to one special kind of employee's invention, the service invention [55]. However, the wording of certain parts of Section 35 clearly indicates their affinity with the law of two countries: the United States of America and Germany (Federal Republic of).

The first subsection of Section 35 runs as follows:

"An employer, a legal entity or a State or local public entity (hereinafter referred to as the 'employer etc.') shall have a non-exclusive license on the patent right concerned, where an employee, an executive officer of a legal entity or a national or local public official (hereinafter referred to as the 'employee etc.') has obtained a patent for an invention which by reason of its nature falls within the scope of the business of the employer etc. and an act or acts resulting in the invention were part of the present or past duties of the employee etc. performed on behalf of the employer etc. (hereinafter referred to as 'service invention') or where a successor in title to the right to obtain a patent for a service invention has obtained a patent therefor."

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[39] Law on the Protection of Inventions by Patents, 1969, *Industrial Property*, 1970, p. 112.

[40] Law on Inventive Activity, 1972, *Industrial Property*, 1973, p. 296.

[41] Patent Law, 1950, *La Propriété industrielle*, 1950, p. 202.

[42] Decree concerning Inventions, Innovations and Rationalizations, 1967, *Industrial Property*, 1968, p. 271.

[43] Law on Patents and Technical Improvements, 1960, *La Propriété industrielle*, 1961, p. 190.

[44] Patent law and ordinance of January 1960.

[45] Law on Inventions and Rationalizations, 1968, *Industrial Property*, 1971, p. 73.

[46] Law on Discoveries, Inventions, Rationalization Proposals and Industrial Designs, 1972, see p. 331 above.

[47] *Industrial Property*, 1966, p. 232.

[48] *Industrial Property*, 1969, p. 184.

[49] This development has been observed by H. Grundmann, op. cit., at pp. 499 ff.

[50] *Industrial Property*, 1972, p. 226.

[51] *Industrial Property*, 1972, p. 233.

[52] On the working of the German Law on Employees' Inventions, see F. Neumeyer, op. cit. footnote 5 above, Chapter IV (Germany), pp. 36 to 65; H. Schade, "Employees' Inventions — Law and Practice in the Federal Republic of Germany," *Industrial Property*, 1972, p. 249. For the extensive German literature, reference is made to Schade-Schippel, *Das Recht der Arbeitnehmererfindung*, 4th ed., Berlin 1964; Volmer, *Arbeitnehmererfindungsgesetz*, Munich 1958; Volmer, *Richtlinien über Vergütungen*, Munich 1964; Heine-Rebitzki, *Die Vergütung für Erfindungen von Arbeitnehmern im privaten Dienst*, Weinheim 1960; Heine-Rebitzki, *Arbeitnehmererfindungen*, Neuwied 1957.

[53] The latest modified version of the Moss Bill is of January 18, 1973 — H. R. 2370.

[54] This provision has not been affected by the 1971 revision of the Patent Law.

[55] See B. Takino and W. M. French, "The Protection in Japan of Inventions by Employees During the Course of Their Employment," in *Washington Law Review*, August 1964, p. 547 at p. 552; see also Akihide Sugimura, "Protection for Employee's Invention," *Patents and Engineering*, Tokyo, Vol. 1, No. 1, May 20, 1971, p. 12.

This subsection has two main features: it defines an employee's service invention and specifies the employer's rights of ownership in such an invention. The definition of the service invention as a single category of such inventions is also found in the laws of the Netherlands, Switzerland, the United Kingdom and the United States of America; but the wording " an invention which by reason of its nature falls within the scope of the business of the employer etc. and [where] an act or acts resulting in the invention were part of the present or past duties of the employee etc. performed on behalf of the employer etc. " is closely related to the definition of a service invention in Section 4 of the German law, which comprises inventions made during the employment " which (i) either resulted from the employee's tasks in the private enterprise or in the public authority, or (ii) are essentially based upon the experience or activities of the enterprise or public authority. "

The definition in the Japanese law is, inter alia, somewhat more distinct and possibly wider than the definition in the German law, in that it speaks about the " present or past " duties of the employee.

The mandatory right of the employer to a non-exclusive license for all service inventions of the employee, provided for in Section 35(1) of the Japanese law, is obviously closely related to the " shop right " doctrine in the United States of America (see below).

Subsections (2), (3) and (4) of Section 35 of the Japanese law are closely related to corresponding provisions in the German law. Subsection (2), which declares null and void any advance agreement to assign to the employer the right to obtain a patent or the patent right or to give him an exclusive license, is in effect similar to Sections 22 and 23(1) of the German law, which provide that the mandatory provisions of the law cannot be defeated by contract and declare null and void agreements that are manifestly inequitable.

Subsection (3) of Section 35, which confirms the employee's right to reasonable compensation where the employer acquires the right to obtain a patent or the patent right or an exclusive right to the employee's invention, is related to Sections 9 and 10 of the German law, which regulate the compensation payable when the employer acquires an unlimited (Section 9) or a limited (Section 10) right to a service invention.

Subsection (4) of Section 35, which provides that in assessing remuneration consideration shall be given to the use that the employer will make of the invention and to the employer's contribution to the making of the invention, corresponds closely to Section 9(2) of the German law, which refers to the commercial applicability of the invention, the employee's duties and position in the enterprise and the employer's contribution to the invention.

The 1967 Patents Law of Israel [53] contains extensive provisions on the regulation of employees' inventions, primarily " service inventions " (Sections 131 to 141). It also provides (Sections 109 to 111) for compensation and for a compensation and royalty committee, which is inter alia competent to determine disputes on remuneration for a service invention (Section 134).

[56] *Industrial Property*, 1969, p. 79.

Although this is not mentioned in the literature available, it seems obvious that the German special law of 1957 on employees' inventions has been used as a model for many of the relevant provisions in the Patents Law of Israel. As examples, one might cite: the definition of a service invention, in Section 132 (German law, Section 4); mandatory remuneration in certain cases, in Section 134 (German law, Sections 9 to 12); the directives for the assessment of remuneration, in Section 135 (German law, Section 9(2)); the reconsideration of remuneration when circumstances have changed, in Section 136 (German law, Section 12(6)); the employee's obligation to notify a service invention, in Section 131 (German law, Section 5); and the special rules for government employees including military and police officers, in Sections 137 and 138 (German law, Sections 1, 41 and 42). There is no literal agreement between these provisions but similaritics of concepts seem to exist. The settlement of disputes between employee and employer is regulated in a dual way in the Israeli law: disputes regarding the extent and the conditions of the employee's entitlement to remuneration are referred to the compensation and royalty committee (Section 134), whereas disputes concerning the type of invention made (whether it is a service invention) are referred to the Registrar of Patents for a decision (Section 133). The German law provides for an arbitration board at the Patent Office, which is competent to hear all disputes (German law, Section 28).

The impact of the German special law on employees' inventions on the situation in the United States of America is of a more unusual nature.

On January 22, 1970, Mr. John E. Moss, a member of the House of Representatives, introduced a law bill (H. R. 15512) " to create a comprehensive federal system for determining the ownership of and amount of compensation to be paid for inventions and proposals for technical improvements made by employed persons. " [57] This bill represents an adaptation of about 90 % of the contents of the German law and incorporates all its main features. The basic principles on the acquisition of ownership in employees' inventions and on compensation for them under the German law have to a large extent been taken over by the Moss bill. There are some deviations from the German law: for instance, inventions made by professors and other academic employees, which are free inventions under the German law (Section 42), are not exempted in the Moss bill; the distinction between the employer's acquisition of exclusive and non-exclusive rights to service inventions is also missing in the Moss bill, as are the German rules on manifestly inequitable agreements (Section 23) and on the insolvency of the employer (Section 27).

The Moss Bill was reintroduced in January 1971 as H. R. 1483, in January 1972, and on January 18, 1973 as H. R. 2370.

VI. Sweden

The first special law on employees' inventions promulgated in Europe after the second World War was the Swedish Law relating to Employees' Inventions of June 1949 [58]. The

[57] For discussion in Congress, see Congressional Record-House, January 22, 1970/H, pp. 191 ff.

[58] *La Propriété industrielle*, 1950, p. 10.

Swedish law distinguishes between four categories of inventions (Section 3):

(1) " where research or inventive activity is the primary task of the employee and the invention in question results substantially from such activity ";
(2) " wbere the invention consists of the solution of a problem in the course of employment and pursuant to specified orders coming from the employee's superior ";
(3) " where the use of the invention falls within the activity of the employer but has come about in some other connection with the employment " than the two categories of inventions previously cited; and
(4) " where the use of the invention falls within the activity of the employer, but the invention has come about without any connection with the inventor's employment. "

Inventions in categories (1) and (2) are service inventions [59]. Section 6 of the Swedish law sets forth the mandatory principle that the employee is entitled to reasonable compensation for any invention to which the employer has acquired full or partial title. For service inventions (categories (1) and (2) above), compensation is paid only to the extent that the value of the title acquired by the employer exceeds what might reasonably be considered to be covered by the salary of the employee and other benefits derived from bis service. For the assessment of this compensation, the law (Section 6(2)) directs tbat special attention be given to the (economic) value and the (tecbnical) scope of the specific right acquired by the employer, as well as to the significance that the inventor's employment may have had in the creation of the invention.

Section 10 sets up a permanent official board to which both employers and employees may apply for guiding opinions concerning the application of the special law, including disputes about the type of invention made by the employee and the right to and amount of compensation. The opinions are not legally binding unless the parties have so agreed in advance, and judicial proceedings are not precluded. The parties do not pay any of the board's costs.

An invention which falls witbin the activities of the employer and is connected with an inventor's employment to do research or make inventions, and for which the inventor has filed a patent application within six months after terminating his employment, is presumed to have been made during such employment (Section 7). Provisions in contracts relating to employees' inventions wbich are clearly contrary to morals or otherwise improper are unenforceable unless amended (Section 9). Finally, the special law is applicable to all inventions patentable in Sweden and covers all inventors employed in public or private service (Section 1).

In April 1955, a Law relating to Employees' Inventions was adopted in Denmark [60]. Its contents are very closely related to the Swedish special law of 1949 with two exceptions: there is no special government board to settle disputes in Denmark, and one section (4) protected so-called enterprise inventions. This section was, however, repealed by the new Danisb Patents Act of 1967 (Chapter XI), so that today, the Danish special law is substantially the same as the Swedish law.

The next country to follow the Swedish and Danish example was Finland. This country, which had earlier had a number of provisions on employees' inventions in its Patent Act of 1943, adopted a special Law on the Right to Employees' Inventions, which came into force on January 1, 1968 [61]. The Finnish law, with 14 sections, is almost identical to the Swedish law of 1949 with the exception of Section 9, which provides that compensation once paid for an invention can be modified by a court if tbis is justified by a substantial change in circumstances.

Finally, Norway adopted a special Law concerning the Right to Inventions made by Employees, in April 1970 [62]. This law is in closest agreement with tbe Finnish law, having a special provision (Section 10) on the variation of compensation in the case of a significant change in circumstances. Tbe remainder of the law is similar in substance to the Swedish, Danish and Finnish laws described above.

VII. United States of America

In the largest industrial country of the Western world, there is no general federal statute applicable to all kinds of employees' inventions. An establisbed body of common law doctrine [63] has bowever been developed, mainly by the individual state courts in disputes involving various types of contracts. The common law covers questions of tbe allocation of ownership in employees' inventions and to some extent, questions of compensation for such inventions. From tbe point of view of legal practice, the " sbop right " doctrine is important: this doctrine is invoked in United States law when an employee is not " hired to invent " but makes patentable inventions under circumstances involving some contribution by his employer. In tbese cases, tbe patent belongs to the employee but is subject to a sbop right belonging to tbe employer. This right consists of a non-exclusive, non-assignable, royalty-free license to the employer to use the invention for the life of the patent [64]. In the private industrial sector, there is otherwise an almost complete freedom of contract, except for contracts (usually invention assignment or employment contracts) violating public policy as expressed by the antitrust laws and containing unreasonable restraints with respect to time, space or subject matter [65].

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[59] For the history and main provisions of the Swedish law, and the State Board rulings, see F. Neumeyer, op. cit. footnote 5, Chapter II (Sweden), pp. 4 ff.

[60] *La Propriété industrielle*, 1956, p. 196. For details of the history and contents of the Law, see F. Neumeyer, op. cit. footnote 5, Chapter III (Denmark), pp. 27 ff.

[61] See p. 348 above.

[62] *Industrial Property*, 1971, p. 238.

[63] For an excellent, concise survey of the United States common law in this field, see J. Stedman, " Employer-Employee Relations " — Chapter 2 of F. Neumeyer, *The Employed Inventor in the United States, R & D Policies, Law and Practice*, Cambridge (Mass.) 1971, pp. 29 ff.; see also J. S. Costa, *Law of Inventing in Employment*, Brooklyn, 1953; see also the cases and literature cited in F. Neumeyer, op. cit. footnote 3, at p. 245.

[64] See for instance, Stedman, op. cit., pp. 40 ff.; Costa, op. cit., pp. 9 ff.

[65] Some leading cases: *Guth* v. *Minnesota Mining & Manufacturing Co.*, 72 Fed. Rep. 2d series (1934) 385; *Gas Tool Patents Corp.* v. *Mould*, 133 Fed. Rep. 2d series (1943) 815; for more cases, see Costa, op. cit., pp. 116 ff.

In the field of government employees, there is a single federal law, the Government Employees Incentive Awards Act of 1954 (Public Law 763, 83d Congress) instituting mainly two types of cash awards for creative government employees, administered by the United States Civil Service Commission. In January 1950, President Truman had issued Executive Order 10096 with the title " Providing for a uniform patent policy for the government with respect to inventions made by government employees and for the administration of such policy, " which created a unified federal administrative law for all government agencies and established a special administrative forum to handle legal problems involved (except for compensation questions). In October 1963, President Kennedy issued a memorandum containing a comprehensive official statement of government patent policy; this " Kennedy Memorandum " is the basis for all future legal development in the government employee invention sector [66]. These government measures do not formally constitute federal statute law, but regulate in practice the area of inventions made by all government employees in 11 executive departments and 49 independent agencies [67] comprising more than 2 1/2 million employees.

In addition to these regulations, between 15 and 20 public laws were promulgated in all kinds of active government research areas such as agriculture, housing, atomic energy, space, coal, saline water, solid waste disposal, motor vehicle safety and environment protection. These laws have specific provisions reserving complete title for the Government in the case of all inventions and of information resulting from research in the specified areas [68].

In view of this heterogenious legal situation in the specific field of employee invention law in the United States of America, it will not be easy to identify the influence that United States law may have had on other countries. It is however possible to indicate some countries, notably non-European developing countries, which seem to have accepted at least parts of the industrial property law in the United States of America, as well as specific rules regarding employees' inventions.

Three Asian countries, the Philippines, Indonesia and Thailand, have (at about the same time — around 1953) taken over parts of the United States patent legislation. A Philippines Inventors Incentives Act seems to be modeled on the United States Government Employees Incentive Awards Act of 1954. Indonesia issued an ordinance for provisional measures in anticipation of the introduction of a patent law, on August 12, 1953 [69]. The draft patent law is substantially modeled on the United States Patent Act, but contains in addition a remarkable provision on inventions made by employees, in practice regulating service inventions as well as the right to special compensation in the form of " an appropriate share in the proceeds of exploitation. " [70] The Philippines and Thailand have industrial property laws similar to the United States Patent Act. Thailand, however, changed its legislative policy radically later on [71].

In addition, as has been mentioned, Japan has partly followed the United States common law on employees' inventions, by introducing the shop right doctrine into Section 35(1) of the 1959 Patent Law [72].

Finally, the 1967 Patents Law of Israel seems to contain elements of the United States law, especially with regard to the administrative body responsible for the assessment of compensation and royalties to be paid to inventors (Sections 109 to 111 of the Patents Law of Israel) [73].

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[66] For the complete texts of Executive Order 10096 and the Kennedy Memorandum, see F. Neumeyer, op. cit. footnote 63, pp. 400 ff. (Appendix A) and pp. 404 ff. (Appendix B to Chapter 5).

[67] See US Government Organization Mannal, 1971/72, Washington, 1971.

[68] Some 15 federal laws of this kind are listed in F. Neumeyer, op. cit. footnote 63, p. 212 and partly on pp. 81 ff.

[69] *La Propriété industrielle*, 1953, p. 172.

[70] See *Manual for the Handling of Applications for Patents, ... throughout the World*, Octrooibureau Los En Stigter, Amsterdam, supplement, Decemher 1962.

[71] For the development of the situation in Thailand, see the articles hy Asman in *Industrial and Intellectual Property in Australia*, Vol. 2, No. 4/9 (1965) and Vol. 3, No. 1/7 and No. 2/8 (1966).

[72] Other aspects of the relevant provisions in the Japanese law were influenced hy the law of Germany (Federal Repuhlic of), as described above.

[73] The other aspects of the relevant provisions in the Israeli law were influenced hy the law of Germany (Federal Repuhlic of), as described ahove.

LETTERS FROM CORRESPONDENTS

Letter from India

By S. B. SHAH *

Legislation

Since the last Letter from India [1] there have been no notable developments in the fields of industrial designs and trade marks. The principal event has been the entry into force of the new legislation on patents.

The Patents Acts, 1970, and the Patents Rules, 1972, hereafter referred to as "the Act" and "the Rules," came into force on April 20, 1972. The Act [2] repeals the provisions relating to patents in the Indian Patents and Designs Act, 1911, except its Section 21A. The Rules repeal the provisions relating to patents in the Indian Patents and Designs Rules, 1933 [3]. The repealed matter is hereafter referred to as "the repealed provisions". An application for patent pending on April 20, 1972 will be processed and decided under the Act and the Rules. However, the repealed provisions will be applicable to the renewal of a patent subsisting on that date and to the proceedings relating to a patent in a court on that date.

"Patent", wherever the context so admits in the Act, includes a patent in force on April 20, 1972. The Register of Patents under the Act incorporates the Register maintained under the repealed provisions. The Patent Office has at present its Head Office at Calcutta and branch offices at Bombay and Madras. "The Controller" means hereafter the Controller of Patents.

The definition of "invention" has been expanded under the Act, and now means any new and useful *(a)* art, process, method or manner of manufacture, *(b)* machine, apparatus or other article, *(c)* substance produced by manufacture; and includes any new and useful improvement of any of them and an alleged invention (Section 2(1)*(j)*). However, the following are now expressly precluded from patentability: inventions relating to atomic energy (Section 4), as well as (Section 5) product claims to substances used as food (defined in Section 2(1)*(g)*) or as medicine or drug (defined in Section 2(1)*(l)*) and to substances produced by chemical processes, including alloys, optical glass, semi-conductors and inter-metallic compounds. A number of other matters are also excluded (under Section 3), including inventions contrary to morality, scientific discoveries, methods of testing, and processes for the treatment of humans, animals or plants.

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[1] See *Industrial Property*, 1970, p. 151; 1971, p. 136.

[2] Published in *Industrial Property*, 1972, pp. 304 and 353.

[3] The Indian Patents and Designs Act, 1911, as amended by the Act, is now entitled "Designs Act, 1911" and the Indian Patents and Designs Rules, 1933, as amended by the Rules, are now entitled "Designs Rules, 1933" and deal exclusively with the registration and protection of designs.

Application for Patent (Sections 6 and 7)

The true and first inventor or his successor in title, either alone or jointly with any other person, may apply to the Controller for a patent for his invention. The first importer or the first communicatee of an invention from abroad can no longer apply for a patent in India (Section 2(1)*(y)*). A foreigner whose home country is notified in the Gazette of India as one whose government does not treat the citizens of India at par with its own nationals in the matter of patents cannot apply for or hold a patent in India (Section 134).

The application for patent must relate to one invention only. It must be accompanied by *(a)* the provisional or complete specification, *(b)* documentary proof of the applicant's title to make the application, and *(c)* the statement and undertaking in Form 4 of the Rules, relating to applications for patents made or to be made abroad in respect of the same or substantially the same invention by the applicant or his predecessor or successor in title, either alone or jointly with any other person.

The provisional specification will merely describe the nature of the invention. It gives no protection to the applicant but is useful to ascertain the priority date of a claim in the complete specification when filed. Where a provisional specification is filed, the complete specification must follow within twelve (maximum 15) months, otherwise the application will be treated as abandoned (Section 9). The Controller may permit the applicant to file a single complete specification in pursuance of several applications, each filed with a provisional specification, if they appear to relate to a single invention (Section 9(2)). He may also permit an applicant to treat a complete specification filed with his application as a provisional one (Section 9(3)). He may also cancel the provisional specification and postdate the application to the filing date of the complete specification (Section 9(4)). He may postdate an application under Section 17 or antedate it under Section 16. If the applicant is not the true and first inventor, he must file the declaration of inventorship in Form 6 of the Rules either with, or within three months of, the filing of the complete specification (Section 10(6)).

The requirements for the complete specification are laid down in much more detail than hitherto. The complete specification will fully and particularly describe the invention and its operation and the method, best known to the applicant, by which it is to be performed. It must end with clear and succinct claims fairly based on matters disclosed in it. The drawings accompanying a specification form a part of it. Models and samples supplied to the Controller to explain the invention do not form a part of the specification. Each claim of the complete specification must have a priority date. Ordinarily, it will be the date on which the complete specification is filed. Where the complete specification is filed after one or more specifications, either provisional or treated as provisional, the

priority date of a claim will be the filing date of that specification wherein was first disclosed the matter on which that claim is fairly based. Where an application is postdated or antedated by the Controller, the priority date of the claims of its complete specification will be the date accorded to the application.

Convention application (Sections 133 to 139): The Government may declare under Section 133 a country to be a convention country for all or any of the purposes of the Act. Australia, Canada, Ireland, New Zealand, Sri Lanka and the United Kingdom are convention countries at present. Where a person has made in a convention country an application (called " basic application ") to patent an invention, either he or his successor in title may file in India an application (called " convention application ") for patent in Form 2 or 2A of the Rules within twelve months of the basic application, claiming the filing date of the basic application as the priority date for the claims of its complete specification. The complete specification filed with the convention application may include claims for the development of the invention in the interval between the basic and convention applications. A single convention application may be filed within twelve months of the earliest of two or more basic applications if they relate to cognate inventions, but the priority date of each of its claims will be the date on which the earliest specification was filed containing the matter on which the claim is fairly based.

The Controller may substitute the applicant or a joint applicant in the event of the devolution of his interest in the application (Section 20).

Examination of Application (Sections 12 to 21 and 29 to 34)

The Controller will, under Section 12, refer the application and the complete specification to an examiner to examine and report to him within 18 months as to *(a)* whether the documents comply with the Act and the Rules, *(b)* whether there is any lawful objection to the grant of a patent on the application, and *(c)* whether the invention claimed has been anticipated in the manner set out in Section 13 read with Sections 29 to 34: i. e., whether the invention has been anticipated by its disclosure — not falling within a number of exceptions provided for in Sections 29 to 34 — in an earlier Indian patent specification or in any other document published in India or elsewhere. The examiner will also check whether the invention has been claimed in an Indian complete specification published after the filing of the applicant's complete specification but having priority. If the report is adverse, the Controller will communicate its substance to the applicant, requiring him to put his application and complete specification in order within 15 (maximum 18) months of the Controller's first requisitions. If the applicant fails to meet the requisitions in time, the application will be treated as abandoned. The consideration of the question of anticipation at this stage of the procedure is an innovation in the Act: under the repealed provisions, this question was raised only in opposition or revocation proceedings.

The Controller will refuse the application *(a)* if the documents do not comply with the requirements of the Act and the Rules, *(b)* if what is claimed is not an invention (Section 2(1)*(j)*) at all or is not patentable under the Act (Sections 3, 4 and 5), *(c)* where the invention claimed is anticipated in the manner indicated above, and *(d)* if the invention claimed could be used in a manner contrary to law. In all these cases, the Controller will permit the applicant to amend his application and complete specification instead of refusing the application. The Controller will hear the applicant before refusing the application.

If the complete specification appears to the Controller to relate to a plurality of inventions, he may permit the applicant to confine his application to the priucipal invention and to file a further application, with the complete specification relating to each of the other inventions bearing the date of the original complete specification, without disturbing the priority dates of the new claims.

Where the invention claimed appears to the Controller to be incapable of performance without substantial risk of infringement of a claim of a patent, he will direct the applicant to insert in his complete specification a reference to that patent by way of notice to the public.

The examination under Section 12 will not warrant the validity of the patent when granted. No liability attaches to the Government or any of its officers by reason of the report.

Advertisement of Complete Specification and Opposition (Sections 22 to 28)

The Controller will advertise his acceptance of the complete specification in the Gazette of India, whereafter the application and the complete specification will be open to public inspection. At any time before the expiry of four (maximum five) months from the date of advertisement in the Gazette, any person interested may file a notice of opposition to the grant of the patent to the applicant, but only on the grounds set out in Section 25(1) and no other. The grounds of opposition cover wrongful obtaining of the invention, want of subject-matter, want of patentability, insufficiency of description, obviousness, contravention of Section 8 [4], prior claiming in India, and prior knowledge or use in India or elsewhere not falling within one of the exceptions provided for in Sections 29 to 34.

Although the applicant will not be able to file a suit for infringement of the patent until it is sealed, he will have the same rights after advertisement in the Gazette as if the patent had been sealed on the date of the advertisement.

Secrecy Directions (Sections 35 to 42)

The Controller may issue directions (called " secrecy directions ") prohibiting the publication of information concerning an invention sought to be patented which either he or the Government may regard as relevant to the defence of India. The secrecy directions are made non-justiciable in a court. The Government may review the directions periodically. While the directions are in force, the acceptance of the complete specification will not be gazetted but the application will not be refused. Disregard of directions will, apart from

[4] Section 8 requires an applicant to inform the Controller about any corresponding application that he is prosecuting abroad.

criminal liability, render the applicant ineligible for a patent. The Government will pay the applicant a reasonable solatium for the use by it of the invention while the directions are in force.

Unless a corresponding application has already been filed in India, a resident of India cannot make or cause to be made abroad an application for patent without the authority of the Controller (Section 39).

Sealing of Patent (Sections 43 to 53)

Where the application is not refused by the Controller under the Act or is not opposed in the prescribed time or the opposition is finally dismissed, the applicant may pay the sealing fee under Section 43 and request the Controller to seal the patent. The patent will bear the date on which the complete specification was filed. The grant is subject to the conditions set out in Section 47 relating to the use of the invention by the Government for its own purposes or by any person for experiment, research or instructions to pupils.

A patent is declared to be a species of moveable property (Section 50(5)). It gives the patentee the exclusive right by himself or by his agents or licensees to make, use, exercise, sell or distribute the patented article, substance or process throughout India. In the absence of a contract, each joint patentee has an equal, undivided share in the patent, which gives him the right to make, use, exercise and sell the patented invention or its product for his own benefit but not to assign his interest or grant a licence under the patent without the consent of his co-owners. The Controller may resolve a dispute between the co-owners of a patent, subject to the contract between them and equities affecting others on the record of the Register.

The term of a patent for a process for preparing substances used or usable as food or medicine will be the shorter of the term of five years from its sealing or of seven years from its date. The term of every other patent is 14 years from its date.

In respect of applications filed before April 20, 1972 for patents for inventions relating to food and medicines, the Government had issued directions to the Controller under Section 78C of the repealed provisions not to gazette their acceptances while the directions were in force. He was empowered, however, under Section 78D(2) of those provisions to extend the period for doing any act in connection with such applications. By notification dated April 1, 1972, the Controller has extended the period to July 10, 1975. The patent granted on such an application as aforesaid will be dated either April 20, 1972, or with the date of filing of its complete specification, whichever is later.

Every patent is required to be renewed annually from its third year and, if not renewed, will lapse.

Patent of Addition (Sections 54 to 56)

A patent of addition is granted for an improvement in or modification of another invention (called " main invention ") for which the applicant has either obtained a patent or filed an application for patent. The patent of addition will not be effective beyond the term of the patent for the main invention and will be renewed without payment of any renewal fees. The court revoking the main patent may order the continuance of the patent of addition as an independent patent subject to payment of renewal fees for the remainder of its term. The Controller may revoke an independent patent for an improvement of another patented invention and grant the patentee a patent of addition instead.

Amendment of Specification (Sections 57 to 59)

The Controller will allow the applicant or the patentee to amend his accepted complete specification only by way of a disclaimer or explanation or correction of an obvious error. The request for amendment will be published in the Gazette and may be opposed by a person interested. The amendment will form part of the specification and will not be questioned subsequently except on the ground of fraud. In a petition for revocation of a patent, the High Court, instead of revoking the patent, may allow the patentee-respondent to amend his complete specification.

Determination of Patent Rights (Sections 60 to 65 and 89)

Lapsed patents (Sections 60 to 62): The Controller may restore a patent that has lapsed for non-payment of renewal fees, if he is requested within one year of its cessation but subject to the protection of and payment of compensation to persons who may have availed or taken steps to avail themselves of the invention during the period of cessation. No infringement action will lie during that period.

Surrender of patent (Section 63): The patentee may offer to surrender his patent to the Controller, who may accept the surrender and revoke the patent.

Revocation of patent (Sections 64 and 65): The Government or any person interested, by means of a petition, and the defendant to a suit for infringement of a patent, by means of a counter-claim, may apply to the High Court for the revocation of a patent on the grounds set out in Section 64(1), which include the grounds of opposition and the following: *(a)* the applicant was not entitled to apply, *(b)* the invention was not useful, *(c)* the claim is not fairly based on the description, *(d)* the patent was obtained on a false suggestion, *(e)* secrecy directions were disregarded or Section 39 [5] was violated, and *(f)* leave to amend the specification was obtained by fraud. A patent granted before April 20, 1972 will not be revoked only because it was published abroad before its date or was granted to an importer or communicatee of the invention from abroad. The Controller may revoke a patent relating to atomic energy. The High Court may revoke a patent on the petition of the Government if, without a reasonable cause, the patentee has failed to comply with the Government's request to make, use or exercise the invention for the Government on reasonable terms. Where a patent or the mode of its exercise appears to the Government to be mischievous to the State or prejudicial to the public, it may declare the patent to be so in the Gazette, whereupon the patent will be deemed to be revoked. The Controller may revoke a patent under Section 89

[5] Relating to the filing of applications abroad by Indian residents (see above).

for non-working after two years of the grant of a compulsory licence or a licence of right if the reasonable requirements of the public for the patented invention are not being met at reasonable prices.

Compulsory Licences, Licences of Right
(Sections 82 to 98)

Any time after three years from the sealing of a patent, a person interested (including an existing licensee) may apply to the Controller for a compulsory licence under the patent on the ground that the reasonable requirements of the public for tbe patented invention are not satisfied (Section 90) and the patented invention is not available to it at a reasonable price. The patentee may oppose the application and may be given time upto twelve months to work the invention in India. After taking into account the nature of the invention, the patentee's efforts to work it in India and tbe applicant's ability to work it to the public advantage, the Controller may order the patentee to grant the applicant a licence under the patent on terms whicb may be mutually agreed or fixed by the Controller. Tbe Controller may, at the same time, deprive the patentee of all or any of his rights under the Act and revoke any existing licence. The licence will not permit tbe licensee to import the patented item but, in the public interest, the Government may authorise its import. The Controller's order will operate as a deed between the patentee and the licensee. The Controller may review the licence terms (Section 93(5)).

After three years from the sealing of a patent, the Government may move the Controller to endorse it with the words " licences of right ", on the same grounds as those for which a compulsory licence application may be made. Patents granted under tbe repealed provisions subsisting on April 20, 1972, and relating to food, medicines, chemical substances including alloys, optical glass, semi-conductors and inter-metallic compounds, and patents to be granted under the Act for processes of making such substances (the substances themselves are unpatentable — see above), will be deemed to be endorsed " licences of right " on April 20, 1972, or after tbree years from the sealing, whicbever is later. Tbe effect of endorsement is that any person interested in working the invention in India may require the patentee to grant him a licence under the patent on terms either to be mutually agreed upon or to be fixed by the Controller, the royalty not exceeding four per cent of the net sale price for bulk exclusive of taxes and commission, in tbe case of patents for food and medicines.

Suits relating to Patents (Sections 104 to 115)

Infringement: The patentee and/or his exclusive licensee may file a suit to restrain the infringement of his patent and obtain reliefs of injunction, damages and/or account of profits and delivery-up of infringing items. The defendant may plead invalidity of the patent or the grounds set out in Sections 47 and 49 [6].

Declaration of non-infringement: A person may sue the patentee or his exclusive licensee for a declaration that his use of any process or manufacture or bis use or sale of any article is not an infringement of the latter's patent, after a notice in that behalf. Tbe plaintiff is not entitled to put the validity of the patent in issue.

Groundless threats: A person threatened by circulars, advertisements or communications with proceedings for infringement of a patent may file a suit against the addresser of the tbreats for a declaration that the threats were groundless and for an injunction and damages. The defendant may plead infringement and counterclaim to restrain infringement and seek other reliefs.

Government Use of Patented Invention
(Sections 99 to 103)

Tbe Government of India, a State Government and a Government undertaking (see Section 2(1)*(h)*) may make, use, exercise or sell a patented invention subject to the provisions of the relevant sections (Sections 47 and 99 to 103). Each such authority is entitled to use a patented invention for its own purposes on payment of a royalty, either to be agreed upon or to be fixed by the High Court, which in the case of a medicine will not exceed four per cent of the net ex-factory price for bulk exclusive of taxes and commission. If an invention is useful for a public purpose, the Government may acquire it on payment of compensation, either to be mutually agreed upon or to bė fixed by the High Court.

Patent Agents (Sections 125 to 132)

A person will be registered as a patent agent entitled to practise before the Controller if he is a citizen of India and over 21 years of age, with a recognized university degree or other prescribed qualification, and is either an advocate or has passed the Government's qualifying examination. These sections, which are an innovation in the Act, have not been brought into force.

Offences (Sections 118 to 124)

Contravention of tbe secrecy provisions, falsification of the entries in the Register, unauthorized claims to patent rights, wrongful use of the words " Patent Office ", refusal to supply information under Sections 100(5) and 146 [7], and practising as a patent agent without the Controller's licence are offences punishable with imprisonment and/or fine.

Case Law

Patents: The appeal against the judgment of the Bombay High Court in *Farbwerke Hoechst A. G.* v. *Unichem Laboratories* [8] has been withdrawn, with the result that the patent relating to the manufacture of antidiabetic sulphonylureas including the compound tolbutamide remains unchallenged. The patent was also upheld by the Calcutta High Court. In a

[6] Relating to tbe importation and use of inventions on behalf of the Government, etc., and to tbe exemption concerning inventions on board foreign vessels or aircraft.

[7] Government undertakings must supply information, when so requested by the Government, on the use that they are making of another's patented invention (Section 100(5)). Patentees and licensees must supply information, when so requested by the Controller, on tbe commercial working of their patented invention (Section 146).

[8] [1969] R. P. C. 55; see " Letter from India," *Industrial Property*, 1970, p. 151 at p. 152.

recent case, the courts have had to consider whether a full-time technical director of a company can take out a patent for an invention made, in the course of his employment, using the company's manpower, materials, money and workshops and hold it adversely to the company. The judge was inclined to the view that the director-patentee held the patent as a trustee for his company.

Trade marks: It has been held [9] that a trade mark cannot be removed from the Register for non-use over the prescribed period if such non-use was due to statutory import restrictions of the goods concerned. This judgment is important for foreign registrants of trade marks in India, where import restrictions now prevail. One other case is worth reporting [10], in which the Supreme Court of India refused to remove from the Register the trade mark DROPOVIT on the ground of its alleged similarity with the earlier registered trade mark PROTOVIT, having regard to several earlier registrations with the suffix " VIT ".

[9] *Plaza Chemical Industries* v. *Kohinoor Chemical Co. Ltd.* (74 Bombay L. R. 838).

[10] *Hoffmann-La Roche & Co. Ltd.* v. *Geoffrey Manners & Co. Pvt. Ltd.* (73 Bombay L. R. 119 S. C.).

ACTIVITIES OF OTHER ORGANIZATIONS

Union of European Patent Agents

Brussels Congress

(May 2 to 5, 1973)

The Union of European Patent Agents held its congress in Brussels from May 2 to 5, 1973.

There were a large number of participants, representing 17 countries. The discussions centered on the following important subjects: the problem of languages in the European Patent Office, the " economic clauses " in the Convention on the European Patent for the Common Market, the Protocol on the Centralization of the European Patent System and on its Introduction, the training of examiners, the examination and the problems of representation before the European Patent Office. The participants also examined the work which had been and was to be carried out by the Union of European Patent Agents and studied the Union's Statute, which was amended so as to enable the Union to accept as a member any qualified person eligible for recognition as a professional representative by the European Patent Office.

CALENDAR

WIPO Meetings

December 3, 4 and 11, 1973 (Paris) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee

Object: Consideration of various questions concerning the Rome Convention — *Invitations:* Brazil, Denmark, Ecuador, Fiji, Germany (Federal Republic of), Mexico, Niger, Sweden, United Kingdom — *Observers:* Austria, Congo, Costa Rica, Czechoslovakia, Paraguay; intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with the International Labour Organisation and Unesco

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

Object: Consideration of various questions concerning copyright — *Invitations:* States members of the Committee — *Observers:* All other member countries of the Berne Union; intergovernmental and international non-governmental organizations concerned — *Note:* Some meetings will he joint with the Intergovernmental Copyright Committee estahlished hy 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:* Anstralia, Austria, Belgium, Canada, France, Germany (Federal Repuhlic of), Ireland, Japan, Luxembourg, Netherlands, Soviet Union, Spain, Sweden, United Kingdom, United States of America — *Observers:* Colombia, Benelux Trademark Office

January 7 to 11, 1974 (Geneva) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

January 15 to 18, 1974 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee

Febrnary 6 to 8, 1974 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)

Febrnary 11 to 15, 1974 (Geneva) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

March 4 to 8, 1974 (Geneva) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

March 25 to 29, 1974 (Geneva) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

April 22 to May 3, 1974 (Geneva) — ICIREPAT — Technical Committee for Shared Systems (TCSS) and Technical Committee for Standardization (TCST)

May 13 to 17, 1974 (Geneva) — International Patent Classification (IPC) — Working Gronp IV of the Joint ad hoc Committee

June 26 to 28, 1974 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)

July 1 to 5, 1974 (Geneva) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

September 2 to 8, 1974 (Geneva) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

September 9 to 13, 1974 (Geneva) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

September 18 to 20, 1974 (Geneva) — ICIREPAT — Plenary Committee

September 24 to Octoher 2, 1974 (Geneva) — Sessions of the Administrative Bodies of WIPO and the Unions administered by WIPO

September 30 to Octoher 4, 1974 (Geneva) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

Octoher 7 to 11, 1974 (Moscow) — Symposium on the Role of Patent Information in Research and Development

Participation open to all interested persons subject to a registration fee — *Note:* Meeting organized in cooperation with the State Committee for Inventions and Discoveries of the Council of Ministers of the USSR

Octoher 21 to 31, 1974 (Geneva) — ICIREPAT — Technical Committee for Shared Systems (TCSS) and Technical Committee for Standardization (TCST)

November 4 to 8, 1974 (Geneva) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

December 9 to 13, 1974 (Geneva) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

December 16 to 18, 1974 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)

September 23 to 30, 1975 (Geneva) — Sessions of the Administrative Bodies of WIPO and the Unions administered hy WIPO

Meetings of Other International Organizations concerned with Intellectual Property

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

Febrnary 24 to March 2, 1974 (Melbourne) — International Association for the Protection of Industrial Property — Executive Committee

May 6 to 30, 1974 (Luxembourg) — Conference of the Member States of the European Communities concerning the Convention on the European Patent for the Common Market

May 3 to 10, 1975 (San Francisco) — International Association for the Protection of Industrial Property — Congress

ANNOUNCEMENT OF VACANCY

Competition No. 223

Head, IPC Section

(Industrial Property Division)

Category and grade: P. 5/P. 4, according to the qualifications and experience of the selected candidate.

Principal duties:

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

His particular duties will be the following:

(a) preparation of long range and short range draft programs for the IPC;

(b) preparation of reports on the work performed and planned concerning the IPC;

(c) preparatory work and assistance in the Secretariat for meetings of the IPC Iuterim Committee and its subsidiary hodies and, after the entry into force of the Strashourg Agreement Concerning the International Patent Classification, of the bodies and technical committees to he set up under that Agreement;

(d) preparation of WIPO's activities relating to international cooperation in the classification of search files in accordance with the IPC;

(e) execution of those parts of the IPC program which are with'u the competence of the International Bureau of WIPO;

(f) assistance in coordinating the work of the Offices of the participating countries and the International Patent Institute in execution of the IPC program;

(g) contacts with industry and private organizations to ensure harmonization of efforts in patent classification;

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

Qualifications required:

(a) University degree in a relevant field of science or technology or qualifications equivalent to such degree.

(b) Wide knowledge and experience in the field of patent classification.

(c) Ahility to supervise and direct a group of specialists in IPC. Capacity for critical analysis and initiative in elahorating proposals concerning the implementation of the IPC.

(d) Ability to act as a representative of WIPO in specialized meetings related to IPC.

(e) Excellent knowledge of English and at least a good knowledge of French. Ahility to work in other major languages would be an advantage.

Nationality:

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

Type of appointment:

Fixed term appointment of two years, with possibility of renewal; or prohationary period of two years, after satisfactory completion of which a permanent appointment will he offered.

Age limit applicable to appointment for a probationary period:

Less than 50 years of age at date of appointment at P. 4 level; less than 55 years of age at date of appointment at P. 5 level.

Date of entry on duty:

To he agreed.

Applications:

Application forms and full information regarding the *conditions of employment* may be ohtained from the Head of the Administrative Division, WIPO, 32, chemin des Colombettes, 1211 Geneva 20, Switzerland. Please refer to the number of the Competition and enclose a hrief curriculum vitae.

Closing date: January 15, 1974.