

Industrial Property

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ORGANIZATION (WIPO)

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

WIPO Convention**Ratification****GREECE**

The Government of Greece deposited on December 4, 1975, its instrument of ratification of the Convention Establishing the World Intellectual Property Organization (WIPO).

Greece has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently acceding to the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works as provided for in Article 29^{bis} of that Act.

Pursuant to Article 15(2), the WIPO Convention will enter into force with respect to Greece on March 4, 1976.

WIPO Notification No. 85, of December 8, 1975.

INTERNATIONAL UNIONS

The Hague Agreement

Signatory States of the Protocol of Geneva

In accordance with Article 12(6) of the Protocol of Geneva of August 29, 1975, to the Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925, and by the expiry of the required period (that is, on December 1, 1975), the following States had signed the said Protocol:

- Belgium, Germany (Federal Republic of), Liechtenstein, Netherlands, Switzerland, on August 29, 1975;
- France, on October 30, 1975.

Pursuant to the provisions of Article 7(2), the Protocol is subject to ratification by France, Germany (Federal Republic of), Liechtenstein and Switzerland.

Pursuant to the same provisions, it is also subject to ratification by Belgium and the Netherlands and it is open to accession by any other State member of the Paris Union for the Protection of Industrial Property, provided that Belgium and the Netherlands at the time of depositing their instruments of ratification, or such other State at the time of depositing its instrument of accession, also deposit an instrument of ratification or accession in respect of the 1934 Act or the 1960 Act of the Hague Agreement.

Instruments of ratification of, or accession to, the said Protocol must be deposited with the Director General of WIPO.

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

The Hague Notification No. 8, of December 3, 1975.

Patent Cooperation Treaty (PCT)

Ratification

UNITED STATES OF AMERICA

The Government of the United States of America deposited on November 26, 1975, its instrument of ratification of the Patent Cooperation Treaty (PCT) adopted at Washington on June 19, 1970, with its Regulations, subject to the three following declarations:

“(1) Under Article 64(1)(a), the United States shall not be bound by the provisions of Chapter II of the Treaty;

(2) Under Article 64(3)(a), as far as the United States is concerned, international publication of international applications is not required; and

(3) Under Article 64(4)(a), the filing outside of the United States of an international application designating this country is not equated to an actual filing in the United States for prior art purposes.” (*Original*)

Furthermore, the said instrument of ratification was accompanied by the following declaration:

“Pursuant to Article 62(3) of the Patent Cooperation Treaty, the United States of America declares that the Treaty shall extend to all areas for which the United States of America has international responsibility.” (*Original*)

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

PCT Notification No. 9, of December 1, 1975.

CONVENTIONS NOT ADMINISTERED BY WIPO

European Convention on the International Classification of Patents for Invention

Denunciation by Israel

In accordance with Article 8(3) of the European Convention mentioned above of December 19, 1954, the Government

of Israel denounced the said Convention on September 12, 1975.

Pursuant to the said Article, this denunciation will take effect from September 12, 1976.

This denunciation was transmitted to the Swiss Government by the Government of Israel.

WIPO MEETINGS

Paris Union

Working Group on Scientific Discoveries

Third Session

(Geneva, October 1 to 3, 1975)

Note*

Pursuant to a decision of the Assembly of the Paris Union, the Working Group on Scientific Discoveries met in Geneva for the third time from October 1 to 3, 1975¹, under the Chairmanship of Mr. J. F. da Costa (Brazil).

The Working Group had been convened to study possible measures for the setting-up of a system of international recordal of scientific discoveries. Twenty-four States, one intergovernmental organization and three international non-governmental organizations were represented at the session.

The list of participants appears at the end of this Note.

Opinions were divided on the question of the usefulness and the necessity to create an international register in which the description of scientific discoveries and the identity of their discoverers would be recorded: some of the experts were of the opinion that no such international register was necessary or even useful, others were firmly of the opposite opinion.

After having noted this divergence of opinion, the Working Group nevertheless proceeded to the detailed examination of a possible system of international recordal of scientific discoveries, a system which would be operated by WIPO.

However, as to the legal basis of the system (should there be one established), a further fundamental difference of opinion emerged during the discussion: some of the experts favored the solution, indicated in the preparatory papers, to create the legal basis in the form of a resolution of the General Assembly of WIPO, whereas others favored the creation of a treaty.

Since these two views could not be reconciled, it was agreed by the Working Group that the Director General of WIPO should prepare the drafts of both a resolution and a treaty; these drafts should be discussed at the next session of the Working Group, scheduled for May 1976; once so considered by the Working Group, they should be submitted to the General Assembly of WIPO in September 1976.

* This Note has been prepared by the International Bureau.

¹ A Note on the second session of the Working Group was published in *Industrial Property*, 1974, p. 431.

List of Participants*

I. States

Australia: K. B. Petersson. Belgium: P. Peetermans; R. Philippart de Foy. Brazil: J. F. da Costa; J. A. Graca Lima. Bulgaria: I. Ivanov; T. Sourgov. Byelorussian SSR: N. I. Androsovitich. Canada: M. Moher. Czechoslovakia: A. Ringl. France: S. G. Bindel. German Democratic Republic: D. Schack; C. Micheel (Mrs.). Germany (Federal Republic of): E. Steup (Mrs.). Hungary: E. Tasnádi. India: K. Gopalan. Kenya: D. J. Coward. Netherlands: H. F. G. Lemaire (Miss). Nigeria: S. Ojomo. Pakistan: I. Bukhari. Poland: M. Paszkowski. Soviet Union: I. Nayashkov; F. A. Sviridov; V. Zuharev; A. Zaitsev; V. Roslov. Sweden: D. S. Ahlander. Switzerland: R. Kämpf; J. Mirimanoff-Chilikine; Ch. Peter. Togo: K. Sossah. Turkey: N. Yosmaoglu. United Kingdom: J. J. D. Ashdown. United States of America: H. Winter; H. D. Hoinkes.

II. Intergovernmental Organization

United Nations (UN): H. Einhaus.

III. Non-governmental Organizations

International Association for the Protection of Industrial Property (IAPIP): E. Pitrovranov. International Confederation of Professional and Intellectual Workers (CITI): M. Gniton. World Federation of Scientific Workers (FMTS): W. O. Lock.

IV. Officers

Chairman: J. F. da Costa (Brazil); Vice-Chairmen: I. Ivanov (Bulgaria), S. G. Bindel (France); Secretary: L. Baenmer (WIPO).

V. WIPO

A. Bogisch (Director General); L. Baeumer (Counsellor, Head, Legislation and Regional Agreements Section, Industrial Property Division); G. R. Wipf (Counsellor, Head, General and Periodicals Section, Industrial Property Division); A.-B. Kecherid (Legal Officer, Legislation and Regional Agreements Section).

* A 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

Twelfth Session

(Geneva, November 3 to 6, 1975)

Note*

The Committee of Experts set up under Article 3 of the Nice Agreement for the International Classification of Goods

* This Note has been prepared by the International Bureau.

and Services for the Purposes of the Registration of Marks held its twelfth session¹ in Geneva.

Sixteen States party to the Nice Agreement, one inter-governmental organization and four international non-governmental organizations were represented.

The list of participants follows this Note.

The main items on the agenda were consideration of proposals in regard to a systematic review of the Classification, and consideration of the report of the first session of the Temporary Working Group set up by the Committee at its session in June 1974 to consider, on the basis of the existing List of Classes, the Alphabetical List and the Explanatory Notes.

With regard to the first item, the Committee recognized that the Classification had, in general, proved to be a useful working instrument and that its basic structure did not therefore require modification. At the same time, it decided to undertake a systematic review of the Classification with a view to ascertaining whether a revision of the Classification was necessary and, if so, to what extent. The International Bureau will request the administrations of the member States of the Nice Union and the organizations referred to in Article 6(2) of the Committee's Rules of Procedure to submit proposals for amendments, additions and any other changes they deem necessary, it being understood that the International Bureau will also be able to submit proposals on the matter. All such proposals will be communicated by the International Bureau to the member States of the Nice Union and to interested organizations; they will then be submitted, together with those proposals and comments that are now before the Committee and which their authors maintain, to the Preparatory Working Group set up by the Committee of Experts at its session in June 1974. However, if one quarter of the States members of the Committee so request within a period to be laid down by the Director General, the Committee shall be convened for the purpose of drawing up guidelines for consideration of specific proposals. When the Preparatory Working Group has concluded the general and systematic review of the Classification, it will submit to the Committee all the proposals that are the outcome of its work together with any relevant comments and recommendations. The Committee took note of the International Bureau's opinion that the systematic review of the Classification will probably take at least two to three years.

The Committee decided that it would be advisable to consider undertaking periodic general and systematic reviews of the Classification. It expressed the view that a period of five years at the minimum and ten years at the maximum should elapse between the two reviews. Further, the Committee decided to continue to apply the procedure laid down in Article 3 of the Nice Agreement to the proposals for revision, if the author of the proposals made an explicit request to that effect.

¹ A Note on the eleventh session (seventh ordinary session) was published in *Industrial Property*, 1974, p. 292.

The Committee also approved the principles which the Temporary Working Group proposed to follow in the consideration, on the basis of the existing List of Classes, of the Alphabetical List and of the Explanatory Notes.

List of Participants*

I. States party to the Nice Agreement

Algeria: G. Sellali (Mrs.); F. Bouzid (Mrs.); R. Lammali. Australia: C. Hermes. Austria: G. Gall. Denmark: R. Carlsen (Mrs.); I. Sander (Mrs.). Finland: B. Norring. France: C. May. Germany (Federal Republic of): E. Steup (Mrs.); M. Aúz-Castro (Mrs.). Monaco: J. M. Notari. Netherlands: E. van Weel. Norway: A. Guldhav; O. Apeland. Soviet Union: L. Komarov; V. Stotsky. Spain: E. Rua Benito; J. Ruiz del Arbol. Sweden: B. Lundberg; G. Deijenberg. Switzerland: F. Balles; J. Weber. United Kingdom: R. L. Moorhy. United States of America: R. Bowie (Mrs.).

II. Observers

Intergovernmental organization

Benelux Trademarks Office: L. van Bauwel.

International non-governmental organizations

Council of European Industrial Federations (CEIF): E. R. Wenman. International Association for the Protection of Industrial Property (IAPIP): A. Puppe. International Chamber of Commerce (ICC): A. de Sampaio. Union of Industries of the European Community (UNICE): W. Mak.

III. Officers

Chairman: E. Steup (Mrs.) (Germany, Federal Republic of); *Vice-Chairmen:* G. Sellali (Mrs.) (Algeria), L. Komarov (Soviet Union); *Secretary:* C. Werkman (WIPO).

IV. WIPO

K. Pfanner (*Deputy Director General*); L. Egger (*Counsellor, Head, International Registrations Division*); C. Werkman (*Counsellor, Head, International Trademarks Section, International Registrations Division*); F. Carrier (*Principal Examiner, International Trademarks Section*).

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

Patent Cooperation Treaty (PCT)

Interim Committees

1975 Sessions

(Geneva, October 27 to November 3, 1975)

Note*

The three PCT Interim Committees, namely, the Interim Advisory Committee for Administrative Questions, the Interim Committee for Technical Assistance and the Interim Committee for Technical Cooperation, were convened from October 27 to November 3, 1975, in Geneva.¹ Twenty-two States,

* This Note has been prepared by the International Bureau.

¹ This was the sixth session of the PCT Interim Advisory Committee for Administrative Questions, and the fifth session of the PCT Interim Committee for Technical Assistance and of the PCT Interim Committee for Technical Cooperation. For a Note on the 1974 sessions of the Interim Committees, see *Industrial Property*, 1974, p. 470.

two intergovernmental organizations, seven non-governmental organizations and two interested firms were represented. The list of participants follows this Note.

Progress of the PCT in the United States of America. The Interim Committees were informed that the United States House of Representatives was expected shortly to enact a law to give effect to the PCT and that the instrument of ratification would probably be deposited by the end of 1975.²

Interim Advisory Committee for Administrative Questions

Administrative Instructions. This Interim Committee examined a document containing a third revised draft of the Administrative Instructions relating to Chapters I and II of the PCT (which deal respectively with the International Application and the International Search, and the International Preliminary Examination). It approved a number of sections of the draft without comment and agreed that the remaining sections should be revised in the light of the comments and suggestions made.

Draft Forms. The Interim Committee decided that it would not study the forms required in the various phases of the PCT procedure in detail at its present session. The Director General of WIPO was requested either to prepare a final version of the said forms himself, on the basis of the observations to be submitted by the Offices to the International Bureau, or to convene a Working Group to do so.

Draft Guideline for Applicants Filing under the PCT. The Interim Committee made a number of suggestions as to form and content regarding revision of the draft Guideline for Applicants using the PCT. In particular, it proposed that the Guideline should be supplemented by national guidelines which should be prepared by each Receiving Office and contain relevant information for applicants filing through the Office concerned. The revised Guideline will be submitted to the Interim Committee at its 1976 session.

Guidelines for Receiving Offices under the PCT. The Interim Committee made suggestions regarding preparation of a new version of the draft Guidelines for Receiving Offices. It agreed that the optional nature of the Guidelines, especially so far as the organizational proposals were concerned, should be stressed and that a clearer distinction should be made between those proposals and the procedural part of the Guidelines. The revised Guidelines will be submitted to the Interim Committee at its 1976 session.

Draft Model Agreement with International Searching Authorities. The Interim Committee asked that a revised draft of the Model Agreement with International Searching Authorities be sent to all prospective International Searching Authorities for comment, to facilitate the preparation of drafts of individual agreements with each prospective Authority.

² The law was signed by President Ford of the United States of America on November 14, 1975 (see p. 366); the instrument of ratification was deposited with the Director General of WIPO on November 26, 1975 (see p. 359).

Test of Certain Aspects of PCT Procedure through simulated PCT Procedures. The Offices of Austria, Japan, Sweden, Switzerland, the United Kingdom and the United States of America, and also the International Patent Institute (IIB), indicated that they were ready to participate in the test program under way between the Federal Republic of Germany and the Soviet Union.

Interim Committee for Technical Assistance

Survey of Patent Document Collections available to Developing Countries. This Interim Committee recommended that the International Bureau continue its efforts to make patent document collections available to developing countries. All Offices having collections that could be made available to developing countries were urged to inform the International Bureau as soon as possible and to store their collections for a longer period so that developing countries could obtain them.

Technical Assistance Projects. The Interim Committee considered a progress report on the project to modernize the Brazilian patent system, the first two-year phase of which has been concluded.

The Interim Committee also noted a progress report on other technical assistance projects, including those concerned with the establishment of regional patent documentation services or centers for Egypt and the African and Malagasy Industrial Property Office (OAMPI).

Usefulness of INPADOC Services for Developing Countries. The Interim Committee recommended that the program being carried out to determine the value of the services of the International Patent Documentation Center (INPADOC) for developing countries should be continued.

Training Program to be implemented by the Austrian Patent Office. The Interim Committee noted the Austrian Government's offer to assist developing countries in establishing an infrastructure by providing a comprehensive program for training future experts in the use of the International Patent Classification.

Technical Periodicals available at low cost or free of charge. The Interim Committee requested that the International Bureau continue its efforts to draw up a revised, expanded list of technical periodicals that could be provided free of charge or at very low cost to developing countries.

Interim Committee for Technical Cooperation

Minimum Documentation: Non-Patent Literature. This Interim Committee approved the updated version of the list of 169 periodicals which is to be included in the PCT minimum documentation. It noted that all 169 periodicals were to be included by all the prospective International Searching Authorities in their documentation by January 1977 at the latest.

The Interim Committee stressed the value of the Patent Associated Literature (PAL) Project of the Institution of Electrical Engineers (INSPEC) in providing a harmonized

form of access to non-patent literature. It unanimously agreed that, following the introduction of the PAL 1976/77 Service, INSPEC would examine a certain number of periodicals on the PCT Minimum List of Non-Patent Literature.

Minimum Documentation: Patent Documents. The Interim Committee considered the question of "gaps" in the search files of the prospective International Searching Authorities and noted that these Authorities would try to complete their minimum documentation through bilateral arrangements among themselves and/or with other members of the Interim Committee. It agreed that the International Bureau should seek solutions to guarantee existing coverage and achieve complete coverage in future of English-language abstracts of Japanese and Soviet Union documents as soon as possible.

The Interim Committee agreed that a decision on the treatment of families of patents should be deferred until its next session owing to difficulty in arriving at generally agreed principles.

Searching under the PCT. The Interim Committee asked for a revised draft of a Guideline for Searches under the PCT to be submitted to its next session.

Guidelines for the Preparation of Abstracts. The Interim Committee approved the General Guidelines for the Preparation of Abstracts of Patent Documents, adopted by the Plenary Committee of ICIREPAT at its seventh ordinary session.

List of Participants*

I. States

Algeria: G. Sellali (Mrs.). Austria: G. Gall. Brazil: A. Gurgel de Alencar. Denmark: J. J. P. Irgens; O. P. Callesen. Egypt: S. A. Abou-Ali. Finland: P. Salmi; E. Friman. France: P. Guérin. Germany (Federal Republic of): U. C. Hallmann; W. Massalski. Hungary: E. Parragh (Mrs.). Ireland: P. Slavin. Ivory Coast: L. M.-L. Boa (Mrs.). Japan: T. Shiroshita; T. Yoshida. Luxembourg: F. Schlessner. Netherlands: J. Dekker. Norway: O. Os. Philippines: E. Bautista. Romania: V. Tudor. Soviet Union: L. Komarov; E. Buryak. Sweden: S. Lewin; B. Sandberg (Mrs.); L. Törnroth. Switzerland: J.-L. Comte; R. Kämpf; M. Leuthold; J. Mirimanoff-Chilikine. United Kingdom: D. G. Gay; A. F. C. Miller; R. W. Heinink. United States of America: A. C. Marmor; L. O. Maassel; M. E. Turowski (Miss).

II. Intergovernmental Organizations

International Patent Institute (IIB): J. A. H. van Voorthuizen; A. Vandecasteele. Organization of American States (OAS): G. J. Schamis.

III. Non-Governmental Organizations

Council of European Industrial Federations (CEIF): R. Kockläuner. European Federation of Agents of Industry in Industrial Property (FEMIP): F. A. Jenny; B. Dousse. International Association for the Protection of Industrial Property (IAPIP): M. Mathez. International Federation of Inventors' Associations (IFIA): S.-E. Angert; P. Feldmann. International Federation of Patent Agents (FICPI): H. Brühwiler; G. E. Kirker. Union of European Professional Patent Representatives (UNION): G. E. Kirker. Union of Industries of the European Community (UNICE): M. G. E. Meunier.

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

IV. Observer Organizations

International Patent Documentation Center (INPADOC): G. Quarda. The Institution of Electrical Engineers (INSPEC): D. Barlow; R. B. Cox.

V. WIPO

K. Pfanner (*Deputy Director General*); P. Claus (*Technical Counsellor, Head of Section, Industrial Property Division*); J. Franklin (*Counsellor, Head, PCT Section, Industrial Property Division*); N. Scherrer (*Counsellor, PCT Section*); Y. Gyrdymov (*Technical Officer, PCT Section*); B. Bartels (*Consultant, PCT Section*); T. Ogiue (*Consultant, PCT Section*); J. Sheehan (*Consultant, Industrial Property Division*).

ICIREPAT

Plenary Committee

Seventh Session

(Geneva, September 17 to 19, 1975)

Note*

The Plenary Committee of the Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) held its seventh ordinary session¹ in Geneva from September 17 to 19, 1975. The session was chaired by Mr. C. Marshall Dann, Commissioner of Patents and Trademarks of the United States Patent and Trademark Office. A list of participants appears at the end of this Note.

Past and Current ICIREPAT Activities. The Plenary Committee noted the general report of the International Bureau on the activities of ICIREPAT during the preceding year, as well as reports on the activities of the Technical Committees and on the status of ICIREPAT search systems.

The Plenary Committee adopted several recommendations approved by the Technical Coordination Committee, including two revised chapters of the ICIREPAT Manual: "ICIREPAT Procedures for the Development and Introduction of Systems," and "Guide for the Implementation of Systems," Guidelines for the Preparation of Abstracts of Patent Documents and of Categorized Abstracts, Recommended Standards for 16 mm Roll Microfilm and 35 mm Roll Microfilm in 8-up Configuration for Exchange between Patent Offices, Revised versions of the Two-Letter Code for Countries, Organizations and the Like (ST. 3) and of the Standard Code for the Identification of Different Kinds of Patent Documents (SI. 8).

Coordination of ICIREPAT efforts with other bodies of WIPO. The Plenary Committee considered a proposal of the United States of America regarding the need for more coordination of ICIREPAT efforts with other bodies of WIPO and recommended to the Executive Committee of the Paris Union to request the Director General of WIPO to convene an Ad Hoc Committee to review the related technical activities

* This Note has been prepared by the International Bureau.

¹ A Note on the sixth ordinary session of the Plenary Committee was published in *Industrial Property*, 1974, p. 434.

within the framework of the Patent Cooperation Treaty, the Strasbourg Agreement Concerning the International Patent Classification and ICIREPAT.

Reorganization of ICIREPAT. The Plenary Committee agreed to merge the Technical Coordination Committee (TCC) of ICIREPAT with the Plenary Committee (PLC) with effect from January 1, 1976, and agreed furthermore that the Plenary Committee would, at its spring session, mainly discuss technical matters, whereas in its fall session, preceding the administrative meetings of WIPO, both technical and policy matters would be dealt with. The necessary draft amendments in the Organizational Rules of ICIREPAT for implementing this decision were approved by the Plenary Committee and submitted to the Executive Committee of the Paris Union for decision.

The Plenary Committee considered a proposal by France regarding the reorganization of ICIREPAT with a view to incorporating it in the program and budget of the Paris Union and decided to inform the Executive Committee of the Paris Union that it was not in a position to formulate any definite views on this proposal until it received a more detailed analysis of its legal, technical and political consequences.

Long-term program for development of an integrated system of patent search. The Plenary Committee dealt with a report on the action taken by the TCC and by the Ad Hoc Committee of the TCC on the proposal of the Soviet Union for a "Long-Term Program for Development of an Integrated System for Patent Search," and decided that the fifteenth session of the TCC should mainly be devoted to the further discussion of the Long-Term Program.

Program for 1976. The Plenary Committee approved the draft program of ICIREPAT for 1976 for submission to the Executive Committee of the Paris Union.

List of Participants *

I. States

Australia: K. B. Petersson. Canada: M. Moher. Cuba: J. M. Rodriguez-Padilla. Czechoslovakia: J. Zelko. Denmark: K. Skjædt; A. Morsing. Finland: E. Pakkala. France: D. Cuvelot. German Democratic Republic: R. Blumstengel. Germany (Federal Republic of): A. Wittmann; W. Weiss. Japan: Y. Hashimoto. Netherlands: J. Dekker. Norway: E. O. Kjeldsen. Soviet Union: I. Nayashkov; V. Znbarev; F. A. Sviridov; V. Roslov. Sweden: G. Borggård; L. G. Björklund. Switzerland: J.-L. Comte. United Kingdom: D. G. Gay; D. C. Snow. United States of America: C. Marshall Dann; M. K. Kirk; A. C. Marmor.

II. Organizations

International Patent Institute (IIB): J. A. H. van Voorthuizen; A. Vandecasteele. Commission of the European Communities (CEC): H. Bank. Fédération internationale de documentation (FID): F. Liehesny.

III. Chairmen of the Technical Committees

Chairman of the Technical Coordination Committee: G. Borggård; *Chairman of the Technical Committee for Search Systems:* D. G. Gay; *Chairman of the Technical Committee for Standardization:* A. Wittmann.

IV. Officers

Chairman: C. Marshall Dann; *Secretary:* P. H. Clans.

V. WIPO

A. Bogsch (*Director General*); K. Pfanner (*Deputy Director General*); P. H. Claus (*Technical Counsellor, Head, ICIREPAT Section, Industrial Property Division*); H. Konrad (*Technical Counsellor, ICIREPAT Section*); D. Bonchez (*Technical Assistant, ICIREPAT Section*); V. Evgeniev (*Technical Assistant, ICIREPAT Section*).

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

LEGISLATION

BENELUX

(Belgium — Luxembourg — Netherlands)

Decision of the Executive Board of the Benelux Trademark Office — Entry into force on January 1, 1976, of search for anticipation in regard to Benelux trademarks *

The Executive Board of the Benelux Trademark Office at its meeting on November 13, 1975

Having regard to Article 6.B of the Uniform Benelux Trademark Law, annexed to the Benelux Convention concerning Trademarks signed at Brussels on March 19, 1962¹

Having regard to paragraph 2 of Article 35 of the Executive Rules of the Uniform Benelux Trademark Law of July 31, 1970², as amended by the Protocol of November 21, 1974³

DECIDES that:

The Benelux filing of a mark shall be accompanied, as from January 1, 1976, by the documents referred to in paragraph (a) of Article 2 of the Executive Rules of the Uniform Benelux Trademark Law regarding examination for anticipation.

* This decision has been published in the *Moniteur belge* of December 4, 1975.

¹ *Industrial Property*, 1969, pp. 305 and 307.

² *Industrial Property*, 1970, p. 369.

³ *Industrial Property*, 1975, p. 260.

FRANCE

Decree

No. 75-153 of March 10, 1975, Amending Decree No. 68-1100 of December 5, 1968¹, Concerning Applications for, and the Issuance and Maintenance in Force of, Patents and Certificates of Utility

1. — A paragraph, worded as follows, is inserted between the first and second paragraphs of Article 60 of the aforesaid Decree of December 5, 1968:

“Where payment has been made on the due date but at a rate lower than that required, the warning issued to the owner of the patent application or patent shall advise him that he risks forfeiture of his rights if the balance due is not paid prior to the expiry of the period provided for in the second paragraph of Article 89.”

The second paragraph becomes the third paragraph.

2. — The last paragraph of Article 79 of the aforesaid Decree of December 5, 1968, is replaced by the following provisions:

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

“Payment of this fee shall fall due on the last day of the month containing the anniversary date of the filing of the patent application; it cannot be accepted if it is made more than one year prior to the date on which the annual fee falls due.”

3. — The first two paragraphs of Article 89 of the Decree of December 5, 1968, are replaced by the following provisions:

“Payment of the fees and charges provided for in this Decree, other than the annual fee, shall be valid if it is made at the rate in force at the date of payment.

“Payment of the annual fee shall be valid only if it is made at the rate in force at the due date specified in the fourth paragraph of Article 79 of this Decree. However, in the case of insufficient payment of an annual fee, such payment shall be deemed valid if the balance by which it falls short of the amount payable at the due date is paid within six months following that date.”

4. — The provisions of Articles 1 to 3 above shall be applicable to annual fees paid as from the date of entry into force of this Decree.

5. — The Keeper of the Seals and Minister of Justice, the Minister for Economic and Financial Affairs, the Minister for Industry and Research and the Secretary of State for Overseas Departments and Territories are entrusted, each as far as he is concerned, with the implementation of this Decree, which shall be published in the Official Gazette of the French Republic².

² *Journal officiel*, March 15, 1975, p. 2834.

ITALY

Decrees concerning the Temporary Protection of Industrial Property Rights at Exhibitions

Sole Section

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

SAMIA — *Salone mercato internazionale dell'abbigliamento maschile* (Turin, August 30 to September 2, 1975);

IX^o *Salone internazionale della musica e high fidelity* 1975 (Milan, September 4 to 8, 1975);

XIII^a *Mostra internazionale del marmo e delle macchine per l'industria marmifera* (S. Ambrogio di Valpolicella (Verona), September 6 to 14, 1975);

I° Salone nazionale professionale della caravan e dell'accessorio (Turin, September 8 to 14, 1975);

SMAU — Salone internazionale macchine, mobili, attrezzature ufficio (Milan, September 16 to 21, 1975);

IX° Salone della attività vitivinicole VINITALY (Verona, September 21 to 28, 1975);

SAMIA — Salone mercato internazionale dell'abbigliamento femminile (Turin, October 4 to 7, 1975);

ITMA '75 — VII° Esposizione internazionale del macchinario tessile (Milan, October 6 to 15, 1975);

XV° Salone nautico internazionale and V° Salone internazionale delle attrezzature subacquee (Genoa, October 17 to 27, 1975);

VII° Salone internazionale delle attività zootecniche eurocarne (Verona, October 25 to 29, 1975);

IX^a Mostra nazionale del mobile (Florence, October 25 to November 4, 1975);

II° SICAT — Salone della cartoleria arredamento e delle attrezzature tecniche per ufficio (Naples, October 31 to November 4, 1975);

V° TUR — IN'75 — Salone del turismo invernale e dei problemi della montagna (Pordenone, October 31 to November 4, 1975);

IV° Salone internazionale del veicolo industriale (Turin, November 1 to 9, 1975);

V^a Rassegna internazionale della chimica and MAC '75 (Milan, November 6 to 12, 1975);

XII° TECNHOTEL — Mostra internazionale delle attrezzature alberghiere e turistiche and VI° BIBE — Mostra internazionale dei vini liquori ed altre bevande (Genoa, November 15 to 23, 1975);

Salone internazionale macchine per l'enologia e l'imbottigliamento (Milan, November 16 to 23, 1975)

shall enjoy the temporary protection established by the decrees mentioned in the preamble¹.

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.)

UNITED STATES OF AMERICA

Public Law 94-131

(November 14, 1975)

An Act

To carry into effect certain provisions of the Patent Cooperation Treaty, and for other purposes

Section 1. — Title 35, United States Code, entitled "Patents", is amended by adding at the end thereof a new part IV to read as follows:

"Part IV. — Patent Cooperation Treaty

"Chapter 35. — Definitions

"Sec.

"351. Definitions.

"§ 351. Definitions

"When used in this part unless the context otherwise indicates —

"(a) The term 'treaty' means the Patent Cooperation Treaty done at Washington, on June 19, 1970, excluding chapter II thereof.

"(b) The term 'Regulations', when capitalized, means the Regulations under the treaty excluding part C thereof, done at Washington on the same date as the treaty. The term 'regulations', when not capitalized, means the regulations established by the Commissioner under this title.

"(c) The term 'international application' means an application filed under the treaty.

"(d) The term 'international application originating in the United States' means an international application filed in the Patent Office when it is acting as a Receiving Office under the treaty, irrespective of whether or not the United States has been designated in that international application.

"(e) The term 'international application designating the United States' means an international application specifying the United States as a country in which a patent is sought, regardless where such international application is filed.

"(f) The term 'Receiving Office' means a national patent office or intergovernmental organization which receives and processes international applications as prescribed by the treaty and the Regulations.

"(g) The term 'International Searching Authority' means a national patent office or intergovernmental organization as appointed under the treaty which processes international applications as prescribed by the treaty and the Regulations.

"(h) The term 'International Bureau' means the international intergovernmental organization which is recognized as the coordinating body under the treaty and the Regulations.

"(i) Terms and expressions not defined in this part are to be taken in the sense indicated by the treaty and the Regulations.

"Chapter 36. — International Stage

"Sec.

"361. Receiving Office.

"362. International Searching Authority.

"363. International application designating the United States: Effect.

"364. International stage: Procedure.

"365. Right of priority; benefit of the filing date of a prior application.

"366. Withdrawn international application.

"367. Actions of other authorities: Review.

"368. Secrecy of certain inventions; filing international applications in foreign countries.

"§ 361. Receiving Office

"(a) The Patent Office shall act as a Receiving Office for international applications filed by nationals or residents of the United States. In accordance with any agreement made between the United States and another country, the Patent Office may also act as a Receiving Office for international applications filed by residents or nationals of such country who are entitled to file international applications.

"(b) The Patent Office shall perform all acts connected with the discharge of duties required of a Receiving Office, including the collection of international fees and their transmittal to the International Bureau.

"(c) International applications filed in the Patent Office shall be in the English language.

"(d) The basic fee portion of the international fee, and the transmittal and search fees prescribed under section 376 (a) of this part, shall be paid on filing of an international application. Payment of designation fees may be made on filing and shall be made not later than one year from the priority date of the international application.

"§ 362. International Searching Authority

"The Patent Office may act as an International Searching Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau.

"§ 363. International application designating the United States: Effect

"An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent Office except as otherwise provided in section 102(e) of this title.

"§ 364. International stage: Procedure

"(a) International applications shall be processed by the Patent Office when acting as a Receiving Office or International Searching Authority, or both, in accordance with the applicable provisions of the treaty, the Regulations, and this title.

"(b) An applicant's failure to act within prescribed time limits in connection with requirements pertaining to a pending international application may be excused upon a showing satisfactory to the Commissioner of unavoidable delay, to the extent not precluded by the treaty and the Regulations, and provided the conditions imposed by the treaty and the Regulations regarding the excuse of such failure to act are complied with.

"§ 365. Right of priority; benefit of the filing date of a prior application

"(a) In accordance with the conditions and requirements of section 119 of this title, a national application shall be entitled to the right of priority based on a prior filed international application which designated at least one country other than the United States.

"(b) In accordance with the conditions and requirement of the first paragraph of section 119 of this title and the treaty and the Regulations, an international application designating the United States shall be entitled to the right of priority based on a prior foreign application, or a prior international application designating at least one country other than the United States.

"(c) In accordance with the conditions and requirements of section 120 of this title, an international application designating the United States shall be entitled to the benefit of the filing date of a prior national application or a prior international application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application which designated but did not originate in the United States, the Commissioner may require the filing in the Patent Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

"§ 366. Withdrawn international application

"Subject to section 367 of this part, if an international application designating the United States is withdrawn or considered withdrawn, either generally or as to the United States, under the conditions of the treaty and the Regulations, before the applicant has complied with the applicable requirements prescribed by section 371(c) of this part, the designation of the United States shall have no effect and shall be considered as not having been made. However, such international application may serve as the basis for a claim of priority under section 365(a) and (b) of this part, if it designated a country other than the United States.

"§ 367. Actions of other authorities: Review

"(a) Where a Receiving Office other than the Patent Office has refused to accord an international filing date to an international application designating the United States or where it has held such application to be withdrawn either generally or as to the United States, the applicant may request review of the matter by the Commissioner, on compliance with the requirements of and within the time limits specified by the treaty and the Regulations. Such review may result in a determination that such application be considered as pending in the national stage.

"(b) The review under subsection (a) of this section, subject to the same requirements and conditions, may also be requested in those instances where an international application designating the United States is considered withdrawn due to a finding by the International Bureau under article 12 (3) of the treaty.

"§ 368. Secrecy of certain inventions; filing international applications in foreign countries

"(a) International applications filed in the Patent Office shall be subject to the provisions of chapter 17 of this title.

"(b) In accordance with article 27(8) of the treaty, the filing of an international application in a country other than the United States on the invention made in this country shall be considered to constitute the filing of an application in a foreign country within the meaning of chapter 17 of this title, whether or not the United States is designated in that international application.

"(c) If a license to file in a foreign country is refused or if an international application is ordered to be kept secret and a permit refused, the Patent Office when acting as a Receiving Office or International Searching Authority, or both, may not disclose the contents of such application to anyone not authorized to receive such disclosure.

" Chapter 37. — National Stage

" Sec.

" 371. National stage: Commencement.

" 372. National stage: Requirements and procedure.

" 373. Improper applicant.

" 374. Publication of international application: Effect.

" 375. Patent issued on international application: Effect.

" 376. Fees.

" § 371. National stage: Commencement

" (a) Receipt from the International Bureau of copies of international applications with amendments to the claims, if any, and international search reports is required in the case of all international applications designating the United States, except those filed in the Patent Office.

" (b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2) of the treaty, at which time the applicant shall have complied with the applicable requirements specified in subsection (c) of this section.

" (c) The applicant shall file in the Patent Office —

" (1) the national fee prescribed under section 376(a) (4) of this part;

" (2) a copy of the international application, unless not required under subsection (a) of this section or already received from the International Bureau, and a verified translation into the English language of the international application, if it was filed in another language;

" (3) amendments, if any, to the claims in the international application, made under article 19 of the treaty, unless such amendments have been communicated to the Patent Office by the International Bureau, and a translation into the English language if such amendments were made in another language;

" (4) an oath or declaration of the inventor (or other person authorized under chapter 11 of this title) complying with the requirements of section 115 of this title and with regulations prescribed for oaths or declarations of applicants.

" (d) Failure to comply with any of the requirements of subsection (c) of this section, within the time limit provided

by article 22(1) or (2) of the treaty shall result in abandonment of the international application.

" (e) After an international application has entered the national stage, no patent may be granted or refused thereon before the expiration of the applicable time limit under article 28 of the treaty, except with the express consent of the applicant. The applicant may present amendments to the specification, claims, and drawings of the application after the national stage has commenced.

" (f) At the express request of the applicant, the national stage of processing may be commenced at any time at which the application is in order for such purpose and the applicable requirements of subsection (c) of this section have been complied with.

" § 372. National stage: Requirements and procedure

" (a) All questions of substance and, within the scope of the requirements of the treaty and Regulations, procedure in an international application designating the United States shall be determined as in the case of national applications regularly filed in the Patent Office.

" (b) In case of international applications designating, but not originating in, the United States —

" (1) the Commissioner may cause to be reexamined questions relating to form and contents of the application in accordance with the requirements of the treaty and the Regulations;

" (2) the Commissioner may cause the question of unity of invention to be reexamined under section 121 of this title, within the scope of the requirements of the treaty and the Regulations.

" (c) Any claim not searched in the international stage in view of a holding, found to be justified by the Commissioner upon review, that the international application did not comply with the requirement for unity of invention under the treaty and the Regulations, shall be considered canceled, unless payment of a special fee is made by the applicant. Such special fee shall be paid with respect to each claim not searched in the international stage and shall be submitted not later than one month after a notice was sent to the applicant informing him that the said holding was deemed to be justified. The payment of the special fee shall not prevent the Commissioner from requiring that the international application be restricted to one of the inventions claimed therein under section 121 of this title, and within the scope of the requirements of the treaty and the Regulations.

" § 373. Improper applicant

" An international application designating the United States, shall not be accepted by the Patent Office for the national stage if it was filed by anyone not qualified under chapter 11 of this title to be an applicant for the purpose of filing a national application in the United States. Such international applications shall not serve as the basis for the benefit of an earlier filing date under section 120 of this title in a subsequently filed application, but may serve as the basis for a claim of the right of priority under section 119

of this title, if the United States was not the sole country designated in such international application.

“ § 374. Publication of international application: Effect

“The publication under the treaty of an international application shall confer no rights and shall have no effect under this title other than that of a printed publication.

“ § 375. Patent issued on international application: Effect

“(a) A patent may be issued by the Commissioner based on an international application designating the United States, in accordance with the provisions of this title. Subject to section 102(e) of this title, such patent shall have the force and effect of a patent issued on a national application filed under the provisions of chapter 11 of this title.

“(b) Where due to an incorrect translation the scope of a patent granted on an international application designating the United States, which was not originally filed in the English language, exceeds the scope of the international application in its original language, a court of competent jurisdiction may retroactively limit the scope of the patent, by declaring it unenforceable to the extent that it exceeds the scope of the international application in its original language.

“ 376. Fees.

“(a) The required payment of the international fee, which amount is specified in the Regulations, shall be paid in United States currency. The Patent Office may also charge the following fees:

- “(1) A transmittal fee (see section 361(d));
- “(2) A search fee (see section 361(d));
- “(3) A supplemental search fee (to be paid when required);
- “(4) A national fee (see section 371(c));
- “(5) A special fee (to be paid when required; see section 372(c));
- “(6) Such other fees as established by the Commissioner.

“(b) The amounts of fees specified in subsection (a) of this section, except the international fee, shall be prescribed by the Commissioner. He may refund any sum paid by mistake or in excess of the fees so specified, or if required under the treaty and the Regulations. The Commissioner may also refund any part of the search fee, where he determines such refund to be warranted.”.

Section 2. — Section 6 of title 35, United States Code, is amended by adding a paragraph (d) to read as follows:

“ § 6. Duties of Commissioner

“(d) The Commissioner, under the direction of the Secretary of Commerce, may, with the concurrence of the Secretary of State, allocate funds appropriated to the Patent Office, to the Department of State for the purpose of payment of the share on the part of the United States to the working capital fund established under the Patent Cooperation Treaty. Contributions to cover the share on the part of the United

States of any operating deficits of the International Bureau under the Patent Cooperation Treaty shall be included in the annual budget of the Patent Office and may be transferred by the Commissioner, under the direction of the Secretary of Commerce, to the Department of State for the purpose of making payments thereof to the International Bureau.”.

Section 3. — Item 1 of section 41(a) of title 35, United States Code, is amended to read as follows:

“ § 41. Patent fees

“(a) The Commissioner shall charge the following fees:

“1. On filing each application for an original patent, except in design cases, \$ 65; in addition on filing or on presentation at any other time, \$ 10 for each claim in independent form which is in excess of one, and \$ 2 for each claim (whether independent or dependent) which is in excess of ten. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.”.

Section 4. — Section 42 of title 35, United States Code, is amended to read as follows:

“ § 42. Payment of patent fees; return of excess amounts

“All patent fees shall be paid to the Commissioner who, except as provided in sections 361(b) and 376(b) of this title, shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury directs, and the Commissioner may refund any sum paid by mistake or in excess of the fee required by law.”.

Section 5. — Paragraph (e) of section 102 of title 35, United States Code, is amended to read as follows:

“ § 102. Conditions for patentability; novelty and loss of right to patent

“(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2) and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or”.

Section 6. — The first sentence of section 104 of title 35, United States Code, is amended to read as follows:

“ § 104. Invention made abroad

“In proceedings in the Patent Office and in the courts, an applicant for a patent, or a patentee may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in sections 119 and 365 of this title.”.

Section 7. — The second sentence of the second paragraph of section 112 of title 35, United States Code, is amended to read as follows:

“ § 112. *Specification*

“ A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

“ Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

“ A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.”.

Section 8. — Section 113 of title 35, United States Code, is amended to read as follows:

“ § 113. *Drawings*

“ The applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented. When the nature of such subject matter admits of illustration by a drawing and the applicant has not furnished such a drawing, the Commissioner may require its submission within a time period of not less than two months from the sending of a notice thereof. Drawings submitted after the filing date of the application may not be used (i) to overcome any insufficiency of the specification due to lack of an enabling disclosure or otherwise inadequate disclosure therein, or (ii) to supplement the original disclosure thereof for the purpose of interpretation of the scope of any claim.”.

Section 9. — Section 120 of title 35, United States Code, is amended to read as follows:

“ § 120. *Benefit of earlier filing date in the United States*

“ An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, by the same inventor shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.”.

Section 10. — The first paragraph of section 282 of title 35, United States Code, is amended to read as follows:

“ § 282. *Presumption of validity; defenses*

“ A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.”.

Section 11. — (a) Section 1 of this Act shall come into force on the same day as the entry into force of the Patent Cooperation Treaty with respect to the United States. It shall apply to international and national applications filed on and after this effective date, even though entitled to the benefit of an earlier filing date, and to patents issued on such applications.

(b) Sections 2 to 10 of this Act shall take effect on the same day as section 1 of this Act and shall apply to all applications for patent actually filed in the United States on and after this effective date, as well as to international applications where applicable.

(c) Applications for patent on file in the Patent Office on the effective date of this Act, and patents issued on such applications, shall be governed by the provisions of title 35, United States Code, in effect immediately prior to the effective date of this Act.

NEWS FROM PATENT OFFICES

FRANCE

Activities of the National Institute for Industrial Property in 1973 and 1974

Applications

There was a decrease in *patent* applications in 1973 and 1974 by comparison with previous years¹; also the increase in applications for the registration of *trademarks* and *designs* during 1973 was followed by a decrease in 1974. Information on the activities of the various departments of the Institute during 1973 and 1974 appears in the following tables:

Titles filed with the National Institute for Industrial Property in 1973 and 1974

I. Patents	1973	1974	Absolute variation	Percentage variation
Total number of filings	47,234	43,633	— 3,601	— 7.6 %
Filings by natural persons	9,406	8,192	— 1,214	— 12.9 %
Filings by legal entities	37,828	35,441	— 2,387	— 6.5 %
Filings of French origin	13,458	12,706	— 752	— 5.5 %
Filings of foreign origin	33,776	30,927	— 2,849	— 8.4 %

Distribution of filings by country of origin

	1973 Filings	1974 Filings	Absolute variation
France	13,458	12,706	— 752
United States of America	9,991	9,264	— 727
Germany (Fed. Rep. of)	8,612	7,646	— 966
Japan	3,071	2,940	— 131
United Kingdom	3,049	2,781	— 268
Switzerland	2,118	2,001	— 117
Netherlands	1,287	1,215	— 72
Italy	1,146	1,050	— 96
Sweden	796	855	+ 59
Soviet Union	590	411	— 179
Other countries	3,116	2,764	— 352
Total	47,234	43,633	— 3,601

II. Trademarks	1973	1974	Absolute variation	Percentage variation
Total number of filings	26,231	23,076	— 3,155	— 12 %
Registrations	25,425	27,193	+ 1,768	+ 6.9 %
Renewals	7,020	4,381	— 2,639	— 37 %

III. Designs	1973	1974	Absolute variation	Percentage variation
Number of filings	12,950	11,968	— 982	— 7.5 %

¹ See the report on the Institute's activities in 1971 and 1972 in *Industrial Property*, 1973, p. 179.

IV. National Patent Register	1973	1974	Absolute variation	Percentage variation
Transfer of ownership (number of patents concerned)	5,905	4,599	— 1,306	— 22 %
Grants or assignments of licenses	1,179	931	— 248	— 21 %
Lapses	39,319	38,561	— 758	— 19 %
Reinstatements	114	83	— 31	— 27 %

V. National Trademark Register	1973	1974	Absolute variation	Percentage variation
Transfer of ownership (number of marks concerned)	5,987	5,308	— 679	— 11 %
Grants and assignments of trademark licenses	1,312	1,544	+ 252	+ 17 %

Examination Procedure

(a) Patents

In 1973, 75 % of the patent applications filed were subject to a report on the state of the art, either immediate or deferred. As from January 1, 1974, all patent applications are subject to this procedure. The average time taken during the period under review to despatch the first draft documentary report was approximately seven months from payment of the documentary report fee.

The number of patents granted in 1973 was 27,939. This figure dropped to 25,071 in 1974. The situation reflects the progressive broadening — up to 100 % — of the scope of the documentary report procedure; the number of applicants awaiting the grant of patents rose to 110,000 at the end of 1974.

(b) Trademarks

In 1973, 26,211 trademarks filed in France and 9980 international marks were examined. This procedure, which is carried out solely to ascertain whether a mark filed may be regarded as a trademark within the terms of the legislation in force (Section 3 of the Law of December 31, 1964, as amended), resulted in 2101 notices of irregularity and 925 rejections.

In 1974, 24,003 trademarks filed in France and 8615 international marks were examined. The examination resulted in 1684 notices of irregularity and 893 rejections.

Legislation

There were no changes in French industrial property legislation during the period under review but during 1975 amendments were made to the Trademark Law of December 31, 1964 and to the Decree of December 5, 1968 on the Implementation of the Patent Law of January 2, 1968². By virtue of the Law of June 30, 1975, all disputes arising out of

² See p. 365.

the implementation of the Trademark Law now lie within the competence of the law courts, thus ending the jurisdiction of the administrative courts as regards appeals against rejections pronounced by the Director of the National Institute for Industrial Property: the new provisions stipulate that only the Paris Court of Appeal shall rule on such appeals. In addition, provisions similar to those of the Patent Law have been introduced which make it possible to ascertain and proceed against any acts that infringe trademark rights occurring prior to publication of the trademark in question. With regard to patents, the Decree of March 10, 1975, makes substantial changes in the regulations governing payment of fees.

Studies undertaken earlier on rights arising out of employees' inventions have been pursued and a draft law has been prepared. Further, as a consequence of the signature of the European Patent Convention, a study has been initiated on the national legislative and regulatory measures that will have to be taken in connection with the implementation of the Convention and the PCT, and work on revision of the 1968 Patent Law has started with a view, in particular, to bringing it into line with the European Convention. A preliminary draft has been drawn up along these lines.

International Cooperation

The National Institute for Industrial Property was, of course, represented at the two diplomatic conferences that highlighted 1973, namely, the Vienna Conference held from May 17 to June 12, 1973 (Trademark Registration Treaty, Type Faces and Classification of the Figurative Elements of Marks) and the Munich Conference held from September 10 to October 5, 1973, on the European Patent.

The National Institute for Industrial Property has always been a regular participant at WIPO meetings — both at the Assemblies, Conferences of Representatives, Committees of Directors and Executive Committees of the various Unions, and at the Assemblies and Committees of the Organization itself — and 1973 and 1974 were no exception. Among other meetings organized by WIPO and attended by the National Institute for Industrial Property, were the following: the Plenary Committee and Technical Coordination Committee of ICIREPAT held in Geneva in July and November 1973 and in February, June and September 1974; the numerous meetings of the Technical Committees (TCSS and TCST); the PCT Interim Committees held in Tokyo in 1973 and in Geneva in 1974; and the meetings of the committees for the preparation and implementation of the WIPO Permanent Legal-Technical Program (Geneva, June 1973 and March 1974). Representatives of the National Institute for Industrial Property also take an active part in the committees and working groups on the International Patent Classification (IPC), which between them account for some dozen meetings a year and the National Institute for Industrial Property has participated in other expert committees or working groups set up under the auspices of the Unions, for example, the Committee of Experts on the Deposit of Microorganisms for the Purposes of Patent Procedure (the first meeting of which was held in April 1974), the Working Group for the Mechanization of Trademark Searches (Geneva, February, September and

December, 1973), the Working Group on Industrial Property Statistics (Geneva, July 1974) and the Committee of Experts for the International Classification of Goods and Services (Geneva, September 1973 and June 1974). Finally, the National Institute for Industrial Property took part in the Moscow Symposium on Patent Information held in October 1974.

Obviously, participation of the National Institute for Industrial Property is not confined to meetings organized by WIPO. Special mention should be made of the Interim Committee of the European Patent Organisation, established at the Munich Conference: the National Institute for Industrial Property is represented on six of its seven working groups — which latter themselves create subgroups — and the frequency of their meetings together with the volume of the work place a heavy burden on the National Institute for Industrial Property. Within the European context, reference should likewise be made to the Brussels meetings on the establishment of a draft Convention on the European Patent for the Common Market which is to be considered at a conference originally scheduled for 1974 but now to be held in Luxembourg at the end of 1975. Meetings of the International Patent Institute (IIB) Administrative Board have also been attended regularly. Several other international or bilateral meetings in which the National Institute for Industrial Property participated have had to be omitted for lack of space.

Also, as is the practice, foreign trainees were received by the National Institute for Industrial Property.

Administrative Matters

The National Institute for Industrial Property is a public institution having legal personality and financial autonomy. It must balance its expenditure by using its own resources (fees and reserves).

Its provisional budget for 1974 was fixed at 125,120,000 francs, which represents an increase of 32,506,210 francs over the 1973 budget, or, if compared with the 1972 end-of-year accounts, an overall increase of 47,257,211 francs in round figures.

Over the past three years, receipts from industrial property fees have increased as follows:

Year	Income fr.
1972	60,358,844
1973	76,436,950
1974	101,565,246

The proportion of patent fees received was:

Year	A. Total receipts fr.	B. Receipts from annual and late- payment fees included in A fr.
1972	56,166,971	34,318,944
1973	71,784,112	42,759,152
1974	96,169,174	50,749,865

The development of the main items of expenditure during the same period was as follows:

Year	Staff costs fr.	Printing costs fr.	Work entrusted to IIB fr.
1972	18,456,494	21,861,940	17,861,594
1973	22,037,525	19,688,913	36,858,251
1974	26,454,447	19,342,505	46,590,946

As far as staff costs are concerned, it should be noted that, for the period under review, the budgeted staff strength rose from 665 in 1972 to 725 in 1973 and 737 in 1974.

The distribution of staff in 1974 was as follows:

— Decision-making and professional staff and examiners (legal and administrative staff: 73; engineers: 179, including 45 apprentice examiners under training)	252
— Higher clerical staff	54
— Clerical staff	362
— Manual workers and service staff	69

Information of General Interest

During 1973 and 1974 the National Institute for Industrial Property continued to support the International Industrial Property Study Center (CEIPI) in Strasbourg and the French Patent Examiners' Training Association (FORMEX), formed to train examiners for the future European Patent Office³.

In the field of information, the National Institute for Industrial Property continues to participate, so far as possible, in symposia, seminars or study sessions on industrial property. It is also extending its own information services for the benefit of the public, especially with respect to technical or legal documentation. For instance, a computerized legal information service on patents was offered to the public, in collaboration with Montpellier University, at first experimentally in April 1973 and then, on a regular basis, in May 1974. This automated system is designed to cover all French court decisions on patents since 1900.

³ See *Industrial Property*, 1973, p. 181.

JAPAN

Activity Report of the Patent Office *

Number of applications and the state of examination

Due to the progress of technical innovation and the recent trend towards multiplicity of goods and designs, the number of applications relating to industrial property has steadily increased. Further, because of the complex and diverse content of technology, as well as the increase in search materials, the burden of examination has become heavier than ever. By the end of 1974, the number of pending applications had risen to about 1,170,000.

* For the previous Activity Report, see *Industrial Property*, 1973, p. 398.

(1) Number of applications:

Year	Patents	Utility Models	Designs	Trademarks	Total
1970	130,831 (30,309)	142,066 (2,369)	46,860 (967)	139,414 (8,991)	459,171 (42,636)
1971	105,785 (27,360)	122,843 (1,942)	48,446 (898)	142,518 (9,632)	419,592 (39,832)
1972	130,400 (29,072)	148,610 (1,975)	54,984 (1,026)	183,495 (12,751)	517,489 (44,824)
1973	144,914 (29,593)	147,914 (1,978)	47,798 (1,005)	200,133 (16,021)	540,659 (48,597)
1974	149,319 (27,810)	157,591 (1,910)	45,387 (902)	167,265 (13,586)	519,562 (44,208)

Note: The figures in parentheses relate to foreign applications.

(2) The state of examination:

Category	Year	Applications	Requests for Examination	Applications Processed	Applications Pending
Patents	1970	130,831		69,871	405,080
	1971	105,785	28,621	80,493	353,208
	1972	130,400	34,859	84,281	303,786
	1973	144,814	47,340	78,844	272,282
	1974	149,319	59,182	86,441	245,023
Utility Models	1970	142,066		81,661	462,995
	1971	122,843	38,830	94,124	407,701
	1972	148,610	47,810	97,315	358,196
	1973	147,914	54,511	93,353	319,354
	1974	157,591	71,185	97,152	293,387
Designs	1970	46,860		36,016	104,610
	1971	48,446		43,171	109,885
	1972	54,984		41,377	123,492
	1973	47,798		43,883	127,407
	1974	45,387		51,192	121,602
Trademarks	1970	139,414		90,068	269,309
	1971	142,518		102,948	308,879
	1972	183,495		103,893	388,481
	1973	200,133		115,970	472,644
	1974	167,265		129,012	510,897
Total	1970	459,171		277,616	1,241,994
	1971	419,592		320,736	1,179,673
	1972	517,489		326,866	1,173,955
	1973	540,659		332,050	1,191,687
	1974	519,562		363,797	1,170,909

To cope with the increasing number of applications, as well as with the backlog of pending applications, the Japanese Patent Office has taken steps: (1) to strengthen its organizational structure and increase the number of its personnel; (2) to promote mechanization, particularly with regard to retrieval of examination materials, administrative work, etc.; (3) to improve examination practice, for example, by arranging interviews with inventors, etc.; and (4) to revise legislation. A partial revision of the Patent Law and the Utility Model Law¹, which includes provisions on early publication and filing of requests for examination, was undertaken in 1970. As a result, the number of applications pending in regard to

¹ The Patent Law as amended up to 1971 and the Utility Model Law as amended up to 1971 were published in *Industrial Property*, 1974, pp. 140 and 185.

patents and utility models dropped from approximately 870,000 in 1970 to about 540,000 by the end of 1974, which testifies to the success of the measures adopted to expedite examination.

Revision of industrial property legislation

A partial revision of the Patent Law was promulgated on June 25, 1975 and will come into force on January 1, 1976. The revision will have the following effects:

(1) Patents for products

Inventions relating to food, drink, tobacco and the like, to medicines and methods of compounding them, and to products manufactured by chemical process are patentable (Paragraphs (i), (ii) and (iii) of Article 32 of the Patent Law are deleted).

The right to a patent relating to the method of compounding medicines does not apply to the actual mixing of medicines on medical prescription (New paragraph (3) of Article 69 of the Patent Law).

When the holder of a patent seeks a license under another patent having an earlier priority date and negotiations between the two parties fail, and if the said holder requests the Patent Office to take a decision on the grant of a license, the holder of the patent with the earlier priority date may, within a prescribed period, demand a license in respect of the patent held by the later patentee. In other words, cross-licensing becomes possible (Revision of Article 92 of the Patent Law).

This revision applies *mutatis mutandis* to the Utility Model Law and the Design Law² (Articles 22 and 23, respectively).

(2) Multiple claims

In addition to the indispensable constituent features of an invention, claims may state the method of working the invention (Revision of Article 36 of the Patent Law).

The requirements governing patents of addition and "combined" patents (that is to say, those relating to unity of invention) have been extended to include inventions relating to a process (Revision of Articles 31 and 38 of the Patent Law).

Opposition to the grant of a patent may not be filed on the ground that the requisite conditions for a combined application, or the formalities for defining the scope of claims etc., have not been fulfilled in the application (Revision of Article 55 of the Patent Law).

When an appeal is lodged against a decision to reject an application after publication of the examined application, amendments may be made to the specification, etc., in the application. Further, a preliminary examination is held if a demand for trial is lodged after amendments have been introduced (New paragraph (3) of Article 17).

This revision applies *mutatis mutandis* to the Utility Model Law.

(3) Requirement to use registered trademarks

When an application to renew the term of a registered trademark is filed, an investigation is conducted by the Patent Office into the use of the trademark and if it has not been in actual use for three years prior to the application for renewal, the renewal is not registered (Revision of paragraph (2) of Article 19; new paragraph (2) of Article 20; and revision of paragraph (1) of Article 21 of the Trademark Law³).

An investigation is conducted to determine the relationship between the business of the applicant and the goods in respect of which application for registration of the trademark is made and the trademark is not registered for goods having no connection with the business of the applicant.

With regard to registered trademarks that have not been in use for three years, in any trial by the Appeals Department to cancel such a trademark by virtue of paragraph (1) of Article 50 of the Trademark Law, the burden of proof (*onus probandi*) is on the defendant (Revision of Article 50 of the Trademark Law).

(4) Relevant laws have been subject to amendments arising from Japan's ratification of the Paris Convention for the Protection of Industrial Property as revised at Stockholm (Revision of the Patent Law, the Utility Model Law, the Trademark Law and the Law for the Prevention of Unfair Competition).

(5) The fees for applications for and issue (or registration) of patents, utility models, designs and trademarks have been revised (Articles 107 and 195 of the Patent Law; Articles 31 and 54 of the Utility Model Law; Articles 42 and 67 of the Design Law; and Articles 40 and 76 of the Trademark Law). This revision of fees took effect on June 25, 1975.

International cooperation

The patent system throughout the world is becoming increasingly international and Japan is actively promoting international cooperation in this area. Thus, it has: (1) signed the PCT and participated in all the PCT Interim Committees, including the meeting in Tokyo in October, 1973; (2) participated in ICIREPAT, IPC and TRT; (3) signed the agreement with INPADOC in November, 1972; (4) participated in the legal-technical programs of WIPO, the Ad Hoc Group of Governmental Experts on the Revision of the Paris Convention and the UNCTAD meetings on transfer of technology, etc., and also accepted trainees under the legal-technical assistance programs of WIPO. At the beginning of 1975, Japan ratified the Convention establishing WIPO, the Paris Convention for the Protection of Industrial Property as revised at Stockholm and the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods.

² The Design Law, as amended up to 1971, was published in *Industrial Property*, 1974, p. 443.

³ The Trademark Law, as amended up to 1970, was published in *Industrial Property*, 1974, p. 476.

NETHERLANDS

Activities of the Octrooiraad in 1974 *

1. Patent Applications

(a) The number of applications filed in 1974 was 17,062; 2,096 of these, or 12.3 %, originated in the Netherlands (that is, the Netherlands, Surinam and Netherlands Antilles), while 14,966, or 87.7 %, were foreign in origin.

The following comparative table gives percentage figures for the years 1970 to 1974 in respect of applications originating in the Netherlands and abroad:

	1970	1971	1972	1973	1974
Netherlands	13	12.8	12.9	12	12.3
France	7.2	8.2	8.6	8	7.2
Germany (Fed. Rep. of)	21.5	21.7	21.6	22.4	22.6
Japan	6.5	6.4	5.5	6.6	7.2
Switzerland	6.1	6.6	6.3	6.2	6.2
United Kingdom	7.8	7.1	8	8.2	7.2
United States of America	25.9	25.4	25.9	24.5	25.6
Other Countries	12	11.8	11.2	12.1	11.7
	100	100	100	100	100

As will be seen from this table, there was little variation in the percentage figures for the five years from 1970 to 1974.

(b) The number of patent applications filed in 1974 — 17,062 — fell back to the 1965 level, which represents a decrease of 5 1/2 % by comparison with 1973.

A peak was reached in 1969 when the number of applications rose to 19,699, or four times the pre-Second World War figure.

The largest decrease recorded in 1974 was in the mechanical arts (18.29 %), particularly internal combustion piston engines, engineering components, burners, furnaces, heating systems, air conditioning, heat exchangers, steam generators and mechanically-driven clocks or watches. There was however an increase in some areas of the sector, for instance, wind and fluid-propelled engines, clockwork and weight-driven motors, pumps, gasometers, pipelines, artificial islands, orthopedic apparatus, slide fasteners, typewriters characterized by the marking process, rotary ploughs, cycles, mowers and electrography.

There was a sharp drop in 1974 in the electricity sector (9.05 %), particularly in the following areas: electrical components (capacitors, switching devices, discharge tubes, batteries, waveguides, line connectors), electrical heating, printed circuits and optical and electro-optical digital computers and memory devices. But there was an increase in such areas as circuitry for the supply and distribution of electricity and basic electronic circuitry (for example amplifiers) as well as telegraphy and telephony.

In the chemical sector, which showed an overall increase of 2.6 %, a large number of applications continued to be

filed in the following areas: treatment of sewage, dyes, paints, varnishes and organic compounds for medicinal preparations, as well as gasification of solid fuels, production of liquid hydrocarbons (e.g. from shale), ferrous or non-ferrous (metal) alloys, surface treatment and metal covering. There was, however, a drop in the following areas: glass, cements, ceramics, fertilizers, explosives, fermentation industries (beer, vinegar), treatment of leather and detergents.

2. Pre-Grant Procedure

The following paragraphs give an explanatory account of the figures and data that follow regarding patent applications for which the pre-grant procedure has not yet been completed.

Prior to 1964, all applications filed automatically underwent the grant procedure but on January 1, 1964 this changed completely with the introduction of the system of deferred examination — a Netherlands "invention." Under this system, there are two distinct phases to the pre-grant procedure, each of which can only be initiated on written request. The first phase is mainly concerned with a search into the prior art, whereas, during the second, the *Octrooiraad* ascertains whether the application meets all the requirements as to substance and form and takes a decision on the patentability of the application. Also, any opposition procedure is initiated during the second phase.

Annual fees are payable in respect of maintenance of patent applications, failing which they lapse.

As already stated, the two phases can be initiated only on request. The request that initiates the first phase must be submitted within seven years following the filing of the application. The request that initiates the second phase normally has to be submitted within the same period but, if the first phase is not completed within seven years, the second may be delayed for up to eight or nine years. If the requests are not submitted within the prescribed periods, the patent application lapses. It takes an average of two years, for each of the two phases, to process the application.

The deferred examination system applies both to patent applications filed after January 1, 1964 and to most applications filed before January 1, 1964 but for which the grant procedure had not been completed by that date. As a result, a mass of patent applications, for which the grant procedure had not been completed, has accumulated. At the end of 1974, the position regarding the number of such applications, broken down by year of filing, was as follows:

Year of filing	Number of Applications	Year of filing	Number of Applications
1962 or earlier	260	1969	11,503
1963	543	1970	13,438
1964	1,271	1971	14,894
1965	2,566	1972	16,667
1966	3,908	1973	17,562
1967	4,893	1974	17,003
1968	9,139		

Total: 113,647

* For the previous Activity Report, see *Industrial Property*, 1973, p. 400.

The table below gives a breakdown of these 113,647 applications in terms of procedural stages:

Applications for which no request has been submitted	64,910
Applications that have not completed the first stage	4,878
Applications that have completed the first stage but for which no second-stage request has been submitted	20,907
Applications that have not completed the second stage	22,952
	<u>113,647</u>

In 1964, 15,355 applications were filed, 1,271 of which were still pending at the end of 1974, that is, ten years after the introduction of the deferred examination system. The following table shows the status of the 15,355 applications (the percentages given are approximate):

Lapsed or withdrawn applications:

before start of first stage	36 %
before completion of first stage	1 %
after end of first stage but before start of second stage	21 %
Applications that have lapsed or been withdrawn or rejected during second stage	17 %
Applications pending	9 %
Patents granted	16 %
	<u>100 %</u>

By July 1, 1975, the percentage of patent applications pending had fallen to 0.42 % and the percentage of patents granted had risen to 21.66 %. The percentages for applications filed during 1965 and in subsequent years are expected to be of the same order.

Now that definitive figures in respect of the first year of the new procedure (1964) are available, it is possible to make a more accurate assessment of the benefits derived. The main advantages appear to be that:

- the applicant can select the date on which the procedure is to begin while retaining the benefit of the filing date;
- the *Octrooiraad* has been able to carry out a major clearing operation regarding patent applications pending on January 1, 1964.

The most significant advantage is that only 21 % of all patent applications fulfil the conditions both as to patentability and, from the point of view of the applicant, as to economic viability.

3. Revision of legislation

At the end of 1974, a Bill to amend the Netherlands Patent Act was laid before the Netherlands Parliament. The main object of the Bill was to bring the Patent Act into line with the Lisbon and Stockholm Acts of the Paris Convention and the European Convention (of 1963) on the Unification of Certain Points of Substantive Law on Patents for Invention. The Bill also provided for certain amendments to the Act which were designed to meet a number of requirements of a practical nature.

The amendments necessitated by the Paris Convention included modification of the provisions on right of priority and division of applications.

All the amendments necessitated by the 1963 Convention were included in the Bill, except for the provision making revocation of a patent retroactive in effect. This is because, under the Act in its present form, revocation only takes effect in the future. The studies required to solve the problems involved in a system which has retroactive effect (that is, to the moment of grant) — particularly as regards damages, enforcement measures, patent maintenance fees and license royalties — have yet to be concluded. The solutions provided for in the Community Patent Convention are of assistance in conducting these studies.

Under the Netherlands Patent Act, patents may be granted for processes used in the preparation of a substance, but not for the substance itself. The 1963 European Convention has made it necessary to lift this restriction.

By bringing the Act into line with Article 3 of the 1963 Convention, the provisions on industry will be extended to cover the grant of patents, for example, of inventions in the agricultural sector. At the same time, all the exceptions allowed under Article 2(b) in respect of new plant varieties and animal breeds have been incorporated. Further, the grant of patents for farming equipment and preparation of agricultural chemical products is already possible now.

The amendments made to bring the Act into line with Article 4(1) and (2) of the 1963 Convention (novelty criterion) had for the most part already been recognized by case law in the Netherlands over the past years and cannot therefore be regarded as constituting a radical change. The same applies to the definition of inventive step. The amendment made in the light of Article 4(3) of the 1963 Convention, however, introduces a new and basic legal concept inasmuch as it provides a solution in respect of patent applications which are not included in the prior art but which have an earlier priority date. In practice, however, there will be no great difference between the effects of the new provision and those of the previous system, since the drafters of the Bill have availed themselves of the possibility afforded by the second sentence of Article 5 of the 1963 Convention whereby, as a general rule, patent applications referred to in paragraph (3) of Article 4 are excluded from the prior art for purposes of considering whether or not an invention involves an inventive step.

Article 4(4)(b) of the 1963 Convention requires the deletion from the Netherlands Patent Act of the provision whereby an inventor who has displayed his invention at certain recognized exhibitions enjoys a form of right of priority. This provision has often given rise to difficulties owing to the different systems prevailing in various countries.

The provision of Article 8 of the 1963 Convention concerning "the extent of the protection conferred by the patent" already formed part of Netherlands law by virtue of its case law and will be reflected in the Act itself. In this connection, a reference has been included, in the statement of reasons, to the Protocol on the Interpretation of Article 69 of the European Patent Convention.

In addition, the provision in the Patent Act regarding inventions that are contrary to public policy or morality have been brought into line with Article 2 of the 1963 Convention.

Lastly, the Bill contains certain amendments necessitated by practical considerations that have come to light during recent years. These amendments include the following:

— The possibility has been introduced of *restitutio in integrum* in the event of failure to meet certain time limits in dealings with the Netherlands Patent Office. One of the conditions for application of this provision is proof that "all due care required by the circumstances" has been taken. The provision was partially modelled on Article 122 of the European Patent Convention.

— One of the actions a patentee can take for infringement is an action for damages. Under the Bill, the patentee will in future, and where appropriate, have the right to claim from the infringer, instead of damages, the profits which the latter has made as a result of his infringement. The court may however refuse to order the infringer to surrender his profits and instead require him to pay damages.

— The maximum duration of validity of a Netherlands patent was formerly twenty years from the date of filing the application or ten years from the date of grant of the patent, if the latter period was longer than the former. Under the Bill, the ten-year term is deleted.

— As stated earlier, the 1963 Convention required the prohibition of the grant of patents for a substance to be lifted. In some interested circles, and particularly the chemical industry, this has caused misgivings and given rise to the fear that difficulties may be encountered in exploiting patents granted subsequently for "dependent inventions." There might, for example, be a new process, involving an inventive step, for the preparation of a substance already patented: in that case, the process would be "dependent" on the patent granted for the substance itself. The Bill takes account of such objections by providing that the procedure for obtaining a compulsory license will be extended and specially adapted to deal with such cases of dependence.

4. Transfer of novelty searches

The *Octrooiraad* has continued in recent years to transfer the work on the establishment of search reports to the International Patent Institute (IIB), so that its own task is for all practical purposes confined to examinations as to substance.

5. International cooperation

The *Octrooiraad* has participated in a number of international meetings. Special mention should be made of those held under the auspices of the following organizations and committees:

- Interim Committee of the European Patent Organisation and its working parties
- "Community Patent" expert groups
- Interim Committees of the PCT
- WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property

— WIPO Committee of Experts on Inventions Relating to Microorganisms

- Annual meeting of the Administrative Bodies of WIPO
- Administrative Board of IIB
- Executive Board of the Benelux Trademark Office
- Annual meeting of IAPIP.

6. Administrative matters

The Netherlands Government has always adhered to the principle that the Patent Office's expenditure should so far as possible be balanced by its income. To this end, fees have been raised and adjusted to meet costs and expenditure. Increases have been made at intervals of about two years, the last one occurring on June 1, 1974.

Income in 1974 was as follows:

Filing fees	fl. 4,380,000
First-stage fees	» 3,520,000
Second-stage fees	» 3,100,000
Publication fees	» 910,000
Annual fees (patent applications)	» 12,350,000
Annual fees (patents)	» 10,400,000
Other income	» 1,010,000
	fl. 35,670,000

Expenditure in 1974 was as follows:

Personnel costs	fl. 20,100,000
Payment to IIB for searches in the first stage	» 6,530,000
Equipment and supplies	» 6,510,000
Contributions to international organizations	» 250,000
	fl. 36,390,000

As at the end of 1974, the personnel of the Patent Office consisted of:

Legal officers: 10 (namely, 1 President of the Office, 1 Vice-President, 1 Secretary, 1 member, 2 alternate members and 4 other legal officers)

Technical officers: 145 (namely, 3 Vice-Presidents, 29 members, 37 alternate members, 71 examiners and 5 officers)

Other staff: 263 (including employees (37) of the interim offices).

UNITED STATES OF AMERICA

Activity Report of the Patent and Trademark Office

Patent Examining Operations

During the fiscal year 1974/75 (ending on June 30, 1975), the Examining Corps disposed of an all-time high of 116,706 applications and initially examined 112,963 applications. This record exceeds the 116,003 disposals of the previous fiscal

year¹. We received 102,000 new applications during the fiscal year, leaving 182,342 pending applications at year's end.

New applications are now being taken up by examiners for first actions on an average of five months from their filing dates and the average pendency of an application is between 20 and 21 months. We expect further reductions in pendency, in order to reach our long-range goal of 18 months, to come primarily from speedier clerical processing and printing.

Of the 116,706 disposals, 76,475 were allowances and 40,231 abandonments. We are now operating at the same 66% allowance rate as last year. Next year's plans call for a somewhat smaller number of disposals.

During calendar year 1974, applications from abroad numbered 38,445 and 25,632 patents were issued to foreign applicants. Domestic applicants during the same year filed 64,093 applications and received 50,463 patents. Most of our foreign applicants resided in one of five countries: Japan with 9,163 applicants, the Federal Republic of Germany with 8,897, the United Kingdom with 5,109, France with 3,157 and Canada with 2,191.

During fiscal year 1974/75, the Office continued its program of granting special status on request to applications relating to energy conservation and preservation of the environment. This special status was granted for 262 energy-related applications and 1,752 environment-related applications.

New Projects

A Trial Voluntary Protest Program has been instituted for determining the feasibility of a permanent program enabling the public to assist the Office in supplying references. Members of the public have been permitted in a sample of 1,998 cases to inform us of the best prior art known to them. These applicants were invited to waive the confidentiality of their applications to participate, which 667 applicants did. Protests have been received against 60 applications and prosecution reopened in 22. An enlarged program is planned for the coming year.

Further guidelines have been issued for applicants and their attorneys desiring to submit prior art for consideration by the Office. The new guidelines also provide procedures for the public to have prior art placed in the record of a patented file.

The Office instituted a quality review program for patent applications, under which approximately 2,200 applications were selected for review last year. The program involved an evaluation of all facets of examination, including the scope of the search conducted by the examiner, the classification he selected for an issued patent, whether the examiner followed the proper procedures and, most importantly, whether patentability was correctly determined. The program has indicated that examiners properly examined 94 percent of the 1,651 applications for which review has been completed.

We also began our program to review court decisions holding a claim invalid. Any information in these decisions useful

for improving the validity of patents is periodically tabulated and studied.

Last April, the Office began using a high-speed, computer controlled, microfilm search system (CCMSS) for searching digital data processing systems and analog-digital converters. The computer file for the prior art on digital data processing systems contains about 1,700 documents, mostly United States patents. The analog-digital converter file contains about 6,000 documents, of which half are United States patents. Copies of these documents are available in about four seconds and the system is available to the public.

Our patent classifying operations were reorganized last year. The new organization will be responsible both for our ordinary reclassification efforts and our search for new information handling and access systems. In the future, less emphasis will be placed on the internal development of systems and more on using already-available systems. During the past fiscal year, about 150,000 patents were reclassified, six classes abolished, and four classes and 786 subclasses established.

Our Scientific Library instituted a trial program for time-saving computer searching of non-patent literature and other library sources. The program permits approximately 300,000 bibliographic citations to be searched. These include weekly issues of Chemical Abstracts, Government Research and Development Reports from 1964 to the present held in the collection of the National Technical Information Service of the Department of Commerce and the medical literature indexed by the National Library of Medicine. Search time for data in the program averages 5.5 minutes, with an average direct cost of \$ 1.00. The program is in the process of being evaluated.

Last year, 80 new scientific journals were added to the holdings of the Scientific Library which now subscribes to a total of 1,799 titles.

Our Office of Technology Assessment and Forecast, supported by the National Science Foundation, completed work on the development of a partial concordance between the patent classification system and the Standard Industrial Classification System, which is the basis for the collection of most economic data. This concordance will enable the user of patent data to better understand the relationship between technology and the economy.

This Office also released the fourth in a series of publications concerned with patent activity in specific areas of technology. This publication describes certain patent activities of foreign and United States corporations and United States government agencies having major patent activity, especially in nuclear energy and oil shale and coal gasification.

Patent Appeals and Interferences

The Board of Appeals, during the past fiscal year, received 4,664 appeals and 417 petitions for reconsideration, disposing of 4,247 appeals and 407 petitions for reconsideration. At the end of the fiscal year, 5,164 appeals and 62 petitions for reconsideration were pending. Examiners' decisions were affirmed by the Board of Appeals in 2,433 cases, affirmed-in-

¹ See the Activity Report for 1973/74 in *Industrial Property*, 1974, p. 424.

part in 436 cases and reversed in 1,000 cases. The other 378 cases were either dismissed, withdrawn or the appeal suspended. To reduce their backlog of cases, the Board has shortened the time for an oral hearing from 30 to 20 minutes and has requested applicants to consider carefully whether or not an oral hearing is even necessary. Also, the recent appointments of several new members of the Board should help reduce their backlog of pending cases.

During the past fiscal year, the Board of Patent Interferences received 369 new cases and decided or otherwise terminated 324 cases. At the end of the year there were 688 pending interferences, a slight increase over each of the two previous years.

Judicial Matters

At the request of the Solicitor General, on behalf of the Patent and Trademark Office, the Supreme Court has agreed to reconsider the patentability of computer programs. In *Gottschalk v. Benson and Tabbot*, the Court upheld our ruling that computer software is unpatentable as a process. In hearing *Dann v. Johnston*, the Court will be asked by the Solicitor General to decide if programs for general purpose digital computers are patentable, whether claimed as machine systems or as a process.

A Circuit Court of Appeals decision has held that the public is not entitled to inspect abandoned patent applications. The Court ruled, in *Sears v. Gottschalk*, that the secrecy requirements of the patent laws predominate over the requirements of the Freedom of Information Act (which generally makes government-held information publicly available). Certiorari was denied by the Supreme Court.

In *Kawai et al. v. Metlesics et al.*, the United States Court of Customs and Patent Appeals ruled on the right of priority. The decision holds that a foreign patent application must disclose an invention in a manner adequate to satisfy our disclosure requirements (the first paragraph of section 112) for a United States applicant to receive this right. No further review was taken.

In *Feldman v. Aunstrup*, the United States Court of Customs and Patent Appeals decided that the deposit of a microorganism in a suitable foreign depository complies with the disclosure requirements of our patent laws. Previously, that Court had ruled only on the adequacy of deposits in a federally-operated depository.

Trademark Examining Operations

The Commissioner in a formal ceremony in December issued the one-millionth trademark registration.

The Trademark Examining Divisions made significant progress in their goals for application pendency. By the end of the fiscal year, examiners were acting on new applications within four and one-half months of their filing dates. For the previous fiscal year, the average was seven months.

The pendency period of amended cases at the end of the fiscal year was 2.7 months. We expect significant assistance in reducing this period to our goal of one month from improvements now being made in our processing and clerical procedures.

Only 33,898 applications for registration were filed last year, slightly below the previous year's 34,193, but there was an eleven percent increase in disposals. There were 48,805 applications pending in the Examining Divisions at the end of the fiscal year.

The Office awarded three contracts to commercial firms for the testing of computerized trademark searching systems. Data from these tests is now being evaluated.

The Trademark Reporting and Monitoring System (TRAM), a computer system for monitoring file activity, was improved during the year. TRAM is now capable of identifying the location of a file and the examiner assigned to it. It also provides status reports on applications, which permitted us to eliminate some manually-kept records. We estimate an annual savings in personnel costs of nearly \$ 29,000 from the new TRAM system.

The Trademark Trial and Appeal Board decided 428 cases after hearing, 311 of which were adversary in nature and 117 *ex parte*. They also disposed of 1,219 adversary proceedings during their interlocutory stage, and 153 *ex parte* appeals prior to hearing. At the end of the fiscal year, 1,974 adversary proceedings and 282 *ex parte* appeals remained pending.

Patent and Trademark Legislation

Four bills were introduced within the past year for revision of the patent laws. One of these, S. 1308, was introduced at the request of the Administration. The other bills were prepared and introduced by members of the Senate Subcommittee on Patents, Trademarks and Copyrights. Each of these bills would bring about a thorough revision of the present patent laws, but in different ways. The present patent laws have not been revised in substance since 1836.

The Senate Subcommittee has now reported out a bill for further consideration by the Congress, based on features of the four pending bills. By the time of this publication we expect the Subcommittee's bill to have reached the Senate for its consideration or even to be approved by the Senate and under consideration by the House of Representatives. No independent action on patent law revision has yet begun in the House of Representatives.

The bill reported by the Senate Subcommittee includes such features as an opposition proceeding available to members of the public; a revised fee schedule for recovering about 50 percent of the costs of operation of the Office, which includes a three-payment maintenance fee system; a slightly revised definition of prior art; revised administrative procedures for examining patent applications; assignee filing provisions; enlarged requirements for inventors, applicants and attorneys to disclose information pertinent to patentability; a patent term measured from the filing of an application; provisions for settling patent disputes through arbitration; and provision for deferred examination.

In June, the Senate enacted S. 24, a bill for implementing the Patent Cooperation Treaty in the United States. This bill will add Part IV to the present patent laws, providing new procedures for international applications while leaving unaffected the substantive requirements for obtaining a United

States patent. In July, the House of Representatives conducted hearings on the bill. The Senate has already given its advice and consent to ratification of the Treaty².

Legislation is now being prepared for implementation of the Trademark Registration Treaty. The President will forward the Treaty to the Senate for its advice and consent to ratification.

New Laws

Three new laws concerning patents and trademarks were enacted this past year.

Public Law 93-596 changed the name of the Patent Office to the Patent and Trademark Office. The Commissioner is now the Commissioner of Patents and Trademarks.

The trademark laws were amended by Public Law 93-601 in three ways. The time available for filing oppositions to the registration of trademarks was extended. The requirement for filing reasons of appeal with the Office, when taking an appeal to the United States Court of Customs and Patent Appeals, was eliminated. Courts are now authorized to assess attorney's fees in trademark infringement suits.

Section 151 of the Patent Law was amended by Public Law 93-600. The Commissioner may now accept the late payment of a patent issue fee when the applicant can establish that his delay in payment was unavoidable.

International Activities

The Patent and Trademark Office this past year participated in a number of international meetings, under the auspices of WIPO and other United Nations agencies, concerned with the protection of industrial property. We also participated in other intergovernmental meetings for the same purposes. Typical of these meetings are the following.

² See p. 366 and p. 359.

We participated in the PCT Interim Committee meeting and the second annual meeting of the Committee of Experts on the deposit of microorganisms, served on the United States delegation to the meeting of member and non-member States of the International Union for the Protection of New Plant Varieties, attended last year's meeting on the recognition of scientific discoveries, participated in the consideration of the feasibility of developing a code of conduct suitable for the needs of developing countries, and served on the Permanent Committee for the Acquisition by Developing Countries of Technology Related to Industrial Property and the Ad Hoc Group of Governmental Experts on the Revision of the Paris Convention.

Office representatives participated in various programs to aid developing countries in protecting industrial property. Two programs were conducted in cooperation with United Nations-affiliated organizations, UNCTAD and UNDP in Ethiopia and WIPO and UNDP in Brazil. We also served on the US/Saudi Arabia Joint Working Group on Industrialization, and participated in certain OAS activities on the transfer of technology.

In October, the Office signed an agreement with the International Patent Documentation Center (INPADOC). The agreement calls for the exchange of certain bibliographic data of our Office for microfilmed copies of selected foreign patents.

Operating Costs and Income

For the past fiscal year, \$ 77,000,771 was available to the Office for the expenses of operation. Of this amount, \$ 131,000 came from reimbursements for services and the remainder from appropriated funds. About 36 percent of the costs of our examining operations (patents and trademarks), or \$ 27,000,761, was recovered by fees collected therefor. At the end of the fiscal year, our staff included 1,133 professional and 1,874 non-professional employees.

LETTERS FROM CORRESPONDENTS

Letter from Australia

A. C. KING *

Patents

Since my last contribution¹ the Appeal Tribunal under the Patents Act (a Justice of the High Court) has had a disputed decision of the Patent Office referred to it.

In *Universal Oil Products Co. v. Monsanto Co.*, (1972) 46 A.L.J.R. 658, an unsuccessful opponent to the grant of a patent relied on allegations of obviousness and insufficiency of the specification. In respect of both aspects, Gibbs J. applied the principle that a patent application should not be refused unless it is clear that any patent which issues on it would be invalid. His judgment is of particular interest in that he referred to an unresolved question relating to the ground of obviousness in the Australian Act, namely "that the invention, so far as claimed in any claim, was obvious and did not involve an inventive step, having regard to what was known or used in Australia on or before the priority date of that claim." This question is whether in the above context the word "known" requires public knowledge to be taken into consideration as well as common general knowledge. Gibbs J. reviewed the Australian cases on the point and the British cases on the identical ground of revocation in the British Act, concluding that the question was still open. However, in the circumstances of the case before him, he thought fit to treat a cited patent specification as part of common general knowledge. He also approved the statement of Lord Reid (at (1972) R.P.C. 355-6) that the hypothetical skilled technician should be supposed to have tried everything which would appear to him as giving any prospect of valuable results.

There have also been decided in the High Court a number of infringement actions in which the defendants have alleged invalidity. In *Utilux Pty. Ltd. v. Amp. Inc.*, (1974) 48 A.L.J.R. 17, a patent claimed electrical connectors having ferrule-forming portions which were used by being crimped about the conductors to be connected. The ferrule-forming portion had a rib on one surface transverse to the axis of such portion and an associated depression on the other surface, the depression and rib being formed from and as part of the ferrule-forming portion and being bounded on both sides by zones which were cold-work-hardened more than the remainder of such portion and extended substantially completely through the thickness of such portion. On appeal to the Full High Court it was argued that the invention lay in the conjunction of

the rib and associated depression within zones of metal which were cold-work-hardened more than the remainder of the ferrule-forming portion. The Court held that once it was understood that the long established process of forming a rib and an associated depression in a metal strip by the use of punches and dies produced work-hardening in the metal, there could be no invention in enunciating that such a process produced greater work-hardening in some areas of the metal than in others, and that an invention could not be claimed in the inevitable consequence of employing a well-known method of working metal by remarking upon the difference between the effect of the use of dies exerting pressure in the areas adjacent to the point at which the metal was worked and areas further from that point.

In *Olin Corporation v. Super Cartridge Pty. Ltd. & Anor.*, (1975) 49 A.L.J.R. 135, the plaintiff claimed infringement of claims relating to the manufacture, by a process of compressive deformation, of shell cases in one piece out of polyethylene and of a number of claims to tubular structures having a base at one end and thin walls increasing in tensile strength from the base outwards. Jacobs J. held that the defendant's manufacture of such shells (which was by a process of drawing blanks through a die) did not infringe the plaintiff's method claims, and that the claims in the second category above were invalid because, being each for a product regardless of how it might be formed, they extended to all solutions to the known problem of making such a product. The Court also found that these claims were not fairly based on the description in the specification because the invention was no more than a new method of making a known product.

In an application for an interlocutory injunction in a patent action, *Firth Industries Ltd. & Ors. v. Polyglas Engineering Pty. Ltd. & Ors.*, (1975) 6 A.L.R. 212, Stephen J. refused an injunction on the ground, which he held to be the proper test in Australia, that the patent was not an old one and that the defendants had shown the existence of a substantial issue as to validity. He said that if he had concluded that the patent before him was an old patent he would still have refused an injunction on the ground that the defendant's evidence showed grounds for supposing that the defendants had a chance of successfully disputing validity of the patent at the trial.

The only application for extension of letters patent over the past few years has been *A Petition for Extension of Letters Patent granted to Montecatini S. G. A. & Carl Ziegler*, (1973) 47 A.L.J.R. 161. This was a petition to the High Court for extension of a patent relating to the Ziegler process for the manufacture of polypropylene. It failed ultimately on the ground that the remuneration proved to have been received by the patentee was not inadequate. In the course

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¹ *Industrial Property*, 1973, p. 64.

of his judgment Gibbs J. paid tribute to the great importance of the patented invention as a scientific discovery and to its revolutionary importance in macromolecular chemistry. However, he found that although the invention was useful to the public it was not of immense or outstanding or exceptional importance. The information relating to remuneration did not show remuneration relating solely to the patent in suit as it had been worked jointly with other patents, but the Court held that this was not a ground of objection: the Court was entitled to regard the total figure of profits as profit from the patent in suit, since such a course favoured the opponents.

Industrial Designs

The committee of enquiry referred to in my earlier Letter produced part of its report in 1973. This report proposes substantial amendments to the Designs Act, but it has not yet been implemented.

The committee has not yet reported on its second term of reference which is to consider and to recommend whether separate legislative provisions should be made in Australia with respect to utility models and, if it so recommends, the provisions that it is thought should be included in that legislation.

In the case of *Kolozsy v. K. Biro & Co. Pty. Ltd.*, (1971) 2 N.S.W.L.R. 444, one of the questions raised was whether certain medallions, including a raised profile head of Captain Cook, and a bust of Captain Cook, constituted designs capable of being registered under the Designs Act. For this purpose it was necessary to resolve the question under the Copyright Act of 1911 whether an original work of artistic merit which is not brought into being for any purpose other than its own intrinsic merit will come within the provisions of the Copyright Act and will not be excluded from registration under the Designs Act notwithstanding that the artist intends that it should be reproduced in substantial numbers. The Court held that the design for the bust was not a registrable design because it could only be sold on the basis of its intrinsic artistic merit and because it was not to be applied to any other article but was to be sold as a bust. It was held however that the medallions, being intended to be used in connection with another article, namely, a backing plate, and to be sold in this form as a memento and not primarily because of their beauty or artistry, were industrial designs and capable of being registered under the Designs Act.

Trade Marks

In *Berlei Hestia Industries Ltd. v. Bali Company Inc.*, (1971-1973) 129 C.L.R. 353, the Full High Court reversed the finding of Windeyer J. on an application for rectification of the Register of Trade Marks referred to in my previous Letter. Windeyer J. had held that the marks "Bali-bra" and "Berlei" were not deceptively similar when used in respect of brassieres. The Court considered Section 61(1)(b) of the Trade Marks Act which provides that the original registration of a mark in Part A shall after seven years be taken to

be valid in all respects, subject to a number of exceptions including "that the trade mark offends against the provisions of Section 28 of the Act." Section 28 provides in substance that a mark, the use of which would be likely to deceive or cause confusion, is not registrable. It was found unnecessary to decide whether the above-cited word "offends" relates to the position at the date of application for registration or the date of application for rectification as the mark was found to be deceptive at both times, but Mason J. thought that the latter date was the proper one.

In *Re Registered Trade Mark "Thunderbird,"* (1974) 4 A.L.R. 687, an application was made to expunge a registration on the ground that it was wrongly made. Before applying for registration the registered proprietor had negotiated for a manufacturing licence with a corporation which was manufacturing and marketing speed boats in the United States of America under the above trade mark, had bought and received from the latter a loosely assembled boat for mould-making, and had made arrangements for payment of royalties. Jacobs J. decided that the only use of its trade mark which the American corporation had had in Australia was a single sale to the Australian company, that this use was enough to prevent the latter from claiming to be the proprietor of the mark in Australia, and that therefore the original registration should not have been made. The Court had to consider whether the original registration was nevertheless to be deemed to be valid because the application for rectification was heard more than seven years after the application date, although the date of lodgment with the Court of the application was within the seven-year period. He decided that the latter date was the relevant one and that the registration should be expunged.

In *Burger King Corporation v. The Registrar of Trade Marks*, (1973) 47 A.L.J.R. 237, an applicant for registration appealed against the Registrar's refusal to accept the word "Whopper" in respect of "all goods in Class 30 including sandwiches" in Part B of the Register. This mark had not been used in Australia, but had been used extensively by the applicant in the United States of America in respect of goods including hamburger sandwiches. Gibbs J. held that there was no doubt that the above word was commonly used and understood in the sense of "something unusually large of its kind." He held that evidence of acceptance in other jurisdictions was irrelevant but that evidence that the mark had become distinctive in America was evidence that it was capable of becoming distinctive in Australia. The Court noted that the Australian Act contains no express statement of the matters to be considered in deciding whether a mark is capable of becoming distinctive, although it specifies the matters to be considered in deciding distinctiveness. These are inherent adaptability to distinguish and distinctiveness in fact acquired by use or otherwise. The Court held that in a Part B application the enquiry as to the first matter is the same as with a Part A application; in respect of the second matter the enquiry becomes whether the trade mark is capable in fact of distinguishing the goods by reason of future use or other circumstances. The Court held that "Whopper" was capable,

by reason of use, of distinguishing the applicant's goods but that it is not inherently adapted to distinguish them, being a word which a trader might, without any improper motive, wish to use to describe his goods if they are of unusual size. The appellant tendered affidavits by grocers and food scientists relating to whether the mark applied for was descriptive and whether it was capable of becoming distinctive but the Court found such evidence inadmissible because it could not be said that in respect of such matters only persons possessing special skill or knowledge would be competent to hold opinions.

Unfair Competition

In *George v. Bentley*, (1972) 3 S. A. S. R. 170, a hotel business had for many years been conducted at a country town by a family named Bentley as "Bentleys Hotel." It was sold and the new proprietors changed its name to "Bentleys Hotel-Motel" without however providing accommodation of a motel type although they were in the course of constructing such accommodation. The defendants erected a motel and began to conduct a motel business (without selling liquor) a mile away under the name "The Bentley-Hoad Motel," one of the defendants being a member of the Bentley family. It was found that there had been some public confusion between the two places and that the defendants hoped to gain some advantage from their use of the name "Bentley" which was in that district synonymous with being a good hotelier. However, the Court held that an injunction should be refused as the plaintiff and defendants were not engaged in the same field of activity and as it had not been proved that the name under which the hotel was being conducted was likely to deceive customers into believing that the motel was the hotel or connected therewith.

In *Cricketer Ltd. v. Newspapers Pty. Ltd.*, (1974) V. R. 477, the applicant for an interlocutory injunction was an English company which had published in England for a number of years a weekly magazine called "The Cricketer," of which only a small part related to cricket in Australia and of which about 130 were sold in the State of Victoria. The defendants began to publish and distribute in Victoria a monthly magazine called "Cricketer" which had a number of features distinguishing it from the plaintiff's magazine and was largely devoted to cricket in Australia. Kaye J. of the Supreme Court of Victoria found that the plaintiff's magazine had a substantial reputation in Victoria and went on to compare the format and contents of the two magazines with relation to the members of the relevant public. He found that the distinctive English character of the one publication and Australian character of the other were an important difference between them and he refused an injunction because he was not satisfied that if the evidence remained the same the plaintiff would succeed at the trial.

Letter from the Federal Republic of Germany

Friedrich-Karl BEIER * and Paul KATZENBERGER **

Part II ***

JURISPRUDENCE —

TRADE NAMES, INDICATIONS OF SOURCE AND UNFAIR COMPETITION

Summary

I. Protection of Trade Names

II. Unfair Competition. Protection of Indications of Source

1. Slavish Imitation
2. Comparative Advertising
3. Unfounded Warning Notices
4. Deceptive Advertising
5. Deceptive Indications of Source
6. Objectionable Methods of Advertising
7. Games of Chance, Free Lotteries, Promotional Gifts
8. Special Sales
9. General Points on the Law against Unfair Competition

I. Protection of Trade Names

Among decisions of the Federal Supreme Court dealing with protection of trade names, the "Miss Petite" decision¹ deserves special mention. It is of prime importance as regards the question of assessing the damages to be awarded for intentional or negligent infringement of a trade name. As already pointed out in a previous "Letter,"² according to established case law there are three bases on which damages for infringement of industrial property rights can be assessed: first, on the basis of actual damage to the injured party, including loss of profits; secondly, on the basis of the royalties that would properly have been paid to the injured party had lawful use been made of the protected object; and, thirdly, on the basis of the profits earned by the infringer as a result of infringement of the right in question. By means of the second and third methods of assessing damage, the courts take account of the special vulnerability of industrial property rights and the difficulties of the injured party in proving loss of profit.

The courts have so far applied these principles mainly in cases of infringement of patents, designs and copyrights, but the Supreme Court has also affirmed their applicability in cases of trademark infringement³. The "Miss Petite" decision lays down, for the first time, that this threefold basis of assessing damages may also be applied in the case of infringement of a trade name.

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*** Part I of this Letter has been published in *Industrial Property*, 1975, p. 246.

¹ Federal Supreme Court decision of February 16, 1973, 60 *Entscheidungen des Bundesgerichtshofs in Zivilsachen* (BGHZ) 206; 1973 *Gewerblicher Rechtsschutz und Urheberrecht* (GRUR) 375, with note by v. Falck.

² See *Industrial Property*, 1973, p. 203.

³ Federal Supreme Court decision of January 12, 1966 — *Messmer-Tee II*, 44 BGHZ 372; 1966 GRUR 375.

Another decision, on the protection of the trade name "Metrix,"⁴ is of interest from two points of view. First, it provides further clarification regarding *protection of foreign trade names* in accordance with Art. 8 of the Paris Convention. The decision rightly starts from the premise that, within the sense of this provision, the term "trade name" must be broadly interpreted. Thus, protection of a trade name will cover not only the full designation of the firm but also any designation recognized by the law of the country of origin as a distinctive sign of the enterprise and regarded by the law of the country where the protection is sought as a means of identifying an enterprise. The designation "Metrix" used by the French plaintiff met both requirements. She had used this designation in France for several decades as a so-called "dénomination commerciale." In the Federal Republic of Germany, it was also entitled to protection as a so-called "special trade designation" under Section 16(1) of the Law against Unfair Competition. The Federal Supreme Court likewise recognized that the designation "Metrix" has been used in the country where protection is sought, which is a prerequisite for protection of foreign trade names. As the decision makes clear, it sufficed that such use was effected on the plaintiff's behalf, through her domestic representative, it being immaterial whether the latter was a dependent subsidiary or an independent trader. It only had to be shown that the designation served to identify the plaintiff's *firm* and not simply her products.

The second point of interest raised by the "Metrix" decision concerns *loss of priority following a change in business name*. The defendant's firm had originally borne the name "Matrix GmbH" but this had subsequently been amended in 1967, to "Metrix GmbH." The Federal Supreme Court considered that there had been an intrinsic change which affected the special nature of the designation "Matrix" and a resultant loss of priority which the defendant was entitled to claim for that designation. The defendant was therefore unable to claim an earlier priority for the designation "Matrix GmbH" against the plaintiff and could only rely on the adoption of the designation "Metrix GmbH" in 1967. By that time, however, the plaintiff had already started to use the designation "Metrix" in the Federal Republic of Germany, so that the priority reverted to her.

II. Unfair Competition. Protection of Indications of Source

1. Slavish Imitation

Of a line of judicial decisions on slavish imitation only the "Modeneuheit" decision deserves special mention⁵ for the way in which it breaks through the confines within which case law has hitherto held that imitation of another's products constitutes unfair competition. The cornerstone of this case law is that imitation of the products of another which are not protected by any special rights can only be regarded as unfair competition if special circumstances also obtain. Such

circumstances might, for example, include cases of deception, which could have been avoided, as to the origin of the products imitated or the presence of special subjective criteria. The fact that the products imitated were particularly deserving of protection had not hitherto been regarded as a special circumstance, for that point, it was held, was adequately covered by patent, design and copyright law.

The "Modeneuheit" decision goes beyond this principle. Judgment was sought with regard to the imitation by a German firm of a fabric design belonging to a French house of "haute couture." The Supreme Court held that this constituted unfair competition but, contrary to accepted practice, did not take note of any special circumstances. The Court based its finding on the consideration that the fabric design imitated did not merely follow a general fashion trend but was characterized by individual creative features. Such fashion products presuppose a considerable outlay in money, work and time and the anticipated returns on them generally have to be earned in a short season. In the opinion of the Supreme Court, unfair competition generally occurs where, by imitating the product, a competitor takes advantage of such an outlay and thus deprives the firm which first brought out the new fashion of the fruit of its work. To meet the need for protection for a limited period, protection under the Law against Unfair Competition should as a rule accordingly be confined to one fashion season.

The reservations entertained with regard to this decision stem mainly from the relationship between the Law against Unfair Competition and the special protection afforded by industrial property rights and copyright. There is a danger that undue protection under the Law against Unfair Competition will undermine these special rights, as well as their objectives. In the case in question, copyright protection was not available in the absence of the necessary level of artistic creation, and no protection as to design was sought. The Federal Supreme Court doubted whether design law provides the necessary protection for fashion products since it is generally aimed at long-term protection and presupposes compliance with certain formal requirements. One point raised in the "Modeneuheit" decision is certainly hard to refute: fashion is a constant "return to the same" so that design protection for fashion creations must necessarily fail in many cases for lack of novelty, which is an essential prerequisite.

2. Comparative Advertising

In the eyes of German courts, comparative advertising is still essentially unlawful, even if accurate in content and objective in approach. Previous "Letters"⁶ have however reported on a number of decisions in which the Supreme Court has taken an increasingly positive stand regarding accuracy of comparative advertising; in particular, it has underlined the consumers' need for information which can be satisfied by comparative advertising. A proposition that ultimately emerges, and could serve as a guideline in judgments, is that accurate and objective comparative advertising is permissible when based on adequate grounds, especially if it serves to

⁴ Federal Supreme Court decision of May 18, 1973 — *Metrix*, 1973 GRUR 661, with note by v. Falck.

⁵ Decision of January 19, 1973, 60 BGHZ 168; 1973 GRUR 478, with note by U. Krieger.

⁶ See *Industrial Property*, 1968, pp. 343 et seq.; 1973, p. 204.

enlighten the consumer⁷. But a recent decision of the Supreme Court⁸ suggests that there is a return to a *stricter attitude* regarding even accurate and objective comparative advertising.

The decision arose from a comparison of various marketing systems for television sets, all of which were said to carry less risk as regards repairs. The defendant was an insurance company which offered a policy covering repairs for television sets. In a prospectus, it compared the advantages of buying a television set in conjunction with their insurance policy and of hiring a television set with the hirer responsible for the repairs. As a specific object of comparison, it referred to an offer by and a prospectus of the plaintiff, whose business was to hire out television sets. The Federal Supreme Court held that this form of comparative advertising was unlawful; it was particularly critical of the direct reference to the plaintiff's offer by indicating his name, and of the use of his prospectus.

The Court had previously allowed so-called *unavoidable comparison* which occurs when a person's own performance cannot be clearly and effectively depicted except by direct comparison with a competitive offer⁹. It would have been in line with this trend if the Supreme Court had seen in the plaintiff's advertisement a case of unavoidable comparison and thus had also allowed the reference in it to the plaintiff's name, since the advantages of the plaintiff's proposed insurance policy over the hire of a television set could hardly have been demonstrated as effectively in any other way. Also, the general public's need for information could have been affirmed. The Supreme Court, however, did not follow that course. As a result of the return to a more cautious judicial attitude, voices are being raised in favor of an explicit statutory regulation which would allow accurate and objective comparative advertising and thus provide the basis for improved consumer information in this area too¹⁰.

In another Federal Supreme Court decision¹¹ deserving of mention, comparative advertising was held not to be unlawful solely on the ground that *no sufficiently definable circle of persons concerned* could be ascertained. A coffee producer had launched a publicity campaign using the slogan "Statt Blumen, ONKO-Kaffee" ("Instead of flowers, ONKO coffee"). An action brought by an association of florists and nurserymen failed because the publicity was not directed at specific florists or nurserymen but affected the branch as a whole, to which an unascertainable number of businesses belonged. The decision is also of interest because it concerned a dispute between *totally unconnected branches*. The Federal Supreme Court explained that it suffices for the application of the Law against Unfair Competition if the parties are

brought into competition by the specific act in dispute. This will cover firms belonging to different branches if an attempt is made to attract customers by recommending that they take one commodity (flowers) instead of another (coffee).

3. Unfounded Warning Notices

According to a long line of case law established by the former *Reichsgericht* and the Federal Supreme Court, the proprietor of an industrial property right who issued a warning notice to an alleged infringer, thus causing him to cease production, was running a great risk. Indeed, the courts regarded not only an unfounded warning addressed to the customers of the alleged infringer but also a warning to the alleged infringer himself as a prohibited and essentially unlawful act. Until now, the Federal Supreme Court has also generally assumed that the warning party has been at fault, which is why claims for damages by recipients of unfounded warnings have usually been successful. The courts could not rely on Article 1 of the Law against Unfair Competition to found this strict liability. An act contrary to honest practices, in the sense of this provision, in fact presupposes — according to old and established case law — that the perpetrator acted with knowledge of the factual circumstances which caused his conduct to be deemed unfair. But this will not be so if the person who issues the warning notice believes in the validity of his right. The courts have therefore devised what is termed a "right to an established and operating industrial enterprise," which is protected under the general provisions governing civil liability (Article 823.1 of the Civil Code) and which is unlawfully infringed by any unfounded warning¹².

In recent years this case law has met with criticism; in particular, from the point of view of comparative law, it has become apparent that the severity of German case law is without parallel abroad¹³. In a new and basic decision¹⁴, the Federal Supreme Court adheres firmly to the principles underlying this case law but, on the question of liability, moderates the requirements as to standard of care which the warning party must meet. To that extent, the principle will henceforth apply whereby the warning party is not liable if, after conscientious consideration, he is convinced of the validity of his right. Nor, in such cases, shall he be liable for any damage resulting from the warning and stoppage of production.

Apart from this principle, the decision provides important guidelines, the observance of which will make it possible to issue a warning without running the risk of having to compensate for possible damage. These guidelines cannot be reproduced in detail here¹⁵, but, to give an example of the main reliefs available to the owner of the right, he is not required to consult an impartial expert in addition to his legal adviser or patent counsel, at least in cases where it is tech-

⁷ See Schricker, "Entwicklungstendenzen im Recht des unlauteren Wettbewerbs, Festschrift für Heydt," 1974 GRUR 579, 585.

⁸ Decision of May 3, 1974 — *Reparaturversicherung*, 1974 GRUR 666, with note by Pietzcker.

⁹ See Ulmer-Reimer, *Das Recht des unlauteren Wettbewerbs in den Mitgliedstaaten der EWG*, Vol. III: *Deutschland*, Munich and Cologne, 1968, Nr. 450 et seq.

¹⁰ See Schricker, "Rechtsvergleichende Bemerkungen zum strafrechtlichen Stutz gegen unlauteren Wettbewerb — Ein Beitrag zur Reform des § 4 UWG," 1975 *Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil*, 38, footnote 50.

¹¹ Decision of January 12, 1972 — *Statt Blumen ONKO-Kaffee*, 1972 GRUR 553, with note by Schramm.

¹² See Katzenberger, *Recht am Unternehmen und unlauterer Wettbewerb*, Cologne etc., 1967.

¹³ See Horn, *Die unberechtigte Verwarnung aus gewerblichen Schutzrechten*, Cologne etc., 1971.

¹⁴ Federal Supreme Court decision of December 11, 1973 — *Maschenfester Strumpf*, 62 BGHZ 29; 1974 GRUR 290, with article by Horn (pp. 235-238).

¹⁵ See the summary by Horn, 1974 GRUR 235, 237 et seq.

nically feasible to have an overall view of the factual elements to determine the validity of his right and to ascertain whether the production of the recipient of the warning in fact infringes his rights. At the same time, however, he may not rely solely on his own judgment but must have recourse to technical and legal advisers and must also draw on his own special knowledge in the matter. Again, in the case of rights that have not been the subject of examinations, such as utility model rights, the warning party is still required to undertake a more thorough investigation than in the case of rights that have been the subject of examination, such as patent rights. The recipient of the warning must not be taken unawares, nor may he be subjected to pressure or duress.

While doubts persist as to whether the principle underlying case law on unfounded warning notices is correct, the new case law established by the Federal Supreme Court on the question of liability has undoubtedly led to fairer results than did its previous practice. As a consequence, the unwarranted debasement of industrial property rights will to a large extent be avoided.

4. Deceptive Advertising

The Federal Supreme Court has once again had before it a number of cases relating to deceptive advertising practices. Only a few decisions can be dealt with here. While they do not fundamentally affect the principles applied until now by case law, they are not without significance for the development of the law.

(a) In the "Skibindungen" case¹⁶, the Supreme Court held for the first time — also under Article 3, as redrafted, of the Law against Unfair Competition — that *not every inaccuracy* causes an advertisement to be regarded as deceptive and therefore unlawful. Admittedly, Article 3 was amended in 1969 with a view to strengthening consumer protection against deception by means of a general ban on all "deceptive statements."¹⁷ But it also recognizes that inaccuracies shall not be regarded as deceptive if they relate only to subsidiary matters and are unlikely to influence a customer's decision to purchase. However, also under Article 3 as redrafted, not only may a positive statement in favor of a product amount to deception but also *silence as to a fact*, if it is of prime importance in the opinion of the public and therefore requires explanation.

In the case in question, the manufacturer of safety bindings for skis had in his advertisements stressed racing skiers' satisfaction with the bindings. He did not however mention that racing skiers used stronger springs than those normally supplied with the bindings. In line with the principles referred to, the Federal Supreme Court did not regard this as deception: racers are already aware of the difference and it matters little to the ordinary customer whether or not he is informed of it, since in any case he understandably purchases the usual form of bindings. In addition, the quality and effectiveness of the bindings as claimed by the manufacturer were beyond dispute.

(b) A second decision of the Supreme Court¹⁸ is particularly interesting as regards *sharing the burden of proof* in disputes concerning deceptive advertising. In accordance with a generally accepted principle, the burden of proving the inaccuracy of an advertised statement lies with the plaintiff. The Federal Supreme Court has however already held in previous cases that the burden of proof as to the accuracy of his allegation may, exceptionally, lie with the defendant. This will be so, for example, if the plaintiff, being unaware of the course of events, cannot know of the relevant facts, whereas the defendant does and can provide the information required¹⁹.

In the new decision, this reversal of the burden of proof was applied for the first time in a case where the facts relating to the disputed statement were *fully available to the public*, so that in principle they were not beyond the plaintiff's knowledge. The defendant watchmaker, in offering watches for sale, had compared the price he was asking with a higher price which he represented as being the price he had previously sought. He wished by so doing to show that there had been a reduction in price. The Supreme Court held that this constituted a false misrepresentation as to a price cut, the defendant having neither shown nor proved that the earlier higher price had in fact genuinely been asked. The Supreme Court did not accept the defendant's argument that the plaintiff could easily have made enquiries and accordingly that it was for the plaintiff to prove that the higher price had not previously been asked. As the Court stated persuasively, the plaintiff could not be expected to follow the defendant's pricing so long as he had no special reason for so doing. This had only arisen in connection with the disputed advertisement in which the allegedly new lower price was being asked.

(c) Another case, the "10-DM-Schein,"²⁰ is worth reporting because it concerns a method of advertising which has become increasingly popular in Germany. In this case, a businessman had advertised a transistor radio for 10 marks which, however, could only be bought with a 10 mark note having the "lucky number 7" in the serial number. In point of fact, the defendant had not sold the radios for more than 10 marks for a long time and the figure 7 occurs very frequently in the serial numbers of German 10 mark notes. The Supreme Court therefore decided that the advertisement in question was deceptive because it pretended that this was a *special sale* at a price lower than that normally asked by the advertiser. Moreover, the reference to the "lucky number 7" gave rise to a misleading impression among holders of 10 mark notes with that number that they were *particularly fortunate* and were among the few able to benefit from the offer.

(d) In a decision of October 25, 1974,²¹ the Federal Supreme Court had to consider an interesting case on *advertising of a unique position*. To people in the trade, the defendant had described his vibration roller, an earth compressing machine, as "unbeatable." The Court considered

¹⁸ Decision of June 28, 1974 — *Preisgegenüberstellung*, 1975 GRUR 78, with article by Fritze, pp. 61-63.

¹⁹ See in particular Federal Supreme Court decision of July 13, 1962 — *Bärenfang*, 1962 GRUR 270, 271.

²⁰ Federal Supreme Court decision of July 12, 1974, 1975 GRUR 262, with note by Ohlgart.

²¹ *Unschlagbar*, 1975 GRUR 141, with note by Malzer.

¹⁶ Decision of July 7, 1972, 1973 GRUR 206, with note by U. Krieger.

¹⁷ See *Industrial Property*, 1972, pp. 49, 62 et seq.; 1973, p. 205.

this to be a claim that the defendant's rollers were the best of those on the market and that no other rollers could at that time or in the foreseeable future offer equally good performance. Since this was factually incorrect, the Court held that the claim amounted to deceptive advertising and therefore infringed Article 3 of the Law against Unfair Competition.

The decision merits special attention because in previous decisions the Supreme Court had held that similar "*extravagant advertisements couched in general terms*" were value judgments, the content of which was incapable of verification, and not "statements" within the terms of Article 3. For that reason, it did not regard as deceptive advertising such publicity slogans as "Mummy only gives me the best" and "AEG-Lavamat, this and no other."²² The Court considered that the case referred to here could be clearly distinguished because the advertisement containing the word "unbeatable" was addressed to specialists and concerned a technical product for which there were known and verifiable standards regarding output. The Supreme Court therefore concluded that, in the circumstances, the word "unbeatable" could be understood as a genuinely meant and verifiable claim as to a unique technical and/or commercial supremacy, and not simply as mere puff bereft of any real significance; thus, it was a "statement" within the terms of Article 3 which in this case, was misleading.

(e) Finally, a certain number of other decisions should be noted here. They provide further clarification on the application of Articles 6(a) and 6(b) of the Law against Unfair Competition, introduced into this Law in 1969, which prohibit certain advertising methods because they tend to deceive the customer²³. Article 6(a) prohibits in principle any reference, at time of sale to the final consumer, to the advertiser's qualities as *manufacturer or wholesaler*. Such references give the generally erroneous impression that it is possible to buy at particularly favorable factory or wholesale prices. In the "Grosshandelshaus" case²⁴ the Supreme Court held that there could be a *sale to a final consumer* within the terms of this provision even if the product was sold only to manufacturers and traders who generally acquired it for their own needs and not for resale. In the instant case, a "wholesale establishment" had offered its goods, which were in common use, indiscriminately to manufacturers and traders of all branches. The precautions taken by the defendant did not suffice to guarantee that her customers acquired only those goods that were suitable for their branch, and other goods for their own use only occasionally, which the court would have regarded as lawful.

Article 3 still applies, along with Article 6(a)²⁵. Hence, in another decision²⁶ the Federal Supreme Court was able to establish infringement of the first of these provisions solely by virtue of the fact that the defendant had represented his

business to ultimate consumers as a "factory store," "delivery depot" and the like. The public therefore expected genuine factory prices whereas in reality they were being charged higher prices.

Article 6(b) prohibits what is known as *purchase voucher trade* with the ultimate consumer. In the "Kaufausweis II" case²⁷, the Supreme Court, in a judgment similar to that in the "Grosshandelshaus" case, held that the distribution of purchase vouchers to manufacturers and traders outside the branch amounted to an infringement of Article 6(b). In the "Kaufausweis II" case²⁸, the Supreme Court held that Article 6(b) was also infringed when a consumer association distributed membership cards authorizing the holders to buy from so-called "contract" dealers. Article 6(b), as worded, includes any person or body issuing purchase vouchers and not only traders. There is no reason for exempting purchase vouchers issued by consumer organizations from the ban imposed by this provision. The risk of deceiving the consumer is also inherent in such purchase vouchers since the holder has no guarantee that he can in fact buy from contract dealers more cheaply than other customers. Moreover, under the law governing discount prices, contract traders are not permitted to give more preferential treatment to the holders of purchase vouchers than to other customers when setting their prices.

5. Deceptive Indications of Source

In a series of decisions, the Federal Supreme Court has again pronounced on the question of deceptive indications of source.

(a) There have been two decisions regarding the circumstances in which an article may be labelled "Deutsches Erzeugnis" (German Product), or "Made in Germany."

In the first of these²⁹, a German manufacturer had described his safety ski bindings, which were constructed in France but made in Germany under license, as a "Deutsches Spitzenerzeugnis" (top German product). The Court of Appeal held that the fact of manufacture in Germany was decisive and therefore did not oppose the article being labelled as German. The Federal Supreme Court however considered that the determining factor was whether the quality or component elements of the product, which constitute its value in the eyes of the public, were the result of the work of a German or foreign enterprise. The public would not be misled by the German designation of a product if they valued it mainly for the features which were of German origin, even if other less significant features were of foreign origin. If, on the other hand, a feature of foreign origin was predominant in their assessment of its value, its designation as a German product could be misleading within the terms of Article 3 of the Law against Unfair Competition. This, however, assumes that the origin of the various elements, whether German or foreign, is an important consider-

²² See *Industrial Property*, 1968, p. 345.

²³ See *Industrial Property*, 1972, p. 62; criticism by Schrieker, "Grenzen des Verbraucherschutzes", 1975 GRUR 349-358.

²⁴ Decision of November 16, 1973, 1974 GRUR 474, with note by Kurt Bauer.

²⁵ See *Industrial Property*, 1973, p. 205.

²⁶ Decision of September 28, 1973 — *Lager-Hinweiswerbung*, 1974 GRUR 224, with note by Kurt Bauer.

²⁷ Decision of October 11, 1974, 1975 GRUR 375, with note by Fischötter.

²⁸ Decision of February 28, 1975, 1975 GRUR 382, with note by Kurt Bauer.

²⁹ Federal Supreme Court decision of March 23, 1973 — *Ski-Sicherheitsbindung*, 1973 GRUR 594, with note by v. Falck.

ation in a person's decision to buy. With regard to the ski bindings in question, it was therefore necessary to ascertain whether their construction constituted an essential element in the public's evaluation of the bindings, and whether the public's decision to buy them depended on their having been made in the Federal Republic of Germany or elsewhere.

The second decision³⁰ concerned the indications "Germany" or "Made in Germany" on goods from the German Democratic Republic. Specifically it related to an alarm clock originating in the Democratic Republic which bore the mark "Germany," only minor changes having been made to its outward appearance in the Federal Republic of Germany. The Federal Supreme Court conceded that a not inconsiderable number of people in the Federal Republic of Germany would assume that the whole article had been made locally, and that such people would therefore have been deceived as to its geographic origin. Nevertheless, the court justifiably declined to regard this as an infringement of Article 3 of the Law against Unfair Competition. The indication "Made in Germany" has its origin in the British Merchandise Marks Act of 1887, which required all goods imported into Great Britain to carry an indication as to their country of origin. "Made in Germany" became the hallmark for quality goods coming from the former German Empire. After the Second World War, both German States were entitled to lay claim to this tradition. Despite any resulting misconception, neither of the two German States nor their respective enterprises can be required to forego the use of this indication of quality.

The Federal Supreme Court points to a possible future solution to the problem. An Order of the Council of Ministers of the German Democratic Republic regarding indications as to the source of goods, dated May 7, 1970 (Official Gazette of the German Democratic Republic, Part II, No. 50, of June 11, 1970) lays down that goods destined for export shall bear the indication "Made in the German Democratic Republic" in the language used in trade with the country in question. In that way, the indication "Made in Germany" could in future be confined to products coming from the Federal Republic.

(b) In the "Sweden" case³¹ the Federal Supreme Court's decision lays down that civil action for the use of deceptive indications as to geographic source can only be brought by manufacturers or traders who are *in competition* with the person using the indication. The mere fact that a manufacturer's or trader's business is located in the place or the country to which the other person refers does not suffice to give him the *locus standi* to initiate an action. This applies equally to actions based on Article 3 of the Law against Unfair Competition and to those based on general principles of civil liability in Germany as well as on Article 26 of the Trade Mark Act. This latter provision is also concerned with the law on unfair competition, and civil actions based on it must be framed within the general limits of German law on unfair competition regarding capacity to take action.

³⁰ Federal Supreme Court decision of April 26, 1974 — *Germany*, 1974 GRUR 665, with note by U. Krieger.

³¹ Decision of June 14, 1974, 1974 GRUR 781, with note by Schwanhäusser.

6. Objectionable Methods of Advertising

The Federal Supreme Court has again had occasion to pronounce on new methods of advertising which were regarded as objectionable mainly because they caused annoyance to the consumers to whom the advertisement was addressed.

(a) Foremost among these was the "Telex Werbung" decision³², which concerned the legality of *unsolicited advertisements by telex*. Some years earlier the court had held that unsolicited telephone advertisements in the private sector generally constituted unfair competition; in particular, it stressed the need to protect the private sector from uncontrolled intrusion by outsiders using the telephone³³. The court in its recent decision stated that an unsolicited advertisement transmitted by telex to a lawyer was unlawful because it blocked the lawyer's telex lines for a certain time in an intolerable manner and interfered with his practice. Nevertheless, this type of advertising — unlike advertisement over private telephone lines — cannot generally be regarded as unlawful. Depending on the special circumstances of the case, the recipient of the advertisement might in fact have an interest in specialist advertising by telex.

Advertisement by *individually addressed post* has long been accepted as normal practice and lawful because generally it does not cause unreasonable annoyance to the recipient. Another decision of the Supreme Court³⁴ is worth noting in this connection: it arose from a complaint by the consumer concerned and could therefore not be based on the Law against Unfair Competition. The court recognized that advertisement by post might possibly infringe the personal rights of the recipient if the latter warned the advertising firm to desist from sending such advertisements in future and his warning is disregarded. This kind of advertising, however, may lawfully be pursued if the observance of the request to desist would involve a disproportionate amount of expense and labour. It must be assumed — for instance, in the case of an action brought by a consumer association — that the court would reach a similar conclusion on the basis of Article 1 of the Law against Unfair Competition.

On this subject, we need only draw attention to a third decision³⁵, in which the Supreme Court declared that it was lawful for a wine merchant to conduct a *survey among consumers*. The consumers, on receiving the questionnaire were not misled as to the publicity aspect of the survey, nor were they unreasonably annoyed. Also, the survey did not constitute any danger for the scientific bodies that conducted opinion polls and market studies.

(b) In another decision³⁶, the Supreme Court had to consider the case of a *salesman's unsolicited visit*. On well-founded and recognized grounds the court considered that it was unlawful for a firm to endeavour, through salesmen, to

³² Federal Supreme Court decision of October 6, 1972, 59 BGHZ 317; 1973 GRUR 210, with note by Droste.

³³ See *Industrial Property*, 1973, p. 207.

³⁴ Decision of February 16, 1973 — *Briefwerbung*, 60 BGHZ 296; 1973 GRUR 552, with note by Bauer.

³⁵ Federal Supreme Court decision of October 11, 1972 — *Verbraucher-Briefumfrage*, 1973 GRUR 268, with note by Kraft.

³⁶ Federal Supreme Court decision of September 22, 1972 — *Gewinnübermittlung*, 1973 GRUR 81, with note by v. Falck.

induce the winners of a publicity competition it had organized to buy its wares. In this case, the salesmen had visited the winners when the latter received their prizes and had endeavoured to sell goods by offsetting the winnings against the purchase price. This constitutes what is termed psychological pressure to buy, which is unlawful even if the salesman points out that the winnings may also be taken in cash.

(c) Finally, two other decisions³⁷ should be mentioned, both of which are to be welcomed as they prohibit a method of advertising whereby the *victims of traffic accidents are annoyed and caught off guard*. The Supreme Court rightly considered that it was unfair competition to accost persons involved in traffic accidents at the scene of the accident for the purpose of inducing them to contract for repairs or car rental. The court compared these approaches to persons involved in traffic accidents with approaches to passers-by in the street, which has long been regarded as unfair competition although the resultant annoyance and element of surprise are far less than in the case of accident victims. The court left open the question whether the decision would be the same if breakdown services were offered at the scene of the accident. In both cases, the Supreme Court also confirmed the opinion it had expressed before, namely, that in judging acts of competition, the dangers arising from imitation of such acts by other competitors should also be taken into consideration.

7. Games of Chance, Free Lotteries, Promotional Gifts

As already reported in an earlier "Letter,"³⁸ the area of promotional gifts has become one of the main themes in Supreme Court decisions on unfair competition. This trend has continued³⁹. In addition, games of chance and free lotteries organized for publicity purposes have also frequently been the subject of the Court's attention in recent years. During the period under review, it has moreover handed down a series of decisions on bonuses and discounts, which are governed by special laws in Germany. What is involved is so-called "value advertising" which differs from pictorial and verbal advertising in that its distinctive feature is an advantage accorded to customers by way of gifts for promotional purposes⁴⁰.

The Federal Supreme Court has continued to take a strict stand regarding promotional gifts and other forms of value advertising. In a few cases, the strict application of classical points of view has already led to a ban on value advertising. Among these have been deception as to chances of winning, so-called psychological (or moral) pressure to buy, interference with competitors' activities, saturation of markets and, in cases of gifts to traders, the risk that the influence exercised over consumers will not be objective and that other goods will be substituted for the goods which consumers want. But it was above all in taking increasing notice of the element

of undue allurement that the Court came to ban certain forms of value advertising which go beyond what is required to draw the public's attention to an offer.

But despite this strict case law, the Supreme Court continues to hold that games of chance, free lotteries and promotional gifts — apart from the law governing bonuses and discounts — are in principle lawful. Only in special circumstances will they be deemed to constitute unfair competition⁴¹. In this way, the court is seeking to meet the requirement that advertising can include value advertising to call the public's attention to an offer, even though there may be a general risk that potential buyers will have their attention deflected from an objective consideration of the offer based on quality and price. At the same time, the court seeks to prevent elements unconnected with the offer in question from carrying too much weight by reason of their undue allurement or of other circumstances.

(a) With regard to *games of chance* and *free lotteries*, according to the "Sweepstake" decision⁴², *deception* of the public as to the chances of winning and the consequent undue power of allurement are, for instance, regarded as special circumstances which cause a lottery to be unfair.

In two other cases the Supreme Court held that the games of chance were allied with *psychological pressure to buy*, which constituted unfair competition. In the "Schatzjagd" decision⁴³, the court rested its case on the fact that participants in the game had to visit certain food shops several times and acquire the necessary commodities in order to win valuable cash prizes. The court considered that the participants also felt morally obliged to make a purchase, despite the fact that the organizer of the game had explicitly indicated that there was no obligation to buy. The competition was therefore designed to attract buyers away from rival establishments into the organizer's shop. In the second case⁴⁴, an object resembling a "golden A" had to be found in a certain furniture shop. The Supreme Court held that this too constituted psychological pressure to buy: the participants in the game could not avoid looking conspicuous while searching through the display rooms in the shop: they felt that they were under observation by the staff and were therefore pressured into making a purchase.

The Supreme Court also held in the "golden A" case that there was *undue allurement*. It did not express an opinion on the question of whether games are always to be regarded as a source of undue allurement. A game will however be deemed unlawful not only if lottery tickets, entry forms or prizes have to be obtained from a shop but also if the shop itself has to be thoroughly searched and valuable prizes are offered. Such games give the organizer an unfair advantage over his competitors, quite apart from any psychological pressure to buy.

³⁷ Federal Supreme Court decision of November 22, 1974 — *Werbung am Unfallort I und II*, 1975 GRUR 264, 266, with note by Pietzcker (two decisions).

³⁸ *Industrial Property*, 1973, p. 208.

³⁹ In connection with the over-all problem, see Lehmann's recently published study *Die Werbung mit Geschenken*, Cologne etc., 1975.

⁴⁰ Federal Supreme Court decision of December 21, 1973 — *Verchlusskapsel-Prämie*, 1974 GRUR 394, 395.

⁴¹ See Federal Supreme Court decision of November 17, 1972 — *Preisaußschreiben*, 1973 GRUR 474, 475; Federal Supreme Court decision of January 26, 1973 — *Das goldene A*, 1973 GRUR 418.

⁴² Federal Supreme Court decision of November 2, 1973 — *Sweepstake*, 1974 GRUR 729, 731, with note by Hoth.

⁴³ Federal Supreme Court decision of March 16, 1973, 1973 GRUR 591, with note by Hoth.

⁴⁴ Federal Supreme Court decision of January 26, 1973 — *Das goldene A*, 1973 GRUR 418, with note by Hoth.

In the "Geld-Gewinnspiel" decision⁴⁵, the organizer of a competition was held liable solely on the point of undue allurement. This decision serves to amplify the judgment in the "Schatzjagd" case, referred to above, in which the finding that there had been pressure to buy was based mainly on the fact that it was necessary to enter certain food shops *several times*. In the more recent decision, it was held that there was no need to ascertain whether there had been any psychological pressure to buy even though the participants had to visit the shop *only once* to obtain their lottery tickets. The decisive factors in banning the competition were its exceptional size, the powerful allurement exercised by the very valuable prizes and the fact that the game was being promoted by a retail firm with shops that offered a wide selection of goods in every-day use. In the court's opinion, this went beyond the bounds of fair competition because it led to indiscriminate buying and was no longer merely a question of advertising the wares offered by the organizer.

In another decision⁴⁶, a competition by a producer supplying the trade was deemed unfair again on the ground of undue allurement. As valuable cash prizes were offered and the entry forms included a printed form for ordering goods, the Supreme Court held that at least some of the participants would place orders solely to improve their chances of winning. The Court did not consider that an organizer's note on the entry form to the effect that participation in the competition was not dependent on placement of an order sufficed to ensure that orders would not in fact be placed.

(b) With regard to *promotional gifts*, in the "Geballtes Bunt" decision⁴⁷ the element of undue allurement assumed crucial significance. A detergent manufacturer had distributed vouchers worth DM 0.80 to consumers, inviting them to tender the vouchers in payment when they bought detergents from their retailer. The Supreme Court held that this went beyond the bounds of lawful value advertising. The vouchers were equivalent to presents of cash and money gifts for advertising purposes naturally hold a particularly strong attraction for the consumer. The court did not have to decide whether a present of a not inconsiderable sum of money for advertising purposes is unfair as such by virtue of its power of allurement. The unfair nature of the operation organized by the detergent manufacturer lay, in the Court's view, in the fact that there was in any event a connection between such a present and the pressure to buy a given commodity which would weigh on the consumer if he wanted to take advantage of the present.

In other decisions, traditional considerations apart from undue allurement caused gifts of goods and services for advertising purposes to be regarded as unfair competition. Thus, one decision⁴⁸ affirmed that free transport for cus-

tomers to business premises is in principle unlawful because of the *psychological pressure to buy* which this generally entails. An exception to this will only be allowed if transport is provided to compensate for any inconvenience caused by the location of the place of business and is offered in such a way that the client remains anonymous, does not have the feeling that he is causing expense and the journey is of no special benefit to him⁴⁹.

Another decision, concerning a distribution of gifts in large quantities⁵⁰, was also based on established case law⁵¹. The Federal Supreme Court held that such a distribution of gifts amounted to unfair competition because, while the packages distributed were smaller than those normally sold in the trade, they were nonetheless considerably larger than was necessary for a proper trial of the goods. Because of the nature of the goods and the extent and duration of the operation, competitors were deprived for a certain time of the opportunity of taking part in the competition to sell the products in question, such competition being in principle open to all. This constituted *interference in competitors' activities* which was not justified for the purpose of testing and *blockage of the market*.

Lastly, in a decided case⁵², a promotional campaign undertaken by a liqueur maker was held to be unlawful on the ground that he had promised café and restaurant owners substantial rewards if they returned the caps to the bottles he had distributed. This constituted not only undue allurement but also an unreasonable attempt to influence the restaurant owners' *objectivity* in advising their customers. Because of the powerful lure of the rewards promised, there was a risk that the café and restaurant owners might *substitute* another product for those ordered by their customers.

(b) Here, reference need only be made to certain decisions⁵² concerning the law on bonuses and rebates⁵³.

8. Special Sales

Likewise, only passing reference is made here to a number of not unimportant decisions handed down in recent years — and in greater number than earlier years — which relate to the "Order of the Minister of the Economy concerning special sales" of July 4, 1935. This Order, which is still in force⁵⁴, seeks to control those sales operations within the retail trade which offer exceptional bargains and thus give the public the urge to buy. The Order does not deal with clear-

⁴⁹ See also *Industrial Property*, 1973, p. 208.

⁵⁰ Federal Supreme Court decision of June 14, 1974 — *Colgate*, 1975 GRUR 26, with note by Klaka.

⁵¹ See *Industrial Property*, 1973, p. 208.

⁵² Federal Supreme Court decision of December 21, 1973 — *Verchlusskapsel-Prämie*, 1974 GRUR 394, with note by Kurt Baner.

⁵³ Federal Supreme Court decision of March 24, 1972 — *Cognac-Portionierer*, 1972 GRUR 611; idem of May 26, 1972 — *Fahrschul-Rabatt*, 1973 GRUR 272; idem of March 2, 1973 — *Service-Set*, 1974 GRUR 402; idem of January 23, 1974 — *Senf-Henkelglas*, 1975 GRUR 199; idem of July 3, 1974 — *Werbegeschenke*, 1975 GRUR 320; idem of November 12, 1974 — *Buchbeteiligungszertifikate*, 1975 GRUR 203; as well as the decisions quoted in footnotes 47, 52, and footnote 49.

⁵⁴ Federal Supreme Court decision of November 3, 1972 — *Ferienpreis*, 1973 GRUR 653; idem of November 24, 1972 — *Porzellan-Umtausch*, 1973 GRUR 416; idem of January 12, 1973 — *Für den Osterverkauf*, 1973 GRUR 477; idem of June 13, 1973 — *Probierpreis*, 1973 GRUR 658; idem of December 14, 1973 — *Campagne*, 1974 GRUR 341; idem of May 20, 1974 — *Schräger Dienstag*, 1975 GRUR 491.

⁴⁵ Federal Supreme Court decision of May 25, 1973, 1974 GRUR 156, with note by Gerstenberg.

⁴⁶ Federal Supreme Court decision of November 17, 1972 — *Preis-ausschreiben*, 1973 GRUR 474, with note by Storch.

⁴⁷ Federal Supreme Court decision of June 13, 1973, 1974 GRUR 345, with note by Hoth.

⁴⁸ Federal Supreme Court decision of May 5, 1972 — *Kunden-Einzelbeförderung*, 1972 GRUR 603, with note by Klaka.

ance, end-of-season or liquidation sales, all of which are covered by special regulations.

The decisions in question are especially directed at the problem of distinguishing between unlawful special sales and lawful special offers. In particular, they adhere to such criteria as normal business practice, time-limits for especially profitable offers, and practices common in the particular trade.

9. General Points on the Law against Unfair Competition

There have been two important decisions of the Federal Supreme Court dealing with general points on the Law against Unfair Competition.

(a) The "Verbraucherverband" decision⁵⁵ brought welcome clarification regarding the *capacity of consumer associations to bring an action for unfair competition*. As reported in an earlier "Letter,"⁵⁶ the Law against Unfair Competition was amended in 1965 to include the right of consumer associations to bring actions against specified forms of unfair competition. In subsequent years, the courts considered on several occasions the question of the conditions that had to be met by a consumer association if it was to have the capacity to bring an action. This arose because there had been certain abuses, particularly the formation of so-called consumer associations by unscrupulous lawyers in an attempt to secure some profitable business.

The Supreme Court's decision put an end to such abuses. A consumer association, the court held, only has the capacity to bring an action under the Law against Unfair Competition if it safeguards consumers' interests by informing and advising them not only according to the letter of its statute but by actually carrying out such activities efficiently. Associations that have been wrongfully constituted do not normally meet

this condition, so that their right to bring an action will not be recognized.

(b) The "Kaffeewerbung" decision⁵⁷ concerns the problem of *applications for injunctions on the ground of unfair competition which are barred by the statute of limitations*. It is widely recognized that such applications can be subject to the statute of limitations; if after an act of unfair competition the term of limitation has expired and the defendant pleads this, the application for an injunction can no longer be based on that act. The running of the statute of limitations is precluded only with regard to continuous acts and the same holds good if threatened acts of unfair competition have to be banned by an interim injunction⁵⁸.

The "Kaffeewerbung" decision concerned the application of the statute of limitations in the case of a perpetual injunction which had been imposed over 30 years earlier by the courts and prohibited certain statements in an advertisement. The defendant firm had observed the injunction for 30 years. It then repeated the prohibited statements, claiming that the judgment could no longer be upheld as the application for the injunction had meanwhile been barred by the statute of limitations. The court did not share this view. It considered that, in the light of the meaning and purpose of the statute of limitations, the statute only applied to a right that had been infringed, for only then can the creditor proceed against the debtor through or outside the courts and thus avoid the statute. The former judgment, however, had conferred a right of unlimited duration on the competitor which was matched by a permanent obligation on the defendant to which the latter had submitted; during all that time, the right had been respected. The competitor had not had any reason, throughout those 30 years, to proceed against the then defendant, so that the right as confirmed by the judgment at the time could not be barred by the statute of limitations.

⁵⁵ Federal Supreme Court decision of June 30, 1972, 1973 GRUR 78, with note by Utescher.

⁵⁶ See *Industrial Property*, 1966, p. 169.

⁵⁷ Federal Supreme Court decision of June 16, 1972, 59 BGHZ 72; 1972 GRUR 721, with article by U. Krieger (pp. 696-698).

⁵⁸ See as to the latter Federal Supreme Court decision of November 10, 1965 — *Kupferberg*, 1966 GRUR 623, 626.

BOOK REVIEWS

Patents, Trademarks, and Related Rights — National and International Protection, by Stephen P. Ladas. Harvard University Press, Cambridge (Mass.), 1975. - Three volumes totalling 2115 pages.

As early as 1930, Stephen P. Ladas published a work entitled *The International Protection of Industrial Property* which dealt mainly with the international protection of the various industrial property rights covered by the Paris Convention. Since that time, that is to say for almost half a century, Mr. Ladas has devoted himself to the subject of industrial property, working both as a lawyer specializing in the field and within such bodies as the International Association for the Protection of Industrial Property or the International Chamber of Commerce.

These introductory remarks should suffice to show that the work reviewed here represents the fruits of a unique store of knowledge and accumulation of experience. Lack of space prevents us from showing the full extent of the incredible richness of this work, but the mere recital of the areas dealt with will suffice to give an idea of the magnitude of its scope.

The work starts with an *Introduction* which contains a concise description of the concept of "industrial property" and its evolution through the ages, from ancient Greece and Rome up to the present day, with particular reference to the tendency towards the unification and universal harmonization of the law of industrial property.

The other topics dealt with are divided into 52 chapters, grouped into ten main Parts.

Part I deals with the Protection of *Foreigners' Industrial Property before the Creation of the Paris Union*. Here, an account is given of the national legislative systems and bilateral treaties in the field of patents, industrial designs, utility models, trademarks, trade names, indications of source and appellations of origin, and unfair competition.

Part II consists of a full and detailed analysis of the Paris Union. Here the author discusses in particular the origin and history of the Union, its organizations, the system established by the Convention establishing WIPO and the general aspects of the industrial property regime set up by the Paris Convention. He also surveys the activities of other intergovernmental organizations in the field of industrial property (the International Patent Institute, the Central American Common Market and OAMPI, among others), and analyzes the problems of the relation of the Paris Convention to bipartite treaties and national laws.

Part III is devoted to the *International Regime of Patents*. The author deals here with questions such as the right of priority, the principle of the independence of patents, the restrictions of obligations of the patentee, etc. He explains the workings of the treaties which cover these matters, such as the Strasbourg Agreement Concerning the International Patent Classification, the Patent Cooperation Treaty, the European Patent Convention and the draft Common Market Patent Convention. One chapter, of more than 120 pages, deals more particularly with the problems presented by the coexistence of the patent system and antitrust laws in the various legislative groups (Common Law countries, Latin America, Rome Treaty, etc.).

Parts IV, V and VI deal, respectively, with the *International Regimes of Industrial Designs and Models, of Utility Models, and of Trademarks*. As in the Part devoted to patents, these Parts contain an account of the problems and their solutions under the various national legislative systems, and an analysis of the legal rules established by international treaties on the respective subjects (e.g., the Hague Agreement for the International Deposit of Industrial Designs, the Madrid Agreement Concerning the International Registration of Marks and, more recently, the Trademark Registration Treaty).

Part VII analyzes the *International Regime of Other Rights of Industrial Property, that is to say, Trade Names, Indications of Source and Appellations of Origin, Know-How, and the Repression of Acts of Unfair Competition*. Without going into detail, it may simply be mentioned here that the hundred or more pages devoted to know-how give a clear understanding of the difference which exists between know-how on the one hand, and trade secrets and patents on the other hand. The author also describes in this Part the solutions to the problems presented by know-how in the various national legal systems, analyzes the practical problems (such as those connected with licensing of know-how, trade secrets, etc.) and discusses the particular problems of the relationship between know-how and the rules of competition in the Common Market, etc.

Part VIII deals with *Inter-American Conventions on Industrial Property* (by which is to be understood not only the various Pan-American Conventions, but also, in general, all the efforts being made in the Americas: for example, the work of the Latin American Free Trade Association).

Finally, Parts IX and X deal, respectively, with the *Two World Wars and the Unions* (which leads the author to analyze more particularly the Berne Arrangement of 1920 and the Neuchâtel Agreement of 1947 on the restoration of industrial property rights), and with *Future Developments* in the industrial property field, especially on the subject of the *Protection of Scientific Property* and the relationship between *Industrial Property and Economic Development*.

The book concludes with a number of Appendixes containing the texts of the main treaties dealt with in the body of the work (recent texts of the Paris Convention and its Special Agreements, principal inter-American conventions, PCT, TRT, European Patent Convention, etc.). These texts are followed by a general index of 13 pages facilitating the search for information on a given subject, as well as a 5-page index of the legal cases analyzed by the author (that is to say, the main judicial decisions all over the world).

The outline sketched above is sufficient, for all its bareness, to give an idea of the scope of the work. Each Part, each chapter, constitutes a complete work in itself.

As can easily be understood, this veritable compendium, utterly exhaustive and brilliant in its clarity, represents the unique outcome of a life devoted to the study and improvement of the vast field of industrial property. This work, which is both theoretical — because it explains all the developments of each rule of law on the subject — and practical — because it is based on an exhaustive amount of documentation and case law and on the quite exceptional experience of its author, constitutes an indispensable work of reference for theoreticians and practitioners of industrial property law alike — not forgetting that the author himself is in fact both, and that his authority is universally recognized.

Now that the United States of America is preparing to celebrate the bicentenary of its Constitution, which established industrial property law in that vast and powerful country, it is most gratifying to see one of its citizens confirm his position as one of the top-ranking specialists in the field of industrial property.

A. B.

Le droit des appellations d'origine - l'appellation Cognac [The Law on Appellations of Origin: The Cognac Appellation], by J.-M. Auby and R. Plaisant; foreword by President E. Faure. Librairies techniques, Paris, 1974. - 444 pages.

The reader will certainly not be misled by the title of this book, for no one would expect two such leading experts as President J.-M. Auby and Professor R. Plaisant to confine themselves to a discussion of the Cognac appellation of origin, however illustrious it may be. And indeed,

taking this universally famous brandy as an example, the authors give a full account of the system of appellations throughout the world.

After starting by explaining the effect of the French law on vine-growing and wine production ("*statut viti-vinicole*"), the authors devote two chapters to French legislation on appellations of origin and to the part played by French administrative bodies. There is a detailed discussion of the law on fraud, on simple and guaranteed appellations of origin, on the VDQS or "*vins délimités de qualité supérieure*" (quality wines from certain delimited areas) and on regional wines (*vins de pays*), followed by an extensive review of the question of controls and penalties at all levels — from production to distribution, and ranging through the wholesale trade, transport, labelling, marking, invoicing, publicity, etc.

The authors then analyse, in an equally thorough manner, the legal systems of some fifteen States and groups of States, covering the Socialist, Western European and Anglo-Saxon countries as well as a number of developing countries. The conclusions that follow are extremely useful in that they stress the considerations that obtain in all laws on appellations of origin (public health, consumer protection, guarantee of quality, etc.): these are common considerations and, as such, should serve to unify law on the matter.

Next to be considered are multilateral treaties on the subject, together with a number of bilateral treaties, which naturally leads into a discussion of the regulations of the European Economic Community on vine-growing and cultivation (and particularly of the VQPRD or "*vins de qualité produits dans des régions déterminées*" (quality wines produced in specific areas)).

There is of course a chapter, almost 100 pages long, on the Cognac appellation which deals in particular with the part played by the BNIC (*Bureau national interprofessionnel du Cognac*), the conditions for obtaining the right to the Cognac appellation of origin, inspection of the brandy and even the tax system that applies.

As a fitting conclusion, there is an extremely useful summary of French administrative bodies and legislation, as well as of the principles that underlie certain legislation in other countries and the most important treaties. All this is supplemented by the inclusion of the texts of a number of laws and regulations which readers of the book will find most helpful.

This book makes for particularly pleasant reading owing to the attractive, clear and concise way in which the complicated question of appellations of origin and the laws that govern them in different countries is approached. It will be read with profit not only by those interested in such matters but also by anyone who values the "fruits of the soil," which require constant protection and care for the greater benefit of producers and consumers in all countries of the world, be they developed or developing.

G. R. W.

La tutela del disegno industriale — Problemi e prospettive [Protection of Industrial Designs — Problems and Prospects], by *F. Benussi*. Giuffrè editore, Milan, 1975. - 207 pages.

We live in an era of intense legislative activity as far as industrial designs are concerned. This is illustrated by the steps taken to bring the Hague Agreement up to date, publication of the WIPO model law and harmonization of the laws of Scandinavian countries on the subject, not to mention the Soviet law of 1965 and the work on the adoption of uniform legislation within the framework of the European Economic Community.

This book, therefore, comes at the right time. The author starts by outlining the problem of protection of industrial designs — a problem which stems from their hybrid character in that they fall half-way between technological achievement and aesthetic creativity, at the point where industrial property law merges with copyright law: hence the differences in legal treatment of the matter, depending on whether national legislations emphasize technology and the patent approach or aesthetics and the copyright approach.

This naturally leads the author into an analysis of the development of the law in a number of countries: France, the United Kingdom, Federal Republic of Germany, the Benelux and Scandinavian countries, the United States of America and, of course, Italy.

In his analysis, the author defines certain general principles, or commonly accepted rules, which break free from the strait jacket of national classifications and pave the way for regulations on new creative forms that fall outside the rigid distinction between technology and aesthetics; after highlighting the main elements of creative forms, he recommends a copyright approach based on the principle of subjective novelty.

There is no doubt that this book will help in arriving at new international legislation with a view to improving protection for industrial designs.

G. R. W.

Practica tecnico-legale della proprietà industriale — Brevetti, modelli et marchi [Technico-juridical practice in industrial property — Patents, designs and models, marks], by *Alfonso Giambrocono*. Etas Libri S. p. A., Milan. - 150 pages.

This work deals with the procedure for the deliverance of patents, with designs and models and with marks, with the rights granted, their limitations and the conditions for retention of these rights — all this both on the Italian and international planes.

This is essentially a practical guide, based on rich experience in the field and illustrated with well-chosen practical examples (such as examples of descriptions of patents or a table giving the taxes currently in force in Italy) which underline the errors which the depositor should avoid making (for example, the distinction which exists in Italian law between utility models and ornamental models).

This work will, without doubt, interest all those who, as inventors or creators, industrialists or counsellors in industrial property, are interested in the obtention, defense or maintenance of industrial property rights in Italy.

G. R. W.

Traité des dessins et des modèles [Treatise on Designs], by *Pierre and François Greffe*. Librairies techniques, Paris, 1974. - 763 pages.

This new edition of the treatise by Pierre and François Greffe consists mainly of an extremely detailed study of French design law and practice.

It should however be stated at the outset that over 138 pages of this study are taken up with an account of the relevant law in a number of Western European countries, namely, Belgium, Germany (Federal Republic of), Italy, Luxembourg, Netherlands, Spain, Switzerland and the United Kingdom. This account consists of contributions by, respectively, A. Braun, G. Seelig, G. Pellegrino, E. Arendt, W. L. Haardt, A. de Elzaburu, A. Troller, Ch. Marcon and J. Burrell, all of whom are leading specialists and need no introduction here.

The first part of the book, which deals with French law, is divided into 22 chapters and systematically arranged, which makes for ease of consultation.

After a short account of the historical background, the first chapters start by discussing the combined effect of the French Design Law of 1903 and the French Law on Literary and Artistic Property of 1957, and then go on to consider the place of designs among industrial property rights, the definition and general characteristics of designs, the elements of copyright and the beneficiaries of protection.

Next, dealing with the requirements for protection, the authors tackle the difficult problem of the novelty requirement. In particular, they throw light on questions relating to fashion, photographic works and the right to respect for the person.

After discussing the problems relating to assignment of designs, the authors devote some ten chapters to the many delicate problems of infringement (kinds of infringement, elements of the act of infringement, procedure, remedies, etc.).

A final chapter, which links the outline of French law with the accounts of the main systems in Western Europe, considers protection of designs in French private international law and under conventional law.

This book, which is at once wide-ranging and concise, draws on a wealth of case-law that admirably illustrates and supplements the academic outline of the various legislative systems and the authors' lucid explanations.

Industrial property specialists will welcome with keen interest this new edition of the *Traité des dessins et modèles*.

G. R. W.

Selection of New Publications

- ANDRIUSHIN (V. V.). *Izobretatel'skoe i patentnoe pravo*. Minsk, Belarus', 1975. - 128 p.
- ARIES (Robert). *The Pharmaceutical in Europe from Lab to Licensing*. Report presented at a conference and debate of the Association des Anciens Elèves du Certificat d'Etudes Supérieures de Législation des Etablissements Pharmaceutiques, Paris, 1975. - 98 p.
- Aspects actuels de la contrefaçon*. Travaux de la Troisième Rencontre de propriété industrielle — Centre Paul Rouhier, Lyon, 1974. Paris, Librairies Techniques, 1975. - 198 p.
- BARD (Basil). *The Patent System*. Guildford, IPC Science and Technology Press Ltd., 1975. - 80 p.
- Van DIJK (W.). *Modellenrecht in de Beneluxlanden*. Amsterdam, Merkenbureau Van der Graaf & Co B. V., 1975. - 132 p.
- FABIANI (Mario). *Modelli e Disegni Industriali*. Padua, Cedam — Casa Editrice Dott. Antonio Milani, 1975. - 147 p.
- GODENHIELM (Berndt). *Employee Inventions* (International Encyclopedia of Comparative Law, Volume XIV - Copyright and Industrial Property, Chapter 7), Tübingen, Mouton, The Hague, Paris, J. C. B. Mohr (Paul Siebeck), 1975. - 262 p.
- Von GODIN (Hans, Freiherr). *Wettbewerbsrecht*. Berlin and New York, Walter de Gruyter, 1974. - 673 p.
- GREFFE (François and Pierre). *Traité des dessins et des modèles* (nouvelle édition). Paris, Librairies Techniques, 1974. - 765 p.
- Das Deutsche Patentamt 1975*. Zukunftsprobleme aus der Sicht einer 25 jährigen Entwicklung. Präsident Dr. Kurt Haertel zum 65. Geburtstag. Cologne, Berlin, Bonn and Munich, Carl Heymanns Verlag KG, 1975. - 159 p.
- KAZIMIERCZUK (Zdzisław). *Nowe prawo dla wynalazców*. Warsaw, Książka i Wiedza, 1974. - 110 p.
- LUCAS (André). *La protection des créations industrielles abstraites*. Paris, Librairies Techniques, 1975. - 339 p.
- MORELLE (Guy). *La protection internationale des inventions pharmaceutiques* (thesis). Toulouse, Université des Sciences sociales de Toulouse, 1975. - 342 p.
- Problemy Ochrony prawnej wzorów przemysłowych*. Polska Akademia Nauk, Warsaw, Zakład Narodowy im. Ossolińskich — Wydawnictwo, 1974. - 166 p.
- De ROUX (X.), VOILLEMOT (D.) and VASSOGNE (T.). *Le droit français de la concurrence*. Paris, Juridictionnaires Joly, 1975. - 340 p.
- Selected Decisions of the Commissioner of Patents, Designs and Trade Marks 1971 — 1974* (Part I and Part II) - bilingual edition English/Hebrew. Jerusalem, Patent Office, Ministry of Justice, 1975. - 260 p. and 283 p.
- SOARES (José Carlos Tinoco). *Código da Propriedade Industrial* (Comments on the Brazilian Industrial Property Code). São Paulo, Editora Resenha Tributária Ltda., 1974. - 339 p.
- SOLTYSINSKI (Stanisław). *Prawo wynalazcze Komentarz*. Warsaw, Instytut Wydawniczy CRZZ, 1975. - 326 p.
- STAUDER (Dieter). *Patentverletzung im grenzüberschreitenden Wirtschaftsverkehr*. Cologne, Berlin, Bonn and Munich, Carl Heymanns Verlag KG., 1975. - 241 p.
- TESCHEMACHER (Rudolf). *Die mittelbare Patentverletzung*. Cologne, Berlin, Bonn and Munich, Carl Heymanns Verlag KG., 1974. - 176 p.
- TIETGEN (Uwe). *Die Unterschiede zwischen Fabrik- und Händlermarken in warenzeichen- und wettbewerbsrechtlicher Sicht*. Cologne, Berlin, Bonn and Munich, Carl Heymanns Verlag KG., 1975. - 231 p.
- TROLLER (Alois). *Kurzlehrbuch des Immaterialgüterrechts*. Basel and Stuttgart, Verlag Helbing & Lichtenhahn, 1973. - 202 p.
- ULMER (Eugen). *Die Immaterialgüterrechte im internationalen Privatrecht*. Cologne, Berlin, Bonn and Munich, Carl Heymanns Verlag KG., 1975. - 135 p.
- VOLYNETS-RUSSET (E. IA). *Planirovanie i paschet effektivnosti priobreteniia litsenzii*. Moscow, Ekonomika, 1973. - 144 p.

CALENDAR

WIPO Meetings

- January 19 to 23, 1976 (Geneva) — International Patent Classification (IPC) — Steering Committee
- January 26 to 30, 1976 (Geneva) — International Patent Classification (IPC) — Committee of Experts
- February 2 to 4, 1976 (Geneva) — ICIREPAT — Plenary Committee (PLC)
- February 2 to 10, 1976 (Geneva) — Nice Union — Temporary Working Group
- February 16 to 20, 1976 (Geneva) — Hague Union — Regulations — Working Group
- February 16 to 27, 1976 (London) — International Patent Classification (IPC) — Working Group IV
- February 23 to March 2, 1976 (Tunis) — Committee of Governmental Experts for the Preparation of a Model Law on Copyright for Developing Countries
(Meeting convened by the Government of Tunisia in cooperation with WIPO and Unesco)
- March 1 to 5, 1976 (Geneva) — Nice Union — Revision of the Nice Agreement — Committee of Experts
- March 9 to 12, 1976 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Working Group on the Use of the International Patent Classification
- March 15 to 19, 1976 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (3rd session)
- March 22 to April 2, 1976 (Munich) — International Patent Classification (IPC) — Working Group I
- March 29 to 31, 1976 (Geneva) — Paris Union — Ad hoc Coordinating Committee for Technical Activities
- April 26 to 30, 1976 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- April 26 to 30, 1976 (Geneva) — Paris Union — Committee of Experts on the Deposit of Microorganisms for the Purposes of Patent Procedure
- May 3 to 7, 1976 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)
- May 3 to 7, 1976 (Geneva) — Paris and Madrid Unions — Working Group on the Use of Computers in Trademarks Operations
- May 10 to 15, 1976 (Geneva) — Paris and Berne Unions — Committee of Experts on Scientific Discoveries
- May 17 to 21, 1976 (Geneva) — International Patent Classification (IPC) — Working Group V
- May 17 to 21, 1976 (Geneva) — Paris Union — Computer Programs — Committee of Experts
- May 24 to 31, 1976 (Geneva) — Nice Union — Temporary Working Group
- June 8 to 14, 1976 (Geneva) — Paris Union — Group of Governmental Experts for the Revision of the Paris Convention
- June 14 to 18, 1976 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Working Group on the Model Law for Developing Countries on Inventions and Know-How
- June 21 to 25, 1976 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Working Group on Licensing Guidelines
- September 6 to 17, 1976 (Washington) — International Patent Classification (IPC) — Working Group III
- September 21 to 24, 1976 (Geneva) — ICIREPAT — Plenary Committee (PLC)
- September 27 to October 5, 1976 (Geneva) — WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Nice, Lishon, Locarno, IPC and Berne Unions; Conferences of Representatives of the Paris, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Council of the Lishon Union — Ordinary Sessions
- September 27 to October 8, 1976 (Rijswijk) — International Patent Classification (IPC) — Working Group II
- October 6 to 8, 1976 (Geneva) — Trademark Registration Treaty (TRT) — Interim Advisory Committee
- October 11 to 15, 1976 (Geneva) — Paris and Madrid Unions — Working Group on the Use of Computers in Trademarks Operations
- October 11 to 15, 1976 (Geneva) — International Patent Classification (IPC) — Steering Committee
- October 13 to 21, 1976 (Geneva) — Nice Union — Temporary Working Group
- October 18 to 22, 1976 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)
- October 18 to 22, 1976 (Geneva) — International Patent Classification (IPC) — Committee of Experts
- October 25 to 29, 1976 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- October 25 to 30, 1976 (Baghdad) — Regional Conference for Arab States on Industrial Property
(Meeting organized jointly with UNIDO and IDCAS)
- November 1 to 6, 1976 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees

- November 8 to 19, 1976 (Stockholm) — International Patent Classification (IPC) — Working Group IV
- November 22 to 26 [or 30], 1976 (Geneva) — Paris Union — Group of Governmental Experts for the Revision of the Paris Convention
- November 29 to December 3, 1976 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Working Group on the Model Law for Developing Countries on Inventions and Know-How
- November 29 to December 10, 1976 (Rijswijk) — International Patent Classification (IPC) — Working Group I
- December 13 to 17, 1976 (Geneva) — Nice Union — Committee of Experts
- March 14 to 18, 1977 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (4th session)
- September 26 to October 4, 1977 (Geneva) — WIPO Coordination Committee and Executive Committees of the Paris and Berne Unions

UPOV Meetings

- Council: October 13 to 15, 1976
- Consultative Committee: March 10 and 11, 1976; October 12 and 15, 1976
- Technical Steering Committee: May 6 and 7, 1976; November 18 and 19, 1976
- Working Group on Variety Denominations: in the course of the week from September 14 to 17, 1976
- Committee of Experts on International Cooperation in Examination: May 5, 1976; November 15 to 17, 1976
- Committee of Experts on the Interpretation and Revision of the Convention: February 17 to 20, 1976; September 14 to 17, 1976
- Note: All these meetings will take place in Geneva at the headquarters of UPOV
- Technical Working Party for Vegetables: March 23 to 25, 1976 (Wageningen - Netherlands)
- Technical Working Party for Ornamental Plants: May 12 to 14, 1976 (Melle - Belgium)
- Technical Working Party for Agricultural Crops: May 24 to 26, 1976 (Tystofte - Denmark)
- Technical Working Party for Fruit Crops: June 16 to 18, 1976 (Hanover - Federal Republic of Germany)
- Technical Working Party for Forest Trees: August 17 to 19, 1976 (Hørsholm - Denmark)

Meetings of Other International Organizations concerned with Intellectual Property

- January 16, 1976 (Paris) — International Literary and Artistic Association — Executive Committee and General Assembly
- February 2 to 6, 1976 (Strasbourg) — Council of Europe — Legal Committee on Broadcasting and Television
- May 9 to 13, 1976 (Munich) — International League Against Unfair Competition — Congress
- May 24 to 29, 1976 (Athens) — International Literary and Artistic Association — Congress
- May 25 to June 1, 1976 (Tokyo) — International Publishers Association — Congress
- August 30 to September 3, 1976 (Stockholm) — International Federation of Musicians — Congress
- September 6 to 10, 1976 (Budapest) — Hungarian Group of AIPPI and Hungarian Association for the Protection of Industrial Property — Conference on the Significance of Protection of Industrial Property in International Industrial Cooperation
- September 26 to October 2, 1976 (Montreux) — International Association for the Protection of Industrial Property — Executive Committee
- September 27 to October 1, 1976 (Paris) — International Confederation of Societies of Authors and Composers — Congress
- October 11 to 16, 1976 (Varna) — International Writers Guild — Congress