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# World Intellectual Property Organization

## WIPO Convention

### Accessions

#### BARBADOS

The Government of Barbados deposited on July 5, 1979, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

Barbados will belong to Class C for the purpose of establishing its contribution towards the budget of the WIPO Conference.

The Convention Establishing the World Intellectual Property Organization will enter into force, with respect to Barbados on October 5, 1979.

WIPO Notification No. 106, of July 10, 1979.

#### EL SALVADOR

The Government of El Salvador deposited on June 18, 1979, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO), signed at Stockholm on July 14, 1967.

El Salvador will belong to Class C for the purpose of establishing its contribution towards the budget of the WIPO Conference.

The WIPO Convention will enter into force with respect to El Salvador on September 18, 1979.

WIPO Notification No. 105, of June 19, 1979.

## International Unions

### Hague Agreement

As from July 1, 1979, it shall be possible to make international deposits of industrial designs in accordance with the Protocol of Geneva of August 29, 1975, to the Hague Agreement Concerning the International Deposit of Industrial Designs.<sup>1</sup> New

Regulations Under the Hague Agreement, the text of which, together with that of the Protocol of Geneva, appears in this issue of *Industrial Property Laws and Treaties*,<sup>2</sup> have been adopted (see the Note on the Assembly and Conference of Representatives of the Hague Union, below); the date of the entry into force thereof is July 1, 1979.

<sup>1</sup> See *Industrial Property*, 1979, p. 109.

<sup>2</sup> MULTILATERAL TREATIES — Texts 4-001 and 4-002.

# WIPO Meetings

## Paris Union

### Provisional Steering Committee of the Diplomatic Conference on the Revision of the Paris Convention

(Geneva, March 20 to 31, 1979)

#### NOTE\*

Established by the Executive Committee of the Paris Union on a recommendation made by the Intergovernmental Preparatory Committee on the Revision of the Paris Convention for the Protection of Industrial Property at its fourth session,<sup>1</sup> the Provisional Steering Committee of the Diplomatic Conference on the Revision of the Paris Convention held a session in Geneva from March 20 to 31, 1979.

Twenty-four States members of the Provisional Steering Committee were represented and 22 States members of the aforementioned Preparatory Committee but not members of the Provisional Steering Committee were represented by observers. The list of participants follows this Note.

In accordance with its mandate, the Provisional Steering Committee established the provisional agenda of the Diplomatic Conference, established the provisional Rules of Procedure of the Diplomatic Conference (including an annex containing the list of intergovernmental and international non-governmental organizations which will be, in accordance with the decision of the Provisional Steering Committee, invited to the Diplomatic Conference) and took the decisions and gave the required advice concerning the preparatory documents for the Diplomatic Conference which must be drafted by the Director General of WIPO.

The Diplomatic Conference will be held in Geneva from February 4 to March 4, 1980.

#### LIST OF PARTICIPANTS\*\*

##### I. Members of the Provisional Steering Committee

**Argentina**<sup>2</sup>: N. M. Freyre Penabad; M. A. Vernengo. **Brazil**<sup>2</sup>: A. Bahadian. **Bulgaria**<sup>2</sup>: B. Todorov; S. Kolarova. **Cameroon**<sup>2</sup>: D. Ekani. **Canada**<sup>2</sup>: D. E. Bond; R. Théberge; C. Boileau; M. Leir.

\*This Note has been prepared by the International Bureau.

<sup>1</sup>See *Industrial Property*, 1978, p. 216.

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

<sup>2</sup>Member of the Paris Union.

**Czechoslovakia**<sup>2</sup>: V. Vaniš; A. Ringl; J. Čížek. **Egypt**<sup>2</sup>: F. El Ibrashi; T. Dinana. **France**<sup>2</sup>: G. Le Tallec; L. Nicodème; J.-P. Plantard; A. Némó. **German Democratic Republic**<sup>2</sup>: D. Schack; M. Siegmund; M. Forster. **Germany (Federal Republic of)**<sup>2</sup>: E. Steup; H. Graeve; M. Aúz Castro; H.-P. Kunz-Hallstein. **Hungary**<sup>2</sup>: E. Tasnádi; G. Bánrévy; G. Pusztai. **India**<sup>3</sup>: S. Singh. **Italy**<sup>2</sup>: I. Papini; A. Sinagra; R. Boros. **Japan**<sup>2</sup>: H. Iwata; K. Hatakawa; S. Uemura. **Kenya**<sup>2</sup>: D. J. Coward. **Mexico**<sup>2</sup>: M. F. Ize de Charrin. **Poland**<sup>2</sup>: J. Szomański; D. Januszkiewicz. **Soviet Union**<sup>2</sup>: I. S. Nayashkov; V. F. Zubarev; E. Koutakova; S. Egorov. **Sri Lanka**<sup>2</sup>: L. Naganathan. **Sweden**<sup>2</sup>: C. Uggla; M. Jacobsson. **Switzerland**<sup>2</sup>: P. Braendli; R. Kämpf; F. Balles; J.-M. Salamolard; M. Jeanrenaud; P. J. Pointet. **United Kingdom**<sup>2</sup>: I. J. G. Davis; R. Bowen. **United States of America**<sup>2</sup>: D. W. Banner; H. J. Winter; M. K. Kirk; L. J. Schroeder; G. R. Clark. **Yugoslavia**<sup>2</sup>: D. Bošković; D. Čemalović; M. Adanja.

##### II. Observers

**Algeria**<sup>2</sup>: H. Redouane; K. Sahnouni; F. Bouzid. **Australia**<sup>2</sup>: H. Freeman. **Austria**<sup>2</sup>: O. Leberl; G. Mayer-Dolliner; H. Sonn. **Byelorussian SSR**<sup>3</sup>: N. Grinev. **Finland**<sup>2</sup>: T. Kivi-Koskinen; E. Pakkala. **Ghana**<sup>2</sup>: E. O. Vanderpuye. **Greece**<sup>2</sup>: J. Nolas. **Indonesia**<sup>2</sup>: M. Sidik. **Ireland**<sup>2</sup>: M. J. Quinn. **Ivory Coast**<sup>2</sup>: B. T. Aka. **Kuwait**: S. A. Soliman. **Madagascar**<sup>2</sup>: S. Rabearivelo. **Netherlands**<sup>2</sup>: H. Pieters. **Nicaragua**: I. Castillo-Gonzalez. **Oman**: A. Dawood; Z. Taiseer. **Portugal**<sup>2</sup>: J. Motta Maia; R. Serrão; J. Cruz. **Republic of Korea**<sup>3</sup>: S. Kim. **Romania**<sup>2</sup>: V. Tudor. **Spain**<sup>2</sup>: J. Delicado Montero-Ríos; S. Jessel. **Sudan**<sup>3</sup>: M. S. Abdalla. **Thailand**: C. Angpiroj. **Turkey**<sup>2</sup>: N. Yosmaoglu.

##### III. Officers

*Chairman*: I. J. G. Davis (United Kingdom). *Vice-Chairmen*: B. Todorov (Bulgaria); D. Bošković (Yugoslavia). *Secretary*: L. Baeumer (WIPO).

##### IV. WIPO

A. Bogsch (*Director General*); K. Pfanner (*Deputy Director General*); L. Baeumer (*Director, Industrial Property Division*); G. Ledakis (*Legal Counsel*); M. Porzio (*Director, Office of the Director General*); F. Curchod (*Head, Special Projects Section, Industrial Property Division*).

<sup>3</sup>Member of WIPO but not of the Paris Union.

## Hague Union

### Assembly and Conference of Representatives

Third Sessions (2nd Extraordinary)  
(Geneva, May 28 to June 1, 1979)

#### NOTE\*

The Assembly and the Conference of Representatives of the International Union for the International

\*This Note has been prepared by the International Bureau.

Deposit of Industrial Designs (Hague Union) held their third (second extraordinary) sessions in Geneva from May 28 to June 1, 1979. These sessions had been convened following the entry into force of the Protocol of Geneva of August 29, 1975, to the Hague Agreement Concerning the International Deposit of Industrial Designs.<sup>1</sup> Nine States members of the Hague Union were represented; three States members of the International Union for the Protection of Industrial Property (Paris Union) but not members of the Hague Union, one intergovernmental organization and one international non-governmental organization were represented in an observer capacity. The list of participants follows this Note.

During these sessions, new Regulations under the Hague Agreement were adopted, which entered into force on July 1, 1979 (see the notification on the Hague Agreement under International Unions, above), and which are applicable to all international deposits of industrial designs effected in accordance with the Hague Agreement. The text of these new Regulations, as well as that of the Protocol of Geneva, appear in this issue of *Industrial Property Laws and Treaties*.<sup>2</sup>

In addition, the delegations were consulted on the contents of the draft Administrative Instructions to the Hague Agreement.

## LIST OF PARTICIPANTS \*\*

### I. Member States

**Belgium:** P. Peetermans. **France:** J. Norguet. **Germany (Federal Republic of):** B. A. Pagenberg. **Liechtenstein:** A. F. de Gerliczy-Burian. **Luxembourg:** J.-P. Hoffmann. **Netherlands:** E. van Weel. **Spain:** J. M. García Oyaregui; R. Vazquez de Parga y Pardo. **Switzerland:** P. Braendli; M. Leuthold; R. Kämpf. **Tunisia:** B. Fathallah.

### II. Observer States

**Argentina:** J. F. Gomensoro. **Madagascar:** S. Rabearivelo. **Zaire:** W. Katanga.

### III. Intergovernmental Organizations

**Benelux Designs Office:** L. van Bauwel.

### IV. Non-Governmental Organizations

**Benelux Association of Trademark and Design Agents:** R. Du-mez.

## V. Officers

*Chairman:* P. Braendli (Switzerland). *Secretary:* F. Curchod (WIPO).

## VI. WIPO

K. Pfanner (*Deputy Director General*); L. Egger (*Head, International Registrations Division*); M. Lagesse (*Head of Subdivision, Administrative Division*); F. Curchod (*Head, Special Projects Section, Industrial Property Division*); P. Mangué (*Head, Trademark Registration Section, International Registrations Division*); V. Terbois (*Head, Design and Appellation of Origin Registrations Section, International Registrations Division*).

## International Patent Cooperation Union (PCT Union)

### Assembly

Third Session  
(Second Extraordinary)  
(Geneva, April 25 to May 1, 1979)

#### NOTE \*

The Assembly of the International Patent Cooperation Union (PCT Union) held its third session (2nd extraordinary)<sup>1</sup> in Geneva from April 25 to May 1, 1979.

Fifteen of the 24 States members of the Assembly were represented: Austria, Brazil, Denmark, France, Germany (Federal Republic of), Japan, Luxembourg, Madagascar, Netherlands, Romania, Soviet Union, Sweden, Switzerland, United Kingdom and United States of America.

Ten States, one intergovernmental organization and five international non-governmental organizations were represented by observers: Australia, Canada, Czechoslovakia, Finland, Hungary, Italy, Mexico, Niger, Norway and Spain; European Patent Organisation (EPO); Council of European Industrial Federations (CEIF), European Federation of Industrial Property Representatives of Industry (FEMIFI), International Federation of Inventors' Associations (IFIA), International Federation of Patent Agents (FICPI) and Union of Industries of the European Community (UNICE). The list of participants follows this Note.

**Amendments to the PCT Regulations.** The Assembly adopted amendments to a number of Rules of the PCT

<sup>1</sup> See *Industrial Property*, 1979, p. 109.

<sup>2</sup> MULTILATERAL TREATIES — Texts 4-001 and 4-002.

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

\* This Note has been prepared by the International Bureau.

<sup>1</sup> For Notes on the first (first extraordinary) and second (first ordinary) sessions, see *Industrial Property*, 1978, pp. 167 and 280.

Regulations relating to fees, a new Schedule of Fees and a new Rule relating thereto.<sup>2</sup>

The amounts in the currencies of the Contracting States equivalent to those set out in the Schedule of Fees in Swiss francs were established by the Director General of WIPO in consultation with the interested Offices. All of these amounts entered into effect on August 1, 1979. The new fees expressed in Swiss francs are expected to remain in force until the end of 1980. The equivalents in other currencies may be subject to adjustment if there is a significant change in the exchange rate between those currencies and the Swiss franc.

**International Searching and International Preliminary Examining Authorities.** The Assembly approved a draft agreement between the International Bureau of WIPO and the Australian Patent Office and appointed that Office as an International Searching and International Preliminary Examining Authority subject to signature of the agreement following the deposit of Australia's instrument of accession to the PCT and the subsequent entry into force of the PCT for Australia.

The Assembly also took note of an Exchange of Notes with the Australian Authorities in which it was indicated that it was expected that the necessary legal requirements would be fulfilled in time to permit the entry into force of the Treaty by January 1, 1980. The draft Agreement approved by the Assembly provides for the Australian Patent Office to act for applicants from developing countries as well as from Australia itself. The Delegation of Australia stressed the particular interest its Office would have in cooperating with countries of South East Asia and the Pacific.

#### LIST OF PARTICIPANTS\*\*

##### I. Member States

**Austria:** O. Leberl. **Brazil:** A. Westphalen. **Denmark:** K. Skjødt; D. Simonsen. **France:** P. Guérin. **Germany (Federal Republic of):** U. C. Hallmann. **Japan:** K. Matsuie; S. Uemura. **Luxembourg:** J.-P. Hoffmann. **Madagascar:** S. Rabearivelo. **Netherlands:** J. Dekker; H. Pieters; J. Tak. **Romania:** I. Marinescu; V. Tudor. **Soviet Union:** L. Komarov; E. Buryak; K. Saenko. **Sweden:** G. Borggård; S. Lewin; B. Sandberg. **Switzerland:** P. Braendli; R. Kämpf. **United Kingdom:** R. Bowen; A. J. Needs. **United States of America:** H. D. Hoinkes; L. Maassel.

<sup>2</sup>The texts of the Rules as amended (Rules 15.1, 15.2, 15.3, 15.4, 15.5, 16.1(b), 57.1, 57.2, 57.3, 57.4, 57.5 and 57.6), of the new Rule (Rule 96) and of the new Schedule of Fees appear in the *PCT Gazette*, No. 11/1979, published on May 31, 1979. They will also be published as a supplement to the *Manual of Industrial Property Conventions*, Volume III.

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

## II. Observers

**Australia:** L. Thompson; F. J. Smith; H. Freeman. **Canada:** E. W. Bown. **Czechoslovakia:** J. Čížek. **Finland:** P. Salmi. **Hungary:** Z. Szilvássy; E. Parragh. **Italy:** I. Papini; S. Samperi; M. Puglisi. **Mexico:** O. Reyes-Retana; M.F. Ize de Charrin. **Niger:** I. Foukori. **Norway:** A. G. Gerhardsen; P. T. Lossius; I. Lillevik. **Spain:** J. Delicado Montero-Ríos; J. M. García Oyaregui.

## III. Intergovernmental Organizations

**European Patent Organisation (EPO):** U. Schatz; L. Gruszow.

## IV. International Non-Governmental Organizations

**Council of European Industrial Federations (CEIF):** M. van Dam. **European Federation of Industrial Property Representatives of Industry (FEMIP):** C. Gugereil. **International Federation of Inventors' Associations (IFIA):** P. Feldmann. **International Federation of Patent Agents (FICPI):** E. Gutmann. **Union of Industries of the European Community (UNICE):** C. G. Wickham; R. Kockläuner.

## V. Officers

*Acting Chairman:* P. Braendli (Switzerland). *Secretary:* E. M. Haddrick (WIPO).

## VI. WIPO

A. Bogsch (*Director General*); K. Pfanner (*Deputy Director General*); M. Pereyra (*Director, Administrative Division*); E. M. Haddrick (*Head, PCT Division*); J. Franklin (*Deputy Head, PCT Division*); D. Bouchez (*Head, PCT Publications Section, PCT Division*); M. Lagesse (*Head, Budget and Systems Section, Administrative Division*); N. Scherrer (*Head, PCT Fees, Sales and Statistics Section, PCT Division*); V. Trousov (*Senior Counsellor, Legal and General Section, PCT Division*); A. Okawa (*Counsellor, PCT Examination Section, PCT Division*).

## Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

### Interim Advisory Committee

Second Session

(Geneva, April 30 to May 3, 1979)

#### NOTE\*

The Interim Advisory Committee for the preparation of the entry into force of the Budapest Treaty held its second session<sup>1</sup> in Geneva from April 30 to May 3, 1979.

Twenty of the 30<sup>2</sup> States members of the Paris

\*This Note has been prepared by the International Bureau.

<sup>1</sup>A Note on the Committee's first session (April 1978) was published in *Industrial Property*, 1978, p. 169.

<sup>2</sup>The 30 States are as follows: Australia, Austria, Bulgaria, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Indonesia, Italy, Japan, Luxembourg, Mexico, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Senegal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia.

Union that had signed the Budapest Treaty and/or participated in the Budapest Diplomatic Conference were represented on the Committee, while three other States, one intergovernmental organization (special observer) and six international non-governmental organizations participated as observers. The list of participants follows this Note.

The Committee examined, on the basis of documents prepared by the International Bureau, draft forms to be used in procedures under the Treaty, a study on the possibility of refusal of deposit of microorganisms by an international depositary authority and the results of a survey concerning prospective international depositary authorities.

The Committee also dealt with prospects for ratification of the Treaty or accession to it. The Secretariat recalled that two countries, namely Bulgaria and Hungary, had ratified the Treaty and that three more ratifications or accessions were needed for it to enter into force. The Delegations stressed the interest of their countries in the principles embodied in the Treaty and in its early entry into force. The statements of several delegations showed that the procedure for ratification in their respective countries had already started so that several ratifications could be expected to take place between the end of 1979 and 1981.

## LIST OF PARTICIPANTS\*\*

### I. Member States

**Bulgaria:** N. Tzontchev. **Denmark:** D. Simonsen; G. Lütken. **Egypt:** F. El-Ibrashi. **Finland:** H. Lommi. **France:** P. Guérin; D.

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

**Darmon. Germany (Federal Republic of):** U. C. Hallmann. **Hungary:** Z. Szilvássy; E. Parragh. **Italy:** S. Samperi; G. Caggiano; M. Bellenghi. **Japan:** K. Matsue; S. Uemura. **Mexico:** O. Reyes-Retana. **Netherlands:** J. D. Tak. **Norway:** P. Lossius. **Philippines:** D. Wendam. **Romania:** V. Tudor. **Soviet Union:** Z. Komarov; G. Gudkov. **Spain:** J. Delicado Montero-Ríos; J. M. García Oyaregui. **Sweden:** R. Walles. **Switzerland:** J.-L. Comte; R. Kämpf. **United Kingdom:** A. J. Needs. **United States of America:** S. Schlosser; S. Brattain.

### II. Observer States

**Iraq:** A. N. Khalaf. **Madagascar:** S. Rabearivelo. **Niger:** I. Foukouri.

### III. Intergovernmental Organizations (Special Observers)

**European Patent Organisation (EPO):** L. Gruszow.

### IV. International Non-Governmental Organizations

**Council of European Industrial Federations (CEIF):** M. van Dam. **European Federation of Agents of Industry in Industrial Property (FEMIP):** G. Tasset. **International Association for the Protection of Industrial Property (IAPIP):** G. Horvath; G. Tasset. **International Federation of Patent Agents (FICPI):** A. Braun. **International Federation of Pharmaceutical Manufacturers Associations (IFPMA):** G. Szabo. **World Federation for Culture Collections (WFCC):** I. J. Bousfield.

### V. Officers

*Chairman:* J.-L. Comte (Switzerland). *Vice-Chairmen:* Z. Szilvássy (Hungary); S. Schlosser (United States of America). *Secretary:* F. Curchod (WIPO).

### VI. WIPO

K. Pfanner (*Deputy Director General*); L. Baeumer (*Director, Industrial Property Division*); F. Curchod (*Head, Special Projects Section, Industrial Property Division*); A. Ilardi (*Legal Officer, Special Projects Section*).

## General Studies

### Recent Developments in Spanish Legislation in the Field of Industrial Property and Related Rights\*

A. DE ELZABURU and M.-A. BAZ\*\*

In this article we propose to outline what we consider to be the most striking legislative develop-

\* This is the first of two studies dealing with recent developments in industrial property in Spain. The second study, which will be published in a forthcoming issue of *Industrial Property*, will deal with recent developments in Spanish case law.

\*\* Attorneys at law, Madrid. Mr. de Elzaburu is also Honorary President of the International Federation of Patent Agents (FICPI).

ments in the field of industrial property and related rights in our country from 1971 to 1978, thus following on from "Letter from Spain—1967 to 1970."<sup>1</sup>

In view of the length of the period under review and the nature of this article, it has been necessary to limit the majority of references to a mere mention of the source, or at best to an indication of the essence of the provision concerned, and moreover to concentrate on aspects that are most likely to interest a non-Spanish reader, to whom this work is mainly addressed. We have divided this study into two main parts, devoted

<sup>1</sup> See *Industrial Property*, 1971, p. 349.

respectively to the consideration of the present status of projects for the reform and modernization of basic industrial property legislation, and the most striking legislative developments. A future study will focus on the most relevant court decisions.

## I. Projects for the Reform of Industrial Property Legislation

None of the legal and administrative obstacles to the conversion of these reform projects into law has yet been overcome. What is more, no draft has yet even been passed by the Government as a formal bill for presentation to Parliament. The latest important document on the subject, namely the Draft Patent and Utility Model Law, which has already been dealt with in this review,<sup>2</sup> has been mothballed for the time being, owing partly to opposition from various sectors to its content and slant—or at least to some of the most striking of its innovating principles—partly to the implications of all kinds, and the economic implications in particular, inherent in a change in the legal system for the protection of inventions, and partly also to the implications for our country of the signature or non-signature of treaties such as the PCT or the Munich Convention on the European Patent, and finally because the course of political and administrative events within the country has called for a concentration of effort on other areas and subjects which apparently are of more pressing importance.

This is a regrettable situation in the opinion of the authors, as it is obvious—and in this practically all the sectors concerned agree, although the agreement disappears when the time comes to determine the orientation of the reform—that the legislation in force is not equipped to contend with the requirements resulting from the extraordinary progress of technology, the complexity of international economic relations and markets, and ultimately the profound changes of all kinds that have occurred in the world during the last few decades.

We can only hope that we shall have the opportunity in the not-too-distant future to examine final reform projects; our optimism stems from the fact that the Industrial Property Registry (*Registro de la Propiedad Industrial*) has been reorganized and assigned the task, among others, of “promoting action... conducive... to the more adequate protection of industrial property,”<sup>3</sup> with a Studies and International Relations Department, responsible among other things for “proposing such amendments to the industrial property legislation in force as are

dictated by experience.”<sup>4</sup> We believe that this will be one of the basic tasks to be faced as soon as other more immediate targets have been met, such as that of eliminating the backlog in the handling of files.

## II. Legislative Developments

### International Treaties

Between January 1971 and the end of 1978, the *Boletín Oficial del Estado*<sup>5</sup> announced that Spain had ratified or acceded to the following:

#### Multilateral Treaties

##### Industrial Property Treaties

(a) Convention of July 14, 1967, Establishing the World Intellectual Property Organization (April 26, 1970);<sup>6</sup>

(b) Stockholm Act of July 14, 1967, of the Paris Convention for the Protection of Industrial Property (April 14, 1972);

(c) Lisbon Act of October 31, 1958, of the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (August 14, 1973);

(d) Strasbourg Agreement of March 24, 1971, Concerning the International Patent Classification (November 29, 1975);

(e) Locarno Agreement of October 8, 1968, Establishing an International Classification for Industrial Designs (November 16, 1973).

##### Other Relevant Treaties

(a) New York Convention of June 10, 1958, on the Recognition and Enforcement of Foreign Arbitral Awards (August 10, 1977);

(b) European Convention of April 21, 1961, on International Commercial Arbitration (August 10, 1975);

(c) The Hague Convention of October 5, 1961, Abolishing the Requirement of Legalisation for Foreign Official Documents (September 25, 1978).<sup>7</sup>

<sup>4</sup> Section 41(2) of Royal Decree No. 2573 of June 17, 1977 (see Part II of this article, below).

<sup>5</sup> Hereinafter cited as *BOE*.

<sup>6</sup> The date appearing in brackets after the indication of a treaty or agreement is that of its entry into force in Spain, as announced in every case by the Spanish Ministry of Foreign Affairs.

<sup>7</sup> Attention is drawn to the interest of ratifying this Convention, in that dispensing with consular authentication of documents issuing from countries party to it will undoubtedly be a considerable advantage—especially in terms of the time saved—for any of those countries that might otherwise have to draw up official documents in order to achieve effective validity in Spain.

<sup>2</sup> See *Industrial Property*, 1971, pp. 350 *et seq.*

<sup>3</sup> Section 2(3) of Law No. 17 of May 2, 1975 (see Part II of this article, below).

## Bilateral Treaties

### Industrial Property Treaties

(a) Seoul Agreement of July 31, 1975, with the Republic of Korea on the Mutual Protection of Industrial Property (August 15, 1975), and Peking Agreement of June 10, 1977, with the Chinese People's Republic on the Registration and Protection of Marks (August 10, 1977).<sup>8</sup>

(b) The following treaties have been signed on the protection of indications of source, appellations of origin and other geographical indications for agricultural and industrial products:

With the Federal Republic of Germany on September 11, 1970 (September 27, 1973); with Portugal on December 16, 1970 (August 23, 1972);<sup>9</sup> with France on June 27, 1973 (March 5, 1975);<sup>10</sup> with Switzerland on April 9, 1974 (March 10, 1976);<sup>11</sup> with Austria on May 3, 1976 (December 15, 1977).<sup>12</sup> All five have long lists of denominations the reciprocal protection of which is recognized.<sup>13</sup>

In addition to the above, a mention should also be made in this section of the Hispano-Cuban Trade Agreement of December 18, 1971 (December 22, 1972),<sup>14</sup> in that its Article IV provides for the mutual protection of indications of source or appellations of origin "against any form of unfair competition," and a list is included of certain denominations that are specifically protected.

### Taxation

Spain has entered into a number of agreements to avoid double taxation of income that have a definite effect on the taxation of royalties from the grant of licenses and similar forms of exploitation of industrial property rights, such royalties deriving from one State and being paid to the resident of another State. To be more specific, such agreements were entered into with the Netherlands on June 16, 1971 (September 20, 1972), Denmark on July 3, 1972 (June 20, 1973), France on June 27, 1973 (March 10, 1975), Japan on February 13, 1974 (November 20, 1974), Brazil on November 14, 1974 (December 3, 1975), the United Kingdom on October 21, 1975 (November 25, 1976)

<sup>8</sup> Both recognize that the subjects of each Contracting State receive the same treatment in the other State as the nationals of the latter.

<sup>9</sup> See *Industrial Property Laws and Treaties*, BILATERAL TREATIES — Text 5-004 (*Industrial Property*, January 1977).

<sup>10</sup> *Ibid.*, Text 5-001 (*Industrial Property*, April 1976).

<sup>11</sup> *Ibid.*, Text 5-007 (*Industrial Property*, October 1978).

<sup>12</sup> *Ibid.*, Text 5-005 (*Industrial Property*, October 1978).

<sup>13</sup> For a brief analysis of some of the significant principles of these treaties or agreements (and in particular those concluded with Portugal and the Federal Republic of Germany), see "AIPPI-Annuaire" 1975/I, pp. 525 *et seq.*

<sup>14</sup> The text was published in *BOE*, February 26, 1973.

and Sweden<sup>15</sup> on June 16, 1976 (December 21, 1976).

## National Legislation

Although the professional speciality of the writers of this article makes it logical to confine analysis to specific industrial property provisions or provisions very closely connected to industrial property, we nevertheless feel it appropriate to start by commenting on some legislative innovations of a more general character, in view of their particularly universal validity—and therefore their relevance also to our specific area of concern—and then to focus our attention on innovations of more immediate significance.

### Spanish Constitution

For example, we have to refer to this fundamental text, which after all is the ultimate reference for all present and future legal enactments. It was promulgated with all the solemnity befitting such an act on December 27, 1978, and the parts of it that deserve mention within our terms of reference are the express recognition and protection, written into Section 20(1)(b), of the rights "in literary, artistic, scientific and technical production and creation"; the specific reference to "legislation on intellectual and industrial property" in Section 149(1)(9)(a), as subject matter in which the State has exclusive competence; and the provision in Section 96(1) to the effect that "validly concluded international treaties, after having been officially published in Spain, shall form part of the national legal system."<sup>16</sup>

### Civil Code

The changes made to the Preliminary Part of the Civil Code are also important. The 16 sections of that Part were entirely redrafted by Decree No. 1836 of May 31, 1974,<sup>17</sup> and they incorporate three new

<sup>15</sup> The previous Convention with this country, concluded on April 25, 1963, had first been denounced by exchange of letters dated June 26 and 28, 1974.

<sup>16</sup> In an area like that of industrial property, in which very high levels of internationalization of provisions have been achieved and in which the application of rights or benefits recognized by international treaties or agreements is so constant, this statement is of great practical importance because it clearly resolves the dilemma of whether the provisions of the international conventions may be invoked directly before administrative or judicial bodies, or whether they have first to be incorporated in national law. In fact, this bears out a principle which had already received its letters of naturalization in Spanish law with the amendment of the Preliminary Part of the Civil Code, which is mentioned immediately afterwards in the text.

<sup>17</sup> This Decree was published in *BOE*, July 9, 1974; it is a development of Law No. 3 of March 17, 1973, establishing the bases for the amendment of the Preliminary Part of the Civil Code.

features that are of interest to us here: the reference in Section 1(5) to the fact that “the legal provisions written into international treaties shall not be applicable directly in Spain insofar as they have not become part of national law through publication in their entirety in the *Boletín Oficial del Estado*;<sup>18</sup> the provision written into Section 10(1) to the effect that the determination of the rights in movable assets<sup>19</sup> is governed by the law of the place in which they are located;<sup>20</sup> and the specific mention in Section 10(4) of “intellectual and industrial property rights,”<sup>21</sup> indicating that “they shall be protected on Spanish territory in accordance with Spanish law, without prejudice to the provisions of any international conventions and treaties to which Spain may be party.”

### *Criminal Code*

This Code, which provides sanctions for the offenses of infringement of seals and marks (Sections 272 *et seq.*), improper use of names (Section 322) or titles, emblems or decorations (Section 324), disclosure and revelation of secrets (Sections 497 *et seq.*) and infringement of copyright and industrial property (Section 534), underwent redrafting by Decree No. 3096 of September 14, 1973, which has itself undergone a number of amendments since then—including in particular, increasing the amounts of the fines or other monetary penalties as a consequence of inflation and the drop in the value of money—first by Law No. 39 of November 28, 1974, and then by Law No. 20 of May 8, 1978.<sup>22</sup>

<sup>18</sup> As already mentioned in note 16, this provision states in a negative way the principle subsequently stated positively in Article 96 of the Constitution.

<sup>19</sup> Although the Civil Code does not specify whether industrial property rights should be regarded as movable or immovable assets, there is an ample doctrinal and jurisprudential trend, embodying a tradition relying on Section 30 of the Law of May 16, 1972—the immediate predecessor of the current Industrial Property Statute—towards assimilating them for many purposes, without prejudice to their recognition as special rights on immaterial assets, to the first category in the same way as other provisions of positive law: for instance, the Law on Mortgages on Movable Assets of December 16, 1954 (referred to in A. de Elzaburu, “*Lettre d’Espagne*,” *La Propriété industrielle*, 1957, p. 156).

<sup>20</sup> According to the text of the previous Section 10, movable assets were subject to “the law of the country of the owner.” This formula was likely to present insoluble problems of conflicting provisions, for instance in the case of patents or trademarks belonging to Spaniards abroad or belonging to foreigners in Spain, as the application of the personal law of the owner to his property is sometimes not clear or indeed possible. According to the new provisions, to take one example, the ownership of a Spanish trademark by a foreigner will be subject to Spanish law in view of the fact that a trademark registered in Spain has to be regarded as being located in that country.

<sup>21</sup> This mention of “industrial property” rights is the only one in the Civil Code, which did not recognize them until the reform we are concerned with here.

<sup>22</sup> The latter was published in *BOE*, May 9, 1978.

### *Procedural Law*

We should also refer to two important reforms of a jurisdictional and procedural character which have an influence on the field of industrial property, namely those introduced by Law No. 10 of March 17, 1973,<sup>23</sup> amending the Law on Legal-Administrative Jurisdiction (*Jurisdicción Contencioso-administrativa*), and Law No. 1 of January 4, 1977,<sup>24</sup> Creating the National Tribunal (*Audiencia Nacional*). The first provided that rulings made by the Industrial Property Registry—against which there was a possibility of legal-administrative appeals before the Supreme Court—would in future be susceptible of appeal before the territorial jurisdiction (new Section 10(1)(b)), either that of Madrid—that being the place in which acts of the Registry are published—or, at the discretion of the plaintiff, that in the circumscription of which the plaintiff has his domicile (new Section 11(2)(a)), with the further possibility of appeal to the Supreme Court (new Section 14(1)(B)).<sup>25</sup> The second of the two Laws endowed the National Tribunal with nationwide competence to take cognizance of, among others, offenses of infringement of copyright and industrial property where the commission of those offenses might have serious repercussions on the security of business dealings or on the national economy.<sup>26</sup>

### *Self-Management and Restructuring of the Industrial Property Registry*<sup>27</sup>

“The fate of industrial property is closely connected with industry and ultimately with the economic development of the country by way of its direct effect on the key areas of technological policy, for it is the industrial inventions of a country that determine its level of technological development, and the distinctive signs used by the industrialist or trader play a fundamental part in the ultimate aim of all industrial activity.” With these words Law No. 17 of May 2, 1975,<sup>28</sup> began its justification of its provisions on the new structure of the Industrial Property Registry, namely its conversion into a self-managing State entity, in other words,

<sup>23</sup> Published in *BOE*, March 21, 1973.

<sup>24</sup> *BOE*, January 5, 1977.

<sup>25</sup> In view of the dependence of the Industrial Property Registry on the Ministry of Industry, appeals filed with the Supreme Court concerning instruments issued by the Registry are all heard by the Third Chamber of the Supreme Court in accordance with the provisions of the Order of January 12, 1974 (*BOE*, January 19, 1974).

<sup>26</sup> The normal jurisdiction in this category of offenses is determined according to Section 269 of the Law on Industrial Property: the plaintiff may choose between the place in which the offense was committed and the place in which material proof of the offense was discovered.

<sup>27</sup> See also *Industrial Property*, 1976, pp. 294 *et seq.*

<sup>28</sup> Published in *BOE*, May 5, 1975.

a body endowed with administrative and financial autonomy.

Section 2 of the above Law specifies the aims and functions of the Industrial Property Registry and emphasizes, apart from the administrative acts associated with the recognition and maintenance of the protection by registration accorded to the various forms of industrial property, which one might say were natural and logical, the function of applying the international conventions in force in the industrial property field and promoting the development of international relations in the same field, as well as that of "efficiently and periodically publicizing technological information which is the subject of the registration."

Naturally, in order to contend with the new structures and functions and the autonomy introduced by the Law in question, methods had to be devised to obtain the necessary financial means for the adequate development of the activities envisaged. New scales of fees were therefore established which, while much higher than their predecessors—for the most part established by provisions that were more than 40 years old—were in any event lower than those customary in the majority of more developed countries. To achieve these new economic aims the Law was completed by Decree No. 2,358 of September 11, 1975,<sup>29</sup> which sanctions new charges for certain services of the Industrial Property Registry, such as subscriptions to the Official Bulletin of Industrial Property, or insertions in it, the ordering of photocopies of documentation in the Registry's files, or documentary information services.

Finally, Royal Decree No. 2,573 of June 17, 1977,<sup>30</sup> fitted the final link to the chain of legislative reforms that concerns us in this Part: it approved the Rules of Procedure of the Industrial Property Registry, establishing the basic general structure of the Registry, which consists of an Administrative Council, a Director, a General Secretariat and the individual Departments (Patents and Models, Distinctive Signs, Technological Information and Studies and International Relations). A striking feature of this new structure is the Technological Information Department, with a documentary search and distribution service and a documentary study and publications service. The former of these has tasks such as the updating of the search files, the exchange of patent documents with foreign industrial property offices and the organization of the dissemination of more recent technology. The documentary study and publications service is assigned tasks such as the planning of technological information, the issuance of reports and the compiling of statistics, the organization of cooperation with national and international bodies special-

ized in scientific and technological information, the coordination of the publishing of the Official Bulletin of Industrial Property, the microfilming of Spanish patent documents and the furnishing to the public of copies of documents affording technological information.

Quite apart from the importance of these future prospects arising from the reform of the structure of the Industrial Property Registry, perhaps the most striking feature, in the short term, is the fact that, following the entry into force of the Law of May 2, 1975, the efficacy of the reform is already a demonstrable fact: the backlog in the processing of files has diminished considerably, and this in turn, by removing uncertainties, has brought about an increase in the level of protection of industrial property rights, which was precisely one of the aims pursued, according to the Minister of Industry when presenting the Bill to Parliament.

#### *Transfer of Technology*

The Decree of September 21, 1973,<sup>31</sup> regulated, for the first time in organic form, the transfer of technology from abroad to natural persons or legal entities resident in Spain, with specific provisions on administrative acts which until then were in fact a matter of course. Starting from the premise that technology is an economic growth factor and that the acquisition of technology from abroad by Spanish industry is a "strategic source of supply" for it, it was considered necessary to establish some form of control.<sup>32</sup> This was done by the creation of the Register of Contracts for the Transfer of Technology for the registration of contracts concerning the assignment of industrial property rights, transmitting unpatented technology, engineering or research services, training and documentation services, and generally any aspects of technical assistance.

Registration in the Register of Contracts for the Transfer of Technology has been made mandatory, and is therefore a *sine qua non* before the Ministry of Commerce can authorize the transfer abroad of any

<sup>31</sup> Published in *BOE*, October 2, 1973, under serial No. 2343; for an English translation, see *Industrial Property*, 1975, p. 65.

<sup>32</sup> It is normal that many countries should feel concern in the face of their growing technological dependence, and that measures should be adopted to reduce it (although such measures obviously have to remain within the bounds of lawfully acquired industrial property rights). One of those measures—and a very praiseworthy one, too—is, apart from that of supervising the payments of royalties abroad, that of promoting research and the creation of technology within the country. This aim was served in Spain by the restructuring of the Council of Scientific Research by Royal Decree No. 62 of January 21, 1977, and by the creation of the Industrial Property Development Center by the Decree of August 5, 1977 (not to mention the restructuring and redefining of the functions of the Industrial Property Registry, dealt with earlier on in the text).

<sup>29</sup> Published in *BOE*, October 9, 1975.

<sup>30</sup> Published in *BOE*, October 14, 1977.

payments arising out of assistance or similar contracts.

The registration of contracts follows an examination procedure, in which the parties are invited to remove so-called restrictive or discriminating clauses, such as those that prevent, prejudice or hamper the development of the technology by the recipient or limit his corporate freedom, or constitute an abuse on the part of the party assigning the technology, and, more specifically, those covered by Section 3 of the Order of December 5, 1973, which regulated the above-mentioned Decree of September 21, 1973;<sup>33</sup> these clauses correspond for the most part to the abusive practices against which the Council of the OECD warned somewhat later.<sup>34</sup>

A large number of technical assistance contracts have been entered in the new Register since the entry into force of this new Decree (October 3, 1973), and it may be said that the Spanish Administration has adopted flexible criteria for its examinations and authorizations, assessing each contract submitted for registration as a whole, in such a way that the presence of certain discriminating clauses may nevertheless be accepted provided that they are seen to be offset by other advantageous aspects for the recipient of the technology, such as the recognition of the right to export to geographical areas with which Spain has an unfavorable trade balance.

#### *Food and Pharmaceutical Industries and Economic Competition Law*

One of the typical concerns of recent governments is that of the purity, quality, hygiene and healthfulness of products for human consumption and pharmaceuticals. In order to achieve this and avoid the disastrous consequences for health and the economy that the adulteration or imitation of such products or their indiscriminate, uncontrolled consumption may bring, provisions are currently being adopted concerning the manufacture, preservation and marketing of such products, and some of the provisions are of particular interest in the industrial property field in that they have a direct effect on trademark rights or impose limitations on the principle of economic freedom or obligations with respect to the labelling of branded articles (national or imported), etc.<sup>35</sup>

<sup>33</sup> Published in *BOE*, December 17, 1973; for an English translation, see *Industrial Property*, 1975, p. 66.

<sup>34</sup> See Recommendation of the Council Concerning Action Against Restrictive Business Practices Relating to the Use of Patents and Licences, adopted by the Council of the Organization for Economic Co-operation and Development (OECD) on January 22, 1974, at its 348th Meeting (*Industrial Property*, 1974, p. 204).

<sup>35</sup> In other respects the latter may be regarded as a chapter—and undoubtedly the most important one—of what has been called

Mention should be made in this connection of the Decree of August 9, 1974, by virtue of which the Spanish Food Code of September 21, 1967,<sup>36</sup> finally entered into force, and also of the Decree of March 7, 1975, which contains provisions under the Food Code concerning labelling, marking and advertising of tinned and packed foods, prohibiting any labeling and publicity that might leave the consumer in doubt as to the origin, nature, etc., of the foods, and specifying that the registered mark or the name of the manufacturer and the date of packing or the freshness date-limit must in all cases be visibly indicated. Mention should also be made—the interest of which is clear to all foreign industrialists deciding to introduce their products in Spain—of the abundance of concrete provisions governing the preparation and marketing of various products, such as bottled table waters, refreshing drinks and fruit juices and drinks derived from these (Decrees of October 26, 1972, March 7, 1975, and March 28, 1977, respectively); ice cream, sweet meats and chewing gum, cocoa and chocolate products and confectioneries, pastries and bread (Decrees of July 20, 1974, September 12 and December 5, 1975, and May 19, 1978, respectively); food preparations for dietary or special purposes (Decree of October 16, 1976); ready-made meals (part-cooked and cooked) and vegetable preserves (Decrees of February 8, 1977, and June 2, 1978, respectively); etc.

Under this same heading we should also mention the numerous provisions that have been enacted on the preparation and marketing of wines, alcohols and derived products under the Vine, Wine and Alcohol Law<sup>37</sup> and the Regulations under it:<sup>38</sup> for instance, the Order of July 27, 1972, on sparkling and aerated wines; the Decree of March 29, 1973, on whisky; the Order of January 23, 1974, on sangría and other beverages; the Order of July 15, 1974 on cider; the Decree of August 9, 1974, on brandy; the Decree of June 5, 1975, on rum; and the Decree of September 12, 1975, on beer. There have also been a number of regulatory texts on appellations of origin for wines<sup>39</sup> of similar content, intended to protect the purity and proper use of such appellations of origin for wines, whether intended for national consumption or for export.<sup>40</sup>

“consumer protection,” which has been receiving growing attention from national and international bodies, WIPO itself among them: see *Industrial Property*, 1978, p. 283.

<sup>36</sup> On its significance and contents, see *Industrial Property*, 1971, p. 353.

<sup>37</sup> Law of December 2, 1970 (*BOE*, December 5, 1970).

<sup>38</sup> Decree of March 23, 1972 (*BOE*, April 11, 1972).

<sup>39</sup> Examples of those that have been settled are Alella, Alicante, Almansa, Cariñena, Jerez-Xérès-Sherry and Manzanilla-Sanlúcar, de Barrameda, Jumilla, Málaga, Mancha, Montilla-Moriles, Navarra, Penedés, Priorato, Ribeiro, Rioja, Valdepeñas, etc.

<sup>40</sup> See *Industrial Property*, 1971, p. 352, in which the importance of this subject to our country is mentioned, being also demonstrated

Mention should also be made of the provisions on the production and marketing of pharmaceutical products, such as Decree No. 1416 of May 10, 1973, on the Organization of the Pharmaceutical Register for the registration of pharmaceutical preparations developed in Spain (as in principle, under Section 15, imported preparations that are already prepared for sale to the public are authorized only as an exceptional measure); Decree No. 1418 of May 10, 1973, amended by No. 3506 of December 16, 1977, on the Organization of the Pharmaceutical Industry, which, in order to put an end to the excessive proliferation of small firms, imposes minimum requirements for the authorization of the installation of a new industry,<sup>41</sup> and also encourages the earmarking of a percentage of the budget for research; Royal Decree No. 3152 of November 7, 1977, which establishes a set of provisions designed to reduce the number of authorized pharmaceutical preparations, particularly those that are identical in composition to others already existing;<sup>42</sup> and Royal Decree No. 3451 of December 1, 1977, on the Promotion, Publicizing and Advertising of Medicines, which has to receive prior approval when intended for the public, with a general prohibition on that which is conducive to self-medication.

Of no less importance are other provisions enacted in the general area of so-called "market discipline." These include Decree No. 3632 of December 20, 1974, which deals with infringements of the legislation on commercial transactions (for example, the imposition of the obligation not to sell below a minimum price, or minimum purchase conditions), infringements of commercial standardization and technical sales conditions (for instance, failure to comply with

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by its international activity in defense of its appellations of origin (see under II, Bilateral Treaties—Industrial Property Treaties, paragraph (b), above). If a distinction is made between countries that desire and promote the broad protection of appellations of origin and those that do not want it, Spain is bound to be placed in the first category (for a more thorough analysis of this subject, reference may be made to the reports and resolutions contained in the "Annuaire" of IAPIP: 1973/I, pp. 481 *et seq.*; 1973/II, pp. 26 *et seq.*; 1974/I, pp. 83 *et seq.* and 111 *et seq.*; 1975/I, pp. 459 *et seq.*; 1975/II, pp. 85 *et seq.*; 1975/III, pp. 114 *et seq.* and 137 *et seq.*; etc.; alternatively, there are the documents issued by WIPO in the TAO series on the drafting of a treaty for the protection of geographical indications; see also C. Fernandez-Novoa, "La protección internacional de las denominaciones geográficas de los productos," Madrid, 1970).

<sup>41</sup> For instance, one that presupposes a minimum investment of 30 million pesetas in machinery, capital goods and monitoring apparatus.

<sup>42</sup> This is intended as a corrective to one of the most frequently mentioned shortcomings of the pharmaceutical sector (combined with that of industrial and corporate fragmentation, the correction of which has also been attempted, as mentioned earlier in the text), namely that of the proliferation of pharmaceutical specialities having the same composition and uses, but a different presentation—including cases of common origin—which has led our country not only to go beyond the recommendations of the World Health Organization regarding reductions in the number of proprietary medicines, but also to be stricter than the majority of countries of the world with regard to the number of specialities authorized.

provisions on the commercial standardization of goods or merchandise, prohibitions on the sale of certain goods, or provisions on marking, labelling, packing and advertising), offenses of fraud and adulteration (with respect to quality or origin of the merchandise or their weight or measurements), price control offenses, etc.

All this, as we see, is in line with a very up-to-date and praiseworthy policy of consumer protection which involves screening the market and the information provided by parties placing goods and services on that market.<sup>43</sup>

### *Protection of Plant Varieties*

Something that has been a traditional subject of controversy in our country for a number of years is the question of the protection of new varieties of plants or botanical species, in view of the fact that there is no specific legislation in this area, or even any adaptation of the provisions on patents and utility models to the specific problems generally raised by the protection of such subject matter.<sup>44</sup>

This gap began to be filled with the appearance of Law No. 11 of March 30, 1971, on Seeds and Nursery Plants and the General Rules under it, approved by Decree No. 3767 of December 23, 1972. Section 5 of the Law already provided that the Ministry of Agriculture would have to establish a Register of Commercial Varieties of Plants and a Register of Protected Plant Varieties, the characteristics of which were then specified in Section 5(c) and (d) of the Rules. Later, the Order of September 14, 1972, set up the Provisional Register of Producers of Nursery Plants;<sup>45</sup> the Order of July 26, 1973, established the Provisional Register of Commercial Varieties of Plants;<sup>46</sup> another, also

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<sup>43</sup> In this connection we could also mention Decree No. 3289 of November 21, 1974, under which the use of denominations or drawings referring to "hide," "leather" and the like, or to the animals from which they are taken, is strictly reserved for products possessing that character or origin, and errors are avoided that would otherwise be made by consumers with respect to the real nature of a product or its raw material.

<sup>44</sup> However, certain new plant varieties, especially of foreign origin, have been protected by way of utility model registrations (on the basis of the new form of the variety), the validity of which has not been contested, as far as we know, by any court. Obviously, the concept of the utility model was not legally created for this purpose, and the decisions of the Industrial Property Registry recognize that protection can only be explained by the need to cover up a legal loophole.

<sup>45</sup> Its regulation was taken further in the Resolution of December 31, 1972.

<sup>46</sup> Its General Rules were approved by Order of November 30, 1973, and two Resolutions on March 4, 1974 (published in *BOE*, April 19, 1974), approved the first lists of commercial varieties of roses and carnations entered in the Register, which were followed later by lists of other varieties (rye, triticale, oats, cotton, rice, sunflower, saffron, barley, soya and maize by Resolutions of March 27, 1974; potato by Resolution of July 21, 1974; sugarbeet by Resolution of November 21, 1974; wheat by Resolution of

dated July 26, 1973, approved the General Rules on the Control and Certification of Seeds and Nursery Plants;<sup>47</sup> others, on various dates, approved regulations for the registration of various varieties.<sup>48</sup> This continued until the all-encompassing Law No. 12 of March 12, 1975, on the Protection of Plant Varieties was promulgated.<sup>49</sup>

The purpose of the new Law<sup>50</sup> is the recognition, through the grant of a "Plant Variety Title," and the protection of the rights of the breeder of a new plant variety—regardless of its botanical genus or species—which is new in the sense that it is differentiated from others that already exist and meets requirements of homogeneity and stability. A variety cannot be considered new if, prior to the application for a plant variety title, it has already been commercialized or offered for sale in Spain—with the consent of the breeder or his successors in title—or in any foreign country for more than four years or has been the subject of sufficient publicity for exploitation to be possible, or has been described in a prior application.

The registration of the new plant variety in the Register of Protected Varieties of the National Institute of Seeds and Nursery Plants (of the Ministry of Agriculture) is achieved by means of an examination procedure which is limited by regulation to the verification of compliance with the application formalities and the clarity of the description, and also to the study of the documents filed and the fulfillment of the requirements of novelty, homogeneity and stability of the variety for which protection is sought.

The same rights are recognized to foreigners as to nationals insofar as their country applies the principle of reciprocity or insofar as any convention to which Spain is party<sup>51</sup> so provides, but in any event all

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November 25, 1974; peas, French and broad beans and lucerne by Resolutions of January 31, 1975; sorghum by Resolution of July 22, 1975; etc.); earlier approved lists were also amended or extended (as the rose list by Resolution of May 9, 1975).

<sup>47</sup> Thereafter, a number of specific Technical Resolutions for the Control and Certification of Seed were enacted; for instance, on oil-bearing plants and maize (in various Orders on November 28, 1973), on sowing potatoes (Order of November 30, 1973), on sorghum (Order of October 29, 1974), on cotton (Order of March 31, 1975), on fodder plants (Order of January 31, 1976), on nursery citrus plants (Order of July 21, 1976), etc.

<sup>48</sup> For instance, potato, beets, wheat, barley and oats (Orders of April 28, 1975).

<sup>49</sup> This Law was published in *BOE*, March 14, 1975, and, to put an end to the old practice mentioned in Note 43, above, a new paragraph 7 was added to Article 48 of the Industrial Property Statute—the provision governing exclusions from patentability—which provides to the effect that patents may no longer be granted in respect of "new plant varieties that benefit from the system of protection introduced by the Law on the Protection of Plant Varieties."

<sup>50</sup> An English translation may be found in *Industrial Property*, 1975, pp. 289 *et seq.*

<sup>51</sup> At the time of writing, Spain is not yet party to the Union for the Protection of New Varieties of Plants (UPOV) (Paris Conven-

proceedings have to take place through a representative domiciled in Spain. Where appropriate, a "Plant Variety Title," with a minimum term of 15 years and a maximum of 20, is granted, although for the first two years it has provisional character, subject to any opposition that might be filed against its grant.<sup>52</sup>

The "Plant Variety Title"—the validity of which may only be contested before the ordinary courts of law—confers the exclusive right to produce, import, sell or offer for sale or exploit the reproductive or vegetative propagating material of the variety and, in addition, plants or parts of plants which are normally commercialized for purposes other than those of propagation (this applies especially to ornamental plants); it does not, however, authorize its owner to prohibit the use of the new variety for the production of other, different ones. The "Title"—which may be made the subject of licensing and transfers—also gives the right to institute civil and criminal proceedings before the courts against parties who violate the breeder's rights and who, in any case—apart from whatever civil and criminal sanctions may be appropriate in accordance with what is established in the Law itself—are obliged to answer for any damages and prejudice caused and, of course, to discontinue the acts infringing the exclusive right of the owner of the "Plant Variety Title." It is important to mention that, unless expressly agreed otherwise, the action available to the owner of the "Title" may also be initiated by a licensee, subject to prior notification of the owner, in order to determine whether the latter considers it appropriate to take part in the proceedings.

At the time of the grant of the "Plant Variety Title," an entry is also made in the Register of the denomination of the protected variety, which constitutes its generic designation, without prejudice to any trademark that might afterwards be used exclusively in the marketing of the variety. The denomination must not be such as might mislead or lead to confusion with those of other varieties of the same or a similar botanic species or concerning the characteristics or value of the variety or the identity of the breeder.

In order to keep the "Title" in force, an annual fee has to be paid, which differs depending on the group of plant species to which the variety belongs and which

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tion of December 2, 1961). Nevertheless, the Spanish Law has indirectly provided for the possibility of accession taking place in the future by means of a reference—as we have seen—to international conventions on the subject to which Spain may be party; the possibility was also recognized of claiming the priority of a foreign application during a period of 12 months, as provided in Article 12 of the said Paris Convention.

<sup>52</sup> For these purposes—and for the general publicity purposes of a Registry of the kind we are considering, provision has been made (Section 17 of the Rules) for the periodical publication of a "Bulletin of the Registry of Protected Plant Varieties" in which are published filed applications, proposed denominations for new varieties, granted and refused, titles, registered licenses of exploitation, pronounced invalidations, etc.

increases annually in amount for the first five years, remaining unchanged after the fifth.

There are also provisions on the circumstances in which the "Title" may be invalidated (for want of the right to obtain it and for want of novelty) and on the circumstances in which its effects cease (request by the owner, loss of homogeneity and stability of the variety, noncompliance with administrative obligations regarding exploitation and control of the production and preservation of the variety, nonpayment of fees, expiration of term of protection, etc.).

Finally, it should be mentioned that the application of the Law we are commenting on here, and its Rules, began with the possibility, provided by the Order of November 16, 1978, of issuing "Plant Variety Titles" for varieties of wheat, barley, oats, rice, potatoes, roses and carnations.

### *Foreign Investment*

Pursuant to the mandate contained in Section 53 of the Law of June 15, 1972, on the Third Economic and Social Development Plan, the Government promulgated, on October 31, 1974, Decrees Nos. 3021 and 3022, the first approving the revised text of the legislative provisions on foreign investment in Spain<sup>53</sup> and the second the rules governing such investments.<sup>54</sup>

Both texts, and other complementary ones enacted thereafter,<sup>55</sup> achieved the task of tidying up and simplifying the abstruse and complex legislation which had been in force until then, endeavoring thereby to bring about an additional influx of foreign capital, which had begun to provide our markets with less abundant support than in the past, essentially because the economic crisis was already an accepted fact throughout the world, and because political expectations were already becoming complicated.<sup>56</sup>

According to the new provisions, foreign invest-

ment can take place by means of the provision of outside funds, by the provision of capital goods or technical assistance, by the assignment of patents and manufacturing licenses or by any other means that may be authorized; all this may take various forms, the most noteworthy of which—owing to its greater frequency in practice—is that which involves acquiring a share in the capital of a Spanish firm, subject to prior administrative authorization when it exceeds 50% of the capital<sup>57</sup> or a percentage of free investment that is laid down in any specific provision. In addition, a Register of Foreign Investments was created in which all investments made or withdrawn have to be entered by means of the appropriate declaration,<sup>58</sup> the declaration being an essential document for the repatriation of capital or profit. Finally, the responsibilities assigned in this connection to the Council of Ministers, the Ministry of Commerce and the General Directorate of Foreign Transactions are specified in detail (Sections 33 *et seq.* of the Rules).<sup>59</sup>

These new provisions were amended in part by Royal Decree No. 3099 of November 26, 1976, because, according to its statement of grounds, "the world economic situation and especially the effect that the crisis is having on capital markets, combined with the need felt by the Spanish economy to increase the rate of investment in order to absorb as much labor as possible, calls for measures to facilitate the access of foreign capital to the Spanish market." To this end general authorization is given<sup>60</sup> (except in certain

1959 and 1965, all applications for foreign investment were approved practically without exception, although this was by means of the creation of firms with more than 50% of the capital in the hands of foreign investors. Between 1965 and 1969 a more restrictive policy began. Between 1969 and 1972 the restrictions increased. Finally, from 1973 onwards, the policy adopted was one of openness and greater liberalization, but according to selective criteria (according to the status of the sector concerned by the prospective investment, for instance) which were implemented by means of various kinds of machinery, such as that analyzed in the item on the Transfer of Technology, above.

<sup>57</sup> A very important innovation is to be found in the provisions of Sections 1 to 3 and 7 of the Law and Regulations, to the effect that an investment made by a Spanish firm is also considered a foreign investment if the firm in question is itself financed with foreign capital. The purpose of this was to avoid the fraudulent practice of the cumulative creation of firms, whereby the constitution of a Spanish firm with a foreign controlling interest in an area in which administrative authorization was automatic or, easy to obtain, subsequently served to control, through that firm, a new firm created in an area in which authorization was difficult to obtain, in view of the fact that such authorization was no longer necessary owing to the fact of the investing society being—legally but not economically—Spanish.

<sup>58</sup> The owners of the foreign investment, the nominees involved in any of the acts associated with that investment and the banking institutions through which income and expenditure pass, are obliged to make this declaration (Sections 22 of the Law and 28 of the Regulations).

<sup>59</sup> The distribution is naturally made according to criteria of greater or lesser importance to the general objectives pursued by the new provisions.

<sup>60</sup> Section 1 of Royal Decree No. 3099 of November 26, 1976, published in *BOE*, January 21, 1977.

<sup>53</sup> The provisions have the rank of a formal law.

<sup>54</sup> Both Decrees—the Law and the Regulations—appeared in *BOE*, November 6, 1974.

<sup>55</sup> Particularly noteworthy are the Resolutions of the General Directorate of Foreign Transactions of the Ministry of Commerce of January 20, 1975, on the opening of branches or subsidiaries of foreign enterprises, and two others, of January 25, 1975, one concerning the documentation that has to accompany applications for authorization filed with the Government, and the other regulating the procedure for the declaration for foreign investments; one might also mention those of April 17, 1975 (amended on January 18, 1977) and January 19, 1977, publishing—in *BOE*, May 6, 1975, February 16, 1977, and February 10, 1977, respectively—various lists of Spanish firms with a foreign majority shareholding, and Decree No. 1497 of June 19, 1975, specifying the provisions departed from, amended and enforced in the field of foreign investment.

<sup>56</sup> As was pointed out by the Spanish consultant attorney, Antonio Garrigues W. in a lecture given at the Hispano-North American Chamber of Commerce on February 28, 1974, before a large number of businessmen from the United States of America, a distinction may be made between the different phases or periods in the policy of the Spanish Government in this connection. Between

areas) to foreign investment in the establishment<sup>61</sup> of Spanish firms, even exceeding the 50% share limit mentioned earlier, if there is general compliance with the requirements that the foreign investment be made

<sup>61</sup> According to Section 3 of the Royal Decree mentioned in the previous Note, the investment may also be made, the requirements being equivalent, by acquisition of shares issued to increase the capital of existing Spanish firms.

by means of pesetas drawn from foreign accounts, that the corporate capital outlay be not less than 100 million pesetas, that the foreign investor or its subsidiaries or associates do not receive payment for technology transfer to the firm created, and finally that the enterprise provide no fewer than 100 fixed jobs at the outset and maintain a positive annual cash balance as from its first year of operation.

## News from Industrial Property Offices

### CANADA

#### Activities Report of the Bureau of Intellectual Property for the Years 1975-1976 and 1976-1977\*

##### Introduction

The Bureau of Intellectual Property is responsible for the drafting and administration of legislation granting temporary legal monopolies to originators of inventive and creative works and regulating the disclosure of such works in forms easily copied or appropriated by others.

The Bureau comprises the Patent Office, the Trade Marks Office, the Copyright and Industrial Design Office, and branches which specialize in research, international activities, and the dissemination of technical information on intellectual property matters.

Submitted herein is the report of the Commissioner of Patents relating to proceedings under the Patent Act for the years 1975-1976 and 1976-1977. Also included is a review of proceedings under the Industrial Design and Trade Marks Acts for the years under review.

##### I. Patents Branch

The Patent Office administers the Patent Act and Regulations, which provide for the granting of patents for inventions that are new, useful and unobvious. Examination and disposal of patent applications by the Office in accordance with the Act and Regulations entails a search for novelty, consideration of inventive subject matter, a decision as to patentability and also verification of compliance with procedural requirements. A patent grant gives to the inventor or owner of the patent the right to exclude others from making,

using or selling the patented invention in Canada for a period of 17 years from the date of grant.

On November 16, 1976, the Patent Office issued its one millionth patent. A bronze medallion was struck by the Royal Canadian Mint to commemorate the event.

A search room and library are maintained by the Patent Office where any member of the public may obtain information on Canadian and foreign patents. During the years 1975-1976 and 1976-1977, the Patent Office handled an average of 675 requests daily for reference material and published every week the *Patent Office Record* in which details of newly issued patents are given.

By March 31, 1977, the complete office file of 1,007,800 issued patents was classified and organized into 339 main classes of technology which were further subdivided into 32,121 subclasses. These classes are constantly reviewed, and revised or extended as new technologies emerge, and new combinations of known technologies are developed. During the year 1976-1977 and the previous year, 20 classes consisting of 2,194 subclasses were completely revised, 1,911 new subclasses were established and 756 old subclasses were abolished in the partial revision of existing classes.

##### Transactions of the Patent Office from 1974-75 to 1976-77

	1974-75	1975-76	1976-77
Applications for patents	27,019	25,927	25,951
Applications restored under Section 75	164	175	164
Applications reinstated under Section 32	139	137	157
Patents issued	*20,688	*21,440	*21,110
Patents issued under Public Servants Inventions Act	43	41	56
Assignments recorded	24,016	23,395	24,017

\*Includes reissued patents.

\*Excerpted from the *Annual Report of the Department of Consumer and Corporate Affairs for the Year, Ended March 31, 1977*.

### Patent Appeal Board

The Patent Appeal Board reviews, on request to the Commissioner, final rejections of applications for the grant of patents and for the registration of industrial designs. The Board may hold formal hearings as part of the review procedure, if requested. The Board's findings and recommendations are made to the Commissioner for approval.

	1974-75	1975-76	1976-77
<i>Patents</i>			
Rejections affirmed	38	42	61
Rejections reversed	8	8	7
Otherwise disposed of	28	35	13
Pending	50	66	138
<i>Industrial Designs</i>			
Rejections affirmed	2	4	2
Rejections reversed	1	0	1

### Compulsory Licences

The Commissioner of Patents may grant compulsory licences for the use of a patented invention that relates to a food or medicine, or that is considered "abused" by not being "worked" as defined in the Patent Act. The following table shows receipts and disposals of applications to the Commissioner for compulsory licences to use patented inventions.

Applications filed under Section 67 of the act were made on the grounds of the abuse of patent rights by the patent owner. Those filed under Section 41(4) were for licences to import or manufacture patented prescription medicines.

	1974-75	1975-76	1976-77
<i>Section 67</i>			
Applications received	2	2	—
Licences granted	1	—	—
Licences refused	1	—	—
Applications withdrawn	—	1	2
Applications pending	2	3	1
<i>Section 41(4)</i>			
Applications received	36	24	36
Licences granted	22	22	2
Licences refused	—	—	—
Applications withdrawn	1	3	—
Applications pending	27	26	34

### II. Industrial Designs

The Copyright and Industrial Design Office administers, *inter alia*, the Industrial Design Act and the Regulations thereunder.

The outward appearance of an article of manufacture—its shape, pattern or ornamentation—may be registered as an industrial design. Registration of a new design under the Industrial Design Act gives to the registered owner sole rights to use the design in

Canada for a period of five years renewable for one further period of five years.

During the year, the Copyright and Industrial Design Office began and completed a revision of a major segment of its data base of industrial designs to simplify searching by agents and the general public. The Office also began updating its administration of the Industrial Design Act in the light of judicial decisions concerning industrial designs.

### Transactions of the Copyright and Industrial Design Office from 1974-75 to 1976-77

	1974-75	1975-76	1976-77
<i>Industrial Designs</i>			
Applications received	1,501	1,627	1,680
Designs registered	1,371	1,467	1,402
Registrations renewed	672	735	724
Assignments recorded	223	286	242

### III. Trade Marks

The Trade Marks Office is responsible for the administration of the Trade Marks Act. Applications for trade marks are examined and proceed to registration unless the mark applied for is an apt word for use by all traders or confusingly similar to marks already registered in Canada, in which event the application is refused. A newly registered mark remains on the register for an initial period of 15 years. Before a trade mark is licensed an application for registered user should be applied for at the Trade Marks Office.

Trade mark applications are advertised in the weekly issues of the *Trade Marks Journal* to enable persons to oppose any marks which they feel may interfere with their existing rights. The Office maintains a public search room for the public to refer to its registers and indexes of registered marks and users.

### Transactions of the Trade Marks Branch

	1974-75	1975-76	1976-77
Trade mark applications filed	10,615	12,414	12,849
Trade mark applications advertised	9,049	8,180	7,906
Trade mark registrations	7,997	7,086	6,996
Registered user applications filed	9,186	8,489	8,888
Registered users registered	4,973	6,347	6,902
Registered user registrations cancelled	818	2,065	2,371
Transfer applications filed	4,877	3,877	4,667
Transfers registered	6,404	3,412	6,267
Trade mark registrations renewed	3,178	3,221	3,213
Trade mark registrations expunged	1,706	5,521	3,045

#### IV. Technical Advisory Services Branch

The Technical Advisory Services Branch continued to increase public awareness of patents, trade marks, copyrights and industrial design. Through its participation in nine industrial exhibitions, the Branch reached about 116,000 Canadians. Various aspects of intellectual property were explained to some 1,375 persons through lectures and audio-visual presentations at 29 institutions, including universities, community colleges and professional associations. During the year, the Branch participated in six industrial seminars attended by industrialists, scientists and librarians. In the course of these, the Branch was able to exchange information with about 300 seminar participants. The Branch also gave 21 interviews to the press, including radio and television.

#### V. Research and International Affairs Branch

Drafting continued on the recommended revisions to the Trade Marks Act. Research into the field of industrial design also continued.

In June 1976, the *Working Paper on Patent Law Revision* was released as the second in a series of four working papers to update and revise intellectual property legislation on patents, trade marks, copyright and industrial design. Reactions, briefs and submissions received in response to the working paper were studied.

The Branch began to develop and analyze the economic aspects of intellectual property policies. Representatives of the Branch were also active in revising the Paris Convention for the Protection of Industrial Property, of which Canada is a signatory.

FRANCE

#### Activities of the National Institute of Industrial Property in 1977\*

##### Patents

INPI's patent activities may be summarized by the following data:

	1977	1976	%
Patent filings . . . . .	39,978	39,890	+ 0.2
including utility certificates . . . . .	307	410	-25
Requests for documentary searches (referred to IIB)	33,791	30,851	+ 9.5
Notification of preliminary draft documentary reports	29,745	27,744	+ 7.2
Notification of second draft documentary reports . . . .	23,981	28,900	-17
Publication of applications . .	39,778	39,164	+ 1.5
Grant of patents . . . . .	31,045	29,754	+ 4.3
including utility certificates (applied for or resulting from the conversion of patent applications) . . . . .	7,858	6,351	+23.5

After having fallen since 1973, filings have levelled off since 1975. For 1977, a slight increase is to be noted in filings of French origin, whereas foreign filings have dropped slightly.

The number of patents kept in force, whatever the year of filing, also shows a degree of stabilization since 1975. There were some 349,000 of them at the close of 1977.

#### Trademarks and Service Marks

Trademarks are governed by the Law of December 31, 1964<sup>1</sup> (amended by the Law of June 30, 1975), which introduced an examination of the legal validity of the filed sign prior to registration of the mark. In addition to the filing procedures established by national regulations, there also exists possibilities under:

- (i) the Franco-Italian Agreement of January 8, 1955, under which French and Italian nationals may obtain registration of their marks in the other country by means of a simple extension of the filing made in their country of origin;
- (ii) the Madrid Agreement of April 14, 1891, under which a single filing with WIPO enables protection to be obtained in the 24 member countries of the corresponding Union.

The activities concerning marks are reflected in the following figures:

##### MARKS FILED

	1977	1976	%
1. Marks filed by persons resident in France . . . . .	29,611	28,096	+5.38
2. Marks filed by persons resident abroad . . . . .	6,987	7,426	-6.28
3. Total of filings made in France . . . . .	36,598	35,522	+3.02

\* This report is excerpted from INPI's Activity Report for 1977.

<sup>1</sup> See *Industrial Property*, 1965, p. 83.

MARKS FILED  
(continued)

	1977	1976	%
4. Foreign marks from WIPO .....	8,306	7,957	+4.38
5. Franco-Italian marks from Italy .....	0	125	
6. Total of marks resulting from international agreements .....	8,306	8,082	+2.76
7. Overall total .....	44,903	43,604	+2.97

OPERATIONS IN RESPECT OF MARKS

	1977	1976	%
Examined .....	43,294	35,976	+14.78
Notified .....	2,195	1,546	+41.97
Rejected .....	1,560	1,923	-23.26
Registered .....	32,662	31,609	+ 3.33
Published .....	35,105	25,978	+35.13

OTHER ACTIVITIES

	1977	1976	%
Searches .....	6,824	7,377	-8.10
International marks transmitted to WIPO .....	1,828	1,944	-6.34

Industrial Designs

The number of registered industrial designs is growing despite the fact that the number of filings has dropped (4,017 as against 4,145 in 1976). This is explained by the fact that one filing may contain from between one and 100 designs and there may be a considerable resultant variation in the number of registered designs although the number of filings remains relatively stable from one year to the next.

Number of Designs Filed	1977	1976	%
- with the secretariats of the conciliation boards .....	11,176	9,576	+16.70
- with the registries:			
of the commercial courts	1,893	2,004	- 5.53
of the first instance courts	360	619	-41.84
TOTAL .....	13,429	12,199	+10.02

Filings are made with the secretariats of the conciliation boards and the registries of the commercial and civil courts. 3,335 filings were transmitted to INPI in

1977 for the 25-year period of secrecy or for publication. This represented 1,035 designs kept secret and 6,180 designs published. Although the number of *Soleau* envelopes has changed little—less than 2% for 8,786 units—the number of extensions for 10 years has dropped by 15% to a total of 2,032, thus suggesting that the initial 5-year term of protection corresponds quite well to the public's needs.

	1977	1976	%
Deposits transmitted to INPI .....	3,335	3,274	+1.85
Designs published .....	6,180	6,309	-2
Designs kept secret for 25 years .....	1,035	1,015	+2
Identity certificates .....	1,287	1,129	+12
Perforated <i>Soleau</i> envelopes	8,786	8,966	2

National Patent and Trademark Registers

The National Patent and Trademark Registers governed by the Patent Law of January 2, 1968,<sup>2</sup> and the Trademark Law of December 31, 1964, contain entries of the instruments transmitting, assigning or modifying rights deriving from a patent or a mark, made at the request of the owner of the rights or, *ex officio*, following a court decision.

Entries have effect with respect to third parties and are published in the Official Bulletin of Industrial Property.

In 1977, entries were made with regard to 10,229 patents (1976: 8,424, or +22%) and 13,489 trademarks (1976: 15,254, or -12%).

Notifications of the lapse of patent rights numbered 42,392 (1976: 47,776, or -12%).

International Transfer of Technology

INPI records the statements made by French firms that have signed contracts with foreign firms in respect of industrial property: acquisition or assigning of patents, trademarks, designs, manufacturing licenses, payments of the costs for studies and technical assistance.

The declaration of such contracts and annual notification of the corresponding transactions (before March 31 of the following year) were made obligatory by Decree 70-441 of May 26, 1970. Proof that the

<sup>2</sup> See *Industrial Property*, 1968, p. 67.

contracts have been registered with INPI has to be provided to the approved agents before any currency can be made available.

Each year INPI draws up statistics based on this information. These statistics show that, although trade in patents and licenses still shows a deficit, revenue from studies and technical assistance abroad continues to expand. The growth in revenue from this sector has permitted an improvement in the degree of coverage of expenditure in the whole field of technical exchanges.

The activities in this field are reflected in the following figures:

#### PATENTS AND LICENSES

	Expenditure	Revenue	Deficit	Coverage (%)
	(in millions of francs)			
1972	1,147	552	595	48.1
1973	1,340	570	770	42.5
1974	1,562	819	743	52.4
1975	1,650	845	805	51.2
1976	2,092	870	1,222	41.6
1977	2,207	1,006	1,201	45.6

#### STUDIES AND TECHNICAL ASSISTANCE

	Expenditure	Revenue	Surplus	Coverage (%)
	(in millions of francs)			
1972	539	556	17	103.15
1973	548	731	183	133.39
1974	730	1,065	335	145.89
1975	705	1,120	415	158.87
1976	1,104	1,658	554	150.18
1977	1,160	2,073	913	178.71

#### NUMBER OF DECLARATIONS

Type of Declaration	Number of Declarations Concerning			
	Purchases Abroad (Expenditure)		Sales Abroad (Revenue)	
	1977	1976	1977	1976
New contract . . . . .	857	788	440	451
Modification or renewal of earlier contracts . . . . .	214	236	84	78
TOTAL . . . . .	1,071	1,024	524	529

#### BREAKDOWN BY COUNTRIES

Country	Number of Declarations Relating to		
	Total	Purchases Abroad (Expenditure)	Sales Abroad (Revenue)
United States of America . .	332	274	58
Switzerland . . . . .	207	177	30
Germany, Federal Republic of . . . . .	186	150	36
United Kingdom . . . . .	148	121	27
Belgium . . . . .	76	52	24
Japan . . . . .	71	30	41
Italy . . . . .	86	44	42
Spain . . . . .	55	17	38
Other countries . . . . .	434	206	228

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Italy . . . . .	86	44	42
Spain . . . . .	55	17	38
Other countries . . . . .	434	206	228

#### Documentation

(a) INPI's publications comprise, in addition to the patent applications, the patents themselves, the various editions of the *Official Bulletin of Industrial Property (BOPI)*: lists and patent abstracts, marks, industrial designs and statistics, together with the annual tables of published patent applications and marks, and industrial designs filed.

The *Industrial Property Documentary Bulletin (PIBD)* continues to appear twice a month.

(b) The *Legal File* has grown by some 4,000 index cards which have been sent ready-classified to INPI's regional centers in Lyons and Marseilles and to the Center for the International Study of Industrial Property (CEIPI) in Strasbourg.

(c) The *Industrial Property Law Data Bank* now contains almost 7,000 decisions of patent case law. The number of decisions concerning trademarks has grown from 2,400 to 2,600. Trademark case law prior to 1922 is currently being indexed but will not be

incorporated into the documentation at the University of Montpellier until 1978 when a thousand judgments and decisions will have been indexed.

### Legislative Activities

(a) In 1977, the *Patent Law of January 2, 1968*, was revised. On November 24, the National Assembly adopted the draft law which had been examined by the Industrial Property Council in January and February.

(b) On July 1, 1977, the Official Journal published Law No. 77,681 of June 30, 1977, authorizing ratification of the *Community Patent Convention*, signed at Luxembourg on December 15, 1975, and also the laws on the application in France of the *PCT* (Law No. 77,682 of June 30, 1977) and of the *European Patent Convention* (Law No. 77,683 of June 30, 1977). France deposited its instrument of ratification of the European Patent Convention on July 1, 1977. The Convention entered into force on October 7, 1977, and was published in the Official Journal on October 16, 1977 (Decree No. 77 1151 of September 27, 1977). On November 29, 1977, France deposited its instrument of ratification of the *PCT*, which entered into force on January 24, 1978, and took effect with regard to France, under Article 63 of the Treaty, on February 25, 1978.

Preparation of the decrees provided for by the laws on the application of the *PCT* and the European Patent Convention was put in hand on publication of the two texts.

### International Activities

(a) As regards the international agreements set up within the WIPO framework, INPI participated in the yearly meeting, held in October 1977, of the Interim Committee for the application of the *PCT* of June 19, 1970, the purpose of which is to set up an international procedure for filing applications.

(b) A diplomatic conference for the revision of the *Nice Agreement*, of June 15, 1957, Concerning the International Classification of Marks, was held in Geneva in May 1977. The Deputy Director of INPI signed the revised text of the Agreement and the Final Act of the Conference in the name of the French Government. INPI also participates in the working group examining the amendments to be made to the list of goods and services.

(c) As the outcome of work done in 1973 following developments in the use made by technology of microorganisms, a diplomatic conference was held in Budapest, at which 29 States were represented. The Conference adopted on April 28, 1977, a *Treaty on*

*the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*.

(d) The work of the Interim Committee of the *European Patent Organisation* continued up to September 12, 1977, the date of the tenth and final session of the Committee. Prior to that, the Committee had met in March and June and its working groups and subgroups had held more than ten meetings.

At the meeting of September 12, the Interim Committee noted that seven of the 16 States that had signed the European Patent Convention (Federal Republic of Germany, Belgium, France, Luxembourg, the Netherlands, the United Kingdom and Switzerland) had deposited their instruments of ratification, meaning that the Convention would enter into force on October 7, 1977. The Interim Committee has thus completed its work.

(e) At its constitutive meeting on December 3, 1976, the *Interim Committee for the Community Patent* decided to set up three working groups to deal with the Special Departments that are to process Community patents within the EPO, with procedures before these departments and with legal matters, and with the measures to be taken to unify contentious matters concerning validity (a responsibility of the Special Departments under the Convention) and of infringement (which the Convention leaves to national jurisdiction).

Working Groups I and II held only one meeting in 1977, on September 1 and October 24, respectively, devoted to the practical organization of work and the distribution of tasks between the various delegations.

Working Group III, on the other hand, met three times, on January 24, June 13 and 14 and October 25 and 26. Two conflicting approaches to the unification of contentious matters were discussed in the Working Groups. One approach was to set up a Community first instance and appeals jurisdiction competent to deal with validity and infringement of Community patents; the second favored leaving this competence to national jurisdictions as regards the first instance and to deal with appeals only at Community level. This second solution was chosen as the working hypothesis.

(f) The *Community Trademark Working Group* set up under the aegis of the EC Commission met five times in 1977, four of the meetings being devoted to the first reading of certain articles of a preliminary draft text. The question of the legal form of the instrument instituting the Community trademark, whether international convention or regulation, has not yet been resolved at this point in the progress of work. The Industrial Property Council pronounced on February 15, 1977, in favor of an international convention.

(g) The United Nations Conference on Trade and Development (UNCTAD) convened the second

session of the *Group of Governmental Experts on the Role of the Industrial Property System in the Transfer of Technology*. Its work was mainly devoted to examining the effect of trademarks on the development process in the developing countries.

(h) INPI was also involved in the preparation of the French delegation's positions in the UNCTAD negotiations on the elaboration of a *Code of conduct for technology transfer*.

(i) As regards cooperation with developing countries, INPI has given its support, since its creation in 1962, to the African Intellectual Property Organization (OAPI), whose headquarters are in Yaoundé, Cameroon, and which administers the common industrial property system of a number of French-speaking African States. 1977 saw the continuation of technical aid in the printing of OAPI's publications. INPI participated, as an observer, in the two meetings of the African Organization's Administrative Council, the first of which was held in Bangui, Central African Empire, in February 1977 and the second in Cotonou, Dahomey, in December of the same year. INPI also

received, through WIPO, trainees from Benin, Cameroon, Upper Volta and Mali.

(j) Relations with the Socialist economy countries continued in 1977. The Joint Franco-Soviet Patent and Licenses Committee held its ninth meeting in Baku from September 1 to 12, 1977, at which a work program up to 1980 was established. A reciprocal agreement exists with China in respect of trademarks. Following a meeting in December 1976, at which INPI participated, the idea was noted of also signing an agreement as regards the protection of inventions. This matter was examined during talks leading to the signature on January 21, 1978, of a Scientific and Technical Agreement, which makes room for this possibility. In addition, contacts have been established with the Hungarian Government with a view to setting up an industrial property working group reporting to the Joint Committee set up under the Agreement on the Development of Economic, Industrial and Technical Cooperation of November 25, 1974, signed by Hungary and France.

## News Items

### BRAZIL

*President of the National Institute of Industrial Property*

We have been informed that Dr. A.C. Bandeira has been appointed President of the National Institute of Industrial Property.

### JAPAN

*Director General of the Japanese Patent Office*

We have been informed that Mr. Yoshio Kawahara has been appointed Director General of the Japanese Patent Office.

### REPUBLIC OF KOREA

*Director General of the Office of Patents*

We have been informed that Mr. Sang-Sub Lee has been appointed Director General of the Office of Patents.

## Book Reviews

**Technology Transfer Practice of International Firms**, edited by F. R. Bradbury, with the collaboration of H. Stout and J. Woodward. Sijthoff & Noordhoff, Alphen aan Rijn (Netherlands), 1978. — 312 pages.

This work consists of the proceedings and case studies presented at a forum on technology transfer sponsored by the Technology Group of the Business and Industry Advisory Committee to the Organization for Economic Co-operation and Development (OECD) at the University of Stirling, Scotland, in December 1976.

The transfer of technology—or know-how—is a subject of great technical and political importance; it is also the subject of intense debate as those who lack know-how seek access to it at minimum cost. In the view of the editor of this work, the result seems to be an endless discussion of principles with little substantial resolution of the problems.

In order to break out of the sterile confines of debate about principle, the sponsors of this forum presented and discussed detailed studies of the actual technology transfer operations of important multinational firms. Eight studies, each presented in a very interesting manner and containing a great deal of revealing information, are included in this work. They deal with the following: low density polyethylene technology; telecommunications; earth-moving equipment; the development of industries in India; business machines; pharmaceuticals; electric motor manufacturing technology; and the ammonia-based fertilizer industry in India. In addition, the Technology Group's views on the favorable conditions for the effective and equitable transfer of know-how are presented in an appendix.

This work will provide much useful information to everyone, especially those involved in the making of policy, concerned with the transfer of technology.

JAE

**The Protection of Industrial Designs**, by G. Myrants. McGraw-Hill Book Company Ltd., London, 1977. — 211 pages.

Although industrial designs may be protected in the United Kingdom by a registration procedure which has been in existence for more than 150 years, they are, according to the author of this work, the least well understood of all the different forms of industrial property. In an effort to rectify this situation the author, an eminent practitioner, has created a reference manual which provides a practical understanding of the various aspects of design registration and protection.

This work, although addressed to the layman, should nevertheless be of great value to any attorney needing a simplified and easily understandable explanation of British design law and practice.

JAE

**Patent Licensing in Europe**, by B. I. Cawthra. Butterworths, London, 1978. — 256 pages.

As the author points out in the preface to this work, his aim is "to trace the development of the patent licensing system in Europe and to provide a commentary on the clauses likely to be included in patent license agreements for those entering into such agreements and their advisors."

This work therefore treats, on three different levels (national, Community and international), all aspects of patent licensing and the problems related thereto, such as exclusive and nonexclusive rights, export bans or territorial restrictions, exhaustion of rights,

typing clauses, know-how, price fixing, etc. These questions are dealt with in an exhaustive manner and are supported by clear and precise references to the pertinent legislative or regulatory texts and to the applicable case law.

GRW

**La répression de la concurrence déloyale en Allemagne**, by D. Reimer in collaboration with F.-K. Beier and D. Baumann. Editions Economica, Paris, 1978. — 1036 pages.

The Max-Planck Institute in Munich was commissioned by the Commission of the EEC to undertake a study on the repression of unfair competition in the Member States of the EEC. The volumes of this study concerning Belgium, France, Italy and Luxembourg, as well as a volume on comparative law, have already appeared. This work constitutes Volume III of this study. Thanks to Dr. D. Reimer, in collaboration with F.-K. Beier, author of the chapter on indications of source, and Dr. D. Baumann, author of the French translation, this work constitutes the first exhaustive analysis in the French language of German unfair competition law. It covers, in particular, all of the case law relating to the various practices which constitute unfair competition, such as exploiting the renown of another, comparative and personal advertising, the non-authorized use of geographical indications or attacking the reputation of an enterprise. The work is accompanied by a French translation of the relevant laws and decrees and by an alphabetical index permitting easy retrieval of specific information.

GRW

**La tutela del brevetto per invenzione — Ambito e limiti**, by F. Benussi. Giuffrè ed., Milano, 1978. — 171 pages.

As the author points out in his preface, this work studies the scope and the limits not of letters patent, but of the subject matter of the invention and, more precisely, of the inventive idea which forms the basis thereof. It does so taking into account two needs to be considered, that is the necessary recognition of inventive activity on the one hand and, on the other, the interest that third parties have in knowing, with precision, the limits of the exclusive right.

Within this framework, the author analyzes the case law and doctrine of the Federal Republic of Germany, France, the United States of America, the United Kingdom, Belgium, Switzerland and, of course, Italy—the analysis of the legislation of which permits him to brilliantly develop the hypothesis that a legal asset exists prior to the grant of the patent. Finally, the last chapter of this work analyzes the provisions relating to this theory which appear in the European Patent Convention, in particular Article 69, and in the interpretive Protocol to this Article.

This analysis, which is based on a rich bibliography, should interest all those who, familiar with the language of Dante, are interested in the foundation of patent law as well as in the harmonization thereof.

GRW

**La protezione del nome commerciale straniero in Italia (e cenni sulla sua protezione all'estero)**, by M. Cartella. Giuffrè ed., Milano, 1978. — 253 pages.

The problems concerning the protection of foreign trade names and comparable indications (slogans, signs, etc.) are of an ever-growing interest as a result of the universalization of trade and the

progressive standardization of Western European law. In this regard, the work of M. Cartella, which analyzes notably the regulations of the national legislation of different countries and the endeavors at harmonization at both the European and worldwide levels, is of unquestionable interest and should aid in the search for solutions to the difficulties that jurists as well as industrialists and tradesmen are presently encountering.

GRW

**Le droit européen des brevets d'invention**, by P. Mathély. Librairies du Journal des notaires et des avocats, Paris, 1978. — 466 pages.

As the preface by J. B. van Benthem, President of the European Patent Office, points out, the reputation of the author of this work, *Maître* Paul Mathély, is beyond question. An eminent attorney, professor and Rapporteur General of IAPIP, *Maître* Mathély's uncontested authority, not only in France but throughout Europe and the world, is of long duration.

As the European Patent Convention entered into force only in June 1978, European patent law is a recent creation. It is therefore necessary for all those who are interested in industrial property to become familiar with this new law. It is to this need that the present work responds—and it does so in a most authoritative manner, especially since its author, as Rapporteur General of IAPIP, participated from the beginning in the work which led to the realization of the Convention.

This manual is composed of eight parts and analyzes:

- the history and the conditions concerning the creation of European patent law;
- the organizational structure of the European Patent Organisation;
- the European rules on patentability;
- the European patent law;
- the procedure for the grant of a European patent;
- the rights conferred by a European patent;
- the reasons and procedure for the nullification of a European patent; and
- the linkage between the European system and the existing national and international systems, in particular the system established by the PCT.

Through this work the reader will be able to familiarize himself with the sense, the scope and the mode of application of the Munich Convention. As a result of its in-depth analysis of the law, it constitutes an essential manual not only for the student but, because of its in-depth analysis of specific problems, also for the well-seasoned practitioner. Furthermore, as the author of the preface points out, this work will also please all those who love the French language and believe that eloquence is the home where great thought resides.

GRW

**Cinquante cas de publicité mensongère**, by P.-F. Divier and D. Andrei. Librairies techniques, Paris, 1978. — 292 pages.

This work analyzes 50 typical cases of misleading advertising which were the subject of legal decisions in France involving the most recent French laws, including that of January 10, 1978. Each decision is reproduced and commented upon by the authors, who argue very strongly in favor of the protection of the consumer.

Indexes are provided which permit the reader to refer to the types of products or services or texts and cases sought. Moreover, an ingenious checklist aids all those interested in determining whether or not an advertisement falls outside the scope of the law.

GRW

### Selection of New Publications

ALESKSEEV (G.M.). *Avizhenie izobretatelei i racionalizatorov v SSSR, 1917-1977*. Mysl, Moskva, 1977. — 237 p.

ARTEMIEV (E.I.) and KRAVETS (L.G.). *Izobreteniia, uroven tehniki, upravlenie* (2nd ed.). Izd-vo Ekonomika, Moskva, 1977. — 236 p.

AZEMA (J.). *Les arrêts Centrafarm et la libre circulation des médicaments*. Droit et Pharmacie, Paris, 1977, 2 vols. — 370 sheets.

BAUDENBACHER (C.). *Suggestivwerbung und Lauterkeitsrecht*. Schulthess, Zürich, 1978. — 187 p.

BAYLOS CORROZA (H.). *Tratado de derecho industrial*. Civitas, Madrid, 1978. — 1061 p.

BLANCO WHITE (T.A.), JACOB (R.) and DAVIES (J.D.). *Patents, Trade Marks, Copyright and Industrial Designs*. Sweet and Maxwell, London, 1978. — 178 p.

BLOK (P.). *Patentrettens konsumtionsprincip — Patentmonopol og fri konkurrence i national ret og faellesmarkedsret*. Juristforbundets Forlag, København, 1974. — 407 p.

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BRANDMAIR (L.). *Die freiwillige Selbstkontrolle der Werbung*. Carl Heymanns Verlag, Köln (etc.), 1978. — 277 p.

BRETT (H.). *The Patents Act 1977 — An Introductory Guide*. ESC Publishing, Oxford, 1978. — 84 p.

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*Current Developments in Patent Law*. Practising Law Institute, New York, 1978. — 430 p.

*Current Developments in Trademark Law and Unfair Competition*. Practising Law Institute, New York, 1978. — 279 p.

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*EEC Competition Law*. Ed. by Barlo Beckerleg. ESC Publishing, Oxford, 1978. — 154 p.

FRAULOB (W.). *Neuregelung des internationalen Patentrechts*. Weka-Verlag, Kissing, 1978. — 181 p.

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HARVEY (B.W.). *The Law of Consumer Protection and Fair Trading*. Butterworths, London, 1978. — 327 p.

HEPP (D.). *Handbuch des Lizenzgeschäfts — Band 1: Lizenzverträge*. VIR Verlag Industrie und Recht, Wil, 1978. — looseleaf sheets.

KORAM (V.). *An Introductory Guide to EEC Competition Law and Practice*. ESC Publishing, Oxford, 1978. — 142 p.

*Les perspectives d'un droit communautaire en matière de dessins et modèles industriels*. Université des sciences sociales, Grenoble, 1978. — 200 p.

*Lizenzen — Ökonomische und juristische Probleme des Innenhandels*. Herausg. von Willi Linden. Martin-Luther Universität, Halle-Wittenberg, 1978. — 231 p.

MATSUNAGA (Y.). *Successful Licensing to and from Japan*. Nihon Brain Corp., Tokyo. — 212 p.

MAYER (M.). *Patentrecht und Umweltschutz*. Peter Lang, Frankfurt/Main (etc.), 1978. — 263 p.

*New Laws of Patents and Trademarks of Korea*. Patent Dae Suk, Suh, Seoul, 1974. — 106 p.

NIRK (R.) and BRUCHHAUSEN (K.). *Gewerblicher Rechtsschutz und Urheberrecht*. Pädagogischer Verlag Schwann, Düsseldorf, and W. Kohlhammer Verlag, Stuttgart, 1975. — 168 p.

OLENDER (K.). *Patentowanie wynalazków — Taktyka, organizacja, praktyka*. Wydawnictwa Naukowo-Techniczne, Warszawa, 1978. — 264. p.

PHILLIPS (J.). *Employees' Inventions and the Patents Act 1977*. Kenneth Mason, Havant, Hampshire, 1978. — 52 p.

SCHADE (J.). *Geschäfte an der Haustür durch unbestellte Vertreter*. Carl Heymanns Verlag, Köln (etc.), 1978. — 168 p.

STOLARSKA (W.). *Model badania efektywności licencji*. Państwowe Wydawnictwo Naukowe, Warszawa, 1978. — 103 p.

SZAWAJA (J.). *Pravo wynalazcze*. Wydawnictwo Prawnicze, Warszawa, 1978. — 455 p.

*Technology Transfer and Development — An Historical and Geographical Perspective*. Ed. by Driscoll (R.E.) and Wallender (H.W.). Fund for Multinational Management Education in cooperation with Council of America, New York, 1974/75. — 307 p.

THOMANN (F.H.). *Patentrecht*. Schulthess, Zürich, 1978. — 384 p.

VIERHEILIG (W.). *Grenzen der Massgeblichkeit der Verkehrsauffassung im Warenzeichenrecht*. C. H. Beck, München, 1977. — 155 p.

*Werbung für Markenartikel — Auswirkungen auf Markttransparenz und Preise*. Teil A: Blume (O.), Müller (G.); Teil B: Röper (B.); Mitarb.: Heiduk (G.), Heuwing (M.), Kaempf (B.), Marfeld (R.), Wassenberg (G.). O. Schwartz, Göttingen, 1976. — 608 p.

## Calendar

### WIPO Meetings

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

#### 1979

**September 11 to 14 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Patent Information for Developing Countries**

**September 17 to 20 (Geneva) — Development Cooperation (Copyright) — Working Group on Support to National Authors and Performers**

**September 17 to 21 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning**

**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, 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)**

**October 5 (Geneva) — PCT Users Meeting**

**October 15 to 26 (Geneva) — Nice Union — Committee of Experts**

**October 18 and 19 (Geneva) — ICIREPAT — Plenary Committee**

**October 22 to 26 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)**

**October 22, 23 and 30 (Paris) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)**

**October 24 to 26 and 31 (Paris) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)**

**November 5 to 9 (Buenos Aires) — Development Cooperation (Copyright) — Latin American Seminar on Copyright (convened jointly with Unesco)**

**November 26 to December 13 (Madrid) — Diplomatic Conference on Double Taxation of Copyright Royalties (convened jointly with Unesco)**

**November 27 to 30 (Geneva) — Paris Union — Group of Experts on Computer Software**

**December 3 to 6 (Geneva) — Working Group on Industrial Property Aspects of Consumer Protection**

**December 10 to 14 (Geneva) — International Patent Classification (IPC) — Committee of Experts**

#### 1980

**January 7 to 9 (Geneva) — Development Cooperation (Copyright) — Working Group on the Protection of Folklore (convened jointly with Unesco)**

**January 28 to February 1 (Paris) — Committee of Experts on the Model Statutes of the Societies of Authors** (convened jointly with Unesco)

**February 4 to March 4 (Geneva) — Revision of the Paris Convention — Diplomatic Conference**

## **UPOV Meetings**

**1979**

**September 18 and 19 (Geneva) — Administrative and Legal Committee**

**September 25 to 27 (Wageningen) — Technical Working Party for Forest Trees**

**October 16 and 19 (Geneva) — Consultative Committee**

**October 17 to 19 (Geneva) — Council**

**November 12 to 14 (Geneva) — Technical Committee**

**November 15 and 16 (Geneva) — Administrative and Legal Committee**

## **Meetings of Other International Organizations Concerned with Industrial Property**

**1979**

**European Patent Organisation:** September 12 to 14, November 27 to 29 (Munich) — Administrative Council

**European Communities:**

*Working Group of the Commission of the European Communities for the Community Trade Mark:*

September 17 to 20, November 5 to 7, December 10 to 13 (Brussels)

**Inter-American Industrial Property Association:** September 10 to 14 (Bogota) — Sixth Congress

**International Association for the Protection of Industrial Property:** September 23 to 28 (Toronto) — Executive Committee

**International League Against Unfair Competition:** September 9 to 12 (Prague) — Working Session (*Journées d'Etudes*)

**United States Trademark Association:** November 11 to 13 (London) — USTA Forum on "Trademark Law and Practice in the United States".



