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WIPO Meetings

I

WIPO World Symposium on the Importance of the Patent System to Developing Countries

(Colombo, February 1977)

Note*

With the kind cooperation of the Government of Sri Lanka, WIPO organized a meeting in Colombo, under the title "WIPO World Symposium on the Importance of the Patent System to Developing Countries," from February 21 to 24, 1977.

Some 200 persons participated in the Symposium. An incomplete list of the participants (since it contains only the names of those who formally registered) appears at the end of this Note. Participants came from 38 countries, of which 15 were Asian and 23 other than Asian. The Asian countries were Afghanistan, Bangladesh, Hong Kong, India, Indonesia, Iran, Israel, Japan, Malaysia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Turkey; the other countries were Australia, Austria, Belgium, Cameroon, Canada, Denmark, France, Germany (Federal Republic of), Greece, Hungary, Italy, Netherlands, Nicaragua, Portugal, South Africa, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, Venezuela and Zambia.

Twenty-four lectures were heard at the Symposium. Fourteen of them were given by nationals of Asian developing countries, mostly persons closely connected with the planning of the economy of their countries, particularly in the sector of foreign investment: two Cabinet Ministers, ten senior Government officials, two businessmen and one politician/businessman. Four came from India, three from Sri Lanka, two from Malaysia, two from Pakistan, and one each from Bangladesh, Indonesia and the Philippines. Two of them were women, twelve were men.

Ten of the 24 lectures were given by nationals of highly industrialized countries, eight of them persons in the employment of multinational corporations, one in the employment of a chamber of commerce and one representing an association of inventors. Each of them came from a different country, namely: Denmark, France, Germany (Federal Republic of), Japan,

Netherlands, Soviet Union, Sweden, Switzerland, United Kingdom, United States of America. They were all men.

The list of the 24 lecturers appears at the end of this Note.

The meetings were opened by Dr. Arpad Bogsch, Director General of WIPO. They were co-chaired by him and Mr. M. Sanmuganathan, Additional Secretary of the Ministry of Trade of Sri Lanka.

The lectures dealt with questions concerning the transfer of technology and the role of industrial property in such transfer: to what extent does patent and trademark protection in developing countries condition or encourage the "importation" into such countries of patented technology and related technical know-how? The lectures were followed by a general discussion in which the participants asked the lecturers questions and made observations on the lectures, and the lecturers replied to those questions and observations.

The general feeling of the participants, as expressed in the closing speeches of the spokesmen of the Asian and the non-Asian participants, respectively, was that the lectures and the discussions had been most useful since they elucidated, from a *practical* point of view, the role of the patent system in the transfer of technology. Such a practical approach was possible mainly because of the novel composition of the group of speakers: on the one hand, persons of great influence in their governments in charge of the industrialization and foreign investment policies of their countries; on the other hand, persons of great influence in the private sector of business and entrepreneurship in charge of decisions on whether and where to transfer technology through direct investment or licensing, and under what conditions.

The texts of the lectures, which were all given in English, will be published and put on sale by WIPO towards the middle of 1977.

The success of the Symposium was due also to the gracious hospitality of the Government of Sri Lanka, the kindness of the Ceylonese people and the beauty of the Island.

List of Speakers

Hon. T. S. S. bin Abas (*Solicitor General, Malaysia*); Dr. G. Albrechtskirchinger (*Director, Federal Association of the Chemical Industry, Germany (Federal Republic of)*); Mr. S. M. Al-Husainy (*Member, Planning Commission, Bangladesh*); Hon. Senator

* This Note has been prepared by the International Bureau.

K. Ariffin (*Chairman, Bank Bumiputra Malaysia Berhad; President, ASEAN Chamber of Commerce and Industry, Malaysia*); Dr. H. Aspden (*Director, European Patent Operations, International Business Machines (IBM), United Kingdom*); Mr. Felix Bandaranaike (*Minister of Finance and Justice, Sri Lanka*); Miss L. Bautista (*Assistant Secretary, Department of Industry, Philippines*); Mr. M. O. Bhatti (*Controller of Patents and Designs, Pakistan*); Mr. J. Clark (*Director, Patent Department, Monsanto Corporation, United States of America*); Mrs. I. Gambiro (*Legal Counsel, Center for Industrial Research and Development, Indonesia*); Dr. G. Gansser (*Deputy Manager, Ciba-Geigy S.A., Switzerland*); Mr. S. P. Godrej (*Chairman, Godrej Companies, India*); Mr. M. Gorodissky (*Head, Patent Department, USSR Chamber of Commerce and Industry, Soviet Union*); Mr. T. B. Ilangaratne (*Minister of Trade, Sri Lanka*); Dr. N. S. Karunatileke (*Director, Economic Research, Central Bank, Sri Lanka*); Mr. A. A. Khan (*Secretary, Economic Affairs Division, Ministry of Finance, Planning and Development, Pakistan*); Mr. P. C. Nayak (*Joint Secretary, Ministry of Industry; Secretary, Foreign Investment Board, India*); Mr. T. Norberg (*Marketing Director, Tetra Pak International, Sweden*); Dr. A. Ramachandran (*Secretary to the Government, Department of Science and Technology, India*); Mr. P. Rouyrre (*Director for Industrial Property and Industrial Agreements, Creusot-Loire, France*); Mr. M. Suzuki (*General Manager, Patent Department, Toyota Central Research and Development Laboratories Inc., Japan*); Dr. S. Vedaraman (*Controller General of Patents, Designs and Trademarks, India*); Mr. E. J. de Vries (*Legal Counsel, N. V. Philips Gloeilampenfabrieken, Netherlands*); Mr. J. Zachariassen (*Manager, Zac-Consult; International Federation of Inventors' Associations, Denmark*).

List of Participants*

I. Participants

Hon. T. S. S. bin Abas; N. Abidin (Mrs.); H. A. Akon; G. Albrechtskirchinger; S. M. Al-Husainy; S. Ambalavanar; E. S. Appadurai; Hon. Senator K. Ariffin; E. Armitage; H. Aspden; R. Baharuddin (Mrs.); F. Bandaranaike; L. Bautista (Miss); F. K. Beier; J. B. van Benthem; T. Bhandhugravi; M. O. Bhatti; D. E. Bond; P. C. Booth; G. Borggård; L. B. Botha; P. Braendli; R. Brunet (Mrs.); F. Burmester; M. J. Callinan; J. B. Clark; B. Consul-Korale; J. Corre; C. M. Dann; L. S. Davar; J. Delorme; T. Dubost; E. Dundar; K. Dundar; J. Ekedi-Samnik; A. de Elzaburu; S. Fernando (Miss); G. Foldes; S. Fukuda; M. Gabay; I. Gambiro (Mrs.); G. Gansser; D. Garden; T. Gárgyán; G. Gayer; K. Gobiuchi; S. P. Godrej; L. Göransson; M. Gorodissky; T. de S. Gunewardene; S. H. Gursahani; Y. Harima; E. Häusser; G. Hayama; M. R. Hirsch; P. Hocks; M. Ikoma; K. Jayasinghe; L. S. Jayawardena; M. S. Johnston; M. L. C. Kambhu; N. S. Karunatileke; A. A. Khan; I. Kidera; S. Kobayashi; L. Körner; Y. Kuroda; E. Ladas (Mrs.); O. Leberl; M. H. Lowry; A. Lyman; Y. Madani; T. J. Marlay; W. Martosewojo (Miss); E. J. Mebius; Y. Moriwaki; C. W. Morle; C. L. Mubanga-Chipoya; M. Nakamura; R. Narayan; P. C. Nayak; R. L. Neupane; S. Norberg; T. Norberg; K. Ogawa; H. Ogura; R. Parichatkul; A. M. Pereira; H. Petit (Mrs.); R. H. S. Phillips; Y. Plasseraud; A. Ramachandran; A. Rahim; N. Ratmajewia; S. Riccardi; T. W. Roberts; A. G. Rogers; H. Romanus; P. Rouyrre; D. E. J. Rua Benito; M. Sanmuganathan; C. S. de Saram; M. Sato; R. van Schoonbeck; I. E. Schwartz; G. Seelanatha; T. Shiroshita; K. V. Skjådt; R. Smither; V. Srianekratha; E. Steup (Mrs.); Y. Sumida; M. Suzuki; J. M. Swaminathan; S. J. Thacker; E. Tuuli; S. Vedaraman; G. Vianès; F. J. Villarte; E. J. de Vries; R. Walter; D. T. Wendam; D. Weeraratna; J. A. I. Wijeyekoon; I. Wikramanayake; P. Worm; R. Yamamoto; T. Yamato; S. Yoshihara; J. Zachariassen; A. A. Zari; F. Zorzoli.

II. Officers of the Symposium

Co-Chairmen: A. Bogsch (WIPO); M. Sanmuganathan (Sri Lanka).

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

III. Sri Lanka Liaison Officers

M. Sanmuganathan (*Additional Secretary, Ministry of Trade*); J. A. I. Wijeyekoon (*Registrar of Companies*).

IV. WIPO

A. Bogsch (*Director General*); S. Alikhan (*Director, Copyright Division*); L. Kadirgamar (*Senior Officer, External Relations Section, Development Cooperation and External Relations Division*); I. Pike-Wanigasekara (Mrs.) (*Assistant, Office of the Director General*); M. Qayoom (*Head, Conferences and Common Services Section*).

II

WIPO Round Table on Development Cooperation Among Industrial Property (Patent) Offices

(Colombo, February 1977)

Note*

Taking advantage of the presence at the WIPO Symposium (see above) in Colombo, Sri Lanka, of the heads or other senior officials of national offices, WIPO organized a meeting in Colombo, under the title "Round Table on Development Cooperation Among Industrial Property (Patent) Offices," on February 24 and 25, 1977.

There were 31 participants, of whom 29 were government officials of 27 different countries; one was from an intergovernmental organization and one from a scientific institution. The list of participants appears at the end of this Note.

Mr. E. Armitage, Comptroller General of Patents, Designs and Trade Marks, United Kingdom, was elected Chairman. Dr. A. Bogsch, Director General of WIPO, represented the Host Organization.

Most of the participants were persons who direct industrial property offices which either send their employees abroad for training or receive such employees to give them training in the administration of intellectual property laws.

The aim of the discussions was to examine the ways in which the training program, organized and coordinated by WIPO in this field, could be improved in all its phases: planning, selection of trainees, program of training, use of the training received, post-training contacts, etc.

* This Note has been prepared by the International Bureau.

The discussions were based on an outline prepared by the International Bureau of WIPO and a working paper presented by Mr. Armitage. Many valuable new ideas were expressed. They are recorded in a written report.

List of Participants*

I. Participants

Afghanistan: M. Aziz Rahim. **Austria:** O. Leberl. **Bangladesh:** H. A. Akon. **Cameroon:** J. Eked-Samnik. **Canada:** D. Bond. **Denmark:** K. Skjødt. **Finland:** E. Tuuli. **France:** G. Vianès. **Germany (Federal Republic of):** E. Häusser; E. Steup (Mrs.). **India:** S. Vedaraman. **Indonesia:** W. Martosewojo (Miss). **Iran:** Y. Madani. **Israel:** M. Gabay. **Japan:** T. Shiroshita; S. Kobayashi. **Malaysia:** N. Abidin. **Nepal:** R. L. Neupane. **Netherlands:** J. B. van Benthem. **Pakistan:** M. O. Bhatti. **Philippines:** D. Wendam. **Spain:** D. E. J. Rua Benito. **Sri Lanka:** J. A. I. Wijeyekoon. **Sweden:** G. Borggård. **Switzerland:** P. Braendli. **Thailand:** R. Parichatkul. **United Kingdom:** E. Armitage. **United States of America:** C. M. Dann. **Zambia:** C. L. Mubanga-Chipoya. **International Patent Institute (IIB):** J. Delorme. **Max-Planck-Institut für Ausländisches und Internationales Patent-, Urheber- und Wettbewerbsrecht (Munich):** F. Beier.

II. Officers

Chairman: E. Armitage (United Kingdom).

III. International Bureau of WIPO

A. Bogsch (*Director General*); S. Alikhan (*Director, Copyright Division*); L. Kadirgamar (*Senior Officer, External Relations Section, Development Cooperation and External Relations Division*); I. Pike-Wanigasekara (Mrs.) (*Assistant, Office of the Director General*); M. Qayoom (*Head, Conferences and Common Services Section*).

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

III

Regional Meeting on Industrial Property

(Colombo, February 1977)

Note*

A regional meeting on industrial property took place in Colombo, Sri Lanka, from February 16 to 18, 1977. It was organized by the World Intellectual

Property Organization (WIPO) with the assistance of the Government of Sri Lanka.

Representatives of nine Asian countries (Afghanistan, Bangladesh, Indonesia, Malaysia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand) participated in the regional meeting. The list of participants appears at the end of this Note.

Mr. M. Sanmuganathan (Sri Lanka) was elected Chairman and Mr. M. O. Bhatti (Pakistan) and Mrs. I. Gambiro (Indonesia) Vice-Chairmen.

The discussions were based on documents prepared by WIPO, dealing with WIPO's activities for developing countries and questions relating, respectively, to patents, trademarks and the role of industrial property in the transfer of technology to developing countries.

Questions concerning WIPO's present and future development cooperation activities were considered, in particular WIPO's training program, assistance to developing countries and to regional institutions of developing countries through the provision of industrial property and copyright services, model laws for developing countries, guidelines for industrial property licensing in developing countries, and access to information from patent documents. All these activities were noted with great interest and the particular importance of the training of officials from developing countries was underlined.

Detailed consideration was given to all questions concerning patent protection, in particular the subject matter to be protected, the reasons for protection, the requirements and the contents of protection, the role of the patent office and the technical information contained in patent documents.

Questions relating to trademarks were also discussed in detail, particularly with a view to examining the possibilities of modernizing the trademark systems of the countries represented in the meeting.

Particular attention was paid to the role of industrial property in the transfer of technology to developing countries. Account was taken of the information effect of the patent system, which permits the identification of existing technology, and of the legal security it provides in the transfer of technology for both the supplier and the recipient. It was stressed that screening of technology transfer contracts was desirable in order to prevent undue restrictions on the recipient under those contracts.

WIPO's facilities for development cooperation in the field of industrial property and technology transfer were noted with interest.

List of Participants*

I. Participants

Afghanistan: M. Aziz Rahim. **Bangladesh:** H. A. Akon. **Indonesia:** I. Gambiro (Mrs.); W. Martosewojo (Miss). **Malaysia:** N. Abidin

* This Note has been prepared by the International Bureau.

(Mrs.), **Nepal:** R. L. Neupane. **Pakistan:** M. O. Bhatti. **Philippines:** D. T. Wendam. **Sri Lanka:** M. Sanmuganathan; J. A. I. Wijeyekoon; R. Consul-Korale; K. Jayasinghe; N. E. Ratnajeewa. **Thailand:** R. Parichatkul.

II. Officers

Chairman: M. Sanmuganathan (Sri Lanka). *Vice-Chairmen:* M. O. Bhatti (Pakistan); I. Gambiro (Mrs.) (Indonesia).

III. WIPO

A. Bogsch (*Director General*); L. Baeumer (*Director, Industrial Property Division*); S. Alikhan (*Director, Copyright Division*); L. Kadrigamar (*Senior Officer, External Relations Section, Development Cooperation and External Relations Division*); I. Pike-Wanigasekara (Mrs.) (*Assistant, Office of the Director General*); M. Qayoom (*Head, Conferences and Common Services Section*).

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

ICIREPAT

Plenary Committee

Tenth Session

(Geneva, February 7 to 9, 1977)

Note *

The Plenary Committee of the Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) held its tenth ordinary session in Geneva from February 7 to 9, 1977.¹ A list of participants follows this Note.

Needs of Developing Countries in the Field of Patent Documentation and Information Retrieval. The Plenary Committee decided to add Mexico to the list of the ten developing countries (Algeria, Egypt, Iraq, Kenya, Philippines, Portugal, Turkey, Uruguay, Yugoslavia and Zambia) and OAPI, which should be invited to participate as observers in the two meetings of the Technical Committee for Standardization (TCST) during 1977.

Past and Current ICIREPAT Activities. The Plenary Committee noted the general report of the International Bureau on the activities of ICIREPAT in 1976, as well as reports on activities and suggestions of the Technical Committee for Search Systems (TCSS) and of the Technical Committee for Standardization (TCST).

* This Note has been prepared by the International Bureau.

¹ For the Note on the ninth ordinary session of the Plenary Committee, see *Industrial Property*, 1976, p. 251.

The Plenary Committee approved a Scheme on Main Stages of Decision-Making during Development of a Search System, elaborated by the TCSS, and requested the International Bureau to submit this Scheme to the IPC bodies for information.

The Plenary Committee adopted the Guidelines on the Layout and Presentation of the Non-Composed First Page of Patent Documents and an amendment to the Standard Code for Identification of Different Kinds of Patent Documents (SI. 8 Code), including a code "P" for Plant Patents.

ICIREPAT Country Code. The Plenary Committee adopted the amended Standard Code for the Representation of the Names of Independent States and Other Entities Which Issue Patent Documents and International Organizations in the Field of Industrial Property (Country Code) and requested the International Bureau to inform all member States of WIPO and of the Paris Union of the adoption of this amended Country Code and its implementation from January 1, 1978, onwards.²

Merger of the Technical Committee for Computerization (TCCR) with the TCSS and TCST. The Plenary Committee decided to merge the TCCR with the TCSS and TCST. The Plenary Committee agreed to accept provisionally the new texts of the mandates of the TCSS and TCST as proposed by the International Bureau, and decided that these provisional mandates would apply until the structural changes of the Technical Activities of WIPO had been decided upon.

Election of Chairmen and Vice-Chairmen for the TCSS and TCST. The Plenary Committee unanimously elected the following Chairmen and Vice-Chairmen for the TCSS and TCST:

TCSS: Chairman:

Mr. L.G. Björklund (Swedish Patent Office, Stockholm);

Vice-Chairmen:

Mr. W. Weiss (German Patent Office, Munich);
Mr. G. Neguliaev (State Committee for Inventions and Discoveries of the USSR Council of Ministers, Moscow).

TCST: Chairman:

Mr. D. Cuvelot (National Institute of Industrial Property, Paris)

Vice-Chairmen:

Mr. R. Blumstengel (Office for Inventions and Patents, Berlin);
Mr. E. Hurd (United States Patent and Trademark Office, Washington)

² The text of the Country Code follows this Note.

ICIREPAT Program for 1978. The Plenary Committee had a first discussion concerning the draft ICIREPAT Program for 1978 and requested the International Bureau to submit it for comments to all ICIREPAT participating countries.

List of Participants *

I. States

Denmark: A. Morsing. **France:** D. Cuvelot; M. Verderosa. **German Democratic Republic:** R. Blumstengel. **Germany (Federal Republic of):** A. Wittmann. **Netherlands:** J. Dekker. **Norway:** A.G. Gerhardsen; E.O. Kjeldsen. **Soviet Union:** E. Artemiev; G. Neguliaev; S. Egorov. **Spain:** N. Rodríguez Toro. **Sweden:** G. Borggård; L.G. Björklund. **Switzerland:** R. Egli. **United Kingdom:** D.G. Gay; V.S. Dodd. **United States of America:** P.J. Terragno.

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

II. Intergovernmental Organization

International Patent Institute (IIB): J.A.H. van Voorthuizen.

III. Observer Organization

International Patent Documentation Center (INPADOC): G. Quarda.

IV. Officers of the Technical Committees

Chairman of the Technical Committee for Search Systems: D.G. Gay (United Kingdom). *Chairman of the Technical Committee for Standardization:* A. Wittmann (Germany, Federal Republic of).

V. Officers of the Meeting

Chairman: G. Borggård (Sweden). *Secretary:* H. Konrad (WIPO).

V. WIPO

A. Bogsch (*Director General*); F.A. Sviridov (*Deputy Director General*); P.H. Claus (*Director, Patent Information Division*); H. Konrad (*Head, ICIREPAT and Statistics Section, Patent Information Division*); R. Andary (*Technical Officer, ICIREPAT and Statistics Section*); V. Evgeniev (*Technical Officer, ICIREPAT and Statistics Section*).

STANDARD CODE FOR THE REPRESENTATION OF THE NAMES OF INDEPENDENT STATES AND OTHER ENTITIES WHICH ISSUE PATENT DOCUMENTS AND OF INTERNATIONAL ORGANIZATIONS IN THE FIELD OF INDUSTRIAL PROPERTY

INTRODUCTION

1. At its first session, held on April 17 and 18, 1969, the Technical Coordination Committee of ICIREPAT adopted a uniform "Two-Letter Code for Countries, Organizations and the Like." This uniform two-letter code was based on a proposal elaborated by Standing Committee III of the former ICIREPAT, as contained in document STAC III No. 85a. The two-letter code was amended by the TCC at its thirteenth session to include new countries not then covered by the code (document IC/TCC/XIII/10).

2. The Plenary Committee (PLC) of ICIREPAT decided at its ninth session (September 1976) to align the above-mentioned two-letter code completely with the universally recognized ISO Alpha-2 Code contained in International Standard 3166, "Codes for the representation of names of countries," published in 1974 by the international organization for Standardization (ISO).

SCOPE AND FIELD OF APPLICATION

3. This Standard Code provides two-letter alphabetic codes for representing the names of independent States, other entities which issue patent documents and international organizations in the field of industrial property.

4. The designation of the entities in this Standard Code does not imply the expression of any opinion whatsoever concerning the legal status of any country or territory, or of its authorities, or concerning the delimitation of its frontiers.

5. This Standard Code is intended to be implemented for any use requiring the expression of countries, entities or international organizations in coded form.

6. The Standard Code is contained in Annex A in three sections, organized as follows:

- (i) Section One (1) presents a list of countries* and entities in alphabetic sequence and their corresponding codes;

* See footnote on following page.

- (ii) Section Two (2) presents a list of codes in alphabetic sequence and their corresponding countries* or entities;
- (iii) Section Three (3) presents a list of international organizations in the field of industrial property.

MAINTENANCE

7. ISO has entrusted a Maintenance Agency with the management of International Standard ISO 3166. The functions of this Maintenance Agency are:

- "1. To add and to eliminate entities and assign codes, as needed, in accordance with the rules provided.
- "2. To advise users regarding applications of the codes.
- "3. To update and disseminate lists of entities, codes and their definitions.
- "4. To maintain a reference list of all country codes used and their period of use.
- "5. To establish, in the normal course of work, after consultation with an advisory panel, additional rules for the practical application of the principles for assigning codes."

8. WIPO has been granted observer status with the Maintenance Agency and will thus be closely associated with its work. The TCST of ICIREPAT will act upon any information coming from the Agency in respect of International Standard ISO 3166.

IMPLEMENTATION AND GUIDELINES FOR USERS

9. The codes contained in Annex A to this Standard should be used in all patent documents published on or after January 1, 1978 and in announcements related thereto.

10. Any patent document published before January 1, 1978 should use the appropriate Country Code given in the ICIREPAT Standard in force up to this date.

11. To assist users of patent documents, Annex B to this Standard lists those independent States and other entities which issue patent documents, and international organizations in the field of industrial property for which the code in force up to January 1, 1978, is replaced by a new code valid from January 1, 1978.

12. In relation to documents published before January 1, 1978, it is recognized that such documents cannot have an ICIREPAT Country Code which may be given on the document retrospectively changed. In relation to machine-readable and other records available internally within an office where a retrospective change of code is feasible, the decision to change is left to the discretion of the office concerned.

13. Any reference in a patent document published after January 1, 1978, to any other patent document, e.g. a priority application or a cited reference, should, if the reference contains an ICIREPAT Country Code, use the appropriate code given in Annex A.

14. Users other than members of ICIREPAT may notify the International Bureau of WIPO of their use of this Standard Code in order that they may be informed of future changes or actions.

15. When additional entities or codes are required, a request indicating the actual requirement should be made to the International Bureau of WIPO, which will inform the ISO Maintenance Agency.

16. The letter combinations AA, XA to XZ and ZZ are available for private use and for provisional codes.

* The names of the countries are indicated in their abbreviated form, as appearing in the "Terminology Bulletin No. 285/Rev. 1", "Names of Countries and Adjectives of Nationality," issued by the Department of Conference Services of the United Nations Secretariat, document ST/CS/SER.F/285/Rev.1 including corrigenda 1 to 8.

Annex A

SECTION 1

Afghanistan.....	AF	Haiti	HT	Qatar	QA
Albania	AL	Honduras	HN	Romania	RO
Algeria	DZ	Hong Kong	HK	Rwanda	RW
Andorra	AD	Hungary	HU		
Angola	AO				
Antigua	AG	Iceland	IS	Samoa	WS
Argentina	AR	India	IN	San Marino	SM
Australia	AU	Indonesia	ID	Sao Tome and Principe	ST
Austria	AT	Iran	IR	Saudi Arabia.....	SA
		Iraq	IQ	Senegal*.....	SN
Bahamas	BS	Ireland	IE	Seychelles	SC
Bahrain	BH	Israel	IL	Sierra Leone	SL
Bangladesh	BD	Italy	IT	Singapore	SG
Barbados	BB	Ivory Coast*.....	CI	Somalia	SO
Belgium	BE			South Africa	ZA
Belize	BZ	Jamaica	JM	Southern Rhodesia	RH
Benin* (Dahomey (DY))	BJ	Japan	JP	Spain	ES
Bermuda	BM	Jordan	JO	Sri Lanka	LK
Bhutan	BT			Sudan	SD
Bolivia	BO	Kampuchea, Democratic		Surinam	SR
Botswana	BW	(Khmer Republic)	KH	Swaziland	SZ
Brazil	BR	Kenya	KE	Sweden	SE
Brunei	BN	Korea, Democratic People's		Switzerland	CH
Bulgaria	BG	Republic of.....	KP	Syrian Arab Republic	SY
Burma	BU	Korea, Republic of	KR		
Burundi	BI	Kuwait	KW	Taiwan Province.of.	TW
Byelorussian SSR	BY			Tanzania, united Republic of	TZ
		Lao People's		Thailand	TH
Cameroon*, United		Democratic Republic	LA	Togo*	TC
Republic of	CM	Lebanon	LB	Tonga	TC
Canada	CA	Lesotho	LS	Trinidad and Tobago	TT
Cape Verde	CV	Liberia	LR	Tunisia	TN
Central African Empire*..	CF	Libyan Arab Republic	LY	Turkey	TR
Chad*.....	TD	Liechtenstein	LI		
Chile	CL	Luxembourg	LU		
China	CN			Uganda	UG
Colombia	CO	Madagascar	MG	Ukrainian SSR	UA
Comoros	KM	Malawi	MW	Union of Soviet Socialist	
Congo*.....	CG	Malaysia	MY	Republics	SU
Costa Rica	CR	Maldives	MV	United Arab Emirates	AE
Cuba	CU	Mali.....	ML	United Kingdom	GB
Cyprus	CY	Malta	MT	United States of America..	US
Czechoslovakia	CS	Mauritania*.....	MR	Upper Volta*.....	HV
		Mauritius	MU	Uruguay	UY
		Mexico	MX		
Denmark	DK	Monaco	MC	Vatican City State	
Dominican Republic	DO	Mongolia	MN	(Holy See)	VA
		Morocco	MA	Venezuela	VE
Ecuador	EC	Mozambique	MZ	Viet Nam, Socialist	
Egypt	EG			Republic of	VN
El Salvador	SV	Namibia	NA		
Equatorial Guinea	GQ	Nauru	NR	Yemen	YE
Ethiopia	ET	Nepal	NP	Yemen, Democratic	YD
		Netherlands	NL	Yugoslavia	YU
Fiji.....	FJ	New Zealand	NZ		
Finland	FI	Nicaragua	NI	Zaire	ZR
France	FR	Niger*.....	NE	Zambia	ZM
		Nigeria	NG		
Gabon*.....	GA	Norway	NO		
Gambia	GM				
German Democratic		Oman	OM		
Republic	DD				
Germany, Federal Republic		Pakistan	PK		
of	DE	Panama	PA		
Ghana	GH	Papua New Guinea	PG		
Greece	GR	Paraguay	PY		
Grenada	GD	Peru	PE		
Guatemala	GT	Philippines	PH		
Guinea	GN	Poland	PL		
Guinea-Bissau	GW	Portugal	PT		
Guyana	GY				

* Member of OAPI
(see Section 3)

SECTION 2

AD	Andorra	GT	Guatemala	PH	Philippines
AE	United Arab Emirates	GW	Guinea-Bissau	PK	Pakistan
AF	Afghanistan	GY	Guyana	PL	Poland
AG	Antigua			PT	Portugal
AL	Albania	HK	Hong Kong	PY	Paraguay
AO	Angola	HN	Honduras		
AR	Argentina	HT	Haiti	QA	Qatar
AT	Austria	HU	Hungary		
AU	Australia	HV	Upper Volta*	RH	Southern Rhodesia
				RO	Romania
BB	Barbados	ID	Indonesia	RW	Rwanda
BD	Bangladesh	IE	Ireland		
BE	Belgium	IL	Israel	SA	Saudi Arabia
BG	Bulgaria	IN	India	SC	Seychelles
BH	Bahrain	IQ	Iraq	SD	Sudan
BI	Burundi	IR	Iran	SE	Sweden
BJ	Benin*(Dahomey)	IS	Iceland	SG	Singapore
BM	Bermuda	IT	Italy	SL	Sierra Leone
BN	Brunei			SM	San Marino
BO	Bolivia	JM	Jamaica	SN	Senegal*
BR	Brazil	JO	Jordan	SO	Somalia
BS	Bahamas	JP	Japan	SR	Surinam
BT	Bhutan			ST	Sao Tome and Principe
BU	Burma	KE	Kenya	SU	Union of Soviet Socialist Republics
BW	Botswana	KH	Kampuchea, Democratic (Khmer Republic)	SV	El Salvador
BY	Byelorussian SSR	KM	Comoros	SY	Syrian Arab Republic
BZ	Belize	KP	Korea, Democratic People's Republic of	SZ	Swaziland
CA	Canada	KR	Korea, Republic of		
CF	Central African Empire*	KW	Kuwait	TD	Chad*
CG	Congo*	LA	Lao People's Democratic Republic	TG	Togo*
CH	Switzerland	LB	Lebanon	TH	Thailand
CI	Ivory Coast*	LI	Liechtenstein	TN	Tunisia
CL	Chile	LK	Sri Lanka	TO	Tonga
CM	Cameroon*, United Republic of	LR	Liberia	TR	Turkey
CN	China	LS	Lesotho	TT	Trinidad and Tobago
CO	Colombia	LU	Luxembourg	TW	Taiwan, Province of
CR	Costa Rica	LY	Libyan Arab Republic	TZ	Tanzania, United Republic of
CS	Czechoslovakia				
CU	Cuba	MA	Morocco	UA	Ukrainian SSR
CV	Cape Verde	MC	Monaco	UG	Uganda
CY	Cyprus	MG	Madagascar	US	United States of America
		ML	Mali	UY	Uruguay
DD	German Democratic Republic	MN	Mongolia		
DE	Germany, Federal Republic of	MR	Mauritania*	VA	Vatican City State (Holy See)
DK	Denmark	MT	Malta	VE	Venezuela
DO	Dominican Republic	MU	Mauritius	VN	Viet Nam, Socialist Republic of
DZ	Algeria	MV	Maldives	WS	Samoa
		MW	Malawi		
EC	Ecuador	MX	Mexico	YD	Yemen, Democratic
EG	Egypt	MY	Malaysia	YE	Yemen
ES	Spain	MZ	Mozambique	YU	Yugoslavia
ET	Ethiopia				
		NA	Namibia	ZA	South Africa
FI	Finland	NE	Niger*	ZM	Zambia
FJ	Fiji	NG	Nigeria	ZR	Zaire
FR	France	NI	Nicaragua		
		NL	Netherlands		
GA	Gabon*	NO	Norway		
GB	United Kingdom	NP	Nepal		
GD	Grenada	NR	Nauru		
GH	Ghana	NZ	New Zealand		
GM	Gambia				
GN	Guinea	OM	Oman		
GQ	Equatorial Guinea				
GR	Greece	PA	Panama		
		PE	Peru		
		PG	Papua New Guinea		

* Member of OAPI
(see Section 3)

SECTION 3

INTERNATIONAL ORGANIZATIONS IN THE FIELD OF INDUSTRIAL PROPERTY

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)	WO
EUROPEAN PATENT ORGANISATION (EPO)	EP
INTERNATIONAL PATENT INSTITUTE (IIB)	IB
AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)	OA

Annex B

List of countries to which other codes than those contained in Annex A were assigned before
January 1, 1978

Country	Code used before 1.1.1978	New code used from 1.1.1978	Country	Code used before 1.1.1978	New code used from 1.1.1978
Albania	AN	AL	Liechtenstein	FL	LI
Algeria	AG	DZ	Madagascar	MD	MG
Austria	OE	AT	Mali	MJ	ML
Bahrain	BB	BH	Malta	ML	MT
Bangladesh	BA	BD	Mauritania	MT	MR
Barbados	BD	BB	Mauritius	MS	MU
Benin (Dahomey)	DA	BJ	Mongolia	MO	MN
Bhutan	BH	BT	Nicaragua	NA	NI
Botswana	BT	BW	Niger	NI	NE
Byelorussian SSR	SB	BY	Nigeria	WN	NG
Cameroon, United Republic of	KA	CM	Oman	MU	OM
Central African Empire	ZR	CF	Panama	PM	PA
Chad	TS	TD	Papua New Guinea	PP	PG
Chile	CE	CL	Paraguay	PG	PY
China	RC	CN	Poland	PO	PL
Congo	CF	CG	Romania	RU	RO
Dominican Republic	DR	DO	Sierra Leone	WL	SL
Egypt	ET	EG	Sikkim	SK	cancelled
El Salvador	SL	SV	Sri Lanka	CL	LK
Ethiopia	EA	ET	Sweden	SW	SE
Finland	SF	FI	Syrian Arab Republic	SR	SY
Gambia	GE	GM	Taiwan, Province of	CT	TW
German Democratic Republic	DL	DD	Tanzania, United Republic of	TA	TZ
Germany, Federal Republic of	DT	DE	Togo	TO	TG
Guatemala	GU	GT	Tonga	TI	TO
Guinea	GI	GN	Trinidad and Tobago	TD	TT
Haiti	HI	HT	Ukrainian SSR	UU	UA
Honduras	HO	HN	Upper Volta	UV	HV
Ireland	EI	IE	Vatican City State (Holy See)	CV	VA
Japan	JA	JP	Vietnam, Republic of	VS	cancelled
Kampuchea, Democratic (Khmer Republic)	CD	KH	Yemen, Democratic	SY	YD
Korea, Democratic	KN	KP	Zaire	CB	ZR
Korea, Republic of	KS	KR	Zambia	ZB	ZM
Kuwait	KU	KW			

General Studies

A New Patent Law in the Federal Republic of Germany

U. HALLMANN* and A. STEIN**

By virtue of the Law on International Patent Treaties of June 21, 1976,¹ the Federal Republic of Germany ratified three important international treaties which are going to bring about a significant change in the patent law situation in the Federal Republic of Germany.² The three treaties are the European Convention on the Unification of Certain Points of Substantive Law on Patents for Invention (Strasbourg Patent Convention), elaborated within the framework of the Council of Europe, and, at the international level, the Patent Cooperation Treaty (PCT), signed at Washington on June 19, 1970, and the Convention on the Grant of European Patents (European Patent Convention), signed at Munich on October 5, 1973, with the participation of ultimately 21 States.

The European Patent Convention, the Patent Cooperation Treaty and the Strasbourg Patent Convention will become directly applicable in the Federal Republic of Germany on their entry into force. The patent applicant will then be presented with the choice of applying for either a European patent, effective in the Federal Republic of Germany, or a national patent. In both cases he can achieve this by means either of the PCT procedure or, depending on the type of patent he applies for, by direct filing with the European Patent Office or the German Patent Office, both of which are in Munich.

Harmonization of the substantive provisions of national patent law with the corresponding provisions of the European Patent Convention, both texts having been brought in line with the Strasbourg Patent Convention, ensures notably that the invention is, in both cases, subject to the same conditions of patentability and the patent to the same grounds for revocation, and also that the scope of protection is the same for both types of patent. National and European patent law are thus at the same level, which provides a maximum of legal security in the application of the provisions of national and European patent law.

For the foreign applicant, the important provisions of the Law on International Patent Treaties are Articles II to IV, which deal with the details of the implementation of the European Patent Convention (Article II) and of the Patent Cooperation Treaty (Article III) at the national level, and also with the alignment of the national Patent Law on the Strasbourg Patent Convention and the European Patent Convention (Article IV). In discussing these Articles, emphasis will be laid only on the provisions which are of particular interest to foreign applicants.

Article II of the Law on International Patent Treaties

As the European Patent Convention embodies a self-contained, independent law, only a few implementing provisions needed to be enacted. The following provisions in particular are of special significance here:

(1) *Sections 1 and 2.* Where the subject matter of a published European patent application in which protection in the Federal Republic of Germany has been requested is used by a third party, the applicant is, in principle, entitled to claim indemnification appropriate to the circumstances, subject to the following conditions:

(a) the third party must be using the subject matter of the invention intentionally or negligently;

(b) where the application has not been published in German, the applicant must first translate the European application into German and then either have the translation published by the German Patent Office or, alternatively, send it directly to the individual user of the invention; in the case of a European patent application which, according to the PCT procedure, has reached the European Patent Office as designated Office and has been published under Article 21 of the Patent Cooperation Treaty, it must also be published by the European Patent Office in one of that Office's official languages (namely English, French or German); if the translation is to be published by the German Patent Office, for instance, because this is the only way of making it binding on other users, a fee has to be paid within a month following the receipt of the request for publication.

(2) *Section 3.* Independently of the case described under 1, above, a person who, before a German court, claims rights under a European patent application or European patent that has not been published in German in its entirety does not in principle have to

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¹ See *Industrial Property Laws and Treaties*, GERMANY, FEDERAL REPUBLIC OF—Text 2-001.

² For a consolidated version of the German Patent Law, see *Industrial Property Laws and Treaties*, GERMANY, FEDERAL REPUBLIC OF—Text 2-002.

submit a German translation of the patent application or of the patent itself. In individual cases, however, the court may demand such a translation. This would occur, above all, where the members of the Court did not have sufficient knowledge of the foreign language concerned (English or French), or where the defendant did not have the necessary linguistic ability to understand the details of the patent specification.

(3) *Section 6.* The European patent granted by the European Patent Office consists, at the time of its grant, of a bundle of national patents. If it is granted also with effect in the Federal Republic of Germany, it can be declared invalid according to the national invalidation procedure in the same way as an ordinary national patent. To this end, the Federal Republic of Germany has drawn on the whole list of grounds for revocation authorized under the European Patent Convention, copying it in fact word for word from the Convention in the interests of legal security (cf. Article 138 of the European Patent Convention). At the same time, however, the complementary provision in Article 139(2) of the European Patent Convention should be taken into consideration, as it provides a further ground for revocation arising out of an amendment to national law that will be mentioned later; if a European patent is confronted with an earlier national patent application or an earlier national patent, the European patent can be revoked with effect in the Federal Republic of Germany.

(4) *Section 7: Payment of annual fees.* Under the European Patent Convention, annual fees have to be paid to the European Patent Office for the European patent application. After the grant of the patent effective in the Federal Republic of Germany, in other words, as from the transition to national procedure, annual fees have to be paid in the same way as for an ordinary national patent. In order to avoid the duplication of payment, however, national annual fees are payable only as from the year following that in the course of which the notification of the grant of the European patent was published in the European Patent Bulletin.

(5) *Section 8: Prohibition of double protection.* Where one and the same invention has given rise to the grant, with the same priority, to the same inventor or to his successor in title and with effect in the Federal Republic of Germany of both a European patent and a patent according to national procedure, the national patent loses its effect to the extent that its subject matter overlaps that of the European patent. However, this effect occurs only when no further opposition to the European patent can be filed, or where a pending opposition procedure has ended with the upholding of the European patent.

To conclude with regard to Article II, it should be mentioned that, subject to some transitional provisions, it is expected to be applicable for an interim

period only, that is, until the entry into force of the Convention signed in Luxembourg in December 1975 on the European Patent for the Common Market. European patents granted under the European Patent Convention to Member States of the European Communities will then, at the time of their grant, be combined in a unitary Community patent for the territorial area of the EEC States, which patent will be subject to a single law, namely that of the Convention on the Community Patent.

Article III of the Law on International Patent Treaties

In this Article there are a total of eight special provisions whose purpose is to ensure the implementation of the Patent Cooperation Treaty. In view of the comprehensive nature of the Treaty it refers to, the shortness of Article III may come as a surprise, but, in fact, it refers to national law in many places without actually laying down definitive rules. One of the reasons for this is the fact that the German Patent Office will act only as a receiving Office under the PCT. According to the Protocol on Centralisation under the European Patent Convention, the European Patent Office will be the competent International Searching Authority for the Federal Republic of Germany, and it will also act as an International Preliminary Examining Authority. Moreover, the legislators made no use of the reservations available under Article 64 of the PCT, so that it was possible to keep the ratification law relatively short.

The following individual provisions are worth mentioning:

(1) The German Patent Office is a receiving Office within the meaning of Article 10 of the PCT. This is specified in Article III, Section 1(1).

(2) The right to file international applications with the German Patent Office belongs to German nationals and to persons with their headquarters or residence in the Federal Republic of Germany or in Berlin (West). This rule follows from Article 9 of the PCT. Moreover, the second and third sentences of Article III, Section 1, provide that nationals of other States, having no headquarters or residence in the Federal Republic of Germany, may also file international applications with the German Patent Office where the appropriate agreement has been entered into with those States or where the Assembly of the Contracting States has designated the German Patent Office as receiving Office for that purpose. This rule would demonstrate its practical usefulness where, for instance, another State was forced, as a result of the shrinking of its national Patent Office, to discontinue all examining activities in relation to the patent grant procedure, or even to close its Patent Office completely.

(3) According to Section 1(2), the international application must be filed in German. The matter of the number of copies in which this has to be done is

left open in the law ratification. Rule 11.1(b) of the Regulations under the PCT provides that either one or two further copies may be prescribed. As Article III, Section 1(4), prescribes complementary application of the provisions of the Patent Law, and therefore, by way of its Section 26(3), the provisions governing applications for patents, further copies may in fact be prescribed pursuant to the latter provisions.

(4) A transmittal fee is payable for the international application, and may be paid within a month following the receipt of the international application (Article III, Section 1(3), in conjunction with Rule 14.1 of the Regulations under the PCT). This fee will be 100 DM, the same amount, therefore, as the national application fee.

(5) Article 27(8) of the PCT contains a reservation concerning measures for the protection of national security. Rule 22.1(a) provides for the sending of the record copy to the International Bureau only if the treatment of the application as an international application is not contrary to provisions on national security. If, on the other hand, the invention contains a State secret, transmittal does not take place and the international application is considered withdrawn pursuant to Article 12(3) of the PCT. The procedure for security examination of an international application is also governed by the provisions of the Patent Law. In order that the applicant whose international application contains a State secret may not be deprived of all his rights, Article III, Section 2(2), provides that in such a case, while transmittal to the International Bureau and disclosure is stopped by virtue of the order of secrecy, the international application is treated as a national application filed at the outset with the German Patent Office. The amount of the transmittal fee is deducted from the national application fee.

(6) Under Article III, Section 4(1), the German Patent Office is the designated Office when the Federal Republic of Germany is named as a designated State in the international application. The provision also contains an important exception for the case where, under Article 4(1)(ii) of the PCT, the international application contains a request for a European, in other words a regional, patent. In that case the designated Office is the European Patent Office.

Where the German Patent Office is a designated Office, the applicant has to pay the national application fee and submit a translation of the application, where the international application is not already in German, within the time limit prescribed by Article 22(1) of the PCT, that is, not later than at the expiration of 20 months from the priority date. Where the German Patent Office is also the receiving Office, there is a further advantage in that the application fee is deemed to have been paid on payment of the transmittal fee (Article III, Section 4(2)). This is justified

by the fact that in both cases the examining work involves essentially the same formalities.

(7) The German Patent Office also has to handle international applications that are transmitted to it, in its capacity as designated Office, by the International Bureau where the competent receiving Office has refused to grant an international application date under Article 11(1) of the PCT, or which the same Office has declared to have withdrawn under Article 14(1)(b), (3)(a) and (4) of the PCT. As there is no provision in the PCT for legal remedies in the event of such decisions, Article 25(2)(a) of the PCT, in conjunction with Rule 51.1 of the Regulations under the PCT, offers the applicant only the possibility of having the objections of the receiving Office examined by the designated Office, in order that the application may at least continue to be processed as a national application. The condition for this examination, under Article III, Section 5, of the Law, is the payment of the application fee under the first sentence of Article 26(2) of the Patent Law, and where applicable the submission of a translation of the application, within the two-month time limit prescribed by Rule 51.1 of the Regulations under the PCT. The German Patent Office issues its decision by way of a resolution, which completes the procedures if the objections of the receiving Office are found to be valid; otherwise, the further processing of the application as a national application is ordered. Under Article III, Section 5(2), of the Law, this examination is also applied to cases in which the receiving Office has declared the designation of a Contracting State to have been withdrawn (Article 14(3)(b) of the PCT), or where the International Bureau has treated the international application as having been withdrawn, pursuant to Article 12(3) of the PCT.

(8) The Federal Republic of Germany has not availed itself of any reservations under Article 64(1)(a) of the PCT. Consequently, the provisions of Chapter II of the PCT on international preliminary examination are applicable to it. Article III, Section 6(1), of the Law accordingly designates the German Patent Office as elected Office under Article 2(xiv) of the PCT where the person filing an international application has indicated the Federal Republic of Germany in his demand for international preliminary examination as the Contracting State in which he intends to use the results of the international preliminary examination. In this case, the applicant has until the expiration of 25 months following the priority date, in accordance with Article III, Section 6(2), of the Law, in which to pay the application fee under Section 26(2) of the Patent Law, and, where applicable, to submit a translation of the application in German. This is followed by the beginning of the grant procedure before the German Patent Office, which is based on the results of both stages of the international procedure. As already

mentioned, the German Patent Office will not be an International Preliminary Examining Authority, because Section II of the Protocol on Centralization under the European Patent Convention specifies renunciation of this activity.

(9) In principle, an international search is carried out in respect of every international application, in accordance with Article 15(1) of the PCT. In view of the demands of the PCT on International Searching Authorities, it must be assumed that the international search report on the international application will save the German Patent Office from carrying out its own search work. Article III, Section 7, of the Law therefore provides for the national examination fee payable by the international applicant to be set in the same way as if a request had been made under Section 28a(1) of the Patent Law for a search for relevant publications. The examination fee is therefore only 300 DM. Nevertheless, this reduction does not apply where the international search report was made for certain parts of the application only.

(10) Pursuant to Article 21 of the PCT, the international application is published by the International Bureau promptly after the expiration of 18 months from the priority date, or, at the request of the applicant, at any time before the expiration of this time limit. Where the German Patent Office is a designated Office for the international application, the latter also has the effect of a regular national application in accordance with Article 11(3) of the PCT. The legal effects of publication are determined by Article 29(1) of the PCT: they correspond to Section 24(4) of the Patent Law, and include the grant of the provisional protection provided for in Section 24(5) of the same Law. In the interests of better public information, Article III, Section 8(1), of the Law provides that notification of publication by the International Bureau is to be published in the Patent Gazette. Such notification will contain only the most important bibliographic data, including the publication date, of the international application.

As international publication takes place in the language of the international application, in so far as the latter is filed in French, German, Japanese or Russian, and as publication in Japanese, for instance, might lead to difficulties in the operation of Section 24(5) of the Patent Law of the Federal Republic of Germany, Article III, Section 8(2), of the Law provides, in accordance with the rules enacted in European patent law, that the German Patent Office shall publish *ex officio* the translation of the international application that is submitted to it where publication by the International Bureau has not been made in German. In such a case, the protection under Section 24(5) of the Patent Law comes into effect only at the time of publication of the German translation. International applications published under Article 21 of the PCT are regarded as prior

art within the meaning of Section 2(2) of the Patent Law, as amended by the Law on International Patent Treaties when the application fee has been paid and the translation, if required, submitted. This provision likewise corresponds to the system devised for European patent law in the second sentence of Article 158(1) of the European Patent Convention.

Article IV of the Law on International Patent Treaties

This Article deals with what are essentially three problem areas for national patent law with respect to the implementation of the Strasbourg Patent Convention and alignment on the European Patent Convention, namely:

- (1) conditions of patentability,
- (2) the scope of protection afforded by the patent,
- (3) grounds for opposition and nullity.

Apart from this, the duration of national patents has been extended from 18 to 20 years, as in the European Patent Convention, so that European and national patents may have the same duration.

(1) In the new national Patent Law, the conditions of patentability are now regulated conclusively by law.

Under the new Section 1 of the Patent Law, patents are granted in respect of inventions that are new, involve an inventive step and are susceptible of industrial application.

This reflects two main changes in relation to the existing law, namely the disappearance of the requirement of technological progress and the introduction of the concept of absolute formal novelty, also prescribed by the European Patent Convention.

(a) In future, therefore, as in the European procedure, patents may not be refused on the grounds that the invention does not represent technological progress. However, this amendment is not expected to have any noteworthy effect on national procedure, as even in the past it was very rare for a patent application to be rejected for the sole reason that it did not represent technological progress. In most cases, such an application would come to grief on account of its lack of the necessary degree of inventiveness.

(b) The amendment of the novelty concept, on the other hand, has a more far-reaching effect, as it will bring about a reduction in the number of patentable inventions. Under the new Law, all technology that becomes accessible to the public anywhere in the world, in any way, and at any time prior to the date that determines the priority of the application, will be destructive of novelty. Previously, the novelty concept was confined, substantively, to description in documents available to the public and known prior use, geographically to acts constituting use within the national territory and, with respect to time, to documents of the last hundred years.

The provisions on prior rights have also been taken over from the European Patent Convention. Here, then, the matter at issue is the extent to which the patenting of an invention is prevented by inventions that have been the subject of patent applications with earlier priority, which have been made accessible to the public only on the priority date of the more recent application, or even later. Under the old Law, rights with earlier priority were taken into account only in the sense that a patent might not be granted if the invention were already the subject matter of a patent actually granted on the basis of an earlier application. Now, any earlier application that has been made accessible to the public at any time destroys the novelty of the entire disclosure of the more recent application. The validity of this principle is independent of the question whether the earlier application was a national application filed with the German Patent Office, an international application or a European application filed with effect in the Federal Republic of Germany. It is applicable also to the relationship between earlier applications that have not been published for security reasons and more recent applications, in which case the "secret application" is treated as if it had been made accessible to the public on expiration of the eighteenth month after the date of its filing.

Finally, attention should be drawn to the marked limitation, in relation to the old law, of the cases in which the applicant is granted a six-month period of grace for novelty. For reasons of legal security, the only instance in which a disclosure having occurred not earlier than six months prior to the filing of the application should not be destructive of novelty is when it is made by the inventor or his successor in title at one of the rare world fairs, or when it is based on an obvious abuse committed to the detriment of the applicant or his successor in title.

With regard to the remaining conditions of patentability, the Law has for the most part only set down in writing the legal situation that has evolved in the course of several decades under the controlling influence of case law in the Federal Republic of Germany. A significant point for foreign applicants, therefore, is the fact that, for instance, computer programs and therapeutic processes for the treatment of human or animal bodies are still excluded from patent protection.

(2) Apart from the amendment of the old novelty concept, the most significant development for national patent law is the redefining of the scope of protection afforded by the patent. According to the principles developed by case law in the past, the scope

of protection of a patent was set very wide in order that the inventor might be given sufficient reward for the disclosure of his invention, and in order to deprive third parties of any possibility of exploiting gratuitously, by means of technical manipulation, the main subject matter contained in the disclosure of the invention as a whole. One argument against this attitude was that it did not take the interest of the community sufficiently into consideration. Now, therefore, according to the newly-inserted Section 6a of the Patent Law, the claims of the patent will be the determining factor in the assessment of the scope of protection, as they are under European Law. The second sentence of this provision, however, according to which the description and the drawings are to be used for the interpretation of the claims, already shows that there is to be no slavish adherence to the exact wording of the patent claims. By means of this new provision in national patent law, the patent owner will continue to be afforded appropriate protection, but at the same time there will also be sufficient legal security for third parties, who in the matter of the scope of protection may refer more reliably than they could before to the patent claims. However, only after a certain "running-in" period will it be possible to determine whether the aim pursued by this provision, namely the harmonization of the criteria in European and national patent law that govern the interpretation of the scope of protection, has in fact been achieved.

(3) The grounds for revocation of national patents have also been aligned on the grounds for revocation of European patents in the interests of equal treatment, as it would not be acceptable to make the national patent granted by the German Patent Office subject to grounds for revocation different from those applicable to the European patent bundle, which ultimately has to be treated as a national patent.

* * *

In conclusion, therefore, the following may be stated:

Industry and the economy, as well as the individual inventor, will in future be given the choice in the Federal Republic of Germany of two self-contained, modern and liberal protection systems, namely a European and a national patent system. The two systems are in agreement with respect to their substantive provisions and will therefore contribute to an improvement in legal security and overall clarity for the benefit of both national and international applicants.

The Stresa Convention on the Use of Names of Cheeses and the WIPO Draft Treaty on the Protection of Geographical Indications

G. TROTTA *

Introduction

The purpose of this study¹ is to analyze and make comments on the arrangements under the Stresa Convention, as well as to examine its aims and its results. The study also refers to the most recent international rules on individual standards for manufacturing cheeses drawn up jointly by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO), and to the system of bilateral agreements for the protection of geographical names including the names of cheeses. Mention is further made of a number of proposals relating to the protection of names of cheeses, which were made at the 1958 Lisbon Conference on the revision and adoption of new agreements in the field of industrial property. The study continues by examining the initiative taken by the Stresa Council with a view to the revision of the Stresa Convention, which resulted in the setting up of a working group to prepare a draft agreement and the subsequent convening of a committee of experts—the meeting of which was, however, postponed—to undertake a more detailed study of the matter.

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¹ This study concerns the possibility of incorporating the system of protection under the Stresa Convention for the Use of Appellations of Origin and Denominations of Cheeses into the draft of the World Intellectual Property Organization (WIPO) for a new treaty on geographical indications (or revised Lisbon Agreement). It represents the author's own opinion and in no way commits the Italian administration.

For the purposes of this study:

(1) Paris Convention means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised at Stockholm on July 14, 1967;

(2) Treaty of Rome means the Treaty of March 25, 1957, establishing the European Economic Community;

(3) EEC means the European Economic Community;

(4) FAO/WHO Code of Principles means the Code of Principles concerning Milk and Milk Products, drawn up jointly by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO);

(5) Madrid Agreement means the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891, as last revised at Lisbon on October 31, 1958, and supplemented at Stockholm on July 14, 1967;

(6) Lisbon Arrangement means the Lisbon Arrangement for the Protection of Appellations of Origin and their International Registration of October 31, 1968, as last revised at Stockholm on July 14, 1967;

(7) WIPO draft means the Draft Treaty on the Protection of Geographical Indications, or revised Lisbon Agreement, published in WIPO document TAO/II/2 of August 25, 1975;

Consequently, it is interesting to carry out a comparative study of the draft of the World Intellectual Property Organization (WIPO) for a new treaty on geographical indications (or revised Lisbon Agreement), in the light of the current text of the Lisbon Agreement, and the Stresa Convention, taking into account a number of clauses which appear in the draft revision for the Stresa Convention referred to above. My commentary also takes into account the most frequently repeated provisions of the bilateral agreements which have, at the international level, generated concepts and institutions now widely recognized both in domestic legislation and in international agreements.

It is also worthwhile to make an attentive study of the standards applied within the European Economic Community as regards the protection and administration of geographical names and, in a more general way, of the EEC's attitude towards industrial property institutions, also taking into account the interest it has shown in recent initiatives taken by WIPO.

The conclusions which recapitulate the results and standpoints of this study may be commented on in various ways but, although they represent the views of the author alone, they are endorsed by the general desire to find a universally valid solution for the protection of geographical denominations, including the names of cheeses.

The Stresa System and Its Effects

The International Convention on the use of the names of cheeses, signed in Stresa on June 1, 1951, and supplemented by three Protocols, of which two were signed at the same time as the Convention and a third in The Hague on July 18, 1951, constitutes

(8) Stresa Convention means the Stresa International Convention for the Use of Appellations of Origin and Denominations of Cheeses of June 1, 1951, and the Protocols annexed thereto (see *La Propriété industrielle*, 1953, p. 21);

(9) Stresa Council or Council means the Permanent Council of Representatives set up by the Stresa Convention;

(10) Stresa Convention revision draft means the draft for the revision of the above-mentioned Stresa Convention drawn up in 1972 by a group of experts;

(11) Uniform Law of the OAMPI Countries means the Uniform Law on Appellations of Origin annexed to the Convention Relating to the Protection of Appellations of Origin concluded on January 10, 1969, within the framework of the Libreville Agreement of September 13, 1962, Relating to the Creation of an African and Malagasy Industrial Property Office (OAMPI) (now known as the African Intellectual Property Organization (OAPI));

(12) Bilateral agreements means the bilateral agreements on the protection of indications of source, appellations of origin and other geographical indications (or names of other products) published in WIPO document TAO/I/3 of June 20, 1974, and referred to in document TAO/II/6 of December 12, 1975; this term also covers the trade agreement of May 28, 1935, between France and the Netherlands and the special agreements between France and Spain, June 27, 1973, and Italy and Spain, April 9, 1975 (in the process of ratification).

a special agreement within the meaning of Article 19 of the Paris Convention for the Protection of Industrial Property. It is currently in force among the following States: Austria, Denmark, France, Italy, the Netherlands, and Switzerland, forming the Stresa Union, administered by a Permanent Council comprising representatives of all the member States. Italy is the depositary State for the Convention.

The Stresa Convention contains a definition of the term "cheese" and gives protection to two categories of names of cheeses, i.e., "*appellations d'origine*" and "denominations." The first category refers to original produce made in specified regions and approved by the Council by a majority of three-quarters and recorded in List A annexed to the Convention. The names of the cheeses recorded in List A are reserved exclusively for the countries of origin of those products and all imitations are prohibited. Inclusion in List A is only agreed to for cheeses manufactured with milk other than cows' milk, except for Parmigiano Reggiano and Gorgonzola. The second category (denomination) applies to typical products of specified Contracting States, approved by the Council on a simple majority and recorded in List B annexed to the Convention. They may also be used by other countries of the Union, subject to their being accompanied by the name of the manufacturing country. Denominations entered in List B cannot be transferred to List A. Currently there are four names entered in List A: three Italian (Parmigiano Reggiano and Gorgonzola, already referred to, and Pecorino Romano), and one French (Roquefort). List B contains the names of many types of cheese, also fairly well known, from the various member States.

At the time it was concluded, and in the absence of an internationally recognized institutional system for the protection of appellations of origin, the Stresa Convention represented a significant objective since many denominations of cheeses were on the point of becoming generic terms and others had been extensively usurped. It was difficult, in this field, to apply the provisions of the Madrid Arrangement, particularly in the case of "prepacked" and "processed" cheeses. The same word "cheese" was frequently used for a great variety of other products, which in some cases contained cheese but in others were of a completely different nature, such as head cheese. This situation led the drafters of the Stresa Convention to include definitions and technical standards regarding the nature, composition and quality of the products and to exclude from the list of completely protected names (entered in List A) those of cheeses made from cows' milk, in principle at least, due to the fact that they were less specific to a locality. However, even in the case of simple denominations of cheeses (entered in List B), the States party to the Stresa Convention are required to comply with a manufacturing "standard" laid down by the State of

origin. This was an endeavor to reconcile protection of denominations of origin with that of typical products also manufactured in other States. Approval by the Stresa Council was thus subject to recognition of variously origin-related qualitative characteristics of the cheeses and entry of the names in the lists was linked to a commitment, on the part of the other member States, to protect those names which were associated with products of which the origin and quality were typical features.

The criterion adopted for entering appellations of origin in List A under the Stresa Convention was deemed excessively stringent since, in practice, only a small number of original names could satisfy the requirements. This helps to explain, at least in part, the small number of accessions to the Convention. It has also been said that only two States, Italy and France, could effectively benefit from the provisions of the Stresa Convention since they were the only owners of names in List A. Additionally, the discrimination introduced between the different types of milk, in fact subject to two important exceptions, was felt to be unjustified. It is not easy to harmonize the requirements of the Stresa Convention with those to be found in the domestic rules of various countries which do not have the institution of appellations of origin. This is particularly so in the cases of Sweden and Norway, which have recently denounced the Convention, or the United Kingdom and the Federal Republic of Germany, which are nevertheless interested in the protection of cheeses.

Some years later, the FAO/WHO Committee charged with drafting a Code of Principles concerning Milk and Milk Products undertook the establishment of individual standards for the protection of various types of cheeses, drawing up requirements as to their designation, composition, essential qualities, testing methods, marking and labelling, and as regards the origin of products in order to facilitate international trade and consumer information. These "standards" were, however, set at a relatively modest level: the products may be manufactured with any type of milk, the manufacturing methods are those in normal use and the quality requirements somewhat summary. Although it does have some advantages, the FAO/WHO system means, in practice, that numerous other States, particularly the immigration States, can manufacture European cheeses and even use the traditional names for them. As a result, the countries affected have declared that the FAO/WHO Committee was not competent to regulate appellations of origin for cheeses and other States have obtained that, in addition to the denominations of the cheeses in List B which are subject to the FAO/WHO standards, it shall also be compulsory to show the name of the State in which the cheese was manufactured.

At the same time, there has been a development in a number of States, including those party to the Stresa

Convention, towards protecting their respective denominations by means of bilateral agreements reserving the names given in lists annexed to the agreements to the States of origin. Numerous names of cheeses, including names under the Stresa Convention, appear in these lists and have in some cases led to protests by certain States party to the Stresa Convention. According to those States, the inclusion of certain List B names in the Italian and Swiss lists annexed to the agreements concluded by those two States with the Federal Republic of Germany, and the full protection which they enjoyed, prevented other States party to the Stresa Convention from using those same names for products which they exported to the Federal Republic of Germany. The latter State, however, is not a party to the Stresa Convention and the States party thereto may freely negotiate the use of names with States outside the Convention.

However, in order to respect the "spirit" of the Stresa Convention, Italy has entered reservations in the recently concluded agreement with Spain in favor of the rights of its partners as regards the use of Stresa Convention names included in the Italian list. In the agreements between States party to the Stresa Convention, such as the agreement between France and Italy or that between Italy and Austria, which contain a fairly considerable number of names of cheeses, the provisions of the Stresa Convention concerning the names of cheeses under that Convention have of course been safeguarded.

Studies and Revision Drafts of the Stresa Convention by the Stresa Council and BIRPI

In view of the situation resulting from the adoption of the FAO/WHO standards, the multiplication of bilateral agreements and the fact that international registration under the Lisbon Agreement had also been requested for the names of cheeses, the Stresa Council felt there was a need to carry out a comparative study of the various systems adopted at the international level and which could be suitable for protecting denominations of cheeses. Thus, the United International Bureau for the Protection of Intellectual Property (BIRPI)² in Geneva was asked for an opinion and, in their report of September 22, 1969, BIRPI furnished through the Swiss Government, which was competent in this respect, a detailed reply.

The BIRPI document states that appellations of origin constitute a special case of indications of source and that their evaluation is left to the discretion of the State in which protection is requested. The Paris Convention for the Protection of Industrial Property

makes no distinction between the two categories with respect to the repression of false geographical indications (Article 10). The Madrid Agreement also assimilates the two categories for the purposes of the repression of false or deceptive indications and leaves it to the discretion of the courts of the State in which protection is requested to decide whether the denomination is unsuitable for protection by reason of its generic character; however, regional appellations for wine products cannot be held to be generic (Article 4).

It may be recalled that at the 1958 Lisbon Conference, convened for the purpose of revising the Madrid Agreement, a number of interested parties requested that the privileged treatment reserved for wines (and wine-based alcoholic beverages in general) should be extended to the names of other agricultural products and even to industrial products such as beer, mineral waters and cheeses, already protected under various domestic laws and agreements of more than a simple bilateral nature, such as the Stresa Convention. This proposal was rejected and Article 4 remained unchanged since even the suggestion to replace the term "appellations" by the more appropriate word "denominations" in the first part of the Article also proved to be unacceptable. Basically therefore, protection of appellations of origin remained linked to concepts which essentially corresponded to private interests, whereas indications of source were protected on the basis of industrial and commercial interests within the framework of international competition, particularly for the purposes of customs regulations on products, without reference to the nature or quality of the products thus designated. In the case of the names of cheeses, this outcome was a point in favor of the Stresa Convention.

On the other hand, a special agreement was adopted in Lisbon for the protection of appellations of origin in accordance with the concept already well established in France (and Italy) both under national legislation giving protection, in particular, to names of wines and under a number of bilateral agreements (of which the first concluded between France and the Benelux countries dates back to before the war). The Lisbon system consists, as is known, of the international registration of appellations of origin already protected as such and allotted to specific categories of owners within the national system. Protection can, however, be refused by the other member States without them being required to give grounds. In view of the specific subject matter of its protection, the Lisbon Agreement is also felt to be a viable instrument of protection for indications of origin for cheeses. Indeed, various names of cheeses are already protected under the provisions of the Lisbon Agreement (twenty-two French, five Czechoslovak and three Italian); among the cheeses included in List A under the Stresa Convention, Roquefort and Parmigiano Reggiano have been registered.

² BIRPI is the former name of the International Bureau of the World Intellectual Property Organization (WIPO).

The bilateral agreements concluded between various European States, particularly after 1960, concerning the protection of indications of source, appellations of origin and other geographical indications (or names of other products)³ have all adopted the criterion of protection of product names linked directly or indirectly (such as Fontina valdostana and Reblochon savoyard) with geographical localities. The lists of names of products annexed to the Agreements include a number of names of cheeses which enjoy full protection in the Contracting States subject to various stipulations (as those already referred to in respect of names of cheeses under the Stresa Convention). Protection is based on the rules for the repression of unfair competition as regards the use of false or deceptive indications or signs. The special rules governing appellations of origin are of course applicable, also from the point of view of *legitimitas ad causam*, which a large number of States acknowledge in respect of groupings of producers, traders and even consumers, independently of the existence of a collective propriety right in the denomination. However, even though a number of these agreements establish the principle of *lex sequitur nomen* and therefore set up a uniform protection within the Contracting States, the most significant feature of the bilateral agreements is that the international protection which they afford is independent of the protection under domestic law. This enables the various categories of geographical names, whether they be appellations of origin, indications of source, both simple or subjectively or even objectively qualified, or other names which are only indirectly geographical or even altogether non-geographical, to be protected at the level set under national legislation and to reserve their use for the member States for the purpose of preventing, at least in relations between the parties, the indications from becoming part of the public domain, even in the absence of specific provisions under domestic law.

To conclude its study, BIRPI confirmed that the system of protection closest to that of the Stresa Convention was to be found under the Lisbon Agreement. Although the Stresa Convention, contrary to the Lisbon Agreement, does not contain a definition of appellations of origin, it does require that, for the names to be entered in List A under the Convention, the conditions set by the State of origin, corresponding in the main to those required under the Lisbon system, must be complied with. A fairly sizeable difference does, however, exist between international registration under the Lisbon Agreement and approval by the Stresa Council, since the latter makes protection by the other member States

compulsory without provision for possible objections, and affords a protection which is not limited in time, thus preventing the protected names from becoming generic. The denominations entered in List B under the Stresa Convention cannot be classified under the system of protection provided by the Lisbon Agreement. In its report made in 1975, WIPO commented that such names were rather indications of quality and could not, therefore, be included among true geographical indications.

The stringency of the provisions of both the Stresa Convention and the Lisbon Agreement, in conjunction with the requirements of domestic law, which are only to be found in a small number of legal systems, explain, at least in part, the small number of accessions to these two agreements (more than three-quarters of the appellations of origin currently registered at the international level on the basis of the Lisbon Agreement by the eleven member States are, in fact, names of French products).

After having noted the conclusions of the BIRPI report, the Stresa Council considered that the system under the Lisbon Agreement, in which only two Stresa Convention countries, France and Italy, were participating and which applied solely to appellations of origin, was not best-suited to meet the requirements of numerous other countries which were producers of cheeses. Consequently, the Council decided to request the Italian Government to convene a committee of experts to examine the possibilities and conditions for revising the Stresa Convention, particularly a number of proposals aimed at extending protection to other denominations (specifically, indications of source and, more generally, geographical indications) which appeared in numerous bilateral agreements or resulted from the harmonization of the Conventions with the bilateral agreements in order to eliminate the discrimination between the various types of milk used in making cheeses and extending protection to a number of milk products, if possible. The Council also requested that rules be studied for the marketing of "prepacked" cheeses, the coordination of rules for testing in order to facilitate trade in cheeses, the adoption of adequate coordination measures as regards trials and concerning advertising based on the technical characteristics of products. The Council's obvious intent, while seeking to extend protection to other geographical names, was still to make the use of the names conditional upon the characteristic qualities of the cheeses. The Italian Government agreed to this request and a Working Group met towards the end of 1972. This Working Group endorsed the suggestion as regards extension of protection to various geographical indications (but not the suggestions on the rules for marketing cheeses, which could be covered by suitable provisions of a commercial nature adopted by either the Council or other bodies) and based itself to a large extent on the bilateral

³ See *Industrial Property*, 1974, pp. 371 *et seq.*

agreements to draw up a basic draft for the meeting of experts. This draft tended, however, to depart excessively from the provisions of the Stresa Convention, particularly in replacing the system of two lists of denominations of cheeses by a single list containing different levels of protection which were not clearly defined. It was therefore felt preferable to carry out a more detailed study to define precisely the subject matter of protection of geographical names of cheeses and of names which, quite independently of geographical origin, corresponded to standards of quality.

The comparative examination of the Lisbon Agreement and Stresa Convention systems presented in this study will also take into account the "parallel" rulings contained in the WIPO draft.

**Comparative Examination of the Rules
of the Stresa Convention and the Lisbon Agreement,
on the One Hand, and those of the WIPO Draft
and the Draft Revision
of the Stresa Convention, on the Other**

The WIPO draft contains certain definitions and includes in the category of geographical indications both the indications of source and the appellations of origin of goods.

Indications of source are denominations, expressions or signs indicating that a product originates in a country, a region or a specific place.

The WIPO draft does not mention the "qualified" indications of source that have evolved in German doctrine, which are conditioned by the convictions of public opinion as a whole, or of a substantial part of it, and associate certain qualitative characteristics of a product to the place in which it originates.

In the "Scotch Whisky" decision of July 3, 1968, the Supreme Court of the Federal Republic of Germany took into account for the first time the need for protection of qualified geographical indications of source, even in the case of foreign indications, thereby opening the way to complementary protection of the qualities and prices of goods and consequently their names, which thus come to resemble appellations of origin.

The stricter protection of qualified geographical indications as compared with simple indications is somewhat reminiscent of that afforded to "strong" trademarks as opposed to "weak" trademarks; the former are given greater protection owing to their greater renown and economic value, which give rise to more infringements.

The Stresa Convention makes no mention of indications of source for cheeses; however, the denominations in List B associate with the product's

quality element, linked to its "historical" origin, the element of its geographical source; the denomination, used alone in the State of origin, must be accompanied by a mention of the State of manufacture, if different from the State of origin, and this applies even if the product is intended for the domestic market.

It is laid down that the denominations in List B of the Stresa Convention are not appellations of origin in the generally accepted sense (and that therefore they cannot "accede" to List A of the Convention); however, it is for the State of origin to determine the conditions for the use of these names in relation to quality requirements (applicable, according to the WIPO draft, to all geographical names). The system adopted under the Stresa Convention for names in List B is intended, on the one hand, to inform consumers that the products they are concerned with are not original products, even if they are in conformity with the requirements laid down by the State of origin, and, on the other hand, to prevent the manufacture of a cheese that has been more or less "invented" (an occurrence that is less rare than it might seem) in order to take advantage of the renown of a denomination among consumers. For instance, the purchaser of "Camembert Italia" knows that the product is not original, but he knows also that it is nevertheless not a fanciful one and, moreover, that the name Camembert used alone denotes a cheese that is without any doubt French. Thus, the denominations of the Stresa Convention permit identification of the geographical source of the goods.

The definition of *appellations of origin* in the WIPO draft (Article 2(iii)) comes quite close to the one that would result if the provisions of Articles 3 and 5(b) of the Stresa Convention were combined. The latter mentions local, loyal and uninterrupted usages by virtue of which cheeses are manufactured in "traditional" regions. No mentions of these usages, or of tradition, both of which are fairly limitative, is made in the WIPO draft; there is, however, a definition which is widely recognized in a number of countries and in the Uniform Law adopted on the subject by the countries of OAMPI (Article 1). The definition in the WIPO draft, which is inspired by a proposal formulated equally long ago, considers the natural factors requirement separately from the human factors requirement, although the two can neverthe ess coexist; it represents a considerable step forward, as it is tailored to suit the economies and legal systems of many countries. It is applicable to names of cheeses, the value of which is due also to particular local working methods (sometimes the different stages of production occur in different places; this eventuality is also provided for in the Stresa Convention, which makes a distinction between the manufacture and the maturing of the products). However, the denomination of the product is always linked to a geographical location, which may be identified with the "tradi-

tional region" provided for in the Stresa Convention for appellations of origin (like the areas where Parmigiano Reggiano, Grana Padano or Pecorino Romano are made: they are manufactured in various provinces, in several administrative regions). The geographical indication may also be indirect, as is the case with a number of names of wines and even cheeses (Lachrima Christi, Fontal). In exceptional cases, there may be appellations of origin linked simply to the nature of the soil (Graves) or to a given grape variety (Muscadet). In Italy, since the entry into force of Law No. 616 of July 14, 1968, by which the Lisbon Agreement was ratified, the appellation of origin concept has been applicable to typical products produced in considerable volume and having considerable economic value, and which, in the course of time, have acquired considerable renown through the use of the same denomination; this criterion corresponds to the provisions applicable to names in List A of the Stresa Convention.

The concept of *use in the course of trade*, proposed in the WIPO draft (Article 2(iv)), is reminiscent of a similar provision in the Madrid Agreement (Article 3bis). The corresponding provision of the Stresa Convention is drafted on the same lines, while that of the draft revision of the Stresa Convention provides also for the use of names in connection with agricultural and industrial activities to which the rules for the protection of names of cheeses apply.

Whereas under the Stresa Convention it is the *State of origin* that is competent to lay down the rules applicable to the name of a cheese and to apply for its protection, under the WIPO draft, which is conceived more broadly, the State of origin is the one to which a geographical indication directly or indirectly refers.

Under the WIPO draft, the Contracting States undertake to protect geographical indications of any type that *refer directly or indirectly to another Contracting State* (Article 3(1)). The Stresa Convention indirectly produces the same result by prohibiting the use of appellations of origin, denominations and designations that are contrary to the provisions of the Convention (Article 1, second paragraph). The draft revision of the Stresa Convention obliges member States to protect not only cheeses and dairy products but also all geographical indications (appellations of origin, denominations, designations) included in the single list annexed to the Convention (which nevertheless provides for protection at different "levels").

Article 3(2) of the WIPO draft is designed to safeguard more extensive protection that may be afforded to geographical indications by *other treaties* (bilateral or multilateral, including, therefore, the Stresa Convention) or by provisions of national law. This rule corresponds to that of the Lisbon Agreement (Article 4) and to a similar provision in the draft revision of the Stresa Convention (Article 16). The

principle of cumulative protection, which is also recognized in the bilateral treaties, is not at variance with the present Stresa Convention system either; some names in the Stresa Convention lists have been the subject of international registrations at the Secretariat of the Lisbon Agreement, and others appear in the lists appended to bilateral treaties.

Article 4 of the WIPO draft is in itself a special agreement for the repression of *false or deceptive geographical indications*, and it broadens considerably the scope of the protection afforded by the Madrid Agreement. The draft applies to all geographical indications the prohibition of corrective expressions that previously applied only to appellations of origin (Article 4(2)). Moreover, the provisions of the draft revision of the Stresa Convention are not fundamentally different with respect to the names and graphic representations used on products not originating in the State of origin (Article 4(2)); they apply to any product improperly bearing a name or graphic representation (mountain, lake, monument, national dress) that evokes a State or a place located in a State, to which the name or graphic representation refers (for instance, the name or a picture of Vesuvius to identify a Mozzarella cheese manufactured in a State other than Italy, even in the hypothetical case of the name Mozzarella being considered generic).

International registration relates to a *geographical indication*. This may be the name of a State, the name of a major geographical circumscription of that State or another denomination which serves to indicate the source of a product (Article 5(i), Article 6(2) and (3)). The protection of names of States has long been recognized in bilateral treaties, as has the protection of the historical names of States (Gaul, Iberia, Helvetia). The draft revision of the Stresa Convention also mentions the names of States as being eligible for protection (Article 2), and certain cheeses may be indicated by either the present or the historical name of the State (Holland). The Lisbon Agreement provides for the registration of the names of States (Cuba), which seems particularly useful to developing countries.

The major administrative circumscription may be the same as the name of a historical region (Lombardy, Bavaria, Corsica, Ticino), and in that case its configuration is also generally known abroad. In other cases, the registration must be accompanied at least by the name of a product. As we have already mentioned, the situation is different in the case of cheeses in List A of the Stresa Convention that come from traditional historical regions (Parmigiano Reggiano, Pecorino Romano) or geographical regions (Grana Padano), where the regions do not correspond to administrative circumscriptions. Consequently, this eventuality should also be provided for, as perhaps should that of minor circumscriptions (provinces and districts, which sometimes coincide with regions, as in the case of the

Alto Adige and the Aosta Valley), and even that of circumscriptions covering more than one State (Mosselle, Jura; the name Gruyère may be used under the Stresa Convention by both France and Switzerland, but the fact is that it is included also in the Greek list of the Treaty between Greece and Hungary, both countries being party to the Lisbon Agreement).

International registration brings with it the *prohibition of the use of registered geographical names* (on goods that do not come from the State of origin, or that do come from the State of origin but do not comply with the requirements of its law, including requirements relating to quality standards) (Article 9(1) and (2)). The WIPO draft specifies that registered denominations are protected also in other languages, and repeats that their use with corrective expressions or with indications of true source is prohibited (Article 9(3)). The prohibition on the use of geographical denominations reserved for other States or for given products of other States is absolute, with the exception, however, of certain special cases, such as the case of States, regions or products that have the same name or the case of names of persons that are the same as geographical denominations. When it occurs, the use of the denominations themselves by persons having the same name is authorized, subject to special precautionary measures and within the limits of good faith (Article 10).

As we have already mentioned, the Stresa Convention also protects translations of names in List A, prohibits the use of corrective expressions with these names, lays down special rules for the use of List B names, and provides that the names of all exported cheeses must be accompanied by an indication of the country of manufacture (Article 6). The system is based therefore on respect for denominations belonging to others, at least to the extent of avoiding confusion with the products of other countries. The draft revision of the Stresa Convention comes very close to the WIPO draft; it protects the names of States, provinces or administrative regions, and regulates the cases of homonyms and personal use of protected geographical denominations (Article 2).

The *objections* allowed in the WIPO draft give protection a somewhat unpredictable character, far less, however, than does the present text of the Lisbon Agreement, under which the possibilities for refusal of protection by other member States are practically unlimited. The grounds for objection indicated in Article 8 of the draft are essentially two: the denominations for which protection is sought are not geographical indications, or they have become public property in the State in which protection is sought. The text does not contain a reservation comparable to that provided for in the Madrid Agreement (Article 4) for appellations for products of the vine, and specifies that the generic character of the denomination of a product arises from the fact that

it is considered such by the general public and used as such in the course of trade. The assessment of generic character is entrusted to the competent authorities of the "State of protection," which has to base its decision on principles and elements related to the particular circumstances of the country. The situation is different under the Stresa Convention, where the assessment is entrusted by implication to a collective legal-technical body on which all the interested States are represented, namely the Permanent Council, which must also take note of the advisory opinion of the International Dairy Federation for the entering of names in List B, and its decision is binding on all member States, without any possibility of exceptions or reservations.

Opinions on the generic character of geographical denominations are somewhat different in the doctrine and case law of the various States. Sometimes it is required that the denomination be considered generic by the general public, or only by interested circles; it can also happen that the concept itself is based on principles of domestic law, including custom. Alternatively, it may be required that the denomination be intrinsically generic, a condition that could be made into a generally acceptable objective concept if there were a consistent terminology common to the various interested countries having different traditions and even different languages. Consequently, the only solution available to offset the risk of the denominations acquiring generic character and degenerating is for the parties to enter into agreements for the mutual protection of their respective geographical denominations; this is the system adopted in the bilateral treaties and applied in both the WIPO draft and the draft revision of the Stresa Convention.

The possibility of *limitation* and *cancellation* of the international registration introduced in the WIPO draft (Article 14) does not exist in the Stresa Convention. Unlike the Lisbon Agreement, which provides that a registered denomination is protected as long as it does not become generic in the State of origin (Article 6), the Stresa Convention provides safeguards for protected denominations that are practically unlimited in time, and no case can yet be cited, not even a "de facto" one, of renunciation or limitation of protection. Bilateral treaties allow the names on the lists to be limited in number or even modified; moreover, protection can be made subject to specific requirements of the other contracting State (for instance, the name "Grana" in the Italian list of the Italo-German Treaty may not be translated into "Trockenkäse"; the name "Toma" is reserved for Italy and the name "Tomme" for France in the Convention between those two States; in the recent treaty between Italy and Spain, it is specified that the denomination "Sangria" may also be used in Italy, subject to certain conditions).

Article 15 of the WIPO draft gives member States the possibility of transmitting to the International Bureau *legislative texts or regulations* relating to the right to the use of a denomination and the requirements for such use. The Council of the Stresa Convention first examines the texts that afford protection to the denominations of cheeses in the State of origin, while the draft revision of the Stresa Convention contains a provision (Article 7) that corresponds to the one in the WIPO draft.

The safeguarding of prior rights is provided for in Article 16 of the WIPO draft, which allows a *period of grace* of two years, identical with that of the Stresa Convention (Article 5, last paragraph) and that of the draft revision of the same Convention (Article 6(1)) for the use of articles bearing denominations that do not comply with the provisions of the Treaty (a three-year period of grace is provided for in the WIPO draft (Article 16(2)) and in the draft revision of the Stresa Convention (Article 6(2)) for the subsequent use in the course of trade of denominations prohibited by the respective texts). Similar transitional provisions are frequently found in bilateral treaties.

Finally, the provisions of the WIPO draft on *sanc-tions and the right to bring actions* (Article 17) are to a large extent identical with those of the draft revision of the Stresa Convention (Article 5). It is possible, for the repression of abuses, to resort to all judicial and administrative remedies authorized by the State in which protection is sought, including seizure. These remedies are available not only to private persons but also to associations of various categories, including groups of consumers, in so far as the legislation of the State of origin and that of the State of protection permit. Provisions of this kind are also found in a number of bilateral treaties.

Both the WIPO draft (Article 23) and the draft revision of the Stresa Convention (Article 15) provide the possibility of bringing disputes between member States before the International Court of Justice. However, the provision in the WIPO draft may be the subject of a reservation (Article 28), in view of the difficulties of an internal nature that prevent certain States from going before foreign courts. Finally, the WIPO draft, like the Lisbon Agreement, allows the accumulation of protection under the Treaty and protection under other treaties, bilateral or multi-lateral (Article 4). There is a similar provision in the draft revision of the Stresa Convention (Article 16), which also gives member States the possibility of concluding new treaties on the subject (Article 17).

The Rules of the European Economic Community

It would appear worthwhile, for the purposes of this study, to examine the rules applicable to geographical names within the European Economic Community (EEC).

All the EEC Member States are party to the Paris Convention. Five of them (France, Germany (Federal Republic of), Ireland, Italy and the United Kingdom) are parties to the Madrid Agreement; four (Denmark, France, Italy and the Netherlands) to the Stresa Convention and two (France and Italy) to the Lisbon Agreement.

At the bilateral level, clauses to protect appellations of origin have been introduced since before the war in various trade agreements concluded between countries which now form part of the EEC (such as the agreements between France and the Belgo-Luxembourg Economic Union (1928), and France and the Netherlands (1935), which also protected names of cheeses). More recently, France, the Federal Republic of Germany and Italy have concluded bilateral agreements, as already mentioned, which employ the system of lists, and have endeavored to "consolidate" the respective lists throughout the whole of the EEC territory by means of a supplementary agreement with the Benelux countries. This attempt, in fact, bore no fruit since, among other reasons, the Benelux States possess very few designations of origin and a number of those are freely used throughout the Benelux area. The Netherlands nevertheless sought to enhance designations of origin through the work of the Council of Europe Committee set up to prepare an agreement on the protection and marketing of alcoholic beverages. They proposed that negotiations should cover the names of wines of registered origin at the same time as the other Benelux products. This proposal, which constituted a precedent for the "overall" negotiations on geographical indications, fell together with the draft of the convention proper following the difficulties in reaching an agreement between States (even non-European States) whose legal systems were too divergent. It was also felt that a preventive agreement should be concluded in this area between the EEC Member States. The accession of Denmark, Ireland and the United Kingdom to the EEC has complicated the question of protection for geographical indications throughout the Community territory. Although all the Member States have domestic rules for the repression of unfair competition, which are equally applicable to foreign produce, there exists no common concept of appellations of origin or of indications of source, due also in part to questions of terminology and language (in English, the terms indications of origin and indications of source are used indiscriminately).

At the session of the Committee of Experts on the International Protection of Appellations of Origin and Other Indications of Source, convened by WIPO from December 1 to 5, 1975, in Geneva, the representative of the European Communities entered a reservation in respect of Community competence in this area with reference to the common commercial

policy, the principles of which are set out in Article 113 of the Treaty of Rome, for the commercial promotion of names, which requires the true identity of names and the quality of the products to be respected.

The EEC has already looked into this matter on a number of occasions, particularly when adopting various regulations concerning the names of wines. Regulation 817/70 defines quality wines produced in specified regions (Quality Wines P.S.R.); Regulation 2133/74 establishes general standards for the designation and presentation of wines and musts; Regulation 2247/73 deals with notification and publication of Quality Wines P.S.R. in the Official Journal of the European Communities. The term "Quality Wines P.S.R." covers the traditional appellations of origin and the geographical indications of German wines (Ahr, Mosel, Rheingau) which, for the purposes of the EEC, are assimilated to appellations of origin. The German Wine Law of July 14, 1971, gives the *Länder* the possibility of dividing up the wine regions into smaller districts and local authorities may lay down quality requirements for wines, thus establishing conditions which make it easier to apply common rules based both on the origin and the quality of products. Additionally, in Directive 70/50 of December 22, 1969, on the repression of measures having equivalent effect to quantitative restrictions on imports (Article 30 of the Treaty), the Commission prohibited the Member States from confining names which were not indicative of origin or source to domestic products only (Article 2(s)), subject to the provision of the Treaty excluding the protection of industrial property from Community rules, on the condition that it does not constitute a means of arbitrary discrimination or disguised restriction on trade between Member States (Article 36). It is therefore for the Member States to issue rules on appellations of origin and indications of source, but they are forbidden to use as such, for their own products alone, names which cannot be placed in either of the two categories of geographical indications or which are to be considered generic. The Directive gives no instructions on how to define a common concept of the generic nature of geographical names or any lead which could be of use in preventing geographical names of products from becoming completely or partly generic terms.

The rules adopted under Regulation 802/68, adopted on June 27, 1968, for a common definition of the origin of goods, stipulate which place is to be considered the place of production or of final processing for goods which may have been worked in various States for the purposes of applying the common customs tariff, the Community measures on the importation of goods, and the issuance of certificates of origin, and is therefore not of application for identifying and protecting geographical indica-

tions. Likewise, the Community Environmental Programme, decided by the Council of the European Communities and published on December 20, 1973, which empowers the Commission to submit proposals to the Council as regards production techniques and marketing measures in relation to the transformation and protection of the natural environment, including the commercialization and protection of the authenticity and typical characteristics of natural products, offers no suggestions as to the denominations of such products.

A number of decisions taken by the Court of Justice of the European Communities call for comment, such as the judgment given in Case 8/74 (*Dassonville-Foucroy v. S.A. Breuval & Cie*), which holds that for as long as no Community system guaranteeing the authenticity of appellations of origin for products has been set up, the Member States may adopt measures to repress possible abuse, subject to such measures not constituting a means of arbitrary discrimination or a disguised restriction on trade between the Member States (in the case in point, the request by the Belgian party for a British certificate of origin for importing a product into Belgium, which had already been introduced into France, was judged to be arbitrary).

The Court gave a judgment of considerable interest on February 20, 1975, in Case 12/74 (*Sekt and Weinbrand*), as a result of proceedings instituted by the Commission concerning certain provisions of the German Wine Law which confined these denominations, respectively, to sparkling wines and potable spirits of wine produced in the Federal Republic of Germany or any other State of which German was the official language throughout the country, whereas similar products from other States were to use exclusively the designations *Qualitätsschaumwein* and *Qualitätsbranntwein aus Wein*, respectively. According to the German Government, the above-mentioned designations reserved for German wines constituted qualified indications of source in the opinion of the German public, which attributed special qualities linking them to the place of origin. In its action before the Court, the Commission claimed that, on the contrary, these denominations were not qualified indications of source but simply generic names.

The Court upheld the application on the grounds that appellations of origin and indications of source should designate products originating in specified geographical areas and that their purpose was to guarantee the effective origin of products demonstrating the characteristics and qualities which permitted them to be distinguished from other products. According to the Court, whether or not an indication of source is qualified cannot depend on the opinion of the local public but only on the intrinsic capability of the name to act as a geographical indication; moreover, an area which corresponds to the entire

extent of the national territory or is defined on the basis of a linguistic criterion cannot constitute a geographical area capable of justifying an indication of origin. Thus, the Court rejected the German contention that the geographical indications were subjectively qualified and preferred the objective criterion of the intrinsic relevance of the name, which is certainly better adapted to the requirements of a unified market. Finally, the Court confirmed that under Article 36 of the Treaty, the Member States were free to legislate in matters of indications of source but were not allowed to give protection thereunder to generic denominations, such as those under discussion, since they constituted arbitrary measures having equivalent effect to quantitative restrictions forbidden by the Treaty.

The outcome of the case is certainly a justified one. The terms in question are indubitably of a generic nature and have, in fact, been used for products coming from various States, some of which are entirely German-speaking, while others include German-speaking provinces. Although the judgment contained an explicit recognition of appellations of origin, as did that given in Case 8/74, some doubts nevertheless persist as regards the assimilation of indications of source to appellations of origin. In the case in point, the Court adopted an even more stringent and restrictive concept of appellations of origin by requiring there to be a close link between the geographical environment and the characteristic qualities of the product. Such a criterion would exclude protection, in particular, for names of industrial products.

Mention may also be made of EEC Wine Regulation 1160/76 of May 17, 1976, adopted on a proposal by the Commission, which stipulates that quality wines imported from non-member countries and which bear a geographical indication may enjoy, subject to reciprocity, the protection afforded to Quality Wines P.S.R. Agreements may be negotiated for this purpose with non-member countries at the initiative of the Commission (Article 29). The Court pronounced on this subject in its Opinion of November 11, 1975, given under the second subparagraph of Article 228(1) of the Treaty, which empowers the Court to give its opinion on the compatibility with the provisions of the Treaty of agreements which may affect the common commercial policy. In the above-mentioned Opinion, the Court reaffirmed the exclusive competence of the EEC in matters of commercial policy.

The adoption of a Community list of protected geographical names would certainly represent a particularly useful aim. It would not be necessary for this purpose to adopt prior regulations on names requiring the harmonization of national laws and possibly even the restructuring of the traditional institutions.

As in the case of wine, a solution could be adopted which would apply to numerous categories of names, including names of cheeses, and would therefore permit the Member States to preserve their respective systems of protection, which are not only recognized at Community level but also form part of conventions which represent an irreplaceable instrument in international relations. This observation applies just as well to the Stresa Convention. The EEC could replace the Member States in negotiations with non-EEC countries and with international organizations in so far as the common commercial policy is concerned (Article 113) but, according to a widely held opinion, industrial property, at least at the international level and as regards multilateral agreements, remains the preserve of the individual Member States, within the limits of Community commitments and directives, for as long as the EEC does not adopt specific regulations or does not, at the minimum, assume well-defined responsibilities with regard to regulations in this field.

So far, EEC interventions in this field have mainly been concerned with giving maximum effect to the principle of the free movement of goods, which it also applies to other industrial property institutions, particularly patents. In its recent judgment, perhaps the best known of its decisions, given in Case 15/74 (*Centrafarm v. Sterling Drug*), or the case of the "parallel" patents, the Court established a principle in favor of the free movement of patented articles within the Community territory which has exercised a determining influence on the system of so-called economic clauses, i.e., clauses concerning the exhaustion of patent rights and the conditions for granting compulsory licenses, laid down at the recent Luxembourg Conference on the Community Patent and extended for reasons of uniformity to the national patents of the EEC Member States. In substance, the EEC is asking that industrial property rights which, by their very nature constitute legal barriers to the free movement of goods, should be exercised in such a way that they do not result in discriminatory practices nor constitute unjustified grounds for dividing up the Common Market. It will certainly not be possible to exempt geographical indications for goods from this requirement in view of the principles and constraints laid down by the Treaty.

Conclusions

Comparative examination of the WIPO draft and the Stresa Convention, taking account also of certain provisions of the draft revision of the Stresa Convention, permits the following conclusions to be drawn.

The WIPO draft has a far broader scope, which takes in all geographical denominations for all categories of goods, with no obligation to provide for any specific internal system for the denominations them-

selves. The Stresa Convention regulates the use of the denominations protected by the indication of the origin and the qualitative characteristics of the products bearing them. Whereas the appellations of origin concept of the Stresa Convention corresponds, on the whole, to the definition given in the WIPO draft, the latter does not, as we indicated earlier, mention a category of names comparable to the denominations of the Stresa Convention, which nevertheless also have a geographically localizing function.

The "simple" denomination concept of the Stresa Convention emphasizes the traditional character of products that are widely known, and hence quite few in number, but not so few as not to be applicable also to the products of States other than the existing Member States. The denominations are names that are not necessarily still associated with origin, but which guarantee the original qualitative characteristics of the goods to which they refer, and which a cheese-manufacturing country has to maintain.

The appellations of origin of the Stresa Convention are protected more strictly than those of the WIPO draft; they are reserved without limitation in time, and there is no question of their becoming generic. The prior approval of the Council is an absolute guarantee of protection, but the requirement of special and specific control of the name at the national level, and the strict examination carried out by the Council, made up of technical and legal experts, which are conditions that can be imposed only by sectors, make protection very uncertain, and ultimately create a situation that differs little from the one associated with international registration.

Whereas in the WIPO draft the State of origin is the State to which a product refers and which is certified as being the source of that product, under the Stresa Convention that State is the one that decides on and establishes quality standards for all the products protected. In practice, the List B system of the Stresa Convention prevents many names denoting the origin of cheeses from subsequently acquiring generic character while, at the same time, allowing other member States to use them and protecting the names from straight imitation. The products concerned are fairly characteristic, like Provolone and Caciocavallo from southern Italy, which are manufactured by an exclusively local method of pasteurizing curds, rather than milk, in order to prevent the spread of germs. The manufacture of these cheeses elsewhere could be allowed under specified conditions, but the appropriation of the names of others would never be allowed.

This concept is not alien to the WIPO draft system either, as the possibility of negotiation can relate to the conditions under which certain names are used in other countries.

The international registration provided for in the

WIPO draft may relate to the name of a State, and there are products that do bear the name of a State. Even if one were to point out that the names of States are protected "by definition," their registration seems particularly useful for certain specific products, and in general for developing countries. The "traditional" regions of the Stresa Convention do not necessarily correspond to the major circumscriptions of the WIPO draft, but it is for the State of origin to limit the territorial area of protection and to adopt the system best suited to its interests by applying protection to appellations of origin and indications of source, and to other geographical names, which may also correspond to the administrative circumscriptions of the State. The WIPO draft system is broad and quite flexible, and corresponds only partly to that of the Stresa Convention, which nevertheless prohibits the use of false geographical names, regardless of category, and also applies protection to the names of States (List B).

The draft revision of the Stresa Convention is designed to extend the protection of names of cheeses, on the one hand (by the adoption of not-too-strict standards for the application of protection, also with a view to "retrieving" a few names and protecting the names of local products having recently become known at the international level in order to safeguard their originality in good time), and that of dairy products, on the other (however, many of the latter are made up of natural components while others have become generic; for instance, one could consider protecting Royal Danish Filled Milk, but it really does not seem possible to protect Ice Cream and Yogurt). In spite of all the good intentions, and even if one accepted the need to extend its territorial scope, the Stresa Convention system can be revised only on condition that there is no revival of old, settled conflicts between contracting parties and, above all, that no new ones are brought about. Even assuming the hypothetical priority of the origin, many names seem difficult to retrieve under the Stresa Convention (Emmental, for instance, as it is now firmly established in production in States other than Switzerland). It is in Switzerland's interest, however, to have the characteristics of its cheeses respected in as many States as possible (and it has, moreover, to the author's knowledge, certain names of cheeses that might be entitled to inclusion in List A). There are also cheeses that are widely imitated which could be given List B protection, for instance English Cheddar and various German cheeses. Both lists could also be combined in one, with different levels of protection, as with the "all-purpose" system envisaged for the WIPO draft.

The commitment to repress the false or dishonest use of geographical names is provided for in both the Stresa Convention and the Lisbon Agreement, as was mentioned earlier. Similar principles are applicable with respect to commercial documents. Generally

speaking, in almost every State there are rules governing, apart from the nature and quality of goods, their presentation, in other words, the material appearance that combines with advertising to induce the consumer to choose those goods. Consequently, foreign products are also subjected to fairly strict rules. In this respect, there are no fundamental differences of appreciation between the Lisbon and Stresa systems.

The European Economic Community has laid down rules for products of the vine that provide for the protection of geographical denominations since the Quality Wines P.S.R. system can be adapted to the appellations of origin and geographical indications of the wines of member States and is also applicable to foreign wines. Community rules governing the cheese market would prove useful in a sector which, in many ways, can be assimilated to that of wines and which, in addition, is of interest to all member States. Apart from this, the matter may interest the Community from the point of view of the subsidies applicable to animal fats and milk, since regulations on quality cheeses and their names could, as did the regulations that were put into effect for quality wines, lead eventually to the elimination of such intervention.

The Community system should apply primarily to the names of cheeses that are produced in particular regions, starting with those included in List A of the Stresa Convention, and are protected in many countries of the EEC. For other names of cheeses used throughout the Common Market, the List B system of the Stresa Convention could also be adopted. The application of the principle of fair dealing is perhaps even more necessary in a unified market, and most especially for dairy products and cheeses. Many countries of the EEC are also producers of cheeses that are exported in volume to outside countries, in many of which similar products are manufactured.

Outside the Community area, it is not easy to envisage solutions that would reconcile the various interests involved. The safeguarding of the real appellations of origin in List A of the Stresa Convention, which could be open to the names of other highly qualified cheeses, is a requirement that admits no derogation, regardless of the level at which the negotiations take place, either within the EEC or outside it. For the names of other cheeses, which are not few in number, the List B system of the Stresa Convention may also be useful, especially for immigration countries which produce cheeses similar to European cheeses (and perhaps also for developing countries, but the author is not in a position to assess the situation in this respect).

In conclusion, considering the various systems of protection existing at the national and international levels, the proposals for the improvement of the situation also in the context of the European Economic Community and the requirements of international trade, which is of interest to a great number of countries in the cheese sector, it may be said, in the author's opinion, that:

(i) the purpose of the Stresa Convention, which is to safeguard the names of quality products connected with specific regions or States, may be likened to that of the WIPO draft with respect to the criterion for the protection of geographical names that constitute appellations of origin or correspond to the name of the State, or, alternatively, are accompanied by specific quality requirements;

(ii) international registration under the WIPO draft differs from the system of approval of names by the Council of the Stresa Convention, but both have drawbacks that often can be overcome only by direct negotiation between the interested parties;

(iii) each special treaty has its own individual purpose, which may be completed by the purposes of other agreements with similar, parallel or complementary aims; this remark can also be considered in relation to special intellectual property agreements of limited scope (for instance, type faces, television broadcasts, olive oil, cheeses) which, however, at least for certain countries, have an interest that is not solely economic in character and which would justify the introduction of specific international protection, a consideration that would be equally valid in relation to the geographical names on goods. The WIPO draft does not encroach on similar agreements (Madrid, Stresa and the bilateral treaties), but it undoubtedly offers a more comprehensive framework, without excessive regulations or formalities, for the protection of all geographical names;

(iv) with this in mind, and considering also the above reservations regarding their respective purposes, it may be said that the system of protection of the Stresa Convention is compatible with the WIPO draft, that in some ways it "fits on top of it," and finally that the two can be used cumulatively;

(v) it is possible in theory to devise an appropriate form and manner in which to incorporate the Stresa system into the new draft, at the same time respecting all the rules, above all the one concerning the category of denominations in List B of the Stresa Convention, which is included within the framework of the geographical denominations protected by the new Treaty.

Calendar

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1977

- May 2 to 6 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)**
- May 4 to 13 (Geneva) — Nice Union — Diplomatic Conference on the Revision of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks**
- May 11 to 13 (Geneva) — Paris Union — Ad hoc Coordinating Committee for Technical Activities**
- May 16 to 27 (Moscow) — International Patent Classification (IPC) — Working Group IV**
- May 23 to 27 (Rabat) — Development Cooperation — Seminar on Copyright intended for Arab Countries**
Note: Meeting convened jointly with Unesco
- June 1 to 3 (Geneva) — Paris Union — Advisory Group on Computer Software**
- June 6 to 17 (Paris) — International Patent Classification (IPC) — Working Group I**
- June 13 to 17 (Paris) — Berne Union — Working Group on Cable Television**
Note: Meeting convened jointly with Unesco
- June 20 to 24 (Geneva) — Development Cooperation — Working Group on the Model Law for Developing Countries on Inventions and Know-How**
- June 20 to July 1 (Washington) — International Patent Classification (IPC) — Working Group II**
- June 27 to July 1 (Geneva) — Nice Union — Preparatory Working Group on the Revision of the Classification**
- June 29 to July 8 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on the Revision of the Paris Convention**
- September 21 to 23 (Geneva) — ICIREPAT — Plenary Committee**
- September 26 to October 4 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions; Assembly and Committee of Directors of the Madrid Union**
- October 10 to 18 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees**
- October 17 to 28 (London) — International Patent Classification (IPC) — Working Group III**
- October 24 to 28 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)**
- October 24 to November 2 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services**
- November 7 to 11 (Geneva) — Development Cooperation — Working Group on the Model Law for Developing Countries on Trademarks**
- November 7 to 11 (Paris) — ICIREPAT — Technical Committee for Standardization (TCST)**
- November 14 to 21 (Geneva) — International Patent Classification (IPC) — Steering Committee**
- November 14 to 25 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on the Revision of the Paris Convention**
- November 22 to 25 (Geneva) — International Patent Classification (IPC) — Committee of Experts**
- November 28 to December 6 (Paris) — Berne Union — Executive Committee — Extraordinary Session**
- December 7 to 9 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (organized jointly with ILO and Unesco)**
- December 8 and 9 (Geneva) — Berne Union — Working Group on the Rationalization of the Publication of Laws and Treaties in the Fields of Copyright and Neighboring Rights**

1978

- February 15 to 24 (Paris) — Berne Union — Committee of Governmental Experts on Double Taxation of Copyright Royalties**
Note: Meeting convened jointly with Unesco
- March 6 to 10 (Geneva) — Permanent Program — Working Group on Technological Information derived from Patent Documentation**
- March 13 to 15 and 17 (Geneva) — Permanent Program — Permanent Committee for Development Cooperation Related to Industrial Property**
- March 16, 17 and 20 (Geneva) — Permanent Program — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights**
- September 26 to October 2 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions**

1979

- September 24 to October 2 (Geneva) — WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union**

UPOV Meetings in 1977

Council: December 6 to 9

Consultative Committee: December 5 and 9

Technical Steering Committee: May 16 to 18; November 15 to 17

Committee of Experts on International Cooperation in Examination: May 17

Committee of Experts on the Interpretation and Revision of the Convention: September 20 to 23

Working Group on Variety Denominations: in the time between September 20 to 23

Note: All the above meetings will take place in Geneva at the headquarters of UPOV

Technical Working Party for Fruit Crops: May 10 to 12 (Madrid - Spain)

Technical Working Party for Agricultural Crops: May 24 to 26 (Hanover - Federal Republic of Germany)

Technical Working Party for Ornamental Plants: June 7 to 9 (Wageningen - Netherlands)

Technical Working Party for Forest Trees: June 14 to 16 (Orleans - France)

Technical Working Party for Vegetables: September 6 to 8 (Aarslev - Denmark)

Meetings of Other International Organizations Concerned with Intellectual Property

1977

May 1 to 4 (Amsterdam) — Union of European Patent Attorneys — Congress and General Assembly

May 4 and 6 (New York) — International Confederation of Societies of Authors and Composers — Legal and Legislation Committee

May 13 and 14 (Munich) — International Federation of Inventors' Associations — Annual Meeting

May 16 and 17 (Paris) — International Confederation of Societies of Authors and Composers — International Meeting on the Rights of Authors of Plastic and Graphic Arts

May 16 to 18 (Munich) — Deutsche Gesellschaft für Dokumentation — International Symposium on Patent Information and Documentation (organized in cooperation with WIPO and the German Patent Office)

May 23 to 25 (Dublin) — European Space Agency/European Broadcasting Union — Symposium on Direct Satellite Broadcasting

May 23 to 27 (Rio de Janeiro) — Inter-American Association of Industrial Property — Congress

September 8 and 9 (Antwerp) — International Literary and Artistic Association — Working Session and Executive Committee

September 18 to 21 (Edinburgh) — International League Against Unfair Competition — Working Session

October 25 to 27 (Belgrade) — Council of the Professional Photographers of Europe (EUROPHOT) — Congress

November 28 to December 6 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Intergovernmental Copyright Committee established by the Universal Copyright Convention (as revised at Paris in 1971)

1978

May 8 to 12 (Strasbourg) — Council of Europe — Legal Committee on Broadcasting and Television

May 12 to 20 (Munich) — International Association for the Protection of Industrial Property — Congress

May 29 to June 3 (Paris) — International Literary and Artistic Association — Congress

October 1 to 7 (Santiago de Compostela) — International Federation of Patent Agents — Congress

