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Contents

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Notifications

Patent Cooperation Treaty (PCT)

Accession

REPUBLIC OF KOREA

The Government of the Republic of Korea deposited, on May 10, 1984, its instrument of accession to the Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970.

The said instrument contains the following reservation:

"The Republic of Korea declares, pursuant to Article 64, paragraph (1), of the said Treaty, that it is not bound by the provisions of Chapter II of the Treaty concerning international preliminary examination."

The said Treaty will enter into force, with respect to the Republic of Korea, on August 10, 1984.

PCT Notification No. 44, of May 14, 1984.

Budapest Treaty (Microorganisms)

Entry Into Force of Amendment to Article 10(7)(a)

The following amendment to 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, entered into force on May 24, 1984:

— in Article 10(7)*(a)*, "third" is replaced by "second."

This amendment affects the periodicity of the sessions of the Assembly of the Budapest Union.

The said amendment was unanimously adopted by the Assembly of the Budapest Union on September 26, 1980. At that time, the number of the Contracting States and hence the number of the members of the Assembly was five. Those States were Bulgaria, France, Hungary, Japan and the United States of America. The entry into force of the said amendment was brought about by the receipt by the Director General of notifications of acceptance of that amendment by the required number of Contracting States members of the said Assembly at the time the Assembly adopted that amendment, that is, from three-fourths of the five said member States. The required number of notifications is four. They were received, in chronological order, from the following States, the date of receipt being indicated after each State: Hungary (January 27, 1982), Bulgaria (March 18, 1982), United States of America (November 14, 1983), France (April 24, 1984).

According to the applicable provisions of the Budapest Treaty, the said amendment binds not only "all the Contracting States which were Contracting States at the time the amendment was adopted by the Assembly" (Article 14(3)*(b)*) but also "all States which become Contracting States after the date on which the amendment was adopted by the Assembly" (Article 14(3)*(c)*).

Budapest Notification No. 38, of April 30, 1984.

World Intellectual Property Organization

WIPO/Cooperation Council for the Arab States of the Gulf/ Saudi Arabian National Center for Science and Technology

Industrial Property Seminar for the Arab States of the Gulf

(Riyadh, May 7 to 9, 1984)

NOTE*

The World Intellectual Property Organization assisted the Cooperation Council for the Arab States of the Gulf and the Saudi Arabian National Center for Science and Technology in the organization of an *Industrial Property Seminar* in the capital of the Kingdom of Saudi Arabia, Riyadh, from May 7 to 9, 1984.

The Cooperation Council for the Arab States of the Gulf was created on 21 Rajab 1401, corresponding to May 25, 1981, among the Kingdom of Saudi Arabia, the State of Bahrain, the State of Kuwait, the State of Qatar, the Sultanate of Oman and the United Arab Emirates "to effect coordination, integration and interconnection between member States in all fields in order to achieve unity between them" (Charter, Article 4). Among the objectives of the Council are to "formulate similar regulations in various fields including ... legislation and administrative affairs" and "to stimulate scientific and technological progress."

The Saudi Arabian National Center for Science and Technology was created at about the same time and is in full expansion. A big scientific documentation center, among many other things, is in the process of being constituted. The Saudi Arabian Patent Office is part of the Center.

The Seminar was opened by the Minister of Industry and Electricity of the Kingdom of Saudi Arabia, Mr. El-Zamil, the Secretary General of the Cooperation Council for the Arab States of the Gulf, Ambassador Bishara, the Chairman of the Saudi Arabian National Center for Science and Technology, Dr. El-Adhel, and the Director General of WIPO, Dr. Arpad Bogsch.

Thirty persons coming from each of the above-mentioned countries participated in the Seminar.

The Seminar consisted of lectures, followed by discussions, given by Mr. Edward Armitage, former Comptroller-General of the United Kingdom Patent Office and present President of the International Association for the Protection of Industrial Property (AIPPI), Mr. Gerald J. Mossinghoff, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks of the United States of America, Dr. Arpad Bogsch, Director General of WIPO, and Mr. Marino Porzio, Deputy Director General of WIPO. The lectures dealt with industrial property in general, the role of industrial property in development and transfer of technology, the administrative (governmental or regional) structures of industrial property and the licensing of patents and trademarks. Special attention was paid by all lecturers to worldwide and regional cooperation in the field of industrial property.

One participant from each of the six countries reported on the status of industrial property legislation and administration in his country.

On the last day of the meetings, the representatives of the six countries met among themselves to discuss the desirability of setting up a common patent system and recommended that, if the competent authorities of their governments found such a system desirable, it should be set up in the framework of the Cooperation Council for the Arab States of the Gulf and with the technical advice of WIPO.

In view of the extremely rapid and successful industrial development of the six countries and their important place in international transfer of technology and international trade, the establishment of modern and forward-looking institutions in the field of industrial property would be most beneficial and desirable both for the six countries and for the rest of the world.

* Prepared by the International Bureau.

WIPO Meetings

Paris Union

I.

Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property

Fourth Session
(Geneva, February 27 to March 23, 1984)

NOTE*

The fourth session of the Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property took place in Geneva from February 27 to March 23, 1984.[1]

The said session was attended by 364 persons. Altogether, 92 countries were represented.

Among the 93 countries members of the Paris Union the following 69 were represented: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Congo, Cuba, Czechoslovakia, Denmark, Dominican Republic, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Holy See, Hungary, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Libya, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nigeria, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Senegal, Soviet Union, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Yugoslavia, Zaire.

The following countries represented are not members of the Paris Union but members of WIPO: Byelorussian SSR, Chile, China, Colombia, El Salvador, Guatemala, Honduras, India, Jamaica, Mongolia, Pakistan, Panama, Peru, Qatar, Saudi Arabia, Somalia, Ukrainian SSR, Yemen [18].

The following countries represented are members of the United Nations but are not members either of the Paris Union or of WIPO: Angola, Bolivia, Democratic Yemen, Ecuador, Venezuela [5].

Ten intergovernmental organizations and 10 international non-governmental organizations were represented by observers.

The list of participants appears at the end of this Note.

The following main officers of the Conference continued in their functions during the fourth session: the President of the Conference, Ambassador A. Sène (Senegal); the Chairman of Main Committee I, Ambassador F. Jiménez Dávila (Argentina); the Chairman of Main Committee II, Dr. Gy. Pusztai (Hungary); the Chairman of Main Committee III, Commissioner G.J. Mossinghoff (United States of America).

The Plenary of the Conference proceeded to the election of officers to vacant posts of officers. Among the nine posts of Vice-President of the Conference, six were vacant, and they were filled by Mr. D.S. McCracken (Canada), Ambassador K. Chiba (Japan), Mr. F.J. Cruz González (Mexico), Mr. J.J. Bos (Netherlands), Mr. C. Fernández Ballesteros (Uruguay), and Mr. D. Ćemalović (Yugoslavia). Among the two posts of Vice-Chairman for Main Committee I, one was vacant and was filled by Mr. T. Kivi-Koskinen (Finland). Both posts of Vice-Chairman of Main Committee II were vacant, and they were filled by Mr. C.H. Friemann (Australia) and Mr. T.C. Choi (Republic of Korea). Among the two posts of Vice-Chairman of Main Committee III, one was vacant and was filled by Ambassador H.J. Brillantes (Philippines). A vacant post in the composition of the Credentials Committee was filled by Ghana (replacing Kenya). The Credentials Committee elected a new Chairman in the person of Mr. A. McCarthy (Ghana). The Drafting Committee elected a new Chairman in the person of Mr. J.-C. Combaldieu (France), and a new Vice-Chairman in the person of Mr. B. Saci (Algeria).

During the fourth session, the Plenary of the Conference held four meetings, Main Committee I held seven meetings, and Main Committee II held six meetings. All three Regional Groups held one or more meetings on almost every one of the working days of the fourth session. The following delegates were the Spokesmen of the three Groups: Mr. E.E.E. Mtango (United Republic of Tanzania) for the Group of Developing Countries; Mrs. E. Steup (Federal Republic of Germany) for Group B (industrialized market economy

* Prepared by the International Bureau.

[1] For the Notes on the first, second and third sessions, see *Industrial Property*, 1980, p. 144; 1981, p. 309; 1983, p. 100, respectively.

countries); Mr. I. Nayashkov (Soviet Union) for Group D (Socialist countries).

In order to discuss Article 5A (which deals with compulsory licenses and with forfeiture of patents) of the Paris Convention and other provisions concerning patents, Main Committee I set up a Working Group on Questions Relating to Patents composed of the members of seven delegations from each Regional Group. All delegations were admitted to follow the discussions in the Working Group. The Working Group held five meetings and was chaired by the Chairman of Main Committee I, Ambassador F. Jiménez Dávila (Argentina). Following the discussions in the Working Group, Main Committee I continued its debates on Article 5A. Certain ideas were put forward by the Group of Developing Countries for consideration by the other Groups, but no new proposals for amendment were made by any of the Delegations and no agreement on Article 5A could be reached.

The meetings devoted to Article 10*quater* of the Paris Convention, which concerns geographical indications and trademarks, were presided over by Mr. T. Kivi-Koskinen (Finland), First Vice-Chairman of Main Committee I, in accordance with an agreement reached in the first session of the Diplomatic Conference (Geneva, 1980), according to which the questions concerning appellations of origin would be discussed under the chairmanship of that Vice-Chairman of Main Committee I who is a delegate from a Group B country. During those meetings, a proposal made by 23 delegations of Group B was intensively discussed. However, it was neither rejected nor adopted by Main Committee I.

Main Committee II discussed two new documents containing proposals concerning the definition of patents and inventors' certificates to be inserted in Article 1 of the Paris Convention. None of the proposals were rejected or adopted by Main Committee II, but they were the subject of thorough discussions.

In its meeting on March 23, 1984, and on the proposal of the Spokesmen of the three Regional Groups, the Plenary of the Conference adopted the following resolution:

"1. The Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property, in its meeting held at Geneva on March 23, 1984, recommends to the Assembly of the Paris Union for the Protection of Industrial Property that it convene, in what will be its fifth session, the Diplomatic Conference, as soon as it finds prospects for positive results.

"2. The countries participating in the Diplomatic Conference ask for the convocation, in September 1984, of an extraordinary session of the Assembly of the Paris Union to consider the setting up of a machinery for consultations designed to prepare, on substance, the next session of the Diplomatic Conference."

LIST OF PARTICIPANTS

I. States

ALGERIA[1]

Head of the Delegation

B. Ould-Rouis, Ambassadeur, Représentant permanent, Mission permanente, Genève

Alternate Heads of the Delegation

B. Saci, Ministre plénipotentiaire, Représentant permanent adjoint, Mission permanente, Genève

H. Redouane, Directeur des relations économiques internationales, Ministère des affaires étrangères, Alger

Delegate

A.-R. Bendisari, Attaché, Mission permanente, Genève

ANGOLA

Head of the Delegation

A.A. Dos Santos Sousa, Directeur, Secrétariat d'Etat à la culture, Institut national de la propriété intellectuelle, Luanda

Delegate

M.L. Delgado, Expert technique, Institut national de la propriété intellectuelle, Luanda

ARGENTINA[1]

Head of the Delegation

F. Jiménez Dávila, Embajador, Representante Permanente Adjunto, Misión Permanente, Ginebra

Delegate

J. Pereira, Segundo Secretario, Misión Permanente, Ginebra

AUSTRALIA[1]

Head of the Delegation

D.M. Sadlier, Ambassador, Permanent Representative, Permanent Mission, Geneva

Alternate Head of the Delegation

C.H. Friemann, Deputy Commissioner of Patents, Deputy Registrar of Patent, Trade Marks and Designs Office, Department of Science and Technology, Canberra

Delegates

G.D. Carmichael, Assistant Commissioner (Policy), Patent, Trade Marks and Designs Office, Department of Science and Technology, Canberra

N.D. Campbell, First Secretary, Permanent Mission, Geneva

Advisor

D.W. Berryman, President, Australian Manufacturers Patents, Industrial Designs, Copyright and Trade Marks Association, Melbourne

AUSTRIA[1]

Head of the Delegation

O. Leberl, President, Austrian Patent Office, Director General, Industrial Property Department, Federal Ministry of Commerce, Trade and Industry, Vienna

Deputy Head of the Delegation

G. Mayer-Dolliner, Hofrat, Industrial Property Department, Federal Ministry of Commerce, Trade and Industry, Vienna

Delegates

E. Kubesch, First Secretary, Permanent Mission, Geneva

F. Trautmansdorff, First Secretary, Permanent Mission, Geneva

H. Sonn, Vice-President, Austrian Chamber of Patent Attorneys, Vienna

[1] Member of the Paris Union.

[2] Member of WIPO but not of the Paris Union.

BELGIUM[1]

Head of the Delegation
A. Onkelinx, Ambassadeur, Représentant permanent, Mission permanente, Genève

Alternate Head of the Delegation
J.M. Poswick, Conseiller, Mission permanente, Genève

Advisors
D.M.C. Vandergheynst, Secrétaire d'administration, Service de la propriété industrielle et commerciale, Ministère des affaires économiques, Bruxelles
F. Gevers, Président du Conseil supérieur de la propriété industrielle, Bruxelles
M. Chome, Membre du Conseil supérieur de la propriété industrielle, Bruxelles
P. Theunis, Ingénieur, Expert auprès du Conseil supérieur de la propriété industrielle, Bruxelles

BOLIVIA

Delegate
E. Rivera Claussen, Primer Secretario, Misión Permanente, Ginebra

BRAZIL[1]

Head of the Delegation
A. Gurgel de Alencar, Minister Counsellor, Deputy Permanent Representative, Permanent Mission, Geneva

Delegates
E. Cordeiro, First Secretary, Permanent Mission, Geneva
M.F. Cruz Filho, Advisor, National Institute of Industrial Property (INPI), Ministry of Industry and Trade, Rio de Janeiro
P. Franca, Third Secretary, Permanent Mission, Geneva

BULGARIA[1]

Head of the Delegation
K. Iliev, Directeur général, Institut des inventions et des rationalisations, Sofia

Alternate Head of the Delegation
D. Popov, Ministre plénipotentiaire, Ministère des affaires étrangères, Sofia

Delegates
B. Bojinov, Directeur, Chambre de commerce et de l'industrie, Sofia
O. Delev, Deuxième secrétaire, Mission permanente, Genève
S. Boyadjieva, Expert, Ministère des affaires étrangères, Sofia

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC[2]

Head of the Delegation
V.V. Grekov, Permanent Representative, Permanent Mission, Geneva

CAMEROON[1]

Head of the Delegation
D. Yong, Représentant permanent adjoint, Mission permanente, Genève

Delegate
W. Eyambe, Deuxième secrétaire, Mission permanente, Genève

CANADA[1]

Head of the Delegation
J.A. Beesley, Ambassador, Permanent Representative, Permanent Mission, Geneva

Alternate Head of the Delegation
D.S. McCracken, Director General, Policy Research, Analysis and Liaison Directorate, Department of Consumer and Corporate Affairs, Ottawa

Delegates
R. Thèberge, Counsellor, Policy Research, Analysis and Liaison Directorate, Department of Consumer and Corporate Affairs, Ottawa
J. Butler, Special Advisor, Policy Research, Analysis and Liaison Directorate, Department of Consumer and Corporate Affairs, Ottawa
R. Ballhorn, Desk Officer, Economic Law and Treaty Division, Department of External Affairs, Ottawa
P.A. Van Brakel, Intellectual Property Officer, International Financial and Investment Affairs Division, Department of External Affairs, Ottawa
J. Lynch, First Secretary, Permanent Mission, Geneva

Advisors
J. Osborne, Counsel, Gowling and Henderson, Barristers and Solicitors, Ottawa
D.A. Hill, Counsel, Smart and Biggar, Ottawa

CENTRAL AFRICAN REPUBLIC[1]

Head of the Delegation
N. Kombot-Naguemon, Ambassadeur, Représentant permanent, Mission permanente, Genève

Advisor
L. Yagao-Ngama, Premier conseiller, Mission permanente, Genève

CHILE[2]

Delegate
F. Pérez Walker, Consejero, Misión Permanente, Ginebra

Alternate Delegate
P. Barros, Primer Secretario, Misión Permanente, Ginebra

CHINA[2]

Head of the Delegation
Tang Zongshun, Adviser to the Patent Office, Patent Office, Beijing

Delegates
Liu Fengyun, Deputy Director, International Cooperation Division, Patent Office, Beijing
Huang Renxun, Expert, Trade Mark Office, State Administration for Industry and Commerce, Beijing

COLOMBIA[2]

Head of the Delegation
H. Charry Samper, Embajador, Representante Permanente, Misión Permanente, Ginebra

Alternate Heads
I. Botero, Primer Secretario, Misión Permanente, Ginebra
L.A. Luna, Primer Secretario, Misión Permanente, Ginebra

CONGO[1]

Head of the Delegation
A. Gabou, Procureur général près la Cour suprême et Conseiller du Ministre de la coopération, Brazzaville

Alternate Head of the Delegation
E.F. Loukakou, Directeur, Affaires juridiques et consulaires, Ministère des affaires étrangères, Brazzaville

Delegates
D. Ngassaki, Chef de l'Antenne nationale de la propriété industrielle, Ministère de l'industrie et de la pêche, Brazzaville
J.-P. Miamona, Fonctionnaire au Ministère de la coopération, Brazzaville
S. Bayalama, Chef de la Section des questions juridiques, Ministère des affaires étrangères, Brazzaville

CUBA[1]

Head of the Delegation
C. Lechuga Hevia, Embajador, Representante Permanente, Misión Permanente, Ginebra

Delegates
M. Jimenez Aday, Agregado (Asuntos Cientificos y Técnicos), Misión Permanente, Ginebra
A. Roca Garciarena, Vice-Director, Oficina Nacional de Inveneiones, Información Técnica y Marcas, La Habana

CZECHOSLAVAKIA[1]

Head of the Delegation
M. Bělohlávek, President, Office for Inventions and Discoveries, Prague

Alternate Head of the Delegation
J. Prošek, Head of the Trademarks Department, Office for Inventions and Discoveries, Prague

Delegate
V. Benisko, Head of External Relations Department, Office for Inventions and Discoveries, Prague

DEMOCRATIC YEMEN

Head of the Delegation
S.A.S. Fares, Minister Plenipotentiary, Permanent Mission, Geneva

DENMARK[1]

Head of the Delegation
R. Carlsen, Registrar of Trademarks, Patent and Trademark Office, Ministry of Commerce, Copenhagen

Delegate
L. Østerborg, Head of Division, Patent and Trademark Office, Ministry of Commerce, Copenhagen

DOMINICAN REPUBLIC[1]

Head of the Delegation
T. Mejia-Ricart Guzman, Embajador, Representante Permanente, Misión Permanente, Ginebra

Delegates
M. Alfonseca Bursztejn-Lavigne, Ministro Consejero, Misión Permanente, Ginebra
A. Bonetti Herrera, Primera Secretaria, Misión Permanente, Ginebra

ECUADOR

Head of the Delegation
M. Aleman Salvador, Embajador, Representante Permanente, Misión Permanente, Ginebra

Alternate Head of the Delegation
G. Ortiz, Diputado/Vocal Principal, Palacio Legislativo, Quito

EGYPT[1]

Head of the Delegation
F. El Ibrashi, Ambassador, Ministry of Foreign Affairs, Cairo

Alternate Head of the Delegation
A.A. Omar, Under-Secretary, Academy of Scientific Research and Technology, President, Patent Office, Cairo

Delegates
I.F. Salem, President, Commercial Registration Organization, Cairo
M. Daghash, Counsellor, Permanent Mission, Geneva
A.G.M. Fouad, Director, Industrial Property Affairs, Commercial Registration Organization, Cairo

EL SALVADOR[2]

Head of the Delegation
J.L. Lovo Castelar, Embajador, Representante Permanente, Misión Permanente, Ginebra

Delegate
C.A. Barahona Rivas, Secretario, Misión Permanente, Ginebra

FINLAND[1]

Head of the Delegation
E. Kekomaki, Ambassador, Director for Legal Affairs, Ministry of Foreign Affairs, Helsinki

Deputy Head of the Delegation
T. Kivi-Koskinen, Director General, National Board of Patents and Registration, Helsinki

Delegate
E. Wuori, Deputy Director General, National Board of Patents and Registration, Helsinki

Advisors
K. Ilander, Second Secretary, Permanent Mission, Geneva
L. Valjento, Attaché, Ministry of Foreign Affairs, Helsinki
S. Henriksson, Head of Legal Department, Confederation of Finnish Industries, Helsinki

FRANCE[1]

Head of the Delegation
R. de Souza, Ambassadeur, Représentant permanent, Mission permanente, Genève

Alternate Head of the Delegation
J.-C. Combaldieu, Directeur du Service et de l'Institut national de la propriété industrielle, Ministère de l'industrie et de la recherche, Paris

Delegates
M. Hiance, Directeur-adjoint chargé des affaires internationales, Institut national de la propriété industrielle, Paris
P. David, Magistrat, Direction des affaires civiles et du sceau, Ministère de la justice, Paris
R. Tinlot, Inspecteur général, Direction de la consommation et de la répression des fraudes, Ministère de la consommation, Paris
J.-M. Momal, Deuxième conseiller, Mission permanente, Genève
L. Nicodème, Secrétaire-adjoint principal des affaires étrangères, Direction des affaires économiques et financières, Ministère des relations extérieures, Paris
J. Chavant, Attaché, Mission Permanente, Genève

Advisor
A. Françon, Professeur, Université de Paris II, Membre du Conseil Supérieur de la propriété industrielle, Paris

GABON[1]

Head of the Delegation
J.-R. Odzaga, Ambassadeur, Représentant permanent, Mission permanente, Genève

GERMAN DEMOCRATIC REPUBLIC[1]

Head of the Delegation
J. Hemmerling, President, Office for Inventions and Patents, Berlin

Deputy Head of the Delegation
D. Schack, Director, Department of International Cooperation, Office for Inventions and Patents, Berlin

Delegates
F. Jonkisch, Director, Legal Affairs Department, Office for Inventions and Patents, Berlin
M. Förster, Interpreter, Office for Inventions and Patents, Berlin

GERMANY (FEDERAL REPUBLIC OF)[1]

Head of the Delegation
H. Arnold, Ambassador, Permanent Representative, Permanent Mission, Geneva

Alternate Head of the Delegation
E. Steup, Head of Division, Federal Ministry of Justice, Bonn

Delegates
M. Aúz Castro, Judge, Federal Patent Court, Munich
F. Lambach, First Counsellor, Permanent Mission, Geneva

Advisors
G. Albrechtskirchinger, Lawyer, Frankfurt/Main
H. Bezzenberger, Chairman, Industrial Property Committee, Association of German Industry, Director, Hoechst AG, Glashütten
K.J. Heimbach, Director of Patents, Bayer AG, Leverkusen

GHANA[1]

Head of the Delegation
A.J. McCarthy, Counsellor, Acting Permanent Representative, Permanent Mission, Geneva

GREECE[1]

Head of the Delegation
P. Apostolides, First Counsellor, Permanent Mission, Geneva

Delegates
A. Cambitsis, Counsellor (Economic Affairs), Permanent Mission, Geneva
I. Rokas, Counsellor, Ministry of Research and Technology, Athens

Advisor
A. Argyriadis, Professor, University of Athens, Athens

GUATEMALA[2]

Head of the Delegation
A. Fajardo-Maldonado, Embajador, Representante Permanente, Misión Permanente, Ginebra

Delegates
A.I. Pinillos-Schaeffer, Ministro Consejero, Misión Permanente, Ginebra
B. Deger-Battaglia, Consejero (Asuntos Económicos), Misión Permanente, Ginebra

HOLY SEE[1]

Head of the Delegation
O. Roullet, Avocat, Genève

Delegate
A. Marelle, Expert, Mission permanente, Genève

HONDURAS[2]

Head of the Delegation
I. Romero M., Embajador, Representante Permanente, Misión Permanente, Ginebra

Delegate
N.W. Atala, Agregado Comercial, Misión Permanente, Ginebra

HUNGARY[1]

Head of the Delegation
Gy. Pusztai, Président, Office national des inventions, Budapest

Delegates
J. Bobrovszky, Directeur général, Office national des inventions, Budapest
L. Mohácsy, Directeur général, Commission nationale pour le développement technique, Budapest
G. Bánrévy, Directeur général adjoint, Ministère du commerce extérieur, Budapest
J. Gehér, Rapporteur en chef, Ministère de la justice, Budapest
G. Szénási, Deuxième secrétaire, Ministère des affaires étrangères, Budapest

INDIA[2]

Head of the Delegation
R.N. Chopra, Additional Secretary, Ministry of Industry, New Delhi

Delegates
P.R. Chandran, Director, Department of Industrial Development, Ministry of Industry, New Delhi
L. Puri, First Secretary, Permanent Mission, Geneva

INDONESIA[1]

Head of the Delegation
I. Darsa, Ambassador, Permanent Representative, Permanent Mission, Geneva

Deputy Head of the Delegation
H.S. Suradimadja, Director, Directorate of Patents and Copyright, General Directorate of Law and Legislation, Department of Justice, Jakarta

Delegates
N. Wisnoemoerti, Counsellor, Permanent Mission, Geneva
R. Tanzil, Third Secretary, Permanent Mission, Geneva
A. Tambunan, Official, Department of Foreign Affairs, Jakarta

IRAN (ISLAMIC REPUBLIC OF)[1]

Head of the Delegation
H. Bozorgh Khan, Directeur général, Département des relations internationales, Ministère de l'industrie, Téhéran

Delegates
S. Mohammad Hashemi, Conseiller, Ministère de l'industrie, Téhéran
J. Zahimia, Troisième secrétaire, Mission permanente, Genève

IRAQ[1]

Head of the Delegation
I.A. Mahboub, Minister Plenipotentiary, Chargé d'affaires a.i., Permanent Mission, Geneva

Deputy Heads of the Delegation
N.H.S. Al-Badran, Minister Plenipotentiary, Permanent Mission, Geneva
A. Jomard, First Secretary, Permanent Mission, Geneva

Delegate
S. Abbas Lafta, Attaché, Permanent Mission, Geneva

IRELAND[1]

Head of the Delegation
S. Fitzpatrick, Controller of Patents, Designs and Trade Marks, Patents Office, Dublin

Deputy Heads of the Delegation
B. O'Gorman, Assistant Principal, Patents Office, Dublin
M. Kennedy, Assistant Principal, Patents Office, Dublin

ISRAEL[1]

Head of the Delegation
E.F. Haran, Ambassador, Deputy Permanent Representative, Permanent Mission, Geneva

Delegate
M.M. Shaton, Counsellor (Economic Affairs), Permanent Mission, Geneva

ITALY[1]

Head of the Delegation
G.L. Milesi-Ferretti, Ambassadeur, Délégué pour les Accords de propriété intellectuelle, Ministère des affaires étrangères, Rome

Alternate Head of the Delegation
M. Scialoja, Ministre Conseiller, Représentant permanent adjoint, Mission permanente, Genève

Delegates
S. Samperi, Directeur, Office central des brevets, Ministère de l'industrie, du commerce et de l'artisanat, Rome
L. Vannuccini, Primo Dirigente, Office central des brevets, Ministère de l'industrie, du commerce et de l'artisanat, Rome
R. Boros, Conseiller juridique, Direction générale, Programmation et développement, Ministère des participations d'Etat, Rome

Advisors
L. Sordelli, Professeur ordinaire de l'Université de Sienne, Président du Groupe italien de l'Association internationale pour la protection de la propriété industrielle (AIPPI), Milan
L. Ferrari Bravo, Conseiller juridique, Mission permanente, Genève
C. Fiammenghi, Avocat, Secrétaire du Collège italien des consultants en propriété industrielle et Membre du Groupe italien de l'Association internationale pour la protection de la propriété industrielle (AIPPI), Rome
G. d'Amely Melodia, Conseil en propriété industrielle, Confédération de l'industrie, Rome
M. Bellenghi, Expert, Conseil en propriété industrielle, Confédération de l'industrie, Rome

IVORY COAST[1]

Head of the Delegation
A. Traore, Ambassadeur, Représentant permanent, Mission permanente, Genève

Delegates
M. Komenan, Chef, Division des études d'échange de technologie, Ministère de l'industrie, Abidjan
F.K. Ekra, Conseiller, Mission permanente, Genève

JAMAICA[2]

Head of the Delegation
K.G.A. Hill, Ambassador, Permanent Representative, Permanent Mission, Geneva

JAPAN[1]

Head of the Delegation
K. Chiba, Ambassador, Permanent Representative, Permanent Mission, Geneva

Alternate Delegates
Y. Hashimoto, Director General, Industrial Property Training Institute, Patent Office, Tokyo
T. Sato, Counsellor, Permanent Mission, Geneva
H. Sato, Counsellor, Permanent Mission, Geneva
T. Fukuda, Counsellor for Legal Affairs, General and Administration Department, Patent Office, Tokyo
S. Ono, First Secretary, Permanent Mission, Geneva

Advisors
K. Shimizu, Staff Member, Japan Trade Center, Dusseldorf
T. Okabe, General Manager, Patent and Licensing Department, Nippondenso Co., Ltd., Nagoya
Z. Nakamura, Manager, Foreign Patent Affairs, Takeda Chemical Industries, Ltd., Osaka

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A. Wahed, Head, Patent Section, Secretariat for Economy and Light Industries, Tripoli

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Alternate Head of the Delegation
D. Ospelt, Chef suppléant de l'Office pour les relations internationales, Vaduz

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O. Raveloson, Premier secrétaire, Mission permanente, Genève

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A. Bellouki, Deuxième secrétaire, Mission permanente, Genève

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J.J. Bos, President, Patent Office, Rijswijk

Deputy Head of the Delegation
W. Neervoort, Member of the Patent Council, Patent Office, Rijswijk

Delegates
H.J. Heinemann, Minister, Deputy Permanent Representative, Permanent Mission, Geneva
H.J.G. Pieters, Advisor on Industrial Property Matters, Legislation and Other Legal Affairs Department, Ministry of Economic Affairs, The Hague

Advisor
D. Hijmans, Patent Agent, Rijswijk

NEW ZEALAND[1]

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D.F. Kininmonth, Director, Trade Policy, Department of Trade and Industry, Wellington

Delegate
B.T. Lineham, Counsellor, Deputy Permanent Representative, Permanent Mission, Geneva

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Delegate
T.O. Oseni, First Secretary (Economic Affairs), Permanent Mission, Geneva

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A.G. Gerhardsen, Director General, Norwegian Patent Office, Oslo

Alternate Head of the Delegation
M. Ruud, Head of Division, Ministry of Justice, Oslo

Delegates
K.H. Reinskou, Counsellor, Ministry of Justice, Oslo
P.F. Wille, Counsellor, Ministry of Foreign Affairs, Oslo
P.A. Martinsen, Counsellor, Norwegian Patent Office, Oslo

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Delegate
S. Bashir, Second Secretary, Permanent Mission, Geneva

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Delegate
R.M. Decerega, Consejero, Representante Permanente Alterno, Misión Permanente, Ginebra

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A. Thornberry, Segundo Secretario, Misión Permanente, Ginebra

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T. Syquia, Ambassador, Deputy Permanent Representative, Permanent Mission, Geneva

Delegate
A.L. Catubig, Attaché, Permanent Mission, Geneva

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R. Farfal, Président adjoint de l'Office des brevets, Varsovie
J. Zawalonka, Conseiller, Ministre plénipotentiaire, Représentant permanent adjoint, Mission permanente, Genève

Delegates
D. Januszkiewicz, Directeur du Cabinet du Président de l'Office des brevets, Varsovie
P. Matuszewski, Conseiller, Département juridique et des traités, Ministère des affaires étrangères, Varsovie

PORTUGAL[1]

Head of the Delegation
F. Reino, Ambassadeur, Représentant permanent, Mission permanente, Genève

Deputy Head of the Delegation
J. Mota Maia, Directeur général, Institut national de la propriété industrielle, Ministère de l'industrie et de l'énergie, Lisbonne

Delegates
R.A. Costa de Morais Serrão, Directeur, Service des marques, Institut national de la propriété industrielle, Ministère de l'industrie et de l'énergie, Lisbonne
J. Pereira da Cruz, Agent officiel de la propriété industrielle, Lisbonne

QATAR[2]

Head of the Delegation
M.S.R. Al-Kuwari, Ambassadeur, Représentant permanent, Mission permanente, Genève

Delegate
A. Al-Gattari, Troisième secrétaire, Mission permanente, Genève

Advisor
M.A.A. Khalil, Economiste, Mission permanente, Genève

REPUBLIC OF KOREA[1]

Head of the Delegation
H.S. Park, Deputy Administrator, Office of Patents Administration, Ministry of Commerce and Industry, Seoul

Alternate Head of the Delegation
J.-U. Chae, Commercial Attaché, Permanent Mission, Geneva

Delegates
T.-C. Choi, Director, International Cooperation Division, Office of Patents Administration, Ministry of Commerce and Industry, Seoul
S.-D. Kim, Assistant Director, Treaties Division, Ministry of Foreign Affairs, Seoul

ROMANIA[1]

Head of the Delegation
I. Datcu, Ambassadeur, Représentant permanent, Mission permanente, Genève

Alternate Head of the Delegation
I. Marinescu, Directeur de l'Office d'Etat pour les inventions et les marques, Bucarest

Delegate
P. Gavrilescu, Troisième secrétaire, Ministère des affaires étrangères, Bucarest

SAUDI ARABIA[2]

Delegates
S. Al-Shayea, Counsellor, National Center for Science and Technology, Riyadh
H.S.O. Sindi, Specialist in Scientific Research, National Center for Science and Technology, Riyadh
A. Omair, Attaché (Commercial Affairs), Permanent Mission, Geneva

SENEGAL[1]

Head of the Delegation
A. Sène, Ambassadeur, Représentant permanent, Mission permanente, Genève

Delegates
S.C. Konate, Deuxième conseiller, Mission permanente, Genève
A. N'Diaye, Premier scerétaire, Mission permanente, Genève

Alternate Delegate
M. N'Diaye, Secrètaire, Mission permanente, Genève

SOMALIA[2]

Head of the Delegation
A.S. Osman, Ambassador, Permanent Representative, Permanent Mission, Geneva

SOVIET UNION[1]

Head of the Delegation
I. Nayashkov, Chairman, USSR State Committee for Inventions and Discoveries, Moscow

Deputy Head of the Delegation
V. Zubarev, Director, External Relations Department, USSR State Committee for Inventions and Discoveries, Moscow

Delegates
Y. Gyrdymov, Deputy Director, External Relations Department, USSR State Committee for Inventions and Discoveries, Moscow
V. Rochtchine, Counsellor, USSR Council of Ministers, Moscow
M. Oussov, Second Secretary, Permanent Mission, Geneva
H. Koutakova, Expert, External Relations Department, USSR State Committee for Inventions and Discoveries, Moscow
M. Bogouslavski, Professor, State and Law Institute, USSR Academy of Sciences, Moscow

Advisors
V. Troussov, Deputy Director, Patent Examination Department, USSR State Committee for Inventions and Discoveries, Moscow
R. Shabanov, Head of Department, USSR State Committee for Inventions and Discoveries, Moscow
B. Nefedov, Senior Advisor, USSR State Committee for Inventions and Discoveries, Moscow

SPAIN[1]

Head of the Delegation
J. Delicado Montero-Rios, Director General del Registro de la Propiedad Industrial, Ministerio de Industria y Energia, Madrid

Delegates
S. Jessel, Directora del Departamento de Estudios y Relaciones Internacionales, Registro de la Propiedad Industrial, Ministerio de Industria y Energia, Madrid
E. Rùa Benito, Director, Departamento de Patentes y Modelos, Registro de la Propiedad Industrial, Ministerio de Industria y Energia, Madrid
A. Casado Cerviño, Jefe, Servicio de Relaciones Internacionales, Registro de la Propiedad Industrial, Ministerio de Industria y Energia, Madrid
L. Nagore San Martin, Consejero de Embajada, Misiòn Permanente, Ginebra
A.-C. Ortega Lechuga, Jefe, Servicio de Examen y Clasificaciòn de Patentes y Modelos, Registro de la Propiedad Industrial, Madrid

Alternate Delegate
T. de las Heras Lorenzo, Jefe, Servicio de Estudios Documentales y Publicaciones, Registro de la Propiedad Industrial, Madrid

SRI LANKA[1]

Head of the Delegation
D.M. Jayasekera, Minister (Economic and Commercial Affairs), Permanent Mission, Geneva

Delegates
H.M.G.S. Palihakkara, Second Secretary, Permanent Mission, Geneva
P. Kariyawasam, Third Secretary, Permanent Mission, Geneva

SUDAN[1]

Head of the Delegation
H. Ismail, Counsellor, Permanent Mission, Geneva

Alternate Head of the Delegation
M.S.E.D. Abbas, Counsellor, Permanent Mission, Geneva

SWEDEN[1]

Head of the Delegation
G. Borggård, Director General, Royal Patent and Registration Office, Ministry of Commerce, Stockholm

Deputy Head of the Delegation
M. Jacobsson, Assistant Under-Secretary, Ministry of Justice, Stockholm

Delegates
P. Nyqvist, Under-Secretary for Legal Affairs, Ministry of Industry, Stockholm
A. Aslund, First Secretary, Permanent Mission, Geneva

Advisors
L. Körner, Deputy Managing Director, Federation of Swedish Industries, Stockholm
T. Hård, Director, Federation of Swedish Industries, Stockholm

SWITZERLAND[1]

Head of the Delegation
P. Braendli, Directeur, Office fédéral de la propriété intellectuelle, Berne

Alternate Head of the Delegation
R. Kämpf, Chef de la Division des marques, Office fédéral de la propriété intellectuelle, Berne

Delegates
J.-M. Souche, Collaborateur juridique, Office fédéral de la propriété intellectuelle, Berne
A.-M. Buess, Assistante de la Direction, Office fédéral de la propriété intellectuelle, Berne
J.-P. Vettovaglia, Ministre, Mission permanente, Genève
M. Kummer, Avocat, Secrètaire du Vorort de l'Union suisse du commerce et de l'industrie, Zurich

SYRIA[1]

Head of the Delegation
A. Daoudy, Ambassador, Permanent Representative, Permanent Mission, Geneva

Delegate
A. Saker, Minister Plenipotentiary, Permanent Mission, Geneva

Alternate Delegate
M. Sayadi, Minister Counsellor, Permanent Mission, Geneva

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W.S. Naimool, Ambassador, Permanent Representative, Permanent Mission, Geneva

Delegate
M. Lashley, First Secretary, Permanent Mission, Geneva

TUNISIA[1]

Head of the Delegation
F. Mebazaa, Ambassador, Permanent Representative, Permanent Mission, Geneva

Alternate Head of the Delegation
K. Gueblaoui, Chargé de Mission, Cabinet du Premier Ministre, Tunis

Deputy Heads of the Delegation
M. Blanco, Chargé d'études et Chargé du département de la propriété industrielle et du transfert de technologie, Institut national de la normalisation et de la propriété industrielle, Tunis
A. Boudhiba, Chargé d'études principal, Département de la propriété industrielle et du transfert de technologie, Institut national de la normalisation et de la propriété industrielle, Tunis

Advisor
H. Boufares, Premier secrétaire, Mission permanente, Genève

TURKEY[1]

Head of the Delegation
E. Apakan, Counsellor, Permanent Mission, Geneva

Alternate Head of the Delegation
M. Çetin, President of the Industrial Property Department, Ministry of Industry and Trade, Ankara

Delegate
Z. Bastürk, Chief, Patent Section, Ministry of Industry and Trade, Ankara

UGANDA[1]

Alternate Delegate
J.H. Omara, Counsellor, Deputy Permanent Representative, Permanent Mission, Paris

UKRAINIAN SSR[2]

Head of the Delegation
V.G. Batiouk, Représentant permanent, Mission permanente, Genève

UNITED KINGDOM[1]

Head of the Delegation
I.J.G. Davis, Comptroller-General of Patents, Designs and Trade Marks, The Patent Office, London

Alternate Head of the Delegation
V. Tarnofsky, Assistant-Comptroller, The Patent Office, London

Delegates
T.W. Sage, Superintending Examiner, The Patent Office, London
J.P. Britton, Principal Examiner, The Patent Office, London
J.W.B. Richards, First Secretary, Permanent Mission, Geneva
J. Richardson, Legal Advisor, Ministry of Foreign Affairs, London

Advisors
J.M. Aubrey, Advisor, Courtaulds Limited, Coventry
E.R. Wenman, Advisor, Imperial Chemical Industries Limited, London
C.G. Wickham, Advisor, Confederation of British Industry, London

UNITED REPUBLIC OF TANZANIA[1]

Head of the Delegation
W.K. Chagula, Ambassador, Permanent Representative, Permanent Mission, Geneva

Alternate Head of the Delegation
E.E.E. Mtango, Minister Counsellor, Permanent Mission, Geneva

Delegate
S.J. Asman, Counsellor (Scientific Affairs), Permanent Mission, Geneva

UNITED STATES OF AMERICA[1]

Head of the Delegation
G.J. Mossinghoff, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Department of Commerce, Washington, D.C.

Alternate Heads of the Delegation
M.K. Kirk, Assistant Commissioner for External Affairs, Patent and Trademark Office, Department of Commerce, Washington, D.C.
H.J. Winter, Director, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State, Washington, D.C.

Delegates
H.H. Schmitt, Consultant on Intellectual Property Matters to the Secretary, Department of Commerce, Washington, D.C.
L. Schroeder, Industrial Property Specialist, Patent and Trademark Office, Department of Commerce, Washington, D.C.
G.T. Dempsey, Second Secretary, Permanent Mission, Geneva
L.H. Belgard, Second Secretary, Permanent Mission, Geneva

Congressional Advisor
T.N. Kindness, Member of Congress, United States House of Representatives, Washington, D.C.

Advisors
D.R. Dunner, Attorney, Finnegan, Henderson, Farabow, Garret and Dunner, Washington, D.C.
G.M. Frayne, Attorney, Abelman, Frayne, Rezac and Schwab, New York
A.D. Lourie, Vice-President, SmithKline Beckman Corp., Philadelphia, Pennsylvania
J.T. Lanahan, Trade Mark Counsel, UOP Inc., Des Plaines, Illinois
L.T. Pirkey, Attorney, Arnold, White and Durkee, Austin, Texas
T.F. Smegal, Jr., Attorney, Townsend and Townsend, San Francisco, California
R.C. Witte, Patent Counsel, The Procter and Gamble Company, Cincinnati, Ohio
J. Wolfe, Counsel, Committee on the Judiciary, United States House of Representatives, Washington, D.C.

URUGUAY[1]

Head of the Delegation
C. Fernández Ballesteros, Ministro, Representante Permanente Adjunto, Misión Permanente, Ginebra

Alternate Head of the Delegation
J. Meyer-Long, Segundo Secretario, Misión Permanente, Ginebra

VENEZUELA

Head of the Delegation
G. Pérez-Castillo, Ministro Consejero, Misión Permanente, Ginebra

Alternate Head of the Delegation
H. Suárez Mora, Primer Secretario, Misión Permanente, Ginebra

VIET NAM[1]

Head of the Delegation
Nguyen Thuong, Ambassadeur, Représentant permanent, Mission permanente, Genève

Delegate
Vu Huy Tan, Attaché, Mission permanente, Genève

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Head of the Delegation
A. Tarcici, Ambassadeur, Conseiller général, Mission permanente, Genève

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Head of the Delegation
K.H.E. Vidas, Ambassador, Permanent Representative, Permanent Mission, Geneva

Delegates
D. Vujičić, Minister Counsellor, Deputy Permanent Representative, Permanent Mission, Geneva
D. Ćemalović, Independent Counsellor, Federal Patent Office, Belgrade
G. Fejić, First Secretary, Permanent Mission, Geneva

ZAIRE[1]

Head of the Delegation
Mukamba Kadiata-Nzemba, Ambassadeur, Représentant permanent, Mission permanente, Genève

Delegate
Lukusa Kayembe Nkaya, Premier secrétaire, Mission permanente, Genève

II. Intergovernmental Organizations

United Nations: United Nations Conference on Trade and Development (UNCTAD)
P. Roffe, Chief, Legal Policies Section, Technology Division, Geneva
R. Dhanjee, Associate Economic Affairs Officer, Technology Division, Geneva

United Nations: United Nations Industrial Development Organization (UNIDO)
A. Pathmarajah, Special Representative of the Executive Director, UNIDO, Geneva
R. Kloepzig, Senior Industrial Development Officer, Development and Transfer Technology Branch, Division for Industrial Studies, Vienna

United Nations: Office of the United Nations High Commissioner for Refugees (UNHCR)
J. Mizuno, Legal Officer, Geneva

United Nations: General Agreement on Tariffs and Trade (GATT)
A.T. Otten, Counsellor, Non-Tariff Measures Division, Geneva

African Intellectual Property Organization (OAPI)
D. Ekani, Directeur général, Yaoundé

European Communities
A. McClellan, Conseiller, Bruxelles
J. Delmoly, Membre, Service juridique, Commission des Communautés européennes, Bruxelles
M.B. Schwab, Administrateur principal à la Direction générale du marché intérieur et des affaires industrielles, Commission des Communautés européennes, Bruxelles
H.W. Kunhardt, Administrateur principal auprès du Conseil des Ministres des Communautés européennes, Bruxelles

European Patent Organisation (EPO)
J.C.A. Staehelin, Vice-President, Directorate General 5, Legal Affairs and International Relations, Munich

European Space Agency (ESA)
R. Oosterlinck, Chef, Service de la propriété intellectuelle, Paris
P. Kallenbach, Ingénieur en brevets, Paris

Organization of African Unity (OAU)
Y. Afanou, Observateur permanent adjoint (Affaires économiques), Délégation permanente, Genève
K.L.D. Ramasawmy, Conseiller (Affaires sociales), Délégation permanente, Genève

Secretariat of the Interim Committee for the Community Patent
V. Scordamaglia, Chef de Division, Secrétariat général, Conseil des Ministres des Communautés européennes, Bruxelles
H.W. Kunhardt, Administrateur principal auprès du Conseil des Ministres des Communautés européennes, Bruxelles
J. Huber, Administrateur, Bruxelles

III. International Non-Governmental Organizations

Asian Patent Attorneys Association (APAA)
Y. Uchida, Committee Member, Patent Attorney, Tokyo
K. Kato, Committee Member, Patent Attorney, Tokyo

Center for the International Study of Industrial Property (CEIPI)
P. Nuss, Professeur et Chargé de mission, Strasbourg

Council of European Industrial Federations (CEIF)
G.F. Kunze, Vice-President, Nestlé S.A., Vevey

Inter-American Association of Industrial Property (ASIPI)
M. Soni, President, México

International Association for the Protection of Industrial Property (AIPPI)
G. Gaultier, Rapporteur général, Paris
G.M. Frayne, Trésorier général, New York
M. Chome, Vice-Président de l'AIPPI et Président du Groupe belge, Bruxelles
R. Harle, Membre d'honneur, Paris

International Chamber of Commerce (ICC)
G. Gansser, Directeur adjoint, Ciba-Geigy S.A., Bâle, Rapporteur, Commission de la propriété industrielle de la CCI, Paris
W.D. Roberson, Associate Patent Counsel, Patent Department, Polaroid Corporation, Cambridge, Massachusetts
B. Wurm, Director, Patent and Trade Mark Department, AB ASTRA, Södertälje
J. Buraas, Représentant de la CCI auprès des Nations Unies, Genève
D. Werbner, Attachée juridique, Secrétariat économique de la CCI, Paris

International Federation of Inventors' Associations (IFIA)
F. Burmester, Vice-President (Federal Republic of Germany), Reutlingen
C.P. Feldmann, Vice-President (Switzerland), Glattbrugg
S.-E. Angert, Vice-President (Sweden), Stockholm
K.-E. Sundström, Chêne-Bougeries

Licensing Executives Society (International) (LES)
G. Modiano, Member, LES International Activities Committee, Geneva

Pacific Industrial Property Association (PIPA)
K.F. Jorda, President, PIPA, Corporate Patent Counsel, Ciba-Geigy Corporation, Ardsley, New York
W.D. Roberson, Associate Patent Counsel, Patent Department, Polaroid Corporation, Cambridge, Massachusetts

Union of Industries of the European Community (UNICE)
G.F. Kunze, Vice-President, Nestlé S.A., Vevey

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

A. Bogsch, Director General
K. Pfanner, Deputy Director General
M. Porzio, Deputy Director General
L. Baeumer, Director, Industrial Property Division
G. Ledakis, Legal Counsel
I. Thiam, Director, Development Cooperation and External Relations Bureau for Africa and Western Asia
F. Balleys, Head, Industrial Property Law Section, Industrial Property Division
B. Davoudi, Head, Building and Common Services Section
I. Pike-Wanigasekara, Senior Assistant, Office of the Director General
H. Rossier, Head, Mail and Documents Section
Tran-Thi T.-L., Legal Officer, Industrial Property Law Section, Industrial Property Division
V. Yossifov, Program Officer, Industrial Property Law Section, Industrial Property Division

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II.

Working Group on Technical Questions Relating to the Legal Protection of Computer Software

(Canberra, April 2 to 6, 1984)

REPORT ADOPTED BY THE WORKING GROUP

I. Introduction

1. Convened by the Director General of the World Intellectual Property Organization (WIPO) in accordance with a recommendation of the WIPO Committee on the Legal Protection of Computer Software at its second session (Geneva, June 1983) and following an invitation of the Government of Australia, the WIPO Working Group on Technical Questions Relating to the Legal Protection of Computer Software (hereinafter referred to as "the Working Group") met in Canberra from April 2 to 6, 1984.

2. Twenty-five experts from 15 countries participated in the meeting, which was chaired by Dr. R. Bell (Australia). Mr. L. Baeumer (WIPO) acted as Secretary. The list of participants is reproduced in Annex II to this Report.

3. The meeting was opened by the Attorney-General of Australia, Senator Gareth Evans, Q.C. He welcomed the participants and noted that the impact of modern computer technology in traditional intellectual and industrial property concepts has become an issue of remarkably lively public debate in Australia. He stressed that it was of the utmost importance that countries come together with a view to ensuring that their laws, if not necessarily uniform, are at least compatible in basic principle. He drew attention to the fact that WIPO, which administers the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, has been actively studying the question of legal protection of computer software since 1971. Noting that the current debate largely concerned the question whether software is or should be protected under the existing copyright conventions, or should be treated under a special legal regime, he drew attention to the need for national and international legislation to keep pace with technological developments, and emphasized the importance of the task of the meeting, to contribute, by discussing technical questions such as definitions, to creating the legal environment which will best facilitate the application of new technologies in ways of benefit to all mankind. The Attorney-General's address is reproduced in Annex III to this Report.

4. The Director General of WIPO, Dr. Arpad Bogsch, recalled the work undertaken by WIPO since 1971 regarding the drawing up of model provisions for national legislation on the protection of computer software, regarding the question of the desirability of the setting up of an international voluntary register for computer software, and regarding the protection of computer software at the international level. He emphasized that no final decisions had been made and that the work would continue. He drew attention to the need to re-examine definitions, in view of the advances in technology, including the importance of integrated circuits, affecting the creation and use of computer software. Dr. Bogsch expressed his thanks to the Government of Australia for hosting the meeting. The Director-General's address is reproduced in Annex IV to this Report.

5. The discussions were based on an outline prepared by the International Bureau of WIPO entitled "Technical Questions Relating to the Legal Protection of Computer Software" (document LPCS/WGTQ/I/2, reproduced in Annex I to this Report). This Report contains only a brief summary of those discussions and does not reflect all the observations made. Each intervention, however, has been recorded on tape and noted by the Secretariat.

II. Definitions and Technical Explanations

Definitions

6. Discussions were based on paragraphs 3 to 7 of document LCPS/WGTQ/I/2. The definitions contained in the WIPO Model Provisions on the Protection of Computer Software (hereinafter referred to as the "Model Provisions") were examined in the light of developments which had taken place since the preparation of the Model Provisions in 1977 and of developments which could reasonably be expected to take place in the forseeable future. In general, it was

noted that important changes had taken place in respect of computer technology, in particular as regards the production of computer programs, and that further important changes could still be expected.

7. Bearing in mind that its mandate related to technical questions, the Working Group noted that the various formulations (see paragraph 10, below) proposed for the improvement of the definitions in the Model Provisions could include technical explanations not necessarily required in or appropriate to definitions to be contained in national legislation or an international treaty. It also recognized that words should be chosen which would reflect, so far as possible, not only technical senses well understood by computer experts but also legal senses on which decisions by courts would be based. The Working Group took into account the need for the drafting of definitions of legally protected subject matter to match the type of legal protection envisaged, with the result that, for example, the drafting of a definition of computer program with a view to protection by a copyright law would be different from the drafting of such a definition for the purposes of another law. It was agreed to attempt to draft definitions initially in a copyright context.

8. After an extensive discussion, it was generally agreed that it was not possible, useful or necessary to attempt definitions of such jargon terms as "computer software" or "firmware" for the purposes of legal protection. It was also noted that "supporting material" required no special protection (being generally material already capable of protection under existing copyright principles) and therefore needed no special definition.

9. It was pointed out that the definition in the Model Provisions of a "program description" would apply more appropriately to a "program specification," and that, in the light of recent and expected future developments, the definition of "computer program" could include formal program specification in some cases. It was observed that programs consisted not only of imperative instructions but also of declaratory statements in higher level languages, and that the importance of the latter element was increasing and could be expected to increase further.

10. The following alternative texts were proposed by members of the Working Group as improvements of the definition of "computer program" contained in the WIPO Model Provisions:

(a) "*Computer Program* is a well-formed set of instructions capable of directing automatic information-handling machines to perform some function, in some specific way."

"*Program Code* is any representation of a computer program, expressed in any programming language, implementable through automatic or manual translations of its set of instructions."

(b)

"A Computer Program is an expression

(organized / structured / related) (set / sequence / collection / combination / disposition) of (instructions / statements / commands / orders / forms / symbols)

in any language or notation

(high level / intermediate / assembly / machine / micro) (language / code)

on any medium

(magnetic / optical / electrical / pencil on paper) (tape / disk / film / chip / ROM / circuit)

intended to cause a computer

(directly or indirectly / with or without data) (information processing machine / robot / logical device)

to perform a task."

(execute) (particular / specific / intended) (function)

(c) "An expression, in any form and on any medium, of a set of *directions* (with or without related *information*) intended to cause a machine* having information processing capabilities to perform a particular function."

* device?

(d) "A computer program means a set of inter-related instructions intended to cause an information processing device to perform a particular function.'

"For the purpose of copyright/copyright-like protection: a computer program means an expression of a set of inter-related instructions intended to cause an information processing device to perform a particular function."

(In a side-paragraph, terms like:
. related, instruction
. intended
. device
. perform. function
can be determined.)

(e) "A computer program is a structured set of instructions and/or expressions,

which can be described in a written form, using one or several equivalent programming or description languages:

which can be transformed to such a form that it can be stored in a computer-readable media in order to run a computer or an information-processing system."

(f) "For the purposes of copyright protection, a computer program work is an expression of a set of instructions or statements fixed in any form or medium intended to cause* a computer directly or indirectly to indicate, perform or achieve a particular function, task or result."

* capable of causing

Stages in Program Preparation

11. In respect of paragraph 5(b) of document LPCS/WGTQ/1/2, it was pointed out that new methodologies were emerging to automatically generate programs from program specifications. Nevertheless, each specification could be implemented by several algorithms and numerous programs.

Transformation from Program Specification into Source Code and from Source Code into Object Code

12. The question was raised how to define the act of transformation of a program from source code into object code: was this to be considered as a mere reproduction or as an adaptation, resulting in a new work? According to one opinion, such transformation could be compared with the transformation of a written text into binary symbols for the purposes of printing and thus constituted a mere reproduction. On the other hand, the opinion was expressed that additions and deletions could be made, together with changes in the order of the instructions so that several possibilities might exist as regards the result of such transformation. If the compiler program could be considered as an independent intellectual input, the consequence would be that the act of transformation could be an adaptation and not merely a reproduction.

13. It was pointed out that similar considerations might apply to the transformation from program specification into source code, and that there could be an even stronger argument in favor of an adaptation (going beyond mere reproduction) where the said transformation required a more complex intellectual input.

Integrated Circuits

14. With respect to paragraph 5(d) of document LPCS/WGTQ/1/2, attention was drawn to plans for establishing a special form of protection for the design of integrated circuits.

III. Factual Questions

15. Discussions were based on paragraph 8 of document LPCS/WGTQ/1/2.

Use of a Computer Program in the Control of the Operations of a Computer

16. As regards the first question contained in paragraph 8(a) of document LPCS/WGTQ/1/2, namely, whether use of a computer program in the control of the operations of a computer in all cases entailed a reproduction of the program, there was unanimity that this question had to be replied to in the negative, in particular since it contained the proviso "in all cases." Reference was made to re-entrant programs, and to computer programs stored in integrated circuits, which could be directly used without the requirement of establishing a copy in the Central Processing Unit (CPU) of the computer. A precondition of such direct use was the complete technical compatibility of the program as stored and the computer for which it was to be used. That precondition was fulfilled in the case of computer programs, such as those packaged in ROM cartridges, which were sold in relatively large quantities as consumer goods, in particular computer programs for home computers and personal computers and computer programs relating to videogames. In this connection, reference was also made to the storage of computer programs on so-called "smart cards" and "chip cards," i.e., devices which contained the program plus the electronic machine executing the program.

17. The question was raised whether one could speak of reproduction where, in its operation according to the program, the computer would repeat—one after the other—all or some of the instructions that make up the program but would never incorporate the program as a whole nor record such instruction in tangible form. The view was expressed that, in such a case, no reproduction took place because a single instruction could not be considered as a sufficiently characteristic part of a program and, under any definition, a computer program consisted of a structured "set"—and not only of unrelated individual instructions.

18. Attention was drawn to the fact that the device storing the program and the device controlled by the program could be in completely different locations and/or jurisdictions, the instructions of the program

being communicated between the devices by long-distance transmission.

19. It was agreed that the loading of a computer with a program was to be considered as a reproduction, but such loading, and therefore reproduction, might occur only once, regardless of the number of uses (and, in the case of multiuser systems, the number of users).

20. As regards the second question contained in paragraph 8(a) of document LPQS/WGTQ/I/2, it was agreed that, in the case of loading referred to in paragraph 19, above, the medium on which the program was reproduced could be a primary memory or any other tangible medium.

Preventing or Hampering Unauthorized Use of a Computer Program by Technical Protection Devices

21. As regards paragraph 8(b) of document LPCS/WGTQ/I/2, explanations were given on the various existing technical possibilities in order to prevent or hamper unauthorized use (and/or unauthorized copying) of a computer program, such as:

(i) encryption (i.e., making the program unusable or unfit for unauthorized copying);

(ii) deliberate incorporation of defects ("bugs");

(iii) incorporation of passwords or other means of identifying authorized users (e.g., voice or finger print identification);

(iv) restrictionof the servicing of programs to registered authorized users;

(v) other electronic devices, such as "smart cards," etc.;

(vi) sealed cartridge packaging.

22. It was pointed out that the efficiency of those means depended on the investment made in them and that so far no technical means existed which could completely exclude unauthorized use or copying of programs; for each technical obstacle there would be some technical solution to overcome it; all depended on the investment in time, money and effort which the party interested in overcoming the obstacle was ready to make. Moreover, attention was drawn to the inconvenience caused by technical protection devices to authorized users. In any case, it was agreed that technical protection could never render legal protection superfluous.

IV. Classification of Computer Programs

23. With respect to paragraphs 9 to 12 of document LPCS/WGTQ/I/2, the Secretariat stated that the International Patent Classification was merely referred to as an example but that a classification of computer programs appeared to be useful, if not necessary, independently of the form of protection to be considered, for the purposes of organizing the existing material.

24. It was underlined that a classification of computer programs would be particularly important for users of programs, in order to permit selective access through identification of programs. The view was also expressed that such a classification system would involve considerable difficulty in establishing the necessary multiple classifications, and that the usefulness of such a system for potential users is, at best, speculative.

25. Reference was made to the guidelines on patentability of computer programs issued by the Japanese Patent Office and the fact that in that Office about 20,000 patent applications concerning computer programs were pending.

26. It was pointed out that the United States Copyright Office registered computer programs without applying a classification.

27. Attention was drawn to existing schemes of classifying computer programs, established either by important users of computer programs, in particular governments and intergovernmental organizations, or by producers of programs or other interested entities, such as associations of users or producers or independent organizations, i.e., publishers of computer program directories. The said schemes had not yet reached the level of sophistication justifying the expression "classification," and they were far from being uniform. However, certain criteria for distinguishing programs appeared in all of them, in particular the purpose of the program. Criteria frequently used included the function of the program, the language in which the program was expressed, the type (including size) of computer for which it could be used, the author and/or enterprise of origin and the date of creation or publication. It was agreed that examples of such classification systems should be forwarded to the International Bureau.

28. It was noted that a traditional type of classification system may be inadequate for the purposes of users. It was suggested that a computerized information retrieval system based on a range of program attributes might be the only satisfactory way of implementing a classified system of computer programs.

V. Closing of the Meeting

29. In his closing address, the Secretary of the Attorney-General's Department, Mr. Pat Brazil, underlined the progress which had been made in refining technical questions, which will prove important in WIPO's future work on this subject.

30. This Report was adopted by the Working Group in its meeting on April 6, 1984.

ANNEX I

TECHNICAL QUESTIONS RELATING TO THE LEGAL PROTECTION OF COMPUTER SOFTWARE

(WIPO document LPCS/WGTQ/1/2, of February 24, 1984)

Outline Prepared by the International Bureau

I. Introduction

1. The Committee of Experts on the Legal Protection of Computer Software (hereinafter referred to as "the Committee") recommended at its second session (Geneva, June 1983) that a working group for examining certain technical issues, in particular the definition of computer software, should be convened (see document LPCS/II/6, Annex I, paragraph 7). This recommendation was one of the results of the Committee's deliberations on a draft treaty for the protection of computer software (hereinafter referred to as the "draft treaty") (document LPCS/II/3). In particular, the said draft treaty contains definitions of the terms "computer program," "program description," "supporting material" and "computer software," which reproduce the definitions contained in the Model Provisions on the Protection of Computer Software (hereinafter referred to as the "Model Provisions"). The said Model Provisions had been published by WIPO in 1978 after preparatory work undertaken, with the assistance of an advisory group, during the years 1974 to 1977. Thus, the question arose in the Committee of whether, in view of the rapid development of computer hardware and software technology, the said definitions require being brought up to date (see document LPCS/II/6, paragraphs 37 to 45). Moreover, it was suggested that related technical issues (in addition to the definition of computer software) should also be examined (see document LPCS/II/6, paragraph 44).

2. The present paper refers to three kinds of technical questions, namely, definitions (in particular the definition of computer program), factual questions (in particular the question of whether use of the program implies reproduction) and the possibility of establishing a classification of computer programs. The selection of those questions is not to be understood as an expression of an opinion on the legal or other issues to be settled in an international treaty for the protection of computer software. It can, however, be assumed that those questions may be relevant for such a treaty, and there may be additional questions which also require examination. In any case, the present paper has, in respect of its coverage and contents, only a tentative character. The participants in the Working Group are invited to reply to the questions raised and to suggest, and reply to, further questions relevant to the subject.

II. Definitions

3. The definitions of "computer program," "program description," "supporting material" and "computer software" contained in the Model Provisions (Section 1) and the draft treaty (Article 1) read as follows:

(i) "computer program" means a set of instructions capable, when incorporated in a machine-readable medium, of causing a machine having information-processing capabilities to indicate, perform or achieve a particular function, task or result;

(ii) "program description" means a complete procedural presentation in verbal, schematic or other form, in sufficient detail to determine a set of instructions constituting a corresponding computer program;

(iii) "supporting material" means any material, other than a computer program or a program description, created for aiding the understanding or application of a computer program, for example problem descriptions and user instructions;

(iv) "computer software" means any or several of the items referred to in (i) to (iii).

Computer Program

4. In respect of the definition of "computer program," the following observations were made in the Committee (see document LPCS/II/6, paragraphs 37 to 40):

(a) the necessity of a definition was questioned, since it might have the effect of excluding certain matters from protection;

(b) the definition appeared to be too limited; it should cover "source program," "object program," other types of programs and the different stages of development of programs;

(c) the terminology established by the International Organization for Standardization (ISO) should be taken into account;

(d) instead of "... means a set of instructions...," the definition should say "... means an expression, in any form, of a set of instructions ...."

5. In the light of those observations, but also of considerations raised in court decisions and scientific articles dealing with the legal protection of computer software, the following issues are to be distinguished:

(a) Does "program" mean both the machine-readable set of instructions, stored on a medium such as an integrated circuit or a magnetic tape and providing for electrical functions (e.g., a sequence of steps permitting or not permitting the flow of electrical current), and the expression of the said instructions in writing? The machine-readable expression of the program is generally called "object code," whereas the expression of the program in writing (which is the basis for the object code) is generally called "source code." The source code is usually expressed in a programming

language, i.e., an artificial language established for expressing computer programs (*sic* the ISO Standards Handbook 10 "Data Processing—Vocabulary," 1982 (hereinafter referred to as the "ISO Vocabulary"), 07.02.13), whereas the object code is usually expressed in a set of computer instructions, i.e., instructions that can be recognized by the central processing unit of the computer for which they are designed (ISO Vocabulary, 07.16.01). As regards the source code, a distinction seems to be made between a high level computer language, such as BASIC or FORTRAN, and an assembly language which consists of alphanumeric labels and which can automatically be translated by a compiler program into object code. Thus, a computer program may be created in three consecutively prepared expressions: first in high-level computer language, then in assembly language and finally in machine language, the first two expressions being called "source code" and the final expression being called "object code." Therefore, the question arises to what extent various expressions in assembly language and machine language may be established on the basis of a particular expression in high-level computer language.

(b) What are the stages in the preparation of a computer program that precede the establishment of the source code? What is the meaning of "algorithm?" (The ISO Vocabulary (01.04.10) defines "algorithm" as "a finite set of well-defined rules for the solution of a problem in a finite number of steps.")

(c) Do any parts of a computer program deserve a particular definition and, if so, what should be those definitions? For example, what does "subroutine" mean? (The ISO Vocabulary 07.08.01 defines "subroutine" as "a sequenced set of statements that may be used in one or more computer programs and at one or more points in a computer program.") What is a "mnemonic symbol?" (The ISO Vocabulary 04.01.06 defines this as a "symbol chosen to assist the human memory" and gives as an example the abbreviation "mpy" for "multiply.") What is a "notation?" (The ISO Vocabulary defines "binary-coded notation" as a "binary notation in which each character is represented by a binary numeral" (05.05.04) and a "binary-coded decimal notation" as a "binary-coded notation in which each of the decimal digits is represented by a binary numeral" (05.06.01).)

(d) What does "firmware" mean? Is this expression being used to designate integrated circuits (or "chips") which incorporate computer programs in machine language? Could a precise definition of "firmware" be given? (The ISO Vocabulary is silent on this matter.)

Program Description and Supporting Material

6. In the discussions of the Committee, doubts were expressed concerning the usefulness of defining "program description" and "supporting material" (see document LPCS/II/6, paragraph 41). The question here is whether those definitions may be affected by any technological developments.

Computer Software

7. The three elements of which computer software may consist in accordance with the definition of the Model Provisions and the draft treaty have been examined in the preceding paragraphs. The only question which seems to arise in this connection is the question of whether computer software may consist of elements other than the three aforementioned.

III. Factual Questions

8. There seem to be two factual questions of a technical nature relevant for the legal protection of computer software:

(a) Does use of a computer program in the control of the operations of a computer in all cases entail a reproduction of the program? If so, what is the kind of such reproduction and does it result in a tangible copy (e.g., on a magnetic tape)?

(b) To what extent can the unauthorized use of a computer program be prevented or hampered by technical protection devices?

IV. Classification of Computer Programs

9. A technical question of growing importance is the question of whether it is possible to establish criteria (which could be expressed in short symbols) in order to classify computer programs. Those criteria should be internationally accepted, following the example of the International Patent Classification; the international classification of computer programs could even become a part of, or an annex to, the International Patent Classification.

10. A classification of computer programs could enable the storage of computer programs in a manner permitting their easy retrieval. Thus, program data banks could be established, which would facilitate a more wide-spread use of computer programs and avoid duplication of efforts in the preparation of computer programs.

11. Several criteria appear to be conceivable in order to distinguish computer programs, for example, the kind of programming language used, the purpose of the program, etc.

12. While it is realized that the establishment of a classification not only raises technical questions but also administrative questions, a preliminary opinion—based on technical considerations only—on this question nevertheless appears to be useful.

ANNEX II

LIST OF PARTICIPANTS*

I. Experts

R. Bell *(Australia)*; P. Crisp *(Australia)*; J.A. Faria Correa *(Brazil)*; J.E.M. Galama *(Netherlands)*; B.R. Gibson *(New Zealand)*; A. Grissonnanche *(France)*; R.J. Hart *(United Kingdom)*; T.N. Heming *(Australia)*; C.K. Kim *(Republic of Korea)*; J.E.A. Kingston *(Canada)*; G.M. Kreizschmar *(Federal Republic of Germany)*; R. Magnus *(Singapore)*; M. Mitsugi *(Japan)*; R.O. Nimtz *(United States of America)*; S.H. Nycum *(United States of America)*; S.S. Oberoi *(India)*; C. R. Pellegrini *(Switzerland)*; F.E.R. Ramalho *(Brazil)*; G.A. Rose *(Australia)*; A.K. Sarmanto *(Finland)*; K.H. Shin *(Republic of Korea)*; V. Siber *(United States of America)*; P.A. Smith *(Australia)*; P.-Y. Thong *(Singapore)*; A. van Wiersl *(Australia)*.

II. Officers

Chairman: R. Bell (Australia). *Secretary:* L. Baeumer (WIPO).

III. International Bureau of WIPO

A. Bogsch *(Director General)*; L. Baeumer *(Director, Industrial Property Division)*; R. Harben *(Director, Public Information Division). Special Consultant:* M. Najim *(Professeur, Université Mohamed V, Rabat, Morocco)*.

ANNEX III

OPENING ADDRESS BY THE ATTORNEY-GENERAL OF AUSTRALIA, SENATOR GARETH EVANS, Q.C:

Director-General, Distinguished Experts
and Consultants,
Ladies and Gentlemen,

It is my pleasure to welcome you to this meeting of a Committee of Experts on the Legal Protection of Computer Software, convened by the World Intellectual Property Organization. For those of you who are from overseas, welcome also to Australia and, in particular, to our national capital. I hope you find your stay both enjoyable and productive.

You are present in Australia at a time when the community, the computer industry and various parts of government are wrestling with the impact of modern computer technology on traditional intellectual and industrial property concepts.

This once somewhat academic issue has become the subject of remarkably lively public debate following a decision of our Federal Court in December 1983 to the effect that certain categories of computer software were not legally protected as "literary works" under our Copyright Act 1968.

The debate came to a head at a symposium which my Department co-sponsored, held in Canberra a fortnight ago on 15-16 March. Nearly 300 representatives of the computer software industry and user groups came together; united only in one thing, their condemnation of me and the Government (either for talking about protective legislation at all; or for not enacting it the day before yesterday).

In opening that symposium I stated that in approaching the question of whether computer software should be protected by legislation against copying, the Government regarded the onus as lying heavily on those arguing against legislative protection.

At the same time, I made clear that, since an appeal to the Full Federal Court from the earlier decision has been heard but not yet decided, the Government would not contemplate taking legislative action, whatever form legislative change might take, before the outcome of the Full Federal Court appeal was known (although we will reconsider that position in the event that it becomes apparent that there will be any really significant delay).

As your presence in Australia today testifies, the recent Australian experience with computer software and other expanding technology is in no way unique. Faced with an international situation of this kind and the vast improvements in information transmission technology, it is of the utmost importance that countries come together through the auspices of a forum such as WIPO with a view to ensuring that their laws, if not necessarily uniform, are at least compatible in basic principle.

In such a climate, international cooperation and consistency are of the greatest importance and one naturally hopes that those two great multilateral intellectual and industrial property Conventions—the Berne Convention of 1886 and the Paris Convention of 1883—will prove equal to the task: if not in detail, at least in principle.

Against that background, it is pleasing to note that the World Intellectual Property Organization, which administers both those Conventions, has been actively studying the question of legal protection of computer software—and has in fact been doing so since 1971—with a view to developing effective national and international measures.

I am informed, Director-General, that the process began in 1971 with an advisory group of governmental experts, and that the study was continued with the help of non-governmental experts who met four times between 1974 and 1977: with model provisions on the protection of computer software being first published by WIPO in 1978.

Further expert groups met in 1979 and 1983 to consider the desirability and feasibility of an interna-

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

tional treaty for the protection of computer software. I understand that the debate is now largely one of whether software is or should be protected under the existing copyright conventions or should be treated, because of its distinctive characteristics, under a special legal regime, borrowing aspects of both copyright and patent law.

Whilst such careful analysis, debate and consultation is most valuable in developing acceptable legal responses, it does run into one substantial difficulty. Technological development does not wait for legislators and just as the technology may change almost beyond recognition in a decade or less, so the necessary legal apparatus for dealing with such technology must change or risk becoming redundant.

We of course find the same phenomenon with our domestic laws and it is always difficult to balance the time needed for detailed analysis and wide consultation against the risk that solutions will be obsolete, or at least obsolescent, unless adopted reasonably quickly.

I understand that it is largely the function of this meeting to bring the international discussions up to date by considering whether definitions used in the WIPO Model Provisions and Draft Treaty now represent adequately the state of current technology.

It will be a difficult task, since you will be racing against a very difficult opponent. In one respect the situation is like the old paradox of the tortoise and the hare: each time the hare reaches the point where the tortoise was a moment ago, the tortoise has moved on a step. But the big difference here is that the "state of current technology" is no tortoise, but itself goes ahead in leaps and bounds.

Your task is obviously a most important one. I firmly believe that it is only by keeping our national and international laws truly up to date that we can create the legal environment which will best facilitate the application of new technologies in ways of benefit to all mankind.

I appreciate that this meeting will not be directly concerned with national or international policies concerning legal protection of computer software. Nevertheless, this work will be of fundamental importance to the development and expression of those policies and for that reason I am delighted to see such a wide range of countries represented here today. Your recommendations will have a truly international imprint and, as such, should command world-wide respect.

Further to my earlier comments about the current debate in Australia, we are particularly grateful to the experts from the United States, Germany, Britain and Japan who have kindly agreed to lead discussions at the Public Seminar next Thursday. This will offer Australians an unparalleled opportunity to learn about developments in those four countries which are recognized leaders in technology.

Lest I be accused of contributing to that delay which causes legal obsolescence I shall conclude here by offering you my best wishes and those of the Government for successful discussions. I look forward to seeing the report on the deliberations of this Meeting of Experts, which I now have great pleasure in declaring open.

ANNEX IV

OPENING ADDRESS BY THE DIRECTOR GENERAL OF WIPO, DR. ARPAD BOGSCH:

Mr. Attorney-General, the Honorable Senator Gareth Evans,
Ladies and Gentlemen,

The protection of computer software is a question that has occupied for the last 10 years the World Intellectual Property Organization, which I have the honor to represent here today.

The first thing we did was the drawing up of model provisions on the protection of computer software. Model provisions, that is, for the legislator for legislating on the matter. The provisions, published in 1977, were the outcome of the work of an advisory group of non-governmental experts which met, once a year, in the four years between 1974 and 1977 in Geneva, where the World Organization has its headquarters.

A few years later, we received a new mandate from our Governing Bodies. It was to look into two questions. One was the desirability of the setting up of an international *voluntary* register for computer software. Not having received a favorable reaction, the pursuit of this question was suspended for the time being.

The other question was that of the protection of computer software on the international level. In other words, to try to find a reply to the question whether the existing treaties in the field of intellectual property oblige the States to protect computer software of foreign origin and, if so, whether the foreign creators and owners of computer software can safely rely on such treaties. Furthermore, if the answer to these questions is negative, or not completely positive, to look into the feasibility of a new multilateral treaty, specially designed to oblige the contracting States to grant protection to computer software of foreign origin.

Two international meetings, organized by WIPO, have taken place so far on these questions. These meetings were meetings of representatives of governments and interested non-governmental organizations and were convened under the name "Committee of Experts on the Legal Protection of Computer Software." The second and, thus, the most recent of those meetings took place last June. The work is not completed, no final decisions have been made, and the work will continue.

During that second session of the Committee of Experts, it became evident that it was no longer sure whether the definition of computer software, as made in

1977 by the above-mentioned Advisory Group, was still valid and whether the uses to which computer software can be put, and the abuses it can suffer, were the same now as seven or 10 years ago. Many new inventions were made, integrated circuits became of prime importance, and many other things have happened, in the past decade, that affect the creation and the use of computer software.

This is why last year's Committee of Experts recommended, as an intermediate step, before continuing its work, the convening of a working group "for examining certain technical issues, in particular the defintion of computer software."

That working group is this working group. The strongest support of the proposal for such a working group was made during last year's meeting by our distinguished chairman, Dr. Robin Bell, who is a high official of the Department headed by the Attorney-General, Senator Evans. This is one of the reasons for which I convened the working group in Canberra.

But there is another reason as well. It is that I thought it to be particularly appropriate to have a meeting on such a modern topic as computer questions in a country as modern as Australia. Australia is the country of the most staggering rapid development in the intellectual and industrial field, and it is a country whose future is particularly bright. Is computer technology not a field of intellectual and industrial endeavor in the process of a most staggering rapid development with the brightest future?

The idea of having this meeting in Canberra was confirmed during a visit that the Secretary of the Attorney-General's Department, Mr. Pat Brazil, paid to WIPO a few months ago, and was authorized by the Attorney-General himself, in the name of the Australian Government.

WIPO is—and I shall conclude my remarks with these observations—very grateful to the Australian Government, and in particular to Senator Evans, for hosting this meeting. It underlines the interest that they have in international cooperation in the field of intellectual property. This interest, by the way, extends not only to purely legal matters, but also to the program of development cooperation of WIPO. That program is carried out, in respect of the developing countries of Asia and the Pacific, with the particular help of Australia, and I wish to use this occasion, if I may, to pay tribute to the Australian Government's generous participation, and indispensable advice, in our contacts with the developing countries of South East Asia and the Pacific.

I also wish to thank and welcome the participants. They all came at their own expense, using their most valuable professional time. The sacrifice is much appreciated. I hope that you will find the meeting worthwhile.

Finally, I should like to thank, in the name of all of us, our Australian hosts for the organization—whose superb quality is already evident—and for their well-known, friendly hospitality.

General Studies

Recent U.S. Legislation on Patents and Trademarks

G.J. MOSSINGHOFF*

To a person living in the twenty-first century and looking back on this century, surely 1982 will stand out as a watershed in the history of the U.S. Patent and Trademark Office (PTO) and the patent and trademark systems generally. That year, Congress passed laws creating a single court of appeals with nationwide jurisdiction in patent cases,[1] put the Patent and Trademark Office on a sound financial footing,[2] and provided alternatives to costly litigation in patent cases.[3] Legislation passed in 1982 also enabled the PTO to enter into cooperative ventures[4] with other major patent offices and elevated the status of the Commissioner of Patents and Trademarks and the PTO within the U.S. Government.[5] The system of U.S. trademark registration was strengthened.[6] Other amendments to the patent law streamlined patent prosecution procedures.[7]

Public Law 97-164

On October 1, 1982, the U.S. Court of Appeals for the Federal Circuit (referred to hereinafter as the "CAFC") began operations as a result of one of the most comprehensive judicial reform measures in my country's history, the Federal Courts Improvement Act of 1982.[8] The new court was created in part because of the long-recognized problem that the Courts of Appeals for the 12 federal circuits were applying different standards in determining whether or not a patent was valid.[9] For example, the basic question of whether an invention meets the test of being "unobvious"[10] over earlier work was treated in some circuits as one of fact[11] and in others as a question of law.[12] The issue concerning whether combination inventions needed to produce a "synergistic" result to be patentable was also being debated among the circuits and in individual decisions.[13]

By providing a single, authoritative tribunal in the CAFC to handle patent cases nationwide, Public Law 97-164 will contribute greatly to a single standard of patentability which will be understandable to inventors and businesses alike.

Jurisdiction of the CAFC in Patent Cases

To remedy the conflict and uncertainty among the several circuits in patent law matters, Public Law 97-164 gave the CAFC exclusive jurisdiction over all appeals from final decisions of federal district courts in cases where the court's jurisdiction was based, "in whole or in part," on the patent law portion of 35 U.S.C. section 1338.[14] Thus, all appeals in district court cases which arise under the patent laws of the United States of

* Assistant Secretary and Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, United States Department of Commerce.

[1] Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25 (codified in scattered sections of 28 U.S.C.).

[2] Act of August 27, 1982, Pub. L. No. 97-247, 96 Stat. 317 (partially codified in scattered sections of 15, 35 U.S.C.).

[3] Pub. L. No. 97-247, section 17(b) (codified at 35 U.S.C. section 294).

[4] Pub. L. No. 97-247, section 13 (codified at 35 U.S.C. section 6(a)).

[5] Act of October 25, 1982, Pub. L. No. 97-366, section 4, 96 Stat. 1759 (codified at 35 U.S.C. section 3(d)).

[6] Act of October 12, 1982, Pub. L. No. 97-296, 96 Stat. 1316; Pub. L. No. 97-247, sections 8-12 and 14.

[7] Pub. L. No. 97-247, sections 5, 6, 14 and 16.

[8] Pub. L. No. 97-164. See Lever, *The New Court of Appeals for the Federal Circuit (Part I)*, 64 J. PATENT OFF. SOC'Y 178 and n. 3 (1982).

[9] Lever, *supra* note 8 at 197-200 and sources cited at 198 n. 61.

[10] 35 U.S.C. section 103 (1976).

[11] See, e.g., *Shanklin Corp. v. Springfield Photo Mount Co.*, 521 F.2d 609, 616 (1st Cir. 1975), *cert. denied* 424 U.S. 914 (1976); *Halliburton Co. v. Dow Chemical Co.*, 514 F.2d 377, 379 (10th Cir. 1975); *Mahaffy & Harder Eng'r Co. v. Standard Packaging Corp.*, 389 F.2d 525, 530 (4th Cir. 1968).

[12] See, e.g., *Reed Tool Co. v. Dresser Indus., Inc.*, 672 F.2d 523, 527 (5th Cir. 1982); *Satco, Inc. v. Transequip, Inc.*, 594 F.2d 1318, 1322 (9th Cir.), *cert. denied* 444 U.S. 865 (1979); *Nickola v. Peterson*, 580 F.2d 898, 911 (6th Cir. 1978), *cert. denied* 440 U.S. 961 (1979).

[13] Lever, *supra* note 8 at 198 n. 61.

[14] See 28 U.S.C.A. section 1295(a)(1) (West Supp. 1983). Section 1338 of Title 28 provides in pertinent part:

> "(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases...."

28 U.S.C. section 1338 (1976). Appeals from district courts in copyright, trademark or plant variety protection act cases will continue to be taken to the circuit courts of appeals.

America, such as patent infringement suits[15] and suits arising under sections 145 or 146 of Title 35,[16] will now be taken to the CAFC.

In addition to appeals from U.S. district courts, the CAFC will absorb the jurisdiction of the former Court of Customs and Patent Appeals (CCPA), which Public Law 97-164 abolished.[17] All appeals from the PTO's Board of Appeals and Board of Patent Interferences are now taken to the CAFC in the same manner that they formerly went to the CCPA.[18] The CAFC also has the former CCPA's jurisdiction to hear appeals from decisions of the International Trade Comission.[19]

Jurisdiction of the CAFC in Trademark Cases

The CAFC maintains the jurisdiction of the former CCPA over appeals from the PTO Commissioner or the Trademark Trial and Appeal Board with respect to applications for registration of marks and other proceedings provided for in section 21 of the Lanham Act.[20]

Other Jurisdiction of the CAFC

The CAFC is by no means a "patent court," however, nor even a "patent and trademark court," as some have referred to it. The CAFC spends a large portion of its time hearing cases in widely varied fields. It has exclusive jurisdiction over appeals from the Secretary of Agriculture under the Plant Variety Protection Act.[21] The CAFC also hears appeals from final decisions of the U.S. Court of International Trade,[22] the Merit Systems Protection Board,[23] the various boards of contract appeals of U.S. Government agencies,[24] and U.S. district courts and the new U.S. Claims Court[25] in suits against the U.S. Government other than internal revenue cases.[26]

The Operation of the CAFC

The CAFC consists of 12 judges; presently these include the five former CCPA judges plus the seven former Court of Claims judges.[27] Former CCPA Chief Judge Howard T. Markey is now the Chief Judge of the CAFC.[28]

The judges of the CAFC may sit in panels of three to 12 judges.[29] While the Court will normally sit in panels of three, it has the ability to sit in larger panels to ensure the authoritativeness of its decisions where the case law has been highly inconsistent. To ensure uniformity among the decisions of different panels in various cases, Chief Judge Markey has set a policy whereby all decisions are circulated to all CAFC judges for their comment and review before being announced to the public.[30] Thus the new court, under the leadership of Chief Judge Markey, should establish consistency and predictability in many areas of the patent law.

The State of the PTO Prior to Public Law 97-247

Public Law 97-247 put the Patent and Trademark Office on a sound financial footing for the first time in recent history. Further, it allowed the PTO greatly to expand its programs to prepare for the twenty-first century. To appreciate the significance of these developments, some recent history is necessary.

When I began my term as Commissioner in April of 1981, the Patent and Trademark Office was not serving the needs of inventors and industry as well as it should.[31] We had a backlog of more than 200,000 patent applications,[32] which backlog in 1982 was growing at the rate of 10% a year.[33] If the resources level of the Fiscal Year 1982 budget[34]—prior to the passage of Public Law

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[15] See Lever, *The New Court of Appeals for the Federal Circuit (Part II)*, 64 J. PATENT OFF. SOC'Y 243, 253-255 (1982).

[16] Section 145 provides that an applicant who is dissatisfied with the decision of the PTO's Board of Appeals may bring a civil action against the Commissioner in the U.S. District Court for the District of Columbia. Section 146 similarly provides for an action in the District Court for the District of Columbia to appeal the decision of the PTO's Board of Patent Interferences. 35 U.S.C.A. sections 145, 146 (West Supp. 1983).

[17] Pub. L. No. 97-164, section 122.

[18] See 28 U.S.C. section 1295(a)(4)(A) and (C).

[19] See 28 U.S.C. section 1295(a)(6).

[20] See 28 U.S.C. section 1295(a)(4)(B); 15 U.S.C. section 1071.

[21] 28 U.S.C. section 1295(a)(8); 7 U.S.C. section 2461 (1976). Nonexclusive jurisdiction over Plant Variety Protection Act appeals was formerly vested in the CCPA. See 28 U.S.C. section 1545 (1976).

[22] 28 U.S.C. section 1295(a)(5).

[23] 28 U.S.C. section 1295(a)(9).

[24] 28 U.S.C. section 1295(a)(10).

[25] Public Law 97-164 created a new U.S. Claims Court having concurrent original jurisdiction with the U.S. District Courts in suits against the Federal Government. See 28 U.S.C. section 1346; Public Law No. 97-164, section 130. The former U.S. Court of Claims was abolished along with the CCPA by Public Law 97-164. Appeals may be taken from the Claims Court to the CAFC, under 28 U.S.C. section 1295(a)(2).

[26] See 28 U.S.C. section 1295(a)(2).

[27] Pub. L. No. 97-164, section 165 (codified at 28 U.S.C.A. section 44 note (West Supp. 1983)).

[28] See Pub. L. No. 97-164, section 166 (codified at 28 U.S.C.A. section 45 note (West Supp. 1983)).

[29] See 28 U.S.C. section 46.

[30] Address by Chief Judge Howard T. Markey to the Mid-Winter Meeting of the National Council of Patent Law Associations (February 12, 1983) *reported in* National Council of Patent Law Associations Newsletter, 2d Quarter 1983, at 4.

[31] Address by Gerald J. Mossinghoff to the Patent, Copyright and Trademark Section of the American Bar Association at New Orleans, Louisiana (August 8, 1981) [hereinafter cited as New Orleans ABA address].

[32] Address by Gerald J. Mossinghoff to the Patent Law Association of Chicago, at Chicago, Illinois (January 20, 1982) [hereinafter cited as Chicago address].

[33] *Id.*

[34] Fiscal Year 1982 began on October 1, 1981, and ended on September 30, 1982.

97-247—had been maintained in coming years, the average time it takes to get a patent would have continued to increase by about two months a year from the 24.2 months then required[35] until it reached three years in 1988.[36] On the trademark side, it took longer to register a trademark when I started my term as Commissioner—about 25 months—than at any previous time since the Lanham Act was passed in 1946.[37] The trademark application backlog stood at over 116,000 in Fiscal Year 1982 and continued to grow.[38]

In the documentation area, an average of 7% of the patents were missing or misfiled, and in rapidly developing fields that number was as high as one out of four.[39] On the patent side, the examiner's first actions—his or her formal opinions on patentability—were still written in longhand and sent to inventors and executives around the world.[40] As 1980 came to a close, you could not find an article on the Patent and Trademark Office that did not use modifiers such as "hard-pressed," "beleaguered," "underfunded," "understaffed," and even "broken down."[41] Because of severe shortcomings in the Office, the patent system itself was described in December of 1980 on a popular U.S. television program, *NBC Magazine*, as a "cruel hoax."[42]

An additional challenge which continues to face the Patent and Trademark Office is that it ranks among the world's largest information processing organizations. Each day our mail room opens, sorts and distributes 20,000 pieces of mail—more than is handled at a busy British postal counter.[43] Each day we sell 13,000 patent copies; laid end to end, the pages we sell in a year would almost reach from Berlin to Cairo and back again.[44] Our 1,500 daily deposit account transactions are about triple the number at a typical suburban U.S. savings and loan institution.[45] If the 108,000 patent applications we receive each year were placed one on top of the other, the stack would be taller than the combined heights of the Eiffel Tower and the Washington Monument.[46] If the 25 million patents and publications in the patent examiners' files were spread out, they would cover an area over four times as large as Monaco.[47] And by the turn of the century, the size of those files will double.[48]

The Three-Point Program to Turn the PTO Around

To meet the challenges of a rising patent and trademark application backlog, resulting in increased pendency times for issued patents and trademarks, and the information processing needs of our operation, the Secretary of Commerce embarked on an aggressive three-point program.[49] The first point of that program is to achieve an average pendency time of 18 months for issued patents by Fiscal Year 1987. We are calling this "Plan 18/87." The second point, relating to trademarks, is "Plan 3/13," which sets a goal of three months to a first opinion on registrability and 13 months to disposal. The PTO will achieve that goal by Fiscal Year 1985. The third major goal is to move realistically toward a fully automated PTO by 1990, replacing the present all-paper, hand-file-and-retrieve system.

To reach 18 months' pendency for patent applications by 1987, it will be necessary to increase disposals[50] so that disposals eventually exceed receipts. To this end we hired 235 patent examiners in Fiscal Year 1982,[51] 245 examiners in fiscal year 1983, and we plan to hire significant numbers of additional examiners through 1987.[52] To meet the goal of three months' pendency to first action and 13 months to disposal for trademark applications, the PTO hired 20 trademark examiners in 1982[53] and will continue recruitment efforts throughout 1985 to achieve Plan 3/13 in that year.[54]

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[35] [1983] *Commissioner of Patents and Trademarks, Annual Report for Fiscal Year 1982*, at 18 [hereinafter cited as ANN. REP./FY 1982].

[36] New Orleans ABA address, *supra* note 31.

[37] *Id.*

[38] Chicago address, *supra* note 32.

[39] New Orleans ABA address, *supra* note 31.

[40] *Id.*

[41] See e.g., Recer, *Patent System a Drag on Innovation*, U.S. NEWS & WORLD REPORT, February 2, 1981, at 45-46. See also Elkind, *Patent Office Fails as Mother of Invention*, Washington Post, August 18, 1980, at C1, C2; Abrams, *Bottleneck in Trademark Office Disrupts Many Companies' Plans*, Wall St. J., August 7, 1980, at 19.

[42] Interview with Donald W. Banner, former Commissioner of Patents and Trademarks, on *NBC Magazine with David Brinkley*, (December 5, 1980).

[43] See New Orleans ABA address, *supra* note 31; INSTITUTION OF MECHANICAL ENGINEERS, BRITISH POSTAL ENGINEERING (PROCEEDINGS 1969-1970) 1-2 (1970).

[44] The PTO sold 20,975,781 pages of patent and trademark copies last year, which, if laid end to end, would stretch 3,642 miles. See ANN. REP./FY 1982 *supra* note 35, at 62. The distance from Berlin to Cairo is 1,823 miles. HAMMOND CITATION WORLD ATLAS 346-347 (1966); see also New Orleans ABA address, *supra* note 31.

[45] See New Orleans ABA address, *supra* note 31.

[46] *Id.* In my New Orleans ABA address I stated that the stack of applications received would be taller than the Empire State Building and the Washington Monument combined. The Eiffel Tower is 984 feet tall, whereas the Empire State Building is 1,250 feet tall. 3 ENCYCLOPEDIA BRITANNICA MICROPEDIA 814, 880 (1974).

[47] The 25 million documents would cover approximately 68.9 million square feet, or 1,580.6 acres, over four times the 370 acres of Monaco. See HAMMOND CITATION WORLD ATLAS 30 (1966).

[48] New Orleans ABA address, *supra* note 31.

[49] See Remarks of Rep. Robert W. Kastenmeier introducing H.R. 5602, 97th Cong., 2d Sess., 128 CONG. REC. H456 (1982).

[50] A "disposal" is the issue or abandonment of a patent application.

[51] ANN. REP./FY 1982, *supra* note 35, at 19.

[52] The PTO plans to hire 180 patent examiners in 1984, 215 in 1985, and 80 in each of 1986 and 1987. Chicago address, *supra* note 32.

[53] ANN. REP./FY 1982, *supra* note 35, at 30.

[54] Thirty-two trademark examiners were added in 1983. 16 will be hired in 1984 and 19 in 1985.

With respect to our goal of automating the Office by 1990, we have formulated an aggressive long-range program in response to a Congressional requirement set forth in section 9 of Public Law 96-517.[55] Our automation plans are described in detail in my Report to Congress[56] which was completed in December of 1982.

Funding the Three-Point Program

Our three-point program, which we began to implement in 1982, required additional funds. These funds could not be obtained through appropriations from Congress, however, since the funding through appropriations for all civilian government agencies was significantly reduced in 1982. Prospects for the coming years look no brighter. While the PTO, which is a part of the Department of Commerce, actually requested additional or "supplemental" appropriations for Fiscal Year 1982,[57] it still faced significant cuts for Fiscal Years 1983 through 1985.[58] Thus, beginning in Fiscal Year 1983, it became necessary to increase fees to obtain the additional resources needed to place the PTO on a firmer financial footing and allow expansion of personnel and affirmative steps toward automation. Moreover, without the increased fees of Public Law 97-247, the only realistic alternative would have been a PTO program well below the unacceptable level which existed prior to 1982.

Not only was the fee revenue received in 1982 too low, but all fee revenue received by the PTO went into the miscellaneous receipts or general fund of the U.S. Treasury.[59] One of the first things I began working on as Commissioner was an agreement with Congress, on the recommendation of the Office of Management and Budget (OMB), to permit the PTO to retain and use the fees it received.[60] That agreement was obtained, so that now only a portion of the total PTO budget is provided through appropriations, the balance coming from fees.[61]

The Fees under Public Law 97-247

The fees in the accompanying table were established by Public Law 97-247.[62] While representing a substantial increase, they were essential to the three-point program outlined above. They are in keeping with the "user fee" concept of the Reagan Administration, whereby those who benefit most directly from Government services should pay for the cost of providing those services. However, so as not to discourage innovation on the part of "small entities," Congress provided that the fees established in Public Law 97-247 (see table) are to be reduced by 50%[63] for small business firms,[64] independent inventors,[65] and non-profit organizations.[66] The reduction of fees for small entities will be made up by public appropriations.[67]

In order eventually to recover the PTO's full costs and yet keep application and other "front-end" fees as low as possible, Public Law 97-247 increased maintenance fees, also shown in the accompanying table.[68]

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[55] 94 Stat. 3015, 3028.

[56] *Commissioner of Patents and Trademarks, Automating the Patent Office: A Report to the Congress by the Commissioner of Patents and Trademarks under Section 9 of P.L. 96-517 (1982)* [hereinafter cited as *Report under Section 9 of P.L. 96-517*]. The automation plan describes a three-phase program. During the first phase, which extends through 1984, all trademark functions will be automated, including our search facilities. Also, one of our 15 examining groups, Group 220, will be automated by the creation of computerized data bases of patents for retrieval utilizing the U.S. and other classification systems. PTO actions will be prepared on the same electronic work stations used for application review and searching. In the second phase, which runs through 1987, all patent groups will be automated and an essentially paperless operation achieved. At this stage the benefits of full file integrity for patent quality will be obtained. The third and final stage will provide worldwide electronic access to the PTO and expanded dissemination of patent and trademark information. Applicants will then be able to submit their applications in computer-processable media, and even computer-to-computer connection will be available.

[57] See Act of September 10, 1982, Pub. L. No. 97-257.

[58] Chicago address, *supra* note 32.

[59] *Id.*

[60] *Id.*

[61] See H.R. REP. NO. 97-542, 97th Cong., 2d Sess. 2, reprinted in [1982] U.S. CODE CONG. & AD. NEWS 765, 766.

[62] Pub. L. No. 97-247, section 3 (codified at 35 U.S.C.A. section 41 (West Supp. 1983)).

[63] Pub. L. No. 97-247, section 1.

[64] A small business firm is defined for purposes of the fees under 35 U.S.C. section 41 as a business concern with 500 employees or fewer, and which complies with the definition of the Small Business Administration at 13 C.F.R. section 121.3-18. See 37 C.F.R. section 1.9(d).

[65] An independent inventor is defined as any inventor who:
(1) has not assigned, granted, conveyed, or licensed, and
(2) is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person who could not likewise be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a nonprofit organization under 37 C.F.R. section 1.9(d) or (e).
37 C.F.R. section 1.9(c)

[66] A non-profit organization is defined as:
(1) a university or other institution of higher education located in any country;
(2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a));
(3) any nonprofit scientific or educational organization qualified under a nonprofit organization statute of a state of this country (35 U.S.C. 201(i)); or
(4) any nonprofit organization located in a foreign country which would qualify as a nonprofit organization under paragraphs (e)(2) or (3) of this section if it were located in this country.
37 C.F.R. section 1.9(e).

[67] Pub. L. No. 97-247, section 1.

[68] 35 U.S.C.A. section 41(b) (West Supp. 1983). These maintenance fees will be paid by patentees who filed their U.S. applications on or after August 27, 1982, the effective date of Public Law 97-247. See Pub. L. No. 97-247, section 17(a). Those who obtain a patent other than a design patent based upon an application filed on or after December 12, 1980, and before August 27, 1982, are subject to maintenance fees which are one-half of those listed in 35 U.S.C. section 41(b). 37 C.F.R. section 1.20(e)-(g). Plant patents would be exempted from maintenance fees if a bill currently pending in Congress is passed. H.R. 2610, 98th Cong., 1st Sess. (1983).

Maintenance fees make payment by the patentee easier by allowing him or her to defer payment of the bulk of the fees until the patent proves to be commercially valuable. The maintenance fees are due three and a half, seven and a half and 11 and a half years after grant of a patent.[69]

U.S. Patent Fees Established by Public Law 97-247

Fee	Large Entity	Small Entity
Patent application fees		
Basic filing fee	$300.00	$150.00
For each independent claim in excess of 3	30.00	15.00
For each claim, whether independent or dependent, in excess of 20	10.00	5.00
For one or more multiple dependent claims	100.00	50.00
Patent issue fee	500.00	250.00
Design patent application fee	125.00	62.50
Design patent issue fee	175.00	87.50
Plant patent application fee	200.00	100.00
Plant patent issue fee	250.00	125.00
Reissue patent application fees		
Basic filing fee	300.00	150.00
For each independent claim in excess of number in original patent	30.00	15.00
For each claim in excess of 20 and also in excess of number in original patent	10.00	5.00
For filing an appeal from the examiner to the Board of Appeals	115.00	57.50
For filing an appeal brief	115.00	57.50
For requesting an oral hearing	100.00	50.00
For filing a statutory disclaimer	50.00	25.00
For filing a petition to revive an unintentionally abandoned application	500.00	250.00
Maintenance fees		
Three and one-half years after grant	400.00	200.00
Seven and one-half years after grant	800.00	400.00
Eleven and one-half years after grant	1,200.00	600.00
Petition for extension of time		
For first month	50.00	25.00
For second month	100.00	50.00
For third month	200.00	100.00

Extension of Time Policy

Public Law 97-247 also changed the procedure for petitioning for extensions of time to respond to an Office action. Now such petitions are automatically granted upon payment of the appropriate fee for a one-month, two-month or three-month extension of time (see table).[70] This policy will eliminate the time now spent by PTO personnel in deciding whether petitions for extensions of time should be granted. It will also permit the practitioner greater flexibility in deciding whether to abandon an application or file further arguments or amendments in response to an Office action since any additional time needed may be paid for when the paper is filed.

[69] 35 U.S.C. section 41(b). The maintenance fee may also be accepted by the Commissioner after a six-month grace period if the delay is shown to his satisfaction to have been unavoidable. 35 U.S.C. section 41(c).

[70] 35 U.S.C.A. section 41(a)(8) (West Supp. 1983). These fees are reduced by one-half for small entities. Pub. L. No. 97-247, section 1.

Other Fees Related to Patents

All other fees for patent services or processing are set by the Commissioner so as to recover the average cost of such service or processing.[71] Significantly, beginning in Fiscal Year 1986 and every three years thereafter, the Commissioner may adjust the statutory fees shown in the table administratively (i.e., without Congressional action) to account for inflation.[72]

Trademark Fees

Under Public Law 97-247 the Commissioner sets all fees relating to trademark prosecution.[73] The fee for filing an application for registration is $175.00 per class and the fee for renewal of a registration is $300.00 per class.[74]

The New Fees in Historical Perspective

Although higher fees in 1983 and beyond were needed to improve the service provided by the PTO and to overcome the widespread perception that the PTO was not providing inventors with the strongest patents possible, the increased fees are in line with historical standards. Filing fees for U.S. patents recovered 118% of PTO operating costs in 1905 and 1906, and they recovered 100% of costs up to World War II.[75] As PTO operating costs increased after the war while fees remained constant, the percentage recovery of operating costs fell to around 30%, just before Congress increased fees in 1965 which initially recovered approximately 67% of operating costs. In contrast, the present fee structure will achieve only 58% cost recovery for Fiscal Years 1983 to 1985. As maintenance fees are received from Fiscal Year 1986 through Fiscal Year 1996 under Public Law 97-247, the rate of recovery will increase from 58% to just over 80%, for an average rate of recovery over that period of less than 72%. This is less than the 74% estimated for the 1965 fee increase and well below historical U.S. standards.

In addition, the filing and issue fee increases instituted by Public Law 97-247 were relatively smaller increases than those passed by Congress in 1965. In that year, Congress increased the filing fee from $30 to an average of $85 and the issue fee from $30 to an average of $145. This represented a 383% increase in combined fees. Under Public Law 97-247, the total of filing and

[71] 35 U.S.C. section 41(d).

[72] 35 U.S.C. section 41(f).

[73] See Pub. L. No. 97-247, section 3(e) and 15 U.S.C. section 1113(a) [Lanham Act section 31(a)]. See 37 C.F.R. section 2.6 for trademark fees.

[74] 37 C.F.R. section 2.6(a) and (b).

[75] These figures and those which follow were presented in my Chicago address, *supra* note 32.

issue fees was increased to $830 as compared to the 1965 total of $230, an increase of 360%. This rate of increase is also less than the over-400% increase in patent examiners' salaries that will have occurred between their level in 1965 and that projected for 1984.[76]

The New Fees in International Perspective

The fees under Public Law 97-247 brought U.S. fees into a more realistic relationship with those of other nations. When maintenance fees are added to filing and issue fees, total patent fees are less in the United States of America[77] than in France, the United Kingdom, Switzerland, the Netherlands, or Germany (Federal Republic of). They will be approximately equal to the fees in Italy and greater than those in Japan. The combined filing and issue fees under Public Law 97-247 are also much less than the front-end fees charged by the European Patent Office. While trademark registration and renewal fees under Public Law 97-247[78] are somewhat greater than in many other countries,[79] in many cases these other countries provide for only 10-year periods of registration and renewal rather than the 20-year periods provided in the United States.[80]

In summary, Public Law 97-247 raised patent and trademark fees to realistic levels which were absolutely essential to the continued vitality of the U.S. patent and trademark systems. Given the funding constraints throughout our Government, the only realistic alternative to the increased fees of Public Law 97-247 would have been a PTO program well below the unacceptable level which existed prior to 1982. That alternative would not have served our nation's interest or the individual needs of industry and inventors the world over.

Alternatives to Litigation Through Binding Voluntary Arbitration

Public Law 97-247 added a new section 294 to Title 35 of the United States Code permitting binding voluntary arbitration of patent disputes.[81] Section 294 provides that a contract involving patent rights may require arbitration of validity and infringement disputes.[82] Also, the parties to an existing dispute may agree in writing to settle such disputes by arbitration.[83] The decision of the arbitrator is final and binding as between the two parties and is thus enforceable in a court of law.[84]

The arbitration proceedings must comply with Title 9 of the United States Code.[85] Also, either party must be able to avail himself or herself of the defenses to a claim of infringement during the arbitration.[86] The award of the arbitrator is unenforceable until notice thereof is given to the Commissioner by the patentee, his assignee or licensee.[87]

By adding section 294 sanctioning binding voluntary arbitration, Public Law 97-247 overruled two court decisions, *Zip Manufacturing Co. v. Pep Manufacturing Co.*[88] and *Beckman Instruments, Inc. v. Technical Developments Corp.*,[89] which had disapproved arbitration of disputes concerning patent validity or infringement.[90]

Public and Private Benefits of Arbitration

By overruling these decisions, Public Law 97-247 has made the many advantages of arbitration available to owners of, and investors in, patented technology. Arbitration is usually cheaper and faster than litigation. It can have simpler procedural and evidentiary rules.[91] It normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties. It is often more flexible with regard to scheduling of the times and places of hearings and discovery. And, arbitrators are frequently better versed than judges and juries in the trade customs and technologies involved in these disputes.[92]

The availability of arbitration in patent disputes with its numerous advantages will enhance the patent system and thus will encourage innovation.[93] A further

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[76] The average level of examiners' salaries in 1965 was $11,621 and is projected to be $49,389 in 1984.

[77] All these levels of maintenance fees will not be collected until 1996; however, their average for each issued patent can be estimated.

[78] See note 74 *supra* and accompanying text.

[79] The total of $475.00 per class for application and renewal of a registration is greater than the fees in Italy, Switzerland, the Benelux countries, France, the United Kingdom or Germany (Federal Republic of), but less than the fees under the Madrid Agreement.

[80] See 15 U.S.C. sections 1058(a) and 1059(a).

[81] Pub. L. No. 97-247, section 17(b).

[82] 35 U.S.C. section 294(a).

[83] *Id.*

[84] 35 U.S.C. section 294(c).

[85] 9 U.S.C. sections 1-14, 201-208 (codified at 35 U.S.C. section 294(b)).

[86] 35 U.S.C. section 294(b). In suits for infringement, invalidity of the patent and violations of section 112 regarding the duty of disclosure and definiteness of the patent claims shall be defenses in addition to non-infringement. 35 U.S.C. section 282.

[87] 35 U.S.C. section 294(d) and (e).

[88] 44 F.2d 184, 7 U.S.P.Q. 62 (D.Del. 1930).

[89] 433 F.2d 55, 167 U.S.P.Q 10 (7th Cir. 1965).

[90] See H.R. REP. No. 97-542, 97th Cong., 2d Sess. 12, reprinted in [1982] U.S. CODE CONG. & AD. NEWS 765, 776; *Zip Mfg. Co. v. Pep Mfg. Co.*, 44 F.2d at 186, 7 U.S.P.Q. at 64; *Beckman Instruments, Inc. v. Technical Developments Corp.*, 433 F.2d at 62-63, 167 U.S.P.Q. at 15-16.

[91] The American Arbitration Association has suggested a set of rules designed specifically for patent arbitration under the new section 294. See American Arbitration Ass'n *Patent Arbitration Rules* (1983).

[92] See H.R. REP. No. 97-542, *supra* note 89, at 13.

[93] RESEARCH AND POLICY COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT, STIMULATING TECHNOLOGICAL PROGRESS 55 (1980).

public benefit of arbitration is that it should relieve some of the burdens on the overworked U.S. Federal courts. In this regard, the Chief Justice of the United States had generally endorsed the use of arbitration to reduce the judicial backlog.[94]

Cooperative Ventures under Section 6

Public Law 97-247 also amended section 6(a) of Title 35 of the United States Code to clarify the Commissioner's authority to enter into cooperative ventures.[95] Section 6(a) now provides that the Commissioner may "exchange items or services regarding domestic and international patent and trademark law or the administration of the Patent and Trademark Office...."[96]

Under that broad authority, we have entered into cooperative agreements with the European Patent Office (EPO) and the Japanese Patent Office (JPO), as well as with domestic and foreign commercial vendors of services useful in our plans to automate our patent and trademark operations.[97] The purpose of the agreements with the EPO and the JPO is to coordinate closely the advanced automation programs conducted by each of the Offices. The agreements with the commercial vendors have led to the installation of computer technology on a pilot basis for automated search of the patent files in the PTO.[98]

Under the agreement with the EPO which we negotiated last year, each Office will cooperate in efforts to introduce automation by exchanging information about plans, standards, equipment, software, systems and study results. We will exchange patent data in magnetic tape or microfilm form, initiate efforts to harmonize existing documentation systems, and establish joint projects and provide technical experts to implement new systems.[99]

Our cooperative agreement with the JPO, negotiated in January of this year, was even more extensive than the one negotiated with the EPO. The JPO will provide us with magnetic tapes containing Japanese patent bibliographic data and English-language *Patent Abstracts of Japan* (both the file of existing abstracts as well as future updates). Further, the JPO will study the possibility of preparing English-language texts of the first claims in Japanese patent specifications and is in the process of providing a study sample of some 200 such claims.[100]

Last fall, we hosted a meeting of the three Patent Offices involved, at which time we executed a comprehensive trilateral agreement to solidify further the cooperative efforts to introduce automation in the three Offices. I am convinced that we will be able to achieve more through the direct and expeditious trilateral systems of cooperation—made possible by the new section 6(a)—than we could on our own.

Procedural Patent and Trademark Law Changes in Public Law 97-247

Public Law 97-247 made several changes in the law to simplify or streamline patent and trademark procedures.[101] Now a fee or paper deposited with the U.S. Post Office's "Express Mail" service may be considered filed in the Patent and Trademark Office as of the date of such deposit.[102] A patent application can be given a filing date as of the date on which a specification, claims, and, where necessary, drawings are filed in the PTO.[103] In both applications for patents and issued patents, the name of one inventive entity, whether a sole inventor or joint inventors, may be substituted for another provided there was no deceptive intention on the part of the true inventor or inventors.[104]

Oaths[105] and certificates of acknowledgment of assignments[106] in patent cases, and acknowledgments

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[94] Burger, Warren E., *Isn't There a Better Way?*, 68 A.B.A.J. 274-277 (1982).

[95] Pub. L. No. 97-247, section 13.

[96] Section 6(a) provides:

"The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks; shall have the authority to carry on studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law or the administration of the Patent and Trademark Office, and shall have charge of property belonging to the Patent and Trademark Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the patent and Trademark Office."

35 U.S.C. section 6(a). Requirements and procedures for obtaining cooperative agreements with the PTO under section 6(a) are published at 48 Fed. Reg. 20,267 (1983).

[97] The commercial vendors include Compu-Mark, TCR Service Inc., Thomson & Thomson Inc., and Mead Data Central. We have also entered into cooperative agreements concerning patent documentation with Derwent Publications and Research Publications.

[98] Statement of Gerald J. Mossinghoff before the Subcommittee on Commerce, Justice and State, the Judiciary and Related Agencies of the House Appropriations Committee (March 10, 1983).

[99] Statement of Gerald J. Mossinghoff before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary (April 20, 1983).

[100] *Id.*

[101] In addition to the substantive patent law changes already discussed and the procedural ones noted *infra*, Public Law 97-247 deleted the reference to a specific number of examiners-in-chief from 35 U.S.C. section 3(a), thereby eliminating the upper limit on the number of permanent members of the Board of Appeals. Pub. L. No. 97-247, section 4. Public Law 97-247 also deleted section 6(d) of Title 35, which provided for the allocation of appropriated Patent and Trademark Office funds to the Department of State for payment of U.S. financial obligations under the Patent Cooperation Treaty, since the State Department had traditionally assumed responsibility for financial obligations for international agreements to which the United States adheres. Pub. L. No. 97-247, section 7.

[102] See 35 U.S.C. section 21(a) and 37 C.F.R. section 1.10. Section 21(b) was also amended by Public Law 97-247 so that the "holiday within the District of Columbia" previously referred to was replaced by a "federal holiday."

[103] 35 U.S.C. section 111 and 37 C.F.R. section 1.53(b), (c) and (d).

[104] 35 U.S.C. sections 116 and 256.

[105] 35 U.S.C. section 115.

[106] 35 U.S.C. section 261.

and verifications in trademark prosecution,[107] may be sworn to or acknowledged outside the United States by a notary public in any country which adheres to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents,[108] without diplomatic or consular legalization.[109] Public Law 97-247 further abolished the previous election of patent terms by applicants for design patents and provided a single, 14-year term for design patents.[110]

Procedural Changes in Trademark Law

On the trademark side, Public Law 97-247 made further changes in procedures, in addition to implementing the Hague Convention and allowing the mailing date of a fee or paper to be considered the filing date in the PTO.[111] Oppositions to registration[112] and petitions to cancel a registration[113] need no longer be verified; the signature of the person submitting them is now sufficient. Any extension of time to file an opposition after the first extension must be requested before the end of the preceding extension.[114] An interference may now be declared only in situations where a petition to the Commissioner shows that extraordinary circumstances exist.[115] Finally, section 15 of the Lanham Act was amended to change the term "publication" to "registration" in order to make the date of registration rather than the date of publication the crucial date for purposes of incontestability.[116]

[107] 15 U.S.C. section 1061.

[108] Convention Abolishing Requirement of Legalization for Foreign Public Documents, done at The Hague on October 5, 1961, T.I.A.S. No. 10072 (entered into force in the United States on October 15, 1981).

[109] The authority of the notary public or other person authorized to administer oaths in a country adhering to the Hague Convention must be shown by an "apostille" signed by a designated officer of that country, and attached to the oath, certificate or other document. *Id.* articles 3 and 4.

[110] 35 U.S.C. section 173.

[111] See notes 102 and 107 to 109 *supra* and accompanying text. In addition, Public Law 97-247 made the following changes in section 8 of the Lanham Act: Section 8(a) was amended to clarify that the continued use required to be shown in the sixth year be use "in commerce." 15 U.S.C.A. section 1058(a) (West Supp. 1983). Thus section 8(a) now requires use in U.S. interstate commerce to be shown for registration to be maintained. Section 8(b) was likewise amended to require use "in commerce" for registrations published under section 12(c) of the Act. 15 U.S.C.A. section 1058(b) (West Supp. 1983). The word "still" was deleted from sections 8(a) and 8(b) of the Lanham Act. Thus, the owner of a registration issued on the basis of a foreign registration under the provisions of section 44(e) of the Act will have to submit an affidavit to the effect that the mark is in use in commerce. Since the mark need not be used in commerce when it is registered, the registrant cannot be required to state that it is "still" in such use. 15 U.S.C.A. section 1058(a) and (b).

[112] 15 U.S.C. section 1063 (Lanham Act section 13).

[113] 15 U.S.C. section 1064 (Lanham Act section 14).

[114] 15 U.S.C. section 1063.

[115] 15 U.S.C. section 1066 (Lanham Act section 16).

[116] See 15 U.S.C. section 1065.

The Century 21 Bill— Strengthening Trademark Protection

In 1978 a three-judge U.S. district court held that a Nevada regulation governing the relative prominence of names in advertisements was not pre-empted by the Lanham Act. The regulation required licensed real estate brokers to modify their trademarked logos so that the name of the local franchisee was displayed in type as large and bold as that of the franchisor. This is commonly called the 50:50 ratio rule.[117] Other states soon adopted rules requiring different ratios, as well as other regulations for the use of logos.[118] The result was confusion in the uses of trademarks from one jurisdiction to another, a problem which the Lanham Act was designed to eliminate.[119] To remedy this situation Congress passed Public Law 97-296[120] to prohibit states and local jurisdictions from requiring alteration of U.S. trademarks or service marks.[121]

Public Law 97-414

In 1982 Congress also passed a limited patent term extension provision as part of Public Law 97-414.[122] That law provided relief for pharmaceutical manufacturers who could not market their products during part of their patent term because the Food and Drug Administration had granted, stayed, and then reinstated a premarket clearance.[123] The PTO recognizes the need for the restoration of full patent incentives for pharmaceuticals and agricultural chemicals whose patent terms are effectively shortened by regulatory agency proceedings. We are therefore supporting general legislation to restore the patent terms in such cases.[124]

Public Law 97-366

Another item of legislation important for the protection of intellectual property was Public Law 97-366, enacted in October of 1982.[125] This law elevated the Commissioner of Patents and Trademarks to the level of Assistant Secretary of Commerce.[126] It

[117] *Century 21 Real Estate Corp. v. Nevada Real Estate Advisory Comm'n*, 448 F. Supp. 1237, 1241 (D. Nev. 1978), *aff'd mem.*, 440 U.S. 941 (1979).

[118] H.R. REP. No. 97-778, 97th Cong., 2d Sess. 1 (1982).

[119] *Id.* at 2.

[120] Act of October 12, 1982, Pub. L. No. 97-296, 96 Stat. 1316 (codified at 15 U.S.C. section 1121(a)).

[121] See 15 U.S.C. section 1121(a) (Lanham Act section 39(a)).

[122] Orphan Drug Act, Pub. L. No. 97-414, section 11, 96 Stat. 2049.

[123] See 35 U.S.C. section 155.

[124] S. 1306, 98th Cong., 1st sess. (1983).

[125] Act of October 25, 1982, Pub. L. No. 97-366, 96 Stat. 1759.

[126] Pub. L. No. 97-366, section 4 (codified at 35 U.S.C. section 3(d)).

formalized a reorganization of the Department of Commerce which took place soon after I became Commissioner. Under that reorganization, I report directly to the Secretary and Deputy Secretary of Commerce.[127] That direct access to Secretary Baldrige, former Deputy Secretaries Joseph R. Wright and Guy W. Fiske, and Deputy Secretary Designate Clarence Brown greatly enhances the effectiveness of the senior staff of the PTO in dealing with other senior managers of the Department and with the Office of Management and Budget and Congressional committees. It also permits the Office to get Cabinet-level support quickly and effectively when problems arise.

In reporting the bill,[128] which became Public Law 97-366, the Conference Committee noted an additional reason for upgrading the office of Commissioner. The Committee recommended this change because the Commissioner was the chief governmental spokesman for the U.S. Delegation at the Third Session of the Diplomatic Conference on the Revision of the Paris Convention in October 1982.[129] The Committee also cited the economic importance of intellectual property, as well as the need to provide the President and Secretary of Commerce with an authoritative advisor on intellectual property.[130]

Conclusion

The legislative achievements in the Ninety-seventh Congress reflect the very close working relationship the PTO has enjoyed with the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice and with the Senate Judiciary Committee. Representatives of these committees also contributed to the strength of the U.S. Delegation to the third session of the Diplomatic Conference on the Revision of the Paris Convention at Geneva in October of 1982.[131]

The accomplishments of 1982 were built upon the foundation laid in the Ninety-sixth Congress by Public Law 96-517.[132] As for future legislative efforts in the intellectual property field, we look forward to working with the newly established Subcommittee on Patents, Copyrights and Trademarks of the Senate Judiciary Committee as well as continuing to work with the House Subcommittee on Courts, Civil Liberties and the Administration of Justice.

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[127] See address by Gerald J. Mossinghoff to Section on Patent, Trademark and Copyright Law of the American Bar Association, in San Francisco, California (August 7, 1982), reprinted in 64 J. PATENT OFF. SOC'Y 424,427 (1982).

[128] H.R. 4441, 97th Cong., 2d Sess. (1982).

[129] H.R. REP. No. 97-930, 97th Cong., 2d Sess. 3 (1982). See also Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 97th Cong., 2d Sess., Revision of the Paris Convention on Industrial Property (Comm. Print 1982) [hereinafter cited as Lehman Report].

[130] H.R. REP. No. 97-930, *supra* note 129, at 3-4.

[131] Lehman Report, *supra* note 129, at 4. Representatives of the House Judiciary Subcommittee also served on the U.S. Delegation to the fourth session of the Diplomatic Conference at Geneva in February-March 1984.

[132] Act of December 12, 1980, Pub. L. No. 96-517, 94 Stat. 3015. Public Law 96-517, section 1, enacted the system of prior art citations to the PTO and reexamination of patents. See 35 U.S.C. sections 301-307 (Supp. V 1981). Under these provisions, anyone may submit published prior art to the Office and seek to have claims in a patent cancelled or amended in view of such art. Public Law 96-517, section 6(a), created a uniform government patent policy for small businesses and non-profit organizations such as universities. See 35 U.S.C. sections 200-211 (Supp. V 1981). This policy grants to small entities the first option to obtain patent rights resulting from inventions made under government research contracts. 35 U.S.C. section 202. The small entity must comply with certain requirements, however, both to obtain title and to prevent the Government from "marching in" and requiring licensing under 35 U.S.C. section 203. See 35 U.S.C. sections 202-204. The U.S. Government is also restricted in its licensing activity when it retains title. See 35 U.S.C. section 209. Public Law 96-517, section 2, permitted the Commissioner to set patent application processing fees to recover 25% of the costs of processing patent applications, and maintenance fees also to recover 25% of such costs. Section 3 of Public Law 96-517 provided that trademark fees were to be set by the Commissioner to recover 50% of the costs of processing trademark applications. The same section created a PTO Appropriations Account in the U.S. Treasury for the deposit of all fees. 35 U.S.C. section 42 (Supp. V 1981). Section 9 of Public Law 96-517 required the Commissioner to submit an automation plan to Congress by December 12, 1982, which I have done. See *Report under Section 9 of P.L. 96-517*, *supra* note 56.

Public Law 96-517 necessitated certain technical and conforming changes, which changes were made by Public Law 97-256 (Act of December 12, 1980, Pub. L. No. 97-256, 96 Stat. 816). Some of these changes were rendered moot by the passage of Public Law 97-247 on October 1, 1982. Other changes made by Public Law 97-256 included correcting the reference to the Commissioner of Patents and Trademarks in 15 U.S.C. section 1113(a). Chapter 38 of Title 35, U.S. Code ("Patent Rights in Inventions Made with Federal Assistance") was redesignated as chapter 18 and moved to the end of Part II of Title 35. The analysis of Part II and the table of chapters for Title 35 were amended accordingly. The analysis of Part III was amended by the insertion of a reference to chapter 30 ("Prior Art Citations to Office and Reexamination of Patents") which should have been included in Public Law 96-517.

News from Industrial Property Offices

National and Regional Industrial Property Offices

The following list of national and regional industrial property offices was established in April 1984 and is based on the *Directory of National and Regional Industrial Property Offices* published by WIPO. It includes all the countries in which, according to information in WIPO's possession, there is an industrial property office, as well as four regional industrial property organizations.

The list is presented in alphabetical order according to country; the regional industrial property organizations appear at the end of the list. For each entry, the following information is included: the name of the competent administration; the address of the administration; the title and name (where available) of the head of the administration. In countries where patent and trademark matters are dealt with in separate administrations, two entries are provided.

ALGERIA

Algerian Institute for Standardization and Industrial Property (INAPI)

5, rue Abou Hamou Moussa
Boîte postale 1021
Algiers

Directeur général: Dine Hadj-Sadok

ANGOLA

National Institute of Intellectual Property
Secretariat of State for Culture

18, Conselheiro Júlio de Vilhena
Caixa Postal No. 1252
Luanda

Director: Antônio Afonso dos Santos

ANTIGUA AND BARBUDA

The Registrar's Office

St. John's

Registrar

ARGENTINA

National Directorate of Industrial Property
Secretariat of Industry and Mines
Ministry of Economic Affairs

Diagonal Julio A. Roca 651 - 2° s.s.
1322 Buenos Aires

Director Nacional de la Propiedad Industrial: Dr. Miguel Roque Solanet

AUSTRALIA

Patent, Trade Marks and Designs Office
Department of Science and Technology

Scarborough House
Phillip, A.C.T.
P.O. Box 200
Woden, A.C.T. 2606

Acting Commissioner of Patents,
Registrar of Trade Marks and Designs: Pat Smith

AUSTRIA

Austrian Patent Office
Federal Ministry of Commerce, Trade and Industry

Kohlmarkt 8-10
Postfach 95
A-1014 Vienna

President of the Austrian Patent Office,
Director General of the Industrial Property Department:
Professor Dr. Otto Leberl

BAHAMAS

Registrar General's Office
Ministry of Economic Affairs

6th Floor, General Post Office Bldg.
East Hill Street
P.O. Box N 532
Nassau

Registrar General: S.A. Bonaby (Mrs.)

BAHRAIN

Registry of Industrial Property
Directorate of Commerce and Companies Affairs
Ministry of Commerce and Agriculture

P.O. Box 5479
Manama

Registrar: Hassan Al Mukharaq

BANGLADESH (Patents)

The Patent Office
Commerce Division
Ministry of Industries and Commerce

Moon Mansion, 5th Floor
12/K Dilkusha Commercial Area
Dhaka 2

Controller of Patents and Designs: Mahfuzur Rahman Khan

BANGLADESH (Marks)

Trade Marks Registry
Ministry of Commerce

21/2, Khiljee Road
Mohammadpur
Dhaka 7

Registrar of Trade Marks: Md. Moazzam M. Hussain

BARBADOS

Registrar of the Supreme Court
Ministry of Legal Affairs

Coleridge Street
Bridgetown

BELGIUM

Industrial and Commercial Property Service
Administration of Commerce
Ministry of Economic Affairs

24-26, rue J.A. De Mot
B-1040 Brussels

Directeur du Service de la propriété industrielle et commerciale: Léopold Wuyts

BENIN

Industrial Property Service
Directorate of Industry
Ministry of Industry, Mining and Energy

Boîte postale 363
Cotonou

Chef du Service de la propriété industrielle: Noua Akambi

BOLIVIA

Industrial Property Department
General Directorate of Standards and Technology
Ministry of Industry, Commerce and Tourism

Avenida Eliodoro Camacho 1488
Casilla 4430
La Paz

Jefe del Departamento de Propiedad Industrial: Dra. Rosario Jordan Aguilera

BOTSWANA

Department of the Registrar of Companies, Trade Marks, Patents and Designs
Ministry of Commerce and Industry

P.O. Box 102
Gaborone

Registrar of Companies

BRAZIL

National Institute of Industrial Property
Ministry of Industry and Trade

Praça Mauá 7 - 11° Andar
20.081 Rio de Janeiro - R.J.

President: Arthur Carlos Bandeira

BULGARIA

Institute of Inventions and Rationalizations
State Committee for Science and Technical Progress

Boul. G.A. Nasser 52b
1156 Sofia

Director General: Dr. Ing. Kristo Iliev

BURUNDI

Industrial Property and Transfer of Technology Service
Department of Industry
Ministry of Trade and Industry

Boîte postale 492
Bujumbura

Service de la propriété industrielle et transfert de technologie: Valérie Siniremera (Mme)

CAMEROON

Industrial Property Service
Department of Industry
Ministry of Commerce and Industry

Boîte postale 1604
Yaoundé

Chef du Service de la propriété industrielle: Jean O. Tigbo

CANADA

Intellectual Property Directorate
Bureau of Corporate Affairs
Department of Consumer and Corporate Affairs

Place du Portage I - 5th Floor, Zone 1
50 Victoria Street
Hull, Québec K1A OE1

Director General, Intellectual Property; Commissioner of Patents, Registrar of Trademarks: J.H.A. Gariépy

CENTRAL AFRICAN REPUBLIC

National Industrial Property Service
Directorate of Industrial Development and Handicraft
Ministry of Commerce and Industry

B.P. 1086
Bangui

Responsable du Service national de la propriété industrielle: Amon Lougo-Dino

CHAD

National Service of Industrial Property
Directorate of Industry
Ministry of Economic Affairs and Trade

B.P. 424
Ndjamena

Responsable national de la propriété industrielle: Madlongar Mbaitougaro

CHILE

Industrial Property Department
Under-Secretariat for Economic Affairs
Ministry of Economic Affairs, Development and Reconstruction

Teatinos No 120, 11° piso, Oficina 22
Santiago

Jefe del Departamento de Propiedad Industrial: Dr. Juan Enrique Ortúzar Latapiat

CHINA (Patents)

Patent Office of the People's Republic of China
State Economic Commission

Fucheng Road
P.O. Box 168
Beijing

Director General: Huang Kunyi

CHINA (Marks)

Trademark Office
State Administration for Industry and Commerce of the People's Republic of China

10 Sanlihe Donglu
Xichengqu
Beijing

Director of Trademark Office: Li Jizhong

COLOMBIA

Industrial Property Division
Directorate General of Industry and Commerce
Ministry of Economic Development

Edificio Lara
Carrera 13 No 13-24, Oficina 810
Bogotá

Jefe de la División de Propiedad Industrial: Dra. Luz C. Suárez de Paez

CONGO

National Industrial Property Unit
Directorate General of Industry
Ministry of Industry and Fisheries

Boîte postale 211
Brazzaville

Chef, Antenne nationale de la propriété industrielle: Daniel Ngassaki

COSTA RICA

Industrial Property Registry
National Registry
Ministry of Justice

Apartado postal 60
2010 Zapote
San José

Directora de Propiedad Industrial: Lic. Anabelle Castro Granados (Sra.)

CUBA

National Office of Inventions, Technical Information and Marks
Academy of Science

Calle 13 No 409 - Esq.a F
Vedado
Havana

Director, ONIITEM: Ing. Mario Fernández Finalé

CYPRUS

Department of the Official Receiver and Registrar
Ministry of Commerce and Industry

9, Byron Avenue
P.O. Box 1720
Nicosia

Official Receiver and Registrar: Takis L. Christodoulides

CZECHOSLOVAKIA (Patents)

Office for Inventions and Discoveries

19, Václavské nám.
113 46 Prague 1 - Nové Město

President: Ing. Miroslav Bělohlávek

CZECHOSLOVAKIA (Marks)

Trademarks and Industrial Designs Division
Office for Inventions and Discoveries

10, U půjčovny
110 00 Prague 1 - Nové Město

President: Ing. Miroslav Bělohlávek

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Invention Committee of the Democratic People's Republic of Korea

Sosong guyok Zangsan Street Ryonmod Dong
Pyongyang

Secretary General: Pyon Jong Ryob

DEMOCRATIC YEMEN

Registrar General's Office
Ministry of Justice

P.O. Box 5030
El Maalla
Aden

Registrar of Trade Marks, Patents and Designs: Hussein N.M. Momin

DENMARK

Patent and Trademark Office
Ministry of Industry

45, Nyropsgade
1602 Copenhagen V

Director of the Patent Office: Karl Skjødt

DOMINICAN REPUBLIC

Industrial Property Registry Department
State Secretariat for Industry and Commerce

Edificio de Oficinas Gubernamentales, 7° Piso
Av. Francia, esquina Leopoldo Navarro
Santo Domingo

Directora: Dra. Georgina Portes Zarzuela

ECUADOR

Directorate General of Industrial Property
Subsecretariat for Integration
Ministry of Industry, Trade and Integration

Calles Roca No 533 y Juan León Mera
Apartado postal No 194-A
Quito

Director General de la Propiedad Industrial: Dr. Hernán Calisto Ruiz

EGYPT (Patents)

Patent Office
Academy of Scientific Research and Technology

101 Kasr El-Eini Street
11516 Cairo

Under Secretary and President of the Patent Office: Eng. Ahmed Aly Omar

EGYPT (Marks)

Administration of Commercial Registration
Ministry of Supply and Internal Trade

El Tamwin Post Office
99 Kasr El-Eini Street
Cairo

Chairman, Administration of Commercial Registration: Ibrahim Fahmi Salem

EL SALVADOR

Department of Trademark, Patent, Copyright, Name and Commercial Sign Registration
Ministry of Justice—Commercial Registry

3ª Av. Norte y 11ª Calle Poniente
San Salvador

Registrador de la Propiedad Intelectual: Dr. Miguel Angel Gómez

FIJI

Administrator-General's Department
Crown Law Office

Government Buildings
Box 2226
Suva

Administrator-General: Devendra Pathik

FINLAND

National Board of Patents and Registration

Albertinkatu 25
P.O. Box 18154
SF-00180 Helsinki 18

Director General: Timo Kivi-Koskinen

FRANCE

National Institute of Industrial Property

26bis, rue de Léningrad
F-75800 Paris Cédex 08

Directeur: Jean-Claude Combaldieu

GABON

Directorate of Industry
Ministry of Trade and Industry

B.P. 237
Libreville

Chargé de la propriété industrielle: Jean Paulin Mve Nteme

GAMBIA

Attorney General's Chambers
Registrar General's Office
Ministry of Justice

Marina Parade
Banjul

Registrar General: Raymond C. Sock

GERMAN DEMOCRATIC REPUBLIC

Office for Inventions and Patents of the German Democratic Republic

Mohrenstrasse 37b
P.O. Box 1285
1086 Berlin

President: Prof. Dr. Joachim Hemmerling

GERMANY (FEDERAL REPUBLIC OF)

German Patent Office

Zweibrückenstrasse 12
8000 Munich 2

President: Dr. Erich Häusser

GHANA

Registrar-General's Department
Ministry of Justice

P.O. Box 118
Accra

Registrar-General: Dominic M. Mills

GREECE (Patents)

Section of Patents
Ministry of Research and Technology

Ermou 2
Athens

Dr. P.N. Koroyannakis

GREECE (Marks)

Directorate of Commercial and Industrial Property
Ministry of Commerce

Canning Square
Athens

Director: Emile Tiranas

GRENADA

Office of the Registrar
Attorney-General's Chambers

St. George's

Registrar: Ernest Wilkinson

GUATEMALA

Registry of Industrial Property
Ministry of Economic Affairs

6a. Avenida 11-43, Zona 1
Edificio Pan Am, 3er Nivel
Guatemala

Registrador de la Propiedad Industrial: Victor Lubeck Rivas Fajardo

GUINEA

Ministry of Industry

B.P. 468
Conakry

Ministre de l'industrie: Capitaine Mohamed Lamine Sakho

GUYANA

Solicitor-General's Office
Ministry of Justice

Deeds Registry
Law Court Buildings
Georgetown

Head of Industrial Property Office: John Wesley Ramao

HAITI

Industrial Property Office
Department of Commerce and Industry
State Secretariat for Trade and Industry

Rue Légitime 5
Port-au-Prince

Directeur général du commerce et de l'industrie: Carl Férailleur

HONDURAS

Industrial Property Registry
Directorate General of Industries
Secretariat for Economic Affairs

Edificio Faraj, 4 Piso
Tegucigalpa D.C.

Registrador de la Propiedad Industrial: Lic. Camilo Z. Bendeck Pérez

HUNGARY

National Office of Inventions

Garibaldi u. 2
P.B. 552
H-1370 Budapest 5

President: Dr. Gyula Pusztai

ICELAND

Patent and Trademark Office
Ministry for Industry

Arnarhvoli
101 Reykjavik

Secretary General: Páll Flygenring

INDIA (Patents)

Patent Office
Government of India

214, Acharya Jagadish Bose Road
Calcutta 700-017

Controller-General of Patents, Designs and Trade Marks

INDIA (Marks)

Controller-General of Patents, Designs and Trade Marks
Government of India

Central Government Building
Maharshi Karve Road
Bombay 400 020

Controller-General of Patents, Designs and Trade Marks

INDONESIA

Directorate of Patent and Copyright
General Directorate of Law and Legislation
Department of Justice

Jl. Veteran III/8-A
Jakarta I/4

Director: Supjan Suradimadja

IRAN (ISLAMIC REPUBLIC OF)

Registration Department for Companies and Industrial Property

Khiabane Khaiyam—Khiabane Varzesh
Sazemane Sabte Asnad va Amlake Keshwar
Teheran

Director General: Parviz Ahadi

IRAQ

Industrial Property Division
Central Organization for Standardization and Quality Control
Ministry of Planning

P.O. Box 13032
Al Jadria
Baghdad

Director of the Industrial Property Division: Hasson Abdul Rahman Abdul Razak

IRELAND

Patents Office
Department of Industry, Trade, Commerce and Tourism

45, Merrion Square
Dublin 2

Controller of Patents, Designs and Trade Marks: Sean Fitzpatrick

ISRAEL

Patent Office
Ministry of Justice

Clal Centre
Jaffa Road 97
P.O. Box 767
Jerusalem 91007

Commissioner of Patents, Designs and Trade Marks: Yoel Arnon Tsur

ITALY

Central Patent Office
Ministry of Industry, Commerce and Handicraft

19, via Molise
00187 Rome

Director: Prof. Sebastiano Samperi

IVORY COAST

Directorate of Standards and Technology
Ministry of Industry

B.P. V 65
Abidjan

Directeur de la normalisation et de la technologie

JAMAICA

Office of the Registrar of Companies
Ministry of Industry and Commerce

11 King Street
P.O. Box 877
Kingston

Registrar of Companies: Gloria Elaine Edwards (Mrs.)

JAPAN

Japanese Patent Office

4-3 Kasumigaseki 3-chome
Chiyoda-ku
Tokyo

Director General: Kazuo Wakasugi

JORDAN

Section for the Protection of Industrial and Commercial Property
Ministry of Industry and Trade

El-Difah El Madani Street
P.O. Box 2019
Amman

Registrar of Patents, Designs and Trade Marks: Khair Baino

KENYA

Department of the Registrar-General

P.O. Box 30031
Nairobi

Registrar of Trade Marks and Patents: Joseph Nguthiru King'arui

KUWAIT

Commercial Registration Authority
Ministry of Commerce and Industry

P.O. Box 2944
Kuwait

Commercial Registrar: Hussein Abul Malh

LEBANON

Office for the Protection of Commercial, Industrial, Artistic, Literary and Musical Property

Rue Artois
El-Hamra

Beirut

Chef a.i. de l'Office: Mouhyeddine Tabbara

LESOTHO

Registrar General's Office
Law Office

P.O. Box 33
Maseru 100

Registrar-General: Keorapetse Ray Hlalele (Mrs.)

LIBERIA

Bureau of Patents, Trade Marks and Copyright
National Central Archives
Ministry of Foreign Affairs

Monrovia

Director of Archives, Patents, Trade Marks and Copyright: Robert M. Gray

LIBYA (Patents)

Patent Office
Secretariat for Industry and Mineral Wealth

Al-Jamahiriya Street
Tripoli

Head of Patent Office: Ghalia Chaabane (Mrs.)

LIBYA (Marks)

Directorate of Company Registration
Secretariat for Commerce

Al-Jamahiriya Street
Tripoli

Head of Company Registration: Salem Mohammed Rabti

LIECHTENSTEIN

Intellectual Property Office

FL-9490 Vaduz

Directeur: Benno Beck

LUXEMBOURG

Intellectual Property Office
Ministry of the Economy and Middle Classes

19-21, Boulevard Royal
Case postale 97
Luxembourg Ville

Inspecteur principal, Directeur du Service de la propriété intellectuelle: Fernand Schlesser

MADAGASCAR

Directorate of Industry
Ministry of Economy and Trade

B.P. 527
Antananarivo

Directeur de l'industrie: Gérard Reajaonary

MALAWI

Department of the Registrar General
Ministry of Justice

P.O. Box 100
Blantyre

Registrar of Patents, Trade Marks and Designs: Pondomo Arnold Msiska

MALAYSIA

Registry of Trade Marks and Patents
Ministry of Trade and Industry

Block 10
Jalan Duta
Kuala Lumpur

Registrar of Trade Marks and Patents: Noriah Abidin (Mrs.)

MALI

National Directorate of Industries
Ministry of State for Equipment

Boîte postale 278
Bamako

Directeur général des industries: Kadari Bamba

MALTA

Department of Trade
Ministry of Economic Development

Lascaris
Valletta

Comptroller of Industrial Property: Joseph Zammit

MAURITANIA

Directorate of Industry
Ministry of Commerce and Industry

B.P. 387
Nouakchott

Chef de la structure nationale de la propriété industrielle: Tarou Soudani

MAURITIUS (Patents)

Ministry of Trade and Shipping

4th Level, New Government Centre
Port-Louis

Permanent Secretary, Ministry of Trade and Shipping: Jacques Ruben Rosalie

MAURITIUS (Marks)

The Comptroller of Customs
Customs & Excise Department

Port-Louis

Comptroller of Customs: G. Stanley

MEXICO

Directorate General of Inventions, Marks and Technological Development
Under-Secretary for Industrial Development
Secretariat for Trade and Industrial Development

Salvador Alvarado 56, 6° piso
Col. Escandón
11800 Mexico, D.F.

Director General: Lic. Jaime Alvarez Soberanis

MONACO

Directorate of Commerce, Industry and Industrial Property
Department of Finance and the Economy

8, rue Louis Notari
98 000 Monaco (Principauté)

Directeur: Etienne Franzi

MONGOLIA

Industrial Property Department

State Committee for Science and Technology
Council of Ministers of the Mongolian People's Republic

49, Kolarov Street
Ulan Bator

Head, Industrial Property Department: Tzerendolgar Hasbator

MOROCCO

Moroccan Industrial Property Office
Ministry of Trade, Industry and Tourism

8, rue Saint-Dié
Casablanca

Directeur de l'Office marocain de la propriété industrielle: Said Abderrazik

NETHERLANDS

Patent Office—Octrooiraad
Ministry of Economic Affairs

Patentlaan 2—Plaspoelpolder
Postbus 5820
2280 HV Rijswijk (ZH)

President of the Patent Office (Octrooiraad): Jacob Jan Bos

NEW ZEALAND

The Patent Office
Department of Justice

Levin House - 330 High Street
Private Bag
Lower Hutt

Commissioner of Patents, Trade Marks and Designs: Kenneth Sidney Dalefield

NICARAGUA

Industrial Property Registry
Ministry of Justice

Apartado postal 2361
Managua

Registrador de la Propiedad Industrial: Dra. María Soledad Pérez González

NIGER

Directorate of Industry and Handicraft
Ministry of Mining and Industries

B.P. 720
Niamey

Directeur: Ibrahim Tampone

NIGERIA

Trade Marks, Patents and Designs Section
Commercial Law Division
Federal Ministry of Commerce

New Secretariat
Ikoyi
Lagos

Registrar: O. Adeniji

NORWAY

Norwegian Patent Office
Ministry of Justice

Postboks 8160 Dep.
N-0033 Oslo 1

Director General: Arne Georg Gerhardsen

OMAN

Directorate of Commercial Registration
Ministry of Commerce and Industry

P.O. Box 550
Muscat

Director of Commercial Registration: Zahir Taisseer

PAKISTAN (Patents)

Patent Office
Ministry of Industries

Maqbool Chambers
Shaheed-i-Millat Road
Karachi 8

Controller of Patents and Designs: Mohammad Zafar

PAKISTAN (Marks)

Trade Marks Registry
Ministry of Commerce

67, Muslimabad
Dadabhai Naoroji Road
Karachi 5

Registrar of Trade Marks: Riaz Ahmed Malik

PANAMA

Directorate General of the Industrial Property Registry
National Directorate of Commerce
Ministry of Commerce and Industries

Edificio Lotería Nacional de Beneficencia, Piso 17
Apartado 9658 - Zona 4
Panama 4

Director General: Juan José Ferrán

PAPUA NEW GUINEA

Office of the Registrar-General

P.O. Box 1281
Port Moresby

Registrar General: Kere Moi

PARAGUAY

Directorate General of Industrial Property
Ministry of Industry and Commerce

Coronel Bogado 871
Asunción

Director: Dr. Ramón Alberto Bogado Vásquez

PERU

Industrial Property Directorate
Institute for Industrial Technological Research and Technical Standards (ITINTEC)

Jirón Morelli, 2ª cuadra
Apartado 145 - San Borja, Surquillo
Lima 34

Director de Propiedad Industrial: Dr. Guillermo Valdivia Manchego

PHILIPPINES

Philippine Patent Office
Ministry of Trade and Industry

Midland Buendia Bldg.
403 Gil Puyat Ave.
Makati
Metro Manila

Director of Patents: Cesar C. Sandiego

POLAND

Patent Office of the Polish People's Republic

Aleja Niepodleglosci 188/192
P.O. Box 203
00-950 Warsaw

President: Dr. Jacek Szomański

PORTUGAL

National Institute of Industrial Property
State Secretariat for Industry
Ministry of Industry and Energy

Campo das Cebolas
1100 Lisbon

Director General: Eng. José Mota Maia

QATAR

Trade Marks Office
Department of Commercial Registration
Directorate of Commercial Affairs
Ministry of Economy and Commerce

P.O. Box 1968
Doha

Director of Commercial Affairs and Controller General of Commercial Registration: Ali H. Khalaf

REPUBLIC OF KOREA

Office of Patents Administration
Ministry of Commerce and Industry

58-3 Seocho-Dong
Kangnam-Ku
Seoul 135

Administrator: Sung Jua Hong

ROMANIA

State Office for Inventions and Trademarks

5, rue Ion Ghica - Sect. 4
B.P. 52
70418 Bucharest 3

Directeur: Ion Marinescu

RWANDA

Industrial Property Service
Ministry of Economic Affairs and Commerce

B.P. 73
Kigali

Chef du Service de la propriété industrielle: T. Uzabakiliho

SAINT CHRISTOPHER AND NEVIS

Attorney-General's Chambers
Ministry of Justice

Government Headquarters
P.O. Box 164
Basseterre
St. Kitts, W.I.

Attoroey-General: S.W. Tapley Seaton

SAINT VINCENT AND THE GRENADINES

Attorney-General's Department
Ministry of Legal Affairs

Kingston

Attorney-General and Minister of Legal Affairs: Grafton C. Isaacs

SAMOA

Patents, Trade Marks and Companies Section
Justice Department

P.O. Box 49
Apia

Acting Secretary, Department of Justice, Registrar of Patents, Trade Marks and Industrial Designs: P.M. Asera

SAN MARINO

Economic and Social Affairs Office
State Secretariat for External and Political Affairs

Palazzo Begni-Belluzzi
San Marino

Dirigente Ufficio Affari Economico-sociali: Dott. Pietro Giacomini

SAUDI ARABIA (Patents)

Patent Office
Saudi Arabian National Center for Science and Technology

P.O. Box 6086
Riyadh 11442

Acting Director of the Patent Office: Dr. Mohammed Ahmed Tarabzouni

SAUDI ARABIA (Marks)

Industrial Property Protection Section
Department of Internal Trade
Ministry of Commerce

Riyadh

Head of Section: Nawar Al Atibi

SENEGAL

Directorate of Industry
Ministry of Industrial Development and Handicraft

B.P. 3179
Dakar

Directeur de l'Industrie: Simon Dioh

SEYCHELLES

Registrar of Patents and Trade Marks
Registration Division
Department of Legal Affairs

P.O. Box 142
Mahé

Registrar General and Registrar of Patents and Trade Marks: F. Chang-Sam

SIERRA LEONE

Administrator and Registrar-General's Department

Roxy Building
Walpole Street
Freetown

Acting Administrator and Registrar-General: Salimatu Koroma (Miss)

SINGAPORE

Registry of Trade Marks and Patents

305 Tanglin Road
Singapore 1024

Registrar of Trade Marks and Patents: Ang Koon Hian (Mrs.)

SOLOMON ISLANDS

Registrar-General's Office
Ministry of Police and Justice

P.O. Box G 15
Honiara — Guadalcanal

Registrar-General: H.J. Broughton

SOMALIA

Patents and Trade Marks Office
Ministry of Industry

P.O. Box 928
Mogadishu

Registrar of Patents and Trade Marks: Halima Kulmie Warsame (Mrs.)

SOUTH AFRICA

Office of the Registrar of Patents, Trade Marks, Designs and Copyright
Department of Industries and Commerce

Zanza Buildings, 116 Proes Street
Private Bag X400
0001 Pretoria

Registrar of Patents, Trade Marks, Designs and Copyright: H.J. Coetzee

SOVIET UNION

USSR State Committee for Inventions and Discoveries

M. Cherkassky per. 2/6
Moscow (Centre), GSP, 103621

Chairman: Ivan S. Nayashkov

SPAIN

Industrial Property Registry
Ministry of Industry and Energy

Calle de Panamá 1
Madrid 16

Director General del Registro de la Propiedad Industrial: Julio Delicado Montero-Rios

SRI LANKA

Registry of Patents and Trade Marks

5th Floor
267 Union Place
Colombo 2

Registrar of Patents and Trade Marks: Kirthisiri Jayasinghe

SUDAN

Commercial Registrar General's Office
Attorney General's Chambers

P.O. Box 744
Khartoum

Commercial Registrar General: Ali Mohamed Osman Yassin

SURINAME

Bureau for Industrial Property in Suriname
Ministry of Justice

Mr. F.L. Lim A Postraat No. 4 boven
P.O. Box 3014
Paramaribo

Attorney-General, Director of the Bureau for Industrial Property: Dr. R.M. Reeder

SWAZILAND

Registrar General's Office
Ministry of Justice

Mbabane House
P.O. Box 460
Mbabane

Registrar General: Edgar S. Kumalo

SWEDEN

Royal Patent and Registration Office
Ministry of Industry

Valhallavägen 136
P.O. Box 5055
S-102 42 Stockholm 5

Director General: Göran Borggård

SWITZERLAND

Swiss Intellectual Property Office

Einsteinstrasse 2
3003 Berne

Directeur: Paul Braendli

SYRIA

Directorate of Commercial and Industrial Property
Ministry of Supply and Internal Trade

Rue Salhia
Damascus

Directeur de la propriété commerciale et industrielle: Motih Husni

TANZANIA

Department of Registration(s) and Commercial Laws
Ministry of Trade

10th Floor Co-operative Building
Lumumba Street
P.O. Box 9393
Dar es Salaam

Registrar: Richard Benjamin Mngulwi

THAILAND

Patent and Trademark Division
Department of Commercial Registration
Ministry of Commerce

Thanon Maharaj
Bangkok 10200

Director-General, Department of Commercial Registration: Chare Chutharatkul

TOGO

Directorate of Industry
Ministry of Plan, Industry and of Administrative Reform

B.P. 831
Lomé

Chef de la Division de la propriété industrielle: Kato Koakou

TRINIDAD AND TOBAGO

Registrar General's Department

Red House
P.O. Box 390
Port of Spain

Registrar General: Errol D.S. Braithwaite

TUNISIA

National Institute for Standardization and Industrial Property
Ministry of National Economy

B.P. 23
1012 Tunis Belvédère

Président Directeur général: Ali Ben Gäid

TURKEY

Department of Industrial Property
Ministry of Industry and Technology

Tandogän
Ankara

President of the Industrial Property Department: Metin Çetin

UGANDA

Registrar General's Department
Ministry of Justice

Parliamentary Buildings
P.O. Box 7151
Kampala

Acting Registrar General: G.A.M. Ndagije

UNITED KINGDOM

The Patent Office
Department of Trade and Industry

25, Southampton Buildings
London WC2A 1AY

The Comptroller-General of Patents, Designs and Trade Marks: Ivor J.G. Davis, C.B.

UNITED STATES OF AMERICA

Patent and Trademark Office
United States Department of Commerce

Washington, D.C. 20231

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks: Gerald J. Mossinghoff

UPPER VOLTA

Directorate General of Industry and Handicraft
Ministry of Commerce, Industrial Development and Mining

B.P. 258
Ouagadougou

Chef de la structure de la propriété industrielle: Marie Blanche Bado (Mme)

URUGUAY

Industrial Property Directorate
Ministry of Industry and Energy

Rincón 719
Montevideo

Interventor, Dirección de la Propiedad Industrial: Dr. Julio E. Marmolejo

VANUATU

Office of the Registrar - Receiver General

P.O. Box 92
Port Vila

Registrar - Receiver General: Stanley Uren

VENEZUELA

Industrial Property Registry
Ministry of Development

Centro Simón Bolívar
7° piso de la Torre Sur
Caracas 1010

Registrador de la Propiedad Industrial: Dra. Haydée Maradei de García

VIET NAM

National Office on Inventions
State Committee for Science and Technology

39 Tran Hung Dao
Hanoi

Director: Dr. An Khang

YEMEN

Department of the Registry and Trademarks
Directorate of Companies and Commercial Registration
Ministry of Economic Affairs

Sanaa

Director of the Department of the Registry and Trademarks: Aly Mohamed Thabet

YUGOSLAVIA

Federal Patent Office

Uzun Mirkova 1
11001 Belgrade

Director

ZAIRE

Industrial Property Office
Directorate of Industry
Department of the National Economy, Industry and External Trade

Boulevard Colonel Tshatshi No 60
Kinshasa/Gombe

Chef du Service de la propriété industrielle: Mukuna Kakolela

ZAMBIA

Registrar of Patents, Trade Marks and Designs
Ministry of Commerce and Industry

Kwacha Annex House
Cairo Road
P.O. Box 32075
Lusaka

Registrar: Anderson Ray Zikonda

ZIMBABWE

Office of the Controller of Patents, Trade Marks and Industrial Designs
Ministry of Justice, Legal and Parliamentary Affairs

Electra House
Samora Machel Avenue
P.O. Box 8033, Causeway
Harare

Controller of Patents, Trade Marks and Industrial Designs: Ronald Pearson Moul

* * *

AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

Place de la Préfecture
B.P. 887
Yaoundé
Cameroon

Directeur général: Denis Ekani

BENELUX TRADEMARK OFFICE
BENELUX DESIGNS OFFICE
(BBM—BBDM)

Bankastraat 151
2585 EM The Hague
Netherlands

Directeur: Dr. L.J.M. van Bauwel

EUROPEAN PATENT OFFICE
(EPO)

Erhardtstrasse 27
D-8000 Munich 2
Federal Republic of Germany

President: Dr. h.c. J.B. van Benthem

INDUSTRIAL PROPERTY ORGANIZATION FOR ENGLISH-SPEAKING AFRICA
(ESARIPO)

P.O. Box 4228
Harare
Zimbabwe

Director: J.H. Ntabgoba

Calendar of Meetings

WIPO Meetings

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

1984

September 17 and 19 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Developing Countries

September 18 to 21 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property

September 18 to 21 (Geneva) — Permanent Committee on Patent Information (PCPI)

September 24 to 28 (Geneva) — Ordinary Sessions of the Coordination Committee of WIPO and the Executive Committees of the Paris and Berne Unions; Paris Union Assembly (Extraordinary Session); PCT Union Assembly (Extraordinary Session)

October 8 to 10 (Doha) — Regional Committee of Experts on Means of Implementation in Arab States of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore (convened jointly with Unesco)

October 15 to 19 (Geneva) — Nice Union — Preparatory Working Group

October 22 to 26 (Geneva) — Committee of Experts on the Question of Copyright Ownership and its Consequences for the Relations between Employers and Employed or Salaried Authors (convened jointly with Unesco)

November 5 to 9 (Geneva) — Committee of Experts on Biotechnological Inventions

November 19 to 23 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Groups on Special Questions and on Planning

November 26 to 30 (Paris) — Committee of Experts on Copyright Problems Related to the Rental of Material Supports of Works (convened jointly with Unesco)

November 26 to 30 (Geneva) — International Patent Classification (IPC) Union — Committee of Experts

December 3 to 7(?) (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information

December 10 to 14 (Paris) — Group of Experts on the Intellectual Property Aspects of the Protection of Folklore at the International Level (convened jointly with Unesco)

1985

September 23 to October 1 (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)

UPOV Meetings

1984

August 6 to 10 (Hanover) — Technical Working Party for Ornamental Plants and Forest Trees, and Subgroups

October 8 to 11 (Valencia) — Technical Working Party for Fruit Crops, and Subgroops

October 16 (Geneva) — Consultative Committee

October 17 to 19 (Geneva) — Council

November 6 and 7 (Geneva) — Technical Committee

November 8 and 9 (Geneva) — Administrative and Legal Committee

Other Meetings Concerned with Industrial Property

1984

Center for the International Study of Industrial Property: October 3 (Strasbourg) — "Demi-journée d'études sur la propriété industrielle et vingtième anniversaire du CEIPI"

European Patent Organisation: December 4 to 7 (Munich) — Administrative Council

International Federation for European Law: September 19 to 22 (The Hague) — 11th Congress

International League Against Unfair Competition: September 27 to 30 (Milan) — Congress

Pharmaceutical Trade Marks Group: October 18 and 19 (Toulouse) — 29th Conference

1985

International Association for the Protection of Industrial Property: May 13 to 19 (Rio de Janeiro) — Executive Committee

International Federation of Industrial Property Attorneys: June 3 to 7 (Augsburg) — World Congress

Japanese Government: April 18 and 19 (Tokyo) — Celebration and Symposium Commemorating the Centenary of the Japanese Industrial Property System

1986

International Association for the Protection of Industrial Property: June 8 to 13 (London) — XXXIII Congress