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International Unions

Patent Cooperation Treaty (PCT)

UNITED STATES OF AMERICA

Declaration

The Government of the United States of America has deposited with the Director General of WIPO a notification which draws attention to its declaration made under Article 64(4)(a) of the Patent Cooperation Treaty (PCT) done at Washington on June 19, 1970, at the time of the deposit, on November 26, 1975, of its instrument of ratification of the said Treaty, and informs the Director General, pursuant to Article (64)(4)(a) of the said Treaty, of the following:

“As the National Law of the United States of America does not equate, for prior art purposes, the priority date claimed under the Paris Convention for the Protection of Industrial Property to the actual filing date in the United States of America, this country declares under Article 64(4)(a) of the Patent

Cooperation Treaty, that the filing outside of the United States of America of an international application designating the United States of America, is not equated to an actual filing in the United States of America for prior art purposes.

“If an international application designating the United States of America has been internationally published under Article 21 of the Patent Cooperation Treaty, the prior art effect of the international application shall attach as of that date. If such international application was not internationally published, the prior art effect shall attach to it from the date on which a copy of such international application in the English language, together with the national filing fee and an oath or declaration of the inventor, was received by the United States Patent and Trademark Office.”

The declaration of the Government of the United States of America will take effect on May 10, 1978.

PCT Notification No. 21, of March 17, 1978.

WIPO Meetings

Scientific Discoveries

Diplomatic Conference

for the Conclusion of a Treaty on the International Recording of Scientific Discoveries

(Geneva, February 27 to March 7, 1978)

NOTE *

Background

Scientific discoveries are generally considered the basis on which any technological progress is founded. Technical inventions differ from scientific discoveries

in that the former, unlike the latter, are directly applicable in industry.

The definition of “intellectual property” contained in Article 2(viii) of the Convention Establishing the World Intellectual Property Organization comprises “rights relating to scientific discoveries.” Such rights exist in some Member States of the World Intellectual Property Organization (WIPO) in the form of a right to obtain recognition as the author of a scientific discovery through the official recording of such authorship; in addition to such recording, a discoverer may also obtain recognition by other means, including in the form of remuneration. At the international level, however, there is as yet no system for the recording of the authorship of scientific discoveries.

* This Note has been prepared by the International Bureau.

It was in view of this situation that the Soviet Union proposed in 1971 the inclusion in the program of the International Bureau for 1972 of the task of studying the question of the place of scientific discoveries in the system of protection of intellectual property. This proposal was adopted by the Executive Committee of the Paris Union for the Protection of Industrial Property at its 1971 session. The Director General then convened a Working Group on Scientific Discoveries, which held four sessions in 1973, 1974, 1975 and 1976. The Working Group completed its task by presenting two alternative texts: a draft Resolution to be adopted by the General Assembly of WIPO and a draft Treaty to be adopted by a Diplomatic Conference. At its third ordinary session in September/October 1976, the General Assembly of WIPO decided that the draft Treaty should be submitted to a Diplomatic Conference for adoption.

The draft Treaty was published on October 14, 1977, and it served as the basis for the deliberations of the "Diplomatic Conference for the Conclusion of a Treaty on the International Recording of Scientific Discoveries," which was convened by the Director General of WIPO and held in Geneva from February 27 to March 7, 1978.

Delegations from 35 Member States of WIPO took part in the Diplomatic Conference with the right to vote, namely: Australia, Austria, Bulgaria, Byelorussian SSR, Cameroon, Canada, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, India, Iraq, Ireland, Italy, Japan, Mexico, Norway, Poland, Portugal, Qatar, Senegal, Soviet Union, Spain, Sweden, Switzerland, Ukrainian SSR, United Kingdom, United States of America, Zaire. Delegations from seven States not members of WIPO but members of the United Nations or other specialized agencies of the United Nations system took part in the Conference in an observer capacity, namely: Argentina, Madagascar, Mozambique, Republic of Korea, Thailand, Trinidad and Tobago, Venezuela. Finally, representatives of one inter-governmental organization, namely the International Telecommunication Union (ITU), and of two international non-governmental organizations, namely the International Association for the Protection of Industrial Property (IAPIP) and the International Literary and Artistic Association (ALAI) took part in the Conference in an observer capacity.

The Conference unanimously elected Dr. Otto Leberl, Head of the Delegation of Austria, President of the Conference. The Drafting Committee was presided over by Mr. L. Komarov (Soviet Union) and the Credentials Committee by Mr. K. Swaminathan (India). The Conference also set up a Contact Group; this Group, which was composed of delegations from the various groups of countries and presided over by

Mr. D. Ekani (Cameroon), had the mission of finding solutions to the most delicate problems that arose in the course of the Conference; it discharged its task successfully.

Dr. Arpad Bogsch, Director General of WIPO, took part in the discussions.

A list of participants, officers and the WIPO staff members constituting the Secretariat of the Conference follows this Note.

The Diplomatic Conference adopted a Treaty, consisting of 22 articles, entitled "Geneva Treaty on the International Recording of Scientific Discoveries" (hereinafter referred to as "the Treaty").¹ The Treaty was opened for signature on March 7, 1978. The Conference also adopted a Final Act evidencing the holding and outcome of the Conference. Finally, it approved the texts of two agreed statements to be included in the Records of the Conference.

Summary of the Treaty

Substantive provisions. The purpose of the Treaty, as its name suggests, is the institution of a system for the international recording of scientific discoveries within the framework of WIPO. The Preamble to the Treaty states the two main objectives of the Treaty, namely, first, to promote the progress of science through the stimulation of discoverers without discrimination by instituting a system which publicly associates their names with their scientific discoveries; second, to promote information on new scientific discoveries, for the benefit of the scientific community and the world at large, by instituting a system which makes the descriptions of such scientific discoveries accessible to them. The Preamble also mentions that a system for the international recording of scientific discoveries, by facilitating access to scientific information, is of interest to States and in particular developing countries.

The Treaty defines a series of expressions that occur several times in the text (Article 1(1)). These definitions include that of the scientific discovery: "the recognition of phenomena, properties or laws of the material universe not hitherto recognized and capable of verification."

In view of its importance, the provision setting out the scope of the international recording warrants quoting in full (Article 2): "The system for the international recording of scientific discoveries instituted by this Treaty: (i) provides for the widest possible access to the recorded scientific discoveries, (ii) does not affect the free use of the ideas contained in recorded scientific discoveries, (iii) does not affect the freedom of the Contracting States to grant or not

¹ For the text of the Treaty, see this month's *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES — Text 1-003.

to grant rights to discoverers of recorded scientific discoveries and, where any Contracting State grants such rights, the freedom of such State to fix the conditions for and the contents of such rights.”

An application for international recording may be filed with the International Bureau by any discoverer who is a national or a resident of a Contracting State. Provided that the discoverer gives his consent, the application may be filed by a legal entity established in a Contracting State. The discoverer's signature is required in all cases (Article 3(1) and (2)). This means that discoverers who are neither nationals nor residents of a Contracting State may not have their scientific discoveries recorded with the International Bureau. In every case, the application is also required to include a declaration by a scientific institution or government authority appointed by the Contracting State of which the applicant is a national or a resident (where the applicant is a natural person) or in which the applicant is established (where the applicant is a legal entity). The declaration consists of a statement to the effect that the subject matter of the application is a scientific discovery within the meaning of the Treaty and that the application is presented by the institution or authority concerned. The declaration may include an opinion on the merits of the scientific discovery or may certify its authenticity (Article 3(2) and Article 4). Among the mandatory contents of the application, mention may be made of the full description of the scientific discovery, an abstract of the description and the date on which the discovery was, for the first time, published or communicated to the public (Article 3(3)). It should be noted that an application is only receivable if filed within ten years of the above-mentioned date (Article 3(5)).

The International Bureau effects the international recording after a purely formal examination of the application (Article 5). The discoverer then receives a certificate from the International Bureau (Article 6). The latter publishes certain elements of the application, including the abstract of the description of the discovery, in the *Gazette of Internationally Recorded Scientific Discoveries* (Article 7).

Any natural person or legal entity (including those who are neither nationals nor residents of a Contracting State) may file with the International Bureau, without time limit, observations on an internationally recorded scientific discovery. As a result of such observations, those concerned may file counter-observations and the description of the scientific discovery or the abstract may also be amended. Any amendment to an abstract is published (Article 8).

Anyone may, on request, have access to the information contained in the international register (Article 9).

Withdrawal and cancellation procedures are provided for primarily to prevent the international register from containing data which the discoverer

subsequently considers not to correspond to reality (Article 10).

Finally, the Treaty provides for the setting up of a classification system (Article 11).

Administrative Provisions. The Treaty establishes an Assembly, consisting of the Contracting States, with the tasks, in particular, of adopting at its first session Regulations for implementing the Treaty and of amending certain provisions of the Treaty or the Regulations (Articles 12, 14 and 15).

The financing of the international recording system is to be fully provided by the fees to be paid to the International Bureau (for filing the application, for filing observations, counter-observations or amendments to the description or the abstract, and for access to information contained in the international register) and by the sale of the *Gazette*. It is also provided that, in the event of a financial year closing with a deficit, the Contracting States should pay contributions to cover the deficit (Article 13). The Treaty therefore imposes no financial commitments on States that are not Contracting States.

Final Clauses. It should be mentioned that the Treaty is the first international instrument concluded since the establishment of WIPO that is open to all States members of WIPO (rather than to States members of the Paris Union for the Protection of Industrial Property or of the Berne Union for the Protection of Literary and Artistic Works). To become party to the Treaty, a State that has signed it must deposit an instrument of “ratification,” whereas a State that has not signed it must deposit an instrument of “accession”; these instruments must be deposited with the Director General of WIPO (Article 16). The entry into force of the Treaty requires the deposit of ten instruments of ratification or accession (Article 17). No reservations to the Treaty are permitted (Article 18). Another important feature of the Treaty is that it is signed in a single original in the English, French, Russian and Spanish languages, all texts being equally authentic; the Treaty provides for the establishment of official texts in other languages; it will remain open for signature at Geneva until December 31, 1978 (Article 20). Finally, the Treaty contains the usual provisions on denunciation, depositary functions and notifications (Articles 19, 21 and 22).

Conclusion

The adoption of the Geneva Treaty on the International Recording of Scientific Discoveries marks an important date in the history of WIPO and intellectual property in general. While in fact the Convention establishing WIPO refers to scientific discoveries in

its Article 2(viii), it goes no further. It may thus be said that the Geneva Treaty is the first multilateral intellectual property treaty concluded in the field of pure science.

Although under the Treaty the international recording of a scientific discovery does not entail any obligation for Contracting States to give any legal effect to the recording, its importance should be stressed to the extent that, when it has entered into force and become fully operational, it will facilitate access to scientific information to a considerable degree, in particular for developing countries.

LIST OF PARTICIPANTS

I. Member States

AUSTRALIA

Head of Delegation

H. Freeman, Second Secretary, Permanent Mission, Geneva

AUSTRIA

Head of Delegation

O. Leberl, President, Austrian Patent Office, Vienna

Delegates

H. Querner, First Secretary, Permanent Mission, Geneva
H. Pawloy, Patent Attorney, Vienna

BULGARIA

Head of Delegation

B. Todorov, Ministre Plénipotentiaire, Ministère des affaires étrangères, Sofia

Delegate

K. Iliev, Directeur, Institut d'inventions et rationalisations, Sofia

Advisor

S. Tzvetkov, Counsellor, Permanent Mission, Geneva

BYELORUSSIAN SSR

Head of Delegation

V. Jouk, Deputy Chief, Department of Foreign Affairs, State Planning Committee, Minsk

CAMEROON

Head of Delegation

D. Ekani, Director General, African Intellectual Property Organization, Yaoundé

CANADA

Head of Delegation

P. Thibault, First Secretary, Permanent Mission, Geneva

Delegate

J. Gillies, Third Secretary, Permanent Mission, Geneva

CZECHOSLOVAKIA

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A. Ringl, Conseiller, Office des inventions et des découvertes, Prague
V. Pirč, Conseiller, Ministère des affaires étrangères, Prague

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

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K. W. Djo, Attaché, Permanent Mission, Geneva

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Head of Delegation

S. Rubow, Counsellor, Permanent Mission, Geneva

EGYPT

Head of Delegation

F. El Ibrashi, Minister Plenipotentiary, Permanent Mission, Geneva

Delegate

T. Dinana, Second Secretary, Permanent Mission, Geneva

FINLAND

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E. Wuori, Deputy Director General, Patent and Registration Board, Helsinki

Delegate

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S. Salman, Conseiller d'Etat, Ministère de la justice, Baghdad

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S. Egorov, First Secretary, Permanent Mission, Geneva

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L. Grundberg, First Secretary, Permanent Mission, Geneva

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M. Jeanrenaud, Conseiller d'ambassade, Permanent Mission, Geneva

UKRAINIAN SSR

Head of Delegation

Y. Egorov, Head of Department, Member of the Board, Ministry of Foreign Affairs, Kiev

UNITED KINGDOM

Head of Delegation

D. Cecil, First Secretary, Permanent Mission, Geneva

Delegate

K. MacInnes, Counsellor, Permanent Mission, Geneva

UNITED STATES OF AMERICA

Head of Delegation

H. J. Winter, Director, Office of Business Practices, Department of State, Washington, D.C.

Alternate

B. Grossman, International Intellectual Property Specialist, United States Patent and Trademark Office, Washington, D.C.

Advisor

I. Williamson, First Secretary, Permanent Mission, Geneva

ZAIRE

Head of Delegation

M. Bintu'a-Tshiabola, Ambassador, Permanent Mission, Geneva

Delegate

M. Tshinkela, Chef de Division, Service de la propriété industrielle, Kinshasa

II. Observer States

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C. Passalacqua, First Secretary, Permanent Mission, Geneva

MADAGASCAR*Head of Delegation*

J.-J. Maurice, Permanent Representative, Permanent Mission, Geneva

Delegate

A. Tahindro, First Secretary, Permanent Mission, Geneva

MOZAMBIQUE*Head of Delegation*

M. Jeichande, Conseiller, Ministère des affaires étrangères, Maputo

Delegate

W. Ripua, Assistant juridique, Ministère des affaires étrangères, Maputo

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Delegate

S. J. Huh, Assistant Commercial Attaché, Permanent Mission, Geneva

THAILAND*Head of Delegation*

M. Xuto, Ambassador, Permanent Mission, Geneva

Delegates

S. Insingha, Counsellor, Permanent Mission, Geneva
B. Bunnag, Third Secretary, Permanent Mission, Geneva

TRINIDAD AND TOBAGO*Head of Delegation*

P. Dass, Chargé d'affaires a.i., Permanent Mission, Geneva

Delegate

A. Gray, Second Secretary, Permanent Mission, Geneva

VENEZUELA*Head of Delegation*

I. Balza, Second Secretary, Permanent Mission, Geneva

III. Intergovernmental Organizations*International Telecommunication Union (ITU)*

R. Smith, Head, Division for Relations with Member Countries, Geneva

IV. International Non-Governmental Organizations*International Association for the Protection of Industrial Property (IAPIP)*

E. Pitovranov, President of the Soviet Group of IAPIP, Moscow

International Literary and Artistic Association (ALAI)

G. Korsakoff, Honeywell Bull, Paris

V. Officers and Committees*Conference*

President: O. Leberl (Austria)
Vice-Presidents: B. Todorov (Bulgaria)
O. Reyes-Retana (Mexico)
Secretary General: L. Baeumer (WIPO)
Assistant Secretary General: D. Januszkiewicz (WIPO)

Credentials Committee

Chairman: K. Swaminathan (India)
Vice-Chairmen: D. Schack (German Democratic Republic)
M. Jeanrenaud (Switzerland)
G. Ledakis (WIPO)

Secretary:

Drafting Committee

Chairman: L. Komarov (Soviet Union)
Vice-Chairmen: A. Françon (France)
S. Salman (Iraq)
F. Curchod (WIPO)

Secretary:

VI. International Bureau of the World Intellectual Property Organization (WIPO)

A. Bogsch, Director General
K. Pfanner, Deputy Director General
L. Baeumer, Director, Industrial Property Division
G. Ledakis, Legal Counsel
F. Curchod, Head, Special Projects Section, Industrial Property Division
D. Januszkiewicz, Consultant, Industrial Property Division
Y. Gyrdymov, Technical Counsellor, PCT Division
M. Qayoom, Head, Conferences and Common Services Section, Administrative Division
H. Rossier, Head, Mail and Documents Section, Administrative Division

International Patent Cooperation (PCT) Union**PCT Preparatory Committee**

1978 Session
(Geneva, February 6 to 10, 1978)

NOTE*

The PCT Preparatory Committee, which was convened by the Director General of WIPO to assist in the preparation of the first session of the Assembly of the International Patent Cooperation (PCT) Union (hereinafter referred to as "PCT Union") (to be held from April 10 to 14, 1978), met at Geneva from February 6 to 10, 1978.

Invitations to participate, as members, in the session of the Preparatory Committee were sent to those States, 17 in number, which had, prior to the session, ratified or acceded to the Patent Cooperation Treaty (PCT). Twelve of them were represented. Invitations to be represented by observers were also sent to those States, not having ratified or acceded to the PCT, which had been members of the PCT Interim Committees. Ten such States were represented. In addition, two intergovernmental organizations and five international non-governmental organizations were represented. A list of participants follows this Note.

* This Note has been prepared by the International Bureau.

This Note summarizes the major conclusions reached by the Preparatory Committee.

Rules of Procedure of the PCT Assembly. The Preparatory Committee recommended the adoption by the Assembly of Rules of Procedure as contained in a draft considered by the Preparatory Committee and amended by it.

Admission of Observers. The Preparatory Committee recommended to the Assembly that it admit to its sessions: (1) as special observers, the States not members of the PCT Union which contribute to the budget of that Union, the European Patent Office and the Office of the African Intellectual Property Organization; and (2) as observers, all States members of the Paris Union which are not members of the PCT Union and which do not have special observer status, four intergovernmental organizations and 15 international non-governmental organizations.

Dates from Which International Applications May Be Filed and Demands for International Preliminary Examination May Be Submitted. The Preparatory Committee recommended that the Assembly fix June 1, 1978, as the date from which international (PCT) applications may be filed and demands for international preliminary examination of such applications may be submitted.

Amendment of the PCT Regulations. The Preparatory Committee recommended that the Assembly adopt amendments to Rules 4.10(d) (correction or cancellation of indications of dates in priority claims which do not fall within one year before the international filing date), 11.6(a) and (b) (smaller margins at the top of the first sheet of certain parts of international applications), 11.13(a) (execution of drawings using black lines only), 48.2(a)(v) and 48.3(c) (elimination of certain pages of the international search report containing duplicative information for the purposes of publication).

The Committee further recommended that the Assembly adopt new Rules 32*bis* (withdrawal of the priority claim up to the time of international publication of the international application) and 74*bis* (notification of the withdrawal of the priority claim to the International Preliminary Examining Authority).

Fees and Prices. The Preparatory Committee decided to call the attention of the Assembly to certain conclusions reached by the PCT Working Group on Budgetary Questions as to certain PCT fees and the prices of certain PCT publications and to inform the Assembly that the majority of the Preparatory Committee were of the opinion that the initial fees and prices should be fixed at a lower level than that contemplated in those conclusions.

PCT Committees. The Preparatory Committee recommended that the Assembly adopt various decisions relating to the establishment, membership and Rules of Procedure of the PCT Committees for Technical Assistance, for Technical Cooperation and for Administrative and Legal Matters.

Draft Agenda of the First Session of the Assembly of the PCT Union. The Committee approved a draft agenda of the first session of the Assembly.

Progress Reports by the Director General. The Director General reported to the Preparatory Committee on contacts that had taken place with the offices expected to be the receiving, designated and elected Offices and the International Searching and Preliminary Examining Authorities, on preparations for the printing of PCT publications and on the dissemination of information about the PCT, including the holding of seminars in London, Munich, Paris, Washington and Chicago.

LIST OF PARTICIPANTS*

I. States

Austria: G. Gall. **Brazil:** G. R. Coaracy. **Cameroon:** B. Yaya Garga. **Canada:** B. Gillies. **Central African Empire:** E.-L. Bayangha. **Egypt:** F. El Ibrashi; T. Dinana; A. A. Omar. **France:** P. Fressonnet; P. Guérin. **Germany (Federal Republic of):** U. C. Hallmann. **Hungary:** E. Parragh. **Japan:** K. Hoshikawa; K. Hatakawa. **Luxembourg:** F. Schlessler. **Madagascar:** S. Rabearivelo. **Netherlands:** S. de Vries. **Norway:** O. Os. **Romania:** V. Tudor. **Senegal:** P. Crespin. **Soviet Union:** E. Buryak. **Spain:** A. C. Ortega Lechuga. **Sweden:** J.-E. Bodin; B. Sandberg. **Switzerland:** J.-L. Comte; R. Kämpf. **United Kingdom:** R. Bowen; E. F. Blake. **United States of America:** H. D. Hoinkes; L. Maassel.

II. Intergovernmental Organizations

European Patent Organisation (EPO): J. C. A. Staehelin; J. A. H. van Voorthuizen. **Interim Committee of the Community Patent:** O. Petersen.

III. Non-Governmental Organizations

Council of European Industrial Federations (CEIF): M. van Dam. **European Federation of Agents of Industry in Industrial Property (FEMIPD):** J. d'Haemer. **International Federation of Inventors Associations (IFIA):** P. Feldmann. **International Federation of Patent Agents (FICPI):** M. P. Micheli. **Union of Industries of the European Community (UNICE):** R. Kockläuner.

IV. Officers

Chairman: P. Fressonnet (France). **Vice-Chairmen:** E. Buryak (Soviet Union); B. Yaya Garga (Cameroon). **Secretary:** E. M. Haddrick (WIPO).

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

V. International Bureau of WIPO

A. Bogsch (*Director General*); K. Pfanner (*Deputy Director General*); F. A. Svidirov (*Deputy Director General*); E. M. Haddrick (*Head, PCT Division*); J. Franklin (*Head, PCT Administrative Section*); N. Scherrer (*Counsellor, PCT Division*); D. Bouchez (*Technical Counsellor, PCT Division*); Y. Gyrdymov (*Technical Counsellor, PCT Division*); A. Okawa (*Consultant, PCT Division*).

Trademark Registration Treaty (TRT)

Interim Advisory Committee

Third Session
(Geneva, February 21 to 24, 1978)

NOTE*

The Interim Advisory Committee for the preparation of the entry into force of the Trademark Registration Treaty (TRT) held its third session¹ in Geneva from February 21 to 24, 1978.

Eleven of the 22 States members of the Committee² were represented on the Committee and two other member States of the Paris Union and 12 non-governmental organizations sent observers. A list of participants follows this Note.

The Committee began by examining, on the basis of documents prepared by the International Bureau, draft Administrative Instructions as well as several draft forms and a list of other forms to be established. Following a very detailed discussion, the Committee formulated its recommendations and observations for the revision of the above-mentioned drafts.

The discussions then moved to development cooperation activities for developing countries on the basis of a document submitted by the International Bureau. The delegations' reports on their experience gave rise to a most constructive exchange of views. The Committee concluded by giving its full support to the development cooperation program outlined in the document and urging WIPO to continue its implementation in cooperation with the member States.

Finally, the Committee dealt with the prospects for ratification of the TRT or accession to it. All the delegations reported on the situation in their countries. Despite the fact that all expressed great interest in the TRT, their statements showed that ratification by their respective countries and entry into force of the TRT for them would still take some time. The

* This Note has been prepared by the International Bureau.

¹ Notes on the Committee's first two sessions (September 1975 and January 1977) were published in *Industrial Property*, 1976, p. 81, and 1977, p. 87.

² For the composition of the Committee, see the Note on its first session. The 22nd member of the Committee is the Congo, which acceded to the TRT in August 1977.

Secretariat nevertheless drew attention to the fact that four developing countries (Congo, Gabon, Upper Volta and Togo) had already acceded to the TRT and that consequently only one further ratification or accession was needed for it to enter into force, meaning that the Administrative Instructions and necessary forms would have to be made available as quickly as possible. Consequently, the International Bureau was requested to prepare a new draft of the Administrative Instructions and all the necessary forms for the next session.

LIST OF PARTICIPANTS*

I. States

Finland: A. Siponen. **Germany (Federal Republic of):** B. A. Pagenberg. **Hungary:** M. Bognár. **Japan:** H. Yoshino; K. Hata-kawa. **Norway:** A. Kaarhus; J. Smith. **Portugal:** R. Serrão. **Soviet Union:** R. Szabanov. **Spain:** J. Andrade; S. Jessel. **Sweden:** B. Lundberg; A. H. Olsson. **United Kingdom:** R. A. Pittock. **United States of America:** B. A. Meany; D. B. Allen.

II. Observer States

Argentina: C. A. Passalacqua; J. F. Gomensoro. **Philippines:** A. Añes.

III. Non-Governmental Organizations

American Bar Association (ABA): H. W. Nies. **American Patent Law Association (APLA):** H. W. Nies. **Benelux Association of Trade Mark and Design Agents (BMM):** J. P. Van der Stock. **Bundesverband der Deutschen Industrie (BDI):** W. Boekel. **Chartered Institute of Patent Agents (CIPA):** J. S. Bushell. **Council of European Industrial Federations (CEIF):** J. de Clerck. **European Federation of Agents of Industry in Industrial Property (FEMIPD):** J. de Clerck. **Institute of Trade Mark Agents (ITMA):** E. Wenman. **International Chamber of Commerce (ICC):** G. Kunze. **Pacific Industrial Property Association (PIPA):** R. Spencer. **Union of Industries of the European Community (UNICE):** W. Mak. **United States Trademark Association (USTA):** H. W. Nies.

IV. Officers

Chairman: B. A. Meany (United States of America). *Vice-Chairmen:* B. Lundberg (Sweden); M. Bognár (Hungary). *Secretary:* F. Curchod (WIPO).

V. WIPO

K. Pfanner (*Deputy Director General*); L. Baeumer (*Director, Industrial Property Division*); L. Egger (*Head, International Registrations Division*); F. Curchod (*Head, Special Projects Section, Industrial Property Division*); P. Maugué (*Head, Trademark Registration Section, International Registrations Division*); A. Ilardi (*Legal Officer, Special Projects Section*).

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

General Studies

Toward a New Treaty for the Protection of Geographical Indications

R. W. BENSON*

In 1978 we mark the twentieth anniversary of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, amid calls for its revision or its replacement by a new treaty. A new Draft Treaty,¹ prepared by the International Bureau of the World Intellectual Property Organization (WIPO), was discussed by a Committee of Experts in Geneva in December 1975; the Committee then requested the International Bureau to revise the draft for further discussion at its next session.² Why this sense of disappointment in the Lisbon Agreement, which, at its adoption in 1958, constituted a refreshing breakthrough by overcoming certain limitations in existing treaties and by establishing for the first time a system of central international registration for appellations of origin?

The disappointment, it seems, stems not from any failure of the Lisbon Agreement to provide effective protection for appellations of origin, but from its failure to attract more contracting States. There are only 16 contracting States to date,³ and while a proponent of the Agreement points out that this is equivalent to scores of bilateral agreements between the members,⁴ a critic observes that the territorial

coverage falls far short of that originally envisioned.⁵ The Agreement, it is urged, must be made more "flexible" to induce more States to accede to it. And the essence of this greater flexibility is to allow protection for "geographical indications" in general, not merely "appellations of origin" which are considered special kinds of geographical indications recognized by the legal systems of relatively few countries.⁶

Any treaty that fails to attract adherents is itself a failure regardless of its theoretical virtues, and so the current reconsideration of the Lisbon Agreement is entirely appropriate. But the wisdom of revising a treaty or concluding a new one is not a matter of mere numbers. Whether the Lisbon Agreement is inadequate, whether it should be revised, whether a new treaty should be concluded, and whether a new treaty should conform to the WIPO Draft Treaty, are all questions that depend on more fundamental things. They depend on certain rudimentary principles of protection of geographical indications, principles which must not be given a shallow bow and then forgotten in favor of the solely practical considerations involved in treaty negotiations.

Underlying Principles

There are, I think, three principles underlying national and international protection accorded to geographical indications on products: (1) that consumers should be protected from deception; (2) that producers and traders should be protected from unfair competition; and (3) that geographical indications should not merely be devices to lessen economic competition. It will be useful to briefly examine the ramifications of each of these.

(1) The first principle is that *consumers should be protected from deception*. False or misleading repre-

⁵ A. Krieger, "Revision of the Lisbon Agreement for the Protection of Appellations of Origin," *Industrial Property*, 1974, p. 387.

⁶ Article 1 of the Lisbon Agreement extends the treaty only to appellations of origin "recognized and protected as such in the country of origin." Most countries give legal protection to simple geographical "indications of source," but many do not specially recognize certain geographical indications as "appellations of origin." The nature of the distinction between the former term (in French, *indication de provenance*) and the latter (*appellation d'origine*) has caused considerable confusion and debate, and is discussed further in the text of this paper. WIPO's Draft Treaty has solved the problem of terminology for now by using "geographical indication" to embrace either an indication of source or an appellation of origin, or both. "Geographical indication" is used in the same sense in this paper.

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¹ *Draft Treaty on the Protection of Geographical Indications*, WIPO document TAO/II/2, August 25, 1975.

² *Report Adopted by the Committee of Experts*, WIPO document TAO/II/6, December 12, 1975. The Committee also has under consideration, instead of a new treaty, the possibility of revision of the Lisbon Agreement; however, to my mind, there is very little to debate with respect to whether a new treaty should be adopted or the present Lisbon Agreement revised. The disadvantages of a revision, pointed out by the International Bureau in 1975 (*Revision of the Lisbon Agreement or Conclusion of a New Treaty*, WIPO document TAO/II/3, August 25, 1975)—especially the resulting unfairness to States parties to different versions of the treaty, and the need for a unanimous vote for revision by the parties to the Lisbon Agreement—compel the conclusion that an entirely new treaty is necessary.

³ As of January 1, 1978, the following accessions had been recorded: Algeria, Bulgaria, Congo, Cuba, Czechoslovakia, France, Gabon, Haiti, Hungary, Israel, Italy, Mexico, Portugal, Togo, Tunisia, Upper Volta. *Industrial Property*, 1978, p. 13.

⁴ A. Devlétian, "The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration," *Industrial Property*, 1973, p. 308 (at p. 313). Counting 11 members at that time, Devlétian noted that this was the equivalent of 55 bilateral treaties.

sentations of geographical origin on products is a centuries-old phenomenon, common to every country.⁷ The reason, obviously, is that certain geographical indications help sell products or help bring a higher price. If the consumer is induced to purchase a product or to pay a higher price because of a false or misleading geographical indication, he has been defrauded of his money.

As elementary as this principle is, it is surprising that its growth has been stunted by legislation and judicial decisions in both common law and civil law countries. Whether the consumer is misled by a geographical indication is normally narrowed to the very specific question of whether the consumer could reasonably believe that the product originated in a place other than its true place of origin. Thus, the addition of qualifying words to the geographical indication—such as “type” or “style” or the name of the true place of geographical origin—will often be found sufficient to remove any deception. This is apparently the reason a penal action against the merchants of “Spanish Champagne” ended in acquittal in a British court⁸ (though the sale of “Spanish Champagne” was later suppressed in an unfair competition suit brought by the French Champagne houses⁹). The same rationale leads to such products as “California Chablis” or “Virginia style ham” made in an American state other than Virginia.

But do such qualifying words really prevent the consumer from being misled? True, he may not be misled as to the actual geographical source of the product, but he is quite probably misled as to a taste, style, quality or other characteristics which he expects to be somehow similar to the taste, style, quality or other characteristics of products from the foreign place whose name has been borrowed. These expected similarities almost never exist, and governments do little to see that they do. In the United States, for example, any California table wine may be marketed as “California Chablis,” regardless of the grape variety used, and whether the wine is sweet or dry, or possesses any other consistent characteristics. Ludicrous as it seems, there is even a “California Pink Chablis” on the market. So it is with nearly every

imitation of a product with a foreign geographical indication: the law may force producers to inform the consumer he is buying, in effect, an imitation, but the law rarely attempts to assure him that the product even remotely actually imitates the true foreign product. A usurped geographical indication, then, though accompanied by the name of the true place of origin or by words like “style,” is usually merely a marketing device to induce purchase or to bring a higher price on the basis of implied characteristics which do not exist.

Moreover, instead of connoting product characteristics, a geographical indication may simply evoke various psychological associations: for example, “Champagne” may mean “high social status” to some consumers; “Italian” may summon romantic images; “Virginia” may recall nostalgia of a childhood in that state. This, of course, is precisely the reason such names are usurped and used capriciously on products with no relation to the place named: to arbitrarily arouse psychological associations that will induce purchase. Whenever such terms are used on products not originating in the place whose name is borrowed, with or without qualifying words, the consumer’s psychological associations have been falsely aroused and he has been misled into his purchase.

Another cause of the stunted growth of the principle of consumer protection lies in the law’s timid treatment of so-called “generic” terms. These are terms which began life as geographical indications but through common usage lost their connotation of origin and became synonymous with a style of product. It is thought so obvious that the terms do not indicate origin that their use causes no deception even when appearing without qualifying words. The United States Department of Agriculture, for example, recently declared that the term “Italian sausage” could be used without qualifying words because it had become generic and no one would believe the term implied Italian origin.¹⁰ Even if that is true, it ignores the deception of consumers whose psychological associations with Italy have been falsely aroused, and, perhaps more importantly, it permits the deception of consumers who expect generic similarities in Italian sausages. There is typically little or no governmental effort to assure consumers that products possess the generic similarities implied by their names. In the case of “Italian sausage,” for example, the government laid down standards that even many sausage makers claimed are meaningless because they cover hundreds of different styles of sausage.¹¹

Nor does judicial intervention often restrain the ongoing degeneration of geographical terms because the courts normally look to public opinion in finding

⁷ My favorite evidence of this is found in *Don Quijote*, when Sancho Panza is led to believe that he is governor of a small nation and issues the following decree:

“Anyone may import wine from anywhere, provided they declare its place of origin so the wine may be priced in accordance with its esteem, quality and fame, and whoever adds water to it or changes its name shall lose his life.”

M. De Cervantes Saavedra, *Segunda Parte del Ingenioso Hidalgo Don Quijote de la Mancha*, Las Americas Publishing Co., 1958 (1st ed. Madrid 1615), pp. 914-915.

⁸ S. Ladas, *Patents, Trademarks, and Related Rights: National and International Protection*, 1975, p. 1612.

⁹ *Bollinger v. Costa Brava Wine Co.* [1960] R.P.C. 16. But compare *Vine Products Ltd. v. MacKenzie and Co. Ltd.* [1969] R.P.C. 1 (“British Sherry,” “Australian Sherry,” “South African Sherry,” and “Cyprus Sherry” may be sold in the United Kingdom.)

¹⁰ 41 *Federal Register*, January 19, 1976, p. 2629.

¹¹ *Id.*

that a term has or has not become generic.¹² This gives an incentive to the usurpers of geographical indications to attempt to change public opinion. The speed with which modern advertising can change public opinion enhances the probability that by the time (if ever) a court action is brought, the public will actually believe that the geographical term is generic. Moreover, the benefit of increased sales often outweighs the small risk of prosecution. Usurpers are often numerous, while public prosecutors are indifferent, consumers are unorganized, and the foreign producers with the legitimate rights to the name are few and distant.

Because of this weak administrative and judicial intervention, and often entirely outside the scrutiny of the law, terms that first lost their connotation of origin next begin to lose their connotation of product style, and eventually decay until they retain only the slimmest fragment of their former descriptiveness. "French bread," for instance, in the United States today means little more than a relatively long loaf of white bread. "Danish pastry" seems to mean any pastry except that known by a more specific name. "China" refers to any earthen dishes. "Suede" simply means leather whose flesh side is buffed into a nap, rather than kid leather from Sweden which has been tanned in that manner.

To trace the degeneration of such terms is to annotate the history of the law's failure to protect consumers. Today's generic terms are the fossils of past consumer deception. Most can never be defossilized, never be restored to their original meanings. But at least the law could intervene now to prevent further degeneration.

Note that in what has been said about the consumer's expectation of product characteristics and about his psychological associations aroused by geographical terms, no distinction has been made between indications of source and appellations of origin: This is because both the former and the latter, when misused, are capable of deceiving consumers in the same ways. Do not the terms "Virginia style ham," or "American German Beer" (qualified indications of source) deceive as to expected characteristics and as to psychological associations, just as do the terms "Roquefort style cheese" or "California Chablis" (qualified appellations of origin)?

Unfortunately, some commentators have accepted a distinction between appellations of origin and indications of source which leads to the conclusion that an indication of source never connotes product characteristics. It is said, in essence, that an appellation of origin refers both to geographical origin and

to product characteristics while an indication of source refers only to geographical origin.¹³ Though it may be true that connotations of product characteristics and the natural or human factors to which they are due are more dominant and more precisely defined in an appellation of origin, it is nevertheless factually the case that indications of source also often connote product characteristics. A. Devlétian recognizes this in his seminal article on appellations of origin and indications of source,¹⁴ noting that it is often difficult to tell the two apart.¹⁵ The difference is one of degree, not of kind. There seems to be considerable international agreement on this, but resistance to the idea persists and muddies the waters of international protection.

(2) The second principle underlying legal protection of geographical indications is that *producers and traders should be protected from unfair competition*. When someone falsely uses a geographical indication on his products, the business of those who have the exclusive right to the name may be injured in at least two ways: trade may be diverted from their products to the false products; or their goodwill in the reputation of the geographical name may be diluted and eventually destroyed.

In the first instance, it is necessary to prove that consumers are misled into purchasing the false product when they seek to purchase the true, and evidence of consumer opinion is highly relevant; this is the gist of common law "passing off" suits.¹⁶ In the second instance, however, when it is claimed that the false geographical indication dilutes the value of the true, evidence of consumer deception would appear irrelevant. Thus, even if it could not be proven that a single consumer is deceived as to the true origin of "California Rhine Wine" or "New York Champagne," the constant use of those terms by producers outside the Rhine or Champagne districts inevitably dilutes the goodwill value of "Rhine" and "Champagne." The terms lose their distinctiveness, suffer by association with often inferior products, and no longer catch consumers' attention in the same way.¹⁷

¹³ See *Commission of the European Communities v. Federal Republic of Germany*, Case No. 12/74, February 20, 1975, opinion of Advocate General J. P. Warner delivered January 15, 1975 (citing Professor Plaisant). *Cour de Justice des Communautés européennes, Recueil de la Jurisprudence de la Cour*, 1975, Vol. 2, p. 181 (at p. 211).

¹⁴ A. Devlétian, "La protection des appellations d'origine et des indications de provenance," serialized in *Propriété industrielle*, 1956, pp. 225, 250; 1957, pp. 17, 35, 58.

¹⁵ *Id.*, 1956, p. 227.

¹⁶ R. Callmann, *The Law of Unfair Competition, Trademarks and Monopolies*, 1967 (Supp. 1976), § 4.1.

¹⁷ This is disputed by those who say borrowed geographical terms promote, rather than dilute, the true geographical indication. Joseph Heitz, a prominent California winemaker, states: "The name Burgundy was here [on California wines] 100 years before I was born. I wish things had been different; we would be better off. They are better off that we used this, believe me, because whenever you imitate someone you elevate him." R. Benson,

¹² See, e.g., the Camembert cheese case, *Syndicat du véritable Camembert de Normandie c. Laiterie de Liqueil*, Court of Appeals of Orleans, January 20, 1926 (*Gazette du Palais*, 1926, I, p. 595), cited in Ladas, *supra*, p. 1590 (n. 61); *Vine Products Ltd. v. MacKenzie and Co. Ltd.* [1969] R.P.C. 1.

It is not clear just how firmly this notion of dilution without proof of consumer deception or loss of sales has taken hold in the law relating to geographical indications.¹⁸ If it is accepted that dilution of goodwill ought to be unlawful, however, then the principle naturally extends not only to products whose reputation has been built up over many years, but to new products or new regions as well. In California, for example, many areas were planted to vineyards within the last ten years that are already producing distinctive wines. No doubt, there are also, or will be, new products from newly defined appellations of origin in many developing nations. The geographical indications attached to such new products should be protected against usurpation from the beginning, or else they may never be able to attain distinctive reputations.¹⁹

Moreover, if goodwill is indeed to be protected, it may be appropriate to extend protection to goodwill already lost through years of wrongful usurpation. With modern advertising and the mercurial nature of public sentiment, perhaps lost goodwill in a geographical name can be recouped by its legitimate owners—if given legal protection against continuing usurpation. Of course, this arguably would infringe the equitable rights the usurpers have acquired in the names over many years and, especially in the face of laches by the rightful owners of the geographical term, courts will be reluctant to intervene late in the lifetime of the term.²⁰ Nevertheless, the principle of restoration of lost names has been recognized as desirable when possible; many bilateral treaties have accomplished it and, in a move that bodes well for the future, administrative authorities in Oregon, a state with a small wine region in the United States, recently adopted regulations requiring Oregon winemakers to abandon several foreign geographical names that have long been used in the United States.²¹

The effectiveness of the unfair competition doctrine has also traditionally been limited because only producers and traders who collectively possess the exclusive right to a geographical name have been authorized to bring a law suit for its protection.²² This

Great Winemakers of California, 1977, p. 186. However, the fact that foreign producers (who are in the best position to perceive harm) complain strenuously about the usurpations is strong evidence that imitations do injure goodwill.

¹⁸ See R. Callmann, *supra*, § 18.1, on common law limitations.

¹⁹ For example, without protection the wines of Monterey County, a new vineyard area in California, could become generic just as "Monterey Jack" cheese has.

²⁰ *Vine Products Ltd. v. MacKenzie and Co. Ltd.*, *supra*; *The French Republic v. Saratoga Vichy Spring Co.*, 191 U.S. 427 (1903).

²¹ Oregon Liquor Control Commission, Oregon Administrative Rules, Chapter 845, § 10-292. The following designations are now prohibited on Oregon still table wines: Burgundy, Claret, Chablis, Chianti, Marsala, Moselle, Rhine Wine, Hock, Sauternes, and Haute Sauternes.

²² W. Derenberg, "The Influence of the French Code Civil on the Modern Law of Unfair Competition," *American Journal of Comparative Law*, Vol. 4 (1955), pp. 17-18.

restriction is difficult to justify, for another group of merchants is also injured by the unfair competitive acts of usurpers of geographical indications, namely, all other honest competitors of the usurpers. The honest competitors who do not claim any right to use the usurped term may be unable to compete successfully in a market distorted by products bearing false indications; they ought to have standing, therefore, to initiate legal actions. This is especially desirable since, as noted earlier, usurpers are numerous and those with the legitimate right to use the geographical term are often distant and unlikely to be able to defend the name themselves.

(3) The third principle underlying geographical indications is that *they must not merely be devices to lessen economic competition*. Of course, they do lessen some competition by granting a monopoly on the geographical name to a limited group of producers and traders. But, theoretically at least, this kind of restraint of trade is a desirable one as it leads to greater investment, higher quality products and therefore to more economic competition. In addition, of course, the restriction of a geographical indication to products originating in the area is necessary to avoid consumer deception.

The problem lies in preventing illegitimate geographical indications designed to restrain trade. If any group of producers or traders in an area can join together, draw boundaries, set standards and proclaim the birth of a geographical indication to be protected by national and international law, there are great dangers that their purpose may solely be to gain a market advantage. The standards of the geographical indication may be drawn only with the creators' interests at heart, oblivious to interests of other competitors and of consumers. For a recent example, look to the petition of the trade association for the California wine industry in 1976, in which the geographical indication "North Coast Counties," traditionally understood by consumers as covering a wine region near San Francisco, would have been extended over 400 miles south. The reason for the proposal was purely the economic benefit that would have accrued to certain investors.²³

Decisions to recognize geographical indications, then, are heavily affected with a public interest, and should be publicly made. This is why private geographical certification marks—privately created, collectively owned marks which in some countries may consist of geographical terms²⁴—should, in my view,

²³ R. Benson, "American Appellations of Origin," *American Bar Association Journal*, Vol. 62 (1976), p. 791.

²⁴ The term "Roquefort," for example, is protected as a certification mark in the United States. *Community of Roquefort v. William Faehndrich, Inc.*, 303 F. 2d 494 (2nd Cir. 1962). The dangers alluded to in the text do not appear with "Roquefort," however, for in France it is an appellation of origin, protected through a public judicial and legislative process of many years' duration (Loi du 26 juillet 1925). L. Lenzen, "Bacchus in the

not be authorized. Some public process, legislative, administrative or judicial, must accompany the recognition of geographical indications to assure their authenticity as designations of unadulterated products originating in geographical areas that are rationally and equitably defined. Even when the process is a public one, there is no absolute assurance that the decision makers will be able to resist the temptation of creating trade restraints.²⁵ *A fortiori*, persons involved in a completely private process, as in creation of certain geographical certification marks, will be less likely to resist this temptation.²⁶

Inadequacy of Existing Treaties

With the discussion of principles behind us, the inadequacies of existing international protection of geographical indications should come quickly into focus.

Paris Convention for the Protection of Industrial Property, as Revised at Lisbon in 1958 and at Stockholm in 1967. The Paris Convention, historically ineffective with regard to the protection of geographical indications because it applied only to false indications of origin used with fraudulent intent or joined to fictitious trade names,²⁷ was revised at Lisbon in 1958 to cover:

"... cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer or merchant."²⁸

This was a significant broadening of the Convention's protection, but its basic defect remains: determinations of falseness are left to the courts of the country in which protection is sought; courts might approve indications that mislead consumers in the ways described above, i.e., by deceiving their expectations of product characteristics, or their psychological associations. Also, the Convention covers only "false" indications. The history of the provision's adoption shows that the words "or misleading" were rejected at the Lisbon Conference;²⁹ therefore, the words

Hinterlands: A Study of Denominations of Origin in French and American Wine-Labeling Laws," *Trademark Reporter*, Vol. 58, p. 145 (at p. 178). My objection is only to private, not publicly owned, geographical certification marks.

²⁵ See, e.g., *Commission of the European Communities v. Federal Republic of Germany*, *supra*. The terms involved were "Sekt," "Weinbrand," and "Prädikatssekt"; these are not geographical terms, but Germany argued (unsuccessfully) that they are indications of geographical origin nevertheless.

²⁶ As a consumer participant in the public proceedings held to discuss the "North Coast Counties" appellation and related issues (see above), my distinct impression was that the trade association would have secured its objectives had consumers not been present to voice objections on grounds of deception and restraint of trade.

²⁷ Original Article 10.

²⁸ Article 10, Paris Convention, as revised at Lisbon in 1958 and Stockholm in 1967.

²⁹ S. Ladas, *supra*, p. 1579.

"indirect use of a false indication" could not be stretched to include a true but misleading indication such as "California Chablis."³⁰ And even if they could be stretched, or even if the words "or misleading" had been adopted, it is unlikely that the courts of many countries would interpret them expansively enough to allow the principle of consumer protection to reach its full maturity.

On the other hand, the Convention's attempt to repress unfair competition is potentially a stronger weapon against both unfair competition and consumer deception. Subparagraph 3 of Article 10_{bis}(3), added at Lisbon in 1958, prohibits:

"... indications the use of which in the course of trade is liable to mislead the public as to the nature, manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods."

Unfortunately, the words, "the origin," proposed for inclusion after "the nature," were deleted before adoption³¹ so the implication is that Article 10_{bis}(3) cannot be used to suppress misleading indications of *origin*. But, the provision does make unlawful the misleading of consumers as to product "nature," "manufacturing process," or "characteristics," and it is deception as to these very things that was complained of earlier in this study. If it is a geographical indication, say "California Chablis" or "Italian sausage," that does the misleading—not as to *origin*, but as to expected product characteristics—the Convention appears to require courts to suppress the deception. This seems to be an unexplored avenue of redress, at least in the United States.³²

In addition, there is the general prohibition of Article 10_{bis}(2):

"Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition."

The lawyer who won protection for "Roquefort" in the United States as a certification mark³³ argued in another forum that this Article, in combination with the "commercial name" provisions of the Convention, leads to the conclusion that "... if the use of the name is legally protected in the home country, the existing treaties will compel the extension of such protection into all of the signatory countries."³⁴ This conclusion seems overbroad in light

³⁰ L. Lenzen, *supra*, p. 184, suggests that "indirect" could be so extended. A. Knoll, "Champagne," *International and Comparative Law Quarterly*, Vol. 19 (1970), p. 309 (at p. 313), disagrees.

³¹ S. Ladas, *supra*, p. 1579.

³² L. Lenzen, *supra*, p. 184, raises this possibility; A. Knoll's rebuttal, *supra*, p. 314, avoids this point. See also A. Knoll, "Federal Regulation of the Term 'Champagne,'" *Trademark Reporter*, Vol. 60 (1970), p. 285.

³³ *Community of Roquefort v. William Faehndrich, Inc.*, *supra*.

³⁴ L. Pollack, "'Roquefort'—An Example of Multiple Protection for a Designation of Regional Origin Under the Lanham Act," *Trademark Reporter*, Vol. 52 (1962), p. 755 (at p. 762).

of the history of the provisions on indications of origin in Article 10 and Article 10_{bis}(3).³⁵

Finally, the enforcement mechanism of the Paris Convention is seizure of the goods:

"... at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country." (Article 9(3))

The coverage of "interested party" is explicitly extended only to producers, manufacturers or traders of goods of the type bearing the false indication. This permits, though it does not compel, exclusion of the honest competitors of the usurper who do not deal in the protected goods.

In sum, the Paris Convention is limited in some respects and potent in others; its basic defect is its dependence on the courts of each country which, as a practical matter, renders it ineffective to stop all but the most blatant consumer deception and unfair competition. In addition, the Convention does nothing to halt the degeneration of indications into generic words, nor to restore lost geographical indications to their legitimate owners, nor to discourage geographical indications devised to restrain trade.

Madrid Agreement for the Repression of False or Misleading Indications of Source, as Revised at Lisbon in 1958 and Supplemented at Stockholm in 1967. The Madrid Agreement improves on the revised Paris Convention only slightly. Its key section (Article 1(1)) suppresses:

"All goods bearing a false or misleading indication, by which one of the countries to this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin..."

The word "misleading," absent from Article 10 of the Paris Convention, is present here, but the Article only contemplates the possibility of being misled as to "the country or place of origin," not as to product characteristics, etc., which *are* covered in the Paris Convention's Article 10_{bis}(3). S. Ladas suggests that Article 1 does prohibit use of foreign indications along with qualifying words like "type" or the true place of origin.³⁶ Though desirable, it is hard to see why this is so, and the courts of each country will not consistently so hold. Moreover, the Madrid Agreement, like the Paris Convention, allows the degeneration of geographical indications to continue:

"The tribunals of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this agreement..." (Article 4)

³⁵ In addition, see the argument of A. Knoll, "Champagne," *supra*, p. 314.

³⁶ S. Ladas, *supra*, pp. 1586-1587, 1591-1592 (see cases cited in footnotes 45, 46, 69, 70-73). That there is doubt about this is suggested by the fact that both the Lisbon Agreement (Article 3) and the WIPO Draft Treaty (Article 4(2) and Article 9(3)) specifically prohibit such qualifying words.

In a small but significant breakthrough, however, Article 4 goes on to preclude the power of the foreign tribunals to decide that "regional appellations concerning the source of products of the vine" have become generic. Note that this welcome encroachment on the traditional degeneration of geographical terms extends, however, only to "regional" (not local or nationwide) "appellations" (apparently not mere indications of source) concerning the "source of products of the vine."

In the final analysis, subsequent to revision of the Paris Convention at Lisbon, the Madrid Agreement became of minor importance, except for certain regional wine appellations.

Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as Revised at Stockholm in 1967. In 1958 the Lisbon Agreement, building upon an idea that had already taken root in certain other international agreements,³⁷ radically departed from the schemes of the Paris Convention and the Madrid Agreement. The tribunals of each country are no longer to be embroiled in determinations of "false," "misleading," "direct," "indirect" or "generic" terms. Instead, protection is obligatory for all "appellations of origin... recognized and protected as such in the country of origin and registered at the International Bureau..." (Article 1(2)). No usurpation or imitation at all is permitted, even if qualified by the true origin or words such as "kind," "type," "make," "imitation," or the like (Article 3). Once registered and protected, an appellation cannot become generic as long as it is protected as an appellation of origin in the country of origin (Article 6).

Here at last is a scheme that takes the basic principles seriously. Once protected, the debate as to each term is ended. There is no further possibility of misleading consumers' expectations of product characteristics or even their psychological associations in the ways described earlier. The degenerative process of terms becoming generic is halted. There is even the hope of restoration of some generic terms to their original status as appellations of origin, since Article 5(6) allows a two-year period for third parties to terminate prior usurpation of appellations which their countries have agreed to protect. Since a registered appellation is protected *ipso facto*, unfair competition is suppressed without the necessity of litigation over the question whether the unlawful use diverted trade or deceived consumers. Although legal action in each

³⁷ The Stresa Convention for the Use of Appellations of Origin and Denominations of Cheeses, as well as several bilateral treaties signed after World War I. See S. Ladas, *supra*, pp. 1598-1599; and G. Trotta, "The Stresa Convention on the Uses of Names of Cheeses, and the WIPO Draft Treaty on the Protection of Geographical Indications," *Industrial Property*, 1977, p. 115.

country (by public authorities or an interested party)³⁸ is still necessary to enforce protection of appellations registered under the Agreement (Article 8), the possible defenses to such actions are severely limited, and the question will usually be simply whether there was in fact use of the protected appellation by someone unauthorized to do so.³⁹

The Agreement would have been completely unrealistic if it had not permitted States to object to obligatory protection for some appellations. The only question is how are such objections to be manifested, and how, if at all, restricted? Article 5(3) answers these questions by allowing the appropriate national office of any country to declare that it "cannot ensure the protection" of a specific appellation, but such declarations must be accompanied by an "indication of the grounds therefor," must be made within a year after notice of registration of the appellation and must not be "detrimental" to rights secured under the Paris Convention, the Madrid Agreement, or other international or national protection. It is then up to the interested party to go into the objecting country to claim protection for the appellation through "all the judicial and administrative remedies open to the nationals of that country" (Article 5(5)).

The scope of these vague provisions on objections is unclear, and more specific delineation would have been desirable. A. Devlétian suggests that their scope is narrow, permitting objection when the country doubts that the appellation is in fact an appellation as defined in the Agreement's Article 2, or doubts that it is recognized and protected as such as required by Article 1, or when there is confusing similarity between the appellation and geographical names in the objecting country. He believes that the obligation to give grounds for refusal precludes any "arbitrary refusal," and that in no case should a declaration of refusal permit "the continuance of unauthorized use or other abuse of appellations on the pretext that certain appellations were in use prior to the Lisbon Agreement. This case is specifically dealt with in Article 5(6), providing for the two-year period to terminate use."⁴⁰ This is, perhaps, an unusually sanguine view of these uncertain provisions. But, in any event, the system seems to have worked relatively well. By 1973, some 582 appellations had been registered, of which 85 were the subject of refusal; of these 85 refusals, 25 were withdrawn after the registering country supplied more information. In one

case, the two-year period to terminate use was granted.⁴¹

One would also think, though firm evidence would be impossible to gather, that the international registration system under the Lisbon Agreement has led to a decrease in misuse of appellations. The simple reason is that registration removes uncertainty, and also removes the temptation to usurp an appellation in the hope that the rightful owners will tolerate it rather than engage in expensive, risky litigation to prove that the unauthorized use is misleading or causes loss of sales.

In light of all these advantages of the Agreement, why is it limited only to "appellations of origin . . . recognized and protected as such in the country of origin . . ." (Article 1)? Why not all geographical indications? There is no satisfactory legal or doctrinal explanation for the restriction. The practical objection sometimes raised that there is an unlimited number of indications of source is spurious; if true, it is all the more reason to have indications listed in a central international register, rather than leave them to the vagaries of trade practice, public opinion, and the courts. The true explanation for the restriction of the Lisbon Agreement must lie, rather, in the practicalities of treaty negotiations and the genesis of the Agreement in 1958. These matters need not deter us, for history has mooted them. We are now faced with an extension of the Lisbon Agreement in the form of the WIPO Draft Treaty on the Protection of Geographical Indications.

The Draft Treaty on the Protection of Geographical Indications

The WIPO Draft Treaty⁴² is a masterful piece of synthesis and drafting by the International Bureau. Although there are many matters of language, and some matters of policy, to be ironed out in the next draft (which is now being prepared by the Bureau), the Draft Treaty produced considerable consensus among the Committee of Experts drawn from all the member States of the Paris Convention.⁴³

However, in my view, there is one overriding defect in the Draft Treaty and that is its attempt to revise, in effect, not only the Lisbon Agreement but the Madrid Agreement as well. As the International Bureau pointed out in its comments, which accompany the text of the Draft Treaty, Chapter I amounts to a modernization of the Madrid Agreement, while Chapter II extends and improves the system of protection by registration created in the Lisbon Agreement.

³⁸ No definition of "interested party" is given, but it should be as broad as that in Article 10(2) of the Paris Convention.

³⁹ A. Krieger, *supra*, pp. 391-392, suggests, however, that the courts of each country must still decide upon the extent of protection, specifically whether persons other than those registered have the right to use the name and whether the use must adhere to the geographical and quality standards set down by the country of origin. In light of the history and purpose of the Agreement, this seems to be an unduly narrow interpretation.

⁴⁰ A. Devlétian, footnote 4, *supra*, p. 311.

⁴¹ *Id.*, p. 312.

⁴² WIPO document TAO/II/2, August 25, 1975.

⁴³ *Report Adopted by the Committee of Experts*, WIPO document TAO/II/6, December 12, 1975.

The International Bureau proposed, and the Committee of Experts accepted for the next draft,⁴⁴ the possibility of reservation as to Chapter II. Thus, some contracting States would never be bound by the registration system of Chapter II in their relations with other contracting States.

While there is no insurmountable technical problem in putting the different systems of Chapter I and Chapter II under the same treaty umbrella, it seems to me counterproductive to do so. Countries whose geographical indications are new or relatively unknown will have no strong motivation to accede to the rigorous registration system of protection laid down in Chapter II of the Draft Treaty. Consider this: new or unknown geographical indications are less likely to be usurped than older, highly reputed indications, since the former are not as effective in drawing customers as the latter. In addition, to the extent new and relatively unknown indications are usurped, the indications can, if the owners are vigilant, be protected more easily in foreign courts than can older, better known indications because it is easier to prove that the newer indications are not generic. For example, if American winemakers found it necessary to protect the geographical indication "Napa Valley" against usurpation by a French company, they would have an easier time doing so under the Paris Convention, or the Madrid Agreement (if the United States were a party, which it is not), or Chapter I of the Draft Treaty, than the winemakers of Chablis would have in attempting to protect their name under those same treaties.⁴⁵

This would especially be true under proposed Article 4(4) of Chapter I of the Draft Treaty, which disallows any finding that a geographical indication is generic subsequent to the effective date of the treaty if that indication was not generic before that date in the country where protection is sought. While admirable in purpose, this provision may invite countries to accede to Chapter I on the theory that in future years they will be able to prove (with old wine lists, advertisements, etc.) that their geographical indications, new and unknown at the time of the treaty accession, could not become generic, while the older, famous appellations were generic from the date of the treaty because they appeared indiscriminately on products and advertisements in many countries. The International Bureau, in its comments on Article 4(4), recognizes that the problem of proof increases after the passage of many years,⁴⁶ but does not signal that the proof problem helps the countries with newer indications and hurts those with older ones.

⁴⁴ *Id.*, p. 10.

⁴⁵ That is not to say that Chablis could not be successfully protected under those treaties (see, particularly, the discussion of Paris Convention Article 10^{bis}(3)3, *supra*), only that it would be more difficult.

⁴⁶ WIPO document TAO/II/2, August 25, 1975, p. 16.

Let us suppose that the United States, not a party to the Madrid Agreement or the Lisbon Agreement, should at last become interested in fuller protection for its geographical indications, particularly wine indications. This is not an unreasonable supposition because in the last ten years there has been a dramatic revolution in the quality of California wines, accompanied by specific geographical indications that have sprung up by the dozen; in addition, California vintners are beginning to seek major export markets for the first time in their history. The best mechanism to assure fuller protection to American wine geographical indications, and at the same time allow some flexibility for American wineries to continue their use of such names as Chablis, Burgundy, Champagne, Rhine Wine, etc., would be Chapter I of the Draft Treaty. There would be little incentive to accede to the registration system in Chapter II.

As discussed below, Article 7 of Chapter II sets up a mechanism by which contracting States can object to registrations of geographical indications by other contracting States. The mechanism, in effect, encourages a five-year period of negotiations between the two States to settle their differences. Realistically, these negotiations would resemble negotiations for bilateral treaties, with each country trading off economic advantages and disadvantages. But, for the same reason the United States has not negotiated any significant bilateral treaties on wine indications, the United States would not be interested in negotiating under the mechanism of Chapter II: the reason is that American winemakers can probably secure full protection for their new geographical indications through Chapter I without having to give up their use of the European geographical names which they claim are generic. They can "have their cake and eat it too." Although I have used the example of American wine indications, the reasoning also appears to apply to other new indications from many other countries. It leads me to the conclusion that, to induce all countries to join the strong system of protection in Chapter II, the enticement of Chapter I of the Draft Treaty should be eliminated.

Chapter II of the Draft Treaty is, on the whole, a skillful extension of the system established in the Lisbon Agreement. Some of its provisions are quite complex and, at the suggestion of the Committee of Experts, will be transferred to regulations in the next draft by the International Bureau,⁴⁷ but the following key features probably will, and should, remain in the next draft.

Coverage. The principle new feature in the Draft Treaty is, naturally, its extension of protection to both indications of source and appellations of origin. What may be registered under Chapter II are "geographical

⁴⁷ *Report Adopted by the Committee of Experts, supra*, p. 10.

indications" (Article 5), which are defined to cover both "indications of source" and "appellations of origin" (Article 2(i) to (iii)). While this is precisely the needed change as discussed earlier, the Draft Treaty also deletes the Lisbon Agreement's requirement that the appellation be "recognized and protected as such in the country of origin . . ." ⁴⁸ This modification is in response to the criticism that the Lisbon Agreement deprives countries of its benefits if their legal systems do not recognize appellations "as such." The Federal Republic of Germany, for instance, protects geographical indications largely on the basis of a statutory prohibition on deceptive advertising, without any scheme for recognizing geographical indications as such. ⁴⁹

It seems inevitable that, if countries are to have the benefits of a new international treaty, the requirement that they recognize geographical indications "as such" must be dropped. Yet to drop that requirement is to drop some protection against geographical indications which are created privately and are designed mainly to restrain trade. The virtue of the Lisbon Agreement's "as such" requirement, and indeed of its limitation of protection to appellations of origin, is the increase in probability that what is being protected is a publicly created, legitimately defined geographical indication, in accordance with the principle discussed above.

The Draft Treaty mitigates this problem to some degree by providing that only contracting States may file applications for registration of geographical indications, that the State must declare that the indication "is a reference to itself as the State of origin," and that it is "used in the course of trade in relation to products originating in that State" (Article 5). In other words, there is at least some official, public involvement prior to registration. Depending on the breadth and openness of the procedures each State uses to determine which applications it wishes to file, consumers and competitors of the group proposing the application would have an opportunity to be heard on the issue of trade restraint.

To add further protection against geographical indications designed only to restrain trade, an addition to the "grounds for objection" in Article 8 may be worth considering. The central idea of such an addition would be to allow objections on the ground that the denomination in question or the conditions set by the filing State for its use are calculated principally to restrain trade, rather than to serve legitimate functions of conveying accurate information or promoting quality. Admittedly, the wording of such a provision would be a difficult task. The European

Economic Community may have a particular interest in such a provision. ⁵⁰

Type of protection. In the State of protection, "use in the course of trade" (Article 2(iv)) (which is broadly defined to cover use on products, packaging, business papers, advertising, etc.) of registered denominations "is prohibited" (Article 9). ⁵¹ This simple, absolute prohibition on use of registered denominations is the hallmark of the breakthrough originally achieved in the Lisbon Agreement. It possesses all the virtues discussed previously with respect to that Agreement and should be retained intact in any future draft.

The Draft Treaty goes beyond the Lisbon Agreement, or at least clarifies doubts that have been raised about the Lisbon Agreement, by an additional prohibition on the use of denominations registered with reference to specific products, unless the use complies "with the requirements of the law of the filing State, including requirements relating to quality standards, or where applicable, with any special conditions of protection agreed upon [by two contracting States] under Article 7(3)" (Article 9(2)(b)). This is significant protection for producers, traders, consumers and others interested in the quality standards associated with appellations of origin. In a sensible, practical proposal to facilitate the determination of the law of the filing State in the rare cases when it will be necessary, the International Bureau offers to act as a depositary and conveyer of the national "legislative texts, regulations or other texts" relating to the right to use a denomination (Article 15).

Finally, the Draft Treaty expressly applies its prohibitions even if the registered denomination is used in translation, accompanied by an indication of the true source, used with such terms as "kind," "type," "make," or "limitation," or used in "another grammatical form, or in a modified form in so far as the risk of confusion remains despite the modification" (Article 9(3)). This provision is vital to close the loopholes existing in the Paris Convention and Madrid Agreement. The final phrase of the provision is a little worrisome, however. It permits denominations in modified form if there is "no risk of confusion." This is a question of fact to be resolved by the tribunals of each country. As such, it resembles the questions of whether a denomination is "false" or "misleading."

⁵⁰ See *Commission of the European Communities v. Federal Republic of Germany*, *supra*; G. Trotta, *supra*, pp. 120-122; F. Beier, "Les indications de provenance et les appellations d'origine dans le Marché commun," *Propriété industrielle*, 1959, p. 201.

⁵¹ This is the essential thread of complex Article 9. Following the scheme of Article 6, Article 9 distinguishes denominations that are registered with reference to particular products from those that are simply registered alone (such as the official name of the State). The distinction makes sense, but it inflates Article 9 unnecessarily.

⁴⁸ Lisbon Agreement, Article 1.

⁴⁹ A. Krieger, *supra*, pp. 389-390. (German wine geographical indications are, however, a large exception to this rule, as they are defined and recognized "as such" under the 1971 wine law.)

The necessity to resort to litigation to resolve such questions of fact is the main disadvantage of the Paris Convention and Madrid Agreement. The brilliance of the Lisbon Agreement and the Draft Treaty lies in their rejection of litigation over such questions. To allow the possibility of litigation over whether a "risk of confusion remains" is to invite unscrupulous traders to push the risk of confusion to its limit, knowing that if they are ever challenged in court (which is unlikely) they still have a chance to convince the judge that there is no risk of confusion. This strikes me as a chink in the armor of the Draft Treaty.⁵²

Grounds for objection. Here the Draft Treaty improves on the Lisbon Agreement by spelling out the specific grounds for objection. The most crucial grounds are, first, that in the filing State the denomination is used in relation to products originating in any State (is, in effect, generic) (Article 8(1)(iii)), and, second, that in the objecting State the denomination is "regarded as a generic term by the general public and is used as such in the course of trade" (Article 8(1)(iv)). This reflects, in fact exceeds, the realism of the Lisbon Agreement by recognizing the inevitable fact that States will be reluctant to grant protection to terms they consider generic. What may be more important is that the Draft Treaty also sets up a mechanism through which a filing State and an objecting State can negotiate over their differences during a five-year period (Article 7). The mechanism encourages bilateral reconciliation although, of course, it cannot guarantee it. This may be a less idealistic system than that of the Stresa Convention where assessments of generic character are made collectively by a body representing the member States,⁵³ but it is probably a system that will appeal to more countries.

The related problem of "prior rights," which will arise when no objection is filed to a registered denomination, is handled more leniently than in the Lisbon Agreement. The latter, it will be recalled, gives only a two-year period to terminate prior uses which violate the treaty obligations. The Draft Treaty

establishes a two-year termination period, but this can be extended in certain cases to five years and, when the prior use was of exceptionally long duration, to ten or even 20 years (Article 16). Though the suggested periods seem a bit long, the important underlying concept—flexible fairness—is a good one.

Enforcement. One of the most progressive features of the Draft Treaty is the provision that:

"Actions based on this Treaty may be brought before the courts of the State of protection not only by persons and entities entitled under the law of the State of protection to bring such actions, but also by the federations, associations, groups and bodies that represent the producers, manufacturers, traders or consumers concerned and have their registered offices in the State of origin, in so far as the law of the State of origin empowers them to take civil proceedings and in so far as the law of the State of protection permits similar federations, associations, groups and bodies of that State to do so." (Article 17(2)).

Similar rights to intervene in criminal and administrative proceedings are granted by the same Article. The extension of rights to consumer groups is especially welcome, and long overdue in international treaties. The only criticism of the Article is that the word "concerned" may inappropriately limit the rights granted to producers, manufacturers and traders who are "concerned," that is, who deal in, the same goods that are the subject of an alleged unlawful denomination. This exclusion of honest competitors of the usurpers is unfair and, as discussed above, decreases the probability of enforcement.

Conclusion

The WIPO Draft Treaty has brought us a long way from Lisbon in 1958, longer still from Paris and Madrid in the nineteenth century. Subject to the criticisms made in this paper, the Draft Treaty protects and extends the principles underlying geographical indications with a realism and sophistication unmatched by any prior international agreement. If the countries with economically important geographical indications, and countries whose geographical indications are on the verge of becoming important, make the effort to turn the Draft into an Agreement, we will be treating one another more fairly in the next century than we have in this.

⁵² A related but not as serious problem occurs in Article 9(2)(c) and Article 10(1).

⁵³ G. Trotta, *supra*, p. 119.

News from Patent Offices

NEW ZEALAND

Activities of the Patents Division in 1976/1977*

As required by statute, the Commissioner of Patents submitted this report for the period April 1, 1976, to March 31, 1977. The following table provides a comparison of the number of applications for patents, designs, and trade marks, together with the total fees received for each category, over the last three years.

	1974-75		1975-76		1976-77	
	Ended		Ended		Ended	
	March 31, 1975		March 31, 1976		March 31, 1977	
	Appli- cations	Fees	Appli- cations	Fees	Appli- cations	Fees
		\$		\$		\$
Patents	3,238	157,168	3,398	173,778	3,272	322,600
Designs	371	3,672	416	4,080	531	9,201
Trade marks	3,618	87,470	3,828	114,336	3,757	207,745
Miscellaneous ..		6,192		7,904		8,061
Totals	7,227	254,502	7,642	300,098	7,560	547,607

The expenditure for the year was \$620,021 of which salaries totalled \$484,545. The staff employed at March 31, 1977, was 63 compared with 64 at March 31, 1976.

Patents

The 3,272 applications for the grant of letters patent originated in the following countries: New Zealand, 1,149; United States of America, 754; United Kingdom, 423; Australia, 196; Switzerland, 151; Federal Republic of Germany, 121; France, 87; Japan, 80; Netherlands, 66; Sweden, 45; Canada, 37; Italy, 32; and the balance of 131 from 30 other countries.

The technical content fell into the following categories: chemistry, 1,062; mechanical engineering, 1,017; building, 354; home science, 309; electrical engineering, 325; primary industries, 205.

As in previous years, inventions in the chemical and mechanical engineering fields predominate. The

following examples of the subject matter of applications illustrate the wide range of inventions contained in these applications: miscellaneous electrical and electronic equipment; many pharmaceutical compounds and compositions, in particular antibiotics; prodegradants for plastics; herbicides and pesticides; veterinary compositions; applications for and treatment of natural gas; modifications to farm machinery; modular building constructions; foodstuffs; solar heating units; windmills and wind-powered motors; modifications to internal combustion engines to increase their efficiency; and off-shore installations for oil production.

The proportion of patent applications filed by New Zealand citizens or companies incorporated in New Zealand continues to be relatively high at 35 percent of the total.

During the year, 2,078 applications proceeded to acceptance after search and examination, and letters patent were sealed on 1,788 applications. Twenty-three oppositions against the grant of patents and three applications for the revocation of patents were filed.

Trade Marks

The 3,757 applications for the registration of trade marks were received from the following countries in the numbers indicated: New Zealand, 1,384; United States of America, 934; United Kingdom, 377; Australia, 286; Federal Republic of Germany, 161; Japan, 123; France, 110; Switzerland, 74; Netherlands, 52; Sweden, 49; Canada, 28; Italy, 25; Denmark, 19; Spain, 16; German Democratic Republic, 13; Liechtenstein, 12; Hong Kong, 11; Panama, 9; Soviet Union, 9; Singapore, 9; and from 17 other countries, 56.

After search and examination, 2,579 applications were accepted, 2,221 were registered, and 3,034 existing registrations were renewed.

General

The event of major importance to the Patent Office during the year has been the shift from Wellington to Lower Hutt, which took place over the last few weeks of March 1977. The shifting of the several million patent specifications, files, and books was a massive undertaking but, with careful planning, was carried

* This report is excerpted from the *Report of the Department of Justice for the Year Ended 31 March 1977*.

out with a minimum of inconvenience to the public. The move has created many difficulties for the Office and the public and especially for the patent attorneys who are in almost continual contact with the Office and its library. The working conditions are far superior to those vacated in Wellington, however, and it is hoped that the difficulties caused by the move will be overcome in time.

The most significant effect has been the loss of trained staff in the Patent Office. Of the 64 staff employed at the end of last year, only 34 remain in the Office at Lower Hutt. Thirty-five persons have left during the year, at least 19 because they did not wish to transfer to Lower Hutt. In all sections of the Office there has been a loss of experienced staff and in some

the turnover has been very high indeed. As a consequence, arrears in dealing with applications and other work have increased and until the present staff have become fully trained in the specialist work of the Office and new staff appointed where necessary, these arrears cannot be decreased. It is perhaps fortunate that there was a slight decline last year in the number of applications.

On April 1, 1976, a few of the major fees charged by the Patent Office were increased, renewal fees for the first time since 1966 and some others which had not been changed since 1955. The result can be seen in the increased revenue received last year. During the year, a complete review of all fees was carried out and new fees came into effect on April 1, 1977.

Calendar

WIPO Meetings

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

1978

May 3 to 5 (Geneva) — WIPO — Budget Committee

May 7 to 10 (Cairo) — Development Cooperation (Industrial Property) — Meeting of Arab States on Technical Information

May 22 to 26 (Geneva) — Locarno Union — Committee of Experts

May 22 to 26 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Inventions and Know-How

June 5 to 7 (Geneva) — Berne Union — Group of Consultants on New Copyright Laws

June 12 to 16 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Marks and Trade Names

June 19 to 30 (Paris) — Berne Union — Committee of Governmental Experts on Double Taxation of Copyright Royalties (convened jointly with Unesco)

June 19 to 23 (Geneva) — Revision of the Paris Convention — Working Group on Questions of Special Interest to Developing Countries

June 19 to 23 (Geneva) — Revision of the Paris Convention — Working Group on Inventors' Certificates

June 26 to 30 (Geneva) — Revision of the Paris Convention — Preparatory Intergovernmental Committee

June 26 to July 7 (Tokyo) — International Patent Classification (IPC) — Steering Committee

July 3 to 11 (Geneva) — Berne Union, Universal Convention and Rome Convention — Subcommittees of the Intergovernmental Committees on Cable Television (convened jointly with ILO and Unesco)

July 19 to 21 (Geneva) — Development Cooperation (Industrial Property) — Working Group on Promotion of Domestic Inventive and Innovative Capacity

September 4 to 8 (Geneva) — International Patent Classification (IPC) — Committee of Experts

September 13 to 15 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning

September 13 to 22 (Paris) — Berne Union, Universal Convention and Rome Convention — Subcommittees of the Intergovernmental Committees on Videocassettes (convened jointly with ILO and Unesco)

September 18 and 19 (Geneva) — ICIREPAT — Plenary Committee

September 19 to 22 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation

- September 25 to October 3 (Geneva) — Governing Bodies (WIPO Coordination Committee, Executive Committees of the Paris and Berne Unions, Assembly and Conference of Representatives of the Hague Union, and Assembly of the International Patent Cooperation (PCT) Union)
- September 27 to 29 (Geneva) — International Patent Classification (IPC) — Ad Hoc Working Group on the Revision of the Guide
- October 2 to 6 (Geneva) — International Patent Classification (IPC) — Working Group I
- October 23 to 27 (Hull, Canada) — ICIREPAT — Technical Committee for Standardization (TCST)
- October 23 to 27 (Geneva) — Nice Union — Preparatory Working Group on International Classification
- October 23 to 27 (Geneva) — International Patent Classification (IPC) — Working Group IV
- November 13 to 17 (Geneva) — International Patent Classification (IPC) — Working Group II
- December 4 to 8 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Marks and Trade Names
- December 4 to 8 (Geneva) — International Patent Classification (IPC) — Working Group III
- December 4 to 8 (Paris) — Berne Union and Universal Convention — Working Group on questions concerning access to protected works for developing countries, including the implementation of the 1971 revised texts of the Berne Convention and of the Universal Convention (tentative title) (convened jointly with Unesco)
- December 17 to 22 (New Delhi) — Development Cooperation (Copyright) — Copyright Seminar (convened jointly with Unesco)

1979

- January 8 to 12 (Geneva) — International Patent Classification (IPC) — Committee of Experts
- January 29 to February 2 (Geneva) — Rome Convention — Subcommittee of the Intergovernmental Committee on the Administration of Rights under the Rome Convention (convened jointly with ILO and Unesco)
- September 24 to October 2 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, International Patent Cooperation (PCT) 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

1978

- May 23 to 25 (Zurich-Reckenholz) — Technical Working Party for Agricultural Crops
- June 6 to 8 (Hanover) — Technical Working Party for Vegetables
- June 20 to 22 (Paris) — Technical Working Party for Ornamental Plants
- September 5 to 7 (Florence) — Technical Working Party for Fruit Crops
- September 11 to 15 (Geneva) — Ad Hoc Committee on the Revision of the UPOV Convention
- September 19 to 21 (Melle, Belgium) — Technical Working Party for Forest Trees
- October 9 to 23 (Geneva) — Diplomatic Conference on the Revision of the UPOV Convention
- November 13 to 15 (Geneva) — Technical Committee
- November 16 and 17 (Geneva) — Administrative and Legal Committee
- December 5 and 8 (Geneva) — Consultative Committee
- December 6 to 8 (Geneva) — Council

Meetings of Other International Organizations Concerned with Industrial Property

European Patent Organisation: July 4 to 6 (Bordeaux) — Administrative Council

European Communities:

Expert Group of the Commission of the European Communities for the Community Trade Mark:

June 5 to 9, September 18 to 22 and December 11 to 15, 1978 (Brussels) — Examination of draft provisions relating to the Community Trade Mark — restricted meeting

Interim Committee for the Community Patent:

June 26 and 27, 1978 (Brussels) — Working Group III

June 28 and 29, 1978 (Brussels) — Working Group II

September 12, 1978 (Brussels) — Working Group I

October 2 to 4, 1978 (Brussels) — Interim Committee

October 23 and 24, 1978 (Brussels) — Working Group II

November 13 to 15, 1978 (Brussels) — Working Group III

December 4, 1978 (Brussels) — Working Group I

International Association for the Protection of Industrial Property: May 12 to 20, 1978 (Munich) — Congress

International Federation of Patent Agents: October 1 to 7, 1978 (Santiago de Compostela) — Congress

International League Against Unfair Competition: September 6 to 10, 1978 (Strasbourg) — Congress

Union of European Patent Attorneys and Other Representatives Before the European Patent Office: May 12 and 13, 1978 (Munich) — Executive Committee

