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Notifications

Budapest Treaty

I. Ratification

FINLAND

The Government of Finland deposited, on June 1, 1985, its instrument of ratification of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977.

The said Treaty will enter into force, with respect to Finland, on September 1, 1985.

Budapest Notification No. 45, of June 3, 1985.

II. Extension of the List of Kinds of Microorganisms Accepted (Rule 3.3 of the Regulations under the Budapest Treaty)

CENTRAALBUREAU VOOR SCHIMMELCULTURES (CBS)

The following notification addressed to the Director General of WIPO by the European Patent Organisation under Rule 3.3 of the Regulations under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure was received on May 22, 1985, and is published by the International Bureau of WIPO pursuant to Rule 13.2(b)(ii) of the said Regulations:

The assurances furnished in the communication of the European Patent Organisation of July 27, 1981, as published in the September 1981 issue of *Industrial Property*, that the CBS complies and will continue to comply with the requirements specified in Article 6(2) of the Budapest Treaty, are extended to include *bacteria other than actinomycetes*.

The following are applicable to the additional kind of microorganism:

- (a) the part of the communication of July 27, 1981, concerning the fact that irrespective of where the microorganisms are stored, all deposits must be effected at the headquarters of CBS in Baarn, to which all correspondence must likewise be addressed;

- (b) the amended schedule of fees of CBS applicable as of May 30, 1984;
- (c) the requirements of CBS under Rule 6.3 of the Regulations under the Budapest Treaty.

(Translation)

[End of the notification of the
European Patent Organisation]

Pursuant to Article 7(2)(b) of the Budapest Treaty, the assurances furnished in the said notification of the European Patent Organisation will apply as from August 31, 1985 (date of the present publication).

Budapest Communication No. 24 (this Communication is the subject of Budapest Notification No. 46 of June 7, 1985).

III. Change in Fees under Rule 12.2 of the Regulations under the Budapest Treaty

CENTRAALBUREAU VOOR SCHIMMELCULTURES (CBS)

The following notification addressed to the Director General of WIPO by the European Patent Organisation under Rule 12.2(a) of the Regulations under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure was received on May 22, 1985, and is published by the International Bureau of WIPO pursuant to Rule 12.2(b) of the said Regulations:

The fee schedule of CBS as published in the September 1981 issue of *Industrial Property* is changed as follows in respect of the fees for the furnishing of a sample:

- | | |
|---|--------|
| — to a scientific institution | hfl 45 |
| — in other cases | 90 |

(Translation)

[End of the notification of the
European Patent Organisation]

The fees set forth in the said notification of the European Patent Organisation will apply as from the thirtieth day following the date (August 31, 1985) of the publication of the said fees in the present issue of *Industrial Property*, that is, as from September 30, 1985 (see Rule 12.2(c) of the Regulations under the Budapest

Treaty), and will replace the fees for the furnishing of a sample published in the September 1981 issue of *Industrial Property*.

Budapest Communication No. 25 (this Communication is the subject of Budapest Notification No. 47, of June 7, 1985).

Nairobi Treaty

Accessions

CYPRUS

The Government of Cyprus deposited its instrument of accession to the Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981.

The said Treaty will enter into force, with respect to Cyprus, on August 11, 1985.

Nairobi Notification No. 29, of July 11, 1985.

BOLIVIA

The Government of Bolivia deposited, on July 11, 1985, its instrument of accession to the Nairobi Treaty.

The said Treaty will enter into force, with respect to Bolivia, on August 11, 1985.

Nairobi Notification No. 30, of July 11, 1985.

WIPO Meetings

Permanent Committee on Patent Information (PCPI)

I. Working Group on Search Information

Fourteenth Session
Geneva, May 6 to 17, 1985

NOTE*

The PCPI Working Group on Search Information (hereinafter referred to as "the Working Group") held its fourteenth session in Geneva from May 6 to 17, 1985.¹ Twelve States and one intergovernmental organization, members of the Working Group, were represented at the session. The list of participants follows this Note.

The following items were discussed:

IPC Revision Projects Carried Over from 1984. The Working Group dealt with 53 of the 55 IPC revision projects pending. Of those projects, 12 were priority projects in the mechanical field, five were priority projects in the electrical field, and five were priority projects in the chemical field. Substantial amendments were agreed to in respect of subclass E 04 B, relating to "floor, roof or ceiling construction with regard to insulation."

New IPC Revision Projects. The Working Group dealt with 35 of the 59 new IPC revision projects. Of these projects, six were priority projects in the mechanical field, one was a priority project in the electrical field, and seven were priority projects in the chemical field. Substantial amendments were agreed to in respect of subclass G 09 B, relating to "flight instruction."

X-Notations. The Working Group considered the three X-notations (that is, patent documents dealing with subject matter which apparently cannot be satisfactorily classified according to the IPC) before it, allotted by various industrial property offices, and approved amendments, in one language version, to four subclasses. These amendments will permit appropriate classification of the patent documents in question.

* Prepared by the International Bureau.

¹ For a Note on the preceding session, see *Industrial Property*, 1985, p. 35.

LIST OF PARTICIPANTS*

I. Member States

Denmark: H.J. Petersen. **Finland:** L. Helle.¹ **France:** M. Lyon; P. Viala;¹ L. Hornik;¹ M. Lavé.¹ **German Democratic Republic:** H. Konrad;¹ K.P. Wittig.¹ **Germany (Federal Republic of):** K. Molewski;¹ J. Gesell;¹ E. Moritz;¹ W. Ruf;¹ H.F. Schneider;¹ M. Stock.¹ **Japan:** S. Ono.¹ **Norway:** O. Os.¹ **Soviet Union:** M. Makarov. **Spain:** J.D. Vila Robert. **Switzerland:** E. Caussignac;¹ J. Borloz.¹ **United Kingdom:** J. Hillman; P. Redding. **United States of America:** P. Sullivan; J.R. Goudeau.

II. Member Organization

European Patent Office (EPO): E. de Bundel; H. Schryvers;¹ J.F.C. Atkins;¹ C. Dailloux.¹

III. Officers

Chairman: E. de Bundel (EPO). *Vice Chairmen:* J. Hillman (United Kingdom); M. Lyon (France). *Secretary:* B. Hansson (WIPO).

IV. International Bureau of WIPO

B. Hansson (*Head, Patent Classification Section, Patent Information and Classification Division*); A. Sagarmnaga (*Senior Patent Classification Officer, Patent Classification Section*); Y. Mizutani (*Patent Classification Officer, Patent Classification Section*).

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

¹ Attended part of the session only.

II. Working Group on Special Questions

Seventh Session
(Geneva, June 6 to 14, 1985)

NOTE*

The Working Group on Special Questions (hereinafter referred to as "the Working Group") of the WIPO Permanent Committee on Patent Information (herein-

* Prepared by the International Bureau.

after referred to as "the Permanent Committee") held its seventh session in Geneva from June 6 to 14, 1985.¹

The following members of the Working Group were represented at the session: Australia, Austria, Denmark, Finland, France, Germany (Federal Republic of), Japan, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, the European Patent Office (EPO) (14). The International Federation for Documentation (FID) was represented by an observer. The list of participants follows this Note.

The Working Group discussed the general comments on the subject of consistency in the application of the IPC and specific comments in respect of a study of 10 selected subclasses. The Working Group appointed the EPO as Rapporteur to consider all comments received in connection with the said study with a view to defining, if possible, reasons for inconsistency which were common to several or all of the subclasses that had been the subject of the study.

The Working Group recommended to the Permanent Committee that further work on the project for extending the CAPRI Data Base beyond 1973 should not be undertaken for the time being.

The Working Group agreed, with respect to the subject "Means of Reducing the Bulkiness of Search Files," to recommend to the Permanent Committee that, in the light of comments received, the International Bureau should be requested to prepare a detailed proposal to update the existing text of the "Guidelines for the Organization of Search Files Based upon the IPC."

In respect of the subject "Possibilities of Using Microforms and Other Mass Storage Media," the Working Group requested the International Bureau to prepare an updated version of the microform catalog contained in the *WIPO Handbook on Patent Information and Documentation* by inviting offices to submit updated information. Further, a detailed questionnaire was to be prepared for:

- (a) collecting information on the equipment used by offices in conjunction with various mass storage media;
- (b) collecting experiences gained by offices in using particular mass storage media;
- (c) identifying the requirements of users, including ergonomic aspects, with respect to various media; and
- (d) identifying the reasons behind the choice of a particular mass storage medium compared with any other medium in respect of the storage of different kinds of patent documents, of different types of search and numerical files, and of the different purposes of storage and searching.

LIST OF PARTICIPANTS*

I. Members

Australia: H. Preston. **Austria:** F. Sohs. **Denmark:** H.I. Rasmussen. **Finland:** J. Rainesalo. **France:** A. de Pastors. **Germany (Federal Republic of):** M. Vögtel. **Japan:** K. Okazaki; S. Ono; Y. Masuda. **Soviet Union:** K. Koukolev; V.I. Blinnikov. **Spain:** A. Gomez Garcia. **Sweden:** L.G. Björklund; K. Bergström. **Switzerland:** E. Caussignac. **United Kingdom:** G.K. Lindsey. **United States of America:** T.F. Lomont.

II. Member Organization

European Patent Office (EPO): A. Vandecasteele; E. de Bundel.

III. Observer Organization

International Federation for Documentation (FID): F. Schweikhardt.

IV. Officers

Chairman: L.G. Björklund (Sweden). *Vice-Chairmen:* K. Koukolev (Soviet Union); H. Preston (Australia). *Secretary:* P. Higham (WIPO).

V. International Bureau of WIPO

L. E. Kostikov (*Deputy Director General*); P. Claus (*Director, Patent Information and Classification Division*); B. Hansson (*Head, Patent Classification Section, Patent Information and Classification Division*); P. Higham (*Head, Patent Information Section, Patent Information and Classification Division*); G. Negouliaev (*Senior Patent Information Officer, Patent Information Section*); V. Týč (*Assistant Patent Information Officer, Patent Information Section*).

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

III. Working Group on Planning

Fifteenth Session
(Geneva, June 6 to 14, 1985)

NOTE*

The Working Group on Planning (hereinafter referred to as "the Working Group") of the WIPO Permanent Committee on Patent Information (hereinafter referred to as "the Permanent Committee") held its fifteenth session in Geneva from June 6 to 14, 1985.¹

* Prepared by the International Bureau.

¹ For a Note on the preceding session, see *Industrial Property*, 1985, p. 71.

¹ For a Note on the preceding session, see *Industrial Property* 1985, p. 72.

The following members of the Working Group were represented at the session: Australia, Austria, Denmark, Finland, France, Germany (Federal Republic of), Japan, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, the European Patent Office (EPO) (14). The list of participants follows this Note.

The Working Group discussed various new requests and proposals as regards their merits and urgency with a view to deciding whether or not to propose them as new items on the PCPI Program for the 1986-1987 biennium. Among the new requests and proposals to be included were:

- (a) the revision of WIPO Standard ST.3 "Two-letter Code for Countries, Organizations and the Like";
- (b) the revision of WIPO Standard ST.9 "Recommendation Concerning Bibliographic Data on and Relating to Patent Documents"; and
- (c) the holding of advanced training courses in the use of the fourth edition of the IPC.

The Working Group prepared its report to the Permanent Committee on the effectiveness of the PCPI Program in the 1984-1985 biennium.

The Working Group also prepared the draft PCPI Program for the 1986-1987 biennium to be decided by the Permanent Committee. It recommended further a distribution of tasks on the said draft program among the PCPI Working Groups and proposed a schedule of session to work on the items on the PCPI Program in 1986-1987.

The Working Group also prepared a draft "Long Term Program of the PCPI" for the consideration and decision of the Permanent Committee.

LIST OF PARTICIPANTS*

I. Members

Australia: H. Preston. **Austria:** F. Sohs. **Denmark:** H.I. Rasmussen. **Finland:** J. Rainesalo. **France:** A. de Pastors. **Germany (Federal Republic of):** M. Vögtel; K.P. Müllner. **Japan:** K. Okazaki; S. Ono; Y. Masuda. **Soviet Union:** K. Koukolev; V.I. Blinnikov. **Spain:** A. Gomez Garcia. **Sweden:** L.G. Björklund; K. Bergström. **Switzerland:** E. Caussignac. **United Kingdom:** G.K. Lindsey. **United States of America:** W.S. Lawson; T.F. Lomont.

II. Member Organization

European Patent Office (EPO): R. Baré; E. de Bundel.

III. Officers

Chairman: L.G. Björklund (Sweden). **Vice-Chairmen:** K. Koukolev (Soviet Union); H. Preston (Australia). **Secretary:** P. Claus (WIPO).

IV. International Bureau of WIPO

L. E. Kostikov (*Deputy Director General*); P. Claus (*Director, Patent Information and Classification Division*); B. Hansson (*Head, Patent Classification Section, Patent Information and Classification Division*); P. Higham (*Head, Patent Information Section, Patent Information and Classification Division*); G. Negouliaev (*Senior Patent Information Officer, Patent Information Section*); V. Týč (*Assistant Patent Information Officer, Patent Information Section*).

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

General Studies

The Industrial Property Laws of Barbados

L.S. HUNTE*

Introduction

The Parliament of Barbados, during its final session for 1981, enacted four new intellectual property statutes, thereby ushering in a new era in the history of ownership of intellectual property in Barbados. The four statutes comprise a new Patents Act, a new Trade Marks Act, a new Industrial Designs Act and a new Copyright Act. The purpose of this article is to comment on the three new industrial property statutes (patents, trademarks and industrial designs), revised versions of which entered into force on January 1, 1985.¹

Historical Perspective

It must be pointed out that Barbados was uninhabited when it was settled by the British in the year 1627; it had its first Parliament in the year 1639 but remained a British Colony until the year 1966 when it became an independent State. It is, therefore, what lawyers refer to as a Common Law country, that is to say, its legal system has its roots in the British Common Law as opposed to Civil Law countries, which have a system of law based on the Roman Civil Law.

In the year 1979, the Government of Barbados, in answer to the crying need for greater protection of the country's inventors, businessmen, designers, authors, composers, musicians, performers and producers, set up an Inter-Ministerial Committee comprising 12 persons drawn from various areas of the public sector "to examine the existing copyright and industrial property laws of the Country with a view to reforming them."² The Committee was empowered to advise the Government respecting the need for "outside assistance" if necessary.

* Currently Attorney General, Tortola, British Virgin Islands; at the time of drafting this article, Mr. Hunte was serving as Senior Parliamentary Counsel, Ministry of the Attorney General, Barbados.

¹ For the Patents Act, see this month's *Industrial Property Laws and Treaties*, BARBADOS—Text 2-001. The Trade Marks and Industrial Designs Acts will be published in future issues of *Industrial Property Laws and Treaties* (Editor's note).

² The terms of reference of the Inter-Ministerial Committee.

Accordingly, the Committee recommended that the Government should seek the assistance of the World Intellectual Property Organization. WIPO's assistance was sought and, in November of that year, two experts from WIPO visited Barbados and carried out a survey to determine the country's needs. By the end of December of that year, Barbados had received from WIPO four draft model laws, which formed the basis of the new legislation under discussion. Incidentally, the visit by the WIPO experts also heralded the beginning of a period of close friendship and cooperation between WIPO and Barbados that seems to get closer as the years roll on. To mention discussions and seminars (national and regional) is but to name two ways in which this association with WIPO has grown.

Patents

The Patent Law of Barbados had long since outlived its usefulness, based as it was on an Act dating from the year 1903.³ The general procedure as outlined in that Act was as follows: an applicant for a patent of invention applied to the Registrar (who incidentally was also Registrar of the Supreme Court) for grant of a patent. The Registrar referred the application to an examiner. After advertisement of the application and the consequent invitation of opposition to grant of a patent, the application was submitted to the Governor-General with a recommendation that he grant letters patent vesting in the applicant all rights respecting the invention. The concept of letters patent and the grant thereof by the Governor-General had its roots in principles based on the ancient Royal Prerogative.

The new Patents Act revolutionizes the law relating to patents and introduces a more up-to-date procedure in patent law and practice.

General Arrangement of Patents Act, 1981, as Revised

The new Act is divided into five Parts. However, immediately preceding Part 1, there are four preliminary provisions (Sections 1 to 4) comprising the short title and, for the most part, definitions of expressions used in the Act. This is in keeping with a drafting convention followed in Barbados whereby the short title

³ Patents Act, Cap. 314 of the Revised Laws of Barbados, which was repealed on the commencement of the Patents Act, 1981.

of the Act comes first, the definitions of expressions used in the Act come second and the substantive provisions follow in a logical order.

Part I contains the general law as it relates to patents and is arranged as explained herein.

Sections 5 to 8 deal with the protection of inventions and exceptions thereto.

Sections 9 to 20 set out the requirements that must be satisfied before an invention can be patented and includes matters relating to an inventor's right to an invention, disqualifications and employers' and employees' rights.

An inventor, having satisfied himself that he is entitled to a patent, must apply for the grant of a patent if he wishes to have his rights protected. Sections 21 to 31, therefore, are concerned with the procedure to be observed in an application for the grant of a patent and the subsequent process to which the application is subjected before a patent can be granted.

Section 31 provides for examination as to substance but subsection (4) allows the postponement of the operation of the provision until its administration is practicable. Subsection (5) contains a mechanism that permits such an examination to be done through a national, regional, international or foreign institution. The Patent Cooperation Treaty (PCT), to which Barbados became party on March 12, 1985, was borne in mind when this provision was adopted.

The application for grant of a patent having been made and the requirements of the Act having been complied with, the next step is the granting of the patent. Sections 32 to 38 treat this aspect of the proceedings and conveniently include duration and surrender of patents. Duration of a patent has been fixed by Section 34 at 15 years from the filing date accorded the application.

Parts II and III set out the law as it relates to licenses in the field of patents. Part II is concerned with contractual licenses and Part III with non-contractual licenses. These are referred to in some jurisdictions as "voluntary" and "non-voluntary" licenses.

Remedies are prescribed in Part IV and are broken down into civil remedies, invalidation and validation proceedings and criminal sanctions. In Barbados, the period within which a criminal offense that is triable before a magistrate (summary offense) may be brought is, generally speaking, six months from the date on which the offense was committed.⁴ Section 87 of the Act creates an exception to this rule and fixes the limitation period at five years.

Part V has been assigned the heading "Administration." This arrangement is a matter of convenience and the Part has been arranged into two groups of provisions. The first group, Sections 88 to 93, provides for the keeping of a register in which the necessary information relating to patent applications, granted patents as well as license contracts is entered. The

second group, Sections 94 to 101, deals with a number of miscellaneous matters without which the administration of the act would be difficult; these include communication, reciprocity, disposal of fees collected, expenses, repeal of the old Act and the commencement of the new one.

Trademarks

The Trade Marks Act, 1949, of Barbados (which constituted Chapter 319 of the Laws of Barbados) came into operation on May 25, 1950. Compared with the old Patents Act, it was a comparatively recent statute but with a lapse of 31 years between its coming into operation and the enactment of the Trade Marks Act, 1981, the substance of the Act had obviously lagged behind the ever-changing subject matter to which it related. The old Act provided for two types of registration; either in Part A or in Part B of the Register. Sections 5 and 6 specified the differences between Part A and Part B registrations; those distinctions, however, were not always very clear.

Marks registered in the United Kingdom were automatically granted protection in Barbados under the 1949 Act. The concept of the "collective mark" was unknown, as were the principles of priority, joint ownership and many other ideas to which effect are given in modern legislation.

The new Trade Marks Act of 1981 is a radical piece of legislation in some respects and modernizes the law in many instances.

General Arrangement of Trade Marks Act, 1981, as Revised

The Act, unlike the Patents Act, is not divided into Parts, but where a group of provisions relate to a common topic or principle, those provisions have been given a headnote so as to facilitate reading. The Act is arranged as follows:

- (a) Section 1 gives the Act its short title;
- (b) Section 2 defines the technical expressions used in the Act, Section 3 deals with the protection of marks under international treaties to which Barbados is party and Section 4 defines trademarks, service marks and collective marks;
- (c) Sections 5 to 9 set out the principles relating to the protection of marks and the exceptions thereto;
- (d) Sections 10 to 15 are concerned with the procedure respecting applications for the registration of marks, priority and examination;
- (e) Sections 16 to 18 deal with publication and opposition;
- (f) Sections 19 to 27 are confined to registration, renewal of registration and the consequences of registration;

⁴ Chapter 116 of the Revised Laws of Barbados, Section 113.

(g) Sections 28 and 29 have been designated "Proprietary Activities" and deal mainly with the transfer of marks;

(h) Sections 30 to 36 comprise those principles that govern license contracts;

(i) Section 37 has been isolated and stands alone to set out the law relating to renunciation;

(j) Sections 38 to 46 are remedial and have been conveniently grouped together and designated "Protective Measures";

(k) Section 47 is headed "Appeals";

(l) Sections 48 to 51 are concerned with trading practice offenses and 52 with civil remedies; and

(m) Sections 53 to 58 deal with a number of administrative matters.

The arrangement is largely the same as in the Patents Act, which was drafted first, and the provisions are, wherever possible, consistent in wording with that Act. It is not necessary, therefore, to expand the comment on this Act, except to say that the duration of registration of a mark is for a period of 10 years from its registration and that registration is renewable.

Industrial Designs

Prior to the enactment of the Industrial Designs Act, 1981, no industrial designs legislation existed in Barbados, although an Act entitled the United Kingdom Designs and Standardisation Marks Protection Act, 1936,⁵ which was in force until 1979, gave automatic protection in Barbados to United Kingdom designers. This was a curious piece of legislation in that Barbadian designers were neither protected at home nor abroad and thus it afforded the British a protection not available to locals. The Act was repealed on May 31, 1979.

The enactment of the Industrial Designs Act, 1981, therefore, creates history for the Act seeks for the first time to provide legal protection for local designers.

Arrangement of the Industrial Designs Act, 1981, as Revised

The arrangement of this Act is similar to that of the Patents and Trade Marks Acts. It is not subdivided into Parts but those sections which treat a particular principle are grouped together and given subheadings. They are as follows:

(a) Section 1 gives the Act its title;

(b) Sections 2 to 4 are intended to assist with the interpretation of the Act;

(c) Sections 5 to 11 set out the principles that relate to the protection of designs;

(d) Sections 12 to 18 contain the principles that govern applications for the registration of designs and the procedure prior to registration;

(e) Sections 19 to 26 are confined to the principles that relate to registration and renewal of registration;

(f) Sections 27 to 36 cover proprietary activities;

(g) Sections 37 to 42 set out the protective measures available to a registered owner of a design;

(h) Section 43 provides for appeals by dissatisfied persons;

(i) Sections 44 and 45 provide for criminal sanctions against persons infringing rights protected under the Act and, as a complement, Section 46 contains the civil remedies available; and

(j) Sections 47 to 49 contain certain administrative provisions.

The duration of a registered design is five years, but it is renewable for two further consecutive periods of five years each.

Conclusion

The new Acts, therefore, provide the legal framework:

(a) to provide for an up-to-date industrial property administration in Barbados; and

(b) to provide the necessary clearance for Barbados to become a member of the Unions that have been created for the protection of owners of industrial property throughout the world.

Patent Law in the Nordic Countries

M. JACOBSSON*

Introduction

The purpose of this article is to give an overall picture of the patent system in the Nordic countries. First an account of the main features of the historical development of the system will be provided. Then the importance of inter-Nordic cooperation in this area will be explained. The position of the Nordic countries in the overall perspective of international cooperation, notably under the Patent Cooperation Treaty (PCT) and the European Patent Convention (EPC), will also be described. The article contains a summary of the

* Assistant Under-Secretary, Ministry of Justice, Stockholm, Sweden. This article was submitted for publication in January 1985 and analyzes the state of the law up to that date.

⁵ Revised Laws of Barbados Chapter 320 (now repealed).

contents of the Nordic patent laws, and gives an account of the role of the Swedish Patent Office within the PCT and EPC systems. Finally, some information will be given on the services rendered by the Swedish Patent Office outside the examination of applications.

The article is based on the experience that the author has gained from his contribution, as the person responsible, to the preparation of the Swedish legislation that was necessary for the ratification of the PCT and EPC, and also from his participation, as a member of the Swedish Delegation, in international conferences in the industrial property field.

Although the purpose of this article is not only to deal with the subject from a Swedish standpoint, but also to give readers an idea of the situation in the other Nordic countries, the study nevertheless concentrates on the situation in Sweden. It should be added that the expression "the Nordic countries" refers to Denmark, Finland, Norway and Sweden. Iceland has not taken an active part in the inter-Nordic cooperation in this field.

Historical Development

The first law in Sweden for the protection of inventions was enacted in 1819. Under that law an inventor could be granted a privilege for the working of an invention for a period of 15 years. The concept of patents was introduced by a law of 1834.

The second part of the 19th century witnessed the enactment of modern legislation on patents in industrialized countries. The conclusion of the Paris Convention for the Protection of Industrial Property in 1883 was certainly a motivating factor in this respect. A new law on patents was thus enacted in Sweden in 1884. At the same time laws were enacted in the other Nordic countries, namely, in Denmark in 1894, in Finland in 1898 and in Norway in 1885.

The Swedish Law of 1884 remained in force until 1967. Partial reforms were nevertheless made, and a reform of profound importance was made during the 1960s. This reform was carried out in close cooperation with the other Nordic countries. New, almost identical patent laws entered into force simultaneously in the four Nordic countries on January 1, 1968.

An important international development in the field of patent law occurred towards the end of the 1960s and at the beginning of the 1970s, namely, the drafting of the PCT and the EPC. This development called for a further revision of the Nordic laws. A revised law entered into force in Sweden on June 1, 1978, and in the other Nordic countries somewhat later.

Finally, amendments were made to the Swedish legislation in 1982 to permit ratification of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent

Procedure. The corresponding amendments are being introduced in Denmark, Finland and Norway.¹

Inter-Nordic Cooperation and the Drafting of New Laws

Before dealing with the present situation, a mention should be made of a characteristic feature of the legislative process in the Nordic countries, namely, the very close cooperation between those countries in the drafting of laws. That cooperation has quite a long tradition that goes back to the end of the 19th century. Moreover, it is not confined to the industrial property field; in other fields, too, a fairly high degree of uniformity has been attained: for example, one could mention the law on the sale of movable property, the law on credit sales, the law on contracts and the law on maritime transport. Be that as it may, the uniform patent laws are often quoted as one of the best examples of the success of inter-Nordic cooperation. As already mentioned then, the legislation on patents is practically identical in the Nordic countries.

Another advantage deriving from inter-Nordic cooperation should also be emphasized, in addition to that of legislative uniformity: the Nordic countries are small; they therefore have a very small number of experts, especially in the more difficult areas of law. It is thought that collaboration between them will produce higher-quality legislation.

The idea of inter-Nordic cooperation in the patent field is a very old one. The possibility of harmonizing patent laws was considered as long ago as in 1881, at the time of a conference of Nordic lawyers in Copenhagen. Official discussions were held in the 1920s and 1930s, but they did not produce any definite result.

It was only after the Second World War that any systematic work began. This time the initiative was taken by the Nordic Council, a parliamentary assembly grouping representatives of the national Parliaments of the five Nordic countries. The result was the creation in 1949 of an Inter-Nordic Commission² responsible for carrying out a preliminary study of the possibility of creating a "Nordic Community" in the patent field.

In its report, the Commission presented a number of guidelines for the creation of such a community in the field of patents. The Commission recommended first the development of a system of Nordic patents. On the basis of this report, the Nordic Council invited the Governments concerned in 1954 to establish such a system as soon as possible.

¹ For the texts of the patent laws of the Nordic countries, see *Industrial Property Laws and Treaties*: DENMARK — Text 2-001; FINLAND — Text 2001; NORWAY — Text 2-001; and SWEDEN — Text 2-001.

² This Commission was composed of representatives of Denmark, Norway and Sweden. Finland did not become a member of the Council until 1950.

In response to the recommendation by the Nordic Council, legislative committees were appointed in the four countries to consider the problems in detail. The committees collaborated closely and held a number of joint meetings. The results of their work were presented in a joint report, published in 1963 and written in Swedish, Danish and Norwegian.

In this report, the committees presented a draft of uniform patent laws for the four Nordic countries concerned, namely, Denmark, Finland, Norway and Sweden, and also drafts of ordinances for the implementation of those laws.

The report of the committees was sent for comment, according to the Nordic tradition, to the authorities and organizations concerned. On the basis of the comments received, concerted action took place between representatives of the responsible ministries of the four countries with a view to maintaining the uniformity of the legislation. The Governments then presented bills to their Parliaments. In the course of the parliamentary procedure, the competent commissions of the four Parliaments met in order to avoid any divergence between the laws.

After having been adopted by the Parliaments, the new laws entered into force on January 1, 1968, as already mentioned. The revision had thus resulted, in the four Nordic countries, in uniform, indeed identical, legislation. In view of the differences between the countries in the areas of procedural and criminal law, however, it was not possible to work out identical solutions for the provisions concerning those particular areas.

It should be stressed that the uniformity is not confined to the laws themselves, but also extends to the implementing ordinances promulgated by the Governments, and to the rules issued by the Patent Offices of the Nordic countries. It should also be noted that, in order to bring about uniform application of the legislation in the four countries, meetings are held every two years between Patent Office representatives for the discussion of problems of interpretation and implementation.

The Nordic Laws of 1967

In the course of the 1960s, there was a crushing work load on the Patent Offices of the Nordic countries, and the time required for the grant of a patent was increasing steadily. Cooperation between the Offices was therefore regarded as the only means of bringing about the essential rationalization of their activity.

The main purpose of the new Nordic laws was therefore to introduce a system whereby national patents would be granted on the basis of a common application, or "Nordic application." Such an application would be filed with one of the national Offices, which would process it in principle as an ordinary

national application. That Office would then grant a patent, on the basis of the application, for the four Nordic countries or for some of them only. The introduction of such a system clearly called for close harmonization of legislation. It will be noticed that there are certain parallels with the action that was taken, albeit on a far greater scale, which resulted in the drafting of the European Patent Convention.

In this connection it should also be mentioned that the committees of the four Nordic countries proposed in 1978 that a joint administrative body be set up and given responsibility for ruling, in the third and final instance, on appeals against decisions of the national Offices in patent matters. This proposal was never implemented, however.

Added to this main objective, namely the introduction of a system of Nordic patents, there was the strong desire to revise the patent laws from top to bottom, as they were very old, and to make them better meet the needs of industry. Efforts were thus made to adapt the Nordic laws to new international trends, notably the work undertaken within the Council of Europe in Strasbourg on the harmonization of legislation—primarily the 1963 European Convention on the Unification of Certain Points of Substantive Law on Patents for Invention—but also the work carried out within the Council of Europe during the 1960s, which resulted in 1968 in the draft of a convention designed to bring about far more extensive harmonization than that achieved by the 1963 Convention.

The new Nordic laws of 1967 introduced a number of important innovations: publication of patent applications 18 months after the priority date; inclusion of prior applications in the state of the art with a view to adoption of the "whole contents" approach; extension of the area of patentability to include inventions related to chemical compounds, foodstuffs and medicines; and so on.

The provisions on the system of Nordic patents gave rise in Denmark and Norway to violent objections on the part of industrial circles. It was feared that the system might result in Denmark and Norway being swamped with patents, which would have been an unacceptable obstacle to industry in those countries. Even though they had been written into the laws, those provisions in fact never entered into force. In 1978, when the laws were amended to permit ratification of the PCT and the EPC, the provisions on Nordic patents were removed from them. In view of the international cooperation that had led to the adoption of the above two treaties, it was no longer realistic to imagine that the system of Nordic patents would ever be realized.

The 1978 Revision of the Nordic Laws

When the new laws were adopted in 1967, an important evolutionary trend had already begun in the

international patent field. In 1970 the Patent Cooperation Treaty (PCT) was completed and signed; it was followed in 1973 by the European Patent Convention (EPC). The Nordic countries took an active part in the development of both treaties. Sweden, in particular, had indicated its desire to take an active part in the PCT operations very early, as the Swedish Patent Office was the only one of the countries of Scandinavian language that met the conditions required to be an International Searching and International Preliminary Examining Authority.

In February 1978 Sweden deposited its instrument of ratification of the PCT and the EPC. At the same time it ratified the 1963 European Convention on the Unification of Certain Points of Substantive Law on Patents for Invention. The other Nordic countries have all ratified the PCT. It should be pointed out that Sweden and Finland have not made any reservations regarding the implementation of Chapter II of the Treaty, which has to do with international preliminary examination, whereas Denmark and Norway have made such reservations.

As for the EPC, Sweden is the only Nordic country that has ratified it so far. In Denmark, the Government proposed to Parliament in 1978 and 1983 that Denmark should ratify the Convention, but the required majority (five-sixths) was not attained. In Finland, it was decided that the Convention would not be ratified. Finally, in Norway, it was decided that the experience acquired in other member countries of the European Patent Organisation would be awaited before a decision was taken on ratification.

The ratification of the PCT, and for Sweden also that of the EPC, called for a further revision of the Nordic laws. Even though the Nordic countries had adopted different attitudes regarding the EPC, it was decided that the revision of the laws would be undertaken in close collaboration between the four, in order to avoid, as far as ever possible, the risk of divergence between those laws. As in the 1960s, therefore, there was close cooperation between the four committees entrusted with drafting the legislative texts and also between the ministries responsible.

As already mentioned, it was realized in the course of this work that the new treaties had deprived the plan for a system of Nordic applications of any real interest, and that the provisions on it should be removed. It can therefore be said that, while the set of provisions introduced in 1967 was a step along the path of unification of the Nordic laws, the 1978 legislation marked the entry of the Nordic countries into an area of international cooperation that was more extensive with respect to both harmonization of legislation and participation in the activities of joint bodies responsible for the grant of patents.

As before, the opportunity was taken to review the provisions of the patent legislation entirely, in order to take the latest developments into account. For one

thing, it seemed necessary to harmonize as far as possible the provisions on national patents and national patent applications with those of the PCT and the EPC. With regard to substance, it seemed necessary to harmonize the text with the corresponding provisions of the EPC, for instance on patentability and revocation, as it was considered impossible to permit the coexistence in Sweden of two different types of patents based on different principles. On the contrary, it was considered that patents should all be equivalent, whether granted by the Swedish Patent Office or under the EPC. When the substantive provisions were considered, account was also taken of the Community Patent Convention, owing to the advantages of harmonizing the patent law of the Nordic countries with provisions that would probably be introduced in a few years in a large number of countries of Western Europe.

The revised texts entered into force in Sweden on June 1, 1978, in Denmark on December 1 of the same year, in Norway on January 1, 1980, and in Finland on October 1, 1980.

The Revision Due to the Budapest Treaty

International cooperation within the framework of WIPO resulted in 1977 in the conclusion of another international instrument, namely, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. As the Nordic countries wished to ratify the Budapest Treaty, it was necessary for their legislation to be adapted to it. Furthermore, the provisions on microorganisms appearing in the Implementing Regulations to the European Patent Convention were amended in 1979. So, at least as far as Sweden was concerned, it was necessary to consider whether, and if so to what extent, the national legislation should be amended accordingly.

Once again, the legislative work was undertaken in the Nordic framework. In Sweden the necessary legislation was adopted in April 1983, and Sweden deposited its instrument of ratification of the Budapest Treaty on July 1 of the same year. Proposals to that end were presented to the Danish, Norwegian and Finnish Parliaments in 1984³.

The Structure of the Nordic Laws

The laws consist of 11 chapters and 93 sections.

Chapter I contains general provisions, which lay down the main conditions governing the operation of the patent system, namely: patentability, rights granted, prior use, right of priority. With regard to substance, those provisions conform to the EPC and the

³ The Budapest Treaty entered into force with respect to Denmark on July 1, 1985, and will enter into force with respect to Finland on September 1, 1985 (*Editor's note*).

Community Patent Convention (CPC); that is true not only of Sweden but—with one exception—also of the other Nordic countries. Moreover, from a drafting point of view, the provisions of the Nordic laws are either identical or very close to the corresponding provisions of the two Conventions.

General Provisions

The *invention concept*, as understood by patent law, had to a large extent evolved, in the Nordic countries, in doctrine and case law. Before 1978, the law specified merely that an invention had to be industrially applicable. However, there is no doubt that, on all the main points, this concept of Nordic law corresponded very closely to the invention concept as defined in the EPC. And yet, in order to remove all uncertainty, particularly abroad, the Nordic laws were harmonized on this point with Article 52 of the EPC. They now contain the same examples of exceptions to patentability as Article 52. In fact, the harmonization called for only one substantive amendment, which was the general exclusion from patentability of methods for the treatment of the human or animal body. In Nordic law, methods of diagnosis used to be considered patentable, but this is no longer so.

The matter of the *patentability of foodstuffs and medicines* presented a problem. Before 1967 such products were not patentable. When this matter was considered during the preparation of the 1967 Nordic laws, it had been agreed that nothing, in principle, seemed to stand in the way of their becoming patentable, and that it was important, as in any other field of technology, to promote development in those areas through the grant of patents. It had moreover been considered that, in terms of societal interests, there were already sufficient means available to prevent monopoly abuses. And yet at the time a number of important industrialized countries that were in a position similar to that of Sweden had maintained the non-patentability of those products.

In 1967 a compromise had been found: the prohibition on the patentability of these products was removed from the Nordic laws, but was retained under the transitional provisions until such time as each Government decided to lift it. The Nordic Governments did not make use of the possibility of removing this prohibition, and so the position in all the countries, up to 1978, was that those products were not patentable.

The development that occurred after 1967 took the form of the lifting of the ban in the other industrialized countries, especially the Federal Republic of Germany. At the time of its ratification of the EPC, Sweden amended its legislation in order to make foodstuffs and medicines also patentable. Sweden therefore did not exercise the option that Article 167 gave it of making a reservation in that respect for a limited period. On that point the other Nordic countries opted in 1978 not to

align their legislation on the EPC. In Denmark, Finland and Norway, those products are still not patentable.⁴ It should be added, however, that the Parliament of Denmark will probably soon be presented with a Government proposal for the lifting of this ban.

An interesting question which has been widely discussed in Sweden is that of the *extent of the protection conferred by patents on a product as such*. The discussion of this problem has concentrated on patents for chemical compounds. The 1967 laws introduced the principle of the patentability of chemical compounds as such. The explanatory notes annexed to them, however, contained guidelines that restricted that patentability. Protection could only be granted for the products in connection with a specific use or industrial application, in other words, its scope was limited by the use for which the product was intended. It followed also that a second, independent patent could be obtained for the product in relation to a second use. At the time of the 1978 amendments, this restriction on the extent of the protection of patents for chemical compounds was removed. Today, protection can be obtained for a product that is a chemical compound in its own right.

The decision whether, for products other than chemical compounds, the protection afforded by a product patent is confined to a particular application specified by the applicant, or whether that protection extends to any industrial application, was left to the discretion of the courts. The explanatory memorandum considered the question really to be only important for products that were chemical compounds; for other products, notably in the engineering and electrotechnical fields, it would not be possible in practice to define the invention without specifying a particular application. It was added that, for certain types of products that were similar to chemical compounds, such as polymers and alloys, it would seem that they should be treated like chemical compounds in that respect.

The Nordic laws had adopted the rule of *absolute or general novelty* already in 1967. Prior applications not published on the filing date of the application concerned were included in the state of the art (the "*whole contents*" rule). This rule also operated in the patentability examination. In 1978, the principle was amended to align it on that of the EPC, and now no account is taken of the contents of unpublished prior applications in the examination for inventive step. It should be added that, in the opinion of the circles concerned, the earlier situation was excessively strict, as it was applied regardless of whether the prior application came from the same applicant or from another.

In order to define the *rights conferred by a patent*, the Nordic countries used a general formula prior to 1978. A certain number of examples of prohibited commercial exploitation of the patented invention,

⁴ In Denmark processes for the manufacture of foodstuffs are also excluded from patentability.

such as manufacture, use, import or sale, were followed by the words "or by any other means." This formula differed substantially (and perhaps more in form than in substance) from that contained in the CPC. So the intention was to adapt the Nordic texts to what undoubtedly would become the rule in the countries of Western Europe. For its part, as a member of the European Economic Community, Denmark intended to adopt the CPC solution, and it was a question of safeguarding the unification that had already been achieved between the Nordic countries.

Today the Nordic countries follow the CPC very closely, and they have chosen to list the prohibited uses exhaustively. In terms of substance, the amendment consisted mainly in writing specific provisions into the text that punished infringement by negligence and expressly stated certain exceptions to the rights deriving from the patent. Those exceptions concerned especially non-commercial use, the exhaustion of rights in relation to products already marketed, the use of the invention for experimental purposes and the preparation of pharmaceutical products in individual cases.

With regard to the *right of priority*, it was not possible before 1978 to enjoy the priority provided for in the Paris Convention otherwise than by invoking a foreign application. Now, however, the PCT and the EPC provide that an international or European application may be invoked in a priority claim. Such an application may also designate Sweden, when that country is the priority country, so it seemed quite natural that it should be also possible to use a prior Swedish national application for the same purpose. Since the 1978 amendments, therefore, the right of priority may be enjoyed on the basis of a Swedish application.

The Position of the Inventor

According to the Nordic laws, the right to the grant of a patent belongs to the inventor or to his successor in title. The inventor must always be an individual; a legal entity may never have that status—it may acquire the right to an invention, but the right itself always vests originally in the individual inventor. There is, of course, specific legislation in the Nordic countries regarding inventions made by employees. According to that legislation, the employer, under certain conditions, has the absolute right to acquire an invention made by an employee; even in such a case, however, the right to the invention is regarded as having originated with the inventor as an individual.

It should be added that the Nordic countries' legislation on inventions made by employees is more favorable to them than that of other countries, including the Federal Republic of Germany. The cases in which the employer has the absolute right to acquire an invention are very few under Swedish law. He has that right only if the inventor's main duty is to concern himself with research and development and if the invention in question was the result of that duty, or if the

employee made the invention while carrying out a task specified by the employer. Case law has interpreted this provision quite restrictively. In other cases in which the invention made by the employee in the course of his work actually belongs to the area of activity of the employer, the latter has the right only to exploit it in connection with the activities of the enterprise. In any event, the employee is always entitled to equitable remuneration if the employer acquires the right to the invention or exploits it in connection with the activities of his enterprise.

Under the Nordic laws, as under the EPC, the inventor must be mentioned in the application. Where a patent is applied for by a person other than the inventor, however, there is an important difference between the two systems. Under the EPC, the mention has to incorporate a declaration stating the reasons for the acquisition of the right to the patent; the European Patent Office has to send a copy of the mention to the inventor named in it. Under the Nordic laws, on the other hand, the applicant has in that case to prove his right to the invention. In practice that is done by presenting the Patent Office with a deed of assignment signed by the inventor. If the applicant does not provide this proof, the application is rejected.

It has to be admitted that the difference on this point is perhaps not so great in practice, but it does reflect an important difference of principle with regard to the inventor's position in patent law. More than the legislation of other European countries, Nordic legislation places the emphasis on the inventor and his rights. The solution adopted in the EPC, after some protracted and quite difficult negotiation, was a compromise between the Nordic countries, which wanted to give the inventor the same status as in their legislation, and the other signatory countries, which favored the system generally adopted by them, under which the applicant was deemed to be entitled to exercise the right to the patent.

Patent Applications

With regard to the conditions of form that have to be met by a national patent application, the Nordic laws have been aligned almost entirely on the PCT and EPC. A national application thus has to embody a request, a description—with one or more drawings where necessary—one or more claims and an abstract.

It should also be mentioned, with regard to the matter of unity of invention, that the Nordic laws have adopted *en bloc* the regulatory system established by the PCT and the EPC. That means that a more liberal approach has been adopted than hitherto; before 1978, the law imposed more severe restrictions on the categories of inventions that could be included in one and the same application.

According to both the Nordic laws and the EPC, the description must disclose the invention in a manner sufficiently clear and complete for it to be carried out by

a person skilled in the art. It is perhaps interesting to see how this condition is understood in relation to inventions in the field of microbiology.

In 1978, provisions identical to those contained in Rule 28 of the Regulations under the EPC, in their original version, were incorporated in the Nordic laws. Consequently, the deposit of a microorganism used in the making of an invention is now required if that microorganism is not available to the public. The Swedish Patent Office has entered into agreements with a number of depositary institutions that have been approved for this purpose. The terms of those agreements closely resemble those of the corresponding agreements concluded by the European Patent Office with the same institutions. The provisions in question have not yet entered into force in the other Nordic countries.

Rule 28 of the Regulations under the EPC was amended in 1980. As already mentioned, in Sweden the Patent Law has been amended in order to adapt it both to Rule 28 as amended and to the Budapest Treaty. According to those amendments, a deposit is necessary if the microorganism concerned is neither available to the public nor capable of being described in the application so as to enable a person skilled in the art to carry out the invention. The deposit has to be made with an international depositary authority.

At the time of this new legislation, the Nordic legislators noticed that certain very important questions associated with the system for the deposit of microorganisms were not dealt with either in the EPC or in the Budapest Treaty. An attempt was made to find satisfactory solutions to them, either in the law or in the explanatory memorandum.

First, it obviously cannot be sufficient for a deposit to be made on the filing date of the patent application. The deposit also has to continue to exist. A provision to that effect has been included in the Swedish Patents Act. In view of the fact that, according to that Act, deposits will be made under the Budapest Treaty, Rule 9 of the Regulations under the Treaty is applicable. A deposit therefore has to be stored by the international depositary authority for a period of at least five years after the most recent request for the furnishing of a sample of the deposited microorganism was received, and in any case for a period of at least 30 years after the date of the deposit.

Moreover, the deposit of a microorganism has to be considered an integral part of the description, which means that it has in principle to be open to public inspection under the same conditions as the file of the application concerned. It is also considered necessary, again as with the file, that third parties have the possibility of inspecting the deposit *in Sweden*. A deposit is valid only if the depositary authority abides by the rules laid down in the Act regarding public inspection, and if third parties have the possibility of receiving, in Sweden, a sample of the deposited microorganism.

Provisions have also been introduced in the Swedish Act whereby the applicant may effect a new deposit in the cases referred to in Article 4 of the Budapest Treaty, namely when the depositary authority cannot furnish samples, for instance because the microorganism is no longer viable.

Public Inspection of Applications

As already mentioned, patent applications are laid open for public inspection 18 months after the filing date or, if priority has been claimed, 18 months after the date of that priority. The application may be laid open for inspection before the expiry of the 18-month term at the request of the applicant, however.

Those provisions also apply, in principle, to the deposit of a microorganism for the purposes of the procedure before the Patent Office. As soon as the file of an application is laid open for public inspection, any person has the right to request and receive a sample of the deposited microorganism. There are two exceptions to this rule, however. The depositary authority is not obliged to furnish a sample of a deposit where the person who wishes to have such a sample is not empowered, under the provisions of the Act, to deal with microorganisms of that type. The same applies if, in view of the dangerous properties of the microorganism concerned, there is reason to believe that the person is not able to handle it satisfactorily.

As we know, a special system governing the availability of deposits was introduced into the Regulations under the EPC in 1980. If the applicant so decides, availability can only be effected, for a certain period, by the issue of a sample to an expert nominated by the requester (Rule 28.4). The Swedish Delegation to the Administrative Council of the EPO strongly opposed the introduction of such a system, considering it doubtful that an element of an application accessible only through an expert could be deemed accessible to any person within the meaning of Article 128 on the public inspection of files. Therefore, according to the Swedish Delegation, Rule 28.4 did not conform to the principle on which Article 128 was based.

Rule 28.4 was adopted, however, so this system is the one applied by the European Patent Office. That being the case, Swedish legislation considered it necessary, from a practical point of view, to introduce the same system in Swedish law, notwithstanding its opposition on principle, which it still maintained. In view of the fact that Sweden has ratified the EPC, it is always possible to obtain a patent for Sweden by means of a European application. If the applicant wishes, then, he can quite well make use of the expert system, even if Sweden does not introduce it in its legislation.

Denmark is also expected to introduce the system in its legislation. On the other hand, Finland and Norway will probably not adopt it as a means of affording access to deposits.

Procedure Before the Patent Office

With regard to the procedure before the Patent Office, attention should be drawn to two aspects of that procedure, as there are substantial differences between the procedure in Nordic countries and that applied by the European Patent Office.

In the Nordic procedure there is no distinction between search and examination within the meaning of the EPC and the PCT. The Nordic Offices therefore do not draw up any search report to determine the relevant state of the art. In principle, they only carry out an examination the purpose of which is to establish that the application meets the conditions of form and substance that govern patentability. If those conditions are not met, the applicant is invited to correct or restate his application. If he fails to act on that invitation by the appointed time limit, his application is rejected without substantive examination. In that case he has one further possibility of correcting or amending the application within an additional period of four months, on condition that he pays a special fee. If he responds to the invitation at least partly, substantive examination takes place. If the conditions of patentability are still not met, the application is rejected. Where all the conditions are met, the application is provisionally approved for the purposes of the opposition procedure.

In the Nordic countries, the opposition procedure differs from the system introduced by the EPC in that it takes place *prior* to the grant of the patent. As soon as the Office has found that all the conditions of form and substance are met, the application is published. Third parties are invited to file opposition to the application within a period of three months following publication. When this time limit expires, the Office proceeds to make its final examination of the application, taking due account of any opposition that might have been formulated. At this point, then, it decides either to grant a patent or to reject the application. If a patent is granted, it is published.

Appeals

The decision of the Patent Offices of the Nordic countries either to grant a patent or to reject an application is subject to appeal before a higher body, which in Sweden is the Court of Patent Appeals. If this Court rejects a patent application, the applicant is entitled to make a further appeal to the Supreme Administrative Court. On the other hand, the person who has filed opposition does not have the right to appeal to the latter Court.

Term and Revocation

The question of the *term of patents* is obviously an important one. On this point, the EPC has brought about a significant harmonization of legislation in Western Europe, by setting the term at 20 years following the date of the application. The term was 17

years in the Nordic countries until 1978, whereupon it was prolonged from 17 to 20 years. That prolongation applies also to patents granted prior to the entry into force of the amendment, on condition that at least five years of the former term of 17 years still had to elapse, in respect of a particular patent, on the entry into force date.

Also regarding the *grounds for revocation*, the Nordic laws have been amended to bring them into line with the EPC. In order that European patents may be defended under the same conditions in the various countries for which they have been granted, the EPC lists certain grounds for revocation, without it being possible for national legislation to provide for others. However, before 1978 the Nordic laws provided for only two grounds for revocation, which were either that the patent had been granted for an unpatentable invention or one devoid of novelty or inventive step, or that it had been granted to a person who had no right to the invention. They have since been amended, and now they incorporate all the grounds specified in the EPC. By virtue of Article 64 of the EPC, the grounds for revocation of a European patent may not go beyond the grounds for revocation of national patents. It did not seem reasonable, notably as far as the European patent was concerned, that a patent should have to be maintained in Sweden whereas it would be invalid, for instance owing to insufficient disclosure, in the majority of the other countries of the European area.

A number of additional remarks should be made on the subject of *insufficient disclosure*. In the explanatory memorandum of the 1978 legislation, it was emphasized that this ground for revocation would have to be applied with considerable care; there would, for instance, be no question of declaring a patent invalid on the sole ground that the Patent Office should have invited the applicant to improve the description. It should therefore be applied only where the description has a serious defect that makes it impossible for a person skilled in the art to carry out the invention.

Revocation on grounds of insufficient disclosure is, moreover, addressed primarily to the case in which the disclosure was already insufficient at the time of the grant of the patent. If, however, the patent involves the deposit of a microorganism, the position is different. It is quite possible for the deposit to have been properly made at the time of the grant of the patent and for the microorganism to have lost its viability later. Admittedly, the applicant would in that case have the right, under both the Budapest Treaty and Nordic legislation, to effect a new deposit, but he could decide not to exercise that right. It is also possible, even where the microorganism is viable, for the conditions of accessibility to third parties to be no longer fulfilled.

In the course of the preparatory work on the Swedish legislation of 1983 it was emphasized that a patent could be declared invalid also on the ground that the deposit of a microorganism, which was in order at the time of

the grant of the patent, no longer met the prescribed conditions. It was pointed out, however, that the general principles governing the handling of this ground for revocation should be respected, which means that the irregularities affecting the deposit have to be of substantial importance, and that they have to have caused a prejudice to the interests of a third party.

Sanctions for Infringement

The Nordic laws naturally contain provisions providing for sanctions in the event of infringement of the exclusive rights conferred by the patent. There are sanctions of criminal character and others governed by civil law.

The criminal sanctions, which consist of fines or imprisonment for a maximum of six months, may be imposed for infringements committed deliberately. It should be added that, in practice, criminal sanctions are virtually never imposed.

The main sanctions consist in the award of damages. They are liable to be inflicted primarily on the person who commits an infringement deliberately or through negligence. Such person has in that case to pay the patent owner equitable indemnification for the use of the invention, and also for any other prejudice caused by the infringement. However, the person who commits an infringement neither deliberately nor through negligence also has to pay damages, but in that case only in the form of equitable indemnification for the use of the invention.

Compulsory Licenses

In the Nordic laws, there are also provisions for compulsory licensing, notably in the case of insufficient working by the patent owner. Those provisions are based on Article 5A of the Paris Convention. The laws also authorize compulsory licensing in response to an overriding public interest. It should be added that, in practice, compulsory licenses are granted only very rarely; indeed, no compulsory license has been granted in Sweden since 1970.

Procedure Before the Courts

In the Nordic countries, patent disputes, notably those concerning the revocation of the patent, the grant of compulsory licenses and sanctions in the case of infringement, are within the jurisdiction of the ordinary courts of law, in the first instance in Sweden the City Court of Stockholm. Appeals against the decisions of that Court may be filed with the Stockholm Court of Appeal. There is even the possibility of taking such a dispute all the way to the Supreme Court.

It should be mentioned that there has been considerable criticism of the patent procedure in Sweden, particularly for its slowness and for its cost to the parties. Above all, when one and the same patent is involved in two actions simultaneously, one brought by

the patentee for infringement and another against him seeking revocation, the procedure is often very long and drawn out.

The present system may even, at least in theory, result in the same question being considered at six levels. That is particularly liable to happen with the question of inventive step. First, the question whether an invention meets the inventive step condition may be considered by the Patent Office, by the Court of Patent Appeals and by the Supreme Administrative Court. If a patent is eventually granted, a revocation action may be brought claiming that the condition is not met; in that case, the same question may be considered by the Stockholm City Court, the Stockholm Court of Appeal and, at least in principle, the Supreme Court.

It goes without saying that such a system is not satisfactory. A Government Commission recently studied the problem of patent procedure. It published a report, with proposals for a fundamental reform in this area, which is at present being considered by the Ministry of Justice.

Failure to Respect Time Limits

In the administrative procedure of the Nordic countries, there are very heavy penalties for failure to respect time limits. Reinstatement of rights where time limits have been overstepped is not possible, therefore, except in very special cases and under very strict conditions. Before 1978, the patent laws provided for the possibility of reinstating either applications considered withdrawn or expired patents within certain time limits; what they did not contain, however, was any general provision whereby the Patent Office could allow for the fact that a patent applicant or owner had been unable to meet a time limit despite having fully intended to do so. Moreover, the EPC contains provisions in its Article 122 governing *restitutio in integrum* for failure to respect time limits in dealings with the European Patent Office.

In the course of the preparatory work on the 1978 Nordic legislation, it was pointed out that the problem of overstepped time limits was more important in patent law than in the majority of other legal fields. It was therefore considered right that provisions on *restitutio in integrum* conforming fully to those of the EPC should be included in the Nordic laws.

Coordination with the PCT

In anticipation of the ratification of the PCT, Swedish legislation considered it necessary to introduce provisions in the law on three main points. First the legal effects in Sweden of an international application designating Sweden had to be determined; next, the conditions of form and substance that an international application had to meet with in order to be acceptable in Sweden had to be defined; finally, the manner in which such an application could be processed in the national

phase had to be regulated, and also the examination of the international application within the Swedish Patent Office. The other Nordic countries adopted the same provisions.

On the other hand, the Nordic laws do not contain any rule concerning international search or international preliminary examination. The Swedish Patent Office's activities as International Searching Authority and International Preliminary Examining Authority are governed directly by the Treaty itself and the Regulations under it, and also by the agreement concluded between the Swedish Patent Office and the International Bureau of WIPO.

There are, however, certain provisions that regulate the functions of the Nordic national Offices as receiving Offices under the PCT. Those functions are performed by the Office concerned in its capacity as national Office, and certain general provisions are required to define the conditions that have to be met by an applicant. Those provisions appear in the decrees, however, and not in the laws themselves.

Ratification of the PCT called for provisions governing specifically the legal effects of international applications in the Nordic countries, and the conditions under which those applications lost their effects. One particularly interesting point should be mentioned here: under the PCT, international applications have the effect of regular national filings in the designated States, and this raises two specific questions.

The first has to do with the time as from which the applicant may claim protection against infringement. Article 29 of the PCT assimilates international publication in this respect to the compulsory national publication of unexamined patent applications. In the Nordic countries, the application is made accessible to the public 18 months after the priority date and, as from that time, reasonable indemnification may be obtained in the event of infringement, insofar as a patent is eventually granted. On this point the Nordic countries have availed themselves of the possibility offered them by Article 29(2). For an international application to enjoy such protection, the Nordic laws require first that the application, if not written in the national language, be submitted to the national Patent Office translated in that language, and that the translation be made available to the public.

The second question has to do with the implications of the international application for the state of the art. As already mentioned, national applications affect novelty as from their priority date. For an international application designating a Nordic country to have the same effect, it has to be sent to the national Patent Office, in the latter's capacity as designated or elected Office, for the purposes of the national procedure. For this, it is necessary in addition that the application be translated and that the national fee be paid. Under those circumstances, the implications for the state of the art begin as from the priority date.

This solution is different from the rule adopted for European applications designating Sweden. In that case, publication by the European Patent Office causes the application to have an influence on the state of the art in the same way as does the fact of laying a Swedish national application open for public inspection, as provided in the Convention itself.

It should be added that, with effect from January 1, 1985, Sweden has extended from 25 to 30 months the period for the continuation of the procedure in respect of Sweden for applications subject to international preliminary examination, thereby conforming to Article 39(1) as revised in 1984.

Coordination with the EPC

The Swedish Act contains provisions concerning the effects of a European patent designating Sweden. It also regulates the conversion of a European patent application into a national patent application.

As already mentioned, Sweden is the only Nordic country that has ratified the EPC, at least so far. Consequently, the laws of the other Nordic countries do not contain any such provision.

Since the entry into force of the EPC, it is possible to obtain a patent for Sweden through the European Patent Office. Such a patent has the same effects in Sweden, under the Convention, as a patent granted by the Swedish Office. In that connection, it should be borne in mind that Swedish is not a working language of the European Office; European patents are granted in English, German and French, and it has been considered necessary for patents and applications having effect in Sweden to be available in Swedish.

Sweden has therefore exercised the option whereby Contracting States of the Convention may make the effects of European patents and European applications subject to the production of a translation, in this case in Swedish, by the patent owner or applicant. The title granted by the European Patent Office operates in Sweden only if the applicant, within the prescribed period, produces a translation of the application as accepted by the European Office and pays the prescribed fee for its publication.

The published European application affords the applicant some protection against infringement committed prior to the grant of the title. A European application designating Sweden and published by the European Patent Office in principle enjoys the same protection as a Swedish national application laid open for public inspection. For this to happen, however, it is necessary for a translation in Swedish of the claims of the application to have been filed with the Swedish Office. Protection starts only when this occurrence has been made public.

If the translation of a patent or of an application differs from the original text, the protection covers the

invention only to the extent that it is covered by the claims in both versions.

Both for a European patent and for a European application it is possible, subject to payment of the prescribed fee, to correct the translation; however, the rights of third parties who might have exploited the invention in good faith on the basis of the former translation are reserved.

A European patent application may be converted into a Swedish national patent application in the case provided for in Article 77(5) of the EPC, namely, where the patent application fails to reach the European Patent Office within the prescribed period. The legislators did not make use of the possibility offered by the EPC of permitting conversion under other circumstances.

The Swedish Patent Office

General Remarks

The Swedish Patent Office, like the Offices of the other Nordic countries, makes a substantive examination of applications. In order to do this, it has a team of qualified examiners and substantial technical documentation. The international development resulting from the adoption of the PCT and the EPC has had, and will yet have, a great effect on the Swedish Office, not only with regard to the number of applications to be examined but also with regard to the Office's role in the international cooperation arising from the two treaties.

The number of applications filed with the Swedish Office reached its maximum of 18,000 in 1968. During the period from 1969 to 1977, the number of applications averaged 16,000; in 1977 it was 15,000. The entry into force of the EPC radically altered the situation; in 1984, only 6,674 applications were filed. It should be noted that this was entirely due to a drop in filings by foreign applicants, who to a large extent made use of the possibility of designating Sweden in a European application rather than filing a national application with the Swedish Office. The number of applications filed by Swedish nationals remained practically unchanged at 4,000 a year.

In 1978, there were 190 examiners at the Swedish Patent Office; today there are only 160. When the creation of the European Patent Office has had its full effect, this number is expected to drop further to 130. By way of comparison, it should be mentioned that the Danish, Finnish and Norwegian Offices each have between 50 and 70 examiners.

The Swedish Office in Relation to the PCT and the EPC

The searching and examination of applications filed with the Swedish Office takes place on the basis of

documentation that includes the patent documents published since the end of the 19th century in the most important industrialized countries, including the minimum documentation prescribed by the PCT and the national patent documents of the Nordic countries.

Since 1978, the European Patent Office has been authorized to grant patents for Sweden. It is obvious, however, that the European Patent Office will never be able to replace the Swedish Office, either for the examination of applications or for the services required by industry and inventors in Sweden. This is due for one thing to the fact that Swedish is not an official language of the EPO. Also, because of the great distance between Stockholm and Munich, it is essential that an Office be maintained in Sweden with first-rate technical documentation and also a team of well-trained examiners for the carrying out of searches and examinations corresponding to the needs of Swedish industry, inventors and researchers.

The above considerations were responsible for the decision of the Swedish Parliament that the Swedish Office should take on the functions of an International Searching Authority and International Preliminary Examining Authority. The possibility of the Swedish Office undertaking those functions within the PCT was an absolute condition of Sweden's ratification of the EPC.

In that connection, attention should be drawn to some important provisions of the Protocol on Centralization, which is an integral part of the EPC. The Protocol specifies that the States party to the Convention renounce on behalf of their national Patent Offices, in favor of the European Patent Office, any activities that they might be called upon to exercise as International Searching Authorities or International Preliminary Examining Authorities under the PCT. At the request of the Nordic countries, however, an exception to this rule was introduced. The national Office of a State party to the Convention whose official language is not one of the official languages of the EPO is authorized to engage in such activities on condition that they are restricted to international applications filed by nationals or residents of the State concerned, and nationals or residents of States party to the Convention which are adjacent to that State. It should be noted that, as far as the Nordic Offices are concerned, only the Swedish Office meets the PCT condition concerning the number of examiners.

Even before 1978, the Interim Committee responsible for the preparation of the entry into force of the EPC decided that there was nothing against the Swedish Office taking on those functions under the PCT not only for Swedish applicants but also for Danish, Finnish, Icelandic and Norwegian applicants.

The Protocol on Centralization also specifies that cooperation will be established between the European Patent Office and the national Office of a State party to the EPC which performs those functions under the PCT.

The cooperation between the European Patent Office and the Swedish Office is based on an agreement that was concluded to that end in 1978. As provided in the Protocol, the agreement deals among other things with search procedures and methods, the qualifications required for the recruitment and training of examiners and guidelines for the exchange of search reports and other services between the two Offices.

The EPC contains provisions for the coordination of that Convention with the PCT. An international search report drawn up by an International Searching Authority under the PCT replaces the European search report. Where an international search has been carried out in respect of an international application, however, provision is made for the drawing up of a complementary European report. In such a case, the applicant is expected to pay the required search fee for a European search, without any reduction. The Administrative Council nevertheless does have the power to decide on the conditions under which the complementary search report is waived and a reduction granted in the amount of the search fee. Under that provision, the Council has decided to waive the complementary report with respect to international applications for which an international report has been drawn up by the Swedish Office; in that case, the amount of the fee is reduced to zero.

Nordic applicants therefore have the possibility of having the international search carried out at the Swedish Office. To that end, the Office accepts not only applications drafted in Swedish, but also those in Danish, Finnish, Icelandic, Norwegian and English. The search fee is 2,200 Swedish crowns (corresponding to 2,200 French francs). If the international application is based on a national application that has already been the subject of a national search at a Nordic Office, the fee is 1,600 crowns. By way of comparison, it should be mentioned that the fee for an international search at the European Patent Office is 5,150 French francs.

In 1984 the Swedish Office carried out 718 international searches and 134 international preliminary examinations. In addition, 330 international-type searches were carried out.

The Swedish Office cooperates with certain developing countries. It has entered into an agreement with the International Bureau of WIPO under which the former undertakes to carry out international searches and international preliminary examinations for countries—in addition to the Nordic countries—which, according to the practice of the United Nations General Assembly, are considered developing countries. Agreements to that end have been entered into with the African Intellectual Property Organization (OAPI), Madagascar and Brazil. A similar arrangement exists between the Swedish Office and the Industrial Property Organization for English-Speaking Africa (ESARIPO).

Services Rendered by the Swedish Office in Addition to the Examination of Applications

As the PCT and EPC systems develop, the proportion of the resources of the Swedish Office used for the searching and examination of patent applications is bound to diminish gradually. Consequently, the Office will have the possibility of using the resources thus released to offer Swedish industry new services.

As long ago as in 1972, a section was set up at the Swedish Office for services that are not associated with the examination of patent applications. Today this section provides three types of service: searches independent of patent applications; consultation services; and information and training services.

The most important task is the carrying out of technology searches on request. Thus, when a specific technological problem is presented by a firm or inventor, the Office is able to determine whether there are any known technical solutions to it. It can also carry out a search to determine the state of the art in a particular field. If an invention is submitted, the Office can carry out a search to ascertain the state of the art in relation to that invention. It also provides bibliographic services. In providing the above services it makes use, among other things, of national and international indexes, such as the system of the International Patent Documentation Center (INPADOC).

The searches carried out in connection with those services are treated in strictest confidence. They do not generate any profit for the Office as they are carried out on a cost-covering basis. The client may, before filing a search request, ask for an estimate for the services of which he wishes to avail himself. It is he, moreover, who determines the extent of the search, which enables him to limit the price he has to pay.

The search services are not reserved for Swedish clients; indeed foreign clients have become more and more numerous, and today there are clients in a large number of industrialized countries.

In 1984 the Office carried out 2,930 technology searches in connection with these services, including 650 for foreign customers. In addition, during that same year, it carried out 2,200 bibliographic searches.

The Office also offers industry and inventors what are known as "consultant examiner services." A client who wishes to discuss a technological problem may apply to the Office and have a discussion with an examiner specialized in the field concerned. That examiner may assist the client in formulating a precise request for a search, which will make the search faster and more accurate. The examiner may also assist the client in specifying the extent of the search, apart from which the client may also obtain assistance in the interpretation of the technology embodied in the documents cited in a search report. It should be emphasized that these "consultation services" cover only questions of patent information. It is not possible, for instance, for an inventor to obtain advice on matters of patentability,

infringement, marketing or similar problems. The Office likewise does not give advice on questions associated with industrial applicability, questions of economic character or licensing problems.

Assistance to Developing Countries

The Swedish Office has long considered that the patent system, including the information contained in patent documents, is an important factor in the transfer of technology to developing countries. Consequently, the Swedish Office has played an active part in a program of assistance to those countries, devised by the Swedish International Development Authority (SIDA) in cooperation with WIPO.

The program consists, among other things, in the offering of fellowships to officials from developing countries for study periods with the Swedish Office, and also the participation of officials from the Swedish Office in conferences and seminars on industrial property matters for the benefit of Third World countries. The Office also carries out a certain number of searches free of charge to determine the state of the art at the request of developing countries. Those services form part of Sweden's overall program of technical assistance to those countries. As already mentioned, the Swedish Office also carries out international searches and international preliminary examinations for those developing countries with which Sweden has entered into the appropriate agreements.

Final Remarks

It follows from this account that patent law has undergone profound changes in the Nordic countries in the course of the last 20 years. The legislation has been reformed and modernized, the work having been carried out in close cooperation among the four coun-

tries. The revision of the 1960s resulted in uniform legislation in all four. The second revision, towards the end of the 1970s, brought about the harmonization of Nordic law with the two major international instruments, namely, the PCT and the EPC.

As already mentioned, the latter revision marked the entry of the Nordic countries into a very wide area of international cooperation. The ratification of the PCT by all the Nordic countries and that of the EPC by Sweden have made it possible for these four modestly-dimensioned countries to collaborate actively in the work done in connection with the two treaties.

It is the hope of all of us that the significant international development that has taken place in the patent field during the last 20 or so years will benefit all the countries concerned. At the same time, it should not be overlooked that this development has also created, and will certainly create in the future, considerable difficulties of adaptation, not only for industry and inventors, but also for the national Patent Offices. The present exposé has shown how Nordic legislation has endeavored to prevent and lessen such difficulties. A mention has also been made of the action taken by the Swedish Office to adapt to the new position in which it finds itself on account of the PCT and the EPC. Particular emphasis should be placed in this context on the new services offered by the Swedish Patent Office to Swedish industry and inventors.

Obviously it is impossible to make an assessment of future developments in the patent field, but, whatever happens, Sweden will do its utmost to adapt its legislation and structures to the needs of its industry and inventors. It goes without saying that the other Nordic countries will do the same. Those countries will be taking an active part, to the extent that their resources permit, in international cooperation for the development and improvement of the international patent system.

Activities of Industrial Property Offices

JAPAN

Industrial Property Centenary*

On April 18, 1985, the world of intellectual property celebrated in Tokyo the hundredth anniversary of the Japanese industrial property system.

The main event consisted of the "Industrial Property Centennial Commemorative Ceremony." It took place with the participation of His Majesty, Emperor Hirohito.

Some 1,400 persons followed the ceremony in the National Theater.

On the stage of the theater, in addition to the Emperor, were seated the highest dignitaries of the three branches of the Government: from the executive branch, the Prime Minister and two cabinet ministers; from the legislative branch, the Speaker of the House of Representatives and the President of the House of Councillors; from the judiciary, the Chief Justice of the Supreme Court. Each of them (except one of the cabinet ministers) read a short statement addressed to the Emperor.

The others on the stage were the Director General of the Patent Office, Mr. Manabu Shiga, who was responsible for the organization of the ceremony, and the representatives of two groups of awardees honored on the occasion of the centenary, namely, a group of awardees from industry, represented by Mr. Masaru Ibuka (President, Sony Corporation) and a group of awardees from industrial property professionals, represented by Hideo Saito (President, Japan Patent Information Center (JAPATIC)). They read a statement of thanks addressing themselves to the Emperor.

The Emperor, who spoke last but whose statement is reproduced here first, said the following:

"It is with the recognition of its deep significance, and at my great pleasure, that we celebrate today the centennial year of the establishment of the industrial property system.

"I am profoundly satisfied that the Japanese industrial property system has made a great contribution to the development of industry, and to the construction of an affluent society, during the century of its existence.

"It is clear that the role of this system is increasing in its importance with the development of the economy and the progress of technology.

"It is my sincere hope that everyone concerned will continuously do their utmost for the good use of this system" (unofficial translation).

Mr. Yasuhiro Nakasone, the Prime Minister, delivered the following address:

"On the occasion of the Industrial Property Centennial Commemorative Ceremony, with His Majesty, the Emperor, being in attendance, I should like to deliver a congratulatory speech.

"Japan has overcome many hardships thanks to the strenuous efforts of its people since the Meiji era, and in recent times Japan has achieved its present prosperity and the stabilization of its national life. Consequently, Japan now occupies an important position in international society.

"In the course of this process, the Japanese industrial property system has made a great contribution to the introduction of the many excellent achievements of foreign science and foreign technologies and to the promotion of the development of the domestic technologies. It has played a particularly important role in the remarkable postwar economic development of Japan.

"I should like to pay my respects to the efforts of our precursors who have strenuously built up this system. What we need, as far as our foreign relations are concerned, is to aim at the building of a Japan that is internationally minded and that actively contributes to world peace and prosperity, while, as far as our domestic situation is concerned, what we need to aim at is the building of a country with a vigorous culture and a thriving national welfare, preparing for our life in the twenty-first century. For the attainment of those aims, the building of creative science and creative technology is an important matter. This will also contribute to the activation of world economy and to the general development of mankind.

"The industrial property system contributes to all this since it is the basis of the development of technology and of the efficient utilization of the results of new technologies. The significance of the industrial property system is constantly increasing.

"The persons present here have played the leading roles in the development of that system.

"I conclude my congratulatory speech by my wish that further efforts be made so as to meet the needs of the times" (unofficial translation).

* Prepared by the International Bureau.

Mr. Keijiro Murata, the Minister for International Trade and Industry, recalled the decisive role of the protection of inventions, utility models, industrial designs and trademarks in the industrial development of Japan, and recalled the present efforts of the Government in modernizing the procedures of the Japanese Patent Office, including the introduction of "paperless" documentation and examination.

Mr. Michita Sakata, the Speaker of the House of Representatives, paid tribute to the patent system's role in the progress of Japanese industry since that system "protects and encourages the utilization of inventions." He added: "In order to promote economic prosperity and the national welfare—despite the restrictions imposed by national resources, energy resources, environmental conditions, etc., it is indispensable that we develop and update technology and its applications by amassing our knowledge and our creative powers."

The President of the House of Councillors of the Japanese Parliament, Mr. Mutsuo Kimusa, recalled that the Patent Monopoly Ordinance, the predecessor of the present Japanese Patent Law, was promulgated in 1885 and recalled the great merits of one of the main creators of the patent system, Korekiyo Takahashi, since—as he said—"Do not forget those who dug the well when you drink water from it."

Finally, Mr. Jiro Terada, the Chief Justice of the Supreme Court, recalled that "since its establishment, the Japanese industrial property system has been developed concurrently with reforms in economic development and expanding *internationalization*, including accession to *treaties and conventions*." He referred to the important role that courts play in the proper application of the legal texts dealing with industrial property rights.

Among the very few non-Japanese invited to the ceremony was the Director General of the World Intellectual Property Organization, Dr. Arpad Bogsch. As he remarked on several occasions following the ceremony, WIPO cannot but have a feeling of admiration for a country and a government that gives such a degree of recognition to the importance of industrial property, the promotion of which is also a primary task of WIPO. The Japanese ceremony was unique in that, in the presence

of the sovereign of the country, and with concomitant dignity and solemnity, all the highest dignitaries of the country expressed their faith in the usefulness of industrial property both on the national level and in international relations.

Later, on the same day, a splendid reception was given to some 2,000 Japanese and foreign guests by the following five Japanese associations: Japanese Group of the International Association for the Protection of Industrial Property, Japan Institute of Invention and Innovation, Japan Patent Association, Japan Patent Attorneys Association, Japan Patent Information Center. Some of the guests were introduced to Prince Hitachi, one of the sons of the Emperor, and Princess Hitachi. Among them were, in addition to the Director General of WIPO, the then President of the European Patent Office, Mr. Bob van Benthem, and the heads of the industrial property offices of China, France, the Netherlands, the Republic of Korea, Sweden, Switzerland, the United Kingdom and the United States of America, that is, Messrs. Huang Kunyi, Jean-Claude Combaldieu, Jacob Boss, Sung Jua Hong, Göran Borggård, Paul Braendli, Ivor Davis and Donald Quigg, respectively. Canada, Germany (Federal Republic of) and the Soviet Union were also represented.

The following day, the Japanese Patent Office organized an "International Symposium" as part of the centenary celebrations. It was presided over by the Director General of the Japanese Patent Office, Mr. Manabu Shiga. Some 200 specialists of industrial property law, coming from Japan and other countries, were invited and participated. They heard lectures—in this order—by Dr. Arpad Bogsch on "Developing Countries: Cooperation and Self-Help," by Mr. Bob van Benthem on "International Harmonization in the Patent Field," by Mr. Donald Quigg on "Technical Innovation and Legal Protection," and by Mr. Manabu Shiga on "Highly Advanced Information Society and Patent Information."

The Symposium also included the showing of a 15-minute motion picture, synchronized in English, made on the order of the Japanese Patent Office, bearing the title "Towards a New Century of Patent Management." Part of the film showed the WIPO Headquarters and meetings in it.

News from Industrial Property Offices

JAPAN

*Director General,
Japanese Patent Office*

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

SWEDEN

*Director General,
Royal Patent and Registration Office*

We have been informed that Mr. Sten Niklasson has been appointed Director General of the Royal Patent and Registration Office.

Book Reviews

The Future of Legal Protection for Industrial Designs, by C. Fellner. ESC Publishing Ltd., Oxford, 1985.—210 pages.

As S. Stewart points out in his preface to this well-researched and persuasively written book, "industrial designs" occupy a border territory between patent and copyright protection. The purpose of the book, which was commissioned by the Common Law Institute of Intellectual Property and the Intellectual Property Unit of Queen Mary College, London, is to examine the structure erected in the United Kingdom to provide protection in that "border territory."

The author exhaustively analyzes the current system of protection for industrial designs in the United Kingdom and compares it with the methods, including protection against unfair competition, adopted by other EEC Member States as well as by Australia, New Zealand, South Africa and the United States of America. She also dissects the relationship between national industrial design protection and the rights afforded under the Paris, Berne and Universal Copyright Conventions and the Hague Agreement. After considering current proposals for reform of the United Kingdom system of protection, the author concludes that cutting back on pure copyright protection for functional designs while creating a law of "unfair copying" based on principles of unfair competition would best reconcile the interests of manufacturers and users of mass-produced goods.

In conclusion, suffice it to say that this book makes a very valuable contribution to the study of industrial design protection, particularly the interplay between aesthetic and functional designs.

JE

Trademarks in APAA Countries. Asian Patent Attorneys Association (APAA), Tokyo, 1985.—Looseleaf binder, 780 pages.

This most valuable work—probably the first of its kind—analyzes in a clear and coherent manner the trademark systems of Australia, Hong Kong, Indonesia, Japan, Malaysia, New Zealand, the Philippines, the Republic of Korea, Singapore and Thailand. It is the result of several years of careful planning, research and preparation by the APAA Ad Hoc Committee for the Study of Trademarks under the co-chairmanship of Messrs. N. Matsubara of Japan and W. F. Dancer and R. C. Wray of Australia.

The topics chosen for analysis include distinctiveness, similarities, classification, proceedings, opposition, service marks, defensive marks, the effect of registration, renewal, user requirements, cancellation, and licensing and transfer. Within each topic detailed, comprehensive reports prepared by leading experts are presented on a country-by-country basis. The reports include valuable information not only on legal requirements and practice but also on relevant court and industrial property office decisions.

There is no doubt that this book will be immensely appreciated by all those interested in the trademark systems of the APAA countries.

JE

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Selection of New WIPO Industrial Property Publications

- Guide to the International Registration of Marks* (April 1984 edition), no. 430 (EFS), May, July 1984 (Sw.fr. 25.-).
- Directory of Associations of Inventors* (1984 edition), no. 622 (EF), May 1984 (Sw.fr. 12.-).
- International Patent Classification* (4th edition 1984) and *Catchword Index* (published under contract with Carl Heymanns Verlag) (EF), July 1984.
- Patent Law and Trademark Law of the People's Republic of China* (multilingual edition), no. 298 (EFSC), October 1984 (Sw.fr. 15.-).
- Records of the Nairobi Diplomatic Conference for the Adoption of a Treaty on the Protection of the Olympic Symbol (1981)*, no. 350 (EF), November 1984, (Sw.fr. 30.-).
- Patent Cooperation Treaty* (1985 edition), no. 274 (EF), November 1984 (Sw.fr. 12.-).

Calendar of Meetings

WIPO Meetings

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

1985

- September 11 to 13 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Patent Information for Developing Countries
- September 16 to 20 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)
- 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, Vienna and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union)
- October 7 to 11 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on General Information
- October 21 to 25 (Geneva) — Nice Union: Committee of Experts
- November 4 to 30 (Plovdiv) — WIPO/Bulgaria: World Exhibition of Young Inventors and International Seminar on Inventiveness for Development Purposes (November 12 to 15)
- November 18 to 22 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning
- November 25 to December 6 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
- November 26 to 29 (Geneva) — Committee of Experts on a Treaty for the Protection of Integrated Circuits
- December 2 to 6 (Paris) — Committee of Governmental Experts on Model Provisions for National Laws on Publishing Contracts for Literary Works (convened jointly with Unesco)
- December 3 to 6 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property
- December 11 to 13 (Geneva) — Committee of Experts on the International Registration of Marks

UPOV Meetings

1985

- October 14 (Geneva) — Consultative Committee
- October 15 and 16 (Geneva) — Meeting with International Organizations
- October 17 and 18 (Geneva) — Council
- November 12 and 13 (Geneva) — Technical Committee
- November 14 and 15 (Geneva) — Administrative and Legal Committee

Other Meetings Concerned with Industrial Property

1985

- September 2 to 6 (Budapest) — Hungarian Group of the International Association for the Protection of Industrial Property and the Hungarian Association for the Protection of Industrial Property: Sixth International Conference on "New Technical Tendencies and Industrial Property Protection"
- September 16 to 18 (Geneva) — International Association for the Advancement of Teaching and Research in Intellectual Property: Assembly and Annual Meeting
- September 24 to 27 (Strasbourg) — Center for the International Study of Industrial Property: Seminar on Transfer of Technology (second module: Strategy and Procedures for the Transfer of Technology)

September 27 and 28 (Wiesbaden) – International League for Competition Law (formerly International League Against Unfair Competition): *Journée d'études*

October 10 and 11 (Harrogate) – Pharmaceutical Trade Marks Group: 31st Conference on "Generic Prescribing—12 Diverse but Authoritative and Informed Viewpoints"

1986

March 14 (London) – Pharmaceutical Trade Marks Group: 32nd General Assembly

June 1 to 4 (San Diego) – The United States Trademark Association: Annual Meeting

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

