

Industrial Property

Published monthly
Annual subscription:
Sw.fr. 115.—
Each monthly issue:
Sw.fr. 10.—

20th Year - No. 2
February 1981

Monthly Review of the
World Intellectual Property Organization (WIPO)

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(First Segment: Parts A and B) Tcxt 2-007

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ISSN 0019-8625

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Activities of the International Bureau

The World Intellectual Property Organization in 1980*

I. Membership of WIPO

In 1980, seven States joined the World Intellectual Property Organization. In the order of the dates of deposit of instruments of accession or ratification they were: Colombia, China, Philippines, Peru, Argentina, Guinea and Gambia. At the end of the year, the number of members of WIPO was 95 (Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burundi, Byelorussian SSR, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, El Salvador, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Holy See, Hungary, India, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Libya, Liechtenstein, Luxembourg, Malaŵi, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Senegal, South Africa, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, Ukrainian SSR, United Arab Emirates, United Kingdom, United States of America, Upper Volta, Uruguay, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia). Of these 14 States are members of WIPO alone (Barbados, Byelorussian SSR, China, Colombia, El Salvador, Gambia, Jamaica, Mongolia, Peru, Qatar, Sudan, Ukrainian SSR, United Arab Emirates, Yemen).

In addition, 21 States, which have not yet become members of WIPO, are members of one or more of the Unions administered by WIPO (Costa Rica, Cyprus, Dominican Republic, Ecuador, Guatemala, Haiti, Iceland, Iran, Lebanon, Madagascar, Mali, New Zealand, Nicaragua, Nigeria, Panama, Paraguay, San Marino, Syria, Tanzania, Thailand, Trinidad and Tobago).

Therefore the total number of States which are members of WIPO, of one or more of the Unions administered by WIPO or of both WIPO and one or more of the Unions, was, at the end of 1980, 116.**

II. Governing Bodies

During the eleventh series of meetings of the Governing Bodies of the World Intellectual Property Organization (WIPO) and the Unions administered by WIPO, which took place in Geneva from September 22 to 26, 1980, the following eight Bodies (hereinafter referred to as "the Governing Bodies") held their sessions:

- WIPO Coordination Committee, fourteenth session (11th extraordinary),
- Paris Union Assembly, fifth session (1st extraordinary),
- Paris Union Conference of Representatives, seventh session (3rd extraordinary),
- Paris Union Executive Committee, sixteenth session (16th ordinary),
- Berne Union Executive Committee, seventeenth session (12th ordinary),
- PCT (Patent Cooperation Treaty) Union Assembly, sixth session (4th extraordinary),
- TRT (Trademark Registration Treaty) Union Assembly, first session (1st extraordinary),
- Budapest Union Assembly, first session (1st extraordinary).

Seventy-eight States, members of WIPO, the Paris Union or the Berne Union or of one or more of these, were represented at the meetings. Of these, 68 States were members of the Governing Bodies concerned, and 10 States were members of WIPO or of the Berne Union, or of both, attending as observers. In addition, nine intergovernmental organizations sent observers.

The eleventh series of meetings of the Governing Bodies 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. The WIPO Coordination

* This article describes the main activities of WIPO as such (as distinguished from those of the Unions administered by WIPO) in 1980. The main activities of the Unions will be covered in articles to be published in later issues of *Industrial Property and Copyright*.

** More detailed lists showing the membership of the different Unions, the Acts by which States are bound, etc., were published in the January issue.

Committee elected Mr. Alvaro Gurgel de Alencar (Brazil) as its new Chairman.

The main items discussed and the principal decisions taken in joint sessions, by several of the Governing Bodies, or by the WIPO Coordination Committee, are reported on below.

Past Activities. The Governing Bodies reviewed and approved reports by the Director General on the activities of WIPO from September 1979 to September 1980. Most statements made in the discussion expressed satisfaction with the accomplishments of the International Bureau in the past 12 months and underlined the constant increase in the activities in the field of development cooperation for the benefit of developing countries. Several delegations expressly welcomed the conclusion of a working agreement with the Junta of the Cartagena Agreement (Andean Group), which should be particularly useful to the five countries members of that Group. Several suggestions were made, and noted by the Director General, to the effect that more emphasis should be given to certain activities, in particular the teaching of intellectual property law in universities in developing countries, the joint service with Unesco for facilitating access by developing countries to works protected by copyright, the promotion of technical cooperation among developing countries, model laws, the industrial property aspects of consumer protection, long-term advance planning of training, and special programs for the creation and administration of industrial property and copyright infrastructures.

The Delegation of Hungary announced that its Government was ready to continue to host periodically seminars for developing countries on copyright and neighboring rights. The Delegation of the United States of America announced that its Government had approved a contribution of 160,000 US dollars to the work of WIPO for the benefit of developing countries.

Appointment of Deputy Directors General. The Coordination Committee unanimously decided to approve the re-appointment as Deputy Directors General of Mr. Klaus Pfanner, a national of the Federal Republic of Germany, and Mr. Felix Sviridov, a national of the Soviet Union, and the appointment as Deputy Director General of Mr. Marino Porzio, a national of Chile, as proposed by the Director General. The Committee, through its Chairman, the Director General, the Spokesmen of the various Groups and several delegations paid tribute to the outgoing Deputy Director General, Mrs. Kitty-Lina Liguier-Laubhouet. They extolled her merits in her position as Deputy Director General since 1975.

TRT and Budapest Unions. During the eleventh series of meetings of the WIPO Governing Bodies, the TRT Union Assembly and the Budapest Union Assembly held their first sessions, the Trademark

Registration Treaty and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure having entered into force on August 7 and 19, 1980, respectively.

III. Development Cooperation Activities

A. Industrial Property and Patent Information Activities

Objective

The objective of the activities provided for in the program approved by the Governing Bodies in 1979 is to be useful to developing countries in seven different respects:

- (i) training specialists,
- (ii) creating or modernizing domestic legislation,
- (iii) creating or modernizing governmental institutions,
- (iv) stimulating inventive activity,
- (v) stimulating transfer of technology,
- (vi) creating a corps of practitioners,
- (vii) exploiting technological information contained in patent documents.

Development, in Developing Countries, of General Awareness and Knowledge of the Law and Practical Implications of Industrial Property (Training)

Two hundred and sixteen applications for training in the field of industrial property in 1980 were received by WIPO from 83 developing countries and one territory, and from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the Industrial Development Centre for Arab States (IDCAS) and the African Intellectual Property Organization (OAPI). One hundred and five of these applications, from the following 62 countries and one territory, and from UNRWA and OAPI, were accepted for general training: Algeria, Angola, Bangladesh, Bhutan, Bolivia, Brazil, Burundi, Chile, Congo, Cuba, Democratic People's Republic of Korea, Democratic Yemen, Ecuador, Egypt, El Salvador, Ethiopia, Gabon, Gambia, Ghana, Guatemala, Haiti, Honduras, India, Indonesia, Ivory Coast, Iraq, Jamaica, Kenya, Lesotho, Madagascar, Mauritania, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Nigeria, Oman, Pakistan, Panama, Peru, Philippines, Qatar, Republic of Korea, Senegal, Seychelles, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Suriname, Syria, Tanzania, Thailand, Tunisia, Uganda, Upper Volta, Uruguay, Venezuela, Zaire, Zambia, Hong Kong.

The general training arranged in 1980 took the following forms:

(a) for 28 trainees, attendance at a general introductory course at Strasbourg in September 1980, organized by WIPO and the Center for the International Study of Industrial Property (CEIPI), with the cooperation of the National Institute of Industrial Property (INPI) of France; this course was preceded by a visit to WIPO headquarters and followed, in most cases, by practical training in the industrial property offices of the following countries and organizations: Czechoslovakia, Egypt, France, German Democratic Republic, Hungary, India, Netherlands, Switzerland, United Kingdom, United States of America, and OAPI, and CEIPI;

(b) for 20 trainees, practical training in the industrial property offices of the following countries: Bulgaria, Canada, France, Germany (Federal Republic of), Israel, Poland, Soviet Union, Sweden;

(c) for 11 trainees, attendance at a training course on the theoretical and practical aspects of industrial property organized jointly by WIPO and the Industrial Property Registry in Madrid in October and November 1980;

(d) for two trainees, study tours (visits and discussions) in from two to five of the following countries: Algeria, Brazil, France, Ivory Coast, Portugal and Switzerland, and OAPI.

To the extent possible, the arrangements for training in 1980 included visits to the headquarters of WIPO.

Taking together the general and specialized training programs in the field of industrial property and the program in the field of copyright and neighboring rights (see below), the total number of applications received in 1980 was 280, as compared with 201 applications received in 1979. In 1980, a total of 153 applications were accepted from 71 countries and one territory, UNRWA and OAPI; in 1979, 120 applications were accepted from 61 countries, Palestine Liberation Organization (PLO), OAPI and the Zimbabwe National Liberation Movement. In 1980, 40 applications were accepted (24% of the total acceptances) from countries regarded as least developed among the developing countries. In 1980, eight developing countries and OAPI contributed to promoting cooperation among developing countries by receiving 20 trainees.

The following countries and intergovernmental organizations contributed in full or in part to the payment of the travel expenses and subsistence allowances of trainees participating in the general and specialized programs in the field of industrial property: Austria, Bulgaria, Canada, Czechoslovakia, France, German Democratic Republic, Germany (Federal Republic of), India, Israel, Netherlands,

Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, European Patent Organisation (EPO), European Communities (through the European Development Fund), United Nations Development Programme (UNDP); the remainder of the cost was borne by the budget of the WIPO Legal-Technical Assistance Program.

In cooperation with the United Nations Economic Commission for Africa (ECA) and the Organization of African Unity (OAU), WIPO organized in Guinea-Bissau in May 1980 a *seminar on intellectual property for the benefit of newly independent African States*. Of the eight such States invited (Angola, Cape Verde, the Comoros, Djibouti, Guinea-Bissau, Mozambique, Sao Tome and Principe, and the Seychelles) three, Angola, Cape Verde and Guinea-Bissau, were represented, together with national observers and observers from four intergovernmental and one non-governmental international organization. The working documents for the seminar, prepared in French and in Portuguese, were introduced by officials of WIPO and by lecturers invited by WIPO from Brazil and Portugal. The working languages were French and Portuguese.

After a lively discussion, in which the relevance to development of national systems of intellectual property and international cooperation in that field was fully explored, the participants adopted recommendations, including an invitation to the Governments for whose benefit the Seminar was organized to consider joining WIPO, and to establish national laws and administration in the field of intellectual property; the recommendations placed emphasis on the need for training in this field.

Teaching aids for training in the field of industrial property include the texts of lectures prepared for particular training courses and also the WIPO *Industrial Property Glossary*. This was first published in 1979 in four languages (Arabic, English, French and Spanish). In February 1980, the Glossary was published also in English, French and Russian, and in April 1980, in English, French and Portuguese. The translations into Russian and Portuguese were prepared by the industrial property services of the Soviet Union and by those of Brazil and Portugal, respectively.

A further teaching aid, an *Industrial Property Manual for Developing Countries*, is being prepared. It is intended to be an introduction to industrial property in general and a guide supplying, generally by means of questions and answers, practical information for users in developing countries.

Legislation and Institutions

Discussions were concluded on the new *Model Law for Developing Countries on Inventions*. Part I, deal-

ing with patents, was published in August 1979. The remaining parts, dealing with know-how, the examination and registration of contracts, inventors' certificates, technological innovations and, in an annex, transfer of technology patents, were submitted to the Permanent Committee for Development Cooperation Related to Industrial Property at its seventh session for comments before publication. After discussion in the Permanent Committee, it was noted that the Model Law would be published under the responsibility of the Director General, who would consider carefully the various comments made. (A fuller account appears below, in the section of this report concerning the seventh session of the Permanent Committee.)

The remaining parts of the Model Law were published in August 1980.

WIPO continued to cooperate, on request, with governments or groups of governments of developing countries on the adoption of *new laws and regulations*, or the modernization of existing ones, in the field of industrial property, and the creation or modernization of *industrial property offices*.

In the period covered by this report, such cooperation was pursued with the following countries and regional institutions, including their patent documentation and information services:

Africa

Algeria. In July 1980, a three-year agreement was signed between the Algerian authorities and WIPO providing for assistance in the organization of national seminars, training of officials in Algeria and abroad, and preparing regulations under the new legislation to be enacted. In November 1980, WIPO organized jointly with the national office a seminar on patent information, attended by some 70 participants, mainly technical staff of industry.

Angola. Discussions were held in Geneva in June 1980, during a study tour arranged for a government official, on the drafting of industrial property legislation.

Benin. A joint mission by a WIPO consultant from France and an OAPI official was undertaken in September and October 1980 to advise on the creation of a national structure for industrial property and technological information, within the context of the CADIB project of OAPI (see below).

Burundi. A WIPO mission visited Bujumbura in September 1980 to advise on the modernization of the industrial property laws and administration so as to contribute to the country's development objectives. Consultants from the Austrian Patent Office and the European Patent Office took part in the mission, and the European Patent Organisation contributed financially.

Central African Republic. A joint mission by a WIPO consultant from France and an OAPI official was undertaken in October and November 1980 to advise on the creation of a national structure for industrial property and technological information, within the context of the CADIB project of OAPI (see below).

Congo. A joint mission by a WIPO consultant from France and an OAPI official was undertaken in October 1980 to advise on the creation of a national structure for industrial property and technological information, within the context of the CADIB project of OAPI (see below).

Egypt. WIPO organized and financed a visit by the head of the Egyptian Patent Office to the Philippines in November 1980, in order to study legislative and institutional arrangements for the promotion of technological innovation and the support of inventors.

Gabon. A joint mission by a WIPO consultant from France and an OAPI official was undertaken in October 1980 to advise on the creation of a national structure for industrial property and technological information, within the context of the CADIB project of OAPI (see below).

Gambia. Following a WIPO mission in October 1979, proposals for the modernization of the law on trademarks were prepared and transmitted in July 1980.

Ghana. Comments invited from WIPO on a draft Patents Bill were transmitted in September 1980. The Bill is based upon the Model Law for English-Speaking African Countries on Patents, adapted to conform with Ghanaian development needs and drafting practices.

Ivory Coast. A joint mission by WIPO and OAPI, in July 1980, assisted in the first phase of the installation of a new national structure for industrial property services, taking into account the responsibilities of those services in relation to OAPI and CADIB.

Madagascar. Proposals have been submitted to the Government for a possible UNDP project for the establishment of the administrative infrastructure necessary to implement new industrial property legislation which is in preparation.

Mali. WIPO officials visited Bamako in July 1980 to discuss a draft of new industrial property legislation prepared by WIPO.

Mauritania. A WIPO consultant from France undertook a mission in November and December 1980 to advise on the creation of a national structure for industrial property and technological information, within the context of the CADIB project of OAPI (see below).

Niger. A joint mission by a WIPO consultant from France and an OAPI official was undertaken in September 1980 to advise on the creation of a national

structure for industrial property and technological information, within the context of the CADIB project of OAPI (see below).

Rwanda. A WIPO mission visited Kigali in September 1980 to advise on the modernization of the industrial property laws and administration so as to contribute to the country's development objectives. Consultants from the Austrian Patent Office and the European Patent Office took part in the mission, and the European Patent Organisation contributed financially.

Senegal. A joint mission by a WIPO consultant from France and an OAPI official was undertaken in November 1980 to advise on the creation of a national structure for industrial property and technological information, within the context of the CADIB project of OAPI (see below).

Swaziland. Following a WIPO mission and the preparation of detailed recommendations on the possibilities of modernizing the industrial property system and of a draft trademark law, a new law was prepared by the Government, commented on by WIPO in March 1980, and subsequently submitted for enactment.

Togo. A joint mission by a WIPO consultant from France and an OAPI official was undertaken in September 1980 to advise on the creation of a national structure for industrial property and technological information, within the context of the CADIB project of OAPI (see below).

Upper Volta. A WIPO consultant from France undertook a mission in February 1980 to advise on the creation of a national structure for industrial property and technological information, within the context of the CADIB project of OAPI (see below). WIPO proposals based on the consultant's report were presented to the Government in May 1980.

Zaire. Following earlier written advice, a preparatory mission and detailed discussions at WIPO in 1979 and March 1980 with a delegation from Zaire, new industrial property legislation was submitted for enactment.

Zimbabwe. A WIPO official participated in a UN Interagency Meeting, convened in Salisbury in May 1980, on assistance to Zimbabwe, and held discussions with the national authorities responsible for intellectual property concerning cooperation in strengthening the law and administration in industrial property and copyright. Copies of WIPO model laws in the said fields were transmitted at the request of the said authorities in September 1980. In November and December 1980, a WIPO consultant from the Federal Republic of Germany undertook a three-week mission to Salisbury to assist in the drawing up of a plan of action for reorganizing industrial property procedures and staff training.

African Intellectual Property Organization (OAPI). WIPO continued to act as the executing

agency for the UNDP project for the establishment of a patent documentation and information center (CADIB) within the framework of OAPI. In addition to financing from UNDP, the project is receiving support in the form of financing, expert services, training and equipment from the Governments of France, Germany (Federal Republic of) and Switzerland and from the European Patent Office. In the period covered by this report, 12 WIPO experts, nationals of Canada, France, Germany (Federal Republic of), Italy, Switzerland, United Kingdom and Viet Nam, worked on the project.

As part of the project, a colloquium on patent documentation as an aid to technological and industrial development was held in Yaoundé in January 1980. The participants were officials from the OAPI member and potential member States; the lecturers included the Director General of WIPO, the heads of the industrial property offices of Austria, France, Germany (Federal Republic of) and Sweden, and a Vice-President of the European Patent Office.

The second tripartite review of the project was held in Yaoundé in November 1980, with participation by WIPO, OAPI and UNDP; satisfaction was expressed with the progress of the project.

Missions to OAPI member States to assist in the establishment of national structures for CADIB are reported above under the names of the countries concerned.

Officials of WIPO attended in an observer capacity the 19th session of the Administrative Council of OAPI, which took place in Niamey in December 1980. Among other decisions the Council approved the budget of CADIB, as part of the OAPI budget, for 1981, took note with satisfaction of the progress of the project and expressed its thanks to WIPO as the executing agent of the project for the smooth continuation of the project's activities and to the UNDP, France, Germany (Federal Republic of) and Switzerland for their contributions to the project, approved the plan of action for the establishment of the national structures of OAPI in 1981, and adopted a complete recasting of the staff regulations of OAPI based on a study carried out by a consultant of the project. In addition, the Council adopted a resolution recommending to the States members of OAPI which have not yet done so to ratify or accede to the Patent Cooperation Treaty (PCT), the Trademark Registration Treaty (TRT), the Lisbon Agreement and the Hague Agreement. The Council also approved a resolution recommending to the States members of OAPI to support firmly the adoption of the draft Nairobi Treaty on the Protection of the Olympic Symbol, as well as a resolution recommending to the States members of OAPI that they be represented at the Diplomatic Conference on the Revision of the Paris Convention.

African Regional Center for Technology (ARCT). In February 1980, the Chief Technical

Adviser of the UNDP project for the establishment of ARCT visited WIPO for substantive discussions on future cooperation, including cooperation with ESARIPO and OAPI and their patent documentation and information services (ESAPADIC and CADIB). The discussions were continued on the occasion of the participation by WIPO in a meeting of the Executive Board of ARCT in Dakar in June 1980, and a visit to WIPO by the Executive Director of ARCT in September 1980.

Industrial Property Organization for English-Speaking Africa (ESARIPO). Jointly with the Secretariat of the United Nations Economic Commission for Africa (ECA), WIPO continued to act as the Interim Secretariat of ESARIPO.

As part of the activities within the preparatory assistance phase, financed by the UNDP, of the project for the establishment of ESARIPO's Patent Documentation and Information Centre (ESAPADIC), the Interim Secretariat engaged from August 1980 consultants from Australia, Kenya and Nigeria to assist in the preparation of the final project document for submission to the Council of ESARIPO at its fourth session.

Zimbabwe and Sierra Leone deposited instruments of accession to the Lusaka Agreement on the Creation of ESARIPO in November and December 1980, respectively, bringing the total membership to nine States.

The fourth session of the *Council of ESARIPO* was held in Salisbury (Zimbabwe) in December 1980. All States members of ESARIPO (Gambia, Ghana, Kenya, Malawi, Sierra Leone, Sudan, Uganda, Zambia and Zimbabwe) and six observer States (Botswana, Ethiopia, Nigeria, Somalia, Swaziland and Tanzania) were represented. The session of the Council was preceded by a Seminar (with participation from the States referred to above); the sixth session of the Committee for Trade Mark and Industrial Design Matters was held during the period of the Council's session.

The *Seminar* was organized by the Interim Secretariat with the assistance of the Governments of Canada, Germany (Federal Republic of) and the United Kingdom and of the UNDP. The topics discussed were patent documentation as a source of technological information, the ESAPADIC project, the role of national offices in ESAPADIC, the role of ESAPADIC in the implementation of the Lagos Plan of Action for the economic development of Africa, developments in the adoption of the ESARIPO model laws, and the functions of an industrial property office in the field of patents and in that of trademarks. These topics were introduced by an Assistant Deputy Minister, Department of Consumer and Corporate Affairs of Canada, an Assistant Comptroller of the United Kingdom Patent Office, an official of the Patent

Office of the Federal Republic of Germany and members of the staff of WIPO and ECA.

The *Committee for Trade Mark and Industrial Design Matters* expressed its full agreement with the draft Nairobi Treaty on the Protection of the Olympic Symbol, and prepared a draft resolution for the Council recommending the establishment by the States of a system of protection of geographical indications, taking into account the WIPO Model Law for Developing Countries on Appellations of Origin and Indications of Source.

On the basis of the discussions in the Seminar, the *Council* adopted a recommendation that industrial property offices in ESARIPO countries, as national focal points for ESAPADIC, should develop linkages with potential users of patent information, and that studies should be conducted by the Director of the ESARIPO Office to determine the technical tasks that could be performed regionally by ESARIPO and ESAPADIC on behalf of the said offices. The Council adopted the resolutions, referred to above, proposed by its Committee for Trade Mark and Industrial Design Matters. It expressed its appreciation to WIPO for assistance given to member and potential member States in the matter of training, and recommended consideration of training courses within the region for middle-level staff of industrial property offices. The Council approved for 1981 a program of activities, a budget (105,200 US dollars) and contributions to be paid by member States; it approved, for submission to the UNDP, a project document for the establishment of ESAPADIC; on the recommendation of a sub-committee established for this purpose, it selected from 93 applications a candidate, namely Mr. J.H. Ntabgoba, Justice of the High Court of Uganda, and appointed him to the post of Director of the Office of ESARIPO. Arrangements were decided on for the appointment of additional staff of the Office, for the conclusion of a Headquarters Agreement with the Government of Kenya and for obtaining assistance for the construction of a headquarters building, it being noted with gratitude that adequate temporary accommodation would be made available within the premises of the Registrar General's Department in Nairobi. The Council selected an emblem for ESARIPO, and approved Staff Regulations and salary scales for the Office; it reviewed recent international developments in the field of industrial property, and received reports on the introduction of modernized industrial property legislation in the member and potential member States, and on prospects for new ratifications of and accessions to the Lusaka Agreement.

Organization of African Unity (OAU). WIPO continued its cooperation with the OAU, and was represented at the second extraordinary session of the OAU Assembly of Heads of State and Government devoted to economic problems of Africa, held in Lagos in April 1980. This "first OAU economic

summit" had been prepared at immediately preceding meetings, also in Lagos, at the ministerial and expert levels, at which WIPO was also represented. The Assembly adopted the Lagos Plan of Action for the implementation of the Monrovia Strategy for the economic development of Africa. The Lagos Plan of Action refers to the need for national centers for science and technology for development to have effective linkages with institutions responsible for industrial property and patent information, and calls for support for regional and subregional intergovernmental technological institutions, including specifically ESARIPO and ESAPADIC, OAPI and CADIB. WIPO was also represented at a symposium on industrial technology, organized by the OAU and the United Nations Industrial Development Organization (UNIDO) in Khartoum in November 1980, at which the follow-up to the Lagos Plan of Action was discussed.

Asia and the Pacific

Democratic People's Republic of Korea. Following the visit of a WIPO official in October 1979 and discussions in Geneva in January 1980, a seminar on patent information was organized in cooperation with the Government in April 1980, with lecturers from WIPO and the Austrian and Bulgarian government authorities. Discussions were held for the planning of cooperation in the establishment and improvement of the industrial property system. A further seminar dealing with a number of industrial property questions, including trademarks and the Madrid Agreement, the Patent Cooperation Treaty, the International Patent Classification and state-of-the-art searches, was organized in November 1980, with lecturers from WIPO and the Austrian Patent Office.

Indonesia. A WIPO consultant undertook a mission in November and December 1979 to study and advise on means to ensure adequate legal protection for Indonesian industrial designs. On the basis of the consultant's report, WIPO proposals to the Government were transmitted in June 1980.

Nepal. A WIPO official undertook a mission in March 1980 to advise on the modernization of the industrial property system. Draft laws were prepared by WIPO and transmitted in July 1980.

Pakistan. A WIPO official visited Islamabad and Karachi in August and September 1980 for preliminary discussions with the government authorities and the UNDP concerning the Government's request for assistance in studying the possible modernization of industrial property procedures.

Philippines. Following discussion in Geneva in June 1980 of a new Science and Technology Code, including industrial property and copyright legislation, comments on the said Code were sent by WIPO in July 1980. The draft Code was further discussed in Geneva in November 1980.

Republic of Korea. Following discussions with officials of the Korean Patent Office in Geneva in October 1979 and February 1980, WIPO proposed to the Government a plan for cooperation, bilaterally and multilaterally, in the modernization of the Korean Patent Office and in the carrying out of searches and examinations. A WIPO mission to Seoul in June 1980 prepared, with the government authorities and the UNDP, specific projects based on the said plan, to begin in 1980. From September to November 1980, five WIPO experts (from the Japanese Patent Office), financed by the UNDP, assisted in the training of the technical staff; in October and November 1980, three Korean examiners were trained at the Japanese Patent Office, the European Patent Office and the Netherlands Patent Office, with financial assistance from the European Patent Organisation.

Singapore. On the occasion of a national seminar on licensing organized by WIPO and the Science Council of Singapore in December 1980, the Director General had discussions with the ministers responsible for industrial property matters and with other high government officials on the possible modernization of the patent system of Singapore.

Sri Lanka. Between November 1979 and August 1980, experts provided by the industrial property offices of Sweden and the United Kingdom spent a total of more than five work months in Colombo advising and assisting the Sri Lanka Office in the implementation of the new industrial property code, which entered into force in January 1980. Financial assistance was provided by the Swedish International Development Authority (SIDA). A mission of one month's duration was undertaken by WIPO officials and a consultant from the Philippines in March 1980 to advise the Sri Lanka Government on the establishment of institutional arrangements for the support of national inventors. From October to November 1980, a WIPO expert from the United Kingdom assisted the Office in clearing a backlog of applications and in staff training; in November 1980, a WIPO expert from the United Kingdom assisted in preparing and participated in a training course on patents. These missions were undertaken with financial assistance from the UNDP.

Thailand. A mission was undertaken by a WIPO official in June 1980, as part of the program of cooperation for the implementation of the new Patent Act of Thailand. Under the same program, four Thai officials received training in the Canadian industrial property office in July and August 1980, and the head of the department concerned visited the Canadian Office and WIPO in August. With the assistance of the Government of Canada, a training course for the benefit of the staff of the Patent Division was organized in September and October 1980 on patent procedures and patent documentation.

Viet Nam. A WIPO official undertook a mission

in January 1980 to assist in preparing a plan for the improvement of the industrial property system. In December 1980, a WIPO expert from Switzerland and a WIPO official visited Hanoi and Ho Chi Minh City for further discussions with government officials and to give lectures on industrial property at national seminars.

Latin America and the Caribbean

Barbados. Two government officials visited WIPO in Geneva, in April 1980, to discuss with WIPO officials and an expert from Canada draft industrial property and copyright laws prepared at the request of the Government by WIPO. A WIPO official undertook a mission to Barbados in May 1980. In September 1980, further discussions on the draft laws were held in Geneva. In November 1980, WIPO officials gave lectures in a national seminar on intellectual property organized by the Government and WIPO in Bridgetown. The seminar, which dealt with marks, industrial designs and copyright, was attended by 47 participants representing government bodies, private industry, interested non-governmental institutions and universities. The project is being carried out with the financial assistance of the Canadian International Development Agency (CIDA).

Brazil. WIPO is continuing to carry out the UNDP project for the modernization of the Brazilian patent system, with the assistance, during the period covered by this report, of 18 WIPO experts from the industrial property offices of Austria, Australia, Denmark, Germany (Federal Republic of), Israel, Japan, Sweden, the United Kingdom, the United States of America and the European Patent Office. The seventh tripartite review of the project was held in November 1980, with participation by the Brazilian Government, UNDP and WIPO; satisfaction was expressed with the progress of the project, which began in 1973 and is planned to be completed in 1981, when nearly 150 patent examiners will have been trained. It was noted that 50% of the basic patent training in 1980 was carried out by Brazilian instructors; the work plan for 1981 was approved, including training in the handling of appeals and similar high-level instance questions.

Dominican Republic. WIPO paid the expenses of a visit by a government official to Geneva in June 1980, for discussion of a draft industrial property law prepared by the Dominican authorities.

Mexico. A WIPO official visited the Mexican industrial property office in April 1980 to prepare for a training course in the use of the International Patent Classification, and in July 1980 to conduct the introductory part of the course, which was followed by six weeks of classification work under the supervision of two staff members of the Spanish industrial property

office. All of the 20 examiners of the Mexican industrial property office participated in the course.

Trinidad and Tobago. Within the framework of a UNDP financed project for the establishment of an industrial property system, a WIPO official undertook a mission in May 1980 to discuss with the government authorities a draft patent law and draft preparatory assistance document prepared by WIPO. The said document was endorsed by the Government and approved by the UNDP in December 1980.

Uruguay. In December 1980, a WIPO official undertook a mission to Montevideo in response to a request from the competent authorities for advice and assistance on drawing up a plan for the modernization of industrial property legislation and administration.

Andean Group. In implementation of the five-year agreement of technical cooperation signed in November 1979 between WIPO and the *Junta del Acuerdo de Cartagena* (JUNAC), i.e., the Council of the Andean Group established by the Cartagena Agreement (comprising Bolivia, Colombia, Ecuador, Peru and Venezuela), an inter-secretariat meeting between WIPO and JUNAC was held in Lima in June 1980, at which a comprehensive program of assistance was prepared, taking into account the findings of joint missions undertaken in the five member States. The program (approved by the Director General of WIPO and by JUNAC, and to be submitted to the five Andean Governments through a meeting of the heads of their industrial property offices) provides for group training, aimed also at creating a group of Andean experts to train new officials or participants from other developing countries of the region, for expert missions to the national offices to advise on solutions to specific problems and to promote harmonization of procedures, and for regular meetings of the heads of offices. The industrial property offices of Brazil and Spain have offered to contribute to the program.

In October 1980, WIPO and JUNAC organized jointly in Lima a Seminar on Licensing for participants from the five countries. WIPO paid the expenses of eight of the 30 participants and of the three invited lecturers from Latin American countries.

Caribbean Office of ECLA and CARICOM. Following exploratory discussions in Port-of-Spain with the Office for the Caribbean of the Economic Commission for Latin America (ECLA), a project was prepared, in consultation with ECLA and the Caribbean Community (CARICOM), for the strengthening of the industrial property systems, including patent documentation and information services as a contribution to the Caribbean Documentation Centre (CDC), of the English-speaking countries of the Caribbean (Bahamas, Barbados, Dominica, Grenada, Guyana, Jamaica, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago). In September 1980, the Canadian International Devel-

opment Agency (CIDA) agreed to provide financial assistance. The first phase of the project, to be carried out in 1980 and 1981, is the assessment of the situation of the countries concerned in the field of industrial property and patent documentation and information services; the second, to be carried out in 1981, will consist of the holding of a seminar on industrial property and related matters for government officials and other interested circles of the said countries, in order to draw conclusions from the work carried out in the first phase and, possibly, to prepare proposals for future action. The first phase of the project began with visits in November 1980 to Barbados, St. Lucia, St. Vincent and the Grenadines, Grenada, and Trinidad and Tobago by a mission composed of a WIPO official, a representative of CIDA and a government official of Barbados. Further such visits are planned for early 1981 to the remaining countries of the group.

Western Asia

Iraq. An official of WIPO undertook a mission of one month's duration in February and March 1980 in order to advise the government authorities on the improvement of the administrative systems of the industrial property office.

United Arab Emirates. In October 1980, WIPO officials and a consultant from Syria conducted national seminars in Abu Dhabi, Dubai and Al-Ain, giving lectures on industrial property to participants from government departments, universities and chambers of commerce and other private circles.

Federation of Arab Scientific Research Councils (FASRC). Discussions were held in Geneva in July 1980 between representatives of FASRC and of WIPO, in order to explore the possibilities of cooperation between them. Decisions were reached on the following matters: the preparation by WIPO of a general outline of a project for a patent information and documentation unit as a component of an Arab center for scientific and technical documentation; state-of-the-art searches and collaboration in the organization of workshops, symposia and seminars; mutual representation at meetings; exchange of publications. WIPO was represented at a meeting of the Council of FASRC in Amman in December 1980; the Council approved a project for the establishment of the said unit and allocated the necessary funds for 1981.

Inventors, Industry and Commerce

A *Workshop* on the effective use of the industrial property system for the benefit of inventors, industry and commerce in the Asian and the Pacific region was

organized by WIPO, with the cooperation of the Government of the Philippines and of the UNDP, at Manila in April 1980. It was arranged to coincide with the Second Festival of Philippine Inventions and the 14th Annual Inventions Contest, at the closing ceremonies of which the Director General presented the WIPO Gold Medal for the Outstanding Invention, the WIPO Gold Medal for the Outstanding Filipino Inventor, 1980, and corresponding diplomas; he announced that these two WIPO medals and diplomas would continue to be awarded every year in the Philippines, and that such medals and awards would also be offered at similar festivals and contests that might be organized in other developing countries. Similar prizes had already been awarded by WIPO at the *Salon international des inventions et des techniques nouvelles* in Geneva in December 1979.

The 102 participants in the Workshop included 46 representatives of 18 countries and one territory (Afghanistan, Bangladesh, Bhutan, China, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Sri Lanka, Thailand, Tonga, Viet Nam, Hong Kong), and observers from the Asian Patent Attorneys Association (APAA) and the International Federation of Inventors' Associations (IFIA).

Lectures were delivered by invited speakers from India, Japan, Sweden and the United States of America and by officials of WIPO; each lecture was followed by an open forum during which participants addressed questions to the lecturers and to the Director General, or made statements or comments concerning the experience of their respective countries, associations or federations in the field of industrial property generally or specifically in relation to the encouragement and promotion of indigenous inventive and innovative activity.

The participants agreed on a number of conclusions and recommendations. They noted that legal and other measures, policies and practices to encourage and assist indigenous inventors and innovators should be an important consideration in the formulation of laws relating to industrial property; they welcomed the decision of WIPO to offer medals and diplomas to outstanding inventions and inventors in the region; they requested WIPO, with the assistance of UNDP, to organize meetings and training courses, at the regional, sub-regional and national levels, for the benefit of inventors/innovators and potential inventors/innovators in the region, to encourage technical cooperation between countries of the region, with participation of the governments concerned as well as of non-governmental institutions interested in the subject of industrial property; they also requested WIPO to publish as widely as possible the lectures delivered at the Workshop for the benefit of governmental and non-governmental institutions, within and outside the region, concerned with the encourage-

ment and promotion of inventive and innovative activity. The lectures were published in October 1980.

In preparation for the 1980 (third) meeting of a *Working Group on Technological Innovation*, missions were undertaken by officials of WIPO to institutions dealing with technological innovation in the German Democratic Republic, Germany (Federal Republic of), Mexico, the Soviet Union, Sweden and the United States of America.

The Working Group held its third meeting in Geneva in September 1980. The participants were experts designated by national institutions of 19 States (Algeria, Brazil, China, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Ghana, India, Ivory Coast, Japan, Peru, Philippines, Senegal, Soviet Union, Sudan, Sweden, United States of America, Yugoslavia), and observers from three international organizations (UNIDO, International Federation of Inventors' Associations (IFIA) and Licensing Executives Society (International) (LES)).

The Working Group commended WIPO's activities for the promotion of technological innovation, attaching particular importance to activities relating to the offering of awards and prizes to innovators and promoters of innovative activity, and noting with satisfaction the publication of a WIPO *Directory of Associations of Inventors*. The Working Group recommended additional publications, including a directory of institutions dealing with the promotion of innovation, a compilation of relevant activities undertaken by different countries and institutions, a model brochure on why and how legal protection for inventions should be obtained, a book on innovators and inventors of developing countries and a brochure containing guidelines for the creation or reorganization of institutions dealing with promotion of innovative and inventive activity in developing countries.

A WIPO official gave a lecture on WIPO's program for the promotion of inventive activity in developing countries at a national seminar organized in Rijeka in October 1980 by the Yugoslav Association of Innovators and Authors of Technical Improvements, in conjunction with an annual exhibition of inventions. A WIPO medal and a diploma were awarded to the organizers of the exhibition.

Eight countries (Algeria, Benin, Cameroon, Chile, Egypt, Republic of Korea, Upper Volta and Zaire) replied to a questionnaire aimed at providing information for the preparation of a guide on the organization of *patent and trademark activities of enterprises* in developing countries. A draft of this guide was prepared for consideration by a Working Group in 1981.

Acquisition of Technology; Licensing

A *Workshop on Industrial Property Licenses and Technology Transfer Arrangements* was organized by WIPO and the Coordinating Council for Industrial Technology Transfer of *Malaysia*, with the cooperation and financial assistance of the Canadian International Development Agency (CIDA), in Kuala Lumpur (Malaysia) in June 1980. The purposes of the Workshop were to advise how to identify problems which are likely to arise in the negotiation and preparation of such licenses and arrangements, to increase awareness of relevant legal and commercial practices and to indicate possible solutions, and to promote an exchange of information and experience.

Participants designated by the Governments of Indonesia, Malaysia, Philippines, Singapore and Thailand, and a number of persons from national industrial and commercial enterprises, from the legal profession and from regional non-governmental organizations, were invited. The UNDP and the Association of South East Asian Nations (ASEAN) were also invited to send representatives. Approximately 90 persons, from all the invited countries, took part in the Workshop.

The discussions in the Workshop were based on the WIPO Licensing Guide for Developing Countries, case studies and a simulated negotiation exercise. Lectures were given by WIPO staff members and specialists on matters related to the negotiation and preparation of license agreements. The following topics were considered: the role of WIPO, and its activities in furthering development in developing countries; industrial property and its role in the technological process and in industrial and commercial development; methods and arrangements for the commercial acquisition of technology; the negotiation process; the purpose, scope and content of patent licenses, know-how contracts, technical services and assistance agreements, trademark licenses and turn-key projects; introductory and other provisions of a general legal nature; identification of the rights and description of the technology to be acquired; field of use or activity; improvements and other technological advances; disclosure of information and expertise; the protection of know-how; sub-contracting, sub-licensing and assignment; link between technology and the supply of capital equipment, raw materials, intermediate goods or components and spare parts; aspects of production and their relationship to trademark licenses; quality control; working of the patented invention; importation of products manufactured abroad by the licensor, other licenses or third persons; marking; distribution channels; pricing; export of products manufactured under a patented invention or sold under a trademark (exclusivity and territoriality); duration of license agree-

ments; expiration of rights; continued use of know-how; warranty of industrial property rights; guarantee of know-how; responsibility to third persons; default; agreed remedial measures; the settlement of disputes; internal and external procedures; applicable law and forum; economic evaluation of the cost of technology and its price; forms of monetary compensation for industrial property licenses and the supply of know-how; methods of calculation; fees for technical services and assistance; systems of taxation and their impact; settlement of payment; approval by government authorities.

The participants recommended that WIPO continue to organize similar workshops at the regional, sub-regional and national levels in the region of South East Asia; they welcomed the inclusion among the participants of not only government officials but also persons in industry and commerce and the legal profession; they suggested that, in addition to covering the topics treated in the Workshop, consideration be given to focusing attention on a selected industry.

In October 1980, WIPO and JUNAC organized jointly in Lima a Seminar on Licensing for participants from the five countries of the Andean Group. WIPO paid the expenses of eight of the 30 participants and of the three invited lecturers from Latin American Countries.

In December 1980, a national *Seminar in Singapore on Patent and Trademark Licensing* was organized by WIPO and the Science Council of Singapore. Opening statements were made by the Minister for Law and Science and Technology of the Government of Singapore, the Director General of WIPO and the Chairman of the Science Council of Singapore. Lectures, leading to discussions among the participants, were given by the Director General, an official of WIPO and an expert on licensing (President of LES (International)) from France. The 90 participants came from government departments, legal firms and business and commerce.

Development of the Industrial Property Profession and Teaching in Universities

In accordance with a recommendation made by a *Round Table of University Professors on the Teaching of Industrial Property Law*, organized by WIPO in Geneva in October 1979, a meeting of a small group of university professors took place in April 1980. It prepared, on the basis of preliminary drafts submitted by WIPO, a draft Constitution of an International Association for the Advancement of Teaching and Research in Intellectual Property, as proposed by the Round Table. The draft Constitution was circulated for comments in June 1980, and is planned to be formally adopted by a constitutive assembly of the Association in 1981.

Development, in Developing Countries, of Access to the Technological Information Contained in Patent Documents

State-of-the-Art Search Program. Since 1975, WIPO has been operating a program to provide institutions and individuals in developing countries with free-of-charge state-of-the-art search reports under agreements concluded between contributing industrial property offices in developed countries and the International Bureau of WIPO. The program has increased both in the scope of services offered and in the contributions made, in response to increasing numbers of requests from developing countries.

During 1980, 305 search requests were submitted by 33 countries (Algeria, Argentina, Bolivia, Botswana, Brazil, Chile, Costa Rica, Cuba, Democratic People's Republic of Korea, Egypt, Guatemala, India, Iraq, Kuwait, Malawi, Mauritius, Mexico, Pakistan, Peru, Philippines, Republic of Korea, Rwanda, Singapore, Sri Lanka, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Uruguay, Venezuela, Viet Nam, Zaire) and by OAPI. Nine of the said requests were submitted through the Industrial Inquiry Services of UNIDO under an agreement of cooperation concluded in 1979 between the Austrian authorities, WIPO and UNIDO. In the same period, 298 search reports were delivered to developing countries, most of them prepared by the Austrian (176) and the Swedish (65) Offices.

Each report furnished under the Austrian contribution to the program is accompanied by a request to complete an evaluation questionnaire concerning the usefulness of the report to the end user. The replies indicate consistently the relevance and completeness of the reports.

The German Patent Office carried out 17 free-of-charge searches in technical fields in which mechanized search systems are operational in the Office. In addition, copies of 46 patent specifications requested by users in developing countries were provided free of charge.

Under an agreement with WIPO signed in February 1980, the USSR State Committee for Inventions and Discoveries also joined the program. The contribution of the Soviet Union is specially intended to assist the examination of patent applications for inventions made in developing countries as to novelty and inventive step. Four search and examination reports have been delivered.

The European Patent Office (EPO), under an agreement with WIPO, has completed the first two in a series of monographs dealing in depth with areas of technology of specific relevance to developing countries. The publication of these monographs is under preparation. The EPO further agreed to perform novelty searches for 30 patent applications pending in

the Republic of Korea. Twenty search reports have been delivered; the remaining ten are under preparation. In the beginning of 1981, ten to 20 more general state-of-the-art searches will be performed under the program by the EPO on an experimental basis. In 1981, three more monographs will be prepared.

From June 1980, the Swiss Intellectual Property Office has also been contributing to the program by furnishing free of charge copies of patent documents. During the period from June 1 to December 31, 1980, copies of 327 patent documents were furnished by that Office.

The Finnish Patent Office has performed ten state-of-the-art searches as a trial in 1980. The extent of possible further contributions will be assessed in early 1981.

Various other smaller contributions have been offered and provided by many industrial property offices. However, since the demand for search reports has been very high and has sometimes already overtaken the program's capacity, WIPO is seeking new and increased contributions to the program.

Seminars and Training Courses. A staff member of WIPO lectured at an IDCAS Documentation and Industrial Information *Training Course* held in Amman from January 19 to 31, 1980, which was attended by 50 participants from Jordan, Kuwait, Sudan and Tunisia. The subject of the lectures was access to technological information contained in patent documents and the structure and contents of patent documents.

In collaboration with the National Industrial Property Directorate (DNPI) of the Secretariat of State for Industrial Development, Ministry of Economic Affairs, and the Argentine Center for Scientific and Technological Information (CAICYT) of the National Council for Scientific and Technological Research of the Argentine Republic, WIPO organized a *Symposium on the Role of Patent Information in National Economic Development* in Buenos Aires in April 1980. The Governments of Argentina, Bolivia, Brazil, Chile, Colombia, Mexico, Paraguay, Peru, Uruguay and Venezuela were invited to delegate participants, and all were represented. Seven inter-governmental and international non-governmental organizations, seven Argentine institutions and the International Patent Documentation Center (INPADOC) attended the Symposium. The total number of participants was about 50.

Discussions were based on documents prepared and submitted by WIPO concerning the role of patent information in national economic development, the International Patent Classification, state-of-the-art searches and the activities of WIPO in the training of patent information specialists, and also on papers submitted by other participants concerning national experience in the use of the IPC and in state-of-the-art searches, the organization of patent documentation

files and the training of patent information specialists, and, finally, the importance to industry of the technological information contained in patent documents.

In a lively debate on these topics the participants recognized the value of patent documentation in the various sectors of industry, economy and research, the need to create regional data banks, and to structure patent information exchanges within the region in such a way as to avoid duplication of effort, possibly on the basis of the WIPO Latin American Industrial Property and Technology Transfer Data Service, the importance of training, and the help which WIPO could offer by enlarging its cooperation with Latin American countries in the more technical aspects of industrial property.

Seventeen trainees from 15 developing countries attended a *training course* in the use of patent documentation as a source of technological information, in Vienna in June and July 1980, organized jointly by WIPO and the Government of Austria, in accordance with an agreement to that effect signed by the Federal Chancellor of Austria and the Director General of WIPO in May 1980.

Twenty-five trainees from 22 developing countries attended a *Training Seminar* in The Hague in October 1980, organized by WIPO, the EPO and the Commission of the European Communities (CEC) on "Technical Information as an Aid to Industrial Development: Patent Documents," preceded or followed, in many cases, by practical training in the following countries or institutions: France, Germany (Federal Republic of), Japan, United Kingdom, EPO, Max Planck Institute, WIPO.

Users' Guides to the IPC. In cooperation with UNIDO and the European Patent Office (EPO), Users' Guides to the IPC were prepared for agro-industries and for agricultural machinery and implements. Two other Guides already prepared (iron and steel, fertilizers) were revised and adapted to the third edition of the IPC which entered into force on January 1, 1980.

Patent Document Collections. WIPO continued its activity of arranging, and seeking to arrange, for collections of patent documents and related material to be made available and to be received by developing countries requesting them. A request made by Yugoslavia to receive a collection of United Kingdom patent documents has been met by the United Kingdom. The Democratic People's Republic of Korea has received the following collections of patent documents: a complete collection of Swiss documents and collections of documents of the Federal Republic of Germany and of the United States of America offered by Switzerland, a complete collection of Austrian documents offered by Austria, a collection of Bulgarian documents (some 15,000 documents) offered by Bulgaria, some 341,000 French documents on aperture cards offered by Sweden and 27,000 Australian

documents offered by Austria. Arrangements have been made for the Democratic People's Republic of Korea to receive additional Australian documents from Austria, as well as a complete collection of documents of the Federal Republic of Germany from Bulgaria.

The *Working Group on Patent Information for Developing Countries* of the WIPO Permanent Committee on Patent Information (PCPI) held its second session in Geneva in October 1980. Nineteen States and two intergovernmental organizations, members of the Working Group, were represented; one intergovernmental organization and two other organizations were represented by observers.

An assessment was made of the effectiveness of the *WIPO State-of-the-Art Search Program* in 1980 and earlier years. The Working Group concluded that the Program was of great importance to developing countries and should be pursued vigorously and, whilst noting with appreciation the contributions from industrialized countries already forthcoming (see above), considered that efforts to secure further contributions should continue. It was felt that, with the growing awareness of the existence of WIPO's program in the developing countries, serious capacity problems could arise in the future. The Working Group continued its study of the *identification of types of users of patent information in developing countries and their needs*. It was noted that the ongoing surveys being undertaken by Brazil and OAPI would be reported on in the near future, and that the results of a study of users of patent information and their needs recently undertaken by the Australian industrial property office would be discussed at a later date. The Working Group agreed on the basic outline of two model *curricula for patent information training courses*, one devoted to the general subject of patent information and documentation, the other to the use of the International Patent Classification (IPC) for the retrieval of technological information contained in patent documents.

The Working Group, having studied a worldwide survey made for WIPO by the International Patent Documentation Center (INPADOC) showing what *percentage of inventions would be covered by collections of patent documents limited to the documents of particular combinations of countries*, agreed that the information contained in the study fully met the needs of developing countries; it also noted a progress report by INPADOC on the implementation of INPADOC's new Patent Register Service (PRS), which will offer, in 1981, "legal status" information on pending patent applications and on granted patents in certain countries.

WIPO Permanent Committee for Development Cooperation Related to Industrial Property

Barbados, Colombia, El Salvador, Guinea and Malaŵi became members of the Permanent Committee, bringing the total membership to 69 States.

The Permanent Committee held its seventh session in Geneva in April and May 1980. Forty-eight States, members of the Permanent Committee, eight States, non-members of the Permanent Committee, seven intergovernmental and eleven international non-governmental organizations were represented.

In accordance with the special provisions contained in the approved budget of WIPO, travel and subsistence expenses were paid by WIPO for one delegate from each of the countries represented at the session which are members of the Permanent Committee and are regarded as being among the least developed of the developing countries.

The Permanent Committee reviewed activities since its last session and plans for continuing and future activities, on the basis of the relevant program and budget items approved by the Governing Bodies of WIPO for the years 1980 and 1981.

In reviewing activities concerning *training* (individual training and training in groups), several delegations made detailed or general suggestions to be taken into account in planning and implementing the program. Most delegations congratulated the International Bureau on the program's further development since the last session of the Permanent Committee. Several delegations expressed their appreciation for the training so far received by their nationals. Several delegations announced their continued or—in the case of the Delegations of Spain, Germany (Federal Republic of), Canada, the Soviet Union, France and the United Kingdom—increased contributions to the WIPO Training Program. The Delegation of the Federal Republic of Germany announced that its Government would probably organize a course on marks in 1981. The Delegation of Poland stated that its country would participate in training nationals of developing countries by offering a training course at the Patent Office of the Polish People's Republic for a trainee from a developing country.

The Permanent Committee was invited to comment on the draft of the parts of the new *Model Law for Developing Countries on Inventions* which remained to be published (Part 1, on patents, was published in August 1979). The draft dealt with know-how, the examination and registration of contracts, inventors' certificates, technovations and, in an annex, transfer of technology patents. The draft was based on the views expressed during the last session of the Working Group on the Model Law (March 1979).

Several delegations made comments in the Permanent Committee and, taking those comments into

consideration, the said parts of the Model Law were published in August 1980.

The Permanent Committee noted that drafts were being prepared or revised on *basic options for legislators* in connection with the Model Law on Inventions, on "*Trademarks for Development*" and on industrial property aspects of *consumer protection*, for consideration by groups of consultants or experts.

In its review of activities and plans relating to the building of *governmental institutions* for industrial property, the Permanent Committee devoted particular attention to the importance of *cooperation among developing countries* and noted that close consultation was being maintained with the regional commissions of the United Nations and with the UNDP in order to ensure that activities for the promotion and support of such cooperation were fully relevant to current policies, possibilities and needs. The Permanent Committee noted with approval activities in support of OAPI and CADIB, ESARIPO and ESAPADIC, the Andean Group, the Latin American Data Service (LADS) and IDCAS.

The Permanent Committee examined an outline description, presented by WIPO, of a possible system for *international cooperation in the examination of patent applications*, to assist developing countries unable to justify the investment in staff, documentation and other equipment required for substantive examination.

Many delegations spoke on this matter and they all welcomed the initiative of the Director General of WIPO, including a plan for the convocation of a group of consultants, preferably in 1980. The general view of the Permanent Committee was that the matter was clearly and exclusively within the jurisdiction of WIPO, that the contemplated cooperation would be extremely useful for developing countries desiring to formulate a judgment on the patentability of the inventions of their own nationals, and that the feasibility of the cooperation system should be thoroughly explored. Several delegations and observers offered their participation in the planned group of consultants.

Plans were noted with approval for cooperation with governments of developing countries for the development of the *profession* of industrial property lawyer and agent, including plans for the convening of a small group of consultants. Several delegations underlined the importance of the activity in question and welcomed the initiative of the International Bureau. Observer organizations whose membership consists of or includes industrial property lawyers and agents offered their cooperation.

B. Copyright and Neighboring Rights Activities

Objective

The objective is to be useful to developing countries in five different respects:

- (i) training specialists,
- (ii) creating or modernizing domestic legislation,
- (iii) establishing or developing appropriate infrastructure,
- (iv) stimulating creative activity,
- (v) facilitating access to foreign works protected by copyright owned by foreigners.

Development, in Developing Countries, of General Awareness and Knowledge of the Law and the Practical Implications of Copyright and Neighboring Rights (Training)

Sixty-four applications for training in the fields of copyright and neighboring rights in 1980 were received by WIPO from 37 developing countries and one territory, from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and, following consultations with the Organization of African Unity (OAU), from the Pan Africanist Congress of Azania (PAC). Forty-eight of these applications, from the following 33 countries and one territory, UNRWA and PAC, were accepted: Algeria, Argentina, Bangladesh, Bolivia, Brazil, Burundi, Cameroon, Cape Verde, Colombia, Congo, Democratic Yemen, Ecuador, Fiji, Ghana, Guinea, Guinea-Bissau, India, Indonesia, Kenya, Madagascar, Mali, Mauritius, Mexico, Niger, Nigeria, Philippines, Rwanda, Senegal, Somalia, Thailand, Upper Volta, Zaire, Zambia, Hong Kong.

The training arranged in 1980 took the following forms:

(a) for seven trainees, attendance at a *training course* on the administration of copyright and neighboring rights in *Stockholm* in August and September 1980, organized by WIPO in cooperation with the Government of Sweden and the Swedish International Development Authority (SIDA);

(b) for 22 trainees, attendance at a general introductory *training course* on copyright and neighboring rights in *Berlin (West)* in September and October 1980, organized by WIPO in cooperation with the German Foundation for International Development (DSE) on the joint invitation of the Government of the Federal Republic of Germany and the Senate (Berlin (West)); this course was followed by practical training in the following countries: Algeria, Austria, Belgium, France, Germany (Federal Republic of), Hungary, India, Netherlands, Senegal, Switzerland, United Kingdom;

(c) for 14 trainees, attendance at a specialized *training course* on the administration of copyright and neighboring rights in *Zurich* in June 1980, organized by WIPO in cooperation with the Swiss Society for Authors' Rights in Musical Works (SUISA);

(d) for four trainees, practical training in one of the following countries: Argentina, German Democratic Republic, Mexico;

(e) for one trainee, study visits to France and WIPO headquarters.

To the extent possible, the arrangements for training in 1980 included visits to the headquarters of WIPO.

For a general analysis of all the applications for training accepted in 1980, see the section of this report on training in the field of industrial property, above.

The following twelve countries agreed to contribute in full or in part to the payment of the costs of travel and subsistence of trainees: Algeria, Austria, Belgium, German Democratic Republic, Germany (Federal Republic of), Hungary, India, Mexico, Netherlands, Sweden, Switzerland, United Kingdom. The remainder of the cost was borne by the budget of the WIPO Legal-Technical Assistance Program.

The *seminar* on intellectual property for the benefit of newly independent African States, organized by WIPO in *Guinea-Bissau* in May 1980 and described in the earlier section of this report on training in the field of industrial property, dealt also with copyright questions.

Experts from 26 African countries attended in their personal capacity an *African Regional Seminar on Copyright*, convened by WIPO and Unesco, and an *African Regional Seminar on the Protection of the Rights of Performers, Producers of Phonograms and Broadcasting Organizations*, convened by WIPO, ILO and Unesco, at *Lomé* in December 1980, at the invitation of the Government of Togo.

The experts came from the following countries: Algeria, Benin, Burundi, Cameroon, Cape Verde, Central African Republic, Comores, Congo, Ethiopia, Gambia, Ghana, Guinea, Ivory Coast, Kenya, Madagascar, Malawi, Mali, Morocco, Nigeria, Rwanda, Senegal, Tanzania, Togo, Tunisia, Upper Volta, Zaire. Observers from France and Zimbabwe, from the African Intellectual Property Organization (OAPI) and from seven international non-governmental organizations also took part.

Country reports offered by the experts, and statements by the organizations on matters covered by the international conventions for the protection of authors, performers, producers of phonograms and broadcasting organizations led to an intensive cross-fertilization of ideas and exchange of views. In conclusion, the experts adopted texts expressing wishes aimed at furthering the protection of authors' rights and neighboring rights.

In October 1980, a WIPO official gave lectures at national seminars on international aspects of copyright organized by the Brazilian Copyright Council (Ministry of Education and Culture) in Brasilia and Sao Paulo.

Legislation

WIPO continued to cooperate, on request, with governments or groups of governments of developing countries on the adoption of new laws and regulations, or the modernization of existing ones in the field of copyright and neighboring rights. In the period covered by this report, such cooperation was pursued with the following countries:

Angola. Discussions were held at Geneva, during a study tour arranged for a government official, on draft copyright legislation.

Barbados. A draft copyright law, transmitted by WIPO to the Government in December 1979, was discussed with government officials in Geneva in April and during a WIPO mission to Barbados in May 1980. In September 1980, further discussions on the draft law were held in Geneva. In November 1980, WIPO officials gave lectures in a national seminar on intellectual property organized by the Government and WIPO in Bridgetown. The project is being carried out with the financial assistance of the Canadian International Development Agency (CIDA). On the occasion of this seminar, the draft of the law on copyright and neighboring rights was also finalized with government officials.

Burundi. Draft statutes for an authors' organization as well as aspects of amending the existing Copyright Law of 1978 were discussed in Geneva in July 1980 with a government official of Burundi. In December, a draft decree-law on the revision of that Act was submitted by the Government to the International Bureau for comments. The protection of neighboring rights is also provided for in an annex to the draft decree-law.

Cameroon. On request of the Government, a draft law on copyright and neighboring rights was prepared and sent to the competent authorities.

Chile. In November 1980, a draft decree-law on the revision of the Copyright Law of 1970 was submitted by the Government to the International Bureau for comments.

Colombia. Comments on a draft copyright law were prepared and sent to the Colombian Government by WIPO in January 1980.

Guinea. In July 1980, in Geneva, discussions were held with a government official concerning the drafting of a copyright law and the preparation of a decree establishing a Guinean Copyright Bureau, and the relevant draft texts were provided by WIPO. The text of the decree was prepared by the government

authorities in August 1980. In respect of both the law and the decree, final discussions were held during a WIPO mission to Conakry early in August 1980. The new copyright law was enacted in August 1980 and the draft text of the decree has been finalized.

Guinea-Bissau. A WIPO mission visited Bissau in November 1980 to discuss various substantive and drafting questions with a working group set up by the national authorities to prepare draft legislation on copyright and neighboring rights.

Ivory Coast. During a preliminary mission by a WIPO official to Abidjan in July 1980, preparations were made for later substantive discussions in the field of protection of neighboring rights, in which, in addition to the government authorities and WIPO, the international non-governmental organizations concerned participated.

Rwanda. A draft copyright law, and draft statutes of an authors' organization, were discussed in Geneva in July 1980, with government officials of Rwanda.

Thailand. A government official visited WIPO headquarters in October 1980 to discuss international aspects in the field of copyright and neighboring rights.

Zaire. A draft copyright law, and draft statutes of an authors' organization, were discussed in Geneva in July 1980, with government officials of Zaire.

Zimbabwe. A WIPO official participated in a UN Interagency Meeting convened in Salisbury in May 1980 on assistance to Zimbabwe and held discussions with the national authorities responsible for intellectual property concerning cooperation in strengthening the law and administration in industrial property and copyright. Copies of WIPO model laws in the said fields were transmitted at the request of the said authorities in September 1980.

Countries of the "Grands Lacs." Contacts were made with the Secretariat of the Economic Community of the Countries of the "Grands Lacs" (Burundi, Rwanda, Zaire) at its request in order to discuss harmonization of copyright laws of these countries.

Legal Projects for Developing Countries

Folklore. In January 1980, WIPO and Unesco convened a Working Group to study a draft of model provisions for national legislation on the protection of creations of folklore, and to study also international measures in the field of folklore. The Working Group was attended by experts from 16 countries (Algeria, Argentina, Australia, Bolivia, France, Hungary, Mexico, Nigeria, Philippines, Poland, Senegal, Soviet Union, Switzerland, Thailand, United States of America, Yugoslavia) and by representatives of two intergovernmental and seven international non-governmental organizations as observers.

The documentation available to the Working Group consisted of model provisions for national laws on the protection of creations of folklore and a commentary on these model provisions, prepared by WIPO, as well as a study on the international regulation of intellectual property aspects of folklore protection, prepared by Unesco.

The WIPO Model Provisions were based on the consideration that the integrity of folklore as a living and functional tradition in developing countries is seriously endangered through various forms of its exploitation by means of modern technology. Creations of folklore are not only being commercialized on a worldwide scale without granting the communities which produced them or the country of origin thereof an appropriate share in the returns; creations of folklore are often also distorted in the course of their commercialization in order to better comply with marketing requirements. The Model Provisions took into account existing national approaches, as well as the possibilities of having creators of folklore protected in certain cases by means of protecting their performances, audiovisual fixations or broadcasts. The Model Provisions treated as "creations of folklore" all artistic creations expressing characteristic elements of traditional culture through forms which have been evolved from generation to generation. Any utilization of creations of folklore with gainful intent would be subject to authorization by a competent authority, subject to a special exception in favor of members of an indigenous community as regards exploiting their own folklore. There would be sanctions in cases where creations of folklore were used in a distorting manner, irrespective of whether the use itself were subject to authorization.

In the course of a general discussion, the Working Group agreed that (i) adequate legal protection of folklore was desirable; (ii) such legal protection could be promoted at the national level by model provisions for legislation; (iii) these model provisions should be so elaborated as to be applicable both in countries where no relevant legislation was in force and in countries where existing legislation could be further developed; (iv) the said model provisions should also allow for protection by means of copyright and neighboring rights where such form of protection could apply; and (v) the model provisions for national laws should pave the way for sub-regional, regional and international protection of creations of folklore.

At the conclusion of a detailed discussion of the Model Provisions, the Working Group recommended that a revised version, and a commentary thereon, should be prepared, and should be presented for further consideration at a subsequent meeting to be held in February 1981.

Model Statutes for Authors' Organizations. A Committee of Experts to draft Model Statutes for

Institutions Administering Authors' Rights in Developing Countries was convened by WIPO and Unesco in Paris in June 1980. The participants in the Committee of Experts were senior officials of authors' organizations in Algeria, Argentina, Cameroon, Egypt, India, Mexico, Philippines, Senegal, and Venezuela, invited in their personal capacity. Observers from four international non-governmental organizations also attended.

The Committee of Experts noted that recent developments in the field of authors' rights, and as regards authors' organizations in developing countries for the safeguarding of their rights, made it necessary to revise the Draft Model Statute for Societies of Authors in African Countries adopted at Abidjan in 1969, so as to bring it up to date and to extend its geographical applicability to the whole of the Third World. The Committee found that the existence of a national law on authors' rights is not enough to guarantee effective protection of those rights, and that in the implementation of the law an essential task rests with the authors' organizations. It was emphasized that it was for States to decide on the nature of such organizations, for it was noted that organizations other than civil or commercial societies or copyright offices had also been established, such as cooperative societies, societies of a mixed legal character or others.

The Committee of Experts examined, article by article, the drafts submitted by the Secretariats and prepared the texts of two Model Statutes, entrusting to the Secretariats the writing of accompanying commentaries. The two Model Statutes are intended to govern public institutions and private societies administering authors' rights.

Development in Developing Countries of Easier Access to Works Protected by Copyright Owned by Foreigners

A Working Group on the Formulation of Guiding Principles Covering the Problems Posed by the Practical Implementation of the Licensing Procedures for Translation and Reproduction under the Copyright Conventions was convened by WIPO and Unesco in Geneva in November 1980. The experts invited from 14 countries were those who had earlier studied the overall problems posed for developing countries by access to works protected under copyright conventions. Twelve of the said experts (from Algeria, France, Ghana, Hungary, India, Mexico, Philippines, Senegal, Soviet Union, United Kingdom, United States of America, Zambia) participated in the meeting, which was also attended by representatives of four national and regional copyright information centers and eight international non-governmental organizations as observers.

The Working Group discussed in detail draft guidelines prepared by the Secretariats and suggestions for a number of modifications and additions. The result of the discussions was a text of guidelines intended for publishers, users, and governmental authorities in developing countries, and also for copyright owners in developed countries, to facilitate the implementation of the provisions of the Appendix to the Paris Act of the Berne Convention and the corresponding provisions of the Universal Copyright Convention as revised at Paris in 1971. As noted by the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention at their sessions in October 1979, the deliberations of the Working Group could be taken into account in the context of the activities of the future Joint International Unesco-WIPO Service for Facilitating the Access by Developing Countries to Works Protected by Copyright.

IV. Cooperation with States and the United Nations, Management and Supporting Activities

Missions and Visits to WIPO

During the period covered by this report, the Director General undertook missions to Argentina, Austria, Bulgaria, Cameroon, China, Denmark, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Italy, Japan, Malaysia, Philippines, Singapore and the United States of America.

Missions were undertaken by Deputy Directors General to Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, China, Democratic People's Republic of Korea, Denmark, Finland, France, Germany (Federal Republic of), Guinea, Guinea-Bissau, Ivory Coast, Japan, Netherlands, Nigeria, Portugal, Republic of Korea, Senegal, Soviet Union and Viet Nam.

In addition to the missions referred to above, the same and the following other countries were visited by other officials or by consultants of WIPO: Algeria, Bahamas, Bangladesh, Barbados, Benin, Bolivia, Botswana, Burundi, Cameroon, Canada, Central African Republic, Chile, Colombia, Congo, Costa Rica, Dominican Republic, Ecuador, Ethiopia, Gabon, Gambia, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, India, Iraq, Jamaica, Japan, Jordan, Kenya, Lesotho, Liberia, Luxembourg, Madagascar, Malawi, Mali, Mauritania, Mexico, Monaco, Nepal, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Portugal, Rwanda, Seychelles, Sierra Leone, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Thailand, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, United Kingdom, Upper Volta,

Uruguay, Venezuela, Yugoslavia, Zambia, Zimbabwe.

During the period covered by this report, officials of the following Governments worked with WIPO officials at the International Bureau: Angola, Australia, Brazil, Democratic People's Republic of Korea, Dominican Republic, Hungary, Kenya, Nigeria, Philippines. In most cases, the purpose of their stay at WIPO was to familiarize themselves with the work of WIPO in general or on particular questions; in some cases, the visitors were consultants engaged in the preparation of specific studies for WIPO. The list does not include officials visiting WIPO only in the context of the training programs.

Cooperation

WIPO maintained contacts with the Permanent Missions of the various countries in Geneva and various departments involved in WIPO work in their respective capitals, as well as with the United Nations, the various agencies and programs of the United Nations system and regional intergovernmental organizations.

China. Discussions with high officials of the Government of China on plans for technical cooperation for the implementation of the future patent law of China were held at WIPO headquarters in February and March 1980. In April 1980, a WIPO official and a consultant undertook a fact-finding mission to Beijing and Shanghai, in order to prepare proposals for the future organization of patent documents and related literature for the purposes of search and examination and the dissemination of technological information to the public.

Late in 1979 and early in 1980, training visits were arranged, and partly financed, by WIPO for 14 Chinese officials to the national industrial property offices of Canada and the United States of America, and to the International Bureau.

At the invitation of the State Scientific and Technological Commission of China, WIPO organized at the newly-established Patent Office of China in Beijing, for four weeks in October and November 1980, a "Legal Training Course on Patents." The purpose of the Course was to contribute to the professional training of the staff of the Patent Office and the staff of other agencies and institutions which, by reason of their responsibilities for research, development and industrial production, are potential users of the patent system for the promotion of inventive activity and the facilitation of the international transfer of technology.

The Course was opened by the Director General of WIPO and the Vice Minister of the State Scientific and Technological Commission of China. One hundred fifty Chinese officials participated in the

Course. Thirty-nine half-day lectures were given by the Director General and five other officials of WIPO and by five experts invited by WIPO from the private sector. The texts of the lectures were translated into Chinese and distributed to the participants in advance. Each lecture was followed by questions and answers.

After general introductory lectures on the subjects of industrial property, on the reasons for granting patents for invention and on alternative solutions to certain questions of patent law, the Course dealt with the gestation, life and death of a patent for invention, the exclusive right of the owner of the patent, the technical and economic considerations to be made when deciding whether to apply for a patent for invention, the patent application as such, the role and qualifications of patent agents, examination of patent applications as to substance, invalidation of patents, working and licensing of the invention, compulsory licenses and measures in the public interest, appeals and infringement proceedings, the organization of a patent office, utility models and industrial designs, the international system in the fields of patents for invention, utility models and industrial designs, the role, program and activities of WIPO, the Paris Convention, the Patent Cooperation Treaty, the Budapest Treaty, the Strasbourg Agreement, the Hague Agreement, the Locarno Agreement and the protection of Chinese inventions abroad.

United Nations. The Director General and other officials of WIPO participated in the work of a number of intersecretariat bodies of the United Nations system established for the purpose of facilitating coordination of the policies and activities of the organizations of the system. These bodies included the Administrative Committee on Coordination (ACC), composed of the executive heads of all the organizations and programs of the system under the chairmanship of the Secretary-General of the United Nations, which met in March and April, in July (jointly with the Committee for Programme and Coordination (CPC) of the Economic and Social Council) and in November 1980, its Organizational Committee and Consultative Committees on Substantive Questions (Programme) and (Operations) (CCSQ(Prog) and CCSQ(Ops)) and on Administrative Questions (CCAQ), and other subsidiary bodies of the ACC, working groups and interagency meetings convened to deal with various matters of common interest, including procurement of goods and services, fellowships, indexing of documents, information systems, legal questions, publications, consumer protection, peaceful uses of outer space, protection of the environment, assistance to the Palestinian people, action against apartheid, public information, statistical activities, science and technology, technical cooperation among developing countries and preparations for the new international development strategy, for the United Nations Confer-

ences on New and Renewable Sources of Energy and on the Least Developed Among the Developing Countries and for the special session of the General Assembly in 1980.

WIPO was represented at various meetings of United Nations bodies at which questions of direct interest to WIPO were discussed. These included the eleventh special session of the General Assembly held in New York in September 1980, at which the Director General made an intervention, the thirty-fifth session of the General Assembly, held from September to December 1980, the Preparatory Committee for the New International Development Strategy, the Committee of the Whole of the General Assembly, the first and second sessions of the Intergovernmental Committee on Science and Technology for Development, held in New York in February and in May and June 1980, respectively, the session of the Economic and Social Council held in July 1980 in Geneva, the session of the Preparatory Committee for the United Nations Conference on New and Renewable Sources of Energy and the United Nations Conference on the Law of the Sea, both held in July and August 1980 in Geneva.

WIPO was also represented at meetings of the United Nations Conference on Trade and Development (UNCTAD) on preparations for the Third Development Decade, and on the rationalization of UNCTAD machinery, and on preparations for the United Nations Conference on the Least Developed Among Developing Countries; WIPO was represented at a session of the Trade and Development Board of UNCTAD in Geneva in March 1980, at sessions of the United Nations Conference on the International Code of Conduct on Transfer of Technology, convened by UNCTAD in Geneva in April and May 1980, and at the final session of the United Nations Conference on Restrictive Business Practices, convened by UNCTAD in Geneva in April 1980.

WIPO was represented at the Third General Conference of UNIDO held in New Delhi in January and February 1980 (UNIDO III). One of the documents prepared for UNIDO III by the UNIDO Secretariat contained a proposal for the establishment of an international patent examination center and a request that UNIDO III should designate an agency to initiate steps for this purpose; at the Conference it was agreed that the problems which the proposed international patent examination center was intended to solve could be undertaken within the WIPO framework. WIPO was also represented at the session of the Industrial Development Board of UNIDO held in Vienna in May 1980 at which the implementation of the plan of action adopted by a majority vote at UNIDO III was discussed.

WIPO was represented at the following meetings of the United Nations Development Programme (UNDP): Regional Meeting of African Resident

Representatives in Mbane in January; Special Session of the UNDP Governing Council on the 1982-1986 Programme Cycle in New York in February; inter-agency consultative meetings in February and in December in New York and in March and June in Geneva; High-Level Meeting on Technical Cooperation Among Developing Countries in Geneva in May; Conference of African Governmental Experts on Technical Cooperation Among African Countries in Nairobi, and Interagency Workshop on Assistance to Zimbabwe in Salisbury, both in May; regular session of the Governing Council in Geneva in June 1980; Global Meeting of Resident Representatives in Tunis in July 1980. At the request of the UNDP, WIPO prepared and submitted in April 1980 a sectoral analysis of the industrial property situation in the Asia and Pacific Region.

WIPO was represented at a Consultative Meeting on Science and Technology for Development, convened by the United Nations Economic Commission for Asia and the Pacific in Beijing in August 1980.

WIPO provided information for inclusion in reports prepared by the Secretary-General of the United Nations for the General Assembly, the Economic and Social Council and other organs of the United Nations. Among the subjects of direct concern to WIPO which these reports dealt with were science and technology, consumer protection, assistance to developing island countries, assistance to South African student refugees, cooperation with the Organization of African Unity, assistance to African countries facing special difficulties, assistance to the Palestinian people and activities relating to the use of outer space, to the protection of the environment and to new and renewable sources of energy.

In response to a resolution of the United Nations General Assembly, concerned with preparations for the August/September 1980 special session of the Assembly, WIPO submitted interim and comprehensive reports, in October 1979 and May 1980, respectively, on progress within WIPO towards the establishment of the new international economic order.

Public Information, Publications, Library, Headquarters Building, Meetings

Lectures on WIPO and its activities, in general or related to particular topics, were given by WIPO officials, often in conjunction with visits by organized groups to WIPO's headquarters.

Interviews were given to newspaper and radio correspondents. WIPO officials participated in the weekly press briefings given in the United Nations Office in Geneva. Press statements were issued on such occasions as the first session of the Diplomatic Conference on the Revision of the Paris Convention, at the conclusion of which a press conference was held.

WIPO was represented at the regular meetings in Geneva of the Circle of International Information Officers; its representative was elected Chairman for 1980.

Updated versions of the WIPO General Information brochure were published in English, French and Spanish in June 1980. A leaflet, "WIPO—what it is, what it does," first published in 1979 in English and French, was published in Arabic, German, Russian and Spanish in March and in Portuguese in September 1980. A new catalogue of WIPO publications was published in April 1980. Newsletters were published in January (in Spanish), in June (in Arabic, Russian and Spanish), in August (in Portuguese), in September (in Russian and Spanish) and in December 1980 (in Arabic, English, French, Portuguese, Russian and Spanish).

WIPO publications were exhibited at book fairs held at New Delhi in February and March, at Leipzig in March, at Mexico and Warsaw in May, at Frankfurt in October and at Bangalore in December 1980, and also at the "Fiera Internazionale" in Milan in April and the trade fair "Technology for the People" in Geneva in September 1980.

The WIPO specialized library continued to provide services for visitors and for the staff, on the basis of an increasing collection of books, periodicals and documents relating to intellectual property and international cooperation. In 1980, there were 1,833 visits to the reading room, almost equally divided between outside readers and staff. During the same year, 970 books and 126 periodicals were added to the collec-

tion, bringing the total stocks to 32,647 and 1,027, respectively. In addition, over 17,500 documents of WIPO and other international organizations were received.

WIPO was represented at a session of the Section of Archivists of International Organizations of the International Council on Archives, at a World Symposium on International Documentation organized by the Association of International Libraries (AIL) and the United Nations Institute for Training and Research and at the General Assembly of AIL, in Brussels in June 1980, and at the General Conference of the International Federation of Library Associations and Institutions in Manila in August 1980.

During the period covered by this report, gifts for the new headquarters building were received from Australia, Canada, Czechoslovakia and Japan.

In 1980, WIPO organized and provided services for 58 international meetings, in Geneva or elsewhere. For most of the said meetings simultaneous interpretation was provided in from two to five languages. Approximately 17,800,000 pages of documentation were prepared and reproduced for the said meetings. A list of meetings organized by WIPO in 1980 appears after this note.

Decorations

The King of Spain decorated the Director General with the order of "Gran Cruz del Mérito Civil," and two senior officials with the order of "Encomienda de Número de la Orden del Mérito Civil."

LIST OF WIPO MEETINGS IN 1980

<i>Title of Meeting</i>	<i>Month</i>	<i>Place</i>	<i>Organized Jointly with</i>
Working Group on Intellectual Property Aspects of Folklore Protection	January	Geneva	Unesco
OAPI/CADIB Users Colloquium	January	Yaoundé	OAPI
Working Group on Industrial Property Aspects of Consumer Protection	January	Geneva	
Permanent Committee on Patent Information—Working Group on General Information	January	Geneva	
Permanent Committee on Patent Information—Working Group on Search Information	January/ February	Geneva	
Diplomatic Conference on the Revision of the Paris Convention	February/ March	Geneva	
Permanent Committee on Patent Information—Working Group on Planning	February	Rio de Janeiro	
Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright	March	Geneva	Unesco

<i>Title of Meeting</i>	<i>Month</i>	<i>Place</i>	<i>Organized Jointly with</i>
Nice Union Preparatory Working Group	March	Geneva	
PCT Management and Budget Consultants Group	March	Geneva	
Group of University Professors of Intellectual Property Law	April	Geneva	
Workshop on the Effective Use of the Industrial Property System for the Benefit of Inventors, Industry and Commerce in the Asian and the Pacific Region	April	Manila	Government of the Philippines and UNDP
Symposium on the Role of Patent Information on National Economic Development	April	Buenos Aires	Government of Argentina
WIPO Permanent Committee for Development Cooperation Related to Industrial Property	April/May	Geneva	
International Cooperation in the Classification of Search Files According to the International Patent Classification (CAPRI)	April	Geneva	
Industrial Property Seminar for Newly Independent Countries of Africa	May	Bissau	OAU and ECA
WIPO/Austria Training Course	June/July	Vienna	Austrian Government
Committee of Experts to draft Model Statutes for Institutions Administering Authors' Rights in Developing Countries	June	Paris	Unesco
PCT Assembly	June	Geneva	
Budapest Interim Committee	June	Geneva	
Piracy Program Committee	June	Paris	
Permanent Committee on Patent Information—Working Group on Search Information	June	Geneva	
Specialized Training Course on Copyright and Neighboring Rights	June	Zurich	SUISA
Workshop on Industrial Property Licenses and Technology Transfer Arrangements	June	Kuala Lumpur	Government of Malaysia
International Patent Classification Training Course	July	Mexico	
Specialized Training Course on the Administration of Copyright and Neighboring Rights	August/September	Stockholm	Swedish Government
Permanent Committee on Patent Information—Working Group on Planning	September	Geneva	
General Introductory Course in the Field of Industrial Property	September	Strasbourg	CEIPI
Group of Consultants on the International Protection of Computer Software	September	Geneva	
WIPO Governing Bodies	September	Geneva	
Working Group on Technological Innovation	September/October	Geneva	
General Introductory Training Course on Copyright and Neighboring Rights	September/October	Berlin (W)	German Foundation for International Development
Locarno Union Committee of Experts	October	Geneva	
Training Seminar: "Technical Information as an Aid to Industrial Development: Patent Documents"	October	The Hague	EPO and CEC

<i>Title of Meeting</i>	<i>Month</i>	<i>Place</i>	<i>Organized Jointly with</i>
Industrial Property Seminar for United Arab Emirates	October	Abu Dhabi, Dubai and Al-Ain	
Licensing Seminar	October	Lima	JUNAC
Permanent Committee on Patent Information—Working Group on Patent Information for Developing Countries	October	Geneva	
Industrial Property Course	October	Madrid	Industrial Property Registry
Legal Training Course	October/ November	Beijing	Government of China
Joint Meeting of the Permanent Committee on Patent Information and the PCT Committee for Technical Cooperation	October	Geneva	
National Seminar on Intellectual Property	November	Bridgetown	Government of Barbados
Advanced Seminar on Classifying with IPC	November	Stockholm	
Working Group on the Formulation of Guiding Principles Covering the Problems Posed by the Practical Implementation of the Licensing Procedures for Translation and Reproduction under the Copyright Conventions	November	Geneva	Unesco
Seminar on Patent Information and the International Patent Classification	November	Algiers	INAPI
Hague Union Assembly and Conference of Representatives	November	Geneva	
Permanent Committee on Patent Information—Working Group on Search Information, Subgroup C	November	Vienna	
Nice Union Committee of Experts	November/ December	Geneva	
Information Meetings with International Non-Governmental Organizations	November	Geneva	
Permanent Committee on Patent Information—Working Group on Search Information, Subgroup D	December	Paris	
African Regional Seminars on Copyright and on Neighboring Rights	December	Lomé	Unesco and ILO
Industrial Property Organization for English-Speaking Africa (ESARIPO) Seminar	December	Salisbury	ECA
ESARIPO Council and Committee for Trade Mark and Industrial Design Matters	December	Salisbury	ECA
International Patent Classification Union—Committee of Experts	December	Geneva	
Seminar on Patent and Trademark Licensing	December	Singapore	Science Council of Singapore
International Cooperation in the Classification of Search Files According to the International Patent Classification (CAPRI)	December	Munich	
Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works	December	Paris	Unesco

International Unions

Patent Cooperation Treaty (PCT)

Application to the Territory of Hong Kong

The Director General of the World Intellectual Property Organization (WIPO) was informed by the Government of the United Kingdom of Great Britain and Northern Ireland, by a notification dated January 6, 1981, referring to Article 62(3) of the Patent Cooperation Treaty (PCT) done at Washington on June 19, 1970, that the said Treaty shall be applicable to the Territory of Hong Kong.

The said notification will take effect on April 15, 1981.

PCT Notification No. 34, of January 15, 1981.

Budapest Treaty (Microorganisms)

Ratifications

SPAIN

The Government of Spain deposited, on December 19, 1980, its instrument of ratification of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977.

The said Treaty will enter into force, with respect to Spain, on March 19, 1981.

Budapest Notification No. 13, of January 5, 1981.

SOVIET UNION

The Government of the Soviet Union deposited, on January 22, 1981, its instrument of ratification of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977.

The said Treaty will enter into force, with respect to the Soviet Union, on April 22, 1981.

Budapest Notification No. 14, of January 23, 1981.

WIPO Meetings

WIPO

Permanent Committee on Patent Information (PCPI)

Fourth Session
(Geneva, October 20 to 24, 1980)

NOTE*

The WIPO Permanent Committee on Patent Information (hereinafter referred to as "the Permanent Committee" or the "PCPI") held its fourth session in Geneva from October 20 to 24, 1980,¹ which session was held jointly with the third session of the Committee for Technical Cooperation of the Patent Cooperation Treaty (see separate Note). Twenty-nine member States and one member Organization were represented; five organizations were represented by observers. The list of participants follows this Note.

Membership in PCPI Working Groups

The Permanent Committee took note of the membership of the various Working Groups established by it for 1980, and noted the further declarations of interest made at the session.

Review of Activities of the Permanent Committee in 1980

The Permanent Committee reviewed the activities of its four Working Groups established for 1980 as well as the activities of the International Bureau on the tasks assigned to it in 1980. Further details are given below.

Industrial Property Statistics

The Permanent Committee noted that work to establish the WIPO Industrial Property Statistics Data

Base (INPRODAT) had been finalized and that statistics for the ten years from 1970 to 1979 were included, that the Industrial Property Statistics published annually by WIPO (i.e., Publication "A," containing the most important statistics, which is published as soon as those statistics become available, and Publication "B," which is the comprehensive publication of all industrial property statistics received by WIPO) are now printed by photocomposition, and that, with effect from 1979, statistics on the number of patent documents published by industrial property offices would also be collected. The Permanent Committee agreed that the criteria for the breakdown of statistics according to IPC units should be studied with a view to producing a more detailed breakdown.

Annual Technical Reports

The Permanent Committee noted the 28 Annual Technical Reports received from industrial property offices and the summary thereof which had been prepared by the International Bureau.

WIPO Standard ST.3 (Code for Identifying Countries and Other Entities for which Codes are Provided in ISO Standard 3166)

The Permanent Committee agreed that WIPO Standard ST.3 should be updated by including two-letter codes for newly independent countries and also for those entities which issue patent documents and for which codes are provided in ISO Standard 3166.

WIPO Standard ST.9 (INID Code)

The Permanent Committee agreed on various amendments to WIPO Standard ST.9, and more particularly in respect of INID Categories (20) and (80). It was also agreed that a further study of INID Category (60) should be undertaken with a view to its possible revision.

IPC-Associated Publications

The Permanent Committee agreed that a list of the IPC-associated publications of WIPO should be published and that a new publication, "Guidelines for the

* This Note has been prepared by the International Bureau.

¹ For a Note on the third session of the Permanent Committee, see *Industrial Property*, 1980, p. 111.

Organization of Search Files Based on the IPC," should be prepared.

Revision of the IPC

It was agreed to forward to the Committee of Experts of the IPC Union recommended amendments to the IPC concerning more than 30 areas of the IPC.

The Permanent Committee agreed on the IPC revision program for 1981, which would contain more than 60 revision proposals carried over from its program for 1980, together with over 60 new revision proposals already submitted to it and on which work should commence.

WIPO State-of-the-Art Search Program

The Permanent Committee discussed the results so far achieved under WIPO's State-of-the-Art Search Program. The Program provides free of charge to developing countries detailed search reports furnished by industrial property offices in response to search requests received by WIPO from developing countries. It was agreed that the International Bureau should continue to identify further possible contributors to the Program in order to ensure that, in the future, sufficient capacity would be available to meet the steadily increasing number of search requests received.

Finally, the Permanent Committee requested the International Bureau of WIPO to initiate a study on the technological, economic and legal impact of the search reports.

Identification of Users of Patent Information and Their Needs

The Permanent Committee agreed upon a list of possibilities which exist to identify users and potential users of patent information and their needs, and decided that those possibilities should be investigated in more detail when further information from the ongoing surveys being conducted by the Australian and Brazilian industrial property offices and by the African Intellectual Property Organization became available.

Users' Guides to the IPC

The Permanent Committee agreed that the four guides so far established in the industrial sectors "Fertilizers," "Iron and Steel," "Agricultural Machinery and Implements," and "Agro-Industries"

should be further improved by adopting a more straightforward language style and by including statistics on patent activity in those industrial sectors.

The Permanent Committee requested the International Bureau to identify other technical categories of interest to developing countries and to explore the ways and means whereby such additional users' guides in those technical categories could be established.

Consistency in the Application of the IPC

The Permanent Committee agreed that further studies on consistency in the application of the IPC should be undertaken and that they should be based on published unexamined patent applications forming part of the PCT Minimum Documentation and on either the first IPC symbol, or on all IPC symbols, given to such published unexamined patent applications. The results of those further studies should then be related to the patent documents forming part of the PCT Minimum Documentation issued by those countries which publish only granted patents.

World Directory of Sources of Patent Information

The Permanent Committee established a work program for the preparation of a World Directory of Sources of Patent Information, which should be based, in an initial phase, on information to be collected from industrial property offices, and, in a subsequent phase, to include information concerning sources of patent information other than those made available by industrial property offices.

WIPO Handbook on Patent Information and Documentation

The Permanent Committee agreed that work on the publication of the WIPO Handbook on Patent Information and Documentation (which is to replace the former ICIREPAT Manual) should go ahead. It was agreed that the Handbook would include, in addition to the material contained in the former ICIREPAT Manual, also sections concerning the application and revision of the IPC and details of the PCT Minimum Documentation.

Long-Term Program of the PCPI

The Permanent Committee agreed on a first outline of its long-term program. It was also agreed that the further elaboration of the PCPI long-term program should clearly set forth the goals of the program,

provide clear priorities so that, among others, the needs of developing countries were met, and relate the tasks given under the program to those goals and to technical developments taking place outside industrial property offices.

Working Procedures of the PCPI and its Working Groups

The Permanent Committee approved the Working Procedures of the PCPI and the Working Groups. Those Working Procedures are the result of experience gained during the first years of existence of the PCPI and are now considered sufficiently well established to require no substantial amendment during at least the current IPC revision period, which will end in 1984.

PCPI Program for 1981

The Permanent Committee adopted its program for 1981 and decided to continue the existing Working Groups in order to implement that program. Those Working Groups, and the main tasks given to each of them, are set out below:

Working Group on Planning:

- (a) Tasks in connection with PCT Minimum Documentation questions.
- (b) Elaborating further the PCPI long-term program.
- (c) Studying consistency in the application of the IPC.
- (d) Preparing recommendations for the development of hybrid systems in the IPC.
- (e) Reviewing the first compilations made for the World Directory of Sources of Patent Information.
- (f) Studying further ways of identifying users of patent information and their needs.
- (g) Completing the preparation of IPC-associated publications, i.e. the Advice to Classifiers, the Advice to Searchers, and Guidelines for the Organization of Search Files Based on the IPC.
- (h) Recommending how and what statistical data should be provided for evaluating IPC revision projects.
- (i) Studying and recommending a schedule of sessions of PCPI bodies in future years.

Working Group on General Information:

- (a) Revising WIPO Standards as necessary, e.g. Standard ST.7/A and Standard ST.9.

- (b) Finalizing a new standard to replace Standard SI.8.
- (c) Preparing a standard or guidelines for abstracts which are published separately from patent documents and for bulletins containing such abstracts.
- (d) Formulating final recommendations for the improvement of the Industrial Property Statistics.

Working Group on Search Information:

- (a) Continuing and finalizing work on IPC revision projects carried over from the priority revision programs of previous years, and commencing, and if possible completing, new IPC revision projects on the 1981 priority revision program.
- (b) Continuing the development of a handbook to provide detailed guidelines for IPC revision projects.
- (c) Evaluating the effectiveness of the pilot project relating to a common computerized listing of patent documents falling within IPC class C 12.

Working Group on Patent Information for Developing Countries:

- (a) Continuing the study of the effectiveness, including the capacity, of the current WIPO State-of-the-Art Search Program.
- (b) Identifying types of users of patent information in developing countries and their needs.
- (c) Producing and evaluating users' guides to the IPC.
- (d) Evaluating and improving curricula of patent information training courses.
- (e) Assessing the need to establish an IPC manual especially for the purposes of developing countries.
- (f) Studying means leading to the identification of key patents.

Further, the Permanent Committee gave to the International Bureau of WIPO certain other tasks which include: reporting on WIPO's activities in connection with the periodical *World Patent Information*, work on the WIPO Handbook on Patent Information and Documentation, various tasks related to PCT Minimum Documentation questions, and the monitoring of and reporting on INPADOC activities.

Periodical "World Patent Information"

The Permanent Committee noted with interest the progress report given by the Editor-in-Chief of the

periodical *World Patent Information*. The Permanent Committee supported many of the suggestions made by the Editor-in-Chief as means of securing a wider readership of the periodical.

LIST OF PARTICIPANTS*

I. Member States

Algeria: M. Mati. **Australia:** F.J. Smith. **Austria:** J. Fichte. **Brazil:** G.R. Coaracy. **Bulgaria:** I. Kotzev; E. Golémanov. **Czechoslovakia:** M. Kopča; M. Fořtová; M. Hruškovič. **Denmark:** A. Morsing; S.T. Simonsen. **Egypt:** A.A. Omar. **Finland:** E. Häkli. **France:** G.J. Vianès; M. Verderosa; J. Fouchy; A. de Pastors. **German Democratic Republic:** H. Konrad. **Germany (Federal Republic of):** A. Wittmann. **Ireland:** P. Slavin. **Italy:** S. Samperi. **Japan:** S. Kobayashi; S. Uemura. **Kenya:** J.N. King'Arui. **Malawi:** M.H. Chirambo. **Netherlands:** J.C.H. Perizonius. **Norway:** P.E. Lillejordet. **Poland:** Z. Sobczyk; W. Lastowski. **Portugal:** J. Mota Maia; R. Serrão. **Romania:** T. Melescanu. **Soviet Union:** O.V. Kedrovski; Y.I. Plotnikov. **Spain:** E. Gutierrez. **Sweden:** L.G. Björklund; J.-E. Bodin. **Switzerland:** J.-L. Comte; E. Caussignac. **United Kingdom:** V.S. Dodd; K.E. Butterworth. **United States of America:** A.C. Marmor; T.F. Lomont. **Zambia:** M.C.J. Kunkuta.

II. Member Organization

European Patent Office (EPO): A. Vandecasteele; R.J.F. Baré; H. de Vries.

III. Observer Organizations

United Nations (UN): S.P. Padolecchia. **United Nations Industrial Development Organization (UNIDO):** S.P. Padolecchia. **Commission of the European Communities (CEC):** H. Kronz; H. Bank. **International Patent Documentation Center (INPADOC):** G. Quarda. **Patent Documentation Group (PDG):** D. Ligtenberg.

IV. Officers

Chairman: G.J. Vianès (France). **Vice-Chairmen:** A.A. Omar (Egypt); M. Kopča (Czechoslovakia). **Secretary:** P. Claus (WIPO).

V. WIPO

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International Patent Cooperation (PCT) Union

Committee for Technical Cooperation

Third Session
(Geneva, October 20 to 24, 1980)

NOTE*

The Committee for Technical Cooperation of the Patent Cooperation Treaty (hereinafter referred to as "the PCT/CTC") held its third session in Geneva from October 20 to 24, 1980.¹ In accordance with Article 4 of the Organizational Rules of the WIPO Permanent Committee on Patent Information (PCPI) and pursuant to Article 56 of the Patent Cooperation Treaty, the PCT/CTC held its third session jointly with the fourth session of the PCPI. Seventeen member States and one member Organization of the Patent Cooperation Treaty were represented, three States were represented in their capacity of Special Observer to the Patent Cooperation Treaty, and nine States were represented by observers; five organizations were represented by observers. The list of participants follows this Note.

PCT Minimum Documentation — Patents

The PCT/CTC considered and approved the work so far undertaken to update the inventory of patent documents falling within the definition of the PCT Minimum Documentation given in PCT Rule 34, and agreed that the inventory for the period 1920 to 1979, inclusive, should be finalized by the inclusion of the documents issued by Australia, Austria, Canada, Japan, the Soviet Union and the African Intellectual Property Organization.

The PCT/CTC decided that a machine-readable inventory of the sorted collections of patent documents according to PCT Rule 34.1(c)(vi) should be prepared on the basis of the lists of patent documents already made available by the industrial property offices of Australia, Austria and Canada to the PCT International Searching Authorities.

The PCT/CTC also decided that the question should be studied of which Japanese patent documents should be regarded as falling within PCT Rule 34.1(e) from 1970 to date, based on generally available English-language abstracts of those documents from any source.

* This Note has been prepared by the International Bureau.

¹ For a Note on the second session of the PCT/CTC, see *Industrial Property*, 1980, p. 111.

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

PCT Minimum Documentation — Non-Patent Literature

The PCT/CTC agreed upon a number of criteria to be followed when considering whether or not a periodical should appear in the list of periodicals established under PCT Rule 34.1(b)(iii). The PCT/CTC agreed that, in the light of those criteria, the present list of periodicals may now need some revision and invited its members to submit suggestions in this respect. The PCT/CTC recommended to the PCT Assembly that the two French-language periodicals *L'Onde électrique* and *Bulletin de la Société Chimique de France* be included in the list of PCT Minimum Documentation periodicals.

The PCT/CTC agreed that a project should be initiated for a trial period of one year whereby PCT members would cooperate in the selection, exchange and dissemination of bibliographic information extracted from articles appearing in the PCT Minimum Documentation periodicals. So far, nine industrial property offices have agreed to provide details of such selected articles and the PCT/CTC noted that the publication of the bibliographic data of those selected articles would be in the form of a list (paper or magnetic tape) arranged according to the PCT Identification Number of the periodical in question, and that an index according to the IPC symbols allotted to each selected article would also be included in that publication.

LIST OF PARTICIPANTS*

I. Member States

Australia: F.J. Smith. **Austria:** J. Fichte. **Brazil:** G.R. Coaracy. **Denmark:** A. Morsing; S.T. Simonsen. **Finland:** E. Häkli. **France:** G.J. Vianès; M. Verderosa; J. Fouchy; A. de Pastors. **Germany (Federal Republic of):** A. Wiltmann. **Japan:** S. Kobayashi; S. Uemura. **Malaŵi:** M.H. Chirambo. **Netherlands:** J.C.H. Perizonius. **Norway:** P.E. Lillejordet. **Romania:** T. Melescanu. **Soviet Union:** O.V. Kedrovski; Y.I. Plotnikov. **Sweden:** L.G. Björklund; J.-E. Bodin. **Switzerland:** J.-L. Comte; E. Caussignac. **United Kingdom:** V.S. Dodd; K.E. Butterworth. **United States of America:** A.C. Marmor; T.F. Lomont.

II. Member Organization

European Patent Office (EPO): A. Vandecasteele; R.J.F. Baré; H. de Vries.

III. Special Observers

Egypt: A.A. Omar. **Ireland:** P. Slavin. **Spain:** E. Gutierrez.

IV. Observer States

Algeria: M. Mati. **Bulgaria:** I. Kotzev; E. Golémanov. **Czechoslovakia:** M. Kopča; M. Fořtová; M. Hruškovič. **German Democratic Republic:** H. Konrad. **Italy:** S. Samperi. **Kenya:** J.N. King'Arui. **Poland:** Z. Sobczyk; W. Lastowski. **Portugal:** J. Mola Maia; R. Serrão. **Zambia:** M.C.J. Kunkuta.

V. Observer Organizations

United Nations (UN): S.P. Padolecchia. **United Nations Industrial Development Organization (UNIDO):** S.P. Padolecchia. **Commission of the European Communities (CEC):** H. Kronz; H. Bank. **International Patent Documentation Center (INPADOC):** G. Guarda. **Patent Documentation Group (PDG):** D. Ligtenberg.

VI. Officers

Chairman: G.J. Vianès (France). **Vice-Chairmen:** A.A. Omar (Egypt); M. Kopča (Czechoslovakia). **Secretary:** P. Claus (WIPO).

VII. WIPO

F.A. Sviridov (*Deputy Director General*); P. Claus (*Director, Classifications and Patent Information Division*); B. Hansson (*Head, IPC Section, Classifications and Patent Information Division*); P.A. Higham (*Senior Patent Information Officer, Classifications and Patent Information Division*); R. Blumstengel (*Head, General Patent Information Section, Classifications and Patent Information Division*).

Nice Union

Committee of Experts for the International Classification of Goods and Services for the Purposes of the Registration of Marks

Thirteenth Session
(Geneva, November 24 to December 5, 1980)

NOTE*

The Committee of Experts set up under Article 3 of the Nice Agreement for the Purposes of the Registration of Marks met in Geneva from November 24 to December 5, 1980.

The following countries members of the Nice Union were represented: Belgium, Denmark, France, Germany (Federal Republic of), Lebanon, Netherlands, Norway, Portugal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America (14). Japan, Libya and Zaire were represented by observers. The list of participants follows this Note.

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

* This Note has been prepared by the International Bureau.

The purpose of the session of the Committee of Experts was the adoption of a new text of the Alphabetical List of Goods and Services, in English and French, prepared according to proposals made by a working group, called the Temporary Working Group, established by the Committee of Experts at its June 1974 session.

The original mandate of the Temporary Working Group was to carry out a review of the Alphabetical List in the French language, which at the time the said Group was established was the only language in which an authentic text was to be established. The Temporary Working Group had to make the review without changing the existing list of classes.

The Temporary Working Group was composed of seven countries members of the Nice Union and one intergovernmental organization, namely, Austria, France, Germany (Federal Republic of), Netherlands, Spain, United Kingdom, United States of America and the Benelux Trademark Office.

In view of the fact that the Nice Agreement was revised in the interim and now provides that the Alphabetical List must also be established in an authentic version in the English language, the International Bureau prepared a draft of that version. The United Kingdom Patent Office and the United States Patent and Trademark Office gave their assistance to the International Bureau in this work.

After a thorough study of the proposals submitted by the Temporary Working Group and subject to a certain number of changes, the Committee of Experts adopted the revised English and French texts of the Alphabetical List of Goods and Services of the International (Nice) Classification.

The Committee of Experts further decided to identify in the Alphabetical List certain goods and services with an asterisk to indicate that their classification in a given class did not rule out the use of the same—be it qualified—term in other classes and to include at the beginning of the Alphabetical List a note explaining the meaning of the said asterisk.

In the course of the session, the Observer Delegation of Japan made a general statement expressing the interest of Japan in the International (Nice) Classification and informing the Committee of Experts of the studies being made at present on its possible introduction in Japan. In view of the fact that Japan might wish to propose, for insertion in the Alphabetical List of Goods and Services, terms designating various goods or services typical of that country, the Committee, in accordance with the provisions of Rule 4 of its Rules of Procedure, invited Japan to submit such proposals for further discussion, first in the Preparatory Working Group, and eventually in the Committee itself. (The Preparatory Working Group is a working group established on a permanent basis by the Committee of Experts with the mandate to prepare the decisions of the Committee of Experts itself on proposals concern-

ing the creation of new classes and concerning the transfer of goods and services from one class to another (as distinguished from the changes in the text of the Alphabetical List of Goods and Services, prepared by the Temporary Working Group).)

The Committee decided that the new text of the Alphabetical List of Goods and Services, as adopted at the present session, should enter into force on February 1, 1981.

LIST OF PARTICIPANTS*

I. Member States

Belgium: C.G. Tas. **Denmark:** I. Sander; M. Gjerlev. **France:** R.L. Leblanc; M.C. Bartoli. **Germany (Federal Republic of):** G. Jehle. **Lebanon:** T. Badawi; I. Sultan. **Netherlands:** S. de Hoop. **Norway:** A. Kaarhus; A. Guldhav. **Portugal:** R. Serrão. **Soviet Union:** S. Gorlenko; I. Korzoun; V. Poliakov. **Spain:** E. Rua Benito; M. Espiñeira García. **Sweden:** G. Deijenberg. **Switzerland:** F. Balles; J. Weber. **United Kingdom:** E. Haverty. **United States of America:** R.G. Bowie.

II. Observers

Japan: S. Uemura; K. Kudo. **Libya:** S. Rabi; M.M. Milad. **Zaire:** N. Moyila.

III. Intergovernmental Organization

Benelux Trademark Office: S. de Hoop.

IV. Non-Governmental Organizations

International Chamber of Commerce (ICC): A. de Sampaio. **Union of European Practitioners in Industrial Property (UEPIP):** G.E. Kirker.

V. Officers

Chairman: R.G. Bowie (United States of America). *Vice-Chairmen:* S. Gorlenko (Soviet Union); G. Deijenberg (Sweden). *Secretary:* C. Werkman (WIPO).

VI. WIPO

P. Claus (*Director, Classifications and Patent Information Division*); C. Werkman (*Head, Trademark and Industrial Designs Classifications Section, Classifications and Patent Information Division*).

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

International Patent Classification (IPC) Union

Committee of Experts

Eighth Session
(Geneva, December 8 to 12, 1980)

NOTE*

The Committee of Experts of the International Patent Classification (IPC) Union held its eighth session¹ in Geneva from December 8 to 12, 1980. The following member States of the Committee of Experts were represented: Brazil, Denmark, Finland, France, Germany (Federal Republic of), Japan, Netherlands, Norway, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America. The European Patent Office (EPO) was also represented. The list of participants follows this Note.

The Committee of Experts unanimously elected Mr. V.S. Dodd (United Kingdom) Chairman and Mr. J. Fouchy (France) and Mr. M.A. Makarov (Soviet Union) Vice-Chairmen.

The Committee of Experts:

approved amendments relating to five classes and 29 subclasses of the IPC submitted to it by the WIPO Permanent Committee on Patent Information (PCPI);

endorsed the recommendation of the PCPI relating to the contents of the part of the Handbook for the Revision of Search Systems relating to the IPC revision work;

endorsed the conclusions of the PCPI relating to the IPC;

noted the report on the IPC activities of the PCPI and its Working Groups in 1980;

noted and approved the part of the PCPI program for 1981 which relates to the IPC, in particular the IPC revision program;

changed the information relating to four of the IPC training examples approved by it at its sixth session;

decided to make available to patent offices, under certain conditions, copies of the magnetic tapes containing the full text of the English and French versions of the third edition of the IPC;

noted the recommendation and conclusions that were made by the Advanced IPC Seminar held in Stockholm from November 10 to 14, 1980, laid down some organizational guidelines for future advanced

IPC seminars and decided to ask the PCPI Working Group on Planning to select, at its next session, a subject for the advanced IPC seminar to be organized in 1981.

LIST OF PARTICIPANTS*

I. Member States

Brazil: S.M. Fernandes Serpa; A.R. Holanda Cavaleanti. **Denmark:** S.T. Simonsen. **Finland:** H.I. Lommi. **France:** J. Fouchy. **Germany (Federal Republic of):** A. Wittmann; K. Vilbig. **Japan:** T. Takeda; K. Ishimaru; S. Uemura. **Netherlands:** S. de Vries. **Norway:** P.E. Lillejordet. **Soviet Union:** M.A. Makarov. **Spain:** J.D. Vila Robert. **Sweden:** J. von Döbeln. **Switzerland:** E. Causignac. **United Kingdom:** V.S. Dodd. **United States of America:** A.C. Marmor; T.F. Lomont.

II. International Organization

European Patent Office (EPO): A. Vandecasteele; F.C.R. de Laet.

III. Officers

Chairman: V.S. Dodd (United Kingdom). *Vice-Chairmen:* J. Fouchy (France); M.A. Makarov (Soviet Union). *Secretary:* B. Hansson (WIPO).

IV. WIPO

F.A. Sviridov (*Deputy Director General*); P. Claus (*Director, Classifications and Patent Information Division*); B. Hansson (*Head, IPC Section, Classifications and Patent Information Division*); A. Sagarminaga (*Senior Patent Classification Officer, IPC Section*); A. Nakamura (*Patent Classification Officer, IPC Section*).

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

WIPO

Legal Training Course on Patents

(Beijing, October 20 to November 14, 1980)

NOTE*

At the invitation of the State Scientific and Technological Commission of China, WIPO organized at the newly-established Patent Office of China in Beijing, for four weeks in October and November

* This Note has been prepared by the International Bureau.

¹ For the Note on the seventh session, see *Industrial Property*, 1980, p. 114.

* This Note has been prepared by the International Bureau.

1980, a "Legal Training Course on Patents." The purpose of the Course was to contribute to the professional training of the staff of the Patent Office and the staff of other agencies and institutions which, by reason of their responsibilities for research, development and industrial production, are potential users of the patent system for the promotion of inventive activity and the facilitation of the international transfer of technology.

The Course was opened by Dr. Arpad Bogsch, Director General of WIPO, and Mr. Wu Heng, Vice Minister in charge of the State Scientific and Technological Commission of China.

One hundred fifty Chinese officials participated in the Course. Thirty-nine lectures were given by the Director General and five other officials of WIPO and by five experts invited by WIPO from the private sector. The texts of the lectures were translated into Chinese and distributed to the participants in advance. Each lecture was followed by questions and answers.

An attempt was made to provide a broad spectrum of legal training covering all legal aspects of activity in the patent field. The Course was intended to interest all those whose professional work involves them in dealing with patents, whether as a drafter of patent applications or a person processing them for grant.

With these broad objectives in mind, the Course started in the first week with general introductory lectures on the subjects of industrial property, on the reasons for granting patents for invention and on alternative solutions to certain questions of patent law. It then dealt with the gestation, life and death of a patent for invention and the exclusive right of the owner of the patent for invention.

The second week commenced with a review of the technical and economic considerations to be made

when deciding whether one should apply for a patent for invention. Then a series of lectures dealt with the patent application as such, its elements, how it must be drafted and the examination of the formalities of the application. The role and qualifications of patent agents were the subject of further lectures.

During the third week, the lectures concentrated on examination of patent applications as to substance and invalidation of patents, working and licensing of the invention, compulsory licenses and measures in the public interest, appeals and infringement proceedings and the organization of a patent office. Further lectures dealt with utility models and industrial designs.

The fourth week was devoted to the international system in the fields of patents for invention, utility model and industrial design. The role, program and activities of WIPO were the subject of one lecture. Several lectures each dealt with the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty, others with the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, the Strasbourg Agreement Concerning the International Patent Classification, the Hague Agreement Concerning the International Deposit of Industrial Designs and the Locarno Agreement Establishing an International Classification for Industrial Designs. The final lecture had as its subject the protection of Chinese inventions abroad.

The lecturers, in addition to the Director General of WIPO, were Messrs. K. Pfanner, L. Baeumer, G. Ledakis, F. Curchod and L. Kadirgamar from the International Bureau and Messrs. H. Bardehle (Munich), A. de Elzaburu (Madrid), M. Johnston (Ottawa), H. Sonn (Vienna) and D. Vincent (London) from the private sector.

General Studies

The Work of the Benelux Court of Justice in the Application of the Uniform Trademark Law

A. BRAUN*

Introduction

The end of 1980 is also the end of the first decade of the application of the Uniform Benelux Trademark Law. It is opportune to mark this occasion by taking a look at the progress made towards the integration of trademark law in the Benelux countries, specifically in the light of the interpretation of that law by the Benelux Court of Justice.

As we know, the Benelux Convention Concerning Trademarks and the Uniform Benelux Trademark Law, which entered into force on January 1, 1971, brought about the highest possible degree of unification of the law of sovereign States.¹

What was achieved went beyond mere unification through the adoption of minimum rules laid down in an international convention, given force of law in each State ratifying it (as in the case of the equal treatment of nationals of Union countries recognized by the Paris Convention). Indeed, the result also went a step further than the following stage, namely that of achieving unification on the basis of a uniform law (such as those on bank checks or bills of exchange), subject, however, to all the uncertainties of divergent interpretation. What was chosen in this case was total integration by means of a single law, albeit improperly called uniform: it is more than uniform, because it is common to three States which, in that respect, henceforth constitute a single country within the meaning of Article *9quater* of the Madrid Agreement, as revised at Nice.

A single Law governing a single trademark on a single territory: such is the legal system introduced by the Benelux Convention. Its implementation entailed the creation of a common administration, the Benelux Trademark Office, while its interpretation is subject to the common jurisdiction of the Benelux Court of Justice.

It goes without saying that the Benelux Court of Justice was not established by the Brussels Treaty of March 31, 1965, solely for the interpretation of the Trademark Law. Its area of competence is broader, extending to the interpretation of all legal provisions common to the three States.² It is noteworthy, however, that of the first 12 cases referred to the Court between 1975 and 1980 ten concerned trademarks; the prevalence of trademark cases is thus to such an extent that the Benelux Court of Justice is liable to take on the appearance of a higher trademark court.

Interpretations of the Law are given either by way of advice in reply to a Government request or by way of rulings in reply to interlocutory questions referred to it by Benelux tribunals, according to a procedure comparable to that written into Article 177 of the Rome Treaty, which is now well known to all practitioners.

One important difference between the Luxembourg and Benelux Courts of Justice should be mentioned, however. Whereas the former is composed of independent, supranational judges, the latter comprises nine judges who are members of the national supreme courts, and three advocates general who are members of the bar registered with the same courts.³ As the explanatory memorandum puts it:

"The characteristic feature of the structure of the various Benelux institutions lies in the fact that it is designed to bring about close collaboration at a high level between the various services and national institutions.... This same conception is applied at the judicial level in that the Benelux Court is composed of members of the three supreme jurisdictional bodies.... Finally, the task of the Court will be closely linked to that of the supreme courts of the three countries, and it will itself be a sort of collective "offshoot" of the three."

This comment is significant when the issue in question consists of interpreting a provision of trademark law that—and this is often the case—is not the result of an innovation by the authors of the Uniform Law, but originates in Belgian or Dutch practice: it is important that the interpretation to be given to a common concept taken from a national source be clarified by the national tradition concerned and that

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¹ In this connection see Braun, "Protection of Acquired Rights of Foreigners under the Benelux Trademark Law," *Industrial Property*, 1971, p. 210. For the texts of the Convention and the Uniform Law, see *Industrial Property*, 1969, pp. 305 and 307.

² On the subject of this jurisdiction, see F. Dumon, *La Cour de justice Benelux*, Brussels, Bruylant, 1980, 460 p.; see also A. De Caluwé, "Chronique de la Cour de justice Benelux," *Cahiers de droit européen*, Brussels, Larcier, 1980, pp. 240 to 296.

³ For more details, see Dumon, *op. cit.*, p. 43.

integration of the law be gradually achieved by a sort of reciprocal osmosis.

I. Acquisition of the Right

A. Distinctive Character of the Sign

An example of unification is provided by the outcome of the Court of Justice's deliberations on the ability of a single color, of a particular shade of color, or of a combination of colors, to serve as a mark.

It is not the purpose of this study to go even briefly into the matter of the appropriation of a color as a mark, as the debates to which it has given rise in a number of countries are well known. It is merely the intention to illustrate how, working on different attitudes in Belgium and the Netherlands, and without there being any express provision in the Uniform Law, the Court of Justice devised a common rule for the broader protection of signs capable of serving as marks.

The traditional Dutch concept prior to the Benelux Law is perfectly expressed by Wichers-Hoeth:

"The sign has to be capable of being affixed to the product, whether actually on it or on its packaging.... In this respect, therefore, a mark may not be constituted by the shape or color or any other characteristic feature of the product, of part of the product or of its packaging."⁴

As P. Eeckman points out, this restrictive Dutch concept, which moreover is found in the laws of a number of industrialized countries, conflicted with the Belgian concept, which has always shown a preference for a very broad approach to the matter, staying close to French theory and case law in this respect.⁵ This last statement should be qualified, however, because, while there is indeed a French school of thought that could be described as representing the majority, namely that of Pouillet, Mathély and Yves Saint-Gal,⁶ there is also a more reserved school that started with Roubier, followed by Chavanne.⁷ In Belgium, too, there were advocates of the restrictive view, for instance Van Bunnan, who subscribed to the Dutch tradition.⁸

⁴ Drucker and Bodenhausen, *Kort begrip van het recht betreffende de industriële en intellectuele eigendom* (4th edition), with the cooperation of Wichers-Hoeth, Zwolle, 1966, p. 70.

⁵ P. Eeckman, "Couleurs, combinaisons de couleurs et teintes en tant que marques," *Bulletin BMM* (Bulletin of the Benelux Association of Trademark and Design Attorneys), March 1978, p. 50.

⁶ See, in particular, Yves Saint-Gal, who takes stock of the question in the light of the old and the new French Laws, note under *trib. adm.* Paris, February 10, 1977, shade of the Kodak yellow, *Revue internationale de la propriété industrielle et artistique (RIPIA)*, 1977, 12.

⁷ Chavanne and Burst, *Droit de la propriété industrielle* (2nd edition), Paris, Précis Dalloz, 1980, p. 372.

⁸ Louis Van Bunnan, "Six ans d'expérience de la loi uniforme sur les marques," *J.T.*, 1977, 282.

Was the Uniform Benelux Law, whose Article 1 had given a broad definition of the term mark, going to reconcile these concepts by the sole fact of its entry into force? This is not what happened, as we see from the hesitations of Dutch case law,⁹ reflected in two decisions by which interlocutory questions were submitted to the Benelux Court of Justice.

Before dealing with this, the wording of Article 1 should be recalled:

"The following shall be considered individual marks: designations, designs, prints, seals, letters, numbers, shapes of goods or their get-up, and any other symbols which serve to distinguish the goods of an enterprise.

"However, shapes determined by the very nature of the goods or which affect their actual value or produce industrial results cannot be considered marks."

As has been pointed out, this Article does not provide an explicit reply to the question whether a color or combination of colors may in itself be regarded as a mark in terms of Article 1.¹⁰

The explanatory memorandum, which is common to the three Governments and which specifies that it has itself to be one of the sources in the interpretation of the Uniform Law,¹¹ does not enlighten us further, apart from stating as follows:

"Article 1 gives a broader definition of trademarks than is at present accepted by the national law and case law of Benelux countries. It contains a detailed but by no means limitative list of signs that can constitute marks. These signs have to correspond to a common criterion, namely that of serving to distinguish the goods of a particular enterprise.... In this respect the courts will be given extensive powers of discretion, and they will have to take the circumstances of each case into account. It is unmistakably clear from the list given that the shape of goods or the shape of their packaging can be made the subject of protection as a mark."¹²

This at the outset tipped the balance in favor of the South, which recognized shape marks, whereas the North did not recognize them as being eligible for protection by the Trademark Law. So it was not by chance, but rather under the influence of Nordic traditions, that the questions submitted to the Benelux Court of Justice came from the Dutch courts.

In the first case, *Centrafarm/Beecham* (A 76/1), the mark, in respect of which Beecham made a Benelux filing on December 30, 1971, consisted of a cylindrical capsule with hemispherical ends, one half red and the other half black, on the understanding that the dividing line between the red and the black was across the width of the capsule.

⁹ See, in particular, Arnhem, May 23, 1973, *BIE*, 1973, 170, which refused protection to the pale blue Camping Gaz bottles; this ruling was endorsed by Van Nieuwenhoven-Helbach, *BIE, ibid.*, and by Louis Van Bunnan, *J.T.*, 1977, 282.

¹⁰ Conclusions of Advocate General Berger in case No. A 76/1, *Centrafarm/Beecham*, Benelux Court of Justice, *Recueil de la jurisprudence 1975-1979 (Recueil)*, p. 39.

¹¹ Explanatory memorandum, introduction.

¹² Explanatory memorandum, ad Article 1.

The District Court of Rotterdam, which submitted the question by a decision of March 22, 1976, did not rule on whether the Beecham capsule was an integral part of the product, which was ampicillin, or whether it was only part of the packaging, with the result being that the question related to both the product and its packaging.

In the second case, *S.A. Application des gaz et Sieben v. Machinefabriek Leefering BV* (A 76/2), the mark identifying camping-gas products consisted of a particular shade of blue (pale blue).

According to Advocate General Dumon, the interpretation of the Law must obviously be based on its text, the aim pursued by it, its spirit and also the place it occupies in the substantive law, and finally on the general principles of law that are common to the Benelux States. However, this senior magistrate, after having quoted Professor Charles De Visscher: "the text of a treaty does not exist in a vacuum, it is conceived and comprehended only within the framework of the international legal order and in relation to the subject matter concerned by it,"¹³ wisely added that "national courts, and also the Benelux Court of Justice, must and can base themselves for the interpretation of a provision on national doctrine or on the doctrine of foreign countries, often too on the substantive law of foreign countries (comparative law) and, finally, on *reality*, in other words particularly on the application that is or can be made in reality of rules of law, provided of course that such application is compatible with the legal provision that has to be interpreted according to the methods mentioned a moment ago."¹⁴

This advice to look at reality subject to respect for the purpose and spirit of the Law was heeded by the Benelux Court of Justice.

The first question had to do with the ability of a color to serve as a mark. The reply was given in rulings of February 9, 1977,¹⁵ and March 9, 1977,¹⁶ to the effect that, in principle, a color or combination of colors or a particular shade of color could—under certain circumstances—constitute in itself a mark in terms of Article 1.

It is noteworthy that, as is the rule in interpretative decisions, the Court replied in the abstract. In the abstract, therefore, it did not reject any combination of colors or shade of color, or even the color in itself, often called "flat" color. It did, however, take the precaution of adding that this ability of colors to be

adopted as marks is dependent on circumstances. In saying this, the Court echoed the explanatory memorandum, according to which "the courts will be given extensive powers of discretion and will have to take the circumstances of each case into account."¹⁷

This amounts then to referring the question back to the court ruling on the substance of the matter at issue, namely the distinctive character of the sign adopted.

However, in order that the reply given by the authority responsible for interpreting the Law might be useful to those who have to apply it, the Benelux Court of Justice did make a point of circumscribing the problem more accurately by specifying the criteria according to which it should be possible to judge the distinctiveness of a sign.

This brings us to the reply to the second question. The criterion to be considered when ascertaining whether or not a sign possesses distinctive character is whether, in the light of all the circumstances of the case, the sign actually identifies the origin of the product.

With this broad concept provided by the Benelux Law, there is no longer any need to concern oneself with whether or not the sign has original character. Falling into line with recent legal doctrine,¹⁸ which moreover has been followed by Belgian case law, the Court ruled that that was indeed the function of the mark: to identify the source of the product.

The Benelux Court then saw fit to specify certain things that might guide the national courts in the appraisal of actual cases. For instance, it pointed out one thing which in fact is obvious, namely that the distinctiveness of a combination of colors comes out all the less readily when the use of the combination is usual in everyday life and when the range of goods which it is intended to characterize is wide, although that possibility is nevertheless not actually ruled out; a single color is less likely to lend itself to an identifying function, although, once again, such a possibility cannot be entirely excluded at the outset.

There too the Court largely falls into line, as was mentioned, with what is accepted by Belgian and French case law¹⁹ and, by another route, namely the "*Ausstattung*" theory in German case law.²⁰

The Court also said that the assessment of protection in specific cases may differ depending on whether the color or shade is used to distinguish a specific group of goods or to cover a wide range of all the products of an enterprise.

¹³ Charles De Visscher, *Problèmes d'interprétation judiciaire en droit international public*, Paris, 1963, p. 37.

¹⁴ Conclusions of Advocate General Dumon in case No. A 72/2, *Recueil*, p. 68.

¹⁵ *Recueil*, p. 27; *J.T.*, 1978, 96, and comment by Bernard Van Reepinghen.

¹⁶ *Recueil*, p. 48; *RIPJA*, 1978, 37, and comment by Yves Saini-Gal.

¹⁷ Explanatory memorandum, ad Article 1.

¹⁸ Paul Mathély, "*Le nouveau régime des marques*," *Annales*, 1965, 14.

¹⁹ Eeckman, *op. cit.*, p. 63.

²⁰ As Advocate General Berger pointed out in his conclusions, *loc. cit.*, *Recueil*, p. 44.

The Benelux Court went still further, however, in the recognition of the distinctive character of the sign. The Court was requested by Dutch judges to examine whether a mark characterized by a color (or shade, or combination) with no distinctive character on registration could acquire such distinctive character through use or, more precisely still, through consecration by use ("*inburgering*"—literally "naturalization" or "civil integration").

The part played by long-standing use, in countries with preliminary examination, as a validating factor in relation to a mark that is insufficiently distinctive at the outset is well known. Suffice it here to mention Section 4(3) of the German Law or the "secondary meaning" doctrine in Anglo-American law.²¹ French case law has also just established this principle decisively²² in the system introduced by its new Law. Dutch practice, which recognized the preliminary examination system, although very strangely the procedure had no effect on the acquisition of the right through use, also gave effect to the duration of use of a weak mark.²³

Rule 7 of the Draft Regulations on the Community Mark provides in its fourth paragraph that trademarks devoid of distinctive character and therefore excluded from registration escape that penalty "if the mark has acquired distinctive character as a result of the use made of it."²⁴

The question was a different one, and indeed did not even arise in countries in which the right derived from use, namely under the systems of the old Belgian or French laws.

The characteristic feature of the Benelux system is that the right derives from registration but that registration is granted without examination. Could one then accept a situation in which a sign devoid of distinctive character on registration could subsequently, following intensive and prolonged use, such use giving it legitimacy, be redeemed of its congenital defect and acquire the status of a mark?

The reply of the Benelux Court was affirmative. To reach that decision, it did not base itself as much on Dutch doctrine, in which opinions were divided,²⁵ as on the actual text of the Benelux Law, which incorporates in national law, for the benefit of national marks, the provisions of the Paris Convention, and more specifically those contained in Article 6*quinquies* B.2 (with its complementary provision, Article

6*quinquies* C, which owing to an error of coordination was not reinserted after the Lisbon Conference in what was then the draft of the Law, but which is unquestionably implicit in it, as the Court rightly decided).²⁶

Thus it is that the Court is bringing about the unification of Benelux Law over the broadest possible area, on the one hand by extending a very generous welcome to signs capable of serving as marks, and on the other hand by retrieving those that originally would have been devoid of distinctive character by way of the principle of consecration by use.

We should also mention here the "*Kinder*" case, which is currently before the Benelux Court by virtue of a decision of the Brussels Commercial Court of February 18, 1980.

This time the question came from the South. The "*Kinder*" mark belongs to Ferrero, a well-known firm incorporated under Italian law, and for 15 years it has identified a range of chocolate products and other confections intended especially—but not exclusively, and this is important—for children. A German manufacturer began to import a chocolate called "*Kinder Sport*" into Belgium, which resulted in his being taken to court in Brussels.

It should be mentioned that the "*Kinder*" mark had been refused in Germany and also in the Netherlands, under the earlier legislation, as being devoid of distinctive character.

Given the liberalism of the new Benelux Law, this reason for refusal was hardly relevant, and for that reason the Benelux Court was presented with the following two interlocutory questions:

(i) When the word-form evokes the category of consumers for which the product identified by it is more especially but not exclusively intended, is it capable in itself, in other words, when not accompanied by other elements but as a mark in its own right, of constituting a designation or sign in terms of the first paragraph of Article 1 of the Uniform Benelux Trademark Law?

(ii) Is the reply to the above question different if the word-form corresponds to a declined form of the noun which, with the addition of other verbal elements, serves to identify the category of consumers evoked by the word-form in two of the languages used in the Benelux countries?

The discussion clearly centers on the difference of status between the descriptive mark and the evocative mark. The former is defined by Article 6*quinquies* B.2 of the Paris Convention: "when they... consist exclusively of signs or indications which may serve, in trade, to designate...."

²¹ Ladas, *Patents, Trademarks and Related Rights*, vol. II, Cambridge (Mass.), Harvard University Press, 1975, p. 995.

²² *Cass. fr.*, May 7, 1980, in *Verrerie de Biot, Annales*, 1980, 164, and note by Paul Malhély.

²³ *Hoge Raad der Nederlanden*, April 14, 1959, "*Véritable*" trademark, *N.J.*, 1955, No. 944.

²⁴ Working document No. 11, July 1978.

²⁵ Against: Van Nieuwenhoven-Helbach, *Nederlandse handels-en faillissementsrecht* (6th edition), Part II, 1974, p. 123, No. 366; for: Wichers-Hoeth, *op. cit.*, p. 104.

²⁶ The ruling of the French *Cour de cassation* on May 7, 1980, also relied on Article 6*quinquies* C(1) of the Paris Convention, regarded as a generally applicable provision for the assessment of the validity of any mark (*Ann.*, 1980, 164).

On the other hand, a trademark is called evocative when it evokes or merely suggests to the public one or more of the essential characteristics of the product concerned. In principle, such a mark is valid in the Benelux countries, where the drafters of the Uniform Law clearly did not endorse the private draft law produced by the national groups of IAPIP, which provided expressly for the exclusion of the descriptive sign and departed from the extremely liberal system applied in France²⁷ and in Belgium²⁸ (but to a lesser extent in the Netherlands²⁹) to approach the system of prohibition on principle that exists in the Federal Republic of Germany.

Advocate General Dumon, in his conclusions of October 15, 1980, expressed an opinion that was favorable to the acceptance of marks such as "Kind" or "Kinder" when those word-forms did not serve exclusively to identify the purpose of the product, even though they might "evoke" that purpose. This opinion was confirmed by the Benelux Court on January 19, 1981 (unpublished decision).

B. Filing in Bad Faith

As we know, the Benelux Law has substituted filing for use as the factor determining acquisition of rights. However, fearing that registrations would be made in bad faith, the first authors did not mean to subscribe unreservedly to the absolute principle of the filing conferring the right. They presented a hybrid system under which the effects of filing were tempered by the requirement of "good faith" on the part of the applicant.³⁰ When the draft came to be discussed before the Benelux Interparliamentary Advisory Council, the rapporteur reported Dutch objections—valid in the opinion of this author—to an inconsistent system that depended on whether the filing was considered in relation to an earlier filing or to earlier use.³¹ The experts from the Governments recognized these objections and proposed an amendment which was adopted by the Interparliamentary Council, according to which the requirement of good faith was removed from the definition, in Article 3, of

the circumstances giving rise to the right to the mark.³² It was retained, however, in order to prevent fraudulent machinations, as a condition affecting the validity of a filing in relation to a known prior use of an individual mark. This is the rule that now appears in paragraph 6 of Article 4.

Paragraph 6 of Article 4 does not give a formal definition of bad faith. The explanatory memorandum makes it clear that an assessment of bad faith on the part of the applicant has to be made in each specific case and in the light of all the circumstances.

The Benelux Court has been consulted on two occasions on the meaning to be attributed to the concept of filing in bad faith.

In the first of these, called "*La vache bleue*" case, the Court was invited to interpret, in particular, Article 30 of the Benelux Law. This provision, as will be remembered, provides that the confirmatory application is regarded as having been made in bad faith if the applicant claims a right acquired in inexcusable ignorance of the non-existence of his right.

The firm Prével S.A. had filed a word and device mark in France, "*La vache bleue*," which showed a cow in a pastoral setting, in blue on a white background. The firm had also been using this mark in Belgium when another firm, Dejaiffe S.A., subsequently filed a mark in Belgium, "*La vache bleue*," which was unmistakably inspired by the earlier mark. The latter firm had made a confirmatory Benelux filing claiming rights acquired by virtue of its earlier Belgian filing, whereas Prével S.A. had neglected to maintain its rights in the mark, albeit legitimately acquired, and finally filed its mark only in 1975.

Dejaiffe S.A. brought an action against Prével S.A. before the Brussels Commercial Court, seeking invalidation of the 1975 filing, whereas Prével claimed prior use of a similar mark, contending that the confirmatory filing of Dejaiffe S.A. had been effected in bad faith.

The Brussels Commercial Court submitted the following question, in particular, to the Benelux Court: Should a confirmatory filing be regarded as having been made in bad faith within the meaning of the end of the first paragraph of Article 30 of the Uniform Benelux Trademark Law when an owner claims rights acquired by virtue of a Belgian filing, properly made with respect to form but liable to be invalidated for reasons of bad faith under Article 16(2) of the Belgian Law of April 1, 1879, such bad faith being the result of knowledge of the prior use of a similar mark by a third party?

There was thus the possibility of accusing Dejaiffe S.A. of bad faith on two counts, the first having to be assessed in relation to the former Belgian Law of 1879 and the second in relation to Article 30 of the Benelux

²⁷ In France, see Paris, October 8, 1979, "*Femme*" trademark for ladies' clothing accessories, *RIPIA*, 1979, 387; Cass., June 19, 1979, "*Soldécor*" trademark. *Ann.* 1980, 204.

²⁸ *Calor v. Belgo Calor*, for heating appliances, *Comm. Brux.*, June 29, 1966, *Jur. Comm. Brux.*, 1966, 203; *Calor v. Agacalor*, *Comm. Brux.*, November 25, 1975, *Ingénieur Conseil*, 1974, 96.

²⁹ Under the provisions of the Benelux Law, *Clima v. Ormaklima*, for temperature measuring equipment, *trib. arr. Amsterdam*, March 12, 1975, *BIE*, 1976, 212, "*Zij*," "*Hij*" and "*She*" for clothing, *The Hague*, June 28, 1973, *BIE*, 1974, 162, but under the old Dutch Law, refusal of "*Kleinprijs*," *Hoge Raad*, June 21, 1935, *N.J.*, 1936, 3.

³⁰ Explanatory memorandum of the draft submitted by the Benelux national groups of IAPIP, *BIE*, 1954, No. 1, 10.

³¹ *Cons. interp. cons. Benelux, Document 15-2* (March 31, 1960), p. 9.

³² *Cons. interp. cons. Benelux, Document 15-3* (November 21, 1960), p. 9.

Law. It is not the intention here to go into the details of the relatively numerous problems raised by this case. Briefly, and keeping concretely to the facts, the Court ruled, in its decision of February 9, 1978,³³ that it had to be accepted that the applicant was bound to know that no right existed under the first paragraph, *in fine*, of Article 30 of the Benelux Law if, at the time of filing, he had not been able, owing to circumstances that the judge had to determine and assess, to acquire reasonable assurance of the validity of his right. Thus the Court rightly left it to the national judge's discretion to decide whether or not, in the light of all the circumstances of the case, the filing had been made in bad faith. It thus fell into line with the opinion of Advocate General Dumon, for whom good faith or bad faith under Article 30 had to do with facts or circumstances from which a prior right might or might not be derived, but not the actual existence of that right.

Another case that had to do with dairy products and cows ("Cow" and "Cowbrand" marks) was referred to the Benelux Court by the Amsterdam Court of Appeal on June 29, 1978, and resulted in a Benelux Court ruling on May 25, 1979.³⁴

This case, which at the outset was by no means simple, was further complicated by the parties. Briefly, the facts of the case were as follows: the owner of the mark had allowed his rights to lapse through expiry of the registration. He filed the mark again and immediately assigned it to a third party. During the intervening period, however, another third party had been using the mark and had subsequently filed it.

Thus the questions submitted to the Court amounted to the following: Did the original owner of the mark acquire, through its reinstatement filing, rights that were binding on the third party? Moreover, what is the position of the assignee of the mark vis-à-vis the third party?

Confining the discussion to essentials—for that is the purpose of this study—what is there to be learned from the Court's ruling?

The first thing it does is confirm that the Benelux Law is indeed designed to allow the owner of a mark to recover the right that he would have lost, for instance through negligence, by not renewing the registration. How else can one explain that a third party cannot acquire any right in a sign resembling another whose trademark registration has expired less than three years previously (Article 4, paragraph 3, of the Benelux Law)?

Another question then arose: Could not a reinstatement filing be an act of bad faith when, for instance, the owner of the mark does not intend, as in the case

under consideration—and that was not disputed—to use his mark personally?

The Court replied in the negative, pointing out, in particular, that good faith had been removed from the conditions of validity of the filing. It added that a system that gave the first filing the effect of conferring the right to the mark nevertheless required a corrective in favor of those who had previously made use of the mark, normally and in good faith, for similar products and against those who made a filing in bad faith.

As was mentioned, then, the Court abided by the "technical" notion of the application filed in bad faith as laid down limitatively in the Law.

For the rest, it rightly allowed the national judge extensive powers to assess the facts of the case.

It has been rightly pointed out that this ruling of the Court sanctions the economic value of the mark and the validity of its assignment without assignment of the business establishment. Thus the mark ceases to be solely an ingredient of goodwill and acquires a value of its own.³⁵

II. Exercise of the Right

A. Protection of the Distinguishing Function of the Mark

Article 13A.1 of the Benelux Law allows the owner of the mark to oppose any use of a sign identical or similar to that which constitutes the mark for identical or similar goods.

Although in fact the Benelux Court of Justice has not yet made an express ruling on the interpretation of this provision, one can nevertheless dwell on it for a moment, as it is symptomatic of the influence of the North, this time, on the process of unification of trademark law in the Benelux countries.

The question that should be asked is the following: In determining the existence of infringement or imitation, should one have regard solely to the resemblance between the signs, as the text indicates and Dutch tradition advocates, or should one have recourse to the additional condition of the existence of the possibility of confusion between the goods?

In order to reply to this question it is indeed necessary to make a distinction between two situations, depending on whether identical or only similar signs are involved. In the first case, reproduction constitutes "infringement," and in the second "imitation," to use French legal terminology which, within these limits, could, it would seem, be retained in Benelux law.

³³ *Recueil*, p. 83; *J.T.*, 1978, 379 and note by Bernard Van Reepinghen.

³⁴ *Recueil*, p. 160; *J.T.*, 1980, p. 244, and note by Bernard Van Reepinghen.

³⁵ Aimé de Caluwé, *op. cit.*, *Cahier du droit européen*, 1980, 263.

France, the country which for nearly 150 years was the source of Belgian legislation, has always distinguished infringement of a mark from imitation.³⁶ The advantage of the French system, which is not recognized in Germany, is that it affords better protection to the rights in the mark. For instance, additions made to the mark do not remove the infringement if they do not cause the mark to lose its individuality and distinctiveness.³⁷

Belgium recognized a similar distinction, by virtue of the Law of 22 Germinal Year XI until, on March 18, 1823, the Court of Liège ruled that the legal definition was not limitative, and that it was sufficient, to determine the existence of infringement, for the second mark, without actually being identical to the first, to show similarities in relation to it such as might cause confusion and thereby mislead the public.³⁸ This broad interpretation was upheld by the Supreme Court on January 13, 1842.³⁹

Since then, especially under the old Belgian Law of April 1, 1879, the word infringement indifferently covered the two acts of identical reproduction and imitation of the mark.⁴⁰

In the Netherlands, on the other hand, after the reform of November 21, 1956, the Law no longer required, in its Sections 4bis(3) and 10(1)(a), that the existence of a risk of confusion between the marks be considered when the signs involved corresponded exactly or in their essential features.⁴¹

This is why the statement contained in the explanatory memorandum in connection with Article 13A.1, according to which that Article establishes "the protection that present legislation accords to the owner of the mark," should be qualified to some extent. If the text means to refer to the protection that each law gave to the mark in its role as an indication of source, the statement is correct, but if it means that the conditions of protection were the same in the three countries, it clearly represents an inaccurate generalization.⁴² As has already been written, Article 13A.1 does not require the use of the incriminated mark to create confusion as to the origin of the goods or be liable to prejudice the owner of the mark. It is necessary but sufficient for two conditions to be met:

use of an identical or similar sign; use for identical or similar goods.⁴³

Benelux law thus falls into line with the French concept, which is gratifying, as it affords greater legal security.

Infringement. When the signs are identical there is infringement, regardless of additions or words in apposition or opposition.

Given Dutch traditions, it is not surprising that this rule has been clearly confirmed by Dutch courts. Mention should be made here of the extremely clear ruling of the *Hoge Raad* of June 24, 1977, on the subject of the "Monopoly" and "Anti-Monopoly" marks.⁴⁴ The High Court even refused to submit an interlocutory question to the Benelux Court of Justice, as there was no doubt in its opinion as to the interpretation to be given to Article 13A.1. This could not have been clearer.

Belgian case law, on the other hand, understandably had some difficulty in disengaging itself from its tradition, but there is reason to believe that it is now on the right track.

The decision of the Brussels Commercial Court of November 25, 1974, should be mentioned in which the "Agacalor" mark was condemned as being an infringement of "Calor," the court having decided, by reference to French doctrine as expressed by Roubier, that "the addition of the name of the infringer is not sufficient to remove the offense of infringement."⁴⁵

The Brussels Commercial Court then used that decision and French case law in support of its ruling, on February 3, 1977, that "Shopping Promenade" infringed "Shopping," the two marks having been used as titles of newspapers; the court added that no account should be taken, when assessing infringement, of elements foreign to the mark, such as the popularity or presentation of the product, since making the exercise of the right of the owner subject to the condition of a risk of confusion would be tantamount to adding to the Law a requirement that it did not actually state.⁴⁶

Another application of this rule was made in connection with the "Monopoly" and "Anti-Monopoly" marks for games.⁴⁷

³⁶ See again Cass., March 13, 1979, in the *Afer du Rond-Point* case, *Ann.*, 1980, 233, and the note by Paul Mathély.

³⁷ Mathély, *ibid.*, p. 235.

³⁸ *Pas.*, 1823, p. 367.

³⁹ *Pas.*, 1842, I, 47.

⁴⁰ Alexandre Braun, *Nouveau traité des marques de fabrique et de commerce*, 1880, No. 158.

⁴¹ Wichers-Hoeth, *Etude comparative de quelques aspects de l'usage de la marque*, Leiden, 1963, pp. 147 and 148; Van Nieuwenhoven-Helbach, *op. cit.*, No. 471.

⁴² M. Delière-Séquaris, "La protection de la marque selon l'article 13A de la Loi Benelux," *Ingénieur-Conseil*, 1979, p. 187.

⁴³ Antoine Braun, *Précis des marques de produits*, Brussels, Larcier, 1971, No. 229; on the same lines: Schricker and Francq, *La répression de la concurrence déloyale dans les Etats membres de la CEE*, vol. II, 1, Belgium-Luxembourg, Paris, 1974, No. 300a; Van Nieuwenhoven-Helbach, *op. cit.*, No. 473; Wichers-Hoeth, "De beschermingsomvang van het Gemeenschapsmerk," *BIE*, 1978, 35; on opposite lines: M. Delière-Séquaris, *op. cit.*, p. 191; her position does not seem to be convincing, however, as it departs from the actual text of the Benelux Law.

⁴⁴ *Ingénieur-Conseil*, 1977, 294.

⁴⁵ *Ingénieur-Conseil*, 1975, 96.

⁴⁶ *Ingénieur-Conseil*, 1977, 319.

⁴⁷ *Prés. comm. Brux. (référé)*, January 9, 1976, *Ingénieur-Conseil*, 1976, 131.

Imitation. When the case at issue involves signs that are not actually identical but just similar, the question of assessing the signs involved arises.

According to what criteria? Should one in such cases investigate whether or not there is a risk of confusion as to the origin of the goods? As was seen above this criterion was not relevant to the application of Article 13A.1 of the Benelux Law. No account should therefore be taken of inessential elements of the mark, or of the way in which it is presented or used; all that has to be ascertained is whether the marks are sufficiently close for there to be a risk of confusion between them.⁴⁸ This would appear to be the rule, even though its application has not yet been fully accepted by all Belgian courts.

B. Protection of the Advertising Function of the Mark

As one knows, Article 13A.2 of the Benelux Law provides for this principle, which is new to trademark law.

While paragraph 1 recognizes the owner's classical right to protect the distinguishing function of the mark by opposing any use that might be made of it for identical or similar goods, paragraph A.2 of Article 13 provides as follows:

"A. Without prejudice to the possible application of ordinary civil law in matters of civil liability, the proprietor of a mark may, by virtue of his exclusive right, oppose:

"2. any other use, in economic intercourse, of the mark or of a like symbol made without a valid reason under circumstances likely to be prejudicial to the proprietor of the mark."

The "*Claeryn*" case, owing to the contradictory nature of the judicial debate, caused progress to be made in the study of this provision. A number of accounts have been written on the circumstances of the case;⁴⁹ it is thus necessary only to summarize them briefly.

Lucas Bols, a firm incorporated under Dutch law, was the owner of the "*Claeryn*" mark in the Netherlands for young Hollands gin. It had acquired the right to the mark by first use in 1952 and had retained it under the provisions of the Benelux Law. Thanks to intensive advertising as well as to the intrinsic qualities of the product, Hollands gin bearing the "*Claeryn*" trademark enjoyed an excellent reputation.

The Colgate firm proposed to place a cleaning

agent, specifically a liquid soap, on the market under the mark "*Klarein*."

Lucas Bols considered that this mark was liable to prejudice the "*Claeryn*" mark, so it brought an action against Colgate before the President of the District Court of Amsterdam, who, on March 13, 1973, prohibited the use of the "*Klarein*" word-form. This decision was upheld by a decision of the Amsterdam Court of Appeal on July 19, 1973, which, however, restricted the prohibition to detergents. On further appeal, the *Hoge Raad* submitted four interlocutory questions to the Benelux Court of Justice on June 14, 1974, concerning the interpretation of Article 13A.2.

In a decision dated March 1, 1975,⁵⁰ the Benelux Court of Justice gave four replies that are worth dwelling on for a moment.

First the Court ruled that the Uniform Law did not require, under its Article 13A.2, that the distinctiveness of a mark be prejudiced for the owner of that mark to have cause to oppose the use of a similar mark for different goods.

By deciding thus, the Court confirmed that the specialization rule was obsolete. As Advocate General Berger pointed out in his conclusions to this effect, such a development can be seen as evidence of the adaptation of the law to the evolution of the economic functions of the mark, which in this way are afforded legal protection within the framework of trademark law itself.⁵¹

Colgate had maintained that the above development could not go any further than had already been recognized by Dutch case law in relation to the status of the well-known mark. Listening to them, one might have thought that the Benelux lawmakers had never intended to go further. The Court did not accept this argument, however, replying again that such use should not be allowed to "cause a risk of confusion in the mind of the public concerning the origin of the goods."

It did not give a better reception to the other line of defense, which sought to limit protection to the case in which "undue advantage" was taken "of the popularity of the mark whose protection is invoked."

It is not difficult to see that this argument was used as a means of limiting the application of Article 13A.2 to the familiar case of the violation of a well-known mark by "dilution."⁵² Without questioning that in this

⁵⁰ *Recueil*, p. 1; *Ingénieur-Conseil*, 1975, p. 73; *IIC*, 1976, 420.

⁵¹ *Recueil*, p. 17, which among others quotes Van Nieuwenhoven-Helbach, *op. cit.*, No. 456, Van Bunnem, "Aspects actuels du droit des marques dans le Marché commun," 1967, p. 7, and a speech delivered by Bodenhausen on June 4, 1956, before the United States Trademark Association, *BIE*, 1956, p. 69.

⁵² On this subject, see Guglielmelli and Perot-Morel, "L'influence de la notoriété sur le droit à la marque," *Colloque de l'Université de Grenoble sur le droit comparé des marques dans les pays de la CEE*, 1975, pp. 116 to 131.

⁴⁸ On these lines, H.R., December 15, 1972, "*Spanplank/ Spanoplan*," *BIE*, 1973, 62; *prés. trib. Haarlem*, June 11, 1976, "*S + W I M et S*," *BIE*, 1977, 258; *comm. Alost*, February 19, 1980, "*Passina/Passiona*" for non-alcoholic drinks, unpublished; "*Dolviran/Doliprane*" for pharmaceutical products, *Comm. Brux.*, November 20, 1980, unpublished.

⁴⁹ See, in particular, H. Cohen Jehoram, "Protection of Trademarks Against Use for Dissimilar Goods: the Benelux Law—An Example for Europe?," *Industrial Property*, 1978, p. 219 (221).

case, too, there could be violation of the rights in a mark, the Benelux Court did not want to restrict application of the rule to that situation alone.

In reply to the third question, moreover, it said that the degree of popularity of the first mark was of no consequence.

This means that all marks can, in principle, enjoy such extended protection. This does not mean of course that the popular mark will in fact be in a more favorable position: the Court made a point of stating that "the distinction referred to can nevertheless be of some importance in determining whether, in a specific case, it is really plausible that "any other use" of the mark, as stated in Article 13A.2, could in fact cause prejudice to the owner of the mark consisting of a violation of the "potential of the mark for generating purchases," in view of the fact that the existence of that potential normally depends on the degree of popularity enjoyed by the mark."

Relying on the actual text of the Law, which moreover is supported by the explanatory memorandum, the Court stated clearly that it was necessary but sufficient that there be a use of the second mark (a) without valid grounds, (b) in economic intercourse and (c) under circumstances liable to prejudice the owner of the mark.

It was clearly the idea of prejudice that was at the center of the problem submitted to the Court. It stated that such prejudice could consist solely or even partly in a lessening of the appeal of the mark. In the case before it, it was clear that the mark identifying the gin was affected in its potential for generating purchases by the appearance on the market of a mark identifying a liquid detergent. The association was obvious. The same would be true, as was mentioned at the preparatory stage, in respect of a mark identifying a sandwich spread and another identifying a floor polish.

On the last question, concerning the "legitimate reasons" that would justify the use of the second mark under conditions liable to prejudice the owner of the first mark, the Court said that it was not possible to reply in the abstract. It was for the judge ruling on the merits to allow or not to allow exceptions.

According to the decision, the fact of the second mark being particularly suitable for the identification of the product was not a legitimate reason.

According to Advocate General Berger, "there cannot be legitimate reasons within the meaning of Article 13A.2 until participation in economic intercourse—which in itself would be justified—is ruled out unless use is made of a similar mark or sign owned by a third party."⁵³

Bound by the interpretation given by the Benelux Court of Justice, the *Hoge Raad* handed down a

decision on June 27, 1975, rejecting the appeal filed by Colgate.⁵⁴

While the "Claeryn" decision seems worthy of approval, it is necessary that it be properly understood.

One thing that is clear is that, by broadening the area of protection of the mark, the Benelux Law did not intend to reduce the specialization principle to nothing. The dividing line is represented by the existence of prejudice. Unless prejudice, be it even potential, can be found to exist, the owner of the first mark has to tolerate the use of the same sign for non-similar goods.

The "Claeryn" decision was not well received by everyone. Certain writers⁵⁵ criticized it; however, their criticisms would have been better made of the Law itself than of its interpreters. In a very thorough and well-documented study, Madame Deliège-Séquaris, Assistant at the Law Faculty of the University of Liège, qualified her criticism more, but, while it was positive on a number of points, it still does not meet with the approval of this author in that she tips the balance of interest to the advantage of the consumer and the disadvantage of the rights of the owner of the mark.⁵⁶ Admittedly, the advertising function of the mark is of interest to the consumer, but that does not mean that it should be at his disposal. The mark adopted by a producer or distributor is at the exclusive disposal of its owner except where there is a necessity for a third party to use it; this, in the opinion of this author, represents the scope of Article 13A.2 of the Uniform Law in a system of free markets and free movement of goods.

One of the conditions governing the application of Article 13A.2 has not yet been interpreted by the Benelux Court of Justice, because it did not present any problem in the "Claeryn" case, namely "use in economic intercourse," but case law, especially in the Netherlands, has been concerned with it several times.

In this respect, the author is in full agreement with the analysis made by Madame Deliège-Séquaris, an extract from which is reproduced here:

"One can indeed discern two main categories of uses of the mark that are not authorized by its owner.

"The first covers all cases in which a mark is used by a third party to identify or characterize his own economic activity in relation to the public, in other words as a means of establishing himself on the market. That third party appropriates a mark already filed by another person and uses it for his own goods or services (whether similar or different), either as a trademark, trade name or business style, or to describe the nature or purpose

⁵⁴ *BIE*, 1975, t92.

⁵⁵ R. Krasser, "Zum Umfang des Markenschutzes nach dem Benelux-Warenzeichengesetz," *Gewerblicher Rechtsschutz und Urheberrecht (Internationaler Teil) (GRUR Int.)*, 1975, p. 390; Cohen Jehoram, *op. cit.*, *Industrial Property*, 1978, p. 224.

⁵⁶ M. Deliège-Séquaris, "La protection de la marque selon l'article 13A de la Loi Benelux," *Ingénieur-Conseil*, 1979, pp. 215 and 216.

⁵³ *Ingénieur-Conseil*, 1975, 94.

of his goods or services, or again in order to compare them or, under certain circumstances, associate them with the goods of the owner.

"The second category includes cases in which another person's mark is quoted or reproduced by third parties in connection with cultural information or activities, understood in the broad sense. Marks often feature in the press, for instance (newspapers, broadcasting, television), in magazines, dictionaries or encyclopedias, in literary, theatrical, cinematographic or three-dimensional works and in medical or legal publications.

"The condition of use in economic intercourse means that application of Article 13A.2 has to be restricted, in our opinion, to the uses of the mark that fall into the first of the above categories. Uses in the second category therefore escape the prerogatives that the Uniform Law grants to the owner of a mark."⁵⁷

It is thus rightly that comparative advertising involving the mark of another has been condemned by Netherlands case law on the basis of the Benelux Law, although comparative advertising in the Netherlands does not in fact suffer the same weight of prohibition as bears down on it in Belgian statute law, case law and custom.⁵⁸

As for the second category, case law has been less consistent, which reflects the persisting uncertainty of the application of the rule to such cases.

Three examples illustrate this uncertainty. The weekly, *Vrij Nederland*, had published an article on a fictitious explosion at the ethylene factory owned by Shell at Pémis. Both the word and the device marks of Shell had been reproduced in the article, to which the company took exception. The President of the Court of Amsterdam rightly rejected Shell's action based on Article 13A.2.⁵⁹

The same rejection occurred in a case involving the magazine *Playboy*, which had published a provocative photograph of a girl wearing a tee-shirt bearing the mark "M & M's," belonging to the Mars Company. The President of the Brussels Commercial Court, in a summary proceeding, held that there was not use in economic intercourse within the meaning of the Benelux Law, which seems perfectly acceptable to the author, but it seems somewhat presumptuous to base that finding on the assimilation of *Playboy* magazine, for the interpretation of Article 13A.2, to scientific works and dictionaries.⁶⁰

On the other hand, the Amsterdam Court of Appeal applied Article 13A.2 against a film producer, Alicia, who, in a decidedly risqué sequence, showed a

"Coca-Cola" bottle being put to an improper use.⁶¹ In this case, the author shares the opinion of a number of commentators who consider that it was unnecessary to rely on the Benelux Law, as the common law would have been entirely sufficient.⁶²

* * *

As this study is already very long, for which apologies are due to those readers who have followed it thus far, continuing further would be counterproductive. Before ending, however, it would seem worthwhile to take the liberty of adding that the legal unification in the field of substantive law has also had an effect on procedural law, and especially adjective law.

Institutions that have to apply one and the same law tend to draw close to each other and also to unify their sanctions, even though, in fact, sanctions have remained within national jurisdiction.

One example of this is that the summary procedure favored by practitioners in the Netherlands has moved from North to South and is now accepted for marks by Belgian courts.

Another example is that the Dutch courts, which did not recognize the forced intervention procedure, can now accept it for marks by way of the provision written into Article 37C of the Benelux Law: "the court before which the principal claim... is pending shall take cognizance of requests that the plaintiff put up security, requests for intervention and incidental claims..." apart from which the third party proceeded against may demand the invalidation of the rights asserted in the hearing.⁶³

A final example is that, in the field of sanctions, the constraint procedure that has always been applied in the Netherlands was extended to Belgium and Luxembourg by a uniform law signed on November 26, 1973, which entered into force on March 1, 1980.

As it represents the origins of the movement towards the unification of trademark law within the EEC, the Benelux Law has been presented as an example for Europe, to quote a title which, in the form of a question, headed an article published some years ago in this review.⁶⁴ Since then there have rightly been some departures from the model, and definite progress has been made. What is important to remember, however, in connection with this experiment in the integration of legal traditions that are sometimes similar but sometimes also very different, is that such an amalgam can be a source of great mutual enrichment.

⁵⁷ *Loc. cit.*, p. 204.

⁵⁸ *Elsevier v. Oosthoek Encyclopédie (Prés. trib. Utrecht, September 10, 1976, BIE, 1977, 139)*; *Mantano, Gladstone and Belinda v. Roxy*, whose owner compared his cigarette with the first three marks mentioned (*Prés. trib. The Hague, November 25, 1976, Ingénieur-Consil, 1977, 8*); *Laurens v. Reynolds (Amsterdam, January 12, 1978, BIE, 1978, 242)*; ruling against the expression "Genuine German brandy, like Asbach Urall" (*Prés. trib. Utrecht, December 31, 1975, N.J., 1976, No. 365*).

⁵⁹ January 8, 1975, *N.J., 1975, No. 399*.

⁶⁰ *Prés. comm. Brux.*, April 29, 1975, *Ingénieur-Conseil, 1975, 243*.

⁶¹ Amsterdam, December 18, 1975, *BIE, 1976, 214*.

⁶² Also on these lines, the editor of *IIC, 1980, 673*.

⁶³ Benelux Court, June 1, 1978, case No. A 7713, *Möhnlycke v. Satoma, Recueil, p. 133*.

⁶⁴ See footnote 49, above.

Calendar

WIPO Meetings

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

1981

- March 23 to 25 (Geneva) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights
- March 23 to 27 (Geneva) — Development Cooperation — Working Group on the Establishment of a Guide on the Organization of Industrial Property Activities of Enterprises in Developing Countries
- March 25 to 27 (Geneva) — Worldwide Forum on Piracy of Sound and Audiovisual Recordings
- April 6 to 10 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on General Information
- June 15 to 26 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Search Information
- June 29 to July 3 (Geneva) — International Patent Cooperation (PCT Union — Assembly (Extraordinary Session))
- September 7 to 10 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Patent Information for Developing Countries
- September 10 to 18 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Planning
- September 24 and 25 (Nairobi) — Treaty on the Protection of the Olympic Symbol — Diplomatic Conference
- September 28 to October 24 (Nairobi) — Revision of the Paris Convention — Diplomatic Conference
- November 9 to 13 (Geneva) — Permanent Committee for Patent Information (PCPI) and PCT Committee for Technical Cooperation
- November 11 to 13 (Geneva) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)
- November 16 to 24 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee, Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Budapest, TRT and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union)
- November 30 to December 7 (New Delhi) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)
- December 7 to 11 (Geneva) — International Patent Classification (IPC) — Committee of Experts

UPOV Meetings

1981

- May 6 (Geneva) — Consultative Committee
- May 6 to 8 (Geneva) — Administrative and Legal Committee
- June 2 to 4 (Wädenswil) — Technical Working Party for Vegetables
- June 23 to 25 (Edinburgh) — Technical Working Party for Agricultural Crops
- September 22 to 25 (Wageningen) — Technical Working Party for Fruit Crops
- October 6 to 8 (Antibes) — Technical Working Party for Ornamental Plants
- October 13 (Geneva) — Consultative Committee
- October 14 to 16 (Geneva) — Council
- November 9 to 11 (Geneva) — Technical Committee
- November 11 to 13 (Geneva) — Administrative and Legal Committee