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Contents

II

Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods*

Madrid Agreement (Indications of Source) (1891), revised at Washington (1911), The Hague (1925), London (1934) and Lisbon (1958), and supplemented by the Additional Act of Stockholm (1967)

Contracting State**	Original date on which the State became bound by the Agreement	Latest Act by which the State is bound and date from which it is bound (see, however, for some States, the Additional Act of Stockholm)	Additional Act of Stockholm and date from which the State is bound by it
Algeria[1]	**July 5, 1972**	**Lisbon: July 5, 1972**	**July 5, 1972**
BRAZIL	OCTOBER 3, 1896	THE HAGUE: OCTOBER 26, 1929	—
Bulgaria	**August 12, 1975**	**Lisbon: August 12, 1975**	**August 12, 1975**
Cuba	*January 1, 1905*	*Lisbon: October 11, 1964*	—
Czechoslovakia	**September 30, 1921**	**Lisbon: June 1, 1963**	**December 29, 1970**
DOMINICAN REPUBLIC	APRIL 6, 1951	THE HAGUE: APRIL 6, 1951	—
Egypt	**July 1, 1952**	**Lisbon: March 6, 1975**	**March 6, 1975**
France[2]	**July 15, 1892**	**Lisbon: June 1, 1963**	**August 12, 1975**
German Democratic Republic	**June 12, 1925**[3]	**Lisbon: January 15, 1965**	**April 26, 1970**
Germany, Federal Republic of	**June 12, 1925**[3]	**Lisbon: June 1, 1963**	**September 19, 1970**
Hungary	**June 5, 1934**	**Lisbon: March 23, 1967**	**April 26, 1970**
Ireland	**December 4, 1925**	**Lishon: June 9, 1967**	**April 26, 1970**
Israel[1]	**March 24, 1950**	**Lisbon: July 2, 1967**	**April 26, 1970**
Italy	**March 5, 1951**	**Lisbon: December 29, 1968**	**April 24, 1977**
Japan	**July 8, 1953**	**Lisbon: August 21, 1965**	**April 24, 1975**
Lebanon	September 1, 1924	London: September 30, 1947	—
Liechtenstein	**July 14, 1933**	**Lisbon: April 10, 1972**	**May 25, 1972**
Monaco	**April 29, 1956**	**Lisbon: June 1, 1963**	**October 4, 1975**
Morocco	*July 30, 1917*	*Lisbon: May 15, 1967*	—
New Zealand[1]	July 29, 1931	London: May 17, 1947	—
POLAND	DECEMBER 10, 1928	THE HAGUE: DECEMBER 10, 1928	—
Portugal[4]	October 31, 1893	London: November 7, 1949	—
San Marino	September 25, 1960	London: September 25, 1960	—
Spain	**July 15, 1892**	**Lisbon: August 14, 1973**	**August 14, 1973**
Sri Lanka[1]	December 29, 1952	London: December 29, 1952	—
Sweden	**January 1, 1934**	**Lisbon: October 3, 1969**	**April 26, 1970**
Switzerland	**July 15, 1892**	**Lisbon: June 1, 1963**	**April 26, 1970**
Syria	September 1, 1924	London: September 30, 1947	—
Tunisia	July 15, 1892	London: October 4, 1942	—
Turkey	August 21, 1930	London: June 27, 1957	—
United Kingdom	**July 15, 1892**	**Lishon: June 1, 1963**	**April 26, 1970**
Viet Nam[1, 5]	December 8, 1956	London: December 8, 1956	—

(Total: 32 States)[5]

* This list includes all the entities to which the Madrid Agreement (Indications of Source) has been declared applicable. It does not imply any expression of opinion as to the legal status of any country or territory or of its authorities.

** Explanation of type:

Heavy type: States which have accepted the Stockholm Act (1967).

Italics: States which have not accepted an Act later than Lisbon (1958).

Ordinary type: States which have not accepted an Act later than London (1934).

CAPITAL LETTERS: States which have not accepted an Act later than The Hague (1925).

[1] The Madrid Agreement (Indications of Source) was previously applied, as from the dates indicated, on the territories of what are now the following States: Israel (September 12, 1933), New Zealand (June 20, 1913), Sri Lanka (September 1, 1913). The said Agreement was previously applied, from various dates, on the territories of what are now Algeria and Viet Nam.[5]

[2] Including the Departments of Guadeloupe, Guyane, Martinique and Reunion and all Overseas Territories.

[3] Date on which the accession by Germany took effect.

[4] Including the Azores and Madeira.

[5] The situation of Viet Nam in respect of the Madrid Agreement (Indications of Source) is under examination.

III

Union for the International Registration of Marks (Madrid Union) *

founded by the Madrid Agreement Concerning the International Registration of Marks (1891), revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967)

Member State ** [1]	Starting date of membership in the Union	Latest Act by which the State is bound and date from which it is bound
Algeria [2]	**July 5, 1972**	**Stockholm: July 5, 1972**
Austria	**January 1, 1909**	**Stockholm: August 18, 1973**
Belgium [3]	**July 15, 1892**	**Stockholm: February 12, 1975**
Czechoslovakia	**October 5, 1919**	**Stockholm: December 22 or 29, 1970** [4]
Egypt	**July 1, 1952**	**Stockholm: March 6, 1975**
France [5]	**July 15, 1892**	**Stockholm: August 12, 1975**
German Democratic Republic	**December 1, 1922** [6]	**Stockholm: September 19, or December 22, 1970** [4]
Germany, Federal Republic of	**December 1, 1922** [6]	**Stockholm: September 19, or December 22, 1970** [4]
Hungary	**January 1, 1909**	**Stockholm: September 19, or December 22, 1970** [4]
Italy	**October 15, 1894**	**Stockholm: April 24, 1977**
Liechtenstein	**July 14, 1933**	**Stockholm: May 25, 1972**
Luxembourg [3]	**September 1, 1924**	**Stockholm: March 24, 1975**
Monaco	**April 29, 1956**	**Stockholm: October 4, 1975**
Morocco	**July 30, 1917**	**Stockholm: January 24, 1976**
Netherlands [3, 7]	**March 1, 1893**	**Stuckholm: March 6, 1975**
Portugal [8]	*October 31, 1893*	*Nice: December 15, 1966*
Romania	**October 6, 1920**	**Stockholm: September 19, or December 22, 1970** [4]
San Marino	*September 25, 1960*	*Nice: December 15, 1966*
Soviet Union [9]	**July 1, 1976**	**Stockholm: July 1, 1976**
Spain [10]	**July 15, 1892**	**Stockholm: June 8, 1979**
Switzerland	**July 15, 1892**	**Stockholm: September 19, or December 22, 1970** [4]
Tunisia	*July 15, 1892*	*Nice: August 28, 1967*
Viet Nam [2, 11]	**December 8, 1956**	**Stockholm: May 15, 1973**
Yugoslavia	**February 26, 1921**	**Stockholm: October 16, 1973**

(Total: 24 States) [11]

* This list includes all the entities to which the Madrid Agreement (Marks) has been declared applicable. It does not imply any expression of opinion as to the legal status of any country or territory or of its authorities.

** Explanation of type:
Heavy type: States which have accepted the Stockholm Act (1967).
Italics: States which have not accepted an Act later than Nice (1957).

[1] All the States have declared, under Article 3bis of the Nice or Stockholm Act, that the protection arising from international registration shall not extend to them unless the proprietor of the mark so requests (the dates in parentheses indicate the effective date of the declaration in respect of each State): Algeria (July 5, 1972), Austria (February 8, 1970), Belgium (December 15, 1966), Czechoslovakia (April 14, 1971), Egypt (March 1, 1967), France (July 1, 1973), German Democratic Republic (October 25, 1967), Germany (Federal Republic of) (July 1, 1973), Hungary (October 30, 1970), Italy (June 14, 1967), Liechtenstein (January 1, 1973), Luxembourg (December 15, 1966), Monaco (December 15, 1966), Morocco (December 18, 1970), Netherlands (December 15, 1966), Portugal (December 15, 1966), Romania (June 10, 1967), San Marino (August 14, 1969), Soviet Union (July 1, 1976), Spain (December 15, 1966), Switzerland (January 1, 1973), Tunisia (August 28, 1967), Viet Nam [11] (May 15, 1973), Yugoslavia (June 29, 1972).

[2] The Madrid Agreement (Marks) previously applied, from various dates, on the territories of what are now Algeria and Viet Nam. [11]

[3] As from January 1, 1971, the territories in Europe of Belgium, Luxembourg and the Netherlands are, for the application of the Madrid Agreement (Marks), to be deemed a single country.

[4] These are the alternative dates of entry into force which the Director General of WIPO communicated to the States concerned.

[5] Including the Departments of Guadeloupe, Guyane, Martinique and Reunion and all Overseas Territories.

[6] Date on which the accession by Germany took effect.

[7] The instrument of ratification of the Stockholm Act (1967) was deposited for the Kingdom in Europe.

[8] Including the Azores and Madeira.

[9] In accordance with Article 14(2)*(d)* and *(f)*, the Soviet Union declared that the application of the Stockholm Act (1967) was limited to marks registered from the date on which its accession entered into force, that is, July 1, 1976.

[10] Spain declared that it no longer wished to be bound by instruments earlier than the Nice Act. This declaration became effective on December 15, 1966. The Madrid Agreement (Marks) was thus not applicable between Spain and the following States between December 15, 1966, and the date indicated for each State: Austria (February 8, 1970), Hungary (March 23, 1967), Liechtenstein (May 29, 1967), Morocco (December 18, 1970), Tunisia (August 28, 1967), Viet Nam [11] (May 15, 1973).

[11] The situation of Viet Nam in respect of the Madrid Union is under examination.

IV

Union for the International Deposit of Industrial Designs (Hague Union)*

founded by the Hague Agreement Concerning the International Deposit of Industrial Designs (1925), revised at London (1934) and The Hague (1960)[1] and supplemented by the Additional Act of Monaco (1961),[2] by the Complementary Act of Stockholm (1967) and by the Protocol of Geneva (1975)

Member State**	Starting date of membership in the Union	London Act and date from which the State is bound	Complementary Act of Stockholm and date from which the State is bound	Protocol of Geneva and date from which the State is bound
BELGIUM[1, 3, 4]	APRIL 1, 1979	—	MAY 28, 1979	APRIL 1, 1979
Egypt	*July 1, 1952*	*July 1, 1952*	—	—
France[1, 2, 5]	October 20, 1930	June 25, 1939	September 27, 1975	—
German Democratic Republic	*June 1, 1928*[6]	*June 13, 1936*[6]	—	—
Germany, Federal Republic of[2]	June 1, 1928[6]	June 13, 1939[6]	September 27, 1975	—
Holy See	*September 29, 1960*	*September 29, 1960*	—	—
Indonesia[7]	*December 24, 1950*	*December 24, 1950*	—	—
Liechtenstein[1, 2]	**July 14, 1933**	**January 28, 1951**	**September 27, 1975**	**April 1, 1979**
LUXEMBOURG[1, 4]	APRIL 1, 1979	—	MAY 28, 1979	APRIL 1, 1979
Monaco[2]	April 29, 1959	April 29, 1956	September 27, 1975	—
Morocco	*October 20, 1930*	*January 21, 1941*	—	—
NETHERLANDS[1, 2, 3, 4]	APRIL 1, 1979	—	MAY 28, 1979	APRIL 1, 1979
Spain[2]	*June 1, 1928*	*March 2, 1956*	—	—
Suriname[1, 2, 3, 7]	**November 25, 1975**	**November 25, 1975**	**February 23, 1977**	**April 1, 1979**
Switzerland[1, 2]	**June 1, 1928**	**November 24, 1939**	**September 27, 1975**	**April 1, 1979**
Tunisia	*October 20, 1930*	*October 4, 1942*	—	—
Viet Nam[7, 8]	*December 8, 1956*	*December 8, 1956*	—	—

(Total: 17 States)[8]

* This list includes all the entities to which the Hague Agreement has been declared applicable. It does not imply any expression of opinion as to the legal status of any country or territory or of its authorities.

** Explanation of type:

Heavy type: States which have accepted the London Act (1934), the Additional Act of Monaco (1961), the Complementary Act of Stockholm (1967) and the Protocol of Geneva 1975).

CAPITAL LETTERS: States which have accepted the Complementary Act of Stockholm (1967) and the Protocol of Geneva (1975).

Ordinary type: States which have accepted the London Act (1934), the Additional Act of Monaco (1961) and tbe Complementary Act of Stockholm (1967).

Italics: States which have not accepted an Act later than the London Act (1934) or the Additional Act of Monaco (1961).

[1] The Hague Act (1960) is not yet in force. The following States have ratified or acceded to this Act: Belgium, France, Liechtenstein, Luxembourg, Netherlands (as far as the Kingdom in Europe is concerned), Suriname and Switzerland.

[2] The Additional Act of Monaco (1961) is in force in respect of the following States as from the dates indicated: France (December 1, 1962), Germany (Federal Republic of) (December 1, 1962), Liechtenstein (July 9, 1966), Monaco (September 14, 1963), Netherlands (as far as the Netherlands Antilles are concerned) (September 14, 1963), Spain (August 31, 1969), Suriname (November 25, 1975) and Switzerland (December 21, 1962). See also footnote 3.

[3] Belgium had withdrawn from the Hague Union with effect from January 1, 1975. The Netherlands had denounced, in respect of the Kingdom in Europe and with effect from January 1, 1975, the Hague Agreement (1925) and the subsequent Acts to which the Netherlands had adhered, specifying that the said Agreement and Acts—London Act (1934) and Additional Act of Monaco (1961)—would remain in force in respect of the Netherlands Antilles and Suriname. As a result of their ratification of the Protocol of Geneva (1975) and its entry into force on April 1, 1979, Belgium and the Netherlands became, again, as from that date, members of the Hague Union.

[4] The territories in Europe of Belgium, Luxembourg and tbe Netherlands are, for the application of the Hague Agreement, to be deemed a single country.

[5] Including the Departments of Guadeloupe, Guyane, Martinique and Reunion and all Overseas Territories.

[6] Date on which the ratification by Germany took effect.

[7] The Hague Agreement was previously applied, as from the dates indicated, on the territories of what are now Indonesia (June 1, 1928), Suriname (June 1, 1928) and Viet Nam[8] (October 20, 1930).

[8] The situation of Viet Nam in respect of the Hague Union is under examination.

V

Union for the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Union)*

founded by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957), revised at Stockholm (1967) and at Geneva (1977)

Member State**	Starting date of membership in the Union	Latest Act by which the State is bound and date from which it is bound
Algeria	*July 5, 1972*	*Stockholm: July 5, 1972*
Australia	**April 8, 1961**	**Geneva: February 6, 1979**
Austria	*November 30, 1969*	*Stockholm: August 18, 1973*
Belgium	*June 6, 1962*	*Stockholm: February 12, 1975*
Benin	**February 6, 1979**	**Geneva: February 6, 1979**
Czechoslovakia	**April 8, 1961**	**Geneva: February 6, 1979**
Denmark[1]	*November 30, 1961*	*Stockholm: May 4, 1970*
Finland	**August 18, 1973**	**Geneva: February 6, 1979**
France[2]	*April 8, 1961*	*Stockholm: August 12, 1975*
German Democratic Republic	*January 15, 1965*	*Stockholm: November 12, 1969, or March 18, 1970*[3]
Germany, Federal Republic of	*January 29, 1962*	*Stockholm: September 19, 1970*
Hungary	*March 23, 1967*	*Stockholm: March 18, or April 19, 1970*[3]
Ireland	**December 12, 1966**	**Geneva, February 6, 1979**
Israel	*April 8, 1961*	*Stockholm: November 12, 1969, or March 18, 1970*[3]
Italy	*April 8, 1961*	*Stockholm: April 24, 1977*
Lebanon	April 8, 1961	Nice: April 8, 1961
Liechtenstein	*May 29, 1967*	*Stockholm: May 25, 1972*
Luxembourg	*March 24, 1975*	*Stockholm: March 24, 1975*
Monaco	*April 8, 1961*	*Stockholm: October 4, 1975*
Morocco	*October 1, 1966*	*Stockholm: January 24, 1976*
Netherlands	**August 20, 1962**	**Geneva: August 15, 1979**
Norway	*July 28, 1961*	*Stockholm: June 13, 1974*
Poland	April 8, 1961	Nice: April 8, 1961
Portugal	April 8, 1961	Nice: April 8, 1961
Soviet Union	*July 26, 1971*	*Stockholm: July 26, 1971*
Spain	**April 8, 1961**	**Geneva: May 9, 1979**
Sweden	**July 28, 1961**	**Geneva: February 6, 1979**
Switzerland	*August 20, 1962*	*Stockholm: May 4, 1970*
Tunisia	May 29, 1967	Nice: May 29, 1967
United Kingdom	**April 15, 1963**	**Geneva: July 3, 1979**
United States of America	*May 25, 1972*	*Stockholm: May 25, 1972*
Yugoslavia	*August 30, 1966*	*Stockholm: October 16, 1973*

(Total: 32 States)

* This list includes all the entities to which the Nice Agreement has been declared applicable. It does not imply any expression of opinion as to the legal status of any country or territory or of its authorities.

** Explanation of type:
Heavy type: States which have accepted the Geneva Act (1977).
Italics: States which have not accepted an Act later than Stockholm (1967).
Ordinary type: States which have not accepted an Act later than Nice (1957).

[1] Denmark extended the application of the Stockholm Act to the Faroe Islands with effect from October 28, 1972.

[2] Including the Departments of Guadeloupe, Guyane, Martinique and Reunion and all Overseas Territories.

[3] These are the alternative dates of entry into force which the Director General of WIPO communicated to the States concerned.

VI

Union for the Protection of Appellations of Origin and their International Registration (Lisbon Union) *

founded by the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958), revised at Stockholm (1967)

Member State **	Starting date of membership in the Union	Latest Act by which the State is bound and date from which it is bound
Algeria	**July 5, 1972**	**Stockholm: October 31, 1973**
Bulgaria	**August 12, 1975**	**Stockholm: August 12, 1975**
Congo	**November 16, 1977**	**Stockholm: November 16, 1977**
Cuba	**September 25, 1966**	**Stockholm: April 8, 1975**
Czechoslovakia	**September 25, 1966**	**Stockholm: October 31, 1973**
France [1]	**September 25, 1966**	**Stockholm: August 12, 1975**
Gabon	**June 10, 1975**	**Stockholm: June 10, 1975**
Haiti	September 25, 1966	Lisbon: September 25, 1966
Hungary	**March 23, 1967**	**Stockholm: October 31, 1973**
Israel	**September 25, 1966**	**Stockholm: October 31, 1973**
Italy	**December 29, 1968**	**Stockholm: April 24, 1977**
Mexico	September 25, 1966	Lisbon: September 25, 1966
Portugal	September 25, 1966	Lisbon: September 25, 1966
Togo	**April 30, 1975**	**Stockholm: April 30, 1975**
Tunisia	**October 31, 1973**	**Stockholm: October 31, 1973**
Upper Volta	**September 2, 1975**	**Stockholm: September 2, 1975**

(Total: 16 States)

* This list includes all the entities to which the Lisbon Agreement has been declared applicable. It does not imply any expression of opinion as to the legal status of any country or territory or of its authorities.

** Explanation of type:
Heavy type: States which have accepted the Stockholm Act (1967).
Ordinary type: States which have not accepted an Act later than Lisbon (1958).

[1] Including the Departments of Guadeloupe, Guyane, Martinique and Reunion and all Overseas Territories.

VII

Union for the International Classification for Industrial Designs (Locarno Union)*

founded by the Locarno Agreement Establishing an International Classification for Industrial Designs (1968)

Member State	Starting date of membership in the Union
Czechoslovakia	April 27, 1971
Denmark	April 27, 1971
Finland	May 16, 1972
France[1]	September 13, 1975
German Democratic Republic	April 27, 1971
Hungary	January 1, 1974
Ireland	April 27, 1971
Italy	August 12, 1975
Netherlands	March 30, 1977
Norway	April 27, 1971
Soviet Union	December 15, 1972
Spain	November 17, 1973
Sweden	April 27, 1971
Switzerland	April 27, 1971
United States of America	May 25, 1972
Yugoslavia	October 16, 1973

(Total: 16 States)

* This list includes all the entities to which the Locarno Agreement has been declared applicable. It does not imply any expression of opinion as to the legal status of any country or territory or of its authorities.

[1] Including the Departments of Guadeloupe, Guyane, Martinique and Réunion and the Overseas Territories of New Caledonia, French Polynesia, St-Pierre and Miquelon, Wallis and Futuna and the French Austral and Antarctic Territories.

VIII

International Patent Cooperation Union (PCT Union) *

founded by the Patent Cooperation Treaty (Washington, 1970)

Member State	Starting date of membership in the Union
Australia	March 31, 1980
Austria	April 23, 1979
Brazil	April 9, 1978
Cameroon	January 24, 1978
Central African Republic	January 24, 1978
Chad	January 24, 1978
Congo	January 24, 1978
Denmark [1]	December 1, 1978
France [1, 2, 3]	February 25, 1978
Gabon	January 24, 1978
Germany, Federal Republic of	January 24, 1978
Japan [4]	October 1, 1978
Liechtenstein [1]	March 19, 1980
Luxembourg [1]	April 30, 1978
Madagascar	January 24, 1978
Malawi	January 24, 1978
Monaco	June 22, 1979
Netherlands [5]	July 10, 1979
Norway [1]	January 1, 1980
Romania [2]	July 23, 1979
Senegal	January 24, 1978
Soviet Union [2]	March 29, 1978
Sweden [6]	May 17, 1978
Switzerland [1]	January 24, 1978
Togo	January 24, 1978
United Kingdom	January 24, 1978
United States of America [1, 7, 8]	January 24, 1978

(Total: 27 States)

* This list includes all the entities to which the Patent Cooperation Treaty has been declared applicable. It does not imply any expression of opinion as to the legal status of any country or territory or of its authorities.

[1] With the declaration provided for in Article 64(1)*(a)*.

[2] With the declaration provided for in Article 64(5).

[3] Applies to all the territory of France, including overseas departments and territories.

[4] With the declaration provided for in Article 64(2)*(a)*(i) and (ii).

[5] Ratification for the Kingdom in Europe and the Netherlands Antilles.

[6] With the declaration provided for in Article 64(2)*(a)*(ii).

[7] With the declarations provided for in Articles 64(3)*(a)* and 64(4)*(a)*.

[8] Extends to all areas for which the United States of America has international responsibility.

IX

Union for the International Patent Classification (IPC Union) *

founded by the Strasbourg Agreement Concerning the International Patent Classification (1971)

Member State	Starting date of membership in the Union	Member State	Starting date of membership in the Union
Australia[1]	November 12, 1975	Israel	October 7, 1975
Austria	October 7, 1975	Italy[2]	March 30, 1980
Belgium[2]	July 4, 1976	Japan	August 18, 1977
Brazil	October 7, 1975	Luxembourg[2]	April 9, 1977
Czechoslovakia	August 3, 1978	Monaco[2]	June 13, 1976
Denmark	October 7, 1975	Netherlands[3]	October 7, 1975
Egypt	October 17, 1975	Norway[1]	October 7, 1975
Finland[1]	May 16, 1976	Portugal	May 1, 1979
France[2]	October 7, 1975	Soviet Union	October 3, 1976
German Democratic Republic	August 24, 1977	Spain[1, 2]	November 29, 1975
Germany, Federal Republic of	October 7, 1975	Suriname[4]	November 25, 1975
Ireland[1]	October 7, 1975	Sweden	October 7, 1975
		Switzerland	October 7, 1975
		United Kingdom[1]	October 7, 1975
		United States of America	October 7, 1975

(Total: 27 States)

* This list includes all the entities to which the Agreement has been declared applicable. It does not imply any expression of opinion as to the legal status of any country or territory or of its authorities.

[1] With the reservation provided for in Article 4(4)(i) of the Strasbourg (IPC) Agreement.

[2] With the reservation provided for in Article 4(4)(ii) of the Strasbourg (IPC) Agreement.

[3] Ratification for the Kingdom in Europe and the Netherlands Antilles.

[4] The Strasbourg (IPC) Agreement was previously applied, as from October 7, 1975, to the territory of Suriname.

X

Trademark Registration Treaty (1973) *

Signatory States			*Accessions*
Austria	Hungary	Romania	Congo
Denmark	Italy	San Marino	Gabon
Finland	Monaco	Sweden	Togo
Germany, Federal Republic of	Norway	United Kingdom	Upper Volta
	Portugal	United States of America	
(Total: 14 States)			(Total: 4 States)

* This instrument is not yet in force.

XI

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973)*

Signatory States

Austria
Belgium
Brazil
Denmark
France
German Democratic Republic
Germany, Federal Republic of
Hungary
Italy
Luxembourg
Monaco
Netherlands
Norway
Portugal
Romania
San Marino
Sweden
Switzerland
Yugoslavia

(Total: 19 States)

Ratifications

France
Netherlands

(Total: 2 States)

* This instrument is not yet in force.

XII

Vienna Agreement for the Protection of Type Faces and their International Deposit and Protocol to that Agreement (1973)*

Signatory States

France[1]
Germany, Federal Republic of
Hungary[1]
Italy
Liechtenstein[1]
Luxembourg[1]
Netherlands[1]
San Marino[1]
Switzerland[1]
United Kingdom
Yugoslavia

(Total: 11 States)

Ratification

France[2]

(Total: 1 State)

* These instruments are not yet in force.
[1] These States have also signed the Protocol.
[2] This State has also ratified the Protocol.

XIII

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977) *

Signatory States

Austria
Bulgaria
Denmark
Finland
France
Germany, Federal Republic of
Hungary
Italy
Luxembourg
Netherlands
Norway
Senegal
Soviet Union
Spain
Sweden
Switzerland
United Kingdom
United States of America

(Total: 18 States)

Ratifications

Bulgaria
Hungary
United States of America

(Total: 3 States)

* This instrument is not yet in force.

XIV

Geneva Treaty on the International Recording of Scientific Discoveries (1978) *

Signatory States

Bulgaria
Czechoslovakia
Hungary
Morocco
Soviet Union

(Total: 5 States)

* This instrument is not yet in force.

Membership of the Governing Bodies of the Industrial Property Unions

On January 1, 1980, the membership of the Governing Bodies was as follows:

Paris Union

Assembly: Algeria, Australia, Austria, Bahamas, Belgium, Benin, Brazil, Bulgaria, Burundi, Cameroon, Canada, Central African Republic, Chad, Congo, Cuba, Czechoslovakia, Denmark, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Holy See, Hungary, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Poland, Portugal, Romania, Senegal, South Africa,[1] Soviet Union, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, United Kingdom, United States of America, Uruguay, Upper Volta, Viet Nam, Yugoslavia, Zaire, Zambia (73).

Conference of Representatives: Argentina, Cyprus, Dominican Republic, Haiti, Iceland, Iran, Lebanon, New Zealand, Nigeria, Philippines, San Marino, Southern Rhodesia,[2] Syria, Tanzania, Trinidad and Tobago (15).

Executive Committee: Ordinary Members: Algeria, Australia, Brazil, Bulgaria, Cuba, Egypt, Finland, France, Germany (Federal Republic of), Italy, Ivory Coast, Japan, Morocco, Poland, Senegal, Soviet Union, Switzerland *(ex officio)*, United States of America, Uruguay, Yugoslavia; Associate Members: Haiti, Nigeria, Philippines (23).

[1] According to a decision of the WIPO Coordination Committee, not to be invited "to any meeting of WIPO and its Bodies and Unions" (see *Industrial Property*, 1977, p. 231).

[2] As represented by the United Kingdom.

Madrid Union

Assembly: Algeria, Austria, Belgium, Czechoslovakia, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Italy, Liechtenstein, Luxembourg, Monaco, Morocco, Netherlands, Romania, Soviet Union, Spain, Switzerland, Viet Nam, Yugoslavia (21).

Committee of Directors: Portugal, San Marino, Tunisia (3).

Hague Union

Assembly: Belgium, France, Germany (Federal Republic of), Liechtenstein, Luxembourg, Monaco, Netherlands, Suriname, Switzerland (9).

Conference of Representatives: Egypt, German Democratic Republic, Holy See, Indonesia, Morocco, Spain, Tunisia, Viet Nam (8).

Nice Union

Assembly: Algeria, Australia, Austria, Belgium, Benin, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Monaco, Morocco, Netherlands, Norway, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia (28).

Conference of Representatives: Lebanon, Poland, Portugal, Tunisia (4).

Lisbon Union

Assembly: Algeria, Bulgaria, Congo, Cuba, Czechoslovakia, France, Gabon, Hungary, Israel, Italy, Togo, Tunisia, Upper Volta (13).

Council: Haiti, Mexico, Portugal (3).

Locarno Union

Assembly: Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Hungary, Ireland, Italy, Netherlands, Norway, Soviet Union, Spain, Sweden, Switzerland, United States of America, Yugoslavia (16).

PCT Union

Assembly: Australia (as from March 31, 1980), Austria, Brazil, Cameroon, Central African Republic, Chad, Congo, Denmark, France, Gabon, Germany (Federal Republic of), Japan, Liechtenstein (as from March 19, 1980), Luxembourg, Madagascar, Malawi, Monaco, Netherlands, Norway, Romania, Senegal, Soviet Union, Sweden, Switzerland, Togo, United Kingdom, United States of America (27).

IPC Union

Assembly: Australia, Austria, Belgium, Brazil, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ireland, Israel, Italy (as from March 30, 1980), Japan, Luxembourg, Monaco, Netherlands, Norway, Portugal, Soviet Union, Spain, Suriname, Sweden, Switzerland, United Kingdom, United States of America (27).

Patent Cooperation Treaty (PCT)

Accession

LIECHTENSTEIN

The Government of Liechtenstein deposited on December 19, 1979, its instrument of accession to the Patent Cooperation Treaty (PCT) done at Washington on June 19, 1970.

The said instrument contains the following declaration:

"Pursuant to Article 64(1)*(a)*, the Principality of Liechtenstein shall not be bound by the provisions of Chapter II of the Treaty."

(Translation)

The said Treaty will enter into force, with respect to Liechtenstein, on March 19, 1980.

PCT Notification No. 29, of December 20, 1980.

Plant Varieties

Member States, as on January 1, 1980, of the International Union for the Protection of New Varieties of Plants (UPOV)

founded by the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978*

Member State	Starting date of membership in UPOV	Date from which the State is bound by the Additional Act of 1972
Belgium	December 5, 1976	Fcbruary 11, 1977
Denmark	October 6, 1968	February 11, 1977
France	October 3, 1971	February 11, 1977
Germany, Federal Republic of	August 10, 1968	February 11, 1977
Israel	December 12, 1979	December 12, 1979
Italy	July 1, 1977	July 1, 1977
Netherlands	August 10, 1968	February 11, 1977
South Africa	November 6, 1977	November 6, 1977
Sweden	December 17, 1971	February 11, 1977
Switzerland	July 10, 1977	July 10, 1977
United Kingdom	August 10, 1968	—

(Total: 11 States)

* The Act of October 23, 1978, is not yet in force. It has been signed but not yet ratified by Belgium, Canada, Denmark, France, Germany (Federal Republic of), Ireland, Italy, Japan, Mexico, Netherlands, New Zealand, South Africa, Sweden, Switzerland, United Kingdom, and United States of America.

International Convention for the Protection of New Varieties of Plants

Accession to the Additional Act

ISRAEL

The Government of Israel deposited, on November 12, 1979, according to a notification received by the Secretary-General of the International Union for the Protection of New Varieties of Plants (UPOV) from the Swiss Government on December 3, 1979, its instrument of accession to the International Convention for the Protection of New Varieties of Plants, signed at Paris on December 2, 1961, and to the Additional Act of November 10, 1972, amending the said International Convention.

Israel will belong to Class V for the purpose of determining the amount of its contribution towards the budget of UPOV; however, pursuant to the provisions of Article 26(5) of the Convention of 1961 as amended by the Additional Act of 1972, the Council of UPOV has decided to allow Israel to pay only one-half of the contribution corresponding to Class V.

The said International Convention and Additional Act entered into force, with respect to Israel, on December 12, 1979.

UPOV Notification No. 13, of December 13, 1979.

Conventions Not Administered by WIPO

Contracting States on January 1, 1980

Council of Europe

European Convention relating to the Formalities required for Patent Applications (1953) (Entered into force on June 1, 1955)

State	Date of ratification of or accession to the Convention
Iceland	March 24, 1966
Israel*	April 29, 1966
South Africa*	November 28, 1957
Spain	June 28, 1967
Turkey	October 22, 1956

* These States are not members of the Council of Europe.

Convention on the Unification of Certain Points of Substantive Law on Patents for Invention (1963)

This Convention, which was opened for signature on November 27, 1963, has been signed by the following States: Belgium, Denmark, France, Germany (Federal Republic of), Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Sweden, Switzerland and United Kingdom. It is not yet in force. It has been ratified by Ireland, Liechtenstein, Luxembourg, Sweden, Switzerland and United Kingdom.

European Patent Organisation (EPO)

Convention on the Grant of European Patents (1973)

State	Date on which accession to the Convention took effect
Austria	May 1, 1979
Belgium	October 7, 1977
France	October 7, 1977
Germany, Federal Republic of	October 7, 1977
Italy	December 1, 1978
Luxembourg	October 7, 1977
Netherlands	October 7, 1977
Sweden	May 1, 1978
Switzerland	October 7, 1977
United Kingdom	October 7, 1977

Convention for the European Patent for the Common Market (1975)

This Convention has been signed on December 15, 1975, by Belgium, Denmark, France, Germany (Federal Republic of), Ireland, Italy, Luxembourg, Netherlands and United Kingdom. It is not yet in force.

African Intellectual Property Organization (OAPI)

Libreville Agreement of September 13, 1962, as revised at Bangui on March 2, 1977*

State	Date of ratification or accession[1]	
Benin[2]	D	July 5, 1963
Cameroon[2]	L	June 19, 1963
	D	August 23, 1963
Central African Republic[2]	L	December 7, 1962
Chad[2]	O	March 9, 1963
Congo	L	June 15, 1963
	D	July 27, 1963
Gabon[2]	L	December 20, 1962
Ivory Coast	D	March 4, 1963
Mauritania[2]	L	June 19, 1963
Niger	L	February 6, 1963
Senegal	L	July 3, 1963
	D	November 19, 1963
Togo	A	October 24, 1967
Upper Volta	L	May 10, 1963
	D	January 6, 1964

* The revised Agreement is not yet in force.

[1] Date of the law (L), decree (D) or order (O) providing for ratification, or effective date of the accession (A).

[2] This State has provided for the application of Annex IV of the Libreville Agreement. Article 3(2) of the Agreement provides that applicants not domiciled in any of the member States of OAPI file their patent, trademark and design applications directly with OAPI. Annex IV enables member States of OAPI to provide for this direct filing in the case of all other applicants.

Industrial Property Organization for English-Speaking Africa (ESARIPO)

Lusaka Agreement on the Creation of an Industrial Property Organization for Englisb Speaking Africa of December 7, 1976

State	Date on which ratification or accession took effect
Gambia	February 15, 1978
Ghana	February 15, 1978
Kenya	February 15, 1978
Malawi	February 15, 1978
Sudan	May 2, 1978
Uganda	August 8, 1978
Zambia	February 15, 1978

World Intellectual Property Organization

Governing Bodies of WIPO and the Unions Administered by WIPO

Tenth Series of Meetings
(Geneva, September 24 to October 2, 1979)

NOTE*

During the tenth series of meetings[1] of the Governing Bodies of the World Intellectual Property Organization (WIPO) and the Unions administered by WIPO, which took place in Geneva from September 24 to October 2, 1979, the following 20 bodies (hereinafter referred to as "the Governing Bodies") held their sessions:

WIPO General Assemhly, fifth session (4th ordinary),
WIPO Conference, fourth session (4th ordinary),
WIPO Coordination Committee, thirteenth session (10th ordinary),
Paris Union Assemhly, fourth session (4th ordinary),
Paris Union Conference of Representatives, sixth session (4th ordinary),
Paris Union Executive Committee, fifteenth session (15th ordinary),
Berne Union Assembly, fourth session (4th ordinary),
Berne Union Conference of Representatives, fourth session (4th ordinary),
Berne Union Executive Committee, fifteenth session (11th ordinary),
Madrid Union Assemhly, tenth session (3rd ordinary),
Madrid Union Committee of Directors, tenth session (3rd ordinary),
Hague Union Assemhly, fourth session (2nd ordinary),
Hague Union Conference of Representatives, fourth session (2nd ordinary),
Nice Union Assemhly, fifth session (4th ordinary),
Nice Union Conference of Representatives, fourth session (4th ordinary),
Lisbon Union Assembly, third session (3rd ordinary),
Lisbon Union Council, tenth session (10th ordinary),
Locarno Union Assembly, fifth session (3rd ordinary),
IPC [International Patent Classification] Union Assembly, third session (3rd ordinary),
PCT [Patent Cooperation Treaty] Union Assembly, fourth session (2nd ordinary).

Eighty-one States, memhers of WIPO, the Paris Union or the Berne Union or of one or more of these, were represented at the tenth series of meetings. In addition, eight other States, eleven intergovernmental organizations and nine international non-governmental organizations sent ohservers. The list of participants follows this Note.

The tenth series of meetings of the Governing Bodies of WIPO and of the Unions administered by WIPO was convened by the Director General of WIPO, Dr. Arpad Bogsch (hereinafter referred to as "the Director General").

Each of the Governing Bodies elected its officers at the beginning of its session. As far as WIPO is concerned, the General Assemhly, the Conference and the Coordination Committee elected Mr. Albrecht Krieger (Federal Repuhlic of Germany), Mr. Alioune Sene (Senegal), and Mr. Gyula Pusztai (Hungary), respectively, as their new Chairmen. A list of the officers of the Governing Bodies of the various Unions is contained in the list of participants, helow.

The main items discussed and the principal decisions taken by the Governing Bodies are reported on below.

Appointment of the Director General

On the hasis of the nomination made by the WIPO Coordination Committee at its twelfth session, the WIPO General Assembly appointed Dr. Arpad Bogsch, unanimously and by acclamation, as the Director General of WIPO for a further period of six years.

Past Activities and Finances

The Governing Bodies reviewed reports by the Director General on the finances of the International Bureau in 1978, the accounts for 1976, 1977 and 1978

* This Note has been prepared by the International Bureau on the basis of the documents of the sessions of the Governing Bodies.

[1] For the Note on the ninth series of meetings, see *Industrial Property*, 1978, p. 280.

and the activities of the International Bureau from September 1976 to September 1979. The said reports, accounts and activities were approved by each of the Governing Bodies concerned.

Two proposals arising from the report on activities in 1979 were also approved. The first concerned a recent report by the United Nations Industrial Development Organization which advocated the setting up of an international patent documentation center; it was agreed that tbe WIPO Permanent Committee for Development Cooperation Related to Industrial Property be entrusted with the task of advising on any question concerning the prohlems of developing countries in patent examination, and that any duplication of WIPO's tasks in tbis field should be resisted. The second proposal concerned the tasks and composition of a committee of experts on joint inventive activity, whicb would advise on a guide containing questions, and possible solutions, wbich need to be regulated in international agreements of cooperation, relating to inventions made in the course of international joint ventures.

Program and Budget Cycles

The Governing Bodies concerned decided to change from the existing system of triennial and annual programs and budgets to a system of hiennial programs and budgets for WIPO and the nine Unions whicb have independent hudgets (the Paris, PCT, Madrid, Hague, Lisbon, IPC, Nice, Locarno and Berne Unions).

Working Languages

The Governing Bodies decided to extend the use of Arahic, Portuguese, Russian and Spanish as working languages of WIPO, mainly in tbe field of publications, and to the extent permitted hy hudgetary considerations. English and French remain the hasic working languages.

Program and Budget for 1980 and 1981

Industrial Property and Patent Information Activities of Particular Interest to Developing Countries

The International Bureau will continue its systematic, yearly training program for the training of government officials of developing countries, individually or in groups (in courses with pre-estahlished curricula), in tbe law and the practical implications, including patent information, of industrial property.

Furthermore, tbe International Bureau will cooperate, on request, with individual governments or groups of governments of developing countries on the adoption of new laws and regulations, or the modernization of existing laws, in the field of industrial property in order to ensure that they serve hetter their economic and social goals.

Furthermore, the International Bureau will cooperate, on request, with individual governments or groups of governments of developing countries in the creation or modernization of their industrial property institutions (industrial property offices), in the practical administration of their industrial property laws (grant of patents, registration of marks, etc.) and in the organizing of assistance to local inventors, industry and trade to obtain industrial property protection. It will also cooperate with associations of inventors, of scientists, of industrialists and of traders in developing countries, on the practical measures which are available to them, or which could he created for them, in order to promote local inventive or innovative activity, promote the creation of industrial designs, help in the choice of marks that are attractive and legally safe, enahle them to take the fullest possible advantage of national and foreign laws and treaties for the protection of their industrial property and rights and enable them to negotiate efficiently for the licensing or sale of their foreign industrial property rights.

The International Bureau will also lend its assistance in respect of the possihilities and techniques of acquiring technology of foreign origin where such technology is the suhject of industrial property rights, and in respect of possible measures which would enable any developing country to have specialists (lawyers and engineers) qualified to exercise the profession of industrial property lawyer or agent, or, where such profession already exists but is in need of modernization, on possible measures for such modernization.

Finally, the International Bureau will cooperate, on request, with individual governments or groups of governments of developing countries to facilitate access to the technological information contained in patent documents.

The WIPO Permanent Committee for Development Cooperation Related to Industrial Property will meet in Geneva in 1980.

Revision of Industrial Property Treaties

Two revision processes are involved.

One concerns the Paris Convention for the Protection of Industrial Property of 1883. Its last major substantive revision took place in 1958, whereas, in 1967, it was mainly the administrative provisions that were revised. The revision now contemplated should introduce new provisions and should change certain existing provisions to meet hetter the needs of developing countries as countries which are mainly import-

ers of technology. Furthermore, the revision now contemplated should introduce new provisions giving full recognition to "inventors' certificates," a form of protection of inventions existing in the Soviet Union and some other countries. The Diplomatic Conference marking the consummation of the ongoing revision process of the Paris Convention will take place in 1980. The revision of the Paris Convention is expected to result in an increase in the membership of developing countries in tbe Paris Union (only about half of them are members today).

The other revision effort is designed to result in one or two treaties tbat would provide for the international protection of geographical indications (on goods or in connection witb services) in a more efficient manner than at present and mainly in a way that would be acceptable to more countries than under the existing system (which is followed by only 38 States). This work should result in 1982 in drafts that could go direct, or subject only to one more preparatory meeting, to a diplomatic conference in 1983 or 1984.

Promotion of the Acceptance of Certain Industrial Property Treaties

The objective is to ensure tbat more countries (from among the 150 or so sovereign countries of tbe world) than at present become party to the treaties dealing with the international protection of industrial property or certain international classifications.

Preparations for the Entry Into Force of Certain Industrial Property Treaties

One objective is to ensure that governments preparing legislative action in their countries for the acceptance of the revised Paris Convention and of the Trademark Registration Treaty (TRT), the Vienna Agreement (Figurative Elements of Marks), the Budapest Treaty (Microorganisms) and the Geneva Treaty (Scientific Discoveries) will bave at their disposal the necessary documentation to support such action. A further objective is to ensure that when this revision and these treaties enter into force everything that is required for the application in practice of the rclevant provisions should be in place and ready to operate.

Promotion of Industrial Property Protection Through New International Arrangements

The objective is to explore the need for an international treaty on the protection and/or international registration of computer software in order to institute international protection for software and/or to establish a reliable system for proving the origin and the date of creation of new software. The International Bureau will continue to study tbis matter.

Promotion of the Practical Application of Laws and Treaties in the Field of Industrial Property

The objective is to draw a clear picture, region by region, of the present situation of industrial property law and institutions in tbe various countries. Such survey will cover the state of legislation, tbe organization and work of industrial property offices, the number and organization of practitioners, statistics on patents, trademarks, etc. It is expected that, since each government will be able to compare, thanks to tbe proposed survey, the industrial property situation in its own country witb tbat of other countries, it will derive inspiration from tbe survey to improve that situation.

Promotion of Patent Information and Development of Patent Classification

The objectives are to continue tbe improvement of the International Patent Classification, the cooperation witb INPADOC, and the cooperation between patent offices in all aspects of patent documentation and patent information (standardization, modernization of reproduction and dissemination of patent documents, etc.). It is expected that this activity will facilitate the searching of patent literature for the purposes of examining patent applications and locating technical information contained in patent documents. It is also expected that it will make it easier to read and handle patent documents.

The WIPO Permanent Committee on Patent Information (PCPI) and its subsidiary bodies will bold approximately 12 meetings a year. The objectives of this Committee are to encourage and initiate close cooperation among the national and regional industrial property offices, certain Unions administered by WIPO and the International Bureau of WIPO in all matters concerning patent information. The Committee has four Working Groups (Planning, General Information, Search Information, Patent Information for Developing Countries) and some of tbe Working Groups are expected to set up subsidiary bodies. The Committee is expected to draw up and keep under constant review its long-term objectives.

The third revision of the IPC, started in 1979 and scheduled to end in 1984, will continue under the directives of the PCPI and the IPC Committee of Experts.

The International Bureau will continue its cooperation, based on an agreement concluded between

WIPO and the Government of Austria, with the International Patent Documentation Center (INPADOC).

The International Bureau will continue, on the basis of the agreement concluded between WIPO and the Commission of the European Communities, to give its assistance to the publication of the quarterly *World Patent Information.*

Development of Trademark Classification

The objective is to continue the improvement of the Nice Classification of Goods and Services for the Purposes of the Registration of Marks, an important tool in the orderly registration of trademarks and service marks. "Improvement" means the covering of new products and services and the more precise description and classification of existing ones, in addition to the updating of the Classification in various languages.

The general and systematic review of the Nice Classification will continue—on the basis of proposals made by the member States and by the International Bureau—in the Preparatory Working Group (which will hold one meeting) and the Committee of Experts of the Nice Union (which will hold one meeting). The computerized data base in English and French of the Nice Classification will be updated following this review of the Classification.

Development of Industrial Designs Classification

The objective is to continue the improvement of the Locarno Classification for Industrial Designs, an important tool in the orderly registration of industrial designs.

The revision of the Locarno Classification will continue on the basis of proposals made by the member States and the International Bureau.

Maintenance of General Industrial Property Information Services

The International Bureau will continue to collect and publish the yearly statistics of the various national and regional industrial property offices and of the International Bureau itself concerning the applications for registration and renewal of patents, inventors' certificates, marks, industrial designs and other subjects of industrial property. Some of the work will be entrusted to INPADOC and others having relevant data or processing facilities by computer.

The International Bureau will continue to keep up to date its collection of the texts of industrial property laws and regulations of all countries of the world, and of all treaties, dealing with industrial property, both in their original languages and in English and French translations. Relevant information and copies of these texts will be furnished on request to governments and the public, against payment of a fee, where appropriate.

The monthly periodicals *Industrial Property* and *La Propriété industrielle* will continue to be published. The part containing texts of industrial property laws and treaties will be available also separately, and the periodical itself will be available without that part.

Promotion of the Acceptance of Certain Industrial Property Registration Treaties

The objective is to ensure that more countries (from among the 88 members of the Paris Union) than at present become party to the Patent Cooperation Treaty (present membership, 27), the Madrid Agreement Concerning the International Registration of Marks (present membership, 24) and the Hague Agreement Concerning the International Deposit of Industrial Designs (present membership, 17).

Registration Activities in the Field of Industrial Property

The objective is to maintain the registration and similar activities under the Paris Convention, the Patent Cooperation Treaty, the Madrid Agreement (Trademarks), the Hague Agreement (Industrial Designs) and the Lisbon Agreement (Appellations of Origin), in particular by providing accurately and promptly the services required under those treaties.

The International Bureau will maintain the communication service provided for in Article 6*ter*(3) of the Paris (Stockholm) Convention for State emblems and flags, official signs and hallmarks indicating control and warranty, as well as armorial bearings, flags, other emblems, abbreviations, and names, of certain international intergovernmental organizations.

The International Bureau will perform the tasks provided for in the Patent Cooperation Treaty (PCT), in particular the receipt of the record copies of international patent applications, the examination of such applications as to certain formal requirements, the various communications and notifications to the applicant, the national and regional Offices and the International Searching and Preliminary Examining Authorities, as well as the publication of pamphlets containing the said applications and of the PCT Gazette. It will also deal with the improvements in the PCT Regulations, Administrative Instructions and forms, with the harmonization of procedures, with the establishment of fees and with the mutual relations between the International Bureau, the applicants, the

receiving and designated Offices, and the International Authorities under the PCT.

The International Bureau will continue to update the loose-leaf publications (in English and French) of the "PCT Applicant's Guide" and will have each supplement printed and published. The supplements will gradually include information on the requirements of the processing of the international applications before the national Offices. Seminars and users' meetings will be held on the use and usefulness of the PCT. If sufficient outside cooperation and financing is received, the Guide will be published also in Japanese, Russian and Spanish.

The International Bureau will perform the tasks provided for in the Madrid Agreement Concerning the International Registration of Marks, in particular the registration, renewal and publication of marks. It will continue to maintain its search service to the public identifying identical or similar marks among those registered under the Madrid Agreement.

The International Bureau will perform the tasks provided for in the Hague Agreement Concerning the International Deposit of Industrial Designs, in particular the registration and publication of industrial designs deposited with it.

The International Bureau will continue to accept for registration, to register, and to publish registrations of appellations of origin under the Lisbon Agreement.

Copyright and Neighboring Rights Activities

The main features of the program and budget relating to copyright and neighboring rights are summarized in the January 1980 issue of *Copyright.*

Budget

The Governing Bodies concerned adopted the budgets for 1980 and 1981 (each year approximately 30,000,000 Swiss francs) corresponding to the programs outlined above.

Contribution Systems

The Governing Bodies decided that a study of the possible reform of the contribution system of WIPO and the Unions administered by WIPO should be started. The objective of the study is to find a solution according to which the burden of contributions will be more equitably distributed among the member States than it is under the present system. The study should concentrate on finding such a solution within the present multiple contribution system (that is, separate contributions for each Union and for States not members of any of the Unions but Members of WIPO). The solution should have the effect of increasing the difference between the share of those countries paying the highest percentage of contributions and the share of those countries paying the lowest percentage of contributions.

South Africa

Following the decision of the WIPO Coordination Committee in 1977, the Governing Bodies had on their agenda an item entitled "The exclusion of the racist régime of South Africa from any participation in meetings of WIPO and its bodies and Unions." After extensive discussions which lasted several days, the WIPO Conference voted on a proposal that "the WIPO Conference exclude from WIPO South Africa, which the United Nations has found to be flagrantly and persistently pursuing an official policy of racial discrimination in its legislation." Adoption of the proposal would have required a two-thirds majority. The proposal was voted upon in a secret ballot and was rejected by 37 votes in favor, 25 votes against and three abstentions. However, the decision made by the Coordination Committee in 1977 and according to which South Africa is not to be invited to any of the meetings of WIPO or the Unions administered by WIPO has not been repealed and will continue to be applied.

Election of Members of the Executive Committees of the Paris and Berne Unions; Designation of Ad Hoc Members of the WIPO Coordination Committee

Election of the Executive Committees of the Paris and Berne Unions

The Assembly of the Paris Union unanimously elected the following States as ordinary members of the Executive Committee of the Paris Union: Algeria, Australia, Brazil, Bulgaria, Cuba, Egypt, Finland, France, Germany (Federal Republic of), Italy, Ivory Coast, Japan, Morocco, Poland, Senegal, Soviet Union, United States of America, Uruguay, Yugoslavia (19). The Conference of Representatives of the Paris Union unanimously elected the following States as associate members of the Executive Committee of the Paris Union: Haiti, Nigeria, Philippines (3).

The Assembly of the Berne Union unanimously elected the following States as ordinary members of the Executive Committee of the Berne Union: Austria, Belgium, Cameroon, Canada, German Democratic Republic, Hungary, India, Mexico, Spain, Sri Lanka, Tunisia, United Kingdom, Upper Volta, Zaire (14). The Conference of Representatives of the Berne Union unanimously elected the following

States as associate members of the Executive Committee of the Berne Union: Argentina, Czechoslovakia, Turkey (3).

Switzerland will continue to occupy its *ex officio* ordinary seat on the Executive Committees of the Paris and Berne Unions.

Designation of Ad Hoc Members of the WIPO Coordination Committee

The WIPO Conference unanimously designated the following States as ad hoc members of the WIPO Coordination Committee: El Salvador, Mongolia, Sudan (3).

Composition of the WIPO Coordination Committee

As a consequence of the elections of the Executive Committees of the Paris and Berne Unions, the designation of ad hoc members of the WIPO Coordination Committee and the taking into account of the *ex officio* ordinary seat of Switzerland, the following States are members of the WIPO Coordination Committee: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Cuba, Czechoslovakia, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany (Federal Republic of), Haiti, Hungary, India, Italy, Ivory Coast, Japan, Mexico, Mongolia, Morocco, Nigeria, Philippines, Poland, Senegal, Soviet Union, Spain, Sri Lanka, Sudan, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Upper Volta, Uruguay, Yugoslavia, Zaire (43).

LIST OF PARTICIPANTS *

I. States

Algeria [1, 2, 4, 12, 16, 18]: H. Redouane; F. Bouzid; H. Bouhalila.
Angola: A. Fernandes Junior.
Argentina [3, 5, 9, 11]: G.O. Martinez; N. Freyre Penabad; J. Pereira.
Australia [1, 2, 3, 4, 8, 10, 16, 21]: F.J. Smith; H.G. Shore; H.R. Freeman.
Austria [1, 2, 3, 4, 8, 16, 12, 16, 21, 22]: O. Leberl; R. Dittrich; M. Sajdik.
Belgium [1, 2, 3, 4, 6, 16, 12, 14, 16, 21]: H. van Houtte; J.-D. Ryex d'Huisnacht; J. Degavre; J.J.H. de Bock.
Brazil [1, 2, 3, 4, 6, 8, 21, 22]: A.C. Bandeira; A.G. Bahadian; L.C. Oliveira da Cunha Lima; M.F.M. Arruda; G.R. Coaracy.
Bulgaria [1, 2, 3, 4, 8, 16, 18]: T. Ivanov; K. Iliev; L. Stoeva; I. Kotzeve.
Burundi [1, 2, 4]: T. Sanze; E. Rwamibango.
Byelorussian SSR [2]: V.A. Jouk.
Cameroon [1, 2, 4, 8, 22]: D. Ekani; H. Meva-Ondo.
Canada [1, 2, 3, 4, 8, 10]: D.E. Bond; R. Théberge; M. Leir.
Chile [1, 2, 8]: M. Trucco; L. Winter; P. Oyarce.
China: Y.-C. Wu; T.-S. Tang; M.L. Li; Z. Wang; H. Kung.
Colombia: J. Guerra de la Espriella; A. Gomez.
Cuba [1, 2, 2, 4, 6, 16]: F. Ortiz; A. Mata Salas.
Czechoslovakia [1, 2, 2, 4, 6, 9, 12, 16, 18, 26, 21]: M. Bělohlávek; J. Prošek; J. Čižěk.
Democratic People's Republic of Korea [2]: C.G. Chin; Z.R. Byon; K.W. Cho.
Denmark [1, 2, 4, 7, 16, 26, 21, 22]: K. Skjødt; R. Carlsen; D. Simonsen; M. Wagtmann.
Egypt [1, 2, 4, 8, 12, 15, 21]: A.M. Khalil; F. El Ibrashi; S.A. Salem; A. Elshahed; T. Dinana.
El Salvador [2]: N.R. Monge Lopez; C.A. Barahona Rivas.
Finland [1, 2, 4, 8, 16, 26, 21]: E. Wuori; A.-R. Ketokoski.
France [1, 2, 3, 4, 6, 8, 12, 14, 16, 18, 26, 21, 22]: G. Vianès; A. Kerever; A. Némo; L. Nicodème; A. Tramoni-Veneraldi; R. Yung; R. Leclerc; P. Guérin.
Gabon [1, 2, 4, 8, 18, 22]: P.J. N'Gouyou; R. Jaffres-Obembe.
German Democratic Republic [1, 2, 3, 4, 6, 8, 12, 15, 16, 26, 21]: J. Hemmerling; D. Schack; K. Götz; O. Hugler; M. Förster.
Germany (Federal Republic of) [1, 2, 3, 4, 6, 8, 12, 14, 16, 21, 22]: A. Krieger; E. Steup; U. Hallmann; G. Wirth; J. Wenzl.
Ghana [1, 2, 3, 4, 6]: E. Vanderpuye; J.O. Eshun.
Greece [1, 2, 4, 8]: G. Pilavachi; E. Danellis.
Holy See [1, 2, 4, 8, 15]: O. Roullet.
Honduras: P.A. Garay Alvarado.
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[1] WIPO General Assembly.
[2] WIPO Conference.
[3] WIPO Coordination Committee.
[4] Paris Union Assembly.
[5] Paris Union Conference of Representatives.
[6] Ordinary member of the Paris Union Executive Committee.
[7] Associate member of the Paris Union Executive Committee.
[8] Berne Union Assembly.
[9] Berne Union Conference of Representatives.
[10] Ordinary member of the Berne Union Executive Committee.
[11] Associate member of the Berne Union Executive Committee.
[12] Madrid Union Assembly.
[13] Madrid Union Committee of Directors.
[14] Hague Union Assembly.
[15] Hague Union Conference of Representatives.
[16] Nice Union Assembly.
[17] Nice Union Conference of Representatives.
[18] Lisbon Union Assembly.
[19] Lisbon Union Assembly.
[20] Locarno Union Assembly.
[21] IPC Union Assembly.
[22] PCT Union Assembly.

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III. Non-Governmental International Organizations

International Association of Conference Interpreters (AIIC): A. Chaves. **International Confederation of Societies of Authors and Composers (CISAC)**: J.-A. Ziegler. **International Copyright Society (INTERGU)**: G. Halla. **International Federation of Film Producers Associations (FIAPF)**: A. Brisson; S. F. Gronich. **International Federation of Producers of Phonograms and Videograms (IFPI)**: E. Thompson. **International Literary and Artistic Association (ALAI)**: J.-A. Ziegler. **International Organization for Standardization (ISO)**: R. W. Middleton. **International Publishers Association (IPA)**: J.-A. Koutchoumow. **Union of European Practitioners in Industrial Property (UNEPA)**: G. E. Kirker.

IV. Officers

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Chairman: A. Sene (Senegal). *Vice-Chairmen:* D. E. Bond (Canada); R. Farfal (Poland).

WIPO General Assembly

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Paris Union Assembly

Chairman: I. Nayashkov (Soviet Union). *Vice-Chairmen:* B. van der Giessen (Sweden); I. B. Fonseka (Sri Lanka).

Paris Union Conference of Representatives

Chairman: D.-A. El-Fattal (Syria). *Vice-Chairmen:* J. Palarca (Philippines); P. J. Dass (Trinidad and Tobago).

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Chairman: M. Belohlávek (Czechoslovakia). *Vice-Chairmen:* S. Rabearivelo (Madagascar); J. J. Real (Uruguay).

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Chairman: O. Leberl (Austria). *Vice-Chairmen:* H. Redouane (Algeria); J.-P. Hoffmann (Luxembourg).

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Chairman: A. de Carvalho (Portugal). *Vice-Chairmen:* D. Thomas (San Marino); B. Fathallah (Tunisia).

Hague Union Assembly

Chairman: J. Dekker (Netherlands). *Vice-Chairmen:* H. van-Houtte (Belgium); ... (Suriname).

Hague Union Conference of Representatives

Chairman: F. El Ibrashi (Egypt). *Vice-Chairmen:* A. Villalpando Martínez (Spain); A. Kandil (Morocco).

Nice Union Assembly

Chairman: I. J. G. Davis (United Kingdom). *Vice-Chairmen:* K. Skjødt (Denmark); M. J. Quinn (Ireland).

Nice Union Conference of Representatives

Chairman: B. Fathallah (Tunisia). *Vice-Chairmen:* R. Farfal (Poland); ... (Lebanon).

Lisbon Union Assembly

Chairman: S. Samperi (Italy). *Vice-Chairmen:* A. Mata Salas (Cuba); T. M. Garango (Upper Volta).

Lisbon Union Council

Chairman: ... (Haiti). *Vice-Chairmen:* H. Diaz Thomé (Mexico); A. de Carvalho (Portugal).

Locarno Union Assembly

Chairman: J. Hemmerling (German Democratic Republic). *Vice-Chairmen:* D. Bošković (Yugoslavia); A. Gerhardsen (Norway).

IPC Union Assembly

Chairman: Y. Kawahara (Japan). *Vice-Chairmen:* E. Wuori (Finland); J. Hemmerling (German Democratic Republic).

PCT Union Assembly

Chairman: H. J. Winter (United States of America). *Vice-Chairmen:* ... (Congo); I. Nayasbkov (Soviel Union).

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V. International Bureau of WIPO

A. Bogsch *(Director General);* K. Pfanner *(Deputy Director General);* K.-L. Liguer-Laubhouel *(Deputy Director General);* F. A. Sviridov *(Deputy Director General);* C. Masouyé *(Director, Copyright and Public Information Department);* G. Ledakis *(Legal Counsel);* M. Pereyra *(Director, Administrative Division);* M. Porzio *(Director, Office of the Director General).*

WIPO/ESCAP/UNDP/RCTT

Workshop for Government Officials on Industrial Property Licenses and Technology Transfer Arrangements

(Bangalore, India, September 3 to 7, 1979)

NOTE *

The Workshop for Government Officials on Industrial Property Licenses and Technology Transfer Arrangements was held in Bangalore, India, from September 3 to 7, 1979. The Workshop was organized jointly by WIPO in association with the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) and with the cooperation of the United Nations Development Programme (UNDP), and took place at tbe Regional Centre for Technology Transfer (RCTT) of ESCAP.

Forty-two government officials from the following 19 countries participated in the Workshop: Afghanistan, Bangladesh, Bhutan, China, Democratic People's Republic of Korea, Fiji, India, Indonesia, Iran, Malaysia, Nepal, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Sri Lanka, Thailand, Viet Nam. In addition, representatives of ESCAP, UNDP and RCTT attended the meeting. The list of participants follows this Note.

The Workshop was opened by Mr. Govind Narain, Governor of the State of Karnataka, India.

The purposes of the Workshop were to advise the participants how to identify legal problems which are likely to arise in the negotiation and preparation of industrial property licenses and technology transfer agreements, to increase their awareness of existing commercial practices, to indicate the possible solutions and to promote among the participants tbe exchange of information and sharing of experience concerning such legal problems, practices and solutions.

The discussions were based primarily on the *WIPO Licensing Guide for Developing Countries* and a series of background documents prepared by the International Bureau of WIPO, including case studies of license agreements in the electronics, chemical and food industries. The discussions were preceded by lectures given by WIPO staff members and two specialists on matters relating to tbe negotiation and preparation of license agreements.

The participants concluded that the Workshop had been very valuable as an opportunity to exchange experience, to have the benefit of consultations with a number of experts, to develop an awareness of the problems arising in the negotiation and preparation of license agreements, the difficulties encountered and possible solutions and to improve their skills. The participants expressed the desire that similar workshops on a regional, subregional and national basis be organized, which could be devoted to an in-depth treatment of license agreements in given industrial sectors and could include simulated negotiations and drafting of license agreements, with the participation of not only government officials but also members from industry and related professions.

The participants were of the view that consideration should also be given by WIPO, UNDP, ESCAP and RCTT to the possibility of making experts available to countries, at their request, to assist them in special problems connected with license agreements to be negotiated for the acquisition of specific technologies.

* This Note has been prepared by the International Bureau.

LIST OF PARTICIPANTS *

I. States

Afghanistan: Mr. Abdul Qayum Samimi. **Bangladesh:** Mr. Aminuddin Ahmed; Mr. Burhanuddin; Dr. M.I. Talukder. **Bhutan:** Mr. Nima Dorji Drukpa; Mr. Tika Ram Sharma; Mr. Mandhoj Tamang. **China:** Mr. Qian Chuanbing; Mr. Hu Mingzheng; Mr. Li Yongxin. **Democratic People's Republic of Korea:** Mr. Pak Hyong Gyu; Mr. Kim Song Duk; Mr. Choi Bweng Sun. **Fiji:** Mr. Jagdishwar Narayan. **India:** Mr. G. Chandrasekharan; Dr. S. Vedaraman. **Indonesia:** Mr. Yunus Ali; Mr. Agustiar Anwar; Mrs. Ila Gambiro; Mr. Yahya Madani. **Malaysia:** Mrs. Noriah Abidin; Miss Mardizah Abdul Aziz; Mr. Ahmad Shahrom Yasin. **Nepal:** Mr. Jeeban Lal Satyal. **Pakistan:** Mr. Abdul Aziz. **Papua New Guinea:** Mr. Wep Kanawi; Ms. June Anne Watson. **Philippines:** Ms. Gloria S. Cuchapin; Miss Eva Payumo; Mr. Teofilo P. Velasco. **Republic of Korea:** Mr. Myong Koo Kang. **Samoa:** Mr. Barry Oates; Mr. Tommy Scanlan. **Sri Lanka:** Mr. Kirthisiri A.D.S. Jayasinghe; Mr. Sumanapala Perera Morawaka; Mr. Nelun Eustace Ratnajeewa. **Thailand:** Mrs. Ravadee Sajjavudh; Mr. Udom Wongviwatchai; Ms. Krurwan Cheepsatayakorn. **Viet Nam:** Mr. Dong Le; Mr. Van Vien Nguyen; Mr. Khac Trai Vu.

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III. United Nations Economic and Social Commission for Asia and the Pacific (ESCAP)

Mr. Oleg Trofimov; Dr. Tyn Myint-U.

IV. Regional Centre for Technology Transfer (RCTT)

Dr. C.V.S. Ratnam; Mr. Charn Charussilapa; Mr. Sriniwasa Murthy.

V. United Nations Development Programme (UNDP)

Mr. Marc Peeters.

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

Paris Union

Expert Gronp on the Legal Protection of Computer Software

First Session

(Geneva, November 27 to 30, 1979)

NOTE *

The Expert Group on the Legal Protection of Computer Software (hereinafter referred to as "the Expert Group") held its first session in Geneva from November 27 to 30, 1979.

Twenty States, members of WIPO, of the International (Paris) Union for the Protection of Industrial Property and/or of the International (Berne) Union for the Protection of Literary and Artistic Works, and, as observers, four intergovernmental organizations and seven international non-governmental organizations participated in the meeting. The list of participants follows this Note.

The Expert Group first considered the extent to which the legal protection of computer software was at present ensured by national or regional legislative provisions or hy the application of case law. It emerged from the discussion that at present there were no special legislative provisions that afforded such protection, either on the national or on the regional level, except in Bulgaria.

In the course of the session, the expert from Bulgaria gave a detailed account of the contents of Ordinance No. 6 on the use of computer software. The majority of the participants said that the legal situation was uncertain in their countries, although all of them admitted that software protection was desirable. In some countries, the existing protection proved to be sufficient for the time being. It was agreed that the protection, whenever it was not available, should be derived from copyright legislation, from the legislation on the protection of trade secrets or the protection against unfair competition or from specific legislation, such as that embodied in the "Model Provisions for the Protection of Computer Software," published by the International Bureau in 1978.

With regard to the desirability of a treaty for the protection of computer software, the Expert Group examined in detail what the contents of such a treaty might be and then considered the provisions of the existing international conventions, in particular the Paris Convention and the Berne Convention. It noted that the provisions of those Conventions did not fully cover the protection which should be granted to

* This Note has been prepared by the International Bureau.

computer software. It was agreed that the question of the desirability of a special treaty for the protection of computer software should be further studied.

The Expert Group also examined other measures which could enbance international cooperation in the field of legal protection of computer software, in particular the possibility of establishing an international deposit system for computer software.

As regards future work, the Expert Group recommended that the International Bureau prepare a questionnaire which should cover the problems raised in connection with international protection of computer software and any related questions. The International Bureau sbould also prepare a questionnaire dealing in particular with the desirability of additional treaty provisions from the point of view of the creators of computer software and other interested parties. Finally, the Expert Group recommcnded that the replies to the questionnaires should be taken into account for tbe further study by the International Bureau on the desirability and feasibility of a treaty on the protection of computer software and/or adaptation of one or more existing treaties.

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I. States

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General Studies

The New Dutch Patent Legislation

H. R. FURSTNER*

Introduction

The Patents Act of the Kingdom of the Netherlands[1] was amended on December 13, 1978. It had previously been subject to amendment on January 12, 1977. This study will analyze both sets of amendments.

The Patents Act as Amended on January 12, 1977

The main objective of the 1977 amendments was the adaptation of the Patents Act to the Lisbon and Stockholm Acts of the Paris Convention and to the Strasbourg Convention on the Unification of Certain Points of Substantive Law on Patents for Invention.

As regards adaptation to the Paris Convention, Section 7 of the Patents Act, concerning the right of

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[1] For the text of the Patents Act as amended to December 13, 1978, see this month's selection of *Industrial Property Laws and Treaties,* NETHERLANDS—Text 2-001. The text of the Patents Rules as amended will be published in a forthcoming selection of *Industrial Property Laws and Treaties.*

priority, was brought into line with Article 4 of the Convention. In addition, Section 8A was amended, in conformity with Article 4G of the Convention, in order to enable applicants to file divisional applications on their own initiative, within a certain time limit, while preserving the original filing (priority) date. Previously, divisional applications could only be filed in the case of non-unity of the invention and after a decision of the Patent Office to that effect.

As regards adaptation to the Strasbourg Convention, the following provisions should be noted.

In Sections 2 and 2A, the Patents Act was brought into agreement with the Strasbourg Convention insofar as the requirements of novelty and inventive step are concerned. This adaptation may be considered as the culmination of a development which to a large extent was already reflected in the decisions of civil courts and of the Patent Office. In only one respect does the new system show a fundamental change: where two applications collided, and the first application was laid open to public inspection on or after the date of filing of the latter application, former Section 6 of the Patents Act provided tbat the latter applicant could not obtain a patent for anything already disclosed in the first application. In order to decide whether this was the case, the first application was interpreted according to the standards applied to a granted patent; thus the possibility that two patents would be granted for the same invention was avoided. According to the new system, the contents of the latter application must be new vis-à-vis the former application (Section 2(3), Patents Act; cf. Article 4.3, Strasbourg Convention) but need not involve an inventive step (Section 2A(2), Patents Act; cf. Article 5, second sentence, Strasbourg Convention). As the underlying principle in the new system, i.e. to avoid two or more patents being granted for the same invention, is the same as in the old system, it may be assumed that the interpretation of colliding applications will remain largely unaltered.

Section 8 of the Patents Act, concerning the priority based on a display of an invention at officially recognized exhibitions, was deleted as a result of practical difficulties; applicants were not always aware of the fact that in several foreign countries a similar protection did not exist, as the recognition of an exhibition only bad national effect. The more restricted legal effect of displaying the invention at an international exhibition, as provided for in Article 4.4(b) of the Strasbourg Convention, was adopted in Section 2(4) of the Patents Act.

Finally, the prohibition to grant patents for substances as such (Section 4, Patents Act) was deleted in order to bring the Patents Act into line with Article 1 of the Strasbourg Convention.

Apart from the above-mentioned harmonization in connection with the Paris and Strasbourg Conventions, the Patents Act was amended on some other points with a view to practical needs. Mention should be made of Section 17A, which provides for the possibility of *restitutio in integrum* similar to what has been provided for in Article 122 of the European Patent Convention.

The Patents Act as Amended on December 13, 1978

Within two years following the amendments of 1977, the Patents Act of the Kingdom (i.e. the Netherlands and the Netherlands Antilles) was amended for the purpose of implementing the European Patent Convention (EPC). It was also harmonized with the EPC as regards certain slightly different provisions. At the same time, the Patents Act was amended in order to implement the Patent Cooperation Treaty (PCT), including the possibility for national applicants to request a so-called international-type search. Finally, some minor amendments were made relating to national applications, which will not be mentioned here.

The Patents Act as revised on December 13, 1978, entered into force on February 1, 1979. The provisions concerning international applications, however, became applicable on the date the PCT entered into force for the Kingdom, i.e. July 10, 1979. The Patents Rules (Order in Council of September 22, 1921) were revised on January 6, 1979, for adaptation to the revised Patents Act; the revised Patents Rules also entered into force on February 1, 1979 (again, the provisions concerning international applications became applicable only on July 10, 1979).

As regards the applicability of the EPC and the PCT, it should be noted that although the Kingdom as such is party to the EPC, the EPC does not apply in the Netherlands Antilles. European patents and "Euro-PCT" patents therefore do not have effect in the Antilles. The PCT, however, applies both in the Netherlands and the Netherlands Antilles.

Amendments Relating to the Implementation of the European Patent Convention

1. Filing of European Patent Applications

As the Branch of the European Patent Office (EPO) at The Hague and the Netherlands Patent Office are located in the same building, the legislature decided not to avail itself of the possibility under Article 75(1)(b) of the EPC for European patent applications to be filed at the Netherlands Office. In general, therefore, the only place in the Netherlands where European patent applications may be filed is the EPO. However, if the applicant knows, or reasonably should surmise that his invention must be kept secret in the interest of the defense of the Kingdom or

its allies, the European patent application must be filed at the Netherlands Office. Applicants who do not comply with this obligation may be liable to penal sanctions (Section 29G, Patents Act).

2. Translation of European Patent Applications and European Patent Specifications

(a) European Patent Applications. According to Article 67(3) of the EPC, a Contracting State which does not have as an official language the language of the proceedings may prescribe that the provisional protection referred to in paragraphs (1) and (2) of that Article shall not be effective until such time as a translation of the claims either (i) has been made available to the public, or (ii) has been communicated to the person using the invention in that State. In order to ensure the provisional protection, Section 43B of the Patents Act requires the applicant for a European patent to submit in the writ, served on the person using the invention, a translation of the published claims, unless this translation has been filed at and laid open to public inspection by the Patent Office and the writ refers thereto (see also under 3, below).

(b) European Patent Specifications. Section 29P of the Patents Act provides that a translation of the European patent specification as granted or as amended after opposition must be filed at the Netherlands Office within (Section 31C, Patents Rules) three months after the mention of the grant or the mention of the decision on the opposition, respectively, has been published. As the translation is laid open to public inspection, it will have to be as accurate as possible a reproduction of the authentic text. Therefore, Section 29P of the Patents Act stipulates that the translation must be certified by a national representative.

The proprietor of a European patent may, at any time, file a corrected version of the translation, again certified by a national representative. This translation is also laid open to public inspection.

For the filing of the above-mentioned translation a filing fee of 50 guilders must be paid (Section 17(7), Patents Rules).

Finally, it may be noted in this respect that the legislature did not avail itself of the possibilities under Article 70(3) and (4) of the EPC. In both cases, therefore, the text in the language of the European proceedings is the authentic text in the Netherlands.

3. Rights Conferred by a European Patent Application after Publication

As already noted under *2(a)*, above, the Patents Act (Section 43B), provides for a system of provisional protection in accordance with Article 67(2) and (3) of the EPC. Provisional protection is, however, only granted if the person using the invention is made aware of this fact by means of a writ. When, subsequently, the European patent has been granted, its proprietor may demand reasonable compensation for acts done in the period after the writ has been served, insofar as the proprietor of the patent has acquired exclusive rights and insofar as the acts done are within the scope of the last filed published claims.

4. Prohibition of Simultaneous Protection

When a national and a European patent are granted for the same invention and these patents belong to the same inventor (or his successor in title) and have the same filing or priority date, simultaneous protection would occur. In order to avoid this, Section 52 of the Patents Act provides that the national patent ceases to have effect, insofar as it protects the same invention, from the date on which the term of opposition to the European patent has expired without notice of opposition having been given, or from the date on which the opposition procedure was concluded, the European patent having been maintained, or when the national patent is granted later than either of these dates.

Owing to the deferred examination system in the Netherlands, in most cases the European patent will have been granted prior to the grant of the corresponding national patent, which then will have no further effect.

Thus, in principle, the European patent takes precedence over the national patent. It is, however, to be noted (cf. the above-mentioned requirement: "insofar as it protects the same invention") that the national patent will not give way to the European patent entirely when the scope of protection offered by both patents differ; the loss of effect of the national patent may then only be partial. The loss of effect of the national patent is final; any subsequent invalidation of the European patent does not alter that situation.

5. Conversion into a National Application

Section 29H of the Patents Act provides, in conformity with Article 135(1)(a) of the EPC, for two cases in which a European application may be converted into a national application: (i) when the European application was filed at a national office which did not transmit (e.g. for reasons of secrecy) the application in due time to the EPO; and (ii) when the application could not be further processed by the EPO during the transitional period of progressive expansion of the field of activity of the EPO. No other cases of possible conversion (cf. Article 135(1)(b), EPC) are provided for.

According to Section 29H of the Patents Act, a European application may be converted into a national application (in the cases referred to above) and may subsequently be considered to be a national application (having the European filing date) if the application and a regular request for conversion have been filed at the Netherlands Office. A request for conversion is regular if it has been submitted in due time with due observance of the provisions of Articles 135 to 137 of the EPC and has been transmitted to the Netherlands Office in due time.

Furthermore, Section 29I provides that the national filing fee has to be paid within three months from the date of receipt of the requet for conversion. Within the same period a translation of the converted application must be submitted.

The converted application may not be subjected to formal requirements other than or additional to those prescribed by the EPC (cf. Article 137(1), EPC). In this respect it may be noted that the formal requirements in the Patents Rules have been brought into line with those of the EPC and the PCT. Finally, where the applicant has no domicile in the Netherlands, a national representative must be appointed. The time limit for compliance with any shortcoming in these respects is four months after notification by the Netherlands Office.

6. Other Amendments

(a) Patentability. As the Patents Act had already been adjusted to the Strasbourg Convention, there are no amendments in the present Act concerning substantive requirements of patentability, except for the requirement of novelty. According to Section 2(4) of the Patents Act (cf. Article 139(1), EPC), the prior art also comprises the content of European and "Euro-PCT" applications in which the Kingdom has been designated, filed prior to the national application, but published on or after the national filing date.

(b) The proprietor of a European patent, who does not have his residence in the Netherlands, is obliged to elect a domicile in this country (Section 29O, Patents Act). This domicile need not be with a national representative. The requirement of domicile does not exist in the case of European applications. Contacts between the applicant and the Netherlands Office may, whenever necessary, be effected directly, e.g., for the filing of translated claims.

(c) The Netherlands patent legislation does not provide that the revocation of patents has a retroactive effect. However, Section 30A of the Patents Act (cf. Article 68 of the EPC) stipulates that the (partial) revocation of a European patent during an opposition procedure has retroactive effect. Exceptions to the principle of retroactivity are provided for in conformity with Article 35 of the Community Patent Convention.

(d) In Section 47 a minor difference between the old way of calculating the 20-year term of the patent and the European way (20 years as from the date of filing the application) (Article 63, EPC) has been removed.

(e) As regards the grounds for national revocation of European patents, Section 51 of the Patents Act has been supplemented with the grounds mentioned in Article 138(1)(a) and (e) of the EPC (in general, if the subject matter of the European patent is not patentable within the terms of Articles 52 to 57 of the EPC or if the proprietor of the European patent is not entitled under Article 60(1) of the EPC).

(f) A new second paragraph to Section 51 of the Patents Act (cf. Article 54(3), EPC) provides that the state of the art for purposes of novelty also comprises national applications filed prior to the filing date of European applications but published on or after that date.

(g) Finally, several Sections in Chapter III of the Patents Act (legal effects of the patent) were amended for the reason that European patents only have effect in the Netherlands and not in the Netherlands Antilles.

Amendments Relating to the Implementation of the PCT

1. Sections 19B, 19C and 19D of the Patents Act provide that the Netherlands Office shall act as a receiving, designated and elected Office, respectively. However, if an applicant has designated (and elected) the Kingdom and has announced that he wishes to obtain a European patent for the Kingdom, the EPO shall act as the designated (and elected) Office (Articles 153 and 156, EPC).

2. The languages in which the international applications may be filed at the Netherlands Office are Dutch, English, French or German (at the EPO they may only be filed in English, French or German).

3. A transmittal fee amounting to 100 guilders is provided for (Section 17A, Patents Rules). This fee must be paid at the Netherlands Office within one month from the date of receipt of the application.

4. If an international search report has been annexed to an international application for which a request for search has been filed (fee: 800 guilders), an amount of 200, 400, 600, or 800 guilders is refunded, depending on the extent to which the Netherlands Office benefits from the international search report (Section 18A, Patents Rules).

5. Finally, it may be noted that Section 22I(3) of the Patents Act provides for the possibility of requesting an international-type search (cf. Article 15(5)*(a)*, PCT). The fee for such a search is the same as for a national search (Section 17(5), Patents Rules).

The Work of the Commission for the Establishment of a Community Trade Mark and the Approximation of Certain Aspects of National Law in the Common Market

A. THRIERR*

Introduction

It has now been 15 years since the preliminary draft convention on European trade mark law was prepared by a Working Group under the Chairmanship of Dr. De Haan, at that time President of the Netherlands Patent Office. That document was only published, on the Commission's initiative, in 1973.[1]

That preliminary draft served as a basis for the resumption of the Commission's work on the establishment of a Community trade mark.[2] The Commission's guiding ideas were set forth in a document entitled "Memorandum on the establishment of a Community trade mark."[3]

The Commission is about to submit to the Council a draft Regulation on the establishment of a Community trade mark and a draft Directive on the approximation of Member States' laws on trade marks.

Without waiting for the draft Regulation and the first version of the preliminary draft Directive to be finalized, it would be a useful exercise to examine this important work being undertaken by the Commission with a view to establishing a Community trade mark law and, as a supplement, to approximate some of the subsisting aspects of the national laws of the Member States.

That is the issue with which this paper deals. In view of space considerations, it has not been possible to make an exhaustive study of the very many and complex problems raised by the Commission's work;[4] the question is therefore presented in general terms and the presentation and discussion of the solutions contained in Working Document No. 11, entitled "Draft Council Regulation on the Community Trade Mark" (III/D/758/Brussels, July 1978), are confined to the essential minimum.

Plan of this Study

The establishment of a Community trade mark requires two preconditions:

— industry must feel the need for such a system; and

— the system must be a means of achieving the Community's objectives.

These two aspects will be dealt with in the first part of this paper.

In the second part, an analysis of the characteristic features of the draft Regulation and a complementary, and not necessarily definitive, consideration of the draft Directive will enable us to see the place occupied by each of these elements in the work undertaken by the Commission.

A brief concluding section sets out the probable timetable of the work that remains to be done before a regulation on a Community trade mark can come into force.

The Facts at Issue

The Industrial Aspect

As shown by a recent study by the International Association for the Protection of Industrial Property (IAPIP), "Trade marks play an important role in international trade, facilitating the sales of goods and services whatever the degree of development, the economic structure and the social system of the various countries."[5] It seems useful to recall this truth at a time when the trade mark—that indispensable tool of economic life—is receiving, in various forms, more criticism than praise.

In view of their structure and the nature of their production, Community enterprises use a large number of trade marks. While there is still a long way to go before most Community enterprises operate at the level of the Common Market as a whole, the experience of the past 20 years has shown that the road is open and that an ever-increasing number of enterprises are taking it.

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[1] Preliminary Draft Convention on a European Trade Mark, Official Publications Office of the European Communities, Luxembourg.

[2] Saint-Gal, Y., and A. Thrierr, *RIPIA* 1973, No. 94, p. 222.

[3] *Bulletin of the European Communities*, Supplement No. 8/76. Official Publications Office of the European Communities, Luxembourg.

[4] In this regard, see the very interesting article by Beier, F. K., *"Vers la marque communautaire — Objectifs et fondements du futur droit européen des marques," Journal du droit international*, 1977, No. 1, p. 16.

[5] *"Importance économique, fonction et finalité de la marque," Annuaire AIPPI*, 1979/I, p. 461.

The market of the European Community constitutes an extremely important outlet for enterprises from outside the region whose goods and services compete daily to an increasing extent with those of Community enterprises.

This situation explains the importance attached by Community enterprises or those of other countries selling their goods inside the Community to tbe systems upon which they depend for the protection of their trade marks and the exercise of the ensuing rights in a region which is destined to become the largest market in the world.

The number of trade marks filed in the Community is well over 1.5 million, about 15 to 20 percent of which are protected in more than one Member State. This percentage is still small, but it should be remembered that the trade marks in question cover a very substantial part of the goods and services produced in the region.[6]

There is every reason to believe that the proportion of purely national trade marks, i.e., trade marks that apply only within a single State, will further decline in coming years. But one has to be realistic in this matter and take account of the fact that a large number of enterprises will tend to confine themselves to operations on a regional scale. For various reasons, certain products are intended only for a local clientèle (local traditions and tastes, the perishable character of products, climatic factors, etc.), and certain trade marks are not suited for exportation, if only for linguistic reasons.

To protect their trade marks in the Community, firms have the following choice:

— either to file seven separate national applications (on March 19, 1962, the Benelux countries signed a treaty known as the "Uniform Benelux Law," which came into force on January 1, 1971);
— or to file a national application in a member State of the Madrid Agreement to serve as a basis for an international registration and three separate national applications in Denmark, Ireland and the United Kingdom.

With regard to the second option, it should be remembered that the Madrid Agreement of April 14, 1891, does not cover Denmark, Ireland or the United Kingdom and is only partially open because, according to Articles 1 and 2, only tbe nationals of the contracting countries or persons treated as such (nationals of countries not having acceded to the Agreement who, within the territory of the Special Union, have a real and effective industrial or commercial establishment) may file an application for an international trade mark.

As a result, many enterprises have to be satisfied with direct national applications in each of the Member States.

It should further be recalled that the Madrid Agreement is only an agreement on formalities because the registration procedure is conducted, in each signatory country, by the national authorities on the basis of national law. The international application is, in fact, treated in each country as a national application would have been; once registered, the international trade mark produces tbe same effects and is subject to the same rules as a national trade mark.

For the exercise of their rights, enterprises must once again address themselves to the various national authorities with their different national rules.

The Trademark Registration Treaty done at Vienna on June 12, 1973, can be quoted here only as a reference because it is not yet in force and tbe Member States of the European Community have not yet ratified or acceded to it.

To propose to enterprises a system for the protection of their trade marks extending to the whole of the Common Market in itself constitutes a considerable step forward. Community enterprises have accepted the principle thereof, considering that a Community trade mark system should provide them with better legal protection, while simplifying the administrative formalities and reducing their financial expenditure. But they have legitimately and vigorously argued that:

— they were not willing to accept a system wbich for any reason was less favorable to them than the existing national systems;
— whatever the merits of a Community trade mark, protection limited to one or more Member States would long continue to meet most of their real needs;
— such systems should therefore be maintained in force;
— while the harmonization of certain aspects of national trade mark law in the Common Market should be envisaged, the general philosophy of trade mark law embodied in the various legal systems should be maintained;
— the introduction of a Community trade mark should be a progressive step for trade and industry, and should not for that reason be taken at the expense of national laws.

The Community Aspect

According to Article 2 of the Treaty of Rome establishing the European Economic Community:

"The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a contin-

[6] Panel, F., *"La Marque européenne,"* Symposium of the *Union des fabricants*, p. 43.

uous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it."

Article 3 of the Treaty provides that:

"... the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:
"(a) the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
"(b) the establishment of a common customs tariff and of a common commercial policy towards third countries;
...
"(f) the institution of a system ensuring that competition in the common market is not distorted;
...
"(h) the approximation of the laws of Member States to the extent required for the proper functioning of the common market;...."

The only article of the Treaty that directly refers to industrial property is Article 36, which reads:

"The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

As exclusive rights, industrial property rights may be granted by license and the agreements thus concluded are subject to the provisions of Article 85 of the Treaty of Rome, which prohibits all agreements, decisions or practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the Common Market.

Experience quickly showed that, although they both had the same economic objectives, the harmonization of industrial property rights and the provisions of the Treaty of Rome raised a number of difficult problems some of which have not yet been resolved, despite the 20 years that have passed.[7]

The conflict might have been limited had not the Community authorities, by insisting with the greatest firmness on the priority of Community law, sought to give preference to the unity of the market and to free competition as opposed to industrial property rights and the agreements to which they give rise.[8] But the fight was a bitter one, in particular in relation to trade marks, concerning which there seemed at one time reason to fear the worst. The jurisprudence of the Luxembourg Court of Justice embodies certain principles which, while they are not always appreciated, nevertheless constitute an important part of Community law that no one can venture to ignore, whatever may be the state in which national laws have been maintained.

After the unfortunate Hag case, the Court of Justice was wise enough to recognize:

"... that it is compatible with the provisions of the EEC Treaty concerning the free movement of goods for an enterprise established in one Member State to oppose, by virtue of a right in a trade mark or in a trade name protected by the laws of that State, the import of products of an enterprise established in another Member State, bearing a denomination under the law of that State, liable to cause confusion with the trade mark or trade name of the former enterprise, provided, however, that there is no agreement whatsoever restricting competition, nor any legal or economic dependence between the enterprises in question, and that their respective rights have been established independently of each other."[9]

Thus a certain equilibrium seems to have been found. But from our point of view, the failure to achieve rapid results from the considerable efforts of the Commission to work out a Community trade mark law and to eliminate from national laws and practice those obstacles to the achievement of the Community's objectives which do not directly derive from the need to protect enterprises from a breach of the specific purpose of trade marks as defined by the Luxembourg Court of Justice (to ensure to its owners the exclusive right to use the trade mark for the initial distribution of a product and to protect it against competitors who seek to misuse the position and reputation of the trade mark by selling products to which the trade mark is wrongfully attached) would tend to produce a precarious situation.

The judges of the Court of Justice have themselves publicly drawn attention to the inactivity of the lawmakers and the consequences thereof for the development of jurisprudence.[10]

The Commission intends to exercise the powers conferred on it by the Treaty of Rome and will accordingly submit to the Council, in 1980, a draft Regulation aimed at creating a Community trade mark established in accordance with the procedure of Article 235 of the Treaty,[11] as well as a draft Directive for the harmonization of national laws, drawn up in accordance with Article 100 of the Treaty.[12]

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[7] "*La propriété industrielle et les développements récents de la jurisprudence communautaire,*" Symposium of the University of Liège, March 27, 1975; "*L'incidence du droit communautaire de la concurrence sur les droits de propriété industrielle,*" *6e Rencontre de Propriété industrielle*, Lyon, 1976.

[8] Focsaneanu, L., "*La jurisprudence de la Cour de Justice des Communautés européennes en matière de concurrence,*" Editions techniques et economiques, Paris, 1977.

[9] Court of Justice, Case 119/75, *Terrapin/Terranova.*

[10] Mertens de Wilmars, M. J., "*Marque et droit économique — Les fonctions de la marque,*" Symposium of the *Union des fabricants*, p. 149 ff.

[11] "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures."

[12] "The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.
The Assembly and the Economic and Social Committee shall be consulted in the case of directives whose implementation would, in one or more Member States, involve the amendment of legislation."

There is nothing surprising, therefore, about the "Community" coloring of the draft Regulation that some would have preferred to have seen more stringent with regard to national trade marks.[13]

But one must not lose sight of economic realities. Trade marks must be given fair protection whatever the legal system by which they are governed. While the Community aspect of the Commission's work is preponderant, it was not the only one taken into consideration.

In its Memorandum, the Commission clearly stated that the Community trade mark should be a means of achieving the Community's objectives, but it also expressed the hope that it will enable the manufacturers and distributors of marked goods to direct more of their activities towards the Common Market at a cost of less effort, less time and less money.

The success of the Community trade mark which, apart from the reception given by the Council to the Commission's draft, will be measured by the extent to which it is used by enterprises and will depend on the skill with which the authors of the draft have been able to find a balance between the needs of industry and those of the Community.

The Respective Shares of the Industrial and Community Aspects in the Draft Regulation and in the Draft Directive on Harmonization

The unifying effect of the Community trade mark provides a valuable supplement, from the Community's standpoint, to the jurisprudence of the Court of Justice, which defines certain principles of collaboration between the national and Community legal systems. The principle of unity, however, also has great advantages for enterprises.

The fact that a trade mark can be obtained and maintained on the basis of a *single registration* valid throughout the territory of the Community represents a considerable practical advantage as compared with the existing situation. Moreover, such a Community trade mark provides greater legal security to applicants and to third-party owners of prior rights even though the present draft provides that the national courts shall still be competent with regard to the validity of the Community trade mark and infringement of exclusive rights.

Under the present draft Regulation, national jurisdictions are competent to declare, in the form of a counterclaim, the *cancellation* or *lapse* of the Community trade mark, but it does not authorize them to rule on exceptions to cancellation or lapse. The solution proposed by the Commission seems to us preferable to one which systematically obliged the parties to go before the Office, and consequently obliged the national jurisdictions to suspend judgment. But we are not sure that the unity of jurisprudence might not have justified the adoption of a different procedure, in which the Office would alone be competent to rule on the cancellation or lapse of a Community trade mark, the competence of the national courts being confined to cases of exceptions.

Whatever the solution which will be adopted, it seems essential to ensure that questions of infringement, cancellation and lapse not be separated when they arise in the course of the same case. From this standpoint, it is not out of the question that the Commission should alter its present position so as to give exclusive competence to the national courts, whose decisions would have effect *erga omnes*.

Questions of competence also give rise to difficulties in the case of patents. Solutions are at present being sought and the work in progress may help to clarify ideas on the subject, even though—as some have pointed out—trade marks and patents present undeniable differences on this point.

At present, we are inclined to believe that for national courts to be competent in cases of exception and the Office to be competent for cancellations and lapses takes account of the interests of enterprises and ensures a certain unity of jurisprudence.

The Community trade mark proposed by the Commission is acquired by *registration*, subject to an *administrative examination procedure* bearing on the form and the absolute grounds, and to an *opposition procedure*. This pattern of procedure has proved successful in a number of national systems and we regard it as the one best suited to the requirements of a system in which a large number of trade marks, which were ignored until now as a result of territorial separation, will be confronted with the implementation of the principle of coexistence and the rule of unity of the Community trade mark.[14]

We cannot here go into the details either of the basic rules or of the rules of procedure. We shall merely point out that the Commission proposes to establish three types of prior rights:

- those which are open to opposition;
- those which can only be invoked concurrently with the first in an action for cancellation; and
- those which, in view of their purely local interest, can only be invoked as part of an action regulating the use of the Community trade mark.

Like all rules, this proposal contains an arbitrary element and it might have been thought that any prior right capable of justifying the refusal of a Community

[13] Johannes, H., *"L'application des principes de l'arrêt Hag aux marques n'ayant pas la même origine et aux marques non appropriables,"* Revue Internationale de la Concurrence, No. 137-1-1978, p. 47 ff.

[14] von Muhlendahl, A., *Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil (GRUR Int.)*, 1976, p. 27 ff.

trade mark should be able to be invoked under tbe opposition procedure. To some extent, such a provision would have put all the owners of prior rights on an equal footing and would have enabled applicants for Community trade marks to have no doubts about the availability of the sign filed as soon as the registration procedure was completed. But in our view, the solution proposed by the Commission is a balanced one, whicb respects all prior rights and which is suited to the needs of an administrative procedure that needs to be as simple as possible.

The *preliminary search procedure* proposed by the Commission for each application for Community registration, the findings being notified to the applicant and to the owners of earlier trade marks raised by the search, is intended by the authors of the draft as an aid to enterprises. As the Commission has stated on a number of occasions, it did not appear desirable to confer on tbe Office a complete examination procedure covering formal conditions, absolute grounds and relative grounds. It rests on the owner of a tradc mark to exercise his right against any wrongful filing.

Our experience in this matter leads us to share that view. The adverse character of an opposition procedure offers, as a general rule, many advantages for the parties as against the *ex officio* procedures conducted by certain national administrations.

The Commission takes the view that the registration of a Community trade mark should not be obtained, as it were, by surprise; in this connection, it considers that the procedure it proposes is in line with the policy of respect for acquired rights demanded by enterprises.

But in tbe Commission's view, searches are justified also for the protection of the applicant. For it is not only in his interest to know of the existence of rights likely to be opposed to bis application—which could be revealed by a private search—but also, and above all, to know in the most objective way possible, that the owners of such rights have been put in a position to oppose it. To achieve this simultaneous protection of tbe proprietors of prior rights and of the applicant, the best solution, in the Commission's view, is the drawing up of a search report, together with a list of the most relevant trade marks which alone are notified.

The Commission, bowever, did not rest content with an abstract ideal. It believes that such searches are technically possible and that their cost is acceptable as part of a registration procedure. The vast majority of European industry is hostile to the search for anticipations,[15] wbich it regards as duplicating private searches, usually carried out before filing, and still more to the notification of the proprietors of the presumed prior rights, which can only be partial insofar as it can only be carried out in the case of registered rights and, in addition, is highly suggestive in that it gives the proprietors of the listed marks to understand that an opposition will be admissible.

Thus the Commission is reproached with departing from tbe simple, rapid and inexpensive procedure without which industry cannot be expected to adhere to the Community system.

We do not wish to express our views herc on the technical difficulties of a search whicb sbould theoretically cover all the trade marks filed nationally or internationally within the Community, which involves a selection, implying an element of subjectivity, and which is supposed to lead to the personal notification of the proprietors of prior rights, which itself occasions material difficulties.

We think, on the contrary, that the studies that have been made on this question do not entitle one to dismiss the Commission's proposals as unrealistic. Although these studies seem to us somewhat optimistic, we think it would be justified to draw up as broad as possible a study program and to associate with it, in the most concrete way, the national Offices that conduct such searches for anticipations, whether such searches are private or whether they form part of an official examination procedure.

From a very general standpoint, we find difficulty in seeing the logic of the view that tasks which, when carried out privately, seem to give satisfaction to the users, cannot be entrusted to an official body.

Different forms of cooperation and organization are doubtless possible. In any event we feel that we must reply to the criticism of duplication, which we regard as perfectly justified if we agree that the same system can be used both for private and for official purposes. It is perfectly true that the selection of a trade mark requires submitting several signs to the preliminary test for anticipations and that several series of tests are often necessary before a sign apparently free of anticipations can be found.

From thc applicant's point of view, to undertake a new search for anticipations as part of the examination would have no sense. If, therefore, the search procedure is maintaincd, it would be appropriate to provide that the Office can carry out private searches for anticipations which, after being carried out, could be used as the official search report.

We are not convinced that, in the eyes of the Commission, the search and notification procedure is a fundamental aspect of the draft. The decision to maintain or to abandon that procedure depends on objective factors (technique, the time required, costs). We think it would be regrettable to take a final decision without having made a complete and objective study; we hope, therefore, that such a study can be carried out rapidly and free from any emotional prejudice.

[15] Mak, W., *"Die Amtsrecherche bei der EWG-Marke," GRUR Int.*, 1978, p. 121 ff.

The Commission's proposed definition of *signs subject to protection* is as broad as possible and one might wonder whether it would enable the Office to consider the possibility of admitting applications referring to marks consisting of odors or sounds.

The draft provides for the protection of *individual trade marks, collective trade marks* and *certification marks*. It is not sure, however, that, at the present stage of the draft, all the difficulties involved in the highly complex legal status of collective marks and certification marks can be entirely overcome, but the fact that they are expressly provided for seems to us in line with the needs of industry.

Very serious difficulties which, while they may not have threatened the Council's rejection of the draft, at least threatened to limit its effects, have appeared in connection with the definition of the scope of the *rights conferred* by the Community trade mark, of certain particularly restrictive effects of the *obligation to use* the trade mark, of the status of *territorial licenses* and of *international exhaustion*—points on which the Community aspect appears to have been preponderant.

It is well known that the Community authorities reproach the Member States with having permitted the survival in their national laws and practice of rules that are too liberal in their assessment of infringements of trade mark rights. This applies with regard to the jurisprudence that has grown up on the basis of Section 13A(2) of the Benelux Law [16] and the German jurisprudence which opposes the coexistence of signs even though there is no serious risk of the public being misled.

It is a fact that disputes concerning trade marks are sometimes dealt with rather in the light of earlier administrative or legal decisions than in that of an objective assessment of the risk of confusion between marked products of different origins. Abstract considerations tend to be given priority over economic realities, which should be decisive in this matter, and we think that progress could be made in defining objective criteria for deciding whether there is a risk of confusion between two signs.

Starting from the assertion that a trade mark is a factor for distinguishing the origin of a product, the Commission proposes to limit the importance of the right conferred by the trade mark to that function alone. Two trade marks may coexist provided there is no danger of *misleading the public concerning the origin of the products they respectively cover as a result of the identity or similarity of the signs and the products*. Thus the Commission wishes to make the assessment of a risk of confusion subject to an overall appreciation.

For the Commission, confusion is a whole which must be assessed simultaneously in respect of the signs and the products, but the formula proposed by the Commission has been sharply criticized. Personally, we take the view that the reservations regarding this proposal to some extent reflect the fear of acceptance in one form or another of the possibility of two identical, or similar, trade marks coexisting for the same type of goods if one of them is accompanied by distinctive additions (theory of additions).[17]

In this connection, it is instructive to refer to the criticisms brought against the Commission's original proposals for the establishment of a conciliation procedure and its possible effects on the scope of earlier national trade marks.

It is obvious that the recognized scope of the trade mark right is an essential point for enterprises. It should be remembered, however, that enterprises are alternately in the position of applicants and of the proprietors of prior rights. It seems to us, therefore, that only a solution of equity, taking account of this double need of protection, is capable of satisfying their legitimate interests.

It is true that the formulation in the existing draft is ambiguous, but, in our view, it was never the Commission's intention to introduce a third condition, namely, a risk of confusion in addition to the conditions of identity or similarity of the signs and products, nor to give its support to the theory of additions.

For the Commission, the danger of confusion is the sole condition, and it is solely the consequence of the identity or similarity of the signs and products.

We think it is possible to bring together the different points of view, but we remain convinced that, important though the wording may be, it is for the Office and the competent courts, in their assessments themselves, to come up with more or less restrictive criteria which are, in addition, adapted to the specific features of the individual case.

With regard to *well-known trade marks*, industry has requested—quite rightly, in our view—that their protection shall be assured, apart from the rule of specialization, by the trade mark law itself and not merely by reference to the laws on unfair competition. Opinions differ on this point, but we can see no reason why the Commission should not meet the wishes expressed by industry.

Enterprises tend to regard as excessive the Commission's proposals regarding the possibility of the *partial lapse* of a trade mark and of partial refusal to renew a trade mark for products similar to those for which the mark is used. The various views on this

[16] Cohen Jehoram, H., "Protection of Trademarks Against Use for Dissimilar Goods: the Benelux Law—an Example for Europe?" *Industrial Property*, 1978, p. 219.

[17] Johannes, H., "*L'application des principes de l'arrêt Hag aux marques n'ayant pas la même origine et aux marques non appropriables.*" *Revue Internationale de la Concurrence*, No. 137-I-1978, p. 47 ff.

question are well known and have been set out in an IAPIP study.[18]

The Commission has shown some hesitation about *territorial licenses,* although the principle is included in the draft. But while it seems prepared to adopt the idea that the use of a trade mark by the licensee outside his contractual territory constitutes an infringement, it seems to regard the distribution of marked goods outside that territory as an infringement, not of the trade mark right, but of a contractual obligation.

This view does not seem satisfactory because the right to affix the mark is subject to a condition of marketing which, in the case in point, is not fulfilled. It seems to us therefore correct to argue that the mark has not been used in the conditions desired by its proprietor, so that the marketing of the goods outside the contractual territory constitutes an infringement of his trade mark rights.

The views of industry concerning territorial licenses are not clear. Despite initial general hostility to the Commission's proposal, it seems that part of industry is now willing to accept its consequences.

The most serious point of disagreement concerns the Commission's proposal on *international exhaustion.*[19] Apart from the saving clauses included to take account of cases of modification or alteration of the product put on the market under the trade mark or where it is impossible for the proprietor of the mark to exercise control over the quality of the products of his licensee marketed outside the Community, the right to the trade mark is, generally speaking, exhausted by the first act of marketing. This situation is recognized by the jurisprudence of certain countries and unknown in a number of legal systems, but, as a general rule, it is exceedingly unwelcome to enterprises which regard it as being completely opposed to the rule of territoriality of industrial property rights.

Both firms and government experts have brought very serious criticisms against the solution proposed by the Commission because they see in it a danger to the Community's economy without any counterbalancing advantage and without any overriding reason.

The Commission does not share that view. It believes, on the contrary, that the rule of international exhaustion is a necessary condition of the trade mark's function of indication of origin. An authentic product cannot infringe the trade mark proprietor's rights. From the economic standpoint, the interest of the Community is certainly not for the owners of marks to be able to insulate the Common Market from other markets in order to be able to practice discriminatory pricing policies. This argument is not without force, but we must also consider very seriously the risk referred to by enterprises as inherent in the rule of international exhaustion, particularly in view of the highly disadvantageous conditions of competition with certain third countries and of the need to adapt the quality or the characteristics of products to local conditions.

In our view, the rule of international exhaustion corresponds to the trade mark's function in a unified market or within markets having comparable characteristics. Its application in other conditions, however, does not seem to guarantee the interests of enterprises.

The whole question is whether or not the rule of international exhaustion is rendered necessary by the commercial policy that the Community is obliged to apply with regard to other countries by virtue of other commitments.

The solution to this important question seems to us far more a political matter than a legal one and we expect that its discussion in the Council will be among the most interesting.

As we have pointed out above, the interests of industry call for the firm recognition of a firm principle of *coexistence* of the Community trade mark with national marks. The Commission's proposals concerning the *prohibition of cumulative protection* and the *limitation of the right to convert a Community trade mark* that has lapsed or been cancelled while maintaining the priorities previously acquired do not meet the objectives of industry. They appreciably limit the effects of national marks and, in addition, give rise to difficulties with regard to the requirements of the Madrid Agreement concerning the basic filing.

Certain national systems recognize in one form or another that a prior right may no longer, after a certain time, be exercised as against a new mark. Such prescription is sometimes acquired through uncontested registration or—which seems to us more equitable—through the uncontested and good faith use of a mark for a certain number of years.

The possibility given to the proprietor of prior rights to act, at times with malice, by instituting proceedings against the use of a more recent mark which may cause confusion with his own at a moment specially selected to disorganize to the maximum a commercial action undertaken in good faith by a third party is, in itself, shocking.

It was for the sake of legal security that the firms encouraged the proposals of the authors of the 1964 preliminary draft to introduce a rather complicated system of *incontestability.* The question was examined at length by the Commission and extensively discussed with the circles concerned. It turned out that

[18] *"Question 70, Conditions de l'usage nécessaire pour le maintien et le renouvellement de l'enregistrement d'une marque," Annuaire AIPPI,* 1978/II, p. 74 ff., 1979/I, p. 160 ff., 1979/II, p. 9 ff.

[19] Beier, F. K., *"Territorialität des Markenrechts und Internationaler Wirtschaftsverkehr," GRUR Int.,* 1968, p. 8 ff; Schatz, U., *"L'incidence du droit communautaire de la concurrence sur les droits de propriété industrielle," 6e Rencontre de Propriété industrielle, Lyon 1976, Collection du CEIPI,* p. 29 ff.

a rigid system of incontestability had more difficulties than advantages.

In its present version, the Commission's draft provides that it is no longer possible to apply for the cancellation on relative grounds of a trade mark known to have been used in the Common Market for three years. Such incontestability of the Community trade mark would therefore be acquired in respect of all prior rights, with the result that the Community mark and the prior rights, which can no longer be mutually opposed, would be condemned to coexist.

It must be borne in mind that the attitude of industry has been considerably modified and that the advantages of a system of incontestability now seem far less attractive. Incontestability seems to us justified only to the extent that it provides legal sanction for a *de facto* situation leading to the use being tolerated by the owner of the earlier right. Priority, in fact, must be given to protecting the legitimate interests of the first applicant; only then should protection be accorded to the second applicant who, whether by lack of care or deliberately, has adopted a mark tending to cause confusion with that of a third party.

A system in which opposition or cancellation proceedings are provoked (the notification system) seems to us to have certain drawbacks. On the other hand, we approve the principle that toleration of use may have legal effects that may constitute a demurrer against the inactive proprietors of prior rights. But we should prefer that the Commission's proposals tend towards a system of personalized incontestability capable of taking account of matters of fact and, in particular, the place in which the Community mark is being used.

Incontestability implies, in our view, that the owner of the prior right may act, and that it is to his advantage to act, but that his right of action can be barred as a result of his tolerance, which should be judged in the light of the actual circumstances and not depend exclusively on the lapse of a certain period of time.

The unity of the Common Market can only be achieved by the suppression of national rights. This solution has been rejected for the reasons we have already stated. But the Commission has found that the solution of coexistence is compatible with the Community's objectives only insofar as national rights would be modified in such a way that the sole purpose of trade marks thus granted or maintained would be to guarantee origin.

The question thus arises as to whether a *harmonization of national laws* would not constitute an adequate solution in the present state of the trade in branded products.[20]

As we know, that solution has not been adopted.

This study was drawn up at a time when the draft Directive had not yet been made public. The draft has now been published but has not yet been discussed in depth by the interested circles so that it would be premature to emit an overall judgment. It has nevertheless already been criticized on several essential scores:

— it is not a true harmonization draft but simply an amendment to national laws to bring them into line with the Treaty of Rome and the interpretation laid upon it by the Court of Justice and the Commission;
— the incomplete nature of the harmonization will disappoint those who would have liked to see this opportunity seized to make the national laws uniform on a number of essential points not covered by the current draft; others, on the contrary, would have liked the draft to have an even more limited scope than in the proposed version;
— the proposed text generalizes the jurisprudence of the Luxembourg Court of Justice; this generalization of the jurisprudence is sure to be severely criticized: in order to justify certain of the decisions, the Commission itself took cover behind rather special circumstances; the essential feature of jurisprudence is that it can fluctuate but such flexibility would disappear in the context of a Directive if the draft were adopted in its present form.

Basically, the aims of the draft are:

— acknowledging the jurisprudence of the Court of Justice concerning marks having a common origin and on the question of repacking;
— unifying the rules on the obligation to use and its effects;
— excluding from the scope of the trade mark right the marketing of a marked product by a licensee outside his contractual territory;
— providing for a system of incontestability;
— unifying the importance of the trade mark right by transposing the corresponding provisions of the draft Regulation.

In other words, the Commission does not intend to limit the choice between the Community mark and a national mark. It does intend, however, that that choice shall not constitute an obstacle to the achievement of the Community's objectives and that it shall therefore be determined exclusively by economic considerations—the need for limited territorial protection—and not by a speculation based on the fact that a set of national marks in the various Member States would provide better protection than the corresponding Community mark.

On many other points the national rights would be maintained, but it may be imagined that—as has

[20] *Droit comparé des marques dans les pays de la C.E.E.*, Colloquy, Grenoble, June 2 and 3, 1975.

happened in the case of patents—a trend towards spontaneous harmonization would occur.

In that case, perhaps it would have been preferable to include the entire harmonization in one and the same instrument and thus, quite apart from any Community considerations, simplify the task of the enterprises for whom the choice of a single mark remains a source of considerable trouble and cost.

The criticisms of the Commission's proposals in its draft Regulation will doubtless be directed against the draft Directive to the extent that these would include comparable provisions. Such criticisms will be all the more vigorous insofar as the Directive will have direct consequences for all the trade marks filed in the Community and will, on certain points, be in marked opposition to well-established legal principles in line with the philosophy of certain national systems.

Conclusion

We have not joined in tbe debate on the choice of Article 235 of the Treaty, which is of a markedly political nature.[21]

We shall merely say that, up to now, we have found nothing to justify the charge that the Commission has worked in any greater secrecy than that warranted in the preparatory work for a diplomatic conference.

On the contrary, the dialogue with the Commission seems to us to have been as open as possible and we have every reason to believe that it will be the same in the future.

We consider, moreover, that the difficulties encountered in connection with the Luxembourg Convention must not be underestimated.

We appreciate, on the other hand, that, for political reasons, serious reservations may be expressed with regard to the utilization of Article 235, but we do not regard ourselves as in any way competent to deal with that aspect of the question.

We merely hope that the work done so far is not rendered nugatory for reasons foreign to trade mark law; that work, in respect of the draft Regulation, seems to us to have attained a stage of preparation where it is capable of serving as a basis for a proposal by the Commission. Certain points will doubtless be modified but, within the present framework, we do not think that much further progress can be made. It seems that the Commission has decided to prepare a new version of its draft Regulation to be submitted to the Council in the spring of 1980, together with its draft harmonization Directive. The Economic and Social Committee and the European Parliament will then start their consultations in the summer of 1980. That work will last about two years. The Commission will then be able to submit to the Council a revised proposed Regulation on the basis of the views expressed during the consultations and by interested circles. Thus discussion in the Council could start in the spring of 1983, which justifies the hope that the Regulation could come into force in 1985.

The most difficult phase of the work undertaken for the preparation of a Community trade mark law and for an approximation of national laws is about to begin. Enterprises will thus be able to get an overall view of the work done by the Commission with a view to the creation of a Community trade mark law and the harmonization of national laws. It is our earnest hope that they will fully appreciate the importance of what is at stake and that they will make their irreplaceable contribution to this constructive work in a positive way.

[21] Schwartz and Goldman, *"La marque communautaire — Règlement de la Communauté ou Convention entre Etats membres?" RIPIA* No. 109, October 1977, p. 129 ff.

News Items

ARGENTINA

"Director Nacional de la Propiedad Industrial"

We have been informed that Dr. Miguel Roque Solanet has been appointed *Director Nacional de la Propiedad Industrial.*

MEXICO

Director General of Inventions and Marks

We have been informed that Mr. Gilberto Zárate Tristán has been appointed Director General of Inventions and Marks.

SPAIN

Director General of the "Registro de la Propiedad Industrial"

We have been informed that Mr. Rafael Pastor has been appointed Director Generai of the *Registro de la Propiedad Industrial.*

SYRIA

Directorate of Commercial and Industrial Property

We have been informed that the Office of Commercial and Industrial Property is now called *Directorate of Commercial and Industrial Property* and that its structure is as follows:
— *Director:* Mr. Moutih Husni;
— *Assistant Director:* Mrs. Sanieh Habach.

Calendar

WIPO Meetings

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

1980

January 28 to February 1 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Search Information

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

February 11 to 15 (Rio de Janeiro) — Permnnent Committee for Patent Information (PCPI) — Working Group on Planning

March 17 to 21 (Geneva) — Nice Union — Preparatory Working Gronp

March 17 to 28 (Genevn) — International Patent Cooperation (PCT) Union — PCT Bndget Consultants Meeting

April 28 to 30 (Geneva) — Permanent Committee for Deveiopment Cooperation Related to Industrial Property

June 9 to 16 (Geneva) — International Patent Cooperation (PCT) Union — Assembiy (Extraordinary Session)

June 13 to 19 (Geneva) — Budapest Union (Microorganisms) — Interim Committee (or Assembly)

June 23 to 27 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Search Information

September 8 to 12 (Geneva) — Permanent Committee on Patent fnformation (PCPI) — Working Group on Planning

September 22 to 26 (Geneva) — Governing Bodies (WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions; Assembiy of tbe International Patent Cooperation (PCT) Union)

October 14 to 17 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Pntent Information for Developing Countries

October 20 to 24 (Geneva) — Permanent Committee on Patent fnformntion (PCPI)

December 8 to 12 (Paris) — Berne Union — Committee of Experts on Problems Arising from tbe Use of Compnters (convened jointly with Unesco)

UPOV Meetings

1980

March 18 and 19 (Geneva) — Technical Committee
April 14 and 15 (Geneva) — Subgroups of the Administrative and Legal Committee
April 16 (Geneva) — Consultative Committee
April 17 and 18 (Geneva) — Administrative and Legal Committee
April 27 to May 11 (Nelspruit) — Technical Working Party for Fruit Crops
May 12 to 14 (Wageningen) — Technical Working Party for Agricultural Crops
June 23 to 25 (Geneva) — Subgroups of the Administrative and Legal Committee
August 26 to 28 (Hanover) — Technical Working Party for Forest Trees
September 16 to 18 (Lund) — Technical Working Party for Ornamental Plants
September 23 to 25 (Lund) — Technical Working Party for Vegetables
October 14 (Geneva) — Consultative Committee
October 15 to 17 (Geneva) — Council
November 10 to 12 (Geneva) — Technical Committee
November 13 and 14 (Geneva) — Administrative and Legal Committee

Meetings of Other International Organizations Concerned with Industrial Property

1980

European Patent Organisation:

Administrative Council: June 2 to 6, December 8 to 12 (Munich)
Inauguration of the New Building and Administrative Council (Special Session): September 18 and 19 (Munich)

International Association for the Protection of Industrial Property: November 16 to 21 (Buenos Aires) — 31st Congress

Licensing Executives Society: April 28 to 30 (Geneva) — International Conference on Licensing and the International Economic Order, Product and Process Liability and New Trends in Technology Transfer